red

Introduction to the European Union and the European Asylum Harmonisation Process

green

Chapter 1: Main Themes and Developments of the European Asylum Harmonisation Process

EC/EU BASICS

Chapter 1
Main Themes and Developments of the European Asylum Harmonisation Process

I. Introduction

This introductory chapter will provide an overview of the main themes and developments in the European asylum harmonisation process. This process began with the inter-governmental co-operation framework in 1985 and culminated in the creation of an Area of Freedom, Security and Justice (AFSJ) by the Amsterdam Treaty (1997-1999).

The issues addressed in this chapter are presented in greater detail in Part 2 of the Tool Box 'Creating an Area of Freedom, Security and Justice: from intergovernmental co-operation to a common European asylum system'

This chapter includes the following:

II. The pre-Amsterdam era

The development of a common EU asylum policy is a relatively recent process in the context of European integration. The need for harmonised asylum laws and practices and eventually the establishment of a common European asylum system became apparent with the removal of internal borders as well as the increasingly complex challenges of dealing with a mixture of population flows, including asylum-seekers, economic migrants, trafficked persons, and irregular movers.

Discussions about the need for harmonised and co-ordinated asylum policies first began in 1985 in the context of the gradual establishment of the single market and the abolition of internal frontiers. In that year, the Commission issued a White paper on the completion of the Internal Market. This was also the year in which the Schengen Agreement was signed between the BeNeLux countries, Germany and France. The main aims of Schengen were the

abolition of internal frontiers (in order to allow freedom of movement), strengthening of the control of external borders, and co-operation in combating cross border crime.

From the mid-eighties, informal consultations between the Ministers for Immigration and senior officials of the Member States were held at regular intervals. These meetings addressed issues of mutual interest and common concern and led to the adoption of non-binding resolutions and recommendations, including ones on asylum and migration. Discussions also resulted in the preparation and adoption of international Conventions, such as in 1990 the Dublin Convention regarding allocation of responsibility for dealing with an asylum claim (entry into force 1997), and the (draft) Convention on the crossing of external borders.

As measures were adopted to establish the free movement of persons within the single market, it was considered necessary to put in place a number of measures in the area of external border control, including visa policy, police co-operation and judicial co-operation. At the heart of these measures were instruments aimed at harmonising the asylum and migration policies of Member States, as regards admission, residence and return of third country nationals. These initial steps to harmonise some elements of Member States' asylum and migration policies were therefore taken as a result of measures ensuring the free movement of persons, not by virtue of the policies themselves. However, already at an early stage, it was accepted that national policies could no longer provide an adequate response to the growing pressures of immigration on most Member States, and that therefore common approaches were needed. In 1991 an important working document (WGI-930) was adopted under the Dutch Presidency which included an outline of a European work programme on migration and asylum policy harmonisation for the years to come.

Upon entry into force of the Maastricht Treaty in November 1993, a formal mechanism for inter-governmental co-operation, as well as new instruments, was created in the policy area of justice and home affairs. These were listed in the so-called Third Pillar (Title VI) of the Maastricht Treaty which set out provisions for co-operation in justice and home affairs. It was hoped that with the adoption of a single institutional framework and the availability of specific instruments the harmonisation process in these fields would be taken a decisive step further.

These hopes however were dashed. The inter-governmental co-operation under the Maastricht Third Pillar did not yield much noticeable result and led to the adoption of incomplete and non-binding resolutions. The status of these instruments remained unclear and their contents were often considered too general and lacking in ambition. In fact, Member States were not willing to incorporate these instruments into their national laws, policies and procedures.

A political decision was required at the highest level and a subsequent Treaty amendment needed in order to push forward the European integration process as developed under Maastricht. This step change was also needed for a new conceptual approach and commitment to justice and home affairs, including a common policy on asylum and migration. With the signature in June 1997 and subsequent entry into force on 1 May 1999 of the Amsterdam Treaty, the EU made a start with the establishment of a Common Area of Freedom, Security and Justice. The development of a common European asylum policy would be part of this common area, and a review of national asylum legislation, policy and practice would be required in order for a common system, based on shared principles and common objectives, to be established.

III. The context of the 1990s

The early 1990s saw a marked increase in asylum applications in the EU Member States from both European (Western Balkans, Turkey) and non-European countries (Iraq, Afghanistan). As a result of the end of the Cold War, new conflicts emerged, often of an internal nature, which at times led to a sharp increase in the number of asylum-seekers arriving at EU borders. The conflict in the Western Balkans is one of the best-known examples, but continuing conflict in Turkey, Iraq (after the crisis in 1991), Afghanistan, Sri Lanka and Somalia contributed to large flows of refugees and displaced persons.

This influx put the processing systems of individual countries under pressure, and led Member States to develop different systems for temporary protection and other kinds of provisional status, instead of granting full refugee status. Member States were also faced with an increasing number of applications which they considered "manifestly" unfounded, since they were presumed to be lodged by economic migrants in search of a better life, or lodged for reasons without a protection element. National legislation drafted in response reflected the aim to rapidly identify and filter out these unfounded applications.

In the second half of the 1990s, there was rising concern about the increase in human smuggling or trafficking. Poorly treated by their smuggler or trafficker and often undocumented, asylum seekers were seen as part of criminal networks which created an extra burden on the responsible state authorities. The smuggling and trafficking networks appeared to be well informed about the different asylum procedures and practices of Member States. Their efforts were increasingly targeted at states which were considered to provide good prospects for accepting asylum claims, easy access to the labour market, and various possibilities for integration into the host society.

These developments led to a growing demand for harmonisation of rules and practices. Another factor was the very different and piecemeal responses by individual Member States who had their own legal frameworks and their own procedures, tools and concepts.

The harmonisation of asylum policies took place therefore against the background of increased pre-occupation with irregular migration, migrant smuggling and human trafficking, perceived or real abuse of the asylum procedure by those in search of a better life, the increasingly complex nature of asylum applications, and large-scale influxes of persons forcibly displaced by civil war and internal conflict. There was also growing concern about lengthy and multi-layered asylum procedures as well as the lack of return opportunities for unsuccessful asylum-seekers. This put the integrity of screening systems in jeopardy and resulted in a loss of public support for asylum systems in Member States.

Some observers have argued that Member States have become unreasonably preoccupied with these concerns, wishing to create a "Fortress Europe". They argue that Member States place an emphasis on quickly dismissing unfounded asylum claims, rejecting applicants unable to prove their identity and travel route, restricting access to the state territory and the asylum procedure for those who could or should have sought protection elsewhere, narrowly defining who qualifies for refugee status, and making extensive use of detention of asylum-seekers upon entry or prior to expulsion.

IV. The impact of the EC institutional structure on moves towards harmonisation of the European asylum process

The influence of certain Member States, particularly when holding the rotating Presidency of the Council (see chapter 2, B), has marked the various stages of the harmonisation process. Asylum issues, as part of the developing Area of Freedom, Security and Justice, may or may have not received priority depending on the emphasis placed on them by the Presidency. Negotiations on certain issues dear to a particular Member State have often been given decisive impetus when that Member State assumes the Presidency. With time, however, the Presidency's agenda has had to follow the Amsterdam agenda, hence there has been less room for individual priorities.

The role of the Commission and Parliament have been recently strengthened, and this has contributed to a more systematic approach to the asylum harmonisation process. During the pre-Maastricht period of inter-governmental co-operation, the role of both institutions was limited to addressing issues through policy/strategy papers, and the issuance of non-binding resolutions and recommendations. Their contributions were considered by the Council as useful opinions yet were not given any follow-up, nor did they play a major role in Council negotiations on draft instruments.

With the entry into force of the Maastricht Treaty, the Commission was entitled to take the initiative in policy-making. However, in the area of asylum, this was limited to a proposal on temporary protection and the publication of a Communication calling for a comprehensive approach to refugee issues. The European Parliament could issue comments on decisions and instruments yet only following their adoption in Council.

Once the Amsterdam Treaty had entered into force in 1999, the role of the Commission in asylum policy changed considerably. It was given the task, endorsed by the Tampere European Council, of drafting a full legislative package of asylum instruments. In many areas, including migration, border management and visa policy, the Commission shared this task with Member States. UNHCR was asked to provide expert input into the drafting of asylum instruments on invitation by the Commission, on the basis of Declaration No. 17 to the Amsterdam Treaty.

The role of the European Parliament in asylum and migration issues remained a consultative one, although it was strengthened by Amsterdam in so far as the Parliament was asked for its non-binding amendments to draft legislative proposals prior to their adoption in Council. Since the entry into force of the Amsterdam Treaty, discussions have been on-going on ways to strengthen further Parliament's role, including co-decision-making in justice and home affairs.

The Convention for the Future of Europe (see Appendix 2 of this chapter) has produced a draft constitution for the European Union, based on a full revision of the Treaties and the development of new mechanisms for the functioning of EC institutions in the enlarged Union (25 Members). If agreed by the EU Council at the end of 2003, the constitution will have an impact on the future role of the institutions in justice and home affairs, notably the power of the European Parliament.

V. Amsterdam achievements

Measures adopted before Amsterdam were considered insufficient in a Union which was developing its own basic values and legal framework, and in which asylum and immigration matters were accorded a value of their own. The development of a common European asylum system and a common European migration policy became two important elements in the establishment of the Area of Freedom, Security and Justice. Conceptually and politically, the shaping of this area was considered to be as important as the creation of the single market.

The development of a common European asylum system required binding legislative instruments establishing common standards and operational strategies. However, the common minimum standards needed to allow Member States to retain a large margin of discretion in the management of their own asylum systems. It was recognised that in the asylum and immigration area the subsidiarity and proportionality principles (see chapter 3) would have to be duly taken into account: the Community should only take action if, and in so far as the objectives of the proposed action would not be sufficiently achieved by the Member States individually. Therefore, most of the asylum instruments were developed as Directives setting the common minimum standards yet leaving Member States the choice of the most appropriate form and method of implementing them in their national (legal) systems.

Article 63 of the Amsterdam Treaty identified the building blocks of the common asylum policy, and Article 67 a five-year timeframe for implementation. On the timeframe, Member States adopted an Action Plan at the Vienna European Council in December 1998. According to this plan, most of the asylum instruments would be adopted within a two-year timeframe. Following the entry into force of the Amsterdam Treaty in May 1999, Heads of State and Government met in Tampere in October 1999 to adopt the key elements and political focus of future common policy in the various areas of the AFSJ.

By the time the Commission could start preparing the range of instruments for asylum and migration, the timetable for the Vienna Action Plan had become obsolete. The Commission therefore prepared a scoreboard mechanism, or "road map", which indicated a new timeframe for preparing, negotiating and adopting the various proposals. The JHA Scoreboard was to be updated every six months, in an effort to facilitate internal monitoring by the EU institutions of progress in adopting legislative and other instruments needed to establish the AFSJ. As outlined in the Tampere Conclusions, progress in implementation was reviewed by the European Council in Laeken which took place in December 2001. The Laeken Conclusions reaffirmed the EU's commitment to the policy directions and objectives defined at the Tampere Summit, and the need for a new impetus and guidelines to put in place the foundations of the common European asylum system.

Building blocks: first steps towards a common asylum system
The elements or "building blocks" of the AFSJ can be found in the Amsterdam Treaty, Title IV. We reproduce below the main building blocks constituting the common asylum system and the common immigration policy (Article 63). According to Article 67, the JHA Council shall decide unanimously on the various proposals, as submitted by the Commission - or a Member State - and after consulting the European Parliament:

Extracts from the Amsterdam Treaty, Title IV, Article 63

On asylum:

1. Criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States (Art. 63.1a);
2. Minimum standards on the reception of asylum seekers in Member States (Art. 63.1b);
3. Minimum standards with respect to the qualification of nationals of third countries as refugees (Art. 63.1c);
4. Minimum standards on procedures in Member States for granting or withdrawing refugee status (Art. 63.1d);
5. Minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection (Art. 63.2a);
6. Promoting balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons (Art. 63.2b);

On migration, with possible consequences for asylum seekers and refugees:

7. Measures on immigration policy, particularly regarding conditions of entry and residence, and measures addressing illegal immigration and illegal residence, including return (art. 63.3a&b);
8. Measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States (Art 63.4).

VI. Conclusion

The office of UNHCR has welcomed the EU's harmonisation initiatives as an important test case of regional concerted actions to address refugee and asylum matters, and of the willingness and ability of States to define their interests and objectives in these areas collectively. Since the early 1990s, the office has actively sought to contribute to the successful development of harmonised European asylum policies which could result in clear distinction between refugee protection and migration control, ensure fair treatment for all those in need of international protection and reduce friction in the sharing of responsibility for asylum.

VII.Chapter review

– Discuss the context in which discussions about a common European asylum system first took place.
– What were the pressures facing national governments in the 1990s in relation to asylum and migration policy?
– How did the Treaty of Amsterdam change the impact of European institutions on the asylum harmonisation process?
– Discuss the main building blocks of the AFSJ as set out in the Amsterdam Treaty. Which of these elements do you think are likely to be the most controversial?"

Appendix 1

Milestones of the European Integration Process: from Rome to Nice

Some form of European political co-operation emerged with the establishment of the Council of Europe (1949). Although there was no federal project nor any agreement for transfer of policy to a supra-national body, a structure was nevertheless born which allowed for some inter-governmental co-operation. Furthermore, the Council drafted several Conventions, most notably the European Convention on Human Rights, adopted in 1950.

In 1950, French Foreign Minister Robert Schuman and Economist Jean Monnet, both great visionaries, proposed as a first step, a plan to link European states' coal and steel industries as a way of avoiding the possibility that one state would be able secretly to develop military power. This became a reality with the conclusion of the Treaty of the European Coal and Steel Community by six European States: France, Germany, Italy and the Benelux countries in 1951 (the Treaty of Paris).

In Rome, in 1957, these six countries created the European Atomic Energy Community (EURATOM) and more importantly the European Economic Community (EEC) (initiated at the Conference of Foreign Ministers in Messina in 1955). There, the idea of giving up some national sovereignty was agreed upon. The creation of the EEC was based on the assumption that four basic freedoms should be guaranteed: 1) free movement of goods (lifting of tax and customs barriers), 2) free movement of services, 3) free movement of capital, and 4) free movement of workers.

In 1952, a Treaty establishing the European Defence Community was signed but defeated in 1954 by the French National Assembly. The idea of a common defence policy was thereafter abandoned for a long time. In 1966, France also defeated an initiative which would have allowed the Council of Ministers to agree on a number of issues by a qualified majority instead of the traditional unanimity rule. From thereon, the dynamic of European integration lost momentum.

In 1972, the first enlargement took place when the United Kingdom, Ireland and Denmark joined the European Community. Norway, which had expressed strong interest and was also accepted by the Community, rejected membership through a referendum.

In 1971/72, the then Member States agreed to create an economic and monetary Union by 1980. In 1979, the European Monetary System was established. In 1981, Greece joined the European Community, followed by Spain and Portugal in 1986.

One of the cornerstones of European integration was the Single European Act of 1986, which set the deadline for the completion of the internal market by 31 December 1992 (i.e. the lifting of all internal borders and close co-operation on additional issues such as the environment).

In 1992, Member States signed the Maastricht Treaty which paved the way for further economic and monetary Union (First Pillar), as well as for European foreign and security policy to be reinvigorated (Second Pillar). Among other things, the Maastricht Summit called for the creation of European citizenship and for closer co-operation in justice and home affairs (Third Pillar). The powers of the European Parliament were increased. Furthermore, Maastricht created the 'European Union' which cancelled previous titles such as 'European

Economic Community'. This increased the idea of a political union rather than a mere gathering of States for commercial purposes.

With the Treaty of Maastricht, respect for human rights was recognised as an essential element governing the general principles and common provisions of the European Community and of the nascent EU Common Foreign and Security Policy. Article 8 of the Treaty of Maastricht introduced the notion of citizenship of the Union. From this notion derives the right to move within and reside freely in a Member State and the right to vote and stand as candidates at municipal elections in the Member State where the citizen resides. Article 100 C set out a common visa policy.

In 1995, the EU further expanded with the accession of Finland, Austria and Sweden.

In 1997, the 15 Member States agreed for a new revision of the Treaty including an increased "communautarism" in certain areas, including in justice and home affairs. The Treaty of Amsterdam entered into force on 1 May 1999. The Treaty of Amsterdam has marked another significant step in integrating human rights into the legal order of the EU. Article 6 of the Treaty of the European Union (TEU) asserts that the EU is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States. Article 6 also includes a direct reference to fundamental rights as guaranteed by the European Convention on Human Rights to which the EU had, at times, considered joining.

In 2000, at the Nice Summit, Member States agreed to yet another revision of the Treaty (referred to as the Nice Treaty) in view of the then forthcoming EU enlargement with some ten candidate countries. The Nice Summit introduced some institutional changes and adopted the Charter of Fundamental Rights, as a non-binding but nevertheless important reference document.

In December 2002, the Copenhagen Summit paved the way for a historic enlargement of the EU with ten new Member States by 1 May 2004. The acceding countries are: the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

The Athens Summit in April 2003 approved the accession of these ten countries.

Appendix 2

The Convention on the Future of the European Union

In view of the shortcomings of the Nice Treaty in fully reforming the EU institutions and the issues raised by enlargement of the EU, the Laeken European Council decided on 14/15 December 2001 to convene a Convention on the Future of the European Union with the objective of drafting a Constitutional Treaty for the EU.

Mr Valery Giscard d'Estaing, a former President of France, was appointed Chairman of the Convention. The Convention itself was composed of representatives of the Governments and national parliaments of Member States and candidate countries, members of the European Parliament, and two representatives of the European Commission.

The Economic and Social Committee, the Committee of the Regions, Social Partners and the European Ombudsman participated as observers. Candidate countries could participate fully in the debates but had no right to veto any consensus which emerged among the fifteen Member States. Several Working Groups were established in the course of 2002, among which were ones on Justice and Home Affairs, the European Charter of Fundamental Rights, External Relations, and Defence/Conflict-Prevention. In June 2003, the Presidium – the Convention steering committee - presented a final draft Constitutional Treaty.

The draft EU Constitutional Treaty, produced by the Convention, will be discussed at the Inter-Governmental Conference towards the end of 2003 during the Italian Presidency.

With regard to asylum: the Convention agreed to the following measures as recommended by the Working Group on Justice and Home Affairs:

– Abolition of the Third Pillar structure: all JHA issues will be brought together under a single title of the Treaty, with the provision that procedures can still vary according to the action envisaged at EU level. Legislative activity in asylum should use the traditional Community method, yet in police and criminal matters some mechanisms for reinforced inter-governmental co-ordination on operational matters may have to stay.

– The place of asylum in the new Treaty: the new Treaty should include one paragraph serving as the legal basis for future harmonisation beyond the Amsterdam agenda (which is limited in time to 2004). The paragraph should make reference to the 1951 Convention as well as to the need to develop a common policy on asylum and temporary protection with a view to offering appropriate status to any third country nationals requiring international protection and ensuring compliance with the principle of non-refoulement.

– An additional provision in this section should call for responsability-sharing and solidarity as a general principle of the EU to create an area of freedom, security and justice. Under Amsterdam, the reference to burden-sharing has been limited to its financial implications (in the European Refugee Fund) and exceptional situations of mass influx (the Temporary Protection Directive).

– Legislative activity in asylum should be subject to qualified majority voting in Council and co-decision with the European Parliament.

– a provision should call for partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

With regard to migration:

– Immigration policy: the objective of a common immigration policy - similar to a common asylum policy - should also be enshrined in the Treaty, but the immigration paragraph should be limited to the Union taking incentive and support measures to what remain basically Member States' responsibilities for admission and integration. No further legislative harmonisation (as is the case in asylum) is needed beyond what is included in Art 63 par. 3 and 4 of the Amsterdam Treaty, except for the goal of combating trafficking in persons, in particular women and children. These articles in their present form allow the Union to move forward in combating irregular immigration, including its criminal aspects. To that effect, the draft Treaty provisions also stipulate that the Union may conclude readmission agreements with third countries.

Another provision specifies that Member States retain the right to determine volumes of admission of aliens coming to seek work.
Qualified majority voting and co-decision should also be adopted here.

Conclusion

It seems that sufficiently general and flexible provision on asylum will be included in the new Treaty which will allow for the next steps of harmonisation to be taken. A reference to the 1951 Convention as the basis of the common asylum system is likely to stay. Qualified majority voting and co-decision will be the principle rule. The asylum paragraph will call for responsability-sharing, an idea also underlying UNHCR's Agenda for Protection.

green

Chapter 2: EU Institutions

Chapter 2
Institutions

A - Introduction to the EU Institutions

I. Introduction

The preparation of legislation and the development of policy is maintained by complex interaction between the institutions of the EU. The EU institutions, along with the Member States, are responsible for the development of the EU acquis communautaire including the acquis on asylum.

The acquis communautaire refers to the body of legislation, standards and practices which govern Member states' actions in matters within the competence of the Community. It includes the founding Treaty of Rome as revised by the Single European Act and subsequently by the Maastricht, Amsterdam, and Nice Treaties as well as judgements of the European Court of Justice, which has jurisdiction over the application of the treaty provisions. The acquis on asylum refers to the body of standards developed under the Third Pillar of the EU Treaty, most of which are still of non-binding in nature.

This chapter includes the following:

In this chapter the main EU institutions (the single institutional framework), their make up and basic functions are introduced. We also look into the relationship between the EU and Member States at the institutional level. A more complete description of the EU institutions and their role in the asylum policy development process will be given in subsequent sections of this chapter. Community legislation will be discussed in chapter three.

In the Tool Box we sometimes refer to treaties and conventions with two dates. The first date represents the signature date of the States who are party to the treaty or convention, the second date refers to the date the treaty or convention was implemented. For example, the Treaty of Amsterdam (1997-1999) was signed in 1997 and entered into force on 1 May 1999.

The Treaty of Amsterdam is divided into a number of Titles. Title I is concerned with provisions common to all Member States. Titles II, III and IV make up for Community Law (First Pillar). Title V is concerned with common foreign and security policy (Second Pillar) and Title VI is concerned with police and judicial co-operation in criminal matters (Third Pillar). Title IV, envisaging the establishment of an Area of Freedom, Justice and Security (AFSJ), contains provisions on asylum, immigration and other matters related to the freedom of movement of persons. We will refer to this as TEC Title IV throughout the Tool Box.

II. A brief look at the machinery of the EU

The development of the EU has been marked by the shaping of legislation, policies and common action as well as the development of the institutions and their relationship with each other. Each institution has struggled for its identity and role in the European integration process.

The EU is made up of five primary institutions:

– The European Council, made up of the Heads of State and Government of the Member States, meets normally twice during each Presidency and sets the political agenda for the EU as a whole.

– The European Commission, currently made up of 20 Commissioners, provides the administration for the development and implementation of Community law and policy. It is the guardian of the Treaties, executes the Community budget and represents it externally. Commissioners are nominated by the Member States, and the President and his or her team are approved by the EU Parliament. Commissioners do not represent their States but are nominated to serve the interests of the European Community.

– The Council of Ministers of the European Union represents the governments of the Member States. The Council meets in 25 thematic formations at ministerial level. The agenda is set by the Presidency which rotates every six months between the Member States within the EU Council. Voting is weighted.

– The European Parliament, made up of 626 Members (MEPs), is elected directly by EU citizens based on their national voting regulations. It represents the interests of the European citizens. MEPs are elected for five year terms (1999, 2004, 2009, etc.). The number of MEPs from each Member State is based on the size of its population. They are organised in various political groups.

– The European Court of Justice (ECJ), made up of 15 judges from the Member States, enforces EU law and serves as the last judicial authority on Community issues. Judges are appointed for renewable six-year terms.

The institutions have different roles and responsibilities under the three pillars structure as outlined by the Maastricht Treaty and modified by the Amsterdam Treaty and also depending upon the issue concerned. This is addressed in further detail in Part 2, chapters two and three.

Under EU legislation, there is no document officially referred to as the Constitution. The founding Community Treaties (European Steel and Coal Community, European Economic Community and European Atomic Community) can be considered as the Constitution of the EU as they set out general principles and standards for the functioning of the European Communities. The Treaties of Maastricht, Amsterdam and Nice can be considered as its Amendments. In June 2003, the Convention on the Future of Europe published a draft constitutional treaty for the European Union with a view to its adoption at the Inter-Governmental Conference towards the end of 2003.

III. The relationship between the EU institutions and the Member States

The relationship between the EU institutions and the Member States is considered by many to be similar to the relationship between the central authority and provincial authorities at national level. Definitions of this relationship are however controversial, and the unique make-up of the EU does not allow for proper comparison with a federal state. The institutions of the EU have a sui generis relationship with the authorities at Member State level. This relationship is even more ambiguous and unclear for the area of justice and home affairs, where the delegation of powers has been partial.

1. Definition of EC powers

Although in some areas, they can be broad and far-reaching, the powers of the EC are strictly defined. Member States have not wished to ascribe to the EC general powers to act but have instead chosen to lay down in each area the extent of the power to act. This way, Member States are able to keep control of the process of integration and keep their sovereignty prerogatives intact.

However, the EC has also been given powers to act when it proves to be necessary for the attainment of one of the objectives set out in the Treaty. In practice this power has been increasingly used and has allowed the Commission to propose legislation in areas not necessarily foreseen, such as the protection of the environment or of consumers.

Lastly, the Community has been given the power to take such measures as are indispensable for the effective and meaningful implementation of powers that have been expressly conferred: these are referred to as the implied powers. For example this allowed the Community to take action towards third countries in areas where it had vested powers. This is how the external competence of the Community has grown over the years.

2. Principles of subsidiarity and proportionality

The guiding concept regulating the relationship between the EU and the Member States is that of subsidiarity. Subsidiarity has two basic dimensions:

– right of the European institutions to act within the framework of the Community objectives on issues affecting all Member States; and
– the right of Member States to retain control over issues where Community intervention is unnecessary.

The aim of subsidiarity is to guarantee that powers are executed at the most appropriate level. The separation and sharing of powers between the Member States and the EU must always follow the principle of subsidiarity.

Subsidiarity means that the Member States remain generally responsible for competencies that they are better able to manage, maintain or develop unless:

– the area concerned falls within the Community's exclusive competence, OR
– the objectives of the proposed action cannot be sufficiently achieved by the Member States, AND
– the action can be more effectively implemented by the institutions of the EU.

In practice this means that the EU institutions but more specifically the Commission must always prove that there is a necessity and an added value for action at the Community level.

To this principle is linked the principle of proportionality. Once it is demonstrated that the Community should act in a certain area, the question is in what way (which legal instruments to use, see Part 1, chapter 3) and to what extent it should act. The jurisprudence of the European Court of Justice has developed the idea that any Community action is justified to the extent that it does not go beyond what is necessary to achieve the objective: in other words the means should be proportionate to the aim, and the Community should not overtake its role. That is one of the reasons the Community usually prefers adopting Directives - laying down general objectives to attain and which need to be transposed into national legislation - to Regulations – laying down directly applicable detailed rules – since Directives are less prescriptive for Member States. That holds particularly true for matters related to justice and home affairs.

Asylum policy and subsidiarity

The development of asylum policy at the European level is to a great extent influenced by Member States' policies and practices and thus by the principle of subsidiarity. As a classical national prerogative, issues relating to asylum policy were originally listed under the inter-governmental co-operation of the Third Pillar. With the limited transfer to the First Pillar, the EU institutions, other than the Council, still have very limited competence over the development of asylum policy. Although the Commission has been tasked with drafting all asylum legislation, it still shares this right of initiative with Member States. The European Parliament has no right to co-decision and the powers of the European Court of Justice are also limited. Moreover, unanimity voting is required for the adoption of the first series of legislative proposals setting minimum standards, which therefore limits the ambition of the proposed instruments in terms of harmonisation.

IV. Conclusions

Institutional development, seen most recently through the Treaty of Nice (2000-2003) and the work of the Convention on the Future of Europe, is on-going. Enlargement will alter Member States' representation in the various institutions. Member States, and all other actors involved, will have to decide the best way to progress. Signals show strong support for an EU that allows certain groups of States to move ahead with pilot initiatives ("a two-speed Europe"). This will have an effect on the institutions as well.

V. Chapter review

– What are the primary institutions of the EU and what is their role?

– What comparison can be made between the EU institutions and their counterparts at the Member State level?

– What do the principles of subsidiarity and proportionality mean? What role do they play?

– Hold a discussion on the issue of "federalism" versus "communautarism."

B - The Council of Ministers of the European Union

Address: Rue de la Loi 175
B-1048 Brussels
Tel.: 0032/2/285.61.11
Internet: http://ue.eu.int/en/summ.htm

Meeting Place:
Brussels, Belgium, except during April, June and October when meetings are held in Luxembourg

Legal basis: TEC articles 202 – 210, Council Rules of Procedure

I. Introduction

This Section introduces the structure, function and internal decision-making procedures of the Council of Ministers of the European Union, commonly referred to as the EU Council.

To help simplify the complexities of the Council which is composed of several entities, we have divided this Chapter into the following parts:

I. Introduction
II. The European Council
III. The Council of Ministers
IV. The Presidency of the Union
V. Main bodies of the Council
VI. Structure of the present JHA Council
VII. UNHCR and the Council
VIII. Conclusions
IX. Chapter review

Particular attention is paid to the present state and function of the Justice and Home Affairs Council (JHA Council), including an overview of the JHA Council decision-making process and structures. The Council is responsible for visa, asylum, immigration and other policies related to the free movement of persons under TEC Title IV which aim for the creation of the AFSJ.

II. The European Council

The European Council, not to be confused with the Council of Ministers or the Council of Europe (created in 1949 and based in Strasbourg), began informally in 1971 as a meeting of Heads of State and Government of the then nine European Economic Community Members. At the Paris Summit in December 1974 it was decided to call these Summit

meetings the European Council. Article 2 of the Single European Act (1986-1987) formalised the European Council in that it stipulated that at least two European Council meetings should be held each year and specified that members of the European Council should be the Heads of States and Governments of the Member States together with the President of the EU Commission. The Treaty of Maastricht, ex-article D now article 4, firmly established the European Council as the "Supreme Executive" of the EU.

There has been no substantial change to the official role of the European Council from the Treaty of Maastricht to the Treaty of Amsterdam. Between the entry into force of the two Treaties, the European Council demonstrated that it is clearly the Supreme Executive of the EU, maintaining its policy guidance role over the three pillars of the EU. In short, the European Council is responsible for :

– energising the construction of Europe at the highest level,

– resolving obstacles and blockages between the Member States, and

– defining the general guidelines for economic and political co-operation in Europe.

The European Council sets the political priorities of the EU and suggests initiatives to the Council and Commission on behalf of the Member States. General meetings at the beginning and Summits at the end of each Presidency allow the European Council to set priorities and evaluate work. Summits are an important occasion for reassessing the goals and aims of the EU. Often the decisions taken at a given Summit by the European Council translate into EU policy, legislation and practice.

Guidelines, Reports and in particular Presidency Conclusions of each closing Summit are tools that are available to the European Council to keep the process moving. Close co-operation with the EU Member State holding the Presidency is an important element in this process.

Drawing up the priorities is an exercise in diplomacy and co-operation, with a number of consultations taking place at the national and Brussels level. Priorities tend to be broad-based goals and gradually develop through the institutions into legislation.

As a rule, the European Council meets in conjunction with the General Affairs Council (refer next page) - the co-ordinating Council - and uses its administrative structures. The European Council is also charged with resolving disputes that cannot be resolved at ministerial level.

The European Council provides the framework for discussing key political issues including those relating to EU policy on asylum, enlargement and humanitarian assistance. Ultimately it directs the decisions of other relevant Councils to conform to the goals that the European Council has identified.

From 2003 Summits will be held in Brussels, rather than in the Member State which holds the Presidency.

III. The Council of Ministers

The Council of Ministers of the European Union (or "the Council", as it is known) has important legislative functions, as it has – where the co-decision procedure applies, together

with the European Parliament - the power of final adoption of both Community and EU legislation.

The 15 Member States make up the Council of Ministers. It serves as the Member State representative body with a further role to set the political objectives of the EU, co-ordinate and make more coherent the various national policies of the Members States, and act as mediator of discrepancies between the Member States.

The Council meets in 25 different formations, each responsible for different issues.

The General Affairs Council (GAC)

The General Affairs Council, chaired by the Presidency, is seen as the "main council" of all the 25 Council formations. It is attended by Member States' Foreign Affairs Ministers. In addition to taking decisions regarding the EU's Common Foreign and Security Policy, the General Affairs Council assists the European Council with the political agenda of the EU. It is the only Council to do so. The General Affairs Council meets with the European Council at least twice a year at the EU Summits. In 2002, it was decided to split the on average monthly two-day meeting of the GAC into one day for general affairs and one day for external relations .

The 24 other Councils are all made up of the relevant Ministers from the Member States, therefore the Transport Council is made up of the Transport Ministers, the Justice and Home Affairs Council of the Justice and Home Affairs Ministers and so on.

Voting procedures in the EU Council vary depending on the issues subject to the vote. If a piece of draft Community legislation is on the table, in most cases a system of qualified majority voting (QMV) applies. With qualified majority voting, Member States are awarded different weightings for votes, and Commission proposals must receive 62 out of a total of 87 votes in order to be approved.

Current Weighted Voting

10 Germany
10 France
10 Italy
10 United Kingdom
8 Spain
5 Belgium
5 Greece
5 Netherlands 5 Portugal
4 Austria
4 Sweden
3 Denmark
3 Ireland
3 Finland
2 Luxembourg

Qualified majority: 62/87

However, under the Amsterdam Treaty, which transferred certain areas of justice and home affairs from the Third Pillar to the First Pillar, certain issues are decided on unanimously. This rule of unanimity applies to the way asylum policy is decided by the JHA Council, subject to review by the JHA Council once "common rules and essential principles in matters pertaining to asylum" are adopted as per the Nice Treaty. The Nice Treaty also decided to change the weighting of votes between Member States after enlargement.

IV. The Presidency of the Union

The Presidency of the Council is held by each Member State in turn for six months, changing hands on the 1st of January and 1st of July each year.

There is in fact no individual "President" of the EU. A Member State holds the Presidency, with the Head of State acting as the President of the various Council bodies, committees, and working groups.

The EU Presidency is designed to give the Member States an opportunity to serve as the executive of the Union for a six-month period.

EU Presidencies: 2000 – 2007

	First Half	Second Half
1997	The Netherlands	Luxembourg
1998	United Kingdom	Austria
1999	Germany	Finland
2000	Portugal	France
2001	Sweden	Belgium
2002	Spain	Denmark
2003	Greece	Italy
2004	Ireland	The Netherlands
2005	Luxembourg	United Kingdom
2006	Austria	Finland
2007	Germany	Portugal

Even though the EU will be enlarging with ten new Member States in May 2004, it is envisaged that the Presidency will continue to rotate among the 15 Member States until 2006 so that new Member States have time to prepare for holding a Presidency. In addition, the result of the Convention on the Future of Europe and subsequent decisions adopted at the next Inter-Governmental Conference in 2003 are likely to change the present institutional set up as from earliest 2005.

Presently, continuity is maintained through the "Troika" structure composed of the actual and the incoming presidencies and the Secretary General of the Council who also acts as the High Representative for the Common Foreign and Security Policy (CFSP) of the EU. At present this is Mr. Javier Solana.

Together with the European Council and the President of the EU Commission, the Presidency sets the basic agenda for action to be taken by the Council for the duration of the Presidency.

The Presidency is responsible for convening the Council and ensuring its organisation. It represents the EU regarding foreign policy issues in international organisations and at international conferences (this role is shared with the EU Commission), and must keep the Parliament informed of all Council actions under any of the three pillars.

The Presidency is expected to remain impartial and serve as the voice of compromise when necessary.

It is also the Presidency that is responsible, through the various bodies of the Council, for informing and updating regularly the other institutions of the EU on progress and new developments in its areas of competence.

In view of the often diverging interests of Member States, the Presidency will normally mediate conflicts between Member States, between Member States and the Commission, and between the Council and the Parliament. The need for conflict mediation is particularly important in those areas where the European Parliament has a greater say in the legislative process.

The Presidency has a great deal of influence regarding not only the types of legislation to be considered but also the speed at which legislation is considered.

V. Main bodies of the Council

1. The General Secretariat

The Council is presided over by the Secretary General who is also the High Representative for Common Foreign and Security Policy. The Deputy Secretary General, who oversees the work of the General Secretariat, assists this office.

High Representative for Common Foreign and Security Policy

The Treaty of Amsterdam (TEU article 18(2), (3) and TEC article 207(2)) created a new responsibility for the Secretary General of the Council in the form of the "High Representative for the Common Foreign and Security Policy". In order to facilitate the functioning of the General Secretariat, Amsterdam created the position of a Deputy Secretary General (same articles as above).

The General Secretariat administers the Council with over 2000 officials. This includes the legal service, translation and press services, and ten administrative Directorates General (DGs). General Directors, who work in close co-operation with the Deputy Secretary General, head the DGs.

TEC articles 202 – 210 outline the general role and function of the EU Council and article 207 (3) provides that "the Council shall adopt its Rules of Procedure" (CRP). The Council Rules and Procedures have existed in one form or another since 1952. They govern the

administrative functions of the Council and its bodies. In addition, the details of the various committees and working groups which operate within the Council structure are defined in the Rules and Procedures.

2. COREPER

The work of the Council is prepared by the Committee of Permanent Representatives (COREPER). COREPER's 15 members are the Permanent Representatives/ambassadors appointed by the Member States through their Permanent Missions in Brussels. In most cases, once a Working Group has come to a decision on a piece of legislation or instrument, it is forwarded directly to COREPER. It operates in conjunction with the Secretary General and the staff of the General Secretariat. COREPER is divided into two parts: COREPER I (Member State Representatives to the EU) and II (Deputies).

In some cases, such as with the development of agricultural, monetary or asylum policy, the proposal of the Working Group will be forwarded to a Special Committee. These Special Committees are made up of high officials (civil servants) who approve the proposal before it reaches COREPER.

3. Working groups

Proposals for Community legislation or instruments are discussed by one of over two hundred Working Groups made up of experts and officials from the Member States.

VI. Structure of the present JHA Council

The JHA Council serves as the EU's primary decision making body for asylum and migration policy and other areas of AFSJ development. It consists of an administrative structure and a number of political bodies, namely working groups and committees, which are responsible for legislative development in home affairs within the EU and in the accession countries. It also acts as an information clearing house.

1. Administrative structure

Directorate General JHA (DG H): Four Sections exist within DG H of the JHA Council, which provide the administrative framework for the Working Groups for JHA issues. The Sections are:

- Section I: Immigration, Frontier and Asylum
  Composed of several Groups: Group Asylum, Group Migration/Admission, Group Migration/Expulsion, EURODAC, Visa, External Frontiers, False Documents, CIREFI, CIREA (since July 2002 taken over by the Commission and re-named EURASIL)
- Section II: Police Co-operation and Customs
  Drugs, Organised Crime, Terrorism, Customs Co-operation
- Section III: Judicial Co-operation
  Extradition, Organised crime, Customs
- Section IV: General Affairs

Legal service: this unit is responsible for final scrutiny of all legislative instruments that will make up the EU acquis. Represents the JHA Council before the European Court of Justice (ECJ) (see Part 1, chapter 2, E - the ECJ).

The inclusion of the Schengen acquis into the Amsterdam Treaty meant that the Schengen structures became an integral part of the JHA Council.

We should mention here that a body was already created by Article 18 of the Dublin Convention (1990-1998) which legally operated outside the JHA Council framework, though in practice served as an integral part of the JHA Council structure. The so-called Dublin Committee was made up of high level civil servants responsible for asylum policy. This Committee was responsible for developing implementation guidelines related to the Convention as well as for taking decisions on issues arising from the application of the Convention. Now that the "Dublin II" Regulation replacing the Dublin Convention has been adopted, a new Specific Committee will be formed within the Commission structures.

2. Decision making bodies

JHA Council: The final decision making body in justice and home affairs is composed of Ministers of Justice and Home Affairs. Normally, the JHA Council meets formally three times a year during each presidency (and additionally once in an informal session), generally twice at the beginning and twice at the end of each Presidency. JHA Council meetings are used to introduce and adopt draft Directives, take stock of progress and set new priorities.

COREPER: This is the Committee of Permanent Representatives of Member States which prepares Council agenda including the JHA Council agenda. Once the political decision has been taken on an asylum proposal by SCIFA (see below), the proposal is sent to COREPER II (deputies). This body determines whether the JHA Council should immediately agree upon this proposal ("A" item) or of they should debate the item ("B" item). COREPER II's decision is based upon the work and recommendation of the relevant Working Group and SCIFA. If the asylum proposal leaves either of these bodies without the unanimous agreement of its members, the JHA Council will have to discuss the problems related to the proposal ("B" item). If, however, the other bodies are in complete agreement, it is likely that COREPER II will label the proposal an "A" item and the JHA Council (or any other Council in the case of an "A" item which calls for approval) will adopt it unanimously. Close co-operation between Group Asylum, SCIFA and COREPER II is maintained for these reasons.

Asylum Special Committee of the Council: Strategic Committee on Immigration Frontiers and Asylum (SCIFA): These are senior officials responsible for migration and asylum issues. They take political decisions within the JHA Council on the work completed by Group Asylum (see below). Introduced by the Treaty of Amsterdam to replace the K.4 Committee, SCIFA is made up of the most senior civil servants from the Member States with responsibility for home affairs.

SCIFA is responsible for giving opinions to the Council and for contributing to the Council's discussions on migration and asylum issues. SCIFA generally takes the political and practical decisions regarding any proposal that it receives from Group Asylum. SCIFA, along with COREPER, also assists in co-ordinating the asylum developments in the Working Groups. Like any other Council body, SCIFA sessions are closed to outsiders. Initiatives or conflicting positions from the individual Member States find their way to SCIFA, and from here the JHA Council receives its signal as to whether an asylum proposal is acceptable.

JHA Council decision-making and administrative structures in brief

Step 1. Draft asylum Directives or Regulations are initiated by the EU Commission. Group Asylum works with Member State officials to review the text from the Commission and harmonise all States' opinions.

Step 2. If agreement is reached in Group Asylum, often on a substantively amended version of the text, the draft is forwarded to SCIFA for political approval. The draft is once again checked with the national governments of Member States.

Step 3. If SCIFA has reached a conclusion on the draft, it is forwarded to COREPER II and labelled an "A" item and sent to the JHA Council where the Council passes it by unanimous vote. If SCIFA has not come to a conclusion on the instrument, it is forwarded to the JHA Council by COREPER as a "B" item for further discussion by the Council.

Step 4. The draft Directive becomes part of the body of Community Law, if the JHA Council agrees on it unanimously. If not, it is sent back to Group Asylum for more discussions or it is tabled for further discussion at a later date.

Working Party on Asylum: Group Asylum is made up of expert delegates from the Member States, generally from the Ministry of Interior. In addition, a representative from the Legal Service must be present as well as members of the Commission. All asylum proposals submitted by the Commission are first discussed in Group Asylum, through various stages of reading. The results of these discussions are normally forwarded to SCIFA. The latter is expected to decide on issues which have proven to be controversial at the level of Group Asylum.

Group Asylum is chaired by a representative from the Presidency. Any communication to and from Group Asylum is facilitated by the Chair.

3. Other asylum related policy bodies

Asylum policy development in the EU, and in accession, candidate and other third countries, is also within the purview of the JHA Council. Two sub-bodies in particular have been developed for this purpose. The first, the High Level Working Group, deals with third countries while the second, the Working Group Enlargement, deals primarily with accession and candidate countries.

A. High Level Working Group on Migration and Asylum (HLWG)

Established under the Austrian Presidency in the second half of 1998 on the basis of a Dutch proposal, the HLWG is composed of senior migration and asylum officials and experts and is meant to be a "cross pillar" body which addresses migratory and refugee movements from a comprehensive policy approach, involving foreign affairs, trade and aid policies, human rights and social policies. The HLWG's responsibility is to develop a cross pillar common strategy and over-all framework approach to asylum and migration policy. This is done in an effort to improve the EU management of (forced) migratory flows from selected countries of

origin and transit. Members of the HLWG are representatives from Ministries of Foreign Affairs, Interior, Justice, Development and Co-operation.

In January 1999 the Council chose six countries and/or regions for this cross pillar approach: Afghanistan/Pakistan, Albania and neighbouring region, Morocco, Somalia and Sri Lanka. The work of the HLWG has been further strengthened by the Conclusions of the Tampere (October 1999) and Laeken (December 2001) Summits. The mandate of the Group was modified in Council on 4 June 2002, with a view to achieving greater efficiency in its work. More emphasis is laid on strategic policy development, based on increased monitoring and analysis, a more flexible geographic scope to its work, more emphasis on regional approaches, real partnership with countries of origin and transit, and close involvement of Second Pillar Council working parties. Co-operation with international organisations such as UNHCR should also be enhanced, for example through the joint submission of funding proposals for operational activity. In November 2002, the Conclusions of the General Affairs/External Relations Council called for intensified co-operation in the management of migration flows with nine selected third countries which are Albania, China, Russian Federation, Ukraine, Federal Republic of Yugoslavia, Morocco, Tunisia, Libya and Turkey.

Whenever deemed appropriate, the HLWG is assisted by a number of expert groups per country or region. For example, while not directly involved in the decision-making process, the HLWG may share its work with SCIFA and other Council (Second Pillar) groups.

B. Working Group Enlargement or the "Chevènement Group"
This is a group of senior officials and experts established by COREPER (Joint Action of 29 June, 1998), concerned with enlargement, maintaining collective evaluation and application of the EU acquis in justice and home affairs in the thirteen candidate countries, mainly the Central European States, Baltic States, Malta, Cyprus and Turkey. It is also known as the "Chevènement Group" after the then French Minister of the Interior. Group Enlargement uses questionnaires as the basis for its assessment. It co-operates with the Commission DG Enlargement and DG JHA.

4. Information clearing houses

Two information clearing houses have served the EU Member States through the JHA Council. The first, the Centre for Information, Reflection and Exchange on Asylum or CIREA, has been concerned primarily with asylum seeker data, application trends and conditions in countries of origin and transit. The second, the Centre for Information, Reflection and Exchange on Frontiers and Immigration or CIREFI, provides migration-related data and statistics.

Centre for Information, Reflection and Exchange on Asylum or CIREA: this was established in 1992 as a clearing house for information on countries of origin and for exchanges on asylum. It was transferred to the management of the Commission in 2001, and renamed thereafter EURASIL.

The 1990 Dublin Convention created certain obligations related to the transfer and exchange of information on asylum seekers and refugees. As a result the Centre for Information, Reflection and Exchange on Asylum (CIREA) was established by a 1992 Joint Decision of the Council. CIREA's function was to facilitate the exchange of asylum related statistics, data and information regarding asylum issues between the Member States, including country of origin assessments.

The Centre for Information, Reflection and Exchange on Frontiers and Immigration (CIREFI) is another information clearing house. It is similar to CIREA in its function though it deals mainly with issues related to external borders and (irregular) migration.

VII. UNHCR and the Council (see also Part 4 of this Tool Box)

1. UNHCR and the External Relations Council

In relation to asylum in Europe, UNHCR's main focus is clearly the JHA Council as this is the final decision-making body for EU asylum instruments. The External Relations Council mainly affects UNHCR's work and policy on refugee challenges in third countries. This Council provides political guidelines and support for humanitarian and development aid, diplomatic action and human rights activities where it affects UNHCR's work directly.

UNHCR is also consulted on specific issues by the HLWG, both at expert and senior political level. These meetings are used to discuss policy and implementation of programmes. UNHCR also receive funding from the HLWG, mainly for asylum institution and capacity-building in regions of origin, as well as voluntary return and sustainable reintegration programmes.

2. UNHCR and the JHA Council

The core development of EU asylum legislationtakes place in Group Asylum, where early commentary and reconciliation of Member States' diverging positions takes place at an early stage. Efforts have been increased by UNHCR to develop relationships with members of Group Asylum at the Member State level. UNHCR Brussels maintains contacts with the Brussels based representations (JHA Counselors), the Commission and the Council Secretariat.

The relationship with SCIFA is through formal and informal exchanges at national and Brussels levels. SCIFA representatives regularly meet with UNHCR to discuss negotiations on EC instruments or the need for changes to legislation at the national level. Similar discussions are held at the Brussels level. UNHCR has been invited occasionally for presentations in both SCIFA and Group Asylum.

In addition, UNHCR has regularly been invited to meetings of CIREA (now EURASIL within the Commission) in order to provide information to Member States on developments in certain countries of origin, and guidance on the eligibility of asylum seekers originating from these countries.

3. UNHCR and Group Enlargement

UNHCR has been supportive of the work of Group Enlargement, providing the group with detailed and comprehensive information on the needs and strengths of the asylum systems in the candidate countries. Meetings regularly take place where information from UNHCR field offices is shared with Group Enlargement.

VIII. Conclusions

The JHA Council is the primary force behind the establishment of the Area For Freedom, Security and Justice including the development of a common asylum and migration policy. Understanding its mechanisms, decision-making structures, procedures and priorities is crucial to efforts to influence asylum policy development in the European context. The future of the EU asylum harmonisation process rests with the decision-making bodies of the JHA Council, namely Group Asylum, SCIFA and the JHA Council itself.

Five years after the entry into force of the Amsterdam Treaty, or once Community legislation setting out the common rules and essential principles in matters pertaining to asylum has been adopted as prescribed by the Nice Treaty, the JHA Council will have to make new decisions regarding its own role in the decision-making process, moving to qualified majority voting as in other Community areas.

IX. Chapter review

– What is the difference between the Council, the European Council and the Council of Europe? What are their main responsibilities?

– Describe in brief the decision-making process of the JHA Council.

– Which JHA Council sub-bodies are the most important in the development of asylum legislation?

– What might be the role of the JHA Council in the development of asylum legislation after 2004?

C - The European Commission

Address: European Commission
Rue de la Loi 200
B-1049 Brussels
Tel.: 0032/2/29.911.11
Internet: http://europa.eu.int/comm/index-en.htm

Headquarters:
Brussels, Belgium, with offices in Luxembourg, representation offices in the Members States, and delegations in the accession, candidate and other third countries.

Commissioners/Members 1999-2004:
20 (two from France, Germany, Italy, Spain and the United Kingdom, one each from the other Member States. According to the 2000 Nice Summit, when enlargement of the EU occurs, the future Commission will be capped at 27 Commissioners with a maximum of one per Member State).

Staff: 17,500 (not including consultants) (2001)

Legal basis: Art. 211 – 219 TEC

I. Introduction

This section introduces the structure, function and internal decision-making of the Commission of the European Union.

To help simplify the complexities of the Commission, we have divided this Chapter into the following parts:

I. Introduction
II. The Commission in brief
III. Main bodies of the Commission
IV. Commission decision-making
V. Commission bodies concerned with asylum and migration policy
VI. Conclusions
VII. Chapter review

The role of the Commission regarding the development of a common EU asylum system and asylum policy in the context of the creation of the AFSJ will be highlighted.

II. The Commission in brief

1. Who are the Commissioners?

Twenty Commissioners are chosen based on their qualifications and impartiality. Each Commissioner has a "portfolio", or areas of competence. A "Cabinet", which serves in an advisory and co-ordinating role, assists each Commissioner.

2. How is the President chosen?

According to TEC Article 214, the President of the Commission is nominated by the common agreement of the Member States subject to approval by the European Parliament. The European Parliament has to approve the President and the other Members of the Commission as a body.

3. The role of the President of the Commission

The Commission is led by its President. Like the other Commissioners, the President carries a portfolio, with inter alia, responsibility for the Secretariat General.

The President is responsible for the overall functioning of the civil service as well as that of the various agencies of the Commission. Together with the High Representative of the Council, the Presidency and the Commissioner for external relations, the President also serves as the official representative of the Union in the international arena. He is a member of the European Council.

The President leads the administrative bodies of the Commission, the Secretariat General and the Directorates General. In addition, the President co-ordinates the activities of the other Commissioners and helps the resolution of disputes which may arise.

The President is assisted by two Vice-Presidents, both of whom are Commissioners with their own portfolios. They help carry out the representative and administrative tasks of the President.

The Treaty of Amsterdam strengthened the role and powers of the President in several ways:

1. The President's legitimacy, in that (s)he is now appointed by the common agreement of the Member States with the approval of the European Parliament as well as the nomination of the other Members of the Commission (TEC article 214 §2).
2. Its members undertake to resign, if requested to do so by the President. (This will become an institutional requirement with the entry into force of the Nice Treaty).
3. The Commission shall work under the political guidance of the President (TEC article 219 §1).
4. The President decides on the allocation of portfolios among the Commissioners and any reshuffling of portfolios during the Commission's term of office.

4. Responsibilities

The Commission serves as the guarantor of Union concerns and Community issues through the following four main functions:

- Guardian of the Treaties
- Right of Initiative
- Executive Power
- Representation in international forums

A. Guardian of the Treaties

As Guardian of the Treaties of the EU, the Commission is responsible for watching over the proper implementation of Community law. If a breach is reported, the Commission may bring the alleged violator (a Member State or an EU institution) before the Court of Justice.

B. Right of Initiative

Under the First Pillar, the Commission normally has the sole right to initiate legislative proposals (TEC article 251). The only exception to this is in the area of justice and home affairs (JHA). In derogation of TEC article 251, TEC article 67 §1 provides that initiatives may be taken by either a Member State or the Commission (shared right of initiative). (Further deviations from the usual community procedure in the JHA domain are that the Council decides unanimously rather than by qualified majority vote and that the European Parliament has only a right to be consulted rather than to co-decide with the Council.)

C. Executive Power

The Commission carries out the decisions of the Council but has at the same time discretionary power in certain fields determined by the Treaties. For example, the Commission is empowered to administer the various funds of the EU.

Implementation of Community policy

The Commission carries out the implementation of Community policies in a number of ways:

- the establishment and management of Community programmes;
- the establishment of Community funding arrangements;
- investigative measures (regarding the breach of Community law);
- imposition of fines;
- negotiation of trade agreements (with authorisation of the Council);
- agreements with potential Member States;
- drawing up and implementing the Community budget.

In order to accomplish the tasks identified above the Commission had developed, by 2001, a civil service with a workforce of 17,500 employees and a budget of over 4.9 billion euros in 2001. The overall 2001 budget of the EU totals 96.2 billion euros in spending commitments.

D. External Representation

The Commission represents the Community on international bodies and for a where it deals with areas subject to Community competence. For example, the Commission currently participates in UNHCR's Executive Committee with an observer status.

III. Main bodies of the Commission

This section provides an overview of the main administrative organs of the Commission. These are the:

– Secretariat General
– Directorates General
– Task Forces
– Legal Service
– Humanitarian Aid Office (ECHO)
– Europe Aid Cooperation Office (AIDCO)
– Specialised Services: EUROSTAT

1. The Secretariat General

The role of the Secretary General

The Secretary General (SG), appointed by the President of the Commission, heads the Secretariat General of the Commission and is accountable to the President of the Commission. S/he has responsibility for monitoring the decision-making processes of the Council and Parliament, as well as ensuring that all the relevant services of the Commission are informed of proposals and legislative initiatives. The SG also manages relations with the more remote regions of the EU (former colonies, island States etc.).

The SG is responsible for co-ordinating the Specialised Services of the Secretariat General including the Legal Service, the Press and Communication Service, EUROSTAT, and additional services (interpretation & conferences, translation, Anti-Fraud Office, etc.), and also co-ordinates the activities of the 23 Directorates General (DGs) and offices.

2. The Directorates General (DGs)

The administrative foundation of the Commission

The bulk of administrative and policy development is carried out by the 23 Directorates General (DGs) of the Commission. The DGs have specific areas of competence that generally conform to one or more of the "portfolios" of the Commissioners.

The role of the Directorates General

Each DG is led by a Director General (DG Director General) and a Deputy Director-General.

A DG is further divided into Directorates and then into Units and Desks. Directors, Heads of Unit and Desk Officers manage the corresponding organs of the DG. DGs also include Task managers who often have "horizontal" responsibilities.

The various Desks and Units of a DG are responsible for preparing draft legislative instruments and policy and opinion papers based on the request of a Commissioner or their Cabinet. This is the main activity of most DGs and this gives content to the duty of the Commission to draft measures to be presented to the Council, and to ensure that they are implemented.

The 20 Commissioners are provided administrative support by the 23 DGs as well as by the Secretariat General and the different services.

3. Task Forces

The Commission maintains several Task Forces. These Task Forces provide the Commission with a policy-making apparatus regarding a number of issues. The Inter-governmental Conference Task Force, for example, provided the Commission with input into the drafting of revisions of the Treaties (Amsterdam, Nice). Task Forces are created to allow the Commission to be more flexible and specialised in certain subjects (such as enlargement). When subjects are particularly important, some Task Forces are transformed into a DG. This is for example true for the JHA Task Force which used to operate within the Secretariat General as long as JHA matters were purely inter-governmental yet which, with the entry into force of the Amsterdam Treaty in May 1999, was transformed into a full-fledged Directorate – DG Justice and Home Affairs.

4. The Legal Service

The Legal Service is accountable, through the Secretary General, to the President of the Commission. It serves as the in-house advisor to all the departments of the Commission and is, if requested, present at meetings of bodies of the Commission. In addition, the legal service represents the Commission before the Court of Justice, the Court of First Instance, the European Free Trade Agreement Court, the World Trade Organisation Panels and other judicial bodies. The Legal Service also has the right to take part in all proceedings for preliminary rulings for questions put to the European Court of Justice by national courts.

The Legal Service includes a Legal Advisors Group, which ensures legal and linguistic consistency of legal instruments issued by the Commission and the Codification Group responsible for the codification of Community acts.

IV. Commission decision-making

The Commission takes decisions on most issues through consensus, as these issues need to reflect the needs of the EU rather than the individual Member States. Proposals for legislative instruments including those of policy papers (White Papers, Communications) are adopted by the Commission as a collegium.

Proposals originating with the Commission

Although the Commission has the right of initiative, it should not be assumed that the actual emergence of draft legislation is always a one way process. The content of the Commission's proposal is the result of interaction between the Commission, interest groups, national experts, and senior civil servants from Member States. Within the Commission itself, the relevant Commissioner will assume overall responsibility for a proposal which comes within his/her area of competence. Once the Commissioner is satisfied with the draft, and all of those who are directly involved with the proposed measure have given their approval, the proposal will be submitted to the College of Commissioners for their endorsement. The proposal is then forwarded by the Secretary General to the Council and Parliament, by which time it will be in the public domain.

The Council challenges the Commission:

The Luxembourg Compromise of 29 January 1966
While the Commission does reserve the right to initiate Community policy in matters of Community competence, it would be incorrect to think that the Commission acts free from outside political pressure. The Member States, acting through the Council, have a great deal of influence over whether the Commission will initiate legislative or policy proposals. According to the Luxembourg Compromise of 29 January 1966, the Commission should consult the Member States through COREPER, regarding the desirability or necessity of proposals.

It is important to note that although the Commission is the starting point for Community action it is not completely free to choose whether and how to act, but has to respect Community law. Thus, it is obliged to act if the Community interest so requires. In return, the guidelines agreed by the European Council in December 1992 on the principles of subsidiarity and proportionality, as laid down in TEC article 5, allow action at Community level only in so far as it constitutes an added value in comparison to action taken at the national level.

V. Commission bodies concerned with asylum and migration policy

Under Amsterdam, the Commission's role regarding asylum and migration policy development is manifold. It includes the drafting of EC asylum and migration legislation as well as the drafting of policy proposals and operational measures related to broader refugee issues. It also includes the administration of programmes for refugee protection and assistance both within and outside the EU and programmes which benefit governments, international organisations, practitioners, NGOs and academics. In order to effectively co-ordinate its activities in the field of asylum, the Commission has adopted a number of instruments and tools, and has established a number of bodies, including tasks forces, co-ordination groups and specialised services.

1. The role of the Commission in the European asylum harmonisation process

A. Strengthened Role under Amsterdam

Under Title IV, the Amsterdam Treaty changed the role of the Commission in the area of asylum policy development. In an effort to create the European Community as an Area of Freedom, Security and Justice (AFSJ), asylum policy became a Community competence. However, for an initial transitory period of five years, the Commission had to share its right of initiative with Member States.

The Commission, therefore, created the position of a JHA Commissioner to ensure the Commission fulfilled its new role. The ultimate responsibility for decisions taken within the Commission regarding EU asylum issues lies with the JHA Commissioner (currently Antonio Vitorino, whose term ends in 2004).

The JHA Commissioner is responsible for co-ordinating the work of its own Directorate General as well as the work of the various Commission bodies involved in decision-making and policy formulation in the area of justice and home affairs such as, among others, the Legal Service, DG External Relations, DG Social Affairs and the Secretariat General.

The JHA Commissioner has direct contact with the JHA Council, the Presidency, and the European Parliament and its relevant Committees and other EU institutions (the European Court of Justice, the Economic and Social Committee and the Committee of the Regions). The JHA Commissioner also maintains regular contacts with relevant Ministers from the Member States.

In order for the office of the JHA Commissioner to carry out its various tasks, it is supported by DG Justice and Home Affairs (DG JHA).

DG JHA consists of a number of Policy Units, each with a specific area of competence (asylum, migration, visa, external borders, judicial co-operation, drugs, human rights, communications, external relations, and so on). These Policy Units are responsible for drafting new legislative initiatives and for reviewing initiatives submitted by the JHA Council, the EU Member States or communications by the Parliament. The Units also implement the various JHA programmes in, for example, training, exchange support, and studies.

With regard to the role of JHA in external relations, the Heads of State and Government stated at the Feira European Council in June 2000, about a year after the entry into force of the Amsterdam Treaty, that the need for external action should be justified by the existence of internal policies and measures. The EU's external priorities in the field of JHA had to be incorporated in the Union's overall external strategy as a contribution towards the establishment of an Area of Freedom, Security and Justice.

B. JHA programmes managed by DG JHA

European Refugee Fund

The European Refugee Fund (ERF) was launched in 2000 to support existing programmes and new initiatives in the Member States in the areas of reception of asylum seekers;

integration of recognised refugees and others in need of protection; and voluntary repatriation.

Open to national, regional and local authorities, international organisations, practitioners and NGOs, ERF funds are annually distributed to the Member States based on the number of recognised refugees and applications received for an average period of three years. The ERF reserves a portion of its funds for emergency situations including mass influxes as well as 5% for Community work programmes directly funded by the Commission. As it is a decentralised fund, each Member State has its own allocation procedure, subject to DG JHA approval.

The creation of the ERF was formally mentioned in the Vienna Action Plan, the Tampere conclusions and the AFSJ Scoreboard. Prior to the Amsterdam Treaty, four independent budget lines preceded the ERF.

Odysseus/Argo
The Odysseus Programme was launched in 1998 primarily to support practitioner training, exchange and studies in EU Member States and EU candidate countries. The Odysseus Programme ran until 2002 when the Commission created a new programme called ARGO. Some UNHCR initiated projects received Odysseus funds. These projects consisted of targeted training events and study visits. The current programme finances, for example, the European Migration Information Network, which provides online information related to migration issues, as well as a university network for legal studies on immigration and asylum in Europe.

Co-operation with third countries in the area of migration (see Part 3)
Budget line B7 – 667 entitled "Co-operation with third countries in the area of migration" is administered by DG JHA. It provides funding for programmes and projects in the framework of partnership with the countries of origin and transit in relation to asylum and immigration. Projects should be in line with the overall philosophy of the Council High Level Working Group (HLWG). Priority is given to activities relating to third countries, subject to the action plans of the HLWG.

2. Inter-institutional decision-making procedures

Once draft legislative proposals have been cleared by the respective Policy Unit, they are forwarded to the JHA Commissioner for approval of the main focus and key elements. Following approval by the Commissioner, the drafts are sent to other relevant DGs and the legal service as part of inter-service consultation. The relevant cabinets discuss the texts prior to their adoption by the Commission as a whole. The legislative proposal is then communicated to the JHA Council and European Parliament. Once the European Parliament has been consulted, and following often lengthy, technical negotiations in Council working groups, the Council of Ministers votes unanimously on the proposal.

Since the final decision on asylum issues rests with the JHA Council and it is here where the Commission proposals are further developed, the relationship between the JHA Commissioner and DG JHA on the one hand, and the EU Member States and JHA Council on the other, is a dynamic one. Thus, staff of DG JHA are in regular contact with representatives of Member States during and outside meetings of Council working parties to discuss amendments to legislative initiatives. DG JHA is invited to all meetings of JHA Council

groups and COREPER. This helps to foster co-operation between the two institutions.

N.B. The final instrument often departs considerably from the original Commission proposal. This is particularly true of policy instruments on asylum and admission of third country nationals. For example, the original version of the draft Directive on minimum standards for the reception of asylum seekers was substantially different and far more prescriptive than the Directive adopted after a year and a half of negotiations at the Council.

3. European Commission proposals in the area of asylum policy under the Treaty of Amsterdam

Benchmarks of the asylum harmonisation process

(See Part 2 of Tool Box 1 for more details on these benchmarks)

Soon after the entry into force of the Amsterdam Treaty, the Special European Council of Tampere, Finland, on 15-16 October 1999 adopted a series of "milestones" which gave political impetus to and set the main direction for future EU policy on all JHA areas, including asylum and migration. At the invitation of the Tampere Summit, the European Commission, in March 2000, introduced a scoreboard mechanism to keep under constant review the progress made towards implementing the necessary measures and meeting the deadlines set by the Amsterdam Treaty, the Vienna Action Plan and the Tampere Conclusions for the creation of the Area of Freedom, Security and Justice. Scoreboards are published biannually by the European Commission. Progress in implementing the Tampere Summit Conclusions were reviewed by the December 2001 Laeken Summit during the Belgian Presidency.

Since the entry into force of the Treaty of Amsterdam, the Commission, through DG JHA, has initiated or provided support for the following elements of the future European common asylum system:

Legal instruments and initiatives (some adopted)

- Amended Proposal Council Directive on minimum standards on procedures in Member States for granting or withdrawing refugee status of 18 June 2002, (COM (2002) 326 final) – negotiations started early 2003.
- Council Directive on the right to family reunification 2003/86/EC of 22 September 2003.
- Council Decision of 28 September 2000 establishing a European Refugee Fund (OJ L 252, 12–18 of 6 October 2000).
- Council directive laying down minimum standards on the reception of applicants for asylum in Member States, 2003/9/EC of 27 January 2003.
- Council Directive on minimum standards for granting 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 of 20 July 2001 (OJ L 212, 12–23 of 7 August 2001).
- Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States 2003/343/EC of 18 February 2003 – OJ L 050.
- Proposal for a Council Directive laying down minimum standards for the qualification and status of third country nationals and stateless persons as refugees, in accordance with the 1951 Convention relating to the status of refugees and the 1967 protocol, or

as persons who otherwise need international protection of 12 September 2001 (COM(2001) 510) – negotiations expected to terminate by early 2004.

Policy documents

- Communication from the Commission to the Council and the European Parliament: Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum of 22 November 2000 (COM(2000)755 final).
- Communication from the Commission to the Council and the European Parliament on a Community immigration policy of 22 November 2000 (COM(2000)757 final).
- Charter on Fundamental Rights of the European Union declared on 7 December 2000 (OJ C 364, 1 – 22 of 18 December 2000).

Action plans and score boards

- Scoreboard to review progress on the creation of an area of freedom, security and justice in the European Union (COM(2000)167 of 24 March 2000, latest version of 16 December 2002).

All the above-mentioned texts can be found in Tool Box 2 accompanied by UNHCR's comments.

4. Other relevant DGs in the development of asylum and migration policy

DG Employment and Social Affairs

The DG is made up of seven directorates dealing with social policy, employment, free movement and resource management. Among these is a directorate which co-ordinates migrant policy and the promotion of free movement of workers. It also deals with issues relating to the free movement of workers/persons, refugee integration, anti-racism issues and related infrastructure. In June 2003, the Commission, through a joint initiative of DG Social Affairs and DG JHA, issued a Commission Communication on the integration of third country nationals, including refugees, in EU Member States.

DG Budget

The Commissioner responsible for the EU budget calculates and regulates the income of the EU each year. In addition, DG Budget prepares and reports on the various expenditures within each Member State and outside the EU. DG Budget is also responsible for instigating the budget process in the EU. Budgetary inputs are collected from the various DGs, Commissioners, Presidential Departments of the Commission (Legal Services, Translations etc.) and other sources. The budget is then approved by the Commission and forwarded to the Budget Authority consisting of the responsible budget institutions of the Council of Ministers and European Parliament. The budget is then resubmitted to the Commission for final approval of Budget Authority amendments and/or changes. The process lasts approximately one year.

DG Budget is responsible for drawing up the available budget for refugee matters, broken down under various budget headings administered by DG JHA, DG External Relations, DG Development and DG Enlargement.

EUROSTAT
Established in 1953, the Statistical Office of the European Communities or EUROSTAT, is responsible for providing the EU with statistical information, including that relating to asylum, refugees and immigration (for instance for CIREA - now EURASIL - and CIREFI). EUROSTAT also provides information on the accession, candidate and Newly Independent Countries (NIS) countries.

5. Asylum system capacity building in candidate countries (Central Europe and Baltic States, Cyprus, Malta, Turkey)

DG Enlargement
DG Enlargement has been responsible for implementing the accession process and pre-accession strategies for EU candidate countries. The pre-accession strategies lay down country-specific strategies for meeting the criteria for membership adopted by the EU at the 1993 Copenhagen summit. They include the need for stable institutions guaranteeing democracy and the rule of law, a functioning market economy and the ability to take on the obligations of EU membership, i.e. transposition and implementation of the EU standards, including in the asylum area.

The Commission's programme for the political and economic strengthening of the Central European and Baltic States, PHARE (originally Poland, Hungary Assistance for Restructuring of the Economy, now applied to all candidate countries), was initiated to provide technical assistance to the candidate countries in the take-over of the acquis communautaire (see Part 1, chapter 2, A). It has been largely administered by DG Enlargement and in part delegated to the Commission delegations in the candidate countries themselves. This also holds true for similar but separate pre-accession assistance programmes for Malta, Cyprus and Turkey.
The Commission's assistance and preparatory work led to the successful conclusion of these strategies at the Copenhagen Summit in December 2002 when the Council accepted and welcomed ten candidate countries to accede to the EU by May 2004, namely Cyprus, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Slovakia and Slovenia.

6. Humanitarian aid and long-term support for countries of origin

DG External Relations
DG External Relations is currently headed by Commissioner Christopher Patten. It co-ordinates the EU's external relations to all regions and countries of the world. It is equally responsible for the management of delegations and external offices of the Commission around the world. It co-operates with the Ministries of Foreign Affairs in the Member States.

Development aid and humanitarian assistance
With the inauguration of Romano Prodi as President and a change in the apportioning of responsibility, the portfolios of humanitarian aid and development have been grouped together under the same Commissioner to ensure the Commission's coherence of action. To date, both the Humanitarian Aid Office (ECHO) and DG Development are under the responsibility of Commissioner Poul Nielson.
ECHO provides emergency assistance and relief to the victims of natural disasters or armed conflict outside the European Union. Funding comes from the general EC budget and the European Development Fund.
EuropeAid Cooperation Office (AIDCO or EuropeAid)

Set up by the Commission on 1 January 2001 in an effort to reform its external services, the EuropeAid Co-operation Office implements the external aid instruments of the European Commission which are funded by the European Community budget and the European Development Fund. It does not deal with pre-accession aid programmes (Phare, Ispa and Sapard), humanitarian activities, macro-financial assistance, the Common Foreign and Security Policy (CFSP) or the Rapid Reaction Facility. The Office is responsible for all phases of the project cycle management established by the Directorates-General for External Relations and Development and approved by the Commission. It operates under the responsibility of the Commissioners responsible for External Relations and Development, Christopher Patten and Poul Nielson.

VI. Conclusions

The Treaty of Amsterdam has broadened the scope of issues where the Commission has the right of initiative, though in many cases this right remains a shared one with the Council. This is the case regarding the development of the AFSJ and the common asylum system.

Since the retirement of the Santer Commission in 1999, the role of the President has been strengthened, and the Commission has been reorganised under its new President, Romano Prodi, in order to make it more accountable and transparent.

VII. Chapter review

– What are the main functions of the Commission?

– What role does the Commission play with regard to the development of EC legislation?

– What role does the Commission play regarding EU asylum policy development?

– What role does the Commission play regarding refugee protection and assistance in non-EU countries?

D - The European Parliament (EP)

Address: Brussels Rue Wiertz 63
B-1047 Brussels
Tel.: 0032/2/2842111

Strasbourg Palais de l'Europe
Av. l'Europe
F-67070 Strasbourg
Tel.: 0033/88/174001

Luxembourg Plat. du Kirchberg
L- 2950 Luxembourg
el.: 00352/43001

Internet: http://www.europarl.eu.int/

Meeting places:
- Strasbourg for monthly plenary sessions,
- Brussels for Committee meetings and additional mini and extraordinary plenary sessions.

Membership:
626 Members of European Parliament (MEPs) representing over 370 million citizens. MEPs are organised in political groups plus non-attached members. Elections are held every 5 years (1994, 1999, 2004, 2009….)

Number of seats corresponding to size of population:
Germany: 99; France, Italy, United Kingdom: 87 each; Spain: 64; the Netherlands: 31; Belgium, Greece, Portugal: 25 each; Sweden: 22; Austria: 21; Denmark, Finland: 16 each; Ireland: 15; Luxembourg: 6 (to be modified when EU candidate countries enter the EU as per the Nice Treaty).

Voting: qualified majority, simple majority.

Legal basis: TEC articles 189 – 201.

I. Introduction

This chapter introduces the structure, function and internal decision-making of the European Parliament (EP).

To help simplify the complexities of the European Parliament, we have divided this chapter into the following parts:

I. Introduction
II. The European Parliament in brief
III. Membership, representation and voting
IV. The EP's legislative powers as they relate to Community issues and inter-governmental co-operation
V. Main powers of the European Parliament
VI. Role, function and organisation
VII. Political groups
VIII. Committees of the European Parliament
IX. EP Committees involved in asylum and refugee matters
X. Chapter review

It should be noted that the December 2000 European Summit in Nice provided for changes to the treaties which would strengthen certain elements of the European Parliament. Under the draft Treaty produced by the Convention for the Future of Europe, the role of the Parliament would be further reinforced in certain areas such as justice and home affairs, including asylum.

II. The European Parliament in brief

1. What is the European Parliament and what does it do?

The European Parliament represents the peoples of the Member States. It has no power to initiate legislation, only to amend. Together with the Council it approves EC legislation (co-decision). Furthermore, it adopts the Union budget, approves the accession of new Member States, supervises and comments on the workings of the various institutions of the Union, approves the appointment of the President and the Commission as a whole, undertakes research, and adopts resolutions on various topical political issues. It can also bring cases of interpretation of Community law and validate acts of the other institutions before the European Court of Justice, where it is directly and individually concerned.

In addition, the EP may issue reports and holds hearings on its own initiative. The EP maintains relations with EU Member State national parliaments and, through inter-parliamentary delegations, with third country parliaments, particularly parliaments of candidate countries. It also forms the European element of Joint Parliamentary Assembly of EU and ACP parliamentarians.

The role of the EP in the decision-making process of the EU, which began as the European Assembly of the ECSC in 1952, has increased dramatically. This has been one major theme of European integration. The EP and the Council have been constantly struggling with the increasing influence of the EP in the Community decision-making process.

2. Making laws, changing laws

The EP is not comparable to a national legislature in so far as it cannot directly initiate laws. The EP's role is to comment, amend, approve or defeat proposals that come from the Commission and the Council. The extent of its legislative powers (co-decision, consultation) depends on the area of law in question.

3. Asylum Matters

Through the Council, asylum issues are kept firmly in the hands of the Member States, and the EP has the right to be consulted on legislative proposals only. Its amendments to draft legislation are of non-binding nature. Therefore, in order to influence the development of the EU asylum system the EP has been forced to look to other avenues of action, rather than the legislative one. This is done through the organisation of hearings, publication of reports or adoption of resolutions. Though these do not have direct effect on the process, they generate public support and interest among interested groups and parties.

4. Calendar

The EP meets in committees for two weeks a month for consultation and contact with the Council and Commission in Brussels. The third week is reserved for discussions between the political groups and the fourth is for the Plenary Session in Strasbourg. The European Council decided at the Edinburgh Summit in 1992 to maintain Strasbourg as the official seat of the EP, where twelve periods of monthly plenary sessions are held.

III. Membership, representation and voting

1. MEPs

There are currently 626 MEPs. According to the December 2000 Nice Treaty, which set the ground rules for the EP after EU enlargement, there will be up to 732 MEPs once the ten future member States have joined the EU i.e. by May 2004. The principle will remain that each Member State will be accorded a certain number of MEPs depending on the size of population.

2. Elections

Elections are held every five years, according to the general election laws of the individual Member States. Universal suffrage or the direct election of MEPs began in 1979. Since then, there have been elections in 1984, 1989, 1994 and 1999. The next elections are planned for June 2004 with the election of MEPs from the ten new Member Sates. Citizens of the European Union are not represented based on their national or geographic identities, but through political groups. This will be discussed in more detail below.

IV. The EP's legislative powers as they relate to Community issues and inter-governmental co-operation

1. Community issues (First Pillar)

As set out in The Treaty of Maastricht (see part 2, chapter two), the First Pillar of the European Union is the Community that is made up of the ECSC, EC and EURATOM. Depending on the issue concerned, the European Parliament has the right to co-decision, assent, co-operation, or, as is the case with asylum policy, mere consultation. The EP's current competencies and influence are largely limited to Community issues. It should be recalled that asylum, migration, border management and visa issues are part of the First Pillar, yet by way of a specific Treaty provision, the EP's role in the decision making process has been limited in comparison to other areas of Community law.

2. Common Foreign and Security Policy (Second Pillar)

The Second Pillar, the Common Foreign and Security Policy (CFSP), is based on inter-governmental negotiations, so does not provide the EP with any decision-making powers. The EP's procedural rights are limited to consultation.

3. Police and Judicial Co-operation in Criminal Matters (Third Pillar)

As in the Second Pillar, the EP's position in the Third Pillar (known as Police Co-operation and Judicial Co-operation in Criminal Matters) is restricted to the right to consultation.

However, the EP's strength regarding both the Second and Third Pillars is its ability to make public positions and organise initiatives. Also, under The Treaty of Amsterdam, with the transfer of some formerly Third Pillar elements (including asylum) into the First Pillar, the competence of the EP has increased.

V. Main powers of the European Parliament

The European Parliament has three basic powers:

– the shared power to legislate;
– the power of budgetary control;
– the power to supervise the Executive (i.e. the Commission and the Council).

1. Co-legislative power

The EP has the right to approve or amend Community legislation through co-decision, assent, or consultation depending on the area. Final approval rests always with the Council. Regarding asylum legislation, the EP has only the right to be consulted and its opinion (suggestions for amending proposals for a Regulation, Directive or Council Decision) is non-binding.

Where the co-decision procedure applies, the European Parliament's approval or amendments are binding on the Council. Before a joint decision is reached, a specific

procedure has to be followed which culminates, when necessary, in the so called Conciliation Committee (see below). After a first reading at the Parliament, the Council can adopt the act as approved or amended by the European Parliament or adopt a Common Position accommodating some of the EP concerns. Where the Council approves the amendments, the act is adopted as amended. If the Council adopts a Common Position, it is resubmitted to the EP (second reading) which can in turn either approve, amend or reject it. In the latter case, the act is not adopted and a Conciliation Committee is convened. If the Committee can agree on a joint position adopted by both the Council and the European Parliament (third reading), the act is adopted according to the joint position. Otherwise, the act is considered as rejected.

With the changes introduced by The Treaty of Amsterdam, the EP has acquired:

– the right of co-decision in most areas formerly subject to co-operation procedures. Thus, it now extends to social policy, health, freedom of movement, non-discrimination, the single market, transport, research, the environment, development co-operation, transparency, fraud prevention, customs cooperation, statistics and data protection.
– the right to be consulted in the areas of employment, common commercial policy, international negotiations and agreements on services and intellectual property.

The assent procedure applies to the accession procedure (article 49 TEU Amsterdam), the Structural and Cohesion Funds (article 161 TEC), the introduction of a uniform election system for the European Parliament (article 190 § 4 TEC), the conclusion of certain international agreements (article 300 § 3 second indent TEC), and the sanctions applicable in the event of a serious and persistent breach of fundamental rights by a Member State as introduced by The Treaty of Amsterdam (article 7 TEU Amsterdam).

With regard to police and judicial co-operation in criminal matters, the EP will be consulted on the Framework Decisions and Conventions taken pursuant to article 34 b) and d) of The Treaty of Amsterdam (article 39 TEU Amsterdam). The EP will also be consulted under the so called "passerelle clause" of article 42 of Amsterdam, which provides for the transfer of issues regarding police and judicial co-operation in criminal matters from intergovernmental co-operation to Community policy.

(See Part 1, chapter 3 for further information on the EC legislative process).

2. The European Parliament and the budget process: the "power of the purse"

Budgetary powers and responsibilities

The powers of the European Parliament are still limited in many areas. However, one area where the EP has a great deal of control is in relation to the budget of the EU, as the EP must adopt the EU budget each year, and without the EP's approval there is no EU budget.

The EP may exercise its influence over the budget and help to create programmes which it feels are lacking or delete those which are considered unnecessary or of less priority. This influence highlights further the importance of the work of the EP's Budget and Budgetary Control Committees and their ability in effect to alter the policy direction of the EU.
The EP has executed its budgetary powers on a number of occasions. In particular, the European Commission was forced to resign in March 1999 following the refusal of the EP to

discharge the Commission with regard to the implementation of the 1997 EU budget.

EU funds are allocated to a number of areas of interest to UNHCR, such as to justice and home affairs within the external relations policy of the EU. This includes the Balkans (corresponding financial instrument: CARDS), the Middle East and South Mediterranean countries (MEDA), the Newly Independent States countries (TACIS), enlargement (PHARE), or the EU development (European Development Fund) and humanitarian aid (ECHO).

3. Democratic supervision

A. The European Parliament and the Commission

The EP must approve the Commission President appointee as well as the body of Commissioners. The EP may also adopt a motion of censure, as set out in article 201 of the EU Treaty. This requires a 2/3rd majority to pass. The EP reviews the monthly budget and other reports submitted by the Commission. Members of the Commission appear routinely before the EP in Plenary Sessions to answer questions and supply information. Commission Members are also present at Committee meetings.

1999 resignation of the Commission

In March 1999 the entire Commission was forced to resign by the European Parliament after the initiation of the process to censure the Commission. At the request of the EP, a Committee of Independent Experts, also known as the "Three Wise Men", produced a report on the allegations of fraud, mismanagement and nepotism in the Commission. This led directly to the Commission's resignation and to a more prominent EP role in monitoring the transparency and accountability of the Commission's operations.

B. The European Parliament and the Council

The President-in-Office of the Council presents the Council's program to the EP at the beginning of each Presidency (every six months) and gives an account of the Presidency at its conclusion. Chairpersons of specific Councils are expected to do the same thing in the relevant parliamentary Committees and attend parliamentary sessions on topics under their competence.

C. The European Parliament and its Committees

The EP, through its various Committees, supervises the transparent and democratic functioning of the other institutions of the EU. This is done largely through the Committee on Constitutional Affairs, the Committee of Petitions and the Ombudsman.

The Committee on Constitutional Affairs is, inter alia, responsible for matters related to the implementation of the EU Treaty and the assessment of its operation as well as general relations with the other institutions or bodies of the European Union. Thus, it has, for example, pronounced itself on the comitology rules i.e. the institutional division of powers and the internal investigations conducted by the European Anti-Fraud Office (OLAF).

D. European Ombudsman
The first European Ombudsman was appointed by the EP in 1995 to consider complaints about administrative irregularities by the Community institutions or bodies. This is considered a non-judicial means of redress for citizens of the EU. The relevant provisions are found in article 195 of the EU Treaty and the Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties.

The Ombudsman hears complaints directly from the citizens of the Member States. The Ombudsman may also consider complaints that concern work relationships between the Community institutions and bodies and their officials and other servants. These are subject to the exhaustion of remedies through the submission of internal administrative requests and complaints. The Ombudsman is responsible to the President of the EP and routinely reports to the EP.

The Ombudsman considers complaints regarding the following institutions of the Union: Commission, Council, the European Parliament, Court of Justice, Court of Auditors, Economic and Social Committee, Committee of Regions and the European financial institutions. The ombudsman has competence in the following areas: discrimination, unfairness, misinformation, access to documents, irregularities in administrative practice, violations of rights, misuse or abuse of power, waste and mismanagement.

VI. Role, function and organisation

The European Parliament is intended to represent the people's interests in the EU integration process. The EP meets in public sessions and is charged with defending the rights of EU citizens. The EP shares the decision-making power with the Council through a series of mechanisms further defined below.

1. Organisation

The European Parliament, headed by a President, is made up of the Members of the European Parliament (MEPs). The MEPs are organised around transnational political groups, although a few remain "non-attached".

The political groups meet in the plenary sessions of the EP. They also have regular internal meetings. The group's secretariats are based in Brussels as are the secretariats of the various EP Committees and inter-parliamentary delegations. The EP General Secretariat and some specialist EP services are located in Luxembourg.

A. The President
The President of the EP, chosen by a vote of absolute majority, presides over the EP and must ensure that the proceedings are conducted properly. The President, like all other officers of the EP, must abide by the Rules of Procedure (see below). The President is elected every two and a half years.

B. The Vice-Presidents
Fourteen Vice-Presidents, elected by absolute majority, support the President on all matters and replace the President e.g. in presiding over part sessions of the plenary.

C. Quaestors
Five Quaestors, elected by secret ballot, serve as the responsible parties for financial and administrative matters directly concerning MEPs. They are accountable to the Bureau.

D. The Bureau
The Bureau serves as the EP's management. The Bureau is made up of the President of the EP and the 14 Vice-Presidents, the five Quaestors and the Chairpersons of the political groups. They are elected for terms of two and a half years.

It maintains the consistency of information and exchange and is responsible for financial, administrative and organisational decisions concerning MEPs, the internal organisation of the EP and its bodies.

The Bureau appoints the EP Secretary General, approves meetings of Committees and sets regulations related to administrative and organisational practice.

E. Conference of Presidents
The Conference of Presidents is a meeting between the President and the Chairmen of the political groups which draws up the agenda for the plenary sessions and serves as a platform for discussion and debate.

F. The Conciliation Committee
During the legislative Co-decision procedure, as set out in article 251 of the Treaty of the EU, the European Parliament can amend a legislative proposal which must then be approved by the Council. If the Council does not agree, it issues a Common Position which the EP has to approve. If the EP instead amends the Common Position, a Conciliation Committee is convened between the President of the Council and the President of the EP consisting of members of the Council or their representatives and an equal number of representatives from the EP, plus a representative of the Commission (article 251 TEC).

The other members of the Conciliation Committee include the Chair and Rapporteur of the Parliamentary Committee concerned and other members nominated by the political groups. The Conference of Presidents fixes the number of members from each political group. Majority vote governs the Committee.

The Conciliation Committee is charged with finding a solution and moving the legislative process forward. If the Committee reaches no decision, the Council may confirm the common position by qualified majority voting. If the EP rejects the proposal by a qualified majority then the proposal is not adopted.

2. Rules of Procedure

The functioning of the EP, its officers, its bureaucracy and its daily operations are governed by the Rules of Procedure. The Rules of Procedure is a list of over 200 rules that guide the operations of the EP. The 14th edition of the Rules of Procedure was published in the Official Journal of the EC in August 1999.

VII.Political groups

There are currently seven political groups as well as a number of independent non-attached members in the European Parliament. A Chairperson represents each group at plenary sessions. The political groups have spokespersons and co-ordinators for different policy areas.

The minimum number of members required to form a political group is 29 if they all come from one Member State, 23 if they come from two, 18 if they come from three and 14 if they come from four or more.

The following political groups are, at present, represented in the European Parliament:

– European People's Party/European Democrats (EPP/ED)
– European Socialist Party (PES)
– European Liberal Democrat and Reform Party (ELDR)
– Confederal Group of the European United Left – Nordic Green Left (EUL/NGL)
– Greens/European Free Alliance (Greens/EFA)
– Union for Europe (UEN)
– Europe of Democracies and Diversities (EDD)
– Non-attached : Independents (IND)

The groups have a large influence:

– own resources entered in the budget of the EP;
– own secretariat;
– the Permanent Administrators of the Political Groups prepare the group's work in committee and plenary session. These administrators specialise in policy areas;
– active participation in drawing up agenda;
– sustained contribution to debate (designation of an official spokesperson);
– own activities (symposiums, study days, information bulletins, etc.).

Chairpersons

Chairpersons organise their political groups, meet with the President of the EP in the Conference of Presidents, represent their groups in the EP, convene meetings with national parliaments called "Parliamentary Assises", maintain contact with parliaments from Member States with Accession or Associate Agreements, maintain contact with other non-EU parliaments and lobby the Council and Commission on various issues.

1999 elections

The European parliamentary elections held in May 1999 produced a change in the proportions of members of the different political groups. For the last three legislative terms the PES, or the left of centre, group had held the majority of seats. In the 1999 elections, the EPP, or the centre right, group gained control of the largest numbers of seats (232), although they did not secure enough votes for an absolute majority.

2004 elections

In June 2004 elections will be held for 732 members. By that time, ten new countries will have joined the EU, which may change considerably the political spectrum of the EP.

VIII. Committees of the European Parliament

1. What are the Committees?

The preparation for and facilitation of the plenary sessions of the EP are the responsibility of the Parliamentary Committees. There are currently 17 Standing Committees dealing with a range of policy domains such as foreign affairs, employment, financial matters, development aid, and justice and home affairs. Committees meet for two weeks a month in Brussels and one week in Strasbourg, provided the plenary sessions and other parliamentary activities allow for such Committee work during plenary.

The EP may also establish Sub-Committees to deal with issues which require more substantial review or issues that do not immediately fit within the agenda of one of the Committees. In addition, the EP may establish Temporary Committees and Committees of Inquiry. Informally MEPs meet in "Inter-groups" to discuss 'horizontal', crosscutting topics of mutual concern or interest.

Each Standing Committee or Sub-Committee has a Chairperson who is responsible for the overall functioning and accountability of the Committee. One or more Vice-Chairperson assists the Chairperson in these duties.

2. Informal work by the political groups

The Commission's legislative proposals for discussion are also debated informally by the political groups prior to Committee sessions. In each Committee, a Rapporteur is appointed to draw up a report and resolution – in case of a legislative act, this consists of a set of amendments. The Rapporteur serves as the liaison between the relevant groups in preparing the EP legislative or political or financial contribution.
In so doing, the Rapporteur can seek assistance from the Parliament's secretariat, the secretariat of his/her own political group, from the research services which each MEP

possesses, and from expert outsiders (such as UNHCR). The Rapporteur will then present the draft report to the Committee which will adopt or reject the Rapporteur's suggestions for amendments or comments to the original text. The Rapporteur will usually act as the Committee's spokesperson on the matter.
Once agreement is reached in Committee, the proposal is read and adopted in the plenary session of the European Parliament (often with further amendments).

3. Joint Parliamentary Committees

Relations with the parliaments of States with Associate Agreements, such as EU candidate countries, are maintained through the Joint Parliamentary Committees. Delegations of the EP and its foreign counterparts hold regular meetings to exchange views on matters of common concern, such as on the enlargement process, and to adopt related declarations and recommendations addressed to the European institutions or the national authorities concerned. There is also a Joint Parliamentary Assembly between the African, Caribbean and Pacific group of states and the EC and its Member States.

4. Inter-Parliamentary Delegations/Parliamentary Co-operation Committees

Similar to the Joint Parliamentary Committees, the Inter-Parliamentary Delegations maintain contact with Parliaments of third countries with which the EU has Co-operation Agreements (Switzerland, Norway and South Eastern European countries) or another type of co-operation such as Asian, Central American or Middle East countries. The European Parliament also maintains co-operation with third countries from Eastern Europe and Central Asia through Co-operation Committees. Delegations of the EP and its foreign counterparts hold regular meetings to exchange views on matters of common concern, adopt related declarations and recommendations addressed to the European institutions or the national authorities concerned.

IX. EP Committees involved with asylum and refugee matters

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (referred to as the LIBE Committee) is responsible for matters relating to:

- human rights and civil liberties in the EU;
- racism and xenophobia;
- asylum and migration policy, visa policy, and border management;
- judicial co-operation in civil and penal matters;
- police co-operation, organised crime, including Europol;
- customs co-operation;
- police co-operation;
- EUROPOL;
- Drugs;
- Terrorism.

The Foreign Affairs, Human Rights, Common Security and Defence Policy Committee is concerned with common foreign and security policy (i.e. the Second Pillar of The Treaty of Amsterdam), which includes:

- Common Foreign Policy, conflict prevention and crisis management;
- human rights and democratisation in third countries;
- common defence and disarmament;
- relations with third countries and international organisations;
- opening, monitoring and concluding negotiations concerning the accession of European States to the EU;
- opening, monitoring and concluding negotiations concerning Association and Co-operation Agreements and other international agreements;
- co-ordination of the work of Inter-Parliamentary delegations and Joint Parliamentary Committees;
- consultation with the Committee on External Economic Relations and economic and trade matters.

The Budget and Budgetary Control Committees are responsible for budgetary matters including:

- definition and exercise of the EP's budgetary powers;
- the EU budget;
- final implications of Community Acts;
- preparation and co-ordination of the Conciliation Procedure on issues having financial implications;
- accounting and management;
- transfers of appropriations;
- the control of financial, budgetary and administrative measures of the budget of the EU, including the EP budget.

The Development and Co-operation Committee is responsible for matters relating to:

- humanitarian aid, emergency aid and food aid;
- Co-operation Agreements and relations generally with developing countries;
- the African, Caribbean and Pacific (ACP) Convention (Cotonou Agreement, ex-Lomé Convention);
- technical, financial and educational co-operation;
- industrial, agricultural and rural development;
- relations with international organisations which specialise in development, co-operation and humanitarian aid.

The Women's Rights and Equal Opportunities Committee is responsible for matters relating to inter alia:

- the definition and evolution of women's rights in the EU;
- implementation and improvement of directives relating to equal rights for women;
- social and employment policies;
- information dissemination;

– women's role in EU institutions;
– women in the international sphere; and
– the role of migrant and refugee women in Europe.

Employment and Social Affairs Committee
Employment and Social Affairs Committee is responsible for matters relating to inter alia:

– living conditions;
– employment;
– wages and other funding schemes;
– free movement of workers and other social issues.

X. Chapter review

– What are the main powers of the European Parliament?

– What is the role of the President of the EP?

– Describe the Committee structure of the EP. Describe the political group structure.

– What is the role of the Conciliation Committee ?

– What is the EP's relationship to the other institutions of the EU? UNHCR? Member States?

– What influence do the committees of the European Parliament have on the development of EU asylum policy?

E - European Court of Justice (ECJ)

Seat: Luxembourg

Address: Plateau du Kirchberg
L-2925 Luxembourg
Tel.: 00352/43031

Internet: www.curia.eu.int

I. Introduction

The purpose of this chapter is to introduce the structure, function and internal decision-making of the European Court of Justice, commonly referred to simply as the ECJ. The workings of the European Court of First Instance, referred to as the CoFI will also be described.

To help simplify the complexities of the ECJ and CoFI, we have divided this Chapter into the following parts:

I. Introduction
II. The ECJ in brief
III. Composition of the ECJ
IV. Jurisdiction
V. ECJ and national courts: Preliminary Rulings
VI. Composition of the CoFI
VII. ECJ and asylum
VIII. Conclusions
IX. Chapter review

The following presentation is based on the law in force, i.e. the provisions of the Nice Treaty. The entry into force of the Nice Treaty has resulted in a number of procedural and institutional changes designed to enhance the functioning of the ECJ in view of the accession of new Member States to the European Union.

II. The ECJ in brief

1. Institutional structure

The European Court of Justice is governed by TEC Art. 220 –245 and some additional dispersed provisions of the Treaty, its Statute and Rules of Procedure. To handle a growing case load, the Council, responding to a request made by the Court, attached in 1987 to the Court, the Court of First Instance. This was done to allow the Court to focus on the interpretation of Community Law, while allowing the Court of First Instance to adjudicate on

cases brought forward by natural or legal persons (with the exception of Member States), subject to appeal to the Court. The Court is assisted by Advocates General, who deliver opinions on the cases brought before the Court, whereas the Court of First Instance is not. The Court and the Court of First Instance are facilitated by their own Registrar.

2. Role

According to TEC Article 220, the ECJ "shall ensure that in the interpretation and application of this Treaty the law is observed." This involves:

– the settling of disputes in adversary proceedings
between Member States,
between European Institutions and Member States,
between European Institutions,
between individuals and European Institutions;

– preliminary rulings at the request of a national court on the interpretation of the Treaty and the interpretation and validity of acts of the institutions;

– opinions at the request of the Council, the Commission or a Member State on the compatibility of envisaged international agreements with the provisions of the Treaty (TEC Article 300 VI).

In practice, the preliminary proceedings play a dominant role in the work of the Court. It is mainly in this type of proceedings that the Court's jurisprudence became over the years one of the main sources in the development of Community law.

III. Composition of the ECJ

1. The members

The Court of Justice is comprised of one judge per Member State (at the moment 15 Judges) and 8 Advocates General. They are appointed by the governments of the Member States, in common accord, from jurists who demonstrate independence and competency. The Judges and the Advocate Generals hold office for a renewable six year term.

2. The President

The Judges select one of their members to be President for a renewable 3 year term. The President presides over the Court and directs its work. The President:

– distributes cases among the Chambers,
– appoints a Judge Rapporteur for each case,
– appoints the dates of hearings and deliberations,
– deals in chambers with applications for provisional measures.

3. The Advocates General

As laid down in TEC Art. 222, the Advocates General are charged "with making reasoned submissions in open Court with complete impartiality and independence, on cases brought before the Court of Justice, in order to assist the Court in the performance of the task assigned to it."

A First Advocate General is designated each year who decides on the distribution of cases among the Advocates General as soon as the Judge Rapporteur has been appointed for each case by the President of the Court.

4. Law Clerks

Each Judge and each Advocate General is assisted by three law clerks of their choice. These lawyers carry out research and prepare the documents, such as the Court's decisions and the Advocate General opinions.

5. The Registrar

The Registrar is appointed by the Court. He holds office for a term of six years (renewable). He or she receives cases, allocates procedural documents, draws up the minutes of the hearings and directs the functioning of the administrative departments. The Registrar oversees the Court's administrative apparatus including translation and interpretation services.

IV. Jurisdiction of the Court of Justice

The Court is the Supreme Judicial Authority of the Community. Its judgements cannot be referred to any higher authority.

The Treaty of the EU attributes to the ECJ jurisdiction for a range of actions, including the following:

1. Action for failure to fulfil Treaty obligations (TEC Art. 226)

An action for failure to fulfil Treaty obligations allows the Court to determine whether a Member State has fulfilled its obligations under Community Law. An action may be brought to the Court by the Commission (Art. 226 ECT) or by another Member State (227 ECT), yet not by the European Parliament or an individual. These decisions only have a declaratory power. However, penalties may be imposed by the Court following a proposition of the Commission, if a Member State does not comply with an earlier decision by the Court (Art. 228 ECT).

2. Proceedings for annulment (TEC Art. 230)

In these proceedings, the Court reviews the legality of the acts of the Community institutions. A Member State, the Council and the Commission may apply to the Court for an annulment

of all or part of an act of a European institution. The Parliament, the Court of Auditors, and the European Central Bank may initiate such proceedings for the purpose of protecting their prerogatives. An individual may apply to seek annulment of a decision that is of direct and individual concern to him. If the Court considers the action to be well founded it declares the act null and void taking effect ex tunc, that is of the moment that the act would have had legal effects. It can however declare that the effect only exists ex nunc – as of now.

3. Proceedings for failure to act (TEC Art. 232)

These proceedings are applied when an institution fails to act, contrary to the terms of the Treaty. Member States or EU institutions are allowed to initiate proceedings. If the Court establishes a failure to act, it obliges the institution concerned to take the respective measures, but has no power to enforce this.

4. Actions for liability (TEC Art. 288, par. 2)

The Court rules on the liability of the Community for damages caused by its institutions or servants (officials) in the performance of their duties. The burden of proof is on the plaintiff.

5. Proceedings by officials (TEC Art. 236)

The ECJ has jurisdiction in any dispute between the Community and its servants. It awards damages if necessary.

6. Power of opinion (TEC Art. 300 par. 6)

When doubts exist on the compatibility of a draft of an international agreement with the terms of the Treaty, the Council, the Commission or Member States may request the opinion of the Court.

7. Conditional proceedings (TEC Art. 238)

The Court acts as an arbitrator in relation to arbitration clauses in contracts governed by public or private law, concluded by or on behalf of the Community.

8. Request for Preliminary Rulings (TEC Art. 234)

In case a question concerning the interpretation of Community law or the validity of acts of the institutions arises in a national court, this court may consult the ECJ and request a Preliminary Ruling. This question is however obligatory wherever the validity of a Community act is concerned. It is equally obligatory where a problem of interpretation of Community law arises in a national court against the decisions of which there is no further legal remedy at national level.

The ECJ "pronounces Community law" without prejudging the result of the litigation since this is a matter for the national judge applying EC law. This presents a unique way of ensuring the

uniform application and interpretation of Community law in all Member States (see V below).

9. Appeals against judgements of the Court of First Instance (TEC Art. 225, par. 1)

The ECJ hears appeals against judgements by the CoFI.

V. Court of Justice and national courts: Preliminary Rulings

If a national court is in doubt regarding the interpretation or validity of one or more Treaty provisions or acts of the institutions, it may seek a "Preliminary Ruling" from the ECJ. Any court against whose decision there is no judicial remedy under national law is obliged to seek a decision of the ECJ. The same is true, where the validity of a Community act is in question.

The procedure develops as follows:

- The national court brings before the ECJ questions related to the interpretation or validity of Community acts.
- The Registrar has the application translated, notifies the parties concerned (Member States, Commission or the Council) and publishes the essentials of the case in the Official Journal.
- The parties have two months to make their comments known.
- The President appoints a Judge Rapporteur, whose duty is to follow the progress of the case. The First Advocate General chooses the Advocate General.
- At the end of the preliminary inquiry the case is argued by the parties at a public hearing before the judges.
- Some weeks or months later, the Advocate General delivers his opinion.
- Finally the ECJ decides on the basis of a preliminary report drawn up by the Judge-Rapporteur.
- The ruling is binding on all Member States.

This procedure applies in principle to all the other procedures brought before the Court.

VI. The Court of First Instance

1. Composition

The Court of First Instance (CoFI) is comprised of at least one judge per Member State (now: 15 judges), appointed by the Member States, acting in common accord, for a renewable term of 6 years. The members of the Court of First Instance choose one of their own as President for a renewable three year term. The Registrar is appointed by the Court of First Instance and serves as clerk for the Court. Administrative services are handled by the Court of Justice.

2. The jurisdiction of the CoFI

This includes:

– actions for annulment brought by natural or legal persons against the Community;
– actions for failure to act and for damages;
– competition proceedings
– disputes between the Community and its officials and other servants.

NB: While the Council is attributed the power to determine the cases for which the CoFI is competent, the Treaty of the EU rules out a competency of the CoFI in cases of Preliminary Rulings (TEC Art. 225).

With the Treaty of Nice, there is provision for some of the work of the CoFi to be dealt with by judicial panels, with an appeal to the CoFI itself.

3. CoFI procedures

A. Direct actions
A written application must be sent to the Registry by a lawyer. The application is recorded and the action and claim are published in the Official Journal of the European Communities. A Judge Rapporteur is appointed to review and follow the case. The other party also receives the application and has one month to lodge a defence. Both the defendant and plaintiff have one month to respond to each other's remarks. Time limits are observed by the President of the CoFI.

B. Preparatory inquiries
The President sets the date for the public hearing. A Report for the Hearing summarises the case. The hearing takes place before the judges and the Advocate General.

C. Judgements
Judgements are reached by majority vote. The judges deliberate on the basis of the report made by the Judge Rapporteur. When a final text has been agreed upon, the judgement is proclaimed in open court. There are no dissenting opinions. Judgements are published in the Reports of Cases before the Court of Justice and Court of First Instance.

D. Legal Aid
Legal Aid will be provided by the Court after the review of an application for legal aid and supporting evidence has been completed. The Chamber to which the Judge Rapporteur belongs decides whether or not to grant legal aid.

VII. The Court and asylum

Under TEU article 68 and in contrary to Community law in other areas, a national court, against whose decisions there is no judicial remedy shall, if it considers that a decision on the questions is necessary to enable it to give judgement, request the Court for a Preliminary Ruling on the interpretation of the provisions of Title IV. The Council, the Commission and Member States may also seek a decision of the ECJ concerning the interpretation or validity of acts of the institutions based on this Title.

As the Court of Justice is unable to issue rulings on questions of interpretation at the request of lower level national courts – which is the case in other areas –, the implementation of Community measures in these areas risks remaining variable among Member States.

Furthermore, the ECJ does not have jurisdiction to rule on any measure or decision regarding the crossing of internal borders, if issues of internal security or the maintenance of law and order are concerned, as per article 68 §2 TEC.

It is expected that the new treaty, to be adopted by the Inter-Governemental Conference end of 2003, will redress this situation of exception and grants the ECJ usual competence over asylum and migration issues.

VIII. Conclusions

The longer term impact of the Treaty of Amsterdam on the Court will depend upon the JHA Council, which will decide on the Court's future role regarding the EU asylum acquis after the Treaty has been in force for five years (TEC article 67 §2). The Council will decide whether the Court will have increased competencies in this field equivalent to those in other First Pillar areas, or whether these powers of judicial control should remain restricted. The work of the Convention on the Future of Europe will also be important in determining the future role of the Court in justice and home affairs.

The future role of the Court will not only be an important indication of the EU's commitment to accountability and the legal control of its actions, but will also show its willingness to further the harmonisation process through binding interpretative Court rulings. An enlarged competence of the ECJ, will contribute, through the establishment of a body of case law, to the development of the EU common asylum and immigration policy and, hence, its coherence and consistency.

IX. Chapter review

– How many judges sit on the ECJ? For how long are they appointed?

– What is the role of the President of the ECJ?

– What is the significance of the Preliminary Rulings, particularly in immigration and asylum matters?

– Who can petition the ECJ and how?

– What is the difference between the ECJ and the CoFI?

– What role can the ECJ generally play in the development of the common asylum and immigration policy?

F - Other Institutions of the EU

I. Introduction

This section is mainly dedicated to the description of two EU bodies which are also involved in the development of EU asylum policy: the Economic and Social Committee and the Committee of the Regions.

Although they only have a tangential link with asylum matters, two other bodies are also presented: the Court of Auditors and the European Investment Bank.

Finally, to complete the presentation of the EU and other European institutions, a brief mention is made of the European Central Bank.

II. The Economic and Social Committee

Address: Rue Ravenstein 2
B-1000 Brussels
Tel.: 0032/2/546.90.11

Internet: http://raven.ces-cdr.eu.int

1. Role

The Economic and Social Committee (ESC) was established by the Treaty of Rome in 1957 (TEC articles 257-262) with the responsibility for representing the various economic and social groupings in the European Community, in particular in relation to the completion of the single market. These groups are employers, workers, and various interest groups (self-employed, civil society). It has since become a Committee that delivers its opinion on any issues of Community interest.

The Commission and the Council are obliged to consult the ESC during the law making process in various areas, such as:

– free movement, asylum and immigration,
– internal Market,
– social policy,
– vocational training, and
– research and technological development.

The ESC has also the right to issue opinions on its own initiative. It is a strictly consultative body that issues legally non-binding opinions. Its role is important in that the ESC provides a forum where representatives of economic and social activity may exchange views and offer opinions to the institutions of the EU. Recently, the ESC has started to issue comments and opinions on the various Commission proposals for legislative instruments on asylum and migration, as well as Commission policy documents. The ESC has organised hearings and

thematic Conferences on these proposals, for instance on the issue of integration of migrants, and has sought UNHCR's inputs into its various activities.

On some occasions, the ESC opinions have had considerable political implications. For example, the ESC adopted in 1989 an opinion on basic social rights in the Community, which paved the way for the Commission to draft the 'European Social Charter'.

2. Composition

The ESC has 222 members, appointed by the European Council of Ministers for a period of four years on the basis of lists drawn up by the Member States. One third of the seats goes to employers, one third to employees, and one third to various interest groups such as farmers, tradesmen, professionals and craftsmen. Membership can be renewed.

3. Organisation

ESC has its own organisational Bureau comprised of 30 members. The Bureau is responsible for ensuring the smooth running of the day-to-day business of the ESC. The ESC also disposes of a Secretariat with various administrative services (including interpretation and translation services).

III. Committee of the Regions

Address: Rue Belliard 78-81
B-1000 Brussels
Tel.: 0032/2/282.22.11

Internet: http://cor.eu.int

1. Role

The Committee of the Regions (CoR) is an independent advisory body to the European Commission and the Council, representing the interests of regional and local authorities in the Union. It is established by TEC articles 263–265. The Committee provides the Commission and the Council with non-binding opinions, either at their request or on its own initiative.

2. Composition

The Committee has 222 representatives and an equal number of alternates. They are appointed for four-year renewable terms by the Council acting on proposals from the Member States. The representatives are selected from the various regional and local authorities of the EU, such as the German Länder, Belgian regions, or the French provincial authorities. A Chairperson is elected from among its members and a Bureau established for a term of two years. It establishes its own Rules of Procedure, but unlike the ESC, must submit

them for approval to the Council, acting unanimously. The CoR disposes of a Secretariat with similar administrative services to those in the ESC.

3. Areas of consultation

The Committee of the Regions must be consulted by the Commission or the Council on issues related to areas of direct competence and relevance such as education, vocational training and youth, culture, public health, trans-European networks, telecommunications and infrastructure, economic and social cohesion and legislation.

The Committee of the Regions can be consulted on any other matter if the Council or the Commission considers it appropriate. It may also offer its unsolicited opinion in a number of areas ranging from urban affairs to tourism to the environment. It has eight specialised Committees which assist in the development of opinions on these issues. The Committee has delivered opinions on EU asylum-related issues which have a direct link to regional and local management, such as the legal basis for the European Refugee Fund, the Directive on Temporary Protection and the Directive on minimum standards for the reception conditions of asylum seekers.

IV. European Court of Auditors

Address: 16, rue Alcide de Gaspari
L-1615 Luxembourg
tel.: 00352/43981

Internet: www.eca.eu.int

1. Role

The European Court of Auditors (ECA) was set up by the Treaty of Brussels which came into force on 1 June 1977. The ECA was created to assist the Council and European Parliament in exercising control over the budget. Its members regularly take part in parliamentary meetings of the Committees on Budget and Budgetary Control. Since the entry into force of the Maastricht Treaty, the Court has been elevated to the rank of a European institution by TEC article 7 (1).

2. Composition

The Court consists of 15 members (one from each Member State). They are appointed for a renewable term of six years by a unanimous Council decision after consultation with the Parliament. Only the Court of Justice can remove members. Their required qualities are competence and independence. The 15 members elect their President for a duration of three years, likewise renewable.

3. Aims

The Court is responsible for examining all Community and EU revenue and expenditure in order to ensure the financial integrity of the Union. It looks after the external control of European public expenditure and gives opinions on the financial and budgetary plans of the European Union. All institutions of the Union are subject to its scrutiny. Amendments which require an increase or decrease in financing must be approved by the Court (article 279 TEC). Therefore, the Court is competent to issue reports, on its own initiative, on any budgetary matters. For example, the Court of Auditors has published important reports on the granting of humanitarian aid, including EU funding for refugee assistance operations conducted by UNHCR and its implementing partners.

In addition, the Court can publicise any of its findings and produces an annual report at the end of each budgetary year.

V. European Investment Bank

Address: 100 Boulevard Konrad Adenauer
L-2950 Luxembourg
Tel.: 00352/43.791

Internet: www.eib.org

1. Role

The European Investment Bank (EIB) was created in 1958 as an autonomous body set up to finance long–term capital investment which would further the development of the common market on the basis of (now) article 9 TEC.

The not-for-profit EIB is not a Community institution in the strict sense. It is a financial body governed by public law. Its main goal is to assist in the economic development of poorer regions within the EU, as well as inter alia the improvement of transport and telecommunications structures, protection of the environment and urban living conditions, energy, and support for small and medium sized enterprises.

It also provides development funds for states which have entered into agreements with the EU such as African Caribbean and Pacific states, Maghreb and Mashreq countries. The field of financing is described in TEC article 267.

2. Organisation and operation

The European Investment Bank is managed by a Board of Governors which consists of the 15 Finance Ministers from the Member States. They are responsible for laying down directives, approving the annual balance sheet and deciding on increasing capital and appointing the Members of the Board of Directors, the Management Committee and the Audit Committee.

3. Resources

The EIB has two major resources: capital, which is subscribed by the Member States depending on their economic performance and reserves, and borrowing, through the issuance of public bond issues.

Since 1995 the capital of the EIB, subscribed by the Member States, has amounted, after the accession of Finland, Sweden and Austria, to 62 billion Euro. The available borrowing has amounted to about 18 billion Euro. In 1994 loan contracts have been signed with about 60 countries for more than 2.25 billion Euro.

VI. The European Central Bank (ECB)

The task of the Frankfurt based ECB is to maintain the stability of the Euro and control the amount of currency in circulation. The ECB is independent from EU institutions, national governments or any other body.

green

Chapter 3: Community Legislation

Chapter 3
European Community (EC) Legislation

I. Introduction

This chapter is divided as follows:

Under the umbrella of the European Union, it is possible to distinguish three broad categories of law:

(1) the law of the European Community, which is the most extensive and significant so far;
(2) the law of the Second Pillar (Common Foreign and Security Policy), which remains a form of international, inter-governmental law, although linked in certain ways with the Community institutions and objectives; and
(3) the law of the Third Pillar (Justice and Home Affairs), which is a hybrid of the first two, sharing more of the features of EC law while remaining essentially inter-governmental.

Currently, other types of EU law are emerging, under both existing and new Treaty provisions on "closer co-operation." These are increasingly difficult to categorise either as classic Community law or as the law of the other two pillars. Hence, the Convention for the Future of Europe, which prepared a radical overhaul of the Nice Treaty, has issued a draft constitution for the EU which includes a thoroughly revised law-making system based on simplification and reduction of the Union's legislative instruments.

The chapter will concentrate on EC law and the way in which it is formulated and enacted, with a focus on the transfer of asylum policy from the Third to the First Pillar under the Amsterdam Treaty. It is broken down into three parts. Firstly, the sources of EC law will be described. Secondly, a brief overview will be given of the nature of Community legislation. Thirdly, the procedural aspects of the promulgation of EC legislation will be considered, with due attention to the procedure envisaged for the transitional period of five years following the entry into force of the Treaty of Amsterdam for the area of asylum. Finally, the general characteristics of the Community decision-making process will be examined and, in this context, avenues for lobbying by interest groups will be explored.

II. The sources of Community law

Apart from the founding legal acts of the EC and the EU (successive Treaties, Protocols and Annexes, instruments amending and supplementing them) which, together with the general principles of law, constitute the primary source of Community law, the following sources of

EC law can be identified: EC secondary legislation; international agreements concluded between the EC and third countries or organisations; case-law of the European Court of Justice (ECJ); and various other "soft law" instruments.

1. EC secondary legislation

The principal forms of Community secondary legislation are set out in Article 249 of the Treaty of the EU and include four major types of instruments which can be adopted by the EC institutions: regulations, directives, decisions, and recommendations and opinions.

A. Regulations

Regulations have general application and ensure the uniform implementation of EC law in Member States. Regulations are binding in their entirety and are directly applicable in all Member States. They have to be published in the Official Journal and enter into force on the date which is specified in the particular regulation or, otherwise, on the twentieth day following publication.

B. Directives

Directives differ from regulations in that they are binding only as to the result to be achieved, while leaving choice of form and method to national authorities. The directives are passed generally following the "co-decision" procedure (refer below for exceptions) and have to be published in the Official Journal. The date of their entry into force is the same as that of Regulations, however, Member States are given a time period of usually 1 to 2 years to adopt an appropriate act at national level in order to transpose the Directive into national legislation.

Directives provide the Community with valuable flexibility. Thus, in areas where it might be difficult to devise Regulations and in respect of the subsidiary and proportionality principle, Directives are generally the most useful instruments serving the purpose of harmonising laws and practices within certain areas.

C. Decisions

Decisions are binding in their entirety on those to whom they are addressed (specific natural or legal person/s or a Member State). Decisions which are adopted pursuant to the "co-decision" procedure must be published in the Official Journal. They take effect from the date specified therein or, in the absence of any date, on the twentieth day following their publication. Like Directives, Decisions must be transposed into national legislation by an act of the legislature of the concerned Member State.

D. Recommendations and Opinions

Article 211 TEC provides the European Commission with the power to formulate recommendations or deliver opinions on matters dealt with in the Treaty, either where the Treaty expressly so provides, or where the Commission believes that it is necessary to do so to achieve certain objectives. According to Article 249 TEC, recommendations and opinions do not have legally binding force. Nevertheless, it is open to a national court to refer to the European Court of Justice concerning the interpretation or validity of such instruments.

2. EC International Agreements

By virtue of Articles 281 TEC and 300 TEC, the Community (unlike the Union) has legal personality and is empowered to enter into contractual relations with third countries or

international organisations. As examples, the Community has concluded Partnership and Stabilisation Agreements with some countries of the Western Balkans and Trade Agreements with the World Trade Organisation. All of the above constitute Community acts and form part of the EC legal order. In this context, it should be recalled that there is a long standing debate whether the Community should acceed to the European Convention on Human Rights - as it has done to other international and Council of Europe Agreements.

3. European Court of Justice jurisprudence

Decisions taken by the European Court of Justice and the Court of First Instance, within their respective jurisdictions, also constitute sources of EC law. Included within this category, moreover, are what the ECJ refers to as the "general principles" of law (including international human rights and refugee law). These principles are derived by the Court from the constitutional traditions and rules common to Member States as well as from international agreements and conventions to which Member States are party. Furthermore, the European Court of Justice has increasingly included in its rulings a reference to the EU Charter of Fundamental Rights, which without having binding force constitute nevertheless "a source of guidance as to the true nature of Community rules of positive law" (opinon of the Advocate General in the case Hautla, 10 July 2001).

4. Soft law

There are other less formal types of Community law, such as guidelines, communications, resolutions, declarations, etc. As will be shown in the section below, the main distinguishing feature between the "hard law" and "soft law" is that the former has direct effect, while the latter are legally non-binding and are used in order to pave the way towards consensus, or mark points of agreement or convergence between Member States. Prior to the communautarisation of asylum law, all asylum matters adopted constituted soft law (with the exception of the Dublin Convention).

III. The nature of Community Law

The European Community has developed into an organisation with a relatively autonomous legal system. The norms within this system are binding upon Member States and are internalised into their domestic legislative systems in many cases without recourse to national implementing measures. Development of the Community's legal system has been given decisive impetus by the rulings and the interpretative practice of the European Court of Justice (ECJ).

Already in the early 1960s, the ECJ outlined what has become known as the direct effect of Community law. In two cases (Van Gend en Loos [1963], and Costa v. ENEL [1964]), the ECJ held that the Community constitutes "a new legal order of international law" which presumes automatic internalisation of Treaty rules into Member States' legal administration and judicial practice, to which individual applicants should have recourse (the ECJ recognised, however, that in order to be enforced, the provisions of the EC law should be sufficiently "precise and clear").

Also, the Court developed the principle of primacy or supremacy of Community law. Thus, it

argued that if the Treaty goals of creating a common market and an "ever closer union" among Member States were to be realised, then the laws of the single Community would have to apply to the same extent and with equal force in each Member State. Consequently, in cases of conflict between the Community law and national laws, the former should always prevail over the latter.

EC law and Member States' national law

Still, it is important to bear in mind that the implementation and effectiveness of EC law ultimately relies on Member States national legal systems. In order to facilitate the implementation of Community law, Article 10 TEC specifically provides that "Member States shall take all appropriate measures, whether general or particular, to ensure the fulfilment of the obligations" arising out of the Treaty or "resulting from action taken by the institutions of the Community." Furthermore, Member States are required to contribute to the achievement of the Community's tasks and abstain from any measure which can jeopardise the attainment of the objectives of the Treaty.

IV. Procedural aspects of the legislative process

The Community legislative process is very complex: there are at least six legislative procedures which apply in different contexts. The distinguishing feature among them is the degree of power exercised in each by the European Parliament. In order to determine which procedure applies, one should simply consult the Treaty Article which will refer to one of the procedures listed below.

1. Commission Acting Alone

Under this procedure, the Commission has powers to make legislation without any intervention from the other institutions. These cases, however, are rare and of specific nature (for example, Article 86(3) TEC concerning the role of the State in relation to public undertakings, empowers the Commission to promulgate, if necessary, Directives or Decisions to ensure the application of that Article).

2. Council and Commission Acting Alone

There are a number of areas, such as the free movement of workers, capital, common economic policy, and common commercial policy, where the above institutions can take action without intervention by the European Parliament (EP). The Council will act on a proposal from the Commission and take the decision in accordance with the voting requirement laid down in the relevant Treaty Article. The Council may choose to consult the Parliament, but does not have to do so.

3. Consultation Procedure

In this case, the legislative process is still dominated by the Council and the Commission, as there is just a bare requirement to consult the Parliament. Nevertheless, a failure to do so may lead to the measure being annulled, and the Parliament may have to be re-consulted

where there are important changes to the measure, not promoted by the EP itself. The range of topics falling under this procedure includes, inter alia, Article 67 (1) TEC, concerning visas and asylum; Article 13 TEC, dealing with measures to combat various forms of discrimination; Article 21 TEU, concerning the general direction of common foreign and security policy; and Article 39 TEU dealing with police and judicial co-operation in criminal matters.

4. Co-operation Procedure

This procedure applies whenever the Treaty provides that the adoption of an act has to be in accordance with Article 252 TEC (this Article applies now mainly to issues related to the Economic and Monetary Union). The procedure essentially creates two readings of the proposed measure in Parliament. During the first reading, the Parliament gives an opinion on the measure before the Council adopts a Common Position. The second reading takes place after the Council has adopted its common position. If, within three months, the EP has either approved the Common Position or has not taken a decision, the Council shall adopt the act, in accordance with the Common Position. However, if the EP has rejected it and, within three months has, proposed amendments by an absolute majority of its members, the Council has to revisit its position by considering EP amendments. Acting by qualified majority, it shall adopt the proposal which often only partially meets the request by the Parliament for modifications. The EP however has no competence to oppose the Council's final decision under this procedure (as it has under the co-decision procedure).

5. Co-decision Procedure (Article 251)

This procedure is known as "co-decision", both because it is designed to prevent a measure from being adopted without the approval of the Council and the European Parliament, and because the procedure aims at reaching a jointly approved text. This procedure has gradually become the norm during the successive Treaty revisions, demonstrating the increasing competencies of the Parliament.

The Parliament again has two readings under this procedure. The first reading occurs when the EP gives its opinion to the Council before the latter adopts a common position. The second reading takes place on the assumption that the Council has not approved all the EP's first-reading amendments. The Council communicates its Common Position to the EP, which then has the option to approve, reject, or propose amendments to the measure. In cases where the EP suggests amendments not all of which are acceptable to the Council, the Conciliation Committee comes into play. The Conciliation Committee is composed of an equal number of members of the Council and of the Parliament, and is charged with finding a solution and moving the legislative process forward. If the Committee reaches no decision, the Council may confirm the common position by qualified majority voting. If the EP rejects the proposal by a qualified majority then the proposal is not adopted.

Particular Treaty articles may add the requirement to consult the Committee of the Regions and/or the Economic and Social Committee.

6. Assent Procedure

This procedure was introduced for important matters such as the expansion of European Community membership or the rectification of association agreements. According to this

procedure, the act can only be adopted if both the Council and the European Parliament have approved it. Parliament's rules now provide for the possibility of reviewing an interim Council/Commission report with a draft resolution allowing for modification to an agreement before its final approval. The Parliament has also unilaterally introduced a conciliation procedure with the Council under this procedure.

V. Transitional arrangements for implementing TEC Title IV "Visas, Asylum, Immigration and other Policies related to the free movement of persons"

In accordance with Article 67 TEC, during a transitional period of five years following the entry into force of the Treaty of Amsterdam (i. e. 1 May 1999 - 1 May 2004), the consultation procedure (see above) has been maintained in the areas of asylum and immigration. Importantly, during this period, Member States will share the right of initiative with the Commission, and, as well as after the expiration of this timeframe, the Commission will have to continue to examine any request emanating from a Member State. It should be noted however that in the area of asylum, the Tampere Summit requested the Commission to prepare all legislative acts.

Also, after the transitional period expires, the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this Title to be governed by the "co-decision" procedure referred to in Article 251 TEC.

This provision, however, does not apply to:

– Article 62(2)(b)(i) TEC on visas for intended stays of no more than three months, including the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, and Article 62(2)(b)(iii) TEC, concerning a uniform format for visas. Immediately upon entry into force of the Treaty of Amsterdam, these measures were to be adopted through the co-decision procedure; and

– Article 62(2)(b)(ii) TEC on the procedures and conditions for issuing visas by Member States, and Article 62(2)(b)(iv) TEC on rules on a uniform visa, where measures, after a period of five years following the entry into force of the Treaty of Amsterdam, shall be adopted by the Council pursuant to the Article 251 TEC "co-decision" procedure.

In December 2002, the Nice Treaty amended Article 67 in that the Council shall switch automatically to the co-decision procedure "after the adoption of Community legislation setting out the common rules and basic principles in matters pertaining to asylum". A unanimous vote in Council for this change is no longer necessary.

Following the Convention for the future of Europe, it is expected that the inter-governmental conference (IGC) will endorse inter alia proposals to change towards co-decision (and qualified majority in Council) in asylum matters.

VI. Chapter review

– What constitutes EC law?

– What are the differences between the four instruments which can be adopted by EC institutions?

– How is Community law enacted?

– Explain how TEC Title IV will be enacted during the transitional period which follows the entry into force of the Amsterdam Treaty.