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Foreword

On 25 March 1999, the Minister of Foreign Affairs, the Minister of Defence, the Minister for Development Cooperation and the State Secretary for Foreign Affairs asked the Advisory Council on International Affairs (AIV) to produce an advisory report on the establishment of an EU system for the provision of information about the countries of origin of asylum-seekers. The report was prepared by the Human Rights Committee (CMR), which consists of the following persons: Professor P.R. Baehr*, Professor C.E. von Benda-Beckmann-Droogleever Fortuijn* (vice-chair), Professor T.C. van Boven, Dr M.C. Castermans-Holleman, T. ETTY, Professor R. Fernhout*, Professor C. Flinterman* (chair), Professor W.J.M. van Genugten*, Ms L.Y. Gonçalves-Ho Kang You, Mrs C. Hak*, Ms M. Koers-van der Linden, F. Kuitenbrouwer* and Professor E. van Thijn. Members whose names are marked with an asterisk sat on the sub-committee that prepared the report. Dr D.J.M. Corbey of the European Integration Committee (CEI) also contributed. The Committee was assisted in the preparation of the report by T.D.J. Oostenbrink (secretary to the CMR) and Ms M. van Dok, a trainee.

In preparing the report the Committee sought the views of people with expert knowledge of the subject, particularly civil servants. Among those consulted were P.P. van Wulfften Palthe and R.J. Gabriëlse of the Movement of Persons, Migration and Consular Affairs Department of the Ministry of Foreign Affairs. The Advisory Council is grateful to those consulted for their assistance.

The AIV approved the report on 2 July 1999.

I Request for advice

The Advisory Council on International Affairs (AIV) was requested on 25 March 1999 to produce a report in the first half of 1999 on the establishment of an EU system for the provision of information about asylum-seekers' countries of origin; the report was sought partly for the purposes of the meeting of the European Council in Tampere in October 1999. The various existing initiatives and proposals in respect of this subject are briefly described in the request (see annex 1 for the text of the request). Clearly, there are still no precise and well-defined agreements governing the provision and content of asylum-related information at EU level. The request stated that the report should focus on how information is gathered, the role played by the various European institutions in the preparation of the country reports, the criteria for the content and frequency of the reports and the extent to which they can be made public. The request also indicated that the AIV's report should deal with the possibility of using these reports in national asylum procedures.

Asylum information is of crucial importance in determining asylum policy and taking sound decisions in individual cases. Under the action plan of the Council¹ and the European Commission of December 1998 for the implementation of the Treaty of Amsterdam, measures must be taken within two years of the entry into force of the Treaty to establish a system for the joint assessment of countries of origin in order to formulate an integrated approach to specific countries.² The AIV, too, believes that a joint assessment of the situation in countries of origin, based on proper safeguards, is of great importance to the harmonisation of asylum policy. A joint assessment should, however, be based on a proper system for the joint gathering of information about the situation in the countries of origin.

This report will first outline European developments regarding the provision of information in asylum cases (section 2). The AIV then goes on to compare the existing initiatives (section 3) and formulate the basic criteria for an EU asylum information system (section 4). It concludes by making recommendations (section 5). The report has a number of annexes: besides the request for advice, they contain the guidelines for the content of joint reports, a survey of relevant articles from the EU and EC Treaties and a list of abbreviations.

1 References in this report to 'the Council' are to the Council of the European Union. The term 'European Council' is used to denote the meetings of heads of state and government.

2 Action Plan, par. 36, at (a).

II European developments

Fact-finding in asylum cases at EU level has a long history.

* CIREA

Information about the situation in countries of origin has been exchanged within the EU since 1992 through the Centre for Information, Distribution, Reflection and Exchange on Asylum (CIREA³), which was established by the Council in that year. CIREA is part of the Council Secretariat. Information can be exchanged within CIREA regarding asylum legislation, asylum regulations, policy documents, case law, doctrine, statistics (especially about countries of origin), early warnings, travel routes of asylum-seekers, conditions for reception and residence, and matters that have already been harmonised. These exchanges have led to the production of 'joint reports' on third countries, including countries of origin. In 1994 the Council adopted guidelines for the content of such reports⁴ and a procedure for their preparation. This procedure has not been made public. In producing joint reports CIREA cooperates with the UNHCR, in particular the UNHCR Centre for Documentation on Refugees.⁵ To date CIREA has in any event produced reports on Iraq, Georgia, Azerbaijan, Sri Lanka, Nigeria, Turkey and Zaire.⁶ Although the countries about which joint reports have been or are being drawn up are mentioned in CIREA's general reports, the country reports themselves are confidential. The chief aim of CIREA is to coordinate the asylum policy of the Member States effectively. This is why the Ministers, the national government agencies that take part in CIREA and the European Commission have access to the information available to CIREA.⁷ According to the instructions for the circulation and confidentiality of CIREA reports, they may be circulated at national level only to the national authorities responsible for matters concerning asylum and aliens and, depending on national procedures, to a party involved in a dispute if appeal is lodged against a decision given by such authorities.⁸ In view of the principle of public access to country reports drawn up by the Ministry of Foreign Affairs in Dutch proceedings, the CIREA country reports could be made public in this way, although they could never be submitted on behalf of the authorities in Dutch proceedings.

3 Information taken from P. Boeles, R. Fernhout et al., *Vorming van Europees immigratie en asielrecht* (Creation of European immigration and asylum law), WODC 1999, p. 122 et seq.

4 Guidelines for joint reports on third countries, adopted by the Council on 20/6/1994, OJ C 274/52, 19/9/96.

5 Second Report on the activities of CIREA, adopted by the Council on 20/6/94, OJ C 274/57, 19/9/96.

6 See inter alia Nieuwsbrief Asiel- en Vluchtelingenrecht (NAV) 1997, no. 8, p. 817 et seq.

7 See distribution of information in Annex to resolution to establish CIREA, OJ C 274/43, 19/9/96 (see annex II).

8 Circulation and confidentiality of the joint reports on the situation in certain third countries, adopted by the Council on 20 June 1996, OJ C 274/43, 19/9/96.

CIREA may only supply information to international bodies, lawyers, NGOs, universities and the media subject to conditions imposed by the relevant ministers. However, a Member State may object to the circulation of information provided by it.⁹ In practice, information is exchanged outside the framework of CIREA only to a very limited extent and it is not possible for outsiders to check whether and, if so, to what extent the Member States base their policy on these joint reports. Consequently it is very difficult to challenge certain information. In addition, there are major differences in the provision of information from one country to another and in the extent to which this information is public.¹⁰ Until now the discussions within CIREA have been of a purely informative nature.¹¹ There has been no joint (political) assessment within CIREA of the situation in third countries, although CIREA can be seen as a first step in this direction.

* **HLWG**

The High-Level Working Group on asylum and migration (HLWG) established by the Council on 7 December 1998, in response to a Dutch proposal, goes much further in this respect. The aim is to establish a joint, integrated, cross-pillar approach to the situation in the main countries of origin of asylum-seekers and migrants. This approach consists of a package of measures from all three pillars, for example readmission and reconduction agreements under the first pillar, political dialogue under the second pillar and measures to combat crime under the third pillar.¹²

The HLWG consists of senior officials from each Member State and a representative of the European Commission and is charged with the following duties¹³:

- assessing and analysing existing initiatives;
- drawing up a list of the main countries of origin;
- devising a plan of approach for each country;
- covering the following subjects in the reports on these countries: the human rights situation, migration and refugee problems, identification of humanitarian aid, agreements about the readmission of own nationals and the scope for reception in the region;
- examining ways of intensifying cooperation with UNHCR and the International Organisation for Migration (IOM).

The country-specific approach consists of:

1. making a joint analysis of the causes of asylum and migration and of the origin of asylum-seekers and migrants on the basis of:
 - regularly updated analyses of the political and human rights situation in the country of origin, as drawn up in the framework of the Common Foreign and

9 See circulation of information in Annex to the Decision to establish CIREA, OJ C 274/43, 19/9/96. See also art. 14 (3) of the Dublin Convention.

10 See the report of the Temporary Advisory Committee on General Country Reports (Wijnholt Committee), November 1998. See also A. Kuijjer, *'Geheime' waarheidsvinding in het Europese en het Nederlandse asielrecht: paradox of realiteit*, in: *Ongebogen Recht (Meijers-bundel)*, The Hague, 1998, p. 53 ff.

11 Report of Wijnholt Committee, p. 6.

12 Lower House 21501-02, no. 280.

13 Lower House 21501-02, no. 276.

- Security Policy (the second pillar) in cooperation with - and on the basis of information supplied by - the embassies of the Member States;
- regularly updated analyses of the migration and refugee problem, as drawn up by CIREA in close consultation with UNHCR;
2. arranging for effective humanitarian assistance for e.g. reception for displaced persons in the region, for example in cooperation with international organisations and NGOs;
 3. establishing a political dialogue with the country in question or neighbouring countries;
 4. investigating the scope for strengthening economic cooperation with the relevant country or region;
 5. investigating the possibility of the conclusion by the EU of readmission and reconduction agreements with the country concerned;
 6. determining on the basis of country information the scope for emergency relief in the region and the readmission of rejected asylum-seekers to the country of origin (or safe areas in that country);
 7. deciding within the Council on measures relating to asylum and migration and cross-border crime;
 8. in a JHA context and in cooperation with the European Commission, arranging for improvements in and updating of the collection and exchange of information on flows of asylum-seekers and migrants.

The Council reached agreement on 25 January 1999 on the list of countries on which a specific report was needed. Sub-groups have been established for each of these countries and in each case one EU Member State has been given responsibility for making the analysis. The pairings are as follows:

Austria:	Kosovo
Germany:	Iraq
Italy:	Albania
Netherlands:	Afghanistan (incl. Pakistan and Iran as countries of first reception)
Spain:	Morocco
Sweden:	Somalia
United Kingdom:	Sri Lanka

The sub-groups will analyse these countries by analogy with the EU action plan for Iraq. This plan was adopted by the Council on 26 January 1998 and serves as a first example of joint action with a view to the influx of migrants from Iraq and the surrounding area. However, the EU action plan for Iraq provides no information about the analysis on which it is based or about the criteria applied.

Similarly, the criteria governing the preparation of the country analyses are only broadly described in the context of the HLWG. Besides a general introduction to the political, economic and human rights situation, the country analysis should contain statistical information about the numbers of migrants from the country concerned in the EU Member States and about their status, and should also provide an assessment of the causes of migration or flight from that country, examining political, economic, religious or other (e.g. environmental) causes of migration or flight. The analysis should also indicate to what extent there is gender-related persecution, persecution by the State or third parties and whether there is any other possibility of flight within the country or other forms of protection (e.g. reception centres). In view of the terms of reference of the HLWG (see above), an analysis should not be a snapshot of the situation at a given moment, but should make provision for long-term use by allowing for changing circum-

stances. In view of the brief description of the criteria, it is quite possible that the country analyses will differ very widely in terms of their scope and depth. The analyses are prepared in consultation with the ICRC, the IOM and UNHCR. UNHCR's own analyses will be included as an annex to the country analysis.

Specific action plans must then be drawn up by the HLWG on the basis of these country analyses. It is not yet clear whether the action plans and country analyses will be issued together as a single entity or will be dealt with separately. It is also unclear whether parts will be made public and if so which ones. If the example of the EU action plan for Iraq of 26 January 1998 is followed, the specific action points will be made public but not the analyses themselves.

The final report of the HLWG will be presented at the European Council meeting on the theme of 'an area of freedom, security and justice' in Tampere on 15 October 1999. The HLWG will formally cease to function after Tampere. However, the Netherlands is in favour of its continued existence. The State Secretary for Justice has indicated that the same approach may also be applied to other countries.¹⁴ The AIV will confine itself in this report to the question of how joint country reports should in its view be drawn up at EU level. It is beyond the AIV's remit to consider how action plans for specific countries can then be prepared on the basis of these country reports. Nonetheless, the AIV has taken into account that the Council and the European Commission have already decided to draw up integrated action plans for specific countries on the basis of a joint assessment of the countries of origin. As the AIV noted in its discussions, the HLWG has been a valuable instrument in the preparation of such action plans.

* **Joint Action on temporary protection**

The draft Joint Action on the temporary protection of displaced persons¹⁵ contains a different arrangement for country reports. Under Article 3 (3), the European Commission is required to draw up a country report in preparation for a decision by the Council on temporary protection. In keeping with the terms of reference in Article 3 (3) the report must specify:

- the situation in the area of origin;
- the manner and volume of migration flows and of the influx into the European Union, including in particular information from the Member States on the numbers already received and the number that can still be received;
- the possibility of providing protection in the region of origin, including the measures that can be taken on the spot;
- the financial and social consequences of any measures that may be taken by the Union.

The report is to be drawn up with reference to information made available by the Member States, information from the European Commission and other relevant data, for example from the UNHCR. Information from the Member States presumably means information gathered in the context of CIREA. The report must then be submitted to the Council and notification given to the European Parliament. The report is therefore in principle in the public domain. In this case, the country report is intended to serve as preparation for a decision on temporary protection.

14 Report of the general consultations dated 9 February 1999 on the basis of the annotated agenda of the informal Council of 11 and 12 February 1999.

15 COM (1998), 371 def.

III Comparison of procedures

As observed in the request for advice, the initiatives and proposals described above show clearly that there are still no precise and well-defined agreements governing the provision and content of asylum-related information at EU level. Three partially overlapping procedures for the gathering of information on asylum matters exist within the EU and in each of them the Council, the European Commission and the European Parliament play a different role. Comparison of these procedures reveals the following differences:

Scope

The information gathered within CIREA is the most general. It can in principle concern any country of origin. By contrast the country analyses of the HLWG are limited to a selected group of countries. Similarly, the country reports of the European Commission as envisaged in the draft Joint Action are expressly limited to countries from which there are massive flows of fugitives.

Terms of reference

The terms of reference for the country analyses of the HLWG and the European Commission are very restricted. By contrast the guidelines for 'joint reports' within CIREA are very extensive and detailed.¹⁶ The guidelines contain an exhaustive list of subjects that must be dealt with in a report on a country of origin, together with additional questions in so far as the report concerns a safe third country (see annex II). The reports should include information about the general political situation, including the security and human rights situation, information about persecution as defined in the Refugee Convention, the possibility of fleeing within the State, the movement of nationals, the authenticity and credibility of official documents, especially travel documents, the risk that an asylum-seeker will be subjected to punishment, torture or inhuman or degrading treatment on his return, and information about the economic and social situation.

The Member States are urged to use these guidelines when drawing up embassy reports too.

Analysis and policy-making

On the basis of the published guidelines, no clear line can be drawn between analysis and policy conclusions in the joint reports drawn up within CIREA. Statements about persecution within the meaning of the Refugee Convention and estimates of the risks on return of asylum-seekers go further than a finding of fact and involve an element of policy-making. Similarly, policy conclusions regarding countries of origin and safe third countries seem incompatible with the intergovernmental and civil service nature of CIREA.

The procedure contained in the draft Joint Action on temporary protection is more correct in this respect. The Committee (which is independent) draws up a report on the facts, which is then used by the Council as the basis for a political decision.

¹⁶ See OJ C 274/52, 19/9/96.

The position in the HLWG is unclear, although it seems probable that the analysis and draft plan of action will be presented to the Council in a single document for its decision.

Periodicity

As far as is known, there are no rules within CIREA governing the updating of joint country reports; although reports are updated, this occurs irregularly.

By contrast, the draft Joint Action provides for annual updating or earlier at the request of the Council, and in any event six months before the end of a temporary protection arrangement.

The HLWG too has discussed regularly updated analyses of the political situation in the country of origin, although the regularity of the updating has not been defined owing to the (provisionally) temporary nature of the HLWG.

Involvement of the European Commission

The involvement of the European Commission in CIREA appears limited. Although CIREA is part of the Council Secretariat and consists of representatives of the Member States, it falls completely outside the normal decision-making procedures of the EU. The European Commission does not even play a coordinating, let alone an initiating role. The function of CIREA is above all to allow the exchange of information between the Member States.

The European Commission is represented in the HLWG, but once again does not have an initiating or coordinating role. The HLWG is primarily of an intergovernmental nature. Since the action plans will be drawn up on a cross-pillar basis, the role of the Commission will have to be strengthened. From 1 May 2004 the right to initiate such measures will in any event be reserved exclusively to the European Commission (Art. 67 (2) EC Treaty).

As mentioned above, the draft Joint Action does provide for a clear division of responsibilities between the European Commission and the Council.

Sources

In order to obtain a clear picture of the situation in the countries concerned it is important to use information obtained from different sources. No mention is made of this in the mandate of the HLWG. However, the memorandum of the Dutch delegation, which contains an older version of the terms of reference of the HLWG, indicates that the information used for the country analyses will be based on CIREA documents and information provided by the embassies.¹⁷ There is in fact no formal relationship between the HLWG and CIREA. As already mentioned, however, consultations are held with the ICRC, the IOM and UNHCR when the analyses are drawn up. Moreover, UNHCR's own analyses are appended as an annex to the country analyses. CIREA uses mainly information from the Member States and data contained in country reports drawn up by EU diplomatic missions. CIREA also works closely with UNHCR and a UNHCR representative generally takes part in the monthly consultations.

The draft Joint Action and the explanatory notes employ a broader definition. In drawing up a report on the situation in countries of origin the European Commission will draw

¹⁷ Lower House 19 637/21501-02, no. 390.

on a number of external sources, especially of course the Member States but also international and non-governmental organisations. Internal sources may, for example, be the delegations of the European Commission in the host countries concerned. It is only this last definition which ensures that information from NGOs such as Human Rights Watch and Amnesty International can be taken into account when a country report is drawn up. Information from such NGOs does not seem to play an explicit role within CIREA and the HLWG.

Public access

A major problem is the question of public access. Under the draft Joint Action on temporary protection the European Commission draws up an annual survey of the situation in the country of origin, which is then communicated to the Council and the European Parliament. The requirement of notification to the European Parliament implies that these surveys are public.

To what extent there will be public access to the HLWG country analyses is not yet entirely clear. To date, however, not a single Member State has requested confidentiality.

The CIREA joint country reports are not public documents. According to the instructions for the circulation and confidentiality of CIREA reports, the reports may be sent at national level only to the national authorities responsible for matters concerning asylum and third country nationals and, depending on national procedures, to the parties involved in a dispute where there is an appeal against a decision by these authorities.¹⁸ A variety of arguments are used to oppose disclosure. Since the country reports are drawn up by the EU missions on the spot and contain politically sensitive information, disclosure could damage the EU's diplomatic relations with the relevant country. Disclosure could even cause problems with countries in a comparable position. Attempts to encourage voluntary return and to improve the situation for potential asylum-seekers in the country concerned could therefore be frustrated. Public access to the joint country reports is presently the subject of an appeal against the Council to the Court of First Instance (case T-188/98).

Effect on national asylum procedure

The effect on the national asylum procedure is closely connected with the above. The reports of the European Commission in the context of the draft Joint Action, or in any event the decisions of the Council on this subject, have a direct impact on the national procedure. The moratorium for decisions on certain categories of asylum-seeker provided for in the new Aliens Act will be based in part on the decision of the Council on temporary protection.

The HLWG country analyses serve to support the integrated action plans for selected countries of origin and transit of asylum-seekers and illegal migrants. The character of these analyses probably excludes them from playing a primary role in national asylum procedures too, although information contained in the analyses will certainly be useful in assessing the account of the flight.

The joint country reports drawn up within CIREA are undoubtedly of direct importance to the national procedure. Their purpose is, after all, to ensure the effective coordination of asylum and migration policy within CIREA. The national authorities responsible

18 See note 7.

for matters concerning asylum and third country nationals may use the reports and will certainly do so. However, the role played by these reports in the drawing up of country reports by the Ministry of Foreign Affairs is unclear. Ministry reports never refer explicitly to the CIREA reports since the latter would then have to be made public on the grounds that all documents lodged in Dutch appeal proceedings are public. (Under the rules governing the circulation of CIREA information these reports could in fact be made public.) This situation, in which it is unclear to what extent CIREA information is used in the drawing up of country reports by the Ministry of Foreign Affairs, is regarded by the AIV as extremely unsatisfactory.

IV Desirable criteria for an EU asylum information system

Uniform supply of information

Information about countries of origin will be used at EU level first of all for the reports of the European Commission to the Council on the situation in countries for which a temporary protection arrangement is being considered, and second for the action plans (to be drawn up within the HLWG) for an integrated approach to specific countries of origin and transit from which many asylum-seekers and illegal migrants come. The preparation of HLWG country analyses has for the time being been decentralised by delegation to a number of Member States, whereas that of the reports concerning a temporary protection arrangement has been centralised in the European Commission. Hitherto these analyses have involved separate projects carried out for different purposes. Nonetheless, it is quite conceivable that both a temporary protection arrangement and an integrated action plan for a specific country could relate to the same country. Kosovo, for example, could have qualified both for a temporary protection arrangement and for an action plan. It would therefore be desirable if the same information were to be used for both purposes. In the view of the AIV, this means that the country information for both purposes should be combined at EU level.

Institutional structure

In order to combine country information from the different sources, CIREA could be converted from an institution for the exchange of information between Member States into a service responsible for the gathering of information available to the Member States and the EU missions.

CIREA was established by the Council in 1992 - even before the Maastricht Treaty - and was made part of the Council Secretariat. It was provided that upon the entry into force of the Maastricht Treaty a decision would be taken to institute CIREA on the basis of the EU Treaty. However, such a decision was never taken. As the Treaty of Amsterdam has now entered into force, it seems important that such a decision should be taken after all. The function of the institution could be defined as the gathering of information on countries of origin. However, no express legal basis for the gathering of information about countries can be found in the new Title IV of the EC Treaty on visas, asylum and immigration. Indeed, a more obvious legal basis for the gathering of information would seem to be the second pillar. Country reports drawn up for the purpose of the internal and external asylum policy of the Union contain above all human rights information, and the basis for human rights reporting is mainly Article 11 of the EU Treaty.¹⁹ In addition, Article 20 of the EU Treaty provides the basis for cooperation between the diplomatic and consular missions of the Member States and Commission Delegations regarding the exchange of information and joint evaluations. The newly created position of Secretary-General/High Representative for the Common Foreign and Security Policy (Article 18, EU Treaty), to which Mr Solana was recently appointed, and the institution of a policy planning and early warning unit to support him suggest that the gathering of information about countries of origin will for the time being continue to be a function of the Council Secretariat. However, the European

¹⁹ See also the Advisory Committee on Human Rights and Foreign Policy, 'Harmonisatie van het asielrecht in West-Europa' (Harmonisation of asylum law in Western Europe), report no. 10, The Hague, Ministry of Foreign Affairs, 1990.

Commission will have to be fully involved in this since it will have the exclusive right to initiate measures on asylum and migration after 1 May 2004 (Title IV of the EC Treaty). The AIV is of the opinion that it is necessary to investigate in due course, in view of the Amsterdam Treaty, if it is feasible to concentrate the function of gathering of information at European Commission level.

The function of the Council Secretariat proposed here could possibly evolve in the long term into a European research and documentation centre. The question of whether such a centre should - as often advocated²⁰ - be fully independent is not easily answered. The objectivity of the information would be better safeguarded by independence. The reports of an independent institution of this kind would probably become an important yardstick for national authorities charged with asylum policy and judicial authorities that have to decide on asylum cases. Indeed, they might even pay too little attention to conflicting information from other sources. Whatever the nature of the institution, the authorities responsible for asylum policy and the courts responsible for reviewing asylum decisions will always be obliged to check EU information against other sources. On the other hand, it would be more difficult for an independent institution to gain access to information from Member States and their embassies and to information from EU diplomatic missions. The advantages of greater objectivity would be negated by the lack of confidential information, although the authorities would still be inclined to rely on the assessments. This is why the AIV does not wish at present to advocate a fully independent institution, although it does not exclude the possibility that the institution responsible for gathering information could be made independent in the long run.

Sources

CIREA has always interpreted its function restrictively, in fact too restrictively. This is typified by the observation in the CIREA report for 1994 and 1995²¹ that CIREA was also able to use the reports sent by non-governmental organisations of their own volition to the Centre. Clearly, CIREA does not take the initiative in requesting such reports. Nor does the wording indicate whether and if so how the content of NGOs' reports was actually involved in the preparation of the CIREA reports. A future fact-finding service that forms part of the Council will not only have to use information supplied by the Member States, by the embassies of the Member States and of the Union and by UNHCR, but will also itself have to play an active role in gathering information from NGOs such as Amnesty International and Human Rights Watch. Such a service must collect all the information available about countries of origin and, where necessary, itself investigate the situation in such countries.

Separation of fact-finding and policy conclusions

There would be less objection to the temporary assignment of the responsibility for gathering information to the Council Secretariat if fact-finding and policy conclusions were to be expressly separated in the country reports. Fact-finding is a task that can in principle be discharged quite objectively by a civil service organisation. By contrast, policy conclusions should be drawn by the politically responsible body, in this case the Council (as already provided for in the draft Joint Action on temporary protection).

20 For example by the Temporary Advisory Committee on General Country Reports, op. cit., p. 7.

21 These annual reports have been published in the newsletter known as Nieuwsbrief Asiel- en Vluchtelingenrecht (NAV) 1997, no. 8, pp. 817-820.

The division between fact-finding and the preparation of policy conclusions has implications for the terms of reference that must be taken into account when joint country reports are drawn up. In themselves the 'Guidelines for joint reports on third countries'²² are a good basis, although the information to be given under III ('specific information on persecution ...'), IV ('possibility of fleeing within the State') and VII ('return to country of origin') in fact goes beyond a finding of fact. Answering the question of whether there is persecution within the meaning of the Refugee Convention is a policy decision, just as is the question of whether there is a possibility of fleeing within the State and the scope for return of asylum-seekers, in particular those who have been refused. Such policy conclusions should be drawn not by CIREA (which consists of civil servants) but exclusively by the Council. Fact-finding and the preparation of policy conclusions should continue to be expressly separated within the Council Secretariat in the future. The factual country report should then be used by the Council as the basis for policy conclusions in the context of the Common Foreign and Security Policy and in the context of asylum policy under Title IV of the EC Treaty.

Public access

The above also has a bearing on the question of public access to country reports. The objections to public access to CIREA joint reports mentioned above would presumably not apply to country reports containing purely factual information. It is hard to see how such reports could disrupt the EU's diplomatic relations with these countries. It should, incidentally, be noted that the argument of damage to foreign relations has in the past been used in the Netherlands to justify the secrecy of the country reports prepared by the Ministry of Foreign Affairs. Although such reports remain confidential for a short time during submission to the Lower House of Parliament²³, they are subsequently made public without reservation. There is no evidence that this has ever damaged foreign relations, despite the fact that until recently such country reports also contained policy conclusions.

The AIV advocates full public access to country reports and the sources on which they are based. Only then can the objectivity of the content of the country report be assessed. The AIV recognises the objections raised by some Member States to public access. Depending on the outcome of the present appeal (case T-188/98), consideration could be given to the idea of meeting these objections by providing that there should be public access to the country reports, but that the information supplied by the Member States should, if desired, remain confidential and that references to the information of Member States should be omitted from the list of sources in the report.

Whatever the case, since Article 11 of the EU Treaty provides the legal basis for country reports the European Parliament should be informed of such reports pursuant to Article 21 of the EU Treaty. This too provides a compelling argument for public access.

Updating

The HLWG endeavours to ensure that analyses are 'regularly updated'. The draft Joint Action on temporary protection provides for an annual report and a report no later than six months before the end of a temporary protection arrangement or earlier at the

²² See note 14.

²³ Refugee Policy memorandum, Lower House 1986-1987, 19 637, no. 17.

request of the Council. By analogy with the procedure of the HLWG, it is important that an explicit decision should be taken within the Council on the countries for which country reports should be drawn up and that these reports should then be updated annually or earlier at the request of the Council. Only by decision of the Council could a country be dropped from the list of countries for which country reports must be prepared. Policy can be adopted only on the basis of an up-to-date analysis. The AIV believes that annual updating would also benefit the objectivity of the country reports. The reports would also gain in depth. Updating would necessitate a constant flow of information. As a result, the internal expertise of the service responsible for gathering the information would be increased and the information would acquire a more structural nature and be less influenced by incidents occurring at any time in the country under review.

Relevance to national asylum procedure

As stated above, a decision of the Council on temporary protection for a particular category of asylum-seeker will have a direct effect on national asylum procedure in the context of the arrangement for temporary protection. The Aliens Bill provides that the designation by the Minister of the categories of alien to whom a moratorium on decisions will apply will be based in part on Council decisions. Under the Action Plan of the Council and the European Commission for the implementation of the Treaty of Amsterdam a measure for temporary protection under Article 63 (2)(a) of the EC Treaty should be adopted as quickly as possible.

If a joint assessment by the Council of countries of origin, safe third countries and safe countries of origin is to have legally binding effect in national asylum procedures, it is necessary that a measure be adopted under Article 63 (1)(c) of the EC Treaty. On the basis of the Action Plan measures on asylum should be adopted within five years. Unless relevant EC measures (an asylum directive) are adopted, the drawing of policy conclusions will continue to be a national prerogative, even if these conclusions are coordinated within the Council. However, EU country reports could - provided they are made public - serve as a good basis for a government decision on whether persecution within the meaning of the Refugee Convention exists in the country concerned and whether asylum-seekers whose applications have been rejected can be safely returned to their country of origin. As such the EU country reports could be incorporated into the country reports prepared by the Ministry of Foreign Affairs and could perhaps in the long run replace them altogether.

V Summary of recommendations

In summary, the AIV would make the following recommendations with a view to the European Council in Tampere in October 1999:

1. The Council of the European Union (the Council) should decide within the context of the CFSP - at the proposal of the European Commission or of the Member States - on which countries of origin of asylum-seekers and other third countries (countries of transit, safe third countries) country reports should be drawn up.
2. These country reports could be used first of all for the purposes of the asylum policy of the Member States and for the designation of categories of asylum-seeker for temporary protection, and second for the preparation of integrated action plans for specific countries of origin and transit.
3. For the sake of public access and to ensure the greatest possible objectivity, the country reports should not contain any policy conclusions.
4. For the drawing up of country reports, CIREA should be converted into a centre for the gathering of information and the exchange of data on asylum matters. The new centre should be established by decision of the Council under the Treaty of Amsterdam and should for the time being remain part of the Council Secretariat, although the European Commission should be fully involved in the gathering of information.
5. The centre should gather all available information on the countries designated by decision of the Council and should where necessary investigate the situation in those countries. It should use information from the embassies of the Member States and EU missions, cooperate with UNHCR, IOM etc., and actively gather information from NGOs such as Amnesty International and Human Rights Watch.
6. The Council should publish guidelines (in the Official Journal) for the drawing up of country reports. The guidelines should define the framework for the country reports and also contain criteria for assessing the reliability of information.
7. There should be public access to the country reports drawn up on the basis of information gathered in this way. The reports should be communicated to the European Parliament.
8. The information on which the reports are based should also, in principle, be public. Depending on the outcome of the pending appeal (case T-188/98), consideration could be given to the idea of allowing the Member States to stipulate that access to the information they supply be restricted to the centre.
9. As long as the Council considers reporting to be necessary, the country reports will be updated annually and, if necessary, earlier at the Council's request.
10. At the proposal of the European Commission, the Council should decide on the basis of a country report and within the context of a measure for temporary protection - to be adopted as quickly as possible pursuant to Article 63 of the EC Treaty -

which categories of asylum-seeker are in any event eligible for temporary protection in the EU Member States.

11. The Council should formulate policy conclusions, with a view to the joint assessment of the situation in countries of origin, on the basis of country reports within three months of publication of the reports. The Member States should coordinate their asylum policy on the basis of this joint assessment. If a joint assessment is to have legally binding effect, it is necessary that an asylum directive be introduced on the basis of Article 63 of the EC Treaty.
12. For the countries designated by Council decision, the Council should adopt an integrated action plan for each country on the basis of the relevant country report within three months of its publication.
13. The action plans should be prepared by the Member States and the European Commission. The HLWG should be continued for this purposes, although the role of the European Commission in the HLWG should be strengthened within five years.
14. The AIV regards it as extremely unsatisfactory that it is unclear to what extent CIREA information is used in the drawing up of country reports by the Ministry of Foreign Affairs. The CIREA country reports should be incorporated in their entirety into the country reports prepared by the Ministry and could in the long run replace them. The Netherlands Government should base its policy conclusions regarding a particular country of origin on these CIREA country reports (possibly supplemented by a country report prepared by the Ministry) and on the joint assessment of the Council.

Professor R.F.M. Lubbers
Chairman, Advisory Council on
International Affairs
P.O. Box 20061
2500 EB The Hague

The Hague, 25 March 1999

Dear Professor Lubbers,

The Advisory Council on International Affairs is hereby requested to make recommendations in the first half of 1999 on the creation of an EU asylum information system containing data on countries of origin. It is essential to take into account factors such as form, content, procedure (time taken, promptness, frequency) and the degree to which the information may be made public, if the new system is to be of maximum usefulness in the national asylum procedure.

It is perhaps as well to accompany this request with a few explanatory remarks. With the Treaty of Amsterdam, which enters into effect in the near future, the EU has taken an important step in the direction of an EU immigration and asylum policy. The idea is to create a common EU information system for data on countries of origin, with specific reference to asylum seekers, as part of this. The coalition agreement also includes a passage relevant to this, on the effort to achieve uniform standards for official reports issued in an EU context.

The plan of action devised by the Council and the Commission for the implementation of the Treaty of Amsterdam's provisions on establishing an area of freedom, security and justice states that measures should be taken within two years after the Treaty enters into effect to arrive at an EU assessment of countries of origin with a view to formulating a country-specific approach. It should be added that the relevant articles of the Treaty do not explicitly provide for a common assessment of this kind.

In this light, the High Level Working Group (HLWG), that was recently launched in response to a Dutch initiative, is also of importance. For the HLWG's main task is to develop an integrated approach to a number of countries of origin, based on analyses of factors such as the political and human rights situation in these countries. The results of the HLWG's work will be presented to the Tampere European Council in mid-October this year. The experience gained with the HLWG's methods may provide a point of departure for the development of a permanent EU information system in this field. At present, EU cooperation in this field is largely (although not exclusively) confined to exchanges of information through the CIREA.

Attention should also be drawn to the Commission's proposal for a Joint Action on the temporary protection of displaced persons, which includes decision-making on the basis of country reports to be drawn up by the Commission using information made available by Member States.

The various initiatives and proposals noted above make it clear that we have a long way to go before we arrive at a mature and uniform approach to an asylum information system - to its creation as well as its content - at EU level. Modes of information gathering, the role of European institutions in drafting the country reports, criteria of content and frequency, and how much freedom of information would be possible, all require further examination. The Advisory Council should therefore include these issues in its recommendations. From the Dutch point of view it is essential to maximise the reports' practical usefulness in the national asylum procedure: this point should therefore be explicitly addressed. In this connection the Council could also discuss the relationship between the new EU information system and the existing information supply in the Netherlands - that is, the general official reports that the Ministry of Foreign Affairs issues to the State Secretary for Justice - and indeed with the provision of information in the other EU Member States.

In view of the fact that the Tampere European Council is to be held in October 1999, the Advisory Council is urged to issue its recommendations to the Minister of Foreign Affairs in good time.

The Minister for Development Cooperation, the Minister of Defence, the State Secretary for Foreign Affairs and I look forward with great interest to receiving your recommendations.

Yours sincerely,

J.J. van Aartsen
Minister of Foreign Affairs

Annexe IV.1

GUIDELINES
for joint reports on third countries

*(Text adopted by the Council on 20 June 1994)*¹

A. INTRODUCTION

1. The Ministers responsible for immigration have on several occasions spoken of the desirability of drawing up joint situation reports on certain third countries of origin of asylum-seekers. They believe this to be essential if a convergent and eventually harmonized analysis of asylum applications is to be obtained.
2. To achieve this aim fully, there are certain items of information which it is important that the reports should contain.
3. It is suggested that the reports drawn up by Member States' embassies on the spot should contain as far as possible the points set out below.
4. The reports ought to provide an accurate overall picture of the political, economic and social situation in the third country, without being over-detailed since it is vital that they be drawn up quickly.
5. It has been agreed that the following guidelines could be adjusted according to the country on which a joint report is requested. In some cases this would mean omitting certain points. In others, certain specific questions would be added, depending on the information needed.
6. This outline could be revised in the light of experience.

B. CONTENT OF JOINT REPORT'S

I. General Political Situation

1. Recent political developments.
2. Current actual situation in a country, and in particular:
 - a) specify the following points if possible regarding its regime:
 - free elections;
 - multi-party system;
 - freedom of opinion and assembly;
 - religious freedom;
 - independent judiciary;
 - security service activity;
 - situation of minorities;
 - b) security situation in the country (including situations of war or civil war).
3. Prospects
 - a) So far as one can tell, is the political situation stable?
 - b) Are there any known political deadlines (election dates, etc.)?

¹ This text has been taken from the Official Journal of the European Communities, Nr. C 274 of 19/09/96. It concerns pages 52 to 55 (Annexe IV.1) and page 43 (Annexe III.4).

II. General human rights situation

1. Has the country acceded to any instruments for the protection of human rights? Preferably state which. How does it comply in practice with the principles they contain?
2. Are international human rights organizations able to monitor whether human rights are respected?
3. Actual practice as regards human rights

Are People exposed to acts contrary to human rights, in particular:

- a) torture, inhuman or degrading treatment and punishment (e.g. beating imposed by a court, legislation enshrining racial discrimination);
- b) frequent use of the death penalty (in countries where such sentences continue to be carried out);
- c) conditions of imprisonment which are contrary to human rights, arbitrary arrest, lack of freedom to travel, denial of recourse to the courts or specific measures against political prisoners?

III. Specific information on persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion

1. Persecution by the State
 - a) Are there any forms of persecution by the State, such as repressive measures or arbitrary treatment by State bodies of certain groups of individuals?
 - b) What is the extent of such persecution, especially as regards:
 - Interference with life, health and freedom including religious freedom?
 - Extreme conditions involved in military service, where relevant?
 - Other types of social discrimination?

2. Are there other forms of indirect persecution by the State (acts of persecution not carried out by the public authorities but attributable to them), such as the situation where the national authorities are unwilling to give sufficient protection to members of a particular group in the population who are seriously threatened by their fellow citizens?

IV. Possibility of fleeing within the State (in the event of persecution)

1. Are there persecution situations confined to one part of the State's territory?
2. Is it possible to escape such persecution by going to another part of the territory?

V. Movement of nationals of the State

1. What sort of controls are carried out at these State's external frontiers (air, sea and land) as regards their own nationals? In particular, what formalities do the nationals of these States have to complete on entering or leaving? Are they discriminatory compared with the controls imposed on other nationals?
2. On the basis of the information available, are there any illegal networks facilitating the departure of nationals of the State?

VI. Authenticity of documents

1. What credence should be given to documents held by nationals and issued by the national authorities, especially travel documents?
2. Can nationals of the country easily get hold of false official documents or certificates?

VII. Return to country of origin

1. Does the fact of having lodged an asylum application in another country mean that a national risks being subjected to

punishments, torture or inhuman or degrading treatment when he returns to his country of origin?

2. What attitude do the State's authorities take towards foreign nationals, especially asylum-seekers?

VIII. Economic and social situation

It is useful to indicate general features of the economic and social situation that might induce people to leave the country. For example:

1. What is the current general economic situation in the country and, where appropriate, in some of its regions, and what are the prospects for future development?
2. What is the current unemployment level and what are the expected trends?
3. Is there a welfare system?

IX. Preparation of reports on host third countries

The above guidelines concerning countries of origin should be used as far as possible when drawing up reports on host third countries.

Details on the following points would also be desirable:

1. Has the country acceded to the Geneva Convention of 28 July 1951 on the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms or any other similar human rights convention? How does it comply in practice with the principles they contain (where this adds to the answers given under 11.1)?
2. Can any national of a third country submit an application for asylum in the host State? Is it possible, at the frontier or in the territory, for him to request the protection of the authorities of that country

before applying to the Member State where he is seeking asylum? If not, is this the case for persons of certain nationalities or origins?

3. Is it certain that he can be admitted to the host country? If not, is that the case for persons of certain nationalities or origins?
4. Does the asylum-seeker benefit or potentially benefit from effective protection against 'refoulement' as defined by the Geneva Convention?

X. Place and date of the drawing up of the report

It would be useful to state where and when the joint report was drawn up.

ANNEX III.4

Circulation and confidentiality of joint reports on the situation in certain third countries

(Text adopted by the Council on 20 June 1994)

- The joint reports, possibly accompanied by an international note from CIREA, addressed to Steering Group I (Asylum/Immigration) and containing its observations, will be sent to the heads of delegations in that Group and they will be responsible for deciding on national circulation of joint reports within the limits laid down in the two indents below.
- The national authorities responsible for matters concerning asylum and third country nationals will be able to use the reports together with the other items of information at their disposal.
- Depending on national procedures, these reports may be made available to the parties involved in a dispute when there is an appeal against a decision by the authorities responsible for matters concerning asylum or aliens.

In the following, you will find the relevant articles of the EU- and EC Treaty, as consolidated in the Treaty of Amsterdam, to which reference is made in this advice.

Article 11 EU-Treaty Amsterdam:

1. The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:
 - to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations Charter;
 - to strengthen the security of the Union in all ways;
 - to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders;
 - to promote international cooperation;
 - to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.
2. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council shall ensure that these principles are complied with.

Article 18 EU-Treaty Amsterdam:

1. The Presidency shall represent the Union in matters coming within the common foreign and security policy.
2. The Presidency shall be responsible for the implementation of decisions taken under this Title; in that capacity it shall in principle express the position of the Union in international organisations and international conferences.
3. The Presidency shall be assisted by the Secretary-General of the Council who shall exercise the function of High Representative for the common foreign and security policy.
4. The Commission shall be fully associated in the tasks referred to in paragraphs 1 and 2. The Presidency shall be assisted in those tasks if need be by the next Member State to hold the Presidency.
5. The Council may, whenever it deems it necessary, appoint a special representative with a mandate in relation to particular policy issues.

Article 20 EU-Treaty Amsterdam:

The diplomatic and consular missions of the Member States and the Commission Delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the common positions and joint actions adopted by the Council are complied with and implemented.

They shall step up cooperation by exchanging information, carrying out joint assessments and contributing to the implementation of the provisions referred to in Article 20 of the Treaty establishing the European Community.

Article 21 EU-Treaty Amsterdam:

The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy.

The European Parliament may ask questions of the Council or to make recommendations to it. It shall hold an annual debate on progress in implementing the common foreign and security policy.

Article 63 EC-Treaty, paragraphs 1 and 2:

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

1. measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties, within the following areas:
 - (a) 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,
 - (b) minimum standards on the reception of asylum seekers in Member States,
 - (c) minimum standards with respect to the qualification of nationals of third countries as refugees,
 - (d) minimum standards on procedures in Member States for granting or withdrawing refugee status;
2. measures on refugees and displaced persons within the following areas:
 - (a) 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,
 - (b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons;

Paragraphs 3 and 4 not included.

Article 67 EC-Treaty, paragraphs 1 and 2:

1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.
2. After this period of five years:
 - the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council;
 - 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 procedure referred to in Article 251 and adapting the provisions relating to the powers of the Court of Justice.

Paragraphs 3 and 4 not included.

List of abbreviations

CFSP	Common Foreign and Security Policy
CIREA	Centre for Information, Distribution, Reflection and Exchange on Asylum
Commission	European Commission
Council	European Council
EC	European Community
EC Treaty	Treaty establishing the European Community
EU	European Union
EU Treaty	Treaty on European Union
HLWG	High Level Working Group
ICRC	International Committee of the Red Cross
IOM	International Organisation for Migration
NGOs	Non-governmental organisations
UNHCR	United Nations High Commissioner for Refugees

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