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NOTE

From: The UK Delegation

To: The Asylum Working Party

Subject: **Application of Dublin Convention in cases where persons withdraw their asylum claims**

Introduction

This paper concerns the applicability of the Dublin Convention in circumstances where a person has withdrawn his or her asylum claim. It invites agreement to a general interpretation of the Convention on this matter and suggests some possible solutions to the practical issues which arise.

Legal position

2. The basic purpose of the Dublin Convention is to identify the Member State responsible for the consideration of a claim for asylum made in the EU and to provide arrangements for the transfer of the asylum seeker to that State. It clearly follows that unless there is an asylum claim the provisions of the Convention do not apply. This means, we believe, that where an asylum seeker withdraws his or her claim, the provisions of the Dublin Convention no longer have effect and the person should be treated under the general immigration controls which apply to third country nationals.
3. This position is not only clearly logical but is supported, in particular, by Article 3(7) and Article 10(1)(d) of the Convention. These provide that where a person claims asylum in one Member State, withdraws their claim and then claims asylum in another

Member State, the first Member State is (in the absence of other determining factors) required to assume responsibility for the claim and to accept the applicant back. The Convention does not specify any such responsibility if the person is irregularly in another state without claiming asylum. Indeed it does not in our view make sense to regard a country as responsible for a claim which does not exist.

4. In summary we believe the legal position is unarguably that an asylum seeker who withdraws his or her claim no longer comes within the provisions of the Dublin Convention.

Practical difficulties

5. We recognise that even though the legal position is clear, this issue raises certain practical problems. In particular:
 - a. a person may withdraw his or her claim in one Member State but only in the expectation that they will be sent or allowed to travel to another member State where they intend to re-apply for asylum.
 - b. the person may withdraw their asylum claim in one Member State (and perhaps assert that they need some form of subsidiary protection), with the objective of preventing a transfer under Dublin to a second Member State.
6. In respect of a., the Dublin Convention makes explicit provision for this scenario in Article 3(7) and Article 10(1)(d). These provide an accelerated procedure for the return of the person concerned. If Member States are concerned that relying simply on this provision is not enough to deal with abuse of this sort, it may be possible to develop measures to further assist with this problem. For example, when a person withdraws their claim and is to be returned to another Member State or is likely to travel there, information about the applicant (perhaps including fingerprints) could be sent to the States concerned. This would, we believe, be consistent with the provisions of Article 15.
7. As far as b. is concerned, in cases where the person does not seek subsidiary protection, we believe that the general principle that these cases do not come within

the provisions of the Dublin Convention continues to apply. In other words, the State where the applicant withdraws his claim cannot look to the Dublin Convention to provide a means of transferring the persons to another Member State. Clearly where there are no practical barriers to removing the applicant to their country of origin, then this may be the appropriate course of action. Alternatively the person may be returnable to another state which may be obliged under international conventions or agreements to accept him; for example the state of embarkation. In cases where there are barriers to a removal, we do not see any alternatives to the conclusion that the Member State where the claim has been withdrawn remains responsible for the person concerned.

8. In cases where the person withdraws their asylum claim and seeks a form of subsidiary protection, however, we believe it would be open to Member States to agree amongst themselves that the Dublin Convention should continue to apply. The basis for this approach would be that the question of whether a person requires protection under the Refugee Convention or other international instruments is a matter for the authorities of the State or States concerned in exercising their international obligations and not a matter for the applicant. Therefore it could be argued that so long as there is a possibility that the protection that the applicant seeks may amount to asylum, the Dublin Convention should continue to apply.

Conclusion

9. We invite Member States to:
 - agree the general principle that a person who withdraws their asylum application no longer comes within the provisions of the Dublin Convention.
 - consider the possible solutions in paragraphs 6 and 8 above which might minimise some of the practical difficulties that arise from withdrawn applications.

We do not believe agreement on the general principle need be delayed by consideration of possible practical solutions.