

JHA 22
34 3(a)

Brussels, 14 March 1997

9589/3/94

REV 3
LIMITE

JUR 215
ASIM 183

REPORT

from : the Presidency

to : K.4.-Committee

Subject: Rules of Procedure of the Committee provided for in Article 18 of the Convention of 15 June 1990 determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (the "Dublin Convention")

Following the discussions of the K.4. Committee on 6 March 1997, delegations will find attached the revised version of the draft Rules of Procedure of the Committee provided for in Article 18 of the Dublin Convention (Annex I) and draft Statements for the Minutes (Annexes II and III.)

This text is agreed by delegations except Spain which had a general reservation. This delegation considers that the Committee provided for in Article 18 of the Dublin Convention should be the Council itself. The Italian delegation also suggested that this question be studied further.

The Presidency and most delegations recalled that it had already been discussed in the past and that the conclusion had been that it was not possible to replace the Committee provided for in the Dublin Convention by the Council itself without amending the Dublin Convention.

The Spanish delegation also referred to a possible difficulty relating to the Art. 18 Committee in the case of parallel conventions to be concluded with States which are not members of the European Union.

The Belgian, Danish and French delegations also entered reservations on certain provisions which are recorded in the footnotes (see Articles 1(2), 2(2) and 13).

Draft DECISION
of the Committee provided for in Article 18 of the Dublin Convention
of ...
adopting its Rules of Procedure

The COMMITTEE,

Having regard to Article 18(4) of the Convention of 15 June 1990 determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (Dublin Convention), hereinafter referred to as the "Convention",

Whereas the first subparagraph of Article 18(1) of the Convention sets up a Committee comprising one representative of the Government of each Member State,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Committee set up by Article 18(1) of the Convention, herein referred to as the "Committee", shall comprise one representative of each Member State at ministerial level.
2. The Commission of the European Communities, hereinafter referred to as the "Commission", shall be invited to take part in meetings of the Committee. The Committee may, however, decide to deliberate without the presence of the Commission. ⁽¹⁾
3. The Committee shall meet when convened by its Chairman on his own initiative or at the request of one of its members.
4. The Committee shall meet in Brussels at the seat of the Council of the European Union, hereinafter referred to as the "Council". During the months of April, June and October, the Committee shall hold its meetings in Luxembourg.

In exceptional circumstances and for duly substantiated reasons, the Committee, acting unanimously, may decide to hold a meeting elsewhere.

Article 1a

Representatives of States which were not Member States at the time of the opening for signature of the Convention and which have not yet acceded to the Convention in accordance with the provisions of its Article 21, are entitled to attend the meetings of the Committee as observers.

For the purposes of Articles 2(1), (3) and (4), 4(2) and (3), 8(1) and (3) and 9(2) of these Rules of Procedure, such representatives shall be considered as members of the Committee.

⁽¹⁾ The Belgian delegation entered a reservation on the second sentence of paragraph 2 which it should like to be deleted. However, the present wording is in line with Article 4 paragraph 2 of the Council's Rules of Procedure.

Article 2

1. The Chairman shall draw up the provisional agenda for each meeting. The agenda shall be sent to the other members of the Committee and to the Commission at least 14 days before the beginning of the meeting.

2. The provisional agenda shall contain the items in respect of which a request for inclusion on the agenda, together with any documents relating thereto, has been received by the General Secretariat of the Council (hereinafter referred to as the "General Secretariat") from a member of the Committee at least 16 days before the beginning of that meeting.

The provisional agenda shall also indicate the items on which the Chair or a member of the Committee may request a vote.

The Commission may also suggest to the Chairman items for inclusion on the agenda. ⁽¹⁾

3. Only items in respect of which the documents have been sent to the members of the Committee and to the Commission at the latest by the date on which the provisional agenda is sent may be placed on that agenda.

4. The General Secretariat shall transmit to the members of the Committee and to the Commission requests for the inclusion of items in the agenda, documents and indications concerning voting relating thereto in respect of which the time limits specified above were not respected.

5. The agenda shall be adopted by the Committee at the beginning of each meeting. The inclusion in the agenda of an item other than those appearing on the provisional agenda shall require unanimity in the Committee. Items entered in this way may be put to the vote.

(¹) Reservation by the French delegation and scrutiny reservation by the Danish delegation.

6. The provisional agenda shall be divided into Part A and Part B. Items for which approval of the Committee is possible without discussion shall be included in Part A, but this does not exclude the possibility of any member of the Committee or the Commission expressing an opinion at the time of the approval of these items and having statements included in the minutes.

7. However, an "A" item shall be withdrawn from the agenda, unless the Committee decides otherwise, if a position on an "A" item might lead to further discussion thereof or if a member of the Committee so requests.

Article 3

Subject to the provisions of Article 6 on the delegation of voting rights, a member of the Committee who is prevented from attending a meeting may arrange to be represented.

Article 4

1. Meetings of the Committee shall not be public, unless the Committee unanimously decides otherwise on a case-by-case basis. In such event, the debates of the Committee are to be the subject of public retransmission by audio-visual means.

2. The members of the Committee and the representatives of the Commission may be accompanied by officials who assist them. The number of such officials may be laid down by the Committee.

The names and functions of such officials shall be notified in advance to the Secretary-General of the Council.

3. Admission to meetings of the Committee shall be subject to the production of a pass prepared by the General Secretariat.

Article 5

1. Without prejudice to Article 6(7) and other applicable provisions, the deliberations of the Committee shall be covered by the obligation of professional secrecy, except in so far as the Committee decides otherwise.

Where the record of a vote in the Committee is made public in accordance with Article 6(7), the explanations of vote made when the vote was taken shall also be made public at the request of the Committee members concerned, with due regard for these Rules of Procedure, legal certainty and the interests of the Committee.

2. The Committee may authorize the production of a copy or an extract from its minutes for use in legal proceedings.

Article 6

1. The Committee shall vote on the initiative of its Chairman.

The Chairman shall, furthermore, be required to open a voting procedure on the initiative of a member of the Committee, provided that a majority of the Committee's members so decides.

2. Abstentions by members present in person or represented shall not prevent the adoption by the Committee of acts which require unanimity.

3. The Committee shall act on procedural matters by a majority of its members.

4. The members of the Committee shall vote in the order of the Member States laid down in Article 146 of the Treaty establishing the European Community (EC), beginning with the member who, according to that order, follows the member holding the office of Chairman.

5. Delegation of the right to vote may only be made to another member of the Committee.

6. The presence of half or more of the members of the Committee shall be required to enable the Committee to vote.

7. The record of the votes shall be made public by a unanimous Committee decision taken at the request of one of its members.

Article 7

1. Acts of the Committee on an urgent matter may be adopted by a written vote where the Committee unanimously decides to use that procedure. In special circumstances, the Chairman may also propose the use of that procedure; in such a case, written votes may be used where all members of the Committee agree to that procedure.

2. A summary of acts adopted by the written procedure shall be drawn up periodically.

3. The General Secretariat shall establish that the written procedures have been completed.

Article 8

1. Minutes of each meeting shall be drawn up and, when approved, shall be signed by the Chairman-in-Office at the time of such approval and by the Secretary-General of the Council.

The minutes shall as a general rule indicate in respect of each item on the agenda:

- the documents submitted to the Committee,
- the decisions taken or the conclusions reached by the Committee,
- the statements made by the Committee and those whose entry has been requested by a member of the Committee or by the Commission.

2. The draft minutes shall be drawn up by the General Secretariat within 15 days and submitted to the Committee for approval.

3. Prior to such approval, any member of the Committee or the Commission may request that more details be inserted in the minutes regarding any item on the agenda.

4. The decisions referred to in Article 10 shall be annexed to the minutes.

Article 9

1. Except as otherwise decided unanimously by the Committee on grounds of urgency, the Committee shall deliberate and take decisions only on the basis of documents and drafts drawn up in the languages specified in the rules in force governing the languages of the Council.

2. Any member of the Committee may oppose discussion if the texts of any proposed amendments are not drawn up in such of the languages referred to in paragraph 1 as he may specify.

Article 10

The text of the decisions adopted by the Committee shall be signed by the Chairman-in-Office at the time of their adoption and by the Secretary-General of the Council. The Secretary-General may delegate power to sign on his behalf to Directors-General of the General Secretariat.

Article 11

1. Decisions of the Committee shall include in their title the word "Decision", a serial number, the date of adoption and an indication of their subject matter.

2. Decisions of the Committee shall contain the following:

- (a) "The Committee set up by Article 18 of the Dublin Convention";
- (b) a reference to the provisions under which the Decision is adopted, preceded by the words "Having regard to";
- (c) a statement of the reasons on which the Decision is based, introduced by the word "Whereas";
- (d) the phrase "has decided as follows" followed by the body of the Decision.

3. Decisions shall be divided into Articles, if appropriate grouped into chapters and sections.

4. The last Article of a Decision shall be followed by:

- "Done at ...", followed by the date on which the Decision was adopted, and
- "For the Committee
The Chairman",

followed by the name of the Chairman-in-Office of the Committee at the time when the Decision is adopted.

Article 12

The Secretary-General of the Council or a Director-General acting on his behalf shall send authentic copies of Committee Decisions to the Governments of the Member States and to the Commission.

Article 13

Committee Decisions taken under Article 16, paragraph 3 and Article 17, paragraph 2 of the Convention shall be published in the Official Journal of the European Communities. The decision to publish other Committee Decisions in the Official Journal shall be taken in each case by the Committee acting unanimously when the said instruments are adopted. ⁽¹⁾

Article 14

Working parties set up by the Committee to prepare its proceedings shall meet on the occasion of meetings of working parties of the Council responsible for asylum matters.

⁽¹⁾ The Danish delegation held a scrutiny reservation but might lift it in view to the draft statements given in Annex III.

Article 15

The conditions under which the public has access to documents of the Council, disclosure of which is without serious or prejudicial consequences, shall be applied mutatis mutandis to documents of the Committee.

Article 16

Correspondence to the Committee shall be sent to the Chairman at the address of the Council.

Done at

For the Committee
The Chairman

Draft Statement for the Minutes

Re Article 2(1) and (2)

The Chair will endeavour to ensure that, in principle, the provisional agenda for each Committee meeting and the documentation relating to the items on that agenda, are received by the members of the Committee and by the Commission at least 21 days before the beginning of the meeting.

Draft statement by the Committee set up by Article 18 of the Dublin Convention

Re the second sentence of Article 13 of the Committee's Rules of Procedure

The Committee states that it is in favour of acts adopted by it which are general in scope or impose mandatory provisions being published in the Official Journal of the European Communities.

When adopting such acts other than decisions taken under Article 16(3) and Article 17(2) of the Convention, the Committee will therefore as a rule decide that the acts in question are to be published in the Official Journal, save where at the request of any of its members the Committee finds that the unanimity required for the purpose by the second sentence of Article 13 of its Rules of Procedure is not forthcoming.

Draft statement by the Council regarding publication in the Official Journal of decisions taken by the Committee set up by Article 18 of the Dublin Convention

The Council states that it is in favour of acts adopted by the Committee set up by Article 18 of the Dublin Convention which are general in scope or impose mandatory provisions being published in the Official Journal of the European Communities.

When such acts are adopted by the Committee, the Council will therefore as a rule decide that they are to be published in the Official Journal, save where at the request of any of its members the Council finds that the unanimity required for the purpose by analogy with Article 18(3) of its Rules of Procedure is not forthcoming.