Article 130j: being general rules for the implementation of the framework programme;

Article 130n.

5.8. **Court of First Instance**

Article 168a(2): as this is a general decision conferring new powers on the Court or changing its composition.

5.9. **Action against fraud**

Article 209a: if the current legal basis is strengthened as the European Parliament wishes.

5.10. **Euratom Treaty**

Various passages in this Treaty provide a legal basis for the adoption of acts having political significance. See Articles 7, 31, 47, 85, 96 etc. Most of them require qualified majority voting in the Council.

Other matters

5.11. In some fields the Treaty needs to be revised to distinguish between legislative and executive acts, in particular Article 43 on agricultural policy and Article 113 on commercial policy, which might be supplemented by an Article 113a relating to international agreements and an Article 113b for legislative measures.

5.12. There must also be enhanced democratic oversight at European level for certain acts and areas not coming directly under codecision. In the area of EMU, for instance, the strategic debates (broad lines of economic policies, etc.) must be subject to democratic oversight at European level, although without European Parliament involvement in executive decisions.

5.13. The expansion of the legislative field which will result from the future Treaty will have to be taken into account and lead to an extension of the areas covered by codecision procedure.

6. **Conclusion**

While the Commission has made a valuable contribution to the democratization of the European Union's legislative procedures, the omissions and grey areas in its document have to be pointed out, and especially the gulf between the criteria as laid down and the over-restrictive way it has applied them.

7. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

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10. Asylum procedures

A4-0315/96

Resolution on the Council Resolution on minimum guarantees for asylum procedures (5585/95 — C4-0356/95)

The European Parliament,

— having regard to the Council resolution of 20 June 1995 on minimum guarantees for asylum procedures (5585/95 — C4-0356/95) (1),

— having regard to the Universal Declaration of Human Rights of 10 December 1948,

— having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and to the Seventh Protocol thereto,

(1) OJ C 274, 19.9.1996, p. 13.

– having regard to the Geneva Convention of 1951 relating to the Status of Refugees and to the Protocol of 1967,

– having regard to the International Covenant on Civil and Political Rights,

– having regard to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984,

– having regard to Articles K to K.9 and the declaration on asylum in the Final Act of the Treaty on European Union,

– having regard to UNHCR Executive Committee Conclusions 8, 15, 22, 30, 44, 58, 64, 65, 68 and 73,

– having regard to the general legal principles applicable in the Member States,

– having regard to its resolution of 21 September 1995 on the Communication from the Commission to the Council and the European Parliament on immigration and asylum policy (1),

– having regard to its resolution of 18 November 1992 on the harmonization within the European Communities of asylum law and policies (2),

– having regard to the London Resolutions of 30 November and 1 December 1992 of the Council of Ministers of Justice and Home Affairs (3),

– having regard to the report by the Committee on Civil Liberties and Internal Affairs and the opinions of the Committee on Legal Affairs and Citizens' Rights and the Committee on Women's Rights (A4-0315/96),

A. whereas the resolution on minimum guarantees for asylum procedures is a good starting point which sets out a number of important principles whose further development could promote the objective of harmonization,

B. whereas the Council Resolution has no binding statutory effect, and whereas non-binding guarantees are not guarantees and must therefore be transposed into Community and national law;

C. whereas harmonization of asylum policy in the Member States is an essential prerequisite if constitutional standards are to be guaranteed throughout the European Union;

D. whereas the Council and the Commission have omitted to consult the European Parliament pursuant to Article K.6 of the Treaty on European Union,

E. whereas most refugees come from non-European countries and should be taken care of in their own region,

F. whereas a legislative and procedural distinction needs to be made between asylum-seekers and other third-country nationals,

G. whereas an asylum seeker should only be deported to the country of origin if it has been established that a return to the country of origin would not involve a violation of Article 33 of the Geneva Convention of 1951 (*non-refoulement*),

H. whereas applications for asylum are increasingly being made at borders,

I. whereas the concept of safe third countries is regarded as a means of determining the country responsible for processing an application for asylum, thereby avoiding 'orbiting',

J. whereas effective procedural protection of rights is conditional on the following:

– the asylum procedure must offer all asylum-seekers the opportunity of submitting their applications for asylum as swiftly as possible,

(1) OJ C 269, 16.10.1995, p. 156.
(2) OJ C 337, 21.12.1992, p. 97.
(3) 10518/92 (Press 230 – G).

— the parties must have guaranteed legal and linguistic aid,

— the examination of the facts and the freedom to review them must enable the judicial authorities to include all the essential features in their decision,

— asylum applications must be assessed by an independent specialist body with exclusive responsibility for assessing such requests,

— procedures must be available for a negative decision in the asylum procedure to be reviewed by an independent authority; such procedures should in general have a suspensive effect except in the case of manifestly unfounded asylum applications;

K. whereas certain groups of asylum-seekers such as women and unaccompanied minors must be given a special interview by contact officials with specific training in dealing with such groups,

L. whereas freedom from detention is a fundamental human right, as set out in Article 9 of the Universal Declaration on Human Rights and Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,

M. whereas the return of persons whose asylum applications have been rejected in a fair and satisfactory procedure should be guided by the principles of safety and dignity,

N. whereas the Council resolution can be approved subject to the following,

O. whereas the Council resolution needs to be supplemented in a number of key areas,

1. Voices once again its indignation at the daily suffering to which thousands of men and women are exposed on political or religious grounds in a series of countries;

2. Calls for the European Parliament to be consulted, pursuant to Article K.6, before the Council adopts decisions on the basis of the EU Treaty;

3. Calls in general for documents and decisions on the Council to be public in future and, in particular, seeks an end to the closed nature of the activities of the K.4 Committee, the working parties reporting to that Committee and the CIREA and CIREFI coordinating centres; calls likewise for Parliament to be regularly updated on the work being done in this area and for due account to be taken of Parliament's views;

4. Takes the view that this resolution and other Council decisions of a general effect in the field of asylum policy are not entirely binding, because they are pseudo-legislation and quite wrongly removed from parliamentary scrutiny and checks by the Court, and hence unacceptable as forms of Union legislation;

5. Calls on the Council to make asylum policy (Article K.1(1) of the Treaty on European Union) a matter of Community competence and to harmonize it in strict compliance with the principles of the Geneva Convention on Refugee Status in order to avoid the problems outlined above;

6. Calls, in so far as communitization of asylum policy is not feasible in the short term, for the introduction of comprehensive European rules on the right of asylum and the granting of protection to political refugees in strict compliance with the principles of the Geneva Convention on Refugees, in a legal act which is binding in international law;

7. Calls on the Council to establish in a clear and binding manner that every Member State shall consider as clearly unfounded any request for asylum or for refugee status submitted by a national of another Member State and shall in any event reject such a request;

8. Believes there is a need for contact and decision-taking officials to have expertise in the field of human rights and international and national refugees law;

9. Calls for decisions on asylum applications to be taken within a reasonable period, taking account, however, of the complexity of certain applications;

10. Calls on the Member States, when drawing up their joint situation reports on certain third countries of origin of asylum seekers, to take account of whether the UNHCR's Centre for Documentation for Refugees and international human rights organizations have been able to monitor respect for human rights;

11. Calls on the Member States to follow the recommendations of UNHCR, which, in accordance with paragraph 65 of the Handbook on Procedures and Criteria for Determining Refugee Status, reaffirms that the Geneva Convention applies to persons who are the victims of the actions of certain groups when the national authorities are clearly unable to protect them;

12. Calls for asylum-seekers to be offered free legal aid, as provided for in national procedural laws, as well as linguistic assistance, if they are not able to afford it;

13. Calls for appeals against rulings that asylum applications are manifestly unfounded to be referred to a higher legal authority established by law which is independent and impartial and competent to take binding decisions as rapidly as possible;

14. Calls for the principle of the suspensive effect of the appeal to be limited only in the case of asylum applications rejected as manifestly unfounded – applicants should not be deported without having had the opportunity to apply for the suspensive effect of their appeals to be restored;

15. Believes it is necessary for Member States to secure guarantees, prior to deporting an asylum-seeker to a safe third country, that the asylum-seeker will be admitted to the procedure, that there will be an assessment of the substance of the asylum application and that the principle of *non-refoulement* is respected;

16. Believes it is important to allow the asylum seeker enough time to prepare for the interview to assess his application, and for the interview itself; a report in a language understood by the asylum seeker should also be drawn up on the interview and the asylum seeker, or his legal representative, should have the right to inspect it;

17. Calls for proper reasons to be given for decisions on asylum applications, so that it is clear what information was taken into account in the decision, why the information led to the decision and why any other information that was available was not taken into account;

18. Stresses that the authorities responsible for guarding borders must have no responsibility for a substantive examination of asylum applications;

19. Calls, in cases where entry is refused on the grounds that the application for asylum is manifestly unfounded and the guarantee of temporary legal protection does not apply, for the decision to refuse entry to be taken by a central authority with the necessary knowledge and experience in the field of asylum law;

20. Calls for all decisions in the asylum procedure to be made known in writing in a language understood by the applicant, including the decision that the principle of a safe third country is applicable in accordance with national law;

21. Calls on the Member States to agree upon a harmonized list, based on detailed analysis, of safe countries of origin in which all individuals and all sections of the population throughout the territory are safe from political persecution; it must be possible for the legal presumption of freedom from persecution to be overturned in the event of individuals presenting conclusive, substantiated and credible statements of individual grounds for persecution; this list, which shall be valid throughout the Union, must be submitted to the European Parliament for approval;

22. Calls for asylum-seekers to be given an opportunity, in the form of an individual procedure, of contesting the presumed safety of the country of origin; the applicant must be given the opportunity in this procedure to show that his application is based on special circumstances which, despite the situation in his country of origin, could reasonably suggest that the asylum seeker justifiably fears persecution;

23. Calls for the accession requirements of future Member States of the Union to contain conditions in respect of asylum policy;

24. Believes it is necessary for unaccompanied minors to have an opportunity of submitting asylum applications of their own; where necessary, a guardian or supporter should be specifically designated to look after a minor applying for asylum;

25. Welcomes the fact that women's needs are recognised for the first time in the Council resolution, but considers that the wording of the resolution leaves too much leeway for Member States to continue to take no action to support female asylum seekers;

26. Recommends that the EU and its Member States, following the line taken by the Council of Europe, Canada, the USA and the UNHCR, recognize the right of asylum for women and girls who suffer or run the risk of suffering discrimination because of their sex;

27. Urges all Member States to adopt guidelines on women asylum seekers as agreed by the UNHCR Executive Committee Conclusions No 73 of 1993, these guidelines to include advice on responding to sexual violence;

28. Believes it is crucial that sexual violence be recognised as a form of torture, particularly given the use of rape as a weapon of war and the cultural traditions of certain countries which involve gender persecution;

29. Highlights the need for adequate information on the human rights situation for women as well as the specific forms of persecution to which women are often subjected, especially in countries which are the main source of asylum applications in the EU;

30. Calls for all Member States to establish training programmes to ensure that their officials dealing with asylum applications are sufficiently aware of issues related to gender-based persecution and the needs of traumatised women seeking asylum; calls on Member States to put into effect as rapidly as possible the recommendation (made in paragraph 28 of the Council resolution) that as far as possible women officials and interpreters should be responsible for the reception of women asylum seekers;

31. Stresses that where asylum seekers are accompanied by their families an independent legal status should be granted to women so that they do not lose their independent rights in the event of death, divorce or the breakdown of their relationship;

32. Calls for special programmes for women needing medical and psycho-social care following sexual violence;

33. Stresses that the Member States must establish action programmes which enable women refugees to gain economic independence rapidly;

34. Calls, furthermore, for female asylum-seekers to have the opportunity of submitting applications of their own; if required, they should be heard separately from their husbands by female contact officials in an independent, fully valid interview in the framework of a joint application for asylum;

35. Notes with concern that there is still no satisfactory policy with regard to asylum seekers who have exhausted every legal avenue, whose applications have been rejected or who are difficult to deport, or to illegal immigrants;

36. Calls for full compliance with the guarantees contained in Article 9 of the Universal Declaration of Human Rights, Article 5 of the European Convention on Human Rights and the UNHCR guidelines, and for free and permanent access to be granted to authorized NGOs and lawyers even in the event of detention being used;

37. Refers the Commission to its undertaking to submit in 1996 a convention on asylum policy and calls not only for existing agreements to be codified but also for existing shortcomings in asylum law to be rectified, in the light of the criticisms made in the foregoing;

38. Takes the view that, in harmonizing the procedures, the Governments and Parliaments of the Member States should take account of the contents of this resolution and could incorporate the clarifications called for by Parliament in its assessment of the Council resolution;

39. Wishes to be consulted by the Council should the latter decide to propose changes to its resolution on minimum guarantees for asylum procedures or to replace it;

40. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and applicant countries, the Council of Europe, the UNHCR, the ECRE and Amnesty International.