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Delegations will find attached the declassified version of the above document.

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RESTREINT

EVAL 4

ELARG 4

NOTE

from : General Secretariat

to: Collective Evaluation Working Party

Subject: Analysis of materials on Asylum in the Czech Republic, Estonia, Slovenia and Slovakia

I. Czech Republic

1. Accession partnership

The accession partnership for the Czech Republic stresses the need to adopt asylum legislation in conformity with the EU acquis.

2. General remarks on the state of information

There are three major elements of information: The report delivered by the expert mission organised under the PHARE program (hereinafter "PHARE report"), the UNHCR statement and a note from the head of the Department for Refugees and the Integration of Aliens of the Czech Ministry of the Interior. The main problem with the PHARE report of November 1997 is that it is somewhat outdated as first instance competence for decision on asylum applications was moved from the Aliens and Border Police to the Department of Refugees and Integration of Aliens in the Ministry of the Interior on 1 October 1998, a step which is bound to change considerably the administrative picture, and as an entirely new Asylum Act is currently being elaborated. The UNHCR paper is well balanced and very informative on the current and the new draft legislation as well as on practice. The note from the head of the department does not cover all issues of interest to the Evaluation group, but on those

covered (namely refugee camps, internal organisation of the Department, integration efforts, cooperation with NGOs) it is quite informative and remarkably self-critic.

3. Points of convergence

The PHARE report, the UNHCR paper and the Czech note largely converge in their basic statement about asylum procedure and institutions. In particular the Czech Refugee Department's detailed descriptions of their refugee camps and of the refugee integration program are confirmed by the PHARE report's very positive judgment on these two aspects.

However, a number of aspects are only mentioned in one of the three materials.

4. Divergencies

- The UNHCR paper is much more critical about lacking knowledge of English among the Refugee department officials than the PHARE report. As a consequence, officials according to UNHCR tend to resort to Czech embassy reports as sole country of origin information, whereas the PHARE report takes a more positive view of the official's use of and interest in other information sources.
- There is a certain divergency between the two papers as to the efficiency of judicial review: Whereas the PHARE report is very critical about the limited scope of judicial review, UNHCR acknowledges that in practice the High Court has served as significant safety net for cases where the quality of the administrative procedure has been questionable.

5. Gaps

- The most important information deficit is due to the fact that a completely renewed Asylum Act is currently being prepared in order to comply with EU standards. The UNHCR paper (not the PHARE report) does give a detailed account of a number of key provisions of the current draft, but that draft seems to still have a fairly long way to go and some provisions are under intense discussion. Therefore, the Group will have to look again closely at the final Act once it is adopted and some experience has been gathered in its application. This will probably not be possible until the end of this year.

- Particular subjects that are not addressed in UNHCR's reflection of the draft new Act include the legal status of recognised applicants (their practical treatment is described in detail in the PHARE report), the question whether a list of safe origin / third countries is to be drawn up under the new Act (the concept itself will be introduced), and family reunification.
- Little is said on the efficiency of collection, storage and processing of data in the asylum procedure. According to UNHCR, data protection seems to be respected in practice.
- The 1997 PHARE report quotes UNHCR and the Department for Refugees and Integration of Aliens for not knowing whether applications at border crossing points, in particular at the airport, are properly admitted and forwarded in practice. The UNHCR paper confirms these doubts. The first instance competence having now been transformed to the Department for Refugees, it should be enquired whether these doubts persist.
- Procedure and practice governing repatriation of unsuccessful asylum applicants should be further explored. The Czech note only mentions voluntary repatriation and states that 1996 one-fourth of all asylum applicants were repatriated (unclear whether voluntarily in all cases).

6. Main problems in adopting the acquis

- As to the Asylum Act of 1990 which after two amendments is still in place, all sources agree on its failure to comply with key requirements of the acquis (and of the Geneva Convention). The UNHCR notes insufficient protection against non-refoulement, overbroad exclusion clauses, absence of safe third / origin country concept. The Czech note admits further shortcomings of the 1990 Asylum Act like an insufficient regulation of the procedure, a limited time of validity of asylum recognition and a lack of rules on repatriation; it does not say whether the subsequent amendments have remedied these deficits.
- A serious deficit which apparently will not be remedied by the future Act consists in an incomplete access to justice since judicial control is limited to questions of law and cannot reach the factual substance of the case. The Commissions to be formed within the Ministry as second administrative instance cannot be regarded as a fully independent review body since they report to the Minister who is the formal author of the review decision; nonetheless, their establishment marks a progress as compared to the previous situation.

- Judicial action does not have suspensive effect and plaintiffs are only tolerated to stay on Czech territory at administrative discretion.
- For the other deficits of the current legislation see above.
- The PHARE report states an average duration of the asylum procedure of 14 months, with some cases waiting for years.
- The UNHCR paper laments a lack of English language skills on the part of the officials and states that as a consequence they tend to rely on reports by Czech embassies as sole country of origin information. This needs to be checked in light of the PHARE report's more positive impression.
- While conditions and management of the refugee camps appear to be good, one problem seems to be their location distant from border crossings and from all larger cities. This reportedly causes high administrative expenses.

It should be noted that the PHARE report, the UNHCR paper and the Czech note also point to several positive elements of the system, e.g. good conditions at the refugee camps, a remarkable government integration program, increasing cooperation with NGOs and very competent and dedicated staff at the Department of Refugees and Integration of Aliens. The UNHCR paper states that most of the procedural guarantees laid down in the relevant Council Resolution are consistently respected in practice, even though they are not anchored in the current legislation.

II. Estonia

1. Accession partnership

The accession partnership emphasizes the need to ensure effective implementation of the Geneva Convention and the 1967 Protocol as well of as the Law of Refugees. Particular attention must be paid to ensuring the necessary resources for institutional development.

2. General remarks on the state of information

On Estonia, the respective PHARE report and the UNHCR paper constitute the two major sources of information. In addition, one Member State provided an overview paper on its Immigration Service cooperation with Estonian authorities. This paper, while giving an impressive account on that Member State's efforts in counselling and training, refrains from making any comments on the quality of Estonian legislation or practice.

3. Points of convergence

The PHARE report and the UNHCR paper largely concur in their judgment of the legislation as generally being in line with EU standards, in their analysis of the specific problem areas and in their conclusion that administrative practice will have to be reviewed at a later stage.

4. Divergencies

There are two significant divergencies between the PHARE report and the UNHCR statement which need to be clarified:

- UNHCR states that neither the Refugees Act nor any other legislation provide for suspensive effect of the judicial recourse granted against the first (and only) instance administrative decision. The PHARE report says that, while the Refugees Act is not clear on the subject, judicial appeal will have suspensive effect in absence of specific legislation to the contrary.
- According to the PHARE report, a concept of manifestly unfounded applications does not exist whereas the UNHCR paper quotes Art. 6.2.2. of the Refugee Act for a definition of manifestly unfounded applications.

One divergency exists between the PHARE report and the Commission's regular progress report: The latter dates the entry into force of the new Refugees Act July 9 1998 and states that no regulation to apply this act has entered into force yet. Conversely, the PHARE report's very detailed account of regulations mentions the Refugees Act as enacted on July 9 1997 and enumerates several regulations implementing that Act. The latter information appears to be correct.

5.Gaps

Up to now, the most striking aspect of the asylum sector in Estonia has been its nearly complete practical irrelevance. According to the latest data available, only 25 asylum applications have been lodged, and none of them has been decided upon so far. Thus, at present asylum legislation and institutions can only be evaluated in theory; it will be crucial for the Working Group to come back to the practical record of the system at a later stage.

The legislation is generally well explored and reflected in the PHARE report and in the UNHCR paper. Only few information gaps remain:

- The accelerated procedure as provided for in very general terms by the Refugees Act for applications lodged at a border checkpoint cannot be evaluated properly until it is laid down in detail in a regulation.
- In particular, it is not clear whether the accelerated procedure at the border is meant to apply only to manifestly unfounded applications (a term not used in the law) or to all asylum seekers, with the result that the Border Guards could in principle reject any asylum application on the basis of the initial interview (48 hours after crossing the border) and immediately return the applicant. The latter understanding would give rise to a serious incompatibility with the *acquis* since review of the application by a specialised, fully competent authority would not be ensured.

6.Main problems in adopting the *acquis*

Generally speaking, the PHARE report and UNHCR consider the Estonian asylum legislation to be in line with EU standards. The PHARE report also stresses the high dedication and good training of the staff, which is not surprising in the light of the above mentioned Member State account on its intense assistance provided to Estonian authorities.

Only a limited number of specific deficits are mentioned:

- As to legislation, the accelerated procedure at the border needs to be regulated in more detail (see above). In addition, it is suggested to introduce an accelerated procedure for applicants staying in the country as well.

- The Citizenship and Migration Board (central authority in charge for decisions on asylum applications) urgently needs to build up systematic data collection on countries of origin. According to the PHARE report, a project to this end is already being prepared.
- The administrative courts will need to be equipped with country of origin information and material on asylum law, too.
- UNHCR is critical about the system of appeals: Since there is no second administrative instance, all appeals will go to the ordinary administrative courts which are not experienced in asylum matters.
- For lack of practical need, no plans for integration of refugees have been elaborated yet.

III.Slovenia

1.Accession partnership

The Accession Partnership does not specifically address the asylum issue.

2.General remarks on the state of information

The two main sources of information are the PHARE report and the UNHCR paper.

3.Points of convergence

The two papers converge to a large extent. They complement each other conveniently, UNHCR analysing in more detail the existing legislation and practice, and the PHARE report assessing thoroughly the current draft of the entirely new Asylum Act.

4.Divergencies

No divergencies appear between the two documents.

5.Gaps

Despite the high quality of both papers, the information on Slovenia is necessarily much less complete than for all other countries at this stage. There are three major reasons for this:

- First, an all-new, very comprehensive draft Asylum Act has been being prepared for more than two years; apparently the law-making on this is very cumbersome. Replacing the few existing provisions on asylum in the Aliens law which are completely unsatisfactory (see below), adoption of the new act will mean a radical change of asylum law. The PHARE report already engages in a thorough analysis of the current draft of the new Act and lists a large number of inconsistencies with the EU acquis (see below) but it is clear that the whole Act - which comprises as much as 139 articles - will have to be reassessed carefully once adopted.
- Secondly, asylum practice is far too limited (only approx. 200 applications since 1992, only 2 asylum seekers were granted refugee status) to permit a sound judgment on its quality. Both reports expect that the current administrative practices will be deeply affected by the introduction of the new legal regime. In particular, both reports restate certain alleged administrative irregularities that need to be verified: Benefit of the doubt hardly given; refusal of entry without any assessment of asylum seekers' situation by the competent authorities; manoeuvres in order to make the three-day deadline for filing an application expire.
- Furthermore, UNHCR informs that in preparing for the enactment the Ministry of Interior is presently being fully reorganised. Thus, a fresh look will have to be had on institutions again, too.

In sum, it appears that in the field of asylum Slovenia will be a priority candidate for another expert visit in perhaps two years.

6. Main problems in adopting the acquis

- As to the existing legislation, both papers agree (and the Slovenian authorities themselves admitted) that they fail to comply with the EU acquis in many respects. These are set out in the UNHCR paper in some detail: Inadequate definition of the term refugee; no concepts of manifestly unfounded applications and of safe origin / third countries; lack of procedural provisions; no accelerated procedure; no legal framework for data protection; applicants' access to UNHCR and communication in his language not guaranteed; too restrictive social benefits for recognized refugees; lack of independent recourse instance; no suspensive effect.
- The PHARE report lists a number of articles of the draft new Asylum Act which it considers not in line with the EU acquis. These relate to (e.g.): Definition of safe country of origin; manifestly unfounded applications; application of the Dublin Convention; deliberate fraud and abuse of procedure; absence of suspensive effect; delay of decision; excessive amount of data which will be stored legally. These inconsistencies will have to be checked again in light of the final version of the Act.
- As regards asylum practice, both sources stress (and the Slovenian authorities admit themselves) that country of origin information, language and interpretation capacities, training and experience in asylum law are insufficient. With the expected increase in asylum cases, the staff (which is currently in charge of other tasks at the same time) will need to be upgraded. However, the material equipment, especially computers, seems to be decent.
- Both reports concurrently mention excessive delays in asylum procedures.

On the other hand the PHARE report lists as assets Slovenia's experience in receiving nearly 70.000 displaced persons during the Bosnia conflict and its specific legislation on temporary protection. the report concludes that in handling the problem of a mass of displaced persons Slovenia has demonstrated its general capability to conduct a coherent and humane asylum policy. The comprehensive draft law on asylum, despite several particular shortcomings, is welcomed as an encouraging sign of Slovenia's willingness to redress its deficits.

IV. Slovakia

1. Accession partnership

The Accession Partnership in general terms calls for an improvement of the capacity to handle asylum questions and states that some important gaps need to be filled in legislation.

2. General remarks on the state of information

The two main sources of information are a rather thorough analysis in the PHARE report and the UNHCR statement which is informative but incomplete on some legal issues. In addition there is a short statement of the Slovak Migration Office (which is in charge of asylum matters).

3. Points of convergence

The UNHCR paper and the PHARE report largely converge in their assessment of problematic aspects.

4. Divergencies

There are no clear inconsistencies between the PHARE report and the UNHCR statements.

5. Gaps

In its analysis of the legislation, the PHARE report is very problem-centered: It gives only a very brief description of the procedure, concluding that on most issues the Refugee Act of 1996 is in line with the requirements of the Geneva Convention and of the EU acquis. It then analyses in detail two particular aspects of the legislation considered problematic (the 24 hour limit to lodge an application and family reunification); both aspects are also salient in the UNHCR report.

Similarly, the UNHCR paper mostly limits itself to merely mentioning the relevant provisions of the law without quoting or analysing its content.

Thus, based on the two documents alone it is not possible to fully assess a number of important issues like the safe origin / third country concept (which does exist in legislation, even a list of countries is already established), procedural guarantees, the design of the accelerated procedure, definition of manifestly unfounded applications (which exists in the Refugee Act), repatriation procedure for rejectees.

However, the Refugee Act, the important application regulation and the list of safe countries being included in the annex to the PHARE report, it should be possible for experts in the group or in the General Secretariat to study these remaining legal questions in depth later. Since UNHCR and the PHARE report converge in stressing the same particular problems, one might presume that further study of legislation may not yield many more significant deficits.

In addition to the above, the following particular information gaps can be stated:

- The PHARE report stresses its inability to make any judgment on the quality of the administrative decisions since it could not read particular decisions. Apparently the author has some doubts as to the skills of the officials in first and second instance in view of their astonishingly contradictory and uncertain replies on some fundamental questions on asylum law, as reflected repeatedly in the report. According to UNHCR motivation and training of officials has increased thanks to assistance from Germany, Switzerland and UNHCR. Nonetheless, deficits of adequate and updated country of origin information remain (mainly because many officials have insufficient knowledge of English and therefore cannot use international materials), the principle of the benefit of the doubt is mostly not applied and generally the quality of decisions needs to be improved. In sum, the group should try to obtain additional information on the quality of administrative practice.
- One particularly striking example for such inconsistent statements relates to the scope of review of administrative and judicial review: From statements of Slovak officials, it remains unclear whether the Special Advisory Committee forming the second administrative instance has power to review not only the procedure, but also the substance of the cases (asylum motive, credibility of the asylum seeker), and, if so, whether it really engages in this kind of review in practice. Likewise, it is difficult to say to what extent judicial review by the Supreme Court reaches the substance of the case. Clarification of these questions is fundamental for an assessment of conformity with a key element of the *acquis*.

- One further UNHCR allegation to be verified by the Group says that (groups of) asylum seekers caught by the police within Slovak territory are not properly interviewed about their potential persecution situation but treated more or less in a criminal context.
- No statistics about the length of the first and second instance administrative procedure was made available to the PHARE expert; he had to rely on comments by Slovak officials stating that the legal time limits of 90 and another 60 days were almost always respected in practice.
- There is no information about collection, storage and processing of data in the field of asylum, e.g. computerised databanks.
- Little is said on integration efforts.

6. Main problems in adopting the acquis

- The asylum law urgently needs to be clarified in several respects:
 - the 24-hour time limit for filing an asylum application, the consequences of missing this time limit, and the authority competent for reviewing whether good reasons prevented the asylum seeker from complying with it; these rules need to be clarified with a view to granting every asylum seeker due access to the asylum procedure,
 - family reunification,
 - power of the administrative and judicial review instances to review the substance of the case.
 - right to access to UNHCR and to other refugee organisations (respected in practice)
 - principle of benefit of the doubt.
- The members of the Special Advisory Committee (second administrative instance) lack special knowledge in asylum law and practice. If the extent of judicial review is not broadened, the second administrative instance would have to be given greater independence.

- The staff of the Migration Office needs to be better trained in asylum law, languages (mainly English), interviewing techniques, country of origin information. In general, the quality of decisions apparently need to improve (see above gaps).
- Interpreters are lacking for some (mainly oriental) languages.

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List of material received on asylum

- Regular report from the Commission on Czech Republic's Progress towards accession
- Regular report from the Commission on Estonia's Progress towards accession
- Regular report from the Commission on Slovakia's Progress towards accession
- Regular report from the Commission on Slovenia's Progress towards accession
- Report of the JHA Expert Mission to the Czech Republic (17. - 21. November 1997) ("PHARE report")
- Report of the General JHA Expert Mission to Estonia (1 - 5 June 1998)("PHARE report")
- Report of the Expert Mission to the Slovak Republic in the Field of Justice and Home Affairs (24 - 28 November 1997)("PHARE report")
- Report of the JHA Expert Mission to Slovenia (23 - 27 February 1998)("PHARE report")
- UNHCR: EU Acquis on Asylum check list: Czech Republic (version 1 December 1998)
- UNHCR: EU Acquis on Asylum check list: Estonia (version 1 December 1998)
- UNHCR: EU Acquis on Asylum check list: Slovak Republic (version 1 December 1998)
- UNHCR: EU Acquis on Asylum check list: Slovenia (version 1 December 1998)
- Note on migration situation from the Czech Ministry of Interior, made accessible by a Member State (December 1998)

- Note from the Slovak Republic Migration Office, , made accessible by a Member State, June 1998
- One Member State's internal note of CIREA's inaugural meeting with CEEs and Cyprus (10 June 1998)
- ECRE: Position on the enlargement of the European Union in relation to asylum
- Overview of the assistance provided by one Member State's Immigration Service in Estonia.

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