

CONTENTS

ASYLUM CLAIMS MADE BY EU NATIONALS

1. Introduction.....	2
2. Consideration.....	2
3. EU Member States.....	2
4. The Protocol.....	3
5. Appeals.....	3
6. Asylum Support.....	4
7. Enquiries.....	4

ASYLUM CLAIMS MADE BY EU NATIONALS

1. Introduction

- 1.1 This policy instruction sets out the guidance for considering asylum applications from nationals of the European Union.
- 1.2 The Protocol on Asylum for Nationals of Member States of the EU, often referred to as the “Spanish Protocol”, is annexed to the Treaty of Amsterdam establishing the European Community¹ and applies to EU Member States considering claims made for asylum by nationals of other EU Member States.
- 1.3 The procedures that should be followed in dealing with such an asylum claim from EU nationals are listed in the Asylum Process Notice, **“Applications from nationals of the EEA and EU accession countries”**

2. Consideration

- 2.1 An EU national may apply for asylum. Being an EU national does not exclude a person from lodging an asylum claim or from it being considered. Consideration is in the context of a presumption that such a claim is “manifestly unfounded” but that presumption can be rebutted.

3. EU Member States

As well as the United Kingdom the following countries are also members of the European Union.

- | | | |
|---------------|---------------|----------------|
| 1. Austria | 9. Germany | 17. Malta |
| 2. Belgium | 10. Greece | 18. Netherland |
| 3. Cyprus | 11. Hungary | 19. Poland |
| 4. Czech Rep. | 12. Ireland | 20. Portugal |
| 5. Denmark | 13. Italy | 21. Slovakia |
| 6. Estonia | 14. Latvia | 22. Slovenia |
| 7. Finland | 15. Lithuania | 23. Spain |
| 8. France | 16. Luxemburg | 24. Sweden |

¹ The Treaty of Amsterdam signed 02nd October 1997 and became law on 01st May 1999.

4. The Protocol

- 4.1 The Protocol on Asylum for Nationals of Member States of the EU states considers that the level of protection afforded to an individual's fundamental rights and freedoms by those Member States means that they should be regarded as safe countries of origin. Therefore it sets out specific procedures that are to be applied to the handling of any claim made for asylum by a national of an EU Member State (including a dual national). The procedures set out in the protocol must be followed.
- 4.2 Although there are specific exceptions to cover a deterioration in conditions within a Member State, normally the examining State may either declare such a claim inadmissible, or consider it in the context of a presumption that it is “manifestly unfounded”. As the UK does not have a general procedure by which an asylum claim may be declared inadmissible (other than where it is possible to apply safe third country provisions – see separate API on **“Safe third country cases”**) it follows that the claim must be considered within the substantive asylum procedure, albeit against the presumption that it is manifestly unfounded. This presumption can be rebutted and it would be possible and appropriate to give refugee status to any EU national who qualified. The terms of the Protocol require the Member States to inform the EU Council of the fact that they have received and are considering such a claim. Where this applies to the UK European Asylum Policy Unit (EAPU) will prepare the notification correspondence and so it is important that they are informed should such a claim be lodged.

5. Appeals

- 5.1 In accordance with the Immigration (EEA) Regulations 2006, a person who has a right to reside in the UK under the EEA Regulations may appeal against a refusal of asylum unless the claim has been certified as clearly unfounded. The Secretary of State shall certify as clearly unfounded an asylum claim that is made by an EEA national unless he is satisfied that it is not clearly unfounded. Please see the APN on **“Applications from nationals of the EEA and EU accession countries”** for further information.

6. Asylum Support

- 6.1 EEA nationals and their dependants are within the second class of person prescribed by Schedule 3 to the Nationality, Immigration and Asylum Act 2002 as ineligible for support. They are not entitled to support from the Home Office or others, except to the extent necessary to avoid a breach of a person's rights under the ECHR or the Community Treaties. Schedule 3 does not, however, prevent the provision of support or assistance to a child

7. Enquiries:

Further enquiries should normally be made in writing via a Senior Caseworker to European Asylum Policy Unit.