NOTE

from :  the Presidency

to :  CIREA

Subject:  Confidentiality of CIREA documents

1.  Introduction

During the CIREA meeting on 19 and 20 February 1997, the possible use of the draft report on the situation in Iraq prepared by the Secretariat General (9747/96 CIREA 40) was discussed at some length. Clearly, Member States appeared to have very different views as to the exact character of CIREA documents: most Member States tend to consider these documents as confidential, to the extent that they may be used by their administrative bodies dealing with asylum applications only, others are in favour of increasing transparency, primarily since they are unable to use confidential information in their asylum procedure as they have to disclose that information to their courts in case they wish to use it in a decision.

After this extensive discussion, the Presidency announced that it would make an attempt to draw up guidelines for determining whether a document distributed in CIREA is to be considered confidential or not, so as to avoid similar lengthy discussions in the future. Before doing so, the Presidency felt it would be helpful to study Member States' replies to the questionnaire on the storage of asylum information in the European Union (Telex 0275 of 23 January 1997, compilation of replies in 8794/97 CIREA 47). In developing the following thoughts, the Presidency has taken into consideration Member States’ replies to questions 6 and 7 of that questionnaire and the views expressed by Member States during the CIREA meetings on 15 May, 16 June and 30 October 1997.
The Presidency wishes to underline that an analysis of the replies to the other points in the questionnaire on the storage of asylum information and of the replies to the questionnaire on the collection of statistical data have been circulated separately (8120/1/97 CIREA 37 REV 1 and 8860/97 CIREA 50, respectively). Consequently, this note does not touch on the particular issue of the confidentiality of statistical data.

2. Principles for determining the degree of confidentiality

In its reply to the questionnaire on the storage of asylum information, the Belgian delegation pointed out that, in principle, three degrees of confidentiality of documents may be distinguished, viz.:

1. information intended solely for those persons processing files, which may never be explicitly mentioned in a decision ("confidential information");

2. information which may be mentioned in a decision but which is inaccessible to the public ("information with a limited circulation"), and

3. non-confidential information ("public information").

At the meeting on 30 October the French delegation proposed that only CIREA's public information should be used (and, where necessary, quoted) in decisions relating to individual cases, and that a distinction should be drawn between highly confidential information, which should be sent only to designated persons within the relevant bodies, and information which should, by its very nature, be passed on (in ways determined by each State) to the experts concerned but without being released to the public.

Since the practical use of the information under 1 and 2 for national administrative organizations may well be very similar, in the sense that it is unlikely to be used in decisions, the Presidency will, at least for the purposes of this note, confine itself to drawing a distinction between confidential information on the one hand and public information on the other hand. At the meeting on 15 May 1997, the United Kingdom pointed out that 2 and 3 were similar in UK procedures.

The Presidency believes that the following five principles are agreed:

1. it is ultimately up to the Member State releasing any information to CIREA to determine which of the above-mentioned degrees of confidentiality is to be stamped.
on that information. Several Member States, including Belgium, Denmark, the Netherlands, Austria and Portugal, have reaffirmed this premise in their reply to the questionnaire on the storage of asylum information;

2. the fact that any information labelled as confidential may only be used, be it for internal purposes only, by other Member States with prior consent by the providing Member State. By sending that information to CIREA in the first place, however, one may assume that the providing Member State is in fact already giving its prior consent to such use in an implicit manner;

3. information should not be classified as confidential in the light of the Council's rules on the confidentiality of documents (or otherwise) in case that information was previously made public in the Member State that provided it (e.g. by sending it to Parliament or disclosing it to a Court) or when it concerns information such as that contained on UNHCR's CD-Rom "Refworld", information accessible through other technical means like Internet or information published by, for example, a non-governmental organization like Amnesty International;

4. as mentioned by the Danish and Belgian delegations in their replies to the questionnaire, as well as by several other delegations (Germany, Italy, Greece, Spain, Belgium) during the previous meeting, asylum-related information, particularly country of origin information, that is provided to CIREA should preferably be of a non-confidential nature as often as possible. The advantage of public information is that it may actually be referred to by the authorities dealing with asylum applications in their decisions and before their courts, and

5. documents distributed to Member States through CIREA should always have a clear indication of the degree of confidentiality and, perhaps in addition to that, as to the possible use thereof by other Member States.

### 3. Confidential information

Clearly, as was shown by the discussion on the Iraq report referred to under point 1, Member States’ views differ a great deal as to which documents should be classified as confidential and which as public information. It is clear, though, that documents should not be disclosed if the result is likely to facilitate unfounded applications for asylum. Taking into consideration the five principles mentioned above, the Presidency would nevertheless like to try and make an attempt at describing the types of documents that would have to be classified as confidential at any rate, since at least some Member States consider them as such.
At present, the following types of documents are thus likely to have to be considered as confidential:

- Member States' replies to questionnaires on the situation in certain countries of origin or on other subjects and the analysis of those replies;

- reports drawn up by the General Secretariat after discussions about certain third countries (of the type on Iraq, Somalia, etc.);

- documents on sensitive national policy issues;

- Member States' internal administrative guidelines, work instructions, lists of check questions, etc.;

- Member States' country of origin information which is regarded as confidential. The Presidency is aware that some Member States, including the Netherlands, have indicated that their national country of origin information has a public character, so that this general principle would not apply in their case;

- common (i.e. Second Pillar) reports on the situation in certain third countries, notwithstanding the criteria on distribution and confidentiality mentioned in the text adopted by the Council on 20 June 1994 (OJ No C 274, 19.9.1996, p. 43);

- information on return of rejected applicants;

- any information relating to individual cases;

- reports on missions to countries of origin which are regarded as confidential by the Member States sending them;

- lists of names and addresses of Member States' experts on certain asylum-related subjects.
4. **Access to confidential information**

From the various replies to question 7 of the questionnaire on the storage of asylum information, it follows that Member States essentially wish to restrict the use of any confidential information to the authorities which are actually dealing with asylum applications. Some Member States (France, the Netherlands, Sweden, Belgium, among others) specifically indicated that direct access to confidential information may be restricted to a small number of designated policy officials or heads of documentation centres who, in their turn, should decide whether decision makers may have access to the information. One Member State (Austria), however, feels that case workers should also have access to the information. The Presidency notes that Germany, in its reply to the questionnaire, states that it is vital that the courts also have access to the confidential information stored with CIREA if that information is used in a decision. As a result thereof, *parties to proceedings must have access to the information*. It goes without saying that confidential information would also be provided to the Commission.

As an exception to this general rule, however, it was agreed, during the meeting on 19-20 February 1997, that UNHCR and other organizations (e.g. IOM) which are invited to attend a meeting on a certain third country, will receive a copy of the final report to be drawn up by the Secretariat General, albeit for their internal use only and without any explicit mentioning of the views expressed by individual Member States during the meeting. Moreover, they will have an opportunity to comment on the extracts in the draft report that reflect their contribution to the discussion.

5. **Public information**

Again bearing in mind the principles mentioned under point 2, which in particular implies that individual Member States may label some of the information mentioned under 3, notably country of origin information, as non-confidential rather than as confidential, as well as the replies to the questionnaire on the storage of asylum information, the Presidency understands that the following types of documents are generally considered to be public information:
- legislation;
- jurisprudence (anonymized);
- documents describing asylum procedures;
- information on reception facilities;
- official letters to Parliament, replies to Parliamentary questions, etc.;
- annual reports on CIREA's activities.