CHAPTER THREE

Immigration and asylum

20

Convention determining the State responsible for examining Applications for Asylum lodged in one of the Member States of the European Communities

Introduction

The Dublin Convention: "Convention determining the State responsible for examining Applications for Asylum lodged in one of the Member States of the European Communities" (Dublin, 15 June 1990). This was, as its long title suggested, the first attempt by the member states' immigration ministers to bring order to asylum by restricting asylum-seekers' rights. The Convention, based on the asylum provisions of the Schengen Supplementary Agreement of the same date, removed asylum-seekers' ability to choose their country of asylum and their ability to make sequential applications in more than one member state. The principle was that unless the asylum-seeker was joining a spouse or minor children in the destination country, they could be returned to the state which allowed them in to EEC territory (whether by granting a visa or a residence or transit permit) or through which they travelled, which was responsible for determining the claim. The Convention set up a system of information exchange on individual asylum-seekers, on trends, statistics and legal developments in asylum applications, and on conditions in countries of origin.

The Convention undermined the Geneva Convention principle, reflected in the German and French Constitutions, that all asylum claims be substantively investigated. It formalised the growing RIO ("Refugees in Orbit") phenomenon and "chain deportations", as destination countries shunt asylum-seekers back to the last transit country, which returns them to the next one, and so on back to the country they fled from.

The “Dublin Convention”

CONVENTION determining the State responsible for examining Applications for Asylum lodged in one of the Member States of the European Communities

Dublin, 15 June 1990

CONVENTION DETERMINING THE STATE RESPONSIBLE FOR EXAMINING APPLICATIONS FOR ASYLUM LODGED IN ONE OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES

His Majesty The King of the Belgians, Her Majesty The Queen of Denmark, The President of the Federal Republic of Germany, The President of the Hellenic Republic, His Majesty The King of Spain, The President of the French Republic, The President of Ireland, The President of the Italian Republic, His Royal Highness The Grand Duke of Luxembourg, Her Majesty The Queen of the Netherlands, The President of the Portuguese Republic, Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland,

Having regard to the objective, fixed by the European Council meeting in Strasbourg on 8 and 9 December 1989, of the harmonization of their asylum policies;

Determined, in keeping with their common humanitarian tradition, to guarantee adequate protection to refugees in accordance with the terms of the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967 relating to the Status of Refugees, hereinafter referred to as the " Geneva Convention " and the " New York Protocol " respectively.

Considering the joint objective of an area without internal frontiers in which the free movement of persons shall, in particular, be ensured, in accordance with the provisions of the Treaty establishing the European Economic Community [3] , as amended by the Single European Act [4]; [3: Treaty Series No. 47 (1988), Cm 455. 4: Treaty Series No. 31 (1988), Cm 372].

Aware of the need, in pursuit of this objective, to take measures to avoid any situations arising, with the result that applicants for asylum are left in doubt for too long as regards the likely outcome of their applications and concerned to provide all applicants for asylum with a guarantee that their applications will be examined by one of the Member States and to ensure that applicants for asylum are not referred successively from one Member State to another without any of these States acknowledging itself to be competent to examine the application for asylum;

Desiring to continue the dialogue with the United Nations High Commissioner for Refugees in order to achieve the above objectives;

Determined to cooperate closely in the application of this Convention through various means, including exchanges of information,

Have decided to conclude this Convention and to this end have designated as their Plenipotentiaries:

[signatories for 12 EC governments.....]

Who, having exchanged their Full Powers, found in good and due form,

Have agreed as follows:

ARTICLE 1

1. For the purposes of this Convention:

(a) Alien means: any person other than a national of a Member State;

(b) Application for asylum means: a request whereby an alien seeks from a Member State protection under the Geneva Convention by claiming refugee status within the meaning of Article 1 of the Geneva Convention, as amended by the New York Protocol;

(c) Applicant for asylum means: an alien who has made an application for asylum in respect of which a final decision has not yet been taken;

(d) Examination of an application for asylum means: all the measures for examination, decisions or rulings given by the competent authorities

on an application for asylum, except for procedures to determine the State responsible for examining the application for asylum pursuant to this Convention;

(e) Residence permit means: any authorization issued by the authorities of a Member State authorizing an alien to stay in its territory, with the exception of visas and "stay permits" issued during examination of an application for a residence permit or for asylum;

(f) Entry visa means: authorization or decision by a Member State to enable an alien to enter its territory, subject to the other entry conditions being fulfilled;

(g) Transit visa means: authorization or decision by a Member State to enable an alien to transit through its territory or pass through the transit zone of a port or airport, subject to the other transit conditions being fulfilled.

2. The nature of the visa shall be assessed in the light of the definitions set out in paragraph 1, points (f) and (g).

ARTICLE 2

The Member States reaffirm their obligations under the Geneva Convention, as amended by the New York Protocol, with no geographic restriction of the scope of these instruments, and their commitment to cooperating with the services of the United Nations High Commissioner for Refugees in applying these instruments.

ARTICLE 3

1. Member States undertake to examine the application of any alien who applies at the border or in their territory to any one of them for asylum.

2. That application shall be examined by a single Member State, which shall be determined in accordance with the criteria defined in this Convention. The criteria set out in Articles 4 to 8 shall apply in the order in which they appear.

3. That application shall be examined by that State in accordance with its national laws and its international obligations.

4. Each Member State shall have the right to examine an application for asylum submitted to it by an alien, even if such examination is not its responsibility under the criteria defined in this Convention, provided that the applicant for asylum agrees thereto.

The Member State responsible under the above criteria is then relieved of its obligations, which are transferred to the Member State which expressed the wish to examine the application. The latter State shall inform the Member State responsible under the said criteria if the application has been referred to it.

5. Any Member State shall retain the right, pursuant to its national laws, to send an applicant for asylum to a third State, in compliance with the provisions of the Geneva Convention, as amended by the New York Protocol.

6. The process of determining the Member State responsible for examining the application for asylum under this Convention shall start as soon as an application for asylum is first lodged with a Member State.

7. An applicant for asylum who is present in another Member State and there lodges an application for asylum after withdrawing his or her application during the process of determining the State responsible shall be taken back, under the conditions laid down in Article 13, by the Member State with which that application for asylum was lodged, with a view to completing the process of determining the State responsible for examining the application for asylum.

This obligation shall cease to apply if the applicant for asylum has since left the territory of the Member States for a period of at least three months or has obtained from a Member State a residence permit valid for more than three months.

ARTICLE 4

Where the applicant for asylum has a member of his family who has been recognized as having refugee status within the meaning of the Geneva Convention, as amended by the New York Protocol, in a Member State and is legally resident there, that State shall be responsible for examining the application, provided that the persons concerned so desire.

The family member in question may not be other than the spouse of the applicant for asylum or his or her unmarried child who is a minor of under eighteen years, or his or her father or mother where the applicant for asylum is himself or herself an unmarried child who is a minor of under eighteen years.

ARTICLE 5

1. Where the applicant for asylum is in possession of a valid residence permit, the Member State which issued the permit shall be responsible for examining the application for asylum.

2. Where the applicant for asylum is in possession of a valid visa, the Member State which issued the visa shall be responsible for examining the application for asylum, except in the following situations:

(a) if the visa was issued on the written authorization of another Member State, that State shall be responsible for examining the application for asylum. Where a Member State first consults the central authority of another Member State, inter alia for security reasons, the agreement of the latter shall not constitute written authorization within the meaning of this provision.

(b) where the applicant for asylum is in possession of a transit visa and lodges his application in another Member State in which he is not subject to a visa requirement, that State shall be responsible for examining the application for asylum.

(c) where the applicant for asylum is in possession of a transit visa and lodges his application in the State which issued him or her with the visa and which has received written confirmation from the diplomatic or consular authorities of the Member State of destination that the alien for whom the visa requirement was waived fulfilled the conditions for entry into that State, the latter shall be responsible for examining the application for asylum.

3. Where the applicant for asylum is in possession of more than one valid residence permit or visa issued by different Member States, the responsibility for examining the application for asylum shall be assumed by the Member States in the following order:

(a) the State which issued the residence permit conferring the right to the longest period of residency or, where the periods of validity of all the permits are identical, the State which issued the residence permit having the latest expiry date;

(b) the State which issued the visa having the latest expiry date where the various visas are of the same type;

(c) where visas are of different kinds, the State which issued the visa having the longest period of validity, or where the periods of validity are identical, the State which issued the visa having the latest expiry date. This provision shall not apply where the applicant is in possession of one or more transit visas, issued on presentation of an entry visa for another Member State. In that case, that Member State shall be responsible.

4. Where the applicant for asylum is in possession only of one or more residence permits which have expired less than two years previously or one or more visas which have expired less than six months previously and enabled him or her actually to enter the territory of a Member State, the provisions of paragraphs 1, 2 and 3 of this Article shall apply for such time as the alien has not left the territory of the Member States.

Where the applicant for asylum is in possession of one or more residence permits which have expired more than two years previously

or one or more visas which have expired more than six months previously and enabled him or her to enter the territory of a Member State and where an alien has not left Community territory, the Member State in which the application is lodged shall be responsible.

ARTICLE 6

When it can be proved that an applicant for asylum has irregularly crossed the border into a Member State by land, sea or air, having come from a non-member State of the European Communities, the Member State thus entered shall be responsible for examining the application for asylum.

That State shall cease to be responsible, however, if it is proved that the applicant has been living in the Member State where the application for asylum was made at least six months before making his application for asylum. In that case it is the latter Member State which is responsible for examining the application for asylum.

ARTICLE 7

1. The responsibility for examining an application for asylum shall be incumbent upon the Member State responsible for controlling the entry of the alien into the territory of the Member States, except where, after legally entering a Member State in which the need for him or her to have a visa is waived, the alien lodges his or her application for asylum in another Member State in which the need for him or her to have a visa for entry into the territory is also waived. In this case, the latter State shall be responsible for examining the application for asylum.

2. Pending the entry into force of an agreement between Member States on arrangements for crossing external borders, the Member State which authorizes transit without a visa through the transit zone of its airports shall not be regarded as responsible for control on entry, in respect of travellers who do not leave the transit zone.

3. Where the application for asylum is made in transit in an airport of a Member State, that State shall be responsible for examination.

ARTICLE 8

Where no Member State responsible for examining the application for asylum can be designated on the basis of the other criteria listed in this Convention, the first Member State with which the application for asylum is lodged shall be responsible for examining it.

ARTICLE 9

Any Member State, even when it is not responsible under the criteria laid out in this Convention, may, for humanitarian reasons, based in particular on family or cultural grounds, examine an application for asylum at the request of another Member State, provided that the applicant so desires.

If the Member State thus approached accedes to the request, responsibility for examining the application shall be transferred to it.

ARTICLE 10

1. The Member State responsible for examining an application for asylum according to the criteria set out in this Convention shall be obliged to:

(a) Take charge under the conditions laid down in Article 11 of an applicant who has lodged an application for asylum in a different Member State.

(b) Complete the examination of the application for asylum.

(c) Readmit or take back under the conditions laid down in Article 13 an applicant whose application is under examination and who is irregularly in another Member State.

(d) Take back, under the conditions laid down in Article 13, an applicant who has withdrawn the application under examination and lodged an application in another Member State.

(e) Take back, under the conditions laid down in Article 13, an alien whose application it has rejected and who is illegally in another Member State.

2. If a Member State issues to the applicant a residence permit valid for more than three months, the obligations specified in paragraph 1, points (a) to (e) shall be transferred to that Member State.

3. The obligations specified in paragraph 1, points (a) to (d) shall cease to apply if the alien concerned has left the territory of the Member States for a period of at least three months.

4. The obligations specified in paragraph 1, points (d) and (e) shall cease to apply if the State responsible for examining the application for asylum, following the withdrawal or rejection of the application, takes and enforces the necessary measures for the alien to return to his country of origin or to another country which he may lawfully enter.

ARTICLE 11

1. If a Member State with which an application for asylum has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within the six months following the date on which the application was lodged, call upon the other Member State to take charge of the applicant.

If the request that charge be taken is not made within the six-month time limit, responsibility for examining the application for asylum shall rest with the State in which the application was lodged.

2. The request that charge be taken shall contain indications enabling the authorities of that other State to ascertain whether it is responsible on the basis of the criteria laid down in this Convention.

3. The State responsible in accordance with those criteria shall be determined on the basis of the situation obtaining when the applicant for asylum first lodged his application with a Member State.

4. The Member State shall pronounce judgment on the request within three months of receipt of the claim. Failure to act within that period shall be tantamount to accepting the claim.

5. Transfer of the applicant for asylum from the Member State where the application was lodged to the Member State responsible must take place not later than one month after acceptance of the request to take charge or one month after the conclusion of any proceedings initiated by the alien challenging the transfer decision if the proceedings are suspensory.

6. Measures taken under Article 18 may subsequently determine the details of the process by which applicants shall be taken in charge.

ARTICLE 12

Where an application for asylum is lodged with the competent authorities of a Member State by an applicant who is on the territory of another Member State, the determination of the Member State responsible for examining the application for asylum shall be made by the Member State on whose territory the applicant is. The latter Member State shall be informed without delay by the Member State which received the application and shall then, for the purpose of applying this Convention, be regarded as the Member State with which the application for asylum was lodged.

ARTICLE 13

1. An applicant for asylum shall be taken back in the cases provided for in Article 3(7) and in Article 10 as follows:

(a) the request for the applicant to be taken back must provide indications enabling the State with which the request is lodged to ascertain that it is responsible in accordance with Article 3(7) and with Article 10;

(b) the State called upon to take back the applicant shall give an answer to the request within eight days of the matter being referred to it. Should it acknowledge responsibility, it shall then take back applicant for asylum as quickly as possible and at the latest one month after it agrees to do so.

2. Measures taken under Article 18 may at a later date set out the details of the procedure for taking the applicant back.

ARTICLE 14

1. Member States shall conduct mutual exchanges with regard to:
- national legislative or regulatory measures or practices applicable in the field of asylum;
- statistical data on monthly arrivals of applicants for asylum, and their breakdown by nationality. Such information shall be forwarded quarterly through the General Secretariat of the Council of the European Communities, which shall see that it is circulated to the Member States and the Commission of the European Communities and to the United Nations High Commissioner for Refugees.

2. The Member States may conduct mutual exchanges with regard to:
- general information on new trends in applications for asylum;
- general information on the situation in the countries of origin or of provenance of applicants for asylum.

3. If the Member State providing the information referred to in paragraph 2 wants it to be kept confidential, the other Member States shall comply with this wish.

ARTICLE 15

1. Each Member State shall communicate to any Member State that so requests such information on individual cases as is necessary for:
- determining the Member State which is responsible for examining the application for asylum;
- examining the application for asylum;
- implementing any obligation arising under this Convention.

2. This information may only cover:
- personal details of the applicant, and, where appropriate, the members of his family (full name - where appropriate, former name, nicknames or pseudonyms, nationality-present and former, date and place of birth);
- identity and travel papers (references, validity, date of issue, issuing authority, place of issue, etc.);
- other information necessary for establishing the identity of the applicant;
- places of residence and routes travelled;
- residence permits or visas issued by a Member State;
- the place where the application was lodged;
- the date any previous application for asylum was lodged, the date the present application was lodged, the stage reached in the proceedings and the decision taken, if any.

3. Furthermore, one Member State may request another Member State to let it know on what grounds the applicant for asylum bases his or her application and, where applicable, the grounds for any decisions taken concerning the applicant. It is for the Member State from which the information is requested to decide whether or not to impart it. In any event, communication of the information requested shall be subject to the approval of the applicant for asylum.

4. This exchange of information shall be effected at the request of a Member State and may only take place between authorities the designation of which by each Member State has been communicated to the Committee provided for under Article 18.

5. The information exchanged may only be used for the purposes set out in paragraph 1. In each Member State such information may only be communicated to the authorities and courts and tribunals entrusted with:
- determining the Member State which is responsible for examining the application for asylum;
- examining the application for asylum;
- implementing any obligation arising under this Convention.

6. The Member State that forwards the information shall ensure that it is accurate and up-to-date.

If it appears that this Member State has supplied information which is inaccurate or which should not have been forwarded, the recipient Member State, shall be immediately informed thereof. They shall be obliged to correct such information or to have it erased.

7. An applicant for asylum shall have the right to receive, on request, the information exchanged concerning him or her, for such time as it remains available.

If he or she establishes that such information is inaccurate or should not have been forwarded, he or she shall have the right to have it corrected or erased. This right shall be exercised in accordance with the conditions laid down in paragraph 6.

8. In each Member State concerned, the forwarding and receipt of exchanged information shall be recorded.

9. Such information shall be kept for a period not exceeding that necessary for the ends for which it was exchanged. The need to keep it shall be examined at the appropriate moment by the Member State concerned.

10. In any event, the information thus communicated shall enjoy at least the same protection as is given to similar information in the Member State which receives it.

11. If data are not processed automatically but are handled in some other form, every Member State shall take the appropriate measures to ensure compliance with this Article by means of effective controls. If a Member State has a monitoring body of the type mentioned in paragraph 12, it may assign the control task to it.

12. If one or more Member State wish to computerize all or part of the information mentioned in paragraphs 2 and 3, such computerization is only possible if the countries concerned have adopted laws applicable to such processing which implement the principles of the Strasbourg Convention of 28 February 1981 [Treaty Series 86 (1990), Cm 1329] for the Protection of Individuals, with regard to Automatic Processing of Personal Data and if they have entrusted an appropriate national body with the independent monitoring of the processing and use of data forwarded pursuant to this Convention.

ARTICLE 16

1. Any Member State may submit to the Committee referred to in Article 18 proposals for revision of this Convention in order to eliminate difficulties in the application thereof.

2. If it proves necessary to revise or amend this Convention pursuant to the achievement of the objectives set out in Article 8a of the Treaty establishing the European Economic Community, such achievement being linked in particular to the establishment of a harmonized asylum and a common visa policy, the Member State holding the Presidency of the Council of the European Communities shall organize a meeting of the Committee referred to in Article 18.

3. Any revision of this Convention or amendment hereto shall be adopted by the Committee referred to in Article 18. They shall enter into force in accordance with the provisions of Article 22.

ARTICLE 17

1. If a Member State experiences major difficulties as a result of a substantial change in the circumstances obtaining on conclusion of this Convention, the State in question may bring the matter before the Committee referred to in Article 18 so that the latter may put to the Member States measures to deal with the situation or adopt such revisions or amendments to this Convention as appear necessary, which shall enter into force as provided for in Article 16(3).

2. If, after six months, the situation mentioned in paragraph 1 still obtains, the Committee, acting in accordance with Article 18(2), may authorize the Member State affected by that change to suspend temporarily the application of the provisions of this Convention, without such suspension being allowed to impede the achievement of the objectives mentioned in Article 8a of the Treaty establishing the European Economic Treaty or contravene other international obligations of the Member States.

3. During the period of suspension, the Committee shall continue its discussions with a view to revising the provisions of this Convention, unless it has already reached an agreement.

ARTICLE 18

1. A Committee shall be set up comprising one representative of the Government of each Member State.

The Committee shall be chaired by the Member State holding the Presidency of the Council of the European Communities.

The Commission of the European Communities may participate in the discussions of the Committee and the working parties referred to in paragraph 4.

2. The Committee shall examine, at the request of one or more Member States, any question of a general nature concerning the application or interpretation of this Convention.

The Committee shall determine the measures referred to in Article 11(6) and Article 13(2) and shall give the authorization referred to in Article 17(2).

The Committee shall adopt decisions revising or amending the Convention pursuant to Articles 16 and 17.
3. The Committee shall take its decisions unanimously, except where it is acting pursuant to Article 17(2), in which case it shall take its decisions by a majority of two-thirds of the votes of its members.

4. The Committee shall determine its rules of procedure and may set up working parties.

The Secretariat of the Committee and of the working parties shall be provided by the General Secretariat of the Council of the European Communities.

ARTICLE 19

As regards the Kingdom of Denmark, the provisions of this Convention shall not apply to the Faroe Islands nor to Greenland unless a declaration to the contrary is made by the Kingdom of Denmark. Such a declaration may be made at any time by a communication to the Government of Ireland which shall inform the Governments of the other Member States thereof.

As regards the French Republic, the provisions of this Convention shall apply only to the European territory of the French Republic.

As regards the Kingdom of the Netherlands, the provisions of the Convention shall apply only to the territory of the Kingdom of the Netherlands in Europe.

As regards the United Kingdom the provisions of this Convention shall apply only to the United Kingdom of Great Britain and Northern Ireland. They shall not apply to the European territories for whose external relations the United Kingdom is responsible unless a declaration to the contrary is made by the United Kingdom. Such a declaration may be made at any time by a communication to the Government of Ireland, which shall inform the Governments of the other Member States thereof.

ARTICLE 20

This Convention shall not be the subject of any reservations.

ARTICLE 21

1. This Convention shall be open for the accession of any State which becomes a member of the European Communities. The instruments of accession will be deposited with the Government of Ireland.

2. It shall enter into force in respect of any State which accedes thereto on the first day of the third month following the deposit of its instrument of accession.

ARTICLE 22

1. This Convention shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Government of Ireland.

2. The Government of Ireland shall notify the Governments of the other Member States of the deposit of the instruments of ratification, acceptance or approval.

3. This Convention shall enter into force on the first day of the third month following the deposit of the instrument of ratification, acceptance or approval by the last signatory State to take this step.

The State with which the instruments of ratification, acceptance or approval are deposited shall notify the Member States of the date of entry into force of this Convention.

In witness whereof, the undersigned Plenipotentiaries have hereunto set their hands.

Done at Dublin this fifteenth day of June in the year one thousand nine hundred and ninety, in a single original, in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, the texts drawn up in each of these languages being equally authentic and being deposited in the archives of the Government of Ireland which shall transmit a certified copy to each of the other Member States.

Signed by the following governments on 15 June 1990: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and United Kingdom.

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Implementation of the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities

Introduction

Implementation of the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (Lisbon, 11-12 June 1992, SN 2836/93 WGI 1505). This document was drawn up to deal with differences and squabbles between the member states on the practice of the Convention, which, although not yet ratified by all signatory states or formally in

force, has governed their practice since 1990. No member state actually complies with any of the formalities set out here.

Implementation of the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities

(Lisbon, 11-12 June 1992)

Reference: SN 2836/93 (WGI 1505)

(a) Lodging an application for asylum

An application for asylum is regarded as having been lodged from the moment the authorities of the Member State concerned have something in writing to that effect: either a form submitted by the applicant or an official statement drawn up by the authorities.

In the event of a non-written application, the period between the statement of intent and the drawing up of the official statement must be as short as possible.

(b) Reaction to a request that charge be taken of an applicant
(Article 11 (4))

Any response to a request that charge be taken of an applicant with a view to staying the effect of the provision concerning the three-month deadline laid down in Article 11 (4) must take the form of a written communication.

(c) Exceeding the eight-day period
(Article 13 (1)(b))

1. Article 13(1)(b) of the Convention makes it very clear that Member States are obliged to respond to the application to take back the applicant within eight days of its submission.

2. In exceptional cases Member States may, within this eight-day period, give a provisional reply indicating the period within which they will give their final reply. The latter period must be as short as possible and may not in any circumstances exceed a period of one month from the date on which the provisional reply was sent.

3. If the Member State fails to react
- within the eight-day period mentioned in paragraph 1
- within the one-month period mentioned in paragraph 2

it will be considered to have agreed to take back the applicant for asylum.

(d) Measures to expel an alien
(Article 10(4))

The Member State responsible for examining the application must provide proof that the alien has actually been expelled from the territory of the Twelve. These are therefore concrete acts of expulsion, involving an obligation relating to the result rather than the intention, which in effect means that in such cases the Member State must provide written proof.

(e) Departure from the territory of the Member States
(second subparagraph of Article 3(7))

Where the applicant for asylum himself produces proof that he has left the territory of the Member States for more than three months, the second Member State may examine the veracity of that information, if necessary by contacting the third country in which the applicant claims to have been living during that time.

In other cases the Member State in which the initial application was lodged has to provide proof, in particular of the date of departure and the destination of the applicant for asylum. In the context of co-operation between Member States, the Member State in which the second application was lodged is best able to give the date on which the applicant for asylum returned to that State.

(f) Exceptions where the applicant for asylum is in possession of a visa
(Article 5(2))

Article 5(2) provides for three separate cases where the responsibility of a Member State for examining the application for asylum ceases even if the applicant for asylum is in possession of a valid visa issued by that State.

The first exception (subparagraph (a)) concerns a visa issued on the authorization of another Member State; as a general rule, exceptional cases should be proved by the Member States which invoked them.

The second exception (subparagraph (b)) arises from a situation in which an application is lodged in a State in which the applicant is not subject to a visa requirement; there will be no need to seek proof since the problem is not relevant.

The third exception (subparagraph (c)) refers to the case of an applicant for asylum who is in possession of a transit visa issued on the written authorization of the diplomatic or consular authorities of the Member State of final destination; the question of burden of proof is irrelevant here since there is prior written confirmation that the transit visa was issued.

(g) Determination of Member State responsibility in the event of an applicant possessing several residence permits or visas
(Article 5(3)(c))

In the event of an applicant possessing several residence permits or visas issued by different Member States (in particular in the case of Article 5(3)(c)), proof for the purposes of determining the Member State responsible does not arise in that the relevant information appears in the entry document produced by the applicant for asylum.

(h) Determining the periods of time and actual entry into a State
(first and second subparagraphs of Article 5(4))

As regards the determination of the periods of time, the date of expiry of residence permits or visas is calculated from the date on which the application for asylum is lodged.

In addition, checking the expiry date of residence permits and visas is not necessary if such information appears on the applicant for asylum's papers.

As regards proof that the individual has actually entered a Member State, the following situations should be distinguished:

- if an applicant for asylum has actually entered a Member State, proof can be provided through information supplied by the Member State in which the application for asylum was lodged;

- if an applicant for asylum has not left the territory of the Member States, the Member State which issued the expired residence permit or visa has to provide the information required;

- if an applicant for asylum himself supplies the information that he has left the territory of the Member States, the second Member State in which an application was lodged will check the truth of the statements.

These rules apply in respect of actual entry in both subparagraphs of paragraph 4.

(i) Irregular crossing of the border into a Member State
(Article 6)

Proof that an applicant for asylum has irregularly crossed the border into a Member State (Article 6(1)) must be examined after the list of means of proof has been drawn up.

Proof of a Member State ceasing to be responsible when the applicant for asylum lodges his application in the Member State where he has lived for six months (second paragraph of Article 6) must be supplied

in the first instance by the Member State invoking this exception in a spirit of collaboration between the Member States concerned.

If the applicant for asylum claims that he has lived in a Member State for more than six months, it is for that Member State to check the truth of those statements. The initial information to the other Member State concerned will in any case have to include statements made by the applicant for asylum which may be used subsequently as counter-indications.

(j) Formal rules for approval by the applicant for asylum

Approval must be given in writing.

As a general rule an applicant must give his approval when the Member State claiming responsibility for examining the application submitted a request for exchange of information.

The applicant for asylum must in any case know to what information he is giving his agreement.

The approval concerns the reasons given by the applicant for asylum and, where applicable, the reasons for the decision taken with regard to the applicant.

(k) Notification procedures

The system of exchange of information must also include data on notification procedures. Accordingly, notification must be given:

- as quickly as possible in writing;
- using the technical means available;
- to the Member States claiming responsibility for examining an application for asylum.

Such notification, which will avoid the possibility of two procedures being initiated simultaneously in two Member States, applies in respect of Article 3(4) and Article 12.

Where implementation of a decision determining responsibility is suspended, such suspension is notified so that the Member States are kept fully informed. It is extremely useful for the Member State where the application was lodged to be informed that an applicant for asylum is not being transferred pending a decision in his case by the second Member State.

Calculation of periods of time in the context of the Dublin Convention.

When determining the periods referred to in the Convention, Saturdays, Sundays and public holidays should be included in the calculations.

With particular reference to the periods mentioned in Article 11 (4) and Article 13(1)(b):

- the period is to begin on the day following receipt of the application;

- the final day of the period is the deadline for sending the reply.

22

Draft Convention parallel to the Dublin Convention of 15 June 1990.

Introduction

Draft Convention parallel to the Dublin Convention of 15 June 1990 (SN 1729 WGI 1008 REV 2). The draft, never signed, was drawn up for the central and eastern European "buffer" or Associated states, and for other "friendly" countries such as Canada and the US, and is in virtually identical terms.

The text is a report of May 1992 in the Ad Hoc Group on Immigration which includes the draft Convention.

Draft Convention parallel to the Dublin Convention of 15 June 1990

Reference:

Ad Hoc Group on Immigration, 08.05.92, SN 1729 WGI 1008 REV 2, CONFIDENTIAL [Statewatch translation]

1. In the course of its meetings of 3rd and 4th February 1992 in Lisbon, the AHGI called on the competent groups within the Commission and the Council to prepare a working paper for a draft convention to run parallel to the Dublin Convention, and a draft protocol to be appended to the latter. Following a detailed study, it appears that there are reasons for moving away from the idea of concluding an additional protocol (to the Dublin Convention, drawn up by the 12 and open for signature to the MS of the EC), with Third Countries, considering in particular the link established by Art 16, para 2 of the Dublin Convention with the realisation of the objective of the free movement of persons within the internal market (Art 8 of the EEC Treaty). On this basis, a draft was produced (doc. WGI 1008 REV 1 + COR 1).

2. The "Asylum" sub-group studied the latter draft and has reached broad agreement on its text, (reproduced as annex 1).

Two problems remain.

- A technical problem with Art 21, para 2: the French delegation proposed replacing the original text with that given in footnote.

The delegations reserved judgement on this matter;

- A political problem with Art 22, regarding whether or not to retain the reference to the European Convention on Human Rights.

The "asylum" sub-group, taking account of the serious political issues implicated in this matter, agreed to refer the matter to the AHGI.

In addition, the French delegation suggested including, in the report on the draft convention a declaration to the following effect:

"In signing up to the present Convention, the MS undertake to incorporate the modes of application applying to the Dublin Convention, as well as the resolutions, conclusions and decisions adopted in the course of moves towards the harmonisation of asylum policy".

3. After having completed the text of the parallel convention, the AHGI will be able to put it forward for approval to the ministerial meeting to be held on 11/12.06.922

4. The sub-group did not address the matter of procedure relating to future negotiations with Third country states. It was agreed that this matter should be addressed by AHGI.

Annex 1

DRAFT CONVENTION relating to the determination of the state responsible for examining an asylum claim.

PREAMBLE

THE HIGH CONTRACTING PARTIES TO THE PRESENT CONVENTION,

DETERMINED, out of loyalty to their common humanitarian tradition, to guarantee appropriate protection to refugees, in line with the provisions of the 1951 Geneva Convention (as modified by the 1967 New York Protocol) relating to the status of refugees, (hereafter, "the Geneva Convention" and the "New York Protocol");
CONSIDERING the conclusion of the Dublin Convention relating to the determination of the state responsible for examining a claim for asylum, (signed by the EC MS 15.06.90; hereafter "the Dublin Convention");

CONSIDERING the declaration of the MS in the minutes of the meeting at which the Dublin Convention was signed, according to which "the signatory parties declare that, in order that the appropriate guarantees are available to asylum seekers, they will retain the option of extending the cooperation envisaged in the present convention to other states, enabling them, by appropriate means, to undertake measures identical to those set out in the present convention;

AWARE OF the need to avoid leaving asylum seekers in positions of long-term uncertainty in relation to the outcome of their claims and CONCERNED to guarantee to all asylum seekers who arrive on the territory of the High Contracting Parties that their claim will be examined by one of the High Contracting Parties, and to ensure that asylum seekers are not sent from country to country as a result of no High Contracting Party accepting responsibility for the examination of their claims;

CONCERNED to pursue the dialogue instigated with the UN High Commissioner for Refugees in order to attain the above objectives;

DETERMINED to establish, for the application of the present convention, close cooperation at various levels, including the exchange of information,

have agreed to conclude the present convention and have designated the following as the plenipotentiaries:

WHO, in the appropriate manner and by the appropriate means, have agreed the following measures

ARTICLE 1

1. For the purposes of the present convention the following definitions are adopted:

a) foreigner: anyone who does not come from one of the HCP's states;

b) asylum claim: a request by a foreigner to one of the High Contracting Parties for the protection of the Geneva Convention guaranteed to refugees as identified in art.1 of the Geneva Convention (modified by the New York Protocol);

c) asylum seeker: foreigner who has a claim for asylum under consideration

d) examination of an asylum claim: the ensemble of the examination procedures, decisions or judgements on the part of the competent authorities in relation to an asylum claim, except for the procedures determining the state responsible for examining an asylum claim, as set out in the present convention;

e) leave to remain: permission granted by the authorities of an High Contracting Party for a foreigner to stay on its territory, but excluding visas and other leave to remain granted during the assessment of a request for leave to remain or for asylum.

f) entry visa: authorisation or decision from an High Contracting Party allowing a foreigner to enter its territory, if other conditions of entry are fulfilled.

g) transit visa: authorisation or decision by an High Contracting Party allowing a foreigner to transit through its territory, ports or airports, if other conditions relating to transit are fulfilled.

ARTICLE 2

The High Contracting Parties re-affirm their obligations under the terms of the Geneva Convention (as modified...), without any geographical restriction on the application of the provisions, and their undertaking to cooperate with the offices of the UN High Commissioner for Refugees in the application of these provisions.

ARTICLE 3

1. The High Contracting Parties undertake that any foreigner who makes a claim to asylum, at their borders or on their territory, will have their claim examined.

2. This claim will be examined by one High Contracting Party only, in accordance with the criteria set out in the present convention. The criteria enumerated in arts. 4 and 8 apply in the order in which they appear.

3. Claims will be examined by each state in accordance with its national legislation and with its international obligations.

4. All High Contracting Parties have the right to examine a claim with which they have been presented, even if they would not be required to do so under the terms of the present convention, so long as the asylum seeker agrees to this.

The High Contracting Party which under the terms of the above stated criteria would have been responsible for examining the claim is therefore released from this obligation, which passes to the MS who wishes to examine the claim. This state will inform the state which would normally have been responsible, if it takes over responsibility for examining the claim.

5. All High Contracting Parties retain the right, in applying the provisions of their national laws, to return an asylum seeker to a Third Country, with due regard to the provisions of the Geneva Convention (as modified...).

6. The procedures for determining refugee status in an High Contracting Party held, in line with the present convention, to be responsible for examining an asylum claim, will begin when an asylum claim is lodged for the first time with an MS.

7. The High Contracting Party with which the claim is initially lodged is obliged, under the terms of art.13 and in relation to the determination of the state responsible for examining an asylum claim, to take back any asylum seeker who is found to be claiming asylum in the state of another High Contracting Party, after having withdrawn his/her [initial] claim during the determination of the state responsible for examining it.

This obligation does not apply if the asylum seeker has, in the intervening period, left the territory of the High Contracting Parties for a period of at least three months, or has been given leave to remain in one of the High Contracting Parties for at least three months.

ARTICLE 4

If an asylum seeker has a family member who has been recognised as a refugee under the terms of the Geneva Convention (as modified...) in one of the High Contracting Parties's states, who is legally resident in that state, that state becomes responsible for examining the asylum claim, on condition that the interested parties so wish it.

The family member in question must be either the spouse of the asylum

seeker, or his/her unmarried child under the age of 18, or his/her mother or father, if the asylum seeker in question is under the age of 18.

ARTICLE 5

1. If the asylum seeker has a valid temporary residence permit, the High Contracting Party which granted the permit becomes responsible for examining the asylum claim.

2. If the asylum seeker has a valid visa, the High Contracting Party which granted it becomes responsible for examining the claim, except in the following instances:

a) If the visa was granted on the written authority of another High Contracting Party, this High Contracting Party becomes responsible for examining the asylum claim. If an High Contracting Party consults the state authorities in another High Contracting Party, particularly for reasons of security, the latter's concurrence with granting a visa does not constitute written authorisation, for the purposes of the present provisions.

b) If an asylum seeker who has a transit visa makes his/her claim in another HCP's state, where visa conditions do not apply, this state becomes responsible for examining the claim.

c) If an asylum seeker who has a transit visa makes his/her claim in the state which granted it and which has received written confirmation from the diplomatic or consular authorities of the High Contracting Party to which the asylum seeker was supposed to be travelling, then the latter High Contracting Party becomes responsible for examining the asylum claim.

3. If an asylum seeker has several residence permits or visas which are all valid and which were granted by different High Contracting Parties, the responsibility for examining the asylum claim falls to that High Contracting Party which:

a) granted the longest residence permit, or, if the duration of the permits is identical, granted the permit which will expire last; [or]

b) granted the visa which will expire last, if all the visas are of the same kind; [or]

c) in the case of different kinds of visas, the High Contracting Party which granted the visa of the longest validity, or, if they are of identical duration, that which will expire last. This provision does not apply if the asylum seeker has one or more transit visas which were granted on the presentation of an entry visa in one of the High Contracting Parties. In this case the High Contracting Party which granted the entry visa is responsible for the examination of the asylum claim.

4. If the asylum seeker has one or more residence permits which have been invalid for more than 2 years, or has one or several visas which expired in the last 6 months, which allowed him/her into the territory of an High Contracting Party, paragraphs 1, 2 and 3 apply for as long as the foreigner remains on the territory of the High Contracting Parties.

If the asylum seeker has one or more residence permits which have been invalid for more than two years, or if he or she has one or more visas which have been invalid for more than 6 months, which allowed him/her to enter the territory of an hcp, and if the asylum seeker has not left the territory of the High Contracting Parties, the High Contracting Party responsible for examining the claim is the one in which the claim is made.

ARTICLE 6

If an asylum seeker has crossed the border of an High Contracting Party in an irregular manner,by land, air or sea from a Third Country and if the High Contracting Party in question can prove this, then this High Contracting Party becomes responsible for examining the asylum claim.

However, this state ceases to be responsible if it is proven that the asylum seeker stayed in that High Contracting Party for more than 6 months before making his/her claim.

ARTICLE 7

1. Responsibility for the examination of an asylum claim is incumbent on the High Contracting Party through whose borders a foreigner has entered [the HCP's collected territory], excepting the case of a foreigner, having legally entered the territory of an High Contracting Party for which he/she has a valid visa, then makes his/her claim in the state of another High Contracting Party for which he/she also has a visa which permits entry. In this case the latter state becomes responsible for examining the asylum claim.

2. An High Contracting Party which allows transit without a visa, through the transit zones of one of its airports, will not be considered to have allowed a foreigner to enter it's territory without a visa, in the sense of the preceding paragraph, so long as the foreigners do not move outside of the transit zones.

3. If an asylum claim is made during a foreigner's transit through an HCP's airport, then this High Contracting Party is responsible for examining the asylum claim.

ARTICLE 8

If an High Contracting Party cannot be identified to be held responsible for examining an asylum claim on the basis of criteria thus far enumerated, the first High Contracting Party in which an asylum claim is lodged becomes responsible for examining that claim.

ARTICLE 9

Any High Contracting Party is allowed to examine a claim even if, under the terms of the present convention, they would not normally be held responsible for so doing, if there are humanitarian factors to be considered, such as family or cultural ties. The High Contracting Party which would normally be responsible will request that this transfer of responsibility be undertaken, so long as the asylum seeker agrees.

When another High Contracting Party accepts this transfer of responsibility, examination of the claim will be incumbent upon its authorities.

ARTICLE 10

1. The High Contracting Party which is established as being responsible for examining an asylum claim on the basis of the criteria set out in the present convention is obliged to:

a) take into its charge, under the conditions set out in Art.11, any asylum seeker who has made a claim in another High Contracting Party's territory;

b) conclude the examination of this claim;

c) re-admit or take back, under the conditions set out in Art.13, any asylum seeker who is illegally in the territory of any other High Contracting Party than the one which is examining his or her claim;

d) take back, under the conditions enumerated in Art.13, an asylum seeker who has withdrawn his or her claim and who has subsequently made another claim for asylum in another High Contracting Party's territory;

e) take back, under the conditions enumerated in Art.13, any foreigner whose asylum claim it has rejected, and who has subsequently illegally entered the territory of another High Contracting Party.

2. If an High Contracting Party grants an asylum seeker a residence permit which is valid for more than three months, the obligations enumerated in para.1 under a) to e) are transferred to this High Contracting Party.

3. The obligations enumerated under para.1, items a) and d) cease to apply if the foreigner in question leaves the territories of the High Contracting Party's for a period of three months or more.

4. The obligations enumerated under para.1 items d) and e) cease to apply if the state responsible for examining the claim has taken, following the withdrawal or rejection of the claim, to enable the foreigner to return to his or her country of origin or to another country where he or she may legally remain.

ARTICLE 11

1. An High Contracting Party which is presented with a claim for asylum for which it believes another High Contracting Party ought to be responsible has the right to ask the latter party to take over the case as expeditiously as possible, or in any case to do so not more than six months after the initial lodge of the claim.

If a request by an High Contracting Party that another take over a case is not made within six months, responsibility for examining the claim will be incumbent on the state in which the claim was initially lodged.

2. Requests for the transfer of a case should be formulated in terms which are recognisably based on the criteria set out in the present convention.

3. The determination of the state responsible in terms of these criteria will be made on the basis of circumstances prevailing at the time when an asylum seeker makes his or her initial claim in one of the High Contracting Parties.

4. An High Contracting Party must rule on a request [from another High Contracting Party] to take over a case within three months from the submission of the request. If no response is given within this period, the High Contracting Party concerned will be deemed to have accepted the case.

5. The transfer of an asylum seeker from the High Contracting Party where he or she lodged a claim to the High Contracting Party which is finally established as responsible for examining the claim should take place at the latest after the transfer request, or one month after the issue of legal proceedings against the transfer decision by the asylum seeker, if these proceedings are suspensive.

6. The provisions enumerated under Art.18 may subsequently be invoked to determine the particular way in which an High Contracting Party will take an asylum seeker into its charge.

ARTICLE 12

If an asylum seeker lodges a claim with the authorities of one High Contracting Party whilst actually on the territory of another High Contracting Party, the determination of the state responsible for examining the claim is incumbent on the High Contracting Party on whose territory the asylum seeker actually is. The High Contracting Party with whose authorities the claim has been lodged will immediately inform the High Contracting Party wherein the asylum seeker actually is. The latter High Contracting Party is then, for the purposes of the present convention, held to be the state in which the claim has actually been lodged.

ARTICLE 13

1. The taking back of an asylum seeker in the instances set out in Art.3 para.7 and in Art.10 will be carried out according to the following guidelines:

a) The request that an asylum seeker be taken back by a state should be formulated in terms which allow this state to be identified as responsible for the asylum seeker, in respect of Art.3 para.7 and Art.10.

b) A state which has been requested to take back an asylum seeker is obliged is obliged to respond to the request within eight days following its submission. It is obliged to take the asylum seeker back into its charge as quickly as possible, and in any case no longer than one month after accepting responsibility for the asylum seeker.

2. The provisions set out under Art.18 may subsequently be invoked to determine the particular way in which an High Contracting Party will take an asylum seeker back into its charge.

ARTICLE 14

1. The High Contracting Parties will work towards cooperation/ exchange of information on:

- legal provisions, rules or national practices in the field of asylum.

- statistical information on the monthly arrivals of asylum seekers and on their countries of origin. The transmission of information will take place on a termly basis. It will be undertaken by the intermediary of the Committee designated under Art.18. He or she will ensure the transmission of information to all the High Contracting Parties, to the EC Commission and to the UN High Commissioner for Refugees.

2. The High Contracting Parties may work towards cooperation/ exchange of information on:

- General information about new tendencies in asylum claims.

- General information about the situation in the countries of origin of asylum seekers, or about the countries from where they are coming.

3. If an High Contracting Party passes on such information as envisaged in para.2, but wishes the information to remain confidential, then this wish must be respected by the other High Contracting Parties.

ARTICLE 15

1. All High Contracting Parties will provide such information as is requested by other High Contracting Parties which may be necessary in order to:

- determine the High Contracting Party responsible for examining an asylum claim.
- examine an asylum claim.
- undertake all obligations which flow from the present convention.

2. This information should concern only:

- Personal details about an asylum seeker, and, where necessary, about his or her family (surname and first name - if necessary, previous name - false name or pseudonym, nationality - current and previous - date and place of birth).

- Identity and travel documentation (reference, expiry dates, dates on which the documents were issued, place where the documents were issued).

- Other details necessary to establish the identity of the claimant.

- Places in which the claimant has stayed and their travel itineraries.

- Residence permits or visas issued by an High Contracting Party.

- The place where a claim was made.

- The date on which any previous claim was lodged, the date on which the current claim was lodged, the stage which has been reached in the determination procedures and the decision which is eventually reached.

3. Apart from this, an High Contracting Party may ask another High Contracting Party about the grounds upon which a claim is based and, if necessary, about the grounds upon which the eventual decision is based. An High Contracting Party which is asked for information will decide whether it is in a position to respond to the request. In any case, the passing on of such information must be consented to by the asylum seeker in question.

4. Exchanges of information will take place at the request of an High Contracting Party and may only be carried out by the competent authorities in each High Contracting Party. Each High Contracting Party will inform the committee of the authorities it designates as competent, in accordance with Art.18.

5. The information exchanged between two or more High Contracting Parties can only be used for the ends set out in para.1. In each High Contracting Party, this information may only be made available to authorities charged with:

- determining the High Contracting Party responsible for examining an asylum claim

- examining the asylum claim

- undertaking all the obligations which flow from the present convention.

6. An High Contracting Party which passes on information is responsible for ensuring that it is accurate and up to date.

If an High Contracting Party passes on information which subsequently appears to be inaccurate, or which should not have been passed on, the High Contracting Parties to which the information has been passed will immediately be informed. They are then obliged either to amend or to destroy the information.

7. An asylum seeker has the right to be informed of information concerning him or her, which has been passed on, so long as the information is still available. If the asylum seeker claims that the information is inaccurate, or that it should not have been passed on, then he or she has the right to have the information corrected or destroyed. This right will be exercised under the conditions enumerated in para.6.

8. In each High Contracting Party, the passing on and receipt of information will be recorded.

9. The information will be retained only for so long as it is necessary to serve the purpose for which it was passed on. The need for information to be retained must be reviewed at an appropriate time by the High Contracting Party concerned.

10. In any case, information which is passed on will be protected in the same way as the state to which is passed on protects other information of a similar nature.

11. Each High Contracting Party will take steps to guarantee accordance with the present article, if such measures are not already in place. If an High Contracting Party has services such as those referred to in para.12, these services can be made responsible for the control of such information as referred to above.

12. If one or more of the High Contracting Parties wish to computerize the handling of all or some of the information referred to in paras. 2 and 3, they may only do so if they have all enacted legislation enforcing the principles of the 1981 Strasbourg Convention (concerning the protection of individuals in relation to the computerised handling of information about them) and if they have designated an appropriate national authority responsible for independently maintaining and using information exchanged in line with the present convention.

ARTICLE 16

1. All High Contracting Parties are entitled to submit proposals to the committee, described in Art.18, regarding the modification of the present convention, which attempt to address difficulties regarding its implementation.

2. If a revision or change to the Dublin Convention is made, (in line with Art.16 of that convention), the High Contracting Party holding the presidency of the committee described in Art.18 of the present convention will call a meeting of this committee.

3. Possible revisions of or changes to the present convention will be considered and adopted by this committee. They will come into force in line with the provisions made under Art.23.

ARTICLE 17

1. If an High Contracting Party encounters major difficulties as a result of a significant change in circumstances prevailing at the time of the signing of the present convention, this High Contracting Party may refer to the committee referred to in Art.18, so that the committee may formulate proposals for confronting the situation or make necessary revisions of or changes to the present convention, which will come into force in line with the conditions enumerated in Art.16 par.3.

2. If, after 6 months, the difficulties referred to in para.1 are persisting, the committee may authorise the High Contracting Party in question provisionally to suspend the application of measures ordered by the present convention, so long as this suspension would not allow the High Contracting Party's other obligations under international law to be abrogated.

3. During the suspension alluded to in para.2, the committee will work towards the revision of the measures set out in the present convention, if agreement on such revision has not already been reached.

ARTICLE 18

1. In order to serve the aims of the present convention, a committee, composed of a governmental representative of each High Contracting Party, will be established.

Its first meeting will be held within three months following the entry into force of the present convention, at the instruction of the MS which holds the presidency of the European Council.

Members of the Commission of the EC may attend the work of the committee and of its working groups referred to in para.4.

2. The committee will examine, at the request of one or more High Contracting Parties, all matters of procedure pertaining to the application and interpretation of the present convention.

The committee will establish such measures as referred to in Art.11 para.6 and in Art.13 para.2 and will give such authorisation as referred to in Art.17 para.2.

The committee will adopt, in line with Arts. 16 and 17, revisions of or changes to the present convention.

3. Committee decisions will be taken unanimously, except when it is ruling on the application of Art.17 para.2, in which case decisions will require a 2/3 majority vote; such as may be taken to represent the voting intentions of 2/3 of the MS of the EC.

4. The committee will establish its own procedural rules, which will set out, most importantly, the order in which the committee's presidential terms will be held. The committee may create working groups.

The secretariat for the committee and the working groups will be provided by the general secretariat of the Council of the EC.

ARTICLE 19

Regarding the Kingdom of Denmark; the provisions of the present convention do not apply to the Faroe Isles or to Greenland, unless and until the Kingdom of Denmark makes any declaration to the contrary. Such a declaration may be made at any time by communication to the government which will inform the governments of all other High Contracting Parties about it.
Regarding the French Republic; the provisions of the present convention apply only to French European territory.

Regarding the Kingdom of the Netherlands; the provisions of the present convention apply only to Dutch European territory.

Regarding the UK; the provisions of the present convention apply only to the United Kingdom of Great Britain and Northern Ireland. They do not apply to those European territories for whose external affairs the UK takes responsibility, unless and until the UK makes any declaration to the contrary. Such a declaration may be made at any time by communication to the government, which will inform the governments of all other High Contracting Parties about it.

[Other territorial exceptions requested by the High Contracting Parties].

ARTICLE 20

No reservations may be made in respect of the present convention.

ARTICLE 21

1. In any case in which the determination of the MS responsible for examining an asylum claim concerns only the MS of the EC, the determination will be based exclusively on the rules set out in the Dublin Convention of 15.06.90.

2. If, in line with the first paragraph, the examination of an asylum claim is undertaken on the basis of the rules set out in the Dublin Convention, the EC MS will understand, for the application of Art.3 para.5 and of Art.10 para.4 of this convention that the expressions "Third State" and "other country" do not apply to the High Contracting Parties. For the purposes of Art.3 para.7 and Art.10 para.5 of this convention, they will understand the expression "territory of the member states" as denoting the territory of the High Contracting Parties.

Footnote 1: The French delegation has suggested replacing para. 2 with the following text:

"2. If a MS of the EC applies Art.3 para.5 of the Dublin Convention, by sending an asylum seeker to a third country, it may only send the person in question to one of the states party to the present convention in line with the provisions of the present convention."

The delegations are examining this proposal.

23

Conclusions on the transfer of asylum applicants under the provisions of the Dublin Convention (London, 30 November and 1 December 1992)

Introduction

Conclusions on the transfer of asylum applicants under the provisions of the Dublin Convention (adopted London, 30 November and 1 December 1992 by the meeting of immigration ministers). Further agreement on the nuts and bolts of transfer of asylum-seekers from the destination country to the country responsible for determining the claim. It includes the provision that the responsible country can begin determining the asylum claim without the applicant if they fail to cooperate in the transfer.

CONCLUSIONS on the transfer of asylum applicants under the provisions of the Dublin Convention (London, 30 November and 1 December 1992) (1)

Reference: press release

Introduction

1. Articles 3(7), 4, 5, 6, 7 and 8 set down the circumstances in which responsibility for examining an asylum application made in one Member State (hereafter described as the "first" Member State) shall be assumed by another Member State (hereafter described as the "second" Member State).

2. Article 10(1)(a), (c), (d) and (e), Article 11(5) and Article 13(1)(b) set down obligations and timescales regarding the transfer or taking back of the applicant from the first to the second Member State. The term "transfer" is used below both for the case of taking charge and taking back.

3. The arrangements for transfer of the applicant are set out below.

Notification of the applicant

4. The first Member State will inform the applicant as soon as possible when a request is made under the provisions of Articles 11 and 13 to another Member State to take charge of or to take back an applicant and of the outcome of this request. Where responsibility is transferred to the second Member State, this notification shall inform the applicant of his liability for transfer to the second Member State under the provisions of Article 11(5) and Article 13(1)(b) and subject to any relevant national laws and procedures. Where the transfer is to be made as described in paragraph 5(a) (b) below, this notification will include information about the time and place to which the applicant should report on arrival in the second Member State.

Transfer of the applicant

5. When it is agreed that the applicant should be transferred to the second Member State, the first Member State will be under an obligation to ensure as far as possible that the applicant does not evade the transfer. To this effect, the first Member State will determine, in the light of the circumstances of each case, and in accordance with national laws and procedures, how transfer of the applicant should take place. This may be either

(a) on his own initiative, with a deadline being set;
(b) under escort, the applicant to be accompanied by an official of the first Member State.

6. Transfer of the applicant will be considered completed when either the applicant has reported to the authorities of the second Member State specified in the notification given to him, when the transfer is under 5(a) above; or when he has been received by the competent authorities of the second Member State, when transfer is under 5(b) above.

7. When transfer is under 5(a) above, the second Member State will inform the first as soon as possible after the transfer is completed, or where the applicant has failed to report within the specified deadline.

Deadlines for transfer

8. Articles 11 (5) and 13(1)(b) provide that transfer and taking back must be concluded within one month of the second Member State accepting responsibility for examining the asylum application. Member States will make every effort to conform with these deadlines where transfer is made under paragraph 5(b) above.

9. If a transfer has been arranged under the provisions of 5(a) above, but is not completed because of the failure of the applicant to co-operate, the second Member State may begin examination of the application on the

information available to it on the expiry of the deadlines specified in Articles 11.5 and 13.1(b). If the application is refused, the second Member State will remain liable for taking back the applicant under the provisions of Article 10(1)(e) unless the provisions of Article 10(2), (3) or (4) apply.

Footnote 1: At the time of adoption Reservations were made by the Danish and Netherlands delegations.

24

Implementation of the Dublin Convention - Transfer of an asylum applicant

Introduction

Implementation of the Dublin Convention: Transfer of an asylum applicant (7470/94 ASIM 112, 3 June 1994). A standard document, "laissez-passer" to give to an asylum-seeker who is required to go from the destination country to the state responsible for determining their claim, to ensure that the authorities of the responsible state accept their claim. Not in use.

Implementation of the Dublin Convention - Transfer of an asylum applicant

Reference:

3 June 1994
7470/94
RESTREINT
ASIM 112
"I"/"A" ITEM NOTE
from: Permanent Representatives Committee (Part 2)
to: Council (Justice and Home Affairs)
No. prev. doc.: 9950/93 ASIM 7.

Subject: Implementation of the Dublin Convention - Transfer of an asylum applicant

1. At its meeting on 29 and 30 November 1993, the Council (Justice and Home Affairs) reached agreement in principle on the text set out in the Annex hereto, subject to the Netherlands withdrawing a parliamentary scrutiny reservation and Spain withdrawing a general reservation.

2. At the meeting of the Council (Justice and Home affairs) on 23 March 1994, the Netherlands delegation stated that the above reservation had been withdrawn.

3. In a letter dated 7 March (see 5450/94 ASIM 55), the Spanish delegation stated that it would withdraw the general reservation on asylum which had been entered at the Justice and Home Affairs Council on 29 and 30 November 1993.

4. It is therefore suggested that the Committee recommend that the Council adopt the text annexed hereto at one of its forthcoming meetings.

ANNEX

LAISSEZ-PASSER

KINGDOM OF BELGIUM
MINISTRY OF THE INTERIOR
DIRECTORATE-GENERAL FOR PUBLIC SECURITY
ALIENS OFFICE

Reference No (*)

Issued pursuant to Articles 11 and 13 of the Dublin 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.

Valid only for transfer from ... (1) to ... (2), with the asylum applicant required to present him/herself at ... (3) by ... (4).

Issued at

NAME:

FORENAMES:

PLACE AND DATE OF BIRTH:

NATIONALITY:

Date of issue:

PHOTO

For the Ministry for the Interior
SEAL

The bearer of this laizzez-passer has been identified by the authorities ... (5) (6)
This document is issued pursuant to Articles 11 and 13 of the Dublin Convention only and cannot under any circumstances be regarded as equivalent to a travel document permitting the external frontier to be crossed or to a document proving the individual's identity.

(1) Member State from which transferred.
(2) Member State to which transferred.
(3) Place at which the asylum applicant has to present him/herself upon arrival in the second Member State.
(4) Deadline by which the asylum applicant has to present him/herself upon arrival in the second Member State.
(5) On the basis of the following travel or identity' documents presented to the authorities.
(6) On the basis of a statement by the asylum applicant or of documents other than a travel or identity document.
(*) Reference number to be given by the country from which the transfer takes place.

25

Council conclusions concerning the possible application of Article K.9 of the Treaty on European Union to asylum policy

Introduction

Council conclusions concerning the possible application of Article K.9 of the Treaty on European Union to asylum policy (7468/94 ASIM 110, 3 June 1994): the Council is non-committal on the Commission's report

which dwells on the advantages of "communitarianising" asylum measures under the Treaty's "bridge" provision.

Council conclusions concerning the possible application of Article K.9 of the Treaty on European Union to asylum policy

Reference:

3 June 1994
7468/94
RESTREINT
ASIM 110
"I"/"A" ITEM NOTE
from: Permanent Representatives Committee (Part 2)
to: Council (Justice and Home Affairs)
No. prev. doc.: 10360/93 ASIM 21

Subject: Council conclusions concerning the possible application of Article K.9 of the Treaty on European Union to asylum policy

1. At its meeting on 29 and 30 November 1993, the Council (Justice and Home Affairs) reached agreement in principle on the text set out in the Annex hereto, subject to the Netherlands withdrawing a parliamentary scrutiny reservation and Spain withdrawing a general reservation.

2. At the meeting of the Council (Justice and Home Affairs) on 23 March 1994, the Netherlands delegation stated that the above reservation had been withdrawn.

3. In a letter dated 7 March (see 5450/94 ASIM 55), the Spanish delegation stated that it would withdraw the general reservation on asylum which had been entered at the Justice and Home Affairs Council on 29 and 30 November 1993.

4. It was therefore suggested that the Committee recommend that the Council adopt the text annexed hereto at one of its forthcoming meetings.

ANNEX

Draft Council conclusions concerning the possible application of Article K.9 of the Treaty on European Union to asylum policy

The Council noted the progress made in asylum policy co-operation in recent years on the basis, in particular, of the programme approved by the Maastricht European Council.

Aware of the need to intensify such co-operation, it agreed to implement as soon as possible the new instruments available to it under the Treaty on European Union. They will make it possible to improve the effectiveness of the measures adopted in the framework of the Union in implementation of the priority programmes to be drawn up.

The Council took cognizance of the Commission report on the application of Article K.9 to asylum policy, as provided for in paragraph 2 of the declaration contained in the Final Act of the Treaty on European Union.

The Council noted that, in the Commission's view, application of Article K.9 would offer certain advantages. It considers however, like the Commission, that the time is not yet right to propose such application so soon after the entry into force of the TEU.

Nevertheless, it believes that it might be advisable to reconsider this matter at a later date in the light of experience and by the end of 1995 at the latest.

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Resolution on a harmonised approach to questions concerning host third countries

Introduction

Resolution on a harmonised approach to questions concerning host third countries (adopted London, 30 November and 1 December 1992 by the meeting of immigration ministers. SN 4823/92 WGI 1283 AS 147). One of two resolutions attempting to tackle the issue of inter-continental asylum-seekers, this resolution applied the "safe country of transit" principle enunciated in the Dublin Convention to all transit countries, and allowed member states summarily to return asylum-seekers to any transit country deemed safe by them. It contained the novel idea that asylum-seekers were acting illegally by leaving a transit country where they could have claimed asylum. Member states were to revise their national law to adopt these principles.

Resolution on a harmonised approach to questions concerning host third countries

Reference:

SN 4823/92 WG 1283 AS 147

Ministers of the Member States of the European Communities responsible for immigration, meeting in London on 30 November to 1 December 1992;

DETERMINED to achieve the objective of harmonizing asylum policies as it was defined by the Luxembourg European Council in June 1991 and clarified by the Maastricht European Council in December 1991;

TRUE to the principles of the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees and in particular Articles 31 and 33 thereof;

CONCERNED especially at the problem of refugees and asylum seekers unlawfully leaving countries where they have already been granted protection or have had a genuine opportunity to seek such protection and CONVINCED that a concerted response should be made to it, as suggested in Conclusion No. 58 on Protection adopted by the UNHCR Executive Committee at its 40th session (1989);

CONSIDERING the Dublin 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 and in particular Article 3(5) thereof, and WISHING to harmonize the principles under which they will act under this provision;

ANXIOUS to ensure effective protection for asylum seekers and refugees who require it;

MAKE THE FOLLOWING RESOLUTION

Procedure for application of the concept of host third country

1. The Resolution on manifestly unfounded applications for asylum, adopted by Ministers meeting in London of 30 November 1 December 1992, refers in paragraph 1(b) to the concept of host third country. The following principles should form the procedural basis for applying the concept of host third country:

(a) The formal identification of a host third country in principle precedes the substantive examination of the application for asylum and its justification.

(b) The principle of the host third country is to be applied to all applicants for asylum, irrespective of whether or not they may be regarded as refugees.

(c) Thus, if there is a host third country, the application for refugee status may not be examined and the asylum applicant may be sent to that country.

(d) If the asylum applicant cannot in practice be sent to a host third country, the provisions of the Dublin Convention will apply.

(e) Any Member State retains the right, for humanitarian reasons, not to remove the asylum applicant to a host third country.

Cases falling within this concept may be considered under the accelerated procedures provided for in the aforementioned Resolution.

Substantive application: requirements and criteria for establishing whether a country is a host third country

2. Fulfilment of all the following fundamental requirements determines a host third country and should be assessed by the Member State in each individual case:

(a) In those third countries, the life or freedom of the asylum applicant must not be threatened, within the meaning of Article 33 of the Geneva Convention.

(b) The asylum applicant must not be exposed to torture or inhuman or degrading treatment in the third country.

(c) It must either be the case that the asylum applicant has already been granted protection in the third country or has had an opportunity, at the border or within the territory of the third country, to make contact with that country's authorities in order to seek their protection, before approaching the Member State in which he is applying for asylum, or that there is clear evidence of his admissibility to a third country.

(d) The asylum applicant must be afforded effective protection in the host third country against refoulement, within the meaning of the Geneva convention.

If two or more countries fulfil the above conditions, the Member States may expel the asylum applicant to one of those third countries. Member States will take into account, on the basis in particular of the information available from the UNHCR, known practice in the third countries, especially with regard to the principle of non-refoulement before considering sending asylum applicants to them.

Dublin Convention

3. The following principles set out the relationship between the application of the concept of the third host country, in accordance with Article 3(5) of the Dublin Convention, and the procedures under the Convention for determining the Member State responsible for examining an asylum application:

(a) The Member State in which the application for asylum has been lodged will examine whether or not the principle of the host third country can be applied. If that State decides to apply the principle, it will set in train the procedures necessary for sending the asylum applicant to the host third country before for examining the application for asylum to another considering whether or not to transfer responsibility Member State pursuant to the Dublin Convention.

(b) examining an application for asylum, pursuant to the Dublin Convention, by claiming that the requesting Member State should have returned the applicant to a host third country.

(c) Notwithstanding the above, the Member State responsible for examining the application will retain the right, pursuant to its national laws, to send an applicant for asylum to the host third country.

(d) The above provisions do not prejudice the application of Article 3(4) and Article 9 of the Dublin Convention by the Member State in which the application for asylum has been lodged.

Future action

4. Ministers agreed to seek to ensure that their national laws are adapted, if need be, and to incorporate the principles of this resolution as soon as possible, at the latest by the time of the entry into force of the Dublin Convention. Member States will from time to time, in cooperation with the Commission and in consultation with UNHCR, review the operation of these procedures and consider whether any additional measures are necessary.

27

Resolution on manifestly unfounded applications for asylum

Introduction

Resolution on manifestly unfounded applications for asylum (adopted London, 30 November and 1 December 1992 by the meeting of immigration ministers. SN 4822/92 WGI 1282 ASIM 146). The other resolution adopted at the November-December meeting introduced the concept of the "fast-track" procedure and appeal for applications deemed "manifestly unfounded" for a number of reasons including the use of deception or false documentation by the asylum-seeker, the destruction of documents, making the application when all other avenues to stay in the country had failed, failure to reveal a previous application, and coming from a country of origin deemed safe by the member state concerned. The officials who drew up the resolution proposed a sister resolution for dealing with "manifestly founded" applications which would create a fast track to refugee status, but this was not implemented. Member states were to revise their national law to adopt these principles.

Resolution on manifestly unfounded applications for asylum

Reference: SN 4822/92 WGI 1282 ASIM 146

MINISTERS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES responsible for Immigration, meeting in London on 30 November and 1 December 1992, agreed

HAVING REGARD to the objective, fixed by the European Council meeting in Strasbourg in December 1989, of the harmonization of their asylum policies and the work programme agreed at the meeting at Maastricht in December 1991;

DETERMINED, in keeping with their common humanitarian tradition, to guarantee adequate protection to refugees in accordance with the terms of the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees;

NOTING that Member States may, in accordance with national legislation, allow the exceptional stay of aliens for other compelling reasons outside the teems of the 1951 Geneva Convention;

REAFFIRMING their commitment to the Dublin Convention of 15 June 1990, which guarantees that all asylum applicants at the border or on the territory of a Member State will have their claim for asylum examined and sets out rules for determining which Member State will be responsible for that examination;

AWARE that a rising number of applicants for asylum in the Member States are not in genuine need of protection within the Member States within the terms of the Geneva Convention, and concerned that such manifestly unfounded applications overload asylum determination procedures, delay the recognition of refugees in genuine need of protection and jeopardize the integrity of the institution of asylum;

INSPIRED by Conclusion No. 30 of the Executive Committee of the United Nations High Commissioner for Refugees;
CONVINCED that their asylum policies should give no encouragement to the misuse of asylum procedures;

MAKE THE FOLLOWING RESOLUTION:

Manifestly unfounded applications

1. (a) An application for asylum shall be regarded as manifestly unfounded because it clearly raises no substantive issue under the Geneva Convention and New York Protocol for one of the following reasons :

- there is clearly no substance to the applicant's claim to fear persecution in his own country (paragraphs 6 to 8); or

- the claim is based on deliberate deception or is an abuse of asylum procedures (paragraphs 9 and 10).

(b) Furthermore, without prejudice to the Dublin Convention, an application for asylum may not be subject to determination by a Member State of refugee status under the terms of the Geneva Convention on the Status of Refugees when it falls within the provisions of the Resolution on host third countries adopted by Immigration Ministers meeting in London on 30 November and 1 December 1992.

2. Member States may include within an accelerated procedure (where it exists or is introduced), which need not include full examination at every level of the procedure, those applications which fall within the terms of paragraph 1, although an application need not be included within such procedures if there are national policies providing for its acceptance on other grounds. Members States may also operate admissibility procedures under which applications may be rejected very quickly on objective grounds.

3. Member States will aim to reach initial decisions on applications which fall within the terms of paragraph 1 as soon as possible and at the latest within one month and to complete any appeal or review procedures as soon as possible. Appeal or review procedures may be more simplified than those generally available in the case of other rejected asylum applications.

4. A decision to refuse an asylum application which falls within the terms of paragraph 1 will be taken by a competent authority at the appropriate level fully qualified in asylum or refugee matters. Amongst other procedural guarantees the applicant should be given the opportunity for a personal interview with a qualified official empowered under national law before any final decision is taken.

5. Without prejudice to the provisions of the Dublin Convention, where an application is refused under the terms of paragraph 1 the Member State concerned will ensure that the applicant leaves Community territory, unless he is given permission to enter or remain on other grounds.

No substance to claim to fear of persecution

6. Member States may consider under the provisions of paragraph 2 above all applications the terms of which raise no question of refugee status within the terms of the Geneva Convention. This may be because:

(a) the grounds of the application are outside the scope of the Geneva Convention: the applicant does not invoke fear of persecution based on his belonging to a race, a religion, a nationality, a social group, or on his political opinions, but reasons such as the search for a job or better living conditions;

(b) the application is totally lacking in substance: the applicant provides no indications that he would be exposed to fear of persecution or his story contains no circumstantial or personal details;

(c) the application is manifestly lacking in any credibility: his story is inconsistent, contradictory or fundamentally improbable.

7. Member States may consider under the provisions of paragraph 2 above an application for asylum from claimed persecution which is clearly limited to a specific geographical area where effective protection is readily available for that individual in another part of his own country to which it would be reasonable to expect him to go, in accordance with Article 33.1 of the Geneva Convention. When necessary, the Member States will consult each other in the appropriate framework, taking account of information received from UNHCR, on situations which might allow, subject to an individual examination, the application of this paragraph.

8. It is open to an individual Member State to decide in accordance with the conclusions of Immigration Ministers of 1 December 1992 that a country is one in which there is in general terms no serious risk of persecution. In deciding whether a country is one in which there is no serious risk of persecution, the Member States will take into account the elements which are set out in the aforementioned conclusions of Ministers. Member States have the goal to reach common assessment of certain countries that are of particular interest in this context. The Member State will nevertheless consider the individual claims of all applicants from such countries and any specific indications presented by the applicant which might outweigh a general presumption. In the absence of such indications, the application may be considered under the provisions of paragraph 2 above.

Deliberate deception or abuse of asylum procedures

9. Member States may consider under the provisions of paragraph 2 above all applications which are clearly based on deliberate deceit or are an abuse of asylum procedures. Member States may consider under accelerated procedures all cases in which the applicant has, without reasonable explanation:

(a) based his application on a false identity or on forged or counterfeit documents which he has maintained are genuine when questioned about them;

(b) deliberately made false representations about his claim, either orally or in writing, after applying for asylum;

(c) in bad faith destroyed, damaged or disposed of any passport, other document or ticket relevant to his claim, either in order to establish a false identity for the purpose of his asylum application or to make the consideration of his application more difficult;

(d) deliberately failed to reveal that he has previously lodged an application in one or more countries, particularly when false identities are used;

(e) having had ample earlier opportunity to submit an asylum application, submitted the application in order to forestall an impending expulsion measure;

(f) flagrantly failed to comply with substantive obligations imposed by national rules relating to asylum procedures;

(g) submitted an application in one of the Member States, having had his application previously rejected in another country following an examination comprising adequate procedural guarantees and in accordance with the Geneva Convention on the Status of Refugees. To

this effect, contacts between Member States and third countries would, when necessary, be made through UNHCR.

Member States will consult in the appropriate framework when it seems that new situations occur which may justify the implementation of accelerated procedures to them.

10. The factors listed in paragraph 9 are clear indications of bad faith and justify consideration of a case under the procedures described in paragraph 2 above in the absence of a satisfactory explanation for the applicant's behaviour. But they cannot in themselves outweigh a well-founded fear of persecution under Article 1 of the Geneva Convention and none of them carries any greater weight than any other.

Other cases to which accelerated procedures may apply

11. This Resolution does not affect national provisions of Member States for considering under accelerated procedures, where they exist, other cases where an urgent resolution of the claim is necessary, if it is established that the applicant has committed a serious offence in the territory of the Member States, if a case manifestly falls within the situations mentioned in Article 1.F of the 1951 Geneva Convention, or for serious reasons of public security, even where the cases are not manifestly unfounded in accordance with paragraph 1.

Further action

12. Ministers agreed to seek to ensure that their national laws are adapted, if need be, to incorporate the principles of this Resolution as soon as possible, at the latest by 1 January 1995. Member States will from time to time, in cooperation with the Commission and in consultation with UNHCR, review the operation of these procedures and consider whether any additional measures are necessary.

28

Conclusions on countries in which there is generally no serious risk of persecution

Introduction

Conclusions on countries in which there is generally no serious risk of persecution (adopted London, 30 November and 1 December 1992 by the meeting of immigration ministers. SN 4821/92 WGI 1281 AS 145). This document explained the criteria member states were to use in deciding whether a country of origin was to be deemed "safe" and the application therefore manifestly unfounded. After a draft leaked in June 1992 caused outrage by judging the safety of a country solely by the human rights instruments it signed, and not by its practice, the final document included both law and practice in its criteria for safety.

CONCLUSIONS on countries in which there is generally no serious risk of persecution

Reference: SN 4821/92 WGI 1281 AS 145
1. The resolution on manifestly unfounded applications for asylum (WGI 1282) includes at paragraph 1(a) a reference to the concept of countries in which there is in general terms no serious risk of persecution.

This concept means that it is a country which can be clearly shown, in an objective and verifiable way, normally not to generate refugees or where it can be clearly shown, in an objective and verifiable way, that circumstances which might in the past have justified recourse to the 1951 Geneva Convention have ceased to exist [ref: Report from Immigration Ministers to the European Council meeting in Maastricht (doc WGI 930, page 38)]

Purposes

2. The aim of developing this concept is to assist in establishing a harmonized approach to applications from countries which give rise to a high proportion of clearly unfounded applications and to reduce pressure on asylum determination systems that are at present excessively burdened with such applications. This will help to ensure that refugees in genuine need of protection are not kept waiting unnecessarily long for their status to be recognized and to discourage misuse of asylum procedures. Member States have the goal to reaching common assessment of certain countries that are of particular interest in this context.

To this end, Member States will exchange information within an appropriate framework on any national decisions to consider particular countries as ones in which there is generally no serious risk of persecution. In making such assessments, they will use, as a minimum, the elements of assessment laid down in this document.

3. An assessment by an individual Member State of a country as one in which there is generally no serious risk of persecution should not automatically result in the refusal of all asylum applications from its nationals or their exclusion from individualized determination procedures. A Member State may choose to use such an assessment in channelling cases into accelerated procedures as described in paragraph 2 of the resolution on manifestly unfounded applications, agreed by Immigration Ministers at their meeting on 30 November and 1 December 1992. The Member state will nevertheless consider the individual claims of all applicants from such countries and any specific indications presented by the applicant which might outweigh a general presumption.

Elements in the assessment

4. The following elements should be taken together in any assessment of the general risk of persecution in a particular country:

(a) previous numbers of refugees and recognition rates. It is necessary to look at the recognition rates for asylum applicants from the country in question who have come to Member States in recent years. Obviously, a situation may change and historically low recognition rates need not continue following (for example) a violent coup. But in the absence of any significant change in the country it is reasonable to assume that low recognition rates will continue and that the country tends not to produce refugees.

(b) observance of human rights. It is necessary to consider the formal obligations undertaken by a country in adhering to international human rights instruments and in its domestic law and how in practice it meets those obligations. The latter is clearly more important and adherence or non-adherence to a particular instrument cannot in itself result in consideration as a country in which there is generally no serious risk of persecution. It should be recognized that a pattern of breaches of human rights may be exclusively linked to a particular group within a country's population or to a particular area of the country.

The readiness of the country concerned to allow monitoring by NGO's of their human rights observance is also relevant in judging how seriously a country takes its human rights obligations.

(c) democratic institutions. The existence of one or more specific institutions cannot be a sine qua non but consideration should be given to democratic processes, elections, political pluralism and freedom of expression and thought. Particular attention should be paid to the availability and effectiveness of legal avenues of protection and redress.
(d) Taking into account the above mentioned elements, an assessment must be made of the prospect for dramatic change in the immediate future. Any view formed must be reviewed over time in the light of events.

5. Assessments of the risk of persecution in individual countries should be based upon as wide a range of sources of information as possible, including advice and reports from diplomatic missions, international and non-governmental organizations and press reports. Information from UNHCR has a specific place in this framework. UNHCR forms views of the relative safety of countries of origin both for their own operational purposes and in responding to request for advice. They have access to sources within the UN system and non-governmental organizations.

6. Member States may take into consideration other elements of assessment than those previously mentioned, which will be reviewed from time to time.

29

Setting up a "clearing house" for the exchange of information (CIREA)

Introduction

Setting up a "clearing house" for the exchange of information (Memorandum from the Dutch Presidency, SN 3432/91, WGI 881, dated 7 October 1991). The proposal which led to the creation of CIREA, the clearing house for the deposit and exchange of information to assist in member states' harmonisation of approach to asylum determination.

Setting up a "clearing house" for the exchange of information - Memorandum from the Dutch Presidency

Reference:

Ad Hoc Group Immigration,
7 October 1991,
SN 3432/91 WGI 881,
CONFIDENTIAL.
Memorandum from the Dutch Presidency: Ad Hoc Group on Immigration/Subgroup Asylum

Subject: Setting up a “clearing house” for the exchange of information

I. Introduction

This memorandum puts into effect the working programme (WGI 837) of the Dutch Presidency, as adopted by the Ad Hoc Group on Immigration at its meeting of 8 and 9 September last.

In the context of the commitment by the Twelve to achieve harmonisation of the material right of asylum, it is of crucial importance that the Member States have and obtain more, and structural, knowledge of the content of each others policies with respect to asylum and right of asylum, as well as the developments which take place in that field. An important contribution in this respect is the setting up of a so-called clearing house; this joint body can function as a central signalling post, which disseminates information and data obtained from the Member States among the Twelve in a structured way. The remainder of this memorandum, will be devoted to the function and task of the information exchange organ to be set up, as well as the place in the organisation of the EC to be accorded to this future body.

II. Function and tasks

A clearing house must be seen as a central point where the Twelve deposit relevant information and data which may be of importance for the other Member States. This may be data and information concerning the number of asylum seekers, classification according to nationality, official reports or data on the situation in the countries of origin, flows of asylum seekers, jurisprudence, (adopted) policy developments, etc. In handing over data, it is important for the sake of a good understanding in the other Member States that they are presented against the background of the national circumstances. This will enhance the comparability of the information.

The Presidency proposes that the EC Council Secretariat should take charge of the activities resulting from the setting up of a clearing house. With regard to the practical working method, the Presidency proposes that, on the expiry of the rotating Presidencies every six months, the Council Secretary should compile a report of the data received. In this way, a clearing house could help support the current discussions on the harmonisation of the policy with respect to asylum and the right of asylum. Important questions can then be discussed in the bodies set up for that purpose (the subgroup Asylum of the Ad hoc Group on Immigration and the Ad Hoc Group itself).

In addition to this exchange of information on policy, jurisprudence and statistical matters, the Presidency also proposes that regular meetings be organised under the auspices of the clearing house between officials active in the practical implementation of these aspects in the Twelve. On the basis of their specific knowledge, information could be exchanged there and new developments signalled, which may require further development at policy level (in order to arrive at a joint implementation practice). It is important in this respect that fixed contact persons are appointed, thus leading to the creation within the Twelve of a network of implementing officials who direct their attention to the signalling of significant national developments which necessitate further discussion among the Twelve. Such meetings should expressly not have a decision-making character, but should serve only to allow further cognisance of the prevailing implementation practice in the EC Member States. Consultation directed towards decision-making will continue to be reserved for the Ad Hoc Group on Immigration and its subgroup Asylum.

III. Anchoring?

Bearing in mind the fact that the clearing house has a purely administrative function geared to the exchange of information relevant to the policy on asylum and the right of asylum, it is the Presidency's view that the setting up of a clearing house should not be anchored in a formal/legal way within the EC organisation.

30

Establishment of a Centre for Information, Discussion and Exchange on Asylum (clearing house)

Introduction

Establishment of a centre for information, discussion and exchange on asylum (CIREA) (clearing house) (SN 2781/92 WGI 1107, dated 21 May 1992). Pursuant to Art 14 of the Dublin Convention (information exchange on countries of origin of asylum-seekers), a clearing house for

country information was also useful for the assessment of "safe" countries of origin (see above in Document 28). This decision was adopted at the meeting of Immigration Ministers in Lisbon on 11 June 1992. It establishes CIREA, to "gather, exchange and disseminate information" on all matters relating to asylum including member states' law and practice, country information, routes taken by asylum-seekers etc.

Establishment of a Centre for Information, Discussion and Exchange on Asylum (clearing house)

Reference:

Ad Hoc Group Immigration,
21 May 1992,
SN 2781/92 WGI 1107,
CONFIDENTIAL.

Subject: Establishment of a Centre for Information, Discussion and Exchange on Asylum (clearing house)

1. The Ad Hoc Group on Immigration is submitting the Decision annexed hereto to the Ministers responsible for immigration for approval.

2. The Ad Hoc Group on Immigration

- considers that a Decision of a political nature would not enable the clearing house fully to carry out the tasks entrusted to it. An act, in a form to be decided, based on the provisions of the Treaty on European Union would make it possible to achieve that objective;

- suggests that such an act should be drawn up after the Ministerial Decision referred to in 1. above. The Council will be called upon to adopt the act as soon as possible after the entry into force of the Treaty on European Union.

The Ad Hoc Group proposes that the Ministers responsible for Immigration instruct it accordingly.

DECISION establishing the clearing house

THE MINISTERS RESPONSIBLE FOR IMMIGRATION, HEREINAFTER REFERRED TO AS "THE MINISTERS"

Whereas Article 14 of the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990 and Luxembourg on 13 June 1991, provides for an exchange of information;
Whereas, in their report on immigration and asylum policy to the European Council meeting in Maastricht, they decided to establish a clearing house for information, discussion and exchange on asylum;

Wishing to fulfil the task entrusted to them by the European Council meeting in Maastricht, which invited them to implement, within the proposed timescale, the programme of work contained in that report;

Considering the Declaration on asylum annexed to the Treaty on European Union;

Have decided to:

agree to the provisions set out in the Annex for the establishment of the Centre for Information, Discussion and Exchange on Asylum (clearing house);

ask the Ad Hoc Group on Immigration to draw up in proper form the act which, after ratification of the Treaty on European Union, will be submitted to the Council for approval under the procedures laid down for that purpose;

ask the Ad Hoc Group on Immigration to:

- supervise the provisional operation of the clearing house, until the above mentioned act is adopted;

- carry out further studies on the definitive structures and financing of the clearing house.

A Centre for Information, Discussion and Exchange on Asylum, hereinafter referred to as the "clearing house", to operate within the framework of the General Secretariat of the Council of the European Communities, is hereby established.

The Member States shall designate to participate in the clearing house:

- their delegates, who shall in principle be the persons dealing with asylum matters in the relevant Council body;

- officials responsible in the Member States for implementing laws and regulations on asylum and more specifically experts responsible for processing asylum applications.

The Commission shall be fully associated with the work of the clearing house.

The tasks and operating methods of the clearing house shall be as follows:

I. Powers

The clearing house shall:

- for the time being operate provisionally within the framework of this Decision;

- act within the framework of the provisions of the act to be adopted on the basis of the Treaty on European Union as soon as possible after the latter comes into force;

- be an informal forum for exchanges of information and consultations, without any decision-making power.

II. Objectives

The clearing house shall gather, exchange and disseminate information and compile documentation on all matters relating to asylum.

The aim of this exchange of information shall be the development within the clearing house of greater informal consultation, itself designed to facilitate, through competent bodies, coordination and harmonization of asylum practice and policies.

The clearing house may draw the attention of national bodies and/or the Council to certain problems. Those bodies via the Ministers and/or the Ministers themselves may ask the clearing house to conduct studies, which may be accompanied by proposals.

III. Gathering of Information

The following information shall be exchanged within the clearing house:

- Member States' legislation and rules on the right of asylum;

- important policy documents (in their final form);

- important case-law and legal principles;

- statistics.

The Ministers recognize the usefulness to the clearing house of exchanges of information concerning in particular:

- the situation in the countries of origin of applicants for asylum;

- indications available as an early warning;

- routes taken by asylum seekers and the involvement of intermediaries and/or transport operators;

- reception and accommodation conditions;

- matters already harmonized.

Data stored by the Office of the United Nations High Commissioner for Refugees or by other bodies may be taken into account.

This information is to serve as a basis for documentation and discussion and is to be disseminated under the conditions described below.

VI. Dissemination of Information

The Ministers, national authorities participating in the work of the clearing house and the Commission shall have access to the information held by the clearing house.

The Ministers shall determine the framework and conditions for the clearing house to disseminate information to international organizations, nongovernmental organizations, universities and the media in particular.

When supplying information, Member States shall state how they wish it to be classified. A Member State may oppose the dissemination of information which it has supplied.

V. Reports

The clearing house shall draw up a report for the Council, in principle twice a year.

The Ministers may ask the clearing house to draw up a report on Member States' application of the 1951 Geneva Convention.

VI. Meetings

For particular topics, the clearing house may invite other persons to contribute to its proceedings.

VII.

The clearing house may, within its terms of reference, suggest to the Ministers the establishment of all co-operation which it deems necessary, in particular with the Office of the United Nations High Commissioner for Refugees.

31

Guidelines for joint reports on third countries

Introduction

Guidelines for joint reports on third countries (7471/94 CIREA 16, 3 June 1994). The Ad Hoc group document sets out the sort of information that member states' embassies should include on the countries of origin and transit of asylum-seekers: on the general political and human rights situation, specific information on persecution etc.

Guidelines for joint reports on third countries

Reference:

3 June 1994
7471/94
RESTREINT
CIREA 16
"I"/"A" ITEM NOTE
from: Permanent Representatives Committee
to: Council (Justice and Home Affairs)
No. prev. doc.: 9941/93 CIREA 6

Subject: Guidelines for joint reports on third countries

1. At its meeting on 29 and 30 November 1993, the Council (Justice and Home Affairs) reached agreement in principle on the text set out in the Annex hereto, subject to the Netherlands withdrawing a parliamentary scrutiny reservation and Spain withdrawing a general reservation.

2. At the meeting of the Council (Justice and Home Affairs) on 23 March 1994, the Netherlands delegation stated that the above reservation had been withdrawn.

3. In a letter dated 7 March (see 5450/94 ASIM 55), the Spanish delegation stated that it was withdrawing the general reservation on asylum which had been entered at the Justice and Home Affairs Council on 29 and 30 November 1 993.

4. It was therefore suggested that the Committee recommend that the Council adopt the text annexed hereto at one of its forthcoming meetings.

ANNEX

Guidelines for joint reports on third countries

A. INTRODUCTION

1. The Ministers responsible for immigration have on several occasions spoken of the desirability of drawing up joint situation reports on certain third countries of origin of asylum-seekers. They believe this to be essential if a convergent and eventually harmonized analysis of asylum applications is to be obtained.
2. To achieve this aim fully, there are certain items of information which it is important that the reports should contain.

3. Accordingly, at its meeting in October 1992, the ad hoc Group on Immigration instructed the Clearing House to consider the form and content of the joint reports and to make suggestions (WGI 1167 REV 2).

With that in mind, it is suggested that the reports drawn up by Member States' embassies on the spot should contain as far as possible the points set out below.

4. The reports ought to provide an accurate overall picture of the political, economic and social situation in the third country, without being over-detailed since it is vital that they be drawn up quickly.

5. It has been agreed that the following guidelines could be adjusted according to the country on which a joint report is requested. In some cases this would mean omitting certain points. In others, certain specific questions would be added, depending on the information needed.

6. This outline could be revised in the light of experience.

CONTENT OF JOINT REPORTS

I. General political situation

1. Recent political developments

2. Current actual situation in the country, and in particular:

(a) Specify the following points if possible regarding its regime:

- free elections

- multi-party system
- freedom of opinion and assembly
- religious freedom
- independent judiciary
- security service activity
- situation of minorities

(b) Security situation in the country (including situations of war or civil war)

3. Prospects

(a) So far as one can tell, is the political situation stable?
(b) Are there any known political deadlines (election dates, etc.)?

II. General human rights situation

1. Has the country acceded to any instruments for the protection of human rights? Preferably state which. How does it comply in practice with the principles they contain?

2. Are international human rights organizations able to monitor whether human rights are respected?

3. Actual practice as regards human rights. Are people exposed to acts contrary to human rights, in particular:

(a) torture, inhuman or degrading treatment and punishment (e.g. beating imposed by a court, legislation enshrining racial discrimination);

(b) frequent use of the death penalty (in countries where such sentences continue to be carried out);

(c) conditions of imprisonment which are contrary to human rights, arbitrary arrests, lack of freedom to travel, denial of recourse to the courts, or specific measures against political prisoners?

III. Specific information on persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion

1. Persecution by the State

(a) Are there any forms of persecution by the State, such as repressive measures or arbitrary treatment by State bodies of certain groups of individuals?

(b) What is the extent of such persecution, especially as regards

- Interference with life, health and freedom including religious freedom?
- Extreme conditions involved in military service, where relevant?
- Other types of social discrimination?

2. Are there other forms of indirect persecution by the State (acts of persecution not carried out by the public authorities but attributable to them), such as the situation where the national authorities are unwilling to give sufficient protection to members of a particular group in the population who are seriously threatened by their fellow citizens?

IV. Possibility of fleeing within the State (in the event of persecution)

1 . Are there persecution situations confined to one part of the State's territory?

2. Is it possible to escape such persecution by going to another part of the territory?

V. Movement of nationals of the State

1. What sort of controls are carried out at these States' external frontiers (air, sea and land) as regards their own nationals? In particular, what formalities do the nationals of these States have to complete on entering or leaving? Are they discriminatory compared with the controls imposed on other nationals?

2. On the basis of the information available, are there any procedures for the departure of nationals of the State?

VI. Authenticity of documents

1. What credence should be given to documents held by nationals and issued by the national authorities, especially travel documents?

2. Can nationals of the country easily get hold of false official documents or certificates?

VII. Return to country of origin

1. Does the fact of having lodged an asylum application in another country mean that a national risks being subjected to punishments, torture or inhuman or degrading treatment when he returns to his country of origin?

2. What attitude do the State's authorities take towards foreign nationals, especially asylum-seekers?

VIII. Economic and social situation

It is useful to indicate general features of the economic and social situation that might induce people to leave the country. For example:

1. What is the current general economic situation in the country and, where appropriate, in some of its regions, and what are the prospects for future development?

2. What is the current unemployment level and what are the expected trends?

3. Is there a welfare system?

IX. Preparation of reports on host third countries

The above guidelines concerning countries of origin should be used as far as possible when drawing up reports on host third countries.

Details on the following points would also be desirable:

1. Has the country acceded to the Geneva Convention of 28 July 1951 on the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms or any other similar human rights convention? How does it comply in practice with the principles they contain (where this adds to the answers given under II.I)?

2. Can any national of a third country submit an application for asylum in the host State? is it possible, at the frontier or in the territory, for him to request the protection of the authorities of that country before applying to the Member State where he is seeking asylum? If not, is this the case for persons of certain nationalities or origins?

3. Is it certain that he can be admitted to the host country? If not, is that the case for persons of certain nationalities or origins?

4. Does the asylum-seeker benefit or potentially benefit from effective protection against 'refoulement' as defined by the Geneva Convention?

X. Place and date of the drawing up of the report

It would be useful to state where and when the joint report was drawn up.

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Procedure for drawing up reports in connection with joint assessments of the situation in third countries

Introduction

Procedure for drawing up reports in connection with joint assessments of the situation in third countries (7472/94 CIREA 17, 3 June 1994). This document sets out how the joint assessment is to be prepared and the role of CIREA and the "CFSP Political Committee".

Procedure for drawing up reports in connection with joint assessments of the situation in third countries

Reference:

3 June 1994
7472/94
RESTREINT
CIREA 17
ITEM NOTE
from: Permanent Representatives Committee
to: Council (Justice and Home Affairs)
No. prev. doc.: 9943/93 CIREA 8

Subject: Procedure for drawing up reports in connection with joint assessments of the situation in third countries

1. At its meeting on 29 and 30 November 1993, the Council (Justice and Home Affairs) reached agreement in principle on the text set out in the Annex hereto, subject to the Netherlands withdrawing a parliamentary scrutiny reservation and Spain withdrawing a general reservation.

2. At the meeting of the Council (Justice and Home Affairs) on 23 March 1994, the Netherlands delegation stated that the above reservation had been withdrawn.

3. In a letter dated 7 March (see 5450/94 ASIM 55), the Spanish delegation stated that it would withdraw the general reservation on asylum which had been entered at the Justice and Home Affairs Council on 29 and 30 November 1993.

4. It is therefore suggested that the Committee recommend that the Council adopt the text annexed hereto at one of its forthcoming meetings.

ANNEX PROCEDURE FOR DRAWING UP REPORTS in connection with joint assessments of the situations in third countries.

1. The Presidency or any Member State will submit written proposals to CIREA for countries on which the preparation of joint reports is envisaged.

2. Following a decision on the matter in CIREA, its Chairman will request the Chairman of the CFSP Political Committee to draft a report on the situation in one or more third countries on the basis of WGI 1535 REV 1.

3. That request will immediately be forwarded to the Chairman of the corresponding CFSP regional group(s).

4. The representation of the country holding the Presidency in the country/countries concerned will be instructed without delay to draft a report with colleagues from the other Member States.

The time-limit for the reply will generally be two or three weeks. It will be shorter where an existing report is being updated.

5. Should the drafting of the report be delayed or rendered impossible, CFSP sources will quickly inform the Chairman of CIREA of the reasons for that situation.

6. Once drafted, the joint report will be circulated to the CFSP bodies, which will examine it as soon as possible.

7. Once finalized within CFSP bodies, the report will be forwarded by the appropriate body to the Chairman of CIREA for distribution to CIREA members without delay.

8. In exceptional circumstances the Chairman of CIREA may ask the CFSP Chairman to send him an urgent report so that CIREA can examine the situation.

9. The same procedure applies to the updating of reports.

33

Circulation and confidentiality of joint reports on the situation in certain third countries

Introduction

Circulation and confidentiality of joint country reports on the situation in certain third countries (7473/94 CIREA 18, 3 June 1994). The mechanics of distribution of joint reports, which may only be made available to the asylum-seeker on appeal against a negative decision of the national authority.

Circulation and confidentiality of joint reports on the situation in certain third countries

Reference:

3 June 1994
7473/94
RESTREINT
CIREA 18
"I/A" ITEM NOTE
from: Permanent Representatives Committee
to: Council (Justice and Home Affairs)
No. prev. doc.: 10298/93 CIREA 12

Subject: CIREA

Circulation and confidentiality of joint reports on the situation in certain third countries

1. At its meeting on 29 and 30 November 1993, the Council (Justice and Home Affairs) reached agreement in principle on the text set out in the Annex hereto., subject to the Netherlands withdrawing a parliamentary scrutiny reservation and Spain withdrawing a general reservation.

2. At the meeting of the Council (Justice and Home Affairs) on 23 March 1994, the Netherlands delegation stated that the above reservation had been withdrawn.

3. In a letter dated 7 March (see 5450/94 ASIM 55), the Spanish delegation stated that it was withdrawing the general reservation on asylum which had been entered at the Justice and Home Affairs Council meeting on 29 and 30 November 1993.

4. It was therefore suggested that the Committee recommend that the Council adopt the text annexed hereto at one of its forthcoming meetings.

ANNEX

Circulation and confidentiality of
joint reports on the situation in certain third countries

The joint reports, possibly accompanied by an internal note from CIREA, addressed to Steering Group I (Asylum/Immigration) and containing its observations, will be sent to the heads of delegations in that Group and they will be responsible for deciding on national circulation of joint reports within the limits laid down in the two indents below.

The national authorities responsible for matters concerning asylum and aliens will be able to use the reports together with the other items of information at their disposal.

Depending on national procedures, these reports may be made available to the parties involved in a dispute when there is an appeal against a decision by the authorities responsible for matters concerning asylum or aliens.

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First activity report, from CIREA to the Ministers responsible for Immigration

Introduction

First activity report from CIREA to the ministers responsible for immigration (SN 2834/93 WGI 1503 CIREA 66, dated 14 May 1993). Describes progress in setting up CIREA, information collation, use of material from the UNHCR database, the joint assessment procedure and informal liaison with interested third countries on subjects of "common interest".

First activity report, from CIREA to the Ministers responsible for Immigration

Reference:

Ad Hoc Group on Immigration
14 May 1993
SN 2834/93 (WGI 1503 CIREA 66)
CONFIDENTIAL
No previous doc.: WGI 1466 CIREA 56

Subject: First activity report, from CIREA to the Ministers responsible for Immigration

The Ad Hoc Group on Immigration hereby submits the first activity report concerning the work in CIREA to the Ministers responsible for Immigration.

It is recommended that the report should be published,

REPORT from the Centre for Information, Discussion and Exchange on Asylum (CIREA) to the Ministers responsible for Immigration

1. At their meeting in Lisbon on 11 and 12 June 1992 the Ministers responsible for Immigration decided to set up CIREA.

Under the decision, CIREA is to be set up as a forum for the exchange of information between the authorities of the Member States. It operates within the framework of the Secretariat-General for the Council, and the Member States are represented by the authorities responsible for the handling of applications for asylum or otherwise engaged in asylum issues in the competent EC working group.

The objective of CIREA is to act as an informal forum for the exchange of information and consultation without any form of authority to make decisions. CIREA further is to compile, exchange and disseminate information and prepare documentation on all issues in connection with asylum, which does not mean information on individual asylum-seekers.

The basis for the setting up of CIREA is provisional, as a final act is assumed to be adopted according to the rules of the Treaty on the European Union when this has been ratified and come into operation. In this connection, a detailed decision is to be made on the future financing of CIREA.

2. CIREA began its work on the above basis and held its first meeting on 15 October 1992 under the presidency of the United Kingdom. Altogether, 5 meetings have been held, and a further meeting has been planned under the Danish presidency. Representatives of the UNHCR were invited to one of these meetings for the purpose of discussing the possibilities of co-operation with the UNHCR documentation centre (CDR).

Data compilation

3. Within the framework of CIREA, the Member States have initiated the exchange of information on new - and in part planned - legislation in the field of asylum. So far, the exchange takes place in such a manner that the Member States forward a summary of the Act or the amendment to the Act together with the actual wording of the Act to the Secretariat-General for the Council, which circulates the summary to the other Member States who may then - according to their own requirements - ask for the full text from the Secretariat-General for the Council. A similar arrangement has been established as regards important decisions from legal usage; however, the arrangement is still at the opening stage.

4. A limited amount of statistical information on the number of applications for asylum, etc. has been compiled and exchanged via the Secretariat-General for the Council through several years. This work is being continued within the framework of CIREA where the statistics we sought to be developed and improved; this process, however, is rendered difficult by a very diverse way of keeping statistics in the individual countries. As a first stop towards a solution to these problems a detailed analysis of the use by the Member States of a number of terms to express definite concepts of asylum statistics has been initiated.

Co-operation with the UNHCR documentation centre

5. Through the procedure described above, CIREA will not have larger amounts of data at its disposal until after a number of years, so the possibilities of co-operation with the UNHCR documentation centre (CDR), which has computer-based data bases accessible to the public on asylum related subjects such - as conventions, legislation, legal usage, and literature at its disposal, have been examined. Representatives of

CIREA have had the opportunity to study the UNHCR data bases and the Ad Hoc, Group has suggested that the Ministers establish a system of co-operation in this field.

Joint assessments of the situation of the asylum-seeker's countries of origin

6. The Ministers responsible for Immigration took a decision to co-operate along these lines already at their meeting in Munich on 3 June 1988, based on joint reports from the local diplomatic representations of the EC countries. This work is continued within the framework of CIREA where the reports form the basis of the discussions between the asylum authorities of the EC countries. At the same time, the reports could form part of the background material in the actual handling of the asylum case in the Member States.

Finalized documents

7. At present, the following working documents coming within the sphere of CIREA have been examined, i.e.:

- Compilation of texts on European asylum practice;
- Schedule for the purpose of an improved oral exchange of data at the CIREA meetings;
- Principles for the dissemination of information from CIREA;
- Principles for the procedure in relation to the EPS co-operation in connection with the preparation of joint reports on the situation of countries of origin together with the further use of the reports in the national asylum procedures;
- Principles for the selection of new countries to be made the subject of joint reports;
- Reports on the contents of the UNHCR data bases.

Future work of CIREA

8. From now on, the work with increased and improved information on legislation, practice and statistics will be continued, including on co-operation with UNHCR, if possible. Likewise, the work with joint reports on the conditions of the asylum seekers' countries of origin will be continued not only for the purpose of improving the decision basis in the Member States but also as a background for discussions at meetings in CIREA with a view to harmonizing the use by the Member States of the refugee concept of Article 1A of the Geneva Convention as we go along. In this connection, the work on more detailed criteria for the contents of the joint reports will also be continued.

9. Furthermore, a draft for a final legal act, including an attitude to a final structure and the financing of the organization, will be prepared.

10. Finally, CIREA's character of informal forum wilt be further developed by invitations to representatives of third-party countries to participate in meetings on subjects of common interest.

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EURODAC: Progress Report to Ministers by the Ad Hoc Group on Immigration

Introduction

EURODAC - Progress report to Ministers by the Ad Hoc Group on Immigration (SN 4683/92 WGI 1271, dated 16 November 1992). An early report on the feasibility of establishing an automated fingerprint recognition system for asylum applicants to detect concurrent and consecutive applications in the member states, now well on the way to implementation.

EURODAC: Progress Report to Ministers by the Ad Hoc Group on immigration

Reference:

Ad Hoc Group Immigration
16 November 1992
SN 4683/92 WGI 1271
CONFIDENTIAL
Subject: EURODAC

Progress Report to Ministers by the Ad Hoc Group on immigration

1. At its meeting on 12 and 13 November 1992, the ad hoc Group on immigration finalized the progress Report of the feasibility of establishing an automated fingerprint recognition system for asylum applicants (EURODAC).

2. The Ad Hoc Group suggests that the Ministers with responsibility for immigration note progress with this work.

EURODAC

Progress Report to Ministers by the Ad Hoc Group on Immigration

Introduction

Immigration Ministers meeting in the Hague in December 1991 agreed that a study should be undertaken of the feasibility of establishing amongst the Member States an automated fingerprint recognition system for asylum applicants in order to assist in deterring and detecting those applicants making multiple applications in different Member States and to assist in the operation of the Dublin Convention. This report informs Ministers of progress on this work; recommends that the next stage should be the engagement of consultants to undertake a user requirement; and summarises a number of legal issues on which further work will be required.

Feasibility Study

1. The feasibility study was undertaken by fingerprint experts from the Netherlands, Portugal and United Kingdom. This study was not the subject of consensus between the Member States but it allowed the main issues and options to be identified. It made the following observations:

(i) It noted that technology is already in existence capable of meeting in principle the technical requirements for EURODAC.

(ii) It concluded there are four principal architectural options ranging

from a highly centralized system at one extreme to one which is fully localized at the other.

(iii) It concluded that there are no technical barriers to the storage and transmission of fingerprint images, which may be done on paper or electronically, with a further option to live scan recording.

(iv) It identified the associated date options and made some suggestions for additional information which needed to be stored.

(v) It sought to identify the performance standards to be required of the system based on accuracy and speed requirements set by the users.

(vi) It described options for conversion of existing records and noted that financial considerations may weight on the final choice of option.

User Requirement

2. The Ad Hoc Group considers that, given the feasibility of the proposal at a technical level, the next step must be to produce a comprehensive user requirement. This will require detailed consultation with all Member States to establish exactly the individual needs and requirements of all potential users of the system, which will affect the eventual technical options chosen.

3. The production of a user requirement is a highly specialized task and the Ad Hoc Group considers that the work could most satisfactorily be undertaken by independent expert consultants. It is estimated that the basic cost of the consultancy will be ECU 109,000 (= £85,000) plus travel expenses. The terms of reference of this consultancy should be discussed further in the Asylum Sub-Group. It is important that the question of this study should be resolved as soon as possible.

4. it is estimated that the user requirement will require some six months to complete. Subject to satisfactory progress the next stage would be the drafting of detailed technical specifications, a process which would take a further six months, before commercial tenders could be sought.

Other-interests

5. Ministers will wish to note the interest in "EURODAC" by non-Community States. In particular Switzerland has expressed an interest in joining in the proposed system. The Ad Hoc Group considers that involvement of other countries in "EURODAC" should inter alia be contingent upon their accession to a Convention parallel to the Dublin Convention. The ad hoc Group is convinced that there can be no question of a linking between EURODAC and the European Information System (EIS).

Legal issues

6. There are, inter alia, a number of legal issues which will require further consideration. These are:

(i) Does Article 15 of the Dublin Convention provide a sufficient legal basis for EURODAC or is there a need for additional legal bases;

(ii) The nature of the legal instrument leading to the establishment of EURODAC;

(iii) What specific data protection measures - if any - would be needed to accompany the system;

(iv) The legal basis and consequences arising from the identification of two similar sets of fingerprints;

(v) Advice on how any existing systems in individual States could be legally incorporated in "EURODAC";

(vi) The examination of lists of data which may be recorded at the same time as a fingerprint.

Conclusions

7. Ministers are therefore invited to note progress with this work.

36

Conclusion on people displaced by the conflict in the former Yugoslavia

Introduction

Conclusion on people displaced by the conflict in the former Yugoslavia (adopted London, 30 November and 1 December 1992 by the meeting of immigration ministers). The response to the flood of war refugees from the former Yugoslavia was to offer "temporary protection" to limited numbers while funding UNHCR and Red Cross efforts to care for displaced people in locations as close as possible to their former homes. The document sets out the principles adopted by the member states in relation to temporary protection. UNHCR (together with Germany, which has taken most of the refugees) has been consistently critical of member states for failure to admit refugees from former Yugoslavia equitably.

Conclusion on people displaced by the conflict in the former Yugoslavia

Reference: press release. Adopted at the meeting of Immigration Ministers in London, 30 November - 1 December 1992.

CONCLUSION ON PEOPLE DISPLACED BY THE CONFLICT IN THE FORMER YUGOSLAVIA

1. Ministers draw attention to the common position taken by the European community and its Member States at the Conference organised under the auspices of the United Nations High Commissioner for Refugees in Geneva on 29 July 1992, namely:

that large scale and permanent movements of people outside the former Yugoslavia are likely to encourage the inhumane and illegal practice of ethnic cleansing by extremists. This practice should not be permitted to undermine attempts to find a just and lasting solution to the problem of the former Yugoslav republic;

that such a solution will not be assisted by the permanent large scale movements of people outside the boundaries of the former Yugoslavia;

that, in line with the views of the UN High Commissioner for Refugees, displaced people should be encouraged to stay in the nearest safe areas to their homes, and that aid and assistance from the Member States should be directed towards giving them the confidence and the means to do so;

that the burden of financing relief activities should be shared more equitably by the international community.

2. Ministers pay tribute to the work of the UN High Commissioner for Refugees in the former Yugoslavia and commit themselves to continue to co-operate with her office and other humanitarian agencies, in particular the International Committee of the Red Cross, in alleviating the humanitarian aspects in former Yugoslavia. They recognise the growing urgency of the crisis taking into account in particular the effects of the winter.

3. The Community and its Member States have already responded positively to the request of the UN High Commissioner for Refugees to meet the urgent protection and other humanitarian needs of people from the former Yugoslavia who have been compelled to leave their homes in search of safety. Ministers note in particular her request to States to respond by providing protection on a temporary basis to certain

vulnerable categories of people within or at their borders who have been forced, by the conflict and violence, to flee from their homes, until such time as they can return safely, and will do their best to meet it.

4. Ministers welcome the fact that in most Member States special arrangements have now been put in place, consistent with national laws and procedures, to meet the special circumstances of those displaced by the conflict in former Yugoslavia. They undertake that they will respect the following guidelines:

- flexible application of visa and entry controls;

- readiness to offer protection on a temporary basis to those nationals of the former Yugoslavia coming direct from combat zones who are within their borders, and who are unable to return to their homes as a direct result of the conflict and human rights abuses;

- commitment not to return to areas in which they would be at risk such national of the former Yugoslavia who arrive at their frontiers;

- arrangements to permit individuals to work or to receive social benefits and gain access to training programmes which will facilitate their return in due course;

- willingness to assist with the evacuation from the former Yugoslavia, in co-operation with UNHCR and the ICRC, of people with special humanitarian needs, within their national possibilities;

- provisions to assist with material assistance in supporting reception centres in the former Yugoslavia.

5. The Ministers state that they are in principle willing to admit temporarily on the basis of proposals made by UNHCR and the ICRC and in accordance with national possibilities and in the context of a coordinated action by all the Member States, persons from the former Yugoslavia who:

- have been held in a prisoners-of-war or internment camp and cannot otherwise be saved from a threat to life or limb;

- are injured or seriously ill and for whom medical treatment cannot be obtained locally;

- are under a direct threat to life or limb and whose protection cannot otherwise be secured.

The Ministers call upon the Presidency, in co-operation with UNHCR, to negotiate with other States, to create the necessary conditions to enable these States also to be involved in the reception of nationals of the former Yugoslavia in the context of temporary admission arrangements.

The Ministers have decided to set up a special sub-group under the ad hoc group concerning immigration with the purpose of considering the situation of refugees from the former Yugoslavia. The group will gather information on the legal basis of the different countries in particular their visa policies.

6. They welcome the view of the UN High Commissioner for Refugees that, where such temporary protection has been provided to people fleeing from the former Yugoslavia, States do not necessarily need to provide simultaneous access to individualised asylum procedures.

7. Ministers consider that not all nationals of the former Yugoslavia who travel abroad are necessarily in need of protection and they note the views of the United Nations High Commissioner for Refugees that situations may arise where protection may no longer be required for certain groups of persons while remaining essential for others. They welcome the readiness of the United Nations High Commissioner for Refugees to assist in assessing the continuing need for temporary protection, making full use of her office's presence and contacts throughout the former Yugoslavia. Ministers recognise, in common with the United Nations High Commissioner for Refugees, that practical arrangements and assistance may in due course be necessary to facilitate the return and re-integration of nationals who have been given temporary protection outside the boundaries of the former Yugoslavia. They confirm their willingness to co-operate with the appropriate agencies in the matter of return and re-integration.

37

Resolution on certain common guidelines as regards the admission of particularly vulnerable persons from the former Yugoslavia

Introduction

Resolution on certain common guidelines as regards the admission of particularly vulnerable persons from the former Yugoslavia (adopted Copenhagen, 1 June 1993 by the meeting of immigration ministers). Reaffirmed the principle of regional "safe havens" and defined more closely persons who would be given temporary protection within the EC (the injured, ex-prisoners of war and those coming directly from combat zones).

Resolution on certain common guidelines as regards the admission of particularly vulnerable persons from the former Yugoslavia

Reference: Ad Hoc Group on Immigration. Agreed in Copenhagen on 1 June 1993 at the meeting of Immigration Ministers.

Subject:
Resolution on certain common guidelines as regards the admission of particularly vulnerable persons from the former Yugoslavia.

The Ministers recorded their agreement on the above Resolution.

RESOLUTION ON CERTAIN COMMON GUIDELINES AS REGARDS THE ADMISSION OF PARTICULARLY VULNERABLE GROUPS OF PERSONS FROM THE FORMER YUGOSLAVIA

THE MINISTERS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES RESPONSIBLE FOR IMMIGRATION IN THE MEMBER STATES OF THE EUROPEAN COMMUNITIES, meeting in Copenhagen on 1 and 2 June 1993,

CONCERNED at the continuing humanitarian crisis in the former Yugoslavia,

RECALLING the common position adopted by the European Community and its Member States at the Geneva Conference of 29 July 1992 organized by the United Nations High Commissioner for Refugees,

RECALLING the conclusions of the European Council meeting held on 11 and 12 December 1992 in Edinburgh,

DECLARING their support for the work carried out both within and outside the former Yugoslavia by the United Nations High Commissioner for Refugees and by other humanitarian organizations,

EMPHASISING that, in accordance with the approach of the United

Nations High Commissioner for Refugees that protection and assistance should wherever possible be provided in the region of origin, they consider that displaced persons should be helped to remain in safe areas situated as close as possible to their homes, and that the efforts of the Member States should be aimed at creating safe conditions for these persons and sufficient funds for them to be able to remain in these areas,

REAFFIRMING their willingness, in co-operation with the United Nations High Commissioner for Refugees, to admit, according to their possibilities, particularly vulnerable persons in order to afford them temporary protection,

HAVE ADOPTED THE FOLLOWING RESOLUTION:

1. Member States, in compliance with their national procedures and laws, will take suitable measures for the admittance, within the limits of the possibilities of each Member State, of particularly vulnerable persons from the former Yugoslavia in order to afford them temporary protection.

These arrangements are especially intended to apply to:

(a) persons from the former Yugoslavia who:

- have been held in a prisoner-of-war or internment camp and cannot otherwise be saved from a threat to life or limb;

- are injured or seriously ill and for whom medical treatment cannot be obtained locally;

- are under a direct threat to life or limb and whose protection cannot otherwise be secured;

- have been subjected to sexual assault, provided that there is no suitable means for assisting them in safe areas situated as close as possible to their homes;

(b) persons from the former Yugoslavia who have come directly from combat zones within their borders and who cannot return to their homes because of the conflict and human rights abuses.

2. Member States will endeavour to administer such arrangements on the basis of the overall objective that persons from the former Yugoslavia who are admitted to the Member States and given temporary protection are to return to an area in the former Yugoslavia in which they can live in safety as soon as the conditions in that area make it possible to do so safely.

3. Each Member State will make every effort to take the measures required to enable the persons concerned to stay on its territory temporarily within the framework of the general objective referred to in point 2.

To that end Member States will in particular ensure the implementation of principles conducive to conditions in which the persons admitted to their territory can live in dignity during their stay.

Those principles shall include the following:

- the persons concerned shall be entitled to stay temporarily as far as is possible until conditions are suitable for their return, unless their stay constitutes a threat to public order, national security or the international relations of the Member States;

- arrangements must be made for access to resources which allow them to live in decent conditions. Each Member State will determine the appropriate level and the means of achieving this, whether by earnings from work, exceptional aid or social benefits; they will pay special attention to the possibilities for housing the persons admitted;

- Member States will pay due heed to the possibilities for access to health care, each Member State determining the arrangements for setting up this benefit;

- Member States will make every endeavour to ensure children can develop normally. To that end the host State will in particular ensure that they can attend school;

- as far as is possible, arrangements will be made for contacts to be maintained with close relatives (spouses and children who are minors). In exceptional circumstances, in particular on humanitarian grounds, provisional permission to stay may be granted for this purpose;

- whenever possible, the persons concerned will be informed of the conditions of stay in the host country;

- as far as is possible, with the involvement of local authorities and associations, displaced persons will be encouraged to take part in the host country's cultural and social activities.

These principles will be implemented in respect both of persons whose admission has been organized directly by the Member States and of those who make their own way to national territory once they have been granted provisional leave to stay. Member States will in this regard be motivated by the traditions of respect for the rights of the individual on which the European Community is built.

38

Recommendation regarding practices followed by Member States on expulsion

Introduction

Recommendation regarding practices followed by member states on expulsion (adopted London, 30 November and 1 December 1992 by the meeting of immigration ministers. SN 4678/92 WGI 1266, dated 16 November 1992). The first attempt to "harmonise" treatment of failed asylum-seekers, deportees and illegal entrants sets out the general rule, ie expulsion, normally to the country of origin, and legitimises the use of administrative detention pending expulsion and of fingerprinting to assist identification (and so issue of travel documents). Also encourages introduction of laws criminalising assistance to illegals, readmission agreements facilitating removal and exchange of information. Seminal in development of member states' domestic policies.

Draft Recommendation regarding practices followed by Member States on expulsion

Reference: Adopted by meeting of Immigration Ministers on 30 November - 1 December 1992

Ad Hoc Group Immigration
16 November 1992
SN 4678/92 WGI 1266
CONFIDENTIAL
No. previous doc.: WGI 1258

Subject:
Recommendation regarding practices followed by Member States on expulsion

RECOMMENDATION
regarding practices followed by member states on expulsion

Ministers of the Member States of the European Communities responsible for Immigration, meeting in London on 30 November and 1 December 1992

WITH A VIEW to reflecting the best practices existing in Member States and to meeting the requirements of speed, efficiency, effectiveness and economy with regard to expulsion;

TAKING ACCOUNT of the need for effective means to identify, apprehend and expel those who are required to leave the territory of the Member States;

NOTING that this Recommendation does not affect the provisions of international conventions currently in force on extradition;

NOTING that this Recommendation is without prejudice to Community law;

NOTING that this Recommendation does not apply to people refused entry at the border or who are identified attempting to cross the border illegally;

ADOPTED THE FOLLOWING RECOMMENDATION

GENERAL POLICY

1. Member States will ensure that without prejudice to Community law, their policies and practice with regard to expulsion are fully consistent with their obligations under the 1951 Geneva Convention relation to the Status of Refugees and the 1967 New York Protocol. Account should also be taken of other relevant international instruments, including the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms.

2. Subject to the above, the general rule should be that people found:

(A) to have entered or remained unlawfully in Member States (where their stay has not been regularised);

(B) to be liable to expulsion on grounds of public policy or national security; or

(C) to have failed definitively in an application for asylum and to have no other claim to remain, should be expelled, unless there are compelling reasons, normally of a humanitarian nature, for allowing them to remain. In addition, consideration should be given to the question whether, in appropriate circumstances, a person who has been working in breach of immigration/aliens or related provisions should be expelled.

3. In accordance with Article 15(2) of the draft External Frontiers Convention expulsion should be to the country of origin or to any other country to which the individual may be admitted. Where a person is being expelled on public policy or national security grounds this should not be to another Member State unless the individual has a right of residence there.

4. There should be provision for expulsion under either criminal or administrative law.

5. People being expelled should be notified in an appropriate manner of the reasons for the decision unless the interests of national security make such notification undesirable.

6. Whenever there is any doubt about a person's ability to understand the language in which an interview is being conducted, consideration should be given to the provision of an interpreter.

7. There should be a right to be represented and an appropriate means to challenge expulsion decisions.

8. Expulsion should take place as soon as possible after the decision to expel the individual has been taken.

RESTRICTIONS ON PERSONAL LIBERTY

1. There should be power in appropriate circumstances to restrict the personal liberty of people liable to expulsion.

2. Any restriction on liberty should be limited to the period necessary to effect expulsion, including identification, the making of any necessary arrangements and the provision of tickets, travel documents and escorts.

3. Appropriate places of custody should be available, where possible providing accommodation separate from that used by prisoners.

4. People in custody with a view to expulsion should have reasonable access to legal advisers and others in accordance with the general rules relating to the place of custody.

DOCUMENTATION

1. Any necessary arrangements for the identification and documentation of the individual should be made at the earliest possible opportunity.

2. Insofar as legislation does not already so permit consideration should be given to the introduction of laws to allow the fingerprinting of those to be expelled, to assist identification.

3. With a view to minimising delays in obtaining necessary travel documents and/or visas, early contact should be established with the Embassy or Consular authorities of States to which expulsion is to be effected and/or through which transit will be necessary

4. Where a travel document is not held and cannot be arranged within a reasonable period, consideration should be given to the use of a "one-way" document similar to that referred to in paragraph 3.38 and Appendix 8 of Annex 9 to the Chicago Convention.

RE-ADMISSION AGREEMENTS

1. Insofar as re-admission agreements do not already exist, consideration should be given to establishing them with appropriate States. Where possible, such agreements should be multilateral, but where this is not possible bilateral agreements should be considered. Consideration should be given to preparing agreements in a standard format and, in the case of multilateral agreements, these might be along the lines of that between Poland and the Schengen States, with such adaptations as appear necessary to take account of national situations and practical experience of that agreement.

2. When re-admission agreements have been concluded Member States should communicate details of them to Community partners.

3. Specific measures should be adopted bilaterally or multilaterally as required with a view to improving existing arrangements among Member States for re-admission.

PROSECUTION OF FACILITATORS OF ILLEGAL ENTRANTS AND THOSE WHO HARBOUR PEOPLE WHO HAVE ENTERED OR REMAINED UNLAWFULLY AND ACTION AGAINST THOSE WHO EMPLOY ILLEGAL ENTRANTS

1. Insofar as legislation does not already exist, Member States should consider the introduction of laws which would provide for the prosecution of people who knowingly facilitate or attempt to facilitate the entry or transit of illegal entrants, and, subject to appropriate safe-guards, of those who knowingly harbour those who have entered or remained unlawfully. It will be particularly appropriate to provide for the prosecution of those who commit such acts for reward or in an organized way. It is also recommended that appropriate measures should be taken to combat the employment of those known to have entered or remained in breach of the immigration or aliens provisions or who are not authorised to work under immigration/aliens or related provisions.

2. Consideration should also be given to the question whether it would be appropriate to have power to expel people subject to immigration/aliens

provisions who have been involved in the facilitation, harbouring or employment of illegal immigrants.

3. The European Convention on Mutual Assistance in Criminal Matters provides a cooperative framework between countries enabling those signatory to it to obtain and supply evidence for use in criminal proceedings, both in their own country and in others, and to facilitate the appearance of individuals from one country, in criminal proceedings to another. Insofar as national policy permits, Member States are encouraged to enter into arrangements which would enable them to assist their Community partners, for example in obtaining evidence, or service of summonses or other judicial documents on suspects or witnesses.

CONFISCATION OF MODES OF TRANSPORT USED BY THOSE WHO FACILITATE ILLEGAL ENTRANTS

1. Insofar as legislation does not already exist, Member States should consider the introduction of laws which would permit a court, which had convicted a person of knowingly facilitating or attempting to facilitate unlawful entry, to order that the vehicle, ship or aircraft used should be forfeited. However, such legislation might specify limits on the exercise of the power to order confiscation, relating, for example, to the knowledge of the owners and to the size and nature of the vehicle, ship or aircraft involved.

TRANSIT DURING THE COURSE OF EXPULSION

1. Where a person who is being expelled cannot be sent direct to his point of destination, arrangements for the expulsion should be in accordance with the guidelines set out in WGI 1110.

ESCORTS

1. In order to ensure that a person being expelled reaches the intended destination, consideration should always be given to the question whether an escort is required. Escorts may be necessary either for those who require assistance or those who are likely to resist expulsion and may be a potential danger to themselves or others. Early consultation with the carrier is recommended in cases in which an escort may be necessary.

SELECTION, TRAINING AND EQUIPMENT OF THOSE INVOLVED IN EXPULSION

1. All staff charged with the duty of expulsion should be appointed for the purpose and should receive appropriate training.

2. Staff should be properly trained and equipped to tackle the problems of illegal immigration and traffickers. In considering Forgery Detection Training it will be particularly appropriate to take account of the evaluation of the Pilot Course for Training Instructors from Member States.

3. Bearing in mind that costs of investigation, detention and removal can be reduced if illegal immigrants can be prevented from entering Member States, there are benefits to be gained from providing appropriate technical equipment, for example for the detection of forged and falsified documents.

4. Account should be taken of initiatives already underway in other fora on which Member States are represented.

EXCHANGES OF INFORMATION

1. With a view to combating the unlawful trafficking of illegal immigrants, Member States should arrange for appropriate exchange of information with their Community partners, perhaps through CIREFI, if established.

2. With a view to encouraging appropriate exchanges of information the principles set out in the Appendix to this paper are commended to Member States.

3. It is acknowledged that in considering the exchange of personal information States will have to take account of relevant national Data Protection legislation. It is noted that the need for an international agreement containing an appropriate standard for data protection should be considered.

4. Subject to the need to comply with national legislation and data protection requirements, where fingerprints have been taken for the purpose of documenting a person liable to be expelled, Member States should be prepared to make them available to another Member State, if this will assist in making arrangements for expulsion and the individual does not have an acceptable travel document.

APPENDIX

EXCHANGES OF INFORMATION

1. **Contacts for exchange of information**

1.1 It is desirable to have broad exchanges of information, which might involve exchanges of operation experience. These present an opportunity for discovering the practices used by traffickers of illegal immigrants and to take action to prevent them.

1.2 In addition, there is value in having personal contacts for the exchange of information, and the value of such contacts could be increased by countries exchanging officers for training or other purposes. This is relevant not only in neighbouring countries but elsewhere also.

1.3 The Presidency proposes to circulate a questionnaire designed to supplement and up-date existing information about useful points of contact in other Member States.

2. **Exchange of non-personal information**

2.1 Exchanges of non-personal factual information have a most important part to play in combating illegal immigration. These exchanges might be of both an informal, albeit structured nature, and of a formal nature.

2.2 The speed of exchanging information is most important.

2.3 Information should be exchanged about the routes and the methods of illegal entry that were used; about the transit points that illegal entrants and their traffickers used; about the nationalities involved; and in particular about emerging trends concerning those nationalities.

2.4 It is also important to have information about the main types of vehicle used and to consider what could be done to deter people from trying to travel illegally, for example by the use of publicity when traffickers are caught and in particular when traffickers are sentenced to imprisonment or are otherwise punished, for example by confiscation of the ship, aircraft or vehicle used.

2.5 Account should be taken of arrangements already in force, for example those which have been reached within groups such as the Schengen Group and TREVI, in order that those planning exchanges of information might benefit from the experience already gained.

3. **Exchange of personal information**

Arrangements for the exchange of information about those known or suspected of involvement in organized illegal entry may assist considerably in combating it. It is of particular importance that the information passed should be sufficient to enable the individual to be readily identified, and that it should be passed speedily to the competent authorities in other Member States.

39 and 40

Recommendation regarding transit for the purposes of expulsion

and

Conclusion on Greater flexibility in the application of the provisions on transit for the purposes of expulsion

Introduction

Recommendation regarding transit for the purposes of expulsion (adopted London, 30 November and 1 December 1992 by the meeting of immigration ministers. SN 4687/92 WGI 1275. Plus Addendum, dated 6 April 1993. SN 5230/3/92 WGI 1310). Recommends direct removal of deportees as far as possible, and where not, sets out procedures for taking deportee through another member state. Unusually this Recommendation was amended in 1993 to make transit easier.

Recommendation regarding transit for the purposes of expulsion

Reference:

Adopted at the Immigration Ministers meeting in London on 30 November - 1 December 1992
SN 4687/92
WGI 1275

RECOMMENDATION regarding transit for the purposes of expulsion

The Ministers of the Member States of the European Communities meeting in London on 30 November and 1 December 1992 responsible for Immigration,

CONSIDERING Member States' practices with regard to transit for the purposes of expulsion;

WHEREAS those practices should be more closely aligned with a view to their harmonization;

WHEREAS the measures to be applied must meet the requirements of speed, efficiency and economy,

RECOMMEND application of the following guidelines:

I

For the purposes of this Recommendation, "transit" means the passage of a person who is not a national of a Member State through the territory or through the transit zone of a port or an airport of a Member State.

II

A Member State which has decided to expel a third-country national:

- to a third country, should as a rule do so without the alien passing through the territory of another Member State;

- to another Member State, should as a rule do so without the alien passing through the territory of a third Member State.

III

1. Where particular reasons so warrant, in particular reasons of efficiency, speed and economy, a Member State may request another Member State to authorize the entry into its territory and transit through that territory of a third-country national who is subject to expulsion.

2. Before submitting such a request, the State which has taken the expulsion measure will ascertain that in normal circumstances the continuation of the journey of the person expelled and his admission into the country of destination are assured.

3. The State to which such a request is addressed will comply with it subject to the cases detailed at VI.

IV

The State taking the expulsion measure will notify the transit State whether the person being expelled needs to be escorted.

The transit State may:

- authorize the State which has taken the expulsion measure to provide the escort itself;

- or decide to provide the escort itself;

- or decide to provide the escort in collaboration with the State which has taken the expulsion measure.

V

1. The request for transit for the purposes of expulsion should contain information relating to:

- the identity of the alien being expelled;

- the State of final destination;

- the nature and date of the expulsion decision; the authority which took the decision;

- the evidence for believing that the alien is admissible into the country of final destination or into the second transit country;
- the travel documents or other personal documents in the possession of the person concerned;

- the identity of the body making the request;

- the conditions relating to passage through the requested State (schedule, route, means of transport, etc);

- the need for an escort and the escort arrangements.

2. The request for transit for the purposes of expulsion should be addressed as soon as possible to the authorities responsible for expulsion in accordance with the relevant internal law of the requested State, and they should reply promptly.

3. The transit State may request information, in particular regarding the necessity of transit.

VI

Cases in which transit for the purposes of expulsion may be refused:

- where, in the case of transit overland, the alien constitutes a threat to the public order, national security and international relations of the transit

State;

- where, the information referred to at V.3 is considered unsatisfactory.

VII

If, for whatever reason, the expulsion measure cannot be enforced, the State through which the transit is being carried out may return the person expelled, without formality, to the territory of the requesting State.

VIII

Responsibility for costs

Where the costs of expulsion cannot be borne by the alien or by a third person, the requesting State will take responsibility for:

- the travel costs and other expenses, including escort costs, incurred until the alien whose transit has been authorized leaves the Member State of transit;

- where applicable, the costs of return.

IX

These recommendations do not preclude closer co-operation between two or more Member States.

X

A Member State intending to conduct negotiations with another Member State or with a third country on transit for the purposes of expulsion will inform the other Member States thereof in good time.

XI

This Recommendation does not affect the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 or those of the Convention relating to the Status of Refugees.

It does not affect the provisions of international Conventions currently in force on extradition and extradition in transit.

It may not have the effect of substituting transit for the purposes of expulsion for extradition and transit extradition procedures.

This Recommendation was, unusually, amended:
The following was adopted as: "Conclusion concerning greater flexibility in application of the provisions on transit for the purposes of expulsion" at the meeting of Immigration Ministers, Copenhagen, 1-2 June 1993.

Greater flexibility in the application of the provisions on transit for the purposes of expulsion

Reference:

Ad Hoc Group Immigration
6 April 1993
SN 5230/3/92 (WGI 1310)
REV 3
CONFIDENTIAL

Subject: Greater flexibility in the application of the provisions on transit for the purposes of expulsion (WGI 1275)

The Ad Hoc Group on Immigration would suggest that Ministers agree to this addendum to the Recommendation regarding transit for the purposes of expulsion, adopted at their meeting in London (WGI 1275)

ADDENDUM to the Recommendation regarding transit for the purposes of expulsion (WGI 1275)

1. With a view to meeting the requirements of efficiency, speed and economy in connection with necessary transit, a distinction may be drawn between the different measures taken by the Member States to effect expulsion by way of air, water and overland transport.

2. Expulsion by air and passage through the transit zone of an airport in connection therewith should be excluded from the scope of the provisions on requesting authorisation for entry and transit (see WGI 1275, III), so that in such cases the country of transit is merely informed.

3. Notification of transit for the purposes of expulsion by air should contain information as described in WGI 1275, V, concerning requests for transit.

4. In the case of expulsion overland or by water, requests and notifications for entry into or transit through the territory of a State are to be addressed to a central contact body indicated by the country of transit, in accordance with the recommendations contained in WGI 1275.

In the case of expulsion by air, were transit to be refused by the transit country, this information should be transmitted to the requesting State within a period of 24 hours of the transit being notified.

5. A common list of contact bodies should be drawn up by the Member States.

In case of expulsion by air, direct contacts should be made with the appropriate officials at the transit airport in question or, depending on national procedures, with any other appropriate official, provided the 24-hour rule (see point 4 above) is respected.

41

Recommendation concerning checks on and expulsion of third country nationals residing or working without authorization

Introduction

Recommendation concerning checks on and expulsion of third country nationals residing or working without authorisation (SN 3017/93 WGI 1516). This time the emphasis is on detection of those working and living in member states without permission, including rejected asylum-seekers and persons who have contracted immigration marriages.

Recommendation concerning checks on and expulsion of third country nationals residing or working without authorization

Reference:

Ad Hoc Group Immigration
25 May 1993
SN 3017/93 WGI 1516
CONFIDENTIAL

Subject:
Draft Recommendation concerning checks on and expulsion of third country-nationals residing or working without authorization. (previous doc. : WGI 1418)

The Ad Hoc Group on immigration submits to the Ministers responsible for Immigration, for approval at their meeting on 1/2 June 1993, the following text of the above mentioned recommendation.

RECOMMENDATION concerning checks on and expulsion of third country nationals residing or working without authorization

MINISTERS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES, RESPONSIBLE FOR IMMIGRATION

HAVING REGARD to the high priority given to promoting a common approach to the question of illegal immigration adopted by the ministers responsible for Immigration and by the European Council at Maastricht ;

HAVING REGARD to the need to reinforce common endeavours to combat illegal immigration reiterated by the European Council at Edinburgh ;

HAVING REGARD to the fact that this objective presupposes the improvement of means for checking and expelling third-country nationals who are in an irregular situation ;

HAVING REGARD to the recommendation regarding practices followed by Member States on expulsion adopted by Immigration ministers in London [see doc WGI 1266].

NOTING that it is fundamental to expulsion practices that there should also be effective means of identifying and apprehending those to be expelled ;

NOTING that the implementation of the measures outlined in this recommendation will need to take account of the nature and extent of illegal immigration to be combatted in particular Member States;

STRESSING that, in the light of the recommendation adopted at the Ministerial Conference held in Budapest on the implementation of measures to deal with uncontrolled migration, measures should be taken to combat the employment of those known to have entered or remained illegally or those whose immigration status does not allow them to work ;

NOTING that this recommendation is without prejudice to Community law and also takes into account other relevant international instruments including the 1950 Convention for the protection of human rights and fundamental freedoms, the 1951 Geneva Convention relating to the status of refugees and 1967 New York Protocol ;

NOTING in particular that this recommendation excludes from its scope:

- nationals of some EFTA countries who will have rights of free movement when the Agreement on the European Economic Area comes into force ;

- family members of nationals of Member States and of some EFTA countries entering or residing in the territories of Member States in accordance with Community law and the EEA Agreement ;

NOTING that checks and controls on the residence and employment of third country nationals shall be decided upon and carried out by those authorities which are empowered to do so under national legislation,

ADOPTED THE FOLLOWING RECOMMENDATION

1. Measures should be taken with a view to ensuring that third-country nationals do not remain beyond the period for which they have been admitted or given permission to remain and that they do not work without authority to do so.

The general rule should be that persons not entitled to free movement in conformity with Community legislation and found

(i) to have entered or remained unlawfully in Member States (where their stay has not been regularized);

(ii) to be liable to expulsion on grounds of public policy or national security; or

(iii) to have failed definitively in an application for asylum and to have no other claim to remain,

should be expelled, unless there are compelling reasons, normally of a humanitarian nature, for allowing them to remain.

2. In addition, Member States may expel persons who have been working in breach of immigration/aliens or related provisions. In this context, under the same conditions, they may also expel those people who are subject to immigration/aliens provisions who have been involved in the facilitation, harbouring or employment of illegal immigrants.

3. Checks should, in particular, be carried out in respect of persons who are known or suspected of staying or working without authority, including persons whose request for asylum has been rejected.

Member States shall examine the types of checks which would be most appropriate to introduce with a view to detecting third-country nationals who are residing or working illegally, including those persons whose application for asylum has been rejected.

4. Checks should be conducted to ensure that third-country nationals not entitled to free movement in conformity with Community legislation and who have received authorization for residence and, as the case may be, for employment for a limited period of time continue to fulfil the relevant conditions.

To this end, in appropriate circumstances Member States should consider undertaking checks, inter alia, in the following situations:

(i) persons who have received authorization for residence but not for employment;

(ii) persons who have received a residence permit, but whose work permit is of a limited nature ;

(iii) persons who work without authorization after being admitted as short-term visitors or tourists.

Furthermore, to the extent that this is necessary, Member States should consider undertaking checks in view of detecting abuse, inter alia on

(i) persons who have been authorized to be reunited with their family with a view to living together

(ii) persons who have received a residence/work permit on the basis of their marriage to a person resident in the Member State.

5. The decision as to whether checks should be conducted depends on the circumstances in any given case. Exchanges of information between Member States on the type of checks and control procedures together with related legislation should be carried out within CIREFI.

6. Checks on persons suspected of residing or working illegally in Member States are to be carried out in conformity with national legislation and should be aimed at reinforcing common endeavours to combat illegal immigration to the Community.

42

Setting up of a Centre for Information, Discussion and Exchange on the Crossing of Borders and Immigration (CIREFI)

Introduction

Setting up of a Centre for Information, Discussion and Exchange on the Crossing of Borders and Immigration (CIREFI) (adopted London, 30 November and 1 December 1992 by the meeting of immigration ministers. SN 4816/92 WGI 1277). An immigration clearing house to parallel that set up for asylum (CIREA), as a "regular, permanent vehicle for the exchange of information .. for the purpose of combatting illegal immigration". To gather information on lawful and unlawful immigration "flows", unlawful immigration methods, genuine and false travel documents, rejected asylum-seekers and illegal immigrants who abuse the asylum procedure, expulsion, carrier liability.

Setting up of a Centre for Information, Discussion and Exchange on the Crossing of Borders and Immigration (CIREFI)

Reference:
Adopted at the meeting of Immigration Ministers, London, 30 November - 1 December 1992.

Ad Hoc Group Immigration
16 November 1992
SN 4816/92 WGI 1277
CONFIDENTIAL
No. previous doc.: WGI 1249

Subject: Setting up of a Centre for Information, Discussion and Exchange on the Crossing of Borders and Immigration (CIREFI)

Establishment of a centre for information, discussion and exchange on the crossing of borders and immigration (CIREFI)

1. At their meeting in Lisbon on 11 and 12 July 1992, the Ministers with responsibility for immigration called upon the Ad Hoc Group on Immigration to submit a feasibility study for the establishment of a Centre of Information, Discussion and Exchange (Clearing House) for their meeting in December 1992. The ad hoc Group on Immigration hereby submits to Ministers its conclusions an this matter.

2. The Ad Hoc Group considers that the setting up of such a centre for information concerning the crossing of borders and immigration (CIREFI) would be beneficial.

Reasons for the establishment of CIREFI

3. The immigration work programme endorsed by Ministers at Maastricht in December 1991 (WGI 930) encompasses a wide range of topics - admission policies, common approaches to the problems of illegal immigration, analysis of the causes of immigration pressure - on which close and detailed co-operation between Member States is called for. Successful developments in these areas will require reliable data and information flows.

4. Information on a number of issues is already made available and exchanged between Member States on an ad hoc basis as required on any particular occasion. Experience has, however, shown that the exchange and collation of information have not always been particularly effective or rapid; questionnaires tend to be given low priority and need to be carefully drafted to elicit appropriate information. The ad hoc Group considers that there would be benefit in having a permanent mechanism for the regular exchange of information, supported, as the equivalent clearing house on asylum (CIREA) already is, by staff from the General secretariat of the Council of the European Communities.

5. Unlike the current Sub-Groups, which under the arrangements contemplated for the implementation of the Maastricht Treaty are intended to be temporary and to be disbanded once they have fulfilled their mandate, such a body would provide a regular, permanent vehicle for the exchange of information, with a dedicated staff. Under the Maastricht Treaty arrangements this would be the primary institutional arrangement for exchange of information on an ongoing basis between Member States.

Recommendation

6. The ad hoc Working Group on Immigration accordingly invites Ministers responsible for immigration to endorse the establishment of such a Centre for Information, Discussion and Exchange on the crossing of Borders and Immigration (CIREFI), as a forum for exchanges of information and consultations, during the first half of 1993. Ministers are also invited to endorse the following broad tasks and operating methods for the Centre.

Functions

7. The function of the clearing house would be to gather, exchange and disseminate information and compile documentation on matters relating to immigration and the crossing of borders, with a view to the development of greater informal consultation, close co-operation and consultation of competent bodies and increased dissemination of information to Member States. It would aid the rapid exchange of practical information between officials responsible for controls at the external borders for the purpose of combatting illegal immigration. If agreed, the clearing house will, in due course, provide a focal point under the institutional arrangements established by the Maastricht Treaty, for information on matters taken under consideration in the course of implementing the work programme adopted by Ministers. It will also serve as the mechanism for consultation and collaboration on practical matters between the relevant departments of the Member States.

8. The clearing house will not seek to duplicate or replace other arrangements which are already in place for co-operation between the Member States. In particular, it will not seek to assume the role or functions of the Rapid Consultation Centre, established following an informal Ministerial meeting held in March 1991, or to duplicate work undertaken by the Centre for Information, Discussion and Exchange on Asylum (CIREA). It may, however, work in conjunction with the Asylum Clearing House on matters which fall within the sphere of interest of both.

Gathering of Information

9. Information on the following matters would be exchanged within the clearing house.

- authorized immigration flows;
- unlawful immigration flows (country of origin, routes, means of transport);
- unlawful immigration methods (with a view to preventing and halting attempts at unlawful immigration);
- genuine, forged or falsified travel documents;
- control procedures;
- legislation bearing on immigration control procedures and information on immigration policies generally;
- the question of rejected asylum applicants and illegal immigrants who abuse the asylum procedure. in conjunction with the clearing house on asylum (CIREFI);
- information on the expulsion of illegally present third-country nationals;

- information on carriers, liability legislation and practice, including data on inadmissible passenger arrivals and routings; and
- statistics.

10. The clearing house would also have, as one of its functions, practical co-operation by experts on operational matters, including in the field of forged documents, and would supersede the existing forged documents Sub-Group as the forum for such work. Such co-operation might include the organization and oversight of relevant training seminars.

Access to information

11. The clearing house would report to the ad hoc Working Group on Immigration and to its Sub-Groups (or to the successor bodies under the Union Treaty arrangements) on any matter on which its assistance was required or which it felt should be brought to notice.

12. Ministers, national authorities participating in the work of the clearing house, their officials (including officials responsible for border control) and the Commission would also have access to the information held by the clearing house.
Constitution

13. The clearing house would operate under the direction of the ad hoc Working Group on Immigration or its successor body. It would not itself have any decision-making powers, but could draw attention to specific problems and make proposals.

14. The Member States would designate to participate in the clearing house appropriate national experts, who might be officials responsible in the Member States for implementing laws and regulations on those matters set out above, together with other suitable individuals whose particular experience or expertise (e.g. statisticians) might be beneficial.

15. The clearing house would be supported by suitably qualified staff of the General Secretariat of the Council. In all probability, and in order to avoid unnecessary bureaucracy, such staff would be those also employed in connection with the clearing house dealing with asylum matters (CIREA).

The details of the organization of CIREFI are to be discussed by the Sub-Group "External Frontiers" on the basis of WGI 1240 and in the light of proposals submitted by the German delegation. Detailed proposals should be submitted to the ad hoc Group on Immigration as quickly as possible.

43

Budapest Conference to Prevent Uncontrolled Migration - Recommendations

Introduction

Recommendations of the Budapest Conference to Prevent Uncontrolled Migration (Budapest, 15-16 February 1993). Recommends criminalisation of smuggling of immigrants; measures to combat illegal working; mutual assistance in extradition and the setting up of special units to combat the smuggling networks; information exchange on illegal immigration (routes, methods, nationalities, documents); tighter controls to detect illegal immigrants and more effective measures to expel them and confiscation of means of entry; establishment of readmission agreements; mobile surveillance forces to target would-be migrants; advice and assistance to airlines to prevent illegal entry.

Budapest Conference to Prevent Uncontrolled Migration - Recommendations

Reference:

Conference to Prevent Uncontrolled Migration
Budapest, 15 and 16 February 1993

Recommendations

Budapest Conference to Prevent Uncontrolled
Migration.
The competent Ministers meeting at the invitation of Hungary in Budapest (Hungary) on 15 and 16 February 1993.

REFERRING to the Final Communique of the Ministerial Conference on European Cooperation to prevent uncontrolled migration from and through Central and Eastern Europe which met in Berlin on 30/31 October 1991 and which has formed a Working Party with the task of rapidly developing proposals for implementing measures decided upon by this Conference;

REITERATING the importance of freedom of movement throughout Europe;

REITERATING further the respect for human rights and in particular the European Convention on Human Rights;

UNDERLINING their desire to respect the obligations arising from the Geneva Convention of 28 July 1951 on the Status of Refugees and the New York Protocol of 31 January 1967;

NOTING that illegal immigration constitutes a threat to public security and stability, promoting criminality and illegal and clandestine employment;

CONDEMNING the international operation of illegal immigration networks, which constitute a particularly harmful form of criminality;

CONFIRMING the responsibility of all countries to prevent illegal migration;

TAKING NOTE of the report presented by the Working Party for the Development of Proposals for Implementing Decisions Taken by the Berlin Conference to Prevent Uncontrolled migration;

BEING AWARE that the following recommendations should be implemented according to the constitutional provisions and basic principles of the legal system of each state;

BEING FURTHER AWARE that the execution of some of these recommendations depends on the financial means of states concerned and that some of them and in particular the new democracies in Central and Eastern Europe face an extremely difficult economic situation and will require appropriate assistance for this purpose;

RECOGNISING that illegal migration has become a worldwide phenomenon, and therefore expecting that the following recommendations should be executed not only by participating states but by all states concerned in a spirit of international solidarity;

1. Concerning the criminalisation of smuggling of illegal migrants

DEPLORING the damage caused by smuggling of illegal migrants to individual persons as well as to the community as a whole;

RECOGNISING the negative influence of smuggling of illegal migrants in relation to employment;

NOTING in this connection the Resolutions of ECOSOC 1991/35 of 31 May, 1991;

NOTING that smuggling of illegal migrants has the most harmful social and economic effects comparable to those which slavery had in the past and therefore should be considered as a crime in all countries

RECOMMEND

1.

a) That it should be a criminal offence to smuggle or to attempt to smuggle illegal migrants; and that this should include the instigation, and the aiding and abetting of the offence.
b) That particular consideration should be given to offences carried out for reward, and to offences carried out in an organised way.

2.

a) That it should be possible to confiscate direct or indirect proceeds obtained as a result of smuggling of illegal migrants.

b) That it should be possible to confiscate means of transport such as motor vehicles, ships or aircrafts which are owned by smugglers of illegal migrants or their accomplices and which are used for smuggling of illegal migrants, provided that such confiscation is consistent with reasonable principles.

3. That measures should be taken to combat the employment of those known to have entered or remained illegally or those whose immigration status does not allow them to work.

2. Concerning mutual assistance in criminal matters for the prosecution of smuggling illegal migrants

NOTING that smuggling of illegal migrants by its very nature is a border crossing operation which can be prosecuted effectively only if mutual assistance between all competent authorities concerned is guaranteed

RECOMMEND

1. Where possible States should become Parties to the European Convention on Extradition of 13 December, 1957 and the European Convention on Mutual Assistance in Criminal Matters of 20 April, 1959.

2. States which cannot become a Party to these European Conventions should consider concluding such bilateral agreements or adopting such national measures as will allow them to provide on a reciprocal basis the necessary mutual assistance for the prosecution of those smuggling illegal migrants.

3. Concerning the establishment of special units and services to, combat the activities of illegal migration networks

NOTING that increased control of the activities of illegal migration networks should be implemented above all by means of special police and other control units and services in accordance with a joint tactical concept

RECOMMEND

that these units should

1. pursue, in close cooperation with all branches of the police and other competent authorities,

a) individuals or criminal organisations instigating, aiding and abetting illegal migration (activities of illegal migration networks),

b) offences related to illegal employment and unlawful hiring out of workers,

c) criminal offences in connection with the preparation and implementation of the above mentioned punishable offences, in particular the falsification of documents;

2. be provided with an organisation and structure suited to fulfil their tasks; while the decision on such matters will be the responsibility of national governments, it should nevertheless be the aim to introduce similar structures throughout Europe. Model elements might be

a) a component for the collection and analysis of information,

b) a component for "surveillance and investigation", and

c) a component responsible for the apprehension of offenders;

3. apply operational tactics that are geared to the particular modus operandi of the perpetrators, inter alia by acting along the lines developed for combatting organised crime;

4. be provided with modern equipment in particular sophisticated compatible communication technology which will allow rapid cooperation throughout Europe;

5. consist of staff having police and/or other appropriate training, skills and knowledge and experience in the prevention of illegal entry and unlawful employment.

4. Concerning exchange of information on illegal migration

NOTING that exchanges of information including personal information play an indispensable part in combatting illegal migration

RECOMMEND that exchange of information should be promoted and facilitated with due respect to the constraints of national laws and taking into account arrangements already in force according to the following principles

Contacts

1. There should be a central contact point within each state for the exchange of information about illegal migration matters.

2. Personal contacts between officers in charge should be facilitated and increased, in particular by exchanging officers for training or other purposes with a view to improving exchange of information.

Exchange of non-personal information

3. Exchanges of non-personal factual information may be of a formal or informal (but structured) nature but in either case it is most important that information is exchanged quickly. Information should be exchanged about:

a) Countries of origin, routes, methods of illegal entry and exit used;

b) transit stations, border crossing points and the main types of means of transport used;

c) the nationalities of the smugglers and illegal migrants involved and any emerging trends about those nationalities;

d) means and methods for the forgery or falsification of travel or identity documents and residence permits.

4. Irrespective of the continuing exchanges of information under item 3, States should also provide at six monthly intervals factual information (broken down by nationality) especially concerning the number of persons refused entry to or exit from their territory, discovered at points of entry or exit with forged or falsified documents, the number of people detected after entering illegally, the number of traffickers identified and the number of illegal migrants which they have smuggled or attempted to smuggle.

Exchange of personal information

5. States should exchange personal data concerning persons who are known to be or are suspected on good grounds to be involved in organised illegal migration. To this end, in so far as they have not already done so, they should lay down data protection laws and, where necessary, international instruments which are consistent with the

principles of the Council of Europe Convention of 28 January 1981 and which enable the States to ratify this Convention as soon as possible, if they have not done so already.

Training

6. Border-control and other officers with responsibility for combatting illegal migration and traffickers should be properly trained and equipped. States should provide training not only to their own officers but also to others with whom there is a relevant relationship.

5. Concerning procedures and standards for the improvement of control at the border

NOTING that illegal migration is based in many cases on travel without a valid travel document or on the use of counterfeit or falsified travel documents;

HAVING RECOGNISED that legal local border traffic does not give rise to significant problems in the context of illegal migration;

WITHOUT INTERFERING in substantive national or international regulations regarding entry or exit of persons

RECOMMEND
effective procedures for the discovery and prevention of illegal entry including illegal stay on the pretext of tourism, studies or business visits according to the following principles:

1. Subject to the particular circumstances, border control should generally concern the following matters:

a) legitimate possession of authentic recognised and valid travel documents;

b) legitimate possession of a valid visa where necessary;

c) in case of residence abroad, proof of right of residence;

d) possession of documents required for continuation of journey;

e) evidence of possession of funds sufficient for the purpose of the stay and return;

f) examination of the basis of the lists of wanted and unwanted persons or other relevant information;

g) the question whether the person is a threat to public order and security.

2. Further principles to be applied in case of doubt or suspicion:

a) detailed examination of the authenticity and validity of documents by using appropriate technical equipment and testing the credibility of the statements made by enquiring into the projected travel route, objects in the traveller's possession etc.;

b) vehicle and baggage inspection;

c) checking of annotations by border authorities in passport (entry and exit stamps, etc.);

d) in the case of entry for study purposes checking of appropriate documentation which provides evidence of students status (student card, proof of matriculation, proof of registration, etc.);

e) in the case of entry for purposes of employment evidence (work contracts, work permits, etc.) should be sought in order to prove that the person seeking entry is authorised to be employed in the country of destination;

f) in the case of entry as a tourist or other short-term visitor status may be proved inter alia by hotel bookings, letters of invitation, possession of return ticket(s), possession of adequate funds;

g) in case of participation in cultural, sports, scientific or religious events, or in the case of cures in health resorts etc., appropriate evidence in the form of invitations, reports and certificates, etc. should be sought.

3. Measures and Consequences should include:

a) refusal of entry of foreigners not meeting conditions for entry ;

b) the power to retain objects used e.g. documents and means of transport and items illegally held;

c) the surrender of suspects to the competent authorities.

4. Material to be made available to border officers:

a) They should receive updated information on forgeries and high-risk groups and on travel documents and visa regulations;

b) appropriate technical devices for examining travel documents.

c) information on obligations arising from an Geneva Convention of 28 July 1951 relating to the Status of Refugees including the New York Protocol of 31 January 1967.

5. Introduction of travel documents in line with relevant inter-national standards incorporating safeguards against forgery.

6. Concerning readmission agreements

NOTWITHSTANDING the need in appropriate circumstances to be able to remove a person to the country from which he arrived, but

CONSIDERING the importance of rapid readmission of illegal immigrants to their country of origin for the effective prevention of smuggling of illegal migrants;

RECOGNISING the need for bilateral or multilateral agreements allowing for rapid readmission;

RECOGNISING further the need for the necessary facilities to be provided for this purpose;

TAKING NOTE on the one hand of the present absence of a comprehensive system of readmission agreements and on the other of the Readmission Agreement between Poland and the Schengen Countries of 29 March, 1991, as an example of a multilateral agreement concerning the readmission of illegal immigrants

RECOMMEND

RE-ADMISSION AGREEMENTS

1. Insofar as re-admission agreements do not already exist, consideration should be given to establishing them with all appropriate States. Where possible, such agreements should be multilateral, but where this is not possible bilateral agreements should always be considered. Consideration should be given to preparing agreements in a standard format. In the case of multilateral agreements, these might be along the lines of that between Poland and the Schengen States or at least rejecting the principles contained therein, with such adaptations as appear necessary to taken account of national situations and practical experience of that agreement.

2. Such agreements should be an a basis of equality of all countries and provide also for the necessary exchange of personal data with due regard to privacy regulations, as well as for the possibility of transit to the country of origin which is primarily responsible to readmit illegal migrants.

3. To the extent that those concerned have no right of residence in the country to which they are sent, that re-admission agreements should provide that illegal immigrants who are readmitted should be returned without delay to their country of origin or to the country where their journey began.
4. Cooperation in organising the transport of illegal migrants to be readmitted to their country of origin or last stay, in particular into

countries which are far away.

7. Concerning securing of external-borders outside-authorized border crossing points

HAVING RECOGNISED the importance of intensification of the surveillance of the borders outside authorized border crossing points for the prevention of illegal migration;

NOTING that the practical arrangements for securing borders will be for States to determine and will need to take account of such matters as the geographical situation and the nature and extent of illegal migration to be combatted;

RECOMMEND the establishment of mobile surveillance forces according to the following principles:

The mobile surveillance forces should in principle

1. exercise their function not in the form of preventive routine patrols aimed at collecting random intelligence, but rather on the basis of targeted action to apprehend would-be migrants;

2. be on duty 24 hours-a-day and operate in permanent contact with the corresponding authorities on the other side of the border, with cooperation going even as far as extensive work-sharing;

3. have a personnel strength which is to be determined by taking into account the topographic conditions, traffic connections and border police aspects for each individual border section which may be categorized according to their relevance under surveillance aspects. In this regard the following classification of individual border sections might be introduced:

a) sections of particular relevance from the border control point of view,

b) sections of relevance from the border control point of view,

c) sections of little relevance from the border control point of view;

4. perform their tasks at sea borders by using patrol boats or appropriate helicopters without, however, dispensing with the use of operational forces on land, whose mission primarily consists of apprehending illegal migrants reported by the airborne surveillance forces;

5. be integrated into a close network of telephone, radio, telex and other connections for coordinating their activities, use highly efficient equipment - in particular in relation to vehicles and means of communication - which should be harmonised step by step on the basis of an all-European standard.

8. Concerning the obligation of transport operators to prevent illegal migration

CONFIRMING the importance of the relevant provisions in Annex 9 to the Convention on International Civil Aviation 1947 (The Chicago Convention) with regard to the measures for the prevention of transportation of inadequately documented passengers;

STRESSING the need to co-operate with carriers for example within the framework of IATA in order to deal with the problem of inadmissible passengers

RECOMMEND

1. That in accordance with standards 3.37 and 3.37.2 of Annex 9 to the Convention on International Civil Aviation 1947 (the Chicago Convention) immigration authorities shall provide advice and assistance to airlines in preparing and implementing appropriate measures to prevent the transportation of inadequately documented passengers and participate in this regard in co-operation with the airline in training programmes for check-in personnel and other appropriate staff members at airports that experience difficulties with the transportation of inadequately documented passengers as established by IATA;

2. that care be taken that airlines check passengers at airports of departure to establish whether they carry the requisite travel documents for entering the country of destination and/or transit and provide sanctions to be imposed on airlines which transport aliens who are not in possession of those documents into the sovereign territories of their nations; a corresponding rule, should apply to carriers which transport aliens by sea or by land; such carriers should also be given advice and assistance with a view to ensuring that only properly documented passengers are carried.

44

Declaration by the Ministers concerned with immigration (1989)

Introduction

Declaration by Ministers concerned with immigration (adopted Paris, 15 December 1989 at the meeting of immigration ministers. SN 3634/89 WGI 513 REV 1). Contains seeds of common visa policy, electronic information exchange, prevention of consecutive asylum claims. The Ad Hoc Group had been working on the draft Dublin Convention (see 20 above) and on the draft Convention on the Crossing of External Borders (still not signed eight years on).

Declaration by the Ministers concerned with immigration (1989)

[Statewatch translation]

Reference:

Ad Hoc Group Immigration
Paris, 15 December 1989
SN 3634/89 (WGI 513) REV 1
(WGI 513) REV 1

Subject: Declaration by the Ministers concerned with immigration

At their meeting on 15 December 1989 in Paris, the Ministers adopted the attached declaration.

DECLARATION BY THE MINISTERS CONCERNED WITH IMMIGRATION

The Ministers concerned with immigration in the twelve States members of the European Communities, meeting in Paris on 15 December 1989 with the Vice-President of the Commission of the European Communities, have adopted the following declaration in order to recall the objectives they set themselves and the principles upon which their co-operation is based:

The negotiations embarked upon years ago to prepare the way for the implementation of the Single European Act have been aimed at taking the measures required to achieve by the end of 1992 the objective of a space with no internal frontiers, in which the free movement of people is assured in accordance with the Treaty.

There is a growing aspiration, particularly on our continent, that people

should be able to move about freely beyond State frontiers: we believe that EC Member States should be all the more diligent in reinforcing their co-operation in that it provides an incentive for others, in other parts of Europe and the world at large, to develop this freedom too.

We are convinced that the work we have accomplished in the fields of immigration, the crossing of borders, visa policy and the determination of the Member State responsible for examining an application for asylum is an important step towards the construction of a People's Europe and the completion of the internal market.

We solemnly declare that our objectives shall be achieved in accordance with the international commitments regarding asylum or the humanitarian traditions of our States. In particular, the creation of a space with no internal frontiers i.e. a new space of freedom, shall not affect the importance our States attach to the protection of refugees, as enshrined in the Geneva Convention of 28 July 1951, modified by the New York Protocol of 31 January 1967.

We also intend to preserve the open attitudes of our States towards the rest of the world, and to keep up the intensity of the exchanges of every sort, particularly cultural, scientific and economic, that our States carry on with other countries; at the same time, we shall make sure that the development of the free movement of people does not compromise public safety in the territories of our States.

We affirm that States have the right and duty to combat illegal immigration in their respective territories and in the territory of the Twelve as a whole. At the same time we undertake to uphold the rights and the safeguards of foreigners whose presence there is valid. We believe that the overall concern about immigration necessitates appropriate policies in this area.

In accordance with these principles, we have set about studying a number of measures to reinforce co-operation between our States; these measures will be strictly in keeping with the needs of free movement and restricted to those which are essential for that purpose.

We consider that the controls carried out by Member States at their external borders are vital to the successful implementation of the Single European Act with regard to the freedom of movement of people; we want to bring the different border control methods into line and increase their effectiveness so that all our States are equally safe, all along their external borders; in carrying out its frontier control duties, therefore, each State will need to bear in mind the best interests of all the Member States.

For these purposes, we shall harmonize visa practices and policies and we are working towards common rules for the crossing of the external frontiers of the Member States. In this respect we are examining the possibility of mutually recognising visas issued by any other Member State, so as to enable travellers from other parts of the world who want to enter the territories of our different States to avoid having to go through a string of often tedious formalities.

We are also examining the possibility of introducing in the longer term a common visa valid in all Member States of the European Communities. This visa will make things easier for foreigners wishing to enter and travel in the territories of our different States.

In order effectively to implement visa policy and the jointly defined controls along our external borders, we feel it essential that we should begin to exchange information about persons who must be refused access to the territories of one of our States on the grounds that their presence there could threaten security or public order in one of our States and we have decided to look into the best ways of doing this, with special reference to computerization. We undertake that this exchange of information can be envisaged only if beforehand a legal framework guaranteeing the protection of individual liberties and privacy has been established.

In preparing for the free circulation zone provided for in the Single European Act, we must also deal in a satisfactory manner with the appeals for asylum out States may receive.

We welcome the dialogue which has opened up with the United Nations High Commissioner for Refugees on the current problems concerning asylum and on the prospects for future co-operation in this field, and we wish it to be pursued. We intend to set about comparing our national policies in the matter of asylum and we will seek to harmonize these in the context of the following measures.

We undertake that every applicant for asylum will have his application examined by one of our States and be able to request the protection of that State by virtue of the Geneva Convention. In particular, we want to avoid the successive rejection by our Member States of any applicant for asylum on the grounds that it is up to another Member State to deal with the case. We also feel the need to prevent any abuse of the system that might arise through people submitting several applications for asylum in different Member States.

We therefore feel that in each case a single Member State should be appointed to examine the application for asylum on the strength of objectively defined criteria: these criteria must make special allowance for relatives the applicant may have living in one of our States, and that in other cases the route by which he entered EC territory and his residence conditions should be taken into account.

We nevertheless feel that these criteria must protect the sovereign right of any State to examine an application for asylum in accordance with its national legislation and its international commitments in order to avoid any excessive rigidity in the application of the criteria and to protect the guarantee of the basic right to asylum on its territory to the full.

Bilateral exchanges of information shall be authorized between the competent departments in our States for the sole purpose of determining which State is responsible for examining an application for asylum. Restrictions on such exchanges will be defined and they will be covered by all the appropriate legal guarantees and guarantees of confidentiality.

We are aware of the demands imposed by the deadline of 31 December 1992 and we intend to take measures in good time to enable us to meet it.

We welcome the work accomplished over the last six months by the Ad Hoc Group on Immigration on two draft Conventions, one on the crossing of the external borders of Member States and the other of the designation of the State responsible for examining an application for asylum. Work to bring to a conclusion these draft Conventions, which were submitted to us for an initial appraisal, will continue over the next six-month period under the Irish Presidency, in order that the Conventions may be completed before the end of 1990.

(1) In accordance with article 1 of the Geneva Convention of 28 January 1951, as amended by the New York Protocol dated 31 January 1967, on the status of refugees, the term "refugee" is applicable to any person who (...), owing to a well-founded fear of being persecuted for reasons of race, religion, nationality membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owning to such fear, is unwilling to return there".

45

Declaration on principles of governing external aspects of migration policy

Introduction

Declaration on principles of governing external aspects of migration policy (Conclusions of the Presidency, Edinburgh, 12 December 1992. SN 456/92). A follow-up to the 1989 Declaration (44 above). Reiterating importance of measures to prevent migration from outside the Community, including trade, development aid and readmission agreements.

Declaration on principles of governing external aspects of migration policy

Reference: SN 456/92

DECLARATION ON PRINCIPLES OF GOVERNING EXTERNAL ASPECTS OF MIGRATION POLICY

Conclusions of the Presidency - Edinburgh, 12 December 1992

i) The European Council, meeting at Edinburgh, discussed the question of migratory pressures.

ii) It noted with satisfaction that profound political changes now permit greater ease of travel and contacts throughout Europe.

iii) It reaffirmed its intention to ensure that the Community and its Member States remain open to the outside world, not only through personal and cultural exchanges, but also through their commitment to a liberal trading system, by playing their full part in assisting the developing world, and by establishing a framework of political and economic relations with third countries and groups of third countries. In this, the European Council reaffirms the principles of its Declaration at Rhodes in December 1988.

iv) The Member States of the European Communities reaffirmed their commitment to honour in full their obligations under the 1950 European Human Rights Convention, the 1951 Geneva Convention on the status of refugees and the 1967 New York Protocol.

v) It was conscious of the particular pressures caused by the large movements of people fleeing from the conflict in the former Yugoslavia particularly given the harsh winter conditions.

vi) It noted the pressures on Member States resulting from migratory movements, this being an issue of major concern for Member States, and one which is likely to continue into the next decade.

vii) It recognized the danger that uncontrolled immigration could be destabilizing and that it should not make more difficult the integration of third country nationals who have legally taken up residence in the Member States.

viii) It stressed the need to reinforce the fight against racism and xenophobia in line with the joint declaration adopted by the European Parliament, the Council and the Representatives of the Member States, meeting within the Council, and the Commission on 11 June 1986 and with the Declaration on racism and xenophobia adopted by the European Council in Maastricht.

ix) It was convinced that a number of different factors were important for the reduction of migratory movements into the Member States: the preservation of peace and the termination of armed conflicts; full respect for human rights; the creation of democratic societies and adequate social conditions in the countries of emigration. Co-ordination of action in the fields of foreign policy, economic co-operation and immigration and asylum policy by the Community and its Member States could also contribute substantially to addressing the question of migratory movements. The Treaty on European Union, notably its Titles V and VI, once in force, will provide an adequate framework for this coordinated action.

x) It took note of the declaration adopted on the occasion of the Development Council on 18 November 1992 on aspects of development co-operation policy in the run-up to 2000, including the recognition of the role which effective use of aid can make in reducing longer term migratory pressures through the encouragement of sustainable social and economic development.

xi) It noted that, in line with the views of the United Nations High Commissioner for Refugees, displaced people should be encouraged to stay in the nearest safe areas to their homes, and that aid and assistance should be directed towards giving them the confidence and the means to do so, without prejudice to their temporary admission also in the territory of Member States in cases of particular need.

xii) It welcomed the progress made by Ministers with responsibility for Immigration matters under the work programme endorsed at the Maastricht European Council, and in particular the adoption of recommendations on expulsion, resolutions on manifestly unfounded applications for asylum on host third countries and conclusions on countries in which there is generally no serious risk of persecution (1). It recognised the importance of such measures against the misuse of the right of asylum in order to safeguard the principle itself.

xiii) It also welcomed the work on east-west migration of the Berlin and Vienna Groups, and encouraged the Berlin Group to prepare a draft resolution for agreement by Ministers.

xiv) It resolved to take forward those more general migration-related issues set out in the Maastricht work programme that go wider than the direct responsibilities of the Ministers with responsibility for Immigration matters.

xv) It recognised the importance of analysing the causes of immigration pressure, and analysing ways of removing the caused of migratory movements

xvi) It agreed that the approach of the Community and its Member States, within their respective spheres of competence, should be guided and informed by the following set of principles:

- 1. they will continue to work for the preservation and restoration of peace, the full respect for human rights and the rule of law, so diminishing migratory pressures that result from war and oppressive and discriminatory government;

- 2. displaced people should be encouraged to stay in the nearest safe area to their homes, and aid and assistance should be directed towards giving them the confidence and the means to do so without prejudice to their temporary admission also in the territory of Member States in cases of particular need;

- 3. they will further encourage liberal trade and economic co-operation with countries of emigration, thereby promoting economic development and increasing prosperity in those countries, and so reducing economic motives for migration;
- 4. to the same end, they will ensure the appropriate volume of development aid is effectively used to encourage sustainable social and economic development, in particular to contribute to job creation and the alleviation of poverty in the countries of origin, so further contributing in the longer term to a reduction of migration pressure;

- 5. they will reinforce their common endeavours to combat illegal immigration;

- 6. where appropriate, they will work for bilateral or multilateral agreements with countries of origin or transit to ensure that illegal immigrants can be returned to their home countries, thus extending co-operation in this field to other States on the basis of good neighbourly relations;

- 7. in their relations with third countries, they will take into account those countries' practice in readmitting their own nationals when expelled from the territories of the Member States;

- 8. they will increase their co-operation in response to the particular challenge of persons fleeing from armed conflict and persecution in former Yugoslavia. They declare their intention to alleviate their plight by actions supported by the Community and its Member States directed at supplying accommodation and subsistence, including in principle the temporary admission of persons in particular need in accordance with national possibilities and in the context of a coordinated action by all the Member States. They reaffirm their belief that the burden of financing relief activities should be shared more equitably by the international community;

xvii) The European Council urges those Member States who have not already done so to ratify the Dublin Asylum Convention as part of their coordinated action in the field of asylum; it will then be possible to extend such arrangements under a convention parallel to the Dublin Convention, giving priority to neighbouring European countries where these arrangements could be mutually beneficial. The European Council calls for the necessary action to be taken so that the External Frontiers Convention can come into effect at an early date.

Footnote 1:

The resolutions on manifestly unfounded applications for asylum and on host third countries and the conclusions on countries in which there is generally no serious risk of persecution have been accepted by Germany under the reservation of a modification of her fundamental law, and by Denmark and the Netherlands subject to a Parliamentary scrutiny reservation.

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Declarations in the minutes of the Conference of Immigration Ministers of the Member States of the European Communities

Introduction

Declarations in the minutes of the Conference of Immigration Ministers of the Member States of the European Communities (Dublin, June 1990. Included in SN 2836/93 WGI 1505). Agreements to develop a parallel Convention (see 22 above), to report annually on data protection. It also notes the importance of the Draft Convention on the Crossing of External Borders (still unsigned).

Declarations in the minutes of the Conference of Immigration Ministers of the Member States of the European Communities

Reference:

Dublin, 15 June 1990
SN 2836/93 (WGI 1505)

Declarations in the minutes of the Conference of Immigration Ministers of the Member States of the European Communities

The Ministers took note of the text in the Draft Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities.

The Ministers noted:

- that eleven Member States were in a position to sign the Convention;

- a statement by the Danish Minister to the effect that his country was unable to sign the Convention for the time being, and that he intended to continue in his attempts to ensure that Denmark would also be in a position to sign the Convention.

The Ministers of the eleven other Member States decided, therefore, to proceed with the signing of the Convention, on the understanding that if Denmark had not signed the Convention by 7 December 1990 the majority would then sign a convention to which the countries concerned would be the contracting parties.

The Ministers agreed to enter the following declarations in the Conference minutes:

1. The parties hereby declare that in order to ensure that applicants for asylum are given adequate guarantees they will keep open the option of extending the co-operation provided for in this Convention to other States by allowing them to subscribe, by means of appropriate instruments, to commitments identical to those laid down in this Convention.

2. The Member States take the view that it is not necessary to supplement Article 1 5(6) of the Convention by providing that only data which have been applied for in a permitted manner and in good faith may be communicated because they consider this goes without saying and that therefore no provisions to cover the point are needed.

3. The Member States agree to submit an annual report to the Committee on the checks they carry out on the appropriate use of the information referred to in Article 15.

4. The Member States note that other possibilities provided for under international law are not excluded should it prove impossible to reach an agreement with regard to the revision of the Convention pursuant to the provisions of Article 17(2).

5. The Member States consider that where this Convention is suspended at the initiative of one of them, in accordance with Article 17, the Convention shall continue to apply as between the other Member States.

6. The Member States consider that the draft Convention on the crossing of the external borders of the Member States of the European Communities is closely linked to other instruments necessary for the realization of Article 8a of the Treaty establishing the European Economic Community, and, in particular, to the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities. The Member States underline the need to intensify the work on the abovementioned draft with a view to finishing work before the end of 1990. The entry into force of the Convention on the crossing of the external borders of Member States should be brought about as soon as possible after the Convention on asylum comes into force.

7. The Federal Republic of Germany declares that the German Democratic Republic is not a foreign country in relation to the Federal Republic of Germany.

With reference to the Declaration by the Government of the Federal Republic of Germany on the definition of the expression “German national” annexed to the Treaty establishing the European Economic Community of 25 March 1957, the Federal Republic of Germany would point out that this Convention is not applicable to Germans within the meaning of the abovementioned Declaration.

8. The Netherlands is acting on the principle that, as this is a matter concerning all twelve countries, the approval procedure will not commence in the capitals until Denmark has also signed the Convention. In any event, the Netherlands will not start this procedure until Denmark has signed.

9. The Netherlands declares that, as regards the definition of the concept of "application for asylum", the use of the term "seeks from a Member State protection" means that the person involved is an alien who, when submitting an application for asylum, claims refugee status and in that capacity requests permission to stay in the Member State in question.

10. The Kingdom of Spain declares that if, in accordance with the provisions of Article 19 of the Convention, the United Kingdom should decide to extend the applicability of the Convention to Gibraltar, such application will be without prejudice to the position of Spain in the dispute with the United Kingdom concerning sovereignty over the isthmus.

The original of these minutes, as signed by the Conference President and Secretary, will be deposited, along with the Convention, with the Irish Government.

A copy of these minutes will be sent to the signatory States.

47

Resolution on internal border controls (1984)

Introduction

Resolution on internal border controls (adopted 19 June 1984). One of the first attempts to remove internal checks on EEC citizens, creating a Union without passport controls, following the 1981 resolution on a common EEC passport.

Resolution on internal border controls

Formally adopted on 19 June 1984 under the French Presidency of the European Union.
THE COUNCIL AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES, MEETING WITHIN THE COUNCIL,

Noting the conclusions of the Heads of State or of Government meeting in Paris on 9 and 10 December 1974 which called for examination of the possibility of establishing a Passport Union and in particular of abolishing passport control within the Community,

Taking into account, on the one hand, of the decisions taken on the basis of the Treaties establishing the European Communities and, on the other hand, of the practical steps already taken with the aim of facilitating the movement of nationals of the Member States.

Aware of the Community's objective, as defined in Article 3 (c) of the Treaty establishing the European Economic Community, of abolishing, as between Member States, obstacles to freedom of movement for persons carrying out an activity covered by the provisions of that Treaty,

Aware that the ever-closer union of the peoples of the Member States of the Community should, at the final stage of this process, find expression in free passage across the Community's internal frontiers for all nationals of those States,

Aware that the abolition of all checks on persons at internal frontiers, which is the aim of the Passport Union, means that at the same time it is necessary to resolve certain problems peculiar to the creation of such a Union, such as the transfer of checks on persons from internal frontiers to external ones, the admission of nationals of non-Community countries, including the harmonization of provisions on visas and effective cooperation between Member States on public security,

Anxious to achieve this aim without interfering with the necessary checks justified for security reasons, and bearing in mind the problems facing certain Member States in connection with checks on entry into their territory,

Recalling the resolution of 23 June 1981 in which the representatives of Governments of the Member States of the European Communities, meeting within the Council, considered that the establishment of a passport of uniform design was likely to facilitate the movement of nationals of the Member States,

Considering that a step in the gradual implementation of this objective should be to try to make it easier for nationals of Member States to cross frontiers,

Considering that, to this end, it is necessary to:

- seek as far as possible a reduction in the waiting time for checks and in the duration itself of the checks,
- ease as far as possible checks on their nationals living close to the Community's internal frontiers,

HAVE ADOPTED THE FOLLOWING RESOLUTION:

The Member States shall take appropriate measures to reduce waiting time and the duration of checks to the minimum necessary, if they have not already done so. To this end they may, for instance:

- set up special check-points for the nationals of the Member States, if crossing-time would be reduced as a result,
- carry out any checks which are considered necessary on these nationals by means of spot checks, unless this is not possible for reasons of public security.

To make it easier for nationals of the Member States to cross internal frontiers, the checking authorities shall consider that presentation of the passport of uniform design permits a presumption of belonging to a Member State, without prejudice to the rights attached to other documents provided for in existing conventions, including, in particular, the identity card.

Member States may conclude local agreements in order to make it easier for people living close to the Community's internal frontiers to cross frontiers.

On the basis of a report drawn up by the Commission, possibly accompanied by proposals, the Council and the representatives of the Governments of the Member States of the European Communities, meeting within the Council, will assess the implementation of this resolution within four years of its adoption. In the light of this assessment, they will take any other measures needed for the gradual implementation of the objective of free passage across the Community's internal frontiers for Member State nationals.

48

Information note from the Danish delegation concerning the discussions in the Nordic Passport Union

Introduction

Information note from the Danish delegation concerning the discussions in the Nordic Passport Union on ways in which Denmark can meet its obligations under the Community Member States' Convention on the Crossing of the external borders (SN 2245/91 WGI 798, 15 May 1991). Attempt to resolve the problem of open border with the EEC, implying stricter controls at external frontiers, with Denmark's obligation to retain open borders with the other Nordic states (not then members of the EEC).

Information note from the Danish delegation concerning the discussions in the Nordic Passport Union

Reference:

Ad Hoc Group Immigration
Brussels, 15 May 1991
SN 2245/91 WGI 798
CONFIDENTIAL

Information note from the Danish delegation concerning the discussions in the Nordic Passport Union on ways in which Denmark can meet its obligations under the Community Member States' Convention on the crossing of the external borders

It is agreed that a transitional solution is to be found which must not in the long term create obstacles to progress towards the achievement of the common objective of the Community Member States, namely to establish an area without internal frontiers in which the free movement of persons shall in particular be ensured in accordance with the provisions of Article 8a of the EEC Treaty.

The solution could be based on checks being made at Denmark's external Community frontiers during a transitional period as a combination partly of the effective checks that the other Nordic countries carry out at their external Nordic frontiers, and partly of the checks that in practice can now be carried out within the framework of the Nordic Passport Union at the internal Nordic frontiers between Denmark and the other Nordic countries. The nature of the latter checks must be determined with regard partly to the number of travellers, and partly to the fact that the said travellers have already undergone an effective check at the external frontiers of the other Nordic countries. The said checks would be carried out with regard to both the interests of the Nordic countries and to those if the Community Member States.

The Nordic countries guarantee that the checks will be carried out with the same efficiency as the checks that are otherwise established at the external frontiers of the Community Member States.

The Nordic countries that are not Community members are at the same time prepared to discuss the question of entering into reciprocal re-admission agreements with the Community Member States.

Within the context of an overall solution, the Nordic countries are prepared to accept that Denmark, to the extent necessary in order for Denmark to meet its obligations under Article 7a of the EEC Treaty, should not carry out checks on persons who enter Denmark from another Member State. This, however, presupposes that the checks that are carried out at the external frontiers of the Community countries are at least as effective as the frontier checks carried out by the Nordic countries at the external Nordic frontiers.

The Nordic countries at the same time see it as an element in a balanced solution that Nordic nationals should be permitted to enter the Community territory and to travel within the Community under easy conditions corresponding to those which within the Nordic territory will be applicable to Community nationals who enter and travel within the Nordic countries.

49

Implementation of the draft Convention of the Member States of the Community on the crossing of external frontiers - refusal of entry: conditions and rules of procedure

Introduction

Implementation of the draft Convention of the Member States of the Community on the crossing of external frontiers - refusal of entry: conditions and rules of procedure (SN 2521/92 WGI 1103, dated 21 May 1992). Sets out criteria and procedures for refusing entry.

Implementation of the draft Convention of the Member States of the Community on the crossing of external frontiers - refusal of entry: conditions and rules of procedure

Reference:

Ad Hoc Group Immigration
21 May 1992
SN 2521/92 (WGI 1103)
CONFIDENTIAL
no. previous doc: WGI 1071 REV 1

Subject: Implementation of the draft Convention of the Member States of the Community on the crossing of external frontiers - refusal of entry: conditions and rules of procedure

1. The Ad Hoc Group on immigration submits the attached conclusions to the Ministers responsible for Immigration with a view to their approval, on the understanding that they will have to be approved subsequently by the Article 26 Committee of the Convention of the Member States of the European Communities on the crossing of external frontiers.

ANNEX

I.

Under Article 12 of the Draft Convention on external frontiers, entry into the territories of the Member States:

- is refused to persons who are not nationals of a Member State and fail to fulfil one or more of the conditions in Article 7 (1);

- may be refused to persons who are not nationals of a Member State on the basin of Article 7(2).

Entry is refused without prejudice to Article 12(2) and any more favourable constitutional provisions of Member States regarding asylum.

II.

Rules of procedure for refusing entry:

- If one of the situations for refusing entry provided for in the draft Convention on external frontiers arises, the body which is competent to refuse entry in accordance with national law will do so and the reasoned decision will be communicated to the alien.

- The person refused entry has the right to appeal to the competent authorities where this is provided for under national law.

- The competent authorities at the frontier post will prevent the alien refused entry from entering the territory of the Member State in question.

- The competent authorities that refuse entry immediately inform the transport company concerned which resumes responsibility for the person refused entry and immediately or, where appropriate on the expiry of the period laid down in national law returns that person to one of the following destinations:

  - the third State in which his journey began;
  - the third State which issued his travel document;
  - any other place to which the individual will be admitted.

- If the carrier which transported the person refused entry cannot, for any reason, return him it will continue to be responsible. It will therefore have to contract another undertaking which will return him as soon as possible. The carrier may also he responsible for the expenses occasioned by the extension of the alien's stay.

- Where the transport undertaking has not taken all the measures necessary to ensure that the alien has valid travel documents and any visas required, it will suffer appropriate penalties.

- Wherever a national of a third country is refused entry on the grounds of one of the situations provided for in Article 7, the authority responsible for controlling the frontier will affix an entry stamp crossed out in black indelible ink.

- If the alien who in refused entry is at the same time the subject of an order for arrest a circulated description or other circumstances that could justify questioning, the competent authorities will be contacted so that the appropriate action may be taken.

- If the alien is the bearer of falsified or counterfeit travel documents the frontier authorities will establish proceedings and pass the case on to the competent authorities.

- In that event, the frontier authorities will draw up a replacement document to which will be appended a photocopy of the falsified or counterfeit document and any information considered relevant.

The replacement document and other evidence will remain in the charge of the carrier responsible for returning the individual, so as to inform the authorities of the place of transit or of the place of destination.

- Cases in which entry has been refused will be recorded appropriately giving the following information:

  - identification
  - nationality
  - travel document
  - date of occurrence
  - reasons for refusal
  - date and circumstances of return.

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Residence permits (Articles 8(5) and 15(3) of the draft Convention on External Frontiers)

Introduction

Residence permits (Articles 8(5) and 15(3) of the draft Convention on the crossing of external frontiers (SN 2405/1/93 WGI 1454 REV 1, dated 10 September 1993). In an attempt to reduce the number of residence permits in order to facilitate checking at external frontiers and internally, this list of residence permits which are equivalent to a visa (ie, evidence of a right to be in the country) used in each member state was drawn up. Spain had no less than 16 different permits.

Residence permits (Articles 8(5) and 15(3) of the draft Convention on External Frontiers)

Reference:

Ad Hoc Group Immigration
10 September 1993
SN 2405/1/93 WGI 1454
REV 1
CONFIDENTIAL

Subject: Residence permits (Articles 8(5) and 15(3) of the draft Convention on External Frontiers

At its meeting on 1/2 April 1993, the Ad Hoc Group on Immigration approved the list of residence permits as set out in the annex to document WGI 1420 REV 1.

Delegations will find hereafter this list of residence permits completed with the replies received to questionnaire WGI 1154, which are distributed in document WGI 1380, and with the conclusions of the meeting of the External Frontiers Sub-Group of 6 September 1993. Several delegations stressed the need to reduce the number of residence permits in order to facilitate the work both for authorities of Member States and carriers.

LIST OF RESIDENCE PERMITS

I. Residence permits issued by Member States which are accepted as equivalent to a visa (Article 8 (1) and (5) of the draft Convention on External Frontiers)

Belgium

- carte d'identite d'etranger

- certificat d'inscription au registre des etrangers
- titre de sejour special delivre par le, Ministere des Affaires etrangeres

Denmark

- *residence permits for refugees*
- *residence permits for persons other than refugees:*

- for aliens who have previously held Danish citizenship
- for a minor who is a child of a person resident in Denmark or of his or her spouse where the child lives with the person who has legal custody
-for parents over the age of sixty of Danish or Nordic offspring or offspring with a refugee residence permit
- for parents over the age of sixty of an alien with a residence permit of indefinite duration

- *residence permits may be issued to other aliens upon application:*

- where the alien has close family or similar links with a person resident in Denmark
- where the alien is in a situation such that substantial humanitarian grounds weigh decisively in favour of accepting the application
- where there are substantial employment or economic reasons where very special reasons weigh in favour

Germany

Residence permits

- Aufenthaltserlaubnis
- Aufenthaltsberechtigung
- Aufenthaltsbewilligung
- Aufenthaltsbefugnis

Greece

Residence permits granted for the purposes of employment, study or family reunification

Spain

- Initial residence permit
- ordinary residence permit
- special residence permit
- student card
- type A residence and work permit
- type B
- type C
- type D
- type E
- recognition of an exemption from the need to obtain a work permit and residence permit
- work permit for practical training and residence permit
- asylum-seekers' identity document
- residence permit for refugees
- registration card
- temporary card for a member of the family of a Community resident
- card for a member of the family of a Community resident

France

- carte de sejour temporaire comportant une mention particuliere qui varie selon le motif du sejour autorise
- carte de resident
- certificat de residence pour Algerien comportant une mention particuliere qui varie selon le motif du sejour autorise (1 an, 10 ans)
- certificat de residence portant la mention "membre d'un organisme officiel"
- carte de sejour des Communautes europeennes (1 an, 5 ans, 10 ans)

Ireland

Ireland does not issue residence permits or provisional residence permits to non-EC nationals. Permission to remain is by means of a stamp impressed on the passport. Ireland would wish that in general such permission be accepted as equivalent to a visa.

Italy

For the time being, Italy does not accept residence permits as equivalent to a visa.

Luxembourg

- carte d'identite d'etranger
- autorisation de sejour provisoire (sous forme d'un cachet appose dans le passeport national)

Netherlands

- autorisation d'etablissement
- titre d'admission en tant que refugie
- titre de sejour d'une duree indeterminee
- autorisation de sejour
- autorisation de sejour, sous la forme d'un tampon appose dans le document presente par l'etranger lors du franchissement de la frontiere
- piece d'identite des membres des missions diplomatiques ou des postes consulaires
- piece d'identite des fonctionnaires ayant un statut particulier
- piece d'identitg pour les fonctionnaires des organisations internationales
- carte d'identite des membres des organisations internationales avec lesquelles les Pays-Bas ont conclu un accord de siege

Portugal

type A residence permit (1 year)
type B residence permit (5 years)
type C residence permit (permanent)

United Kingdom

At present the United Kingdom does not issue residence permits or provisional residence permits to non-EC nationals.

However, it would wish other Member States to treat as equivalent to visas, endorsements placed in passports of non-EC nationals which permit a stay in the United Kingdom of longer than six months.

II. Provisional residence permits issued by Member States which, together with travel documents, are accepted as equivalent to a visa in exceptional cases (Article 8 (2) and (5))

The French delegation suggested restricting the scope of Article 8(2) to asylum applicants in the following three situations, for which sufficient documents should be provided:

- very serious illness of someone very close to the asylum applicant;
- the death of such a person;
- summons requiring the asylum applicant to appear in court (criminal or civil proceedings).

(see, doc WGI 1462, page 3: note in original)

The External Frontiers Sub-Group will continue its discussions on this point at a forthcoming meeting.

III. Indicative description of the exceptional circumstances in which the provisional residence permits with relevant travel documents referred to in Section I can be accepted as equivalent to a visa (Article 8(5))

- See the three circumstances set out under II above.
- Persons covered by agreements or conventions such as:

- the European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe, signed on 13

December 1957
- the European Agreement on Travel by Young Persons on Collective Passports between the Member Countries of the Council of Europe, signed on 16 December 1961
- the Convention relating to the Status of Refugees, signed on 28 July 1951
- ILO Convention No. 108, signed on 13 May 1958 (seafarers);
- officials of international organizations
- Diplomatic or consular officials
- Persons recognized as stateless.

The Danish delegation pointed out that Denmark's current law did not provide for the possibility of authorizing entry into the country on the basis of "provisional residence permits". An asylum-seeker for instance was given a special receipt when he lodged his passport certifying that he had filed an application for asylum. (doc. WGI 1232, pages 2 and 3)

The Italian delegation recalled its position set out under section I above.

IV. Other residence permits issued by the Member States which are not accepted as equivalent to a visa (Articles 8(5) and 15(3))

Belgium

- declaration d'arrivee
- attestation d'immatriculation
- annexe 15
- annexe 15 bis
- annexe 26
- laissez-passer
- document special de sejour
- attestation de retrait

Denmark
provisional residence permits for certain people from the former Yugoslavia

Germany
Germany does not issue such residence permits

Greece
provisional residence permits

Spain
Spain does not issue such residence permits

France
Provisional residence permits:

- autorisation provisoire de sejour
- recepisse de demandes de cartes de sejour
- recepisse constatant le depot d'une demande de statut de refugie
- recepisse constatant le depot d'une demande de statut de refugie ou l'admission au benefice de l'asile

Ireland
See section I above.

Italy
Residence permit for foreign nationals (permesso di soggiorno)

Luxembourg
Residence permits for asylum applicants and stateless persons

Netherlands
Residence permits for asylum applicants and stateless persons

Portugal
Provisional residence permits for asylum seekers

United Kingdom
See section I above

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Conclusions of the meeting of Immigration Ministers (Copenhagen, 1-2 June 1993)

Introduction

Conclusions (Minutes) of the meeting of Immigration Ministers, Copenhagen, 1-2 June 1993 (adopted by the Council of Justice and Home Affairs Ministers at their meeting on 29-30 November 1993 in Brussels. SN 3009/2/93 WGI 1509 REV 2). Follow-up to the December 1992 meeting, up-dates on Dublin Convention, CIREA, EURODAC, former Yugoslavia, the draft Convention on the crossing of the external borders, common visa policies; draft Conventions on entry for work and for family reunion; draft recommendations on removal of persons illegally staying or working; readmission agreements and other matters. Annexed to the report is a statement by the Commission regretting the failure to implement free movement and the compensatory Conventions.

Conclusions of the meeting of Immigration Ministers (Copenhagen, 1-2 June 1993)

[Statewatch translation]

Reference:

Ad Hoc Group on Immigration
9 November 1993
SN 3009/2/93 WGI 1509 REV 2
CONFIDENTIAL

CONCERNING:
Conclusions of the meeting of Immigration Ministers (Copenhagen, 1-2 June 1993)

I. Immigration ministers met in Copenhagen under the presidency of Mrs Birte WEISS, Interior Minister of the Kingdom of Denmark, in the presence of Mr Vanni D'ARCHIFARI, a member of the EC Commission.

II. Approval of the conclusions of the Ministerial Meeting in London, 30 November and 1 December 1992

The Danish delegation withdrew its reservation and let it be known that the Danish government does not envisage making amendments to Danish legislation.

The Dutch delegation indicated that the Netherlands would reserve its position until the Dutch parliament had voted on a law concerning certain aspects of the conclusions.

III. Asylum

i) Progress on the ratification of the Dublin Convention
Ministers received document WGI 1494 reporting on the position of the Dublin Convention with regard to ratification.

The member states in which the process of ratification is underway expressed their intention to do everything in their power to allow the Convention to come into force as quickly as possible.

ii) Progress on work relating to implementation of the Dublin Convention
Ministers received the report which appears in document WGI 1496 and requested the AHGI to ensure that the remaining work necessary to allow the convention to come into force was completed rapidly.

iii) Details of the implementation of the Common Guide on application of the Dublin convention

Ministers indicated their agreement with the form of implementation of the Common Guide such as set out in document WGI 1495, and called on the AHGI to ensure the effective establishment of this guide.

iv) Practice relating to asylum

Ministers noted the drawing up of this paper which appears in document WGI 1505.

Ministers agreed that this paper should be inserted into the declarations made at the signing of the Dublin Convention at the Conference of Immigration Ministers of the EC member states in Dublin on 15 June 1990.

v) Standards of proof

Ministers noted their pleasure at the progress achieved [WGI 1490] and asked the AHGI to complete their work before the next meeting.

vi) Definition of the notion of refugee as set out in Article 1A of the Geneva Convention.

Ministers asked the AHGI to pursue consideration of this matter.

vii) Eurodac

Ministers acknowledged the work which has been done since their last meeting and approved a mandate allowing studies on the requirements of those who might use the Eurodac scheme.

They called on the competent parties to pursue the work, particularly the juridical matters, so that the political decision regarding whether or not to formally establish Eurodac can be taken before the end of the first session of 1994.

In this context, the Greek delegation expressed the desire that a group made up of all member states choose the co-contracting parties.

viii) CIREA

a) Principles guiding the choice of third countries with whom a link might be established [WGI 1500]

b) Progress of work towards establishing common views on the situation in third countries [WGI 1502]

Ministers were satisfied with the cooperation instigated with the EPC concerning the establishment of common assessments of the situation in third countries. They emphasised that these assessments will be all the more useful in that they can be made available to CIREA more quickly.

Ministers agreed on the document WGI 1500 and called on AHGI to pursue its work with regard to the elaboration of common assessments and on the confidential circulation of the assessments.

c) Circulation of available information to CIREA

Ministers agreed on the modes of circulation of available information to CIREA, as set out in document WGI 1433 REV 1.

d) Cooperation with the UNHCR Documentation Centre

Ministers agreed to instigate cooperation between CIREA and the UNHCR Documentation Centre in line with the methods enumerated in point 2 of document WGI 1501

e) First report on CIREA's activities

Ministers acknowledged this report, as appearing in document WGI 1503 and agreed to make it public.

ix) Convention parallel to the Dublin Convention

Ministers acknowledged a document drawn up by the Presidency on contacts with Austria, Finland, Norway, Switzerland, Sweden and Canada, and on the subject of the parallel convention to the Dublin Convention.

Ministers stated that the Dublin Convention constituted one of the gains resulting from intergovernmental cooperation between the 12 member states in the field of justice and home affairs, which signatory states are asked to accept. They consequently asked the Presidency to pursue contacts with a view to drawing up, at the appropriate time, a parallel convention with other concerned European states. Negotiations could not formally begin until the said convention has been ratified by the 12 member states.

IV Former Yugoslavia

Ministers recalled the importance of the conclusions adopted in London on 30 November 1992.

Ministers debated the situation in former Yugoslavia and concluded by adopting a resolution relating to the treatment of groups or individuals who were particularly at risk or vulnerable and who originated in former Yugoslavia. [WGI 1499]

Ministers noted the documents which had been drawn up in the application of this decision. With reference to these matters, they acknowledged documents relating to:

- the state of legislation and statistics: [WGI 1390 REV. 2 and WGI 1475] [Footnote: Ministers agreed in principle to the publication of this document after its revision by AHGI]

- the list of important documents [WGI 1508],

- visa requirements [WGI 1333 REV. 2],

- modes of cooperation with the member states [WGI 1401 REV. 1 (Annex)]

Ministers called on the AHGI to continue its work proceeding towards regular updating of information, establishing particular consultative procedures between member states, and setting up a network of individual contacts.

Ministers also asked the AHGI to examine the issues of family reunion and procedures governing the movement of displaced persons from the former Yugoslavia between member states.

V. Report to the European Council concerning the free movement of persons

Ministers adopted the report which appears in document CIRC 3640 + ADD 1 and 2.

On this occasion

Ministers debated the situation regarding internal and external borders;

the Commission made the declaration reproduced in Annex.

VI. Controls at external borders

i) Draft Convention relating to the crossing of the external borders of the member states of the EC

- Ministers acknowledged the declarations from the Presidency, Spain and the UK on the discussions which had taken place in order to try to resolve the last remaining problem, and asked the Presidency and the delegations concerned to continue their efforts.

- Ministers acknowledged the possible effects of the Treaty on European Union and of the EC agreement on the draft convention on the crossing of external borders.

Ministers believed

- that the modifications which may need to be made to the draft convention in order to make it compatible with the Treaty on European Union should be of a technical nature and be limited to what is strictly necessary. Negotiations will not be permitted to be restarted over articles

not affected by the Treaty on European Union.

- that the question is a purely technical one which must not be allowed to hold up proceedings on juridical grounds.

- that any period of juridical "vacuum" should also be avoided.

ii) Draft conclusions relating to the implementation of the draft convention on the crossing of external borders
Ministers formally acknowledged that, following the decision which they took in London, CIREFI had begun its work, based on the description of its duties as appearing in WGI 1357 REV. 1.

VII. Visas

i) Conclusions relating to the implementation of common visa policies envisaged in the convention on external border crossings
Ministers noted work in progress and, on the basis of document WGI 1513, agreed to approve conclusions 2, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 28 and 29.

Ministers asked the AHGI to continue its work relating to the completion of the other conclusions.

ii) Valid/Invalid travel documents
Ministers completed and approved conclusions appearing in document WGI 1506 REV 1 [Footnote: The Greek delegation reserved its position]

On this occasion the Portuguese delegation stated that its approval was conditional on Portugal's identification of the 1954 convention relating to the status of stateless persons.

iii) Visa requirements
Ministers noted a list of 73 countries from which incoming travellers would be required to have visas [WGI 1379 REV. 2]

Ministers asked the AHGI to study this list whilst waiting for the Treaty on European Union to come into force.

VIII Admission

i) Draft resolution on the limitation of admission of third-country nationals to member states for work purposes
Ministers noted the progress made [WGI 1498] during the Danish presidency and asked the AHGI to complete its examination of this matter before the next ministerial meeting.

ii) Draft resolution on the harmonisation of national policies on family reunion
Ministers completed and approved document WGI REV 1 [Footnote: the Dutch delegation reserved its right of parliamentary scrutiny]

IX. Removal

i) Flexibility in application of measures relating to transit aimed at removal
Ministers approved the conclusions which appear in WGI 1310 REV. 3

ii) Draft recommendation on the regulation and removal of persons from third countries illegally staying or working
Ministers approved the recommendation which appears in document WGI 1516.

Ministers called on the AHGI to look at ways of improving the means employed by member states regarding the regulation of foreigners illegally present.

iii) Agreements with third countries on re-admission
Ministers acknowledged the progress thus far achieved and called on the AHGI to continue its work in this field.

X. False Documents

Ministers approved the recommendations relating to the European fraud bulletin [WGI 1324 REV 1]

Ministers called on the AHGI actively to pursue work relating to a computerised archives and circulation system for copies of documents.

XI. Contacts with the European Parliament

Ministers noted Mme WEISS's statement regarding her contacts with the European Parliament.

Ministers acknowledged the information provided by the Greek Minister for Public Order to the European Parliament's commission on civil liberties.

XII. Contacts with third countries

Ministers acknowledged information regarding contact that the Presidency has had or will have with:

- Canada and the USA;
- Austria, Finland, Norway and Sweden;
- Switzerland;
- Morocco.

XIII. Next meeting

Depending on the implementation of the Treaty on European Union, Ministers agreed to meet again on 29th and 30th November and 1st December 1993.

ANNEX

STATEMENT BY THE COMMISSION ON THE REPORT TO THE EUROPEAN COUNCIL OF COPENHAGEN REGARDING THE ACTIVATION OF ART.8 OF THE TREATY OF ROME ON THE FREE MOVEMENT OF PERSONS

1. The last European Council (Edinburgh) reaffirmed its support for the full enactment of Art.8A and called on Ministers to accelerate their work, as well as to report to the European Council (Copenhagen). The Commission considers that the present report does not fulfil the guidelines set out at Edinburgh for speeding up this process.

2. Art.8 has still not been fully put into force. The situation described in the report reveals a regrettable lack of progress with regard to the 3 principal compensatory measures, the importance of decisive progress on which had been emphasized by the Edinburgh Council. The Dublin Convention on Asylum had only been ratified by 6 Member States, despite the fact that it has been open for signature for almost 3 years. The wording of the report confines itself to envisaging ratification by other member states "as soon as possible". There was no requirement that this be undertaken by the end of this year. The convention on the crossing of external borders has been held up for 2 years because of one remaining problem. No resolution appears to be in sight, nor are active negotiations taking place. Finally, negotiations at expert level on the European Information System progress very slowly and will need to be decidedly more motivated if they are to allow the aim of signing an agreement by the end of 1993 to be met.

3. Failure to realise the free movement of people by the end of this year, 12 months after the deadline envisaged by the Treaty, appears to be inevitable. The Commission, however, is not prepared to resign itself to this situation.

4. The Commission considers that the attention of the Council ought to be drawn to the fact that the deadline for the enactment of Art.8A has expired and that a timetable for the enactment of compensatory measures has not been drawn up. The insistently slow approach to these matters goes against the wishes of public opinion, which expects that 1993 will herald the abolition of border controls and the realisation of the free movement of persons. Substantial progress in the coming months will require a real political will to fulfil the obligations of the Treaty. If progress were not achieved, the Commission, within the limits of its mandate, is determined to take necessary initiatives to ensure that Art.8A, on the free movement of persons be realised.

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Harmonization of national policies on family reunification

Introduction

Resolution on harmonisation of national policies on family reunification (adopted Copenhagen, 1 June 1993 by the meeting of Immigration Ministers. SN 2828/1/93 WGI 1497 REV 1). Principles of family reunion for non-EU citizens are restrictive, depending on permanent residence of the principal; family members benefiting are drawn much more narrowly than EU family members; waiting periods are allowed; states can apply the primary purpose rule to marriages.

Harmonization of national policies on family reunification

Reference:

Ad Hoc Group Immigration
Copenhagen, 1 June 1993
SN 2828/1/93 WGI 1497 REV 1

Subject:

Harmonization of national policies on family reunification

At their meeting of 1 June 1993, Ministers agreed on the following resolution on harmonization of national policies on family reunification.

The Netherlands delegation has expressed a parliamentary scrutiny reservation on this text.

ANNEX

HARMONIZATION OF NATIONAL POLICIES ON FAMILY REUNIFICATION

1. Ministers of Member States of the European Communities responsible for Immigration, meeting in Copenhagen on 1 June 1993, adopted the following Resolution on the harmonization of national policies on family reunification.

2. This question was included as a priority item in the programme for harmonization of immigration policies adopted by Immigration Ministers and endorsed by the European Council at the conclusion of the Netherlands Presidency in December 1991, and work on it has continued during the Portuguese, United Kingdom and Danish Presidencies.

3. The question of family reunification is already to some extent governed by international Conventions to which some or all of the Member States are parties, as well as by basic provisions of their national laws. The obligations flowing from these Conventions and from basic national laws have been taken into account in the process of seeking further harmonization between the Member States, which does not affect those obligations.

4. On the other hand, there is also a need to control migration flows into the territories of the Member States. This is considered to be one of the factors for the successful integration of immigrants who are lawfully resident within the territories of Member States.

5. With these considerations in mind, Ministers resolved that the national policies of Member States in respect of family reunification for immigrants resident in their territories should be governed by the principles set out below. They agreed to have regard to these principles in any proposals for the revision of national legislation. They further agreed to seek to ensure by 1 January 1995 that their national legislation is in conformity with them. The principles are not legally binding on the Member States and do not afford a ground of action by individuals.

6. The harmonization principles are confined at this stage to family reunification in respect of persons who are not nationals of a Member State but who are lawfully resident within the territory of a Member State on a basis which affords then an expectation of permanent or long-term residence.

7. A number of Member States have different policies in respect of the family members of their own nationals, whilst others treat non-EC nationals settled in their territories on the same basis as their own nationals for the purpose of family reunification. This question is not affected by the present Resolution.

8. Policy in respect of the admission to Member States of the family members of nationals of Member States who are exercising a right of free movement of persons is governed by Community law. When the Agreement on the European Economic Area comes into force, the position of family members of nationals of EFTA States will be governed by that Agreement.

9. Member States have separate policies and practices in respect of other categories of resident non-EC nationals, i.e. those who do not have an expectation of permanent or long-term residence (notably persons who are granted permission to work in a Member State for a fixed period, and students). In some cases persons in these categories are excluded from family reunification.

Nor does this Resolution cover family reunification in respect of persons who have been granted refugee status, for whom some Member States have more favourable policies.

The harmonization of policy in respect of the families of persons in these categories will be further examined in the course of considering admissions policies in respect of them.

PRINCIPLES GOVERNING MEMBER STATES' POLICIES ON FAMILY REUNIFICATION

Non-Community nationals to whom the Principles relate

1. These principles, which do not affect Community law, will be applied in respect of the family members of non-EC nationals who are lawfully resident within the territory of a Member State on a basis which affords them an expectation of permanent or long-term residence. Third-country nationals present in the territory of a Member State on a short-term basis (for example, students and persons admitted for employment for a fixed term) are outside the scope of these principles. The question of what constitutes an expectation of permanent or long-term residence is for determination by reference to national laws and policies.

Family members normally entitled to enter and remain in a Member State

2. The Member States will normally grant admission, under the conditions set out in the remainder of this Resolution, to

- the resident's spouse (that is, a person bound to him or her in a marriage recognized by the host Member State),
- the children, other than adopted children, of the resident and his or her spouse,
- children adopted by both the resident and his or her spouse while they were resident together in a third country, in accordance with a decision taken by the competent administrative authority or court of that state and which is recognized and accepted by the Member State of residence, and where the adopted children have the same rights and obligations as the other children and there has been a definitive break with the family of origin.

The spouse and the children may be admitted only for the purpose of

living together with the resident.

Waiting periods

3. Member States reserve the right to require non-EC nationals to be lawfully present in their territory for certain periods of time before family members may be reunited with them under the terms of these principles.

Further conditions concerning spouses

4. Member States reserve the right to determine whether a marriage was contracted solely or principally for the purpose of enabling the spouse to enter and take up residence in a Member State, and to refuse permission to enter and stay accordingly.

5. A wife and her children will not be admitted for the purpose of family reunification if the marriage is polygamous and the resident already has a wife resident in the territory of a Member State. The Member States also reserve the right to refuse admission to a wife and her children for the purpose of family reunification if the marriage is polygamous and the children of another wife are resident in the territory of a Member State.

Other children

6. Member States reserve the option of admitting a child (including an adopted child) where the child is the offspring of the resident or of his/her spouse, but not of the couple involved. When determining whether or not to accept such a child, the Member State shall consider whether the resident and his/her spouse or either of them, hold parental authority, have been granted custody of the child and have the child effectively in their charge.

7. Member States reserve the possibility of admitting a child adopted by both the resident and his or her spouse while one or both were resident in a Member State provided that the child has been adopted in accordance with a decision taken by the competent administrative authority or court of the State of origin and which is recognized and accepted by the Member State of residence, and where the adopted child has the same rights and obligations as the children referred to in paragraph 2 and there has been a definitive break with his family of origin.

Further conditions concerning children

8. In order to qualify for admission for the purpose of family reunification children must be below a maximum age, which the Member States agree should be between 16 and 18 years, and must not have married or have formed an independent family unit or be leading an independent life.

9. Member States will consider whether an adoption has been arranged solely or principally for the purpose of enabling the child to enter and take up residence in a Member State, and whether to refuse permission to enter and stay accordingly.

Other family members

10. Member States reserve the possibility of permitting the entry and stay of family members, other than those envisaged in paragraphs 2, 6 and 7 of this Resolution, for compelling reasons which justify the presence of the person concerned.

Conditions of stay for family members admitted to the Member States

11. An authorization to stay on the basis of family reunification may, for such a period as the Member State concerned determines, be conditional upon the continued fulfilment of the criteria for admission.

12. Within a reasonable period of time following their admission, family members, in accordance with the national legislation in each Member State, may be authorized to stay on a personal basis independently from the person whom they joined on the basis of family reunification. The principles set out in this document do not affect Member States/national legislation or practice in respect of the rights of reunited families in areas which have no direct bearing on the right of entry and stay.

13. The authorization to stay granted to a family member may be terminated at any time if there are grounds for presuming that it was obtained by means of fraud or forgery.

General conditions of entry and stay

14. A person will not normally be admitted to the territory of a Member State for the purpose of family reunification without a visa or other prior written authorization for that purpose, issued by the Member State in which the family intends to reside. The application must normally be made whilst the family member concerned is outside the territory of the Member State concerned.

A visa or other prior written authorization will not be issued unless the applicant meets all the criteria for entry and stay in the territory of the Member State concerned as set out in these principles.

15. Family members must also, in principle, be in possession of valid travel documents which are recognized by the Member State in which the family intends to reside.

16. Member States reserve the right to make the entry and stay of family members conditional upon the availability of adequate accommodation and of sufficient resources to avoid a burden being placed on the public funds of the Member State concerned, and on the existence of sickness insurance.

17. Member States will normally refuse entry and stay to a family member if his presence would constitute a threat to national security or public policy ("ordre publique"). They reserve the right to refuse entry and stay on grounds of public health.