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10361/93

RESTREINT

ASIM 22

REPORT

from : K.4 Committee

dated: 18 November 1993

to : Permanent Representatives Committee

No. prev. doc.: 10028/93 ASIM 12

Subject: Linkage between the Europe Association or Co-operation Agreements and the readmission practices of third countries

1. At the meeting of Steering Group I (Asylum and Immigration) on 8 and 9 November 1993, the Presidency tabled the text set out in the Annex. This is a version of its proposal, adapted on the basis of previous work, to establish a link between the Europe Association or Co-operation Agreements to be concluded by the European Community with third countries and the readmission practice of those countries. This linkage would be established by including in the negotiating brief proposed by the Commission to the Council one or more of the provisions suggested in the "platform" prepared for the negotiators (see Annex, pages 5 to 7).
2. The Steering Group gave its unanimous backing to the principle of this initiative and emphasized its urgency, while drawing attention to certain difficulties, notably institutional.

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3. Owing to lack of time and the non-availability of some of the language versions of the document, the K.4 Committee have not been able to examine the proposal in detail.

However, four delegations (F/NL/IRL/UK) entered a provisional reservation on the approach suggested by the Presidency.

Two delegations (P/D) queried the actual principle of establishing such a close linkage in the negotiation of an agreement by the Community with a third country, given the institutional consequences which such a procedure could involve both nationally and for the Union (see also pages 4 and 5 of the Annex).

For these reasons, the German delegation thought that the detailed negotiation of the question of readmission should not be combined with negotiation of the Co-operation Agreements but should take place in parallel and could result in a separate Agreement.

4. Under these circumstances, the Presidency considers that at its meeting on 29 and 30 November 1993 the Council should examine the actual principle of the linkage envisaged and ask the Commission to take this into account.

The Council could instruct its competent bodies to examine exactly how this principle should be implemented, in view of the difficulties revealed by the discussions.



**Linkage between Association or Co-operation
Agreements and the readmission practices of
Third Countries**

Subject of the proposal: linkage between future Europe, Association or Co-operation Agreements and third countries' practice on readmission to their territory of their own nationals unlawfully present in Member States.

As with human rights clauses included in such Agreements, the idea is to consider systematically whether to insert in such agreements (preamble and enacting terms) a reference to the issue of readmission, thus establishing a link between the Agreement and the relevant State's practice on readmission.

To avoid any confusion: this step is separate from, and logically prior to, any negotiation of readmission agreements since:

- third countries rarely dispute the obligation to readmit, but they raise problems of identification such that the principle remains inoperative, thereby hampering Member States' efforts to repatriate illegal immigrants;
- it is designed precisely to take advantage of a general or existing agreement, beneficial primarily for the third country, to make it aware of our serious illegal immigration problems and prompt it to co-operate more effectively in practice on readmission, in order to give our expulsion policy a degree of credibility.

Context: this initiative fits in with the work programme approved by the European Council in Maastricht and follows on from the Edinburgh European Council Declaration on principles governing external aspects of migration policy. It is supported by Steering Group 1 and a platform for negotiators of such agreements (see pages 5, 6 and 7) has been prepared. Negotiators could select one or more of its clauses according to circumstances.

Obstacles:

- inclusion systematically or depending on the individual case: there is little to be gained by playing with words; the important point is to establish the link whenever appropriate, i.e. in each case of negotiations for a general agreement with a third country whose practice on readmission of its nationals is considered unsatisfactory by a number of Member States, or a third country which is or might become a significant source of illegal immigration to Member States.

- institutional problem:
 - = the Commission would see serious drawbacks in the inclusion of such clauses if they were to change the nature of the agreement, from a Community one to a mixed one. In order to avoid this Member States would have to refrain from adducing the inclusion of such clauses to request a change in the nature of the agreement;

= some Member States might oppose it for fear of a covert transfer of powers from the third pillar to the first pillar in this way; to reassure them, it could be stressed that the aim is merely to be able to use the agreement (to be concluded in any event, with the third country its main beneficiary) as a means of persuasion and pressure to prompt the third country to co-operate more effectively on readmission (rather than resorting straightaway to a readmission agreement, which would involve a fresh quid pro quo).

Conclusion: The Commission could be requested by the Council to include one or more of the proposed clauses in the negotiating directives which it puts forward, whenever appropriate, or, any other equivalent formula, if need be.

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Platform for negotiators

1. In the preamble to the Agreement

Recognizing that the parties to this Agreement cannot benefit from it fully unless they co-operate actively over combating illegal immigration;

Fully subscribing to the principle of the readmission by each State of its own nationals and wishing to ensure that implementation of this principle is not hampered by a lack of formal proof of identity;

Recalling the Joint Declaration on ACP migrant workers and ACP students in the Community in Annex V to the Fourth Lomé Convention;

Convinced that a policy of expulsion of illegal immigrants - which to be effective requires the active co-operation of the countries of origin, destination and transit - is an effective tool in combating illegal immigration and likely to facilitate the integration into the Community and its Member States of foreigners legally residing there;

Noting that this Agreement and the various undertakings given therein by the Community and its Member States will help to reduce migratory pressures and will guarantee respect for democratic values and human rights;

2. In the provisions of the Agreement:

The Contracting Parties agree:

- that co-operation in combating illegal immigration is an important part of the Agreement;
- that they will take all necessary steps to oppose illegal immigration from or through their territory;

- that they undertake to readmit to their territory all their own nationals [and all stateless persons coming from their territory] ⁽¹⁾ on request and without formalities and, if necessary , issue any travel documents or laissez-passer necessary for that purpose without delay, even if there is no formal proof of their identity;

- that to the extent that the country in question proves willing to co-operate over readmission, particularly in issuing travel documents, and inasmuch as it so requests, the Community and its Member States will subscribe to the additional undertakings set out in the Annex; ⁽²⁾ those undertakings may constitute the quid pro quo of the Community and its Member States in the readmission agreements which they conclude with the country in question;

- that those undertakings are without prejudice to the implementation of existing bilateral co-operation in this field between Member States and the country in question.



⁽¹⁾ The German delegation suggested the inclusion of this phrase.

⁽²⁾ optional

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ADD 1
RESTREINT

ASIM 22

ADDENDUM

to: 10361/93 ASIM 22

No. prev. doc.: 10361/93 ASIM 22

Subject: Linkage between the Europe, Association or Co-operation Agreements and the
readmission practices of third countries

1. At its 1588th meeting the Permanent Representatives Committee examined the K.4 Committee's Report (10361/93 ASIM 22) on the possible establishment of a linkage between Europe, Association or Co-operation Agreements and the readmission practices of third countries.

The Committee took note of the text proposed by the Presidency as a draft platform for the negotiators of those Agreements as well as of the problems which establishing such a relationship might pose (see Annex to 10361/93).

2. All delegations recognized the importance of this initiative but also saw a need to go into it in greater technical detail. A large majority of delegations came out in favour of the principle of such a relationship in appropriate circumstances, since they considered that in the present situation every effort should be made to combat illegal immigration.

3. However, the Portuguese delegation adopted a reserved position regarding this principle which it thought could be detrimental to the proper implementation of Association or Co-operation Agreements.
4. In addition, the Committee made the following comments, which it would draw to the Council's attention:
 - (i) In the opinion of the Committee and of the Commission the question of whether it is necessary to establish any linkage should be examined on a case-by-case basis. There can be no question of a systematic approach since it is necessary in each case to form a judgment of political desirability, which comes under the external policy of the Union as a whole. In this connection, thought was also given to the Union body competent to assess the matter.
 - (ii) The inclusion in the Agreements of provisions contained in the text suggested by the Presidency might pose legal and institutional difficulties. Involved here are, in particular, the respective powers of the Member States and of the Union, and, consequently, the nature and detailed conditions for negotiating the Agreements concerned.
5. The Committee therefore suggests that the Council should examine the principle of the linkage proposed by the Presidency and instruct it to examine further the details of its implementation.

