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NOTE

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from : future French Presidency

to : Migration Working Party (Expulsion)

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Subject: Proposal for a joint action on harmonizing means of combating illegal immigration and illegal employment and improving the relevant means of control

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Delegations will find attached a proposal from the future Presidency concerning the above joint action. A presentation of this proposal will be made at the next meeting of the Migration Working Party (Expulsion), scheduled for 9 January 1995.

**SEMDOC**

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**DRAFT COUNCIL ACT ADOPTING A JOINT ACTION  
ON HARMONIZING MEANS OF  
COMBATING ILLEGAL IMMIGRATION  
AND ILLEGAL EMPLOYMENT AND IMPROVING  
THE RELEVANT MEANS OF CONTROL**

Proposed act No ..... of the Council of the European Union of .....

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the French proposal of .....

Having regard to the Council Recommendation of 30 November 1992 concerning checks on and expulsion of third-country nationals residing or working without authorization,

Having regard to the Council Recommendation of 1 June 1993 regarding practices followed by Member States on expulsion,

Whereas, pursuant to Article K.1 of the Treaty on European Union, policy regarding nationals of third countries and in particular combating unauthorized immigration, residence and work are matters of common interest and therefore fall within the areas for cooperation between Member States referred to in Title VI of the Treaty on European Union;

Whereas the Member States, faced with strong migratory pressures, have already adopted specific measures to ensure better control of population flows and to avoid the continued unlawful presence on their territories of foreign nationals who have entered or are residing illegally;

Whereas, however, the efficiency of that action depends on the Member States of the European Union implementing coordinated and mutually consistent measures;

Whereas, although recommendations laying down guiding principles for practice with regard to expulsion have already been adopted by the Twelve, that effort at alignment needs to be reinforced by asking Member States to undertake to comply with a number of principles designed to ensure a better check on the situation of foreign nationals present within their territories:

Whereas this action is without prejudice to Community legislation, to the Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms and to the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967,

HAS ADOPTED THE FOLLOWING PROVISIONS:

#### Article 1

The Member States intend to harmonize further the means for checking on foreign nationals to verify that they fulfil the conditions laid down by the rules applicable to entry, residence and employment. To that end the Council hereby adopts a joint action specifying general guidelines in this area, which it invites Member States to follow. The guidelines are set out in Articles 2 to 16.

#### Article 2

The scope of this action does not extend to nationals of Member States of the European Union or of EFTA member countries party to the Agreement on the European Economic Area, or to members of their families.

## CHAPTER 1: VERIFICATION OF THE SITUATION OF FOREIGN NATIONALS ON THE OCCASION OF AN IDENTITY CHECK OR QUESTIONING

### Article 3

The competent authorities of the Member States shall systematically verify the residence situation of any foreign national undergoing an identity check.

Such checks may be carried out in the following cases:

- identity checks in connection with the investigation or prosecution of offences (whether or not those offences are specific to foreign nationals);
- preventive identity checks to ward off threats to public order on specific occasions (demonstrations, sporting events, open air concerts) or in specific places (sensitive neighbourhoods, the Underground);
- identity checks in frontier zones and at ports, airports and railway stations handling international traffic;
- other identity checks provided for by national legislation.

### Article 4

The competent authorities of the Member States which have questioned a foreign national for any reason whatsoever shall systematically verify that person's situation with regard to entry and residence.

### Article 5

The verifications provided for in Articles 3 and 4 shall be carried out in a non-discriminatory manner.

Assessment of who constitutes a foreign national shall be based solely on objective criteria which comply with non-racist and non-xenophobic principles.

## CHAPTER II: VERIFICATION OF THE SITUATION OF FOREIGN NATIONALS OTHER THAN ON THE OCCASION OF IDENTITY CHECKS

### Article 6

On occasions other than identity checks, foreign nationals must be in a position to present the documents by virtue of which they are authorized to reside within the territory of one of the Member States of the Union.

Such verification shall be carried out in a non-discriminatory manner.

Assessment of who constitutes a foreign national shall be based solely on objective criteria which comply with non-racist and non-xenophobic principles.

### Article 7

Applications by foreign nationals for benefits provided by a public service of a Member State in the area of health, retirement, family benefit, work-related benefit or housing benefit shall not be met until it has been verified that the situation of the person concerned or his family is in order.

Such verifications shall be carried out at the request of the services providing the benefits, with the assistance of the authorities responsible for issuing residence or work permits, which shall send the former the relevant information under procedures which guarantee confidentiality in the transmission of individual data.

These provisions shall not apply to humanitarian cases.

An information campaign shall be carried out to make the central or local authorities responsible for dispensing social security benefits to foreign nationals aware of what is at stake in combating illegal immigration in order to encourage them to apprise the competent authorities of any cases of breaches of the residence rules which they may detect in the course of their work; the authorities responsible for marriages should also have their attention drawn to the risk of non-genuine marriages.

## PRESIDENCY NOTE

Principles which could be adopted for harmonizing conditions for combating illegal immigration and illegal employment and improving the relevant means of control

### Objectives:

In the work of the Twelve regarding the expulsion of third-country nationals, the emphasis should be placed on combating illegal immigration and illegal employment of foreign nationals not authorized to reside or work.

The strong migratory pressures facing the Member States have already led them to adopt specific arrangements (both legal and physical) to ensure better control of population flows and to avoid the continued unlawful presences within their territories of foreign nationals who have entered illegally.

The efficiency of that action depends, however, on the Twelve implementing measures which, if not identical, are at least consistent.

Although recommendations laying down guiding principles for practice with regard to expulsion have already been adopted by the Twelve, that effort at alignment needs to be reinforced by proposing that the Member States undertake to comply with a number of principles designed to ensure a better check on the situation of foreign nationals present in their territories.

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#### Article 8

Employers wishing to recruit foreign national must check with the authorities responsible for issuing residence and work permits to ensure that the situation of those foreign nationals is in order; the said authorities shall send the employers the relevant information under procedures which guarantee confidentiality in the transmission of individual data.

#### Article 9

Any person who directly or indirectly employs foreign nationals not in possession of a document entitling them to take up paid employment may be subject to special criminal penalties which may in particular take the form of prison sentences, fines or confiscation of the tools of the trade or the proceeds of the unauthorized work.

Administrative penalties may also be introduced.

#### Article 10

The authorities competent to take decisions to refuse authorization to reside may take all necessary measures to check that the persons who have been refused authorization to reside within the territory of the Member State have left that territory of their own accord.

### CHAPTER III: INFORMATION ON RESIDENCE

#### Article 11

A central file of foreign nationals may be set up in each Member State in compliance with the standards laid down in Council of Europe Convention 108 of 28 February 1981.

## Article 12

That file shall contain information on the administrative situation of foreign nationals with regard to residence, including any refusal of authorization to reside and any expulsion measures.

## CHAPTER IV: SECURITY OF RESIDENCE DOCUMENTS

### Article 13

Member States shall check that residence documents issued to foreign nationals are adequately secured against forgery – particularly by colour photocopying – and if not shall make the necessary changes.

They shall also check that documents providing proof of nationality of the Member State are properly protected against falsification and forgery and shall take any measures that may be necessary to that end. The same shall apply to the residence permits issued to nationals of the European Union or of the European Economic Area.

## CHAPTER V: REINFORCEMENT OF THE MEANS NECESSARY FOR THE IDENTIFICATION OF FOREIGN NATIONALS NOT IN POSSESSION OF ANY DOCUMENT

### Article 14

Member States shall take every measure to reinforce means of identifying foreign nationals who are not in a lawful position and who have no travel documents or other documents by which they can be identified.

### Article 15

Foreign nationals who are not in a lawful position and whose expulsion has been decided on shall be held in non-prison accommodation for long enough to facilitate their identification, notably by the consular authorities of the countries to which they are likely to be returned.

Article 16

Deterrent measures may in particular take the form of criminal sentences for foreign nationals who have deliberately brought about their illegal position, particularly by refusing to supply travel documents.

Article 17

Member States shall review the follow-up to Chapter III.3 of the Council Recommendation adopted in London on 30 November 1992 concerning checks on and expulsion of third-country nationals residing or working without authorization.

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CHAPTER VI - CONSULTATION ON THE PROGRESS OF HARMONIZATION

Article 18

Member States shall review regularly within the Council, for example once a year, the progress made on harmonization in the fields covered by this joint action.

Principles:

- Better knowledge of foreign populations - whether migrant or resident, lawfully present or not - through the introduction of statistical monitoring of immigration under the responsibility of the Home Affairs Ministers of the Twelve. Exchange of data within CIREFI.
- Alignment of national arrangements for checking documents held by foreign nationals. Systematic but non-discriminatory checks in the following cases:
  - . Identity checks carried out by the police (preventive checks, checks in connection with the investigation of an offence or questioning, checks in frontier zones and at ports, airports or railway stations handling international traffic in the SCHENGEN area);
  - . Verification of the situation of foreign nationals other than on the occasion of identity checks.

Foreign nationals should be in a position to present the documents by virtue of which they are authorized to reside on occasions other than identity checks.

In addition, verifications may be made when foreign nationals apply for benefits provided by public services in a Member State (social security benefits, housing benefit, work-related benefit, etc.).

Furthermore, there could be an information campaign to make the central or local authorities dispensing social security benefits to foreign nationals aware of what is at stake in combating illegal immigration.

Naturally this must not adversely affect humanitarian cases.

- Other approaches made by foreign nationals to third parties (job applications); awareness campaigns and provision of information after verification of whether the request from the third party is justified.

Direct or indirect employment of foreign nationals not in possession of a document authorizing them to take up paid employment could be the subject of special administrative or criminal penalties (prison sentences, fines, confiscation of tools of the trade and the proceeds of unauthorized employment, etc.).

- Checking that persons refused authorization to remain have actually left the country.
- Further consultation and cooperation on improving expulsion measures (German Presidency's proposals to be studied and possibly adopted): diplomatic cooperation in obtaining return travel documents, limitation of legal and practical difficulties posed by transit through other Member States (joint escorts), "grouping" of returns at Union level (compilation of information on journeys by a centralized body, organization of group flights).
- Reinforcement of the means necessary for identifying foreign nationals not in possession of a document by which they can be identified:
  - holding of such persons in non-prison accommodation for a sufficient period;
  - adoption of measures whereby criminal penalties can be imposed on foreign nationals who have deliberately brought about their illegal position;
- Member States should respect human rights in implementing expulsion measures.

