

7972/95

LIMITE

ASIM 188

**"A" ITEM NOTE**

---

from: COREPER

to : Council

---

No. prev. doc.: 7846/95 ASIM 182

---

Subject: Draft Council Recommendation on harmonizing means of combating illegal immigration and illegal employment and improving the relevant means of control

---

At its meeting on 14 June 1995 Coreper recorded its agreement on the attached draft Recommendation. The Council is accordingly asked to enter this item in part "A" of its agenda and to approve the draft Recommendation prior to its finalization by Legal/Linguistic Experts before formal adoption.

DRAFT COUNCIL RECOMMENDATION  
OF  
ON HARMONIZING MEANS OF  
COMBATING ILLEGAL IMMIGRATION  
AND ILLEGAL EMPLOYMENT AND IMPROVING  
THE RELEVANT MEANS OF CONTROL

THE COUNCIL OF THE EUROPEAN UNION

HAVING REGARD to the Treaty on European Union, and in particular Article K3(2), thereof,

HAVING REGARD to the initiative submitted by the French Republic on

HAVING REGARD to the Recommendation of the Ministers of the Member States of the European Communities with responsibility for immigration of 1 June 1993 concerning checks on and expulsion of third-country nationals residing or working without authorization,

HAVING REGARD to the Recommendation of the Ministers of the Member States of the European Communities with responsibility for immigration of 30 November 1992 regarding practices followed by Member States on expulsion,

WHEREAS, pursuant to Article K.1(2) and (3) 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 an increase in illegal immigration, have already adopted specific measures to ensure better control of population flows and to avoid the continued unlawful presence in 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, that effort at alignment needs to be reinforced by asking Member States 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 in particular Articles 3 and 14 thereof, 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.

HEREBY recommends Member States 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 on the basis of the following guidelines:

1. This Recommendation does not extend to citizens of the European Union or to nationals of EFTA member countries party to the Agreement on the European Economic Area, or to members of their families entitled under Community law.
2. Where an identity check is carried out on a foreigner in accordance with national law, at least where a person appears to be residing in the country unlawfully, his residence situation should be verified. This may apply in particular in the following cases:
  - identity checks in connection with the investigation or prosecution of offences;
  - identity checks to ward off threats to public order or security;
  - identity checks in order to combat illegal entry or residence in certain areas (e.g. frontier areas and ports, airports and railway stations handling international traffic), without prejudice to border controls.

3. Third-country nationals should be in a position, according to national law, to present to the competent authorities confirmation, for example by way of papers or documents by virtue of which they are so authorized, of their authority to reside within the territory of the Member State where they are.
4. Where national law regards the residence or employment situation as a prerequisite for foreign nationals to qualify for benefits provided by a public service of a Member State in particular in the area of health, retirement, family or work, that condition cannot be met until it has been verified that the residence and employment situation of the person concerned and his or her family does not disqualify them from the benefit. Verification of residence or employment status is not required where intervention by a public authority is necessary on overriding humanitarian grounds.

Such verifications are carried out by the services providing the benefits, with the assistance, if necessary, of the authorities responsible in particular for issuing residence or work permits, in accordance with national law relating to data protection in particular.

Member States should inform the central or local authorities responsible for dispensing benefits to foreign nationals of the importance of combating illegal immigration in order to encourage them to report to the competent authorities, in accordance with national law, such cases of breaches of the residence rules as they may detect in the course of their work.

The attention of the authorities responsible for issuing residence permits should also be drawn to the risk of marriages of convenience.

5. Employers wishing to recruit foreign nationals should be encouraged to verify that their residence or employment situations are in order by requiring them to present the document(s) by virtue of which they are authorized to reside and work in the Member State concerned. Member States could stipulate that employers may, if necessary, under the conditions laid down by national law relating, in particular, to data protection, check with the authorities responsible in particular for issuing residence and work permits; the said authorities may send the employers the relevant information under procedures which guarantee confidentiality in the transmission of individual data. <sup>(1)</sup>
6. Any person who is considered, under the national law of the country concerned, to be employing a foreign national who does not have authorization should be subject to appropriate penalties.
7. The authorities competent to authorize residence should be empowered to take measures to check that persons who have been refused authorization to reside within the territory of the Member State have left that territory of their own accord.
8. Each Member State should consider setting up a central file of foreign nationals containing information on the administrative situation of foreign nationals with regard to residence, including any refusal of authorization to reside and any expulsion measures. Any file thus set up will operate in compliance with the standards laid down in Council of Europe Convention 108 of 28 January 1981 for the Protection of Individual with regard to Automatic Processing of Personal Data.

---

(1) The United Kingdom and Irish delegations wanted the following statement included in the Council minutes:

"Recalling the position in their national laws, the United Kingdom and Ireland reserve their rights in regard to the application of point 5."

9. Member States should satisfy themselves that residence documents issued to foreign nationals are adequately secured against forgery and fraudulent use – particularly by colour photocopying – and, should, if necessary, amend them accordingly. <sup>(1)</sup>
  
10. Member States should take every measure to reinforce and improve 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.

Where a foreign national who is not in a lawful position is, or is likely to be, detained under the circumstances provided for in Chapter II of the Council Recommendation on the Member States' practices on expulsion, adopted in London on 30 November 1992 by the Ministers of the Member States of the European Communities with responsibility for immigration, the period of detention should be used in particular to obtain the necessary travel documents for expelling foreign nationals who have no documents. The consular authorities of the country of origin or the country of the nationality of the foreign national concerned should be encouraged to make additional identification efforts to obtain travel documents.

Foreign nationals who have deliberately brought about their illegal position, particularly by refusing to supply travel documents, should be subject to penalties. In appropriate cases, such penalties may fall under criminal law.

---

<sup>(1)</sup> Delegations agreed that the following statement should be adopted by Ministers at the same time as this Recommendation;

"In order to avoid the use by foreign nationals in an illegal situation of false national identity documents and false residence documents of persons subject to Community law, ways must be sought of reinforcing the security aspects of these documents as is done in the case of residence documents issued to nationals of third countries."

Member States will review the follow-up to Chapter III.2 of the Recommendation regarding practices followed by Member States on expulsion adopted in London on 30 November 1992 by the Ministers of the Member States of the European Communities with responsibility for immigration.

The Council will review regularly, for example once a year, the progress made on harmonization in the fields covered by this Recommendation.

Done at ,

For the Council  
The President

---