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LIMITE

ASIM 42

NOTE

from : Working Party on Asylum

to : K.4 Committee

Nos prev. docs: 12948/96 ASIM 179, 5539/97 ASIM 15

Subject: Draft *conclusions* concerning practical implementation of the Dublin Convention

Delegations will find annexed a note from the Presidency containing *draft* Council *conclusions* concerning practical implementation of the Dublin Convention. The *draft* Council *conclusions* are based on the consensus concerning 12948/96 ASIM 179 and 5539/97 ASIM 15 which was reached after discussion in the meetings of the Working Party on Asylum (7 and 8 January and 5 and 6 February 1997). *The form of conclusions was chosen on the advice of Council Legal Service and in accordance with the usual form of the texts adopted earlier by the Council and the Ministers responsible for immigration with regard to implementation of the Dublin Convention. The formal, legal decisions will be taken by the Article 18 Committee after the entry into force of the Dublin Convention.*

As decided by the Working Party on Asylum on 5 and 6 February 1997, the Presidency submits the annexed draft Council *conclusions* to delegations, with the request that any comments be sent to the Council Secretariat by 20 March at the latest. The Presidency will subsequently refer *the* draft Council *conclusions* to the K.4 Committee for approval.

1. Introduction

At the meetings of the Working Party on Asylum on 7 and 8 January and 5 and 6 February 1997, two documents were discussed which contained proposals concerning practical implementation of the Dublin Convention. The aim of the proposals was on the one hand to complete the necessary work on the implementing rules for the practical implementation of the Dublin Convention and on the other hand to see to what extent practical experience in applying the asylum provisions of the Convention implementing the Schengen Agreement could be included in the context of the implementing rules for the Dublin Convention. The result of the discussions is the following proposed draft Council *conclusions* concerning practical implementation of the Dublin Convention.

2. Proposed draft Council *conclusions*

COUNCIL CONCLUSIONS

concerning practical implementation
of the Dublin Convention

THE COUNCIL OF THE EUROPEAN UNION;

- *adopts the following addition* to the guidelines for implementation of the Dublin Convention which were adopted in Lisbon on 11 and 12 June 1992 by the Ministers concerned with immigration:

"Time limit for replying to a request that an applicant be taken in charge

The Member State which is requested to take charge of an applicant should make every effort to reply to the request within a period not exceeding one month from the date on which the request was received.

In cases where particular difficulties arise, the requested Member State may also, before the time limit of one month is reached, produce a temporary reply indicating the period within which it will be possible to give a definitive reply. The latter period should be as short as possible and may in no circumstances exceed the period of three months from the date on which the request was received as indicated in Article 11(4) of the Dublin Convention.

If a negative reply is given by the time limit of one month, the requesting Member State still has the option, within a period of one month from the date on which it receives the negative reply, to contest that reply if after the date on which the request was acknowledged new and important facts have been brought to its attention which show that responsibility lies with the requested Member State. The requested Member State must then respond as quickly as possible.

The effects of this decision in practice must be assessed after one year by the Article 18 Committee. At that time it will be considered whether a period of one month can constitute a maximum time limit.

Urgent procedure

When a request for asylum is submitted to a Member State following refusal to allow entry or residence, arrest as a result of illegal residence or notification or execution of a removal measure, that Member State should forthwith notify this to the Member State deemed to have responsibility; such notification should give the reasons of fact and law why a swift reply is necessary and the deadlines for which a reply is requested. The Member State should endeavour to provide a reply within the specified periods. If this is not possible, it should inform the requesting Member State thereof as quickly as possible."

- *also adopts the following addition* to the conclusions relating to the transfer of asylum applicants pursuant to the Dublin Convention, as adopted in London on 30 November and 1 December 1992 by the Ministers concerned with immigration:

"Where the transfer of the asylum applicant has to be postponed due to special circumstances such as sickness, pregnancy, criminal detention, etc., and it is therefore not possible to carry out the transfer within the normal period of one month, the Member States concerned should duly consult and agree on a case-by-case basis on the time limit within which the transfer must take place.

Where the asylum applicant avoids implementation of the transfer so that it cannot be carried out, it is irrelevant with regard to responsibility whether the applicant disappeared before or after the formal acceptance of responsibility. If the asylum applicant is subsequently found, the Member States concerned should duly consult and agree on a case-by-case basis on the time limit within which the transfer must take place.

The Member States concerned must inform each other as quickly as possible if they know that one of the above situations has arisen. In both the above cases, the Member State responsible for examining the asylum application under the Dublin Convention will remain responsible for taking charge of or taking back the applicant without prejudice to Article 10(2), (3) and (4) of the Convention."

- *also adopts the following addition* to the text on means of proof in the framework of the Dublin Convention, as adopted by the Council on 20 June 1994 (Official Journal No C 274, pp. 35 to 41):

"Without prejudice to the provisions referred to in Official Journal No C 274, pp. 35 to 41, concerning means of proof, responsibility for dealing with an application for asylum may in individual cases be accepted on the basis of a consistent, sufficiently detailed and verifiable declaration by the asylum applicant."

having regard to the exchange of information referred to in Articles 14(1) and 15(1) of the Dublin Convention and the need to have access in a structural manner to statistical data concerning the practical application of the Dublin Convention;

noting that Article 15(1) of the Dublin Convention contains no deadline within which Member States must deal with other Member States' requests for information;

- *agrees to* change to three-monthly exchanges of statistical information concerning the practical application of the Dublin Convention using the tables given in the annexes;
- *also agrees* that the Member State to which a request within the meaning of Article 15 is addressed should make every effort to reply to the request if possible immediately and in any event within one month.
