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LIMITE

ASIM 79

NOTE

from : the Presidency

to : K.4. Committee

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Subject : Council Decision on a guide for effective practices for controls of persons at external frontiers

On 24 March 1997, the External Frontiers Working Party discussed the above-mentioned instrument, as revised by the Presidency. On that occasion, a number of delegations questioned the legal form of this instrument, i.e. that of a Council Decision, whereupon it was agreed that the Presidency would submit its considerations in this respect in a separate explanatory note to the K.4 Committee in an attempt to take away any remaining hesitations as to the legal form of the instrument.

The main consideration for having a separate Council decision on controls of persons at external frontiers is that in the context of the Phare programme border management activities are increasingly earmarked as one of the main priorities in the fields of Justice and Home Affairs, even though the Union has not yet defined a common policy in this regard. In order to provide Phare with at least a source of inspiration in this area and to meet the associated countries' explicit wish to receive authorised information on Member States' practices in this respect, a guide has been elaborated which indicates effective practices, while making it clear that no harmonisation of these practices at the level of the Union has yet taken place.

Thus, a formal Council Decision seems necessary in order to:

1. conclude at political level that the guide offers a good insight in some of the existing practices of Member States for dealing with the controls of persons at their external frontiers (this makes the guide the authoritative statement requested by the associated countries);
2. endorse the submission of the guide to the associated countries.

At the same time, a Council Decision offers the right setting for clarifying that at the level of the Union no harmonisation has yet taken place of Member States' practices for dealing with the controls of persons at their external frontiers and that the guide in no way represents such a harmonised position. The Decision also usefully explains that the guide cannot be used as an alternative to such harmonisation, which will normally involve the adoption of a Convention and a common manual on these issues.

Any submission of the document without an explicit Council Decision risks of making the status of the document both towards the associated countries and for the Union itself less clear.