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LIMITE

ASIM 3
EUROPOL 3

NOTE

From : The Presidency

To : K4 Committee

Subject : Influx of migrants from Iraq

In response to the remit given by the K4 Committee at its meeting on 18 December 1997 to draw up an Action Plan to combat illegal immigration from Iraq, the Migration, Europol and Asylum Working Groups met on 7, 8 and 9 January 1998 respectively to consider the draft proposals for the Third Pillar elements of the Action Plan put forward by the Presidency, as contained in document 5089/98 ASIM 3 EUROPOL 3.

The detailed suggestions made by delegations at those meetings have been incorporated into the revised text which is attached as an annex to this note. The K4 Committee is invited to note its agreement to the revised text.

The K4 Committee is additionally invited to consider three points of general importance to the Action Plan:

(i) Scope of the Action Plan. The text currently refers to Iraqi nationals. Should it have a wider scope to include, in particular, Kurds whether of Turkish or Iraqi nationality? At the Working Group meetings, Member States were anxious to achieve a proper balance between addressing the current problem fully but without broadening the scope too far. The Presidency proposes that the definition is kept tightly focused but that the report from COREPER to the Council describes the wider context.

(ii) Responsible Working Groups. The text does not at present specify in which Third Pillar Working Group the various elements of the Action Plan should be taken forward. The Presidency proposes that this matter should be settled by COREPER after the adoption of the Action Plan by the Council; and

(iii) Timetable. The revised draft Action Plan commits Member States to making a report to the Justice and Home Affairs Council at its March meeting and at regular intervals thereafter. The K4 Committee will wish to consider whether more detailed deadlines for action on individual aspects of the Action Plan need to be set at this stage or whether this should first await the views of the Council. The Presidency proposes that deadlines for individual actions are not specified in the Action Plan, thus retaining maximum flexibility to respond to changing priorities in tackling this problem to maximum effect.

DRAFT ACTION PLAN: JHA ELEMENTS

INFLUX OF MIGRANTS FROM IRAQ: MEASURES TO BE TAKEN BY MEMBER STATES OF THE EUROPEAN UNION

1. The Justice and Home Affairs elements of the action plan adopted by the Council of Ministers are divided into four broad areas in which Member States of the European Union have agreed to take action in order to tackle the influx of migrants from Iraq. These four areas are:

- I. Combatting illegal immigration from Iraq;
- II. Geneva Convention and the implications of asylum procedures;
- III. Use of the Dublin Convention procedures; and
- IV. Police co-operation and tackling organised crime.

Within each area of action, the measures are divided between those which can be implemented immediately and those which require further developmental work.

Timetable

1A. The Justice and Home Affairs Council will receive a first report on progress in implementing these action points at its meeting on 19 March and thereafter at regular intervals as it determines.

I. COMBATTING ILLEGAL IMMIGRATION FROM IRAQ

2. Illegal immigration may be tackled at a number of different levels: such measures are relevant to combatting illegal immigration from all countries, not just Iraq, but have particular relevance to the problems currently posed by Iraqi nationals. The levels at which the phenomenon of illegal immigration may be tackled include:

- effective border controls;
- visa issuing procedures and consular co-operation in the issue of visas;
- pre-frontier assistance and training;
- (...) immediate expulsion of persons illegally present on the territories of the Member States of the European Union insofar as no right to remain exists; and
- enhanced exchange of information at the level of the European Union.

Effective controls at external borders

3. An essential, but not the only, element in combatting illegal immigration is the security of the external frontiers of the European Union. Equal and consistent controls are of particular importance to the participating states in the Schengen Agreement in view of their abolition of internal frontier controls and are the subject of separate consideration. Effective border controls are essential wherever they are operated.

Immediate Action

- i. Member States to operate consistent and effective border controls, for Schengen States in accordance with Schengen requirements;
- ii. Member States to exchange officials by mutual agreement, both between themselves and with the third countries concerned, in order to observe the effectiveness of measures to prevent illegal immigration.
- iii. Sharing of technical knowledge and expertise between Member States with particular experience and the Member States most heavily affected by the illegal arrival of Iraqi nationals;
- iv. Routine and effective implementation by Member States at national level of security measures and carrier's liability legislation against carriers (...) bringing undocumented passengers and passengers with forged documents to the EU. Sanctions to be applied against carriers;
- v. Member States (...) and the Commission to consider the best use of existing EU (...) funding (...) programmes (eg Sherlock, asylum ("Brinkhorst") budget lines and Phara), to support effective controls at the frontiers.

vi. Member States, within the Council, should consider the scope for extension of the Eurodac Convention to the fingerprinting of illegal immigrants, either before its conclusion or after ratification. ¹¹⁾

Future Action

vii. Member States to continue to [...] observe any developments within the IMO on the draft Convention on illegal immigration by sea, which in the view of certain Member States could be a useful instrument in the fight against illegal immigration.

Visa issuing procedures and consular co-operation

4. Although many Iraqi nationals do not apply for visas to travel to a Member State of the European Union, some seek legitimate short-term visas with the intention either of applying for asylum on arrival in the Member State or remaining there illegally on expiry of their permitted stay. It is therefore of great importance that applications for visas from Iraqi nationals, either in Iraq or a country of transit, should be given particular scrutiny by consular officials as to the credibility of the applicant and intention to return to Iraq or another third country.

5. The recommendation adopted by the Council on consular co-operation regarding visas (document 11784/95 ASIM 316) provides for procedures which have potential benefits from their specific application at consular posts in Iraq and transit countries.

Immediate Action

i. Member States will exchange information within the Council about the visa issuing process at posts where applications by Iraqis for visas are made and identify whether procedures require amendment:

ii. Member States will arrange appropriate and specialised training of staff at embassies and consulates at posts where applications by Iraqis for visas are made:

¹¹⁾ A majority of delegations who spoke saw risks in widening the scope of the draft Eurodac Convention before its completion.

Future Action

iii. [...] The Council will monitor the [...] application of the recommendation on consular co-operation [...] and consider proposals for action at posts where applications by Iraqis for visas are made.

Pre-frontier assistance and training

6. There is scope for the identification of Iraqi nationals with false documents by a more targeted application of the provisions of the joint position of 26 October 1996 on pre-frontier assistance and training assignments, (document 9176/96 ASIM 107) which provides for the joint organisation of assignments in third countries. Member States will have the opportunity to exchange views and experiences on the role which Airline Liaison Officers (ALOs) can play in this area at the seminar, to be funded by the Sherlock Programme, which the Presidency is chairing in London on 25 -26 February 1998.

Immediate Action

i. [...] The Council will ensure effective application of the joint position on pre-frontier assistance and training assignments in relation to Iraq and transit countries;

ii. Member States will, bilaterally or within the Council, promote joint missions to specific departure points to train [...] carriers in the detection of false documents in accordance with the joint position;

iii. Member States will provide mutual assistance in the training of staff and airline personnel, eg by bilateral exchange programmes;

iv. Member States will arrange training and exchanges between officials of Member States and third countries concerned, where EU financial programmes exist. The [...] Odysseus programme is an important element in this regard; Member States should commit themselves to resolving current difficulties over this programme; and

Future Action

v. the Presidency will review the outcome of the ALO seminar and bring forward to the Council any proposals for future action at EU level emerging from it. Further seminars for other officials involved in security checks could be a possibility.

Effecting the removal of (...) persons illegally present in the territories of the Member States of the European Union

7. Member States have particular difficulties in returning persons illegally present (...) on their territory to Iraq but an exchange of information and best practice should permit an improvement in the success rate.

Immediate Action

i. Member States will exchange experiences within the Council on the return of Iraqi nationals to Iraq and, in the light of contacts with the UNHCR, consider under what circumstances return might be possible and how it might be effected;

ii. Member States should examine the scope for multi- or bilateral readmission agreements with (...) the source countries of Iraqi illegal immigrants; and

Future action

iii. In accordance with the relevant national law, including the principles of data protection applicable in the European Union, Member States to (...) fingerprint (...) persons illegally present (...) on their territory whose identity (...) cannot be established with certainty on the basis of valid documents.

Enhanced exchange of information at the level of the European Union

8. The Member States of the European Union already exchange substantial information on migration and asylum within the Council and with third countries.

Immediate Action

- i. [...] Presidency to establish early contact with the Turkish authorities to explore the scope for a K4 Committee or Council level meeting with Turkey in accordance with the resolution of the EU-Turkey Association Council of 30 October 1995; ⁽¹⁾
- ii. Member States will exchange best practice on effecting removals to Iraq and will target exchange of other information to the specific needs of the Member States;
- iii. Member States, within CIREA and CIREFI, to continue to exchange factual information and carry out analyses to inform the competent working parties; and
- iv. Member States, within CIREA and CIREFI, to meet with the CEECs and Cyprus, to discuss the use of these countries as transit routes to the EU by Iraqi nationals.

II. GENEVA CONVENTION AND THE IMPLICATIONS OF ASYLUM PROCEDURES

9. Although the illegal immigration of Iraqi nationals is a significant problem for the Member States of the European Union the Council does not overlook the humanitarian aspects of migration from Iraq and the fact that substantial numbers of Iraqi nationals are properly recognised as refugees under the 1951 United Nations Convention relating to the Status of Refugees or granted some other form of status in Member States for humanitarian reasons. The Council fully recognises the importance of ensuring that humanitarian considerations continue to be given proper weight and that the obligations of Member States to provide protection in accordance with international law continue to be honoured. What the Council seeks to do is to ensure that the procedures for seeking and granting asylum and other forms of protection are not open to abuse by those who have no need of such protection.

Immediate Action

- i. The Presidency will establish early contact with the Office of the United Nations High Commission for Refugees (UNHCR) in order to obtain further information about the humanitarian situation;

⁽²⁾ document CE - TR 130/95.

ii. In close co-operation with the UNHCR, Member States will consider within the Council the scope for developing a regional approach to protection in appropriate cases involving co-operation with non Member States in the region of origin and the possibility of "internal flight" options;

iii. Member States will collect and exchange information within the Council on statistics for the grant and refusal of asylum and other forms of status to Iraqi nationals;

iv. Member States will exchange information within the Council on the principles applied by Member States in considering requests for protection and on the practical implementation of the principle of non-refoulement of Iraqi asylum seekers;

v. Member States will exchange information within the Council on the extent to which practical difficulties in returning [...] persons to Iraq are a factor in decisions on granting temporary or subsidiary status to those who do not qualify for asylum; and

Future Action

vi. In the light of the exchange of information on statistics for the grant of asylum and other forms of status, Member States will review their national determination procedures within the Council and give consideration to the possible exchange of best practice, with a view to identifying possible need for changes in national law and practice.

III. USE OF THE DUBLIN CONVENTION PROCEDURES

10. The Dublin Convention came into force on 1 September 1997. Although it has been in operation only a short time the Council considers that there are a number of measures which can be taken relating to the application of the Convention which will help deal with the influx of Iraqi nationals to the Member States of the European Union. Early signature and ratification of the Eurodac Convention is regarded as an essential process in supporting the Dublin Convention.

11. Many of the recent influx are persons who have entered the EU illegally in one Member State and who have travelled, without appropriate documentation, to another Member

State where they have claimed asylum. In principle, the Member State where the asylum seeker entered the EU should be responsible for considering the asylum claim under Article 6 or 8 of the Convention and the applicant transferred to that Member State under the relevant provisions of the Convention. In practice, however, most of the persons concerned do not have documentary evidence of their entry in the EU, nor are they willing or able to provide details which would make it possible to verify how they entered the EU. As the Convention is presently operated, this means it is difficult to convince the Member State where the applicant is believed to have entered that it should be responsible under the Convention.

Immediate Action

i. Member States will exchange information on the ways and means such asylum applicants enter the EU, with a view to supporting decisions about which Member States should be responsible in individual cases;

ii. Member States will apply the requirements of proof laid down by the Convention for asylum seekers without travel documents as flexibly as possible, in accordance with Article 23 of Decision 1/97 of the Committee set up by Article 18 of the Dublin Convention concerning provisions for implementation of the Convention, and will continue their cooperation in further developing this flexibility;

iii. Member States will examine ways in which more cases involving undocumented persons who have entered the EU illegally can be brought within the scope of the Dublin Convention; [...]

iv. pending entry into force of the Eurodac Convention, Member States will examine the extent to which, on a bilateral basis and in accordance with national law on fingerprinting and the principles of data protection, applicable in the European Union, fingerprints of asylum seekers could be compared in order to confirm identity and identify the Member State of arrival in the European Union;

v. Member States commit themselves to the rapid completion and ratification of the Eurodac Convention [...] as a valuable tool in identifying responsibility for asylum seekers; [...] and

vi. Member States will consider the possibility of concluding parallel agreements to the Dublin Convention with the countries of Central and Eastern Europe and Turkey.

IV. POLICE CO-OPERATION AND TACKLING ORGANISED CRIME

13. It is clear from the scale and routing of the current influx that racketeers are behind the planning and facilitation of much of the illegal immigration. It will be important to ensure that all available intelligence on the involvement of organised crime, including the production of falsified documentation, in the problem is brought together, analysed and acted upon. This will include the identification of any linkage to other areas of transnational organised crime in which the groups concerned may be involved.

14. The Europol Drugs Unit (EDU) is already competent for the exchange and analysis of intelligence on crimes involving clandestine immigration networks, including the use of falsified documentation.

Immediate Action

i. the EDU should encourage and facilitate the bilateral exchange of relevant tactical intelligence:

ii. the EDU should prepare an urgent, high level strategic analysis of the extent to which organised crime groups are involved in the present influx and the use of falsified documentation; and

iii. Member States should examine - on the basis of the information and intelligence already available to them, supplemented in due course by whatever analysis the EDU is able to offer - whether they wish to propose joint law enforcement projects in this area. (The methodology for project-based action endorsed by the Multi-Disciplinary Group on organised crime would underpin this action. The EDU may be able to assist with co-ordination and logistical support.)