

5677/99

LIMITE

MIGR 3

OUTCOME OF PROCEEDINGS

from:Migration (Expulsion) Working Party

dated:12 January 1999

1. Adoption of the agenda

The Working Party adopted the agenda set out in Telex No. 5590 of 4 December 1998, with the addition of the items mentioned under 'Any other business' below.

2. Presentation of the work programme of the Migration Working Party (Admission) under the German Presidency

The Working Party took note of the Presidency's work programme for the Working Party, as set out in the relevant section of 14414/98 CK4 54.

The Working Party's subsequent meetings under the German Presidency were tentatively scheduled for 8 March, 28 April and 12 May 1999.

3. Letter to third countries concerning the use of standard travel documents for the expulsion of third-country nationals

11768/1/98 ASIM 208 MIGR 16 REV 1

The Spanish delegation queried in what language the letter would be sent to third countries. The Presidency replied that, as a matter of diplomatic practice, the letter would presumably be sent in the Presidency's language with an appropriate translation appended, depending on the recipient country. Further to a query, the Council Legal Service indicated that this procedure did not meet with any objection from the legal point of view, especially since the text of the letter would be approved by the Council in all official languages.

Some delegations (IRL, Cion) voiced doubts on sending the letter to all third countries, including countries such as the United States, while others (DK, A, UK) did not object to this, particularly if it emerged clearly from the text of the letter that all third countries would receive it (DK) or in the case of countries such as the United States which do not accept the standard document (UK). The Presidency stressed that its intention was to send the letter to all third countries, but undertook to verify this point.

The Netherlands delegation noted an inconsistency in the way the letter was qualified in the cover note ('letter') and in the annex ('note'). The Presidency replied that in diplomatic practice letters are sent in the form of notes, but would verify this point.

The Working Party proceeded to a detailed discussion of the text. The revised draft of the letter taking into account the outcome of this discussion is contained in 11768/2/98 ASIM 208 MIGR 16 REV 2.

4. Draft readmission agreement between Member States of the European Union and a third country

- Consequences of the Amsterdam Treaty

The Commission representative presented again the Commission services' analysis of the institutional arrangements resulting from the entry into force of the Treaty of Amsterdam, as already outlined at the 2 September 1998 meeting and presented in further detail at the 2 December 1998 meeting.

Delegations generally wished to reflect on this legal analysis further and commented on the following points.

(a) The Community's treaty-making power

The German delegation shared the Commission services' view that, following the entry into force of the Amsterdam Treaty, the Community will have treaty-making powers in the readmission area. The Community, however, will be empowered to conclude a readmission agreement only after the Council has approved the Commission's negotiating directives, in accordance with Article 228 EC Treaty (future Article 300 TEC).

Moreover, the statement whereby a repatriation policy at Community level cannot be achieved without readmission agreements with third countries was questioned by the United Kingdom delegation (this Member State, for example, removes 40,000 persons yearly without having concluded any readmission agreement).

The Spanish delegation asked for a clarification on the reference to internal legal acts in this area. The Commission representative pointed out that the Commission had not yet decided how precisely it would propose to implement Article 63(3)(b), and generally referred to the adoption of EC instruments setting up common rules on the expulsion of third-country nationals residing illegally.

The Spanish delegation further asked for a clarification regarding the objectives of the Treaty in this area, for the purpose of the application of the principle whereby the Community has treaty-making power if the exercise of that power is necessary for reaching one of the objectives of the Treaty. The Commission representative referred to future Articles 3(d) and 61 TEC (new).

(b) The exclusive nature of this treaty-making power

The German, French and Italian delegations had misgivings on the exclusive character of the EC powers. On this point, the Commission representative further insisted on the importance of the *a contrario* interpretation of Declaration No. 18 on future Article 63(3)(a) TEC.

Furthermore, the German delegation stated, *inter alia*, that bilateral readmission agreements will continue to apply until the entry into force of a Community readmission agreement, or even afterwards if they are not incompatible with - or supplement - the latter's provisions. It further stated that the Community's powers will have to be exercised in accordance with the subsidiarity principle in Article 3B EC Treaty (future Article 5(2) TEC).

The Finnish delegation asked the Commission representative to confirm whether, in the absence of a Community agreement, Member States should abstain from concluding bilateral readmission agreements. The Commission representative wished to reflect further on this question.

Several delegations (E, F, I) voiced doubts as to the parallel established between trade and readmission policies, considering that the transitional solutions adopted in the trade area should not be regarded as a precedent for the readmission area. The Commission representative stressed that this parallel does not focus on the substance of these policies, but on possible strategies to provide for transitional solutions.

From a practical point of view, it was remarked that readmission agreements between individual Member States and third countries often cover subjects which are specific to the countries concerned; if such bilateral agreements are no longer possible and the existing ones are to be terminated, these subjects may no longer be covered (A, joined by F and UK). The Commission representative replied that a Community readmission agreement would replace only the sections of bilateral agreements that concern readmission aspects, whilst all other subjects that do not fall under Community powers would not be affected by the Community agreement.

The Italian delegation raised further practical questions. Firstly, it queried how the provisions in bilateral readmission agreements relating to police cooperation could be inserted in Community agreements, since police cooperation will not be communitarized. The Commission representative stressed that implementation is usually covered by implementing protocols, rather than the readmission agreement itself; it might be decided that a Community agreement should cover also implementation matters, but only within the limits of Community competence (therefore with the exclusion of matters relating to police cooperation).

Secondly, the Italian delegation raised the question of the compatibility of a Community agreement with specific national provisions (e.g. the Italian provision whereby illegal immigrants cannot be kept in reception centres longer than 30 days), in the absence of a harmonization of migrants' laws. The Commission representative replied that such questions should be settled during the Council's discussion of the Commission's negotiating directives.

(c) The procedures for the conclusion of Community readmission treaties

In response to the Spanish delegation, the Commission representative pointed out that readmission agreements will be Community and not mixed agreements, therefore it will be up to the Commission to negotiate them; the situation will be different, however, if a broader agreement is negotiated including both readmission and other subjects. In either case, the procedures foreseen under Article 228 EC Treaty (future Article 300 TEC) will apply.

(d) Implementation of Community policy

The French delegation questioned the efficiency of a system where a Community agreement, negotiated by the Commission, would be applied by Member States, particularly since police cooperation has not been communitarized by the Amsterdam Treaty. The Commission representative replied that under Community law a Community agreement may impose obligations on Member States and the latter, in accordance with Article 5 EC Treaty (future Article 10 TEC), are bound to comply with such obligations; furthermore, the implementation of a Community readmission agreement by national police forces will also fall under Community matters, and not police cooperation.

In addition, it was remarked that special consideration should be given to the consequences of the Protocol on the position of the United Kingdom and Ireland (UK, E).

Following this exchange of views, the Commission representative advised delegations that the Commission would shortly elaborate an official document stating its position not only on legal questions, but also on policy options, and undertook to make this document available in time for the next meeting.

Further to a query from the United Kingdom delegation on the relationship between future Article 63 second paragraph TEC (new) and Declaration No. 18 on future Article 63(3)(a) TEC, and in response to requests for legal advice also from the French and Italian delegations, the Council Legal Service commented on the various legal questions raised by this matter. It was agreed that the Council Legal Service would provide a written opinion on these questions in time for the next meeting.

- **10338/1/98 ASIM 184 MIGR 8 REV 1 + COR 1 (d)**

The Presidency emphasized that, for both legal and practical reasons, no agreement would be signed before the Treaty's entry into force. The discussion of the present draft would merely prepare the work to be carried out under the Amsterdam Treaty, and in view of the outstanding legal questions, such discussion would focus exclusively on the text's technical points.

The Austrian delegation underscored that the draft agreement had been revised to ensure that it would not apply to relations between Member States, following the drafting suggestions submitted at the 2 December 1998 meeting, in order to meet the concerns expressed by some delegations at the 23 October 1998 meeting.

In this connection, however, the Danish delegation raised the question of the agreement between Member States referred to in Article 3(2).

Following suggestions by the Spanish and French delegations, it was agreed to postpone the discussion of the text until after a debate on strategies has taken place based on the above-mentioned Commission document.

The French and United Kingdom delegations incidentally observed that they had difficulties with the new notion in Article 1(1) ('third-country alien' in English, '*étranger d'un pays tiers*' in French, instead of 'third-country national' and '*ressortissant de pays tiers*', respectively). The Austrian delegation clarified that this notion had been revised to encompass stateless persons. The United Kingdom delegation, however, held the view that in English the wording 'third-country national' covers stateless persons.

Furthermore, the United Kingdom delegation drew attention to an error in the English-language version (see 10338/1/98 ASIM 184 MIGR 8 REV 1 COR 1 (en)).

5. Information on readmission clauses in the context of association agreements

The Commission representative provided the following update on the inclusion of readmission clauses with third countries.

- **ACP.** The inclusion of readmission clauses is part of the negotiating directives, although the actual negotiation of these clauses has not yet started.
- **Euromed association agreements.** The negotiation of a readmission clause with Egypt is particularly difficult, although there are indications to the effect that at the next meeting, scheduled on 26-27 January 1999, Egypt might accept a readmission clause concerning its own nationals. No new development is in sight regarding Algeria, particularly in view of the forthcoming Presidential elections in April 1999. The negotiation of a readmission clause with Lebanon is also extremely difficult and will be discussed at the next meeting, scheduled for February 1999.
- **South Africa.** The current negotiation concerns a joint declaration, rather than the insertion of a readmission clause. However, by joining the Lomé Convention, South Africa will eventually be subject to the outcome of the negotiation in the ACP framework.
- **Pakistan.** A new cooperation agreement has been initialled but not yet signed. A joint declaration on readmission is annexed to the agreement.
- **Bangladesh.** Negotiations have not yet been concluded. The Community side has proposed that Bangladesh should agree to an identical readmission declaration to that negotiated with Pakistan.

The Presidency remarked that one major difficulty in negotiating readmission clauses is that third countries often feel discriminated against by the inclusion of such clauses, since the latter are not inserted systematically in agreements with third countries. Another weakness in the present system lies in the fact that readmission clauses are negotiated only if this is envisaged in the negotiating directives, but as the example of South Africa demonstrates, the need to negotiate readmission clauses may not be apparent when the directives are approved and may emerge only at a later stage. The Presidency therefore advised delegations that it would produce a document on these matters for discussion possibly by the Working Party or by the High Level Working Group on Asylum and Migration.

6. **Any other business**

- *Implementation of instruments concerning illegal immigration, readmission, the unlawful employment of third-country nationals and cooperation in the implementation of expulsion orders (Council decision of 16 December 1996, OJ No. L 342, 31.12.1996, p. 5)*
10804/98 ASIM 192 MIGR 12

The Secretariat advised the Working Party that the French, Irish, Italian and Luxembourg delegations had not yet submitted their replies to Telex No. 1650 of 8 April 1998, and that it was therefore not in a position to draw up the evaluation of all Member States' practices (required by the above-mentioned Council decision).

The Presidency appealed to these delegations to submit their replies as quickly as possible.

- *Assistance in cases of transit for the purposes of expulsion by air*
14348/98 ASIM 261 MIGR 32

The Presidency presented the above-mentioned note, which would be included for discussion on the agenda of the next meeting.
