

Recommendation concerning checks on and expulsion of third country-nationals residing or working without authorization

### **Introduction**

21. Recommendation concerning checks on and expulsion of third country nationals residing or working without authorisation (SN 3017/93 WGI 1516). This time the emphasis is on detection of those working and living in member states without permission, including rejected asylum-seekers and persons who have contracted immigration marriages.

Recommendation concerning checks on and expulsion of third country-nationals residing or working without authorization

Reference:

Ad Hoc Group Immigration  
25 May 1993  
SN 3017/93 WGI 1516  
CONFIDENTIAL

Subject: Draft Recommendation concerning checks on and expulsion of third country-nationals residing or working without authorization. (previous doc. : WGI 1418)

The ad hoc Group on immigration submits to the Ministers responsible for Immigration, for approval at their meeting on 1/2 June 1993, the following text of the above mentioned recommendation.

RECOMMENDATION  
concerning checks on and expulsion of  
third country nationals residing or  
working without authorization

MINISTERS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES,  
RESPONSIBLE FOR IMMIGRATION

HAVING REGARD to the high priority given to promoting a common approach to the question of illegal immigration adopted by the ministers responsible for Immigration and by the European Council at Maastricht ;

HAVING REGARD to the need to reinforce common endeavours to combat illegal immigration reiterated by the European Council at Edinburgh ;

HAVING REGARD to the fact that this objective presupposes the improvement of means for checking and expelling third-country nationals who are in an irregular situation ;

HAVING REGARD to the recommendation regarding practices followed by Member States on expulsion adopted by Immigration ministers

in London [see doc WGI 1266].

NOTING that it is fundamental to expulsion practices that there should also be effective means of identifying and apprehending those to be expelled ;

NOTING that the implementation of the measures outlined in this recommendation will need to take account of the nature and extent of illegal immigration to be combatted in particular Member States;

STRESSING that, in the light of the recommendation adopted at the Ministerial Conference held in Budapest on the implementation of measures to deal with uncontrolled migration, measures should be taken to combat the employment of those known to have entered or remained illegally or those whose immigration status does not allow them to work ;

NOTING that this recommendation is without prejudice to Community law and also takes into account other relevant international instruments including the 1950 Convention for the protection of human rights and fundamental freedoms, the 1951 Geneva Convention relating to the status of refugees and 1967 New York Protocol ;

NOTING in particular that this recommendation excludes from its scope:

- nationals of some EFTA countries who will have rights of free movement when the Agreement on the European Economic Area comes into force ;
- family members of nationals of Member States and of some EFTA countries entering or residing in the territories of Member States in accordance with Community law and the EEA Agreement ;

NOTING that checks and controls on the residence and employment of third country nationals shall be decided upon and carried out by those authorities which are empowered to do so under national legislation,

#### ADOPTED THE FOLLOWING RECOMMENDATION

1. Measures should be taken with a view to ensuring that third-country nationals do not remain beyond the period for which they have been admitted or given permission to remain and that they do not work without authority to do so.

The general rule should be that persons not entitled to free movement in conformity with Community legislation and found

- (i) to have entered or remained unlawfully in Member States (where their stay has not been regularized) ;
- (ii) to be liable to expulsion on grounds of public policy or national security ; or

- (iii) to have failed definitively in an application for asylum and to have no other claim to remain,

should be expelled, unless there are compelling reasons, normally of a humanitarian nature, for allowing them to remain.

2. In addition, Member States may expel persons who have been working in breach of immigration/aliens or related provisions. In this context, under the same conditions, they may also expel those people who are subject to immigration/aliens provisions who have been involved in the facilitation, harbouring or employment of illegal immigrants.

3. Checks should, in particular, be carried out in respect of persons who are known or suspected of staying or working without authority, including persons whose request for asylum has been rejected.

Member States shall examine the types of checks which would be most appropriate to introduce with a view to detecting third-country nationals who are residing or working illegally, including those persons whose application for asylum has been rejected.

4. Checks should be conducted to ensure that third-country nationals not entitled to free movement in conformity with Community legislation and who have received authorization for residence and, as the case may be, for employment for a limited period of time continue to fulfil the relevant conditions.

To this end, in appropriate circumstances Member States should consider undertaking checks, inter alia, in the following situations :

- (i) persons who have received authorization for residence but not for employment ;
- (ii) persons who have received a residence permit, but whose work permit is of a limited nature ;
- (iii) persons who work without authorization after being admitted as short-term visitors or tourists.

Furthermore, to the extent that this is necessary, Member States should consider undertaking checks in view of detecting abuse, inter alia on

- (i) persons who have been authorized to be reunited with their family with a view to living together

- (ii) persons who have received a residence/work permit on the basis of their marriage to a person resident in the Member State.

5. The decision as to whether checks should be conducted depends on the circumstances in any given case. Exchanges of

information between Member States on the type of checks and control procedures together with related legislation should be carried out within CIREFI.

6. Checks on persons suspected of residing or working illegally in Member States are to be carried out in conformity with national legislation and should be aimed at reinforcing common endeavours to combat illegal immigration to the Community.