

6180/98

LIMITE

ASIM 45

EUROPOL 28

**NOTE**

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from : Presidency

to : K4 Committee

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**Subject: Influx of migrants from Iraq and the neighbouring region: progress on implementation of the Action Plan**

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1. Following the adoption by the General Affairs Council (GAC) on 26 January of the Action Plan on the influx of migrants from Iraq and the neighbouring region (reference 5573/98 ASIM 13 EUROPOL 12 PESC 27 COMEM 4 COSEE 4) the Presidency set out its proposals for implementing the Action Plan (reference 5593/98 ASIM 15 EUROPOL 15 CIREA 12 CIREFI 5). The current paper sets out a report on progress on certain items which the Presidency proposes to submit to the Justice and Home Affairs Council on 19 March.

2. The Presidency has taken note of the comments made at the meeting of K4 Committee on 10 February about the handling of the implementation of the Action Plan and will bear these in mind in taking forward the issues in the various working groups. The K4 Committee is invited to note in particular that:-

- Point 7 of the Action Plan is closely related to Point 3 which calls for further information about the humanitarian situation in the region;
- in accordance with the pattern of meetings of CIREA, the Presidency will call for monthly reports on Points 9-11 and will invite CIREA to consider, in the light of the COREU report on the situation in Jordan, whether to discuss with UNHCR Jordan's position as a safe third country;
- the Presidency notes that the Commission's ability to report to the Justice and Home Affairs Council in March on Point 8 depends on the outcome of discussions on the draft joint action on asylum (etc) budget lines;
- the Presidency will not overlook any Europol Working Group element to Point 13;

- the Presidency will, as necessary, involve the Asylum Working Group in Point 17; and
  - the Presidency does not plan to convene meetings of the External Frontiers Working Group to discuss Points 31-36: delegations will wish to ensure that the appropriate experts attend meetings of the Migration Working Group at which these points are discussed. The Presidency will ensure that the attendance of the appropriate experts is specifically requested.
3. K4 is particularly invited to address the Presidency's proposals on the issue of fingerprinting and illegal immigrants (Action Points 16, 17 and 40) in order to effect a linkage between the conclusion of the draft Eurodac Convention, interim bilateral exchanges of fingerprints of asylum seekers and the fingerprinting of illegal immigrants.
4. K4 Committee is invited to discuss the attached draft report and to endorse its submission to the JHA Council on 19 March. It will be brought up to date in terms of factual information arising from meetings of Working Groups which have not yet taken place immediately before the Council and the Presidency's proposed visit to Turkey.
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**DRAFT REPORT TO THE JUSTICE AND HOME AFFAIRS COUNCIL**

**Subject: Progress report on the implementation of certain elements of the Action Plan on the influx of migrants from Iraq and the neighbouring region.**

1. The General Affairs Council (GAC) on 26 January adopted the Action Plan on the influx of migrants from Iraq and the neighbouring region (reference: 5573/98 ASIM 13 EUROPOL 12 PESC 27 COMEM 4 COSEE 4). The Presidency set out its proposals for implementing the Action Plan in document reference: 5593/98 ASIM 15 EUROPOL 15 CIREA 12 CIREFI 5.

2. It was agreed in point 44 of the Action Plan that the JHA Council on 19 March would review progress on implementing relevant action points. This paper therefore provides a progress report on the implementation of the Third Pillar elements of the Action Plan: a further report will be presented to the JHA Council on 28/29 May 1998. This progress report is divided according to the Council working group principally responsible for delivering implementation of the specific action points in the Action Plan. It also addresses the question of the fingerprinting of illegal immigrants. In addition to this action a report is made of the Presidency's contacts with the Turkish authorities at a meeting in Ankara on 19 January [and further meetings in Ankara and Istanbul from 8 - 10 March by the Chairman of K4 accompanied by the Commission and Council Secretariat.]

3. The Presidency is also supporting appropriate co-ordination between the EU Presidency and the Schengen Task Force and the meetings of police chiefs chaired by Italy.

**Asylum Working Group**

Point 7 Consider scope for regional approach with UNHCR. In the light of advice from UNHCR, the Council to consider the possibility of identifying safe areas within the region of origin "internal flight options".

Point 8 The Commission, together with Member States, to consider the most appropriate use of EC funding to improve reception conditions.

Point 12 Member States to review national determination procedures.

Point 14 Review of the requirements of proof laid down by the Dublin Convention.

- Point 15            Consideration of ways of dealing with undocumented asylum seekers in accordance with the Dublin Convention.
- Point 16            Member States to examine the extent to which fingerprints of asylum seekers could be compared, pending entry into force of EURODAC.
- Point 18            Possibility of conclusion of parallel agreements to the Dublin Convention with CEECs in the context of enlargement.

4.            The Presidency prepared discussion papers on action points 14, 15 and 16 for discussion at the meeting of the Asylum Working Group on 25 February. [These points and action points 7 and 8 were discussed at that meeting. Action points 12 and 18 will be addressed at the meeting on 26/27 March.] The Presidency will pursue all these issues at appropriate levels including work the Presidency has in hand separately on the operation of the Dublin Convention which may have an impact on this issue as well as more widely. A report on all action points will be submitted to the meeting of K4 Committee on 27/28 April and a further progress report will be put to the Justice and Home Affairs Council on 28/29 May. The Presidency met UNHCR in Geneva on 20 January and further contacts in association with the Commission will be made as necessary.

#### **Eurodac Working Group**

- Point 17            Conclusion of EURODAC Convention: examination whether EURODAC should subsequently be extended to illegal migrants from third countries.

5.            The Eurodac Working Group has met twice during the UK Presidency and progress on completion of the draft Convention and the main outstanding issues are to be discussed separately by the Justice and Home Affairs Council on 19 March 1998. The issue of the fingerprinting of illegal immigrants and any linkage to the Eurodac Convention is addressed under Point 40 below.

## **CIREA**

- Points 9-11 Member States to collect and exchange information on statistics on asylum and other forms of status; on the principles underlying requests for protection and non-refoulement; and on practical difficulties in returning persons from the region.
- Point 42 Member States to continue to exchange, within the Council, factual information on migration and asylum issues and carry out analyses to inform the competent working parties.
- Point 43 Member States and the Commission, within the Council, to meet with the countries of Central and Eastern Europe and Cyprus, to discuss the use of these countries as transit routes to the EU by illegal immigrants from Iraq and the neighbouring region.

6. The clearing house CIREA already has work in hand on exchanging information. A draft questionnaire prepared by the Presidency to address points 9-11 was discussed at its meeting on 16/17 February and issued on 18 February. The key information will be exchanged on a monthly basis, in accordance with CIREA's working pattern, and the clearing house will keep other working groups informed as necessary on the results and developing trends. CIREA will continue to exchange information on other relevant issues to the same end. A meeting with the CEECs and Cyprus has been arranged for 10/11 June.

## **Migration Working Group**

- Point 26 Ensure effective application of the Joint Position on pre-frontier assistance and training assignments in relation to countries of origin and transit.
- Point 27 Member States, bilaterally or within the Council, to promote joint missions to specific departure points to train carriers in the detection of false documents in accordance with the Joint Position on pre-frontier assistance.
- Point 28 Member States to provide mutual assistance in the training of border control staff and airline personnel, e.g. by bilateral exchange programmes.
- Point 29 Member States to arrange training and exchanges between officials of Member States and third countries concerned, in co-operation with the Commission where EU financial programmes exist. Finalisation of the Odysseus programme.
- Point 30 Outcome of the ALO Seminar.

- Point 31 Consistent and effective border controls.
- Point 32 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.
- Point 33 Member States to send experts to the third countries concerned, by mutual agreement, to advise on the operation of controls at land and sea frontiers.
- Point 34 Member States with particular experience to share technical knowledge and expertise with other Member States and, subject to their agreement, with the third countries most heavily affected.
- Point 35 Routine and effective implementation by Member States at national level of security measures and carrier's liability legislation. The introduction and implementation of sanctions against carriers.
- Point 36 Best use of existing EU funding programmes to support effective controls at the frontiers, including programmes of co-operation in the relevant third countries.
- Point 37 Member States to continue to monitor any developments within the UN on the draft Convention against smuggling of illegal migrants, and within the IMO on the draft Convention on illegal immigration by sea.
- Point 39 Member States within the Council, taking into account the circumstances in each case, to examine the scope for readmission agreements with the third countries most concerned, including countries of transit.

7. The Migration Working Group has exchanged useful information on Points 26-39 at its meetings of 3 and 11 February and will pursue its work at future meetings. [Outcome of meeting of 3/4 March.] [The Presidency hosted a seminar on airline liaison officers on 25/26 February at which this issue was a topic and the lessons drawn from the seminar will be fed into the work of the Migration Working Group]. Questionnaires on various relevant points were issued on 17 February and the Presidency will promote further work on these in the light of results. The application of effective border controls is a matter for the Member States but the Presidency will facilitate discussions of points 30-36 and will prepare any measures or mechanisms which might be required at a European Union level to take forward these action points. The Presidency will continue

to liaise with the Presidency of Schengen to ensure that there is no undue duplication between EU and Schengen activity in this area. The Migration Working Group will pursue as on-going work action points 37 and 39.

### **Visa Working Group**

Point 23 Member States to exchange information within the Council about the visa-issuing process at Embassies and Consulates in the region and to identify whether procedures require amendment.

Point 24 Member States to arrange appropriate and specialised training of staff at embassies and consulates in the region.

Point 25 In the longer term, the Council to monitor the application of the Recommendation on consular co-operation and consider proposals for action at posts in the area.

8. The manner in which these action points are to be taken forward was endorsed by the Migration Working Group on 3 February. [A discussion document prepared by the Presidency to support consideration of these action points was discussed at the meeting of the Visa Working Group on 10 March in continuation of the initial consideration at the Visa Working Group on 21 January.] Work will continue at future meetings of the Working Group.

### **Europol Working Group**

Point 19 The Europol Drugs Unit to encourage and facilitate the bilateral exchange of relevant tactical intelligence.

Point 20 The EDU to prepare, in close co-ordination with work in other fora, 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 documents.

- Point 21 Member States to examine the scope for joint law enforcement projects in this area.
- Point 22 Exchange of information about organisations involved in transporting undocumented passengers, or passengers with forged documents, into the EU. Consideration of joint projects.

9. The EDU continues to facilitate the exchange of information between Member States. It presented an Interim Threat Assessment (EUROPOL 16) to the Europol Working Group on 3 February. This will now inform Member States' consideration of possible law enforcement projects in this area. [Following a conference on the topic in the first week of March, the EDU report to the JHA Council is attached.]

### **CIREFI**

- Point 13 Exchange of information on ways and means migrants from the region enter the EU.
- Point 38 Member States to exchange experiences within the Council on the return of illegal immigrants to the region and, in the light of contacts with the UNHCR, consider under what circumstances return might be possible and how it might be effected.
- Point 41 Member States to exchange, within the Council, best practice on effecting removals to countries in the region and target exchange of other information to the specific needs of the Member States.
- Point 42 Member States to continue to exchange, within the Council, factual information on migration and asylum issues and carry out analyses to inform the competent working parties.
- Point 43 Member States and the Commission, within the Council, to meet with the countries of Central and Eastern Europe and Cyprus, to discuss the use of these countries as transit routes to the EU by illegal immigrants from Iraq and the neighbouring region.

10. CIREFI has agreed to provide monthly updates on existing data exchanged [and responses to the most recent request for updated information were discussed at the meeting of CIREFI on 11 March.] The clearing house has also issued a questionnaire on 10 February concerning returns to the region. CIREFI will analyse all relevant information and report information as necessary and any developing trends to the relevant Council working groups. A meeting with the CEECs and Cyprus has been arranged for 18 May: the experiences of the CEECs and Cyprus in relation to the influx of migrants from Iraq and the neighbouring region will be addressed at that meeting.

### **Fingerprinting of illegal immigrants**

11. On this issue, there are differing views concerning handling. Point 40 of the Action Plan states:-

Point 40            In so far as national law provides, and in accordance with the principles of data protection applicable in the European Union, Member States to fingerprint every third country national illegally entering their territory whose identity cannot be established with certainty on the basis of valid documents, to retain such fingerprints for the purpose of informing the authorities in other Member States, and to consider the exchange of such fingerprints with a view to confirming identities.

There is also a link between this Action Point and Action Points 16 and 17 which are referred to in paragraphs 4 and 5 above.

12.            Action Point 40 has thus far been considered in the Migration Working Group (on 3 and 11 February) [and in a Migration Working Group with asylum and fingerprinting experts on 4 March]. In the course of these discussions, certain fundamental issues have emerged which will need to be addressed in future work: the precise category of third country national to be included in such an exercise; the link between the fingerprinting of illegal immigrants and the operation of the Dublin Convention; and the potential benefit of expanding the exchange of fingerprints to readmission more widely.

13.            This complex issue needs to be considered in separate parts, which could proceed in parallel:

- (i) early completion of the draft Eurodac Convention;
- (ii) consideration of the development of a legal instrument to extend the Eurodac system to illegal immigrants;
- (iii) examination of the scope for, and purpose of, the exchange at EU level of the fingerprints of illegal immigrants. Such an examination should focus as a matter of priority on the improved operation of the Dublin Convention and the possible future application to the readmission to a Member State of third country nationals not seeking asylum; and
- (iv) interim possibilities for the bilateral exchange of fingerprints of asylum seekers and of illegal immigrants.

14. On item 13(i) above, the Council is invited to note the state of progress toward completion of the draft Eurodac Convention [which is being considered separately by the Council on 19 March.] On item 3(iv) the Council is invited to note the ongoing work to examine the current scope for the taking and exchanging of fingerprints pending entry into force of Eurodac.

15. There is a difference of view among the Member States concerning the possible extension of Eurodac to illegal immigrants (points 13(ii) and (iii) above). A few Member States are in favour of making provision in the current text of Eurodac for its extension to illegal immigrants. Other Member States question whether Eurodac should be extended at all. A third group of Member States support the subsequent extension of Eurodac but consider that, in the first instance, the Convention should be completed in its present form. In light of this, the Council is invited to consider:

- (a) whether the Eurodac system should, in principle, be extended to illegal immigrants;
- (b) if so, whether this extension should take place before conclusion of the present text of the Convention, or whether a legal instrument should be drawn up to extend it subsequently; and
- (c) that the preliminary examination described at 13(iii) should be carried out and a report made to the Council before any decision is taken to proceed with an exchange of fingerprints or illegal immigrants at EU level.

## Turkey

16. [Report of visits to Turkey].

## Conclusion

17. The Council is invited:

- (i) to note progress on the work in hand on Action Points 7-43 described in paragraphs 4-10 above;
- (ii) to give its views on the questions posed at paragraph 15 above in relation to Action Point 40;  
and

[(iii) to note the contacts made with Turkey in pursuance of the implementation of the Action Plan.]