

Brussels, 8 April 1998

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LIMITE

ASIM 100

NOTE

From: Presidency

To: Asylum Working Group

Subject: THE DUBLIN CONVENTION: A PROGRAMME OF ACTION

1. At its meeting of 26-27 March the Asylum Working Group considered the draft Programme of Action annexed to ASIM 38 REV 1 (doc 6049/1/98). In the light of comments received, the Presidency has revised the draft Programme (see Annex).
2. The changes to the draft Programme have been underlined and the references in square brackets seek to explain the changes where this seems necessary. On the advice of the Council Legal Service, a number of points have been amended to reflect the fact that these matters would be for decision by the Article 18 Committee.
3. The Asylum Working Group is invited to approve the draft Programme with a view to it being submitted to a meeting of the Article 18 Committee in the margins of the Justice and Home Affairs Council on 28-29 May.
4. The Presidency is considering separately whether to bring forward proposals for draft decisions to be agreed by the Article 18 Committee on 28-29 May in relation to some of the items in the Programme of Action.

DUBLIN CONVENTION: PROGRAMME OF ACTION**1. Encouraging applicants to retain documentation**

- i. Those Member States which have procedures relating to paragraph 2 and 9(c) of the 1992 Resolution on manifestly unfounded asylum applications will ensure that these provisions are applied effectively.

[Direct reference has been made to the 1992 Resolution.]

- ii. Member States will ensure that the process initiated by the Council decision of 2 June 1997 on monitoring of instruments adopted concerning asylum, gives specific attention the scope and effectiveness of procedures referred to in paragraph 1.i. above.
- iii. Member States will consider in the light of information exchanged under item 1.ii. above, whether to introduce or modify such provisions as described under item 1.i. above to better meet the objective of encouraging applicants to retain documentation.

2. Ways of dealing with undocumented asylum seekers

- i. Further to Action Point 13 in the EU Action Plan on the influx of immigrants from Iraq and the neighbouring region, Member States will ensure that information collected in EU fora about the ways and means asylum seekers enter the EU, is made available promptly to officials responsible for making and examining applications under Article 11 of the Convention.
- ii. Further to Action Point 13 of the EU Action Plan on the influx of migrants from Iraq and the neighbouring region the Article 18 Committee will agree common guidance for issue by the Member States to the relevant officials and will take such other steps as are necessary to ensure that such information is taken into account and given appropriate weight when making and examining applications under Article 11 of the Convention and in making

requests for information under Article 15 of the Convention.⁽¹⁾

[Reference has been inserted to the Action Point 13 of the Action Plan on Iraq]

- iii. Further to Action Point 16 in the EU Action Plan on the influx of migrants from Iraq and the neighbouring region, Member States will examine existing practice in relation to the exchange of fingerprints of asylum seekers in the context of the Dublin Convention.
- iv. Further to and in accordance with Action Point 16 in the EU Action Plan on the influx of migrants from Iraq and the neighbouring region and Article 15 of Dublin Convention, Member States may request fingerprint check from other Member States where there is specific evidence showing that the person concerned was in the Member State in question or if there is general evidence suggesting that substantial numbers of applicants of the nationality or social/ethnic group in question have been in the Member State concerned.⁽²⁾
- v. Further to and in accordance with Action Point 16 in the EU Action Plan on the influx of migrants from Iraq and the neighbouring region, Member States affirm the current importance to the effective operation of the Dublin Convention of bilateral exchanges of fingerprint information and state their determination to make every effort to respond fully and promptly to such requests in accordance with Article 15 of the Dublin Convention, national law on fingerprinting and the principles of data protection applicable in the European Union.⁽³⁾

⁽¹⁾ Italy, Spain and Portugal have substantive reservation on this proposal.

⁽²⁾ Italy has a substantive reservation on this proposal.

⁽³⁾ Italy has a substantive reservation on this proposal.

[On reflection, the Presidency considers that item 2.vi in the previous version of the programme should not be included. This is because Action Point 40 of Action Plan on influx of migrants from Iraq and neighbouring region goes beyond the scope of the Dublin Convention. Instead it is intended that item 2.v should cover the possibility of the exchange of fingerprints of illegal immigrants under Article 15.]

3. The speed and the quality of information exchange

- i. Member States will review the systems and procedures they have for storing and accessing any information which may be relevant to Articles 4 - 8 of the Convention.
- ii. Member States will consider in the light of the review referred to in item 3.i. above what action may be necessary, nationally or collectively, to improve the speed and quality of information exchange under Article 15 of the Convention.
- iii. The Article 18 Committee will review the application of Article 28.2 of Decision No. 1/97 of the Article 18 Committee to consider whether any change is necessary to encourage faster responses to requests for information under Article 15 specified in Article 28 of Dublin Convention.

[This item has been drafted more generally, in line with 3.iv]

- iv. The Article 18 Committee will review the application of Articles 4 and 5 of Decision No. 1/97 of the Article 18 Committee with a view to considering whether any changes to these provisions are necessary to encourage faster responses to applications to assume responsibility.

[Specific reference to Article 4.4 has been dropped - it is not necessary]

- v. Member States will consider how the procedure for making request to assume responsibility might be simplified. Particularly in those cases where there is proof or clear evidence that a particular Member State is responsible for examining an asylum application.

[This item has been drafted more generally so as not to rule out the possibility of simplifying procedures generally]

- vi. Member States reaffirm the importance of ensuring that all the available information which is necessary for determining responsibility is contained within the application to assure responsibility.
- vii. The Article 18 Committee Member States will seek to agree common arrangements where new evidence relevant to determining the responsible State emerges after an application to assume responsibility has been made or accepted.

4. Flexible Application

- i. In support of Action Point 14 in the EU Action Plan on the influx of migrants from Iraq and the neighbouring region, Member States will exchange information on practice in relation to applications to assume responsibility made on the basis of indicative evidence only in accordance with Article 23 of Decision No 1/97 of the Article 18 Committee.
- ii. Member States re-affirm their commitment to the principles established in Article 23 of Decision No 1/97 of the Article 18 Committee and their importance to the effective operation of the Dublin Convention. In particular, they emphasise the importance of the requirement that Member States should not adopt too rigid an approach and should be prepared to assume responsibility for examining an asylum application on the basis of indicative evidence alone once it emerges from an overall examination of the asylum applicant's situation that, in all probability, responsibility lies with the Member State in question.
- iii. The Article 18 Committee will agree a common guidance note for issue by the Member States to the competent officials in support of statement set out in 4.ii. above.
- iv. The Article 18 Committee will, in accordance with Action Point 14 in the EU Action Plan on the influx of migrants from Iraq and the neighbouring region and in the light of the

information collected in respect of item 4.i. above, review the application of the provisions on means of proof in Decision No 1/97 with a view to examining the need for a change or modification.

5. Matters of interpretation

- i. The Article 18 Committee will seek to agree a common approach by Member States on Article 1(1)(e) of the Convention.

[Specific reference to border officials has been removed.]

- ii. The Article 18 Committee will seek to agree a common approach by Member States in respect of persons who have withdrawn their claims for asylum in circumstances other than those provided for in Article 3(7) and Article 10(1)(d) of the Convention.

- iii. The Article 18 Committee will consider the need for a common approach by Member States on the application of Article 3(4) _ of the Convention.

[This has been amended to reflect that fact that Member States may decide they do not wish to agree a common approach in respect of this provision.]

- iv. The Article 18 Committee will seek to agree a common approach by Member States in respect of the terms “valid residence permit” and “valid visa” in Article 5 of the Convention where the documents concerned were issued by the competent authorities in good faith but where the person concerned was posing under a false identity or where the travel document concerned was forged or improperly obtained.

- v. The Article 18 Committee will seek to agree a common approach by Member States on how Article 7(1) of the Convention applies to persons who are not subject to a visa requirement on account of their nationality; and on how it applies to persons who are subject to visa requirement on account of their nationality but for whom this requirement is waived in an individual case.

- vi. The Article 18 Committee will seek to agree a common approach by Member States on how Article 7(2) and 7(3) of the Convention apply in respect of asylum seekers who did not

fulfil the requirement of being in possession of an airport transit visa.

- vii. The Article 18 Committee States will seek to agree a common approach by Member States on the time limits which apply to requests to assume responsibility in which a Member State's responsibility is based on Article 8 of the Convention and on the application of Article 8 and 10 of the Convention where a person has lodged an asylum application in more than one Member State.

[Amended to take account of the point raised by the Dutch delegation in ASIM 22.]

- viii. The Article 18 Committee will seek to agree a common approach by Member States on the application of Article 9 of Convention.

[This was previously part of item 5.iii.]

- ix. The Article 18 Committee will seek to agree a common approach by Member States in respect of persons recognised as 1951 Convention refugees by a Member State and who claims asylum in another Member State.

[This was previously item 5.viii. and has amended so as not to refer directly to interpretation of Dublin Convention.]

- x. The Article 18 Committee will consider in the light of further deliberations on the items in this section of the Programme, the likely value and cost of a compilation of the "travaux préparatoires" for the Convention.

[This was previously item 5.ix.]

6. Greater liaison and co-operation

- i. Member States will consider in the light of the seminar for Dublin Convention practitioners held in the United Kingdom on 1-2 April 1998, whether to hold regular seminars on making the Convention operate more effectively and what their structure and content might be.

ii. Member States will take steps on a bilateral basis to ensure, in particular by means of visits where practicable, that close working relationships are maintained between the relevant officials of their most significant partners under the Convention.

iii. The Article 18 Committee will consider the feasibility of and possible funding arrangements for a regular journal for practitioners of the Dublin Convention.

[There is no need for an express reference to the Commission, as agreed on 26 March, because the Commission participates in the Article 18 Committee.]

iv. Member States, where possible, to exchange liaison officers with their most significant partners with a view to improving communication links.

v. Member States will ensure that the Dublin Convention Handbook is completed, distributed, updated and added to as necessary or desirable.

[The addition making it clear that some changes may be desirable rather than strictly necessary.]

7. Miscellaneous matters

- i. Member States will examine the numbers of rejected asylum seekers or illegal immigrants claiming asylum in Member States who have previously been subject to a requirement to leave the territory of another Member State or a group of Member States of their own accord. Member States to review such practice in the light of this information.
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