JHA SG1
WPS 006

EUROPEAN UNION
THE COUNCIL

Brussels, 10 March 1994

4357/1/94

REV 1
RESTREINT

ASIM 10

OUTCOME OF PROCEEDINGS

of : External Frontiers Group

on : 2 March 1994

n°prev.doc. : 9752/93 FRONTEX 1 and 10258/93 ASIM 16

Subject: Draft conclusions on the taking back by Member States of persons who are illegally resident in the territory of a Member State but who hold a residence permit of another Member State (Article 8(3) of the draft External Frontiers Convention)

1. The External Frontiers Group continued the examination of the above mentioned conclusions at its meeting on 2 March 1994. The text resulting from this examination is set out in the annex to this note.

2. The only outstanding points concern the text of conclusion 3.

Ten delegations can agree on the text.

The Spanish delegation formulated a reservation on the penultimate paragraph. This delegation considered that an obligation to take back should only exist as long as the residence permit is valid.

The German delegation formulated a reservation on the last paragraph. The German delegation will reflect on a suggestion to add the following sentence to the last paragraph :

"This time limit may be extended by agreement between the two Member States concerned, upon submission by the requesting Member State of an explicit and justified application."

ANNEX

DRAFT CONCLUSIONS

on conditions for the readmission of persons who are illegally resident in a Member State but who hold a residence permit for another Member State (Article 8(3) of the draft External Frontiers Convention)

Conclusion 1 : Scope

The provisions on taking back pursuant to Article 8(3) are applicable to persons who are not nationals of a Member State, who hold a valid residence permit or valid provisional residence permit within the meaning of Article 8(1) and (2) and who are illegally resident in the territory of another Member State.

The provisions do not affect Member States' obligations under the Dublin Asylum Convention to take back applicants for asylum who are illegally resident in another Member State.

Conclusion 2 : Voluntary departure or return to the Member State which issued a valid residence permit or valid provisional residence permit

Where a person covered by conclusion 1 entered a Member State from another Member State without a visa for the purposes of a short stay or transit, under Article 8(1) or (2), and is illegally resident there, that person must go without delay to the Member State for which he holds a residence permit unless he is authorized to go to another country to which he is certain to be admitted, in accordance with Article 15(1).

If a foreign national wishes to go to another country, he must provide documentary evidence that he may be admitted to that country, e.g. in the form of an entry permit or valid visa, and that he is in possession of the necessary resources, e.g. in the form of a ticket or other documentation that allows him to travel, and cash or a bank deposit in order to secure his transportation and his residence in the country to which he may be admitted.

If the person has provided documentary evidence that he may be admitted to another country and that he is in possession of the necessary resources to travel to and take residence in that country, his wishes should normally be accepted.

Conclusion 3 : Member State which is required to take back the person if he does not leave voluntarily

If a person who is not a national of a Member State and who is illegally resident in the territory of a Member State refuses to leave voluntarily, Member States are required to take him back in accordance with the guidelines set out below.

If the person holds a valid residence permit or valid provisional residence permit for another Member State, the Member State which issued the valid residence permit or valid provisional residence permit is required to take him back.

If the person holds more than one valid residence permit or valid provisional residence permit issued by different Member States, the Member State required to take him back is :

(a) the State which issued the residence permit or provisional residence permit allowing the longest period of residence ; or

(b) where the residence permits allow the same period of residence, the State which issued the residence permit or provisional residence permit with the latest expiry date.

Apart from the above mentioned provisions, the Member States shall take back a foreign national in accordance with Article 8(3) in a period up to 2 months after the expiration of the validity of the residence permit or the provisional residence permit.

The obligation to take him back is subject to the condition that a request for taking him back be lodged within 1 month by the authorities becoming aware of the person's unlawful presence in the Member State.

Conclusion 4 : Taking back

The person is to be taken back after a request has been made by the competent authorities in the requesting State establishing that the person in question holds a valid residence permit or provisional residence permit for the taking back Member State.

A Member State receiving a request in accordance with conclusion 3 must reply to the request within 8 days. If the Member State does not respond within that time, it will be deemed to have agreed to taking back, unless it has expressly requested a one-week extension of that time limit.

The Member State to which the request was addressed is required to take in, within a month at most, the person it has agreed to take back. That time limit may be extended by agreement between the two Member States concerned, upon submission by the requesting Member State of an explicit and justified application.

Member States are to exchange lists of competent authorities to consider requests for taking back and of points at borders where the taking back can take place.

ANNEX

DRAFT CONCLUSIONS

on conditions for the readmission of persons who are illegally resident in a Member State but who hold a residence permit for another Member State (Article 8(3) of the draft External Frontiers Convention)

Conclusion 1 : Scope

The provisions on taking back pursuant to Article 8(3) are applicable to persons who are not nationals of a Member State, who hold a valid residence permit or valid provisional residence permit within the meaning of Article 8(1) and (2) and who are illegally resident in the territory of another Member State.

The provisions do not affect Member States' obligations under the Dublin Asylum Convention to take back applicants for asylum who are illegally resident in another Member State.

Conclusion 2 : Voluntary departure or return to the Member State which issued a valid residence permit or valid provisional residence permit

Where a person covered by conclusion 1 entered a Member State from another Member State without a visa for the purposes of a short stay or transit, under Article 8(1) or (2), and is illegally resident there, that person must go without delay to the Member State for which he holds a residence permit unless he is authorized to go to another country to which he is certain to be admitted, in accordance with Article 15(1).

EUROPEAN UNION
THE COUNCIL

Brussels, 11 May 1994

4357/1/94

REV 1
COR 1
RESTREINT

ASIM 10

CORRIGENDUM

to document 4357/1/94 ASIM 10 REV 1

n°prev.doc. : 6120/94 ASIM 70

Subject: Outcome of proceedings of the External Frontiers Group on 11 May 1994
- Draft conclusions on the taking back by Member States of persons who are illegally resident in the territory of a Member State but who hold a residence permit of another Member State (Article 8(3) of the draft External Frontiers Convention)

The first two pages are to be replaced by the following two pages :

1. The External Frontiers Group continued the examination of the above mentioned conclusions at its meeting on 11 May 1994. The text resulting from this examination is set out in the annex to this note.

2. The two outstanding points concern the text of conclusion 3.

a) Penultimate paragraph

The Spanish delegation formulated a reservation on the penultimate paragraph. This delegation considered that an obligation to take back should only exist as long as the residence permit is valid.

b). Last paragraph

The German delegation formulated a reservation on the last paragraph (doc. 6120/94 ASIM 70).

In the light of the Group's discussion, the Presidency suggests the following text for further examination :

"The obligation to take him back is subject to the condition that a request for taking him back be lodged as quickly as possible within a period of 6 months by the authorities becoming aware of the person's unlawful presence in the Member State."