European Practise with respect to asylum

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I. INTRODUCTION

When it met in Maastricht on 9 and 10 December 1991, the European Council recorded its agreement on the report on immigration and asylum policy (WGI 930) submitted by the Ministers with responsibility for immigration.

The programme provides for action to be taken to harmonize asylum policy.

It was agreed that before the Treaty on European Union came into force it would be necessary to examine certain subjects concerning inter alia:

- application and implementation of the Dublin Convention;
- harmonization of the substantive legal rules on asylum;
- harmonization of expulsion policy;
- creation of a clearing-house for information, discussion and exchange on asylum (CIREA);
- examination of judicial aspects;
- reception arrangements for asylum-seekers.

It was agreed that where necessary these questions, which do not constitute an exhaustive list, would continue to be examined after the Treaty on European Union came into force.

The Declaration on asylum annexed to the Treaty reads as follows:

"1. The Conference agrees that, in the context of the proceedings provided for in Articles K.1 and K.3 of the provisions on co-operation in the fields of justice and home affairs, the Council will consider as a matter of priority questions concerning Member States' asylum policies, with the aim of adopting, by the beginning of 1993, common action to harmonize aspects of them, in the light of the work programme and timetable contained in the report on asylum drawn up at the request of the European Council meeting in Luxembourg on 28 and 29 June 1991.

2. In this connection, the Council will also consider, by the end of 1993, on the basis of a report, the possibility of applying Article K.9 to such matters." (1)

It should also be noted that, with a view to harmonization of certain aspects of asylum policy, Ministers, in two Resolutions adopted in London (manifestly unfounded applications for asylum and host third countries), expressed the wish that consideration should be given to putting the principles agreed in those Resolutions into effect in a binding convention (WGI 1284 REV 2, page 3).

In the work programme for the second half of 1993, which was the subject of an exchange of views within the ad hoc Group on Immigration on 12 and 13 July 1993, the Presidency proposed to draw up a report on progress achieved on asylum in the light of the guidelines laid down in the Maastricht report of 1991.

The purpose of this document is to attain that objective. It is aligned on the structure of the work programme adopted in Maastricht. It gives an account of implementation of each of the chapters and sections to date and describes anticipated future work.

II. DESCRIPTION OF WORK COMPLETED

A. Application and implementation of the Dublin Convention

The Dublin Convention was signed by the Member States of the Community in June 1990 and 1991.

(1) The German delegation proposed that, pursuant to this paragraph, suggestions for common action should be included in the report.

At present [six] Member States have ratified the Convention. When they met in Copenhagen on 1 and 2 June 1993, those States which were in the process of ratifying said that they would do all they could to ensure that the Convention came into force as soon as possible.

1. Definition of a common interpretation of the concepts used in the Convention

(a) Implementation

Article 1 of the Dublin Convention defines the meaning to be attached to certain concepts. An interpretation of certain other concepts provided for in the Convention was arrived at in the light of the guidelines laid down in Maastricht.

In this context the following work has been completed:

- conclusions on the interpretation of certain Articles of the Convention (WGI 1028);
- calculation of periods of time (WGI 1039 REV 1);
- transfer of applicants for asylum (WGI 1269).

Regarding the transfer of applicants for asylum, most of the necessary conclusions have been adopted (WGI 1269) and additional decisions are being studied (WGI 1470).

(b) Future work

This item of the programme has practically reached completion. [The aspects relating to the transfer of asylum applicants could be completed by the end of 1993.]

The possibility cannot be ruled out that certain concepts might be amenable to more precise definition. But that would have to be done in the light of a specific need once the Dublin Convention has come into force. In this respect, it would be for the Article 18 Committee to examine any general question on the Convention's application and interpretation.

2. Exchange of information

(a) Implementation

The objective is:

- to work out a standardized form for exchanging information on the initial indications concerning the Member State responsible for examining the application. With this in mind, the Member States have drafted a standard form (WGI 1011) [which is currently being tested and may have to be adjusted in the light of the experience and comments of the Netherlands delegation (WGI 1220)];

- to establish rules on the forwarding of information in the context of the Dublin Convention. For this purpose, Ministers approved the drafting of a joint handbook, the aim of which would be to provide Member States with details of the authorities in the other Member States to which specific questions and requests are to be addressed (WGI 1495);

- to draw up a non-restrictive list of means of proof and recognized indications to help establish the Member State responsible for examining an application. There have been a number of preparatory discussions on the subject. Member States were sent a questionnaire which was used as a basis for drawing up an inventory (WGI 1415 REV 1) and a compilation (WGI 1441 REV 2). [At present discussions are under way on a proposal concerning the implementation of means of proof in the framework of the Convention (WGI 1490).]

(b) Future work

Work on the following subjects should be finalized by the end of 1993:

- the actual drafting of the Dublin Convention joint handbook;

- the standard form for determining the Member State responsible for examining an asylum application;

- the aspects relating to means of proof.

Implementation mechanisms

(a) Implementation

The objective is:

- to indicate the central contacts in each Member State. Ministers decided to draft a joint handbook for the application of the Dublin Convention (WGI 1495). All that remains to be done is to put together the names and addresses of the authority in each Member State designated to deal with specific questions and requests in the framework of the Dublin Convention;

- to draft a list of documents on implementation mechanisms. That document is included in the compilation of practice with respect to asylum (WGI 1505) and is regularly updated;

- to make an inventory of residence permits. An inventory (WGI 1415 REV 3) and a summary (WGI 1441 REV 2) have been drawn up on the subject. Those same documents also cover existing and future national registration systems for visas, central registers of persons authorized to enter Member States' territory and any other registers on asylum or immigration questions which might exist.

(b) Future work

By the end of 1993, Member States envisage finalizing the actual drafting of the joint handbook on the Dublin Convention.

4. Drafting of a practical handbook for the implementation of the criteria in the Convention

(a) Implementation

The aim is to produce a flow chart for determining the State responsible for examining asylum applications. Such a chart appears in WGI 1193 REV 1.

To make the flow chart easier to consult a computer program on the application of the Dublin Convention has been disseminated on disk. The program has been produced on an experimental basis.

Other aspects relating to the drafting of a practical handbook are already covered in section 3 above.

(b) Future work

The computer program on the application of the Dublin Convention is due to be finalized by the end of 1993.

5. Measures to combat asylum applications lodged under an assumed identity and multiple applications

(a) Implementation

The aim is to:

- exchange fingerprints. An inventory (WGI 1315) and survey (WGI 1317) have been made in order to give a clear idea of fingerprinting practice in each Member State;

- study the feasibility of a system for exchanging and comparing fingerprints (Eurodac). A number of measures have been taken in this regard: the call for tenders procedure, the remit of the study and its financing. Rules have been established on the choice of consultants eligible to carry out the study of users' requirements. The call for tenders was made on 15 July 1993. Several discussions have already been held on the legal problems raised by the creation of Eurodac. (1)

(b) Future work

Work on Eurodac will continue along the following lines:

- after the study of users' requirements (expected to be completed in the first half of 1994), it will be necessary to study the technical specifications aspects. This will take six months' study.
The best that can be expected is that the second study might be completed by the end of 1994.

(1) The Council's Legal Service has drafted an opinion on this subject (5546/93 JUR 25).

Subject to a decision to be taken by Ministers, it will not be possible for the Eurodac system to be up and running until the beginning of 1995;

- progress on questions relating to the technical aspects of Eurodac will take account of the other work referred to above;

- consideration will have to be given to the appropriate legal framework for Eurodac; in the view of several delegations it should take the form of a convention to be concluded between Member States.

Convention parallel to the Dublin Convention

The Dublin Convention is not open to accession by countries which are not members of the European Communities.

Given the interest which certain third countries have expressed in taking part in the rules and mechanisms laid down in the Dublin Convention, a preliminary draft Convention parallel to the Dublin Convention has been prepared (WGI 1105).

It was agreed that negotiations on the Convention could begin only once the Dublin Convention had been ratified by the twelve Member States of the European Communities, with third States having entered into identical international commitments.

The Presidencies have already pursued contacts with certain third countries which had been sent the draft Convention (Norway, Sweden, Finland, Switzerland, Austria, Poland, the Czech Republic and Slovakia). Canada has said that it is very interested in the parallel Convention.

It should be pointed out that at their meeting in Copenhagen on 1 and 2 June 1993 Ministers noted that the Dublin Convention formed part of the "acquis" resulting from intergovernmental cooperation between the twelve Member States in the field of Justice and Home Affairs which acceding States were required to accept. Such States would not therefore have to accede to the Convention parallel to the Dublin Convention.

Although not provided for in the Maastricht programme, the Convention parallel to the Dublin Convention constitutes an important step in terms of establishing an asylum policy in a European context.

B. Harmonization of the substantive rules of asylum law

Progress has been made in harmonizing some of the substantive rules of asylum law. The following points were provided for in the Maastricht programme:

1. Obvious conditions making it possible to establish that asylum applications are manifestly unfounded [1] [2]

   (a) Implementation

   Ministers adopted a Resolution on manifestly unfounded applications for asylum in London on 30 November and 1 December 1992 (WGI 1282 REV 1).

   Ministers agreed to seek to ensure that their national laws are adapted, if need be, and to incorporate the principles of this Resolution as soon as possible, at the latest by 1 January 1995.

   (b) Future work

   Completed, subject to adoption of the necessary measures by Member States.

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[1] Scrutiny reservation by the Netherlands delegation.
[2] Reservation by the German delegation.

Definition and harmonized implementation of the principle of first host country [1] [2]

(a) Implementation

Ministers adopted a Resolution on the first host third country in London on 30 November and 1 December 1992 (WGI 1282 REV 1). Based on the spirit of the Maastricht report, this measure goes beyond the provisions of that report in that it takes account of the situation in the first non-Community host country and in the other non-Community countries.

Ministers agreed to seek to ensure that their national laws are adapted, if need be, and to incorporate the principles of this Resolution as soon as possible, at the latest by the time of the entry into force of the Dublin Convention.

(b) Future work

Completed, subject to adoption of the necessary measures by Member States.

3. Joint assessment of the situation in countries of origin with a view both to admission and expulsion

(a) Implementation

The objective is:

- to facilitate joint assessment of the situation in third countries by drawing up joint reports. At present, three joint reports have already been drawn up by embassies on the spot (Sri Lanka, Romania and Ethiopia/Eritrea).

  Two reports are expected shortly (Albania, Angola). Political Cooperation has already been asked for a second list of reports (Bulgaria, China, Iraq, Vietnam and Zaire). Two further reports will be requested subsequently (Turkey and Nigeria). Ministers recorded their agreement on the factors to be considered in selecting third countries on which joint reports might be requested (WGI 1500). Certain ad hoc rules were established with a view to defining the structure of joint reports as well as with regard to the procedures for forwarding them;

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[1] Scrutiny reservation by the Netherlands delegation.
[2] German reservation.

- to use a clearing house for information, discussion and exchange for the collection, analysis and dissemination of information on countries of origin (see below under D), thus developing more informal consultations, themselves intended to facilitate co-ordination and harmonization of asylum practices and policies.

(b) Future work

The implementing rules in this area are largely completed. Details of certain aspects, such as the dissemination [and confidentiality] (1) of the joint reports, have yet to be spelled out.

4. Harmonized application of the definition of a refugee, as contained in Article 1A of the Geneva Convention

(a) Implementation

An initial inventory was drawn up on the subject (WGI 833) along with several summary documents (WGI 845 and WGI 872 REV 2). Other contributions have been produced in order to make progress with discussions.

In response to the need for more detailed examination of various aspects of the question, a second inventory was drawn up (WGI 1577).

It was agreed that the discussions would be held in parallel within the Subgroup on Asylum and CIREA.

(b) Future work

This is a very important subject, requiring long and complex work, since it involves one of the fundamental aspects of asylum policy. Member States have reaffirmed their will to continue discussions on the matter as a priority. Although, given the scope of the subject and its sensitive nature, it is difficult to specify any precise time-frame, it should be possible to achieve substantial results by January 1995.

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(1) The Group thought it best to await the outcome of the work to be done by CIREA on this matter.

. Countries in which there is generally no serious risk of persecution (1)

(a) Implementation

When they met in London on 30 November and 1 December 1992, Ministers adopted conclusions on countries in which there is generally no serious risk of persecution (WGI 1281).

(b) Future work

Ministers asked the ad hoc Group on Immigration to study the possibility of drawing up a joint list of those countries (WGI 1284 REV 2).

C. Harmonization of expulsion policy

1. Joint assessment of the situation in the countries of origin

(a) Implementation

See B.3(a).

(b) Future work

This point has been completed in principle. As the discussions go into greater detail, new joint reports will be drawn up.

2. Finalization of various aspects of an expulsion policy

(a) Implementation

A questionnaire has been drawn up on the subject. Inventory and summary documents will be drafted in the light of Member States' replies. It will then be necessary to put in place the various points which have a bearing on the harmonization of expulsion policy.

(1) Scrutiny reservation by the Netherlands delegation.

(b) Future work

Discussions must continue in this area. It is possible that some work will be completed early in 1994.

D. Setting up of a clearing house for information, discussion and exchange on asylum (CIREA)

Ministers established the clearing house at their meeting in Lisbon on 11 and 12 June 1992 (WGI 1107).

CIREA is a place where the authorities of the Member States can exchange information and operates within the framework of the General Secretariat of the Council. Member States are represented by the authorities responsible for examining asylum applications or by those dealing with asylum matters in the relevant Working Party of the Twelve.

Subsequently, the clearing house will operate within the framework of the provisions of the act to be adopted as soon as possible after the entry into force of the Treaty on European Union, on the basis of that Treaty.

1. Exchange of statistics and of written information on legislation, policy, case law and information on countries of origin

(a) Implementation

Member States have already submitted the legislative, regulatory or other changes relating to asylum approved in 1991, 1992 and 1993.
In addition, information will be exchanged regarding:

- general aspects relating to asylum policy in the Member States;
- important case law;

- statistics. In this respect the clearing house is preparing a revised statistical system in order to respond effectively to the provisions of the Dublin Convention.

Within the clearing house information is exchanged on the country of origin on the basis of the factors referred to in the joint reports and of information available in the Member States. There have been several exchanges of information between national experts.

(b) Future work

The Maastricht programme has been adhered to on this point. Other discussions will be held in the light of the work already completed.

2. Oral exchange of information at informal meetings of officials responsible for implementing asylum policy

(a) Implementation

Oral information is exchanged informally at each clearing house meeting. The agenda always includes an item for this purpose. A chart has been drawn up to enhance these exchanges of information. The clearing house makes a synthesis of the information.

(b) Future work

The Maastricht programme has been completed as far as this point is concerned.

3. Cooperation with the UNHCR's Centre for Documentation on Refugees

At their meeting in Copenhagen on 1 and 2 June 1993, Ministers recorded their agreement on establishing cooperation between the clearing house and the UNHCR's Centre for Documentation on Refugees according to the detailed conditions laid down under 2 in WGI 1501. That cooperation is currently being put into practice.

Such cooperation will give the clearing house fast access to a large quantity of asylum data.

This measure was not provided for in the Maastricht programme.

E. Judicial examination

(a) Implementation

An exchange of views was held on the examination of the guarantee on the harmonized application of asylum policy when drafting the Maastricht report.

(b) Future work

It would seem more appropriate to continue working in the other areas relating to asylum policy before dealing with the aspects relating to judicial examination.

F. Reception arrangements for asylum-seekers

1. Gathering of data on current reception arrangements (subsistence benefit, accommodation, access to educational facilities, possible access to employment, possible restrictions on movement, etc.)

(a) Implementation

Member States have been sent a questionnaire on reception arrangements for asylum-seekers. The information received will be embodied in an inventory and summary document in the near future.

(b) Future work

This point could be finalized by the end of 1993.

2. Study of conditions for the possible approximation of these factors on the basis of this data-gathering exercise

(a) Implementation

This measure will be implemented only once the data referred to under 1 have been collected. Analysis of the summary made on the subject should make it possible to study the possibility of approximating the rules applied in the Member States.

(b) Future work

Work on this point will begin only once collection of the data referred to under 1 has been completed.

G. **People displaced from former Yugoslavia** (1)

Ministers recorded their agreement on the conclusions concerning people displaced from former Yugoslavia at their meeting in London on 30 November and 1 December 1992 (WGI 1280), noting in particular that:

- in most Member States special arrangements had been put in place to meet the special circumstances of those displaced by the conflict in former Yugoslavia;

- Member States were in principle willing to admit certain groups of persons temporarily on the basis of the proposal made by the HCR and the ICRC and in accordance with national possibilities and in the context of a coordinated action by all Member States.

The following action was taken in the context of the Subgroup set up by the Ministers:

(1) Parliamentary scrutiny reservation by the Netherlands delegation.

- gathering of information on statistics and other aspects relating to admission policy towards persons from former Yugoslavia (inventory, WGI 1514; summary WGI 1475 REV 1);

- drafting of the list of important documents (WGI 1508);

- table of visa requirements (WGI 1333 REV 2);

- definition of possibilities for cooperation within the Member States (WGI 1401 REV 1);

- drafting by Member States of a supplementary questionnaire on the reunification of families of nationals of former Yugoslavia and their movement from one Member State to another (WGI 1476 REV 1).

In addition, at the meeting in Copenhagen on 1 and 2 June 1993, Ministers approved a Resolution on certain common guidelines as regards the admission of particularly vulnerable groups of distressed persons from former Yugoslavia (WGI 1499).

This section, which has been developed in an effort to address the situation existing in former Yugoslavia, was not provided for in the Maastricht programme.

III. CONCLUSIONS

This report is an interim evaluation of the work programme laid down in Maastricht.

Any outline conclusion on progress to date must take account of the fact that:

- devising an asylum policy involves questions which are highly sensitive for Member States and which have only recently become the subject of work at the level of the Twelve;

- detailed, and sometimes long and demanding, preparatory work is required before reaching conclusions at the level of the Twelve;

- the time-frame given was short since the Maastricht programme was approved less than 2 years ago.

Bearing that in mind, the outcome of the work on asylum may be summarized as follows:

- ratification of the Dublin Convention and all acts necessary for its implementation will be finalized in the near future and will very probably come into force during the first half of 1994 (point A). Work on Eurodac, which must proceed in phases, is well under way;

- all the measures drawn up so far for the harmonization of substantive rules of asylum law have been approved (point B), with the exception of the harmonization of the definition of a refugee within the meaning of Article 1A of the Geneva Convention (see comments below);

- the clearing house is fully operational (point C).

Discussions have also begun on the reception of asylum-seekers (point F) and on expulsion (point C) and progress is expected between now and when the Maastricht Treaty comes into force or very shortly afterwards.

As regards the judicial question (point E), it would appear more appropriate to undertake further work in other areas relating to asylum policy before addressing aspects relating to judicial examination.

The work involved in harmonizing the application of the definition of a refugee as contained in Article 1A of the Geneva Convention will take time because of the very nature of the problems which the issue raises. When the Maastricht programme was drawn up, Ministers realized the magnitude of the task since they specified that where necessary work on some issues would continue even after the Treaty had come into force.

Also, it should be emphasized that some of the work undertaken by the Twelve Member States is on a scale which was not foreseen in the Maastricht programme. This is true of the discussions on displaced persons from former Yugoslavia, the Convention parallel to the Dublin Convention and the conclusion concerning countries in which there is generally no risk of persecution, to mention only the most striking examples.

Finally, Chapter VI of the Palma Report (CIRC 3624/89) concerning action in connection with grant of asylum and refugee status has been substantially implemented, or will be shortly.