EUROPEAN UNION **Brussels, 3 March 1995 (21.03)**
THE COUNCIL **(OR. f)**

5403/95

LIMITE

ASIM 74

N O T E

from: Presidency

to : Migration Working Party (Expulsion)

Subject: Presentation of a plan of joint action on concertation and cooperation regarding the execution of expulsion measures

The desire to control migratory flows has prompted Member States of the European Union to take appropriate legislative measures and to seek ways of implementing them more rigorously.

In most States this policy has resulted in an increase in the number of persons whose presence is illegal being returned to their country of origin.

However, certain practical difficulties sometimes prevent enforceable decisions being implemented in practice (difficulties in finding suitable means of transport, absence of travel documents, lack of cooperation on the part of the authorities in third countries).

It was in order to limit such difficulties that the German Presidency, in its contribution of 11 July 1994 (8410/94 ASIM 140), set down a number of principles with the aim of implementing concertation and cooperation throughout the Union regarding the execution of expulsion measures.

The principles proposed are relevant and they have therefore been taken up and further developed by the Presidency, as previously agreed, and with some additional material, into the plan of joint action presented below, whereby Member States would undertake in particular to:

- increase cooperation on the procurement of return travel documents;
- seek ways of eliminating difficulties in connection with transit through other Member States;
- introduce cooperation in organizing expulsions on an EU-wide basis.

DRAFT COUNCIL ACT ADOPTING JOINT ACTION ON CONCERTATION AND COOPERATION REGARDING THE EXECUTION OF EXPULSION MEASURES

Proposal for an Act No of the Council of the European Union of

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the proposal from Germany dated 11 July 1994 (8410/94 ASIM 140),

Having regard to the proposal from France dated ,

Having regard to the Council Recommendation of 30 November 1992 regarding transit for the purposes of expulsion (WGI 1275) and the complement thereto (WGI 1310) of 4 January 1993,

Whereas pursuant to Article K.1 of the Treaty on European Union policy regarding nationals of third countries and in particular combating unauthorized immigration, residence and work constitute matters of common interest;

Whereas Member States experiencing strong migratory pressure have already adopted special measures in order to secure better control of population flows and to prevent aliens who have entered or are residing in their territory illegally from prolonging their stay unduly;

Whereas the effectiveness of such measures requires that expulsion measures decided in respect of aliens whose presence is illegal must be materially carried out, a procedure which is often rendered impossible by the absence of travel or identity documents;

Whereas, however, the effectiveness of such measures also requires the implementation, by the Member States of the European Union, of concerted and mutually consistent measures;

Whereas although recommendations establishing the basic principles which should govern expulsion practices have already been adopted between the Member States, that effort at harmonization should be consolidated by asking Member States to undertake to observe certain principles intended to secure more effective execution of expulsion measures directed at aliens illegally present in their territory;

Whereas this joint action [shall be conducted][shall be] without prejudice to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 or to the Geneva Convention of 28 July 1951 relating to the Status of Refugees as modified by the New York Protocol of 31 January 1967,

HAS ADOPTED THE FOLLOWING PROVISIONS:

1. Cooperation on the procurement of return travel documents

Member States intend to implement concerted means to improve the procurement of laissez-passer from the consular authorities of the States to which expulsions are envisaged for aliens without travel or identity documents.

Where Member States experience repeated difficulties with certain third States in the matter of procuring laissez-passer, they shall proceed as follows:

- make a particular effort to arrange for persons to be identified to visit the consular authorities;

- issue repeated invitations to consuls to visit detention centres in order to interview the persons concerned;

- urge the same authorities to issue travel documents with an adequate period of validity;

- if necessary, introduce a method of payment, on an exceptional basis, of the travel expenses incurred by consular authorities making visits for the purposes of identifying persons whose presence is unauthorized.

Member States shall in the first instance make use of the provisions of the standard agreement on readmission on presumption of nationality and shall ensure that they are observed.

Where it is not possible to obtain return travel documents by using such means, Member States shall wherever possible make use of the standard travel document adopted by the Council on 30 November and 1 December 1994; its use will be reviewed at intervals in order to determine in particular whether the document has led to an improvement in the execution of expulsions.

2. Elimination of problems in connection with transit through other Member States of the Union

In order to limit the difficulties experienced by certain Member States of the Union during the transit through the territory of other Member States of persons being removed (for example escort difficulties, refusal of embarkation in the Member State of transit, refund of transit costs), Member States shall seek any method of cooperation enabling such practical difficulties to be eliminated.

2.1 Escorts

The Member State taking the expulsion measure shall notify the Member State required for the purposes of transit whether the person being expelled requires an escort, the escort being provided by either of the parties or jointly, while the escort arrangements themselves will be decided jointly.

Where no escort is required, it is desirable that the transit State should nevertheless oversee the person being removed without an escort during the stop-over, in accordance with conditions defined bilaterally and on the basis of reciprocity. Member States will seek the legal and practical means necessary for this purpose.

2.2 Refusal of embarkation

Member States shall decide to seek legal means, including through agreement or legislation, to enable a person who has refused embarkation during a transit operation to be prosecuted. It must be possible for such proceedings to be taken by both the Member State of transit and the Member State which took the expulsion measure, subject to application of the principle of double jeopardy.

For the Member State of transit, two cumulative conditions must be met:

- refusal of embarkation, or more generally, refusal to defer to an expulsion measure must be an offence under its internal legislation;

- such internal legislation must apply to both measures taken by the Member State of transit and measures taken by another Member State.

Member States will undertake to amend their legislation accordingly.

For the Member State which took the expulsion measure, two cumulative measures must also be met:

- refusal of embarkation, or more generally, refusal to defer to an expulsion measure must be an offence under its internal legislation;

- such legislation must apply to a refusal of embarkation occurring abroad in the territory of a Member State through which the person being removed was transiting in the course of the execution of an expulsion measure.

Member States will undertake to amend their legislation accordingly.

In order to facilitate these amendments a convention of application may be concluded - on a bilateral or multilateral basis by Member States if necessary.

2.3. Transport costs to the frontier of destination and costs involved in a possible return

Such costs shall normally be borne by the Member State carrying out the expulsion. However, Member States shall hold bilateral talks to determine the circumstances in which it may be possible to forego the refunding of costs on a case-by-case basis and replace it with an annual payment, to whichever of the two States proves to have conducted the most expensive operations, of a sum equivalent to the balance resulting from the difference between the cost of the operations carried out by the two Member States.

2.4. Where a Member State has a choice between two or more Member States when an alien is to be readmitted into another Member State, it is recommended to choose the Member State which is principally responsible for the illegal entry into the territory of the Member States or, if the alien has entered legally, for his stay in that territory.

This will avoid a succession of requests for readmission being passed from one Member State to another.

It will not affect the use of one or more Member States for transit purposes in the course of readmission to the requested Member State.

3. Cooperation in organizing expulsions on a Union-wide basis

3.1 Each Member State shall assume full responsibility for carrying out the expulsion of aliens which it has itself decided or, for States party to the Convention applying the Schengen Agreement of 19 June 1990, which are incumbent upon it by virtue of Articles 23, 25 and 96 of that Convention. However, where the situation justifies it, expulsion may be carried out as a concerted effort.

3.2. In the case of expulsions by air, each Member State shall carry them out on its own initiative, using the resources available on the air transport market or, if necessary, resources it has organized itself.

However, it may make use of air resources organized by another Member State or use seats available out of quotas reserved by another Member State in cases such as the following:

- where the receiving country is distant or very poorly served by air traffic departing from its territory,

- where it fails to find vacant seats on an aircraft,

- where it has exceeded its quota of persons to be expelled on a given flight,

- where another Member State has a confirmed quota of seats reserved on a flight but has not reached that number,

- where the alien in question has to be expelled as a matter of urgency and the Member State cannot find other rapid means,

- where substantial gains in terms of transport costs may be made thereby,

- where the expulsion is a response to a public order operation involving two or more Member States.

However, each Member State shall be entitled to priority, for the purposes of expulsion, on the flights of its national airline companies and more generally on all flights departing from its territory.

3.3. To enable the above provisions to have genuine impact, each Member State which does not already possess one shall establish an internal structure which will have the task of:

- centralizing, on behalf of that Member State, the search for means of transport which will enable expulsion measures to be carried out,

- drawing up a transport plan in connection with expulsion,

- passing on to the competent authorities of the other Member States any useful information regarding seats which might be available to other Member States,

- receiving the corresponding information from other Member States,

- undertaking the operational exchanges necessary with another Member State in cases where the possibilities described in 3.2. are implemented,

- passing on to the competent authorities of the other Member States any information based on experience (e.g. difficulties with certain airline companies).

4. Member States meeting within the Council shall review the progress achieved with the cooperation sought by this joint action on a regular, and at least annual, basis.