EUROPEAN UNION
THE COUNCIL

Brussels, 18 August 1995 (19.10)
(OR. f)

9503/95

LIMITE

ASIM 232

OUTCOME OF PROCEEDINGS

of : Migration Working Party (Expulsion)

on : 19 July 1995

Subject: Draft Recommendation on concerted action and cooperation in the execution of expulsion measures

In the light of the discussions of the Migration Working Party (Expulsion) at its meeting on 19 July 1995, the above text has been amended and is attached hereto.

A number of delegations (D/I/ A/ FIN/UK in particular) entered general linguistic reservations.

Other comments and reservations are given in footnotes.

DRAFT COUNCIL RECOMMENDATION ON CONCERTED ACTION AND COOPERATION IN THE EXECUTION OF EXPULSION MEASURES

THE COUNCIL OF THE EUROPEAN UNION,

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

Whereas Article K.1(3)(c) of the Treaty on European Union stipulates that the Member States shall regard combating unauthorized immigration, residence and work by nationals of third countries on the territory of Member States as matters of common interest;

Whereas Member States have already adopted specific measures to secure better control of migratory flows and to prevent aliens entering their territory unauthorized, and remaining there illegally;

Whereas expulsion measures in respect of aliens whose presence is unauthorized cannot be executed owing to the absence of travel or identity documents;

Whereas in order to achieve the effective execution of expulsion measures it is necessary to make progress in the adoption of coordinated measures by the Member States of the European Union;

Whereas the provisions of this Recommendation 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 RECOMMENDATION:

I. ([1])

Member States will apply the following principles with regard to concerted action and cooperation in the execution of expulsion measures.

II.

1. Member States will cooperate to improve the procurement of the necessary documentation from the consular authorities of the third State to which aliens are to be expelled when they lack travel or identity documents. ([2])

2. Where Member States experience repeated difficulties with certain third States in the matter of procuring documentation, they shall proceed as follows:

   - arrange for persons who are to be identified to visit the consular authorities;

   - issue repeated invitations to consular authorities to visit centres in which aliens are being held, where appropriate, in order to identify them for the purpose of providing documentation;

   - request the consular authorities to send travel documents with a period of validity sufficient for expulsion to be executed.

3. Member States shall in the first instance take account of the provisions of the standard agreement on readmission on presumption of nationality.

([1]) Further to a suggestion by the Irish delegation, the Working Party envisaged giving titles to the chapters preceded by Roman numerals, as proposed by the French Presidency.

([2]) Scrutiny reservation by the Swedish delegation which would prefer the less binding version of the text discussed under the French Presidency (5403/1/95 ASIM 74 REV 1), viz:
"make a particular effort to arrange for persons to be identified to visit the consular authorities".

4. Where it is not possible to obtain the necessary travel documents by using the above means, Member States shall wherever possible issue the standard travel document adopted by the Council on 30 November and 1 December 1994.

III. ([1])

1. Member States shall cooperate to facilitate transit for expulsion purposes when the resolution has been adopted by another Member State on the basis of the principles set out herein.

2. In accordance with the Council Recommendation of 30 November 1992, Member States may ask another Member State to authorize transit across its territory for expulsion purposes.

3. The Member State taking the expulsion measure shall notify the transit State whether it is necessary for the person being expelled to have an escort ([2]).

4. The transit State shall be free to decide whether to authorize transit with an escort provided by the State which decided on the expulsion, whether it will provide the escort itself during transit or whether escort during transit will be arranged jointly with the State which decided on the expulsion.

5. The transit State may decide not to authorize transit in any of the instances provided for in Section IV of the Recommendation of 30 November 1992.

6. The transit State may return the alien to the territory of the State which adopted the expulsion measure if the expulsion measure cannot be executed for any reason whatsoever.

([1]) Most delegations supported this text.
The French delegation entered a substantive reservation on the whole of this chapter, as it wanted more detailed rules on unescorted transit (information of the country of transit of the arrival of the expelled person etc.) and escorted transit, including powers of escort in the country of transit and punishment of persons who refuse embarkation.

([2]) The United Kingdom delegation preferred an arrangement whereby the Member State taking the expulsion measure notifies the transit State if it considers it essential for the person being expelled to be escorted.

7. Where expulsion expenses cannot be met by the alien or by a third party, they shall be borne by the State which adopted the expulsion measure. They shall include both travel expenses, including escort expenses, and the cost of any return to the State which issued the expulsion measure.

8. Member States may determine bilaterally 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 settlement of expenses occasioned by expulsion operations at either party's request ([1]).

IV.

1. Each Member State shall assume responsibility for executing expulsion measures it has itself adopted. However, where there are grounds for doing so, expulsion may be carried out as a concerted effort with other Member States.

2. The Member State which adopted the expulsion measure shall use the resources available on the air transport market or, if necessary, resources it has organized itself.

3. The Member State which adopts the expulsion measure may request cooperation from another Member State to locate seats available to execute the expulsion by air where there is no transport between it and the country of destination, where there is urgency or where there are no seats available on flights from the Member State which adopted the expulsion measure.

4. However, the Member State whose cooperation has been requested for the execution of an expulsion measure by air may refuse to authorize execution from its territory.

([1]) Further to a question from the Austrian delegation, the Chairman said that the wording of this point was not liable to create obligations for Member States.

5. With a view to coordinating the execution of expulsion measures, each Member State shall inform other Member States which authority in its territory shall be responsible for:

- centralizing information on seats available on flights for expulsion purposes;

- contacting the competent authorities in the other Member States with a view to using seats available on flights;

- requesting authorization from other Member States to use seats available on flights departing from them;

- exchanging information with the authorities in other Member States in relation to the execution of expulsions by air.

V.

Member States shall regularly review the progress achieved in relation to the principles set out above for concerted action and cooperation in the execution of expulsion measures.