

10635/97

LIMITE

ASIM 168

OUTCOME OF PROCEEDINGS

from : Migration Working Party

dated : 1 and 2 September 1997

1. Adoption of the agenda

The Working Party adopted the agenda set out in telex No. 3217 of 24 July 1997, as modified by telex No. 3280 of 29 July 1997 (essentially concerning the deletion of item 6 "Travel facilitation for third-country nationals residing in a Member State"), with the addition of the items mentioned below under "Other business".

As for the item "Travel facilitation for third-country nationals residing in a Member State", the Presidency pointed out that, further to Coreper's suspension of work on this item pending the outcome of the IGC (see doc. 5990/97 CRS/CRP 6), any future action on this subject would have to be preceded by a discussion within Coreper, which could take place after the signature of the Treaty of Amsterdam.

For practical reasons, the order of items 4 and 5 was reversed (the Italian initiative was taken up before the Austrian one), and the item "Commission proposal for a Convention on admission" (see "Other business" below) was considered at the opening of the meeting.

2. Preparation of the next meeting of the Budapest Group

Delegations received a draft statement by the Presidency for the meeting scheduled to take place in Vienna on 4 and 5 September 1997. A discussion followed, on which basis, the Presidency revised the draft statement. The revised text was made available to delegations during the meeting.

In addition, it was agreed that further coordination would take place in Vienna before the Budapest Group meeting, and for that purpose delegations would hold a meeting in Vienna at 8:00 a.m. on 4 September (see telex No. 3377 dated 2 September 1997).

In the context of this agenda item, delegations were also informed that on 1 August 1997, the Presidency transmitted the texts of the acts formally adopted in the migration area to the associated CEECs and Cyprus, as agreed by the Council. Copies of the transmission letters were made available to delegations. It was also agreed that third countries other than the aforementioned, participating in the Budapest Group, could also receive these documents, upon request, providing they are not confidential.

3. Marriages of convenience

Docs. 6031/97 ASIM 30

9391/97 ASIM 136 + ADD 1 and 2

9392/1/97 ASIM 137 REV 1

The Working Party proceeded to an in-depth discussion of document 9392/1/97 ASIM 137 REV 1, on which basis the Presidency undertook to revise the document (see document 9392/2/97 ASIM 137 REV 2).

4. Italian initiative concerning a multilateral convention to combat illegal migration by sea

The Presidency informed the Working Party that, as had been agreed at its previous meeting, the draft convention had been transmitted to the Working Party on Mutual Assistance in Criminal Matters.

Delegations exchanged general views on this initiative.

The Greek delegation regarded the Italian initiative as a positive one.

The German, Netherlands, Swedish and UK delegations, while generally welcoming work on the subject, were reserved about the appropriateness of negotiating the Italian and Austrian initiatives separately in two different fora. They deemed that this might result in inconsistent texts, and suggested that the two initiatives be coordinated. The Presidency, echoed by the Italian delegation, pointed out that the aim of this item on the agenda of the Working Party was to give Italy the opportunity to know the views of delegations on its initiative, which concerned amongst others migration aspects. Italy could therefore take advantage of this consultation to improve its text. The Working Party, however, was not called to redraft the text. The Italian delegation further stated that Italy intended to present its proposal to the International Maritime Organization (IMO) in September.

In reply to a remark by the Netherlands delegation that the Italian initiative concerned a number of subjects that did not fall within the competence of the Migration Working Party, the Presidency and the Italian delegation recalled that other working parties were also involved in this exercise (including, as mentioned above, the Working Party on Mutual Assistance in Criminal Matters).

Further to a query from the Netherlands delegation as to where coordination on further negotiation of the text would take place at EU level, the Italian delegation indicated that such coordination could take place in conjunction with the IMO meetings, as is customary when a text is negotiated in an international organization, in order that Member States might defend a common position within the IMO.

The Working Party subsequently went through the text article by article (the UK delegation stressing that any comment made was purely technical, since this delegation had difficulties with the underlying principle of this convention). The observations of delegations on the substance of the text are reproduced below.

Preamble. The German delegation proposed the inclusion of a reference to other international conventions, such as the Geneva Convention.

Article I. The United Kingdom delegation, endorsed by the Netherlands delegation and by the Commission representative, reiterated that the definition of "illegal migrants" in this Article I needed further reflection. In this connection, the Netherlands delegation

indicated that, under the circumstances, the title of the Convention should refer to "legal" and not "illegal" migration. This delegation had doubts also on the definition of "ship" in the same Article.

Article III. The Greek delegation suggested that this Article should also include repatriation laws. The German delegation commented that, due to the number of complex issues involved, it would be extremely difficult to cover repatriation in the text; furthermore, this delegation considered that the proposed Convention should include a link with other related offences.

Article V. The Netherlands delegation observed that Article V(3)(d) should be looked at in the light of the non-refoulement obligations under the Geneva Convention.

Article VI. The UK delegation considered that entering the territorial waters of the State of origin without the latter's approval, as foreseen in Article VI(2), was totally unacceptable.

Article IX. The Swedish and UK delegations considered that the list of offences in Article IX(2) went too far; the UK delegation, in particular, commented that, as far as points (b) and (d) are concerned, it would be impossible to come out with the requisite level of proof.

Article X. The German and UK delegations noted that Germany and the UK cannot establish jurisdiction in all the cases provided for under this Article.

Article XI. The UK delegation observed that the word "appropriate" in this Article was too general.

Article XIII. The Swedish delegation suggested that this provision should be toned down.

Article XIV. The Swedish delegation advocated the deletion of Article XIV(7).

Article XV. The Swedish delegation suggested the deletion of the phrase "the greatest measure of" in Article XV(1).

Article XVI. The German delegation deemed that a sufficient threshold of suspicion should be required in order to carry out inspections.

Article XVIII. The German delegation suggested that a reference should be introduced to the International Tribunal for the Law of the Sea.

The Italian delegation took note of the observations made by delegations, and invited them to also transmit these observations to their national delegates to the IMO.

5. Austrian initiative concerning a UN convention on the smuggling of illegal migrants

A revised English language version of the draft convention by Austria was distributed to delegations. The Presidency informed the Working Party that, as had been agreed at its previous meeting, the draft convention had been transmitted to the Working Party on Mutual Assistance in Criminal Matters.

Two delegations (D, UK) made general remarks on the Austrian initiative. The UK delegation, endorsed by the German delegation, expressed a general reservation on the initiative, since this delegation was not convinced of the added value of a general convention in the matter, while the aim of this initiative could better be pursued in the context of the general efforts to tackle organised crime. The German delegation also referred to its previous remarks, shared by the Netherlands, Swedish and UK delegations, calling for coordination between the Austrian and Italian initiatives (see item 4 above).

The Austrian delegation replied, on the first point, that the problems raised by the smuggling of human beings required specific provisions and, on the second point, that the Italian and Austrian initiatives pursued different objectives, the Italian initiative being more specific than the Austrian one.

The Working Party subsequently went through the text article by article. The observations of delegations on the substance of the text are reproduced below.

Article 1. A few delegations (GR, E, P) voiced doubts on the phrase "persons who are not nationals or not permanent residents", and deemed that the scope of the convention should be made broader to cover any person who does not meet the requirement to enter

the country. Some delegations (D, P, UK) also questioned the requirement of a "profit" purpose (defined in Article 3), which may not be relevant under national legislations and may, in any case, be difficult to prove. The Austrian delegation, however, considered that both restrictions had been introduced in order to exclude situations that did not pertain to the notion of the smuggling of illegal migrants, such as, on the one hand, tourists who enter a country without proper documents, and on the other hand, humanitarian trafficking.

Article 4. The UK delegation observed that the word "appropriate" in paragraph 1 was too general. This delegation also emphasized the difficulties involved in removing the profit derived from trafficking, as envisaged in paragraph 2. A number of delegations (DK, D, S, UK) were reserved on the appropriateness of providing, in paragraph 3, that the people smuggled in are not punishable. The Austrian delegation replied that these persons would not be punishable *only* on account of such smuggling, but the other laws regarding aliens would remain in place, including the possibility of expulsion. The Portuguese delegation observed that in the case of illegal entry into a country, Portuguese law does not provide for criminal charges, but for expulsion, and wished to maintain these provisions.

Article 5. The D and UK delegations were reserved on the establishment of extraterritorial jurisdiction envisaged in this Article.

Article 8. The Netherlands delegation suggested that in the first sentence of paragraph 2 the term "shall" be replaced with "may". The Swedish delegation considered that paragraphs 3 and 4 went too far.

The Austrian delegation took note of the observations made by delegations.

6. Group expulsion by charter flight **Doc. 10258 ASIM 161**

The Presidency presented the proposal contained in the above-mentioned document. This proposal was intended to complement the Council recommendation of 22 December 1995 on concerted action and cooperation in carrying out expulsion measures, by creating a voluntary procedure enabling all Member States to take part in the existing practices currently carried out by a small number of Member States.

Delegations made their provisional comments on the text.

A number of delegations (D, NL, FIN, UK) generally welcomed this initiative, which could usefully extend the existing forms of cooperation to Member States with little experience in the matter. The UK delegation emphasized, in this connection, that, as mentioned by the Presidency, the procedure had to remain voluntary.

The French delegation, by contrast, was reserved on the proposed decision, which, on the one hand, would not improve in any significant way the existing practices and, on the other hand, could negatively affect public opinion (in this respect, it was stated, use of the terms "charter flight", "economy" and "efficiency" should be avoided). On the first point, the Presidency stressed that the proposed decision would define the existing practices in detail and would make it possible to all Member States to participate in them; on the second point, it recalled that the Council recommendation of 22 December 1995 had been published in the Official Journal. The Commission representative also voiced doubts on the appropriateness of adopting a Council decision setting up practical mechanisms.

As far as the proposed procedure is concerned, a general concern was expressed that it should not be a lengthy one (NL). On the particular question of the involvement of the Secretariat General of the Council, a few delegations were against (D, IRL, UK, Commission), or had doubts about it (FIN). In the view of these delegations, involving the Council Secretariat could make the procedure too burdensome (D), or could turn out to be impracticable under specific circumstances (UK), or was unnecessary and anyway inappropriate in view of the operational element of the proposed procedure (IRL).

It was concluded that delegations would reflect further on the proposal and the Working Party would come back to it at the next meeting.

7. Other business

(a) Commission proposal for a Convention on admission

The Commission representative informed the Working Party that on 30 July 1997 the Commission adopted a Proposal for a Decision establishing a Convention on Rules for the

Admission of Third-Country Nationals to the Member States of the European Union. A provisional text in English, French and German was transmitted to the Council and the Parliament for information. Once the Jurist Linguists had reviewed the text, possibly by the end of September 1997, the final text would be transmitted officially to the Council in all the official languages and would be published in the Official Journal.

This representative further presented the aims of the proposal, its content and its legal form.

(b) Article 3 of the European Convention on Human Rights

Delegations were informed that only one delegation had taken advantage of the opportunity to transmit contributions on document 7779/97 ASIM 89. It was agreed that delegations would have until 15 September 1997 to submit any additional contribution, on which basis a revised version of this document would be issued (see telex No. 3462 of 5 September 1997).

(c) Ministerial troika meeting with India

As a follow-up to the inter-pillar meeting of 9 April 1997, regarding repatriation to India, China and Viet Nam, the Netherlands delegation informed the Working Party that on 2 September 1997, in the context of a ministerial troika meeting with India, the Netherlands Minister would introduce the subject of the readmission of illegal immigrants. This delegation would further report on the outcome of this meeting at a future meeting of the Working Party.

(d) Readmission agreement between the Netherlands and Ethiopia

The Netherlands delegation informed delegations that, on 22 August 1997, the Netherlands had concluded a readmission agreement with Ethiopia, providing for assisted return of Ethiopians whose application for refugee status or for permanent residence has been rejected. This delegation mentioned that it would provide the text of this agreement to any interested delegation (for this purpose, the text has been made available to the Council Secretariat).