

10684/97

LIMITE

ASIM 174

OUTCOME OF PROCEEDINGS

from : "Asylum" Working Party with experts in migration matters

dated : 9-10 September 1997

No. prev. docs. : 7042/97 ASIM 64 (see also OJ No C 106, 4.4.1997, p. 13),
7296/97 ASIM 70, 8042/97 ASIM 95, 9367/97 ASIM 135, 10360/97 ASIM 163,
10391/97 ASIM 164, 10410/97 ASIM 165 and ADD 1

Subject : **Commission proposal for a Joint Action concerning Temporary Protection of Displaced Persons**

The Working Party discussed Articles 11 to 14 of the Commission's proposal and thus completed its first reading.

Subsequently, the Working Party discussed how best to continue work on the proposal, based on a discussion paper by the Presidency (10410/97 ASIM 165 and ADD 1).

The UK delegation reiterated its reservation on the entire text of the proposal, and indicated that it has some difficulties with its approach, insofar as the proposal seems to be a mere reflection of the past, rather than a text that might help cope with future situations.

Article 11.

The Commission representative drew attention to the fact that the proposed exclusion clauses are directly derived from Articles 1(F) and 33 of the Geneva Convention. On this point, the UK delegation raised the question whether, due to the difference between temporary protection and the Geneva Convention, the exclusion clauses should not be drawn up more widely, in order to exclude temporary protection for serious offences that are not as serious as those foreseen in the Geneva Convention.

The German delegation tabled a scrutiny reservation, in view of the implications that these exclusion clauses

might have for German constitutional law.

The Spanish delegation suggested that the second indent of this article, relating to serious non-political crimes, should be made more specific and redrafted on the basis of section 13.2 of the Joint Position of 4 March 1996 on the harmonized application of the definition of the term 'refugee' in Article 1 of the Geneva Convention.

The Commission representative welcomed this suggestion and wondered whether this could solve Germany's constitutional difficulties. The German delegation pointed out that the Joint Position of 4 March 1996 included a clause whereby the guidelines set therein were without prejudice to Member States' case law on asylum matters and their relevant constitutional positions; the same clause would therefore have to be inserted in this proposal.

On the Spanish proposal, the UK delegation expressed a general note of caution regarding drawing up the exclusion clauses in the same way as an instrument interpreting the Geneva Convention, since the circumstances which form the basis of the two regimes are different.

The Finnish delegation considered that the consequences of the exclusion clauses are not clear in the text, and if the phrase "the benefit ... shall not apply" means that the person concerned had to be expelled, irrespective of a possible threat to his/her life or freedom, this would conflict with the non-refoulement obligations under the Geneva Convention.

Article 12.

The majority of delegations (DK, D, E, F, IRL, FIN, UK) tabled substantive reservations on voting by a qualified majority in order to adopt the implementing measures referred to in Articles 3 and 4, in particular stressing the importance of reaching unanimity on implementing measures that have considerable cost implications.

A few other delegations (GR, I, A, P, S) raised scrutiny reservations on this issue, some (GR, P) sharing the misgivings voiced by the first group of delegations.

Three delegations (B, L, NL) were in favour of voting by a qualified majority.

The Commission representative considered that, further to the Treaty on European Union, adoption of implementing measures by a qualified majority has become the rule, and requiring unanimity is the exception. The UK delegation replied that, according to Article K.3(2)(b), it is left up to the Council to decide which voting rule applies in the case of measures implementing joint action, and no assumption could be drawn either way.

The German delegation asked whether the situation would be different under the future Amsterdam Treaty. The Legal Service declined to answer this question, since the Treaty of Amsterdam has not been signed as yet.

Article 13.

A number of delegations favoured the provision of long-term measures in principle, but could not go along with the present wording of this Article.

A few delegations (DK, NL, FIN, S) considered, in particular, that 5 years is too long a period. In this connection, it was remarked that this question is linked to the suspension of asylum applications, foreseen in Article 10, which has raised similar concerns.

The Austrian delegation stated that the proposed drafting is extremely prudent; in the opinion of this delegation, this Article should be made stronger on procedure, to cater for the difficulties and the costs that certain Member States are likely to face at the end of the temporary protection, particularly regarding those persons who have integrated into the country with their families.

By contrast, two delegations (F, UK) doubted whether this Article should be included in the instrument at all. In this respect, the French delegation referred to Article 10, and pointed out that, at the end of the 5-year suspension, a person is either recognized as refugee, or is rejected. A recognized refugee will obviously be entitled to stay; a failed applicant might still be allowed to stay, if not by virtue of subsidiary protection, on the basis of the national provisions regarding aliens. Therefore, the usefulness of Article 13 was regarded as doubtful.

The UK delegation, on its part, questioned the appropriateness of a reference to long-term measures, especially if it is linked to integration, and in any case objected to specifying any time-scale for the introduction of these measures. This delegation stated that, at least in its

present formulation, this Article took no account of the wider context in which an international crisis might occur (for example, an ongoing negotiation of a peace process), and held the view that the instrument should give Member States maximum flexibility.

In reply to these remarks, the Commission representative insisted on the flexible character of the proposed provisions, which should be read in conjunction with Article 4, and merely invites Member States to consider whether they could introduce any such measures.

Finally, the Portuguese delegation observed that it was not clear what is meant by "long-term measures", and called for a clarification of the provision; in fact, this delegation could accept the prolonging of the existing protection, but not the introduction of new measures extending the rights previously granted. Furthermore, this delegation pointed to a translation error in the Portuguese language version of this Article, which provides an obligation to consider long-term measures ("consideração").

With respect to the remark made by the Portuguese delegation, the Commission representative stated that the Commission did not intend to prejudice in any way the choice of the Council, and that various possibilities might be considered for the purpose of introducing long-term measures.

Article 14.

The Spanish delegation voiced concern regarding the entry into force of the joint action on the day of its publication in the Official Journal, and proposed delaying its entry into force until a later date, in order to allow more time to Member States to complete all required preparation.

The Commission representative pointed out that, even after its entry into force, the joint action will not create individual rights, until implementing measures are adopted.

In reaction to this remark, the Spanish delegation raised the question of possible transitional situations, during which the joint action would nonetheless be applicable once it has entered into force.

Future work on the proposal

The Presidency introduced its discussion paper, contained in document 10410/97 ASIM 165 and ADD 1. On the basis of the outcome of the first reading of the Commission's text, the Presidency's document proposed, on the one hand, to continue work at working party level on some specific aspects of the Commission's proposal, which could be settled through a technical/legal debate; and on the other hand, to transmit certain fundamental questions of political nature to the informal meeting of the JHA Ministers scheduled for 9-10 October 1997, in order to obtain political guidance from the Ministers on these questions.

The Working Party agreed to the approach of the Presidency. After an in-depth discussion of this document, it was also agreed as follows:

- (1) The Presidency would prepare a revised version of document 10410/97 ASIM 165 and ADD 1, taking into account the observations made by delegations, in order to ensure that their positions were accurately reflected therein.
- (2) The Presidency would transmit a note to the K.4 Committee, including a list of questions which the K.4 Committee could use as a basis for further transmission to the Ministers (see document 10656/97 ASIM 170). A room document containing this list was distributed during the meeting for information.

The Presidency mentioned that the Austrian delegation had drawn up a proposal concerning burden-sharing and invited delegations to take note of it (see document 10391/97 ASIM 164). The Austrian delegation emphasized the extremely flexible nature of this paper, which merely intended to express preliminary thoughts on the question, even more so now that the question of burden-sharing might be transmitted to the Ministers.

The Commission representative informed the Working Party that the Committee on Legal Affairs (opinion) and the Committee on Civil Liberties (committee responsible) of the European Parliament were about to complete their work on the proposal. The European Parliament was thus expected to adopt a legislative resolution on the proposal in October and to transmit its opinion to the Council between the end of October and the beginning of November.