

7973/97

LIMITE

ASIM 93

INFORMATION NOTE

from : Presidency

to : K.4 Committee'

Subject: Draft convention, parallel to the Dublin Convention, with Norway and Iceland
- SN 2779/92 WGI 1105 + COR 1

1. At the time of the signing of the Dublin Convention Determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities, the following Declaration No 1 was entered in the minutes of the Conference of Immigration Ministers:

"The parties hereby declare that in order to ensure that applicants for asylum are given adequate guarantees they will keep open the option of extending the cooperation provided for in this Convention to other States by allowing them to subscribe, by means of appropriate instruments, to commitments identical to those laid down in this Convention".

In June 1992, the Ministers approved a preliminary draft parallel Convention, as set out in the abovementioned document, as a basis for negotiations to be conducted with third States and in particular EFTA Member States, since formal negotiations could not begin until the Dublin Convention had entered into force ⁽¹⁾.

⁽¹⁾ SN 2796/1/92 WGI 1122 REV 1, part V, point F (pp. 5 and 6) and
SN 4824/1/92 WGI 1284 REV 1 COR 1, part V B., point (b) (page 5).

At its meeting on 7 and 8 October 1996, the K.4 Committee asked the Asylum Working Party to consider whether that preliminary draft parallel Convention needed to be adapted and whether it could be negotiated with Iceland and Norway ⁽¹⁾. However, at its meeting on 16 April 1997, the Asylum Working Party questioned whether those instructions had not been largely superseded by subsequent events that had occurred within the framework of the Schengen agreements. ⁽²⁾

2. The first subparagraph of Article 142(1) of the Convention implementing the Schengen Agreement reads as follows:

"When agreements are concluded between the Member States of the European Communities with a view to the completion of an area without internal frontiers, the Contracting Parties shall agree on the conditions under which the provisions of the present Convention are to be replaced or amended in the light of the corresponding provisions of such agreements".

Hence, in a Protocol signed in Bonn on 26 April 1994, it is laid down that the provisions of Chapter 7, Title II, of the Convention implementing the Schengen Agreement on responsibility for examining applications for asylum, shall cease to apply when the Dublin Convention enters into force.

Furthermore, the thirteen States Party, Signatory or acceding to the Schengen Agreements signed a Cooperation Agreement with Iceland and Norway on 19 December 1996. Article 1 of that Agreement lays down that the Schengen Agreements and the Schengen acquis shall apply between all the Parties to that Agreement, unless contrary provision is made. Article 3(1)(c) of the Agreement lays down that:

"The Republic of Iceland and the Kingdom of Norway shall decide independently whether to accept ... provisions adopted by the Member States of the European Union which the Executive Committee has found to have replaced provisions of the Schengen Convention in accordance with Article 142(1) thereof ... and which enter into force after the date on which this Agreement is signed".

⁽¹⁾ 10556/96 CK4 30, paragraph 15 (pp. 13 and 14).

⁽²⁾ 7630/97 ASIM 82, paragraph 3 (pp. 2 and 3).

The first sentence of the following paragraph 2 lays down that:

"The acceptance by the Republic of Iceland and the Kingdom of Norway of acts referred to in paragraph 1 shall create rights and obligations between the Parties".

3. The abovementioned provisions of the Cooperation Agreement will therefore result in the extension of the provisions of the Dublin Convention to Iceland and Norway – provided that the latter so decide – as far as thirteen Member States of the European Union are concerned.

In these circumstances, one may question the usefulness of a convention parallel to the Dublin Convention, to be concluded by all fifteen Member States of the European Union, Iceland and Norway. It will suffice if the United Kingdom and Ireland only conclude, at the appropriate moment, such an arrangement with Iceland and Norway, or else await the outcome of the Intergovernmental Conference which is at present considering the question of incorporating the Schengen acquis in the Community legal order.
