EUROPEAN UNION
THE COUNCIL

Brussels, 13 March 1998 (19.03)
(OR. f)

6787/98

LIMITE

ASIM 73

OUTCOME OF PROCEEDINGS

of: Asylum Working Party

on: 25 February 1998

1. **Adoption of the agenda**

The agenda in Telex No 641 of 11 February 1998 was adopted with the addition of the "Other business" items (Item 5 below).

2. **Influx of migrants from Iraq and the neighbouring region**

(a) **EU Action Plan: introduction and procedural discussion**

5502/98 ASIM 9
5573/98 ASIM 13
5593/98 ASIM 15

The Presidency informed the Working Party of the latest developments since the last Asylum meeting on 9 January and put forward the Presidency note setting out the work to be done by each Working Party concerned and the deadlines for its completion (ASIM 15).

The Asylum Working Party's remit covered points 7, 8, 14, 15 and 16 to be dealt with today, and points 12 (national decision-making procedures concerning asylum) and 18 (parallel agreements to the Dublin Convention), which would be discussed at the meeting on 26 and 27 March. The Presidency said that point 13 (exchange of information on ways and means used by asylum-seekers from Iraq and the neighbouring region to enter the EU), which was to be dealt with by CIREFI, would, at a certain point in the discussion, be considered by the Asylum Working Party as well.

(b) Action point 7: possibility of identifying safe areas within the region of origin

Delegations had received a document from HCR containing its preliminary comments on the possibilities of internal asylum in Iraq and refuge in the neighbouring region.

The Presidency said this matter would be considered at a future meeting of the Asylum Working Party in the light of the HCR document and the data now being collected and analysed by CIREA.

The Austrian delegation wanted CIREA to consider how the concept of "internal asylum" was to be understood. It also wanted consideration to be given, in the negotiations with Turkey, to the accompanying measures that would have to be taken for persons who would be sent back to Turkey if it were regarded as a safe third country.

The Presidency said it would pass on Austria's request to the Chairman of CIREA. It also said that the questions relating to Turkey would be examined during contacts between the Presidency and that country.

(c) Action point 8: use of EC funding to improve reception conditions

The Commission representative informed the Working Party that Coreper currently had before it two proposals for joint actions using appropriations under budget headings B7-6008 (Action to assist refugees who have found temporary protection in the European Union and B5-803 (Action in the field of asylum policy and refugees (see 6300/98 ASIM 54 FIN 44). These joint actions were expected to be adopted at the JHA Council meeting in March (as "A" items) so that the funds in question could be used as soon as possible.

(d) Action point 14: review of the requirements of proof laid down by the Dublin Convention

5873/98 ASIM 26

Delegations welcomed the Presidency's note (ASIM 26), which looks at the problem of the collection of evidence based on Articles 23 to 27 of Decision 1/97 of the Committee set up by Article 18 of the Dublin Convention, and suggests discussions that might be held to establish whether amendments to the provisions on means of proof should be envisaged.

On the question of greater flexibility in the collection of evidence, the Greek, French, Italian and Portuguese delegations called for caution to be exercised to avoid the problems that might result from legal uncertainty. They considered that an application should be supported at least by a consistent set of indicative evidence.

The Greek delegation thought it advisable to start by looking at the statistics relating to the application of the Dublin Convention ([1]) to see what conclusions could be drawn.

- *National experience with requests that charge be taken which are made and received on the basis of indicative evidence*

An initial exchange of information on Member States' experience showed that most Member States had been faced with requests that were based solely on indicative evidence, or even just one piece of indicative evidence, or were supported by the applicant's declaration alone. The German and Netherlands delegations observed that these were in the main requests based on Articles 6 and 7 of the Convention.

The Luxembourg delegation said that Luxembourg had applied a restrictive interpretation of the Convention (request for the applicant to be taken back only where proof was established) and had applied the same policy to the requests submitted to it.

([1]) The General Secretariat of the Council circulated to delegations a draft document containing the statistics submitted by Member States concerning the application of the Dublin Convention from 1 September to 31 December 1997.

A number of delegations (B/DK/D/E/F/L/NL/P) said that their countries' current statistics did not make it possible to establish the number of decisions taken following the production of indicative evidence/proof.

Most delegations supported the Presidency's suggestion that a questionnaire be drawn up to obtain information from the Member States on the way in which they applied the Convention in cases where there was only indicative evidence.

They also thought it would be extremely useful for this question to be addressed – on the basis of specific examples which they would submit to the Presidency – at the seminar on 1 and 2 April. The Greek delegation suggested that the Presidency should send the Member States' authorities a telex in time to ask those taking part in the seminar to come prepared with case studies.

– *Guidance note calling for full use to made of Article 23 of Decision 1/97*

The Working Party agreed in principle to the Presidency's suggestion that a guidance note be sent to the "Units" responsible for applying the Dublin Convention, as envisaged in Annex B to ASIM 26. The wording of the note would be revised by the Presidency to take account of delegations' comments on paragraphs 4 and 7.

The Italian delegation entered a reservation on paragraph 7 concerning the taking into account of general evidence as to the movement and behaviour of other applicants of the same social group.

– *Statement by the Article 18 Committee asserting the importance of the flexible type of approach provided for in Article 23 of Decision 1/97*

The Working Party approved the statement suggested by the Presidency (point 16 of ASIM 26).

Since it was no longer planned to hold a meeting of the Article 18 Committee in the margins of the JHA Council meeting in March (see item 3 below), and since use of the written procedure had been ruled out, the Presidency said it would consider what further action should be taken in regard to the draft statement.

(e) Action point 15: consideration of ways of dealing with undocumented asylum-seekers in accordance with the Dublin Convention
5861/98 ASIM 25

The Belgian delegation said that the subject of undocumented asylum seekers was a general one and that discussion of it should not be confined to the Iraq Action Plan but should be clearly separated from it. It was also important for the Eurodac Convention to be concluded at an early date so that the necessary instrument for identifying such asylum-seekers would be available.

The Netherlands delegation told the Working Party that a draft amendment to the Netherlands' legislation on undocumented asylum seekers was currently undergoing scrutiny.

The following comments were made on the action proposals put forward by the Presidency in Annex A to ASIM 25:

- *general remarks:*

Several delegations wanted to examine the Presidency's note in more detail and entered scrutiny reservations for the time being.

The Finnish delegation said there was no "Dublin Unit" in Finland and asked for this to be taken into account in the drafting of the proposals.

- *First point: transmission to the units responsible for operating the Dublin Convention of information on ways and means used by asylum seekers to enter the EU*

The Netherlands and Belgian delegations suggested discussing this matter at the seminar on 1 and 2 April.

The French and Spanish delegations thought it would be useful to specify the EU fora in question.

- *Second point: using the information mentioned in the first point in the operation of the Dublin Convention*

The Netherlands and Belgian delegations agreed to this point.

- *Third point: storing and accessing information that may be relevant to the operation of the Dublin Convention*

The Netherlands and Belgian delegations agreed to this point. The Netherlands delegation said the Netherlands had a databank based on interviews with asylum-seekers, which could be used to analyse request flows.

The German and Finnish delegations asked for the type of information to be specified.

- *Fourth point: time limit for responding to urgent requests for information*

The Netherlands and Belgian delegations were in favour of reducing the time limits.

Several delegations thought that an "urgent request" should be defined and that the consequences of not answering information requests in time should be spelled out.

The German delegation thought the types of information request should be specified.

The Swedish delegation said this was another point that could be discussed at the seminar on 1 and 2 April.

- *Fifth point: extending the statistical monitoring to include the number of requests for information made and the time taken to respond to them*

Several delegations thought this would not be very useful at the present time.

The Greek delegation suggested that, to avoid any misunderstanding, the link with Article 15 of the Dublin Convention should be specified here.

In response to a question from the German delegation, the Presidency said that the information concerned did indeed relate to persons but, once it had been converted into statistics, it would not be possible for individuals to be identified.

The Presidency noted in conclusion that:

- there was no need to reformulate points 1 and 2, since they were simply concerned with initiating a discussion of the ways in which the information concerned was to be used;
- point 3 should be clarified further; a questionnaire would be drawn up by the Presidency;
- the Working Party would return to points 4 and 5 at its meeting in March.

(f) Action point 16: comparison of fingerprints of asylum seekers pending entry into force of Eurodac

6050/98 ASIM 39
11746/97 ASIM 205
5946/98 ASIM 29
6243/98 ASIM 51

The Working Party examined the Presidency's proposals (ASIM 39).

- *Questionnaire*

All delegations agreed that a questionnaire on this matter should be issued.

The following comments were made by delegations:

The German and Austrian delegations wanted to include questions aimed at ascertaining to what extent the Member States could take the fingerprints of illegal immigrants and compare them with those of asylum seekers, it being understood that the exchange of fingerprints could only take place in response to an application for asylum and was therefore covered by Article 15 of the Dublin Convention. The Austrian delegation suggested including:

- a point 1a on the fingerprints of illegal immigrants;
- a point 5a on comparisons made between the database for asylum-seekers and the one for illegal immigrants.

The Belgian and Netherlands delegations wanted the questionnaire to be confined to asylum-seekers.

The Presidency said the questionnaire was only concerned with asylum-seekers. But if Member States could obtain information on a person before he or she became an asylum-seeker, any such information might be useful and relevant to the operation of the Dublin Convention. Since, in the context of the Migration Working Party a questionnaire had simultaneously been issued on the fingerprinting of illegal immigrants, the Presidency would decide whether or not there was a need for questions on illegal immigrants to be included in the present questionnaire.

The Netherlands delegation pointed out that, at one time, Article 15 had been regarded as an insufficient legal basis for the recording and systematic comparing of illegal immigrants' fingerprints (see the opinion of the Council Legal Service in 5546/93 JUR 25); that was why the Eurodac Convention had had to be drawn up. It thought it would be useful to discuss the circumstances in which asylum seekers' fingerprints could be exchanged on the basis of Article 15 of the Dublin Convention. It also wanted Member States to be asked for the most detailed information possible about their systems for recording fingerprints (point 5) and about any problems they had in exchanging fingerprints (not only the problem of incompatible systems but also those relating to the time and human resources available) (point 8).

The Danish delegation suggested adding the following points:

- which are the competent authorities for recording and exchanging fingerprints?
- to what extent can fingerprints be obtained without the asylum-seeker's consent?

The Spanish delegation queried the content of point 14. It thought that Article 15 of the Dublin Convention was a sufficient legal basis for bilaterally exchanging asylum-seekers' fingerprints without bilateral agreements being necessary.

The Presidency said in conclusion that the questionnaire would be revised with all due despatch and sent to delegations. Given the work schedule laid down in the Action Plan, the Presidency kept 13 March as the deadline for answering the questionnaire.

- *Paragraphs 10 and 11*

These points were not examined in detail.

The Danish delegation agreed to paragraph 10.

3. Application of the Dublin Convention

4. Commission proposal for a joint action concerning temporary protection

For lack of time it was not possible to discuss Items 3 and 4.

As it had not been possible to make any progress in examining the operation of the Dublin Convention, the Presidency told the Working Party that there would be no meeting of the Dublin Convention Article 18 Committee in the margins of the JHA Council on 19 March. The German delegation said its Government attached great importance to the meeting and reserved its response to this decision.

5. **Other business**

– *Interpretation of the Dublin Convention*

The Italian delegation asked delegations to say what interpretation should be give to the Dublin Convention in the following cases:

- a third-country national enters a Member State, leaves it to go to a country outside the Union, and finally arrives in another Member State where he seeks asylum (e.g.: arrives in Italy, crosses Switzerland, seeks asylum in Germany; or, perhaps, arrives in Greece, crosses Albania, seeks asylum in Italy);

- a third-country national seeks asylum in a Member State after being expelled from another Member State;

- do you accept the interpretation whereby the first Member State has to explicitly ask the second Member State to take charge of the asylum-seeker on the expiry of the three-month period specified in Article 11(4)? What happens if the second Member State sends a negative response to the request to take charge one day after the three-month period expires and if the first Member State has not explicitly exercised its right of automatic acceptance?

For lack of time it was not possible to discuss these questions.

– *Seminar on the Dublin Convention (in Slough on 1 and 2 April)*

The Presidency said that information on the seminar would be sent to the delegations in the near future. The financial arrangements were still under consideration and delegations might have to pay some of their participation costs.

– *Next meeting*

The Presidency told delegations that a meeting of the Asylum Working Party was envisaged for 16 March, instead of the meeting of the Eurodac Working Party. This would be confirmed as soon as possible.