

12027/98

LIMITE

ASIM 217
MIGR 19

NOTE

from : Presidency

to : Migration Working Party (Admission)

Subject : Draft report to the K.4-Committee on the Commission proposal for a Convention on rules for the admission of third-country nationals

Introduction

The Commission's proposal for a Convention on rules for the admission of third country nationals (doc. 10994/97 ASIM 185) was published in September 1997 and sent to the European Parliament shortly thereafter. The European Parliament's response is yet to be received. A general discussion of the Commission's proposal by the Member States took place in the Migration Working Group towards the end of the Luxembourg Presidency in 1997. Detailed consideration of the text then ensued under the UK and Austrian Presidencies. A record of those discussions is contained in the Council Secretariat's 'Outcome of Proceedings' (docs. 6488/98 ASIM 63 + ADD 1 + ADD 2 + ADD3). This note seeks to draw out the main themes emerging from this first reading of the proposal.

2. In tabling this proposal it was the express intention of the Commission to go beyond what had already been agreed in the various Resolutions relating to controls on the admission of third country nationals to the Member States for particular purposes. The Commission explained that its proposal was designed to be an instrument which broke new ground, and not simply a consolidating measure.

3. The objective of the first reading of the text during the UK and Austrian Presidencies has been to give Member States an opportunity to express their general reaction to the text in order to gauge the level of support by Member States for the proposal and to identify any areas giving rise to particular difficulty. It was not the purpose of this first reading to seek to resolve those difficulties through redrafting and negotiation.

4. It was also agreed that substantive discussion of Chapters II and IX would not be meaningful until Member States had had the opportunity to give their initial reactions to the main admission categories provided for in the proposal. This report is therefore based on those reactions in relation to Chapters I and III to VIII of the draft Convention and without the benefit of the European Parliament's opinion.

Scope of the proposal

5. Delegations acknowledged from the outset that the Resolutions themselves, even though they were non-binding instruments, had been agreed only after lengthy and difficult negotiations and many compromises. To transform these alone into a binding measure would be problematic enough; but to try to extend their scope at the same time, as did the Commission proposal, meant that Member States were faced with an enormous task if agreement were to be reached. On this basis, Member States entered reservations of principle for a variety of reasons. The Commission proposal indicated that it was unlikely to be adopted before the Treaty of Amsterdam came into force and the Commission's intention was therefore to re-present it as a draft directive in the light of the Member States' first reactions.

6. Because of the wide divergences in the Member States' immigration law, practices and administrative systems the Resolutions contain frequent references to their provisions being subject to the application of the national law. Member States attached much importance to such references to provide for flexibility. Since such references would be inappropriate in a binding instrument there are many provisions in the Commission's proposal that would require changes, sometimes substantial and fundamental, to Member States' laws if they were to be agreed upon. A First Pillar instrument would, if agreed, require such changes in national law.

Nature of the draft Convention

7. There was also concern about the nature of the draft Convention and its coverage. It was unclear whether it was intended to be an exhaustive legal instrument which precluded Member States from admitting categories of third country nationals not within its provisions, or whether those not covered could be admitted according to Member States' discretion. Additionally, several countries were concerned to preserve arrangements under which certain groups of third country nationals were admitted under more generous conditions than others, usually for ethnic, cultural or historic reasons.

8. Many of the proposals' s provisions were found to be too rigid, sometimes where such inflexibility was thought to serve little purpose. By contrast, other provisions were felt to be too vaguely framed, thus laying themselves open to abuse.

9. One of the most contentious issues was the proposal to confer rights on long resident third country nationals both in the Member State in which they are resident and in other Member States. Most Member States had difficulties with various aspects of these proposed provisions. For some, these centred on the definition of those who would benefit from these rights; for others the rights to be conferred within the Member State of residence went beyond those currently afforded under national law; while yet others had fundamental problems with the proposition that third country nationals should have any rights in Member States other than the one in which they enjoyed long resident status.

10. The Austrian Presidency formed the view that the extensive rights proposed in the Commission's proposal should be counterbalanced by obligations to be placed on the beneficiaries of those rights. It therefore tabled a proposal for supplementing the draft Convention (ASIM 153) which, inter alia, would introduce sanctions of those who failed to comply with the proposed rules for admission. Member States were generally supportive of the principles behind this initiative and, taking account of a preliminary discussion, the Presidency has now revised its proposal (ASIM 153 REV 1).

Conclusions and recommendation

11. It is clear from this first reading of the Commission's proposal that substantial changes would be necessary before eventual agreement could become a realistic prospect. Moreover, Member States have yet to address the consequences of First Pillar methodology of the Commission's proposals, for example the role of the European Court of Justice. The Commission Services have indicated their willingness to revise the text in the light of the difficulties identified by the Member States.

12. K.4 Committee is invited to:

- i. note the outcome of discussion in the Migration Working Group as summarised above and in ASIM 63 and ADD 1 – 3.
 - ii. invite the Commission to revise its proposals in the light of comments made by Member States and taking into account the imminent entry into force of the Treaty of Amsterdam.
 - iii. agree that the Austrian Presidency's proposal for supplementing the Convention be included in this revision.
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