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NOTE

from : the Presidency

to : Migration Working Group

Nos. prev. docs. : 13553/97 ASIM 255 CIREFI 76, 6111/98 CIREFI 10

Subject : **Enforcement priorities : best practice in the Member States of removing clandestine migrants and persons not entitled to remain in the Member States**

Introduction

1. At its meeting on 11 February 1998, the Migration Working Group discussed the Presidency's proposals concerning the manner in which Member States tackle the enforcement and removal of clandestine migrants and other third-country nationals who no longer qualify to remain in the Member States. These proposals were set out in document reference 13553/97 ASIM 255 CIREFI 76.

2. The Presidency proposes to build upon the useful exchange of information and the views expressed by Member States by refining the issues further and seeking to identify areas of mutual interest and best practice, including the potential for greater practical co-operation. This paper will be presented at the meeting of the Migration Working Group on 3/4 March: it will be discussed further as necessary at the meeting of the Migration Working Group on 23/24 April.

3. This paper is divided into five main areas:

(A) Prevention of illegal entry : liaison officers;

(B) Prevention of illegal entry: sanctions;

(C) Categories of persons subject to enforcement activity;

(D) Priority given to different categories of person; and

(E) Enforcement activity and interface between enforcement authorities and other government departments or NGOs.

A. Prevention of illegal entry: liaison officers

4. Earlier discussions brought general agreement that prevention was better than cure and that, to this end, most Member States had liaison officers in third countries, although the titles of such officers differed between the Member States and such officers did not necessarily carry out precisely the same duties. The Presidency considers that this is an area where there is scope for greater co-operation within the European Union. The following points are presented to the Migration Working Group as possible areas of best practice:-

- Member States will continue to exchange information regarding the posts in third countries at which they have stationed liaison officers;

- In the context of this exercise Member States will consider whether further information is required in addition to that provided in document 6111/98 CIREFI 10;

- Member States, within the Council, will consider any lessons to be drawn from the Airline Liaison Officer Seminar held in London on 26 February 1998;

- Where more than one Member State has liaison officers at the same post the Member States, bilaterally or within the Council, will consider the desirability and practicability of joint missions to that post or a mechanism for local co-operation and dissemination of relevant information to the Council;

- Member States will exchange such information on an annual basis with the first exchange to take place by 30 June 1999.

B. Prevention of illegal entry : Sanctions

5. Discussions in the Migration Working Group on 11 February 1998 revealed a consensus that sanctions were necessary to deter the arrival of third-country nationals intending to enter or stay illegally in the Member States. In response to the implementation of the Action Plan on the influx of migrants from Iraq and the neighbouring region, the Presidency has issued a questionnaire on Member States' practice regarding penalties against carriers. The Presidency will consider, on the basis of the replies to that questionnaire, whether there is any best practice

to be drawn which would have wider application. In the meantime, the Migration Working Group is invited to consider the following points as possible areas of best practice:-

- Member States will, within the Council, exchange information on the effectiveness of carrier sanctions on an annual basis;

- Member States will, within the Council, exchange views on the desirability and effectiveness of posting surveillance officers at ports to detect undocumented passengers and identify the carrier;

- On the basis of the outcome of this exchange of information, Member States, within the Council, will consider the exchange of best practice on carrier sanctions.

Such exchanges could begin once responses to the current questionnaire have been received.

6. Earlier discussions also indicated that sanctions against carriers were not the only sanctions which Member States use to deter illegal immigration. Some Member States prosecute undocumented asylum seekers; some prosecute facilitators and traffickers but not the illegal immigrants themselves; some prosecute the employers of illegal immigrants but not the illegal immigrants themselves. The Migration Working Group is invited to consider which sanctions are the most effective and what best practice can be drawn from Member States' experience. In particular, the Migration Working Group may wish to consider the following points, although these are not intended to be an exclusive list and delegations may have other, relevant points which should be addressed;

(i) What are delegations' views on the proposition that Member States should routinely prosecute those who present forged documents with the aim of gaining entry to the Member State fraudulently?

(ii) What are delegations' views on the proposition that third-country nationals arriving in the Member States with no documentation, including those whose entry has been facilitated by traffickers, and including asylum seekers, should routinely be prosecuted?

(iii) What are delegations' views that those who take employment unlawfully, in addition to the employer, should be routinely prosecuted?

(iv) What conclusions can be drawn in terms of exchange of best practice?

C. Categories of persons subject to enforcement activity

7. Discussions in the Migration Working Group on 11 February 1998 indicated that most Member States do not differentiate between the different categories of third-country nationals illegally present (eg. detected clandestine migrants, persons whose authorised stay has expired, and failed asylum seekers with no further claim to remain in the Member States). Some Member States do however distinguish between categories of persons subject to enforcement activity. Given that the removal of persons no longer entitled to remain is a problem faced by all Member States, the Presidency considers that the variety of procedures in the Member States could be a source of learning. It could also be useful to examine whether one system as opposed to others minimised or eliminated exploitation by those intent on prolonging their stay.

8. The following points are presented to the Migration Working Group as first possible steps in best practice in this area:

- Member States will exchange information on the national policies regarding the categorisation of persons liable to removal from the Member States;

- Member States agree that the categories of persons liable to removal include:

    - clandestine migrants;

    - third country nationals who entered the Member State legally but have remained beyond the authorised period or have not complied with other conditions attached to their stay;

    - third country nationals who entered the Member States on the basis of forged documents;
    - asylum seekers whose claim for asylum has been rejected and who have no further right to remain in the Member State.

9. In addition, before the meeting of the Migration Working Group on 23/24 April, Member States are invited to consider:

- In what way the different approaches serve to minimise or maximise exploitation by those intent on prolonging their stay; and

- What steps might be taken at European Union level to improve the overall success rate in effecting removals.

D. Priority given to different categories of person

10. The Presidency invites the Migration Working Group to give further consideration to the potential advantages or disadvantages of giving different priority to the removal of third country nationals depending on their category. Generally, Member States with finite resources are faced with increasing numbers of failed asylum seekers, while clandestine immigration and entry by false means continue to be a problem.

11. The Migration Working Group is invited to consider the relative merits of two main options:

- whether priority should be given to the removal of persons where success is most likely eg because of their nationality, possession of travel or identity documents, because they have been in the Member State for a relatively short period, irrespective of how they entered the Member State; or

- whether priority should always be given to the removal of clandestine immigrants either to deter others from illegal immigration or to signal the Member State's policy to deal effectively with illegal immigration.

12. The Migration Working Group may conclude that there are some third country nationals who, for whatever reason, cannot be removed. In considering these issues Member State are invited to consider what further exchanges in this area might prove fruitful and whether there are particular points which might be laid down as best practice.

E. Enforcement activity and interface between enforcement authorities and other government departments or NGOs

13. The exchange of views at the earlier meeting of the Migration Working Group indicated that there were enforcement activities other than the removal of persons, eg the prosecution of illegal immigrants and/or their facilitators or employers; possibility of checks on immigration status before the issue of social, educational or health assistance; possibility of checks on immigration status before the performance of a marriage. An assessment of the contribution such measures make to dealing with clandestine migrants and persons not entitled to remain could be a useful contribution to this exercise.

14. A further consideration is the effectiveness of the detention of persons illegally on the territories of the Member States or reporting procedures for illegal migrants. It is recognised that detention is costly and not feasible in terms of large numbers. But the Migration Working Group

is invited to exchange information on the use of detention of illegal immigrants and, where detention is not possible, what contribution effective reporting procedures can make. The Migration Working Group is invited to consider the following first proposals on best practice:

- Member States will exchange information on the use of detention of illegal immigrants in the Member States;

- Member States will consider the introduction of effective reporting conditions for third country nationals in the territory awaiting removal to their country of origin or another third country;

- Member States will consider whether there should be a link between reporting and the payment of benefits;

F. Conclusion

15. The Presidency presents these comments and possible options as an aid to further discussion. They are by no means exclusive and delegations' additional views and proposals will be very welcome. In particular, delegations are invited to consider whether they wish to have a document of best practice built on the preliminary points set out above and what form such a document should take. The Presidency's own view is that any document setting out best practice should be confined to an operational exchange of information which would not be put to the Council as a formal measure for adoption but might be put to K4 Committee to note.