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EUROPEAN UNION
THE COUNCIL

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LIMITE

MIGR 49

NOTE

from :	General Secretariat
to :	Expulsion Working Party
No. prev. doc.:	7668/1/99 MIGR 29 REV 1
Subject :	**Updated information on Council decision of 16 December 1996 on monitoring the implementation of instruments adopted by the Council concerning illegal immigration, readmission, the unlawful employment of third-country nationals and cooperation in the implementation of expulsion orders (OJ No. L 342 of 31.12.96, p. 5) (see Telex No. 2371 of 21.05. 99)**

Delegations will find herewith updated information on the above-mentioned received from Greece, Spain, Ireland, Italy, Austria and Finland.

Sweden stated that its replies are accurately reflected in the General Secretariat's summary report (7668/1/99 MIGR 29 REV 1). The United Kingdom has no comment to add.

GREECE

1. **Council Recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third-country nationals**

From 1 January 1999 Greece has been using the standard "laissez-passer" for the expulsion of third-country nationals who have no travel documents.

The standard travel document has hitherto been used in ten cases of expulsion of Bangladeshi nationals and one case involving an Indian national, with positive results.

2. **Council Recommendation of 30 November 1994 concerning a specimen bilateral re-admission agreement between a Member State and a third country**

Since the adoption of the Recommendation, Greece has made use of the basic principles set forth in the document, without encountering any particular problems, in the bilateral readmission agreements it has concluded with Bulgaria, Croatia, Poland, Slovenia, Latvia and Lithuania.

3. **Council Recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of re-admission agreements**

Since the adoption of the Recommendation, Greece has followed the guiding principles laid down in it when concluding protocols for the implementation of bilateral readmission

agreements with Bulgaria, Croatia, Poland, Romania, Slovenia, Latvia and Lithuania.

4. **Council Recommendation of 22 December 1995 on harmonising means of combating illegal immigration and illegal employment and improving the relevant means of control**

The content of the Recommendation is covered by the provisions of Law No 1975/91 on aliens etc., Presidential Decree 141/91 on the powers of Public Order Ministry employees, and Law 2472/97 on the protection of the individual in respect of the processing of personal data, which contain provisions concerning:

- identity checks on aliens to verify that they are legally resident in Greece;
- means of proving that aliens are legally resident;
- checks to identify marriages of convenience contracted in order to obtain a resident permit;
- sanctions (criminal and administrative) against employers who illegally employ aliens;
- the keeping of a central archive of aliens containing details of residence permits and expulsion measures.

5. **Council Recommendation of 22 December 1995 on concerted action and co-operation in carrying out expulsion measures**

The basic principles of the Recommendation in respect of transit for the purpose of expulsion were included in the readmission agreement concluded by Greece with Italy, and in the similar agreement with France, which has reached the signing stage.

6. Council conclusions of 4 March 1996 on clauses to be inserted in future mixed agreements

The police cooperation agreements concluded by Greece with Armenia, Iran, Cyprus and the FYROM also include a readmission clause, in line with the model in the Council conclusions.

7. Council Recommendation of 27 September 1996 on combating the illegal employment of third-country nationals

Law No 1975/91 on aliens, currently in force in Greece, is fully in line with the content of the Council Recommendation.

In particular, Article 23 of that Law contains provisions laying down the procedures for granting a work permit, which all third country nationals require in order to exercise any occupation or to engage in any type of work in Greece.

In addition, Article 33(7) and (8) of that Law contain provisions on the criminal and administrative penalties applicable to employers who unlawfully employ third country nationals, and to such nationals if they accept work without the required permit. Under the provisions of Article 33(7) of that Law, anyone who employs an alien, in any manner, without a work permit is liable to a term of imprisonment of at least three months and a fine of at least 100.000 drachmas. In the case of repeat offences, the prison term is at least six months and the fine at least 300.000 drachmas.

A prison sentence and fine are also imposed on aliens who accept paid employment or exercise a profession or any other occupation without a work permit.

Employers who engage aliens without a work permit are liable for an administrative fine ranging from 30.000 to 200.000 drachmas.

In accordance with the provisions of Article 33(8) of Law 1975/91, if the accused is convicted of violating the provisions of the previous paragraph, the Minister for Public Order may, taking the general circumstances into consideration, order the closure of the establishment or undertaking for a period of between one and six months.

SPAIN

There are no new developments to report concerning the instruments referred to in **points (a), (b), (c), (d), (e) and (f)** of the questionnaire, beyond the information given previously, which the General Secretariat has already received.

With regard to the instruments concerned, the information provided earlier on the Recommendation of 30 November 1994 concerning the adoption of a standard travel document (**point (a)**) need be supplemented only with the number of documents used for the expulsion of third country nationals in 1998, and the results obtained:

Morocco	369
Mali	27
Romania	24
Senegal	5
Brazil	3
Colombia	3
Bosnia and Herzegovina	1
Bulgaria	1
Ecuador	1
Egypt	1
Ghana	1
Equatorial Guinea	1
Tunisia	1
Uruguay	1
TOTAL	**439**

Of the total of 439 cases in which the EU travel document was used, in 437 the response was positive, with admission being refused only in two cases, concerning a Moroccan national and a national of Bosnia and Herzegovina.

Similarly, with regard to **point (g)**, concerning the Council Recommendation of 27 September 1996 on combating the illegal employment of third-country nationals, apart from the criminal penalties applicable to activities related to illegal immigration, as set out in Articles 312 and 313 of the current Criminal Code, adopted by Constitutional Law 10/1995 of 23 November, and the information given previously, we would, with regard to administrative sanctions in this area, inform you of the adoption by means of Royal Decree 928/1998 of 14 May of the new General Rules on procedures for imposing penalties for social offences, which, in this respect, implements Law 8/1988 of 7 April, on social offences and penalties, as amended by Law 11/1994 of 19 May, which treats as a very serious offence any pretence or deception in respect of the recruitment or hiring of employees, and which gives powers to impose penalties to the provincial labour and social affairs offices, and to the Directorate-General for Migration Control, where the penalty exceeds 500 000 pesetas per employee.

IRELAND

(a) Adoption of standard travel document

Ireland uses the EU standard travel document in the removal of undocumented third-country nationals when appropriate. The document was used on 11 occasions in 1998 in the course of returning persons to Romania, Bulgaria, Latvia, Ukraine and Australia. With one exception (an attempted return to Morocco, which was prevented by Court order) Ireland has not yet had occasion to return persons to those countries which, as reported by other Member States, do not always accept the travel document.

(b) Specimen bilateral readmission agreement between a Member State and a third country

To date Ireland has not entered into any readmission agreements with third countries. It has received proposals for readmission agreements from Romania and Bulgaria and these are currently under consideration, having regard to the terms of Council Recommendations of 30 November 1994 and 24 July 1995 regarding readmission agreements.

(c) Guiding principles to be followed in drawing up protocols on the implementation of readmission agreements

See (b).

(d) Combating illegal immigration and illegal employment and improving the relevant means of control

It is proposed to publish a bill before the end of 1999 which will make the trafficking of illegal entrants a criminal offence.

(e) Concerted action and cooperation in carrying out expulsion measures

Ireland has had little experience in the area of expulsion, with relatively few removals from this State to-date. The number of returns in 1998 (64) does however represent a significant increase over 1997 (6 returns) and reflects the increase in the number of persons who have entered the State illegally during the period 1997 to date. There is likely to be continued growth in the number of returns although at present, arising from a recent decision in the Irish Supreme Court which found the existing deportation provisions to be unconstitutional, removals have ceased. Legislation has however been published which will provide for powers, principles and procedures regarding the deportation of non-nationals. Ireland has not adopted any formal measures to give effect to the provisions of this instrument but informal transit arrangements are in place with other Member States as necessary.

(f) Council conclusions on clauses to be inserted in future mixed agreements

Ireland has not included any readmission clauses in mixed agreements with third countries.

(g) Council Recommendation on combating the illegal employment of third-country nationals

See (d) above.

ITALY

Council Recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third-country nationals

Italy did not use such a standard travel document in any expulsion procedure.

Council Recommendation of 30 November 1994 concerning a specimen bilateral readmission agreement between a Member State and a third country

The specimen bilateral readmission agreement is used as a basis for discussion for drawing up readmission agreements with third countries.

Council Recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements

3. This Recommendation is the basis for concluding readmission agreements.
4. We did not have any particular difficulties in adopting the provisions of the Recommendation.

Council Recommendation of 22 December 1995 on harmonising means of combating illegal immigration and illegal employment and improving the relevant means of control

Point 2 of the Recommendation

Since 21 October 1997, following Italy's implementation of the Schengen Convention, all posts at border crossing points have been linked up to the Schengen Information System (SIS). This has enabled routine checks to be carried out on a computerised basis in compliance with the Convention.

The SIS is also used by the police forces within the country.

Point 3 of the Recommendation

Under Article 144 of the Consolidated Law (*testo unico*) on the Police, the police are entitled at all times to ask third-country nationals to produce their identity papers.

Under Article 4(1) of Law No 39 of 28 February 1990, a third-country national who applies to the public authorities for a licence or to be registered with a professional association must produce a valid residence permit when submitting the application.

Point 4 of the Recommendation

1. In order to qualify for health, welfare or other benefits provided by a public service, a third-country national must be in possession of a valid residence permit, except where humanitarian grounds apply.

2. With regard to measures taken against bogus marriages, we would refer to the Migration Working Party (Admission), which is responsible for this area.

Point 5 of the Recommendation

The local police authority and the Ministry of Labour and Social Security will conduct a prior check as to whether the residence and employment situations of a third-country national being recruited to work in Italy are in order.

Employers recruiting third-country nationals must submit all work permit applications to the provincial Employment Office (technically, applications for a *nulla osta* or green light to work); once the authorisation has been obtained, the employer has to regularise the foreign national's position with the local police authorities.

Point 6 of the Recommendation

Law No 39/90 laid down criminal and administrative penalties in respect of persons employing unauthorised foreign nationals for purposes of exploitation.

Point 7 of the Recommendation

No specific provisions beyond those of the previous year were adopted in 1997 in connection with this point of the Recommendation.

Point 8 of the Recommendation

Italy operates a centralised data file (*Centro Elettronico Documentale* or CED), which also stores data on the administrative position of third-country nationals.

Point 9 of the Recommendation

A new format residence permit is being designed, which will offer optimum security against attempts at forgery (watermarked paper, arms of the Ministry of the Interior, invisible multicolour printing detectable under Wood lamp, plastic protection of the photo, etc.).

Point 10 of the Recommendation

The police may require a foreign national who refuses or is unable to prove his identity to undergo photographic fingerprinting. On the same grounds the police may also detain a foreign national for up to 24 hours under Article 11 (detention for purposes of identification) of Decree Law No 59 of 21 March 1978 (converted by Law No 191 of 18 May 1978).

Council Recommendation of 22 December 1995 on concerted action and co-operation in carrying out expulsion measures

A. Cooperation in enforcement of expulsion measures involving transit

In its enforcement of expulsion measures involving transit in 1997, Italy cooperated mainly with Germany, Spain and France.
Italy also cooperated actively with those Member States which requested transit through Italian national territory.

B. Principles for concerted action in carrying out expulsions (point 6 (a) to (d) of the Recommendation)

There were no instances of the expulsion of third-country nationals being carried out jointly (with other Member States) in 1997.

Council conclusions of 4 March 1996 on clauses to be inserted in future mixed agreements

No measures in connection with the subject of the above Council conclusions were adopted in 1997.

Council Recommendation of 27 September 1996 on combating the illegal employment of third-country nationals

There were no particular legislative innovations in this field in the year under examination.

Re I:

Council Recommendation of 30 November 1994 on the adoption of a standard travel document for the expulsion of third-country nationals.

The information has been correctly reproduced.

Re II:

Council Recommendation of 30 November 1994 concerning a specimen bilateral re-admission agreement between a Member State and a third country

Re 1:

The information in point 1.1 is correct in relation to Austria.

Re 4:

If compared with the passages referring to other Member States, the information in point 4.8 gives the impression that Austria has modelled the readmission agreements with Bulgaria and Croatia word for word on the EU specimen readmission agreement. This is incorrect. The specimen agreement in any case offers only a working basis for the texts of the Austrian draft bilateral agreements; parts of the recently concluded agreements go far beyond the EU specimen text, subject to requirements with regard to the specific partner in the agreement.
For information on the present state of progress on agreements, a list of bilateral readmission agreements with third countries concluded or negotiated on the basis of the EU specimen agreement is given below:

Concluded agreements:

- Bulgaria: entered into force 30.11.1998, BGBl III No. 189/1998;
- Croatia: entered into force 1.11.1998, BGBl III No. 177/1998.

Negotiated agreements:

- Estonia: draft agreement agreed by exchange of notes;
- Yugoslavia: draft agreement initialled on 28.1.1998;
- Latvia: draft agreement initialled on 10.12.1998;
- Lithuania: draft agreement signed on 9.12.1998;
- Switzerland and Liechtenstein: negotiations now in progress (see footnote 3).

For the sake of completeness, we also list those "old" bilateral agreements which came into being when the EU specimen agreement did not yet exist:

- Poland: entered into force on 1.9.1991, BGBl No. 462/1991[1]
- Romania: signed on 13.11.1990 in the form of a protocol[2]
- Switzerland, Liechtenstein: entered into force on 1.2.1955, BGBl No. 80/1955[3]
- Slovakia: entered into force on 1.11.1992, BGBl No. 667/1992 as amended by BGBl No. 1047/1994
- Slovenia: entered into force on 1.9.1993, BGBl No. 623/1993
- Czech Republic: entered into force on 1.11.1992, BGBl No. 667/1992[4]
- Tunisia: entered into force on 1.8.1965, BGBl No. 255/1965[5]
- Hungary: entered into force on 20.4.1995, BGBl No. 315/1995 as amended by BGBl III No. 25/1998

Re III:

Council Recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements

Re 1:

The information in point 1.1 is correct in relation to Austria.

Re 4:

The paragraph concerning Austria in point 4.1 is incomplete. The guiding principles in question were used as a basis for all protocols implementing bilateral re-admission agreements concluded or negotiated using the EU model agreement.

Re IV:

Council Recommendation of 22 December 1995 on harmonising means of combating illegal immigration and illegal employment and improving the relevant means of control

Re 1:

The information in point 1.3 is correct in relation to Austria.

The information given in points 1.4 and 1.7 (concerning Points 2 and 3 of the Council Recommendation) is correct.

It should be noted in connection with the second paragraph of point 1.15 (concerning Point 4 of the Council Recommendation) that Section 106(1) of the 1997 Aliens Law has no subparagraph 1

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1 The agreement contains only provisions on the readmission of each State's own nationals.

2 The protocol contains only provisions on the readmission of each State's own nationals.

3 The agreement with Switzerland applies also to Liechtenstein, pursuant to section IV para. 3 thereof. Treaty negotiations for the conclusion of a new agreement are under way with both countries.

4 The agreement with the former Czechoslovakia is applied on a pragmatic basis in relation to the Czech Republic.

5 The agreement contains only provisions on the readmission of each State's own nationals.

"Subparagraph 1" should thus be deleted.

AUSTRIA

Point 1.18 relating to Point 5 of the Council Recommendation refers only to Sweden. By fax dated 7.7.1998 (Ref. 33.399/193-III/16/98) Austria indicated the following:
"As regards point 5 of the Council Recommendation it should be pointed out that under Austrian legislation on the employment of foreign nationals, an employer may not as a rule recruit a foreign national until he has been issued with a permit to employ that person. Pursuant to §4(3) subparagraph 7 of the law on the employment of foreign nationals, an employment permit may not be issued unless the foreign national has right of residence under the 1997 Aliens Law, including the right to engage in paid employment. It is the responsibility of the labour market department to check on these matters."

We have noted that Austria is not referred to in connection with Point 6 of the Council Recommendation. By fax dated 7.7.1998 (Ref. 33.399/193-III/16/98) Austria indicated the following:
"The rules on the penalties for employers referred to in point 6 of the Council Recommendation are contained in §28 of the law on the employment of foreign nationals. Penalties may range between ATS 10 000 and ATS 240 000 per illegal worker, depending on the circumstances of the case. The inspectors who police the illegal employment of foreign nationals are parties to the proceedings; they endeavour to secure penalties that are commensurate with the economic impact of the offences.

Furthermore, pursuant to §108(2) of the 1997 AL, any person in authority who refuses to allow law enforcement officials access to business premises or work places in accordance with §71(5) is guilty of an administrative offence and may be fined up to ATS 50 000 (§71(5) states that officials of law enforcement agencies are authorised to enter business premises and work places if they suspect the presence of foreign nationals who are not legally resident in federal territory.)

Lastly, pursuant to §103(2) of the 1997 AL, anyone who employs a foreign national contrary to the provisions of the law on the employment of foreign nationals must pay the costs incurred in implementing any expulsion and/or residence ban imposed as a result of such illegal employment, as well as the costs of detention pending expulsion."

The information given in point 1.20 (concerning Point 7 of the Council Recommendation) is correct.

Only Finland is referred to in point 1.22 concerning Point 8 of the Council Recommendation. By fax dated 7.7.1998 (Ref. 33.399/193-III/16/98), Austria provided the following information:

"In keeping with point 8 of the Council Recommendation Austria has an Electronic Criminal Investigation System (EKIS), which includes the Foreign Nationals Information System (FIS). The FIS contains the following groups of data: residence permits, residence permit refusals, visas, visa refusals, residence bans and expulsions, detention orders, entry refusals and deportations, decisions by the aliens authorities, decisions of the State police and special residence authorisations.

There is also an Asylum Information System (AIS) containing the personal particulars of foreign nationals and all other documentation concerning them.

Lastly, since the Schengen Agreements entered into force, Austria can also call upon the Schengen Information System (SIS), to consult alerts within the meaning of the Convention implementing the

Schengen Agreement."

AUSTRIA

The information in point 1.24 (concerning point 9 of the Council Recommendation) is correct in relation to Austria.

The information given in point 1.27 is correct.

The information given in point 1.30 (concerning Point 10 of the Council Recommendation) is correct.

Re V:
Council Recommendation of 22 December 1995 on concerted action and cooperation in carrying out expulsion measures

The information is in principle correct, but need to be amended in one respect:

As may be ascertained from points 2.3 and 4.5, negotiations are being conducted with Italy and Germany on the subject of "transit". By fax dated 7.7.1998 (Ref. 33.399/193-III/16/98), however, Austria has already indicated that the re-admission agreements with Germany and Italy have in the meanwhile already entered into force.

- Germany: entry into force on 15.1.1998, BGBl III No 19/1998;
- Italy: entry into force on 1.4.1998, BGBl III No 160/1998.

Re VI:
Council conclusions of 4 March 1996 on re-admission clauses to be inserted in future mixed agreements

In the fax dated 7.7.1998 (Ref. 33.399/193-III/16/98) no position was expressed on these conclusions. Since, as may be ascertained from MIGR 29, other Member States have expressed opinions, the Austrian delegation would like to concur with the United Kingdom's opinion that the conclusions are not an issue for individual Member States to cover.

Re VII:
Council Recommendation of 27 September 1996 on combating the illegal employment of third-country nationals

The information in point 1.1 is correct in relation to Austria.

The information given in points 1.4 and 4.1 is correct.

FINLAND

1. Finland's replies (telexes 1650 and 1065) are properly and accurately reflected.

2. The Ministry of the Interior's instructions regarding the implementation of return and expulsions entered into force on 1 September 1998.

The readmission agreement between Finland and Bulgaria entered into force on 17 February 1999.

The amendment of the Aliens Act (537/1999) entered into force on 1 May 1999. On 27 April 1999 the Ministry of the Interior issued new instructions regarding residence and work permits (9/011/99) which take account of the impact of the amendment of the Aliens Act on residence and work permit cases. The new instructions entered into force on 1 May 1999.

EUROPEAN UNION
THE COUNCIL

Brussels, 14 September 1999

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ADD 1

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ADDENDUM TO THE NOTE

from :	General Secretariat
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Subject :	**Updated information on Council decision of 16 December 1996 on monitoring the implementation of instruments adopted by the Council concerning illegal immigration, readmission, the unlawful employment of third-country nationals and cooperation in the implementation of expulsion orders (OJ No. L 342 of 31.12.96, p. 5) (see Telex No. 2371 of 21.05. 99)**

Germany has no comment to add on the abovementioned subject.