



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 24 January 2000

5599/00

LIMITE

**MIGR 9
COMIX 85**

OUTCOME OF PROCEEDINGS

from :	Expulsion Working Party/Mixed Committee (Iceland and Norway)
dated :	29 November 1999
No. prev. doc.:	12488/99 MIGR 66 + COR 1 (f, d, i, nl, en, gr, es, p, s)
Subject :	Initiative of the Republic of Finland with a view to the adoption of a Council Regulation determining the obligations as between Member States for the readmission of third-country nationals

General comments – Scope of the initiative

Most delegations generally welcomed Finland's initiative (based on the discussion of 11672/99 MIGR 62 COMIX 320), which Coreper had decided to publish in the Official Journal at its meeting on 24 and 25 November 1999 (see OJ C 353, 7.12.1999, p. 6).

A number of delegations (DK, GR, F, I, A, S) and the Commission representative, however, had no final views on it and entered general scrutiny reservations.

A few delegations (B, DK, E, F) and the Commission representative considered that the question of the legal form of the instrument should be further discussed at a later stage, once its content was more fleshed out.

As regards the scope of the initiative, some delegations (DK, A, S, Iceland) and the Commission representative generally supported the broad approach taken therein, whereby the instrument would cover the readmission obligations between Member States of both third-country nationals illegally present in a Member State and third-country nationals to be readmitted from a third country under a readmission agreement. The Commission representative, however, noted that the two situations covered by the initiative were of a different nature and their consideration might diverge at a later stage.

In reply to a query from the Irish delegation, regarding the “Schengen relevance” of this matter, the Presidency recalled that at its meeting on 6 October 1999 Coreper had recognized that no agreement was forthcoming as to whether this matter was Schengen-related, and had agreed that the matter could be dealt with in the framework of the Mixed Committee “for information, consultation and discussion”.

In this connection, a few delegations (B, DK, I, NL, Iceland) shared FIN’s view that the initiative should be regarded as Schengen-related. The German delegation, supported by the Commission representative, stressed that the initiative had a broader scope than Article 23 of the Schengen Convention, which relates only to short-term stays and called for a clarification of the state of long-term residents.

The German delegation also recalled situations which had long been discussed in the asylum context, on which there was no agreement that the Dublin Convention could be applied (withdrawal of an application; recognized refugee illegally present in another Member State). The discussion of the scope of this initiative should go in parallel with the discussion of the scope of the Commission’s proposal to replace the Dublin Convention.

Furthermore, the German delegation queried whether bilateral agreements dealing with this matter would be affected by this draft regulation. In the Presidency’s view, this would be the case. The French delegation suggested that the actual functioning of the existing bilateral agreements should be taken into account when discussing the initiative. In this connection, the Presidency referred to the General Secretariat’s survey of the Member States’ bilateral readmission agreements (11486/2/99 MIGR 61 COMIX 291).

Also with respect to the scope of the initiative, the Italian delegation called for a clear distinction between the asylum and migration situations, and suggested that the initiative should contain “exclusion clauses” (as is the current practice of bilateral readmission agreements), in particular to the effect of excluding from its scope of application the situations falling under the Dublin Convention.

The Swedish delegation concurred with the German and Italian delegations on the need to clarify the scope of the initiative, with respect to the situations mentioned by these delegations (long-term residents, refugees and asylum-seekers, in particular those who withdrew their applications).

Positions of the United Kingdom, Ireland and Denmark

The Danish delegation recalled the Protocol on the position of Denmark.

The Irish delegation queried what date should be considered to be the effective date of presentation of this initiative for the purpose of implementing Article 3 of the Protocol on the position of the United Kingdom and Ireland. The Council Legal Service referred to its opinion whereby the relevant event is the circulation of the initiative as a Council document in all language versions to all members of the Council, i.e. the date of the Council document (9164/99 JUR 216 JAI 46 JUSTCIV 84, para. 3) (in the present case this date was 22 November 1999).

Questions of procedure

Following a query from the Greek delegation, the Presidency clarified that it would briefly present the initiative for information purposes at the 2 December 1999 meeting of the Mixed Committee at Ministerial level.

On the Presidency’s suggestion, it was agreed that the Visa Working Party would be consulted on the provisions in the text dealing with visa matters. By contrast, the question of possible consultation of the Data Protection Working Party on the data protection provisions, also suggested by the Presidency, would require further consideration; in this respect, the Belgian delegation noted that the working party’s terms of reference relates solely to third-pillar matters, whereas Finland’s initiative falls under the first pillar.

Comments on the preamble

1st recital. The United Kingdom and French delegations referred to the terms “common EU asylum and migration policy”, used in the Tampere conclusions, which they regarded as preferable to “Community immigration policy”. The Swedish delegation suggested deleting the words “in general” or replacing them with the words “between the Member States”.

3rd recital. The Belgian delegation (supported by the French and Icelandic delegations) expressed a preference for the term “development of”, rather than “building on”, the Schengen *acquis*, as the latter might imply that this draft regulation purports to revise Article 23 of the Schengen Convention. The Italian delegation also had doubts on this recital.

The Presidency pointed out that the proposed wording reflects the language of Article 5 of the Protocol integrating the Schengen *acquis*.

5th recital. The Danish delegation was not clear on the link between the rules on responsibility and the case, difficult to prove, where a Member State could not expel an illegal migrant to a third country. According to this delegation, supported by the United Kingdom delegation, a clause should be introduced to safeguard well-functioning bilateral agreements. The Presidency stressed that this recital sets a priority goal (direct expulsion to third countries, in accordance with Article 23 of the Schengen Convention) which is difficult to express in terms of a legal obligation in the context of a regulation, whereas Article 1(5) introduces a derogation from the rules on responsibility, to cater for this priority goal.

Also on this point, the Italian delegation saw a contradiction between this recital and Article 23 of the Schengen Convention, and considered furthermore that rules on responsibility should be used only where it is impossible to expel directly to a third country. According to the French delegation, the question as to when it would be preferable to expel an illegal migrant to a Member State instead of a third country was the crucial point that needed to be clarified. The Spanish delegation, while sharing the idea underlying this recital, had doubts on its actual wording, and further agreed with the Danish delegation that it would be difficult to prove that a Member State cannot expel an illegal migrant to a third country. Also in the view of the Swedish delegation, this recital should be clarified.

6th recital. The Commission representative drew attention to the dangers posed by this link between the Community's internal rules and the readmission agreements concluded by it with third countries; in fact, a readmission agreement would need to reflect the internal rules and, in the case of complicated internal rules, this might discourage third countries from concluding a readmission agreement.

7th recital. The Italian delegation queried the meaning of "transit agreements". In the German delegation's opinion, it should be indicated more clearly that "agreements on extradition" are not affected by this draft instrument.

The Belgian, German and French delegations regretted the absence of a similar recital in the preamble, to the effect that the **Geneva Convention** is not affected by this regulation. The Presidency stated that the reference to the Geneva Convention was unnecessary, because the Geneva Convention is an international instrument, which binds all Member States, and this regulation would not affect the obligations arising from it. The United Kingdom delegation and the Commission representative supported this approach, the latter stressing that the draft regulation deals only with relations between Member States, and not with third countries. Following a suggestion from the French delegation, to the effect of including, as an alternative, a reference to the internal instruments on asylum, the Presidency indicated that it might be useful to refer to the Commission's proposal to replace the Dublin Convention.

8th recital. The German delegation drew attention to the implications for the Schengen information system of collecting personal data relating to long-term residents, on which at present there is no legal basis in the Schengen *acquis*.

9th recital. The French delegation indicated a preference for a regulatory committee. The Commission representative, by contrast, was in favour of a management committee, as envisaged in Article 17 of the initiative.
