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THE COUNCIL

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REPORT

from: Steering Group I (Asylum/Immigration)

on : 9 November 1993

to : Article K.4 Committee

No. prev. doc.: 9803/93 ASIM 3

Subject: Linkage between Europe, Association and Co-operation Agreements and co-operation with third countries on readmission

1. The Group examined the Presidency's proposed texts on the above question.

After making certain drafting amendments to the texts (see Annex), it decided to submit them to the Committee for discussion and a decision, together with the following comments:

(i) The Group unanimously acknowledged the usefulness of the initiative and gave it its full support. Its purpose was to enable future Association or Co-operation Agreements to be used to alert third countries to the problems of illegal immigration and to encourage them to co-operate more effectively with Member States over readmissions.

(ii) The Group deemed the matter to be urgent in view of the progress made in discussions on the Co-operation Agreements with Morocco and Tunisia.

(iii) The Group wanted to draw the Committee's attention to certain aspects of the initiative, in particular the institutional problems (Community competence/national competence) on which it did not feel qualified to adopt a position.

(iv) It should be noted that the Group was in favour of including, on a case-by-case basis, those of the proposed provisions that seemed appropriate in that particular instance when linkage was established between a general Agreement with a third country and that country's practice as regards readmission.

(v) The Group felt that it might be useful to supplement the proposed texts in the Annex by including a section containing positive measures that could be annexed to a co-operation Agreement. This section would include clauses designed to encourage the third country concerned to improve its co-operation on readmissions.

The Group realized that these commitments fell within the competence of other Council bodies and suggested that they be examined in those bodies ([1]).

([1]) These clauses could cover the following aspects:
- efforts to redirect existing technical, economic and financial aid towards the regions and areas from which most of the illegal immigrants originally came;
- priority for the creation of a climate favourable to private, job-creating investment;
- special measures to provide appropriate technical assistance on migration policy.

PROPOSAL FROM STEERING GROUP I (IMMIGRATION/ASYLUM)
TO THE ARTICLE K.4 COMMITTEE FOR
THE PERMANENT REPRESENTATIVES COMMITTEE

Subject of the proposal: linkage between future Europe, Association or Co-operation Agreements and third countries' practice on readmission to their territory of their own nationals unlawfully present in Member States.

As with human rights clauses included in such Agreements, the idea is to consider systematically whether to insert in such agreements (preamble and enacting terms) a reference to the issue of readmission, thus establishing a link between the Agreement and the relevant State's practice on readmission.

To avoid any confusion: this step is separate from, and logically prior to, any negotiation of readmission agreements since:

- third countries rarely dispute the obligation to readmit, but they raise problems of identification such that the principle remains inoperative, thereby hampering Member States' efforts to repatriate illegal immigrants;
- it is designed precisely to take advantage of a general or existing agreement, beneficial primarily for the third country, to make it aware of our serious illegal immigration problems and prompt it to co-operate more effectively in practice on readmission, in order to give our expulsion policy a degree of credibility.

Context: this initiative fits in with the work programme approved by the European Council in Maastricht and follows on from the Edinburgh European Council Declaration on principles governing external aspects of migration policy. It is supported by Steering Group 1 and a platform for negotiators of such agreements (see pages 5, 6 and 7) has been prepared. Negotiators could select one or more of its clauses according to circumstances.

Obstacles:

- inclusion systematically or depending on the individual case: there is little to be gained by playing with words; the important point is to establish the link whenever appropriate, i.e. in each case of negotiations for a general agreement with a third country whose practice on readmission of its nationals is considered unsatisfactory by a number of Member States, or a third country which is or might become a significant source of illegal immigration to Member States.

- institutional problem:

    = the Commission would see serious drawbacks in the inclusion of such clauses if they were to change the nature of the agreement, from a Community one to a mixed one. In order to avoid this Member States would have to refrain from adducing the inclusion of such clauses to request a change in the nature of the agreement;

= some Member States might oppose it for fear of a covert transfer of powers from the third pillar to the first pillar in this way; to reassure them, it could be stressed that the aim is merely to be able to use the agreement (to be concluded in any event, with the third country its main beneficiary) as a means of persuasion and pressure to prompt the third country to co-operate more effectively on readmission (rather than resorting straightaway to a readmission agreement, which would involve a fresh quid pro quo).

Conclusion: The Commission could be requested by the Council to include one or more of the proposed clauses in the negotiating directives which it puts forward, whenever appropriate.

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Platform for negotiators

1. **In the preamble to the Agreement**

Recognizing that the parties to this Agreement cannot benefit from it fully unless they co-operate actively over combating illegal immigration;

Fully subscribing to the principle of the readmission by each State of its own nationals and wishing to ensure that implementation of this principle is not hampered by a lack of formal proof of identity;

Recalling the Joint Declaration on ACP migrant workers and ACP students in the Community in Annex V to the Fourth Lomé Convention;

Convinced that a policy of expulsion of illegal immigrants - which to be effective requires the active co-operation of the countries of origin, destination and transit - is an effective tool in combating illegal immigration and likely to facilitate the integration into the Community and its Member States of foreigners legally residing there;

Noting that this Agreement and the various undertakings given therein by the Community and its Member States will help to reduce migratory pressures and will guarantee respect for democratic values and human rights;

2. **In the provisions of the Agreement:**

The Contracting Parties agree:

- that co-operation in combating illegal immigration is an important part of the Agreement;

- that they will take all necessary steps to oppose illegal immigration from or through their territory;

- that they undertake to readmit to their territory all their own nationals [and all stateless persons coming from their territory] ([1]) on request and without formalities and, if necessary , issue any travel documents or laissez-passer necessary for that purpose without delay, even if there is no formal proof of their identity;

- that to the extent that the country in question proves willing to co-operate over readmission, particularly in issuing travel documents, and inasmuch as it so requests, the Community and its Member States will subscribe to the additional undertakings set out in the Annex; ([2]) those undertakings may constitute the quid pro quo of the Community and its Member States in the readmission agreements which they conclude with the country in question;

- that those undertakings are without prejudice to the implementation of existing bilateral co-operation in this field between Member States and the country in question.

([1]) The German delegation suggested the inclusion of this phrase.
([2]) optional