Churches Committee
for Migrants in Europe

ASYLUM POLICIES IN A EUROPEAN COMMUNITY WITHOUT INTERNAL BORDERS

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1. DEVELOPING ASYLUM POLICIES IN THE EC CONTEXT

The current negative public opinion with elements of xenophobia and racism, the starkly increasing costs for dealing with asylum-seekers[1], as well the impact of the lack of a coordinated immigration policy among Member States of the European Community, have accelerated consultations and discussions in a number of different European fora. More than 30 bodies, entities and groups discussing topics related to these questions now exist. Alone in 1991 more than 100 meetings on this subject took place.

The EC Member States have been discussing immigration and asylum issues for many years. These negotiations, besides attempting to identify solutions to these problems which the different Member States are facing on their territories, are directed at working out the necessary measures in view of applying Art. 8a of the Treaty of Rome as amended by the Single European Act, which provides that:

> the Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992"; it defines the internal market as an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty .

After all, the EC Member States confirmed the EC Commission's programme for implementing Article 8a, set out in the 1985 White Paper in the declaration on Article 8A annexed to the 1986 Single European Act. As progress was slow in the removal of controls on persons, the Commission, in several of its latest annual reports, drew the attention of the Council and the Parliament to this problem. Maastricht marks a further step in this development by providing additional bases. Also in matters of movement of persons, which ultimately could pave the way towards the communitarization of asylum.

There are still doubts as to whether, by the first of January 1993, all necessary measures will be ready to allow for free movement of all persons. The United Kingdom and Spain continue to disagree on the Gibraltar question. This is the reason why the Convention on external border crossing is still unsigned. In order to meet EC requirements, the external borders convention, must be complemented by other instruments such as the creation of a European system on computerized data and measures for personal data protection.

The question of the interpretation of Article 8a of the EC Treaty concerning free movement of persons has made some progress after more than 7 years of discussion. On the basis of the document dated 6 May 1992, prepared by the Commission, the latter affirmed that in the frontier-free area there should be free movement for all persons without internal border controls. The internal market could not operate under the conditions similar to those in a national market if the movement of individuals within this market were hindered by controls at internal frontiers [2].

The Commission in October 1991 and on the request of the Luxembourg European Council in June 1991, submitted two Communications to the Council and the European Parliament on Asylum and Immigration respectively[3]. These Communications provide, together with the document Article 8a, a first official input of the Commission into the intergovernmental discussions on asylum and immigration issues, which were on the agenda of the General Affairs Council (EC-Ministers of Foreign Affairs) for the first time on 11 May 1992.

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1 Alone in 1992, the cost of the treatment of asylum-seekers in the Western countries was estimated at $7 billion. Financial Times, March 4, 1992

2 "Abolition of Border Controls", Commission Communication to the Council and the Parliament. SEC 92/877 final, Brussels, 8 May 1992.

3 Commission Communications on Asylum SEC (91) 1857 of 11 October 1991 and Immigration SEC (91) 1855 of 23 October 1991 to the Council and the European Parliament.

The Council decided to review these matters, taking into account the outcome of the forthcoming meeting of ministers responsible for immigration on 11/12 June 1992 in Portugal for preparations of the European Council in Lisbon 25/26 June[4]. The importance of the General Affairs Council now dealing also with these matters resides in the fact that henceforth the Ministers responsible for Immigration have no longer exclusive competence, on these questions and that another Community body, besides the Commission, is becoming more involved in the European asylum harmonization process.

The European Parliament has taken an active interest in asylum questions over the past years. Both the Committee for Legal Affairs and Citizens' Rights and the Committee on Development and Co-operation had appointed special rapporteurs who presented reports strongly advocating protection to and assistance for refugees and asylum seekers inside and outside the EC respectively[5]. Most recently, in anticipation of the ratification of the Treaty on European Union, the Parliament established the Committee on Civil Liberties and Internal Affairs, which is dealing with issues named in the Treaty, namely the chapter on intergovernmental co-operation, including asylum and immigration. This Committee appointed several Rapporteurs who are already working on reports covering these matters; of particular relevance in this context is the report by Mr. P. Cooney, MEP, and former Minister of Justice, who is working on asylum.

1. Preparatory work

On 2/3 December 1991 the EC ministers responsible for immigration met in The Hague and adopted the report of the Ad Hoc Group on Immigration (WGI 930). This report contains the Work Programme for 1992 and stresses, among other things, that the work relating to harmonization of asylum has to be based on the 1951 Refugee Convention. There was also consensus on the importance of close co-operation with UNHCR.

Working Group Immigration document no. 930 of 3 December 1991 deals with specific issues such as manifestly unfounded asylum requests, a safe country concept, application of the cessation clause, principles of first asylum countries, as well as UNHCR's role in supervising the determination of refugee status in accordance with Article 35 of the 1951 Convention. In the course of the work for this report, there were discussions between the EC Presidency responsible for these matters and UNHCR. Even though UNHCR is generally satisfied with the result of these efforts, as they do reflect developments in the Executive Committee of UNHCR, we believe

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4 Press Release of the Council of 11 May 1992, 6326/92, p.5.

5 R. Dury (Rapporteur) "Rapport fait au nom de la commissio ' -929/83, 28 October 1983. ! " droit d'asile", doc A2-227/86/A, 23 February 1987.
$ % & ' (&) ' Rights on freedom of movement of persons and problems relating to national security in the Community", doc A3-0199/91, 2 July 1991.
M.C. Aulas (Rapporteur), "Report of the Commitee on Develoment and Cooperation on the European Community policy on refugees and displaced persons in developing countries", doc A3-0345/91, 28 November 1991.

that there are still certain areas which could benefit from further discussions. These areas would include safe country issues and accelerated procedures.

The work programme for 1992 (WGI 930)[6] contains areas for future work, which include:

- Application and implementation of the Dublin Convention,
- Harmonization of rules of material law,
- Harmonization of policies of return,
- Creation of a centre for information exchange and reflection (clearing house),
- Legal examination of questions of guarantees for harmonized application of asylum policies, and
- Reception conditions for asylum-seekers.

2. Relevant provisions in the Treaty on European Union

Beside the approval of substantive matters discussed in the Ad Hoc Immigration Report WGI 930, the heads of States and Governments, in December 1991, agreed on provisions of the Treaty on European Union which eventually will have far reaching implications on asylum. These provisions include the following:

- Article 100 c:

a) The Council shall determine by unanimity until 31 December 1995 and by qualified majority after that date and in cases of emergency a list of third countries whose nationals need a visa for crossing the external borders. The Council shall act on a proposal from the Commission and after consultation with the European Parliament.

b) Acting by qualified majority, the Council on a proposal from the Commission and after consulting the European Parliament, shall introduce a uniform model of visa.

- Co-operation on Justice and Home Affairs:

To this effect and in the framework of inter-governmental cooperation:

a) The Council may either adopt joint positions or joint actions or draw up conventions (Art. K(3)), on asylum policy, rules governing the crossing by persons of external borders of the Member States and the exercise of controls thereon, and immigration policy, (Art. K(l-9)).

b) The Commission has the right of co-initiative in this field (Art. K(3,2)).

c) The European Parliament is informed and consulted, (Art K(6)).

d) Conventions could be concluded where the competence of the Court of Justice may be foreseen, (Art.K (3, 2c)) and

6 Report from Ministers responsible for Immigration to the European Council meeting in Maastricht on immigration and asylum policy, (WGI 930), p. 9.

e) Finally, the Council may unanimously recommend to Member States to adopt, in accordance with their respective constitutional rules, these matters mentioned in Art. 100c of the EC Treaty body, (Art.K(9))[7].

The Declaration on Asylum of the Treaty foresees expressis verbis that this question of transfer to Community rules must be examined by the end of 1993, including the possibility of applying Art. K(9) without a need of any new intergovernmental conference to amend the EC Treaty (Passerelle), but with the intervention of the competent national bodies (Parliament?).

After having outlined these articles, we shall briefly analyze the rather complex constellation which emerges from the Maastricht European Council. The Treaty represents a division of competence between those areas which are primarily community matters and those which are primarily intergovernmental. There are three pillars: The first pillar for Community matters, these second pillar for foreign and defence policy, and the third pillar for the intergovernmental matters - the Union. On the basis of Art. K(9), the passerelle, we have a system that is planned to transfer a matter from the intergovernmental to the Community framework. The Declaration on Asylum, contained in the Annex of the Treaty indicates that this matter is a priority for such a transfer, without however foreseeing any easing for asylum of the very heavy procedures set out in the Passerelle system. There is a new coordinating committee created which is mentioned in both the first pillar (Art. 100D) and the third pillar (Art. K4)).

a)Treaty matters and Article 100c (First Pillar)

Article 100c of the Treaty on European Union, provides the Community with some new, if somewhat limited, competencies in the area of free movement of persons. This represents a modest opening, through which other competencies may pass, subsequently applying the system of the Passerelle . The two competencies listed in Article 100c allow the Community to Determine the third countries whose nationals must be in possession of a visa ; and to adopt the measures related to uniform visa format for visas . Both these competencies could usefully complete the external borders convention, assuming that it is in force after ratification of the Maastricht Treaty. Besides internal preparatory work as, for example, the drawing up of appropriate instruments for tabling at the appropriate moment, there would seem to be no reason to exercise these new competencies in anticipation of the ratification of the Maastricht Treaty since they make little sense in isolation from the external borders convention.

[7] Article K9 reads: "The Council, acting unanimously on the initiative of die Commission or a Member Stale, may decide to apply Article 100c of the Treaty establishing the European Community to action in areas referred to in Article K.1 (1) to (6), and at the same time determine the relevant voting conditions relating to it. It shall recommend the Member States to adopt that decision in accordance with their respective constitutional requirements."

There is an interesting innovation concerning Community competence. Even though Art. 100c confers Community competence[8] in the matter in question, which implies the right of initiative of the Commission, 100c indicates in Paragraph 4 that the Commission has to look into any request put forward by a Member State. The Commission is not obliged to turn these requests into proposals, but it has to look into them. It is a particular provision borrowed from the Euratom Treaty[9] that provided this welcome compromise between those who advocated a pure community system, and those who wanted the Member States to share the initiative with the Commission[10].

b) Foreign and Security Policy (Second Pillar)

This chapter is only indirectly related to questions of movements of persons, asylum, refugees and immigration. But, in most cases, cross border movements involve the interests of concerned States and are therefore likely to be addressed in the framework of the second pillar on foreign and security policy. On the international level, there is also a new and more political trend of international action that integrates more and more political and humanitarian affairs and peace-keeping. United Nations operations in Namibia, Cambodia and the ex-Yugoslavia, where political measures are combined with peacekeeping operations, the latter composed of an increasing element of civilian personnel, are proofs of these new approaches.

In addition, States often feel that refugees and asylum-seekers and, in some instances, even other movements of populations are a danger to their national security, which is another reason why this second pillar, on ratification of the treaty, is likely to take such questions into account. For some years already, the EC Member States addressed refugee issues in the context of the European Political Co-operation (EPC). Although it would be interesting to explore this subject further, it is only mentioned here as an indication.

c) Co-operation in Justice and Home Affairs (Third Pillar)

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8 Full Community competence means a Commission monopoly on the right of initiative. The Council acts on a proposal of the Commission. No Conimunity competency is the opposite extreme, that is, the Comission has no right of initiative at all. The compromise here is a right of co-initiative with a Member State, specifically Article 100a.4, which states "In the areas referred to in this Article, the Commission shall examine any request made by a Member State that it submit a proposal to the Council.

9 "The Commission shall examine any request made by a Member State". Treaty establishing the European Atomic Energy Community, 25 March 1957, Article 32 paragraph 2.

10 Michel Petite, "Judicial and Interior Questions", undated (referred to wilh permission of the author).

This chapter names in a first provision (K1-9) nine matters of common interest, namely:

K1 - asylum
K2 - crossing the external borders;
K3 - immigration;
K4 - drugs;
K5 - international crime;
K6 - judicial co-operation in civil matters;
K7 - judicial co-operation in criminal law;
K8 - co-operation between customs services;
K9 - police co-operation, including the creation of Europol, a system of exchange of police information.

The first six of these nine matters are similar for specific characteristics. Firstly, in due course, they are on their way to becoming full Community competence. However, the procedure is heavy and requires decisions by unanimity in order to make recommendations for adoption by the Member States. The adoption has to go through the whole constitutional procedure in each Member State in order to be implemented. Secondly, there is a shared initiative in these matters between Member States and the Commission. This Droit de l'initiative for the Commission, even though it is not exclusive, represents a significant innovation, as does the transfer of responsibilities to the Council, as opposed to Ministers meeting under intergovernmental cooperation.

d) Role of the European Parliament

Even though the European Parliament is mentioned in both the first and third pillar in the treaty of European Union, in real terms, it has gained little in terms of its scope for active involvement in this area.

(i) First Pillar:

In the two areas (determination of third country nationals needing a visa and the adoption of a uniform format for visas) the Parliament is to be consulted on the Commission proposals before their adoption by the council. In the case of the visa lists, the Council's decisions are to be taken by unanimity until the end of 1995 and by qualified majority.

Paragraph 2 gives the Commission the right, in emergency situations, upon the Threat of a sudden inflow of nationals from a particular third country to make recommendations for adoption by qualified majority of the Council, to introduce a short-term visa requirement (6 months maximum). The Parliament is not involved in this emergency procedure. However, any decision to extend this provisional visa requirement into something more lasting would follow the procedure set out in 100c (l) and would involve consultation of the Parliament.

ii) The Second Pillar:

In anticipation of the ratification of the Treaty on European Union, the European Parliament transformed the so far existing political affairs committee into the Committee on Foreign Affairs and Security; in the framework of the committee there exists also a subcommittee on human rights. Both the committee and the subcommittee examine questions relating to human rights and refugees outside of the EC territory. Therefore, the work of these bodies will be of increasing importance considering that the EC must further develop a more global view in which the old tensions between sovereignty and protection of fundamental rights will have to be addressed. Considering that asylum and refugee questions are essentially human rights concerns of international reach, these two bodies of the European Parliament face substantial challenges for the EC innovative tasks.

iii) The Third Pillar:

The only specific mention of the European Parliament in the third pillar is limited to responsibility shared between the Commission and the Presidency for keeping the Parliament informed. The responsibility for consulting the Parliament and ensuring that its views are taken into account fails exclusively on the Presidency.

Parliamentary questions about activities in this area are to be addressed to the Council, though it seems reasonable to assume that the Commission will be expected to participate in the Parliament's annual debate on the subject.

e) Comments regarding asylum

As mentioned above, it is the subject of a separate declaration contained in the Treaty and has been singled out as the potential priority matter for transfer under the Passerelle procedure from the third to the first pillar. The same Declaration stipulates that the:

> Council will consider as matter of priority questions concerning Member States' asylum policies, with the aim of adopting, by the beginning of 1993, common action to harmonize aspects of them, in the light of the work programme and timetable contained in the report on asylum drawn up at the request of the Luxembourg European Council.

This part of the Declaration was presumably designed to reiterate the importance which Heads of Governments attached to asylum policy. Anticipating the ratification of Maastricht, they attributed a role to the Council (as opposed to immigration Ministers). In practice, asylum questions are likely to continue to be treated in the intergovernmental framework during 1992 throughout the ratification procedures. This particular emphasis on asylum at Maastricht could now justify the Commission to be more forthcoming than in pre-Maastricht time about making an input with its own ideas on asylum into the intergovernmental discussions.

The Common Provisions of the Treaty (Title 1, Article F) state that the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Actions within the framework of intergovernmental co-operation in the field of Justice and Home Affairs (Title VI) shall be taken in accordance with this Convention. The interpretation of the provision could mean that the European Convention on Human Rights and the 1951 Convention relating to the Status of Refugees (mentioned in Article K.2)) have precedence over other Conventions in this area between Member States[11]. Article 35 of the 1951 Convention provides the legal basis for the co-operation between the EC Member States which are all signatories, and the UNHCR. Article 35 states the following:

> "The Contracting States undertake to co-operate with the Office of the UNHCR (...) in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention".

Even though UNHCR is not participating in the intergovernmental discussions on asylum and refugee matters, on the basis of Article 35 there have been increasing contacts essentially between the Presidencies of the EC and Schengen Member States with UNHCR for advice or comments on policy or legal draft documents.

II. ACHIEVEMENTS AND CHALLENGES ON THE EVE OF 1993

[11] See also Jan Niessen, "Community Policies in the Field of Migration and Asylum After Maastricht",in EuroCitizen-Action-Service, April/May 1992, Nº 16, pp. 7-8.

1.Main results of negotiations:

a) Luxembourg Schengen Presidencies

At its meeting on 25 October 1991, the Central Group of Schengen presided over by Italy, invited UNHCR to make a presentation on asylum and refugee questions, bearing in mind Article 35 of the Geneva Convention. Asylum and refugee issues within the context of Schengen were addressed, in particular the problem of sanctions which could 'Impede the access of asylum seekers to the procedure as provided for in the Schengen Agreement and other related questions. UNHCR also reiterated the need to be associated with the appropriate implementing body of Schengen dealing with refugee and asylum matters for the harmonization of asylum.

UNHCR welcomed this opportunity to meet with the Central Group and to directly share concerns and recommendations. In fact, contacts between Schengen and UNHCR have intensified since the first meeting held under the Dutch Schengen Presidency in May 1990, when UNHCR was invited to present a number of suggestions on the draft text, some of which are now reflected in the final document.

In addition, the Chairman of the former German Schengen Presidency made a public presentation at the UNHCR Seminar on Refugee Policy to 1992 and Beyond on 20 June 1991 in Brussels at which, for the first time in the Schengen process, direct dialogue between Schengen and representatives from interested governments and non-governmental organisations as well as academic circles and the media was provided. UNHCR welcomes the progress towards an open attitude of the Schengen Presidencies and hopes to continue these discussions on asylum and refugee matters.

The activities relevant to asylum during the Luxembourg Presidency include the drawing up of a common manual on external border crossing, measures aimed at setting up of the Schengen Information System (SIS) in Strasbourg and discussion for the adherence of Greece.

The Ministers and Secretaries of State at their meeting on 19 June 1992 in Luxembourg adopted several essential measures for the entry into force of the Schengen Agreement[12] . These measures include agreement relating to the Central Schengen Information System (C-SIS), the principle of the common handbook relating to external border controls, the establishment of a control instance on the protection of data and the arrangements for the circulation of persons in airports of intra-Schengen flights.

Issues which have been and are expected to be further discussion include the following:

i) Readmission agreements with third countries, including Austria and Switzerland,

ii) Measures necessary for the actual implementation of the Schengen Information System,

iii) Completion of the common handbook and its annexes relating to external border controls and visa policies.

Regarding the list of visas, we understand that an agreement was reached on the list of countries whose nationals require a visa which would be dealt with in a flexible manner. Specifically it is anticipated to include and exclude countries if and where appropriate.

Concerning the ratification of Schengen, according to latest available information, France, Luxembourg, Portugal and Spain have ratified the Schengen Supplementary Agreement. The signing and deposit of the agreement is still outstanding, but envisaged to take place in the near future. Belgium has introduced the necessary data protection law and the debate on ratification of Schengen is planned to be held soon. There is no particular problem anticipated and ratification is expected to be completed by October or November 1992. In Italy, the procedure has been introduced into the State Council and, considering that the new Government is now

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in place, the ratification is expected towards the end of 1992. In Germany, discussions are on-going in the relevant instances and is still depending on political agreement concerning Article 16 of the Basic Law. This agreement is, however, more and more likely so that ratification is expected before the end of 1992. In The Netherlands, the Second Chamber has ratified it with discussion in the First Chamber scheduled for September [13]. Consequently, ratification is expected to have been completed in the founding Member States by the end of 1992. Within this progress, the entry into force is expected to take place in the first half of 1993.

As regards the implementation of the Schengen Agreement after its ratification, we understand that the Executive Committee, mentioned under Article 131 of the Schengen Agreement, is likely to be established from

[13] Since the ratification in the Netherlands was greatly debated, we will look at the process and its result in some detail. One 23 June 1992, the Second Chamber of the Dutch Parliament voted in favour of the, Bill after a debate of three days. Its 150 members approved the Bill with 123 votes in favour and 23 against. Subsequent to the negative advice by the Dutch Council of State regarding ratification o Schengen in the Netherlands, the Dutch Government, on 16 April 1992 had sent a 151-page, memorandum to the Second Chamber on the draft legislation concerning inter alia the approval of the Implementing Agreement of Schengen, 1990, in response to the Parliament's request of judicial and parliamentary control for the implementation of Schengen. During the debate in Parliament, several amendments were proposed, both to the Act of Approval as well as to the Implementation Act. Three amendments relating to the resolutions of the Executive Committee. Two of these amendments were adopted with the following result: the resolutions of the Executive Committee will be made public in the "Tractalenblad", which is the official Bulletin for the Publication of treaties. In addition, any draft resolution of the Executive Committee that will be binding on the Netherlands will be made public a soon as the text has become final and will be, submitted to Parliament. Under special circumstances it may be submitted to Parliament in a confidential manner if there are compelling reasons or if the draft has a secret or a confidential character. The Dutch member on the Executive Committee can only cooperate and participate in the decision-making process after prior consultation and parliamentary agreement. Tacit agreement is presumed unless one or both Chambers express the wish, within a period of 15 days, to give its/their agreement expressly. Consequently, the adopted amendments provide for some parliamentary, but not judicial, control.
See: Aleidus Woltjer, "Developments in the Netherlands - Parliamentary Approval of Schengen", Dutch Center for Immigrants, Utrecht, 8 July 1992, pp 1,2 and 4.

The currently existing bi-annual meetings of Ministers and Secretaries of State ir charge of the implementation of the Schengen Convention (political body). The current Central Group (civil servants) is expected to continue its work namely, preparing the meetings of the Executive Committee. This might ir fact be similar to the functioning of the COREPER (Committee of Permanent Representatives of the EC system). It might be envisaged that UNHCR be associated with one of the future sub-groups, dealing with asylum.

b) Portuguese EC Presidency

Prior to the meeting of Ministers responsible for immigration of 11/12 June 1992 in Lisbon the Twelve Member States had discussed during the Portuguese Presidency a number of issues largely based on the Working Programme established during the previous Dutch Presidency. Some of these issues were also raised briefly in the Troika meeting with UNHCR on 16 June 1992. The issues included:

(i) Centre of information and reflection (Clearing house)

According to the proposal of the Dutch EC Presidency the setting up of such a centre was adopted in principle in December 1991 and in detail in June 1992 by the respective European Councils in Maastricht and Lisbon.

- Written exchanges of information on legislation, policy case law and information concerning countries of origin, together with statistical information;
- Oral exchange of information through informal meetings of officials responsible for implementing asylum policy.

ii) Harmonized definition and application of the first asylum principle; adoption is pending further discussions during the UK Presidency and the lifting of reservations of two Member States.

iii) Draft Parallel Convention to Dublin; adopted as a preliminary basis for further discussion during the UK Presidency. This Convention is elaborated for membership of non-Community States. Its completion will be subject to the ratification Process of the Dublin Convention.

iv) Draft Convention on the Crossing of the External Borders of the Member States of the European Community[14]; on 11 October 1990, UNHCR was invited by the Italian Presidency to a meeting with the Group of Coordinators on Free Circulation of Persons. At that time and during the subsequent Luxembourg Presidency, UNHCR had an opportunity to comment on the draft of that Convention. UNHCR believes that there are a number of elements in the draft which are positive, particularly the following :

- the inclusion in the Preambule of a provision which states that "The Member States of the European Communities intend to conduct these controls in compliance with their common international commitments, in particular the Geneva Convention of 8 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees as well as with more favourable constitutional provisions on asylum .
- the safeguards which provide for exceptions, for humanitarian reasons or because of international commitments, to restrictions o issue of residence permit in Article 11 and on entry into the territory of the Member States in Article 12 and issue of visa in Article 24.
- the inclusion in Article 13 concerning information of a reference t the Council of Europe Convention on the Protection of Individual with regard to automatic Processing of Personal Data of

[14] Doc SN 2535/91 (WGI 829) (text as finalised by the Jurist/Linguists Working Party)

28 January 1981 and to Recommendations R (87) 15 of 17 September 198 regulating the use, by the police, of personal data, and the expected EC Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

There are, however, several elements which might need to be addressed for the implementation of this convention if and when it will be signed, such as carrier liability and sanctions in Article 14 and the implementation of this convention.

As asylum and refugee matters (including K (1-9) of the Maastricht Treaty) are discussed in the intergovernmental framework, main elements of work accomplished are recorded here at the end of each EC Presidency. The main results of the Portuguese Presidency are summarised here below:

The Twelve - Meeting of Ministers Responsible for Immigration 11/12 June 1992 in Lisbon:

- Abolition of internal borders:

The Ministers responsible for Immigration heard the presentation by Vice-President Bangemann on the Commission's interpretation of Article 8(a) (Communication to the Council and the European Parliament of 5 May 1992 This interpretation includes third country nationals into the provisions concerning free movement of persons (not accepted by the U.K.). The Ministers agree on the need for completing the measures outlined in the Palma Document; prepared by the Group of co-ordinators, which foresees essential and desirable measures for free movement of persons.

- The right of asylum:

a) The Dublin Convention:

The Ministers examined the state of ratification of the Dublin Convention and the progress towards its implementation after entering into force. (So far only Denmark, Greece and the UK have done so. In addition, a common definition and interpretation was raised in view of the future application of the Convention.

b) Harmonization of asylum policies:

The Ministers welcomed the work accomplished on the first host country principle and entrusted experts with discussions to encompass the overall problems of third host countries.

c) Assessment of the situation in countries of origin:

The Ministers called, within the context of the European Political Coopeation, for joint reports (to be established by the twelve EC embassies) starting with Angola, Ethiopia, Romania, Albania and Sri Lanka.

d) Clearing House:

The Ministers decided in Lisbon that in its initial stage the Clearing House (within the Council Secretariat) should focus on compulsory exchange of information resulting from the Dublin Convention.

e) Extension of the Dublin Convention:

The Ministers approved a preliminary draft convention as a base for negotiation and entrusted the UK Presidency with informal contacts with non-Community states, particularly from EFTA, pending its ratification.

External Borders:

The Ministers, as well as the Commission have emphasised the need for signing and ratifying the external borders convention. In addition, the Ministers requested that a feasibility study be carried out on the creation of a centre for information, research and exchanges regarding the crossing of borders and immigration (CIREF) and adopted the conclusions concerning the implementation of the external borders convention (WGI 1108).

- Family Reunification:

The Ministers noted the work under way in the Sub-Group concerning harmonization of admission and removal, underlining that family reunification is a priority. They confirmed their objective to reach common principles by December 1992 and to adapt national laws, where necessary. One of the documents for discussion on this subject, has been prepared by the Commission[15].

Visa:

The Twelve agreed to add 12 countries from the ex-Soviet Union to the list of countries whose nationals are subject to a compulsory visa. They are Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Uzbekistan, Russia, Tajikistan, Turkmenistan and Ukraine. In addition, they decided to continue mutual consultations on the visa regime to be applied to Baltic States and the States of the former Yugoslavia.

- Common instructions at consular posts:

The Ministers requested that a consular manual be prepared taking into account the requirements resulting from the Dublin and the external borders conventions regarding the visa and other consular matters.

- European Information System (EIS):

It was deemed necessary that Member-States create this computerized system for applying the external borders convention. This system, similar to the Schengen Information System, is being elaborated in the horizontal subgroup-" Informatique".

- False documents:

The Ministers welcomed the organization, with the Commission's support, of a Seminar held from 2 August 1992 - 11 September 1992 to train instructors of personnel responsible for examining travel documents.

- Situation in Bosnia-Herzegovina (B/H):

On the initiative of the German and Italian Ministers, the consequences of the situation in B/H concerning refugees and displaced persons was examined. Though no specific decision was taken, they agreed to follow this

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[15] This is a working document (V/384/92 – 2 % ! % " 3 International, du Droit Communautaire et la Legislation et/ou la pratique des Etats Membres" which contains chapters on topics such as the European Convention on Human Rights, Article 8; Interpretation of the concept of Family, European Social Charter of 18.10. 1961 of the Council of Europe, European Convention on the legal status of migrant workers of 24.11.l977. The document also looks at the conditions for obtaining "un droit permanent de sejour" and the situations. of the children born in the country and is of relevance to UNHCR in the context of Family Reunion of Refugees.

matter especially through the rapid advisory centre (set up in March 1991within the Troika to deal with problems created by sudden major movements of immigrants)[16].

European Council - Lisbon 26/27 June 1992

The European Council in its Conclusions of the Presidency approved the report of the Co-ordinators which, regarding free movement of persons:

a) took note that the problems toward the signing of the external borders convention were still not solved;

b) called for ratification of the Dublin Convention and welcomed the progress achieved towards its implementation;

c) expressed that the drafting of an instrument for a European Information System for signature possibly before the end of 1992 should be undertaken;

[16] Reunion des Ministres charges de l'immigration, Lisbonne, le 11 juin 1992. 7273/92 (Presse 115-G).

d) invited the competent authorities to adopt the other essential measures identified in the Palma Document and to implement the work programme on asylum and immigration approved at its Maastricht meeting[17].

The report of the Co-ordinators[18] makes mention of two interesting elements concerning the implementation of the conclusions of the European Council in Maastricht and the consequence of the Treaty on European Union:

a) The European Council of Lisbon has entrusted the competent entities of the Council and the Group of Coordinators on Free Circulation of Persons to examine, in collaboration with the Commission, the consequences of the Treaty on European Union on the organization of work in this field in order to allow the effective application of the pertinent provisions of the treaty immediately upon its entry into force.

b) The Group of coordinators has established a report to the attention of the Council (General Affairs) which was made available to the European Council in view of the implementation of the Maastricht Treaty. This report has defined the relationship between the Committee of Personal Representatives and the Committee of Article K.4 of the Treaty. The report evaluates the competence and the organization of the K.4 Committee and of the structures on which the Committee depends. Reflections in this regard should be accomplished in the course of the next few months. In order to attain this objective and to elaborate the propositions to be represented to the K.4 Committee, it will be necessary that the Ad Hod Group Immigration, the TREVI group, CELAD (European committee to combat drugs), the MAG (Mutual Assistance Group) and the Group on Judicial Cooperation provide propositions to the Coordinators concerning the outline of the work in this domain which, according to them, will be implemented in 1993. These propositions would be accompanied by commentaries in order to allow the Coordinators to determine which groups will need to be established. In the framework of the mission of the coordination, with which the K.4 Committee has been entrusted by the Treaty on the European Union, the Committee could continue the mission which the European Council of Rhodes entrusted to the Group of Coordinators.

To conclude, the Report of the Coordinators made the following recommendations:

a) welcoming the interpretation and the implementation as soon as possible of the necessary measures to implement Art. S.(a) on free movement of persons (but the differences have not been eliminated),

b) requesting the Group of Coordinators to ensure the implementation of the work programme established, taking into consideration the communications on asylum and immigration of the Commission as noted by the European Council of Maastricht,

c) requesting the Group of Coordinators to continue its work on the extension of the system contained in the Dublin Convention to third countries on the basis of the draft project WGI 1008 of 8 May 1992,

d) requesting the Coordinators to complete their reflections on the organization of work structures for the implementation of provisions of Title Vl of the Treaty on European Union and requests the Groups

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17 Conclusions of the Presidency, European Council in Lisbon, 26/27 June 1992, SN 3321/1/92.

18 circ. 3647/92 of 19 June 1992.

competent for internal affairs and judicial customs cooperation to cooperate with the Coordinators in any questions which might be submitted to them in this regard.

2. Work programme until December 1992[19]

a) The Spanish Schengen Presidency

The second half of 1992 is of great importance for the preparations to implement the additional agreement, provided that the ratification process is completed.

The priorities of the Spanish presidency include studying possibilities of more flexible mechanisms than existing ones concerning sanctions adjustment as well as other forms of possible cooperation eg. sanction measures to continue, measures for adaptation of airports to permit the free movement of community citizens after 1992. The Ministers at their meeting on 19 June 1992 agreed that the airports in their respective countries will be in a position to eliminate all immigration controls on people travelling within the Schengen area by 1 December 1993. In order to advance in this matter, the inter service group of the Commission of the EC arrived at the following results:

- The abolition of baggage controls on intra-community passengers might be introduced in all Community airports on 1 January 1993 following the appropriate adjustments. These adjustments are to be determined for each airport on the basis of existing infrastructure.
- The abolition of control on intra-community passengers requires more complex infrastructure adaptations.
- All the Schengen airports will abolish Intra-Schengen passenger controls at the latest on 1 December 1993. At the level of the Twelve, the draft Convention on the external border crossings defines airports as external borders until 1 January 1995, even in respect to intra-community flights. So far, nothing has been decided at the Community level concerning the control of persons in respect to passengers of intra-community flights, not even for the period after 1 January 1995. Other priority issues of relevance to asylum include:
    a) Harmonization of visa policy;
    b) Common consulate instructions;
    c) Readmission of persons on the basis of agreements;
    d) Reference to asylum policy in this context to the Dublin Convention relating to:
        - Measures to be adopted in the preparation of the transitional phase, in the even that the Schengen Convention enters into force before the Dublin Convention.
        - Preparation of modifications of the Schengen Agreement which may be necessary on the basis of Article 142.

[19] This section draws from discussion with delegations from EC and Schengen Member States, who preferred not to be quoted but consented to the publication as a useful step towards more transparency in these matters.

- Analysis of the consequences of provision of the Schengen Agreement which should exist as, for example, the determination of models for information exchange on asylum-seekers.

The Spanish Work Programme foresees specifically contacts with UNHCR in its external relations.

b) UK EC Presidency

According to the draft calendar of meetings[20] there are 60 meetings planned to be held, of which more than 30 are scheduled to take place in Brussels and the others in London. The Coordinators plan to focus on essentially two major issues:

- The programme of measures according to the Palma document for the Free Movement of Persons (Article 8 A of the Treaty of Rome). This concerns preliminary preparatory work on controls of external bordes crossings (basically carried out under the supervision of the Ad Hoc Immigration Group), the development of a European Information System (EIS) as mandated by the Maastricht and Lisbon European Councils.
- The preparation of the infrastructure arrangements in relation to the implementation of Title VI (third pillar) of the European Union Treaty of Maastricht. In order to carry out its coordinating role and to advise the Council in an effective manner, it is planned to avail of the support of three senior steering groups. Each group would be responsible for an area of work falling within the responsibility of the K.4 Committee, which is expected to be as follows:
  - Immigration and Asylum - Article K.1 (1,2,3) and Article 100c;
  - Security and law enforcement, police and customs cooperation - Article K.1 (4,5,8,9)
  - Judicial cooperation - Article K.1 (6,7)

In addition the work programme of the Ad Hoc Group on Immigration during the UK Presidency plans to continue and, as far as possible, complete the initiatives begun under the Portuguese Presidency. It also expects to advance further elements of the asylum and immigration work programme adopted by Immigration Ministers of the Hague and endorsed by the Maastricht European Council in December 1991, taking into consideration the Ministerial Conclusions in Lisbon in June 1992. The UK Presidency, in consultation with UNHCR, plans to discuss issues on asylum including on manifestly unfounded asylum applications, the concept of safe countries of origin or safe third countries, the Clearing House, harmonisation of asylum law and procedures, the implementation of the Dublin Convention.

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[20] CIRC; CELAD; WCI, le 10 juillet 1992. Rev. *2*. Projet de calendrier des r unions 4 5 " 1992.

III. CONCLUDING REMARKS

In recent years, EC Governments have been faced with increasing population movements towards their territory and have been hard pressed to find compromises responding to their international obligations, including the 1951 Convention and to the growing internal political/economic pressures against refugees. Most measures connected with abolishing internal border control are well under way for implementation in 1993 in the Community framework. The United Kingdom does not yet subscribe to the interpretation of EEC Treaty Article 8a added by the Single European Act to allow free movement of non-EC nationals. In addition, the Convention of the Twelve on the crossing of external borders, if signed later in 1992, is not likely to be ratified in time to enter into force as required in the Community program on 1 January 1993. The Schengen Supplementary Agreement is the only instrument (integrating Benelux, France, Germany, Italy, Spain, Portugal and, from November 1992, possibly Greece) which, if ratified in time by the Netherlands and Germany, will enter into force. A part of the Schengen Agreement does concern the external border crossing and is therefore liable on the whole to apply external border controls more restrictively, thus starting to make access to the Schengen territory for asylum seekers and refugees more difficult. Article 26(2) of Schengen states that all national laws are to contain sanctions against carriers, and these are being, or will be, amended to that effect. It will require joint efforts between all concerned to ensure that persecuted and war victims continue to be able to rely on the Schengen States' protection at and within their borders.

The Schengen Supplementary Agreement foresees that asylum matters will be handled according to national laws. In view sloonal wlyntar(acctak6(a)54( )1hapete)51(A)Rew [(viesul7(that a [(vies))-3.9(54( )-3.3435.-17.424(u)13.4d Tw [(viecaw)6.29.7