

CONV 386/02

WG X 11

NOTE

from :	Secretariat
to :	Working Group X "Freedom, Security and Justice"
Subject :	Summary of the meeting held on 29 and 30 October 2002

The fourth meeting of the Group was held on 29 and 30 October (afternoon and morning), and was chaired by Mr Bruton, member of the Praesidium. In line with its agenda, the meeting dealt with questions relating to asylum, immigration and external border control (afternoon of 29 October), and judicial cooperation in civil matters (morning of 30 October). The list of participants is annexed hereto.

On the first matter, the Working Group heard three experts: Colonel Marek Adamczyk, Director in the Polish Border Guard Unit, Mr Eckehart Wache, Head of the Federal Border Police Office in Frankfurt/Oder (Germany), and Mr Jean-Louis de Brouwer, Head of Unit in the European Commission.

On the second matter, the Group heard Ms Alegria Borrás, Professor at the University of Barcelona (Spain).

I. Asylum, immigration and external border control

Exposé by Colonel Marek Adamczyk¹

In his exposé, Colonel Adamczyk emphasised Poland's efforts to prepare for taking on responsibility for the future external border of the European Union. Preparation work had long since commenced and was being pursued actively, in particular by the gradual modernisation of

¹ Full text distributed to members (WD 10).

border posts. Internal legislation governing border guards had also been amended in order to bring it into line with Community rules. The training of troops, their mobility and place of deployment had either been reviewed or would be shortly. In view of these considerations, Poland felt that it would be ready to meet the obligations of the Schengen acquis by the end of 2003.

Colonel Adamczyk stressed the need to strengthen cooperation within an enlarged Europe. This would be achieved in particular by mechanisms for exchanging experiences and best practices, the implementation of an effective border protection system, coordination of all departments (customs, border police), and the undertaking of joint actions. At a global level, European Union action should aim gradually to make control procedures and methods at external borders uniform in order to achieve an integrated border control. This coordination could for example take the form of exchanges of information and joint patrols. Colonel Adamczyk emphasised the role of the SCIFA + (Strategic Committee on Immigration, Frontiers and Asylum) with the participation of national experts for the coordination of Member States' actions. He welcomed the reports and discussions on the feasibility of a common border service.

Exposé by Mr Wache¹

Mr Wache gave his own personal analysis based on his in-depth knowledge of the situation at the German-Polish border. In the previous year 50 million people had crossed the section of the border for which he was responsible. Only 10 000 of these had been returned for failing to meet the required conditions. Mr Wache gave a mitigated assessment of the fight against illegal immigration: while the overall figures for illegal crossings were decreasing significantly, the proportion of illegal immigrants having recourse to a criminal organisation was increasing steadily (approximately 50% today). This crime was accompanied by other forms of illegal practices: drug trafficking, cigarette smuggling, etc.

¹ The exposé by Mr Wache is available in WD 11.

Mr Wache emphasised the importance to be placed on the conditions for issuing visas. This was the responsibility of Member States' representations in third countries. The situation varied in this respect. In the vast majority of cases, illegal immigration occurred after legal entry, in other words on a Schengen visa. It was in the course of the stay that foreign nationals ceased to meet the entry conditions (expiry of a tourist visa, for example).

Mr Wache would like strengthened cooperation between bodies responsible for border control, based on the model of German-Polish cooperation. He was in favour of staff exchanges and joint patrols.

During the ensuing exchange of views between members, the following points were raised:

- European border police: speakers mostly regarded the establishment of a common police force as a long-term prospect. It should be preceded by intermediary stages such as the implementation of joint checks (joint patrols, training programme, adoption of common standards and rules, etc.). One member also suggested the long-term implementation of a European unit which could serve as reinforcement for national units at a given point on the external border. Constitutional aspects of the possible implementation of a European border police or joint patrols were also raised. In Germany, officials from other Member States could already, under certain conditions, take part in checks;
- visa policy: participants wondered how to reinforce current policy and the reliability of the system. The advisability of including biometric data on visas was discussed. The experts who spoke were cautious, fearing that it would delay border crossings;

- lifting of border controls for future Member States: several speakers sought clarification on the conditions for lifting border controls. It was pointed out that this would take place on the basis of compliance with objective criteria after the accession of the new Member States and following a Council decision. In the meantime, current controls would be retained. Lifting of controls would therefore not be simultaneous with accession;
- reestablishment of controls at internal borders: the current system gave each Member State the right to reintroduce controls at internal borders under certain conditions. One member suggested introducing some degree of coordination between these national measures in the event of a security threat affecting several Member States at once (terrorism, for example).

II. Asylum and immigration

Exposé by Mr de Brouwer

In his exposé, given in a personal capacity, Mr de Brouwer emphasised the developments in the area of asylum and immigration over the last ten years (Treaty of Maastricht and Treaty of Amsterdam). The conclusions of the European Council in Tampere in 1999 constituted a watershed, with the programme decided on that occasion guiding the European Union's work since then. The area of asylum and immigration came under first-pillar Community procedures (Title IV of the TEC). However, in the area under consideration, the pillar distribution had particularly harmful effects as in some cases it required the adoption of two texts under different procedures for matters which were closely related, such as the fight against illegal immigration, which had a significant criminal component.

Mr de Brouwer addressed the following points in particular:

- implementation of a common asylum system: the conclusions of the Tampere European Council drew a distinction between two stages. In the short term, they requested the implementation of the measures provided for in Article 63 of the TEC, for which the Commission had forwarded the necessary proposals (minimum standards, common definition)

but progress had been slow due to the fact that the mode of adoption was unanimous voting. A deadline had been set for the end of 2003. In the long term, the Tampere European Council agreed on the establishment of a genuine common European asylum system, going further than the common minimum standards and including a uniform refugee status as well as a common procedure. Mr de Brouwer felt that establishing Article 63 as the legal basis, with a somewhat unclear formulation, limited the scope for action to the adoption of minimum standards. It would therefore not enable implementation of the second phase of the ambitious political agreement concluded in Tampere.

- admission and integration policy: Mr de Brouwer felt that it was necessary to draw a distinction between the common integration policy, on the one hand, and admission policy, on the other. Although the legal basis of the Treaty would make it possible to progress towards an integrated policy, all observers felt that admission policy should continue to be a matter for Member States. Only certain common general criteria could be envisaged. The unanimity rule had also compromised the results which could be expected here. With regard to integration, Mr de Brouwer mentioned in particular the Tampere conclusions, which called for equitable treatment of third-country nationals legally resident in the Union. The creation of a set of uniform rights for long-term residents could be envisaged. However, Mr de Brouwer also stressed the importance of the subsidiarity principle in this area, and felt that the open method of coordination (OMC) could usefully be employed instead of the adoption of legislative acts.
- joint management of migratory flows and the fight against illegal immigration: progress had been made in this area with the adoption of two plans (soon to be three), the implementation of which was the responsibility of Member States. However, their content remained vague.

The discussion which followed this presentation focused first on abandonment of the unanimity rule. A number of speakers were in favour; two members, however, expressed reservations on the very principle of a common Union policy in these areas. Several speakers then supported the idea of creating a legal basis allowing of a genuine common asylum policy that went further than the minimum standards. Lastly, the discussion also addressed the matter of burden-sharing, that is, solidarity between Member States in the hosting of asylum applicants. Several Convention members would like this solidarity, including the financial aspect, to be better ensured. Mr de Brouwer suggested that this principle be horizontally enshrined in the Treaty for asylum policy, immigration policy and border control.

III. Judicial cooperation in civil matters

Exposé by Ms Borrás¹

Ms Borrás addressed the civil aspects of Title IV of the TEC (Articles 65, 68 and 69). She argued for a Title devoted to judicial cooperation in civil matters, so that the subject could be developed independently of matters relating to asylum, visa and immigration. She would also like the reference to "the proper functioning of the internal market" to be withdrawn.

She also felt that the wording of Article 65 was unsatisfactory and that competences should be described there more clearly and precisely. Ms Borrás was concerned about the application of Court of Justice case-law (AETR case-law) whereby internal competence prevailed over external competence, fearing that it would lead to a lengthening of ratification procedures for international agreements.

Ms Borrás criticised the special arrangements under Article 68 TEC, which limited the preliminary ruling procedure in respect of the common arrangements; the introduction of the special arrangements by the Treaty of Amsterdam was a step backwards, particularly in relation to the regular preliminary ruling procedure in force up to then, in particular for the Brussels Convention.

Ms Borrás expressed regret that the Treaty of Nice had not abolished the unanimity rule. The result was the creation of ambiguous legal rules for matters affecting family law. She also suggested that a right of initiative for Member States be introduced into the Treaty for these matters.

Lastly, Ms Borrás pointed out that the provisions of Article 65 had, at least for questions of judicial cooperation in civil matters, rendered obsolete any recourse to Article 293 (ex-220), which provided for the negotiation of internal agreements between the Member States. It was therefore appropriate to consider its possible removal.

¹ The presentation by Ms Borrás is set out in WD 8.

The discussion that followed this presentation focused essentially on the proposals to amend the current wording of Article 65, with a member of the Group wishing it to be kept unchanged while indicating that the preliminary ruling procedure set out in Article 68 TEC could be extended to courts of first instance.

**List of Working Party members who attended
the meeting on 29 and 30 October 2002**

Mr John BRUTON, Chairman, member of the Praesidium

BIRZNIECE Inese

BREJC Mihael

de BRUIJN Thom

CAREY Pat

COSTA Alberto

DEMETRIOU Panayiotis

FARNLEITNER Hannes

FAYOT Ben

FLOCH Jacques

GRABOWSKA Genowefa

HEATHCOAT AMORY David

LEKBERG Sören

KIRKHOPE Timothy

KUTZKOVA Neli

MENDEZ DE VIGO Iñigo

MEYER Jürgen

NAGY Marie

PACIOTTI Elena

PELTOMAKI Antti

Baroness SCOTLAND of Asthal

VAN LANCKER Anne

VITORINO Antonio