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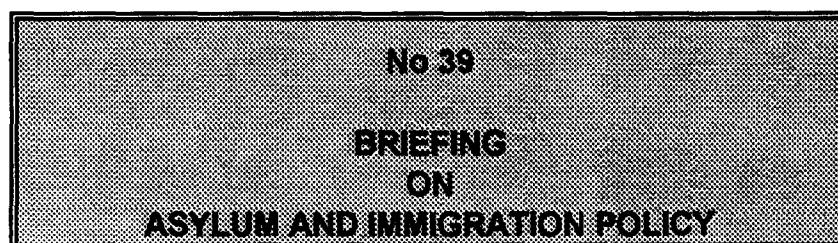
SECRETARIAT WORKING PARTY

TASK-FORCE  
ON THE  
" INTERGOVERNMENTAL CONFERENCE "

WORKING PARTY SECRETARIAT

JF/bo/244/96

Luxembourg, 22 August 1996



These briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda. Briefings will be updated as negotiations proceed.

**Already out:**

1. The Court of Justice
2. The Commission
3. The Court of Auditors, ESC and COR
4. Differentiated integration
5. The common foreign and security policy
6. The role of the national parliaments
7. The hierarchy of Community acts
8. Codecision procedure
9. CJHA
10. European citizenship
11. WEU, security and defence
12. Public services
13. Social policy
14. The European Parliament
15. The European Council
16. The Council of the European Union
17. The budget and the IGC
18. The IGC and transparency
19. Subsidiarity and the allocation of powers
20. The Union's legal personality and external representation
21. Commitology
22. Fundamental rights
23. The IGC and the democratic nature of the Union
24. The coherence of the external action of the EU under the first (Community) and second (CFSP) pillars
25. The 1996 IGC and the effectiveness of the Union
26. Europol
27. The IGC and the Schengen Convention
28. Combating fraud
29. Energy
30. Tourism and the IGC
31. Economic and social cohesion
32. European environment policy and the IGC
33. The common agricultural policy and the IGC
34. Civil protection
35. Ending sex discrimination
36. Enlargement of the EU

**BRIEFING  
ON  
ASYLUM AND IMMIGRATION POLICY**

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**BRIEFING  
ON  
ASYLUM AND IMMIGRATION POLICY**

**I. INTRODUCTION**

In October 1986, the Ministers of Home Affairs of the Member States of the European Union decided to create the "Groupe ad hoc Immigration" (AHI), in order to make a first attempt to coordinate national asylum and immigration policy in the EU. This initiative was taken in view of the Single European Act, to be signed in 1987, which was to eliminate all internal borders before 1993. The first report the Group produced was the Palma Document, presented in Madrid in 1989.

In June 1990, the Dublin Convention decided that every Member State of the Union must be responsible for examining a request for asylum, whatever the country of origin of the request. The Member State responsible was defined as the first Member State which authorises the entry of the applicant on its territory.

In 1991, the Commission submitted to the Member States two documents concerning asylum and immigration policy. In these documents, the measures to be taken in order to harmonise these policies were described.

The Treaty on European Union, signed in February 1992, replaced all earlier agreements concerning asylum and immigration policy. These policies were classed in Article K of the TEU, concerning cooperation in the fields of justice and home affairs, also known as the "third pillar". The only aspects of immigration policy that were classed under the "first pillar" of the TEU were the elaboration of a list of countries whose nationals must be in possession of a visa when entering the external borders of the EU, and a uniform format for visas.

At the Edinburgh Council Summit in December 1992, the Council reaffirmed its intention to keep the European borders open for nationals of third countries.

In its Communication to the European Parliament and to the Council in 1994, the Commission made a clear distinction between immigration policy, in which it is necessary to act in a restrictive and preventive manner, and refugee policy in which the Commission underlines that "it is impossible to reduce the number of refugees the Member States are considered to protect".

Concerning asylum and immigration policy, there is no Convention which is signed and ratified by all Member States.

## **II. SUMMARY**

Concerning the subject of asylum and immigration policy, both the European institutions and most of the Member States are in favour of extending the Community powers and transferring them to the first pillar.

However, the United Kingdom prefers intergovernmental cooperation between the various governments instead of bringing asylum and immigration policy under Community competence.

The European institutions and the Member States suggest using the bridge provision, provided for in Article K.9 of the TEU, more often in matters concerning these policies.

## **III. CURRENT STATE OF COMMUNITY LAW**

Except for Article 100(C) of the EC-Treaty, as inserted by Article G(23) TEU, there are no explicit competencies regarding asylum and immigration issues. Although Article K.1.1 and K.1.3 TEU list asylum policy respectively immigration policy as matters of common policy the main responsibility for asylum and immigration policy continues to lie with the Member States.

Article 100(C) of the EC-Treaty, as inserted by Article G(23) TEU, says:

*"1. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall determine the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States.*

*2. However, in the event of an emergency situation in a third country posing a threat of a sudden inflow of nationals from that country into the Community, the Council, acting by a qualified majority on a recommendation from the Commission, may introduce, for a period not exceeding six months, a visa requirement for nationals from the country in question. The visa requirements established under this paragraph may be extended in accordance with the procedure referred to in paragraph 1."*

Article K.1 TEU says:

*"For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest:*

- (1) asylum policy;*
- (2) rules governing the crossing by persons of the external borders of the*

*Member States and the exercise of controls thereon;*

(3) *immigration policy and policy regarding nationals of third countries;*

(a) *conditions of entry and movement by nationals of third countries on the territory of Member States;*

(b) *conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment;*

(c) *Combating unauthorized immigration, residence and work by nationals of third countries on the territory of Member States;"*

#### **IV. POSITIONS**

##### **1. EUROPEAN PARLIAMENT**

###### **1.1 Opinion of the Committee on Civil Liberties and Internal Affairs (04/05/95)**

The Committee on Civil Liberties and Internal Affairs considers it necessary to lay down rules governing relations with third countries, define the rights and obligations of citizens of third countries resident in the Union and encourage their integration.

Furthermore, the Committee believes that it is important to democratize decision-making processes relating to all the matters listed in Articles K.1, subparagraphs 1 to 4, because of their implications for the freedom and security of the public: asylum policy, the crossing by persons of external borders and the exercise of controls thereon, immigration policy and policy regarding nationals of third countries. Therefore, the Committee urges that the relevant powers be entrusted immediately to the Community in accordance with the procedure laid down in Article K.9 of the Treaty.

###### **1.2 Resolution on the functioning of the Treaty on European Union with a view to the 1996 IGC (17/05/95)**

The Parliament is of opinion that decisions on asylum and immigration policy must be brought within the Community domain.

The 'passerelle' procedure, provided for in Article K.9 of the TEU, should be applied in a more flexible way and should be extended to cover all the areas listed in Article K.1. Furthermore, the Council should act by a qualified majority instead of unanimously.

Existing restrictions on the Commission's right of initiative and implementation should be removed. The roles of the Court of Justice, Court of Auditors and European Parliament should be strengthened, and the legislator should be able to adopt directives without unanimity being required.

###### **1.3 Resolution on the agenda for the 1996 Intergovernmental Conference with a view**

## **to the Madrid European Council (14/12/95)**

The Parliament urges to bring the fields of Justice and Home Affairs within the Community sphere. It considers a European asylum policy of specific importance.

## **2. COUNCIL**

### **2.1 Council report on the functioning of the Treaty on European Union (05/04/95)**

Title VI, which deals with the cooperation in the fields of justice and home affairs, covers some subjects which are very closely associated with Community powers and others which are at the heart of national sovereignty.

In the dual EC/JHA approach the line between the respective spheres is somewhat blurred. The TEU also provides for the possibility of "communitarizing" areas covered by Title VI, such as asylum policy and immigration policy, by means of the bridge provided for in Article K.9 of the TEU, but so far no use has been made of that possibility.

### **2.2 Madrid European Council - Presidency Conclusions (16/12/95)**

The Madrid European Council is of opinion that, in order to act more efficiently, matters concerning third country nationals, such as asylum and immigration, should be put fully under Community competence.

## **3. COMMISSION**

### **Commission report for the Reflection Group (10/05/95)**

According to the Commission, the demarcation between Community matters and the third pillar (among which asylum and immigration policy) is not very clear. This has made decision-making more difficult and has discouraged openness in this field.

The possibility of using the bridge provided by the Treaty (Article K.9) to apply Community rules to cover the areas of asylum and immigration policy could be one solution to this problem.

In November 1993 the Commission sent a report to the Council on the possibility of applying Article K.9 to asylum. However, since the report was presented immediately after the Treaty came into effect, the Commission did not formally propose making use of the bridge. The Council agreed to review this question in 1995.

## **Commission opinion 28 February 1996, Reinforcing political union and preparing for enlargement.**

In a view of establishing an area of freedom and security, Commission think solution must be found to complex problems, such as asylum and immigration. These problems have become international in scale; none of them stops at national borders.

Hitherto, the Union seems tackling these problems with outdated methods and resources. So Commission proposes that the shortcomings in the fields of Justice and Home Affairs, and, notably, the absence of democratic and judicial review can be remedied only by setting clear objectives and providing for instruments and methods.

According to the Commission establishment of common rules for the entry, residence and status for nationals from non members countries seems to be the most difficult to reach among the other subjects of third pillar.

Some instruments and methods should be adopted:

### Decision making

The Commission believes the unanimity rule generally paralyses the Council. It should be replaced by qualified majority voting. Parliament must be more closely involved and Commission should have the power of initiative in the fields concerned.

### Legal instruments

The Union must have more effective legal instruments in these fields, as legal status of the joint action and the common position is still obscure.

### Review of the Court

Decisions taken should be subjected to review by the Court of Justice, if only to guarantee the uniform interpretation of texts.

### Working methods

The Commission affirms the best way to attain all these objectives would be to transfer JUSTICE AND Home Affairs to the Community framework (Communitarisation).

## **4. REFLECTION GROUP**

### **Reflection Group's Report (05/12/95)**

Many Reflection Group-members agree that immigration policy and asylum (ruling out asylum among citizens of the Union) ought to be brought under Community competence.

As regards the arrangements for aliens, some members would like to see the Union introduce a common status for legally resident third-country nationals, whilst others point out that this would require the precondition of an overall common immigration policy.



## **5. Member States**

### **5.1 AUSTRIA**

#### **Austrian "Grundsatzpositionen" for the Intergovernmental Conference 1996, dated 28 March 1996**

Austria believes that co-operation in the areas of Justice and Home Affairs has been unsatisfactory until now.

Two methods are suggested to increase efficiency:

- transfer third pillar tasks to first pillar (communitarisation);
- strengthen the use of communal institutions, instruments, procedures in the working of the third pillar.

As regards second solution Austrian Government thinks many areas, among others, are suitable for communitarisation:

- visa policies
- external borders control
- immigration policy
- customs co-operation

Austria would also like to see more majority voting in the third pillar areas and a stronger role of the Commission. In particular right of Commission initiatives should be extended to the third pillar.

Furthermore, the Austrian Government would like to see a clarification of the powers governing visas.

### **5.2 BELGIUM**

#### **Note de politique du Gouvernement au Parlement concernant la CIG de 1996 (23 October 1995)**

The Belgian Government is in favour of transferring the common asylum policy to the first pillar.

#### **Memorandum of Belgium, Netherlands and Luxembourg in a view of the IGC**

The three states agree that shortcomings of co-operation come from the institutional structure of third pillar. The IGC offers the possibility of reforming deeply this structure, transferring some areas in the first pillar or strengthening the third pillar.

The advantages of communitary methods are evident:

- effectiveness of decisions
- compulsority of decisions
- democratic and judicial control.

So it's necessary to identify, among the third pillar areas, the most suitable to be placed in the first pillar.

The immigration policy is one of the areas mentioned and particular attention should be paid to asylum and visa's questions.

### **5.3 FINLAND**

#### **Memorandum concerning the Finnish points of view with regard to the 1996 IGC of the European Union (18 September 1995)**

So far, the European Union has not had a clearly formulated policy for issues related to immigration and other entry. In view of the importance of this issue, harmonization and joint action are considered necessary by the Finnish government. At the same time, however, due attention should be given to the burden-sharing aspects.

Efforts have been made to devise an asylum policy under the 'Dublin Convention', which can be viewed as a multilateral agreement on repatriation. The agreement has not yet taken effect, but Finland has decided to subscribe to it as soon as possible. Work on the coordination of approaches to asylum issues should continue.

### **5.4 FRANCE/GERMANY**

#### **Letter from the President of the French Republic, Jacques Chirac, and the Chancellor of the Federal Republic of Germany, Helmut Kohl (6 December 1995)**

President Chirac and Chancellor Kohl propose that the IGC should focus on four priority objectives. One of these is the creation of a homogeneous area where freedom of movement is guaranteed by common provisions, particularly in the field of asylum and immigration policy.

### **5.5 GERMANY**

#### **Basic positions of the Federal Government with regard to the 1996 Intergovernmental Conference (24 November 1994)**

The Federal Government regards the common right of asylum as one of its priority areas.

#### **Discussion document on 'more rule of law at European level' (13 June 1995)**

This document of the Steering Committee of the CDU/CSU parliamentary group in the Bundestag on developing the bases of Community policy in the field of the third pillar is largely the work of Karl Lamers.

It discusses, among other topics, asylum and immigration policy. In these areas the document proposes making the current legislation of the Member States as uniform as possible while taking account of the geographical and geopolitical differences between

each of them. The document affirms that key issues arising from asylum and immigration policy can be resolved only at Community level, taking the view that the Schengen method, i.e. conventions which must be ratified by national policies, is not sufficient to meet the challenges posed in such areas. The document therefore proposes that all these areas be integrated as far as possible into the Community sphere of competence by amending or supplementing the Treaty or, at the very least, harmonizing the various national legal systems and their fields of competence to a greater extent. The cooperation already embarked on in accordance with the provisions of Article K of the EU Treaty and Article 100(C) of the EC Treaty should provide a basis for common regulations and measures, in particular in the field of asylum policy and the fight against illegal immigration.

#### **German aims for the Intergovernmental Conference (26 March 1996)**

The Government insists on the necessity of visa policies, the law of asylum, customs co-operation and immigration law should be unionised.

### **5.6 GERMANY/ITALY**

#### **Joint declaration by the German and Italian Foreign Ministers regarding the 1996 IGC (15 July 1995)**

The declaration proposes that increased use should be made of Community procedures, particularly as regards asylum and immigration policy; the decision-making process should be simplified; the Commission should be given greater rights and wider powers of initiative and the European Parliament should be given wider democratic control, with the Court of Justice responsible for ensuring uniform application of the relevant laws.

### **5.7 GREECE**

#### **'Towards a citizens Europe - democracy and development': memorandum for the 1996 IGC (January 1995)**

The Greek Government feels that there should be more specific asylum and immigration policies. Greater powers of control for Parliament are advocated in this field.

### **5.8 LUXEMBOURG**

#### **Luxembourg Government memorandum on the 1996 IGC (30 June 1995)**

The Luxembourg Government supports the application of the rules laid down in Article 100(C), which provide for initiatives to be taken by the Commission and for decisions to be taken by a qualified majority in the field of asylum policy and immigration policy.

### **5.9 THE NETHERLANDS**

## **European cooperation in the fields of Justice and Home Affairs. Third memorandum for the 1996 IGC (23 May 1995)**

For the Dutch Government, asylum and immigration policy can no longer be tackled on a purely national basis. On the contrary, those problems require effective cooperation within the European Union.

Furthermore, the Dutch Government is of opinion that more specific policy objectives and resources should be incorporated. This would imply that Article K.1 of the EU-Treaty would no longer simply list a number of policy areas, but would indicate for each of the policy areas in question, the principles on which the policy is based, the objectives of the policy and the policy resources to be used.

### **Between Madrid and Turin: Dutch priorities on the eve of the 1996 IGC.**

In the field of Justice and Home Affairs the objectives to be reached are:

- strengthening the role of the Court of Justice, the Commission and the European Parliament.
- increasing the scope for a community approach to visa and asylum policy
- lowering the threshold of the bridging clause, making easier for JHA policy areas to be transferred to the EC legal order.

## **5.10 PORTUGAL**

In the **Committee on European Affairs of the Assembly of the Republic**, Portuguese government representatives stressed that Portugal would insist on the achievement of total freedom of movement for persons.

In a document issued by the **Ministry of Foreign Affairs** (Portugal and the IGC), Portuguese Government argues that, in order to reach the goal mentioned above, the Union has to show that it can face the problems that generate public insecurity in European societies:

- international crimes,
- narcotraffic,
- terrorism,
- illegal immigration.

So it is necessary to define the common objectives that the member States are willing to follow rather than questioning the structure of the third pillar. The achievement of these objectives asks for changes in the present system of third pillar. These changes are:

- communitarization and reinforcement of cooperation in certain areas,
- simplification of decision-making system,
- creation of reinforced measures of protection of the citizens' rights.

Portugal also defends that in many cases the qualified majority voting should be introduced and the roles of the EP and the Court of Justice should be strengthened

concerning all the third pillar issues.

It finally will promote a closer relation between the national parliaments and the Union institutions.

### **5.11 SPAIN**

#### **Document on the 1996 Intergovernmental Conference: starting points for a discussion (March 1995)**

The Spanish Government is unwilling to replace the present unanimity requirement with qualified majority voting for matters concerning asylum policy (as long as the law of some Member States allows asylum to be granted to nationals of other Member States) and immigration policy (until a genuine overall immigration policy is devised).

#### **Elements for a Spanish position on the Intergovernmental Conference of 1996**

European citizens ask insistently Union to deal with the growing migratory pressure on its borders.

An answer to these legitimate aims could be given by leading a common battle against illegal immigration.

It's pointed out that there's no correspondence between greatness of objectives and means set to realize them. That is due to inefficient and inadequate dispositions of VI title as Commission and Parliament have already underlined.

### **5.12 SWEDEN**

#### **Communication écrite du Gouvernement - Conférence intergouvernementale de 1996 de l'UE (30 November 1995)**

The Swedish Government is of opinion that asylum and immigration policy should be transferred into the Treaty.

### **5.13 UNITED KINGDOM**

#### **Foreign Minister Douglas Hurd - Talk at the French Institute for International Relations (12 January 1995)**

In his talk Douglas Hurd said that he would like to see the third pillar continue to depend on intergovernmental cooperation between the various governments in the form set out in the Treaty and not be managed by the supranational institutions of the Community pillar.

## **The British approach to the European Union Intergovernmental Conference 1996; Foreign and Commonwealth Office**

United Kingdom has been working with some partners to combat the serious and growing problem of illegal immigration into European Union.

U.K. complains for the small percentage detected and returned. In 1994 member States of European Union received over 300.000 requests for asylum and there is evidence that applicants seek to exploit differences between European countries' laws and procedures.

Nevertheless U.K. noticed there is now closer practical co-operation between the police, immigration and customs authority of member states than ever before.

According to the previous opinions expressed, U.K. won't admit improvements in co-operation involving changes to the Treaty. Nor would the English Government accept a transfer of subjects from the third pillar into the community sphere.

### **V. SOURCES**

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Opinion of the Committee on Civil Liberties and Internal Affairs for the Committee on Institutional Affairs. PE 212.450/fin./Part II. 02/12/94

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#### **\* Council**

Council report on the functioning of the Treaty on European Union. 05/04/95

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#### **\* Commission**

Commission report for the Reflection Group. 10/05/95

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#### **\* Reflection Group**

**\* Austria**

Guidelines (of the Austrian Government) on the subjects likely to be dealt with at the 1996 IGC. 00/06/95

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**\* Finland**

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**\* France/Germany**

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**\* Portugal**

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**\* Spain**

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**\* Sweden**

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**\* United Kingdom**

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\* Bunyan, Tony, Webber, Frances, Coopération intergouvernementale en matière



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\* J. Fernandez Fernandez (Task Force IGC), White paper on the 1996 Intergovernmental Conference, volume II;

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