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OUTCOME OF PROCEEDINGS

of: Working Party on Migration and Expulsion/Mixed Committee
(EU-Iceland/Norway/Switzerland)

on: 6 July 2006

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Subject : **Proposal for a European Parliament and Council Directive on common
standards and procedures in Member States for returning illegally staying
third-country nationals**

At its meeting on 6 July the Working Party on Migration and Expulsion continued the first reading of the above proposal and examined in particular Article 9, paragraphs 1-3.

The results of the discussions are set out in the Annex to this Note.

Article 9¹
Re-entry ban

1. Removal orders shall include a re-entry ban of a maximum of 5 years².
Return decisions may include such a re-entry ban³.
2. The length of the re-entry ban shall be determined with due regard to all relevant circumstances of the individual case, and in particular if the third-country national concerned:
 - (a) is the subject of a removal order for the first time;

¹ **CZ, FR, AT and PL** entered scrutiny reservations on the Article as a whole. **CZ** indicated that the rather limited scope of the Article, especially paragraphs 2 and 3, drew attention to possible inconsistency with the SIS II future Regulation. **SE**, supported by **SI**, underlined that the third-country nationals who commit criminal offences, especially those who pose a threat against public order, should not be treated the same way as ordinary migrants (overstayers, etc). **FR** pointed out that more coherent criteria in all the provisions of the Article are required in order to tackle the issue of the re-entry ban. **UK** emphasized that it should be left to the Member States to decide to whom and for how long they would impose the re-entry-ban, giving thus to the whole Article an optional character. **SE** also underlined that the imposition of the re-entry ban should be optional (see also footnote 1 at page 3).

The **Cion** suggested reconsidering the contents of the Article in the light of the discussion about Article 7 of the draft Directive.

² **DE**, supported by **CH, CY, EE, FR, IT and PL**, pointed out that in principle, the re-entry ban shall be of unlimited duration and that, under certain conditions, Member States may consider withdrawing the ban. In this context it was underlined that their argumentation for a life ban in principle, makes even more sense where the third-country national concerned may constitute a threat against public order. **AT** pointed out that where the re-entry is allowed, the return decision shall remain valid and only the removal order shall be suspended.
NL opposed the above suggestion of **DE** and the other delegations, preferring to provide for a maximum length of the re-entry ban, which may be imposed following a case-by-case examination. Furthermore, **NL** suggested reducing Article 9(1) to the following wording: *"In case of removal Member States shall impose a re-entry ban"*. **PT** suggested providing for a minimum length of the re-entry ban instead of a maximum one. This delegation also asked that it be clarified that the re-entry ban may be imposed not only for illegal entry/stay but also for other wrongful conduct of a third-country national.

EE and **EL** expressed their concerns over practical questions arising from implementation of the draft provision, such as the fact that return decisions and removal orders are often included in the same act. **PL** pointed out that Article 9 is directly linked with Article 7 of this draft Directive therefore, a similar approach should be followed for both provisions. This delegation further suggested distinguishing between the forced returns where a re-entry ban should be obligatory and the voluntary returns where the imposition of the re-entry ban should be optional.

³ **PL** also suggested providing for cases where it would be possible to refrain from imposing a re-entry ban although a return decision was issued. According to this delegation, the exceptions should be limited in particular to the asylum seekers whose application has been refused at a final instance and decide to leave voluntarily.

BE suggested to delete the second sentence of paragraph 1 or, alternatively, to restrict its scope to the cases *"where there is a risk of absconding if a first obligation to return has not been complied with, during the period of voluntary departure granted by virtue of Article 6(2)"*.

- (b) has already been the subject of more than one removal order;
- (c) entered the Member State during a re-entry ban;
- (d) constitutes a threat to public policy or public security.

The re-entry ban may be issued for a period exceeding 5 years where the third-country national concerned constitutes a serious threat to public policy or public security.

- 3¹. The re-entry ban may be withdrawn, in particular in cases in which the third-country national concerned :
 - (a) is the subject of a return decision or a removal order for the first time;
 - (b) has reported back to a consular post of a Member State;
 - (c) has reimbursed all costs of his previous return procedure².
4. The re-entry ban may be suspended on an exceptional and temporary basis in appropriate individual cases.
5. Paragraphs 1 to 4 apply without prejudice to the right to seek asylum in one of the Member States.

¹ IT suggested replacing the whole paragraph 3 with the following wording: *"Member States may remove the re-entry-ban in accordance with their national law"*.

² FR expressed its concerns about the legal clarity of this provision.