

Strengthening external border checks and combating illegal immigration (Brussels, 10 October 2002)

Caption: In this note dated 10 October 2002, the Council of the European Union focuses on the issue of illegal immigration, in particular the matter of aliens who are detained in Member States because their travel documents do not present a stamp that indicates the date on which they crossed the external border.

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**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 10 October 2002 (11.10)
(OR. fr)**

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NOTE

from : French delegation
to : Council
Subject : Strengthening external border checks and combating illegal immigration

The Seville European Council called for enhanced cooperation in combating illegal immigration and asked the Commission and Member States to act swiftly to implement operational measures.

In accordance with the objective and strategy outlined by the Heads of State or Government, France recommends that the Council state its position on the issue of aliens who are apprehended in the territory of the Member States while holding a travel document which does not bear a stamp indicating the date on which the external border was crossed.

This is becoming an increasingly serious problem, particularly since the lifting of the visa obligation for certain countries. When nationals of such countries are challenged, they often claim to have entered the Schengen area during the previous three months and that their presence is therefore legal.

However, under Article 23 of the Convention implementing the Schengen Agreements, "*aliens who do not fulfil or who no longer fulfil the short-visit conditions applicable within the territory of a Contracting Party shall generally be required to leave the territories of the Contracting Parties immediately*". Those conditions are defined in Article 5 of the Convention and basically involve the possession of a travel document, usually a passport. The Common Manual on border checks provides that during checks at authorised border crossing points such documents must be stamped with the date of entry.

France interprets those provisions as meaning that aliens whose travel documents do not bear a stamp attesting to the fact that they entered the country during the previous 3 months shall be presumed to be unlawfully present. It is important that this interpretation of the texts should be shared by all Member States. This is the aim of the draft Council conclusions annexed hereto.

The conclusions recommend that between now and the next Justice and Home Affairs Council the Permanent Representatives Committee should, in the context of implementing the Schengen *acquis*, consider the possibility for Member States to assume that third-country nationals whose travel documents do not bear the aforementioned stamp are unlawfully present. If in everyday practice Member States proved unable to draw such a conclusion in cases where there was no stamp, then the rules currently in force at European level would have to be amended at the earliest opportunity.

To avoid penalising anyone acting in good faith, it is clearly impossible to draw such a conclusion on the basis of a missing stamp unless border control units take the utmost care in systematically affixing such stamps. Accordingly, this requirement is also emphasised in the draft conclusions, as well as the Member States' determination to ensure strict compliance therewith.

This problem, which is faced not only by France but by a number of other Member States, calls for a rapid response. Hence France's eagerness to see the conclusions adopted by the Council when it meets on 14 and 15 October and to see a proposal submitted to the Council on 28 and 29 November which takes due account of the results of the discussions held.

ANNEX**DRAFT****Council conclusions on external border checks and combating illegal immigration**

THE COUNCIL,

Having regard to the conclusions of the Seville European Council on 21 and 22 June 2002 concerning measures to combat illegal immigration;

Having regard to the Protocol to the Treaty of Amsterdam integrating the Schengen *acquis* into the framework of the European Union;

Bearing in mind the requirements arising in particular from Articles 5 and 23 of the Convention implementing the Schengen Agreement;

Bearing in mind the obligation on Member States, as laid down in the Common Manual on border checks, to affix a stamp whenever an external border is crossed;

Bearing in mind the need to develop a standard approach on border checks and combating illegal immigration;

HAS ADOPTED THE FOLLOWING CONCLUSIONS:

- 1) Member States shall ensure that an entry stamp indicating the date on which the external border was crossed is systematically affixed to the travel document at authorised crossing points;
- 2) The Council considers that nationals of third countries whose travel documents bear no such stamp shall be presumed to be unlawfully present;

- 3) Accordingly, the Council instructs the Permanent Representatives Committee, before the next Justice and Home Affairs Council and in the context of implementing the Schengen *acquis*, to examine the legal conditions under which such a conclusion could be drawn;

Should there be no legal provision for such a possibility within the current framework, the Council shall examine as a matter of priority any amendments to be made to the existing rules.