

*Advisory letter of 15 May 2003 to the Minister of Foreign Affairs and the Minister for Immigration and Integration on the Dutch presidency of the EU in 2004*

Dear Sir and Madam,

As you will be aware, the Advisory Council on International Affairs (AIV) and the Advisory Committee on Aliens Affairs (ACVZ) have decided on their own initiative to issue a joint AIV/ACVZ advisory letter on European asylum and migration policy. The full recommendations are due to appear early in the autumn of 2003.

Via contacts with officials, we have learned that the government needs to decide as early as May 2003 on the matters it wishes to place on the agenda for the Dutch presidency of the EU in the second half of 2004. The AIV/ACVZ recommendations would therefore come too late to be of use in this respect. For this reason, we have decided to write to you outlining our advice on the general approach to be adopted in placing 'asylum and migration' on the agenda for the Dutch presidency. The recommendations in this letter are therefore of a procedural and organisational nature. Our final joint recommendations will offer a more in-depth discussion of a number of substantive issues relating to the future of this policy area.

In this connection, we would point out that the number of migrants arriving in Europe is unlikely to decline over the next few years. Figures on demographic trends indicate continued rapid population growth in the traditional countries of emigration to Europe. The flow of asylum seekers entering the Member States of the European Union has also been fairly constant of recent years. As a result, EU citizens are finding themselves more directly confronted with issues relating to integration and comparative affluence, and asylum and migration are attracting greater public and political attention. For these reasons, and because of the scope and cross-border nature of the theme, asylum and migration policy continues to occupy an important place on the agenda of the European Union and on those of individual Member States. The continuing difficulty of controlling inward migration has produced agreements within the Union on further communisation of asylum and migration policy. However, due in part to differences in national interest, it has proved more difficult to agree concrete arrangements for implementing the policies laid down in Title IV of the EC Treaty and supplemented by the conclusions of the Tampere European Council. The directives so far adopted or proposed show that initially lofty ambitions have been greatly toned down.

We write on the eve of major events within the European Union. On 1 May 2004, the Union will gain ten new Member States: in numerical terms, the most substantial enlargement in its history. In mid-2004, elections will be held for the enlarged European Parliament. And in the course of 2004, new European Commissioners will be appointed.

Moreover, 1 May 2004 is the deadline set in the Treaty for enshrining a large number of issues in EC legislation. This will be the obvious time to take stock of advances in European asylum and migration policy and to think about how any future policy developments are to be achieved. In the absence of new treaty provisions before 1 May 2004, Title IV of the EC Treaty, with its minimum standards-based approach, will remain in force and new or amended treaty provisions will be required to provide the basis for the development of any more far-reaching policy.

In this context, it is clear that there is (so far) a consensus in the Convention on the future of Europe in favour of an ambitious approach to European asylum and migration policy. For example, there is general agreement in the Convention on the desirability of giving the policy a broader and more general basis in EU law. If the Union were to acquire such legislative powers in relation to asylum and migration policy, this would clear the way for more sweeping harmonisation on matters which are now regulated only in terms of minimum standards. Something closer to a common European asylum and migration policy could then be achieved. In the opinion of the AIV and ACVZ, the fact that agreement exists on this basic point of principle, which is capable of such far-reaching consequences, demonstrates the presence of growing support for a broader European approach to this policy area. This view is supported by the fact that the Convention is also in favour of the introduction of majority voting and co-decision in this area.

We believe that these factors can act as a catalyst and generate the momentum for a new push forward in this area. This offers the Dutch presidency new opportunities to initiate further developments in the asylum and migration policy of the Union within this changing political and legal environment. The fact that the Netherlands is to work together with the Irish presidency in the first half of 2004 and with the European Commission to devise a strategic multi-annual policy programme for the Union over the period from 2004 to 2007 represents a particularly promising opportunity. In the light of the above, we feel that the Dutch presidency should direct its efforts at restoring the ambition reflected in the Tampere conclusions, and should do so even if the conclusions of the Convention are not endorsed by the governments of the Member States.

The AIV and ACVZ feel that the Dutch presidency should at least aim to achieve a significant step forward. First of all, an evaluation should be conducted that can be used to involve the new Member States in the further development of the policy area. The results of the evaluation should be used as the basis for preparing a programme of action. To this end, we recommend the government to organize a conference in cooperation with Ireland. The formula for the conference should make it possible to invite not only official-level delegations from the 25 EU Member States, but also other stake-holders such as MPs, representatives of the European Commission, academics and representatives of NGOs. This will help to increase support for the programme. The programme of action would then need to be approved at an informal Council meeting.

At the same time, the Netherlands can maintain progress by working together with other parties, such as the Commission, on the further development of substantive policy themes (to be determined, in part, by the results of the evaluation). The possible results of the evaluation and the selection of themes will be discussed in detail in our forthcoming final joint recommendations on this subject.

To sum up, the specific recommendations of the AIV and ACVZ are that the Dutch presidency should direct its efforts towards:

1. Completing negotiations on any remaining draft directives subject to the Treaty deadline of 1 May 2004, and any other draft directives not subject to this deadline but still needing to be agreed. The latter will tend to contain the proposals on which it will be most difficult to reach agreement. The difficulty of achieving concrete results in this area should not be underestimated.
2. Conducting an evaluation of the legislation enacted on the basis of Title IV of the EC Treaty, including at any rate consideration of the following two questions:
  - a) Is the system of directives that has been accepted coherent or are there inconsistencies and discrepancies?
  - b) Does the system meet the relevant international standards?  
This issue will be discussed in detail in our final joint report.
3. Organising a conference on the evaluation in cooperation with Ireland. The conference should bring together a wide range of people including government representatives, MPs (from national assemblies and from the European Parliament), European Commission representatives, academics and representatives of NGOs.
4. Drafting a programme of action for future Union policy on the basis of the evaluation mentioned under point 3.
5. Gaining political approval for the programme of action by means of an informal Council meeting immediately following the conference.

We should be delighted to provide any further information you may require regarding the advice given in this letter.

Yours faithfully,

[signed]

[signed]

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