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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

**on the monitoring and evaluation mechanism of the third countries in the field of the
fight against illegal immigration**

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1. MONITORING AND EVALUATION REPORT (PILOT 2004)

1.1. Introduction

The European Council resolved that EU dialogue and actions with third countries in the field of migration should be part of an overall integrated, comprehensive and balanced approach. In June 2003, the Council also recognised the importance of developing an evaluation mechanism to monitor relations with third countries. In conclusions adopted in December 2003, the aim of the mechanism is described as monitoring the migratory situation in the third countries concerned including their administrative and institutional capacity to manage asylum and migration and the actions being taken in order to tackle illegal migration. The Commission was accordingly invited to present an annual report on specific third countries. This first annual report is a pilot report for the monitoring and evaluation mechanism for third country cooperation on illegal immigration. It covers a limited number of countries¹: **Albania, China, Libya, Morocco, Russia, Serbia and Montenegro, Tunisia and Ukraine.**

The report contains a brief overview of the Commission's analysis of current relations with each country on migration and sets out some political recommendations as invited by the Council. These identify options through which the EU and its Member States might cooperate to support the relevant country in migration management. As this is the first report, technical recommendations to improve the mechanism are also included. The Annex contains further analysis of EU cooperation with the countries concerned and provides more detailed factual information on each country focusing on the main areas of interest identified by the Council. The information contained in this report and annexes has been gathered by the Commission services and its delegations in the third countries concerned. The report uses information supplied by Member States and/or collected directly in the third countries concerned, sometimes with the concurrence of the Member States, international organisations and representatives in the region and includes material collected through direct contact with third-country authorities. This report aims to cover principal developments until 20 December 2004.

There is strong variation between the countries in terms of the level of existing cooperation with the Community. The countries selected range from having no formal relationship with the Community to having very close cooperation and systematic monitoring of migration issues. Accordingly, not only the details

¹ These countries were identified as geographical priorities from the Council Conclusions of November 2002 and March 2003. Turkey is not included in this pilot report, although it was originally proposed as one of the countries as it is now a candidate country.

available but the conclusions and possibilities for enhancing cooperation vary extensively. It is hoped that this report will assist the Council in assessing the level of cooperation of each country in the fight against illegal immigration as set out in the Seville Council conclusions of 2002.

2. ALBANIA

2.1. Overview

The EU has several layers of interaction with the Albanian Government which are used, as appropriate, to touch on migration issues². The future Stabilisation and Association Agreement envisages that migration issues will be addressed in the framework of one of its sub-committees. FSJ matters are also discussed, as appropriate, in the framework of the implementation of EC assistance programmes to Albania.³ Albania has made progress in the control of illegal migration/trafficking towards the EU through the Adriatic/Ionian Sea but further and continued efforts in this area are needed. The framework legislation required in the area of migration and asylum has been adopted but it still lacks some of the necessary underpinning secondary legislation. Progress is hampered by Albania's limited administrative and financial capacity which results in under-implementation of existing legislation. The successful negotiation of a readmission agreement at Community level (which should enter into force in 2005) is a positive development in Albania's migration policy indicating a willingness to take responsibility on the international plane.

2.2. Recommendations

Albania has demonstrated positive cooperation with the Commission on migration issues.

Albania should be encouraged to take all necessary steps to ensure implementation and enforcement of its current legal framework in the fields of migration, asylum and connected areas (for example, penal legislation against organised crime and trafficking in human beings).

Albania should be encouraged and, where appropriate, diplomatically supported to conclude readmission agreements not only with its regional neighbours but with the countries of origin of migrants transiting through Albania.

Finally, in the broader context of integrating migration issues into development policy, it will be important to complement existing Community efforts by addressing in the future the issue of facilitating transfer of remittances, which are currently of fundamental importance for Albania's macro-economic stability. This could be done through further developing the Albanian financial sector and enhancing co-operation with the international banking entities, in order not only to facilitate the transfer of remittances but also to help to progressively reduce the level of cash circulating in the country and to limit, therefore, money laundering and tax evasion possibilities.

² See paragraph 1.2 of the Annex

³ See paragraph 1.2 of the Annex

3. CHINA

3.1. Overview

A broad EU-China political dialogue was confirmed in an exchange of letters in 1994, growing out of trade and economic cooperation during the 1980s. However, the specific dialogue with China on migration began after the tragedy in Dover of June 2000 when 58 would-be illegal immigrants lost their lives and 5 EU-China high-level consultations on the fight against illegal migration and trafficking in human beings have taken place since then.

Within the Community budget, €10 million had been put aside in 2002 for building up a co-operation project with China to fight illegal migration. Unfortunately, it proved impossible to develop such a project in collaboration with the Chinese authorities. However, the high-level consultations have undoubtedly facilitated constructive dialogue on matters of common interest.⁴ In February 2004, China and the EC signed the Approved Destination Status Agreement, allowing Chinese tourist groups to visit the EU and containing an obligation on the Chinese administration to readmit overstaying tourists. Exploratory discussions have recently taken place with a view to an EC-China readmission agreement. In this context and in view of expressed interests from both sides, the EU has agreed to discuss issues related to visa facilitation for certain categories of Chinese personnel. At the summit in December 2004, a joint statement was issued which expressed the common hope for an early opening of negotiations on these issues as soon as technically and legally possible.

3.2. Recommendations

There is a developing dialogue between the EU and China on migration management which should be welcomed. Moreover, the importance of legal migration for China (given the number of professionals and students who are being attracted to studying and working in the EU) should be recognised. The EU could propose a genuine discussion on two-way flows and that the remit of the high-level consultations be expanded for this purpose.

China's continued commitment should be sought to a reduction in illegal migration from China given the high humanitarian cost which often accompanies illegal migration. A reduction could be sought by fostering better cooperation and exchange of expertise between China and Member State administrations, including through the opportunities offered by the Aeneas programme. The Commission will build on the results of the EU-China Summit in particular by seeking to open negotiations on a future bilateral readmission agreement between the European Community and China and parallel discussions with China on visa facilitation for certain categories of personnel.

⁴ See paragraph 2.3 of the Annex

4. LIBYA

4.1. Overview

The EU has no formal relations with Libya and Libya is not a member of the Barcelona Process. Accordingly, there is at present no avenue for a formal EU-Libya dialogue on migration management. As noted by the General Affairs Council on 11 October 2004, however, Libya has made significant strides towards reintegration into the international community.

Following an exploratory mission to Libya in May 2003, a Commission-led technical mission on illegal immigration with the participation of Member States experts, was conducted in Libya between 27 November and 6 December 2004. It is acknowledged that migratory pressure on Libya is likely to increase. Libya has been identified as a potential priority for intervention and support by the Commission under the Aeneas programme for the period 2004-2006. However, whether Community support is provided to Libya to combat illegal immigration and in what form - directly or through regional policies - will be decided by the Council on the basis of the findings of technical mission. The mission report on Libya was presented to COREPER in April 2005 and will be discussed at the June Council.

4.2. Recommendations

The Commission recommends that Libya be encouraged to respond positively to the EU's policy of engagement whilst reiterating that the ultimate objective of any cooperation is Libya's full integration into the Barcelona Process. Dialogue and cooperation with Libya in areas such as institution building, training activities and the establishment of a system to manage asylum requires a long-term commitment by the EU and its Member States. The Commission notes that the regional dimension of migration challenges faced by Libya and other African countries must be taken into account in achieving lasting solutions. The Commission will explore ways of strengthening dialogue on migration issues with African regional organisations.

5. MOROCCO

5.1. Overview

Since the EC-Morocco Association Agreement entered into force on 1 March 2000, significant progress has been made in terms of building confidence between the EU and Morocco. The establishment of the Migration and Social Affairs Working Group represents a significant advance as does the agreement of the European Neighbourhood Policy Action Plan⁵. Morocco is also cooperating with its neighbour Spain in efforts to stem the flow of illegal migration by sea with the attendant humanitarian concerns. Morocco has also made efforts to cooperation with third countries, in particular with Nigeria.

Despite several rounds of negotiations, the EC has not yet been able to agree the text of a readmission agreement with Morocco. Most of the outstanding issues are minor

⁵ See paragraphs 4.2-4.3 of the Annex

but some, such as the readmission of non-nationals and the forms of evidence to be provided remain problematic.

Concrete cooperation on projects aimed at developing Morocco's ability to manage migration has begun in the context of the MEDA budget line. Morocco is also identified in the Aeneas programme as a focus for intervention in 2004-2006 as part of the Mahgreb region.⁶

5.2. Recommendations

Morocco displays a positive attitude in discussions with the EU. Morocco's significant progress in improving migration management to date should be noted and Morocco's open attitude to regional cooperation should be recognised.

At the same time, the importance of further efforts to stem the flow of illegal migration across the Mediterranean – with its high humanitarian cost – must be stressed. To that end, Morocco should work closely with the EU to implement the European Neighbourhood Policy Action Plan and to reach final agreement on and adoption of a EC readmission agreement in the near future.

Further dialogue should be encouraged not only between Morocco and its regional neighbours but also with the neighbouring countries of origin to the South in order to seek regional strategies for managing the migratory flows more successfully.

6. RUSSIA

6.1. Overview

The cornerstone of EU-Russia relations is the Partnership and Cooperation Agreement (PCA) which entered into force on 1 December 1997⁷. On a political level, FSJ issues are also regularly discussed at the six-monthly EU-Russia summits. At a practical level, the EU has developed specific instruments to strengthen FSJ cooperation such as the Joint Action Plan on organised crime from 2000 and its implementation tool, the EU liaison officers' network.

Over the past few years, Russia has become a country of origin, transit and destination for migrants. Although steps have been taken to strengthen the control of the Russian border with the Caucasus, Russia has indicated that a lack of resources has hampered significant progress on its Southern and Eastern border. More than €2.6 billion has been allocated to Russia under the TACIS programme since it began in 1991⁸ and an indicative sum of EUR 20 million has been set aside in the National Indicative Programme for 2004-2006 to enhance the Russian asylum system, to improve coordination between migration authorities and to pave the way for an EC-Russia readmission agreement. Russia is also one of the countries identified as a priority for intervention and assistance under the Aeneas Programme.

⁶ See paragraph 4.4 of the Annex

⁷ This agreement has an initial duration of ten years but will be extended automatically unless either party gives notice to the contrary.

⁸ See paragraph 5.4 of the Annex

6.2. Recommendations

The EU-Russia Common Space on Freedom, Security and Justice within the framework of the PCA will offer the main framework for developing and expanding our overall cooperation in the area of Freedom, Security and Justice. Cooperation with Russia on migration policy is an important matter of common concern and growing relevance. The EU should invite Russia to engage in a comprehensive dialogue within the framework of the Permanent Cooperation Council on all migration-related issues, including asylum, the fight against illegal migration and trafficking in human beings.

Progress in the ongoing readmission and visa facilitation negotiations with Russia is to be welcomed and Russia should be called on to conclude both agreements simultaneously in 2005. Russia should also be encouraged to conclude readmission agreements with neighbouring countries of origin. At the St. Petersburg Summit, the EU and Russia agreed to examine the conditions for visa-free travel as a long-term perspective. Russia should also be encouraged to finalise its border demarcation agreements with Estonia and Latvia and to progress its negotiations with Lithuania.

Both the EU and Russia need to respond positively to the challenge of balancing security concerns with freedom and justice. The balance achieved must secure the necessary conditions for effective integration of legal migrants, in particular through the development of coherent policies on managed labour migration.

7. SERBIA AND MONTENEGRO

7.1. Overview

Due to the long and complex constitutional reform which the country underwent in 2002 and 2003, Serbia and Montenegro⁹ still faces specific challenges relating to the actual articulation of powers between the State Union and the two constituent republics. The authorities of Serbia and Montenegro have made some progress in the area of migration and asylum but further effort is needed. While Serbia and Montenegro's readmission agreements with member states and regional neighbours are being implemented, a lack of resources makes reintegration of returnees difficult.

Practical cooperation projects at both national and regional level have already begun with Serbia and Montenegro in the framework of the CARDS programme¹⁰. The development of national policies based on a uniform approach (by the two state authorities) to migration has been identified by the Commission (including in the Aeneas Programme) as a key priority for Serbia and Montenegro. The Commission has also suggested that national and regional strategies be developed to prevent trafficking in human beings and to inform potential emigrants about the dangers of (and alternatives to) illegal immigration.

⁹ Kosovo under the United Nations Security Council Resolution 1244 of 1999 is still separately administered by the UN Interim Administration and so is not within the scope of this report.

¹⁰ See paragraph 6.4 of the Annex

7.2. Recommendations:

The Commission notes that the authorities of Serbia and Montenegro take a positive attitude to working with the European Community and her institutions. However, Serbia and Montenegro should be urged to improve cooperation between the State Union and the two Republics in order to effectively implement the European Partnership through the relevant Action plan. To this end, Serbia and Montenegro could be encouraged to put mechanisms in place to check whether policies developed at the State Union level are implemented consistently by the two republics.

Furthermore, the Council may wish to promote/facilitate dialogue between Belgrade and Pristina in order to tackle returns to Kosovo more effectively as outlined in the European Partnership Plan and to curtail transit of illegal migrants through this territory.

8. TUNISIA

8.1. Overview

The Association Agreement signed in 1995 and in force since 1 March 1998 governs bilateral relations between the EU and Tunisia and has provisions which envisage cooperation on migration issues. The move to include FSJ issues in cooperation activity with Tunisia has been gradual but represents a positive development. Tunisia has been identified as a priority for cooperation on migration with the EU. Accordingly, the establishment of a working group under the Association Agreement with a mandate which includes visas, illegal immigration and transit migration represents a significant advance which is confirmed by the European Neighbourhood Policy Action Plan which contains a comprehensive JLS chapter. During the ENP consultations, Tunisia expressed a particular interest in initiating dialogue on visa facilitation. In the migration field there are two key practical issues which deserve attention. The first is the scale of illegal migration (mainly transit migration from the sub-Saharan region and other Maghreb countries) and the second is the lack of a functioning asylum system. Tunisia has at present no functioning domestic system for determining protection claims and is reliant on the UNHCR.

8.2. Recommendations

Tunisia has shown a long-standing constructive approach to dialogue with the European Community and this cooperation has recently been extended to encompass FSJ issues, including migration management. The recent adoption of the European Neighbourhood Policy Action Plan should be welcomed. However, Tunisia and the EU should strengthen their dialogue on migration and social affairs and examine the issue of asylum and visa facilitation in order to see whether more can be achieved.

Given that the migrant flows through Tunisia are a regional phenomenon, Tunisia's efforts to seek regional strategies for migration management should be supported. Such solutions could encompass regional cooperation on border control, fostering dialogue and cooperation between Tunisia as a transit country and the countries of origin, assisting the Tunisian government in keeping links between the diaspora and home communities and supporting reintegration of those who return.

9. UKRAINE

9.1. Overview

The legal basis for relations between the EU and Ukraine is the Partnership and Cooperation Agreement which entered into force in 1998. A specific EU Action Plan on Justice and Home Affairs was signed with Ukraine in December 2001. Implementation of the Action Plan is monitored by a detailed Scoreboard. Cooperation between the EU and Ukraine has intensified over the last few years on FSJ issues, especially following the signature of the EU-Ukraine JHA Action Plan. Although Ukraine has achieved advanced progress in some sectors of asylum and migration, border management and trafficking in persons, much remains to be done. During 2004, consultations took place with Ukraine for a European Neighbourhood Policy Action Plan which was adopted at a special Co-operation Council meeting in February 2005.

Ukraine has benefited substantially from TACIS assistance, which has supported, *inter alia*, the strengthening of the border management, asylum and migration regimes. Approximately 34 M€ has been spent on such projects to date and projects worth 20.5 M€ are under development. The Aeneas programme will complement these efforts. These supporting measures will contribute to the implementation of the EC-Ukraine readmission agreement once it is signed and adopted. Ukraine actively participates in regional activities such as the Söderköping process and the Budapest process.

9.2. Recommendations

Cooperation with Ukraine on migration policy is a matter of common concern and of growing relevance. A cooperative approach can bring tangible results. The Commission has received good cooperation from Ukraine on FSJ issues. The endorsement of the EU-Ukraine European Neighbourhood Policy Action Plan is to be welcomed. The Action Plan offers the main framework for developing and expanding overall cooperation on a wide range of issues in the area of Justice, Freedom and Security.

The Commission and Ukraine look forward, in the context of the European Neighbourhood Policy Action Plan, to establishing a constructive dialogue on visa facilitation, with a view to preparing for negotiations on a formal agreement for visa facilitation, taking into account the need for parallel progress in the ongoing negotiations for an EC-Ukraine readmission agreement. The early conclusion of an EC readmission agreement remains of the utmost importance. Ukraine's new government should be encouraged to continue this comprehensive dialogue with the EU on all migration-related issues, including the fight against illegal migration, asylum and trafficking in human beings.

10. GENERAL RECOMMENDATIONS

10.1. Political recommendations

10.1.1. *Strengths and weaknesses of this first report*

This report aims to provide the information necessary for the Council to evaluate current levels of cooperation by the relevant country in combating illegal migration. This first report aims, in particular, to provide a benchmark against which progress made in cooperation by an individual country in future years can be more easily measured. Useful orientations for the future of the EU relationship with the countries concerned have, however, already emerged.

There is a lack of reliable and comprehensive information on migration management and migration flows. Moreover, the Council will also be aware that many third countries view discussions on illegal migration as being indivisible from broader issues of migration management such as visa facilitation/waiver, legal channels for migration, the provision of funding and border surveillance equipment (or closer links with the EU in general).

10.1.2. *The next report – additional countries?*

The Commission has been invited¹¹ to consider extending its report to those countries for which there is a mandate for a Community readmission agreement. This would require the addition of **Algeria, Hong Kong, Macau, Pakistan and Sri Lanka** in the next report. The Commission supports the inclusion of Algeria and Pakistan in the next report as the readmission negotiations could be assisted by more detailed knowledge of the migration challenges faced by these countries and their capacity to cooperate with the EU. The Commission suggests that the inclusion of Hong Kong and Macau be reviewed in the next annual report as this will enable the joint readmission committees (formed in both Macau and Hong Kong in September 2004 and meeting in Spring 2005) to make further progress. The inclusion of Sri Lanka should be reviewed in due course once the immediate pressures on that country following the humanitarian disaster of the Tsunami have receded.

Consideration could also be given to expanding the report to **include more of the European Neighbourhood Policy Partner countries**.

10.2. Technical recommendations

10.2.1. *Improving statistical information*

One of the key difficulties encountered in developing an accurate picture of the migratory situation for each country was the lack of accurate and comparable information and statistics on migration. This was primarily due to the fact that the countries either do not systematically collect even basic immigration statistics or do collect data but use very different methodologies to those used by the EU. There is a pressing need for all countries to improve data collection and treatment capacity and

¹¹ Draft Council Conclusions on the priorities for the successful development of a common readmission policy 13758/04 of 27 October 2004.

to put in place adequate methods and channels for comparing and exchanging this information and the Commission will continue to work towards developing the appropriate statistical bases.

10.2.2. Making better use of existing reporting mechanisms

The relationship between this reporting exercise and others (such as, for instance the regular reviews under the European Neighbourhood Policy¹² or the Association Agreement committees or the report foreseen by the Hague Programme on progress and achievements in asylum and migration in the context of the ENP (2005)) should be clarified and possible duplications avoided. The Commission will also in future years consult the Immigration Liaison Officers' Networks where appropriate and will make use of their regular reports on matters relating to illegal immigration in third countries.

10.2.3. Maintaining flexibility in the reporting mechanism

The Commission supports the production of an annual report to monitor third country cooperation on illegal immigration and suggests that each report deals with no more than 10 countries. The Commission also considers that the report must be repeated at regular intervals to allow a country's progress to be assessed. **However, the Commission recommends that the frequency of reporting on individual countries be reduced to not more than once every two years** as this will leave sufficient time for the countries concerned to pass amending legislation if required or to increase administrative or operational capacity. Each annual report may therefore cover a different group of countries.

¹² Reports on the implementation of the first wave of the ENP action plans (covering all areas including asylum and migration) are foreseen at the end of 2006 (2 years after adoption).

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1. ALBANIA

1.1. Migratory Situation

In recent years the relative improvement in the political, social and economic situation in Albania, combined with improved border controls, enhanced co-operation with neighbouring countries and increased awareness of the risks of illegal immigration has led to a decrease in emigration. It is expected that migration towards EU will continue but will be comprised mostly of legal migrants. Albania is still considered as a transit country for illegal migrants, originating mostly from Turkey (Kurds), China and Iraq.

1.2. Framework for EU cooperation with Albania

The EU has several layers of interaction with the Albanian Government which are used, as appropriate, to touch on migration issues. There has been a Trade and Cooperation Agreement in place with Albania since 1992. Negotiations for a Stabilisation and Association Agreement (SAA) were launched in January 2003; however, the reform process in Albania has not progressed sufficiently to allow, so far, the conclusion of these negotiations and the signature of the Agreement. It is envisaged that the future SAA will include provisions on FSJ including migration issues and that these issues could be addressed in the framework of a sub-committee under the SAA. This sub-committee would, in turn, report to the higher instances of the Agreement (the Stabilisation and Association Committee and, ultimately, the Stabilisation and Association Council). At present, there is an ad-hoc Council/Commission set up (the EU/Albania Consultative Task Force) which, among other things, is empowered to deal with migration and other FSJ issues. Also, FSJ matters are discussed, as appropriate, in the framework of the implementation of EC assistance programmes to Albania, which provide significant financial support to activities directly or indirectly related to migration. The Country Strategy Paper and Multi-annual Indicative Programme for the period 2002-2006 state that FSJ is a top priority for EC assistance in Albania (for the period 2001-2004, nearly half of national CARDS funding went to the FSJ sector, including for improving integrated border management and strengthening Albania's capacity to develop and implement asylum and migration policy in line with international standards). JLS matters are part of most of the high level meetings between EU and Albanian representatives.

1.3. Progress/Development

Albania has made progress in the control of illegal migration/trafficking towards the EU through the Adriatic/Ionian Sea but further and continued efforts in this area are needed. The framework legislation required in the area of migration and asylum has been adopted but it still lacks some of the necessary underpinning secondary legislation. In addition, practical implementation of the existing legislation needs improvement. On the positive side, the conclusion of readmission agreements with a number of countries and with the EC is a positive development in Albania's migration policy indicating a willingness to take responsibility on the international plane. Similarly, the Albanian decision to enter into visa-liberalisation measures with its neighbouring countries should foster and facilitate regional co-operation. Albania has ratified most of the international conventions in the field of migration but there are still some (notably those relating to the protection of migrant

workers) that remain outstanding. The main issue remains adequate implementation and enforcement of existing legislation.

1.4. Current status

Albania has been currently receiving funding under the CARDS programme to address issues in the JLS area (average: around € 20-25 million/year). These funds support, among other things, the implementation of the National Strategy for Migration, National Strategy on Anti-Trafficking, as well as the Integrated Border Management Strategy and Law on Asylum. Several issues ranging from upgrading equipment and improving training of all involved actors and improving security of Albanian travel documents to enhancing in-service and interagency cooperation are addressed by these programmes. Furthermore, between 2001 and 2003, seven co-operation projects on migration have been undertaken in Albania in the framework of the B7-667 budget line. Finally, Albania is identified as a priority under the Aeneas programme, mainly for financial assistance in the implementation of the EC readmission agreement, but also in the framework of the whole Western Balkans region for which the EC will seek to support the development of a single approach to drafting asylum, migration and visa policies, the development of national and regional strategies with a view to combating trafficking in human beings and improving access to international protection.

1.5. Existing national legislation aimed at preventing and combating illegal migration and the participation in international instruments dealing with asylum and migration

The Albanian authorities have criminalised illegal border crossing, human trafficking, people smuggling, forgery and use of forged documents. The penalties for committing these offences are quite severe and usually consist of imprisonment and a fine. In case of trafficking, the penalties are higher if the victims are female or minor.

Albania has ratified all the major international instruments dealing with asylum and immigration apart from the ILO C143 Migrant Workers Convention and the UN International Convention on the Protection of Rights of All Migrant Workers and Members of their families.

Although legislation exists to ensure respect for human rights, prevent discrimination and combat human trafficking and smuggling, effective implementation and enforcement remains problematic. Cases and evidence are not always properly prepared/collected which undermines the ability to successfully prosecute offenders. The functioning of the law enforcement bodies, the prosecutor's office and the judiciary need to improve to prevent flaws in the prosecution leading to a failure to secure conviction. Corruption within law enforcement bodies remains a serious issue.

In March 2004, Albania passed a law to establish a witness protection programme. However, doubts have been expressed by some international experts that Albania will be able to devote all necessary resources to ensure the law's adequate implementation. Actual implementation of the law will be assessed during 2005.

1.6. Efforts in migration management, border control and interception of illegal immigrants

Albania's administrative capacity in the area of migration management remains weak.

Despite Community support, the administrative resources available to implement strategies and policies effectively in this area are insufficient. This leads to an imperfect implementation of legislation, with the consequent lack of guarantees and/or legal security. The Albanian legal framework on migration has undergone a gap analysis, which has been taken into account in the recently prepared National Strategy on Migration. The proper implementation of this strategy and its relationship to other policies (e.g. strategies on asylum, anti-trafficking and border management) are central issues.

With the co-operation of the international community, Albania has made efforts to improve border management and control illegal migration. Border police and customs officials are now more aware of the issues related to trafficking/smuggling and illegal migration. The progress made so far, in particular with regard to illegal trafficking from Albania to Italy by sea, needs to be acknowledged. Nonetheless, efforts need to continue in order to prevent new routes being opened and to ensure continuing improvement in terms of border management.

Although a National Integrated Border Management Strategy has been adopted, the border infrastructure is limited and needs further upgrading. Efforts over recent months have been mainly concentrated on Tirana international airport. The current checking procedures at the borders need to be updated in order to increase efficiency and so achieve a better balance between control and traffic facilitation. The overall efficiency of the Border Police remains low for several reasons, including limited training, lack of efficient risk-analysis procedures, insufficient team work and inter-agency co-operation, and inadequate equipment and infrastructure. Albania's capacity to control its green and blue borders is limited. The existence of unexploded mines in certain areas (e.g. North-east of the country) poses an additional problem for efficient control.

Albania's accommodation capacity for illegal migrants and rejected asylum seekers is insufficient. At present, irregular migrants are accommodated in the National Reception Centre for Victims of Trafficking, which accommodates both victims of trafficking and irregular third country nationals identified in Albania. The international community has provided financial support for the operation of this Centre.

Despite relative improvements by the Albanian Statistical Office (INSTAT) over recent years, the capacity for migration-related data collection and analysis remains small. Some research studies on internal migration have recently been published but in general reliable data regarding external migration is not easily available in Albania.

1.7. Cooperation in readmission/return of own nationals and of third-country nationals

The EC-Albania readmission agreement was signed on 14 April 2005. The Albanian authorities maintained a constructive attitude throughout the negotiating process. To date, Albania has concluded readmission agreements with the following member states: Italy, Hungary, Belgium, Germany and UK and with the following third countries: Bulgaria, Romania, Croatia, and Former Yugoslav Republic of Macedonia. Negotiations have also begun with the Netherlands, Luxembourg, Slovenia, Slovakia and Bosnia and Herzegovina. Albania is also trying to negotiate and conclude agreements with Moldova, Ukraine and Turkey. However, Albania's weak administrative, technical and operational capacity continues to challenge proper implementation of the agreements, particularly as regards the readmission of third country nationals and stateless persons. On the other hand, Albania has readmitted a considerable number of its nationals without the need of

readmission agreements.

The reception arrangements for returned migrants remain limited.

1.8. Cooperation on visa policy

All countries for which Albania waives visa requirements are countries for which the EU also waives visas, with the notable exception of Turkey (Turkish citizens do not need a visa to enter Albania). There are 3 countries whose nationals can obtain a visa at the border upon arrival (Israel, the Former Yugoslav Republic of Macedonia and Malta). Montenegrins can also obtain a visa at the border. Nationals of all other countries need to have a visa before they travel (issued in principle by the diplomatic missions). Albania has sought to carve-out a role for itself as a facilitator of regional co-operation, and has developed quite an open visa policy regarding its neighbours. Citizens of Croatia and Kosovo do not need a visa to enter Albania. Citizens from Montenegro can obtain one at the border. Citizens from Serbia and Bosnia and Herzegovina need a visa, but are exempted from this requirement during the summer period. Albanian citizens continue to need visas to travel to neighbouring countries, except for entry to the territories of Montenegro and Kosovo.

The Albanian Ministry of Foreign Affairs (MFA) has continued work towards the establishment of a centralised information system which should enable the development of an online network for diplomatic or consular offices abroad. The visa stamp system is gradually being replaced by visa stickers, and new more secure passports are being rolled out. However, Albanian detection rates for forged documents at border-crossing points need to improve. The technical expertise of border police remains limited and they need to further upgrade their equipment.

1.9. Asylum system

The national asylum legislation consists of two main laws: the Asylum Law and the Law on Integration and Family Reunification of Persons Granted Asylum (Law on Integration). Other legal acts such as the Laws on Foreigners (No. 8492 of May 1999), on the Guarding and Control of the State Borders (No. 8772 of April 2001) on Citizenship (No. 8389 of August 1998) form part of the Albanian protection regime. Asylum in Albania comprises three categories: Convention Refugee Status, Temporary Protection on Humanitarian grounds, and Temporary Protection in case of mass influx.

Albania's general legislative framework broadly meets international standards. However, important secondary legislation and by-laws have not yet been enacted (e.g. residence permits, ID cards and travel documents for asylum seekers are not available). Furthermore, the existing legislation is still not fully implemented and not all institutions are fully operational or indeed operate to international standards.

Reception arrangements have seen a significant improvement since the UNHCR rehabilitated and converted some former military barracks into a reception centre for asylum seekers.

The Albanian authorities have indicated that there has been considerable progress in reducing delays in making first instance asylum decisions which are now made in 52 days, i.e. within international guidelines. This represents a considerable reduction and the methods of achieving such progress merit further study. Similarly, the centralised

pre-screening system (which aims at identifying whether persons found in Albania in irregular position are asylum seekers, economic migrants, refugees, etc) seems to be now operational throughout the whole country, including border areas. Close follow up of these issues, in co-ordination with IOM and UNHCR, will be carried out in the months to come.

2. CHINA

2.1. Migratory Situation

The People's Republic of China is the world's most populous country and has a long tradition of emigration. In recent years, illegal immigration from China has received press and policy attention due to the brutality of the snakehead gangs who organise the trafficking and to some high profile humanitarian accidents (notably the lorry deaths at Dover in 2000 and the cockle-picking tragedy, also in the UK, in 2004). In reality however the biggest source of immigration into the EU from China are legal migrants, many of whom then overstay and become illegal migrants. It is important to note, on the positive side, that significant resources are being employed by European countries to attract Chinese students and tourists and emigration agencies are flourishing in China.

China is not generally considered to be a transit country for migration flows but is a country of origin and increasingly is becoming a country of destination for migrants from other South-East Asian countries both in terms of legal migration (by Japanese businessmen) and illegal migration (which includes both those crossing the border from North Korea and irregular economic migration from the Philippines).

2.2. Framework for EU cooperation with China

A broad EU-China political dialogue was confirmed in an exchange of letters in 1994, growing out of trade and economic cooperation during the 1980s. The 1998 Commission Communication "Building a Partnership with China" included a reference to cooperation in the fields of Freedom, Security and Justice (with particular emphasis on illegal immigration and international crime). However, the specific dialogue with China on migration began after the tragedy in Dover of June 2000 when 58 would-be illegal immigrants lost their lives. Illegal migration was raised as an issue by Prime Minister Zhu Rhongi in July of that year and EU-China high-level consultations on fight against illegal migration and trafficking in human beings have taken place five times since then.

2.3. Progress/Development

International migration and combating illegal migration have been identified as areas for focus in EU-China relations as issues of global importance. Within the Community budget, €10 million had been put aside in 2002 for building up a co-operation project with China to fight illegal migration. Unfortunately, it proved impossible to develop such a project in collaboration with the Chinese authorities. The 2003 Commission Policy Paper¹ published in September 2003 also stressed the importance of migration and recognised that the regular high-level consultations had increased confidence and that concrete proposals for cooperation should now be developed and implemented. The high-level consultations have

¹ Commission Policy Paper, "A maturing partnership shared interests and challenges in EU-China relations" COM (2003) 533.fin.

facilitated constructive dialogue on matters of common interest to both parties including illegal immigration, improved knowledge of document security and visa arrangements and Chinese information campaigns against trafficking. The Commission has identified improved cooperation on identification, re-documentation and readmission of Chinese nationals subject to forced return by member states as being priorities for the upcoming period.

2.4. Current status

In February 2004, China and the EU signed up to the Approved Destination Status Agreement, a significant break through which allows Chinese tourist groups to visit the EU and containing an obligation on the Chinese administration to readmit any of these tourists who overstay in a member state. Exploratory discussions have recently taken place with a view to an EC-China readmission agreement. In this context and in view of expressed interests from both sides, the EU has agreed to discuss issues related to visa facilitation for certain categories of Chinese personnel. At the summit in December 2004, a joint statement was issued which expressed the common hope for an early opening of negotiations on these issues as soon as technically and legally possible.

In parallel with these developments, China has been identified as a priority under the Aeneas programme which will aim at supporting co-operation in the fight against illegal migration and implementation of a future EC readmission agreement.

2.5. Existing national legislation aimed at preventing and combating illegal migration and participation in international instruments dealing with asylum and migration

China has signed the 1951 Geneva Convention but has not given effect to it domestically. Indeed, China does not apply the concept of refugee status and accordingly deals with those arriving from places such as North Korea as illegal economic migrants (see comments on UNHCR protest below).

Emigration from China PRC has only recently been permissible without a strictly controlled exit permit. However, private passports are now issued and can be obtained by ordinary citizens on production of ID documents and proof of residence. It is expected that all citizens will be able to apply for passports in this manner by the end of 2005. There are, however, problems with the security of Chinese passports and visas. These problems derive in part from fraudulent activity and in part from lack of coordination between the different agencies as the State seeks to liberalise policies on internal and external migration. Some fragmentation of the external migration system has resulted as the migratory purpose (e.g. overseas study, work or tourism) determines which department handles the case. In addition, new enterprises have sprung up (such as emigration agencies) with which the Chinese system is unfamiliar.

2.6. Efforts in migration management, border control and interception of illegal immigrants

China was classified as a Tier 2 Country for Human Trafficking by the 2003 US State Department Report (produced in June 2004). This means that the PRC does not fully comply with minimum standards for the elimination of trafficking but that it is making significant efforts to do so. China has made significant attempts to crack down on snakehead gangs organising illegal migration (notably Operation Spring Thunder in June

2004 in which it was reported that well over 100 illegal trafficking agencies were closed). The British press reported (in November 2004) the arrest of 58 people who were allegedly planning to travel to the UK illegally.

Many migrants leaving China, however, do so legally and only begin their illegal activity once they arrive in the EU (normally via an Eastern European country from where they cross into Western Europe by land). Nevertheless, illegal entries are recently increasing, mainly through air borders. At the domestic political level, therefore, China is more concerned by its own internal migratory flows from rural areas to the cities and by the impact of brain drain than by irregular emigration, with the exception of cracking down trafficking networks due to their criminal nature and their links with criminal organisations.

2.7. Cooperation in readmission/return of own nationals and of third-country nationals

So far, China has not concluded a readmission agreement with any third country. Some member states report excellent practical cooperation from China on returning nationals but mainly once the identification of the person concerned is achieved (identification remains the major problem with China due to the delays encountered and the lack of co-operation often encountered from the Chinese side). Co-operation practices with Chinese authorities vary greatly as between Member States though it is clear that no return of third nationals is taking place. China has objected in the past to what it sees as the politicisation of return, i.e. the granting of asylum to some Chinese nationals found illegally in a member state. China takes the view that all such people should be returned at the same time.

The EU has no current information on the treatment of illegal immigrants forcibly returned by the EU member states to China. There is no doubt however that China actively seeks voluntary return of its own people. Since the 1990s China has put in place programmes to encourage its skilled nationals to return to China either temporarily or permanently. The policy of increased openness towards return and investment from the outside has undoubtedly contributed to China overtaking the USA for the first time ever in the World Bank's table of foreign direct investment in 2004 with a total of U.S. \$57 billion. (In the first 9 months of the year, the actually utilised figure for foreign direct investment was U.S. \$47 billion up 21% on 2003.)

2.8. Cooperation on visa policy

The most significant development in this area is the Approved Destination Status Agreement entered into by the EU with China in February 2004. Partly in response to this, the Council of the European Union Visa Working Party agreed to investigate further the Chinese requests on visa facilitation. As part of this process, possible abuse of the old "public" Chinese passports (i.e. those for official business) was reported and some discrepancies between visa issuing processes of the different Schengen states were discovered. Evidence of Schengen visa forgeries was also detected. China proposed a document on visa facilitation which was discussed in Beijing in July 2004 and a joint statement was made at the EU-China Summit at the Hague on 8 December 2004 in which the two parties agreed to open negotiations on visa facilitation as soon, in parallel to readmission negotiations, as technically and legally possible.

2.9. Asylum system

Despite signature of the 1951 Geneva Convention, the UNHCR country operations plan for 2005 records that China has still not enacted refugee regulations or extended its Convention signatory status to the Hong Kong Special Administrative Region. UNHCR therefore undertakes all status determination on behalf of the PRC. The UNHCR has protested at not being given access to North Korean asylum seekers. China however has continued to classify these people as economic migrants rather than as asylum seekers.

3. LIBYA

3.1. Migratory Situation

Libya borders Egypt, Sudan, Chad, Niger, Algeria and Tunisia and has permeable borders of 4,400 km. It also has a 1,775km coastline. Given these geographical realities, it is perhaps unsurprising that Libya has increasingly become a transit country for migrants heading up from sub-Saharan Africa towards Western Europe. This problem may have been exacerbated recently by displacement of illegal migrants from Tunisia following increasingly close cooperation between the Tunisian and Italian authorities. Libya is undeniably a destination country for African migrants, explicable in part by the fact that Libya is the richest country in Northern Africa.

3.2. Framework for EU cooperation with Libya

The EU has no formal relations with Libya and Libya is not a Member of the Barcelona Process. Accordingly, there is, at present, no formal framework for EU-Libya dialogue on migration management. Libya is, however, indicating its desire to seek a rapprochement with the international community. Given the lack of formal relations, there is, as yet, no scope for seeking a mandate for readmission negotiations with Libya. Libya is, however, one of the principal transit countries for migration into Europe.

3.3. Progress/Development

As noted by the General Affairs Council on 11 October 2004, Libya has made significant strides towards reintegration into the international community and was one of the first countries to announce a voluntary disengagement from its programme to acquire weapons of mass destruction through a transparent international process. The Council also noted the resolution of other key issues impeding EU/Libyan cooperation (for example compensation for victims of the Berlin bomb attack in 1986) and decided to embark upon a policy of engagement with Libya. In reviewing the elements relevant to the development of relations with Libya, the Council recalled its conclusions of November 2002 that cooperation with Libya on migration was urgent and resolved that a technical mission to Libya be conducted as soon as possible in accordance with the terms of reference elaborated in response to the Council's mandate of 16 June 2003.

3.4. Current status

Following an exploratory Commission mission to Libya in May 2003 and Libyan confirmation of its interest in cooperation with the EU on migration, a Commission technical mission on illegal immigration with the participation of Member States experts, was conducted in Libya following the decision of the Council of 11 October 2004. This mission took place between 27 November and 6 December 2004. It is acknowledged that migratory pressure on Libya is likely to increase. Libya has been identified as a

potential priority for intervention and support by the Commission under the Aeneas programme for the period 2004-2006. However, the decision as to whether Community support is provided to Libya to combat immigration and in what form - directly or through regional policies –will have to be decided on the basis of the recent EU technical mission.

3.5. Existing national legislation aimed at preventing and combating illegal migration and the participation in international instruments dealing with asylum and migration

Libya has not signed the 1951 Refugee Convention or the 1967 Protocol but has ratified the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. Although the Constitution appears to provide for non-refoulement of refugees, there is no domestic legislation which governs the grant of asylum in practice.

3.6. Efforts in migration management, border control and interception of illegal immigrants

The migration control measures practised by the Libyan authorities currently appear more or less limited to mass expulsions triggered by upsurges in numbers. When the authorities decide to take action, roundups are organised by the police and migrants are sent to camps in South Libya. The Libyans make the point that due to a lack of adapted vessels and vehicles they are not able to adequately control either their coastal border or the non-demarcated desert borders. The Libyan authorities estimate that there are between 750,000 to 1,200,000 persons present illegally in Libya which is significant in a country with a population estimated last year by the UN at 5.5 million.

3.7. Cooperation in readmission/return of own nationals and of third-country nationals

Current co-operation between Libya and partners from the EU or the international community remains limited. However, and as explained by Libyan authorities on various occasions during the mission, Libya has gained an increasing understanding of the need to develop co-operation on migration issues. As regards bilateral co-operation between Libya and countries from the EU, only Italy and Malta are involved at this stage.

Libya is trying to develop a return policy for foreigners residing illegally in the country. Individuals concerned are held in reception centres until travel documents can be processed through the embassies of their countries of origin or they are released with a temporary residence permit. Co-operation exists and memoranda of understanding are in place with several countries of origin, but all costs associated with return seem to be covered by Libya¹.

In 2003, Libyan Authorities repatriated 43,000 illegal immigrants of various nationalities. This number reached 54,000 in 2004, witnessing a significant increase in nationals originating from sub-Saharan African countries and Egypt.

¹ Memoranda of understanding covering police cooperation on border control issues and exchange of information have been signed with Sudan, Chad, and Niger.

3.8. Cooperation on visa policy

Libya appears to be increasing its political transparency in an effort to seek closer links with the international community. However, it has been the subject of UN sanctions for a considerable period and as such has not been involved in international cooperation on visa policy. Nationals from Arab states (other than Iraq and Palestine) can enter Libya without a visa as can nationals of Sudan, Ethiopia and Eritrea.

The Directorate of Transport and Nationality Office within the Ministry of the Interior is responsible for legal and illegal immigration matters and for the implementation of laws affecting travel documents, ID and residence permits.

3.9. Asylum system

Libya has neither signed the 1951 Convention on Asylum nor its Protocol of 1967, but has ratified the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, which entered into force in 1974. The Libyan Constitution does foresee the protection of refugees. However, there is no administrative structure dealing with refugees and asylum seekers, and no cooperation agreement between UNHCR and Libya; the local UNHCR office has no official status. Consequently, in practice, international protection of refugees is not assured.

UNHCR has granted refugee status to a number of asylum seekers who applied directly to their office, but has no access to reception centres. The general practice of the Libyan authorities is not to deport individuals having been granted such a status.

4. MOROCCO

4.1. Migratory Situation

Morocco is a country of transit and origin for economic migration toward the EU. Morocco has the potential to remain a country of origin for migrants due to its fast growing population rate coupled with slow domestic economic growth, little social security provision at home and significant ties with the Moroccan diaspora already resident in Europe. Morocco has ongoing territorial disputes over the Western Sahara which has had a negative effect on Morocco's relationships within the region.

4.2. Framework for EU cooperation with Morocco

The EC-Morocco Association Agreement which forms the legal basis for EU-Moroccan co-operation entered into force on 1 March 2000. Morocco and the EU have established a working party to address issues related to social affairs and migration under the auspices of the Association Agreement. Since 2000, several meetings at Ministerial and expert level have also been held which addressed migration and related areas. The recent adoption of the European Neighbourhood Policy Action Plan which contains an important section on migration represents a real advance in cooperation in this field.

4.3. Progress/Development

Since the signature of the Association Agreement, significant progress has been made in terms of building confidence between the EU and Morocco. Both sides have agreed

and taken responsibility for a comprehensive agenda which covers legal migration, integration, asylum and how to address the problems caused by illegal migration. Morocco strengthened its penal code on trafficking and smuggling in 2003 and improved its administrative capacity through the creation of a special unit in the Ministry of Interior in addition to a special “brigade” dealing with illegal migration. Morocco is also cooperating well with its near neighbour Spain in efforts to stem the flow of illegal migration by sea with the attendant humanitarian concerns. Morocco has also made efforts to deepen cooperation with third countries, in particular, with Nigeria.

4.4. Current status

Concrete cooperation on projects aimed at developing Morocco’s ability to manage migration has begun in the context of the MEDA budget line. These projects aim both to strengthen borders (€45 million is directed at improving labour management and legal migration) and to foster economic development in areas which produce large numbers of migrants. Indeed, Morocco is the leading beneficiary of Community assistance among Mediterranean partners. Between 2001 and 2003, Morocco benefited from nine co-operation projects under the B7-667 budget line, 4 of which concerned development. Morocco is also identified in the Aeneas programme as a focus for intervention in 2004-2006 as part of the Mahgreb region. Priority will be given in the Mahgreb to the implementation of the future EC readmission agreement, fighting illegal migration, supporting co-operation with African neighbour countries and improving capacity building for asylum and international protection.

Despite several rounds of negotiations, the EU has not yet been able to agree the text of a readmission agreement with Morocco. Significant progress has been made on the terms of the agreement with a final round of negotiations planned for 1 2005 as certain aspects, in particular the readmission of third country nationals remain to be agreed.

The financing agreements for launching the €45 million MEDA projects on frontier control and legal migration were signed on 20 December 2004. These projects will be managed directly by the EC delegation in Rabat. Morocco requested special emphasis to be placed on illegal migration and people trafficking in the “Programme for the Implementation of the Association Agreement – 3AP”. This is a twinning project aimed at training auxiliary forces on illegal migration and trafficking. The implementation of the joint EU-Morocco Action Plan under the European Neighbourhood Policy which contains a significant section on migration will further strengthen cooperation in this field.

4.5. Existing national legislation aimed at preventing and combating illegal migration and the participation in international instruments dealing with asylum and migration

Morocco is party to the 1951 Geneva Convention on Refugees and its 1967 protocol. Domestic legislation also exists which provides a legal structure for the determination of claims by the Office of Refugees and Stateless People (ORSP) and for an appellate authority. Legislation also exists to provide access to the labour market for recognised refugees. However, much of the underlying detail and administrative processes are missing. For example, there is as yet no appellate authority or procedures for appeal.

A new law was adopted in 2003 however which imposes new penalties for those entering Morocco illegally and for those involved in smuggling and trafficking. The new law

creates a sentence of life imprisonment where the trafficking/smuggling activity results in the death of the migrant. A special administrative unit to tackle illegal immigration and an ad hoc police taskforce are also established under the new legislation.

4.6. Efforts in migration management, border control and interception of illegal immigrants

Morocco cooperates with Spain on border checks through a group that organises discussions, exchanges of information, liaison officers and joint patrols. However, the efforts of the Moroccan authorities to patrol their borders are hampered by inadequate infrastructure which was originally conceived for defence (i.e. the surveillance belt set up in 1992 comprising 570 observation checkpoints along the coastline). Various authorities have control over these posts although in due course the New Migration and Border Surveillance is expected to coordinate the border patrols and, to have at its disposal, the infrastructure and manpower necessary to combat illegal migration.

4.7. Cooperation in readmission/return of own nationals and of third-country nationals

Morocco enjoys close relations with neighbouring countries of origin but has no formal readmission agreements with them. Recently however the authorities report having repatriated nationals of neighbouring countries of origin in a series of ad hoc operations. Morocco's cooperation with Nigeria seems particularly well advanced.

Morocco has been negotiating a readmission agreement with the EU formally since February 2003 although there was a year of informal preparatory talks prior to this date. Most of the outstanding issues are minor but some, in particular the readmission of non-nationals, the forms of evidence to be provided and the time limits for replies to readmission requests remain problematic. The latest round of negotiations was held in mid-January 2005. Responses from EU Member States indicate that Morocco is flexible and cooperative on readmitting Moroccan nationals from EU member states (except when the returnees are minors). Morocco seems less willing to accept returns of third country nationals.

4.8. Cooperation on visa policy

Visa arrangements are governed by administrative practice rather than statute law. The basic principle, laid down by the Residential Order dating back to 8 January 1915, is that a stamp must be placed in the passport of any person coming from abroad, normally entitling the holder to a three month stay. The list of countries whose nationals are exempt from the visa requirement is decided on by administrative act. At present, the nationals of 52 countries are exempted from the visa requirement including nationals of PRC, Ivory Coast, Mali, Niger, Qatar, Senegal and Tunisia. (Algeria was very recently added to the list).

4.9. Asylum system

There are continued doubts as to whether Morocco is able to offer effective protection, in practice, to those seeking protection inside its territory. Despite the existence of governing legislation, no appellate authority for hearing refugee claims has been established and there is confusion over the application process for asylum. In particular, there are overlapping processes for status determination where the ORSP insists that applicants are recognised by the UNHCR as refugees before they apply for refugee status in Morocco (implying a preference to simply confirm UNHCR determinations). However, in other cases,

applicants are recognised by the government without being approved by UNHCR. There is little or no transparency in decision making by the ORSP. That said, Morocco holds membership status in the IOM and the UNHCR has had a permanent senior liaison officer in Casablanca since 2002.

5. RUSSIAN FEDERATION

5.1. Migratory Situation

The Russian Federation is the world's largest country. Russia shares a land border with 14 countries requiring 450 different official border crossings. Russia is a country of origin, transit and destination for migrants and is currently the biggest source of asylum claimants in the European Union (most of whom are, or claim to be, Chechens). Significant numbers of Russians have left Russia in recent years leading to fears of an ageing population and labour shortage similar to those currently expressed in the EU. Estimates vary widely as to the number of illegal immigrants present in Russia but lower end estimates put the figure at around 3.5 million. If this were true, Russia's net emigration figures suggest further immigration into Russia would be required to maintain current population levels.

5.2. Framework for EU cooperation with Russia

The cornerstone of EU-Russia relations is the Partnership and Cooperation Agreement (PCA) which was signed in June 1994 and entered into force on 1 December 1997. It has an initial duration of ten years but will continue in force automatically unless either side issues notice to the contrary. The PCA aims at strengthening political, commercial, economic and cultural ties, and organises the dialogue by creating a structure of joint institutions. Cooperation between the EU and Russia is fairly well advanced and has become a key component in developing a strategic partnership between the two parties. On a political level, FSJ issues are also regularly discussed at the six-monthly EU-Russia summits. At a practical level, the EU has developed specific instruments to strengthen FSJ cooperation such as the Joint Action Plan on organised crime from 2000 and its implementation tool, the EU liaison officers' network. Under the TACIS programme, about €100 million have been spent on FSJ projects, notably border management and strengthening the judiciary.

5.3. Progress/Development

At the St. Petersburg Summit of May 2003, the EU and Russia decided to create (in the long-term) four common spaces within the PCA, including a common space of freedom, security and justice. The two parties also signed a protocol to the PCA establishing a Permanent Cooperation Council which will be able to meet in a flexible manner to discuss issues arising under the PCA.

EU/Russia Ministerial Troikas in the area of JHA have taken place regularly since 2001 (most recently on 26 October 2004 in the format of the Permanent Partnership Council) with the aim of identifying and reviewing priority areas for work. It is hoped that this institutional setup will facilitate even closer cooperation on the common space of Freedom, Security and Justice.

In February 2004, the Commission published a Communication on EU-Russia relations,

which led to Council conclusions on how to improve the effectiveness of the EU-Russia partnership.

5.4. Current status

More than €2.6 billion has been allocated to Russia under the TACIS programme since it began in 1991 with a view to promoting the transition to a market economy and to reinforcing democracy and the rule of law. An indicative sum of €20 million has been set aside in the National Indicative Programme for 2004-2006 to enhance the Russian asylum system, to improve coordination between migration authorities with a view to improving registration and reception conditions for asylum seekers and to pave the way for an EC-Russia readmission agreement. In the FSJ area, the Indicative Programme also focuses on judicial reform and the fight against organised crime.

Moreover, two projects were selected in 2003 for co-financing under budget heading B7-667 to improve the reception of refugees and asylum seekers in St Petersburg and to create a network of legal assistance to refugees and forced migrants in Russia. Russia (together with Ukraine) is also one of the countries identified as a priority for intervention and assistance under the Aeneas Programme with the emphasis on supporting the implementation of the future EC-Russia readmission agreement and improving the protection and treatment of migrants.. In this context, EU assistance is expected to undergo further refinement in the light of the future Common Space on Freedom, Security and Justice.

5.5. Existing national legislation aimed at preventing and combating illegal migration and the participation in international instruments dealing with asylum and migration

The Russian Federation has adopted national legislation in order to implement the 1951 UN Convention relating to the status of refugees and its 1967 Protocol. Russia amended its asylum legislation in 1997 with the help of UNHCR to bring it more into line with the 1951 Convention. The Law on Forced Migrants covers Russian citizens and stateless persons or foreign citizens with a legal right of residence in Russia who were forcibly displaced from their place of residence in Russia. Russian internal controls on migration persist with some regions, especially Moscow, still operating a strict system of residency registration permits (“propiska system”). Unregistered persons, including Russian citizens from other areas can be fined and even deported to their region of origin. Forced returns to North Caucasus often results in asylum applications to EU Member States. The number of such applications has increased dramatically also due to stronger xenophobic tendencies amongst ethnic Russians. Still, several million people remain unregistered in the Moscow and St Petersburg areas. Without registration, a person cannot legally work or access social benefits. A government Decree of December 2004 allows those who are Russian citizens not to register with the authorities for up to ninety days (instead of three days) if they move out of their region of permanent residence. Russia has signed neither the international conventions related to statelessness nor the ILO conventions on migrant workers preferring to conduct its own series of regularisations. The latest legislation on regularisation has tightened the requirements for acquiring Russian citizenship.

In parts of Georgia which are controlled by Russian troops, South Ossetia and Abkhazia, Russia is providing the population with Russian citizenship and passports.

In December 2003, amendments were made to the Criminal Code including to the definition of trafficking in human beings to bring it in line with UN standards and to introduce penalties for traffickers of up to fifteen years imprisonment. However, as the amendments are part of the Criminal Code rather than a separate piece of legislation, they do not address the social dimension of the problem, e.g. witness and victim protection and rehabilitation. Russia was placed on the “watch list” of Tier 2 countries by the US State Department Report on Trafficking for 2003 (published in June 2004) because victims of trafficking had no specific status or mechanisms to assist or protect them under Russian law. An amendment to the Penal Code was adopted by the Duma on 31 July 2004 to target and criminalise trafficking in human beings as well as to protect witnesses and victims.

5.6. Efforts in migration management, border control and interception of illegal immigrants

The Federal Migration Service (created in 1992, abolished in 2000 and re-established in May 2002) has retained its status as an executive agency under the control of the Ministry of the Interior. It currently applies a more restrictive policy on immigration. New legislation has been adopted, e.g. the Law on Citizenship and the Law on the Legal Status of Foreign Citizens. The government has also tightened up controls on immigration, including those applied to citizens of other CIS states. Variable quotas for foreign workers have been introduced, reflecting changing economic needs and efforts to draw illegal immigrants out of the shadows. Recently the process for regularisation, partly influenced by the threat of terrorism, has become increasingly strict. Uncertainty remains as to the number of persons illegally present or internally displaced within Russia’s borders. The introduction of migration cards, which has created an extra burden on EU citizens residing in Russia, was launched as an attempt to monitor the entry and exist of foreigners but no statistics have yet been presented as to its impact. Although steps have been taken to strengthen the control of the Russian border with the Caucasus, Russia has indicated that a lack of resources has hampered significant progress on its Southern and Eastern border. The EU has asked Russia to sign and ratify border agreements with Latvia and Estonia and to undertake demarcation of all EU-Russia common borders. It now looks as if agreement with Latvia and Estonia is achievable by summer 2005. The long border with Kazakhstan remains largely un-demarcated. Russia is requesting EU assistance in equipping the Russian border guards on this section as current border controls are acknowledged to be insufficient to prevent or even control illegal migration. In December 2004, President Putin announced new measures to improve Russia’s Border Guard Service. These measures will not be directed at the Kazakhstan border but include the establishment of 72 new border posts (in the North Caucasus), the acquisition of detection equipment (e.g. night vision equipment) and the creation of a personnel training centre. The Border Guard is reducing its compliment of conscripts and is expected to be fully operational on a professional basis by 2008.

5.7. Cooperation in readmission/return of own nationals and of third-country nationals

Russia has bilateral readmission relations with some member states on the basis of Memoranda of Understanding (MOU) and has informal cooperation with others. IN January 2003, the EU and Russian began negotiations for a readmission agreement. Readmission negotiations stalled whilst a parallel discussion was developed on the EU’s future visa policy vis-à-vis Russia. Visa talks have been taking place with back to back negotiations on readmission since October 2003. However, it was not until July 2004 that the Commission received a mandate to negotiate an EU-Russia agreement on visa

facilitation. The latest round of negotiations took place in Moscow in December 2004. For the EU, in accordance with the St. Petersburg Summit of May 2003, the priority is the simultaneous conclusion and entry into force of both agreements in the current year while the establishment of a visa-free travel regime is a long-term process.

Russia continues to link the conclusion of an EU-Russia readmission agreement with the conclusion of similar agreements with its neighbouring countries and with the abolition of visa requirements with the EU.

5.8. Cooperation on visa policy

All visitors to Russian require a visa except nationals of its CIS neighbours who are able to produce a travel document (other than Georgia and Turkmenistan). In May 2004, the Russian FMS acknowledged the need to reduce the number of travel documents which entitled CIS citizens to enter Russia visa-free. Due to domestic political sensitivities, the internal passport system which existed under the former Soviet Union will remain in existence until 2006. It is acknowledged that there is widespread abuse of these internal passports by CIS nationals.

The Russian government intends to modernise its passport and visa issuing arrangements to include more modern security features (such as biometric data) in 2006. These security arrangements will cover both ID documents and international travel documents.

5.9. Asylum system

Russian domestic legislation implementing the UN Convention relating to the status of refugees still gives an asylum-seeker only 24 hours in which to make a claim. There are two key practical problems in the Russian asylum system: (1.) inability of claimants to access the status determination procedure (i.e. an inability to get oneself registered as an asylum-seeker, particularly in big cities such as Moscow) and (2.) lack of protection whilst determination on the merits is ongoing. Asylum-seekers are not given papers entitling them to stay in Russia whilst they await a decision on their claim which makes them vulnerable to removal as illegal immigrants. During that period – which can last for between 1-2 years – the applicant has no other legal rights and is not entitled to work or receive state medical assistance. State facilities for asylum seekers are minimal. The applicant and his/her family can be re-arrested at will and fined for being illegally in the country.

The Russian government has however in the last year cooperated with the UNHCR project to ensure access to schooling for the children of asylum seekers between the ages of 6-12. Russia has also cooperated with the UNHCR projects in Moscow and St Petersburg aimed at improving access to health care and other benefits for refugees.

Improvement has also been seen in the willingness of the Russian courts to stop deportations and keep mixed families (of Russian and non-Russian immigrants) together. Difficulties continued to be reported however in relation to asylum seekers who are not from the CIS states.

6. SERBIA AND MONTENEGRO

6.1. Migratory Situation

Serbia and Montenegro is a country of destination and origin for migrants. According to the UNHCR Statistical Yearbook for 2003, Serbia and Montenegro hosted over 291 000 refugees and over 261,000 Internally Displaced Persons during 2003¹. In the third quarter of 2004, Serbia and Montenegro was the second highest refugee producing country (after Russia) for the 36 industrialised countries.² In addition, , due to the long and complex constitutional reform which the country underwent in 2002 and 2003, Serbia and Montenegro³ still faces specific challenges relating to the actual articulation of powers and respective competencies between the State Union and the two constituent republics.

6.2. Framework for EU cooperation with Serbia and Montenegro

Relations with the state of Serbia and Montenegro, as for other countries in the Western Balkans, are anchored in the Stabilisation and Association Process which provides for an annual Stabilisation and Association Report. Currently, the EU has no contractual relations with the State Union of Serbia and Montenegro. Since the fall of the Milosevic regime in October 2000, Serbia and Montenegro (formerly the Federal Republic of Yugoslavia – FRY) has benefited from various instruments of the SAP, notably autonomous trade measures covering almost all products and substantial financial support. As confirmed at the Thessaloniki Summit Serbia and Montenegro is a potential candidate for EU membership.

Over the past years, the EU has provided its policy advice through the EU-FRY Consultative Task Force, and then the Enhanced Permanent Dialogue (EPD). The EPD currently monitors and drives reforms on the basis of the European Partnership adopted by the EU Council of Ministers in June 2004 and of the corresponding implementation Plan finalised by Serbia and Montenegro's authorities in December 2004.

In 2002-2003, the FRY underwent a fundamental constitutional reform leading to the adoption of the Constitutional Charter of the State Union of Serbia and Montenegro on 4 February 2003.⁴ An Action Plan for the creation of a single external trade policy and an unhindered internal market was adopted in summer 2003. The adoption of these basic documents enabled the Commission to start work on a draft Feasibility Report. However, the attempts to achieve a minimum level of common trade policy and internal market integration did not achieve the desired results. Therefore, due to serious delays in the implementation of the Constitutional Charter and the Action Plan on trade and internal market and major deficiencies in the implementation of Serbia and Montenegro's international obligations, it was not possible to assess the feasibility of opening SAA negotiations.

To help overcome the persistent constitutional stalemate and re-energise Serbia and Montenegro's progress towards the EU, a "twin-track" approach was proposed by the Commission in July 2004 and subsequently endorsed by the EU Council of Ministers and the political leaders of Serbia and Montenegro in October 2004. This approach would

¹ The UNHCR began a re-registration process for refugees in Serbia and Montenegro at the end of 2004 and initial results suggest that current numbers may be significantly lower.

² *Asylum Levels and Trends in Industrialized Countries—Third Quarter 2004* UNHCR Geneva, 15 November 2004.

³ Kosovo under the United Nations Security Council Resolution 1244 of 1999 is still separately administered by the UN Interim Administration and so is not within the scope of this report.

⁴ The State Union comprises two member states: the Republic of Serbia and the Republic of Montenegro. Throughout this Communication the terms Republic(s) and republican refer to the Republic of Serbia and the Republic of Montenegro as member states of the State Union of Serbia and Montenegro.

imply a single Stabilisation and Association Agreement with distinct negotiations with the Republics on trade, economic and possibly on other relevant sectoral policies.

The Commission adopted the Feasibility Report on 12 April 2005. On the basis of the progress made by Serbia and Montenegro, the Commission concluded that Serbia and Montenegro is sufficiently prepared to negotiate a Stabilisation and Association Agreement. The Council has subsequently endorsed the Feasibility Report and asked the Commission to present a proposal of negotiation directives.

6.3. Progress/Development

As highlighted in the Feasibility Report, the Constitutional Charter contains rules on the **division of competences** between the State Union and the two constituent Republics. Based on the information provided by the authorities on the current situation, the Commission understands that these competences are articulated as follows. The State Union itself holds powers relevant for an SAA in the fields of international political cooperation, non-economic international obligations (such as cooperation with the International Criminal Tribunal for the former Yugoslavia - ICTY), human and minority rights and regional cooperation. In addition, the State Union is competent for defence – a matter which is linked to the respect of the SAP political criteria. Other policies, including the police and judiciary, lie within the respective remits of the two Republics. Nevertheless, certain legislative powers and administrative structures remain on the State Union level. Moreover, in the field of justice and home affairs the State Union has competencies related to the framework legislation with a view to ensure a unified Asylum, Visa, Migration and State border management policy while the implementation takes place at the level of the two Republics.

The authorities of Serbia and Montenegro have made some progress in the area of migration and asylum. New framework legislation on asylum was adopted in the SU parliament in March 2005. It is to be fully implemented following the adoption of the respective Republican legislation currently being finalised. At the operational level, action has been taken to improve training and the provision of equipment. Serbia and Montenegro has also signed readmission agreements with a significant number of EU and non-EU countries. While the readmission agreements are being implemented, a lack of resources however makes reintegration of returnees difficult. As noted above, progress in migration management generally is greatly hampered by the constitutional disagreements between the two Republics in securing a unified approach in this area.

6.4. Current status

Practical cooperation projects on both the national and regional scale have already begun with Serbia and Montenegro in the framework of the CARDS programme. These projects were partly aimed at supporting reforms in the area of justice and home affairs with one CARDS regional project providing specific assistance for migration and asylum. There is also a new project underway, funded under budget line B7-667 to develop an asylum-processing capability structure and refugee legislation in line with international and European standards. In total, four projects co-financed by the B7-667 budget line between 2001 and 2003 had Serbia and Montenegro in their scope. The development of national policies based on a uniform approach (by the two state authorities) to migration has been identified by the Commission (including in the Aeneas Programme) as a key priority for Serbia and Montenegro. Illegal migration also remains a serious problem, especially in

relation to migrants arriving from Kosovo, which the authorities of Serbia and Montenegro have little power to address. The Commission has also suggested that national and regional strategies be developed to prevent trafficking and to inform potential emigrants about the dangers of (and alternatives to) illegal immigration.

6.5. Existing national legislation aimed at preventing and combating illegal migration and the participation in international instruments dealing with asylum and migration

The Criminal Codes of both Republics classify slavery, transport of enslaved persons, human trafficking, production of forged documents and illegal border crossing as criminal offences. However, there is no separate crime of people smuggling apart from the crime offence of facilitating illegal border crossings. The minimum penalties range from six months imprisonment for organising illegal border crossings to five years for human trafficking by an organised criminal group. If the crime involves minors, the minimum sentences can reach five years imprisonment. The new draft Laws on witness protection in both Serbia and Montenegro envisage several protection measures including physical protection, change of residence, transfer to another (penitentiary) institution and complete changes of identity. The law also provides for international cooperation on a mutual assistance basis or a contractual basis and establishes budgetary provision for the programme's implementation.

At the State Union level, Serbia and Montenegro has ratified all the major international instruments dealing with immigration and asylum (apart from the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their families).

6.6. Efforts in migration management, border control and interception of illegal immigrants

Illegal migration continues to be a serious problem, although credible efforts have been taken at different levels. Both Republics have established national teams to fight human trafficking and in Montenegro a new strategy on trafficking was adopted. Inter-agency cooperation within each Republic seems to be improving but more effort is needed. There is little evidence to date of formalised coordinated actions between the two Republican agencies. Cooperation with the regional police forces and Interpol is good. Public awareness campaigns have been initiated but further activities in this area are needed.

Following the Ohrid Conference on Border Security in May 2003 Serbia and Montenegro presented further concrete measures at the EU-Western Balkan Justice and Home Affairs ministerial meeting in November 2004. These will be implemented in the short term under scrutiny by the Commission. Integrated border management in practice continues to be obstructed by different interpretations of the Constitutional Charter. A Memorandum of Understanding was signed in July 2003 between the two Republican Ministers of Interior and the State Minister. However, there has been no evidence to date of any practical inter-Republican coordination concerning border issues. Both Republics have been engaged in training of border police, but they lack adequate resources.

Serbia is continuing the process of phased demilitarisation of the "green border", starting with the border with Hungary. The next phases are planned to take place at the Romanian and Bulgarian borders. It is envisaged that the process of discontinuing the SCG Army

presence at the State border and its replacement by the Republican police should be finalised by the end of 2005.

6.7. Cooperation in readmission/return of own nationals and of third-country nationals

There have been positive developments in the area of readmission, where a joint working group, comprising the relevant State and Republican institutions, was reported to have been established. Agreements have been signed with Germany, Slovenia, Italy, Denmark, Sweden, Slovak Republic, Hungary, Belgium, Switzerland, Bulgaria and Croatia and are in the process of being negotiated with Portugal, France, UK, Czech Republic, Austria, Lithuania, Latvia, Canada, Norway, BiH, Romania, FYROM and Ukraine. However, the country has limited resources to underpin practical implementation of the agreements.

The facilities available for the reception of returned migrants are administered by external agencies (e.g. Government Assisted Repatriation Program/Reintegration and Emigration Program for Asylum-seekers in Germany or Assisted Voluntary Return for Vulnerable Persons in Switzerland, both administered by the IOM).

The authorities of Serbia and Montenegro also face challenges in managing migration linked to Kosovo. Significant numbers of internally displaced people (IDPs) in Serbia and Montenegro claim to originate from Kosovo (total figures for IDPs in 2003 were over 261,000 in 2003). More generally, ministers from Serbia and Montenegro met with representatives from Croatia and Bosnia and Herzegovina, UNHCR, OSCE and the EU on 31 January 2005 to agree a declaration that they would bring an end to the refugee situation in South-Eastern Europe by the end of 2006 either through voluntary return or local integration. The governments agreed to form a joint task force which will meet four times a year to progress implementation accompanied by yearly ministerial meetings.

6.8. Cooperation on visa policy

On **visa policy**, there have been steps to align Serbia and Montenegro's policy on state-level, but some exceptions for Montenegro (Albania, Russian Federation and Ukraine) remain, in contradiction to Constitutional Charter provisions. Differences also exist with respect to entry on the basis of ID cards alone. Montenegro allows this for EU citizens, Serbia does not. This creates problems at the administrative boundary line between Serbia and Montenegro, with the risk that foreigners who have entered Montenegro without a visa move to Serbia and then illegally cross the borders with neighbouring countries. Following the Decision of the Council of Ministers from February 2005, a Working Group was established under the lead of the MFA of SCG, comprised of representatives of both Republics, mandated with drafting a Law on a unified visa system for Serbia and Montenegro and respective by-laws and regulations with a view to Serbia and Montenegro joining the Schengen white list.

At present the State Union Embassies and Consular Offices face difficulties in implementing the two visa regimes of Serbia and Montenegro.

In 2003 Serbia and Montenegro decided to repeal the visa regime for around 40 European and non-European countries, including all EU Member States. They abolished the practice of issuing visa (tourist passes) at the borders, introduced visas for several African and Asian countries and tightened procedures for source countries for human trafficking. Serbia and Montenegro has a reciprocal visa free regime with all former Yugoslav

Republics, except Slovenia.

6.9. Asylum system

As regards **asylum policy**, the constitutional dispute on the division of competences affects the timely adoption of legislation in this field. Serbia and Montenegro is lagging behind other countries in the region. Outdated refugee legislation also makes the implementation of Serbia and Montenegro obligations under the 1951 Geneva Convention and 1967 New York Protocol difficult. Progress in this area is also part of the Council of Europe post-accession commitments.

The Framework Asylum Law at the State Union was adopted by the State Union Parliament in March 2005. In Montenegro, the republican Asylum law is finalised, defining the competencies vested at the republican level, the criteria, procedure and responsible agencies, benefiting from UNHCR assistance and expertise, while in Serbia the draft is at an advanced stage. The new draft legislation will have to be in conformity with the principles outlined in the adopted framework legislation.

UNHCR currently handles most asylum cases in Serbia and Montenegro. In addition to the inadequate infrastructure and limited human resources, there are no systematic mechanisms to identify asylum seekers at land, sea or air borders. A referral system was recently established at Belgrade International Airport with UNHCR support. Further training activities for border guards and police officers on the international protection of refugees and border procedures have been agreed with the Ministry of the Interior of Serbia. In Serbia, there is only one reception centre for asylum seekers and refugees with very limited capacity and inadequate infrastructure. In Montenegro at present there are no reception capacities, though these are planned for 2005.

Positive developments can be noted in the area of **readmission**. Serbia and Montenegro has so far signed readmission agreements with Italy, Slovenia, Slovakia, Hungary, Denmark, Belgium, Germany, Sweden, Switzerland, Bulgaria and Croatia. Negotiations are ongoing with Portugal, France, the United Kingdom, the Czech Republic, Austria, Lithuania and Latvia. The implementation aspects of these readmission agreements is monitored by the Ministry for Human Rights and Minorities, but without impact in terms of overcoming the considerable social and economic problems related to the return of Serbia and Montenegro citizens. In reality, within the context of migration management, the Ministries of Interior for both Republics are dealing with some aspects of readmission. While the readmission agreements are in general working well, implementation is heavily influenced by the scarcity of resources. In particular, from persons coming from Kosovo, Serbia and Montenegro has no access to a database allowing verification of their citizenship. In this case the authorities often simply refuse to deal with individual cases.

7. TUNISIA

7.1. Migratory Situation

Tunisia is both a country of transit and origin for economic migration to the EU. However, Tunisia is also increasingly a destination country for sub-Saharan migrants, many of whom appear to enter Tunisia through Libya. Tunisia's foreign policy seems aimed both at internal security and regional stability which is sought by, *inter alia*, seeking closer links with the EU, actively seeking to re-launch the Arab Mahgreb Union and supporting

the peace process in the Middle East.

7.2. Framework for EU cooperation with Tunisia

Tunisia and the EU established diplomatic relations in 1976 and a cooperation agreement was signed the same year. Tunisia has been proactive and has played a constructive role as a Euro-Med coordinator within the Arab group. The Association Agreement signed in 1995 governs bilateral relations between the EU and Tunisia and has provisions which envisage cooperation on migration issues. Tunisia was the first country in its region to enter into an Association Agreement with the EU. Under the framework of the Association Agreement, four Association Councils have taken place, the most recent Council being held on 31 January 2005. In addition a working party has been meeting regularly to deal with migration and social affairs under article 73 of the Association Agreement.

Once the new European Neighbourhood Policy Action Plan enters into force, it will determine the framework for cooperation.

7.3. Progress/Development

The move to include FSJ issues in cooperation activity with Tunisia has been gradual but represents a positive development. Tunisia has been identified as a priority for cooperation on migration with the EU. Accordingly, the establishment of the working group with its mandate to discuss co-development, social integration, visas, illegal immigration and transit migration represents a significant advance. The working group has discussed both legal and illegal migration in addition to human trafficking and the status of 3rd country nationals who are long-term residents within the EU. In addition, the New Neighbourhood Policy Joint Action Plan envisages the possible signing of a readmission agreement with the European Community together with visa facilitation work. Tunisia must be encouraged to balance its efforts to manage emigration (e.g. such as its programmes with Italy and France) with efforts to encourage nationals to return.

7.4. Current status

In the migration field there are two key areas which deserve attention. The first is the scale of illegal migration (mainly transit migration from the sub-Saharan region and other Maghreb countries) and the second is the lack of a functioning asylum system. Tunisia is passing strict laws in an effort to prevent illegal migration and is working hard with Italy to prevent the embarkation of refugees on sea-craft. New laws on confiscation of sea-going vessels appear to be having an impact as flows appear to be undergoing displacement to Morocco and Libya.

Tunisia has at present no functioning domestic system for determining protection claims and is reliant on the UNHCR. In addition, only a small percentage of the people arriving in Tunisia seek to claim asylum. The UNHCR has expressed concern that those granted asylum under its mandate are not always provided with residence permits by the Tunisian government and so have no secure status.

Two co-operation projects were agreed in 2003 under the B7-667 budget line: one deals with the enhancement of transit and irregular migration management, the other deals with institution building in the area of asylum (This is a general UNHCR project covering North-Africa). Tunisia is identified as a high priority for the EU as part of the Maghreb

region under the Aeneas programme, particularly as regards illegal migration and asylum.

7.5. Existing national legislation aimed at preventing and combating illegal migration and the participation in international instruments dealing with asylum and migration

In February of 2004, Tunisia made amendments to its existing passport and visa controls aimed at curbing the flow of immigrants. The Aliens Police retain central control of all the procedures for issuing visas and for entry control and also supervise the issuing of residence permits and extensions. Tunisia is a signatory to the main international conventions on refugees and human rights and the right to protection from *refoulement* is enshrined in the Tunisian constitution.

7.6. Efforts in migration management, border control and interception of illegal immigrants

Tunisia's borders are controlled using a mixture of police and National Guard personnel. Their combined numbers are in the region of 25,000. Tunisia strengthened its laws relating to trafficking at the beginning of the year to try and make routes through Tunisia unattractive to facilitators. Tunisia has also introduced a new law permitting it to seize small sea-going craft. Tunisia has in addition been working closely with the Italians in order to patrol the coastline between Tunisia and Italy. This has been successful although there are fears that this has simply displaced illegal immigration activity to Libya and Algeria.

7.7. Cooperation in readmission/return of own nationals and of third-country nationals

Tunisia has signed up to readmission agreements with Italy and Austria and France. The Italian agreement was accompanied by a programme aimed at providing the Tunisian police with equipment and training. France has also had agreements with Tunisia on the entry and stay of Tunisian residents for labour purposes since 1988 (amended in 2000) and on professional training since 1982. Tunisia has indicated a willingness to consider a readmission agreement with the EU providing that this is agreed within the wider framework of the Association Agreement.

One member state has noted difficulties in asking the Tunisian authorities to identify and receive back nationals (in the absence of a readmission agreement) and has commented that it can take up to a year even where the person is documented.

The Tunisian government takes a very supportive attitude towards those Tunisian nationals who wish to return whether on an annual summer visit or more permanently. The Tunisian government has extended the social security framework so that it can cover Tunisian nationals abroad. The government also hosts a website aimed at providing practical help to Tunisians working overseas.

7.8. Cooperation on visa policy

The issuing of visas is the responsibility of the Aliens Police. The Tunisian government websites do not yet appear to publish information on visa requirements (which can be changed by notice from the consulate). Tourist visa requests appear to take in the region of 4-7 days to process except where approval of the Ministry of Interior is required.

7.9. Asylum system

Although as detailed above, Tunisia has ratified the main international legal instruments in the asylum field (e.g. the Geneva Convention and Protocol and the OAU convention) and has legislated to protect third country nationals from *refoulement*, there is no domestic legislative or administrative framework for processing protection claims. Indeed, since 1992 the UNHCR has decided all claims at the request of the Ministry for Foreign Affairs. The number of asylum seekers who claim asylum in Tunisia is still low (i.e. in the region of 100-200 people). The accommodation provided for those who are undergoing decisions on entry is very basic.

8. UKRAINE

8.1. Migratory Situation

Ukraine is both a source and a transit country for illegal migrants to the EU. However, it has to be noted that a considerable number of migrants from the Commonwealth of Independent States first enter the EU legally and only become illegal through overstaying visas.¹ Migrants to Ukraine come not only from neighbouring countries such as Russia, Moldova and Belarus but also from Asian countries such as China, Pakistan and Vietnam. Ukraine and the EU face similar problems in gathering accurate statistical data on illegal migration and the statistical data on the number of non-nationals residing illegally in Ukraine is very unclear. Ukraine is seeking to address this issue with the help of projects funded by the European Community under the TACIS programme.

8.2. Framework for EU cooperation with Ukraine

The legal basis for relations between the EU and Ukraine is the Partnership and Cooperation Agreement which was signed in 1994 and entered into force in 1998. A specific EU Action Plan on Justice and Home Affairs was signed with Ukraine in December 2001 defining the areas for cooperation (i.e. migration and asylum; border management and visas; organised crime; terrorism; judicial co-operation; law enforcement co-operation; and strengthening the judiciary, rule of law and good governance). Implementation of the Action Plan is monitored by a detailed Scoreboard. There is also an EU - Ukraine Sub-Committee which meets regularly to evaluate progress. The last such meeting took place in Brussels on 12 November 2004.

During 2004, consultations took place with Ukraine for a European Neighbourhood Policy (ENP) Action Plan. The Action Plan was adopted at a special Co-operation Council meeting in February 2005. Given the existence of the JHA Action Plan, the JHA chapter of the ENP Action Plan consists principally of a reference to the existing JHA Action Plan together with a reference to preparing for negotiations on visa facilitation.

JHA Ministerial Troikas are held annually with Ukraine; the most recent was on 25 February 2005.

¹ The SIS does not distinguish those third country nationals who enter the EU legally and overstay.

8.3. Progress/Development

Cooperation between the EU and Ukraine has intensified over the last few years on FSJ issues, especially following the signature of the EU-Ukraine JHA Action Plan. The Scoreboard is an effective tool for systematically monitoring and developing cooperation and progress on *inter alia* migration and asylum, border management and visa issues. The Scoreboard sets out a number of administrative, legal and operational weaknesses and appropriate actions to address them. Although Ukraine has achieved advanced progress in some sectors of asylum and migration, border management and trafficking in persons, much remains to be done. There is no definitive agreement with Belarus and Russia as regards border demarcation and demarcation with Moldova is still incomplete. Ukraine legally reformed its border guard service and transformed it – to a large extent – from a military organisation into a professional law enforcement agency. Further training is necessary for the border guards; there is also a need to update the training strategy to meet European best practice standards. Ukraine has implemented substantial reforms to its asylum system, has addressed a number of problems with its asylum processes and further reforms are in hand.

8.4. Current status

Concrete cooperation between the EU and Ukraine has been underway for some years on migration management. Ukraine has substantially benefited from TACIS assistance, which has been supporting, *inter alia*, the strengthening of the border management, asylum and migration regimes. Related already implemented or ongoing projects amount to approximately 34 M€, and projects worth 20.5 M€ are under development. The B7-667 budget line and the Aeneas programme will complement these efforts. All these supporting measures will contribute to the implementation of the EC-Ukraine readmission agreement once such agreement is signed and adopted. Ukraine actively participates in regional activities such as the Söderköping process and the Budapest process. It is anticipated that the new Government of Ukraine will further strengthen the overall process of integration with the EU.

8.5. Existing national legislation aimed at preventing and combating illegal migration and the participation in international instruments dealing with asylum and migration

Ukraine significantly improved its asylum legislation in 2001 by the introduction of a new law which contained provisions on safe third countries, the definition of a refugee; non-refoulement and reception conditions for unaccompanied asylum seeking children which aimed to be compliant with UNHCR best practice. However the law remained flawed in some areas. Ukraine has responded well to criticisms of its asylum legislation and has brought forward further amendments to the asylum legislation which are currently before the *Verkhovna Rada* (Parliament). Ukraine has also sought to address the very short time frames (3-5 days) for submitting protection applications through issuing administrative guidance to its officials. Ukraine has also been granting subsidiary protection in individual cases; around 3,000 persons benefit from subsidiary protection.

Ukraine has also tightened its legislation on illegal immigration and trafficking and introduced laws on the use of immigration cards for entry and exit at airports and border points. It is too early to say as yet whether these procedures are fully implemented at all border points at all times. Article 149 of the Criminal Code (trafficking in human

beings) is currently under revision in the *Verkhovna Rada* since the present version does not comply with the 2000 UN Convention Against Trans-national Organised Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

8.6. Efforts in migration management, border control and interception of illegal immigrants

Ukraine has started to modernise its border management system and to demilitarise the state border guard troops replacing them with a state border guard agency. This replacement required the introduction of 122 Ministerial Decrees and 25 Presidential Decrees. In parallel, the border guards have been undergoing training aimed, *inter alia* at improving detection rates of forged documents. According to the Administration of the State Border Guard Service, steps are also being taken to reduce the level of corruption. To what extent these steps are effective cannot be judged as yet.

Ukraine has also taken steps to improve border infrastructure and has constructed 80 border crossing points. Ukraine has successfully demarcated its border with the EU with support from TACIS. However, both its border with Belarus (demarcation not ratified by Belarus) and its border with Russia (demarcation not accepted by Russia) remain undemarcated. Ukraine has held trilateral discussions with Moldova, under the auspices of the Commission, on border issues and preparations are under way for a feasibility study of ways of improving management of this border. Some demarcation work has started on the Northern section of the border with Moldova.

The TACIS programme provides considerable support to Ukraine's reform efforts. The total cost of projects funded by TACIS relating to border management and asylum and migration management which are either already finished or still underway amount to approximately 34 M€. In addition, there are 20.5 M€ worth of projects in the pipeline.

Ukrainian law has been amended to allow detention of illegal immigrants for up to six months. Conditions in detention facilities were previously reported by the press to be poor. A centre exists in Mukachevo which is used to house refugees as well as women illegal migrants and the children of detained illegal migrants (this centre is also supported by TACIS, the project is implemented through UNHCR and NEEKA (the Foundation for Environment and Health Protection)). A detention centre for illegal migrants is in place in Pavchino (Zarkapathian region) and supported by a B7-667 project implemented through the Caritas Austria. The Ukrainian authorities have recognised that third country nationals can remain in detention for a longer period than may be desirable because the state lacks the necessary financial resources to send them home.

8.7. Cooperation in readmission/return of own nationals and of third-country nationals

Ukraine has signed readmission agreements with various European countries including Slovakia, Lithuania, Hungary and Poland. These agreements encompass third country nationals as well as own national readmissions. In practice, it seems that the number of third country nationals readmitted under these agreements is small as Ukraine has until now only been prepared to readmit a person if full proof was provided that a person passed through Ukrainian territory. Aeroplane tickets and boarding cards are not accepted as a proof by the Ukrainian authorities. Several Member States have however noted good cooperation on re-documentation and return of Ukrainian nationals residing illegally in the

territory of the Member States.

Ukraine is currently negotiating a readmission agreement with the European Community. Negotiations began in 2002 and considerable progress had been achieved until they were interrupted in December 2004. Negotiations were resumed in April 2005. Ukraine stressed during the JHA Sub-committee meetings and other occasions that the conclusion of a readmission agreement with the EU will depend upon synchronising all readmission agreements in the region. Ukraine has also expressed its wish to conclude a visa facilitation agreement with the European Community as soon as possible. The European Commission made it clear to Ukraine that whilst it supports the attempt to find regional solutions to migration challenges, it will not accept making entry into force of one agreement conditional on events outside the party's control or on the commencement of visa facilitation.

Ukraine has negotiated separate visa agreements with Hungary, Lithuania and Poland.

8.8. Cooperation on visa policy

The list of countries whose citizens require a visa to enter Ukraine is adequate. The citizens of only 14 countries benefit from a visa free regime, i.e. the countries of the Commonwealth of Independent States, Hungary, Lithuania and Poland. Although Ukraine has agreed with Belarus, Moldova and Russia that their citizens will require international passports in order to enter Ukraine from 1 January 2005, implementation of this agreement has been delayed.

Ukrainian travel documents and visas comply with international standards. It is envisaged that a TACIS project may support the introduction of biometrics into passports and visas.

Several rounds of visa dialogue have been held between the European Commission and Ukraine; Ukraine has expressed concern at long delays in issuing visas, the lack of member state consulates outside Kiev and difficulties faced by Ukrainian officials in obtaining visas. The ENP Action Plan notes that a constructive dialogue on visa facilitation between the EU and Ukraine will be established. In accordance with this provision, the Commission aims to present to the Council a draft mandate for negotiation of a visa facilitation agreement with Ukraine with a view to launching negotiations before the next EU-Ukraine summit. Progress in the ongoing negotiations on readmission will remain essential. Technical talks on visa facilitation were held with Ukraine in April 2005.

8.9. Asylum system

Ukraine has ratified the 1951 Geneva Convention on the Status of Refugees. The State Committee for Nationalities and Migration (SCNM) is responsible for asylum issues. There are currently around 2,500 refugees in Ukraine. UNHCR and the State Committee on Nationalities and Migration established a database of asylum seekers and refugees in 2003. Ukraine intends to develop an electronic finger print system, compatible with EURODAC. The Ukrainian State Budget 2004 provided for the creation of three new reception centres for asylum seekers at Kiev (Jagodin), Kharkiv and in the Zakarpathian region in addition to the centre already operating at Odessa. These centres are co-financed by the TACIS regional project mentioned below. On 1 March 2004, Ukraine adopted an Action Plan for the Integration of Refugees, covering education, training, acquisition of language skills and cultural integration.

TACIS supports, *inter alia*, a project “Strengthening the asylum systems of Ukraine and Moldova” (€1.1 million allocated for Ukraine). This project deals with: improving reception facilities; enhancing the computerized registration system; raising public awareness and improving legal assistance to refugees. A further project is underway to train officials dealing with refugees. Particular attention should be paid to reform of the State Committee for Nationalities and Migration.

9. TABLE OF PARTICIPATION IN INTERNATIONAL INSTRUMENTS

The General Affairs Council¹ also asked this report to address whether the third countries covered by this report participated in international instruments dealing with asylum and migration. The Council identified the following international instruments: 1951 Geneva Convention relating to the Status of Refugees and related Protocol on the Status of Refugees, New York 1967; the 1954 New York Convention relating to the Status of Stateless Persons; the 2000 Palermo Convention against Transnational Organised Crime and its Protocols (i) to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and (ii) Against the Smuggling of Migrants by Sea. Consideration has also been given to whether the countries concerned are signatories to the Chicago Convention (with regard to Annex 9 on return by air) and also to the SOLAS Convention on Maritime Safety of 1974 with related protocols of 1978 and 1988. Participation by the third countries in the relevant instruments is reflected in simple terms below.

¹ Meeting at Brussels, 8 December 2003, 15525/03 (Presse 356).

	Albania	China	Libya	Morocco	Russia	SAM	Tunisia	Ukraine
1951 Geneva Convention	X	X	-	X	X	X	X	X
1967 Protocol	X	X	-	X	X	X	X	X
1954 New York Convention on Statelessness	X	-	X	-	-	X	X	-
1961 UN Convention on the Reduction of Statelessness	X	-	X	-	-	-	X	-
Palermo Convention against Transnational Organised Crime 2000	X	X	X	X	X	X	X	X
Palermo: Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and Children	X	-	X	-	X	X	X	X
Palermo: Protocol against the smuggling of migrants by Sea	X	-	X	-	X	X	X	X
Annex 9 to the Chicago Convention on return by air	X	X	X	X	X	X	X	X
SOLAS Convention on Maritime Safety of 1974	X	X	X	X	X	X	X	X
SOLAS: Protocol 1988	-	X	-	-	X	-	X	-

