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COMMISSION STAFF WORKING PAPER

**Annual report on the development of a common policy on illegal immigration,
smuggling and trafficking of human beings, external borders, and the return of illegal
residents**

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1. INTRODUCTION

This first annual report which the Commission announced in its Communication of 3 June 2003¹ is an essential part of the **regular political monitoring process** in the field. This paper will contribute to the European Council of 5 November by providing an overview of progress made in the implementation of the three action plans on illegal immigration, external borders and return in the past year. The report will therefore review the main developments in each policy field since the Thessaloniki European Council focusing on the legislative, operational and financial measures which have been proposed or adopted. The report, however, also covers some earlier measures indicated in the three action plans adopted in 2002 with special attention to those which have not been fully implemented or simply did not correspond to the initial expectations of the Council.

An annual stocktaking exercise is inevitable, bearing in mind the high level of activity in terms of legislative instruments, action plans, strategies, conclusions and operational measures proposed or adopted. Stakeholders thus need a clear picture of what has been done in order to assess and reflect on further steps.

This report which is addressed to the Council and the European Parliament records a high number of measures that, because of their nature and the areas touched upon (e.g. external borders, visas, return, etc), are of interest to a wider public including the third country nationals themselves. Therefore this annual report also intends to respond to an increasing **transparency** requirement of civil society in these sensitive policy areas.

2. EXTERNAL BORDERS

In the field of **operational cooperation** following the Conclusions of the European Councils of June and October 2003, the Commission put forward a proposal for a Council Regulation establishing a European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the EU². This Agency is tasked with the mission of facilitating the Member States' implementation of Community legislation on external border control by co-ordinating the operational aspects of their co-operation in the management of the external borders. It will have no executive tasks for carrying out border checks. The Council reached an agreement on the main elements of the Commission proposal in November 2003 and the formal adoption is expected for October 2004. This Agency will become operational in 2005 and will take over a series of ongoing projects carried out by the Member States' border guard authorities, following the action plan on external borders. The Agency will also be responsible for the operational coordination and evaluation of the different pilot projects and joint operations, while political control will remain with the Council. The need for rapid response units

¹ Communication from the Commission to the European Parliament and the Council in view of the E.C. of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents – COM (2003) 323

² COM (2003) 687 final - 2003/0273 (CNS)

indicated in the external borders action plan has been adapted in the Agency's proposal by offering the possibility to render assistance to Member States confronted with circumstances requiring increased technical and operational assistance at the external borders.

From 2002 onwards the national authorities established specialised centres for developing a common training core curriculum, a common integrated risk analysis model and research and common use of surveillance equipment. Furthermore, they set up other specialised centres dealing with each type of border like the Centre for Land Borders, the Air Borders Centre and the two Sea Borders Centres for the West and the East parts of the Mediterranean Sea and the Atlantic Ocean. These different centres have been quite active in the past year involving all the Member States, including the new ones, with a few exceptions. Some Member States have detached national experts to these centres.

The Training Centre in Vienna drafted a Core Curriculum for border guard training as a common standard for first, second and mid-level officers' basic training and launched the operationalisation of this Core Curriculum and organised specific courses for the national border guards participating in the operations of the Focal Points at the Land Borders.

The Risk Analysis Centre in Helsinki developed the CIRAM (Common integrated risk analysis model) and has already applied it in various periodical reports on the risks and threats at external borders and in tailored analysis covering the new Member States and the illegal immigration from China.

The Centre for Land Borders in Berlin has organised a series of one/two week long Joint Operations at the German, Austrian, Italian, Greek and Slovenian external borders with some new and old Member States. The positive results of these activities reside mainly in the effort of establishing a common methodology of organising, evaluating and targeting these joint operations with the active involvement of the participating guest border guards. This Centre has also developed the concept and the organisation of Focal Points (multinational teams) at the Border Crossing Points from Finland to Slovenia.

The Air Borders Centre in Rome has set up a structure based on a few border guards, who organise the stock taking and the exchange of data and information about the number and nationalities of the illegal immigrants detected and dealt with at the Air Border Crossing Points of a number of European airports.

The "Programme of measures to combat illegal immigration across the maritime borders of the Member States of the European Union" adopted by the Council in November 2003³ has become a substantial part of the working programme of the Sea Borders Centres. The programme proposes measures that cover firstly the controls between ports in the EU area and from/to Third Countries' ports. Secondly, they design solutions for coastline and high sea surveillance and control and encourage the conclusion of agreements with the countries of origin or transit of the illegal immigrants. The execution of this programme which has been evaluated recently by

³ Council Document No 15445/03

the Council has been integrated into the work programme of all the existing centres. The Agency will incorporate all these centres and can create specialised branches for the different types of external borders (land, sea and air borders).

One important cooperation aspect which still needs to be explored concerns the nature of the tasks to be assigned to the guest border guards during the joint operations at the external borders. In this regard the Commission will be undertaking a study under the ARGO programme regarding the possibilities for Member States to confer executive powers to the guest border guards operating on their territories (ARGO study). This would in general benefit the exchange of staff between Member States at border crossing points and the creation of common units of border guards, both measures being indicated in the action plan on external borders. Other measures proposed in the action plan in the field of cooperation such as the creation of groups of experts for missions abroad or a permanent process of exchange and processing of data and information have not been followed up, although at least the second one could be addressed by the future Agency.

The Commission put forward several other proposals in the field of external borders. The most recent and important one is a proposal for a Regulation establishing a Community Code on the rules governing the movement of persons across borders⁴. Already indicated in the action plan, the Thessaloniki European Council urged the Commission to present, as soon as possible, proposals on the recast of the Common Manual. This proposal, however, goes beyond a mere recasting of the Common Manual, not only because it integrates all recent initiatives in the field of external border controls on persons, but above all because it covers the crossing of both external and internal borders by persons. The section on internal borders also includes the arrangements for temporarily reintroducing checks at the internal borders of the area of free movement, including the possibility of jointly and simultaneously reintroducing such checks in the event of an exceptionally serious cross-border threat and, in particular, a cross-border terrorist threat. This proposal will be followed by a new practical guide for border guards.

The proposal on the stamping of travel documents of third country nationals⁵ establishes an obligation for the Member State to systematically stamp the travel documents at the crossing of the external borders. It also lays down the conditions in which the absence of an entry stamp on a third country national's travel document may constitute a basis for the presumption - that could be rebutted - of illegal residence on the territory of the Member State, and limits the situations where a relaxation of checks can be justified due to exceptional and unforeseen circumstances.

The two proposals on the establishment of a regime of local border traffic at the external land borders of the Member States constitute the third legislative instrument⁶. The two proposals for Regulations deal with local border traffic i.e. the

⁴ COM(2004) 391 final 2004/0127 (CNS)

⁵ Council Regulation laying down the requirement for the competent authorities of the Member States to stamp systematically the travel documents of third-country nationals when they cross the external borders of the Member States and amending the convention implementing the Schengen agreement and the common manual to this end. COM (2003) 664 2003/0258 (CNS)

⁶ COM(2003) 502 final - 2003/0193 (CNS)- 2003/0194 (CNS)

crossing of borders by nationals of third countries, who live in border areas and regularly travel for legitimate reasons to a Member State of the Union without constituting a threat to security. One draft Regulation is designed to facilitate local movement at the land borders between the Member States and neighbouring third countries, whereas the second one extends the facilitation mechanism to the borders between two Member States that have not yet abolished checks on persons at their common borders. However, these proposals will be replaced by new ones to be adopted under the procedures applicable as of 1st May 2004 (i.e. co-decision – instead of consultation - will apply to one of the two new proposals). The new draft Regulations – which will take into account the result of the discussions held on the 2003 proposals - will be strengthened on the ‘security side’ in order to prevent possible abuses of the local border traffic regime by illegal immigrants as well as by criminals.

Regarding the **burden sharing** of the expenses needed for ensuring the control and surveillance of the external borders, the Agency will constitute a significant first step given that it can provide operational support (joint teams, mobile equipment etc) to Member States in need. The recently proposed amendment to the ARGO Programme legal basis⁷ will open the possibility to provide financial support to exclusive, albeit with EU added value, national projects in the area of external borders in order to contribute to integrated border management. These projects should address specific structural weaknesses at strategic border points to be identified in agreement with the Member States on the basis of objective criteria (risk assessment).

The ARGO programme, as well as the Agency, would therefore constitute short term burden sharing measures for the control of the external borders while a substantial and more adequate solution is being considered in connection with the post-2006 financial perspectives.

An important solidarity instrument, the so-called “Schengen Facility”, has been laid down in the Act of Accession with a view to enhancing the efforts of the new Member States in the immediate post-enlargement phase. The objective is to ensure that the standards of control and surveillance of the new Member States’ external borders fully conform with the Schengen provisions, and the aid is distributed in the form of a lump sum for seven of the new Member States in order to finance actions at the new external borders of the Union⁸. The Commission adopted a Decision on the management and monitoring of the Schengen Facility⁹ so that its implementation is in line with the requirements of the EU Financial Regulation, providing the new Member States with standards of good administrative practice to ensure sound financial management of this Facility.

⁷ Proposal for a Council Decision amending Decision No 2002/463/EC adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO programme) – COM (2004) 384 - 2004/0122 (CNS)

⁸ Cf. Article 35 of the Accession Treaties foresees a lump sum of € 969 millions for seven of the new Member States

⁹ C / 2004 / 248

3. VISA POLICY AND SECURE TRAVEL AND ID DOCUMENTS

Given the constant changes in migratory flows the Council underlined in its action plan of February 2002 that the common list of third countries whose nationals require visa or are exempt from that requirement must be re-examined annually. Since the last amendment of Regulation 539/2001¹⁰ adding Ecuador to the so-called “negative” list, there have not been new elements for assessing, according to the different criteria (including illegal immigration), whether a particular third country must be removed or added to this list. Political negotiations have been focused on new regimes for visa facilitation for certain third countries that do not affect the visa obligation itself and which will be treated in chapter 5 of the report (Relations with third countries).

The future cornerstone of **cooperation** in the visa domain will be the Visa Information System (VIS), which is a system for the exchange of visa data between Member States. The objectives of the VIS are in particular to improve the administration of the common visa policy and to contribute towards internal security, to facilitate checks of persons at the external borders and within the territory of the Member States and to fight against fraud. It will also facilitate the application of the Dublin II regulation and support the identification and return of illegal residents.

The Commission put forward a proposal for a first legal instrument for the VIS¹¹ aimed at allowing the development of the VIS with Community funding, while the national infrastructures will be developed or adapted by the Member States. This Decision was adopted by the Council in June¹² 2004 and constitutes a mandate to the Commission for developing the VIS. The Council in its conclusions on the VIS in February 2004, dealt with all the substantial issues: purposes, content of the data including biometrics, period of retention, access, architecture of the system, implementation, data protection etc. The Commission will take these political orientations into account for its proposal for a second legal instrument for the VIS which will be presented before the end of the year.

The political and financial relevance of the VIS has been reflected in the Commission’s legislative and work programme 2004¹³; it was decided that the establishment of the VIS should undergo an extended impact assessment. This assessment will be presented in the form of a report to be annexed to the proposal for the second legislative instrument. This report must analyse the risks inherent in the current situation, different problems to be addressed by the VIS, options or alternatives for this information system, its impact from different perspectives and trade-offs involved in its implementation. The report will thus allow the stakeholders (in particular, Commission, Council and European Parliament) to take these impacts into account when proposing and negotiating the legal instrument. A broader

¹⁰ Council Regulation (EC) No 453/2003 of 6 March 2003 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement *O.J. L 069 - 13/03/2003*

¹¹ COM (2004) 99 - 2004/0029 (CNS)

¹² 2004/512/EC: Council Decision of 8 June 2004 establishing the Visa Information System (VIS) *O.J.L 213, 15/06/2004*

¹³ COM (2003) 645 final of 29.10.2003

consultation process of the civil society and business sectors has been launched to ensure that the economical and social impact is also taken into account.

Regarding the technical aspects, the Council, in its conclusions of 5-6 June 2003, invited the Commission to continue its preparatory work on the development of the VIS on the basis of a centralised architecture, taking into account the option of a common technical platform with SIS (Schengen Information system) II. Following the Council conclusions on the VIS the Commission has activated this option in the SIS II public procurement procedure. The contract resulting from this public procurement will therefore cover the technical development and implementation of the SIS II and VIS, and should be awarded by the Commission in September 2004.

Beyond the pure visa domain the Commission also addressed the issue of security of travel documents, visas and residence permits for third country nationals launching several **legislative** proposals in the past year. The Council already underlined the importance of making these documents more reliable against forgery and fraudulent use in its action plan of February 2002, and the Commission presented two proposals amending the uniform format for visas¹⁴ and residence cards¹⁵ in 2003. The Commission's intention was to bring forward the final date for the implementation of the photograph in the uniform format for visas and residence permits, and to integrate biometric identifiers into visas and residence permits in a harmonised way, thus ensuring interoperability. These proposals also follow the conclusions of the Thessaloniki European Council, stating that a coherent approach was needed in the EU on biometric identifiers or biometric data which would result in harmonised solutions for documents for third country nationals, EU citizens' passports and information systems (VIS and SIS II). In this sense the choice of a biometric identifier consisting of a facial image as a primary identifier, in line with the recommendations of ICAO in order to ensure interoperability and the also mandatory use of fingerprints for making possible background checks, was of capital importance.

Regarding the integration of these new security standards a committee chaired by the Commission and composed of representatives of the Member States is preparing the technical specifications necessary for the implementation of biometrics into these two types of documents. The work has been divided between three groups dealing with contact-less chips, their integration in the visa sticker and the hardware necessary to enrol the biometrics in the chip and to read it at the border.

Also regarding document security, the Commission tabled a proposal on EU Passports¹⁶ that will set a harmonised high security standard for passports within a European Union of 25 Member States. This Regulation will require Member States to store biometric data on passports. Only the facial image has been chosen as a mandatory biometric identifier for passports in compliance with the ICAO recommendations; fingerprints can be added as an option at the discretion of Member

¹⁴ Proposal for a Council Regulation amending Regulation (EC) 1683/95 laying down a uniform format for visas – COM (2003) 558 final 2003/0217 (CNS)

¹⁵ Proposal for a Council Regulation amending Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals COM (2003) 558 final 2003/0218 (CNS)

¹⁶ Proposal for a Council Regulation on standards for security features and biometrics in EU citizens' passports – COM (2004) 116

States. Still in the field of passports and as part of the fight against terrorism agenda, the Commission proposed a third pillar instrument for enhancing the exchange of information on stolen and lost passports between Member States and Europol¹⁷.

In this same context there has also been progress regarding the FADO system (False and Authentic Documents) which will provide assistance to the Member States' authorities with responsibility for checking the authenticity of travel documents. The central part of the system could be ready by December 2004, although it will not be accessible to Member States and therefore not fully operational before mid-2005.

4. RETURN POLICY

In the context of **cooperation** in the field of return, the Council Directive on assistance in cases of transit for the purposes of removal by air¹⁸ adopted in November 2003 represented a first important legal milestone. The objective of this Directive is to create a set of rules aimed at facilitating the transit of persons subject to removal in an airport of a Member State other than the Member State which has adopted and implemented the removal decision. To that end, it defines under which conditions the transit operations may take place and indicates what measures of assistance the requested Member State should provide.

In order to reinforce the cooperation among Member States the Council adopted, in April 2004, a Decision on the organisation of joint flights for removals from the territory of two or more Member States of third-country nationals who are subject to individual removal orders¹⁹. This involves in particular the identification of common and specific tasks of the authorities responsible for organising or participating in these operations. Common Guidelines on security provisions for joint removals by air were annexed to this Council Decision²⁰. In order to give practical effect to this Decision, the Council noted that it will be necessary to share information among Member States about the organisation of joint removals. The European Border Management Agency (cf. point 2) will also provide assistance in the organisation of these flights.

The importance of the identification and documentation of third country nationals for the purpose of return has given rise to new discussions in the Council for the revision of the EU Travel letter (standard document for the return of third country nationals). Member States agreed that action is needed since a large number of third countries still do not accept this document in the context of return. In June 2004 the Council adopted conclusions on the EU Travel Document and invited the Commission, in consultation with the Member States, to undertake the re-examination of its legal basis, format and use in view of the preparation of future legislative instruments in

¹⁷ Proposal for a Council Common Position on the transfer of certain data to Interpol COM (2004) 427(01)

¹⁸ OJ L 321 , 06/12/2003

¹⁹ 2004/573/EC: Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders *OJ L 261 06/08/2004*

²⁰ Nevertheless, the European Parliament, when consulted on this Italian initiative of a Council Decision on joint flights, rejected it, stating, among other reasons, that the rights of the people returned were only listed in an annex to the proposal and not in the proposal itself.

this area. The action plan on return of November 2002 also pointed out the need for a handbook of best practices on obtaining travel documents and identifying third country nationals for the purposes of return, and even to establish country (of return) specific best practices. A general handbook on best practices was developed during the first semester of 2003 and the relevant working parties of the Council are preparing country specific best practices on the basis of a questionnaire submitted to the Member States. The action plan on return also referred to measures for joint training of return enforcement officials and networks of practitioners (national contact points) which so far have not been carried out.

The adoption of certain minimum standards on return procedures including expulsion and removal decisions as well as mutual recognition of other Member States' decisions was also highlighted in the action plan and the Commission envisages to table a proposal on return during the first half of 2005. The existing Directive²¹ on the mutual recognition of expulsion decisions was completed by a compensation mechanism²² for any financial imbalances which may result from the application of this Directive when removal cannot be executed at the expense of the third-country national(s) concerned. A number of Member States have not yet transposed this Directive (deadline 2 December 2002). So far the impact, i.e. cases of formal recognition, was almost inexistent. In this context it must be noted that no progress has been made on a common mechanism for exchanging information on return decisions. The Commission is reflecting on how to articulate this exchange of information preferably via the SIS.

Another important point discussed during the last year in the field of return was its **financial** dimension, in particular the possibilities of providing Community support for the return of third country nationals. Following the invitation made by the European Council in Thessaloniki and as a result of the initial reflections on the creation of a Community Return Programme, the Commission put forward the idea of launching preparatory actions for 2005 and 2006 for integrated return programmes. In June 2004 the Council adopted conclusions on the elements for establishing preparatory actions for a financial instrument for return management. Such actions shall aim in particular to facilitate operational co-operation between Member States and also to promote integrated return plans, which are conducive to effective and sustainable returns. For these preparatory actions the Commission will also draw from the experience gained in implementing the Afghanistan Return Plan adopted by the Council in November 2002 and which is currently being evaluated. In any event the implementation of such preparatory actions will necessarily also depend on the position of the European Parliament, as part of the Budgetary Authority, when adopting the EU budget for 2005.

²¹ Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals O.J. L 149 , 02/06/2001

²² 2004/191/EC: Council Decision setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals O J. L 060 , 27/02/2004

5. RELATIONS WITH THIRD COUNTRIES

The EU has since last year strengthened the **dialogue** with third partner countries on migration. This dialogue comprises different aspects such as the root causes of migration and the possibilities of addressing these in a comprehensive manner, the Community legal migration policy, the joint management of migration flows, including visa policy, border control, asylum, readmission and counteracting illegal migration and the integration of legal migrants living and working in the EU.

A standard clause covering the joint management of migration flows and compulsory readmission in the event of illegal immigration is being discussed in relation with any new (or revision of) cooperation or association agreements with third countries. Since June 2003 the Commission managed to include such clauses in the Agreements with Syria, the Andean Community and with the Central American Republics, and is currently negotiating it with MERCOSUR, the Gulf Co-operation Council and Albania.

Regarding the European Neighbourhood Policy (ENP), the Commission adopted a Strategy Paper in May 2004²³ that was endorsed by the June 2004 GAERC and the European Council. In September 2004²⁴, the Commission adopted its proposal for a draft Regulation establishing a European Neighbourhood and Partnership Instrument as a new instrument to provide Community assistance to ENP partner countries during the next Financial Perspective 2007-2013. Its Article 2 specifically mentions the issue of migration within the scope of assistance objectives.

After extensive consultation with the partner countries the Commission is now preparing adoption of a set of proposals for ENP Action Plans to be concluded with Ukraine, Moldova, Jordan, Israel, the Palestinian Authority, Tunisia, and Morocco. These political agreements between the European Union and the respective ENP partner countries establish a common agenda to pursue defined objectives through agreed actions according to a calendar extending over the next three to five years. Migration issues form a key part of the JHA-related objectives.

Progress was also made in the negotiation of Community Readmission Agreements. To date, negotiations have been successfully completed with Hong Kong, Macao, Sri Lanka and Albania. The agreement with Hong Kong²⁵ entered into force in March 2004 and the one with Macao²⁶ in June 2004. The agreement with Sri Lanka²⁷ is currently in the process of ratification and their entry into force is expected for early 2005. In its recent Communication of July 2004²⁸ on the priorities for the successful development of a common readmission policy the Commission indicated the

²³ COM(2004)373

²⁴ COM (2004) 628

²⁵ Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation (OJ L 17, 24.1.2004).

²⁶ Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation (O.J. L 143, 30.4.2004)

²⁷ SEC (2003) 255 final of March 2003.

²⁸ SEC (2004) 946 final (EU restricted)

obstacles or difficulties encountered in the negotiations, the incentives to be used and put forward recommendations for further negotiations.

It is interesting to note that, during negotiations, some third countries established a link between the conclusion of readmission agreements and visa facilitation regimes. For example in the case of Russia, in July 2004, the Commission has received negotiating directives from the Council in order to negotiate an agreement on visa facilitation; “back-to-back” negotiations on visa facilitation and readmission could start in autumn 2004. The case of China tends to be similar as this country has formally asked in May 2004 to have negotiations on a visa facilitation regime in parallel with negotiations on the readmission agreement proposed by the EU. This request is currently examined within the EU institutions. Nevertheless, it is worth recalling that an important agreement (Authorised Destination Status Agreement, ADS) has already been signed with China²⁹ in February 2004. In this agreement which entered into force in September 2004, the Chinese agreed for the first time to incorporate a readmission clause as a “quid pro quo” in what is, essentially, a visa facilitation agreement for group visits of Chinese tourists to the Community.

In the case of the US the ongoing policy dialogue and cooperation on JHA matters is more focused on the fight against terrorism than on illegal immigration. However, the impact that this shared security agenda has on areas such as border management, visa policy, travel documents, exchange of personal data and biometrics must also be underlined.

The new programme for financial and technical assistance to third countries in the areas of migration and asylum, programme called “Aeneas”, could also help in facilitating the preparation and implementation of Community readmission agreements already negotiated. Indeed, its financial envelope (250 million over 2004-2008) can partly be dedicated to this purpose. However, its objectives are much broader and concern five major areas corresponding to key aspects of the migration phenomenon: the development of immigration policies in third countries, the promotion of legal migration channels, international protection, combating illegal immigration, including human trafficking, and readmission and sustainable reintegration of returnees in their countries of origin.

The Commission has drawn up the annual work programmes 2004 and 2005 that have received a positive opinion from the “Aeneas” Management Committee. These work programmes will be soon adopted by the Commission so that the implementation of Aeneas can start before the end of 2004. During the consultation on the work programmes the Committee had also an exchange of views on a strategy paper drafted by the Commission services defining the thematic and geographic priorities for the first phase of the programme (2004 – 2006). It must be underlined that the Aeneas programme will complement and not duplicate the actions already financed by the EU in the area of migration management in third countries, mainly through major co-operation programmes such as TACIS, MEDA and CARDS.

²⁹ Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China, on visa and related issues concerning tourist groups from the People's Republic of China (ADS) OJ L 83 , 20/03/2004

Moreover, the Thessaloniki European Council and the aforementioned Council conclusions of May 2003 also recognised the importance of developing an evaluation mechanism to monitor relations with third countries regarding cooperation in the fight against illegal immigration. The aim of the mechanism is to monitor the migratory situation in the third countries concerned, and also their administrative and institutional capacity to manage asylum and migration, including the actions undertaken in order to tackle illegal migration. The results of the monitoring and assessment activity are to be presented in annual reports. The Commission plans to present its first annual report before the end of 2004.

6. FIGHT AGAINST SMUGGLING OF AND TRAFFICKING IN HUMAN BEINGS

The Commission continued to promote the fight against smuggling of and trafficking in human beings, taking into account the legal difference between these two crimes, and the different extent of exploitation and mistreatment that smuggled and trafficked persons face. There is in addition a practical problem of distinguishing smuggling from trafficking cases, and of identifying trafficked persons. Against this background, further progress should be made in the areas of policy development, legislation, financial support and operational incentives.

Looking more specifically at the situation and the needs of trafficked persons, in September 2003, the Commission's Experts Group on Trafficking in Human Beings started to work on a report that will mainly be based on the recommendations of the Brussels Declaration, and will advise the Commission with a view to further steps at EU level. The report is likely to be submitted to the Commission in November 2004. It is the intention of the Commission to issue a Communication on trafficking in human beings in 2005, taking the group's advice into account.

In the area of **legislation**, the most relevant acts aiming at harmonising national legislation have been or are being implemented by EU Member States. The deadline for the implementation of the Council Framework Decision on combating trafficking in human beings³⁰ has passed and the evaluation procedure has started. As regards smuggling of human beings, the Member States will have to implement before 5 December 2004 the Council Directive defining the facilitation of unauthorised entry, transit and residence³¹ and the Council Framework Decision on strengthening the penal framework to prevent the facilitation of unauthorised entry, transit and residence³².

The Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been subject to an action to facilitate illegal immigration, but who cooperate with the competent authorities, was adopted by the Council in April 2004³³. This directive harmonises the rules for obtaining a residence title. It also harmonises the status for victims, including assistance, access to the labour market and education. In all the Member States

³⁰ (2002/629/JHA) Council Framework Decision OJ L 203 1/8/2002

³¹ Council Directive 2002/90/EC O. J. L 328 , 05/12/2002

³² (2002/946/JHA) Council Framework Decision O.J. L 328 05/12/2002

³³ Council Directive 2004/81/EC O.J. L 261 6/8/2004

concerned³⁴, victims of trafficking will have access to at least these minimum benefits if they cooperate with the competent authorities against the traffickers. Furthermore, the Council Directive relating to compensation to crime victims³⁵ adopted in April 2004 will also be relevant for the situation of trafficked persons in EU Member States.

There is also a **financial** aspect in this policy area since projects aiming at preventing and combating trafficking in human beings have been and are financially supported by the AGIS framework programme on police and judicial cooperation in criminal matters. Like previous STOP-funded projects many of the AGIS projects related to human trafficking focus on prevention measures, awareness raising, training, support and protection for trafficked persons, networking among support organisations, and cooperation between law enforcement agencies.

At **operational** level, the Council has already noted in its action plan on illegal immigration that Europol should be given more powers to be able to improve and coordinate cooperation involving competent national authorities of EU Member States on counteracting trafficking in and smuggling of human beings. According to Article 2 (2) of the Europol Convention Europol shall already act to prevent and combat “illegal immigrant smuggling” and “trade in human beings.” The latter’s definition, in the annex to Article 2 is different from the one in the Council Framework Decision on combating trafficking in human beings³⁶. It is important to have one single definition at EU level and when the Europol Convention is next reviewed it is anticipated that the definition concerning trafficking in human beings will be brought into line with the relevant EU legislation. Similarly, the definition of “illegal immigrant smuggling” should be adapted to the relevant Council Directive.³⁷

Europol’s work programme includes an annual threat assessment on trafficking of human beings and intelligence bulletins sent to Member States on a bi-monthly basis. However, a more regular flow of information between Member States and Europol is needed. On the more operational side, Europol has been tasked by the Police Chiefs’ Task Force with preparing and implementing an action plan to combat trafficking in human beings in and from Bulgaria. Furthermore, Europol should be more involved in Joint Investigation Teams (multi-agency operational teams) at EU level.

³⁴ Denmark does not participate. Neither United Kingdom nor Ireland did opt in so far.

³⁵ Council Directive 2004/80/EC L 261 6/8/2004

³⁶ The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women And Children, supplementing the United Nations Convention Against Transnational Organised Crime also covers trafficking in human beings for the removal of organs, which is not covered by the Framework Decision. Currently, Europol is looking at this particular issue further to discussions in the Council regarding a Greek initiative in 2003 for a *Council Framework Decision concerning the prevention and control of trafficking in human organs and tissues*.

³⁷ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, OJ L 328, 5.12.2002, p. 17

7. SUPPORTING MEASURES

7.1. Transforming undeclared work into formal employment

The Council in its action plan of February 2002 stressed that in order to deal with the problem of illegal immigration comprehensively the issue of illegal employment of illegal residents should also be addressed. Illegal employments, but also undeclared work, constitute an important pull factor for illegal immigration. The EU action aiming at transforming undeclared work into formal employment is targeted at all people working in the informal economy of whom the illegal immigrants only constitute a part. This action is to be put in the framework of the European Employment Strategy (EES), which is a key component of the Lisbon Agenda, and in particular of the Employment Guidelines adopted in July 2003³⁸. Under the Guideline No 9 “Transform undeclared work into regular employment” Member States are committed to develop and implement broad actions and measures to eliminate undeclared work, by combining simplification of the business environment, removing disincentives and providing appropriate incentives in the tax and benefits system, improved law enforcement and the application of sanctions. Member States shall report in their National Action Plans (NAPs) on the measures taken.

Following the high-level discussion including an Informal Council in July 2003 initiated by the Italian Presidency in the second half of 2003 on ways to eliminate undeclared work, the Council adopted a Resolution on transforming undeclared work into formal employment in October 2003³⁹. In order to have a better understanding and to have reliable estimates on the size of the undeclared work in an enlarged Union, the Commission ordered a study which was completed in May 2004. The resulting final report “Undeclared work in an enlarged Union”⁴⁰ contains a description and analysis of undeclared work in the Member States, with special focus on the new Member States, although it does not give any estimate on the number of third country nationals active in the undeclared economy.

Within this context the specific issue of the illegal immigrants who due to their lack of papers cannot access the regular labour market was pointed out again in the Commission Communication “Study on the links between legal and illegal immigration”⁴¹. This problem that affects low- as well as high-skilled workers of third countries has an important social impact since it constitutes a barrier for a full integration of these people into the host societies.

7.2. Carriers liability

A Directive on the obligation of carriers to communicate passenger data was adopted by the Council in April 2004⁴² and will have to be transposed by no later than 24 months after the date of entry into force. The objectives pursued are to improve external border controls and to reinforce the means of combating illegal immigration.

³⁸ 2003/578/EC: Council Decision of 22 July 2003 on guidelines for the employment policies of the Member States O. J. L 197 , 05/08/2003

³⁹ 2003/C 260/01 O.J. C 260 29/10/2003

⁴⁰ http://europa.eu.int/comm/employment_social/employment_analysis/work_enlarg_en.htm

⁴¹ COM(2004) 412 final

⁴² Council Directive 2004/82/EC L 261 6/8/2004

The Directive places air carriers under the obligation to transmit, by the end of the check-in, relevant information on all passengers they are carrying to enter Member States' territory to national competent authorities, if requested to do so.

This Directive was one of the key points discussed at a meeting held in March 2004 in the framework of the Carriers' Liability Forum bringing together representatives from Member States, Transport Industry, European Institutions and Humanitarian Organisations. The Forum in general continued to prove its usefulness as gathering place for exchange of information and consultation on newly introduced rules, practices, case law and policy developments in the EU and its Member States relating to carriers liability. The representatives of the airline industry regretted that the aforementioned directive was not subject to formal stakeholders' consultation.

7.3. Exchange of information and statistics

The Commission tabled a proposal in November 2003 for a Council Decision establishing a secure web-based Information and Co-ordination Network for Member States' Migration Management Services⁴³ aiming to provide for the rapid exchange of information via a comprehensive, modern and secure web-site. Member States have already reached political agreement on the proposal and the formal adoption is foreseen by the end of the year. According to the relevant provisions of the Decision, the Commission will adopt the detailed rules regarding the access, use, storage and transmission of information as well as regarding other technical aspects. The Commission shall also provide for access to bodies governed by public law established under the Treaties establishing the European Communities or established in the framework of the European Union involved in fights against illegal immigration (i.e. Europol) by concluding an agreement with them. This secure web-site will contain different types of strategic, tactical and operational information regarding illegal migration. It could also help Member States in their efforts to increase co-operation and co-ordination of joint return operations.

This Network would also be a useful tool for the enhancement of co-operation among immigration liaison officers posted abroad by the Member States provided for by Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officers (ILOs) network⁴⁴. This Regulation provides the necessary framework for setting up real co-operation networks and coordinating efforts of the Member States in the fight against illegal immigration in third countries or regions. It constitutes a basis for harmonising the tasks of the ILOs as members of the network in particular regarding the collection and exchange of information among them. Other important aspect is the cooperation between the ILOs and the competent authorities in the host country or any other appropriate organisation within that country. Finally ILOs can also render assistance in establishing the identity of third country nationals and facilitating their return to their country of origin. Progress has been made in the development of a Common Manual for ILOs and the Commission shall establish in the following months a model for a semester report that they have to submit regarding their activities and the situation regarding illegal immigration in the host

⁴³ COM(2003) 727 final 2003/0284 (CNS)

⁴⁴ Council Regulation (EC) No 377/2004 O.J. L 064, 02/03/2004

country. This reporting exercise shall also contribute to the third countries' monitoring mechanism referred to in chapter 5.

The Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI) continued to assist the Member States in exchanging information on illegal immigration and unlawful residence, combating smuggling of human beings, better detection of false or falsified travel documents and in improving return practices. The CIREFI provided for a forum of information exchange on illegal immigration in the framework of the Transatlantic dialogue and for the same purpose with the Candidate Countries (Bulgaria, Romania, Turkey) and countries of the Stabilisation and Association Process.

On the basis of the Action Plan for the collection and analysis of Community Statistics in the field of migration the Commission has continued to develop and improve migration statistics and their analysis. In particular, the Commission has published the first annual report on asylum and migration statistics which disclosed to the public data on enforcement measures against illegal migration⁴⁵. The statistics on such enforcement measures (notably refusals at the frontier, apprehensions of illegally present non-EU citizens, and returns) are collected on a monthly basis from Ministries of Interior and Justice and related national agencies. In accordance with the abovementioned Action Plan, it is now possible for annual aggregates of these enforcement data to be published. An ongoing concern is the poor supply of these data by some Member States that reduces the usefulness of the statistics and restricts the extent to which comparisons can be made between countries and over time; the Commission will continue to raise this issue with data suppliers. Another of the main aims of the Action Plan was to develop draft legislation. The Commission has consulted data suppliers and data users, Ministries and Statistical Offices on draft legislation and it is expected that a proposal for a Regulation on migration, asylum and return statistics will be adopted by the Commission later in 2004. This will set out the responsibilities of the Commission and national authorities to supply, process and release these statistics. Through subsequent implementing arrangements the Commission will address the technical issues on the data on enforcement measures, such as the definitions used and the outputs to be delivered by the Commission.

7.4. Measures in the field of research

7.4.1. Research to better understand the socio-economic roots of illegal migration

The need for a sound basis for analysis has led the Commission to reinforce the collection of statistics and to support social and economic research in these fields. Research, in a context of historical and contemporary legal and illegal migration streams into Europe, has been developed under the 4th and 5th Framework Programmes for research, technological development and demonstration of the European Commission.

The research addresses trends in the socio-economic context, as well as issues raised by migrant groups themselves with respect to employment (whether their occupation is formal or informal), racism, civil rights, and participation. The various studies

⁴⁵ http://europa.eu.int/comm/justice_home/doc_centre/asylum/statistical/doc_annual_report_2001_en.htm

which have been undertaken so far illustrate the different historical experience of migration, and the variations in time, space and locality in different Member States. Priority will be given to a wider range of issues concerning migration flows (trends, nature, origin, scale, “push and pull factors” in the countries of origin, and in the recipient countries) under the 6th Framework Programme⁴⁶.

7.4.2. *Research and Security*

In February 2004, the Commission published a Communication and a Decision⁴⁷ on the implementation of a Preparatory Action on the enhancement of the European industrial potential in the field of security research. This Preparatory Action will span three years (2004-2006) with a planned budget of approx. 65 M€. The Preparatory Action aims at contributing to the security of the European citizen whilst reinforcing the industrial basis of the EU security industry. Its immediate goal is to test the ground for the establishment of a full European Security Research Programme from 2007 onwards within the 7th RTD Framework Programme.

Activities aimed at improving “situation awareness” are within the scope of this Preparatory Action, which could provide therefore support to projects that demonstrate concepts, technologies and capabilities to enhance surveillance of land and sea borders. In the context of this Preparatory Action, a ‘Workshop on Research and Technology Challenges in the Field of Border Control’ is being organised by the Commission in Ljubljana in October 2004.

8. CONCLUSIONS

The report shows that all actors, Community institutions and Member States, have actively pursued the objectives laid down in the relevant Communications and Council action plans and conclusions. There are, however, different degrees of progress in the fields covered by the report.

The field of **external borders** has been the most prolific during the last year. The legislative instruments proposed by the Commission for the revision of the Schengen Acquis on the control of external borders are intended to consolidate and make more coherent the existing legal framework. This process, which will result in clearer rules and better implementation, also presents the advantage of associating for the first time fully the European Parliament with the development of this important part of the Schengen acquis that had its origin in a purely intergovernmental framework. The operational cooperation channelled through the numerous specialised centres, joint operations and pilot projects, is aimed at promoting mutual understanding and trust, and the exchange of good practices and information between national services. This cooperation is also raising the awareness about the risks and threats at the common external borders of the EU. It must be noted that the results of these activities are sometimes not as positive as expected, however, they constitute a first step in view of a much more effective common action under the single roof of the future external

⁴⁶ Decision No 1513/2002/EC (...) concerning the sixth framework programme of the EC for research, technological development and demonstration activities, contributing to the creation of the European research area and to innovation (2002-2006)

⁴⁷ Communication COM (2004) 72 and Decision (2004/213/EC).

borders' Agency. This Agency will ensure the operational coordination and effective control of the activities that are currently lacking.

In the field of **return of third country nationals** there is still much work to be done. Thus, there are no harmonised conditions and procedures for the return of people staying illegally in the EU. This lack of common rules necessarily has a negative impact on the possibilities of cooperation and funding at Community level. The priority must therefore be that the EU equips itself with common rules that will also increase the mutual trust and facilitate the recognition of other Member States' return decisions. Another condition sine qua non for making possible the mutual recognition and an effective cooperation among Member States is a systematic exchange of information regarding expulsion and removal decisions. The future Commission's proposals on return and SIS II will take into account these requirements and examine the possibility of creating new categories of alerts or use the existing categories for new purposes.

However, the success of the return policy also depends heavily on the **cooperation of third countries**, which is directly reflected in the progress of the readmission agreements. The readmission agreements as well as the entire migration dialogue with third countries is characterised by the need for strong coordination of the different EU policies and institutional actors that contribute to the shaping of the external relations of the EU. Such coordination leads to the necessary bundling of forces and render the EU action vis-à-vis the third countries more coherent and efficient. Thus, important progress was made in the establishment of a dialogue with third countries (neighbours and a number of countries of origin) when it comes to legal and illegal migration, also providing support for many projects aimed at better managing of migration by and in these countries. The recent Communications on readmission (cf. point 5) and links between legal and illegal immigration (cf. point 7.1) indicated some new actions that could be explored in this field.

The coordination of different policies is key to making progress regarding the problem of **undeclared work** which requires a mix of policies in the socio-economic field. The existing studies in the field and future national reports (NAPs) will help to assess the need for further action concerning undeclared work carried out by third country nationals staying illegally in the EU.

The recent developments regarding **visa policy, residence permits and passports** have been strongly influenced by the EU security agenda, in particular the fight against terrorism. The same applies for technological developments such as the creation or revision of large-scale IT systems for exchanging personal data and the use of biometrics. The other important objectives such as effective management of travellers, asylum seekers or migrants' flows must also be highlighted. Ultimately the development and use of these powerful technologies for the collection and exchange of personal data must be compliant with fundamental rights including data protection rules. The concerns raised in this context by the European Parliament and other organisations representing civil society must be addressed by performing careful assessment of the proportionality of the measures envisaged, and establishing clear and solid legal frameworks in order to guarantee the data subjects' rights.

The exchange of information (no personal data) **and statistics** will be supported by new instruments establishing a more formal framework. The objective is to increase

the commitment of the Member States to deliver reliable and comparable data in a timely manner that should allow stakeholders to get a clearer picture of the illegal immigration in the EU.

In the **fight against the smuggling of and trafficking in human beings** the EU will continue to follow a multi-disciplinary approach covering the prevention of these crimes, the protection of the victims and the prosecution and punishment of the perpetrators. To that end the legislation adopted has to be properly implemented and evaluated. Law enforcement agencies and the judiciary should consider the crimes concerned as a priority and adequate personal and financial resources should be allocated. Specific attention must be paid to trafficking in children and related forms of exploitation.

The implementation of these policies and the cooperation between Member States should be guided by a **solidarity principle** that must be materialised in mechanisms that can guarantee fair burden sharing. The commitments made by the Commission in its Communication of June 2003 were respected and a total of € 94 millions are currently proposed or programmed until 2006 for the external borders, visa information system and return programme. Furthermore the Commission, in its recent Communication of July 2004 on the new Financial Perspectives (2007-2013)⁴⁸, has already referred to the management of external borders as one of the priority areas, and favours the idea of a framework programme that would also cover asylum and migration management including the fight against illegal immigration and return.

⁴⁸ COM (2004) 487

Measures proposed in the three Council action plans on illegal immigration, external borders and return

| Field | Measure | Reference doc.⁴⁹ |
|-------------------------------------|---|------------------------------------|
| Visa policy | Review of the list of third countries whose nationals must be in possession of visas when crossing the external borders | APII (25) |
| Visa / Documents | Improving the security of the visa and of the residence permit based on new technologies | AP II (27) |
| Visa / Documents | Encourage and support third countries in their efforts to render travel documents more secure (new) | AP II (26) |
| Visa / consular coop. | Creation of common administrative structures or joint visa offices for the issuance of visas | AP II (33) |
| Visa | Development of a visa information system | AP II (40) |
| Statistics | Collection of statistics regarding migration including illegal immigration | AP II (43) |
| Info, intelligence analysis | European system for exchanging information on asylum, migration and countries of origin (feasibility study) | AP II (46) |
| Info, intelligence analysis | Further development of the Early Warning System | AP II (49) |
| Pre-frontiers/ info exchange/ coop. | Network of Immigration Liaison Officers (ILO): improving cooperation | AP II (51-52) |
| Third countries | Financial and technical support for actions in third countries | AP II (55) |

⁴⁹ Comprehensive plan to combat illegal immigration and trafficking of human beings in the EU (APII) -Council Document 6621/1/02 - Plan for the management of the external borders of the Member States of the EU (APF) Council Document 10019/02 Return Action Programme on Return (APR) .Council Document 14673/02

| Field | Measure | Reference doc. ⁴⁹ |
|--------------------------------|--|-------------------------------------|
| Third countries | Information campaigns and awareness raising in the countries of origin | AP II (56-57) |
| Border management | Feasibility study on improving sea border controls | AP II (63) |
| Border management/ Cooperation | The setting up of an external borders practitioners common unit | APF (44 – 50) |
| Border management/ Cooperation | National contact points for border management | APF (51) |
| Border management/ Cooperation | Setting up of a network structure (series of ad-hoc operational centres) | APF (53-54) |
| Border management/ Cooperation | Joint operations at the external borders | APF (57-59) |
| Border management/ Cooperation | Pilot projects | APF (61-66) |
| Border management/ Cooperation | Network of centres for forged documents (FADO) | APF (70) |
| Border management/ Cooperation | Personnel exchange between border checking points | APF (73) |
| Border management/ Cooperation | Quality management (compilation of common standards) = catalogue of best practices | APF (81) |
| Border management/ Cooperation | A permanent process of data and information exchange and processing (use of different tools: visa network, SIS, secure Intranet, etc.) | APF (84-85) |
| Border management/ Cooperation | Group of experts for missions abroad | APF (88) |
| Border management/ Cooperation | Rapid response unit (crisis situations) | APF (90) |
| Border management/ Cooperation | Units for common border guard and customs cooperation (e.g. study on status and powers of the guest border officers in other MS). | APF (91-93) |
| Border management/ Cooperation | Common integrated risk analysis | APF (101) |

| Field | Measure | Reference doc. ⁴⁹ |
|---------------------------------|---|-------------------------------------|
| Border management/ Cooperation | A common syllabus for the training of border guard / A common core curriculum | APF (103 – 104) |
| Border management/ Cooperation | The common use of mobile surveillance equipment | APF (105) |
| Border management/ Cooperation | The development of new technologies to facilitate checks at BCP and surveillance between BCP | APF (106-108) |
| Border management | Produce a practical handbook usable by border guards and available in electronic form | APF (113-114) |
| Border management / legislation | Recast the Common Manual on checks at the external borders | APF (110) |
| Border management / legislation | Introduce into the Common Manual certain “best practices” | APF (111) |
| Border management / legislation | Identify principles and adopt common measures on “local border traffic” | APF (113) |
| Border management/ Solidarity | Assessment of options concerning burden-sharing between the Member States and the Union | APF (115-117) |
| Return / cooperation | Rational repatriation operations (joint return operations) | APF (74) |
| Return / statistics / analysis | Assessment of exchange of statistics | APR (21) |
| Return / cooperation | Network of national contact points including meetings among Member States’ return practitioners at operational level | APR (22-23) |
| Return / cooperation | Handbook of best practices (e.g. on identification and documentation of third country nationals) + best practices for return to specific regions or countries | APR (24-29) |
| Return / cooperation | Joint training of return enforcement officials | APR (30-33) |
| Return / cooperation | Joint return operations (+ technical support facility for exchange of information) | APR (36-39) |
| Return / legislation | Set up minimum standards on return procedures | APR (40-43) |

| Field | Measure | Reference doc. ⁴⁹ |
|---------------------------------------|--|-------------------------------------|
| Return / cooperation | Improvement of possibilities for transit | APR (46-48) |
| Return / legislation | Minimum standards on expulsion decisions | APR (49-51) |
| Return / legislation | Legal framework for the mutual recognition of return decisions (financial compensation, exchange of information) | APR (52) |
| Return/third countries / solidarity | Country specific return programmes | APR (55-59) |
| Return / cooperation / solidarity | Financial resources for return | APR (60) |
| Return / third countries | Enhance co-operation with third countries: include clauses on management of migratory flows and compulsory readmission in EC cooperation or association agreements | APR (61-62) |
| Return / third countries | Community Readmission agreements | APR (64-66) |
| Organised crime / cooperation | Coordinated criminal investigation related to cross-border crime and linked to illegal immigration | APF (78) |
| Organised crime / cooperation | Measures to give Europol more operative powers to enable it to work together with national authorities on the trafficking or smuggling of human beings. | APII (84) |
| Organised crime / legislation | Put into practice the new legal instruments aimed at combating the smuggling and trafficking of human beings | AP II (86-89) |
| Organised crime / legislation | Determination of the possibility of granting to the victims of trafficking of human beings certain benefits or special assistance | AP II (90-91) |
| Illegal employment | Conduct a study of the relevant laws of the Member States | AP II (Annex) |
| Illegal employment | Proposal for harmonising the way in which illegal employment is dealt with at European level | AP II (Annex) |
| Criminal activities / Financials gain | Analysis of the possibility of adopting provisions on confiscation of financial gains and on confiscation of | AP II (95) |

| Field | Measure | Reference doc. ⁴⁹ |
|--------------------|--|------------------------------|
| | means, in particular means of transport, used in criminal activities relating to illegal immigration | |
| Carriers liability | Follow-up of the directive (transposition and implementation) | AP II (97) |