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**COMMUNICATION FROM THE COMMISSION  
TO THE EUROPEAN PARLIAMENT AND THE COUNCIL  
IN VIEW OF THE EUROPEAN COUNCIL 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**

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## 1. INTRODUCTION

As long ago as 1994, the Commission stressed that the management of migration flows was one of three essential elements, together with cooperation with countries of origin and the integration of legal immigrants, for a comprehensive and therefore effective immigration policy. The Tampere European Council confirmed this approach and added the separate but complementary objective of establishing a common asylum system.

At Laeken and in Seville, the European Council re-emphasised the importance of measures to combat illegal immigration. In Seville, in particular, it launched a number of detailed initiatives, including operational measures, aimed at implementing this priority quickly. 2002 was certainly particularly productive in terms of political programming as the Council adopted three successive actions plans, each time on the basis of communications from the Commission, to form a comprehensive and coherent set of measures.

The European Council in Thessaloniki provides an opportunity to carry out a preliminary assessment of this work. In any case, this assessment could only be very preliminary as it would be presumptuous to try to draw final conclusions about the effectiveness of the common policy after so short a time. Nevertheless, it is advisable for the Heads of State and Government to review the progress made in the last few months in order to make a political evaluation and draw up guidelines as to the priorities to be pursued before the completion of the overall programme defined at Tampere.

This communication is the Commission's contribution to the exercise. It is not by any means an exhaustive inventory of the work carried out so far - such an inventory can be found in the "road map" drawn up by the Danish Presidency and recently updated by the Greek Presidency. With particular regard to operational cooperation in the management of external frontiers, the Commission also refers to the special report produced by the Presidency, on which it was able to collaborate.

As part of the framework gradually built up in its three communications on measures to combat illegal immigration, integrated management of external borders and the repatriation of illegal immigrants, the Commission aims to highlight the consistency of this constantly evolving policy and create the basis for a follow-up process which will be given shape with the drafting of an annual report.

In particular, a limited number of initiatives or questions will be tackled which, in the Commission's view, also constitute essential elements for the effectiveness of common action, be it in the strengthening of operational cooperation, mainly through the introduction of large information processing systems, the mobilisation of financial resources in pursuit of a common effort, or the adoption and implementation of legislative acts. The Commission is also keen to emphasise the importance of other measures in the field of judicial and criminal matters, social affairs and external relations.

The Heads of State and Government meeting in Thessaloniki will also have their attention drawn to two other dossiers concerned with important aspects of the integrated approach called for at Tampere, namely the international dimension of the asylum system and the integration of immigrants. In response to a request from the European Council, specific communications have also been prepared for this purpose. The Commission welcomes this opening up of the agenda and hopes that the balanced vision which has guided the Union so far and which must continue to inspire it in the context of the new constitutional treaty, will be confirmed; at the same time it repeats its hope that the proposals still before the Council will be adopted quickly.

## 2. POLICY DEVELOPMENTS

### 2.1. Visa Policy

The Community visa policy, which was set up as one of the measures accompanying the removal of controls of persons at the internal borders, can significantly contribute to the prevention of illegal immigration. Illegal immigration represents one of the basic criteria for the determination of those third countries whose nationals are subject to the visa requirement, besides other criteria such as public policy and security, EU's external relations, regional coherence and reciprocity, listed in Council Regulation (EC) N° 539/2001.

**The review of the list of third countries whose nationals must be in possession of visas** was one of the priorities indicated in the Seville European Council. The Commission proposal for amending the list of third countries in order to transfer Ecuador to the *negative* list was endorsed and adopted by the Council in March 2003. The amendment of Regulation No 539/2001 demonstrates the contribution of the common visa policy to the fight against illegal immigration. A correct and timely implementation on the ground by all Member States will serve that purpose.

The European Councils of Laeken and Seville as well as the comprehensive plan to combat illegal immigration and trafficking of human beings (hereinafter called "Santiago Action Plan") have given high priority to the establishment of a common **Visa Information System (VIS)**. The Council adopted in June 2002 the guidelines for the introduction of such a system and invited the Commission to carry out a feasibility study following the guidelines adopted. The objectives of the VIS as set out in the Council guidelines are in particular to facilitate the fight against fraud, to contribute to the prevention of "visa shopping", to improve visa consultation, to facilitate identifications for the application of the Dublin II regulation and return procedures, to improve the administration of the common visa policy and to contribute towards internal security and combating terrorism. The VIS should comprise a Central Visa Information System (C-VIS) and a National Visa Information System (N-VIS) in each Member State. The feasibility study is now available, and provides an analysis of the technical and financial aspects of the VIS.

The importance of biometrics for the overall efficiency of the system must be underlined. The study has assessed three options, which can be envisaged as biometric identifiers for the time being: iris scanning, facial recognition and fingerprints and recommends the latter as primary biometric identifier for identification purposes. Fingerprint technology would provide the required accuracy to identify individuals and fingerprint databases would still be used for the next decades even if the biometric technology changes. A second biometric identifier such as facial recognition could be implemented to improve the accuracy. In any case, the use of

biometrics at such an unprecedented scale will bear a significant impact on the system, both in technical and financial terms.

The estimates set out in the feasibility study for the investments costs of the central system, the C-VIS, and for all the N-VIS, including their communication infrastructure, range from about 130 million to nearly 200 million Euros, depending on which basic architecture and which functionalities are chosen.. These costs, of which the development and operation of the “biometrics” module represents a high proportion, could however be spread over a period of ten to twelve years, depending on the implementation and how quickly consular posts are connected to the VIS. However, the VIS is not an issue for the Community budget alone. The main financial burden concerns the national parts of the VIS, and in particular the equipment of the Member States’ consular posts, world-wide connections, shipping and training.

Given the important financial consequences of the VIS project, the study has focused on synergies and recommends the technical integration of SIS II (second generation of the Schengen information system) and VIS in its central part, an option that would generate important budgetary savings. However, the political agendas of SIS II and VIS to date differ substantially: while for the new SIS there has already been a decision on the Community financing and responsibility for the development of the system with a set of core functionalities agreed to start implementation, VIS is starting from scratch. The Commission has assigned a high priority to both projects but in particular to SIS which underpins crucial aspects of Schengen co-operation and the new version of which must become operational in 2006 when the accession countries are expected to be ready to apply the Schengen acquis fully.

The further development of the VIS will depend upon the strategic orientations to be decided by the Council, in particular with regard to the following issues:

- the development of the VIS , and if so, the choice of the option and technical solution for the architecture of the system,
- confirmation of the general approach given in the Council guidelines on which the feasibility study is based,
- choice of the biometric identifier or identifiers to be stored and processed in the system.

According to that political orientations, the Commission will take the necessary steps for implementing the system in technical, legal and financial terms.

In a broader context, the verification and identification of travellers and the vulnerability of current travel documents have been on the agenda of the EU and other fora such as ICAO (International Civil Aviation Organisation), G8, IGC and the EU/US transatlantic relation. Two Commission proposals dealing respectively with the **uniform format for visas and for residence permits for third country nationals** were designed to make these documents more secure and to establish a reliable link between the document issued and its holder. The Council adopted both proposals in the first half of 2002 and the Committee established by Regulation 1683/95 on a uniform format for visas assisted the Commission in developing further technical specifications for the uniform format of visas. In relation to the two new instruments the additional technical specifications were adopted by the Commission in June and August 2002.

The possibility of adding **biometric identifiers** for enhancing the security of visas and residence permits even further and to facilitate the verification and identification of the person has been raised in the Council and would imply an amendment of the aforementioned instruments, which the Commission will present in the near future. At the same time it would be appropriate to advance the implementation date (mid 2007) set out in those instruments for the obligatory integration of the photograph in the visa and residence permit. The Commission will propose harmonised and interoperable solutions regarding the use of biometrics in order to obtain the maximum added value taking into account the results of the VIS (Visa information system) feasibility study and the ICAO recommendations. However, the biometrics issue also has an impact on passports given the new US regulations requiring further security features for passports of nationals benefiting from the US visa waiver programme. The Commission will present proposals on harmonised security features including biometrics in EU passports that would not only support their acceptance vis-à-vis third countries but also facilitate their controls by the authorities and make them less vulnerable to fraud. The Commission therefore underlines the urgency of having definitive international standards in this field in order to facilitate stakeholders' decisions on ongoing projects that envisage biometric identifiers given also the large investments they may represent.

The **creation of common administrative structures for the establishment of common EU visa issuing offices** was another of the points addressed by the Santiago action plan in its visa chapter. As evidenced by the abortive experience in Pristina, there is no progress to be noted in this field although this is a crucial issue when it comes to reinforcing consular co-operation and harmonising the examination of visa applications. Common visa issuing offices can offer important effects of synergy in terms of technical equipment and personnel, in particular if the Council decides to set-up and deploy on a global scale the visa information system.

## **2.2. Border Control Policy: Towards the development of a Common and Integrated Policy for the management of the external borders.**

A common and integrated policy for the management of the external borders, which contributes inter alia to the fight against illegal immigration, was the overall ambition of the Commission's Communication of May 2002 on integrated management of the external borders. The Council's Plan for the management of the external borders<sup>1</sup> which was adopted in June 2002, endorsed the Commission's approach and ambitious objectives. It established a programme of actions, initiatives and studies to be executed either by the Member States or by the Commission. The Seville European Council underlined this Plan and assigned to the Commission some additional tasks such as the burden sharing study.

**Member States' pilot projects and joint operations** are implemented through co-ordinating centres for punctual joint operations on the various kinds of borders or by establishing European definitions for risk assessment and for the training of border guards; drafting respectively common rules for risk analysis and for the core curriculum for training. The Commission has participated actively in these operational and strategic projects, whose content and objectives may have an extremely significant impact on the common objective of ensuring an equivalent level of control and surveillance at the European external borders<sup>1</sup>.

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<sup>1</sup> The projects monitored have been the Berlin Centre for joint operations on the land borders, the Finnish project on the CIRAM –Common Integrated Risk Analysis Model- and the Austrian project for a Common Core Curriculum for national border guards training

The evaluation of these joint operations and projects, which have involved nearly all the member States and some of the future ones, is based on a two-pronged analysis. Firstly on immediate results in terms of common practices and experiences gained from the co-operation and secondly on long term benefits for developing improved, more effective security standards applied to the checks and surveillance tasks at the external borders. In this sense the final judgement is positive overall since both the Member States and the accession countries have widely and actively participated in the projects providing their various methodologies and experiences and being ready to meet and assume those of the other Member States. The objective of improving mutual trust and knowledge in a very sensitive area has been achieved. As a logical consequence, the gradual building of common practices in the management of the checks and surveillance activities at the external borders has also been achieved. Finally, the two horizontal projects on the common model for risk analysis and the training curriculum have in particular promoted a common awareness of the need to ensure an equivalent level of external border security, removing the weak points and widening the strong ones.

However, the Commission's **evaluation of the operational co-ordination and co-operation** between Member States has to take into account the statement contained in annex III of the Council's Plan for the management of the external borders. Following this statement all the operational initiatives are to be placed in the institutional framework of the EU with due regard for the co-ordinating role of the "Common Unit of external border practitioners". Moreover, these initiatives are to be in conformity with the general objective of the Community of ensuring everywhere an equivalent level of control and surveillance at the external borders. This Common Unit, with extensive tasks for the overall management of the European common policy for the external borders, is intended to verify the content, approve and control the implementation of the joint operations and pilot projects following the Council's plan.

**The Common Unit for External Borders Practitioners** meets in the Council under the aegis of the SCIFA (Strategic Committee of the Council for Immigration, Frontiers and Asylum) in the so-called SCIFA+ formation. This institutional status raises questions about the effectiveness of SCIFA + when carrying out some of the important tasks which have been conferred on the Common Unit. Its strategic and operational tasks are at the core of the common policy for the management of the external borders. They imply the execution of the common and integrated risk assessment, the co-ordination of joint operational actions, the strategic management ensuring a convergence among the national staff and equipment policies and risk assessment inspections in critical cases at the external borders. A much more operational body should perform the daily operational management of these activities requiring a permanent and systematic activity. Notwithstanding the work done by the SCIFA+ in approving these operations and projects, its limitations as a Council Working Party have been demonstrated, when co-ordinating and managing the joint operations and pilot projects raising therefore the need of alternative institutional solutions.

From an institutional point of view there are some significant lessons to be drawn. The decentralised network of national centres confers a central role on the responsible national services. This is a logical and effective solution since these services have the exclusive and pertinent, professional qualifications to perform the operations required. On the other hand, the need for a coherent, effective and really operational co-ordination of all these centres has appeared clearly to all the stakeholders. The current arrangements for this co-ordination have shown structural limits in guiding these actions effectively. New institutional devices must be envisaged in view of facilitating Member States actions while ensuring an effective, continuous and fully operational co-ordination for these activities. This framework must be developed with the final aim of building up the common and integrated European policy for

the management of the external borders and creating the European border guard. Therefore, the concept of the Common Unit proposed by the Commission in its Communication of 2002 and endorsed by the European Council should be reviewed: certain more strategic co-ordination tasks could remain with SCIFA +; the more operational tasks could be entrusted to a new permanent Community structure able to exercise this day-to-day management and co-ordination tasks and to respond in time to emergency situations. The status and legal basis of this operational Community structure remain to be defined given the present drafting of article 62 TEC.

As regards the **recast of the Common Manual of external borders**, it seemed necessary - before presenting concrete proposals- to make a thorough analysis of the acquis on external borders and of the existing gaps, as well as of the procedural complexities linked to the recast. The Commission therefore will present to the Council a working document on this issue, analysing the current situation and proposing several options on the way to proceed.

Following the discussion with current and future Member States on the Commission working document "Developing the acquis on **local border traffic**" issued in September 2002, legislative proposals will be presented by the Commission in due course.

The increasing illegal immigration arriving by sea raised political awareness on the importance of an effective control and surveillance of the EU **external maritime borders**. The Commission's feasibility study on improving sea border controls intends to give response to these concerns. Indeed, the study has two clear objectives: to identify the gaps and weaknesses existing at these borders and to provide a list of the appropriate legislative and operational measures in order to have an equivalent level of effective protection at the external borders. Once completed the study, which is expected in June 2003, the Commission will submit it to the Member States and organise an expert meeting in order to prepare the appropriate follow-up.

### **2.3. Return Policy**

The importance of an effective return policy has been reflected in policy developments regarding the fight against illegal immigration throughout the year 2002. Based on the broad consultation process among all relevant stakeholders launched by **the Commission's Green Paper on a Community Return Policy** and followed by a **Communication** in October 2002, the Council adopted a **Return Action Programme** in November 2002 following a request by the Seville European Council.

The credibility and integrity of the legal immigration and asylum policies are at stake unless there is a Community return policy on illegal residents. Moreover, all efforts to fight illegal immigration are questionable, if those who manage to overcome these measures succeed finally to maintain their illegal residence. The signal effect of a failed return policy on illegal residents cannot be underestimated.

The Return Action Programme laid emphasis on the need for immediate enhanced operational co-operation of Member States' enforcement authorities, but called also for the creation of common minimum standards and country specific programmes as well as an intensification of co-operation with third countries on return. After having designed the Community return policy it is essential that all measures as set out in the Return Action Programme are swiftly implemented. Only this will ensure that the message gets across that immigration must take place within a clear legal procedural framework and that illegal entry and residence will not lead to the desired stable form of residence.



A concrete proposal for **enhancing operational co-operation among Member States** is the German initiative for assistance in cases of transit for the purposes of removal by air which are well advanced. This instrument could not only facilitate returns to the country of origin when direct flights are not available, but also improve the co-operation of enforcement services. Such co-operation should also be extended to joint return operations, in particular by organising joint charter flights. The Commission is preparing, therefore, in close co-operation with the Member States, draft guidelines on security provisions for removals by air, which are crucial in order to safeguard a smooth and safe return of the persons concerned.

In large part, however, the key obstacle for returns is not the concrete removal operation, but rather the process of getting proper return **travel documents for undocumented illegal residents**. Better information exchange and sharing of best practices with a common handbook should improve the situation, but a substantial change can only be achieved with new means of identification of undocumented persons. The VIS could assist in the identification of undocumented persons inter alia by biometric means and with the retrieval of scanned travel documents, under precondition that these persons have once applied for a visa and thus their data have been entered into the system by the consular post.

The discussion of the German initiative on assistance in cases of transit for the purposes of removal by air has already shown that not only assistance of the transit Member State is needed, but also the existence of **a clear legal basis for the continuation of the removal operation** initiated by another Member State, in particular if the use of coercive force is unavoidable. Consequently, a binding regime of mutual recognition and common standards needs to be established in order to facilitate the work of the services involved and to allow enhanced co-operation among Member States. It must also ensure an adequate and similar treatment of illegal residents, who are the subject of measures terminating a residence, regardless of the Member State, which enforces the removal.

Consequently, the Commission intends to take the initiative to prepare a **proposal for a Council Directive on minimum standards for return procedures and mutual recognition of return decisions**. This proposal will build upon the existing Directive on mutual recognition of expulsion decisions, which has – among other shortcomings – not established a binding framework for the mutual recognition of all return decisions. In addition a majority of Member States have failed so far to communicate to the Commission any measures incorporating this Directive into national law, the deadline for which was 2 December 2002. In the meantime, the Commission's proposal on the compensation of financial imbalances due to the mutual recognition of expulsion decisions following the implementation of the former Directive is being discussed. Nevertheless a bilateral financial compensation cannot work satisfactorily in the long run if there is not sufficient information on expulsion decisions of other Member States. Consequently, this should be borne in mind when the issue of harmonisation of the criteria for entering third country nationals in the refusal of entry list of the SIS (Schengen Information system) will be discussed.

**Integrated country-specific return programmes** should be designed to ensure effective, timely and – above all – sustainable return. Such programmes should, therefore, provide reasonable assistance to returnees and also to the country of origin concerned to allow adequate capacity building. As requested by the Seville European Council, the Council adopted with the general Return Action Programme the first specific pilot programme for Afghanistan on 28 November 2002. It is obviously too early to draw lessons from that experience, which will require a full assessment focusing specifically on the sustainability of the return and safety of the returnees, but a more integrated approach should be privileged in the future. Indeed, if added value at Community level can lie in particular with the support of

the arrival and integration of the returnees in the country of origin, better co-ordination at other stages of the return process is needed for the sake of efficiency. Moreover, the model of trilateral agreements, tailored to the needs of destination countries, involving at a much earlier stage the authorities of the said countries as well as operators should be further explored.

#### **2.4. Key flanking measures**

Over the last years the **fight against smuggling and trafficking of human beings** has been continuously discussed in connection with illegal immigration. While the substantial link between these phenomena is recognised (these two offences, although separate in law, often overlap in practice), their relation has to be clarified as both should be the targets of a coherent EU policy.

The Council adopted a Framework Decision on combating trafficking in human beings in July 2002. Furthermore, the seriousness of this crime has been underlined by the fact that it falls within the scope of the European arrest warrant as adopted by the Council. Trafficking appears as a cross-border phenomenon affecting Member States and third countries as countries of origin, transit and destination: some victims enter EU Member States illegally while others arrive legally but in a considerable number of cases, the residence status of the latter becomes illegal after some time.

A Council Directive defining the **facilitation of unauthorised entry, transit and residence** and a Council Framework Decision on the **strengthening of the penal framework** to prevent these activities, were adopted in November 2002. The decisive element is the illegal entry into, transit across or residence in a Member State. Combating human smuggling is a complementary element of a policy combating illegal immigration as in many cases the illegal entry into a Member State would hardly be possible without the services of smugglers.

Smuggling and trafficking are mainly controlled by criminal networks and dismantling them requires information. This is why it is crucial to encourage the victims of these networks to co-operate with the law enforcement authorities in their fight against the smugglers and traffickers of human beings. The Commission, therefore, adopted a proposal on 11th February 2002 on a short-term residence permit issued to **victims of smuggling or trafficking in human beings** who co-operate with the competent authorities. The text is still waiting to be discussed in the Council.

**The Brussels Declaration**, which came out of the European Conference on Preventing and Combating Trafficking in Human Beings - Global Challenges for the 21st Century, of September 2002, is another milestone in the development of EU policy in this field. The Brussels Declaration aims at further developing European and international co-operation, concrete measures, standards, best practices and mechanisms to prevent and combat trafficking in human beings. The Commission's work in the near future will be guided by this declaration which will form the basis of further initiatives at EU level, possibly structured by an action plan based on the opinion of an expert group set up to that end.

**Undeclared work**, while difficult to measure, seems to be on the increase in many Member States. It tends to act as a pull factor for illegal migration and it can lead to exploitation and insecurity for the migrants involved, while undermining the financing and delivery of public services and social protection. The Employment guidelines have included, since 2000, a commitment to combat undeclared work and the conclusions of the European Council in Stockholm drew attention to the need to reduce the informal economy as one of the measures needed to develop the European employment strategy. New targets will therefore be set in the

2003 guidelines. Tackling undeclared work requires putting in place a range of policies, which combine preventive actions with sanctions. As in the case of smuggling and trafficking, particular attention should be paid to gender issues in this framework. Such measures must go hand in hand both with fighting illegal migration flows and ensuring that there are clear and transparent legal channels available for economic migrants to fill job shortages which are also growing in most Member States. The Commission's proposal for a directive on the admission of third country nationals for employment will play an important role in simplifying and clarifying for potential immigrants how legal entry to the EU can be obtained.

Regarding **carriers' liability** the recently adopted Council Directive supplementing the provisions of the Convention implementing the Schengen Agreement has not achieved proper harmonisation at EU level. These provisions only cover passenger and not goods transport; moreover, rail transport is only partially covered and Member States have a wide discretion in implementing these provisions. In addition, many of them are late in incorporating this Directive into national law. A Round Table on Carriers Liability was organised bringing together in November 2001 representatives from Member States, the transport industry, European Institutions, humanitarian organisations and other interested parties to reflect on possible ways forward at European level. As a follow-up, a series of expert meetings focusing on specific issues took place in the course of 2002 in the framework of a so-called "Round Table Process" providing a useful forum for discussion and mutual understanding between the actors involved. The main conclusion of this process so far is that there is no immediate need for new harmonising measures, but that regular consultations should be pursued under the auspices of the Commission.

## **2.5. Operational co-operation and exchange of information**

The importance of proper **gathering and exchange of information, intelligence and analysis** was repeatedly underlined in the Commission's Communication of November 2001 and the Santiago Action Plan. There are in this field several actors involved at very different levels.

Regarding **statistics**, the available information is not sufficient for a proper monitoring and evaluation of legal and illegal immigration policy. The lack of commitment of some Member States to provide the data and the fact that definitions and statistical methods are only partially harmonised, which often results in the provision of data which are not comparable, hinders statistical analysis or other outputs. The Commission has therefore presented an action plan for the collection and analysis of Community statistics, which intends first of all to respond to the request of the Council in its conclusions of May 2001 for a comprehensive and common framework for future action on improving statistics. One of the main aims is to have a discussion about possible future legislation to underpin all statistical work in the field. The co-operation and co-ordination among authorities providing data, international organisations and other relevant actors is another of the future steps that the Commission is proposing in its action plan.

The **CIREFI group** has continued its work on the collection and exchange of information concerning illegal immigration including when appropriate the analysis of the information and drawing up of conclusions. In this context in January 2003, Commission services have suggested to Member States a platform for the exchange of information based on modern and secure web technologies, which is called **ICONet (Information and Co-ordination Network)**. Given its flexibility ICONet could be the ideal platform for the collection and dissemination of information in several areas such as immigration liaison officers or return as well. Taking into account the outcome of the current pilot phase the Commission will prepare

a legal basis for ICONet that would better identify its content, use cases and procedures for modification.

The creation of an **ILO (immigration liaison officers) network** was referred to in the initial Communication of November 2001 and the following action plans of the Council. Efforts focused on two seminars held in Funchal (Portugal) and Athens during the Portuguese and Greek Presidency, a report prepared by the Danish Presidency and the pilot project led by Belgium for the creation of an ILO network in the Western Balkans. Currently, although all Member States agree on the important role that ILOs carry out in the prevention and fight against illegal immigration in the countries of origin or transit and that this role should be further increased, there is no agreement on streamlining tasks and definitions of ILOs. Networks of ILOs in certain regions or third countries would at least provide the basis for the co-operation and co-ordination among the ILOs in the field, including the national services responsible for their posting. A legal basis for such networks would formalise this co-operation and co-ordination by defining their objectives and letting Member States know what information or services can be expected or requested via them.

Another important potential actor is **Europol** whose objective is improving the co-operation between Member States in preventing and combating serious forms of international organised crimes such as illegal immigrant smuggling and trafficking of human beings. Europol's increasing operational support is demonstrated for example in its analysis support to Member States investigations being also regularly involved in border control pilot projects and experts meetings on new trends and modus operandi in the flows of illegal immigration. Europol is also providing strategic support with periodical intelligence bulletins and annual threats assessment and has until now signed full operational agreements with several third countries and Interpol that provide for the exchange of personal data on illegal immigration crime networks and the exchange of liaison officers. In the future its role will also include participation in Member States joint investigation teams targeting criminal networks.

### **3. PARTNERSHIP WITH THIRD COUNTRIES**

In order to be effective, the objectives of a Community policy on illegal migration need to be taken into account in the global framework of the EC's relations with third countries. The Seville European Council left no doubt that combating illegal immigration requires a greater effort by the European Union and a targeted approach to the problem, with the use of all appropriate instruments in the context of the EU's external relations, while pursuing the constant long-term goal to develop an integrated, comprehensive approach to tackle the root causes of illegal migration.

In a concrete follow up to the Seville conclusions, the Council identified in November 2002 nine **countries<sup>2</sup> with which co-operation on the management of migration flows would need to be intensified** in the first instance. For most of these countries, the Commission has already programmed assistance for establishing an adequate legislative framework , reinforcing their external borders and promoting institutional and administrative capacity for managing migration . In addition, open and frank exchanges on migration problems and the ways to address them had already begun in the more general context of the EC policy dialogue with these third countries. In general terms, these countries take a positive attitude to

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<sup>2</sup> Albania, China, the former Republic of Serbia and Montenegro, Morocco, Russia, Tunisia, Ukraine, Libya and Turkey

exploring ways for better managing migration flows, including for tackling illegal migration, and seem open to intensify their co-operation with the EU in that field. During the talks, third countries have made it clear however that they often find themselves confronted with illegal and transit migration that is increasingly causing problems. They have called upon the Commission and Member States for co-operation that would also take into account these problems.

Besides these nine, there are however many more countries of origin and transit that require the attention of the EU and its Member States when addressing the issue of migration. In this respect, the new neighbours of the enlarged European Union are to be given particular attention as recognised by the Council on 14 April 2003 during the debate on the Communication of the Commission on Wider Europe which sketches a new framework for the EU's relations with the eastern and southern neighbours.

The EU needs therefore to continue on better integrating migration related issues in its external relations policy. It is with this purpose in mind that the Commission presented its Communication on **integrating migration issues in the EU's external relations** with third countries of December 2002. On that basis the Council adopted in May 2003 conclusions on a number of important subjects that are also relevant for this policy area. It proposed to ensure that the full migration agenda is taken forward in the dialogue within the context of current and future Association, Co-operation or equivalent agreements, including the root causes of migration and the possibilities to address 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.

In its Communication the Commission expressed its intention to examine the extent to which greater priority should be given to specific programmes relating to migration, including illegal migration, in the framework of the midterm review of the Country Strategy Papers, in addition to the concrete initiatives aimed at addressing migration, including illegal migration, in third countries already integrated in the EC's external policies and programmes, such as MEDA, CARDS, TACIS and PHARE. Without prejudging the results of the CSP review, the Commission also considered that budget line B7-667 dedicated to the co-operation with third countries in the field of migration should be significantly reinforced and should come as complement to what can be achieved in the CSP review, in order to finance specific, targeted actions in the field of migration complementary to those financed under the more generic developments lines. Aiming at giving concrete expression to this, the Commission intends to put to the Council a **proposal for a legal basis establishing a multiannual cooperation programme with third countries in the field of immigration**. The general objective of this financial instrument will be, in future, to provide a specific and complementary response to the needs of third countries of origin and transit in their efforts to ensure third countries with a stimulus in their preparation for implementing existing or future readmission agreements with the Community or to support them in implementation proper.

The swift return of illegal migrants to the country they came from is one of the major elements in combating illegal migration. Having in place **EC readmission agreements** with the third countries concerned will facilitate the return in a way that is acceptable both for the EU Member States and the receiving country. So far the Council has authorised the Commission to negotiate Community readmission agreements with 11 third countries/entities (Morocco, Sri Lanka, Russia, Pakistan, Hong Kong, Macao, Ukraine, Albania, Algeria, China and Turkey) and the Commission has successfully concluded negotiations with Sri Lanka,

Hong Kong and Macao. Negotiations with most of the other countries, in particular with Russia, Ukraine and Marocco are well underway.

The Seville European Council explicitly called for the speeding-up of ongoing readmission negotiations. From its side, the Commission is making all the necessary efforts to complete these negotiations in a satisfactory way, but this also requires a greater level of political and diplomatic support from the Member States. However, experience so far has taught that the time needed to negotiate a readmission agreement, which is seen as being in the sole interest of the Community, should not be underestimated. They can only succeed if they are part of a broader co-operation agenda, which takes duly into account the problems encountered by partner countries to effectively address migration issues.

Compensatory measures in the field of migration policy such as more generous visa policy with respect to the co-operating countries or increased quotas for migrant workers, closer economic co-operation, trade expansion, additional development assistance, better market access or WTO compatible tariff preferences are demands often mentioned as areas where greater generosity is expected from the EU and its Member States in order to lead to more progress in the negotiations.

That is the reason why the Commission considers that the issue of “leverage” – i.e. providing incentives to obtain co-operation of third countries in the negotiation and conclusion of readmission agreements with the EC – should be envisaged on a country by country basis, in the context of the global policy, co-operation and programming dialogues with the third countries concerned, taking into account in particular the importance of the third country in terms of emigration flows towards the EU and the state of its relations and co-operation with the Community and the Member States. It will then be up to the Community and its member States to decide whether to make available supplementary types of incentives to obtain the desired results. This problem does however in principle not arise to possible future negotiations with ACP countries. Since Article 13 of the Cotonou Agreement already provides for clear legal obligations for the Parties to that Agreement as regards the readmission of own nationals illegally present on the territory of another Party and as regards the conclusion of bilateral readmission agreements, the Commission considers that such supplementary financial incentives are not necessary and therefore shall not apply to those countries.

#### **4. THE APPROPRIATE FINANCIAL RESOURCES AND BURDEN SHARING MECHANISM**

The European Council of Seville asked the Commission to evaluate the financial resources available in three specific areas: the management of external borders, return of illegal residents and co-operation with third countries in the area of immigration. The Commission reported on these three fields in an integrated manner in the second part of its Communication “Integrating Migration issues in the European Union’s Relations with third countries” of 3 December 2002.

The statement made by the Commission in this Communication as regards the clear disparity between the political importance given in the EU to the JHA policies and the financial resources of the Community budget allocated to these policies still stands. In 2002, financial instruments in support of the asylum and immigration policy (including the emergency reserve of the European Refugee Fund) within the heading “Internal policies” of the Financial perspectives represented 0,96 % of the total expenditure under this heading (6,236 billion Euros).

**Burden-sharing between Member States and the Union for the management of external borders** is one of the five components of the common policy for the management of the external borders, as designed by the Commission and endorsed by the Council. The conclusions of the Seville European Council meeting called on the Commission to carry out before June 2003, "a study .....concerning burden sharing between Member States and the Union for the management of external borders."

According to the Council's Plan for the management of the external borders, the following conditions apply for the burden sharing and for drawing on the Community budget:

- National budgets remain the main source of investments and planned spending.
- Investment will be mainly on equipment and human resources.
- The bases of the sharing will be established at the Union level and within the limits of the Community financial perspectives.

Furthermore, the Plan also set the following orientations for Community contribution:

- Financing purchases of joint equipment, in particular with a view to supporting joint operations by Member States.
- Setting up a mechanism for redistributing funds between Member States.

In order to carry out this study, and in particular to evaluate the level and nature of financial resources allocated at national level to the management of external borders (controls and surveillance of persons), the Commission collected information from the Member States. Gathering detailed and comparable data proved difficult, and such analytical methodology did not allow the Commission to conclude in a detailed way on the questions raised. However, the data gathered did confirm the very substantial size of the investments and operational costs arising from the management of external border surveillance, of which the control of persons is a significant part.

In its communication of December 2002, the Commission put forward 4 main criteria to be taken into account in evaluating the burden of each Member State:

- The geographical situation of a Member State and the nature of the borders;
- The migratory pressure at the different types of border (land, sea and airport);
- The number of checks carried out on persons entering and leaving the Schengen area;
- The quality standard of controls and surveillance at external borders, as measured by the common risk analysis method applied to each type of border.

These criteria were discussed on several occasions by the Council since January 2003, and the Commission concluded from the debates that took place that the validity of these criteria was acknowledged. Certain Member States have also suggested to take into account other criteria linked with the overall cost of reception of asylum seekers, or of return measures.

Furthermore, the Commission considers that these discussions have also confirmed two of the basic principles outlined in its Communication of December 2002:

- the principles of subsidiarity and additionality of the Community’s financial intervention: the Community budget can only be called upon for expenses deriving from an operation that has a clear added value for the Community;
- only the types of expenditure directly linked to the Community dimension of external border control should be co-financed (costs arising from the organisation of joint operations, co-ordination, development of quality standards, control of implementation, exchange of information and experiences).

In spite of the difficulties encountered for the collection and analysis of data, the basic options have been confirmed and a framework of reference is in place for the further elaboration of a burden-sharing mechanism.

The main question still remaining is that of the availability of financial resources for an instrument addressing the structural needs identified.

- **In the short term** the Commission has already put forward the possibility to revise the **ARGO programme**. The increase of the funds available under this programme, even if they are of a limited amount, may be used to ease the burden of the Member States concerned. The provision of financial support to national projects in the area of external borders for addressing specific structural weaknesses at strategic border points would be identified in agreement with the Member States on the basis of objective criteria (risk assessment). The increase of the ARGO Programme is already provided for the PDB of the year 2004 and for the following years. However, the revision of ARGO, which is intended to promote administrative co-operation, will not be able to tackle the structural dimension of the investments required.
- **In the long term**, a substantial, adequate solution for burden sharing would rely on the new **post-2006 financial perspectives** for the area of the JHA. The preparation of the next multi-annual financial perspective offers indeed an important opportunity to shape the political project for the enlarged Union after 2006 in the light of the Convention work. The Commission is determined to fully recognise the development and maintenance of the area of freedom, security and justice as a priority objective of the Union.
- **In the meantime**, the Budgetary Authority could consider to make use of part of the margin available **from 2004 to 2006** to address the most pressing structural needs in this area and to cover a wider definition of solidarity that would include the cost of the reception of asylum seekers, a support to the implementation of integrated return programmes, and the development of the VIS.



## 5. CONCLUSIONS

Based on this preliminary stock-taking exercise, the Commission feels that the following guidelines should be considered as priorities for guiding the actions of the Union's institutions over the coming months in implementing, in accordance with the conclusions of the Seville European Council, the action plans adopted in 2002:

- The **principle of solidarity** - a corollary of the mutual trust between Member States on which the development of an area of freedom, security and justice is founded - should be reinforced and consolidated. This principle, incorporated in the present Treaty in connection with the reception of refugees and displaced persons, inspired the creation of the European Refugee Fund. It is important that the work of the Convention should extend its scope to cover all aspects of common immigration and asylum policies, including the issue of visas and external border controls.
- Although this solidarity can take a variety of forms, in particular through the strengthening of operational cooperation, it is unquestionably of major financial importance. For this reason the principle of solidarity should be reflected in budgets within the **new post-2007 financial perspective**.
- In the meantime, the Commission is willing to examine, in agreement with the budgetary authority and in accordance with the principles governing the utilisation of the budget, the possibility of using part of the budgetary margin available for internal policies to support a solidarity drive over the period 2004-2006 which could include:
  - a structural approach to requirements in terms of **external border controls**, extending beyond a simple reinforcement of the ARGO programme; with this in view, the Commission could send the Council as soon as possible a proposal for a legal basis for the management of a new instrument based on the June 2002 action plan, the communication of December 2002 (part II) and the lessons drawn from projects carried out in the context of SCIFA+;
  - with the renewal of the ERF, the adoption of a more targeted approach, concentrating available resources, to reception and integration of refugees and displaced persons;
  - the gradual development of the Visa Information System (VIS), in the light of the options to be selected by the Council on the basis of the results of the feasibility study.
- At the same time, the Commission is willing to examine with the Member States the elements to be taken into consideration in developing a separate instrument designed to assist a **common return policy** by financing specific programmes covering the various stages of this process and aiming to guarantee their long-term success; the necessary proposals will be tabled at the end of 2003 and will cover the various stages of this process and the different arrangements.
- The Commission has entered €10 million in the preliminary draft budget for 2004 to finance the initial phase of development of the VIS. Its programming for 2005-2006 will also see an increase in appropriations for ARGO (from €6.5 million in 2004 to €12 million a year in 2005 and 2006), with a view to boosting support for the "external border control" strand of this administrative cooperation programme, although it must not be forgotten that

this will also have to cover the growing needs in the fields of immigration, asylum and visa policy.

This programming will have to be adapted in the light of the political guidelines set by the Thessaloniki European Council. Preliminary objective and reasonable estimates suggest that of the additional needs, for the period 2004-2006, amount to a total of €140 million to cover the further development of the VIS, the implementation of an integrated return programme and the establishment of an instrument of Community solidarity to protect the external borders.

This amount is justified by the structural inadequacy of the resources currently available for immigration and asylum policies in the Community budget, and would be partly offset by a reallocation of some of the funds allocated to existing instruments (ARGO and ERF). It must also be seen against the Member States' total annual expenditure on the management of external borders (nearly €3 billion a year) and the Community effort being made under the so-called "Schengen facility" agreed by the Copenhagen European Council to prepare new Member States to take over the Schengen acquis (€970 million for 2004-2006).

- As these measures would take up 30 to 45%, depending on the year, of the margin currently available in heading 3 of the financial perspective for 2004-2006, and given the uncertainty which affects this margin, in particular should current forecasts of growth levels and inflation prove not to be correct, an alternative option would consist in deferring certain parts of this initiative,

while at the same time expressing the commitment to make use, in coming budget years, of all the flexibility available. The Commission would, at this stage, programme the appropriations required for:

- the development of the VIS for 2005 and 2006 - €15 million in 2005 and €20 million in 2006 - the lowest possible amount for operating the system in its initial years;
- an initial attempt at solidarity and closer cooperation on control of external borders, with financial resources of €15 million a year for, 2005 and 2006 to cover, among other things, the development of training and exchange programmes for officers responsible for checks and surveillance of borders, the introduction and widespread use of new technologies for the purposes of surveillance, enhancing interoperability of existing systems and improving the control and surveillance capacity at border crossing points jointly identified as showing structural shortcomings. For the year 2004, and pending the adoption of the relevant legal basis, this financial support could be envisaged through the reinforcement, of the funds available to the ARGO Programme by an amount of 15M€, through the budgetary procedure.

The implementation of an integrated return programme would have to be deferred until the adoption of the post-2007 new financial perspective.

On the basis of the conclusions of the Thessaloniki European Council, the Commission will submit when appropriate to the budgetary authority a revised programming that will reflect the options chosen as well as the new weighting between policies of Heading 3 of

the financial perspectives that may be necessary. It will also take them into account for the preparation of the new financial perspectives.

- The conclusions of the Seville European Council laid the basis for strong action on external border controls. This initiative has led to the introduction of a number of **pilot projects** to try out various forms of cooperation identified either by the European Council itself or in the plan adopted by the Council. These first trials have been evaluated on the basis of the report produced by the Presidency with the assistance of the Commission. Lessons should also be drawn from the Commission study into the particularly sensitive and complex question of **maritime borders**. The Commission is convinced that the first priority must be to guarantee the consistency and long-term nature of Community action by setting priorities and creating a stable framework and methods.
- On the first point, the Commission feels that special attention should be paid to risk analysis, staff training and greater standardisation of verification equipment and procedures, which underpin all genuinely effective policies. On the second point, the Commission believes that requirements in terms of planning, support (training, information gathering and processing, network analysis, etc.), organisation and evaluation of operational cooperation could require, beyond the creation of a joint unit made up of practitioners, the establishment of a **Community operational structure**. The role of this body would be to implement the strategic guidelines adopted by the Council with the assistance, if need be, of the “centres” set up as **pilot projects** whose contribution would have been validated by the Council. Clearly, such an operational body could only be fully effective if it was endowed with the powers and resources - human, material and financial - necessary for the accomplishment of the basic tasks of common interest conferred upon it. Within the context of the resources allocated by the budgetary authority, this operational structure could play a role in the management of Community financing. It could also mark the first step on the road to the creation of a “European Corps of Border Guards”, which the Commission still firmly believes is necessary to support and complement the actions of Member States’ bodies in the management of their external borders.
- The development of a **common visa information system** represents an organisational, technological and financial challenge for the Union and the Member States over the next few years. It is vital that the Council should lay down, as soon as possible following the Commission’s feasibility study and before the end of 2003 at the latest, the guidelines necessary for programming the development of the system, the preparation of the legal basis allowing it to be set up, and the release of financial resources in accordance with the options chosen. The importance of these choices should not be underestimated either at Community level or in terms of their impact on national administrations and budgets.
- In this framework a coherent approach is needed on **biometric identifiers or biometric data** in the EU; this would result in harmonised solutions for documents for third country nationals, EU citizens’ passports and information systems (VIS and SIS II). Building on the consensus reached at the informal ministerial meeting in Veria in March, the Commission will propose the appropriate instruments starting with visas and residence permits for third country nationals and following with EU citizens’ passports.

- The implementation of a common return policy for illegal immigrants is largely dependent on action by the Member States. Nevertheless, greater efficiency can be achieved by increasing cooperation and introducing the necessary legislative framework, in addition to the possible adoption of a specific financial instrument. Some progress has been made in both these areas but greater efforts are needed. The Commission is therefore asking the Council to look into the possibility of conferring on the **operational structure**, which would be set up for border control, similar responsibilities for the organisation of cooperation on returns. Also, with a view to consolidating its ad hoc legislative efforts up to this point, the Commission confirms its intention of tabling a proposal laying down common minimum standards.
- The conclusions of the Seville European Council, the conclusions of the Council meetings of November 2002 and May 2003, and the Commission communication of December 2002, set out the political guidelines for the **integration of immigration policy into the Union's relations with third countries**. Nothing needs to be added and it is important to implement these guidelines. The Commission points out that it made two commitments in this connection in its communication in December. Firstly, it will shortly table a proposal for a cooperation programme with the aim of providing a specific and complementary response to the needs of non-EU countries of origin and of transit in their efforts to improve the management of migratory flows and, in particular, to encourage non-member countries in preparing to implement readmission agreements or to help them in the actual implementation of the agreements. Secondly, as promised in the communication of December 2002, it will ensure that by 2004 at the latest the priorities for the management of migration flows will be duly taken into account, on a country-by-country basis and in the context of the programming dialogue as part of the ongoing process of revision of national and regional strategy documents.
- Work on developing a **common policy on readmission** must continue. This implies the swift conclusion and full implementation of the agreements already negotiated. In the case of ongoing negotiations, the Commission must enjoy the steadfast political support of the Member States, and the Council must display a willingness to consider the expectations of the non-EU countries taking part in these negotiations in a broader context. Finally, the Commission recommends that a detailed assessment of geographical priorities be carried out, taking into account in particular the importance of the third country concerned and the state of its relations and cooperation with the Community and the Member States, before entering into other negotiations, especially in the context of the implementation of the Cotonou Agreement.
- The common policy to combat illegal immigration outlined at Tampere and refined in Seville will only work if it combines a set of measures which correspond to the different aspects of the problem. It must therefore be based on:
  - strengthening the Union's ability to gather, exchange and process **information** on this phenomenon, in particular the rapid and complete implementation of the statistics action plan, the development of ICONet and the bringing together in a joint framework and networking of the many liaison officers seconded to non-EU countries; in addition, further thought should be given to ways of integrating in a coherent framework not only these various instruments but also EUROPOL, the operational structure for which the Commission is calling, and even the European Migration Network which is currently being studied from the point of view of feasibility;

- working towards greater consistency of action in the field of **combating trafficking in human beings**, where the Commission will play its role by taking the necessary initiatives based on the Brussels Declaration, and **combating undeclared work** by the fixing of objectives under the European employment strategy and indirectly by the swift adoption of the proposal for a directive on admission for employment purposes.
- The effectiveness of the joint action depends on the establishment of political frameworks and the adoption of measures, but also their **implementation** in full. This requires greater cohesion, which could be obtained by the merger of the three action plans which occasionally lead to duplication. A regular political monitoring process must be introduced: the Commission now intends to draw up a report like this one on an annual basis; the Council could then discuss it and draw the necessary conclusions for the direction of joint action at its end-of-year meeting. Finally, the Member States must fulfil the commitments they entered into: as regards the implementation of Community acts, the Commission will assume its full responsibilities, if necessary through the use of the infringement procedures provided; these procedures could usefully be supplemented by a system of peer review.