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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL  
AND THE EUROPEAN PARLIAMENT**

**ON A COMMON POLICY ON ILLEGAL IMMIGRATION**

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## **1. SUMMARY**

Shortly before the European Council in Laeken, a crucial stage has now been reached in the implementation of both the Amsterdam Treaty and the conclusions of the Tampere Summit. Since the Commission has tabled most of the proposals on asylum and legal immigration it is necessary to cover also illegal immigration as the missing link of a comprehensive immigration and asylum policy. The Commission hereby transmits to the Council and the European Parliament this Communication on a Common Policy on Illegal Immigration.

The Commission has identified six areas for possible actions preventing and fighting illegal immigration:

- 1. Visa policy**
- 2. Infrastructure for information exchange, co-operation and co-ordination**
- 3. Border management**
- 4. Police co-operation**
- 5. Aliens law and criminal law**
- 6. Return and readmission policy**

Based on existing instruments and measures at national level the Commission is striving to make further progress aiming at the creation of synergy effects of national efforts by adding the European dimension. Moreover, the Commission is keen to enrich current discussions at European level:

- Bearing in mind that any action to counter irregular migratory flows should take place as close as possible to the irregular migrants concerned, the EU should promote actions in, and support actions of, countries of origin and transit, taking into account the EU policy on human rights. These actions should comprise intensive information exchange, knowledge transfer and financial support for justified control efforts.
- Respecting the importance to enforce existing common rules particularly relating to the common standards for visa issuance and border controls the EU should strengthen its monitoring efforts.
- Administrative co-operation should be intensified, e.g. with the further development of the network of liaison officers or the promotion of the concept of having joint teams for border controls.
- Towards enhancement of co-operation and co-ordination of Member States' law enforcement agencies, a permanent technical support facility could be established to assist in information gathering, analysis and dissemination, to co-ordinate administrative co-operation and to manage common databases for migration management.
- All possibilities of modern technology and telecommunication should be utilised to improve operative co-operation, e.g. in the case of the Early Warning System on irregular migratory flows.

- Exchange of information including statistics and analysis should be advanced by various actions such as improving the quality of statistics or the creation of a European Migration Observatory.
- The concept of adequate and comparable sanctions against promoters of illegal immigration should be further upgraded and harmonised. This includes, in particular, severe punishment of criminal activities. The seizure of illegally obtained financial advantages is also identified as a key factor.
- Undeclared work of illegal residents is another subject of major concern, which requires further action to diminish the attractiveness for employers and the pull factor for potential irregular migrants.
- Police co-operation must be strengthened with the assignment of an advanced role to Europol.
- The development of a Community readmission policy should be pursued and the current negotiations with third-countries should be finalised in due course.

In addition the Commission intends to launch discussions on a number of new and innovative concepts to tackle illegal immigration:

- Return policy must be further built up with a focus on internal co-ordination such as the creation of common standards and the initiation of common measures. The Commission will, therefore, forward a **Green Paper on the Community Return Policy** in the nearest future.
- Towards the creation of a European Border Guard, first steps will be outlined to facilitate this process. Further details will be presented in a **Communication on European Border Management**, which will be provided by the Commission in the near future.
- The EU should reflect on the establishment of a European Visa Identification System, which would allow an exchange of information on issued visas among Member States. **To that end the Commission will undertake a feasibility study on the creation of a European Visa Identification System.**

## 2. PART I - INTRODUCTION

The prevention of and the fight against illegal immigration are essential parts of the common and comprehensive asylum and immigration policy of the European Union.<sup>1</sup> With the entry into force of the Treaty of Amsterdam, new competences have been created, with the inclusion of the new Title IV in the EC Treaty. While Art. 62 TEC is the legal basis for regulations relating to border controls and visa policy, Art. 63 paragraph 3 TEC refers explicitly to measures on illegal immigration and illegal residence, including repatriation of illegal residents. Moreover, since facilitation of illegal immigration involves, in most cases, organised criminal networks operating at an international level, the relevant provisions of Title VI of the Treaty on European Union on police and judicial co-operation in criminal matters (Art. 29, 30, 31 TEU) also apply.

The Vienna Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, of December 1998<sup>2</sup>, already mentioned that in line with priority to be given to controlling migration flows, practical proposals for combating illegal immigration more effectively needed to be brought forward swiftly.

In addition, the European Council emphasised in the conclusions of its Tampere summit of October 1999<sup>3</sup> the need for more efficient management of migration flows at all stages and to tackle illegal immigration at its source. Moreover, the European Council called for closer co-operation between Member States and confirmed the requirement for new Member States to accept in full the relevant *acquis* including the standards which have been set within the Schengen co-operation.<sup>4</sup> Within the framework of the Council, the common interest in the fight against illegal immigration, the need for co-operation and the determination to combat networks was highlighted again by the recent agreement reached on the Directive defining the facilitation of unauthorised entry, movement and stay, and the accompanying Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence, as well as the Directive concerning the harmonisation of financial penalties imposed on carriers transporting into the territory of the Member States third country nationals lacking the documents necessary for admission.

The Commission has consolidated a first set of objectives to enhance the fight against illegal immigration in the Scoreboard reviewing progress on the creation of an area of “freedom, security and justice” in the European Union.<sup>5</sup> Besides improvements in the exchange of information and statistics, the enhancement of the fight against trafficking in human beings and the economic exploitation of migrants is mentioned, as well as co-operation with countries of origin and the establishment of a coherent common policy on readmission and return.

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<sup>1</sup> Cf. COM 2000 755 final.; COM (2000) 757 final.

<sup>2</sup> Cf. OJ C 19 of 23 January 1999, p. 1.

<sup>3</sup> Cf. paragraphs 22 – 25.

<sup>4</sup> Cf. OJ L 239 of 22 September 2000, p. 1.

<sup>5</sup> Cf. COM (2000) 782 final; COM (2000) 167 final.

In its Communication on a Community Immigration Policy<sup>6</sup>, adopted in November 2000, the Commission stressed the need for a comprehensive common migration policy, which takes account of the changing economic and demographic needs of the European Union. Immigration should take place within a clear legal procedural framework in order to manage migratory flows effectively and to avoid any competitive distortion: **Illegal entry or residence should not lead to the desired stable form of residence.** There is a growing need not only for high skilled workers but also for low skilled workers in the legal labour market. Anyway illegal residents cannot be considered as a pool to meet labour shortages, although it has to be recognised that the possibility to have access to undeclared work might be perceived as the most important “pull factor” for potential migrants. Nevertheless opening or re-opening legal channels for migration cannot be seen as a panacea against illegal immigration.

In July 2001 the Commission adopted a further Communication which sets out its proposals for an open method of co-ordination for the Community Immigration Policy as a complement to the legislative framework<sup>7</sup>. This will involve the definition of European guidelines which Member States will implement at the national level. In this Communication the Commission has suggested that initially six guidelines should be established in the key areas already identified by the European Council in Tampere. The third guideline put forward by the Commission, under the theme of managing migration flows, concerns the reinforcement of the fight against illegal immigration, smuggling and trafficking.

The Commission is considering to address the issue of illegal immigration with a comprehensive approach, which should make best possible use of the different institutional possibilities as set out in the Treaties. Nevertheless, different notions at stake, like smuggling and trafficking in human beings as described below in 4.7, should be constantly borne in mind.

<p>Taking account of the relevant European guidelines on immigration, which need to be implemented at the national level, it remains to be defined in detail, what the fight against illegal immigration at EU level should comprise. Many areas can be recognised as having links to the irregular movements of persons towards the EU and illegal residence within the EU. The purpose of this communication is to bring current developments, which might only be seen as the first steps, and possible future initiatives at EU level into a coherent framework. It intends to identify the key elements of such a policy (Part II) and to outline, in a structured way, which future measures and forms of co-operation could lead to the proper development of an effective common fight against illegal immigration (Part III).</p>
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<sup>6</sup> Cf. Communication from the Commission to the Council and the European Parliament on a Community Immigration Policy, COM (2000) 757 final.

<sup>7</sup> COM (2001) 387 final.

### 3. PART II – GUIDELINES, TARGETS AND REQUIREMENTS

#### 3.1. Understanding the Phenomenon

Illegal immigration is multifaceted in terms of the individuals concerned and the patterns of their illegal entry and residence. First there are those who illegally enter the territory of a Member State. This can take place either with an illegal border crossing or at a border post using false or forged documents. Often these illegal entries happen on an individual and independent basis. However, illegal entries are increasingly organised by facilitators, who provide transport, temporary shelter, travel documents, information, surveillance or other supportive services starting in the countries of origin, continuing in transit countries and ending in the country of destination. The prices of smuggling services are very high, so that many illegal immigrants have to hand over most or all of their savings. In cases where illegal immigrants are not able to pay the price, they often become victims of traffickers, who employ exploitative means to gain “reimbursement” for the cost of the journey.

There is also a large number of illegal residents in the European Union who have entered with a valid visa or residence permit but have “overstayed”. Others simply enter with valid travel documents, when their nationality is exempted from a visa requirement for a short-term stay. This legal residence, however, becomes illegal, when the person concerned embarks on self-employed or employed activities not authorised by the visa exemption or the visa obtained. In many cases persons with a proper residence and work permit simply overstay their period of legal residence or violate residence regulations in other ways.

Due to the nature of undocumented residence it is not possible to assess the exact proportions between the different categories of illegal residents. It seems clear, however, that each one represents a significant part of the whole phenomenon of illegal immigration and that any future action needs adequately to address each category. To do so effectively, however, requires further in-depth analysis of the phenomenon, so as to be able better to determine the adequate instruments for the different categories of illegal residents and patterns of illegal residence.

The Commission favours further efforts to analyse the patterns of illegal residence in the European Union in order to adjust future measures more specifically to the real problems which need to be tackled to prevent and fight illegal immigration effectively. To this end the Commission advocates in Part III the establishment of proper instruments and structures to make EU wide analysis possible.

#### 3.2. Compliance with International Obligations and Human Rights

Measures relating to the fight against illegal immigration have to balance the right to decide whether to accord or refuse admission to the territory to third country nationals and the obligation to protect those genuinely in need of international protection. This concerns, in particular, obligations for protection arising from the European Convention on Human Rights, particularly is Art. 3, and the Geneva Convention on Refugees, most notably Articles 33 and 31. The latter article states that “*states shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without*

*authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence”.*

Effective action against illegal immigration plays an essential part in contributing to public acceptance of admission for humanitarian grounds by preventing misuse of the asylum system. Nevertheless, the fight against illegal immigration has to be conducted sensitively and in a balanced way. Member States should, therefore, explore possibilities of offering rapid access to protection so that refugees do not need to resort to illegal immigration or people smugglers. This could include greater use of Member States’ discretion in allowing more asylum applications to be made from abroad or the processing of a request for protection in the region of origin and facilitating the arrival of refugees on the territory of the Member States by resettlement scheme. Such approaches could ensure sufficient refugee protection within and compatible with a system of efficient countermeasures against irregular migratory flows. Finally, whatever measures are designed to fight illegal immigration, the specific needs of potentially vulnerable groups like minors and women need to be respected.

As mentioned in the Communication towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum, of November 2000<sup>8</sup> the Commission is of the opinion that processing requests for protection in the region of origin and facilitating the arrival of refugees on the territory of the Member States by resettlement schemes could be ways of offering rapid access to protection without refugees being drawn towards of illegal immigration or smuggling gangs. To that end the Commission has committed two studies on this new approach of protection.

### **3.3. Actors-in-the-Chain Approach**

Efforts on migration management cannot have their full impact, if measures are not implemented at the beginning of the migration chain i.e. the promotion of peace, political stability, human rights, democratic principles and sustainable economic, social and environmental development of the countries of origin. To that end, migration issues should be integrated in the existing partnerships, which are the general framework of our relations with third countries.

As a next step, co-operation should be further developed with transit countries. Smugglers of human beings use different modes of transportation and different routes for their illegal activities. Usually, direct connections from the main source countries are not available. Thus, transit through third countries is the norm. Irregular migrants take advantage of gaps at border controls and other deficiencies in control measures. Some transit countries show a certain reluctance to deal with irregular migration flows properly due to their interest in not becoming a country of destination. It is necessary, therefore, to enter into a dialogue with transit countries in order to support their effort to deal with the problem. For instance the establishment of refugee determination and reception capacities in those countries could be supported substantially.

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<sup>8</sup> Cf. no. 2.3.2. of COM (2000) 755 final.

In the context of enlargement the candidate countries have to adopt, in their domestic legislation and practices, the existing EU *acquis* on the fight against illegal immigration. This also implies full acceptance of the Schengen *acquis* as stated in Article 8 of the Schengen Protocol; the candidate countries are also required to produce detailed national Action Plans for implementation of the Schengen *acquis*.

It is important to recognise that, despite the control measures in place, irregular migration flows may continue within the external borders of the EU, as illegal migrants seek to reach their preferred Member State by transiting other Member States. Notwithstanding measures already in place to manage illegal migration and co-operation between Member States, illegal movements should continue to be monitored and influenced even inside the territory of Member States, with an emphasis being placed on information sharing and intensified co-operation.

The EU and its Member States should continue to participate actively in other international fora and to conclude multilateral agreements on the subject. Further international co-operation could also facilitate and promote third country co-operation and other efforts which aim to fight illegal immigration. In particular, when measures on illegal immigration are conducted in third countries, the expertise of international organisations, such as UNHCR or IOM, could be very helpful in many respects. First, such organisations could confirm that measures do comply fully with justified needs for protection. Secondly, effects of synergy could result by using existing infrastructures instead of establishing new ones. Finally, such an involvement could lead to a better mutual understanding between actors.

An efficient management of migration flows has to take place at all stages to keep track of irregular movements. For future policy making the Commission will apply the actors-in-the-chain approach in order to monitor and influence irregular movements from the countries and regions of origins via the transit countries to the destination countries. Therefore, the fight against illegal immigration requires also the mobilisation of a number of external policy aspects.

### **3.4. Prevention of Illegal Immigration**

It has already been recognised at European level, in the specific field of trafficking in human beings, that only a multidisciplinary approach covering both repression and prevention would be able to tackle the phenomenon in an efficient and coherent way. The development of a balanced policy in the area of illegal immigration must also encompass prevention as a crucial element in the European Union's strategy. The prevention dimension in the field of illegal immigration should include research on the causes, improving understanding of the phenomenon and detection of new trends, the launching of information campaigns as well as promoting new partnerships and developing existing networks. Attention in this field should also be given to the outermost regions of the Union, having regard to their geographic situation which exposes them very particularly to these migratory movements.

The European Forum on prevention of organised crime, that has been launched by the Commission in May 2001 and has already devoted attention to the prevention of trafficking on human beings, could serve as a catalysis for the promotion of such initiatives.

### **3.5. Enforcement of Existing Rules**

Obviously, a legal framework for the fight against illegal immigration already exists in all EU Member States as do regulations on the issuance of visas, border controls, illegal entry and stay, on smuggling, trafficking, illegal employment and carrier liability. Certain common principles on these issues have been laid down in several recommendations under the regime of the Maastricht Treaty.<sup>9</sup> In addition, and much more importantly, a large number of binding rules has been established within the Schengen framework.

It does not make any sense to introduce new rules or to harmonise rules at EU level, if present regulations are not enforced with sufficient resources and, most importantly, the necessary will. Common efforts are condemned to fail, if Member States' services and practices do not follow the rules adopted in common, i.e. relating to visa issuance and external border controls. Whether as countries of transit or destination, Member States must, therefore, work intensively towards a genuine partnership based on mutual confidence in each others law enforcement activities.

The creation of an area of freedom, security and justice requires all Member States to effectively apply common rules. The common security system is only as strong as its weakest point. Consequently, it is crucial to enforce existing rules properly as a main priority.

Only the practical implementation and efficient enforcement of existing rules as well as of future common measures will ensure the credibility of the rule of law in the area of freedom, security and justice as foreseen in the Treaty of Amsterdam. Consequently monitoring the enforcement of existing common rules, e. g. by undertaking regular joint screenings of consular posts and external borders, should be strengthened.

### **3.6. Adequate Sanctions for Criminal Activities**

Criminal activities, which are regularly connected with irregular migration flows, are a major common concern in all Member States. Trafficking and smuggling in human beings especially are seen as totally unacceptable. Appropriate criminal provisions have, therefore, to be put in place. At the EU level, no Member State should be considered by would-be criminals as being relatively "safer" for the conduct of unlawful activity. This would strengthen justice in the EU and send a clear signal that Member States are willing to provide for severe sanctions. In Tampere Conclusions No. 23, the European Council has, therefore, urged the adoption of legislation providing for severe sanctions against serious crimes.

In September 2001 the JHA Council reached political agreement on a Framework Decision on combating trafficking in human beings.<sup>10</sup> The Framework Decision provides in particular a common definition of trafficking which will contribute to the

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<sup>9</sup> Cf. e. g. OJ C 5 of 10 January 1996, p. 1; OJ C 5 of 10 January 1996, p. 3; OJ C 304 of 14 October 1996, p. 1; OJ L 342 of 31 December 1996, p. 5.

<sup>10</sup> Cf. COM (2000) 854 final.

facilitation of law enforcement and judicial co-operation in criminal matters. In addition to articles on liability of legal persons, sanctions on legal persons, jurisdiction and prosecution, the Framework Decision also provides for a common level of penalties set at a level of not less than eight years' imprisonment if the offence has been committed in specifically defined circumstances.

Following the political agreement reached at the Council in May 2001 on the proposal for a Framework Decision on smuggling of migrants, work needs also to be completed with a view to harmonise the Member States penal legislation and to ensure as soon as possible the implementation at national level. Furthermore, common standards are important for dealing with illegal employment, the liability of carriers and regulations on illegal entry and residence.

Moreover, it should be borne in mind that financial advantage is the key incentive for nearly all actors who promote illegal immigration. Criminal punishment alone is not sufficient to take effective action. The cost of illegal immigration should be raised by a number of measures with financial impact on traffickers and smugglers, but also on employers of illegal residents. The set of measures should at first comprise the freezing and confiscation of assets which have been gained by traffickers and smugglers. The obligation for reimbursement of all costs related to the return of illegal residents should be passed on to traffickers, smugglers and employers of illegal workers. In addition, the competitive advantages enjoyed by employers of illegal workers could be negated by financial sanctions.

Considering the growing involvement of international criminal organisations in illegal migration and trafficking of human beings, the Council should identify, in implementation of the 1997 action plan on organised crime, measures of particular relevance and, where needed, give priority to their adoption or implementation. In a broader context the UN Convention against Transnational Organised Crime in Palermo on December 12 – 15 2000 and its two accompanying protocols on trafficking in persons and smuggling of migrants<sup>11</sup> now form the basis for a global recognition of the problem and a comparable approach to tackle it. It is, therefore, essential to ensure a swift ratification of these instruments as well as a co-ordinated implementation of their provisions at EU level.

#### **4. PART III –ACTION PLAN**

##### **4.1. Visa Policy**

According to Article 61 TEC, visa policy is a directly related flanking measure to the free movement of persons with respect to external border controls. Whilst facilitating the free movement of persons, visa policy can also significantly contribute to the prevention of illegal immigration. Visa policy alone cannot, however, counter illegal immigration relating, for example, to third country nationals who enter legally but “overstay”.

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<sup>11</sup> Cf. UN Doc. A/55/383 of 2 November 2000 and COM (2000) 760 final.

#### 4.1.1. *Visa lists*

The adoption of the Council Regulation 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, provides further development for an harmonised visa policy and instrument for preventing entries into the Member States territory of non-authorized persons.<sup>12</sup>

#### 4.1.2. *Uniform visa and security standards*

Security and identification issues have been covered by the use of secure documents, which should allow for clear identification of the person concerned. In addition, travel documents aim to prove that the holder is entitled to exercise certain rights. Since travel documents have existed, they have been targets of forgery and misuse for obvious reasons. States have, therefore, tried on an ongoing basis to raise the security standard of these documents. An example of a very successful co-operation in the field of security documents is the evolution of the EU / Schengen visa sticker. Based on the Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas, it has become a document of the highest standard, effective against counterfeiting or attempts at falsification. Third countries should also be encouraged and even supported to strengthen their efforts in order to render their travel documents more secure.

Improving the security of the visa is an ongoing process. In this respect, new and innovative solutions have to be developed, which would lead to further improvements in the security of the use of documents. One aspect is the clear linking of the identity of the persons to the visa sticker. This has been taken into account by the Commission proposal amending regulation 1683/95 of October 9<sup>th</sup> 2001<sup>13</sup> aiming at the integration of a photograph produced according to high security standards into the uniform format for visas. This is only the first concrete step towards the integration of further high security measures, which should be developed using new technologies.

#### 4.1.3. *Creation of Common Administrative Structures*

The Tampere Conclusions (Nr.22) stressed that “a common active policy on visas and false documents should be further developed, including closer co-operation between EU consulates in third countries and, where necessary, the establishment of common EU visa issuing offices.”

Information exchange on visa-issuing practices and trends in document forgery already takes place both formally and informally. This useful co-operation should be further promoted and enhanced by mutual assistance in the training of staff. It is also common practice in several places to represent other Member States in countries, where a Member State does not have its own representation.

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<sup>12</sup> OJ L 81 of 21 March 2001, p. 1.

<sup>13</sup> COM (2001) 577 final.

In this context, the idea of **joint visa posts** has been raised from time to time, but unfortunately without any concrete result till now, due to practical, legal and cost-sharing difficulties.

However, it seems quite obvious that one of the expected advantages of joint visas posts would be to reduce the cost of visa issuance. Such a burden sharing approach could provide the financial means needed by the Member States in order to improve the technical equipment used for the purposes of issuing visas (detection of counterfeit or forged documents, access to online databases of sample travel documents, secured storage conditions for blank visa stickers etc.). In addition, staff sharing would also mean sharing of experience and know-how in the field of risk assessment of illegal immigration or potential overstayers . In a medium or long term perspective, one more substantial positive outcome of joint post visas would consist of more uniform implementation of the common rules and the reduction of visa shopping.

The establishment of joint visa posts should be pursued starting with a pilot project at a suitable location. In order to overcome the legal, financial and to a certain extent psychological difficulties that may arise, the Commission recommends a step by step approach: to start with the use of common buildings and facilities, then to share technical equipment and finally to exchange staff with the view of setting up common teams.

#### 4.1.4. *Development of a European Visa Identification System*

The creation of common administrative structures could, in itself, be a major step forward in harmonising Member States policies and practices with regard to visas. Nevertheless, an alternative and complementary approach could be envisaged making use of the possibilities of modern communication and computer technology.

Indeed, even high-standard visa sticker cannot have its full impact, when the passport to which it is attached is not of a comparable standard. Secure documents are of no use when the holder has hidden them or has thrown them away in order to veil their identity, the travel route or the expiry of the visa. Besides it is very difficult to identify and verify even bona-fide travellers with a valid visa, when they are not carrying their travel documents.

In the context of the prevention of terrorist threats, the conclusions of the JHA Council held on 20 September invite the Commission to make proposals on the creation of a system to be used for the purpose of exchanging information on issued visas. Reflections and feasibility studies that should be launched could explore whether such a common electronic online system could complement the concept of security documents in order to create a dual identification process based on secure documents and a corresponding database.

Such a system could include information, which is already gathered or required from the visa applicant today, such as personal particulars. In addition, an electronic photo could be taken and stored. Travel documents should also be scanned and stored, which would have two major advantages. First, subsequent manipulations of the travel document could be easily detected by comparison of the travel document with its image. Secondly, the stored image of the travel documents could be used to obtain

new travel documents quickly, when a person is obliged to leave the country, but tries to veil his or her identity. Anyway, the development of such a system should be based on a clear definition of needs and objectives as well as a thorough evaluation of existing initiatives (including the possibilities already offered by the SIS and VISION) and resources to be mobilised. Any such system should be devised in conformity with current rules on the protection of personal data.

The Commission proposes to assess the feasibility of a European Visa Identification System in order to establish a timely instrument to ensure proper admission for short-term stays and return after the expiration of the visa. At a later stage, it could be envisaged to test the possibility of setting-up such a system, in an initial phase, for some countries or regions of origin.

## **4.2. Information Exchange and Analysis**

### *4.2.1. Statistics*

It is a widely shared assessment that the level of illegal immigration is significant and cannot be neglected due to its social, economic and political implications in the countries of destination. However, by definition it is impossible to have a clear picture of the scale of the phenomenon of illegal immigration in the Member States of the European Union. An estimate of the scale of illegal migration can only be derived from existing hard data which have a link to the phenomenon such as refused entries, apprehensions of illegals at the border or in the country, rejected applications for international protection, applications for national regularisation procedures and escorted or forced returns.

The Council of May 2001 decided to introduce a public annual report consisting of a statistical overview and an analysis for the purpose of discussing trends in asylum and migration flows and the relevant policy developments in the European Union. This would include a section analysing data on illegal immigration.

The Commission will bring forward an Action Plan to implement the decision of the Council and other actions necessary with a view to improve the data collection on asylum and migration as laid down in the April 2001 Commission staff working document<sup>14</sup>.

### *4.2.2. Gathering Information, Intelligence and Analysis*

However, mere figures are not sufficient for understanding the phenomenon and to prepare decisions for operative purposes. This requires further in-depth analysis of its causes, the methods of entry and the consequences for our societies. Member States have gathered considerable information and have gained expertise in this field, but the European dimension to the phenomenon has not yet been sufficiently explored. Although formal and informal networks to exchange information have been developed over the years for this purpose, further improvement of the exchange of

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<sup>14</sup> Cf. SEC (2001) 602, of 9 April 2001.

intelligence and information on a European level is required to enable the Community to develop adequate common policies.

In order to establish constant information exchange among Member States, a centre for information exchange, CIREFI<sup>15</sup>, has been set up. On a nearly monthly basis, experts from Member States share information, in particular on current trends in irregular migratory flows. However, this form of co-operation could be strengthened, requiring more intense networking among Member States operational services, especially in the field of analysis.

The Commission is examining the creation of a European Migration Observatory, which could monitor and carry out comparative analysis of both legal and irregular migratory flows. Moreover the Commission underlines the necessity to further develop adequate structures at EC level in order to allow for more co-ordinated action of Member States enforcement bodies.

#### 4.2.3. *Development of the Early Warning System*

With a Council Resolution of May 1999 an Early Warning System for the transmission of information on illegal immigration and facilitator networks has been introduced. The aim was to set up a standardised, permanent communication framework enabling a Member State to report illegal migration phenomena instantly. However, the Early Warning System (EWS) is still in a rudimentary phase. The main problems are the insufficient use of it, a lack of information distribution within the concerned services of the Member States and a poor technical infrastructure. As a first step common guidelines, concerning cases in which the system should be used, could be further elaborated. Nevertheless, the administrative and technical infrastructure seems to be the key obstacle. Operational services have to be given the chance to deliver and to obtain information as easily as possible, seven days a week, 24 hours a day. That is the reason why the EWS should be developed as a web-based secure intranet site. Admittedly, the success of this approach depends very much on the possibility of operational services accessing the system without difficulty.

The Commission will forward a proposal on how such an advanced Early Warning System could be implemented and administered.

### 4.3. **Pre-Frontier Measures**

#### 4.3.1. *Advice and Support by Liaison Officers*

First steps have been taken to develop the concept of liaison officers in countries of transit and origin and to co-ordinate these efforts among Member States.<sup>16</sup> Along the lines of the conclusions, which have been approved by the Council in November

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<sup>15</sup> Centre d'information, de réflexion et d'échange à l'égard des frontières extérieures et de l'immigration, cf. OJ C 274 of 19 September 1996, p. 50.

<sup>16</sup> Within the Schengen Framework these concepts have already been set up in the field of document advisers and external borders, cf. SCH/Comex (98) 59 rev = OJ L 239 of 22 September 2000, p. 308 and SCH/Comex (99) 7 Rev 2 = OJ L 239 of 22 September 2000, p. 411.

2000 and May 2001, networking is being intensified among liaison officers of Member States, for example in co-operation in the Western Balkan area.

In the future, the EU should continue in building up the network of immigration and airline liaison officers by promoting desirable closer co-operation. Permanent information exchange between immigration and airline liaison officers as well as with police liaison officers and other intelligence officers of Member States should be guaranteed. Common training should be conducted regularly on the basis of previously defined tasks and assignments. The mutual support of liaison officers should be assisted.

Co-ordination should take place efficiently regarding tasks, training and liaison officers postings. In addition, ad-hoc co-ordination in the target area seems to be useful, e. g. in order to establish contacts with other actors on the field level.

#### 4.3.2. *Financial Support of Actions in Third Countries*

While applying the actors-in-the-chain approach, it is essential to support targeted measures in the countries of origin and transit. Some of these forms of assistance were already identified in the conclusions of the Tampere European Council in view, in particular, to help these countries to strengthen their capacity to combat trafficking in human beings, and to cope with their readmission obligations (see 4.8.). In this framework, targeted migration and asylum projects could be financed in the following areas:

- Support of asylum seekers infrastructure;
- Development of public registration structures;
- Awareness raising campaigns;
- Improvement of document security;
- Deployment of liaison officers;
- Expert meetings, training and seminars;

With regard to the specific situation in transit countries the following additional elements could be financed:

- Supporting returns of irregular migrants;
- Improvement of border control management and equipment.

Building upon lessons learned from the implementation of the action plans prepared by the High Level Working Group on Immigration and Asylum and adopted by the Council, and to complement national actions carried out within the framework of the European guidelines on immigration, the Commission will propose a new programme to that end. This programme could complement other existing regional programmes, in which, despite their much broader scope, migration issues also are one of the priorities. In any case, particular attention should be given to the overall coherence of our external actions.

### 4.3.3. *Awareness Raising Campaigns*

In No. 22 of its Tampere conclusions, the European Council mentioned information campaigns in the countries of origin as another instrument to influence irregular migration. The concept of information campaigns as such should be interpreted in a broad sense. Initiatives aimed at raising awareness among the public at large of the problems and risks related to illegal migration could be considered, as well as concentrated initiatives targeted at specific groups such as unemployed, women or students. Initiatives could make use of various means to convey messages such as seminars, round tables, the written press and radio and television broadcasts.

The preparation of information campaigns requires a tailor-made solution for the respective country of origin or even region. The cultural dimension is a fundamental element of such campaigns. The elaboration of information campaigns has, therefore, to be conducted carefully in a way, which ensures that the campaign has the desired effect on the target region and audience.

The Commission will further develop the concept of awareness raising campaigns taking due account of regional and cultural identities in order to create an efficient and focussed instrument in the countries of origin.

## 4.4. **Border Management : Towards the Development of a European Border Guard**

High standard external border controls are an important contribution in order to prevent illegal immigration. It should be highlighted as well that border management is not focussing solely on the immigration aspect but also on other purposes: customs purposes, traffic security, prevention of the entry of dangerous or illegal goods, identification of persons wanted for arrest or extradition at a request of a competent judicial authority etc.

All these elements have to be integrated into a coherent strategy. The setting-up of a **European Border Guard** as a core element of such a strategy has already received strong political support, and exploratory work, financed by the ODYSSEUS programme, is underway. This being said, first steps can be taken in the short term, which will form the nucleus of such an overall approach.

### 4.4.1. *Common Curriculum and Training*

As already emphasised, border checks are carried out in accordance with uniform principles based on a common standard. However, these elements have to be developed further. A key factor to enhance the quality of the co-operation could be the elaboration of a harmonised curriculum of Border Guard officials by taking into account the particularities of the national training traditions.

Another measure in order to strengthen co-operation between border control authorities is the harmonisation of the training of Border Guard officials. First attempts are being made within the planned police school (**CEPOL**). However, it should be outlined in that context, that a clear distinction between immigration and respectively border control issues and police co-operation must be drawn. Border control issues should be conducted by a specialised service, which calls for specific

know-how. A professional border guard management requires clearly focussed education and training. In addition it should be recalled, that the legal framework differs.

It should therefore be considered whether these specific needs would not be better matched by setting-up an independent and dedicated instrument based on a network of existing national training facilities and offering appropriate and targeted services like programme design, seminars, workshops, etc. This in turn could become the initial phase of a **European Border Guard School**. Such a school could also offer training to the staff of transit countries that are engaged in any form of co-operation with the Union.

#### 4.4.2. *Border Controls and Border Surveillance by Joint Teams*

Article 7 and Article 47 of the Schengen Convention implementing the Schengen Agreement call for closer co-operation in the field of border controls. Such co-operation may take the form of an exchange of liaison officers. On the basis of bilateral agreements, reciprocal secondment of liaison officers already takes place. These liaison officers can be posted to executive border guard authorities at the external borders. They are not carrying out any tasks relating to the sovereignty of States but advise and support the competent border guard authorities. It should be examined how an exchange of this kind could be improved and further developed not only by bilateral co-operation of the Member States, but also by a coherent Community approach. The technical co-operation support facility referred to under 4.5. could be instrumental to that end.

The Commission intends to develop further these suggestions in a Communication on European border management to be released in the near future. A main feature of this overall approach will be the development of an operational concept leading – in the medium-term – to a European Border Guard.

#### 4.5. **Improvement of Co-operation and Co-ordination at the Operational Level**

As a result of intensified common efforts, Member States' actions could be better adjusted and co-ordinated in many instances :

- Co-ordinating the deployment of liaison officers and experts (see 4.3.1.);
- Co-ordinating action among liaison officers and experts as well as other actors in the target area (see 4.3.1.);
- Networking and connecting Member States operational services (see 4.4.2.).

Until now, many valuable initiatives have been either taken by individual Member States or developed within the Council, very often with the support of Community funding offered by the ODYSSEUS programme. Nevertheless, the moment has come to depart from such a piecemeal approach and to ensure coherence and consistency.

The Commission has duly taken this need for enhanced co-operation into consideration when preparing its proposal<sup>17</sup> for the successor to ODYSSEUS, which has reached the end of its lifetime. Consideration should also be given to the establishment of a **permanent technical co-operation support facility**, which could contribute to the initiation, channelling and co-ordination of concrete actions.

Other areas are identified in the present communication where improvements of co-ordination and co-operation could imply the creation of new instruments or structures, with regard, for instance, to gathering, analysing and dissemination of intelligence and information (see 4.2.), administering existing or future electronic systems (see 4.1.4. and 4.2.3.) or training (see 4.4.1.). If the Council follows these suggestions, in order to avoid uncoordinated proliferation, the Commission will recommend to follow a step-by-step, incremental approach, building upon the ongoing reflection on externalisation, which could lead in the medium-term to the **creation of one single technical support agency. The latter could** perform the three main functions of information gathering and dissemination (European Migration Observatory, Early Warning System), co-ordination of administrative co-operation (training, European Border Guard School, co-ordination and planning of operational co-operation) and systems management (SIS, Eurodac, European Visa Identification System), with regard to migration management in general.

As a successor to the ODYSSEUS programme, the Commission proposes a new pluriannual programme, ARGO, aiming at supporting the administrative co-operation needed for a proper implementation of the policies and instruments based on Art. 62 and 63 TEC. Many of the above-mentioned objectives will be taken into consideration in this framework. The Council is therefore invited to adopt its legal basis as soon as possible.

Moreover, the creation of adequate structures at Community level should be envisaged in view of ensuring co-ordination and efficiency in carrying out operational tasks flowing from enhanced co-operation. This should be done in a coherent way, based on a shared assessment of existing needs and available resources both at national and Community level, as well as avoiding duplications and overlappings.

#### 4.6. The Advanced Role of Europol

Detection and dismantlement of criminal networks are high priorities in the fight against illegal immigration. This action is promoted by police co-operation, in which the role of Europol could be advanced.

The purpose of Europol's work in the field of combating illegal immigration is, as in other areas, to provide support to the Member States in the prevention, investigation and analysis of the crimes involved. Europol provides for strategic products, which comprise not only descriptive but also predictive elements. These allow for an appropriate threat and risk assessment. Europol carries out operational support with intelligence bulletins and analysis work files. It also supports joint investigations and

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<sup>17</sup> Cf. proposal for a Council Decision adopting an action programme for administrative co-operation in the fields of external borders, visas, asylum and immigration (ARGO), COM (2001) 567 final.

operations. The joint operations, which have already been conducted, have led to the development of follow-up investigations and to the observation, arrest and conviction of several suspects.

The EU Police Chiefs Operational Task Force invited Europol to organise experts meetings, elaborate threat assessments and analysis work files on the smuggling of migrants and trafficking in human beings, and to report back to the Task Force. To this end, the Task Force called on Member States to provide Europol with the information required. Europol was also invited to draft a strategy paper on illegal immigration and trafficking in human beings.

To strengthen its role, Europol should be given more operative powers to enable them to work together with national authorities on trafficking or smuggling of human beings, as also concluded by the EU Police Chiefs Operational Task Force in March 2001.

To that end, Art. 30 TEU should be fully utilised and Europol should be enabled in a legally binding manner to:

- further facilitate and support the preparation, co-ordination and carrying out of specific investigative actions by the competent authorities of Member States, including operational actions of joint investigation teams, comprising representatives of Europol in a support capacity;
- ask the competent authorities of the Member States to conduct investigations in specific cases and develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases on trafficking or smuggling of human beings;
- be instrumental in the collation and exchange of information by the law enforcement agencies of reports on suspicious financial transactions relating to trafficking and smuggling of human beings. The Europol management board is invited to consider the establishment of agreements with transit countries to foster the operational exchange of information.

#### **4.7. Aliens Law and Criminal Law**

A “classical” approach to fight illegal immigration is to adopt regulations under the law on aliens, such as carrier sanctions or measures against illegal employment. In summary, all regulations in the law on aliens comprise a set of measures, which have an internal as well as an external preventive effect, if properly enforced.

Many legal and practical instruments which the EU is progressively building in closely related matters, such as police and judicial co-operation, must also be mobilised in a concrete way in order to find a comprehensive approach in fighting against smugglers and traffickers in human beings. The liaison magistrates, where they exist, the European judicial network, and especially Eurojust, should improve their activities to focus on this type of offence. Furthermore, the adoption of the Convention on mutual legal assistance of 29 May 2000, as well as the recent developments on its protocol on improving mutual assistance in criminal matters, in particular in the area of combating organised crime, laundering of the proceeds from

crime and financial crime, will constitute important tools to increase the efficiency of judicial co-operation in the fight against smuggling and trafficking. It is necessary to call for a swift ratification of the Convention and later of its protocol.

#### 4.7.1. *Smuggling of Human Beings*

- Distinction between Smuggling and Trafficking of Human Beings

The expressions “smuggling” and “trafficking” are often used synonymously, although a clear distinction should be drawn due to substantial differences. This is also useful from a law enforcement perspective. A clarification of terminology and definitions has been made in the framework of the United Nations Convention against Transnational Organised Crime and its two accompanying protocols on smuggling and trafficking, which were signed in Palermo on December 12-15<sup>th</sup> 2001.<sup>18</sup>

These definitions make it clear that smuggling is connected with the support of an illegal border crossing and illegal entry. Smuggling, therefore, always has a transnational element. This is not necessarily the case with trafficking, where the key element is the exploitative purpose. Trafficking involves the intent to exploit a person, in principal independent from the question as to how the victim comes to the location where the exploitation takes place. This can involve, in cases where borders are crossed, legal as well as illegal entry into the country of destination. Illegal immigration can also cover parts of the trafficking situation, but has indeed a wider scope and relates more to the general illegal entry and residence of persons. Illegal immigrants in a wider sense are, therefore, not necessarily victims of traffickers.

- Measures against Smuggling of Human Beings

As regards the issue of smuggling of migrants, Art. 27 of the Schengen Implementation Agreement requires “to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside the territory of one of the Contracting Parties in breach of that Contracting Party’s law on the entry and residence of aliens”.

The Council recently reached political agreement on a Directive defining the facilitation of unauthorised entry, movement and stay and an accompanying Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence.<sup>19</sup>

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<sup>18</sup> Art. 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air stipulates that “*smuggling of migrants*” means “*the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident*”.

Art. 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons defines “*trafficking in persons*” as “*the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.*”

<sup>19</sup> The formal adoption is still pending due to procedural necessities (state as of begin of November 2001). The texts are based on the initiative of a Directive defining the facilitation of unauthorised entry,

On the basis of the outcome of this agreement, it has to be assessed, whether there is a continuing need to harmonise further the rules on smuggling in human beings. The minimum result should be that there is a binding framework for the prosecution of facilitators of illegal entries or their instigators and accomplices. This should include not only common definitions and basic requirements for the maximum sentence but also new minimum sanctions for the crimes concerned.

#### 4.7.2. *Trafficking of Human Beings*

As indicated in point 3.6 the Council reached political agreement on a Framework Decision addressing the substantial criminal law aspects of trafficking. Furthermore, in the field of legislative measures against trafficking in human beings, it is also important to underline that the victims must be put in focus. The adoption of the Framework Decision on the standing of victims in criminal procedure on 15 March 2001 is especially relevant here. It provides measures to safeguard for instance the victims right to information and protection in relation to the criminal procedure. It is, however, also important to clarify the status of the victims of trafficking in terms of their right of residence when they are prepared to co-operate in investigations against their exploiters. On the one hand, such a clarification would provide a platform for a more structured assistance and protection focusing directly on the victims individual situation and needs, and, on the other hand, on the need of the law enforcement and the judiciary to conduct efficient in investigations against traffickers.

After final adoption and evaluation of the implementation of the Framework Decision on combating trafficking in human beings, the need to approximate further minimum rules relating to the constituent elements of criminal acts and to penalties in the field should be assessed with due respect to the principle of subsidiarity. Furthermore the Commission will present a legislative proposal on short-term residence permits for victims of trafficking that are prepared to co-operate in investigations and criminal procedure against their exploiters.

#### 4.7.3. *Illegal Employment*

A significant number of illegal migrants have entered the country of destination legally, but overstayed the time limits for residence because of the possibility to continue working. Since the Council Recommendation of 27 September 1996 on combating the illegal employment of third-country nationals,<sup>20</sup> the sensitive issue of illegal employment of third-country nationals has not been tackled again in the Council.<sup>21</sup> The Commission adopted a Communication on illegal work in 1998, which also deals with illegal employment of illegally resident third-country

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circulation and residence, and a Framework Decision on the strengthening of the penal framework to prevent the same actions; OJ C 253 of 4 September 2000, p. 6.

<sup>20</sup> OJ C 304 of 14 October 1996, p. 1.

<sup>21</sup> But cf. Council Decision of 19 January 2001 on Guidelines for Member States' employment policies for the year 2001 and the employment guidelines for 2001, OJ L 22 of 24 January 2001, p. 18/23 on combating undeclared work in general.

nationals.<sup>22</sup> This Communication intended to initiate a debate in the Member States and among the social partners on the most appropriate strategy to fight illegal work.

It would seem clear that in order to address the problem of illegal immigration comprehensively, the illegal employment of illegal residents should be put back on the political agenda. The demand for illegal workers is especially caused by their employers. Sanctions against illegal employment should be harmonised for the elimination of all competitive advantages, which is a very basic principle of Community law. This includes minimum criminal penalties. In addition, financial gains should be diminished, as described below.

The Commission will further examine the opportunity of tabling a proposal for a Directive on the employment of illegal residents from third countries which would focus on the specific requirements needed to tackle this issue.

#### 4.7.4. *Illegal Immigration and Financial Advantages*

The adoption of the Framework Decision on money laundering, the identification, tracing, freezing, seizing and confiscation of means and assets from crime represents an important instrument for the prevention and repression of smuggling of migrants and trafficking of human beings.

As a common principle, the confiscation of all financial gains from criminal activities relating to illegal immigration should be given priority. Therefore, regulations on confiscation have to be established and adequately enforced, if this is not already the case. This should include provisions on the liability of legal persons, who are involved in these activities. Penalties for legal persons could be, for instance, the exclusion from entitlement to public benefits or the disqualification from practising commercial activities. Furthermore, traffickers, smugglers or liable legal persons should be fully charged for all return related costs, including costs for social welfare and other public expenditure during the stay.

Employers of illegal workers create the demand for illegal labour migration. The pull factor to immigrate illegally would be questioned when it is difficult to find a job and to earn money. This causal link justifies taking effective measures with considerable financial consequences. Such measures would also contribute to avoid unfair competition.

On a subsidiary basis employers of illegal workers could also be charged in full for the return costs of returning their illegal workers, including all costs of their stay until return, which are, at present, usually covered by social welfare or other public means. Financial sanctions for employers of illegal workers could be introduced in order to decrease the financial attractiveness of illegal employment. These financial sanctions could be assessed according to the estimated savings made from the illegal employment. The resources from the financial sanctions could be used for voluntary return programmes, thus creating a perspective for returned migrants in their countries of origin. These financial measures would significantly diminish the

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<sup>22</sup> COM (1998) 219 final.

interest in promoting illegal immigration. Member States should ensure that this business does not pay.

At the EU level, the Commission recommends to address the seizure of financial advantages more intensively with the aim to develop a legal framework and common rules. As a first, more concrete step a set of binding minimum sanctions and a catalogue of optional sanctions concerning means of transports and return-related costs should be adopted on the basis of a proposal presented by the Commission.

#### 4.7.5. *Carrier Liability*

Carriers today are already responsible for returning those aliens who are refused entry on the basis of Art. 26 of the Convention implementing the Schengen Agreement of 14 June 1985. In addition, carriers are obliged to take all necessary measures to ensure that an alien is in possession of valid travel documents. The Council adopted in June 2001 a Directive supplementing the provisions of Article 26, which contains three optional models of penalties for carriers, who do not fulfil their obligations.

Nevertheless, there should be a reflection on future, more harmonised regulations with regard to carrier liability in an in-depth discussion among all interested parties. To this end trilateral talks will be held between Member States, the transport industry and the Commission.

These talks could help to find a balance to ensure the necessary liability of carriers by acknowledging their difficulties in exercising control measures. In the framework of these talks, consideration should be given to the different characteristics of passenger traffic and transport of goods. In addition, commercial carriers should be supported with training and technical advice to enable them to carry out their responsibilities properly.

### 4.8. **Readmission and Return Policy**

A Community return policy should be based on the three elements: common principles, common standards and common measures. Important common principles are, for example, the priority of voluntary return over forced return and the strengthening of the obligation under international law to readmit own nationals. On the basis of such principles, common standards on expulsion, detention and deportation could be developed. Another subject of further consideration should be the consequences of illegal entry and residence regarding each individual illegal resident, including the feasibility of exit controls.

Common measures and regulations should tackle administrative co-operation of Member States. For instance, it should be noted that a European Visa Identification System, as described above, could significantly facilitate the process of identification of illegal residents and the provision of travel documents for return purposes. On the basis of the experience gathered in implementing the European Refugee Fund, it could also be assessed, whether a specific financial instrument should be available for return purposes in order to create an incentive for Member States to strengthen their efforts.

Closer co-operation is also needed on the issues of transit and readmission. The concept of readmission agreements, which has been endorsed in conclusion No. 27 of the European Council in Tampere, has to be developed. Nevertheless, before the negotiation of any readmission agreement, the political and human rights situation in the country of origin or transit should also be taken into account. When the first Community readmission agreements are concluded and implemented, their effects have to be evaluated and assessed. Furthermore, readmission clauses should be included in all future Community association and co-operation agreements. Targeted technical assistance, if needed supported by Community funding, could be offered where appropriate. The EU should also use its political weight to encourage third countries, which show a certain reluctance to fulfil their readmission obligations. In addition Member States should envisage regulating the procedures for readmission among themselves as well. Closely related to readmission is the transit issue. At EU level rules on transit of returnees should be put in place as well as with third countries, where appropriate.

Return policy is also an integral and crucial part of the fight against illegal immigration. Due to its independent importance, it will be the subject of a more detailed reflection in a separate Green Paper on a Community Return Policy. The wide discussion of the issues listed in this paper will form the basis e.g. of the preparation by the Commission of a draft Council directive or minimum standards for return procedures.

## 5. CONCLUSION

At Tampere, the European Council has required the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it. Border controls must in particular respond to the challenges of an efficient fight against criminal networks, of trustworthy action against terrorist risks and of creating mutual confidence between those Member States which have abandoned border controls at their internal frontiers. Efficient action in preventing and fighting illegal immigration and trafficking in human beings is therefore a key element for the successful completion of the ambitious programme set up by these conclusions as well as by the Treaty. It is also crucial in building up the necessary confidence and support of public opinions for a much needed common asylum regime based on the highest humanitarian standards, as well as a genuine immigration policy, in line with Europe's tradition of hospitality and solidarity, taking into account the new dimensions of the migration phenomenon world-wide and ensuring a proper integration in our societies of legal migrants.

The civil society must also be intensively involved in the efforts to prevent and fight illegal immigration. Relevant actors like political parties, trade unions, representatives of industry and economy as well as of relevant non-governmental organisations have to be heard to develop a widely accepted set of measures. This integrative method should apply both at national and at EU level in the framework of the open method of co-ordination proposed for the Common immigration policy.

The Council is invited to endorse the action plan., if possible before the end of the year in order to ensure rapid development, indicating which of the potential actions it considers to be elaborated with priority. For its part, the Commission will take into account the main elements of this approach in drawing up the first set of guidelines to be proposed to the Council by the beginning of 2002 in view of initiating an open co-ordination policy in the area of immigration.