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Subject :	Proposal for a Return Action Programme

The European Council of Laeken on 14 and 15 December 2001 called for an Action Plan on illegal immigration[1]. The European Council of Seville on 21 and 22 June 2002 reaffirmed the necessity to fight effectively against illegal immigration as an essential part of a comprehensive policy on immigration and asylum and decided to speed up the implementation of all aspects of the programme adopted in Tampere for the creation of an area of freedom, security and justice in the European Union.

[1] Cf. Conclusion No. 40.

On the basis of the Commission's Communication on a common policy on illegal immigration of 15 November 2001[1] the JHA Council adopted on 28 February 2002 a Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union.[2] Herein it was emphasised that a return and readmission policy is an integral and vital component in the fight against illegal immigration. The Commission tabled on 10 April 2002 a Green Paper on a Community Return Policy on Illegal Residents[3].

In Conclusion no. 30 from The European Council in Seville it is – *inter alia* – stated:
"(…) *The European Council calls on the Council and the Commission, within their respective spheres of responsibility, to attach top priority to the following measures contained in the plan*: (…)

as regards expulsion and repatriation policies, adoption by the end of the year, of the components of a repatriation programme based on the Commission Green Paper; (…)"

At its meeting held on 21 November 2002 the Permanent Representatives Committee reached broad agreement on the return action programme.

On this background the Danish Presidency has tabled a draft Return Action Programme, which is annexed to this note, with a view to adoption on the JHA Council on 28–29 November 2002.

The question of financial assistance evoked in Part VII might be subject to further discussions by the Ministers at the meeting of the Council.

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1 COM (2001) 672 final.
2 OJ C 142 of 14.06.2002, page 23
3 COM (2002) 175 final.

ANNEX

Proposal for a Return Action Programme

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Executive Summary

By its very nature the return of third country nationals is often a difficult and arduous task involving a wide range of measures from enforcement to diplomacy.

The establishment of an efficient comprehensive common return policy as part of the creation of an area of freedom, security and justice thus poses one of the greatest challenges to the European Union in the field of Justice and Home Affairs.

The European Council in Seville called on the Council and the Commission, within their respective spheres of responsibility, to attach top priority to the adoption by the end of 2002 of the components of a repatriation programme based on the Commission Green Paper.

At the informal JHA Ministerial meeting in Copenhagen on 13 - 14 September 2002, Ministers clearly prioritised the need for improving and enhancing the practical operational co-operation among Member States on return issues as well as strengthening the co-operation with relevant third countries on combating illegal immigration.

The Presidency responding to this call tables this proposal for a Return Action Programme.

The Return Action Programme is made up of the following four components:

- Immediate enhanced practical co-operation, including exchange of information and best practices, common training, mutual assistance by immigration officers and joint return operations

- Common minimum standards for return to be envisaged in the short, medium or long term

- Country specific programmes

- Intensified co-operation with third countries on return

Both the Member States and the Commission have identified these components as being crucial for the establishment of a truly improved common return policy. The Presidency therefore firmly believes, that its proposal for a Return Action Programme will meet the high expectations of the European Council in leading to more effective, timely and sustainable returns.

I. Introduction

1. The establishment of an effective comprehensive common return policy with regard to third country nationals poses one of the greatest challenges to the European Union in the field of Justice and Home Affairs.

2. The European Council of Tampere on 15 and 16 October 1999, as part of the efforts to create an area of freedom, security and justice, stressed the need for more efficient management of migration flows at all their stages. The European Council was determined to tackle illegal immigration at its source and in this respect identified assistance to countries of origin and transit to be developed in order to promote voluntary return as well as to help the authorities of those countries to strengthen their ability to combat effectively trafficking in human beings and to fulfil their readmission obligations towards the European Union and the Member States and deal with other aspects of migration management. The European Council also invited the Council to conclude readmission agreements or to include standard clauses in other agreements between the European Community and relevant third countries or groups of countries.

3. On 14 and 15 December 2001 the European Council met in Laeken. In order to strengthen the area of freedom, security and justice, the European Council stressed the need for adoption, on the basis of the Tampere conclusions, of a common policy on asylum and immigration maintaining the necessary balance between protection of refugees, the legitimate aspiration to a better life and the reception capacities of the European Union and its Member States. To this end the European Council i. a. pointed to the need for integrating the policy on migratory flows into the European Union's foreign policy. In particular the European Council called for readmission agreements to be concluded with the countries concerned and for the development of an action plan on the basis of the Commission Communication of 15 November 2001 on a Common Policy on Illegal Immigration[1]. In this Communication the Commission stressed the need for a common return policy.

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[1] COM(2001)755 final

4. The Council (Justice and Home Affairs) on 28 February 2002 adopted the Comprehensive Plan to combat illegal immigration and trafficking of Human beings in the European Union prepared by the Spanish Presidency[1]. In Chapter E of the Comprehensive Plan dealing with issues of readmission and return policy, it is stressed, that a readmission and return policy constitutes an integral and vital component in the fight against illegal immigration. The Commission accordingly was called upon to present a Green Paper analysing possible measures and courses of action to flesh out a Community return policy. Furthermore the Comprehensive Plan identifies two elements on which a Community return policy should be based, namely common principles and common measures. It is emphasized, however, that common measures and regulations must not be an obstacle to administrative co-operation between Member States, which must be improved and developed.

5. On 10 April 2002 the Commission tabled a Green Paper on a Community Return Policy on Illegal Residents[2], and on 16 July 2002 the Commission hosted a public hearing where policies and options for a future Common European Union policy on the return of illegal residents were discussed. The Commission Green Paper is a valuable tool focussing in particular on the future co-operation among Member States on return of illegal residents and the development of the readmission policy together with third countries.

6. At its meeting in Seville on 21 - 22 June 2002, the European Council decided to speed up the implementation of all aspects of the programme adopted in Tampere for the creation of an area of freedom, security and justice in the European Union, in particular the common policy on immigration and asylum. The European Council therefore requested the Council, the Commission and the Member States, each within its respective sphere of responsibility, to implement a number of measures, including the adoption by the end of the year of the components of a return programme based on the Commission Green Paper.

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1 OJ C 142 of 14.06.2002, page 23.

2 COM(2002)175 final

7. At the informal Ministerial meeting (Justice and Home Affairs) in Copenhagen on 13 - 14 September 2002, ministers had a debate on the elements of a future return programme on the basis of a note prepared by the Presidency. Ministers at this occasion prioritised the need for improving and enhancing the practical operational co-operation among Member States on return issues as well as strengthening the co-operation with relevant third countries on combating illegal immigration.

8. On 14 October 2002 the Commission presented a Communication on the Community Return Policy on Illegal Residents[1]. Its purpose is to put forward an outline for a Return Action Programme taking into account, inter alia, the contributions and discussions in response to the Green Paper. The Communication focuses on the first element of the Seville European Council's requirement, namely the concrete measures deriving from the general policy on the return of illegal residents, valid for all regions or countries of origin or transit.

9. The Presidency having regard to the conclusions of the European Council in Seville, in particular conclusion no. 30, and responding to the requests made by Ministers in Copenhagen, therefore puts forward a proposal for the elements of a Return Action Programme based on the Commission Green Paper and the Commission Communication on return with a view to adoption by the Council in accordance with the time limit set by the European Council.

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[1] COM(2002)564 final

II. Scope and content of a Return Action Programme

10. The Return Action Programme covers both forced and voluntary return of third country nationals as well as the central stages of return, including preparation and follow-up.

11. With reference to the outcome of the informal JHA Ministerial meeting in Copenhagen the focus will be on the operational co-operation among Member States on forced as well as voluntary return of illegal residents and if deemed necessary voluntary return of persons residing legally. Furthermore there is a need to address the specific problem of transit countries.

12. Notwithstanding the importance to be attached to voluntary return, there is an obvious need to carry out forced returns in order to safeguard the integrity of the EU immigration and asylum policy and the immigration and asylum systems of the Member States. Thus the possibility of forced return is a prerequisite for ensuring, that this policy is not undermined and for the enforcement of the rule of law, which itself is essential to the creation of an area of freedom, security and justice. Moreover the major obstacles experienced by Member States in the field of return occur in relation to forced returns. Therefore the programme to a large extent focus on measures facilitating forced returns, although some of the measures are also relevant with regard to voluntary return

13. It is recalled, that return of third country nationals must of course be performed in accordance with all relevant international obligations and human rights instruments. Several aspects of the return of third country-nationals are regulated in international human rights instruments, such as the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the 1951 Geneva Convention on the Status of Refugees and the 1967 Protocol attached thereto. Furthermore in all actions regarding children, the 1989 UN Convention on the Rights of the Child prescribes, that the child's best interest must be a primary consideration. Finally the Charter of Fundamental Rights of the European Union proclaimed in Nice in December 2000 also contains several provisions applicable to a Return Action Programme. The Committee of Ministers of the Council of Europe in 1999 has also adopted a recommendation on the return of rejected asylum-seekers[1].

14. It must also be considered that the co-operation with third countries - both of origin and transit - on return and readmission is of vital importance to the success of a Return Action Programme. At the informal Ministerial meeting (Justice and Home Affairs) in Copenhagen on 13 - 14 September 2002, Ministers made it clear, that one of the main obstacles to an efficient return policy was the unwillingness of some third countries to take back their own nationals. The Return Action Programme must therefore also deal with how to ensure co-operation on readmission with third countries, not only of their own nationals residing illegally in the territories of the Member States, but also of other countries' nationals who can be shown to have passed through the third country in question.

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[1] Rec. No. R (99) 12

15. Finally, it is worth noting that even if for the time being the practical, operational aspects of co-operation among Member States in the field of return will be given the highest priority, it shall be explored upon evaluation of the practical co-operation, if there is a need for creating a suitable legal framework in the medium and long term. The adoption of common standards is foreseen in the Commission Green Paper and the Communication, and this aspect of return co-operation is accordingly also dealt with in the Return Action Programme.

    It must be underlined, that the focus of the Community effort is to create ”added value” to the efforts of individual Member States with regard to the facilitation of return and the number of returnees.

    For the purpose of clarity and overview a road map covering the different components of the Return Action Programme is attached as Annex 2. The Annex refers to measures and actions proposed in the programme to be adopted or carried out in the short term (within one year), medium term (within three years) or in the long term.

III. Components of a Return Action Programme

16. All Member States face the same obstacles to an efficient and timely return of illegal residents to their country of origin: lack of willingness to return voluntarily, unknown residence or identity of the person, missing travel documents or difficulties in co-operation with some states in issuing identity or travel documents; resistance to return of the returnee; absence of adequate means of transportation. Member States have, therefore, developed a variety of practices in order to overcome these difficulties. Experience has been gained with different concepts or countries of return. The improvement of co-operation between the Member States based on the experience gained is vital to solve practical problems.

17. Information exchange on such experience is clearly the first step of any co-operation among Member States. The improvement of existing schemes to exchange information is, therefore, important and the best starting point for further successful co-operation.

18. Co-operation at the operational level in terms of mutual assistance in individual cases could also benefit from certain rules to be developed and adhered to, in particular regarding assistance during transit and joint operations.

19. A comprehensive Community return policy should be gradually developed by identifying measures that can be implemented immediately. These measures focus on practical steps for operational co-operation, including the adoption of certain minimum standards, which can be identified with the aim to facilitate the operational return of third country nationals. In addition, at this stage it is useful to consider a number of other guidelines and minimum standards for implementation in the medium or long term based on an evaluation of the experience gained from operational co-operation.

IV. Measures and actions with regard to improved operational co-operation among Member States

a. Improved knowledge of the phenomenon

20. Member States have different terminology, legal systems and practice with regard to return issues. In order to facilitate exchange of information between Member States as well as improving practical co-operation by enhancing mutual understanding a series of common definitions has been drawn up as an integrated part of this programme (see Annex 1). The definitions are of a preliminary and legally non-binding character, and should therefore only serve as an indicative basis in future documents with the aim to streamline terminology and to avoid linguistic confusion.

b. Exchange of statistical information

21. Also the exchange of statistical information in the field of return should be improved. In this context attention should be drawn to the Conclusions of the Council of May 2001 on common analysis and the improved exchange of Statistics on Asylum and Migration[1], where it is considered that there is a need for a comprehensive and coherent framework for improving statistics in the area of asylum and migration. The Commission has started the work on the publication of a comprehensive annual report on statistics in the area of asylum and migration. It is envisaged that the first report, on 2001 data, will be published in early 2003. In the section on return, figures will include the total number in each Member State of rejected applicants for asylum returned and other persons removed.

    After the publication of the report, an assessment should be made of what other figures may be collected and how the figures on different types of return can be made more comparable. In this regard common definitions will serve as an important tool.

c. Contact points and regular meetings amongst practitioners on return

22. Co-operation starts with the use of contacts and with an informal exchange of information and experiences among individuals. A systematic overview of the organisation and responsibility of Member States' return enforcement services, which will facilitate working contacts amongst different Member State officials, has been distributed in hard copy. It is important that such a list is regularly updated and easily accessible. In this regard the establishment of a web-based information and coordination network is being considered. This site should include a section for return services containing among other things contact information. The site would be easily accessible for relevant authorities and updated on a permanent basis.

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[1] Cf. Doc. 7973/01 ASIM 10.

23. It appears from the Council's action plan for the management of the external borders, that under the auspices of the Council meetings among practitioners on return should be held.[1] Such meetings will be useful to improve mutual understanding and co-operation, and should take place at operational level on a regular basis to discuss new experiences and to organise programmes for return operations. During these meetings, Member States should also exchange statistical information on returns, best practices for returns to specific countries, the frequency of bilateral contacts, for instance relating to transport etc. Moreover Member States should exchange experience on return issues involving relevant countries of origin or transit. The meetings will take place on an ad hoc basis within the appropriate Council body[2] with the participation of relevant return experts. The first meeting will take place as soon as possible in 2003.

d. Best practices and guidelines on obtaining travel documents, identification etc.

24. The major obstacle for effective return is uncertainty concerning the identity of the person concerned and/or his or her lack of necessary travel documents. Countries of origin often delay or deny the issuing of return travel documents because of missing information on nationality or identity. In order to avoid removal, illegal residents may therefore hide or destroy their travel documents and not infrequently claim a completely false identity and/or nationality. As a consequence, lengthy and expensive procedures have often been conducted, which include presentation of the returnee at several embassies of neighbouring third countries or conducting a language or dialect analysis.

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1 Cf. Doc. 10019/02 FRONT 58, nr. (77)

2 The Strategic Committee on Immigration, Frontiers and Asylum has pointed to the Migration and Expulsion Working Party.

25. As set out in the Commission's Communication on the Community Return Policy on Illegal Residents, the establishment of a visa identification system will facilitate the identification of a large part of the persons who are to be returned. Following the Commission's proposal the Council agreed on the establishment of an online European Visa Identification System[1] in its action plan on illegal immigration of 28 February 2002. The Commission is currently assessing the technical feasibility of such a Visa Information System. A central function of the future Visa Information System should be the return component identifying undocumented persons after apprehension in the Member States with biometric means in order to retrieve the existing personal information, in particular a scan of the travel document as presented at the visa post.

[1] The present Commission's working title is "Visa Information System".

26. The identification of persons, who are not obliged to have a visa or who enter illegally without obtaining a visa, will, however, not be included in the visa system. Furthermore the establishment of the visa identification system is for technical reasons not scheduled to take place in a short time frame. Accordingly an improved co-operation between Member States on identification shall in the interim period be established in order to enhance identification and procurement of travel documents for illegal residents. In this regard the first meeting among return practitioners should focus on methods and procedures with the aim to improve the identification of persons to be returned. Member States should start exchanging best practices to be able to improve operational co-operation on these matters. Based on the experience in the Schengen context Member States have already adopted a catalogue with recommendations and best practices on removal and readmission on 28 February 2002[1]. On the same date the Council adopted conclusions on obtaining travel documents for the return of people who do not or who no longer fulfil the conditions for entry and residence. The Member States have completed a questionnaire on the procurement of travel documents in the return phase, which is attached to the conclusions. This questionnaire shall be updated and distributed to Member States at regular intervals with a view to achieving a mutual benefit of each others' experience in this field. It is the intention to prepare a handbook of best practices in this field on the basis of the replies to the questionnaire.

27. On 29 November 2000 the Council adopted Conclusions on the measures to be taken against third countries posing problems concerning issuance of documents. The conclusions encourage embassies of Member States to co-operate, with regard to the contact with authorities of third countries, which do not co-operate on return related issues. It seems that these conclusions have not lead to a significant improved co-operation. An intensified co-operation between embassies with regard to obtaining travel documents etc. may still be useful and the advantages of such a co-operation should therefore be discussed.

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[1] EU Schengen Catalogue, External borders control, Removal and readmission: Recommendations and best practices, Council of the European Union, 28 February 2002.

e. Country specific best practices

28. It is well known that implementing returns to certain countries of origin or transit is arduous due to difficulties in the co-operation with authorities in these countries in relation to identification, issuance of travel documentation etc. Accordingly it would be useful to develop best practices for return to specific regions or countries of origin and transit. This should include contact information in Member States as well as in the third country in question, methods of identification of nationals from that country/countries, methods of obtaining travel documents and the practicalities of the physical return (means of transport, procedures on arrival, escorts during return). Such information should also be made available in a future web-based network.

29. For this purpose a number of specific countries or regions should be identified for which best practices need to be developed. The identification of such countries should take place on the basis of discussions between practitioners as well as on the basis of the criteria laid down in the Council conclusions of April 2002 on criteria for the identification of third countries with which new readmission agreements need to be negotiated.[1] In this context it should be noted that the ongoing work in the High Level Working Group on Asylum and Migration relates to co-operation between the Community and third countries whereas the present identification of target countries solely aims at improving practical co-operation between Member States with regard to return.

f. Joint training

30. Return enforcement is a very difficult and demanding task, which calls for various skills for the responsible persons such as proper knowledge of the legal competencies, adequate treatment of returnees, the management of incidents, intercultural understanding and negotiation techniques.

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[1] Council conclusions on criteria for the identifications of third countries with which new readmission agreements need to be negotiated, adopted by the Council on 24 April 2002.

31. Based on the experiences gained from the establishment of a common core curriculum for border guard training as foreseen in the Council's Plan for the management of the external borders, Member States should consider establishing a similar common core curriculum for training of officials with responsibility for return. The content of such a core curriculum on return should be focused on practical issues and minimum standards that are to be developed within this programme.

32. Priority at this stage should be given to joint seminars or regular meetings between persons responsible for the development of national training schemes regarding return related matters. The selection of subjects for such seminars, e.g. subjects of common interest, which are not based on needs due to national legislation, should take place during the regular meetings to be held between return practitioners as mentioned above in section 23. Member States could also at this stage offer training courses to officials of other Member States in their training facilities.

g. Mutual assistance by immigration liaison officers

33. The issue must be raised whether immigration liaison officers (ILO's) in countries of origin or transit may also be used in relation to returns as well, among other things with a view to facilitating contact with the authorities of the countries in question.

34. The Presidency has initiated a project on liaison officers with the aim to improve the co-operation on border management and illegal migration. A number of selected embassies and consulates of the Member States have responded to a questionnaire on the tasks and ideas for improved co-operation between existing ILO's. On the background of the answers received a report has been drafted, including an evaluation of the possibilities of improved co-operation in the field of migration i.a. the current and future level of co-operation between the Member States' Immigration Liaison Officers in third countries.

35. ILO's, in countries of origin or transit, have regular contact with the border guard and immigration authorities. It should therefore be evaluated whether such working relations could be made available for return related tasks. In this regard the resources and capacities of the various liaison officers should be taken into account.

h. Joint Return Operations

36. Removing illegal residents using charter flights usually proves expensive for Member States. Member States could therefore enforce returns more efficiently by organising joint operations where relevant in order to share existing capacities on charter flights. Provided that adequate transit arrangements are established, Member States should on a voluntary basis seek to carry out joint charter flights for returns. Joint charter flights have already been organised as pilot projects on a bi- or trilateral basis among Member States or other destination countries. The development of this practice would not only have financial advantages, but the signal sent would be stronger as well.

37. In this context a project proposed by France on a centre for rationalising return operations has been approved in the framework of the Council.[1] The aim of the centre is to facilitate joint operations, including establishing a protocol laying down the procedures and the practical aspects of such flight operations.

38. An exchange of information on the request and capacities of Member States with regard to joint operations should immediately start taking place on an ad hoc basis. Also a future secure web-based network could in the longer run contain a tool, which allows an online co-ordination on joint operations. Thus interested Member States could easily express their interest in joining each others operations.

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[1] Cf. Doc. 11388/02 FRONT 77 MIGR 72 COMIX 470

39. A website, however cannot replace personal interaction, which is clearly needed to reach an advanced level of co-operation. Therefore the meetings to be held among return practitioners, cf. above section 23, should be the immediate appropriate forum to enhance co-operation and co-ordination on joint operations. In this regard consideration could also be given to the technical support facility advocated by the Commission in the recent Communication on the Common Policy on illegal immigration[1] and the Communication on a Community Return policy on illegal residents.[2]

V. Common minimum standards or guidelines on return

40. A comprehensive Community return policy should be gradually developed by identifying measures that can be implemented immediately. These measures focus on practical steps for operational co-operation, including the adoption of certain minimum standards, which can be identified with the aim to facilitate the operational return of third country nationals. In addition, at this stage it is useful to consider a number of other guidelines and minimum standards for implementation in the short, medium or long term based on an evaluation of the experience gained from operational co-operation. The establishment of common minimum standards or guidelines on return should be considered in the context of the Community efforts to create a European migration and asylum policy.

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1 COM (2001) 672 final
2 COM (2002) 564 final

a. Removal

41. Member States' return and removal procedures are already, and should of course continue to be, conducted in accordance with human rights standards and international obligations. With the aim to improve operational co-operation on return common standards for escorts will prove valuable to facilitate joint flight operations and transit through Member States. Also there is a need to establish certain common minimum standards regarding rules on security and restraints. In this context the experiences made from the French centre on rationalising return operations, cf. point 37 will be valuable. Also the Commission has offered to invite experts from Member States to a meeting with the aim of exchanging information on existing legislation and practices regarding security rules. As far as removals by air are concerned the IATA/CAWG Guidelines on Deportation and Escort as well as national rules/guidelines already in force could provide the basis for developing EU provisions on escorting and the use of restraints.

42. Experience from an improved operational co-operation should be used to assess whether removal, as the closing act of enforcing return and in accordance with Article 63(3)(b) of the EC Treaty, should be subject to further common minimum standards, safeguarding both the rights and the health of the person concerned as well as the effectiveness of the removal.

43. Without prejudice to legal instruments in the field of asylum guidelines or minimum standards could also be considered with regard to the assessment of whether removals to certain third countries are feasible or not. This would serve to streamline Member States' present return practice in relation to specific countries of origin in case the actual situation makes removals questionable due to compelling humanitarian reasons. This could include consultation of organisations such as UNHCR or UN Administrations (e.g. UNMIK in Kosovo) or other relevant actors.

44. There are already international instruments requiring that detention must be in accordance with the basic human rights in place. Consideration should, however, be given to whether certain minimum standards for detention pending removal or during transit are needed in order to facilitate operational co-operation between Member States.

45. In establishing binding minimum standards on detention a certain degree of flexibility must, however, be ensured in order to leave Member States the ability of exercising their own discretion with the purpose of facilitating safe and dignified returns.

b. Transit arrangements

46. According to both the Comprehensive Plan to combat illegal immigration and trafficking of human beings and the Councils plan for the management of the external borders agreement should be reached between Member States on mutual support and assistance in enforcing repatriation and readmission measures during transit (by air, sea and land).

47. It is often necessary to use airports of other Member States due to a lack of direct flight connections to the country of return. In such cases it is important to establish a clear legal framework for the transit procedure, e.g. the use and competencies of escorts in transit and regulations on failure to return. To that end Germany intends to launch an initiative for a Council Directive on assistance in cases of transit for the purpose of removal by air[1]. This initiative should be pursued rapidly with the aim of improving the existing co-operation between Member States.

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[1] Cf. doc. 13861/02 MIGR 111.

48. In addition, it is necessary to find pragmatic solutions for returnees crossing internal borders of Member States, in particular in cases of voluntary return. This problem is particularly relevant when the returnee is a national of a country, which is under visa obligation, and would, therefore, need a visa to transit through the territory of other Member States. In such a case, the use of a secure standard travel document issued by the Member State returning the person – which would be recognised by all Member States – could be envisaged to make return as "unbureaucratic" as possible.

c. Preconditions for expulsion decisions

49. Community rules on expulsion are contained in the provisions of Articles 5, 23 and 96 of the 1990 Schengen Convention. Moreover, the Council has further elaborated these rules in Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals[1]. The experience gained from the implementation of these initial standards provided for in the Directive should create the foundation for further considerations on harmonisation in this field.

50. In developing the idea of mutual recognition of expulsion orders, it might be examined whether it would be appropriate to make a distinction between the reasons for expulsion decisions on the grounds of serious threat to public order or to national security and other legitimate reasons, which would normally lead to expulsion decisions.

51. The expulsion of refugees as well as other persons under other forms of international protection requires special attention, for they can only be removed in accordance with international obligations such as the 1951 Geneva Convention or the European Convention on Human Rights. In general, a decision for expulsion should in all cases be based on the individual situation. The human rights of the person concerned and whether the measure is proportionate must be adequately considered. A judicial remedy should be available.

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[1] Cf. OJ L 149 of 2 June 2001, p. 34.

d. Mutual recognition of return decisions

52. Within an area of freedom, security and justice where inner border control does not exist, the efficient return of illegal residents who have absconded after receiving an expulsion decision issued by one Member State and who have been apprehended in another Member State, is of major importance. In this regard an expulsion decision issued by one Member State should as far as possible and in accordance with national legislation be enforced in another Member State without the latter having to issue a new expulsion decision. The Council has already taken a first step towards the mutual recognition of decisions on the expulsion of third-country nationals, cf. Directive 2001/40/EC. The Directive provides for a system for the mutual recognition of administrative decisions on expulsion, while leaving to the Member States a certain discretion in deciding whether or not to apply its rules. In this regard it is of special importance to implement Article 7 of the Directive concerning financial arrangements, which will be subject to a specific Commission proposal.

53. The implementation of the already adopted Directive 2001/40/EC will provide Member States with the necessary experience to consider possible amendments or changes of the directive.

e. Proof of exit and re-entry

54. With the aim of encouraging returnees to choose to return voluntarily, consideration could be given to the question of proof of exit and to the legal consequences of the voluntary or forced return on an application for a subsequent re-entry**.** Common definitions regarding the circumstances under which a new application for a visa or a residence permit should be excluded could thus be established, e.g. possible restrictions regarding applications for a visa or a residence permit in cases of forced return. The Schengen-information system or the future Visa Information System could be used for this purpose.

VI. Country specific programmes

55. The aim of country specific programmes should be to ensure effective and timely return. Furthermore the question of creating sustainable solutions as a means to tackle root causes for illegal immigration, i. a. reasonable assistance to returnees and assistance to capacity building in countries of origin, should be considered.

56. Country specific programmes should only be adopted, when there is a clear need. The countries in question could be selected on the basis of the criteria contained in the Council conclusions on the identification of third countries with which new readmission agreements need to be negotiated adopted by the Council on 25 - 26 April 2002[1]. Country specific programmes could e.g. cover return to countries, where the conditions have hitherto made return impossible, but were these conditions have now improved considerably. In the framework of the establishment of country specific return programmes the situation of transit third-countries should also be appropriately taken into account.

57. Country specific programmes should be tailored to the country in question and should accordingly take into account the specific situation in the country, including its needs, as well as the caseload.

58. The Afghanistan return programme[2] is the first country specific return programme to be adopted by the Council. The programme contains several components, which could be deemed relevant for other future country specific return programmes.

59. The experience gained from the Afghanistan return programme shall of course be used in the planning of similar future country specific return programmes.

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1 Doc. 7990/02 MIGR 32

2 Doc. 14654/02 MIGR 124 RELEX 248

VII. Financial assistance

60. The question of costs is important to the success of any return programme. So far the Joint Actions of 1997 and 1999 (Budget lines B7-6008 and B-5-803), the European Refugee Fund (ERF) and the budget line for activities of the High Level Working Group on Asylum and Immigration (HLWG) (B7-667) have been used for return related issues. The Seville Conclusions require the Commission to report to the Council on the financial resources available at Community level inter alia for repatriation of immigrants and rejected asylum seekers, cf. Conclusion 38. The Commission's report on the budgetary aspects, is expected to be presented to the Council in late November 2002. On the basis of the Commission report it will have to be decided how best to deploy any financial resources, which can be mobilised for return in order to effectively meet the requirements of the European Council in Seville in the field of return.

VIII. Intensified co-operation with third countries

61. As stated in the Seville Conclusions, an intensified co-operation with third countries to tackle the root causes of illegal immigration is vital to the success of the European Union's efforts to combat illegal immigration and must therefore remain a constant long-term objective. Furthermore any future co-operation, association or equivalent agreement, which the European Union or the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration.

62. In the field of asylum and immigration, the co-operation with third countries falls under the competence of the High Level Working Group on Asylum and Immigration (HLWG). Following the Seville Conclusions the HLWG has been charged with presenting draft conclusions on the systematic assessment of relations to selected third countries with a view to intensify co-operation on the management of migration flows. The conclusions were adopted by the Council on 18 November 2002.

63. The Commission will submit by November 2002 a report on the effectiveness of the financial resources available at Community level for asylum and migration projects in third countries, including technical and financial assistance to enhance their co-operation capabilities in particular in order to conclude readmission agreements.

64. Furthermore, considerable emphasis must be added on the conclusion of readmission agreements covering own nationals as well as third country nationals and stateless persons. Depending on the Commission's assessment of the state of play of negotiations on readmission agreements, the Council must take appropriate action with regard to relevant third countries. In this respect it is also important for the European Union to consider the use of all appropriate instruments available in the context of the Union's external relations to further negotiations with third countries without jeopardizing the fundamental legal position, that the readmission of own nationals is a non-negotiable obligation incumbent on any state.

65. Concerning the conclusion of readmission agreements with third countries, the following developments should be noted: The decision to authorise the signing of a readmission agreement with SAR Hong Kong has been adopted by the Council on 23 September 2002. A readmission agreement with Sri-Lanka has been initialled in May 2002. Further the readmission agreement with SAR Macao has been initialled on 18 October 2002, whereas negotiations with Morocco, Pakistan, Russia and Ukraine are to be continued. New negotiation mandates concerning Albania, Algeria, Turkey and China has been presented by the Commission with a view to their adoption by the Council. Further readmission agreements with relevant third countries can of course be concluded as need be. Where appropriate, Member States can assist the Commission during the negotiation process, in accordance with the EC Treaty.

66. Finally, the conclusion of transit and admission arrangements with other third countries than the countries of origin must be considered, as direct returns are not always feasible. Transit provisions should therefore be systematically included in Community readmission agreements. If no such agreements are in force or under negotiation, separate transit agreements should be concluded, where appropriate. Also co-operation with other countries of destination outside the EU on transit regimes should be established where necessary.

ANNEX 1 – Indicative definitions

Term	Definition
Return	Comprises the process of going back to one's country of origin, transit or another third country, including preparation and implementation. The return may be voluntary or enforced.
Illegal resident	Any person who does not, or no longer, fulfill the conditions for presence in, or residence on the territory of the Member State of the European Union.
Illegal entrant	Any person who does not fulfil the conditions for entry in the territory of the Member States of the European Union.
Voluntary return	The assisted or independent departure to the country of origin, transit or another third country based on the will of the returnee.
Forced return	The compulsory return to the country of origin, transit or another third country, on the basis of an administrative or judicial act.
Readmission	Act by a state accepting the re-entry of an individual (own nationals, third-country nationals or stateless persons), who has been found illegally entering to, being present in or residing in another state.
Readmission agreement	Agreement setting out reciprocal obligations on the contracting parties, as well as detailed administrative and operational procedures, to facilitate the return and transit of persons who do not, or no longer fulfil the conditions of entry to, presence in or residence in the requesting state.
Expulsion	Administrative or judicial act, which states – where applicable – the illegality of the entry, stay or residence or terminates the legality of a previous lawful residence e.g. in case of criminal offences.
Expulsion order	Administrative or judicial decision to lay the legal basis for the expulsion.
Detention pending removal	Act of enforcement, deprivation of personal liberty for return enforcement purposes within a closed facility.
Detention order	Administrative or judicial decision which forms the legal basis for the detention pending removal
Removal	Act of enforcement, which means the physical transportation out of the country.
Removal order	Administrative or judicial decision to lay the legal basis for the removal (in some legal systems synonymous with expulsion order).
Legal re-entry	Admission of a third-country national or stateless person to the territory of the Member State of the European Union after prior departure.
Rejection	Refusal of entry to a state
Transit	Passage through a country while travelling from a country of departure to the country of destination.

ANNEX 2

LIST OF MEASURES AND ACTIONS TO BE ADOPTED AND CARRIED OUT IN THE FIELD OF RETURN				
Area	**Measures**	**Work done**	**Work still to be done**	**(Indicative timetable)**
Operational co-operation	Assessment of exchange of statistics	Council conclusions from May 2001 on statistics.	Drafting by the Commission of annual reports on statistics, cf. Council conclusions from May 2001. On the background of this annual report assessment of what other figures on return may be collected and compared	Short term Short term
	Network of national contact points	List of contact points on return distributed October 2002	Inclusion of existing contact information in a future secure web-based network	Short term
	Meetings among Member States' return practitioners at operational level	Examination of this issue by SCIFA in November 2002	First meeting within the appropriate Council body as soon as possible in 2003	Short term

	Handbook of best practices (e.g. on identification and documentation of third country nationals) + best practices for return to specific regions or countries	Catalogue of best practices on removal/readmission 28/2/02. Council conclusions on obtaining travel documents 28/2/02 (questionnaire)	- Creating a handbook of best practices on obtaining travel documents, - Consideration on creating a handbook of best practises in general - Consideration on creating best practices on regions and/or countries	Short term Medium term Medium term
	Joint training of return enforcement officials	On 22/7/02 approval by SCIFA+ of project on a common core curriculum for border management	- Joint seminars/courses, - In the light of the SCIFA+ project on a common core curriculum evaluation of the need to establish a similar project on return training.	Short term Medium term
	Enhance co- operation among Immigration Liaison Officers (ILO)	On going work in SCIFA+ on creation of network on liaison officers	Evaluation of common guidelines to be established on cooperation between ILOs within SCIFA+	Short term
	Joint return operations	Bilateral co-operation. French Centre on rationalisation of return operations approved by SCIFA+ on 16/9/02 – first meeting held on 24/9 2002	Drafting of a protocol to advance joint operations	Short term

Common minimum standards	Set up minimum standards on return procedures		- Considering minimum standards for return procedures in accordance with proposal by the Commission, including certain minimum standards on detention pending removal. - Common security standards regarding return operations, - Common standards for escorts.	Medium term Medium term Short term
	Improvement of possibilities for transit	Study of a German initiative for a Council Directive (2002) on assistance in the case of transit by air.	-Adoption of German initiative for a Directive on transit by air, -Establish the legal framework for land transit.	Short term Medium term
	Minimum standards on expulsion decisions	Directive 2001/40/EC on the mutual recognition of decisions on expulsion	Implementation of Directive 2001/40/EC on 2/12/02.	Short term
	Legal framework for the mutual recognition of return decisions	Directive 2001/40/EC on the mutual recognition of decisions on expulsion	Commission proposal on the arrangements of expenses, Implementation of Directive 2001/40/EC on 2/12/02.	Short term Short term
Country specific return programmes	Elements for integrated Community return programmes		Adoption of Afghanistan Return Programme on 28/11/02. Consideration of target countries with regard to further return programmes.	Short term Short and Medium term
Financial assistance	Evaluation of financial resources for return	Budget lines B7-6008, B-5-803, ERF and B7-667	Consideration on the basis of the Commission report on how best to deploy any financial resources for return	Short term

Intensification of co-operation with third-countries	Enhance co-operation with third countries	Bilateral cooperation	HLWG conclusions on co-operation with third countries adopted on 18/11/ 2002	Short and Medium term
	Include transit provisions in any Community readmission agreements, or if no readmission agreement has been concluded enter into transit arrangements	The Commission is currently negotiating a number of agreements including transit arrangements.	Inclusion of transit provisions in future readmission agreements or conclusion of transit arrangements	Short and Medium term
	Community Readmission agreements	Negotiation mandates for readmission agreements with Hong Kong, Pakistan, Russia, Morocco, Macao, Sri Lanka and Ukraine adopted Readmission agreements with Hong Kong, Macao and Sri Lanka initialled. Commission proposals for new mandates for readmission agreements with Albania, Algeria, China and Turkey	Council discussion on incentives for third countries to enter into readmission agreements Consideration of new readmission mandates with additional third countries	Short term/Medium term