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COMMUNICATION FROM THE COMMISSION

on Policy priorities in the fight against illegal immigration of third-country nationals

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1. introduction

1. This Communication forms an integral part of the EU´s comprehensive and structural approach towards effective migration management and complements recent policy initiatives in this area, such as the Policy Plan on Legal Migration[1], the Communication on Migration and Development[2], and the Communication proposing a Common Agenda for Integration[3].

2. Addressing illegal immigration of third-country nationals specifically has been a central part of the EU's common migration policy since its inception. In particular, in its 2001 Communication on a common policy on illegal immigration, the Commission announced its intention to *´address the issue of illegal immigration with a comprehensive approach´* that addresses the different stages of the migration process. The three 2002 Council Action Plans on illegal immigration, external borders and return listed a comprehensive set of measures. The Commission's 2003 Communication assessed progress made under these Action Plans and announced an annual stocktaking, to which the 2004 report responded. A similar report is annexed to this Communication, covering progress made in 2005. A further annex contains statistical data on migration flows to the EU-25.

3. The term 'illegal immigration' is used to describe a variety of phenomena. This includes third-country nationals who enter the territory of a Member State illegally by land, sea and air, including airport transit zones. This is often done by using false or forged documents, or with the help of organised criminal networks of smugglers and traffickers. In addition, there is a considerable number of persons who enter legally with a valid visa or under a visa-free regime, but "overstay" or change the purpose of stay without the approval of the authorities; lastly there are unsuccessful asylum seekers who do not leave after a final negative decision.

4. The Hague Programme sets the agenda for stepping up the fight against all these forms of illegal immigration in a number of policy areas; border security, illegal employment, return and cooperation with third countries. Five years after the first Communication on illegal immigration and six months after the presentation of the Policy Plan on Legal Migration, time has come to revisit this crucial topic, in the light of mounting migratory pressure at the EU´s external borders. This Communication therefore sets out new policy priorities and proposes a number of practical and action-oriented measures.

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1 COM(2005) 669, 21.12.2005.
2 COM(2005) 390, 1.9.2005.
3 COM(2005) 389, 1.9.2005.

2. elements of the eu approach

5. Illegal entry, transit and stay of third-country nationals who are not in need of international protection undermine the credibility of the common immigration policy. Without reinforced Community action, the crisis as already seen and perceived today would increase both in qualitative and quantitative terms.

6. The comprehensive EU approach to combat illegal immigration is guided by a set of fundamental principles which aim to reconcile the need for solidarity within the Union, fundamental rights, expectations of third countries, and public perception in Member States.

7. **Solidarity, mutual trust and shared responsibility between Member States** is a key requirement in an area without internal borders, which poses a particular burden with respect to pressure from illegal immigration on Member States who control an external border.

8. **Fundamental rights** must be protected and promoted. Irregular migrants must be offered a humane and dignified treatment particularly as they are often victims of traffickers' networks and exploited by employers. Any legislative initiative in this field therefore should be subject to an assessment to evaluate its impact on fundamental rights. Any limitation must be in compliance with the Charter on Fundamental Rights and the European Convention on Human Rights and Fundamental Freedoms, and thus be in accordance with the law and necessary in a democratic society.

9. **Mixed migratory flows** where there are a plethora of reasons for individuals´ attempts to enter the EU, including for international protection, present Member States with an array of challenges. For this reason, an effective policy on illegal immigration has to respond to different areas of concern and, at the same time, ensure that international human rights obligations are fully respected, including **the right to seek asylum**.

10. An essential component of EU migration management is **partnership with third countries** with a view to ensuring coherence between internal and external action. In addition to cooperation with the immediate aim of reducing and preventing illegal immigration, this also encompasses measures to help countries of origin address the root causes and push-factors of irregular migration flows. Illegal immigration is a complex phenomenon that must be tackled in all its dimensions.

11. A firm policy to prevent and reduce illegal immigration could strengthen the credibility of **clear and transparent EU rules on legal migration**, as foreseen in the Policy Plan adopted by the Commission[4]. Conversely, the existence of such rules may in itself reduce illegal immigration by offering perspectives to those who may otherwise migrate illegally. Generally, labour migration can contribute both to tackling the effects of demographic change in the EU and in the satisfaction of labour market needs.

12. It is important not to create false or disproportionate expectations in the public

[4] See footnote 1.

opinion: The reasons that push third-countries nationals to seek to immigrate illegally are so wide and complex that it would be unrealistic to believe that illegal immigration flows can be completely stopped. **Public perception** which tends to establish a link between some societal problems and illegal immigration should also be taken into account. The EU and its Member States must promote a rational debate based on objective information in order to eradicate racism and xenophobia including by adopting and implementing effective EU legislation in this area.

3. policy priorities

13. A multi-faceted approach that targets measures at all stages of the migration process is necessary given both the scale of the challenge and the complexity of the phenomenon. This Communication therefore addresses nine different priority areas. For each issue, the current state of play is examined and the context set out. On that basis, perspectives for action and activities are presented.

a. Cooperation with third countries

14. Dialogue and cooperation on migration between the EU and countries of origin and transit is crucial and will be further strengthened. Such cooperation has been developed with the countries of the Eastern and Southern neighbourhood and the Balkans Intensified engagement with other key countries such as Libya is required to secure commitment to effective cooperation. Illegal immigration is also increasingly on the agenda of relations with Latin America and with certain Asian countries.

15. In response to recent and ongoing illegal immigration in the Mediterranean region, the European Council of 15-16 December 2005 underlined the need for a **global approach based on concrete actions and decided to allocate up to 3% of the relevant financial instruments** to intensify financial assistance in areas concerning or related to migration. Short and mid-term measures, such as joint patrols, surveillance and reinforced response capability have been implemented and are aimed at preventing loss of life at sea. Furthermore a 25M€ Migration Capacity Building Facility for ACP countries has been adopted, targeting mainly technical assistance for a better managed migration. **Enhanced cooperation and dialogue** on a broad range of migration issues with Sub-Saharan African states and neighbouring countries across the entire Mediterranean region is part of the longer term agenda. Relevant frameworks include (a) the political dialogue under the Cotonou Agreement between EU and ACP countries, notably its Article 13; (b) the political dialogue with the EU´s Mediterranean partners; (c) dialogue with and between (sub) regional organisations, including the Economic Community of West African States (ECOWAS) and the African Union (AU); and (d) specific ad hoc regional initiatives such as the Rabat conference.

16. In the context of development cooperation policies and programmes, the EU will continue to **address the push-factors for illegal immigration**, such as poverty, unemployment, conflict, environmental degradation, bad governance, lack of access to education, health, etc. Migration aspects will continue to be integrated into the EU's strategies for assisting developing countries, in close partnership with the countries concerned. Where appropriate and by mutual agreement, the EU will help partners in

the developing world to enhance their capacity to better manage migration flows and fight against human trafficking.

17. Furthermore, and as announced in the Policy Plan on legal migration, the Commission will take steps to **expand the sources of information** available in countries of origin on the possibilities and conditions of legal immigration to the EU. To that end, the Policy Plan foresees that the Commissions starts work to establish an EU immigration portal in 2006. This portal will comprise both information on legal migration opportunities and on the dangers and consequences of illegal immigration into the EU. In addition, the possibility of establishing information points, for instance in selected African countries, will be considered, as well as the feasibility of information campaigns.

b. Secure Borders – Integrated Management of External Borders

18. The Community Borders Code, including the non-binding practical guide for border guards to be issued in September 2006, the Regulation on local border traffic and the Regulation establishing the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) together represent a legal and operational framework through which border controls can be further developed to a high standard.

19. The future External Borders Fund will further increase solidarity between Member States by supporting the fair share of responsibilities concerning the financial burden arising from the management of the Union's external borders.

20. With a view to further enhancing the effectiveness of joint border control operations, FRONTEX will facilitate technical cooperation and conclude necessary arrangements with third countries, in particular neighbouring and candidate countries.

21. A **common understanding of integrated border management** to cover the full spectrum of border management activities at EU level should be developed. This approach would include the identification of best practices for an integrated border management model. To support this, the Commission proposed a regulation to establish a mechanism to provide rapid assistance to a Member State facing a situation of particular pressure at the external border[5]. It will also carry out an evaluation of FRONTEX in 2007 which will comprise a review of its current tasks including an assessment of whether its remit should be extended. Furthermore a supervisory mechanism to supplement current Schengen evaluation arrangements including unannounced inspections is envisaged.

22. Biometric technology will have a significant impact on border control systems. The potential of this technology should be exploited to enhance the effectiveness of border control operations while taking into account ethical concerns and the protection of fundamental rights.

23. To this end, an **integrated technological approach - e-borders -** should be included in the fight against illegal immigration. In the context of intelligence-led border

[5] COM(2006) 401, 19.7.2006.

management[6], advance passenger information is used for border control purposes. Directive 2004/82/EC provides for an obligation for certain carriers to communicate data contained in their passenger's passports to the authorities which carry out checks on persons at the external border. Further to the full implementation of the Directive by September 2006, this system should be extended to other carriers and further enhanced, with a view to developing threat analyses and risk assessments. This implies a more comprehensive targeted use of data. Here, the pursuit of the general interest of the Union in combating illegal immigration shall fully respect data protection obligations.

24. **Technology should also be used in the entry/exit context**. Community rules currently do not provide for automated registration of third-country nationals on entry into or exit from the territory of the EU[7]. Member States are obliged to systematically stamp travel documents of third-country nationals, both at entry and exit which is done manually by border guards when a third country national crosses the border. Overstayers are thus only identified by comparing entry and exit stamps.

25. The Visa Information System (VIS) will enable border control authorities to check a visa application history and to verify whether a person presenting a visa is the same person to whom it was issued. However, it will not keep track of the various entries of third-country nationals or check on whether persons have left by the end of their entitlement to stay. Moreover, the VIS does not concern third country nationals who are not required to hold a visa to enter the EU. The second generation Schengen Information System (SIS II) will contribute to maintaining a high level of security within an area without internal border controls. The alerts registered in respect of third country nationals only concern persons to be refused entry into the Schengen area, which is a very limited number compared to those required to be registered by an entry-exit system.

26. To address the above-mentioned constraints on the VIS and SIS II, the **creation of a generalised and automated entry-exit system** to complement existing databases would facilitate checks on the immigration and residence status of third country nationals entering and exiting EU territory. This would reinforce Member States´ capacity to verify if a third country national was ´overstaying´ or had done so in the past. Such a system could also be used as a register of workers from third countries to facilitate legal migration management, in particular for seasonal workers schemes, in line with the 2005 Policy Plan on legal migration.

27. Given the huge impact, the large financial implications, and the technological complexity of such a system, the Commission will **carry out a comprehensive study**, to be initiated in 2006, to assess the feasibility and proportionality of such a system, as well as its legal implications and here in particular the respect of data protection rules

c. Fight against Human Trafficking

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[6] Intelligence-led border management describes a process of gathering and analysing data for threat analysis and risk assessment, with a view to establishing certain risk criteria. This would allow border control authorities to filter out passengers who fall under one of these categories, in order to carry out additional checks.

[7] See also COM(2005) 597, 24.11.2005.

28. The EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings, adopted by the Council on 1 December 2005 and based on the Commission Communication[8], sets the agenda in this field for the medium term. The Action Plan covers a range of issues such as measures to improve the understanding of the crime and its dimensions, prevent trafficking, reduce demand, more efficient investigation and prosecution, protection and support of victims, safe return and reintegration and also issues linked to anti-trafficking in third countries. The Action Plan explicitly requires that this should include prevention strategies specific to vulnerable groups such as women and children.

29. The Community will – notably through the EU development policy, which focuses on the primary objective of poverty reduction, and the achievement of the Millennium Development Goals – continue funding measures addressing factors that make persons vulnerable to trafficking, e.g. poverty, discrimination and lack of access to basic and higher education. In this context it is to be highlighted that the high sums that have to be paid to human traffickers are a net loss for the persons concerned.

30. Current **Commission priorities with respect to the implementation** of the Action Plan are the development of coordination and cooperation mechanisms needed at EU level, promotion of best practices in the identification of and support for victims, networking, involving international and non-governmental organizations, as well as the development of guidelines for data collection.

d. Secure travel and ID documents

31. Document security relates to border controls but is also an important factor in post entry measures. Biometric identifiers enhance the security of visa and residence permits, which in addition facilitates border crossing for bona fide travellers. It is crucial not only to secure travel and ID documents, but also to ensure that they are not obtained by deception, for instance using falsified documents or by identity theft. **Common guidelines** should be developed on minimum security standards, in particular with respect to issue procedures.

32. The Commission is also actively cooperating with third countries, especially neighbouring countries and countries in the Western Balkans, to help secure their travel documents with biometrics.

e. Addressing regularisations

33. Current Community law, including Schengen rules, does not contain provisions on regularisations, i.e. the discretionary decision to grant a legal stay on the territory; such decisions are at present a matter of the exercise of Member States´ discretion. Given the difficulties in tolerating the sustained presence of significant numbers of third-country illegal immigrants on their territories, some Member States have undertaken large-scale regularisation programmes in recent years. These national measures have given rise to expressions of concern and interest in other Member States. Furthermore, such measures may have implications for other Member States as a consequence of the abolition of internal border controls within the Schengen area.

[8] COM(2005) 514, 18.10.2005.

Also, the long-term residents Directive 2003/109/EC provides for the possibility for third-country nationals to move to and reside in another Member State after five years of legal residence in the first Member State of residence.

34. In response to recent events, including regularisations, and as requested by the Council, the Commission has proposed the establishment of a mutual information system on national measures in the area of migration and asylum which may have an impact on other Member States or on the Community as a whole. This system is expected to become operational in 2007.

35. In addition, and in order to address the lack of sound evidence and up-to-date information, a **study will be launched in 2007** on current practices, effects and impacts of regularisation measures in Member States. This study will constitute the basis for future discussion, including on whether there is a need for a common legal framework on regularisations at EU level.

f. Tackling a key pull factor: illegal employment

36. A central tenet of how the EU addresses illegal immigration is the removal of incentives in destination countries. Pull factors are quite simply related to the fact that as migrants seek a better life, they will continue to head for the EU as long as life chances are better here than in their home countries. However, Member States also create pull factors by tolerating the illegal employment of third-country nationals. The possibility of finding work whilst illegally present in the EU[9] is a significant pull factor, as the risk of being detected by competent authorities is currently very low both for the employer and the employee. Moreover, illegal employment, in particular in small and medium-sized enterprises and in seasonal work, seriously undermines the credibility of legal migration channels and erodes Member States´ tax revenues. It can also lead to serious exploitation or even slavery-like conditions, which cannot be tolerated in the European Union. Such conditions are not limited to cases where organised crime is involved. Illegal employment prevents workers from benefiting from social welfare and creates an uneven playing field for employers. Also, where jobs are shifting from the regular labour market to the black economy, this may lead to resentment when these jobs are taken by illegally staying third-country nationals. Reducing employment of this kind might contribute to reducing intolerable forms of exploitation, increasing tax revenues and diminishing xenophobic attitudes.

37. The European Employment Strategy and the Employment guidelines call for action to foster regular employment. Initiatives such as the modernisation of social security, the reduction of non-wage labour costs and reducing the tax burden on low-income/low-skilled workers are likely to contribute to lowering incentives to undeclared work and, in turn, to recruiting illegal immigrants.

38. In addition, the employment of illegally present third-country nationals or persons working in violation of their residence status should be specifically targeted. At the same time, attention should be paid to the general functioning of EU labour markets. In this respect, three widespread phenomena stand out, work undertaken in the

[9] For the purpose of this Communication, such illegal employment is understood to comprise any kind of remunerated economic activity undertaken by a third-country national who is illegally present in the EU (covering all third-country nationals not in possession of a valid permit for stay or residence).

construction, catering and textile industries, frequently through recruitment by organized criminal networks; the selling of often counterfeited merchandise; and domestic work in private households where extreme forms of exploitation often occur. Some Member States have taken measures further to a 1995 Council Recommendation on harmonising means of combating illegal immigration and illegal employment and improving relevant means of control[10], including obliging employers to verify the immigration status of third country nationals before offering employment through checks with the authorities responsible for issuing residence and work permits. There has also been the introduction of penalties for employers, ranging from exclusion from public procurement contracts, to limitations on future recruitment (black lists), to criminal sanctions, and to the obligation to bear return costs. **A first priority should be the adoption of similar measures by Member States who have not already taken such action, and effective implementation by all Member States.** Member States should also apply effective sanctions for breaches of legislation in particular on health and safety at the workplace which often occur in the context of illegal employment.

39. At the same time, the Commission will launch in 2006 an **evaluation of impact and possible shortcomings** with respect to the 'facilitators package', comprising Directive 2002/90/EC and Council Framework Decision 2002/946/JHA which define the facilitation of unauthorised entry, transit and residence and strengthen the penal framework to prevent the facilitation of such phenomena. This evaluation will consider the impact of the recent judgment of the Court of Justice in case C-176/03. Although the nature of these measures was per definition much broader, they were first EU level instruments to target unlawful assistance to illegal entry and stay. The Commission will start discussions with Member States and relevant stakeholders, in particular employers´ organisations and trade unions, on employers' liability in respect of employment by enterprises of illegally staying third country nationals. At the end of this process, the Commission will evaluate whether additional measures at EU level designed to harmonise sanctions targeting enterprises employing illegally staying third-country nationals are needed.

40. Policies to fight illegal work should be supported by **improved information** both on the phenomenon of work undertaken by illegally staying third country nationals and Member States´ measures to reduce such employment. This should include information to be collected directly from undocumented workers in cooperation with NGO´s.

41. EU rules for the admission of economic migrants were announced in the recent Policy Plan on legal migration[11]. **Measures** have to be built-in **to reduce the risk of abuse**. The Policy Plan announced a proposal for a general framework Directive for 2007 to guarantee a common framework of rights for all third-country nationals in legal employment which will also include measures to combat illegal employment. These should comprise the establishment of a single work/residence permit that would contain biometric identifiers in order to create a reliable link between the document and its holder. Moreover, the financial responsibility of employers could be engaged, in line with the principle established in the Directive on third- country national

[10] OJ C 5, 10.1.1996, p. 1.
[11] COM(2005) 669, 21.12.2005.

researchers (2005/71/EC).

g. Return policy

42. Return, in full respect of fundamental rights, remains a cornerstone of EU migration policy. An effective return policy is key in ensuring public support for elements such as legal migration and asylum.

43. The **conclusion of readmission agreements** will also remain a priority. Ongoing negotiations should be completed and new negotiating mandates be adopted, starting with the Western Balkan countries and, as soon as possible, with selected Neighbourhood countries.

44. The proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals is currently under discussion in the European Parliament and Council. It provides for common rules concerning return, use of coercive measures, temporary custody and re-entry.

45. With the future Return Fund, the Community will be endowed with an instrument to support and encourage the efforts made by Member States to improve the management of return in all its dimensions, including enhanced cooperation, which will further increase solidarity between them.

46. The **organisation of joint return flights** is supported through three elements; Council Decision 2004/573/EC sets out a legal basis for such flights; return preparatory actions and the future return fund provide in financial terms; and communication support provided by the ICONet web-based network allows for necessary information exchange between Member States. These constitute the current basis for cooperation. FRONTEX will provide the necessary assistance for organising and coordinating the joint return operations of Member States. Furthermore, Council Directive 2003/110/EC strengthens cooperation among Member States in cases of transit by air. The Commission will consider **further proposals** building on the 2003 Council conclusions encouraging Member States to facilitate short-term transit by land or sea.

47. Lack of documentation remains an obstacle to the effective return of illegal migrants, in particular as the EU travel document is still not accepted by a large number of third countries. The current EU travel document is based on a 1994 Council recommendation, and the Council adopted conclusions in June 2004 on its re-examination. FRONTEX is to undertake work on the identification of best practice on the acquisition of travel documents and the return of third country nationals.

48. **Common standards for the training** of officers responsible for return should also be established, for instance through the elaboration of a common training manual and EU-wide standardised and specialised seminars.

h. Improving exchange of information through existing instruments

49. Operational cooperation between Member States can only be successful if they are able to share information of a technical and strategic nature swiftly and easily.

50. ICONet is now operational. The access foreseen for Europol and Frontex in the course of 2006 should increase effectiveness. For future use, ICONet could function as an early warning system, in the coordination of return operations, and as a platform for information exchange for Immigration Liaison Officers (ILOs).

51. Member States´ ILOs provide crucial information from countries of origin with respect to illegal immigration. **Cooperation among ILOs should be facilitated and intensified** to make better use of this information. In order to respond to current pressure from illegal immigration, priority regions for the establishment of such ILO networks should be relevant African countries and the Western Balkans.

52. Europol offers operational and strategic support to Member States as part of its mandate to prevent people smuggling. However, **operational cooperation** and communication between Member States and Europol should be improved and reinforced. To that end, structured cooperation between national immigration services, border guards, police and other law enforcement agencies responsible for combating facilitated illegal immigration and human trafficking should be established, which should also include exchange of intelligence data and their joint analysis. Also, Member States should make enhanced use of Joint Investigation Teams to dismantle facilitators´ networks, in accordance with the relevant Framework Decision 2002/465/JHA and with the participation of Europol.

i. Carriers' liability

53. With respect to carriers´ obligations to prevent illegal immigration, Article 26 of the Convention implementing the Schengen Agreement, the Carriers Liability Directive 2001/51/EC and Directive 2004/82/EC on the obligation of carriers to communicate passenger information are particularly relevant. An **assessment of the effects of these measures** will be undertaken with a view to addressing any shortcomings or gaps. The forum set up in 2001 and composed of representatives from Member States, transport industry, and humanitarian organizations, should explore possibilities of cooperation between migration authorities and carriers, and identify best practice in the course of 2007.

4. conclusion

54. The Hague Programme confirms that the implementation of measures already agreed is an integral part of how the EU continues to address illegal immigration. Informal exchange of information between Member States as well as monitoring of Member States' compliance with the existing acquis by the Commission is crucial in order for the measures to take their full intended effects.

55. Against the background of the multi-strand approach described, the Community should foster a joint approach based on mutual trust and the sharing of expertise and

knowledge with a view to deepening cooperation and developing common policies. The measures proposed build upon an already sound basis and will contribute to the Hague Programme objective to improve the ability of the Union to regulate migration flows. The Commission will report to the Council on progress made in the implementation of these measures one year after adoption of this Communication.