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***Annex to the*:**

Proposal for a European Parliament and Council directive on common standards on procedures in Member States for returning illegally staying third country nationals

Impact Assessment

{COM(2005) 391 final}

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1. PROBLEMS IN THE CURRENT SITUATION

"Return" in the context of this document concerns persons staying **illegally** in the EU. These persons do not, or no longer, fulfil the conditions for entry into, presence in, or residence in the territories of the Member States of the European Union whether because they entered illegally, overstayed their visa or residence permit, or because their asylum claim has been finally rejected. These persons have no legal status enabling them to stay in the territory of the Member States and need to be obliged to leave the territory of the Member States. It may be that illegal migrants or rejected asylum seekers agree to return voluntarily. This clearly should be encouraged. However, Member States need to be able to compel third country nationals' to respect their obligation to return, if circumstances require.

Currently, Member States' legislation on returning third country nationals present illegally differs widely. Both the terminology used in national legislation and the substantive provisions applying to return, removal, use of coercive force, temporary custody and re-entry are different from Member State to Member State. This leads to difficulties in situations involving more than one Member State (for example: a person found to be staying illegally in MS A is apprehended in MS B. – Should that person be permitted a second opportunity to challenge his return in MS B with legal remedies, with the attendant risk of "*legal remedies shopping*" ?) This situation also has a distorting effect on the repartition/movement of illegal immigrants (who may prefer to move to those MS which have the most relaxed rules) within the EU and it sends a bad signal to the outside world in terms of the EU's willingness to combat illegal immigration effectively.

In the absence of basic common rules and terminology in this field, further harmonisation, based on mutual trust of MS into their national systems, will be difficult, if not impossible.

1.1. Need for a credible European return policy supporting the fight against illegal immigration heading toward the European Union

Reliable estimation for the number of illegal immigrants who have entered or are present illegally on the territory of the Member States by the very nature of illegal immigration, is difficult to make. There are, however, a number of other indicators which can help us understand and draw conclusions regarding illegal immigration heading toward the European Union. Eurostat currently collects data both on the numbers of apprehended aliens illegally present in the territory of the Member States; and of third country nationals removed by Member States[1]. Moreover, the scale of illegal immigration into the EU seems still to be significant (estimates suggest that it is well over 500,000 each year). National return trends are varied, across Europe [2]. Increased migration pressure during the next decades seems very likely in view of the economic and political situation in many countries of origin and with regard to demographic forecasts. Illegal migratory movements are likely to continue at a significant rate so long as 'push' factors in third countries and 'pull' factors in the EU remain important.

Organised criminal networks have a direct interest in illegal migration. Smuggling and trafficking in human beings has become a prominent field of their activity throughout Europe. A common return policy should be an indispensable part of fight against illegal immigration.

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1 See Annexes

2 See also Return Migration: Policies and Practices in Europe, IOM, January 2004

The credibility of EU migration policy and the rule of law are at stake when illegal residents succeed in staying in the EU despite being subject to an issued return decision and this situation further hinders the development of a necessary, well managed immigration policy accepted by the wider public in the Member States. It could also lead to an increase in xenophobia and could be used as an argument by extremist anti-migration movements in Member States.

1.2. Lack of harmonised procedural rules on return of third country nationals illegally staying on the territory of the Member States

The lack of harmonised procedural rules on return causes complex problems that can be further broken down into the following interrelated elements:

1.2.1. Need to increase mutual trust in Member States' institutional and administrative systems responsible for return procedures

For any enhanced administrative and operational cooperation in the field of return, mutual trust in each other's system is an indispensable prerequisite that cannot be developed without the same standards being applied throughout the Member States.

1.2.2. Lack of common standards and terminology upon which further harmonisation could be built

Until now, not only the procedural rules but also the terminology used by Member States is quite different which makes it difficult to identify and compare the same procedural steps followed in the Member States concerned. The terminology in the field of return differs substantially due to differences in the legal systems and institutional framework of return procedures in the Member States. The synonymous uses for different terms often create confusion. For example, in the context of return the term "expulsion" is frequently used. The current understanding of "expulsion" differs widely among Member States. For some Member States, expulsion is an act which states the illegality of entry, stay or residence; for other Member States, expulsion is an act which terminates the legality of a previous lawful residence e.g. in cases of criminal offences. Annex I of the 2002 Council Return Action Programme reflects this ambiguous "twin"-understanding of the term expulsion and does not arrive at a common definition. The lack of common terminology makes more difficult the exchange of information between Member States and the improvement of practical cooperation.

1.2.3. Danger of "legal remedy shopping"

The absence of harmonised rules makes it possible that a third country national illegally staying in one Member State may not be prevented from accessing all remedies according to the national law of that Member State even though the third country national has already used all available remedies and absconded in another Member State. .

1.2.4. Varying national standards on temporary custody with regard to return

Temporary custody is an instrument of law enforcement, regularly used by Member States by which the persons concerned are deprived of liberty in accordance with relevant national legislation. However, national practices, e.g. in terms of reasons/purpose of temporary custody (facilitating the identification of the illegal resident concerned in order to obtain return travel documents; preventing the returnee from absconding before removal etc.) or the duration,

differ widely. The possible time limits for such kind of temporary custody are between statutory limits of few days, extendable limits of several months up to no explicit statutory limits at all among Member States. Consequently, illegally staying third country nationals in similar situations in different countries may or may not be kept in temporary custody depending on the national practice followed in the Member State where they are subject to return. Even if all Member States observe the relevant international obligations laid down in Article 5 of the European Convention on Human Rights in relation with lawful temporary custody and the possibility to take proceedings by which the lawfulness of the temporary custody shall be decided speedily, the present situation raises serious concerns on equal and fair treatment of the persons concerned. Moreover, the conditions of temporary custody, in particular the accommodation standards have significant difference from Member State to Member State. Third country nationals subject to return may be kept in specific temporary custody facilities where such facilities do exist. In some Member States where special temporary custody facilities are not available or capacities are exhausted, returnees may be kept in temporary custody in ordinary prisons. For the time being there are no binding European standards to ensure that returnees are separated from convicts in order to avoid any criminalisation.

1.3. Lack of obligation of third country nationals illegally staying in a Member State to leave the territory of the entire European Union

A return should be judged successful only if the illegal resident concerned has left the territory of the EU rather than of a particular Member State, providing that no other Member State has granted legal residence. The mere fact that a third country national illegally staying in a Member State may comply with his/her obligation to leave by moving to another Member State leads to uncontrolled secondary movement among Member States and may lead to further illegal presence in another Member State. The goal of a potentially long illegal stay in the EU is also an incentive for other third country nationals to seek to avoid compliance with conditions laid down by Community law and national legislation of the Member States for legal entry and stay.

1.4. Lack of effective information exchange among Member States on return decisions and removal orders

Due to the lack of effective information exchange among Member States on return (expulsion) decisions and of corresponding IT tools which would enable such an exchange, a third country national subject to return could abscond to another Member State. If that person is apprehended in the second Member State, the competent authorities might have to start a new return procedure from the very beginning, if the person concerned has also a right to stay there and the existence of the previously issued enforceable decision might never be found out. This is particularly relevant in an area without internal border controls. The Council adopted a Directive on the mutual recognition of decisions on the expulsion of third country nationals on 28 May 2001[3] to permit the recognition of an expulsion decision issued by the competent (administrative) authority in one Member State ("issuing Member State") against a third country national present within the territory of another Member State ("enforcing Member State"). However, the implementation of this Directive has not as yet been able to evolve into a daily practice of mutual recognition because of the lack of systematic exchange of information on expulsion decisions.

[3] Council Directive 2001/40/EC, OJ L 149, 2.6.2001, p. 34.

2. POLITICAL ORIENTATIONS AND OBJECTIVES

The European Council, at its special meeting in Tampere on 15 and 16 October 1999, underlined the need for more efficient management of migration flows at all stages.

The Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union[4], adopted by the Council on 28 February 2002 based on the Commission's Communication of 15 November 2001 on a common policy on illegal immigration[5], states that readmission and return policy is an integral and vital component of the fight against illegal immigration. To that end, the plan emphasises the need to analyse the advisability of implementing common standards for return procedures.

The European Council, at its meeting in Seville on 21 and 22 June 2002, highlighted the need for fighting against illegal migration and attached top priority – inter alia - to return policy.

The Return Action Programme, approved by the Council on 28 November 2002 and based on the Commission's Communication of 14 October 2002 on a Community return policy on illegal residents[6], recommends that consideration should be given to establishing common minimum standards on return.

The European Council, at its meeting in Brussels on 16 and 17 October 2003, reaffirmed that a common return policy is a key element for an efficient and comprehensive immigration policy and invited the Council and the Commission to give the highest priority to the implementation of the Return Action Programme adopted in November 2002.

The European Council at its meeting in Brussels on 4 and 5 November called for the establishment of an effective removal and repatriation policy, based on common standards and for persons to be returned in a humane manner with full respect for their human rights and dignity. It called for the submission of a Commission proposal in early 2005 and suggested that this proposal should support effective national removal efforts and take into account special concerns as regards safeguarding public order and security.

In principle, any illegally staying third-country national, regardless of the cause of the illegal presence (i.e. expiry of a visa, expiry of a residence permit, revocation or withdrawal of a residence permit; final negative decision on an asylum application, withdrawal of refugee status, illegal entrance etc.) should be obliged to leave the EU. This is essential to ensure that admission policy is not undermined and to enforce the rule of law, which is a constituent element of an area of freedom, security and justice.

To the extent possible, priority should be given to voluntary return for obvious humane reasons. In addition, voluntary return requires less administrative effort than forced return.

However, the forced return of illegal residents may be necessary in certain circumstances. It can also send a signal both to illegal residents in the Member States and to potential illegal migrants outside the EU. Combined with further efforts to combat undeclared work in the EU, more transparent procedures, awareness raising campaigns against smuggling of human beings

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4 OJ C 142, 14.6.2002, p. 23.
5 COM (2001) 672.
6 COM (2002) 564.

and better information about legal channels for admission, efficient return policies can encourage potential migrants to explore instead the possibilities for obtaining legal residence in the EU and can discourage those who do not fulfil the necessary requirements for legal immigration. It can also help to ensure public acceptance of greater openness towards legal immigrants.

Bearing in mind the above mentioned political orientations, the overall policy objectives are to strengthen the integrity and credibility of the common European immigration policy and to combat illegal immigration by developing a common return policy as a necessary complement, as well as to fix basic common rules on return procedures in MS in order to enhance mutual trust of MS in their respective national systems and to provide a first step towards harmonisation. These rules should be transparent and fair, taking into account the need for an effective and strict return policy, whilst respecting the human rights and fundamental freedoms of the person being returned.

3. POLICY OPTIONS

On the basis of the problem analysis, the political orientations and the objectives set out above, four policy options were defined and assessed.

3.1. Option 1.: No policy change

The first option is to maintain the status quo and not seek to develop common standards on return procedures. Member States may oblige third country nationals staying illegally on their territories to leave and enforce their return – including temporary custody measures – according to their national legislation and practice. Third country nationals subject to a return decision may potentially comply with their obligation to leave by moving to another Member State. The existing community legal framework provides only for a limited and optional possibility of mutual recognition of administrative expulsion (return) decisions issued by the competent administrative bodies of another Member States for certain reasons, meanwhile return decisions quite often are issued by judicial authorities for other reasons (i.e. as a criminal sanction).

However, the following developments have potential to improve the current situation and approach the political objectives summarised above:

- Firm implementation of return decisions issued by the competent administrative or judicial bodies of Member States with a view to ensure that third country nationals subject to return decision should leave the territory of the European Union provided that they have no valid claim to stay in any other Member States. It entirely depends on the relevant provisions in national legislation and on the attitude of the authorities responsible for the enforcement of such return obligations.

- More frequent use of joint return flights for removal of third country nationals subject to return decisions. The Council adopted a Decision on 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subject of individual removal orders. The purpose of this Decision is to coordinate joint removals by air in which two or more Member States are using a selected air carrier for enforced return of third country nationals subject to a removal order. The

Return Action Programme, approved by the Council on 28 November 2002, recommends – as one of the measures and actions with regard to improved operational cooperation among Member States – that the return of third-country nationals illegally resident in a Member State should be made as efficient as possible by sharing existing capacities for organising joint flights. Joint removal operations already take place among some Member States as a means of sharing costs, making better use of resources and demonstrating common action in the fight against illegal immigration. More frequent use of such flights could enhance the effectiveness of the national return policies of the Member States as well as shortening the average stay of third country nationals subject to removal orders on the territory of the Member States issuing that order.

- The current development of the second generation of the Schengen Information System (SIS II) which resulted from the necessity to connect new Member States, will bring benefits in terms of the latest developments in the field of information technology and should allow for easy introduction of new functionalities in the system such as the possibility to share data regarding return decisions for those Member States who fully apply the Schengen-acquis. However, it should be borne in mind that these system entries, in the absence of harmonised European standards, will not necessarily reflect the same legal and factual conditions leading to the issuance of a return decision. Entering data systematically on return decisions issued by the competent administrative authorities of Member States could however improve the effectiveness of the implementation of the Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals.

3.2. Option 2.: Adoption of a non-binding legal instrument

This second option is for common standards on return procedures to be laid down in a non-binding legal instrument, namely in an EC Recommendation of the Council and of the European Parliament. Recalling the Council Decision of 22 December 2004 providing for certain areas covered by title IV of Part three of the Treaty establishing the European Community to be governed by the procedure referred to in Article 251 of that Treaty[7] and its Article 1 paragraph 2, any measures referred to in Article 63(3)(b)- on illegal immigration and illegal residence, including repatriation of illegal residents shall be adopted as from 1 January 2005 in accordance with the procedure laid down in Article 251 of the Treaty (codecision procedure).

Laying down common standards on return procedures by adopting a Recommendation would mean that Member States are called on, but not placed under any legal obligation, to reach the desired and necessary level of harmonisation in this field. In spite of the undoubted common interest to tackle illegal immigration and to develop an effective return policy, due to the complexity of this issue – different roles played by Member States, and different level of exposure to the consequences of illegal migratory movements as well as the above mentioned variety of legal and administrative framework of return procedures at national level, the outcome of this option would be difficult to anticipate and/or schedule in time.

3.3. Option 3.: Gradual harmonisation by adoption of a directive on common standards of return procedures

The third option is that common standards on return procedures are laid down in a European

[7] J 396 of 31.12.2004, p. 45.

Parliament and Council Directive with a comprehensive approach covering all relevant key aspects of return, including the ending of illegal stay, the enforcement of the obligation to return, cases of temporary custody of third country nationals subject to a return decision, access to legal remedies, prevention of re-entry of third country nationals subject to return decisions or removal orders as well as the procedures to be followed in case of apprehension of those persons in another Member State.

This Directive by definition would be binding on the Member States as regards the objectives to be achieved, but they could take into account their national legal and institutional circumstances when translating those common standards into their national legal and administrative system. Bearing in mind that return policy both at the national and Community level is closely linked to the legitimate interest of Member States in safeguarding public order and security on the one hand and to respect for human rights and fundamental freedoms of individuals on the other, common standards of such policy shall have a binding character.

3.4. Option 4.: Full harmonisation by adoption of a regulation on return procedures

The last option would provide for full harmonisation of return procedures by laying down detailed procedural rules for all the elements listed under Option 3 and by establishing a single forum for legal remedies in relation to return decisions, removal and temporary custody orders. The form of this legally binding instrument would be a European Parliament and Council Regulation adopted by the co-decision procedure. As the Regulation would set out all provisions in a detailed manner, it would not be possible to take into account the given circumstances of national legal and administrative systems of the Member States and it would be very difficult to ensure consistency with other kinds of legislation and procedures. In this regard, it is worth emphasising that the common return policy should not be seen as a self-standing policy but as part of a complex European immigration policy which has criteria both for legal entry and stay of third country nationals and also for terminating legal stay which usually end with the obligation to return for the persons concerned. The implementation of the Tampere "mandate" in the field of immigration represents a continuous and systematic development of the common immigration policy through this comprehensive approach. Separation of an integral element of this policy such as the issue of return of third country nationals illegally staying on the territory of Member States would be neither proportionate nor in accordance with the subsidiarity principle at the present stage.

4. IMPACT OF THE POLICY OPTIONS

We have assessed the relative financial costs, the potential for evading return by absconding to another Member State as well as the possible impact on human rights and protection of personal data of the different policy options set out in point 3. In this context "financial costs" mean the costs over and above those already incurred or anticipated under current arrangements or planned developments. However, potential costs of actual implementation of return decisions and removal orders were excluded from the assessment because they fall under the scope of a future community financial instrument on return. "Administrative costs" mean any burden on administrations of the Member States to implement the given policy option.

Moreover the benefits were also assessed, notably the efficiencies in implementation of a Common return policy, the likely impact on apprehension of illegals and on the volume of illegal immigration towards the EU; the development of common, fair and transparent rules;

effects that lead to strengthened operational cooperation (enhanced information exchange, mutual trust), possible contribution to internal security and last but not least the likelihood that human rights and fair treatment of third country nationals will be safeguarded.

The impacts have graphically been indicated with symbols whenever appropriate:

√*	impact conditional on the effectiveness of current developments and developments planned
*	Small impact
**	Medium impact
** *	Very significant impact

4.1. Benefits and costs of Option 1: No policy change

- Financial cost**:** no change[8]

- Evading return by absconding in another Member State: **

In principle, this option would lead to a situation in which third country nationals obliged to leave the territory of a Member State could easily abscond to another Member State and subsequently avoid the actual removal from the territory of the European Union or, at least, prolong their illegal stay within the EU. The other planned development described in 3.1 could only balance this negative impact to a limited extent.

- Impact on human rights, in particular the protection of privacy and personal data and the right to liberty:***

The use of the second generation of the Schengen Information System (SIS II) for storing data on return decisions and removal orders, including personal data of the third country nationals concerned, would have very significant impact on human rights and privacy, and there would be a substantial need to meet personal data protection and data security requirements in particular in view of the use of biometrics, since there would be a risk of misuse. Furthermore, the lack of common standards on temporary custody of third country nationals subject to return procedure could also have a negative impact and lead to different treatment in different Member States of the persons concerned.

[8] It should be noted that the estimated costs of the development of the SIS II referred in the Impact Assessment are 31,3 Million Euro – COM(2003) 771final – but as no financial impact on that development could be derived from these policy options, it has been left out of consideration.

- Administrative costs: no change

- Efficiencies in the implementation of a Common Return Policy: √*

This Option could only enhance the efficiency of the implementation of a Common Return policy - which is still a long way from completion– if the current developments (i.e. organisation of joint return flights) were used more frequently and more extensively and the planned development (SIS II) would support Member States in the enforcement of the return decisions.

- Increased apprehension of illegally staying third country nationals: √*

This option would only result in a significant increase of apprehension of third country nationals illegally staying in the territory of the Member States if accompanied by other measures, including more intensive checks of third country nationals within the territory of Member States and making data available on return decisions and removal orders issued by the competent authorities of Member States.

- Reduction in illegal immigration: √*

The "No policy change" option would have a small impact conditional on the implementation of current developments, in particular, cooperation among Member States in the organisation of joint removal flights and the possible use of the planned development (SIS II) for sharing data on return decisions and removal orders among Member States who fully apply the Schengen-acquis which would signal to those third country nationals intending to enter illegally or to overstay, the strong likelihood that such an attempt will result in their being compelled to leave the territory of the Member States.

- Developing common, fair and transparent rules on return procedures: no impact

- Enhanced information exchange among Member States on return decisions: √*

An improvement to the present state of information exchange among Member States on return decisions could only be anticipated if the planned developments regarding IT tools in the field of migration allowed storage and exchange of and exchange such data.

- Enhanced mutual trust of Member States in their national system: no impact

- Strengthening the credibility and integrity of the EU immigration policy: no change or negative impact

If cooperation on the implementation of current policy were to increase such as more extensive use of joint return flights for the enforcement of removal orders but no effort was made to check that the procedures were conducted in accordance with agreed common legal standards in each individual case of TCNs subject to removal on that flight, , regardless of the Member State issued the removal order, , it might give the impression that Member States do not pay attention to this aspect and emphasis is only put on actual removals. The principles of credibility and integrity of any policy,

including immigration policy, would be at risk if a fair balance between rights and obligations and appropriate, clear and transparent rules providing for securing compliance with those rights and obligations were not set out.

- Contribution toward internal security: √*

Current and planned developments – both on national and community level – i.e. cooperation between national security agencies, cooperation of law-enforcement bodies (police, border-guards), migration management services will of course continue to improve internal security within the European Union and its Member States.

- Safeguarding human rights and fair treatment of third country nationals (TCNs) subject to return: no change

4.2. Benefits and costs of Option 2: Adoption of a non-binding legal instrument

- Financial cost**:** no change

- Avoiding return by absconding in another Member State: **

The same impact should be anticipated as for Option 1.

- Impact on human rights, in particular the protection privacy and of personal data and the right to liberty:***

In order to provide for access to data on return decisions and removal orders, it is essential to create a database of such information. Failure to do so will make a more effective implementation of the common return policy impossible even if all Member States comply with the Recommendation and make the necessary changes to their national legislation. Therefore the use of this database that may be the second generation of the Schengen Information System (SIS II), would have the same impact as described above concerning the "No policy change" option. Due to their non-binding nature of this option, the provisions on temporary custody could not secure similar treatment of the persons concerned in each Member State.

- Administrative costs: √*

Member States may have to modify their existing legal and administrative system and the distribution of competencies (i.e. to ensure regular judicial review of temporary custody measures) in order to provide for the desired level of harmonisation with the common standards set out in the non-binding legal instrument, if they intend to do so.

- Efficiencies in the implementation of a Common Return Policy: √*

This Option could only enhance the efficiency of the implementation of a Common Return policy - which as has been emphasised is still some distance away from being completed – if Member States were prepared to achieve the necessary and envisaged harmonisation of their current legislation and practice. Given the fact that return procedures are already established and conducted in all Member States and such procedures constitute an integral part of their domestic, administrative – including

maybe law-enforcement – system on one hand, and, on the other, the different roles played by Member States, as well as the different level of exposure to the consequences of illegal migratory movements, the compliance with a non-binding legal instrument by Member States could neither be guaranteed nor scheduled in time.

- Increased apprehension of illegally staying third country nationals: *

The adoption of a non-binding legal instrument laying down common standards on return procedures can only be expected to have a small impact on the number of illegals apprehended because this instrument would only address situations where the third country national has already been found in an illegal situation due to his/her illegal entry or stay. Therefore this instrument would not seek to establish any new methods for more effective apprehensions. However, since effective community action on return of illegal residents is an essential part of a common policy to fight illegal immigration, a development of a return policy is likely to have some impact – albeit a small one – on apprehensions by facilitating return - either voluntarily or forced – of apprehended aliens. The additional measures described under Option 1 may have an additional impact in this regard.

- Reduction in illegal immigration: √*

The likely impact of the adoption of a non-binding legal instrument would be similar to that of the "No policy change" option, namely that it would have a small impact conditional on the compliance of Member States with those non-binding common standards on return procedures. However, as the reasons for illegal migratory movements toward the European Union vary widely, this impact should not be overestimated.

- Developing common, fair and transparent rules on return procedures: **

This option would undoubtedly develop common, fair and transparent rules on return procedures. However, due to the lack of any legal obligation for Member States to comply with those rules, its likely impact must remain at medium..

- Enhanced information exchange among Member States on return decisions: √*

An improvement to the current state of information exchange amongst Member States on return decisions could only be anticipated if the planned development regarding IT tools in the field of migration permitted the storage and exchange of such data and, and Member States harmonise their legislation with the non-binding common standards providing for exchange of information.

- Enhance mutual trust of Member States into their national system: *

As the extent of actual harmonisation on European level would depend on Member States' attitude to voluntary compliance with the common standards, it must be expected that the impact will be small.

- Strengthening the credibility and integrity of the EU immigration policy: *

Laying down only non-binding common standards on an issue which directly concerns

both human rights and security, could have a small impact only on public opinion inside and outside the European Union concerning the credibility and integrity of the EU immigration policy.

- Contribution toward internal security: *

Current and planned developments – both at national and community level – i.e. cooperation between national security agencies, cooperation of law-enforcement bodies (police, border-guards), migration management services will of course continue to improve internal security within the European Union and its Member States. Non-binding common standards on return procedures if and when implemented by Member States may contribute to internal security. However, it must be emphasised that the primary aim of the common return policy is not to fight terrorism and most third country nationals subject to return do not constitute any threat to national security of Member States.

- Safeguarding human rights and fair treatment of third country nationals (TCNs) subject to return: *

This option would permit the reaffirmation of the EU's respect for the human rights and fundamental freedom of persons in the context of return procedures as well as setting out procedural safeguards regarding rights and obligations of third country nationals subject to return. However, as long as these provisions are set out in a non-binding legal instrument, their impact will be limited.

4.3. Benefits and costs of Option 3: Gradual harmonisation by adoption of a directive on common standards of return procedures

- Financial cost**:** no change

- Evading return by absconding in another Member State: no such impact

Laying down binding common standards on return procedures - including the procedure to be followed in the event of apprehending illegally present third country nationals subject to a return decision or a removal order - should obviously reduce the possibility of absconding.

- Impact on human rights, in particular the protection of privacy and personal data and the right to liberty:**

A lower intensity of impact could be expected than under any of the previous options. The adoption and the transposition of the directive by the Member States would necessarily lead to systematic sharing of data among Member States who fully apply the Schengen-acquis on return decisions and removal orders via the common database providing for such functionality - that is likely to be the second generation of the Schengen Information System (SIS II) – but it would be based on the agreed binding common standards in spite of the previous options. Bearing in mind the present differing practice of Member States on temporary custody, harmonisation of this aspect may make in some cases national provisions stricter, in other cases less strict compared to the present situation.

- Administrative costs: **

Member States will probably have to modify their existing legal and administrative system and the distribution of competencies (i.e. to ensure regular judicial review of temporary custody measures) in order to provide for the requested level of harmonisation with the common standards set out in the directive within the given transposition deadline.

- Efficiencies in the implementation of a Common Return Policy: **

This Option could provide for a significant improvement regarding the efficiency of the implementation of a Common Return policy as well as for the further gradual development of that policy. Member States would be placed under a legal obligation to comply with the common standards laid down in the directive, being able to take into account any particularities of their national legal and administrative environment. This option would also pave the way for appropriate follow-up and consideration of the need for future policy developments. The reason to grade its impact at medium level is that even if it would be a core element of a Common Return Policy, the effective implementation of that policy demands synergy of the different legal instruments and practical arrangements (i.e. closed operational cooperation among the competent administrative and law-enforcement bodies of Member States) applicable in this field.

- Increased apprehension of illegally staying third country nationals: *

The same impact should be anticipated as under Option 2.

- Reduction in illegal immigration: **

The likely impact of the adoption of a binding legal instrument can be expected to be at medium level. Laying down binding common standards and firm application of them at both the national and community level accompanied by other measures such as enhanced administrative cooperation of the competent national authorities of the Member States would result in a credible likelihood of return and of its subsequent enforcement, if the circumstances of a given case so require. Consequently, the clear message to illegal residents in the Member States and to potential illegal migrants outside the EU will be that illegal entry and residence do not lead to the stable form of residence they hope to achieve[9]. It will be made clear that, in principle, third-country nationals, without a legal status enabling them to stay, either on a permanent or a temporary basis, and for whom a Member State has no legal obligation to grant any kind of protection, have to leave the EU. On the other hand, the variety of reasons behind illegal migratory movements, including the ones which are linked to poverty and other extreme hardship situations in the countries of origin pushing people to look for their prospects elsewhere, will necessarily limit the impact of any policy option.

[9] Cf. COM (2001) 672, p.6.

- Developing common, fair and transparent rules on return procedures: ***

This option would develop binding common, fair and transparent rules on return procedures, to be transposed by Member States into their national law within a given deadline. Even if this option envisages gradual harmonisation, it sets out common standards regarding the most important aspects of return procedures.

- Enhanced information exchange among Member States on return decisions: **

An improvement on the present state of information exchange among Member States on return decisions could only be expected if the planned developments regarding IT tools in the field of migration permit storage and exchange of such data. However, the Commission's proposals to be tabled on this subject, notably the draft regulation on the establishment, operation and use of the Second Generation Schengen Information System (SIS II) in synergy with this policy option will lead to enhanced information exchange among Member States who fully apply the Schengen-acquis.

- Enhance mutual trust of Member States in their national system: ***

For achieving stable and mutual trust of Member States in each others' national systems responsible for issuing return decisions and removal orders as well as for dealing with legal remedies, it is indispensable that those systems operate according to common standards, ensuring an adequate and similar treatment of illegally staying third country nationals subject to return. In addition, in all stages of a return procedure, full respect of human rights and fundamental freedoms of the persons concerned shall be ensured while performing a necessary law enforcement task. The only way to provide for such mutual trust is that each national system is developed according to binding common standards.

- Strengthening the credibility and integrity of the EU immigration policy: **

Having binding common standards on return procedures which – it is worth emphasising again - directly concern human rights and security aspects, would undoubtedly be beneficial to the credibility and integrity of EU immigration policy, given that it would be an integral part of a set of instruments reflecting the Union's comprehensive and balanced approach towards the present challenges of migration.

- Contribution toward internal security: **

Current and planned developments – both at the national and community level – i.e. cooperation between national security agencies, cooperation of law-enforcement bodies (police, border-guards), migration management services will of course continue to improve internal security within the European Union and its Member States. Whilst reiterating that the level of threat to national security posed by third country nationals subject to return–is in most cases very low, it needs to be pointed out that this option would take into account Member States' legitimate interest in ensuring internal security and lays down certain provisions to deal with those particular cases.

- Safeguarding human rights and fair treatment of third country nationals (TCNs)

subject to return: ***

This option would set out fair and transparent rules for return procedures. It would put special emphasis on those measures - including the temporary custody of third country nationals subject to a return procedure and the enforced return of the persons concerned - by which those rights might be threatened in the absence of binding legal standards. Furthermore, it would set out procedural safeguards regarding rights and obligations of third country nationals subject to return.

4.4. Benefits and costs of Option 4: Full harmonisation by adoption of a regulation on return procedures

- Financial cost**:** **

This option probably would have a medium impact regarding financial costs. However, as this option has been discarded at an early stage due to the reasons described under point 3.3, it is not possible to quantify these possible financial costs.

- Evading return by absconding in another Member State: no such impact

The same impact should be expected as under Option 3.

- Impact on human rights, in particular the protection of privacy and personal data and the right to liberty:**

The same impact should be expected as under Option 3.

- Administrative costs: **

The same impact should be expected as under Option 3. In addition the creation of a single European appeal body dealing with all legal remedies in relation with return procedures would cause administrative costs not only at the national but also at the Community level.

- Efficiencies in the implementation of a Common Return Policy: *

In principle, there is a potential for this option to have the same impact as Option 3. However, bearing in mind that this option is not compatible with the present legal and administrative environment of Member States, the creation of a self-standing procedural system for return that is not integrated into the national system of Member States, may even undermine the effective implementation of the overall policy.

- Increased apprehension of illegally staying third country nationals: *

The same impact should be expected as for Option 3 with the attendant concerns mentioned in the previous point.

- Reduction in illegal immigration: **

In principle, this Option could be expected to have the same impact as Option 3.

- Developing common, fair and transparent rules on return procedures: ***

In addition to the benefits that Option 3 could bring, this option could go even further in theory, by laying down not simply common standards but detailed and unified provisions on all stages of return procedures.

- Enhanced information exchange among Member States on return decisions: ***

As the procedure would be unified by this option, including a single European Appeal body, it would require the closest cooperation among Member States in information exchange as well. The need for a central database, highlighted in connection with the previous options would obviously arise.

- Enhance mutual trust of Member States into their national system: **

Full harmonisation of return procedures should facilitate the establishment of mutual trust among Member States regarding each other's national systems providing it happens and is achieved comprehensively. However, as return procedures are inseparable from the overall national procedural and institutional system dealing with management of migration in each Member State, this option would only have a medium impact in this regard.

- Strengthening the credibility and integrity of the EU immigration policy: **

The same impact should be expected as for Option 3.

- Contribution toward internal security: **

The same impact should be expected as for Option 3

- Safeguarding human rights and fair treatment of third country nationals (TCNs) subject to return: ***

This option would make it possible to set out detailed procedural safeguards regarding the rights and obligations of third country nationals subject to return procedure focusing on respect of binding legal standards of human/fundamental rights laid down in European and international law.

4.5. Impact summary tables

The following tables will show the costs and benefits of the different policy options:Costs[10]	Financial costs	Evading return by absconding in another Member State: **	Impact on fundamental rights, in particular the protection of privacy and personal data and the right to liberty	Administrative costs
No policy change	-	**	***	
Adoption of a non-binding legal instrument	-	**	***	√*
Gradual harmonisation by adoption of a directive on common standards of return procedures	-	-	**	**
Full harmonisation by adoption of a regulation on return procedures	**	-	**	**

[10] √*:impact conditional on the effectiveness of current developments and developments planned-*:Small impact-**:Medium impact-***:Very significant impact

Benefits[11]	Efficiencies in implementation of Common Return Policy	Increased apprehension of illegally staying TCNs	Reductions in illegal migration	Developing common, fair and transparent rules	Enhanced information exchange among MS	Enhance mutual trust of MS into their national system	Strengthening the credibility and integrity of the EU immigration policy	Contribution towards internal security	Safeguarding human rights and of TCNs
No policy change	-	√*	√*	-	√*	-	-	√*	-
Adoption of a non-binding legal instrument	√*	*	√*	**	√*	*	*	*	*
Gradual harmonisation (Option 3;)	**	*	**	***	**	***	**	**	***
Full harmonisation (Option 4.)	*	*	**	***	***	**	**	**	***

11 √*:impact conditional on the effectiveness of current developments and developments planned-*:Small impact-**:Medium impact-***:Very significant impact

Policy options	Advantages	Drawbacks
No policy change	None	No improvements Very significant impacts on human rights and data protection
Adoption of a non-binding legal instrument	Conditional improvement depending on Member States' attitude towards voluntary compliance with non-binding common standards	Very significant impacts on human rights, and data protection Costs of adaptation of national administrations to the common standards No substantial contribution to reduction of illegal migration Not in line with the European Council's request
Gradual harmonisation by adoption of a directive	No significant financial cost Substantial improvements in most areas notably standardisation of return procedures and safeguarding human rights Fully in line with the European Council's request	Costs of adaptation of national administrations to the common standards
Full harmonisation by adoption of a regulation	Substantial improvements in most area notably standardisation of return procedures and safeguarding human rights	Costs of adaptation of national administrations to the common standards Costs of the establishment of new administrative structures Not in line with the European Council's request

5. SUPPORTIVE MEASURES TO BALANCE NEGATIVE IMPACTS AND TO FACILITATE MORE EFFECTIVE IMPLEMENTATION OF THE CHOSEN POLICY OPTION

Since the common standards on return procedures would be established by an instrument of the first pillar under Article 63(3)(b) of the TEC, the community legislation on data protection (Directive 95/46/EC and as far as a Community body is processing data Regulation (EC) 45/2001) is applicable. These rules ensure the protection of fundamental rights of third country nationals subject to a return procedure with regard to the processing of their personal data.

National laws of Member States implementing the data protection requirements of Directive 95/46 will apply, as the procedures are conducted by the competent authorities of the Member States.

Member States shall provide inter alia that personal data must be processed fairly and lawfully, that data is collected for specified, explicit and legitimate purposes and is not further processed in a manner incompatible with those purposes – which in this context are the identification of third country nationals subject to a return decision or a removal order and the prevention of re-entry of those subject to a re-entry ban. Furthermore the processing of personal data must be adequate, relevant and not excessive in relation to the purposes for which it is collected and processed, it must be accurate and, where necessary, be kept up to date. Every reasonable step must be taken to ensure that data which is inaccurate or incomplete is erased or rectified.

To balance the negative effects of the abovementioned drawbacks and to facilitate more effective implementation of the chosen policy option the following supportive measures were considered:

5.1. Use of the Visa Information System (VIS)

On 19 February 2004, the JHA Council adopted conclusions to give the necessary political orientation on the basic elements of the VIS. According to these conclusions the Visa Information System (VIS) is "a system for the exchange of visa data between Member States, which must meet the following objectives:

(a) "assist in the identification and documentation of undocumented illegals and simplify the administrative procedures for returning citizens of third countries;"

A major obstacle to effective return is uncertainty as to 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 frequently claim a completely false identity and/or nationality. As a consequence, lengthy and expensive procedures often have to be conducted, which include presentation of the returnee at several embassies of third countries or conducting a language or dialect analysis.

The Commission has tabled a proposal for a Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas[12] on 28 December 2004. According to this proposal the competent immigration authorities will be able to access VIS to search for the purposes of identification and return of illegal immigrants.

Travel documents are currently photocopied and stored at the relevant consulate. If a Member State requires copies of these documents for returning an illegal immigrant, the competent authority can use the VIS to localise the consulate post that stores the documents, and may even use the VIS infrastructure to ask for these documents. The travel documents can subsequently be faxed or sent by normal mail to the competent authority that needs them, in the event that the alphanumeric data on the travel document stored in the VIS is not sufficient for the specific purpose.

[12] OM(2004) 835 final

5.2. Use of the Second Generation Schengen Information System (SIS II)

The Commission will table a proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Second Generation Schengen Information System (SIS II)[13]in 2005.

This upcoming proposal for a Regulation, will largely be based on the current SIS provisions contained in the Schengen Convention[14] taking also into account the Conclusions of the Council and the Resolutions of the European Parliament on SIS II[15]. In addition, this Regulation will aim to better align the SIS legal framework with EC law and likely to enlarge the use of the SIS II, in particular, in the following areas:

- Alerts concerning third country nationals for the purpose of refusing entry. The current rules on these alerts has to be reviewed in order to further harmonise the grounds for issuing such alerts in the SIS II. This is due to the current diverging practices in the Member States for issuing such alerts.

- Additional uses for the alerts concerning third country nationals. The proposed Regulation will likely enlarge the scope of these alerts so that the authorities responsible for immigration will also gain access to these alerts in certain cases and in accordance with their competencies. These new uses are foreseen in the context of the fight against illegal immigration and more in particular for the return of illegal third country nationals.

This upcoming proposed Regulation will be based on Article 63 (3) (b) of the EC Treaty since it lays down the grounds for issuing alerts on third country nationals for the purpose of refusing entry in the territory of the Member States. This constitutes mainly a migration management measure intended to prevent particular groups of third country nationals from gaining access to the territory of the Member States. The SIS II could contribute, therefore, to the fight of a specific and serious type of illegal immigration since the presence of these persons in the territory of the Member States would be illegal. These alerts would equally support the implementation of the return policy.

5.3. Data protection safeguards

The very principles for a legal framework of data protection are already laid down and recognised at European level, in particular in Article 8 of the Charter of Fundamental Rights of the European Union, Article 8 of the European Convention of Human Rights as well as in the Data Protection Directive 95/46/EC and the Council of Europe Convention of 1981 for the Protection on Individuals with Regard to Automatic Processing of Personal Data. The above-mentioned principles must be read alongside Article 6 of the Treaty on the European Union which declares that respect for human rights and fundamental freedoms is one of the principles on which the Union is founded.

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13 this proposal hasn't been adopted yet.

14 Articles 92 to 119 of the Schengen Convention taking into account also the amendments entered in the Convention following the adoption of the Regulation EC No 871/2004 concerning the introduction of some new functions for the SIS, including in the fight against terrorism.

15 Council Conclusions on SIS II of 5-6 June 2003, 29 April and 14 June 2004 and European Parliament's Opinions and Resolutions T4-0082/1997, T5-0610/2002, T5-0611/2002, T5-0391/2003, T5-0392/2003 and T5-0509/2003

Further specific provisions regarding data protection (such as the retention period for personal data entered into the SIS II and/ or to the VIS or the independent supervision of data processing) should be set out in the above mentioned respective legislative instruments.

5.4. Financial assistance to be provided for the implementation of a Common Return Policy including common standards on return procedures

The European Council at its meeting in Brussels on 4 and 5 November adopted "The Hague Programme" on Strengthening Freedom, Security and Justice in the European Union in which it called for the establishment of a European Return Fund by 2007 taking into account the evaluation of the preparatory phase. The Commission is currently working on a proposal for a Decision of the European Parliament and the Council establishing the European Return Fund for the period 2007-2013.

One of the specific objectives of that instrument should be the promotion of an effective and uniform application of common standards on return according to the policy development in the field. Thus the Member States should be able to benefit from this future Fund in the context of the implementation of the chosen policy option .

Actions relating to ensuring an effective and uniform application of common standards on return eligible for support from the Fund could be:

- Enhancement of the capacity of competent authorities to take high quality return decisions as quickly as possible;

- Enhancement of the capacity of competent administrative authorities to execute/enforce speedily removal decisions in full respect of human dignity and the relevant European security standards regarding such operations;

- Enhancement of the capacity of judicial bodies to more quickly assess return decisions appealed;

- Organization of seminars and joint training for the staff of the competent administrative, law enforcement and judicial bodies concerning legal and practical aspects of return operations;

- Enhancement of the capacity of competent administrative authorities to effectively implement common arrangements on mutual recognition and joint return operations.

6. MONITORING AND EVALUATION

The effective monitoring of the chosen policy option would require regular evaluation of the implementation and of the state of play regarding the situation in the field of returning third country nationals.

In order to facilitate the identification of possible problems and questions of interpretation at an early stage and to offer an opportunity for discussion between MS and the Commission, the best option seems to be the establishment of an informal Contact Committee:

This Contact Committee would offer a platform for the exchange of views on the

interpretation of the provisions of the legal instrument as adopted according to the policy option chosen.

In addition, in depth evaluation would not be possible without reliable statistical data on return procedures. Such data collection already takes place in the framework of the CIREFI[16] and Member States also supply data for Eurostat.

Detailed indicators and targets would need to be developed, including results achieved against objectives in order to judge the outputs and factual impacts of the final policy option.

Monitoring and evaluation indicators could be in particular:

- Number of return decisions and removal orders issued by the competent administrative and judicial bodies of the MS;
- Number of requests for legal remedies;
- Numbers of decisions on appeals divided by their outcome (approved/altered);
- Number of third country nationals having returned (voluntarily/forcibly);
- Number of third country nationals having been kept in temporary custody in return procedures;
- Average duration time of temporary custody;
- Average time of return procedures;
- Number of mutual recognition of return decisions and removal orders;
- Number of requests to take back TCN's by the Member State which has issued the return decision.

Based on the information gathered in the Contact Committee as well as in regular collection of relevant statistical data, a regular report should be drawn up assessing the continuing validity of the underlying rationale and any implications of future options.

7. STAKEHOLDER CONSULTATION

Following the presentation of the Green Paper on a Community Return Policy on Illegal Residents[17], the Commission received a number of reactions from interested parties, including all relevant stakeholders. Then the Commission hosted a public hearing on 16 July 2002, where on the basis of the ideas set out in the Green Paper, the present practices of return policies and options for a future common EU policy on the return of illegally staying third country nationals were discussed. The hearing allowed an open exchange of views between representatives of the European institutions, Member States, candidate countries, countries of origin and transit of illegal migratory movements, other countries of destination, international organisations,

[16] Council Conclusions of 30 November 1994 on the organization and development of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (Cirefi)*OJ C 274 , 19/09/1996 p. 50*

[17] COM (2002) 175 final

regional and municipal authorities, non-governmental organisations and academia.

Member States have been further consulted in the framework of the Commission-chaired informal expert committee.

In addition, NGO's and the UNHCR have also been granted the opportunity to express their views on the necessary elements of common standards on return procedures.

7.1. Member States

In the context of the public hearing, 12 Member States and 5 candidate countries provided written contributions and many of them expressed their views during the public hearing as well. Following the above mentioned expert meetings, these common standards were made the subject of a written consultation procedure.

The main conclusions to be drawn are the followings:

- Member States backed the principle that an illegal resident had to be removed with the use of coercive measures, if he/she did not leave voluntarily. A clear date should be set by which the person should leave the territory once a decision had been made; in case of non-compliance, an expulsion order should follow swiftly afterwards.

- A firm link should be made between return policy and other measures taken to tackle illegal immigration, such as border management, document security and visa policy.

- General support exists for laying down common standards, including the "phased approach" to harmonisation.

- Future common standards should not impose an obligation to follow a two-stop procedure (return decision followed by removal order) in all circumstances.

- Possibility for Member States to maintain systems of both judicial and administrative temporary custody and on the maximum time-limits for temporary custody.

- Need for a flexible approach allowing Member States to choose between mutual recognition of return decisions and the return of persons concerned to a first Member State" already issued a return decision or a removal order.

7.2. Comments from international and non-governmental organisations and from academia

11 NGO's, among them the most prominent and respected organisations in Europe, provided written contributions as well as international organisations such as the International Organisation for Migration, the UNHCR and the Red Cross.

Among those comments the following should be highlighted:

- With regard to the actual removal, the training for staff carrying out return

enforcement should include training on human rights and anti-discrimination.

- Main issues with regard to temporary custody pending removal: the necessity of ensuring judicial control over temporary custody, the importance of establishing a maximum duration for temporary custody and minimum standards for treatment, as well as the need to establish the rights and duties of the person kept in temporary custody (for example the right to legal assistance).

- Recommended accommodation standards for temporary custody and appropriate safeguards for the treatment of vulnerable groups, such as minors, ill or physically handicapped persons, elderly persons and victims of trafficking. Families should not be separated during removal procedures.

- Safeguards should include at least the right of appeal and appropriate legal assistance. These safeguards were crucial where the individual had not given consent to return.

- As a general rule, appeals should have suspensive effect. The only potential exceptions to this would be in the case of manifestly unfounded asylum claims, in which cases there should nonetheless be the possibility of independent review before the person could be removed. Widely-accepted international jurisprudence supports the view that an 'effective remedy' implies suspensive effect of appeals.

- Temporary custody should be an exception and that alternative measures should be considered. Temporary custody periods should be strictly limited to the time necessary to organise the departure of the returnee. Minimum conditions should be guaranteed: sanitary controls, no coercive measures such as handcuffs, information for foreigners about procedures and their future, access to social help.

- The EU could play a leading role in the development of a return policy that holds Member States accountable for observing their existing human rights commitments.

8. COMMISSION'S DRAFT PROPOSAL AND JUSTIFICATION

8.1. Proportionality and European added value of the policy options

Based on the assessment of the four options in chapter 4., proportionality and the European added value of the options can be summarized as follows:

	Proportionality	European added value
No policy change	Does not address the political objectives set and only some improvements in the problems in the current situation could be anticipated due to other planned developments	None
Adoption of a non-binding legal instrument	Moderate improvement, of which final outcome difficult to foresee	Sets out common, but non-binding basic rules that may lead to harmonisation of return procedures
Gradual harmonisation by adoption of a directive	Substantial improvement, meeting all of the political objectives and providing for the flexibility for MS regarding the transposition of common standards into national systems	Standardises return procedures conducted by MS by setting out common, fair and transparent rules; safeguards human rights of third country nationals subject to return procedures Contributes to an effective common return policy
Full harmonisation by adoption of a regulation	Substantial improvement, meeting all of the political objectives, but at the same time would unnecessarily separate return procedures from other developments in the field of migration	Standardises return procedures conducted by MS by setting out common, fair and transparent rules; safeguards human rights of third country nationals subject to return procedures Contributes to an effective common return policy

8.2. Final Policy choice

The assessment of the various impacts makes it clear that Option 3, the gradual harmonisation by adoption of a directive on common return standards meets the political objectives and orientations set out in the conclusions adopted by the European Council, in particular the Hague Programme adopted in Brussels on 4-5 November 2004 as well as in the Return Action Programme approved by the Council on 28 November 2002.

Within an area of freedom, security and justice where inner border controls do not exist, the efficient return of illegally staying third country nationals who have received a return decision or removal order, is of major importance. A return should be judged to have been effected only if the illegal resident concerned has left the territory of the EU rather than that of a particular Member State, where no other Member State has granted legal residence.

The possibility of effective return – either voluntarily or forcibly – is essential to ensure that admission policy (including protection need-based admission) is not undermined and to enforce the rule of law. A credible policy on return helps to ensure public acceptance for more openness towards persons who seek protection because of well-founded fear of persecution, and for legal immigrants. Furthermore, laying down common standards on return procedures would be a major contribution to safeguarding human rights and fundamental freedoms of persons subject to return.

For the preparation of the legislative proposal, the supportive measures outlined in section 5 of this assessment should be duly taken into account in order to minimize and balance the drawbacks as well as to facilitate the most effective implementation of the chosen option which would represent a remarkable development of the Common European Policy on fight against illegal immigration according to Article 63(3)(b) of the Treaty establishing the European Community.

Further developments should be based on experience gathered by the monitoring and evaluation of the implementation of the chosen policy option and on Article III-267 c) of the Constitution after its entry into force.

ANNEX

Apprehended aliens illegally present, 2000-1st quarter 2004 based on data of

	2000	2001	2002	2003	2001	2002	2003	Jan 2004	Feb 2004	Mar 2004	
	Absolute numbers				Indexed numbers (2000=100)			Absolute numbers			
Belgium	6070	17310	19998	22164	285	329	365	1583	1608	1904	
Czech Republic	25503	21580	22625	23142	85	89	91	1386	1335	1864	
Denmark	275	646	313	1666	235	114	606	138	172	214	
Germany	18970	35184	30621	26485	185	161	140	1965	1764	1808	
Estonia	3104	1342	864	1716	43	28	55	163	118	150	
Greece	:	:	43742	47915	:	:	:	2298	2253	2628	
Spain	38121	44919	53579	55164	118	141	145	4464	5613	5473	
France	53604	48769	48521	54092	91	91	101	5212	5255	6335	
Ireland	:	:	:	:	:	:	:	:	:	:	
Italy	91460	90160	92823	59535	99	101	65	3619	5701	7462	
Cyprus	1449	182	725	3794	13	50	262	193	508	404	
Latvia	305	263	377	518	86	124	170	37	34	34	
Lithuania	813	236	197	502	29	24	62	14	30	33	
Luxembourg	164	85	:	:	52	:	:	49	54	46	
Hungary	4710	1818	406	509	39	9	11	29	50	25	
Malta	49	703	1854	945	:	:	:	30	47	26	
Netherlands	:	8942	10648	6395	:	:	:	:	:	:	
Austria	42374	45308	46232	43448	107	109	103	2726	2916	3648	
Poland	954	3509	7549	8841	368	791	927	428	601	713	
Portugal	26140	4683	11397	17886	18	44	68	1954	1878	1723	
Slovenia	26971	14305	5393	4214	53	20	16	250	307	317	
Slovakia	1571	3070	3858	10257	195	246	653	833	665	596	
Finland	:	168	474	1588	:	:	:	168	237	269	
Sweden	8675	15780	26674	27163	182	307	313	1953	1665	1670	
United Kingdom	:	:	57740	:	:	:	:	:	:	:	
TOTAL	**351282**	**358962**	**486610**	**417939**				**29492**	**32811**	**37342**	**1714438**

Source: CIREFI, Eurostat

Removed aliens, 2000-1st quarter 2004 based on data of

	2000	2001	2002	2003	2001	2002	2003	Jan 2004	Feb 2004	Mar 2004	
	Absolute numbers				Indexed numbers (2000=100)			Absolute numbers			
Belgium	85	9108	10352	9996	10715	12179	11760	704	791	1029	
Czech Republic	3943	6375	4873	2602	162	124	66	114	163	210	
Denmark	1339	3058	1627	3100	228	122	232	293	265	337	
Germany	50066	36295	31310	30176	72	63	60	2175	2426	2717	
Estonia	394	317	255	171	80	65	43	14	6	20	
Greece	226413	201962	45299	40930	89	20	18	1498	1666	3453	
Spain	23772	25001	26257	26757	105	110	113	1839	1828	1872	
France	19163	14339	10015	11692	75	52	61	1190	1265	1429	
Ireland	:	:	:	:	:	:	:	:	:	:	
Italy	26734	32000	33289	31013	120	125	116	1757	3015	3801	
Cyprus	2791	3204	2932	3307	115	105	118	225	244	304	
Latvia	188	206	197	375	110	105	199	29	26	28	
Lithuania	648	501	487	846	77	75	131	20	31	35	
Luxembourg	128	118	:	:	92	:	:	3	13	13	
Hungary	11011	8497	3602	4804	77	33	44	207	340	472	
Malta	:	698	952	847	:	:	:	30	47	26	
Netherlands	:	19302	22577	23206	:	:	:	1548	1721	2295	
Austria	14841	11592	9858	11070	78	66	75	833	839	982	
Poland	6609	5777	6847	5879	87	104	89	344	448	485	
Portugal	1143	607	1991	2798	53	174	245	261	392	273	
Slovenia	8596	8418	4268	3209	98	50	37	184	179	178	
Slovakia	2896	2568	1069	1293	89	37	45	75	107	156	
Finland	2501	1514	2223	2773	61	89	111	238	377	400	
Sweden	1465	2180	6854	7355	149	468	502	801	997	1286	
United Kingdom	:	:	15100	21380	:	:	:	:	:	:	
TOTAL	**404726**	**393637**	**242234**	**245579**				**14382**	**17186**	**21801**	**1339545**

Source: CIREFI, Eurostat