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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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Executive Summary

Illegal immigration into the EU poses a **challenge in particular for the credibility of the common European and the Member States' immigration policy**. Council and Commission therefore have repeatedly emphasized the importance of measures to combat illegal immigration over the last years.

Given the scale of the challenge, a **comprehensive approach** is pursued, addressing all aspects of the migration chain such as cooperation with third countries, border security, human trafficking, secure documents, illegal employment, regularisations and return policy.

Problems identified are the continuous pressure of illegal immigration into the EU, an imbalance in distribution of illegal immigration between Member States, humanitarian crises, exploitation of illegal immigrants, and a number of push-factors in countries of origin. Subsidiarity issues are addressed in this section as well.

Against these identified problems, the **principal objectives of EU policy** are to reduce the amount of illegal immigration, thereby respecting fundamental rights; to avoid humanitarian crises, and to reduce criminal activities linked to illegal immigration.

In order to assess how to achieve these objectives **several options were identified** within the different areas for action. These options are assessed against a number of **possible impacts**: on illegal immigration, on criminal activities linked to illegal immigration, on fundamental rights, political impacts at EU level, impact on third countries of origin and transit. For proportionality reasons, the assessment is preliminary at this stage.

Resulting from the above comparison, **measures were chosen that are both effective to meet the objectives** to reduce illegal immigration and opportunities for criminal networks that profit from illegal immigration in full respect of fundamental rights, and can **realistically be expected to be implemented in the short to medium term**.

For the areas where a choice existed between different options, the preferred options are the following: **external borders:** enhanced use of biometric data (option 2); **secure travel and ID documents:** development of common guidelines (option 2); **illegal employment:** specifically targeting the employment of illegally staying third-country nationals (option 2); **regularisations:** studying the impacts of regularisations (option 2); **return policy:** further stepping up cooperation (option 2); **carriers liability:** evaluation of adopted measures (option 2).

1. background and consultation of interested parties

1.1. The current framework

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.

Estimates of illegal migration flows can only be derived from relevant indicators, such as the numbers of refused entries, of illegal immigrants apprehended at the border or in a Member State, of rejected applications for asylum or other forms of international protection, of applications for national regularisation procedures and of removals. A further useful indicator is given by the considerable number of those who enter legally and then "overstay". From these indicators, estimates of annual inflows of illegal immigration into the EU are thought to reach over six figures.

Addressing illegal immigration specifically has been a central part of the EU's common migration policy since its inception. The Treaty of Amsterdam created Community competences in this area in its Title IV, with Art. 62 TEC as the legal base for measures relating to border controls and visa policy, and Art. 63 (3) TEC as an explicit base for measures on illegal immigration and illegal residence, including repatriation of illegal residents.

Community policy to combat illegal immigration has pursued a comprehensive approach. Measures target all stages of the ´migration chain´- entry, stay and return-, given the various phenomena linked to illegal immigration: Some migrants enter the territory of a Member State illegally by land, air or by sea. Some use false or forged documents, others try to enter either on an individual basis or using organised criminal networks, active in particularly in the two most odious forms of illegal immigration, namely the networks of smugglers acting for non-humanitarian reasons and the exploitation of foreign nationals in the form of trafficking in human beings. A significant share of illegal residents enters legally with a valid visa or under a visa-free regime, but "overstays" or changes the purpose of stay without the approval of the authorities. Some, such as failed asylum seekers, enter into an illegal status if they do not leave the country once all consideration of their asylum applications has been exhausted.

Since the entry into force of the Treaty of Amsterdam in 1999, a number of common measures have been adopted to combat illegal immigration in accordance with Article 63 (3)(b) of the EC Treaty[1]. In particular, six directives dealing with different aspects of this policy, as well as two Council Decisions, have been adopted aiming at the harmonisation of the legal framework and improvement of practical co-operation:

(1) Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (applicable as of 2

[1] Provisions on measures related to crossing of the external policies – adopted under Article 62 of the TEC - have also a role to play in combating illegal immigration.

December 2002)

(2) Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (applicable as of 11 February 2003);

(3) Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (applicable as of 5 December 2004);

(4) Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air (applicable as of 6 December 2005);

(5) Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (applicable as of 6 August 2006);

(6) Council Decision 2004/573/EC of 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 subjects of individual removal orders (applicable as of 7 August 2004);

(7) Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network (applicable as of 5 January 2004);

(8) Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data (applicable as of 5 September 2006);

(9) Council Decision 2005/267/EC of 16 March 2005 establishing a secure web-based Information and Co-ordination Network for Member States' Migration Management Services (applicable as of 21 April 2005);

(10) Commission Decision of 15 December 2005 laying down detailed rules for the implementation of Council Decision (2005/267/EC) of 16 March 2005 C(2005) 515 final

Council Framework Decision 2002/496/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (applicable as of 5 December 2004) adopted under Title VI of TEU constitutes another important element of the development of a common EU policy against illegal immigration.

In addition, the Commission tabled a number of proposals in 2005 that are particularly relevant in this field and are currently under negotiation in the Council and the European Parliament:

- Proposal for a Decision of the European Parliament and the Council establishing the European Return Fund for the period 2008-2013 as part of the General programme

'Solidarity and Management of Migration Flows'[2];

- Proposal for a Decision of the European Parliament and the Council establishing the European Borders Fund for the period 2007-2013 as part of the General programme 'Solidarity and Management of Migration Flows';

- Proposal for a Directive of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals[3].

Further measures to combat illegal immigration form part of an integral approach to manage migration and therefore complements other recent policy initiatives, in particular the Policy Plan on legal migration[4], the Communication on Migration and Development[5], and the Communication proposing a Common Agenda for Integration[6].

The Policy Plan on legal migration adopted in December 2005 sets out a range of initiatives that the Commission intends to take in the next few years, mainly in the field of economic migration. It explicitly acknowledges that the admission of economic immigrants is inseparable from further measures to combat illegal immigration in order to ensure the integrity and credibility of a common policy on immigration Flexible, clear and transparent common rules on legal migration could indeed strengthen the credibility of EU attempts to reduce illegal immigration and at the time respond to employers´ labour supply needs.

The Common Agenda for Integration: Framework for the Integration of Third-Country Nationals in the European Union is a first response from the Commission to the request in The Hague Programme to establish a coherent European framework for integration. Following the adoption of Common Basic Principles on integration (CBPs) by the Justice and Home Affairs Council of 19 November 2004, the cornerstones of this Communication are proposals for concrete measures to put the CBPs into practice, together with a series of supportive EU mechanisms. In order to strengthen the implementation of the CBPs, actions meant to provide guidance for EU and Member States' integration policies are suggested. The Communication also stresses the importance of further clarifying the rights and responsibilities of migrants within the EU, developing specific co-operation activities and exchange of information on integration, mainstreaming and evaluation.

Finally, with the Communication on Migration and Development the Commission aims, in a spirit of partnership with countries of origin, to link migration and development cooperation with a view to contributing to poverty alleviation in these countries. The Communication puts forward a set of policy orientations that will help maximise the benefits of migration for the development of migrants' countries of origin. Migrants

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2 COM(2005)123 final/2.
3 COM(2005)391.
4 COM(2005) 669, 21.12.2005.
5 COM(2005) 390, 1.9.2005.
6 COM(2005) 389, 1.9.2005.

and diaspora members can make an important contribution to their countries of origin through remittances and their skills and expertise – whether by returning permanently, investing or by sharing their expertise with their compatriots back home. The communication proposes concrete orientations for enhancing this contribution. At the same time, it also looks at how to limit the negative effects of brain drain, i.e. the exodus of skilled professionals from the developing world. With this document, the Commission is providing very concrete input into a debate of increasing global importance and in particular to the High Level dialogue on Migration and Development that will take place in September 2006 in the framework of the United Nations General Assembly.

1.2. Consultation

The Commission services have consulted the Member States in the framework of the Commission's Committee on Immigration and Asylum and gathered their views on achievements and future challenges that the European Union is faced with in the combat against illegal immigration. In order to facilitate an interactive debate on the subject matter, a discussion paper was sent to the Member States in which the Commission services highlighted the main general as well as recent developments and the Commission's assessment of progress in the various areas linked to the combat against illegal immigration. Member States were asked to express how they generally view the progress achieved over the last five years in reducing illegal immigration in the EU. Furthermore, the discussion paper sought to gather opinions on areas where progress was insufficient, including the possible measures that should be undertaken to overcome this.

The main elements of the Member States' opinions could be summarised as follows:

- Member States are in general satisfied with progress over the last years, but underline that in some areas more needs to be done. Areas such as external border controls, return policy, cooperation with third countries and supporting measures such as improved information exchange between Member States were mentioned in particular.

- Member States also mentioned the need to take the Hague Programme and joint Action Plan as starting point, as these already set out a considerable work agenda for priority areas.

- Finally, it was underlined that there would be scope for more operational co-operation between Member States in a whole range of areas from border controls to technical assistance. In particular, the EU has a strong role to play in the area of returns. Progress with practical measures to combat illegal immigration is not in parallel with the legislative measures. More focus on practical cooperation and measures, including evaluation of existing measures, could further contribute to a reduction of illegal immigration.

The Commission also has regular contacts with other relevant stakeholders such as

different international organisations (e.g. IOM, UNHCR), NGO's and European associations of commercial carriers that are affected by different aspects of illegal immigration[7]. Their comments and positions presented on specific proposals tabled by the Commission – e.g. the draft Return Directive– or at general concerning the subject matter, are taken into account by the Commission.

Points of concerns that are repeatedly raised are the following:

- Legislative and practical measures adopted and implemented in the framework of a common European policy on illegal immigration shall not hinder the access to effective protection for third country nationals who are in need of it;

- Any measures shall be taken in a humane manner and with full respect for the human rights and dignity of the third country nationals concerned;

- If new binding legal instruments are to impose further obligations on third country nationals or on other stakeholders (such as commercial carriers), the benefits of compliance should also be underlined.

This initiative is mentioned in the Commission Legislative and Work Programme (CLWP) 2006 under JLS/005. No inter-service steering group was set up.

2. issues/problems the communication is expected to tackle and the respect of subsidiarity

2.1. Continuous pressure of illegal immigration into the EU

Although certain figures seem to indicate an overall downward trend between 2002 and 2004[8], illegal immigration into the EU is still reaching considerable numbers each year. From indicative statistical data, estimates of annual inflows of illegal migration into the EU are thought to reach over six figures[9]. In particular in the summer months of recent years the EU is experiencing an increasing inflow of illegal immigrants by sea. The passage is mostly organised by criminal networks involved in the smuggling of human beings. Some if not most of the vessels used by the criminal networks are unseaworthy, which has led to severe humanitarian tragedies. Human smuggling by land using different kind of vehicles often with modified compartments have also lead

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[7] The Commission services host regularly the "Carrier's Liability Forum" on illegal immigration where all relevant European associations of the transport industry, the Member States and humanitarian organisations are gathered in other to exchange views and information concerning the development and implementation of the relevant legislative and regulatory framework and the different policies concerning that subject.

[8] See statistical annex, in particular CIREFI data.

[9] "The total volume of illegal migration flows to Europe in 2001 was estimated at 650,000 for the EU15 and at 800,000 for the (now) EU25". Quote taken from : M. Jandl and A. Kraler, ´Links Between Legal and Illegal Migration´, in: M. Poulain et al (Ed), THESIM- Towards harmonised European Statistics on International Migration, Louvain, 2006, p 355. See also statistical annex.

to casualties in many cases.

In spite of efforts made either individually by Member States and/or in co-operation with other Member States at European level, the external borders of the European Union thus remain under permanent pressure of illegal migratory flows. Abuse of procedures relating to legal residence resulting in the overstaying by third country nationals having entered legally or attempts to misuse of those procedures aiming at to obtain legal entitlement for residence (e.g. fake marriages/family reunifications, false visa applications) also result in factually illegal residence.

Illegal entry, transit and stay of third country nationals who are not in need of international protection, without effective countermeasures, undermines the credibility of the common European and the Member States' immigration policy.

A coherent and credible asylum and migration policy shall not award those behaviours that constitute an infringement of rules laid down with regard to refugee protection and legal residence. Thus the integrity of such policy as well as the rule of law can only be ensured if they are accompanied with effective countermeasures against those infringements, including the ones that are facilitating administrative co-operation of migration management services of the Member States in the context of fighting against illegal immigration.

Without reinforced Community action, the crisis as already seen and perceived today would increase both in qualitative and quantitative terms. Humanitarian crises and exploitation of illegal immigrants would further increase. Within the EU, public attention would increasingly focus on illegal immigration, which would risk to undermine opportunities for a further rational development of asylum and migration policies, including on legal migration.

2.2. Humanitarian crises

The passage via the Mediterranean Sea or the Atlantic Ocean towards the Member States of the European Union is mostly organised by criminal networks involved in the smuggling of human beings. Most of the vessels used by the criminal networks are not seaworthy, which has lead to severe humanitarian tragedies, especially during summer months.

The number of boats that do not reach EU shores, and thus of dead persons, is difficult if impossible to establish. A rough estimation of several hundreds of deaths can only be made on the basis of information obtained from immigrants' statements, NGO's working in the countries of transit, boat remains found at sea and other sources.

2.3. Exploitation of illegal immigrants

Crossing of the external borders, transit trough or illegal stay on the territory of the Member States of the European Union are often facilitated by criminal networks. Third-country nationals who are looking for a better life pay to those facilitators amounts of

money that exceed many times an average annual salary in their countries of origin.

Illegal immigrants may also be subject to human trafficking for the purpose of sexual or labour exploitation. Generally, illegal employment may lead to exploitation, given the *de facto* absence for third-country nationals of opportunities to report ill-treatments to any authority.

Illegal employment constitutes a major pull-factor for third-country nationals looking for better prospects. Once in the EU many illegal migrants are able to find work in the hidden economy, which demonstrates that there is a link between illegal immigration and the unregulated labour market. Within the EU, the shadow economy is estimated to be between 7-16% of the EU GDP[10], although this is by no means entirely made up of illegal migrants. Illegal migrants work mostly in the low-skilled sector such as in construction, agriculture, catering or cleaning and housekeeping services to support themselves. Often they are hired for the so-called "3 D"- jobs (dirty, dangerous and demanding work), which are not sought after by the domestic labour force.

2.4. "Push factors" in countries of origin

Illegal migration from third countries will be existing or is on the rise, in particular from sub-Saharan Africa, and is expected to increase even further in the coming years, due to a number of factors, such as rise in population, poverty, environmental degradation, possible natural disasters, increasing numbers of facilitators that organize the smuggling of human beings and continued conflicts.

2.5. Respect of Subsidiarity

Actions that Member States may take on their own in order to address the above described aspects and symptoms of illegal immigration within the "Schengen-area" without internal borders can hardly lead to the desired sustainable result if they are not co-ordinated with and accomplished at EU level. Practical experiences show that if a Member State steps up the surveillance of its external borders, other migration routes are quickly developed ("displacement effect") heading towards another Member State. Such movements could easily bypass the strengthened control and reach their final destination. In addition, the negative consequences in case of lack of sufficient measures by some Member States would not be limited to these, due to the possibility to move from one Member State to another. Indeed, the challenges posed by the management of migration flows can no longer be adequately met by the Member States acting alone and independently.

Title IV of the EC Treaty on visas, asylum, immigration and other policies related to free movement of persons confers powers on these matters on the European Community. These powers must be exercised in accordance with Article 5 of the EC Treaty, i.e. if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or

[10] Council Resolution on transforming undeclared work into regular employment, October 2003.

effects of the proposed action, be better achieved by the Community.

While important steps have been taken in the development of a common policy on combating illegal migration, the problem that the European Union is faced with in this respect makes it imperative that the Commission, in close co-operation with Member States as well as other relevant stakeholders, should explore the possible loopholes and common actions to address this phenomenon more effectively.

3. what are the main political orientations and objectives?

Council and Commission have repeatedly emphasized the importance of measures to combat illegal immigration over the last years, as the management of migration flows is regarded as an essential element for a comprehensive and therefore effective immigration policy.

In particular, in its 2001 Communication on a common policy on illegal immigration[11], the Commission announced its intention to *´address the issue of illegal immigration with a comprehensive approach´*. In terms of policy programming, the three 2002 Council Action Plans that were adopted on the basis of Commission communications list a comprehensive set of measures and actions in the areas of illegal immigration and trafficking in human beings, the management of external borders and return. The Commission's 2003 communication on illegal immigration contributed to a first assessment of progress made under these action plans and also announced an annual stocktaking, to which the 2004 report[12] responded.

The "Hague Programme; strengthening freedom, security and justice in the European Union" adopted by the European Council on 4-5 November 2004[13] and the Council and Commission action plan implementing the Hague Programme[14] offer a comprehensive framework of action needed to enhance the combat against illegal immigration.

The need for a comprehensive approach to migration management, which needs to fight illegal migration but also express solidarity to both Member States and third countries was unanimously confirmed and then further endorsed by the European Council on its 15/16 December 2005 meeting.

Against that background, the main objectives in this policy area are the following:

3.1. Reduction of illegal immigration into the EU

The amount of illegal immigration into the EU should be further reduced. This implies targeting both push and pull factors for illegal immigration.

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11 COM(2001) 672.
12 SEC(2004) 1349.
13 14292/1/04 REV 1 CONCL 3.
14 9246/05 LIMITE JAI 184.

3.2. Respect for fundamental rights and avoidance of humanitarian crises

Respect for fundamental rights is a basic principle of any Community policy in the field of fight against illegal migration. The existing Community legislation and proposals already tabled by the Commission are built upon that principle. The Hague Action Plan states the need "to ensure the full development of policies enhancing citizenship, monitoring and promoting human rights". Thus, any policy initiative to reduce the amount of illegal immigration into the EU (see above 3.1.) has to respect fundamental rights, which illegal immigrants enjoy.

A particular concern relates to human tragedies that occur in the Mediterranean as a result of attempts to enter the EU illegally. Efforts should thus be made to prevent further loss of life at sea.

3.3. Reducing criminal activities linked to illegal immigration

As demonstrated above, illegal immigration does not simply mean irregular movement of third-country nationals individually, but this phenomenon is surrounded with various forms of crimes that are threatening the rule of law, human rights and dignities of the persons concerned and even endanger their lives. Thus the purpose of any Community action to reduce illegal immigration should at the same time be aiming at reducing those crimes and dismantling the organised criminal networks engaged in them.

3.4. Addressing push-factors for illegal immigration

Push-factors for illegal immigration should continue to be addressed, in close cooperation with respective countries of origin, with the aim to contribute to the further development in these countries which in turn can provide perspectives for potential illegal migrants in their home countries and thus refrain them from migrating illegally.

4. what are the main policy options available to reach the objectives?

The scale of the challenge that the EU is facing on illegal immigration advocates in favour of pursuing a multi-faceted approach, addressing various areas in a comprehensive approach. Priority areas are thus cooperation with third countries, management of external borders, fight against human trafficking, secure travel and ID documents, illegal employment, regularisations, return policy and various horizontal and flanking measures.

Action in each of these priority areas is likely to contribute to achieving, taken together, the objectives as defined above under 2, as these objectives are intertwined: measures to reduce the amount of illegal immigration (3.1) always have to respect fundamental rights (3.2) and will also contribute to reducing criminal activities linked to illegal immigration because of the mere reduction of such illegal immigration (3.3). Objective 3.4 is to be specifically addressed through enhanced cooperation with

countries of origin, which is one of the nine priority areas.

On the basis of the analysis, the political orientations and the objectives set out above under 1.-3., a number of policy options are defined under each of the fields mentioned above.

4.1. Cooperation with third countries

4.1.1. Option 1: Current approach - dialogue and cooperation with third countries

Dialogue and cooperation on migration are needed with both countries of origin and transit in order to provide these countries with knowledge and equipment with a view to efficiently tackling illegal immigration. As a long-term perspective, push-factors for (illegal) immigration in countries of origin need to be remedied through development cooperation.

Specifically regarding cooperation with third countries in response to recent and ongoing illegal immigration in the Mediterranean region in the spring and summer months, concrete action is needed with the immediate aim to both saving lives at sea and reducing illegal immigration.

4.1.2 Option 2: Enhanced information opportunities in third countries

Currently, there is very little and scattered information available in countries of origin of encompassing information on legal migration opportunities into the EU Member States and especially on consequences of illegal immigration. Therefore, and in addition to dialogue and cooperation outlined above under 4.1.1, it is important to take measures to increase the amount of such information.

4.2. Integrated management of external borders

4.2.1 Option 1:Continuing the current approach

The adoption of the Schengen Borders Code[15] and the Regulation establishing the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) already establish a legal framework on which border controls can be developed to a high standard.

4.2.2 Option 2: Integrated border management

In addition to the application of the instruments referred to above, guidance could be developed with respect to the integrated management of external borders by Member States. The role of the FRONTEX agency and its remit would need to be considered in this context. Also, in order to ensure that the common rules referred to above are applied in a coherent manner in all Schengen Member States, measures to evaluate and control this concrete application could be considered.

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[15] See for details the annual report 2005, annexed to the Communciation.

4.2.3 Option 2: Enhanced use of biometric data

Still in addition to the two options above, the potential of biometrics could be harnessed for the purposes of border control. This could be done in two ways, first through making enhanced use of passenger data for the purposes of an e-border concept, and second, through the creation of a generalised and automated entry-exit system to complement existing databases that would facilitate checks on the immigration and residence status of third country nationals entering and exiting EU territory.

4.3. Human Trafficking

In October 2005 the Commission presented a specific Communication on human trafficking which formed the basis for a comprehensive and long-term EU Action Plan of December 2005. Therefore, the options sketched here do not refer to further policy development, but relate to ways in which to implement the Action Plan.

4.3.1. Option 1: Simultaneous implementation of all measures

Regarding the measures listed in the Action Plan for which responsibility for implementation falls upon the Commission, implementation could be pursued at a similar pace for all measures, without given priority to selected issues.

4.3.2. Option 2: Prioritise implementation in selected areas

Another possibility would be for the Commission to select priority areas with which the implementation would be started. Generally, Commission priorities depend on the deadlines set out in the Action Plan itself. Insofar, the Commission is committed to implementing all measures contained in the Action Plan in full respect of these deadlines. However, taking into account the report and recommendations submitted in 2004 by the Commission's Experts Group on Trafficking in Human Beings, certain issues deserve particular attention and should thus be prioritised in the near future.

4.4. Secure travel and ID documents

4.4.1 Option 1: Continuing the current approach

Currently, biometric identifiers in travel and ID documents are inserted by Member States. This will contribute to establishing a reliable link between the document and its holder.

4.4.2 Option 2: Developing common guidelines

In addition to this ongoing implementation of biometric identifiers, issuing procedures for such documents could be secured in order to prevent, in particular, identity thefts. Common guidelines on minimum security standards could be developed, building on

the work carried out in the G 8 framework in previous years.

4.5. Illegal employment

4.5.1 Option 1: Continuing the current approach

Currently, the European Employment Strategy and the employment guidelines pursue a comprehensive policy aimed at fostering regular employment. The modernisation of social security, wage developments in line with productivity growth, reduction of non-wage labour costs and tax burden on low-income/low-skilled workers, to quote some of the initiatives, also contribute to reducing incentives to undeclared work, hence, indirectly, also to recruit illegally-staying third-country nationals.

4.5.2 Option 2: Specifically targeting employment of illegally staying third-country nationals

In addition to further pursuing this policy, the employment of illegally staying third-country nationals could be specifically targeted in order to reduce pull-factors for illegal immigration. Measures could comprise, inter alia, the exclusion from public procurement contracts, limitations to further recruitment of third country nationals, criminal sanctions, and the obligation to bear the return costs.

4.6. Regularisations

4.6.1 Option 1: Continuing the current approach

Current Community law does not contain provisions on regularisations, i.e. the discretionary decision to grant a legal stay on the territory. Such decisions are therefore within the competence of Member States. These have recurred in recent years to such policies in order to address the problem of their already present populations of illegally staying third-country nationals. In response to recent events, including regularisations, and as requested by the Council, the Commission has already 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 currently discussed in Council and is expected to become operational in 2007.

4.6.2 Option 2: Studying the impacts of regularisations

There is no or little sound evidence and up-to-date information on current practices, effects and impacts of regularisation measures in Member States. A comprehensive study could therefore be launched to provide the EU institutions with information on the implications of regularisation measures taken in recent years in particular for illegal immigration. 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.

4.6.3 Option 3: Proposing Community legislation

Based on the argument that regularisations may serve as a pull-factor for additional illegal immigration into the EU, common EU rules could be proposed that would provide for criteria under which such regularisations could be carried out.

4.7. Return policy

4.7.1 Option 1: Continuing the current approach

With respect to Community return policy, a number of common principles, standards, and measures have already been elaborated (for details see 2005 annual report annexed to the Communication) or are in the process of elaboration, in particular the return Directive referred to above under1.1.

4.7.2 Option 2: Further stepping up cooperation

The measures referred to above could be used as a foundation on which to build further measures and enhance closer cooperation in a number of areas, such as joint return flights, documentation and common standards for training.

4.8. Information exchange

In this area, a number of instruments to facilitate exchange of information, both between Member States and Member States and organisations such as Europol, have been put in place over the last years. However, too little use is made of these existing instruments. Measures should be taken to remedy this situation. The options below identify possible courses of action with respect to the three different information exchange mechanisms.

4.8.1 Option 1: Current approach - Immigration Liaison Officers

Council Regulation (EC) No 377/2004 on the creation of an immigration liaison officers (ILOs) network already provides the necessary framework for setting up real co-operation networks and coordinating efforts of the Member States in the fight against illegal immigration in third countries or regions. It constitutes a basis for harmonising the tasks of the ILOs as members of the network in particular regarding the collection and exchange of information among them. Enhanced use should be made of the possibilities provided under this regulation. Priority regions for the establishment of such ILO´s could be countries which pose an issue for the EU with respect to illegal immigration.

4.8.2 Option 2: enhanced use of ICONet

The Information and Co-ordination Network for Member States' Migration Management Services aims to provide for the rapid exchange of information via a comprehensive, modern and secure web-site.

In addition to stepping up cooperation among ILO´s (option 1) enhanced use should be made of ICONet. In particular, to enlarge the sources of information available, the

Commission shall provide for access to bodies governed by public law established under the Treaties establishing the European Communities, or established in the framework of the European Union involved in fights against illegal immigration (i.e. Europol) by concluding an agreement with them.

This secure website contains different types of strategic, tactical and operational information regarding illegal migration. It could also help Member States in their efforts to increase co-operation and co-ordination of joint return operations.

4.8.3 Option 3: enhanced use of ICONet and Europol

Still in addition to option 2, the use by Member States of support offered by Europol with respect to facilitated illegal immigration could be enhanced. This refers to issues such as information flow between Member States and Europol and operations under participation of Europol.

4.9. Carriers liability

4.9.1 Option 1: Continuing the current approach

EU level legislation on carriers´ liability does not contain a formal obligation for the Commission to periodically report on the application of these instruments in the Member States and to propose the necessary amendments, as is practice in other areas of Community law.

4.9.2 Option 2: Evaluation of adopted measures

Notwithstanding the above, such evaluation could be undertaken in order to assess the practical impact and possible shortcomings and gaps.

4.9.3 Option 3: Legislative proposals

Amendments could also be proposed without full and comprehensive evaluation of these instruments, in particular for certain aspects where shortcomings are already known.

5. summary comparison of impacts of the options and assessment of the preferred policy option

5.1. Summary comparison of impacts

The following points provide a cursory assessment of the options identified within the nine sections contained in the Communication as regards their expected contribution to key objectives of the policy on illegal migration and relevant impacts, such as on fundamental rights, third countries or political impacts. For reasons of proportionality, this is a preliminary assessment at this stage which will serve as a basis for the more in depth analysis that will be carried out before concrete measures will be proposed.

The impacts are indicated with the symbols below, where appropriate:

+++ - - -	Significant positive/negative impact
++ - -	Medium positive/negative impact
+ -	Small positive/negative impact
+/-	balanced positive/negative impacts

The key impacts assessed in the following table are almost exclusively social impacts. Relevant environmental impacts could not be identified. Where listed impacts have in addition a direct economic relevance, this is indicated.

	Impact on illegal immigration	***Impact on criminal activity linked to illegal immigration***	***Impact on fundamental rights***	***Political impacts at EU level***	***Impact on third countries of origin and transit***

Cooperation with third countries	Option 1 - Current approach: Will reduce illegal immigration flows especially in the Mediterranean region. ++	Option 1 – current approach: By reducing possibilities for illegal immigration also reduced opportunities for operations of criminal networks. On the other hand, measures to combat illegal immigration can render the passage more difficult and dangerous so that recourse to smugglers might be increased and at even higher prices. Despite this, the enhanced cooperation with third countries is overall expected to curb criminal exploitation of illegal migrants. ++	Option 1 - Current approach: Encourage third countries to apply relevant human rights standards towards illegal immigrants. +	Option 1 - Current approach: Broad consensus on the necessity and usefulness of such action. ++	Improved capabilities to manage migration flows. Reinforced cooperation with selected countries may have displacement effects for migration flows to other countries, or lead to modified (illegal) migration routes. Measures to combat illegal immigration may be negatively perceived in the population. +/–
	Option 2 – enhanced information in 3rd countries: should strengthen positive impacts of option 1. ++	Option 2 – enhanced information in 3rd countries: similar assessment as option 1. ++	Option 2 – enhanced information in 3rd countries: similar assessment as option 1. +	Option 2 – enhanced information in 3rd countries: Similar assessment to option 1. ++	Option 2 – enhanced information in 3rd countries: in addition to the above assessment, the level of knowledge of possible migrants would be increased. This could help to increase legal at the expense of illegal immigration. +

External borders	Option 1– current approach: Necessary, but likely not sufficient measures, given the high migratory pressure. +	Option 1– current approach: Some detection of criminal activities through border controls. +	Option 1– current approach: No direct impact.	Option 1– current approach: No major impact, as already implemented.	Option 1 – current approach: Currently obstacles esp. for bona-fide travellers (waiting-time at border checkpoints). **Economic impact.** -
	Option 2: integrated border management: consistent border management in all spectrums +	Option 2: integrated border management: As option 1 , but increased detection with more coherent system. +	Option 2: integrated border management: No direct impact.	Option 2: integrated border management: Likely difficulties in agreeing on a common understanding of what integrated border management should consist of. -	Option 2: integrated border management: as in option 1.
	Option 3 – enhanced use of biometric data: Considerable further securisation of external borders once the system is set up, therefore reduction of illegal entries. +++	Option 3 – enhanced use of biometric data: Easier detection of criminal activities. ++	Option 3 – enhanced use of biometric data: Need to balance data protection with interest of Community and Member States to combat illegal immigration. --	Option 3 – enhanced use of biometric data: Major impact given both the fundamental rights (data protection) and technical challenges. In depth clarification of feasibility and desirability therefore necessary. --	Option 3 – enhanced use of biometric data: Better framework conditions for more legal travel into the EU. Potential obstacles (eg waiting time) for bona fide travellers. Could however be addressed through a trusted travellers system. **Economic impact.** +/-

Human trafficking	Option 1 implementation of action plan to lead to reduced numbers of trafficked persons. ++ Option 2 - prioritisation: slightly more positive impact as option 1 if most urgent issues are tackled earlier. ++	Option 1: Implementation of action plan expected to reduce numbers of trafficked persons and to dismantle networks. ++ Option 2 - prioritisation: slightly more positive impact than option 1 if most urgent issues are tackled earlier. ++	Option 1:Reduced numbers of human rights violations with successful implementation of action plan. ++ Option 2 - prioritisation: similar to slightly more positive impact as option 1 if most urgent issues are tackled earlier. ++	Option 1: Broad consensus on need for such action. + Option 2 - prioritisation: a focus on some issues identified by the Expert's Group in Trafficking in Human Beings is likely to be welcomed by Member States. ++	Option 1: Better protection of their citizens against this crime. ++ Option 2 - prioritisation: slightly more positive impact than option 1 if most urgent issues are tackled earlier. ++

Secure travel and ID documents	Option 1 – current approach: Less likelihood of successful entries with falsified documents, therefore reduction of illegal immigration. +	Option 1 – current approach:: Easier detection of criminal activities. +	Option 1 – current approach:: Impact in particular on data protection of current policy to be monitored carefully. -	Option 1 – current approach:: Broad consensus among Member States on need to include biometric identifiers. Concerns in EP especially for data protection considerations. +	Option 1 – current approach:: Improved possibilities for legal travel into the EU. **Economic impact.**+
	Option 2 – common guidelines: Impacts of option 1 further strengthened with more secure issuance procedures. ++	Option 2 – common guidelines: Impacts of option 1 further strengthened. ++	Option 2 – common guidelines: Impact in particular on data protection of potential future initiatives to be examined carefully. -	Option 2 – common guidelines: Issuance as part of national procedures, therefore likely to be some reluctance in member States; on the other hand may recognize the usefulness of such coordination at EU level. -	Option 2 – common guidelines: Further improved possibilities for legal travel into the EU. **Economic impact.** ++

Illegal employment	Option 1 – current approach: Reduction of undeclared work in general should also lead to reduction of work opportunities for illegally staying third-country nationals. + Option 2– specific targeting of illegal immigrants: Specifically targeting and reducing a key pull-factor will reduce level of illegal immigration into the EU. ++	Option 1– current approach: General impact that lesser employment possibilities offer fewer opportunities for criminal networks. A reduction of illegal employment might impact on companies which at present exploit illegal immigrants **(Economic impact)** + Option 2– specific targeting of illegal immigrants: Fewer possibilities for exploitation by criminal networks and for companies which exploit at present illegal immigrants **(Economic impact)** ++	Option 1– current approach: No major impact. Option 2– specific targeting of illegal immigrants: Reduced labour exploitation. Consideration of impacts on data protection when assessing inclusion of biometric identifiers in work permits. +/-	Option 1 – current approach: No major impact, as maintains status quo. Option 2– specific targeting of illegal immigrants: Further measures specifically against employment of illegally staying third-country nationals may face opposition from actors who currently draw benefits from these opportunities. -	Option 1 – current approach: Overall, current toleration of employment of illegally staying third-country nationals takes away some pressure from the domestic labour markets in countries of origin At the same time, the emigration of higher qualified workforce and its illegal employment abroad can constitute a loss for the respective country of origin's productive process. **Economic impact.** +/- Option 2– specific targeting of illegal immigrants: Possibly fewer remittances to countries of origin. Consideration of negative impacts in third countries due to drop in money sent back (remittances) by illegal immigrants **Economic impact.** -

Regularisations	Option 1 – current approach: Maintenance of likely pull-factor, thus continued unwanted incentives for illegal immigration. - Option 2 – studying impacts of regularisations: Will provide necessary background information for possible future policy making. + Option 3 – proposing Community legislation: Would contribute to reducing pull-factor for illegal immigration; increased transparency re criteria. Proposed legislative measures might at this stage not fully address the issue due to lack of analytical basis. +	Option 1 – current approach: Given the current pull-factor, continuing opportunities for criminal networks to bring illegal immigrants into the EU. - Option 2 – studying impacts of regularisations: Necessary background information for possible future policy making. + Option 3 – proposing Community legislation: Would contribute to reducing a pull-factor, and thus opportunities for criminal networks, and for companies which at present exploit illegal immigrants **(economic impact).**. Proposed legislative measures might at this stage not fully address the issue due to lack of analytical basis +	No direct impact.	Option 1 – current approach: studying impacts of regularisation: No changes to status quo, thus no major obstacles/impacts. Option 2: studying impacts of regularisation: should be perceived favourably by Member States and other stakeholders. + Option 3 – proposing Community legislation: Reservations likely in Member States that practice large-scale regularisations. Also, at this stage not realistic given the absence of a sound analytical basis. ---	Option 1 – current approach: chance for future regularisation might serve as a pull-factor for illegal immigrants and contribute to the loss of population in countries of origin. **(economic impact)** - Option 2 – studying impacts of regularisations: in the short run, no improvements to the present situation.. Should provide basis for future policy making **(economic impact)** + Option 3 – proposing Community legislation: Would contribute to reducing a pull factor. **(economic impact)** +

Return policy	Option 1– current approach: Some impact. However operational cooperation by Member States needed in addition to common legislation. +	Option 1– current approach: The current common basis of return policy will help undermining the credibility of criminal –trafficking and smuggling-networks to some extent. ++	Option 1– current approach: In cases of enforced returns, temporary deprivation of personal liberty prior to departure (detention) and during return transport. Need to carefully examine human rights situation in third countries to which illegal migrants are returned. -	Option 1– current approach: Obstacles still to be overcome (adoption of the return Directive). +/-	Option 1– current approach: A certain number of persons to be reintegrated. Less remittances. **(economic impact)** -
	Option 2 – increased cooperation: Will reduce the stock of illegally staying third country nationals and act as a deterrent for further illegal immigration. ++	Option 2 – increased cooperation: More effective returns in practice will undermine the credibility of criminal –trafficking and smuggling-networks. ++	Option 2 – increased cooperation: Likelihood for less/shorter detentions with more efficient and quicker return procedures. +	Option 2 – increased cooperation: Broad consensus in Member States as to the need for enhanced operational cooperation. +	Option 2 – increased cooperation: Increased numbers of persons to be reintegrated. Further reduced remittances. **(economic impact)** -

Improved information exchange	Option 1 – current approach – Immigration Liaison officers (ILOs): Will help improve information and coordination between Member States - in various areas related to illegal immigration and therefore improve efficiency in preventing and combating illegal immigration. + Option 2 – enhanced use of ILOs + ICONet: positive effects of option 1 would be strengthened by web-based data exchange. ++ Option 3 – enhanced use of ILOs, ICONet + Europol: positive effects of option 2 would be strengthened if Member States would make stronger use of support offered by Europol in the area of illegal immigration ++	Option 1 – current approach – Immigration Liaison officers (ILOs): Will help improve information and coordination between Member States in preventing illegal entries, e.g. through smuggling, and persecution of facilitated illegal immigration, thus contributing reducing facilitated illegal immigration. + Option 2 – enhanced use of ILOs + ICONet: positive effects of option 1 would be strengthened by web-based data exchange. ++ Option 3 - enhanced use of ILOs, ICONet + Europol: positive effects of option 2 would be strengthened if Member States would make stronger use of support offered by Europol in the area of illegal immigration ++	No direct impact	No direct impact.	No direct impact

Carriers liability	Option 1 – current approach: Effectiveness in tackling illegal immigration assumed, but currently not verified, including shortcomings. +	Option 1 – current approach: Effectiveness in tackling criminal networks assumed, but currently not verified, including shortcomings. +	Option 1 – current approach: Impact on data protection (passengers data Directive) to be monitored carefully. -	Option 1 – current approach: No major impact, as status quo.	No direct impact.
	Option 2 – evaluating existing measures: Will provide for necessary information to possibly recast these instruments to increase their efficiency in preventing and reducing illegal immigration. ++	Option 2 – evaluating existing measures: Evaluation will provide for necessary information to possibly recast this instrument to increase its efficiency in reducing criminal activity linked to illegal immigration +	Option 2 – evaluating existing measures: Will provide a basis for fully taking into account relevant fundamental rights in possible subsequent legislative proposals. ++	Option 2 – evaluating existing measures: Comprehensive evaluation likely to be welcomed, as would provide transparency in view of possible further legislative proposals. ++	
	Option 3– legislative proposals: uninformed policy-making would risk non-achievement of policy objectives. --	Option 3– legislative proposals: uninformed policy-making would risk non-achievement of policy objectives. --	Option 3– legislative proposals: Need to fully take into account relevant fundamental rights in legislative proposal. +	Option 3 – legislative proposals: Loss of credibility given risk of uninformed policy-making. ---	

5.2. The preferred policy option

Resulting from the above comparison, the measures as presented in the Communication where chosen as they are both effective to meet the objectives to reduce illegal immigration and opportunities for criminal networks that profit from illegal immigration in full respect of fundamental rights, and can realistically be expected to be implemented in the short to medium term.

To sum up the preferred options are the following:

Priority area	***Preferred policy option***
Cooperation with third countries	Option 2: Dialogue and cooperation; and enhanced information
External borders	Option 3: integrated border management and enhanced use of biometric data
Fight against human trafficking:	Option 2: Prioritise implementation in selected areas
Secure travel and ID documents:	Option 2: development of common guidelines
Illegal employment:	Option 2: specifically targeting employment of illegally staying third-country nationals
Regularisations:	Option 2: studying the impacts of regularisations
Return policy:	Option 2: further stepping up cooperation
Information exchange:	Option 3: Enhanced use of ILOs, ICONet and Europol
Carriers liability:	Option 2: evaluation of adopted measures

In particular, where the choice was between careful evaluation of the current acquis or situation and an immediate legislative proposal, preference is given to comprehensive evaluation that would provide the basis to build upon possible future policy initiatives.

The measures proposed in the various policy areas taken together are expected to meet

the objective of contributing to reducing illegal immigration in full compliance with fundamental rights and thereby contribute to the further development of an effective common immigration policy.

5.4. EU added value of the preferred option

As outlined under point 3. above, the need for a comprehensive approach to migration management at EU level has repeatedly been underlined by the Member States, for example by the European Council at its 15/16 December 2005 meeting. It is crucial for the further development of a common policy to combat illegal immigration that the Commission, in close co-operation with Member States as well as other relevant stakeholders, explores the possible loopholes and common actions to address this phenomenon more effectively at the EU level.

6. monitoring and evaluation

Monitoring and evaluation of the implementation of the future actions and measures set out in the preferred policy option will be an important element to ensure the effectiveness of the common policy on illegal immigration. To that end, the Commission will report to the Council on progress made in the implementation of these measures one year after adoption of this Communication.

In addition, and with a view to continuously verifying whether implementation is on track and in order to provide for transparency *vis a vis* stakeholders as well as the general public, it is advisable e to continue drawing up annual reports on progress made in the development of the common policy to combat illegal immigration. Discussions will be held with Member States as well as stakeholders in the course of implementation of the future priorities, as well as in the run-up to the preparation of annual reports. Separate monitoring and evaluation – including impact assessments where required – will be carried out for every measure upon implementation, as a clear assessment of the impact can only be carried out in relation to specific measures.