

**Irish Presidency of the European Union  
Informal meeting of the Justice and Home Affairs Ministers  
Dublin, Ireland, 22-23 January, 2004**

**European Union return policy - enhancing  
practical cooperation**

**Introduction**

Strengthening the EU as an area of freedom, security and justice is a core objective of the Union and is an issue the European Council has placed high on its political agenda. The Irish Presidency will continue to support and prioritise this task.

A key focus of the Irish Presidency will be to take forward measures specified by the Treaty of Amsterdam for the purposes of meeting the overall objectives. 2004 marks the deadline for the completion of the five-year (1999-2004) work programme agreed in Tampere to develop a common policy on migration and asylum with a view to ensuring more effective management of the migratory flows to the EU.

The Irish Presidency believes the successful development of a common return policy at EU level is key to an efficient and effective immigration and asylum policy across the Union. With this in mind, priority will be given to the practical implementation of measures adopted in the field of return, particularly those arising out of the Return Action Plan, adopted under the Danish Presidency in November 2002.

## **Background to Community Policy on Returns**

Following the inclusion in the Treaty of Amsterdam of Community competence in the areas of migration and asylum, the Heads of State and Government, meeting in Tampere in 1999, called for the development of a common EU policy on these issues.

In the conclusions of the European Council at Laeken in December 2001, Member States requested the Council to develop an action plan on the basis of the Commission's Communication on Illegal Immigration of November 2001. As a result, on 28 February 2002, the Council adopted a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union. In its Communication, the Commission announced the preparation of a Green Paper on return policy on illegal immigrants. The Green Paper, published on 10 April 2002, built on the elements of the Council Action Plan and explored various issues related to the return of third-country nationals. Building on this work and the Commission Communication on a Community return policy of 14 October 2002, a Comprehensive Return Action Plan on illegal residents was drawn up under the Danish Presidency and approved by the JHA Council on 28 November 2002. This Action Plan proposed the development of a number of short, medium and long-term measures in the field of return. Considerable progress has been made in adopting these initiatives under the Greek and Italian Presidencies, and will be continued under the Irish Presidency. Moreover, the Council also adopted on 28 November 2002 a return plan for Afghanistan, which helps to coordinate Member States' efforts in this respect and promotes integrated return programmes.

The European Council at Thessaloniki in June 2003, called for further progress on the development of a common policy on illegal immigration, external borders, the return of illegal migrants and co-operation with third countries. The Thessaloniki Council conclusions followed the publication by the Commission of a Communication on the Development of a common policy

on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal immigrants. This Communication provided an analysis of the progress to date in achieving the conclusions of the Seville, Laeken and Tampere Councils as well as developing recommendations for future Community action in fields such as budgetary measures, visa policy, external borders, return policy, partnership with third countries, an annual report and other “flanking measures” such as the rapid and complete implementation of the statistics action plan and the bringing together in a joint framework and networking of the many liaison officers seconded to non-EU countries.

In October 2003, the European Council in Brussels under the Italian Presidency reaffirmed its commitment to a balanced approach between, on the one hand, the urgent need to stop illegal immigration and to fight against the trafficking of human beings, and, on the other hand, the reception and integration of legal immigrants. European leaders urged the Commission, the Council and the Member States to make every effort to facilitate the successful conclusion of the Community readmission agreements with third countries and to give the highest priority to the implementation of the Return Action Plan adopted in November 2002.

At the December 2003 Brussels European Council, political leaders called for more rapid progress in the field of returns. Furthermore, the Council confirmed a request made to the European Commission in Thessaloniki, to present a proposal for a financial instrument aimed at supporting a common approach in the area of return policy. Reaching agreement on this proposed instrument, due for presentation in the near future, will be one of the main priorities of the Irish Presidency in the area of returns. In addition, the Commission will also table, in early 2004, a proposal for a Council Directive on minimum standards for return procedures and mutual recognition of return decisions.

## **Enhancing practical cooperation among Member States in the field of returns**

Considerable progress has been made in meeting both the objectives set out in Article 63(3)(b) of the Treaty, which obliges the Council to adopt measures in the area of illegal immigration and illegal residence, including the repatriation of illegal residents, and the Return Action Programme, agreed by Ministers on 28 November 2002.

Ireland does not intend bringing forward any new legislative initiatives in the returns area over the next six months. The Irish Presidency believes Member States must now focus their attention on the practical implementation of various return-related measures already adopted to date. It further believes that Member States should improve communications with the Commission about the implementation of these measures. Ireland aims to consolidate the work achieved so far and to enhance operational cooperation on returns through the full implementation of the recently adopted legislative measures, particularly the Council Directive and Decisions mentioned below.

- Council Directive 2001/40/EC on mutual recognition of expulsion decisions and Council Decision setting out the criteria and financial arrangements for the compensation of financial imbalances resulting from the application of Council Directive 2001/40/EC.

This Directive was adopted by the Council on 28 May 2001 and allows Member States to recognise and implement expulsion decisions made in other Member States. Provision is made in the Directive for the financial compensation of Member States effecting the removal orders issued by other Member States. This provision to correct any financial imbalances was effected by a separate Council Decision agreed by the Council on 6 November 2003.

With these two legislative measures agreed, mutual recognition of expulsion orders can become a reality. However, for this to occur, there is a clear need for closer cooperation among the relevant authorities in the Member States. Essential to the operation of the Directive and Decision is the setting up of a secure online information system which would allow all current Member States and accession states from 1 May 2004 to exchange data on expulsion decisions quickly and efficiently. Without such a system, the mutual recognition of expulsion decisions will be impossible.

The Presidency has explored the possibility of extending the proposed Information and Coordination Network for Member States' Migration Management Services (ICONET) to include a facility for data exchange on expulsion decisions. However, for technical and legal reasons, it is not possible to use the ICONET platform for the exchange of personal information relating to expulsion decisions. An alternative worth considering is the use of the Schengen Information System (SIS) and, possibly at a later stage, the proposed Visa Information System (VIS). Article 96 of the Schengen Acquis already allows for the use of SIS to exchange selected personal information about individuals who appear on refusal of entry lists because they are the subject of expulsion decisions in participating Member States. A major difficulty with this suggestion is that neither Ireland nor the UK currently take part in SIS. Furthermore, the 10 new Member States joining the EU on 1 May 2004 will not participate in SIS for some time after accession. A practical solution, facilitating the speedy exchange of information on expulsion decisions from all Member States, will have to be found.

- Council Decision on the organisation of joint flights for removals, from the territory of two or more Member States, of third-country nationals who are the subjects of individual removal orders.

This Decision was agreed by the Council on 6 November 2003 and includes common guidelines on security provisions for joint removals by air. The Decision states that when a Member State, Iceland or Norway organises a

flight for the removal of third-country nationals which is open to the participation of other Member States, it shall inform the national authorities of those Member States.

The Decision is expected to be formally adopted in Spring 2004. It is therefore timely to consider the practical steps necessary to put the Decision into effect. In advance of the formal adoption of the Decision, the Presidency invites interested Member States to consider initiating one or more joint flights as a pilot exercise. This would be organised on a voluntary basis and would provide a valuable insight into the practical issues involved in the implementation of the Decision. Furthermore, consideration should be given to using the forthcoming financial instrument on returns - whose ultimate aim is to support a common approach in the area of return policy - to fund such a pilot and possible future joint flights.

Looking to the medium-term, the successful operation of the joint flights Decision will require secure and timely information exchange between Member States. However, the Decision does not set out how exactly this exchange should take place. The ICONET could be used as a platform for data exchange on joint flights since personal information is unlikely to be exchanged.

In this context, it should also be recalled that the Council in its Conclusions of 27 November 2003 has agreed that the future Border Management Agency shall provide Member States with the necessary technical support in organising joint return operations.

**Ministers are invited to give their views on these practical issues, in particular on following questions:**

- 1. Should interested Member States be asked to organise one or more joint flights as a pilot exercise once the Decision has been formally adopted?**
- 2. Taking into account the signal sent by joint flights, should specific third countries be identified as the first 'target destinations' for joint flights?**
- 3. Should Community financing of joint flights be made available in the framework of the forthcoming financial instrument on returns?**
- 4. How could the information exchange on expulsion decisions and for joint flights be organised?**
- 5. What future role might the proposed Border Management Agency have in organising joint flights?**

### **Readmission agreements with third countries - setting future priorities**

Negotiations have been completed with Hong Kong (November 2001), Macao (October 2002), Sri Lanka (May 2002) and Albania (November 2003). The agreement with Macao was formally signed in October 2003. The Hong Kong readmission agreement was signed in November 2002 and concluded in December 2003. The latter is expected to enter into force in the first quarter of 2004 as the first ever Community readmission agreement. Agreements with Sri Lanka and Albania are expected to be concluded soon. Negotiations with the remaining third countries are ongoing. As highlighted at the European Council in Brussels on 16-17 October 2003, the Presidency awaits, before mid-2004, the publication of a report by the Council and the Commission identifying the priorities of a common readmission policy and the measures taken to ensure the successful development of such a policy. It also

welcomes the Commission proposal to set up a management committee to oversee the implementation of the finalised readmission agreements. The Commission is due to publish shortly draft rules of procedure, which will be considered by the management committee when it meets for the first time after the Hong Kong readmission agreement has entered into force.

**Having regard to the report to be published by the Council and the Commission, Ministers are invited to discuss future priorities for readmission agreements with third countries/regions.**

### **The EU Travel Letter - developing a common approach**

The difficulty ascertaining the identity of third-country nationals and the problems experienced by many Member States in obtaining travel documentation from third country embassies and consulates on time remains a major obstacle to effective return. The 'EU Travel Letter', a standard travel document for the expulsion of third-country nationals introduced by a Council Recommendation of 30 November 1994, has attempted to overcome the problems in this area. Member States have, however, had different experiences with its use.

Building on the work achieved to date - particularly the manual on best practice on the acquisition of travel documents - the Irish Presidency believes the current use of the EU Travel Letter by Member States should be examined in greater detail, with a view to adopting a common approach in dealing with third countries. The challenge is to enhance the recognition and increase the acceptance of the Letter by third countries. The Presidency recognises the efforts being made by the Commission in the negotiation of readmission agreements to increase the use of the Travel Letter or a similar common document agreed between the parties.

**Ministers are invited to give their views on the usefulness of an EU Travel Letter evaluation.**

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