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Delegations will find attached the proposal for a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union, in view of its adoption by the Council.

Proposal for a comprehensive plan to combat illegal immigration and  
trafficking of human beings in the European Union

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### III. - EVALUATION OF THE PLAN

#### ANNEX

## I. – INTRODUCTION

- (1) The European Council meeting at Laeken on 14 and 15 December 2001 reaffirmed its commitment to the policy guidelines and objectives defined at Tampere regarding the creation of an area of freedom, security and justice in the European Union, and considered that the objective of bringing about within that area a true common asylum and immigration policy implies, as well as the establishment of various instruments, integration of the policy on migratory flows into the Union's foreign policy, in that it called for an action plan to be developed on the basis of the Commission communication on illegal immigration and the smuggling of human beings.
- (2) The prevention of and the fight against illegal immigration are essential parts of the common asylum and immigration policy of the European Union. With the entry into force of the Treaty of Amsterdam, new competences have been created, with the inclusion of the new Title IV in the Treaty establishing the European Union. While Article 62 of the same Treaty is the legal basis for regulations relating to border controls and visa policy, Article 63(3) refers explicitly to measures on illegal immigration and illegal residence, including repatriation of illegal residents. Moreover, since facilitation of illegal immigration involves, in most cases, organised criminal networks operating at an international level, the relevant provisions of Title VI of the Treaty on European Union on police and judicial cooperation in criminal matters (Articles 29, 30 and 31 of the Treaty on European Union) also apply.
- (3) The Vienna Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, of December 1998, mentioned that in line with giving priority to controlling migration flows, practical proposals for combating illegal immigration more effectively needed to be brought forward swiftly.

- (4) In addition, the European Council emphasised in the conclusions of its Tampere summit of October 1999 the need for more efficient management of migration flows at all stages and to tackle illegal immigration at its source. Moreover, the European Council called for closer cooperation between Member States and confirmed the requirement for new Member States to accept in full the relevant *acquis* including the standards which have been set within the Schengen cooperation. Within the framework of the Council, the common interest in the fight against illegal immigration, the need for cooperation and the determination to combat networks was highlighted again by the agreement reached on the Directive defining the facilitation of unauthorised entry, movement and stay, and the accompanying Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence, as well as the Directive concerning the harmonisation of financial penalties imposed on carriers transporting into the territory of the Member States third country nationals lacking the documents necessary for admission.
- (5) The Commission has consolidated a first set of objectives to enhance the fight against illegal immigration in the "Scoreboard" reviewing progress on the creation of an area of freedom, security and justice in the European Union. Besides improvements in the exchange of information and statistics, the enhancement of the fight against trafficking in human beings and the economic exploitation of immigrants is mentioned, as well as cooperation with countries of origin and the establishment of a coherent common policy on readmission and return.
- (6) Accordingly, on 15 November 2001 the Commission adopted its communication to the Council and the European Parliament on a common policy on illegal immigration, in which the Council of the European Union is invited to approve, at the earliest opportunity, an Action Plan to prevent and combat illegal immigration, indicating which actions must be given priority.

## A. Dimensions of the phenomenon

- (7) Illegal immigration is multifaceted in terms of the individuals concerned and the patterns of their illegal entry and residence. First there are those who illegally enter the territory of a Member State. This can take place either with an illegal border crossing or at a border post using false or forged documents. Often these illegal entries happen on an individual and independent basis. However, illegal entries are increasingly organised by facilitators, who provide transport, temporary shelter, travel documents, information, surveillance or other supportive services starting in the countries of origin, continuing in transit countries and ending in the country of destination. The price of smuggling services is very high, so that many illegal immigrants have to hand over most or all of their savings. In cases where illegal immigrants are not able to pay the price, they often become victims of traffickers, who employ exploitative means to gain "reimbursement" for the cost of the journey.
- (8) There are also a large number of illegal residents in the European Union who have entered with a valid visa or residence permit but have "overstayed". Others simply enter with valid travel documents, when their nationality is exempted from a visa requirement for a short-term stay. This legal residence, however, becomes illegal, when the person concerned embarks on self-employed or employed activities not authorised by the visa exemption or the visa obtained. In many cases persons with a proper residence and work permit simply overstay their period of legal residence or violate residence regulations in other ways.
- (9) Owing to the nature of undocumented residence it is not possible to assess the exact proportions between the different categories of illegal residents. It seems clear, however, that each one represents a significant part of the whole phenomenon of illegal immigration and that any future action needs adequately to address each category. To do so effectively, however, requires further in-depth analysis of the phenomenon, so as to be able better to determine the adequate instruments for the different categories of illegal residents and patterns of illegal residence.

(10) Accordingly, further efforts to analyse the patterns of illegal residence in the European Union must be encouraged in order to adjust future measures more specifically to the real problems which need to be tackled to prevent and fight illegal immigration effectively.

#### B. International obligations and Human Rights

(11) Measures relating to the fight against illegal immigration have to balance the right to decide whether to accord or refuse admission to the territory to third country nationals and the obligation to protect those genuinely in need of international protection. This concerns, in particular, obligations for protection arising from the European Convention on Human Rights, particularly Article 3 thereof, and the Geneva Convention on Refugees, most notably Articles 33 and 31. The latter Article lays down that *"States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence"*.

(12) Effective action against illegal immigration plays an essential part in contributing to public acceptance of admission for humanitarian grounds by preventing misuse of the asylum system. Nevertheless, the fight against illegal immigration has to be conducted in a balanced way. Member States should, therefore, explore possibilities of offering rapid access to protection so that refugees do not need to resort to illegal immigration or people smugglers. Whatever measures are put into practice to fight illegal immigration, the specific needs of potentially vulnerable groups like minors and women need to be respected.

C. Relations with third countries

- (13) Efforts on migration management cannot have their full impact if measures are not implemented at the beginning of the migration chain, i.e. the promotion of peace, political stability, human rights, democratic principles and sustainable economic, social and environmental development of the countries of origin. To that end, migration issues should be integrated in the existing partnerships, which are the general framework of our relations with third countries.
- (14) In the context of enlargement the candidate countries have to adopt, in their domestic legislation and practices, the existing EU acquis on the fight against illegal immigration. This also implies full acceptance of the Schengen acquis as stated in Article 8 of the Schengen Protocol; the candidate countries are also required to produce detailed national Action Plans for implementation of the Schengen acquis.
- (15) Cooperation should also be further developed with transit countries. Smugglers of human beings use different modes of transportation and different routes for their illegal activities. Usually, direct connections from the main source countries are not available. Thus, transit through third countries is the norm. Illegal immigrants take advantage of gaps at border controls and other deficiencies in control measures. Some transit countries show a certain reluctance to deal with irregular migration flows properly due to their interest in not becoming a country of destination. It is necessary, therefore, to enter into a dialogue with transit countries in order to support their effort to deal with the problem.
- (16) The European Union and its Member States should continue to participate actively in other international fora and to conclude multilateral agreements on the subject. Further international cooperation could also facilitate and promote third country cooperation and other efforts which aim to fight illegal immigration. In particular, when measures on illegal immigration are conducted in third countries, the expertise of international organisations, such as UNHCR, could be very helpful in many respects. First, such organisations could confirm that measures do comply fully with justified needs for protection. Secondly, effects of synergy could result by using existing infrastructures instead of establishing new ones. Finally, such an involvement could lead to a better mutual understanding among those involved.



D. Enforcement of existing rules

- (17) Obviously, a legal framework for the fight against illegal immigration already exists in all European Union Member States as do regulations on the issuing of visas, border controls, illegal entry and stay, on smuggling, trafficking, illegal employment and carrier liability. Certain common principles on these issues have been laid down in several Recommendations under the regime of the Maastricht Treaty. In addition, and much more importantly, a large number of binding rules has been established within the Schengen framework. The importance of the evaluation of the Schengen acquis is worth mentioning in this respect.
- (18) It does not make any sense to introduce new rules or to harmonise rules at European Union level, if present regulations are not enforced with sufficient resources and, most importantly, the necessary will. Common efforts are condemned to fail, if Member States' services and practices do not follow the rules adopted in common, i.e. relating to the issuing of visas and external border controls. Whether as countries of transit or destination, Member States must, therefore, work intensively towards a genuine partnership based on mutual confidence in each others law enforcement activities.
- (19) The creation of an area of freedom, security and justice requires all Member States to apply common rules effectively. The common security system is only as strong as its weakest point. Consequently, it is crucial to enforce existing rules properly as a main priority.
- (20) Whatever the circumstances, the Action Plan should be carried out while taking into account the relevant Community law.

## E. Penalties

- (21) Illegal activities, which are regularly connected with irregular migration flows, are a major common concern in all Member States. Trafficking and smuggling in human beings especially are seen as totally unacceptable. The appropriate provisions have, therefore, to be put in place. At European Union level, no Member State must be considered as a place for committing unlawful acts. This would strengthen the scope of justice in the Union and send a clear signal that Member States are willing to impose severe penalties. In Tampere Conclusions No 23, the European Council therefore urged the adoption of legislation providing for severe penalties for serious crimes, and in Laeken Conclusions No 45 the Council stated that efforts to surmount the problems arising from differences between legal systems should continue within the reinforcement of the area of freedom, security and justice.
- (22) The UN Convention against Transnational Organised Crime signed in Palermo on 12 to 15 December 2000 and its two accompanying Protocols on trafficking in persons and smuggling of migrants now form the basis for a global recognition of the problem and a comparable approach to tackling it. It is, therefore, essential to ensure a swift ratification of these instruments as well as a coordinated implementation of their provisions at EU level.

## II. - MEASURES AND ACTIONS

### A. Visa Policy

- (23) According to Article 61 of the Treaty establishing the European Community, visa policy is a directly related flanking measure to the free movement of persons with respect to external border controls. Whilst facilitating the free movement of persons, visa policy can also significantly contribute to the prevention of illegal immigration and to the fight against terrorism. Visa policy alone cannot, however, counter illegal immigration relating, for example, to third country nationals who enter legally but "overstay".
- (24) The adoption of the Council Regulation listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, provides further development for an harmonised visa policy and instrument for preventing entries into the Member States territory of non-authorised persons.
- (25) Given the constant changes in migratory flows, these lists should be reexamined annually without prejudice to the standard machinery laid down in the Regulation for reviewing the lists.

## I. Uniform visa and security standards

- (26) Security and identification issues have been covered by the use of secure documents, which should allow for clear identification of the person concerned. In addition, travel documents aim to prove that the holder is entitled to exercise certain rights. Since travel documents have existed, they have been targets of forgery and fraudulent use for obvious reasons. States have, therefore, tried on an ongoing basis to raise the security standard of these documents. An example of a very successful cooperation in the field of security documents is the evolution of the EU/Schengen visa sticker. Based on the Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas, it has become a document of the highest standard, effective against counterfeiting or attempts at falsification. Third countries should also be encouraged and even supported to strengthen their efforts in order to render their travel documents more secure.
- (27) Accordingly, measures aimed at improving the security of the visa and of the residence permit based on new technologies should be adopted. Consideration should be given in particular to including in visas and, where appropriate, in residence permits, not only a photograph of the applicant but also his or her biometric data.

## II. Creation of common administrative structures

- (28) The Tampere Conclusions (No 22) stressed that "a common active policy on visas and false documents should be further developed, including closer cooperation between EU consulates in third countries and, where necessary, the establishment of common EU visa issuing offices."
- (29) For this common policy on visas to be developed in line with the approach referred to in the Tampere Conclusions, it is essential as a first step to increase cooperation between Member States' diplomatic and consular representations in the countries generating the migratory flows.

- (30) Information exchange on visa-issuing practices and trends in document forgery already takes place both formally and informally. This useful cooperation should be further promoted and enhanced by mutual assistance in the training of staff. It is also common practice in several places to represent other Member States in countries where a Member State does not have its own representation.
- (31) In this context, the idea of joint visa offices has been raised, but hitherto without any concrete result, due to practical, legal and cost-sharing difficulties; progress must therefore be made in examining the possibility of setting up such joint visa offices as requested in the Laeken Conclusions (No 42).
- (32) However, it seems quite obvious that one of the expected advantages of joint visa posts would be to reduce the cost of issuing visas. Such a burden-sharing approach could provide the financial means needed by the Member States in order to improve the technical equipment used for the purposes of issuing visas (detection of counterfeit or forged documents, access to online databases of sample travel documents, secured storage conditions for blank visa stickers etc.). In addition, staff sharing would also mean sharing of experience and know-how in the field of risk assessment of illegal immigration or potential overstayers. In a medium or long-term perspective, one more substantial positive outcome of joint visa posts would consist of more uniform implementation of the common rules and the reduction of visa shopping.
- (33) Accordingly, quite apart from the vital importance of increasing collaboration at local consular level, measures should be adopted progressively with a view to the establishment of joint visa offices, given the requirement for better management of external border controls laid down in the Laeken Conclusions. In the short-term, any possible initiatives by the Member States on setting up joint offices or infrastructures could be carried out in Pristina as a priority pilot project. At the same time, a feasibility study on the legal, technical and financial issues raised by the creation of integrated joint consular offices would be carried out.

### III. Development of a European Visa Identification System

- (34) The creation of common administrative structures could, in itself, be a major step forward in harmonising Member States policies and practices with regard to visas. Nevertheless, a complementary approach could be envisaged making use of the possibilities of modern communication and computer technology.
- (35) The Laeken Conclusions No 42 also note that the Council and the Member States must take steps to set up a common visa identification system. It has been suggested that this system could be supplemented by introducing a central register of aliens resident in Europe.
- (36) In the context of the prevention of terrorist threats, the conclusions of the JHA Council held on 20 September 2001 invited the Commission to make proposals on the creation of a system to be used for the purpose of exchanging information on issued visas. A series of reflections and feasibility studies should be instigated and could explore whether such a common electronic system could complement the concept of security documents in order to create a dual identification process based on secure documents and a database.
- (37) In order to ensure that the services responsible have information which is as full and helpful as possible, this database should not only contain details of visas issued but also data concerning visas applied for and refused.
- (38) Such a system could include information which is already gathered or required from the visa applicant today, such as personal particulars. In addition, an electronic photo could be taken and stored, together with the biometric data of the applicant. Travel documents should also be scanned and stored, which would have two major advantages. First, subsequent manipulations of the travel document could be easily detected by comparison of the travel document with its image. Secondly, the stored image of the travel documents could be used to obtain new travel documents quickly, when a person is obliged to leave the country but tries to conceal his or her identity. Anyway, the development of such a system should be based on a clear definition of needs and objectives as well as a thorough evaluation of existing initiatives (including the possibilities already offered by the SIS and VISION) and resources to be mobilised.

- (39) Any such system should be devised in conformity with current rules on the protection of personal data.
- (40) Accordingly, urgent measures for establishing a common visa identification system should be adopted, without prejudice to an examination of any possible technical or legal problems that might arise.

## **B. Information exchange and analysis**

### **I. Statistics**

- (41) It is a widely shared assessment that the level of legal as well as illegal immigration is significant and cannot be neglected due to its social, economic and political implications in the countries of destination. However, by definition it is impossible to have a clear picture of the scale of the phenomenon of illegal immigration in the Member States of the European Union. An estimate of the scale of illegal migration can only be derived from existing hard data which have a link to the phenomenon such as refused entries, apprehensions of illegals at the border or in the country, rejected applications for international protection, applications for national regularisation procedures and escorted or forced returns.
- (42) The Council of May 2001 decided to introduce a public annual report consisting of a statistical overview and an analysis for the purpose of discussing trends in asylum and migration flows and the relevant policy developments in the European Union. This would include a section analysing data on illegal immigration.
- (43) Accordingly, the necessary measures should be adopted to provide Member States with statistical data reliable enough to analyse at regular intervals both legal migratory flows and illegal immigration.

## II. Gathering information, intelligence and analysis

- (44) However, mere figures are not sufficient for understanding the phenomenon and to prepare decisions for operative purposes. This requires further in-depth analysis of its causes, the methods of entry and the consequences for our societies. Member States have gathered considerable information and have gained expertise in this field, but the European dimension to the phenomenon has not yet been sufficiently explored. Although formal and informal networks for the exchange of information have been developed over the years for this purpose, modernisation of the exchange of statistical information on a European level is required to enable the Community to develop adequate common policies in conjunction with the measures for Europol contained in this comprehensive Plan.
- (45) In order to establish constant information exchange among Member States, a centre for information exchange, CIREFI, has been set up in which, on a nearly monthly basis, experts from Member States share information, in particular on current trends in irregular migratory flows. However, this form of cooperation should be strengthened, requiring more intense networking among Member States' operational services, especially in the field of analysis. In this context, it is useful to analyse how existing instruments might be put to better use.
- (46) Accordingly, among other initiatives to be undertaken in this field, a feasibility study shall be carried out with a view to developing a European system for exchanging information on asylum, migration and countries of origin, as provided for in the Laeken Conclusions (No 40).

## III. Development of the Early Warning System

- (47) With a Council Resolution of May 1999 an early warning system for the transmission of information on illegal immigration and facilitator networks has been introduced. The aim was to set up a standardised, permanent communication framework enabling a Member State to report illegal migration phenomena instantly.



- (48) However, the Early Warning System (EWS) is still in a rudimentary phase. The main problems are insufficient use, a lack of information distribution within the Member States' services involved and poor technical infrastructure. As a first step common guidelines, concerning cases in which the system should be used, could be further elaborated. Nevertheless, the administrative and technical infrastructure seems to be the key obstacle. Operational services have to be given the chance to deliver and to obtain information as easily as possible, seven days a week, 24 hours a day. That is the reason why the early warning system should be developed as a web-based secure intranet site. Admittedly, the success of this approach depends very much on the possibility of operational services accessing the system without difficulty.
- (49) Accordingly, measures designed to implement and administer an early warning system more developed than the existing one should be adopted.

### **C. Pre-Frontier Measures**

#### **I. Advice and support by liaison officers**

- (50) First steps have been taken to develop the concept of liaison officers in countries of transit and origin and to coordinate these efforts among Member States. In accordance with the conclusions adopted by the Council in November 2000 and May 2001, networking is being intensified among liaison officers of Member States, for example in cooperation in the Western Balkans area.
- (51) In the future, the EU should continue to build up the network of immigration and airline liaison officers by promoting closer cooperation. Permanent information exchange between immigration and airline liaison officers as well as with police liaison officers and other intelligence officers of Member States must be guaranteed. Common training must be conducted regularly on the basis of previously defined tasks and assignments and the mutual support of liaison officers must be encouraged.

(52) Accordingly, as the coordination and adaptation of the Member States' actions in the use of liaison officers and experts, as of other operators in this field, is necessary, together with closer cooperation in boarding checks at points of origin, measures to coordinate tasks, training and liaison postings efficiently should be adopted, using the experience gained in the Balkans, although this could be extended to include other regions of strategic interest to the European Union, involving the establishment of an information network of all the Member States' liaison officers, who would draw up joint reports for subsequent analysis by the CIREFI Working Party, in conjunction with the development of the Early Warning System.

## II. Financial and technical support for actions in third countries

(53) While applying the actors-in-the-chain approach, it is essential to support targeted measures in the countries of origin and transit. Some of these forms of assistance were already identified in the conclusions of the Tampere European Council with a view, in particular, to helping these countries to strengthen their capacity to combat trafficking in human beings, and to cope with their readmission obligations. In the same context, it is worth making mention of the Action Plans prepared by the High-Level Working Group on Asylum and Migration.

(54) In this framework, targeted migration and asylum projects could be financed in the following areas:

- Support for asylum seekers infrastructure;
- Development of public registration structures;
- Establishment of reception centres for illegal immigrants in transit countries;
- Awareness-raising campaigns;
- Improvement of document security;
- Fight against corruption;
- Deployment of liaison officers;
- Expert meetings, training and seminars;
- Supporting returns of irregular migrants;
- Improvement of border control management and equipment.

(55) Accordingly, and within the available resources, measures to build upon national technical and financial assistance to help third countries should be adopted within the framework of the European guidelines on immigration, giving particular attention to the overall coherence of the Member States' and the Union's external action.

### III. Awareness-raising campaigns

(56) In No 22 of its Tampere conclusions, the European Council mentioned information campaigns in the countries of origin as another instrument to influence illegal migration. The concept of information campaigns as such should be interpreted in a broad sense. Initiatives aimed at raising awareness among the public at large of the problems and risks related to illegal migration could be considered, as well as concentrated initiatives targeted at specific groups such as the unemployed, women or students.

(57) Accordingly, given that the preparation of information campaigns, both by the European Union and by Member States, requires a tailor-made solution for each country of origin or even region, and furthermore, since the cultural dimension is a fundamental element of such campaigns, their elaboration has to be conducted carefully in a way which ensures that the campaign has the desired effect on the target region and audience.

### D. Measures relating to border management

(58) High-standard external border controls are an important contribution to preventing illegal immigration. Also significant is that border management does not focus solely on the immigration aspect but also on other purposes: customs purposes, traffic security, prevention of the entry of dangerous or illegal goods, identification of persons wanted for arrest or extradition at a request of a competent judicial authority, etc.

(59) All these elements have to be integrated into a coherent strategy, which should be based on the Tampere and Laeken Conclusions. Account should be taken of the the incoming Commission communication on border controls as well as of the results of the feasibility study on a European Border Guard and of the seminar on police and border security.

#### I. Border management in a common area

(60) The existence and improvement of external border controls – which should be the subject of a risk assessment – in a common area established by the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders must not cause us to lose sight of the reality of the illegal migratory flows within that common area, involving evasion of entry permits for aliens who may remain illegally in the countries of the European Union after the end of their legal stays.

(61) Accordingly, the undesirable effects of the abolition of checks at common borders, in particular with enlargement in prospect, such as easier illegal transit between Member States and the obvious encouragement to networks trafficking in human beings, must be dealt with by means of effective and realistic measures that prevent transit between Member States followed by illegal establishment, but at the same time do not undermine the freedom of movement of persons within an area of freedom, security and justice, and take account of the provisions of the Amsterdam Treaty, the Vienna Action Plan and the Tampere and Laeken Conclusions.

#### II. Controls at sea borders

(62) The statistics show that the number of illegal immigrants arriving by sea has increased over recent years, for several reasons (sea borders are now longer, and are difficult to control ...).

(63) This situation shows the need for the adoption of appropriate legislative and/or operational initiatives at European level aimed at improving sea border controls. To this end, the Commission is invited to conduct a feasibility study to see how these controls can be improved.

### III. Common curriculum and training

(64) As already emphasised, border checks are carried out in accordance with uniform principles based on a common standard. However, these elements have to be developed further. A key factor to enhance the quality of the cooperation could be to set up a harmonised curriculum for border guards that takes into account the different characteristics of national training traditions.

(65) Another measure for strengthening cooperation between border control authorities is the harmonisation of the training of border guards. Border controls should be carried out by a specialised service, which calls for specific know-how. A professional border guard management requires clearly focused education and training. In addition, the fact that there are different legal frameworks should be borne in mind. Careful consideration should be given to the possible contribution of the European Police College (CEPOL) to the achievement of these objectives.

(66) Accordingly, it should be considered whether these specific needs might not be better met by setting up a network of existing national training facilities offering appropriate and targeted services like programme design, seminars, workshops, etc. and creating the conditions for a joint training effort.

#### IV. Border management cooperation and performance by joint teams

(67) Articles 7 and 47 of the Schengen Convention call for closer cooperation in the field of border controls. Such cooperation may take the form of an exchange of liaison officers. On the basis of bilateral agreements, reciprocal secondment of liaison officers already takes place. These liaison officers can be posted to executive border guard authorities at the external borders. They do not carry out any tasks relating to the sovereignty of States but advise and support the competent border guard authorities. It should be examined how an exchange of this kind could be gradually improved not only by bilateral cooperation between Member States, but also by a coherent Community approach. It is equally important to take account of the fact that new Member States will be joining. A study could be made of the usefulness of technical cooperation support facilities as referred to in the section on the improvement of cooperation and coordination in the operational sphere in the Commission communication to the Council and to the European Parliament of 15 November 2001 on a common policy on illegal immigration.

(68) Accordingly, without prejudice to the existing agreements in this field between Member States, and because the setting up of the Member States' various operational services and the relationship between them must be analysed, measures should be adopted to develop and intensify practical cooperation and coordination of border checks and surveillance and to analyse the need for and the viability of a common external border unit.

#### E. Readmission and return policy

(69) Readmission and return policy is an integral and vital component in the fight against illegal immigration. Given its importance, the matter must be given proper consideration, separately and at a more detailed level, in preparation for which the European Commission must, as a matter of urgency, present a Green Paper analysing possible measures and courses of action to flesh out a Community return policy, and it should also analyse the advisability of establishing a financial instrument for implementing the return policy.

(70) Nevertheless, it is already possible to highlight a number of practical measures that should be considered for implementation.

I. Establishing a joint approach/cooperation between the Member States for the purposes of implementing return measures

(71) A Community return policy should be based on two elements: common principles and common measures. One important common principle is, for example, the strengthening of the obligation under international law to readmit own nationals, a principle that is confirmed in the Tampere Conclusions (No 26). It should likewise be possible to ensure that third-country nationals leave the territory of the Member States when they have no legal status authorising them to stay either permanently or temporarily.

(72) Nonetheless, common measures and regulations must not be an obstacle to administrative cooperation between Member States; such cooperation must be improved and developed.

(73) In this context, it should be noted that a European Visa Identification system will significantly facilitate the process of identifying illegal residents and the issue of travel documents for return purposes.

(74) Accordingly, without prejudice to the establishment of common principles, progress must be made towards closer collaboration on the issues of transit and readmission, of identification of illegal residents and the issue of travel documents for return purposes.

II. Readmission agreements with third countries

(75) The concept of readmission agreements, which was endorsed in conclusion No 27 of the European Council in Tampere, has to be developed. Nevertheless, before the negotiation of any readmission agreement, the interests of the European Union and of the Member States should be taken into account.

- (76) However, there is no need to wait until the first Community readmission agreements that are being negotiated by the Commission on the basis of the mandate given by the Council are concluded and implemented to identify without delay the third-countries generating illegal immigration and negotiate and conclude new readmission agreements with them, as provided for in the Laken conclusions (n. 40). The EU should also use its political weight to encourage third countries which show a certain reluctance to fulfil their readmission obligations.
- (77) Accordingly, the third countries with which new readmission agreements need to be negotiated and concluded must be identified, and common measures adopted aimed at ensuring that such countries fulfil their obligation to readmit their own nationals in accordance with the rules already established under international law. These agreements should also include an obligation to readmit third-country nationals and stateless persons coming from or having resided in the country concerned.

### III. Transit of returnees

- (78) Closely related to readmission is the transit issue: it is a common finding that third-country nationals staying illegally in the territory of the Member States have transited through the territory of other countries and did not arrive in the Member State concerned directly from their countries of origin.
- (79) Accordingly, rules on transit of returnees should be put in place at EU level as well as with third countries, where appropriate.



#### IV. Common standards for return procedures

- (80) There have been differences documented in the legal provisions governing return procedures and in the corresponding administrative practices; this will hinder the establishment in future of an effective Community return policy for third-country nationals found to be staying illegally in the territory of the Member States.
- (81) Accordingly, it would be a good idea to analyse the possibility of adopting measures in accordance with Article 63(3)(b) of the Treaty establishing the European Community to implement common standards for return procedures.

#### C. Europol

- (82) The detection and dismantling of criminal networks are high priorities in the fight against illegal immigration. This action is promoted by police cooperation, in which the role of Europol could be enhanced.
- (83) The purpose of Europol's work in combating illegal immigration is, as in other areas, to provide support to the Member States in the prevention, investigation and analysis of the crimes involved. Europol supplies the elements of strategy, which contain not only explanatory detail but also elements of conjecture. These allow for an appropriate threat and risk assessment. Europol provides operational support with intelligence bulletins and analytical work files. It also supports joint investigations and operations. These joint operations, which have already taken place, have resulted in further investigations and to the observation, arrest and conviction of several suspects.
- (84) Measures should be adopted to give Europol more operative powers to enable it to work together with national authorities on the trafficking or smuggling of human beings, as was also concluded by the EU Police Chiefs Operational Task Force in March 2001.

(85) Accordingly, to that end, Article 30 of the Treaty on European Union should be fully utilised and Europol should be empowered to:

- facilitate further and support the preparation, coordination and carrying out of specific investigations by the competent authorities of Member States, including the operational activities of joint investigation teams comprising representatives of Europol in a support capacity;
- call on the competent authorities of the Member States to conduct investigations in specific cases and develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of trafficking or smuggling of human beings;
- contribute, where possible and appropriate, to the collation by law enforcement agencies of reports on suspicious financial transactions relating to trafficking and smuggling of human beings and to exchanges of information relating to them. The Europol Management Board is invited to consider the establishment of agreements with transit countries to foster the operational exchange of information.

## **G. Penalties**

(86) Many legal and practical instruments which the EU is gradually introducing in closely related matters, such as police and judicial cooperation, must also be mobilised in a practical manner as part of a comprehensive approach to combating smugglers and traffickers in human beings. The liaison magistrates, where they exist, the European judicial network, and especially Eurojust, should focus more actively on this type of offence. Furthermore, the adoption of the Convention on Mutual Legal Assistance of 29 May 2000, as well as the recent extension of its Protocol on improving mutual assistance in criminal matters, in particular in the area of combating organised crime and laundering of the proceeds of crime and financial crime, will represent important tools for increasing the effectiveness of judicial cooperation in the fight against smuggling and trafficking.

## I. Smuggling of Human Beings

### Distinction between Smuggling and Trafficking of Human Beings

- (87) The expressions "smuggling" and "trafficking" are often used synonymously, although a clear distinction should be drawn as they are substantially different. This is also useful from a law enforcement perspective. Clarification of the terminology and definitions has been included in the United Nations Convention against Transnational Organised Crime and its two accompanying Protocols on smuggling and trafficking, which were signed in Palermo on 15 December 2001.
- (88) These definitions make it clear that smuggling means helping with an illegal border crossing and illegal entry. Smuggling, therefore, always has a transnational element. This is not necessarily the case with trafficking, where the key element is the exploitative purpose. Trafficking involves the intent to exploit a person, in principle irrespective of how the victim comes to the location where the exploitation takes place. This can involve, in cases where borders are crossed, legal as well as illegal entry into the country of destination. Illegal immigration can also include trafficking aspects, but has indeed a wider scope and relates more to the general illegal entry and residence of persons. Illegal immigrants in a wider sense are, therefore, not necessarily victims of traffickers.
- (89) Accordingly, the following points should be borne in mind concerning the smuggling of human beings:
- as regards the issue of smuggling of migrants, Article 27 of the Schengen Convention makes it a requirement "to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside the territory of one of the Contracting Parties in breach of that Contracting Party's law on the entry and residence of aliens";
  - the Council recently reached political agreement on a Directive defining the facilitation of unauthorised entry, movement and stay and an accompanying Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence.

## II. Trafficking in human beings

- (90) The Council has reached political agreement on a Framework Decision addressing the substantial criminal law aspects of trafficking. Furthermore, in the legislative measures against trafficking in human beings, it must also be stressed that the victims must be given special attention. The adoption of the Framework Decision on the standing of victims in criminal procedure on 15 March 2001 is especially relevant here. It provides measures to safeguard for instance the victim's right to information and protection in relation to the criminal procedure.
- (91) It is important to clarify the status of the victims of trafficking in terms of certain benefits or special assistance when they are prepared to cooperate in investigations against their exploiters. On the one hand, such a clarification would provide a platform for more structured assistance and protection focusing directly on the victim's individual situation and needs, and, on the other hand, on the need of the law enforcement authorities to conduct efficient investigations against traffickers.

## III. Illegal Employment

- (92) A significant number of illegal immigrants have entered the country of destination legally, but overstayed the time limits for residence because they have the opportunity to continue working. Since the Council Recommendation of 27 September 1996 on combating the illegal employment of third-country nationals, the sensitive issue of illegal employment of third-country nationals has not been tackled again in the Council. The Commission adopted a Communication on illegal work in 1998, which also deals with illegal employment of illegally resident third-country nationals.
- (93) Accordingly, in order to deal with the problem of illegal immigration comprehensively, the issue of illegal employment of illegal residents should be addressed after the situation regarding Member States' legislation in this area has been studied.

#### IV. Illegal immigration and financial benefits

- (94) It is worth noting the progress made in preparing and adopting standards on money laundering, the identification, tracing, freezing, seizing and confiscation of means and assets from crime for the prevention and suppression of smuggling of migrants and trafficking of human beings.
- (95) Accordingly, as a common principle, the confiscation of all financial gains from criminal activities relating to illegal immigration should be given priority, as should the confiscation of the means of transport used for the trafficking of immigrants. Therefore, rules on confiscation have to be established and adequately enforced, if this is not already the case. This should include provisions on the liability of legal persons who are involved in these activities. Penalties for legal persons could be, for instance, the exclusion from entitlement to public benefits or the disqualification from practising commercial activities. Furthermore, traffickers, smugglers or legal persons who are liable should be made fully responsible for all return-related costs, including costs for social welfare and other public expenditure during the stay.

#### V. Carrier Liability

- (96) Carriers today are already responsible for returning those aliens who are refused entry on the basis of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985. In addition, carriers are obliged to take all necessary measures to ensure that an alien is in possession of valid travel documents. The Council adopted in June 2001 a Directive supplementing the provisions of Article 26, which contains three optional models of penalties for carriers who do not fulfil their obligations.
- (97) Accordingly, the guidelines in that Directive should be followed up to ensure that it is transposed and implemented.

### III – EVALUATION OF THE PLAN

- (98) As has been seen in this Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union, many different measures and courses of action must be developed and implemented to prevent and combat illegal immigration, as an essential part of the common asylum and immigration policy of the European Union; if the Comprehensive Plan is to have full effect a mechanism must be set up to monitor and appraise the initiatives proposed, the progress made and the achievements attained.
- (99) Such monitoring and appraisal must be carried out at an appropriate level and frequently enough to be useful, in order to ensure that the ambitious work programme established by this instrument can be developed swiftly, taking into account the new dimensions that the phenomenon of immigration on a global scale represents.
- (100) Accordingly, the European Commission will have to draw up an annual report monitoring and appraising the Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union, and this report will be submitted to the Council for discussion.
- (101) The Commission's annual report on monitoring and appraisal will contain a "scoreboard", which will also be updated annually, showing the progress made on each measure and course of action developed.
- (102) Likewise, the Commission is invited to take account of the content of this Comprehensive Plan, including the list of priorities, when drafting future initiatives for submission to the Council.

ANNEX

SUMMARY OF MEASURES AND ACTIONS TO BE ADOPTED AND IMPLEMENTED IN COMBATING ILLEGAL IMMIGRATION AND TRAFFICKING IN HUMAN BEINGS\*

VISA POLICY	Uniform visa and security standards	In the short-term: improve document security on the basis of new technologies. In the medium-term: possibly inclusion of biometric data on documents.
	Creation of common administrative structures	In the short-term: run a pilot project on using joint infrastructures. In the short-term: strengthening the consular cooperation.
		In the medium-term: bring integrated consular offices into operation.
	Development of a European Visa Identification System	In the short-term: conduct a feasibility study to determine the main features of the common visa identification system.
		In the medium-term: bring the common visa identification system into operation.
	Statistics	In the short-term: annual report consisting of a statistical overview and data analysis. In the medium-term: review of the system.
Gathering information, intelligence and analysis		In the short-term: conduct a feasibility study with a view to developing a European system for exchanging information, taking into account possible improvements of existing instruments.
	Development of the Early Warning System	In the medium-term: determination of a European system for exchanging information. In the short-term: implement and appraise the existing Early Warning System.

\* N.B. : Short-term: actions and measures to be implemented as soon as possible and in principle within one year.  
Medium-term: actions and measures to be implemented as soon as possible and in principle within three years.

PRE-FRONTIER MEASURES	Advice and support by liaison officers	In the short-term: step up cooperation via the liaison officers' network.
	Financial and technical support for actions in third countries	In the short-term: implement the Action Plans prepared by the High-Level Working Group on Asylum and Migration.
	Awareness-raising campaigns	In the medium-term: prepare campaigns in the countries of origin and transit.
MEASURES RELATING TO BORDER MANAGEMENT	Border management in a common area	In the short-term: put into practice a risk assessment system.
	Controls at sea borders	In the short-term: conduct a feasibility study on improving sea border controls. In the medium-term: carry out measures to improve sea border controls.
	Common curriculum and training	In the short-term: analyse the possible contribution from CEPOL towards improving training. In the medium-term: create a network of national training organisations.
	Border management cooperation and performance by joint teams	In the short-term: step up cooperation with the operational services in the Member States.
		In the short-term: analyse the feasibility of a joint external borders service.
		In the medium-term: actions and measures based on the feasibility study.



READMISSION AND RETURN POLICY	Establishing a joint approach/cooperation between the Member States for the purposes of implementing return measures	In the short-term: improve practical cooperation between the competent services. In the short-term: determination of appropriate criteria and practical arrangements for the compensation between Member States of costs resulting from the enforcement of expulsion Decisions, as established in the Council Directive on the mutual recognition of expulsion Decisions. In the short-term: analysis of the actions and measures that may be envisaged on the basis of the Commission Green Book on return
	Readmission agreements with third countries	In the short-term: conclude outstanding Agreements In the short term: identification of third-countries with which agreements need to be negotiated. In the medium-term: conclude different readmission Agreements as distinct from those outstanding.
	Transit of returnees	In the short-term: establish within the European Union and with third countries standards for the transit of returnees, where necessary.
	Minimum common standards for return procedures	In the medium-term: examine the possibility of adopting measures to ensure certain common minimum standards for return procedures
EUROPOL	In the medium-term: apply Article 30 of the Treaty on European Union in its entirety, giving EUROPOL wider scope for supporting investigations in the Member States concerning networks of illegal immigration, including trafficking of human beings; provide support for Member States and, wherever possible and appropriate, participate in the collection and exchange of information among bodies responsible for implementing the laws applying in such cases.	
PENALTIES	Smuggling of Human Beings	In the short-term: put into practice the new Community instruments aimed at combating illegal trafficking of human beings.
	Trafficking of human beings	In the short-term: determination of the possibility of granting to the victims of trafficking of human beings certain benefits or special assistance.
	Illegal Employment	In the short-term: conduct a study of the laws of the Member States. In the medium-term: prepare a proposal for harmonising the way in which illegal employment is dealt with at European level.
	Illegal immigration and financial benefits	In the short-term: analysis of the possibility of adopting provisions on confiscation of financial gains and on confiscation of means, in particular means of transport, used in criminal activities relating to illegal immigration.
	Carrier Liability	In the short-term: follow up the Directive on carrier liability.