



Discussion of key elements for a future Repatriation/Return Programme on the basis of the Commission Green Paper

The European Council of Seville on 21 and 22 June 2002 reaffirmed the necessity to fight effectively against illegal immigration as an essential part of a comprehensive policy on immigration and asylum. The European Council of Laeken on 14 and 15 December 2001 had already called for an action plan on illegal immigration¹. On the basis of the Commission's Communication on a common policy on illegal immigration of 15 November 2001² the JHA Council adopted on 28 February 2002 a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union.³ Herein it was emphasised that a return and readmission policy is an integral and vital component in the fight against illegal immigration. The Commission tabled on 10 April 2002 a Green Paper on a Community Return Policy on Illegal Residents⁴. A first broad discussion on this Green Paper among various stakeholders took place during a public hearing on 16 July 2002, which was hosted by the Commission.

The informal JHA Council is now invited to discuss the elements of a future repatriation/return programme as it was requested in no. 30 of the Seville Conclusions. Here it is – inter alia – stated:

“(...) The European Council calls on the Council and the Commission, within their respective spheres of responsibility, to attach top priority to the following measures contained in the plan: (...)

as regards expulsion and repatriation policies, adoption by the end of the year, of the components of a repatriation programme based on the Commission Green Paper; those components should include the best possible facilities for early return to Afghanistan; (...)”

¹ Cf. Conclusion No. 40.

² COM (2001) 672 final.

³ Council Doc. 6621/1/02 rev.1, JAI 30.

⁴ COM (2002) 175 final.



A first, initial exchange of viewpoints on the future programme took place in the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) on 23 July 2002.

Expulsion of third country nationals, who are not legally residing in the Member States, is one of the major challenges the European Union is facing today.

In many cases Member States are lacking the tools to effectively implement negative decisions regarding applications for residence permits, particularly in the area of asylum law.

To give an adequate illustration of the kind of challenge expulsion poses one needs only to mention the multitude of problems Member States were faced with in the past when trying to return rejected asylum seekers to the Federal Republic of Yugoslavia.

The purpose of this paper is to list a number of key elements for a general repatriation/return programme based on the Commission's Green Paper. The discussion of the Ministers will serve to provide input for the Commission to draw up a Communication on the topic as soon as possible after the informal JHA Ministerial meeting, cf. the Road Map of the Presidency for the follow-up to the Conclusions of the European Council in Seville. The Danish Presidency will then on the basis of the Commission Communication draft a repatriation/return programme to be adopted in accordance with the Seville Conclusions by the end of the year (JAI Council in November 2002).

It is considered that a return programme constitutes an integral part of a comprehensive Community immigration and asylum policy, which is necessary to safeguard the credibility and the integrity of the whole system. An effective return programme for illegal residents is important to ensure continued support from the European citizens to the concept of international protection of refugees and other persons in need of protection. At the same time the establishment of such a return programme and the implementation of decisions on return must of course be performed in full respect of international obligations and human rights.

The Seville Conclusions stress the vital importance of co-operation with countries of origin and transit on return and readmission, and intensification of co-operation with relevant countries should therefore be progressed. In this regard the ongoing negotiations with third countries on readmission play an important role.

With regard to the more specific elements of a future repatriation/return programme the Danish Presidency considers that it would be convenient for the Ministers to exchange viewpoints on the following key issues:

1. Which categories of persons should be covered by a Repatriation/Return Programme?

In no. 30 of the Seville Conclusions the European Council calls for the Council and the Commission to give priority to expulsion and repatriation policies, including adoption by the end of the year, of the components of a repatriation programme based on the Commission Green Paper; those components should include the best possible facilities for early return to Afghanistan.

The Commission Green Paper focuses mainly on return of illegal residents, cf. page 3:

"Due to the very complex and sensitive nature of return issues this paper only intends to open a discussion on the return of illegal residents and should not be seen as an effort to cover all dimensions connected with the return of third-country nationals."

The Danish Presidency invites the Ministers to express their views on which of the following categories of persons should be covered by the future repatriation/return programme:

- Persons who do not, or who no longer, fulfil the conditions for entry to, presence in, or residence on the territories of the Member States of the European Union. In consideration of the credibility and integrity of the asylum system a particularly important category in this respect are the rejected asylum seekers.
- Persons who have obtained residence permit on the basis of a need for protection according to the Geneva Convention or other forms of protection, and who wish to return voluntarily.
- Persons otherwise residing legally and who wish to return voluntarily.

2. Which elements could the operative part of the Repatriation/Return Programme include?

On 23 July 2002 the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) stressed that it is important that the future programme focus on issues specifically related to the practical/operational return and repatriation phase. Improved operational co-operation on both forced and voluntary return can contribute to solve a number of practical problems, including the lack of identification and travel documents, which is often the obstacle for smooth return. The operative part of the repatriation/return programme could include the following elements:

- Improved exchange of information and experiences among other things on identification and obtainment of travel documents,
- Common definitions of terms used in the field of return with a view to facilitating co-operation and exchange of information,
- Networking of authorities and regular meetings amongst practitioners,
- Development of best practices on return,
- Improved co-operation between representations and liaison officers of the Member States in relevant third countries.
- Establishment of common guidelines on:
 - Escorts and other assistance with regard to transit.
 - Standard security measures with regard to return operations, including possible joint operations (e.g. risk evaluation of the returnee and use of enforcement measures).
 - Training programmes on e.g. escorts and security measures for persons responsible for return.
 - Readmission and transit rules among Member States.

The Danish Presidency invites the Ministers to express their views on the need for the above-mentioned elements and whether additional elements should be contained in a future programme with the aim of improving the operational co-operation between Member States.

3. Could other common standards be envisaged in the future Repatriation/Return Programme?

On page 11 ff. in its Green Paper the Commission proposes and promotes the establishment of common standards relating to all phases of return, including common standards on ending of legal and illegal residence, detention pending removal and mutual recognition of return decisions.

Once improved practical co-operation between Member States has been established, the need for an introduction of such common standards in the medium or long-term perspective may be assessed.

The Danish Presidency invites Ministers - if possible already at this stage - to comment on the proposals for common standards raised in the Commission Green Paper and to give priority to one or more of these areas with the aim of approximation in a medium or long term perspective, depending on the experience that will be gathered from an improved practical co-operation between Member States.

4. Which elements should concrete return programmes include?

Further the Presidency invites Ministers to express their views on which elements should be included in country specific return programmes in general.

Such elements could include:

- A common European demarche towards the authorities of the country of origin.
- Setting up of lists of contact points of relevant competent authorities in Member States.
- Possibility of co-operation between Member States on carrying out returns (e.g. joint flights).
- Establishing a financial Community instrument for the purposes of return.
- Establishing common criteria concerning which categories of persons, that could be covered by a return programme.

Given the fact that the European Council in Seville attached special priority to a programme regarding early return to Afghanistan, Ministers are invited to express their views on which elements should be included in a specific return programme facilitating early return to Afghanistan.

The European Refugee Fund only covers expenses with regard to return of persons enjoying international protection. This excludes the important category of rejected asylum seekers as well as persons otherwise residing legally in the Member States.

A new financial instrument could thus be envisaged, covering expenses for return activities not already covered by the European Refugee Fund, including expenses for e.g. transport, escort, issuance of travel documents etc. occurring in connection with the return of rejected asylum seekers as well as persons otherwise residing legally in the Member States.

The Danish Presidency invites the Ministers to express their viewpoints on whether the future repatriation/return programme should include the possibility of establishing such a new financial instrument for return activities. In this regard elements for specific country programmes could be envisaged.