



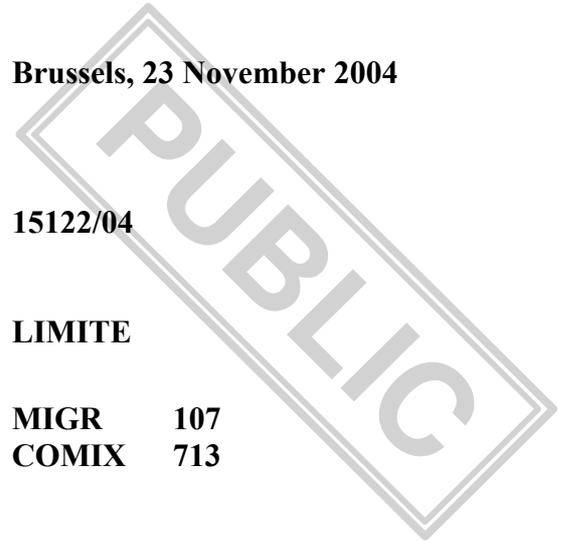
**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

**MIGR 107
COMIX 713**



I/A ITEM NOTE

from : Presidency
to Permanent Representatives Committee/Council
Subject : Adoption of draft Council Conclusions on best practices on return with regard to specific countries of third country nationals illegally staying on the territory of Member States

1. Various EU instruments, and in particular the Return Action Programme, adopted by the Council in November 2003, have stressed the need for improving and strengthening the practical co-operation between the competent authorities of the Member States in the area of return. In this respect, the establishment of best practices in the area of return on specific countries has been identified as one of the most appropriate and useful measures to be implemented.

In various meetings held during the Dutch Presidency, the relevant Council bodies and, in particular, the Working Party on Migration and Expulsion, had an extensive exchange of views and information on best practices on return to specific countries.

In the framework of this exercise, the Presidency has drafted two reports: an analysis of reported best practices of return to specific countries from EU Member States and Norway and Iceland, as set out in 14750/1/04 REV 1 MIGR 103 COMIX 69 RESTREINT UE, as well as best practices with regard to the return of illegal residents to China, as set out in 14755/1/04 REV 1 MIGR 104 COMIX 693 RESTREINT UE.

2. As a result of this examination, the Presidency submitted the above-mentioned draft Council Conclusions on best practices on return with regard to specific countries of third country nationals illegally staying on the territory of Member States. Delegations reached consensus on the text as set out in the Annex to this Note .

3. The Permanent Representatives Committee could confirm the agreement and invite the Council to adopt the draft Council Conclusions annexed to this Note. Furthermore, the Permanent Representatives Committee and the Council are invited to take note of the Presidency reports as set out in 14750/1/04 REV 1 MIGR 103 COMIX 692 RESTREINT UE and 14755/1/04 REV 1 MIGR 104 COMIX 693 RESTREINT UE.

Draft Council Conclusions on best practices on return with regard to specific countries of third country nationals illegally staying on the territory of Member States

Recalling that:

- Return policy is an integral part of the national and international migration policy of Member States and the Community;
- The Hague Programme, adopted by the European Council of Brussels of 4/5 November 2004, has underlined that migrants who do not, or no longer have the right to stay legally must return on a voluntary or, if necessary, compulsory basis (point 1.6.4);
- The EU Return Action Programme, approved by the Council on 28 November 2002 recommends the development of best practices for return to specific countries of origin or transit. The purpose of these best practices is to promote an effective practical cooperation among Member States, on the one hand, and between Member States and countries of origin or transit, on the other hand, with a view to implementing return.
- The Council, in its Conclusions of 2 November 2004, underlined the importance of concluding Community readmission agreements with third countries of origin or transit and encouraged the Commission to actively pursue pending negotiations whilst identifying future priorities for readmission negotiations;
- The identification of best practices with regard to specific countries could prove useful for establishing specific preparatory actions for return management in the area of migration, as defined in the relevant Council Conclusions¹, as well as for the application of other relevant Community instruments,⁶² such as AENEAS and ARGO;

¹ The Conclusions on the elements for establishing preparatory actions for a financial instrument for return management in the area of migration (10375/04 MIGR 51) have been adopted by the Council on 8 June 2004.

- All return practices are to be carried out with due respect for human rights and fundamental freedoms as defined in the relevant EU and international instruments,

The Council

- *Identifies*, on the basis of the analysis of return practices of Member States in relation to specific countries of origin and carried out by its competent bodies a non-exclusive, indicative list of useful best practices for return as set out in the Annex;
- *Invites* Member States to regularly provide information to the competent Council bodies and to the Commission on return practices for the purpose of drawing up assessments of return practices to specific countries;
- *Recognizes* the need to periodically update the Annex taking into account the information provided by Member States on their assessment of best practices for specific countries;
- *Invites* the Commission to take into account the Council's identification of best practices, resulting from any assessments of return practices of Member States in relation to specific countries, when drawing up integrated return plans as part of any preparatory actions for a financial instrument for return management in the area of migration;
- *Invites* the Commission to make the results of assessment of return practices of Member States in relation to specific countries available to all Member States through the ICONet, once the latter is formally established.

The following is an indicative list of best practices identified by Member States regarding the voluntary or forced return of third country nationals to their country of origin or transit. The order of the listed practices does not denote the priority attached to them.

- Promoting assisted Voluntary Return (AVR) programmes for sustainable return, where appropriate in cooperation with international or non-governmental organizations;
- return counselling at the earliest opportunity and communicating clearly to the returnees the availability of voluntary return, whilst maintaining the option to enforce their return;
- the conclusion of readmission agreements at Community level or, when appropriate, agreements or informal arrangements at bilateral level, with countries of origin or transit;
- undertaking measures in order to clarify the identities of persons being returned, placing special emphasis on the procurement of travel documents, other identity documents or removal documents;
- promoting return on the basis of validly assumed nationality of the country of return or transit while providing the safeguard to the country of return or transit that if the returnee is proven to be of other nationality, readmission to the Member State is guaranteed;
- intensive consular co-operation through a close working relation with representatives of the country of return or transit;
- direct co-operation with authorities in the country of origin or transit as well as the use of biometrics for return purposes;
- choosing the mode of return operations on a case by case basis, e.g. by making individual security assessments, by giving serious consideration to the possibilities for chartered flights as well as by promoting the organisation of joint return operations.