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#### NOTE

from : Presidency

to : K4 Committee

Subject: Strategy paper on immigration and asylum policy

1. The Austrian Presidency hereby submits a draft strategy paper which, following an in-depth discussion in the relevant working parties, could ultimately be officially noted by the Justice and Home Affairs Council as a basis for the European Union's future immigration policy.
2. The delegations on the K4 Committee are requested to discuss this paper and also to comment on it in writing by the beginning of September. On the basis of the discussion and these comments, a revised version will then be forwarded to the Immigration, Asylum and Visa Working Parties, with a request for them each to go through the text from their own specialised point of view. The result of this review is to be submitted in December 1998 to the Council – either as an agreed outcome or as an interim progress report on the discussion.

1. Introduction

1. In 1991, the European Commission established an initiative to determine an immigration policy strategy at European level, by way of two communications – on the right of asylum and immigration. A Maastricht European Council work programme from the same year focused on the harmonisation of immigration and asylum policies.
2. In December 1992 the Edinburgh European Council adopted a declaration of principles on immigration policy, which was prompted by the increase in migration from East to West in the previous three years following the fall of the iron curtain and, especially, by the mass exodus from Bosnia-Herzegovina. The declaration was particularly in favour of more effective management of migratory movements to the Member States of the European Union.
3. This declaration of principles included some specific strategic points, which were to serve as guidance in future European migration policy; among them is the common will to
  - reduce the causes of migration by taking appropriate measures vis-à-vis the regions of origin,
  - develop a common policy for temporary protection of displaced persons,
  - combat illegal immigration,
  - enter into agreements with States of origin and transit,
  - ratify the Dublin Convention, and
  - adopt the External Frontiers Convention.
4. The declaration of principles had no lasting influence on the European Community's migration and asylum policy in following years. The specific declarations of intent were hardly implemented, and the general ones were not laid down in clear programmes and action plans. In 1994 the European Commission therefore made a new, comprehensive attempt to develop an immigration policy approach for the European Union by submitting a very extensive and substantial communication to the Council and to the European Parliament on immigration and asylum policy. The purpose of this first consistent strategic immigration approach at European level was to find an integrated and coherent response to actual developments, lay down the key elements of effective migration management and define a new framework for Union action in this field.

5. The European Commission defined here as key elements:

- activities to counter migratory pressure;
- effective control of immigration, and
- strengthening of the position of legal immigrants.

As regards the extent to which this approach has been implemented, it can be ascertained after four years that clearly visible and measurable real achievements have been made only in individual aspects of the three areas. The outcome of work in the Third Pillar – around 70 Council (legal) acts in the field of immigration – should not be overlooked; this has been a thoroughly respectable achievement and an essential step towards approximation of the law in Europe. However, the European Union has not really managed to influence sustainably the reality of immigration in a manner that can be ascertained empirically. Neither the potential will to emigrate nor actual emigration from the main regions of origin has decreased in the past five years (rather the opposite). Furthermore, neither the control activities at the external borders of Schengen and the Union nor the Member States' laws on aliens and asylum stop illegal immigration. The incessant influx of illegal migrants and the effects of migration crises on demographic policy have been major contributing factors to the absence of any prospect, even now, of uniform EU-wide rights of legal immigrants.

6. It is not the Commission – or the Council and its working parties – which is responsible for this situation. Most of the estimates and assumptions made in 1994 were correct; only a few analyses need to be revised in the light of developments in recent years. They will be examined in greater detail in the first part of the following section. The discrepancy – which can be established without doubt – between what was claimed and what has been implemented seems primarily due to the fact that the strategy debate initiated by the Commission was not conducted on a broad basis, no comprehensive political approach was laid down, no operational work programme was derived therefrom and no action plans following a uniform concept were developed and implemented.

7. The European Union's activities in the past few years have thus remained to a certain extent fragmentary, have produced no lasting results in important areas, have sometimes consumed too much energy in dealing with specific topical crises and have lost political dynamism because, the overall framework which could have guaranteed conclusive further development of this policy area was lacking. At the same time, however, the strategy for combating organised crime and the pre-accession strategy proved that it was possible to develop and stringently implement such medium-term strategies in the field of justice and home affairs. It must therefore also be possible in the case of migration policy.

## 2. The European Union and the migrations of the past decade

### 2.1. The forecasts from 1994 and current trends

9. A systematic look at the Commission's communication from 1994, by checking the statements made therein against the reality of 1998, shows that the basic conditions for the migration policy have changed quite considerably in the short period that has elapsed.
10. The initiatives taken in the Union to harmonise the available data on migratory movements and improve the quality of data (proposals 1 and 2 of the Commission's communication) were only partly successful. The results obtained by CIREA and CIREFI are still not fully satisfactory and the systems are not efficient enough when specific policy-related questions need to be answered quickly and/or precisely. For example, the Union is still not able to give accurate information regarding the number of third country nationals illegally on the territory of its Member States or exact details of asylum-seekers and immigrants who have disappeared to an unknown destination, or to determine empirically the weaknesses of external border controls at any particular time.
11. One of the main problems of the situation prior to 1995, i.e. the tendency towards an increasing influx of asylum-seekers (proposal 6), seems to have been resolved. Since 1994 numbers of asylum-seekers have stabilised, even following a constant slight downward trend – but without a drop in the total number of illegal immigrants. Thus, there is cause to assume that the asylum reforms in many countries now make it less attractive for illegal immigrants to seek asylum, so that many of them now refrain from taking this step – at least as long as they are not discovered by the aliens police of the country of immigration.

12. Despite many legislative amendments in the Member States, it has been practically impossible to achieve the really crucial breakthrough in preventing or reducing the number of manifestly unfounded applications for asylum (proposal 7). The EU States have thus not achieved any real success in combating abuse of the right of asylum. The undoubtedly important progress in harmonising the concept of refugee and in procedural rules could only make a limited contribution towards solving this problem. The same applies to the speeding up of procedures, which has been incorporated into various national laws.
13. The concept of temporary admission (proposal 8-10), which was highly topical in 1994, at first got bogged down at the very outset and – contrary to expectations at the time – has not to date been implemented in the Union. This does not only mean that a legal provision is still lacking; possibly more significant for the migration situation in Europe is the fact that an essential element of the concept – the decision on termination of protected status and the organised return, approved by all parties, of persons admitted – could not be implemented throughout Europe in the case of Bosnian refugees, and possibly cannot be implemented in such periods of mass exodus. This realisation and doubts about the wisdom of cooperating in a spirit of solidarity at all, which obviously still exist in some cases, admittedly shake such a concept to its foundations.
14. In general, however, political interest is no longer focused so much on asylum questions and problems of temporary protection, but more on general questions of migration, problems of combating facilitator networks and expulsion issues. In that respect the priorities of an overall approach differ today from those in 1994. In the light of the greater proportion of illegal immigrants and the high professionalism of facilitator organisations, this aspect now has particular priority. A further priority seems to be the determination of the status of legal immigrants who are to be integrated by the host society.
15. The initiatives envisaged in 1994 to reduce the worldwide migration pressure (proposal 3) were not started systematically. In the years since then it has been possible on just one occasion to prevent a mass exodus through a successful package of measures – in Albania in 1997. However, this exemplary case has not yet been systematically analysed. Experiences in connection with the influx of Kurds and with Kosovo tend to give rise to scepticism.

16. The proposal that a partial reduction in migration pressure be brought about by means of "safety valves" in the form of immigration quotas, admission of those temporarily employed and humanitarian justifications for immigration (proposal 4 and 5) was not adopted into States' practice. The intensifying labour market situation in the Member States and the continuing high migratory pressure from family reunification and illegally facilitated third country nationals made any movement in this area impossible and apparently demanded exclusive concentration on restrictive measures.
17. A check on implementation of the proposed list of measures to prevent illegal immigration set out in the 1994 paper (proposal 11-14) reveals a list of still unresolved issues. Cooperation with the transit States has not succeeded in stopping the influx of illegal migrants, but has influenced the volumes concerned; it has not been possible to force back on a lasting basis the international criminal organisations trafficking in human beings; external border controls have been neither standardised nor intensified within the Union (although there has undoubtedly been progress in the Schengen context); reciprocal monitoring initiatives have hardly been developed; only in visa policy and practice is it possible to identify clear progress.
18. Effective measures to combat illegal employment (proposal 13) have still not been taken. However, to reduce the pull factors of illegal migration and to promote social stabilisation of the host societies, this aspect is extremely important, and increasingly so in view of unemployment trends. If the Union now devotes itself to fighting unemployment as a priority objective, considerable importance will also have to be attached in this context to a strategy to counter illegal immigration.
19. The speeding up of the voluntary return of illegal immigrants was as strikingly unsuccessful as the steps taken to establish the widest possible network of readmission agreements (proposal 15 to 17). A problem hardly referred to in the 1994 paper was the increasing refusal of a growing number of States of origin to take back their own nationals from the country which they had entered illegally.

20. This survey of the proposals made in 1994 – and the list is not complete – would in itself be sufficient grounds for a new initiative to develop a European migration strategy. But it is not the only reason: another one lies in the new longer-term trends described below, which were not discussed explicitly in the 1994 paper.

## 2.2 Longer-term new development trends

21. All over the world, expenditure on development aid is falling and poor areas of the world are continuing to decline dramatically; developments in Africa as a whole provide evidence that the situation there is now much worse than a decade ago. The trends towards concentration and therefore the explosion of unemployment in large parts of the Third World are increasing. Each year 80 million young people reach working age there and 100 million people migrate in this part of the world to the large metropolitan centres, without really having any chance of an occupation offering a secure livelihood. For migration towards the rich, especially Western European States, this means that total immigration continues to exceed 1,5 million immigrants per annum, and the proportion of illegal immigrants in this total has clearly increased. It must now be assumed that every other immigrant in the first world is there illegally.
22. At the end of the 1980s and in the first two years of this decade, immigration to Western Europe attained dimensions unprecedented since the Second World War, especially because of the collapse of the Eastern European regimes and the war in the Balkans. Almost 10 million people left their homes over a five-year period and about four million of them came to Western Europe. In this situation the States of Western Europe rapidly devised cooperation arrangements, which resulted in parallel migration policy strategies. Starting from very informal reflections by experts, which led to concepts that at the time seemed very radical, a series of innovations were implemented in the legislations of Western Europe between 1991 and 1993: the principle of the safe country of origin and the third State principle in the right of asylum, the concept of safe internal refuge areas in the persecuting State, the concept of the Dublin Convention, harmonisation of visa policy, the concept of temporary protection of persons displaced from war-zones, the expansion of external border controls in the Schengen area, etc. However, this special situation and the resulting reform drive essentially ended in 1994.



23. The trend towards standardisation primarily covered asylum issues, where more or less identical laws now exist in Europe, but also the field of visas and travel documents, where there was large-scale harmonisation. However, as regards other aspects of migration, particularly in the context of immigration regulations, only sporadic advances were made and no harmonised European approach was implemented. This applies particularly to fields in which work did not progress beyond the initial stages – for instance, temporary protection, burden-sharing, border controls – and most especially to areas in which hardly any developments occurred – for example, the juridical status of legal immigrants, the setting of immigration quotas, uniform treatment of family reunification or the regulation of seasonal labour. Systematic completion of these fragmentary results would therefore be appropriate.
24. Five years after it began, the reform approach to European migration regulations was therefore composed of parts that had either been concluded or shelved as not feasible. Since then no new approach has been made. It is therefore quite obvious that a new start should be made in assessing the new developments and taking them as the occasion for developing a new strategy.
25. In this context, the measures laid down at the time can certainly be accepted as final. No European country today would consider going it alone in opening up the right of asylum, making access easier for migrant workers or increasing social security benefits for immigrants. Such topics do not therefore need to be discussed even at regular intervals. It is far more useful to concentrate on the unresolved and new issues: topics and approaches responding to the latest trends and not based on the requirements of "old" waves of immigration.
26. Since the beginning of the 1990s, a series of new trends have in fact become apparent. This applies, for instance, in connection with exodus movements. The bipolarity between the Western and communist world has disappeared, together with all those conflicts attributable to it, but has been replaced by a clear increase in local, nationalistic conflicts and the splintering of States into smaller countries with the associated internal displacements of population. Whereas, formerly, suppression by an authoritarian regime was the main cause of the exodus of asylum-seekers to Western Europe, the largest single factor now giving rise to such migratory movements is inter-ethnic persecution and displacement by non-governmental power-brokers.



27. In line with these developments, the Geneva Convention has in part become less applicable to the problem situations actually existing. It was unquestionably geared to refugees who were displaced by authoritarian government regimes (of the communist world or less-developed States), but it is not at all geared to displacement by inter-ethnic conflicts or to coping with illegal immigration from many crisis regions, especially in the Third World. Thus, new questions arise and need a response.
28. In view of developments over the past few years, traditional migration policy management patterns must also be reconsidered: How effective is a common visa policy, when most immigrants arrive illegally without a visa in any case? What alternative do we have to the traditional approach whereby illegal aliens are returned to their homeland, when native countries are becoming increasingly difficult to ascertain or do not take back their citizens? What is the consequence if the power of integration of the host States is primarily used by illegal immigrants who crowd out those who take the legal path?
29. Finally, the question arises as to how strong are the push factors in the principal States of emigration and the social and economic pull factors in the host countries, and to what extent it seems possible to counteract them merely by the destination countries' traditional national immigration strategies under the law governing aliens - border control, visa system, fixing of quotas, aliens police force, etc.

### 2.3. Changed political structures

30. Since the beginning of the 1990s, the political environment for migration policy has also changed in Europe:  
It is now already necessary to recall that at the beginning of the 1990s there was no Europe-wide institutional cooperation as it currently exists under the Maastricht Treaty and is to be further developed under the Amsterdam Treaty.
  - At that time there was no institutionalised cooperation between the rich Western European States and their Central and Eastern European neighbours as it now exists under the Third pillar - the pre-accession strategy - but also in some other contexts.

- There was at that time no operational Schengen system and it is important in this respect that the Schengen club of 5 States has developed into 15 States. This club is in the process of creating a unified European migration area surrounded by a uniformly controlled border.
- The States of Central and Eastern Europe have grown into a new role. For Western Europe they are no longer States which produce refugees, but cooperating neighbours gradually adjusting to the standards of the Western European States.
- The intergovernmental and international fora in which migration policy questions are discussed have become innumerable. According to a survey recently conducted in the European context, at least 50 different cooperation fora operate in Europe, largely uncoordinated and independently of one another.
- Finally, Europe's relationship with the traditional host States in the migration policy context has changed completely: although the USA (together with Canada and Australia) was a major host country for onward migrants up to the 1980s, it has lost this function and is now important more in the political context of the causes of emigration movements and as a cooperation partner in crisis management.

31. In the light of these changes the main question arising is whether it can still be useful, as in the last stage of migration policy reform, to implement national – though coordinated – amendments to the law, or whether it would not seem more appropriate to amend the regulations at EU level – especially after the integration of Schengen and in accordance with the initiated enlargement process. However, it must in any case be a European system, i.e. one organised jointly by the States of Europe and outwardly autonomous. Solutions can only be European, and in two senses: on the one hand, the migration problems in Europe can be solved only by all its countries acting together and, on the other, Europe will have to solve these problems itself and not expect any help from outside.

32. Specifically in the light of the imminent entry into force of the Amsterdam Treaty, new conditions therefor become apparent which the Member States consider to be an obvious improvement. The question as to the institutional and procedural context in which the decision-making process in European migration policy will in future take place has now been answered. The task now arises of optimising from the outset the efficiency, speed of decision-making and the combined formulation of these institutions' objectives and guaranteeing the best possible result by concentrating on one single decision-making system. It is probably also important, in the light of the commitment made at Cardiff to a citizen-oriented Union, to make progress in the field of migration, which affects citizens with particular directness.
33. Some developments in the early 1990s have enabled new and important experiences in migration policy to be acquired, so that a much more sober and pragmatic approach to migration questions can perhaps be found than was possible when the initial surprise came at the beginning of the decade. Lessons drawn from the cases of Bosnia, Albania, the influx of Kurds, etc. offer important experiences which can now be incorporated into a strategy.
34. For example, experience has shown – especially in the context of the Bosnia conflict, the major migration catastrophe of the 1990s – that the European Union with the instruments hitherto at its disposal is obviously not able to prevent conflicts or to intervene in them purposefully and early. Yet, with regard to migration, Europe was severely hit by the consequences of the conflict, a fact which clearly shows the need to develop instruments of prevention and control.
35. Conversely, regulations such as those of the Dayton Agreement have proved entirely successful in practice and shown that such instruments are capable, for example, of changing substantially the UNHCR's basic policy: thus, it can be perceived that, for instance, the UNHCR is now clearly committed to the repatriation of displaced persons, in contrast to earlier positions, and increasingly emphasises local solutions to problems, rather than resolving problems by accepting flows of refugees into third States. The new role of the OSCE, although obviously not yet very well defined, should also be mentioned here.

36. The sustained decline in asylum-seekers to about a quarter of the peak reached in the early 1990s has clearly eased the political discussion of asylum issues. Dublin and Eurodac show that progress is possible. Cooperative solutions developed jointly by several States are therefore just as conceivable today as cooperative solutions by States together with the UNHCR. However, the phenomenon whereby such joint solutions can also be undermined now exists – for example, a person entering the country initially avoids submitting an application for asylum, although he intends to stay on a permanent basis and apply subsequently.
37. On the other hand, European States today face very specific and rapidly growing new problems, especially in the context of illegal migration, the fight against which is evidently not proving successful: it is becoming increasingly obvious to decision-makers that the solutions cannot be found solely in the law governing asylum and aliens or within the competence of Justice and Home Affairs Ministers, but require cooperative transnational and comprehensive multi-disciplinary approaches.
38. Sections 3, 4 and 5 below now attempt to develop an approach on the basis of this analysis: first, the main points not connected with a particular subject are outlined, then the major problem areas set out individually – with some particularly topical issues specifically singled out – and, finally, points condensed from it for a plan of work.

3. Outline for a reassessment of European migration policy

39. National interests still dominate the process of decision-making in the European Union's migration policy. This is an anachronism insofar as it has in any case become clear in the decade now ending that migration policy challenges always concerned the Union as a whole and did not refer exclusively to one country. Three examples providing clear evidence of this are: the exodus of Croats, Bosnians and Kosovars; the illegal immigration of Iraqis, Kurds and other migrants accompanying them, organised on a large scale; and the emigration movement from the Maghreb. It is therefore obviously essential for a uniform European policy concept to be developed. The European Union should devise its future immigration policy as an entity and cannot expect such a policy to develop automatically, so to speak, from the product of national decisions.

40. In view of

- the highly complex topics involved in migration policy,
- the fact that crisis situations repeatedly occur, calling for a response from the European Union,
- the experiences of the past few years, in which the inadequate reaction to such crises was an ad hoc package of measures not set in any overall strategic context, and
- the realisation that one-dimensional, short-term or situation-related measures led to neither the desired result in the specific case, nor the necessary structural improvements,

this concept must develop as a consistent, medium-term migration policy strategy for the European Union. It can take as its basis the results of the Edinburgh summit in 1992 and the European Commission's communication on immigration and asylum policies from 1994, and thus ensure continuity.

41. The European Union's migration policy must obviously cover the following areas, irrespective of specific topical events and short-term developments:

- . reduction of migratory pressure in the main countries of origin of immigrants
  - intervention in conflict regions
  - extension of development aid and economic cooperation
  - political cooperation between host States and States of origin
  - raising of human rights standards
- . reduction of illegal immigration and suppression of illegal immigration networks, especially in connection with the fight against organised crime
- . immigration control
  - improvement and standardisation of data capture
  - Europe-wide quota system for new immigration
  - standardisation of rules governing the migration of third country nationals, and especially those governing family reunification
  - limitation and considered use of transfer payments to immigrants
  - combating of illegal unemployment
- . overall concept of control of legal entry, at all stages of movements of persons:
  - in the country of departure at the time of granting the visa,
  - in transit by checks on transport undertakings,
  - in the transit States by implementation of the EU acquis,
  - in EU external border controls,
  - by security nets at the internal borders,
  - in the country of destination with swift procedures (under the law governing asylum and aliens)
- . determination of the status of legal immigrants with a view to promoting integration
- . new protection for refugees
  - temporary protection of displaced persons and solidarity compensation
  - integration programmes which are socially acceptable to the host States
  - reintegration programmes with international support
  - reform of the asylum application procedure and transition from protection concepts based only on the rule of law to include politically oriented concepts
  - reduction of manifestly unfounded applications for asylum



- . agreements with States of origin and transit States
  - in the field of prevention, and
  - with regard to effective repatriation

. "Europeanisation" of migration policy

42. In view of the current challenges, some particularly topical themes in these areas can be singled out, on which work should be commenced immediately and be concluded before the turn of the century:

- the need to link all migration-related decisions within the EU structures (especially in the light of Amsterdam);
- comprehensive assessment of third States with regard to immigration management by the Union vis-à-vis these States;
- effectively combating illegal, criminal trafficking in human beings, organised on a multinational scale;
- the development of legal instruments and procedures which are safe from abuse and actually make it possible for migration policy objectives to be attained;
- the development of an external borders policy for which there is joint responsibility;
- the establishment of EU asylum law which is independent, uniform, comprehensive and meets today's requirements rather than those of a geopolitically outdated situation;
- the consistent and efficient repatriation of illegal immigrants.

43. In drawing up this plan, it is important also to be aware that new methodical approaches will have to be selected. One approach consists of aiming at multi-dimensional solutions and not being confined to legal questions. Moreover, it is not expected that such a new concept can be drawn up rapidly; the necessary time must be taken and deadlines not fixed hastily. Science, scientific policy advice and both sides of industry could also be involved in drawing up the plan. Finally, the emphasis should initially not be on the form such a plan may take, but on questions of content.

44. First of all, there is a backlog demand for Europe-wide harmonisation of national legislation on migration. The migration policy regulations in the individual Member States of the Union currently still differ so much that such a policy cannot operate satisfactorily in the light of the global challenges and greater cohesiveness of the Union in economic and social policy areas. This must be taken into account if the further development of the Union is not to be jeopardised from an economic, social and democratic point of view.
45. It is, moreover, a question of reforming the decision-making structures with regard to EU migration policy. The present structures are relatively clumsy, so that it is impossible for the Union to react quickly and effectively to current events. This was apparent both from the large wave of migration from the former Yugoslavia and from the reaction to the relatively minor occasion of ships of migrants landing in Southern Europe: in some cases there was little reaction, and in others over-reaction; internal conflicts arose on many levels, preventing obviously outstanding questions from being resolved; the measures finally taken had hardly any appreciable effect on the actual migratory movements. Clearer rules, more efficient decision-making structures, and more rapid and sustained reactions are therefore needed in this context.
46. The decision-making competences in the European Union's migration policy, established over many years, are – even after entry into force of the Amsterdam Treaty – fragmented, harbour the risk of parallel, opposing or uncoordinated activities, and cannot on the whole be properly controlled by an overall plan. An organisational reform is necessary, starting simultaneously in several areas:
  - simplification of the Council's and Commission's complicated cooperation machinery,
  - concentration of all Commission competences in one hand and in one system,
  - streamlining and paring of work structures with regard to both working parties and the Council and Commission administrations,
  - linking migration policy decisions with the priorities of the Union's funding programmes and foreign policy.

47. If a single Commissioner were competent for all migration policy questions, progress could be as significant as was the case a few years ago when one Commissioner took responsibility for the Third Pillar. The current breakdown among various Commissioners of migration law issues, humanitarian aid, free movement of people and external relations with reference to migration is at any rate not an optimum situation. Obviously, the holder of such a function then needs clear terms of reference for establishing a comprehensive migration policy.
48. Standardisation at institutional level should however not only affect the Commission, but the entire organisational structure at Community and Intergovernmental level. The complete merging of the Schengen institutions into a unified EU structure, renunciation of any special organisations or separate bodies with or without a legal personality, and the flattening of the current decision-making pyramid from the working parties to the Council are necessary if an effective policy is in fact to be established.
49. Finally, standardisation is necessary not only at institutional level but also with regard to procedures and rules of law. The current rules on migration consist of independent Conventions, Third Pillar legal acts of different forms and obscurely related to one another and also, in future, acts based on the Amsterdam Treaty. It is necessary in this respect to establish a consistent, simple EU legal system, broken down into steps.
50. On the basis of the analysis provided in the first part of this paper and the theses set out here, the Council Presidency could work out in detail, together with the Commissioner now primarily responsible in this field within the Commission, the basic outlines of the required new strategy. If this draft is to fulfil its objective, it must contain the essential aspects of a migration strategy for the European Union over the next decade, a list of topical and priority tasks derived therefrom and, for each task, a plan of work with deadlines. This demand was also made by the European Council in Cardiff and an attempt is made in Parts 4 and 5 to develop appropriate approaches.

#### 4. Global approach

##### 4.1. Reduction of migratory pressure in the main countries of origin

51. The reduction of migratory pressure calls for a coordinated policy which extends far beyond the narrow field of policy on aliens, asylum, immigration and border controls, and also covers international relations and development aid.
52. No illusions can be entertained with regard to the huge volume of such a project; this aspect of the strategy must incorporate world-wide all the main regions of origin of immigrants. In view of the breadth of this field, slow progress will have to be accepted, since the possibilities of – for example – eliminating the economic causes of migration from the Third World are undoubtedly very limited. The same applies to demographic and environmental factors and to durable change in the human rights situation.
53. To reduce migratory pressure, it is particularly necessary in areas close to Europe to take action in regions where internal ethnic crises threaten to escalate. From experience with the Bosnian war, such actions are potentially quite successful, but only if they are not conducted on a political level but involve as broad a range of activities as possible.
54. It will be indispensable for Europe to act independently in future in this field and not to confine itself to joining in the activities of other bodies. Over the past few years it has become apparent that the effects on Europe of migration from various conflicts were dramatic, though the impact on other parties involved was less crucial, and that conflict resolution – for instance, a certain ethnic division of Bosnia – had particularly serious consequences for Europe from the point of view of migration policy. It is therefore quite legitimate for Europe to take its own decisions regarding intervention in such impending crises.
55. However, direct influence and presence is necessary, not only for the prevention and rapid containment of conflicts, but also for the restoration of normality which makes it possible for displaced persons to return and stabilises regions in the longer term. In this respect, action taken by the European Union and its Member States is not only useful and necessary but also important in the context of coping in a spirit of solidarity with the consequences of mass exodus movements.

56. An expansion of development aid and economic cooperation with the main regions of emigration is essential. There can however be no illusions that such efforts will result in the short term in curbing emigration; the opposite may in fact be the case: initially, an economic boom potentially leads to increased emigration from the urban areas of the Third World. However, in the medium term - and this means a period of only a few years - emigration figures fall considerably.
57. In view of such interconnections, crisis prevention, intervention and economic aid to poor States are not a substitute for restrictions on immigration and border controls, but both paths must be followed in parallel.
58. It must be recognised that a successful migration policy can never be implemented solely by one party involved in this process. The formerly socialist countries were unable to prevent emigration as long as the West offered good conditions of admission, and neither can the Western European States now prevent immigration merely with border controls and rules of law. Here, political cooperation between host countries, transit States and States of origin is the only promising path.
59. An integrated approach must be followed, to the extent that just about all the EU's bilateral agreements with third States must incorporate the migration aspect. For instance, economic aid will have to be made dependent on visa questions, greater border-crossing facility on guarantees of readmission, air connections on border-control standards, and willingness to provide economic cooperation on effective measures to reduce push factors.
60. Here, a model of concentric circles of migration policy could replace that of "fortress Europe". For obvious reasons, the Schengen States currently lay down the most intensive control measures. Their neighbours (essentially the associated States and perhaps also the Mediterranean area) should gradually be linked into a similar system which should be brought increasingly into line with the first circle's standards, particularly with regard to visa, border control and readmission policies. A third circle of States (CIS area, Turkey and North Africa) will then concentrate primarily on transit checks and combating facilitator networks, and a fourth circle (Middle East, China, black Africa) on eliminating push factors.

61. In the system as a whole, meeting the obligations arising in each respective role should have positive consequences, just as failure to meet them should have negative consequences for the country concerned: for example, the second circle must meet Schengen standards as a precondition for EU membership; for the third circle, intensified economic cooperation is linked to the fulfilment of their obligations; and for the fourth circle, the extent of development aid granted can be assessed on that basis.
62. Actually raising human rights standards in the States producing the most emigrants undoubtedly also makes an important contribution to migration management. However, there is at present an obvious lack of effective international institutions to enable this task to be carried out. It is questionable how useful a reassessment in the UN and, in particular, new approaches in the allocation of the UNHCR's tasks could be: the UNHCR is today still concerned primarily with the situation of refugees in the States of refuge and tends not to look at the States responsible for displacing people or the push factors in the countries of emigration. Concentrating on these issues too would certainly be in line with the initial approach towards a new view of tasks within the UNHCR.
63. An increase in the standards of basic rights is, however, also of vital interest to the actual immigrants concerned and to cooperation policy under the four-circles model. It is a matter of building up by stages more effective systems of asylum and protection against deportation.

#### 4.2. Curbing illegal migration and combating facilitator networks

64. Curbing illegal immigration and facilitator networks must, in the current phase – which should be fixed at around five years at least – be the main task of those State institutions involved in the broadest sense with aliens police matters.
65. It can only take place successfully if the success of facilitator networks and illegal attempts at immigration is consistently thwarted. One objective must be to allow only those who take the legal path to immigrate and integrate. However, all promises made to these persons must then also be kept and they must be permanently integrated. Another objective must consist in confiscating the proceeds from facilitator networks by means of a package of appropriate measures and permanently destroying the facilitators' economic basis.



66. The rapid processing of manifestly unfounded applications for asylum and immigration is an integral part of such a concept. It must thereby be clear that a quick decision is possible only if the legal procedure has a framework based on a timetable. It is not practical to involve more than one administrative authority and one independent body of appeal.
67. The system must furthermore ensure that asylum-seekers who are the subject of negative decisions, rejected applicants for immigration and deported aliens who have no protection against deportation leave the country and that they cannot have access to the labour market and integration solely on the basis of their prior residence as asylum-seekers.
68. Effective measures against criminal facilitator networks are required and call for human resources investments in the criminal investigation department, international cooperation in analysis and in operational matters, severe penalties for any facilitation activities carried out in return for payment, revocation provisions for vehicles and the like, possibilities of hot pursuit and observation across the border in question, effective legal assistance provisions and the practice of unconditional extradition. In all these areas there are still considerable shortcomings at present.
69. Cooperation with States of origin in determining and ensuring the identity of both facilitators and those they smuggle in is an essential component of a successful fight against crime. Bilateral agreements need to be concluded which guarantee repatriation of the country's own nationals, whereby the burden of proving nationality should not rest solely with the expelling State, but confirmable means of establishing credibility must suffice. States with a particularly high potential of illegal emigrants must be induced to set up effective fingerprint files.
70. An international exchange of data on the identity of facilitators, rejected asylum-seekers and illegal immigrants is necessary. Requests for information from States of immigration to States of prior residence must be answered.
71. From the relevant elements already developed or established with regard to the action plan for combating organised crime, in connection with Europol, in the context of the pre-accession pacts on organised crime and the United Nations' initiative for combating facilitator networks, a global programme should be drawn up, laying down levels and priorities and avoiding duplication of work.

#### 4.3. International cooperation to manage migratory movements

72. As the European Commission stressed back in 1994, improved collection and analysis of accurate migration data is a necessary precondition for effective migration management. In this connection, although good systems have been set up with CIREFI and CIREA, what are still lacking are up-to-date, reliable data on the specific potential emigrant figures in individual major emigration countries, allowing for rapid analysis and strategy development if necessary. Something else that is missing – in addition to data on overall figures (i.e. for instance, number of asylum-seekers or illegal border-crossers apprehended in a particular year) – are longitudinal data (i.e. information on the later fate of these persons, from the number of recognised refugees to the number of persons who have actually been deported or who have left the country following the negative conclusion of the procedure). Finally, up-to-the-minute data in crisis situations are lacking.
73. The idea of setting up a European observatory for migration, discussed for some time, was obviously not pursued any further, leading to the conclusion that rather than assigning this task to an institution to be newly created, the terms of reference of existing institutions could be expanded along these lines. This could be further supplemented by a modern technical system for transmitting existing data.
74. Immigration is generally dependent on push and pull factors. This is a market mechanism in which supply and demand can also be subjected to political influence. Three instruments suited to managing migration are described below; a fourth instrument is horizontal to the others, but its impact is at least equally significant: the clear, targeted notification of potential immigrants about immigration management measures, which, from past experience, can itself have just as much effect as the actual measures themselves.
75. In the same way as the traditional countries of immigration, some European countries have proceeded to set annual quotas for maximum possible numbers of immigrants. These quota restrictions have on the whole proved effective, as long as they remain to some extent within a realistic framework. It should therefore be considered to what extent such quotas can be resorted to throughout Europe, in which case a breakdown into family reunification, new immigration for employment purposes and special groups (such as students, business delegates, managers, etc.) would be advisable.

76. If these quotas are set correspondingly lower than the average immigration figures for the past few years, they will prove effective. On the other hand it must be borne in mind that they cannot be set at zero in a continent of immigration without giving fresh impetus to illegal immigration. Nor can such quota restrictions concern asylum-seekers, the granting of refugee status or the admission of persons displaced from war-zones. However, the numbers of recognised refugees and persons admitted must be taken into account when the quotas are next fixed.
77. From discussions in the past few years it is clear that many countries do not wish to follow this procedure. A practical solution must therefore enable a coordinated system to be offered for those countries participating in it but without placing the other countries under any obligations.
78. The greatest challenge for Western Europe's migration policy in the next decade is the momentum of family reunification. On account of the policy on immigrant workers followed in the Member States in the past few decades, an exceptionally large group of single men have immigrated and now wish to fetch their families or start new families. From a quantitative point of view, the demand for family reunification will certainly account for the major part of immigration pressure for a decade.
79. A coordinated European procedure is advisable here. Family reunification will go ahead - as it should. The annual figures, conditions (waiting times, accommodation, income) and volume (nuclear family) must be determined on a uniform basis if irregularities and secondary migrations are to be avoided.
80. Standardisation is important not least with regard to questions of basic rights, as the Court of Human Rights in Strasbourg has to judge the standard of Article 8 of the ECHR by the legal situation in the Member States of the Council of Europe.
81. A question not yet discussed to any extent in the European context is how the system of transfer payments to immigrants is to develop in future. Although it is sporadically discussed and there have been standardisations (for instance, in payments to asylum-seekers during the procedure or in social welfare), no overall concept exists as yet.

- (m) formulation of a united position vis-a-vis the UNHCR and a single method of working in its decision-taking bodies
- (n) Convention on the safety of expelled persons against attacks
- (o) Convention on mass return following granting of temporary protection

#### 5.5. Coordinated measures in the Member States

- (a) harmonisation of the Nationality Law (in particular with regard to time limits for naturalisation, obstacles to naturalisation, acquisition of nationality by the second and third generation of immigrants and language knowledge)
- (b) harmonisation of the Aliens Law (in particular with regard to entry documents, sanctions against illegally resident aliens and deportation)
- (c) harmonisation of the Asylum Law (in particular with regard to details of the procedure and the benefits the State provides for asylum applicants)
- (d) harmonisation of the Immigration Law (in particular with regard to numerous restrictions, the material conditions and the procedure for granting authorisations and with regard to family reunification)
- (e) harmonisation of the conditions of work and residence conditions of foreign workers, determination of minimum standards
- (f) harmonisation of State benefits to aliens with temporary right of residence and to aliens illegally resident in the host country
- (g) measures to reduce unemployment amongst third country nationals who are legally resident
- (h) measures to support the integration of legally resident third country nationals, in particular language teaching
- (i) measures to reduce pull factors which lie outside the rules of aliens and asylum law
- (j) measures to prevent and eliminate secondary migration within the European Union.

82. The main issue here is to what extent nationals of third countries may also be entitled to the substantial social welfare benefits available in the Western European States to their own nationals. While this is accepted in principle for immigrant workers and their families who have been legally resident for some time, the level of benefits to illegally resident persons is for good reason not uniform and is often disputed for that reason. Standardisation, especially in the case of such people, is however directly linked to the functioning of the Dublin Convention and of readmission agreements.
83. If, however, the basic attitude of the Western European countries of immigration is not to allow illegal immigrants access either to high transfer payments or to the labour market, they must find a consistent answer to how they wish to deal with persons unable to find any lasting physical basis of existence but who are resident in their territory.
84. Finally, an important area of immigration management - more precisely, reduction of the importance of one essential pull factor - is the development of effective measures against illegal employment and illegal employers of third-country nationals. The European Union has not to date gone beyond general declarations of intent in this field. One approach could be to confiscate business proceeds acquired on the basis of illegal employment, and especially social welfare charges evaded, and use this income to encourage return.

#### 4.4. Overall entry control concept

85. An effective entry control concept cannot be based simply on controls at the border but must cover every step taken by a third country national from the time he begins his journey to the time he reaches his destination.
86. Management begins in the country of origin when a visa is granted. In recent years considerable progress has proved possible - initially in the Schengen context and subsequently at EU level: to begin with, the lists of States whose nationals require visas and those which do not, the technical standardisation of visa stickers, a unified, Europe-wide communication system linking visa authorities within the framework of the SIS and a number of alignments in visa practice, particularly as regards the requirements for the grant of visas.

87. Nonetheless, it must be admitted that even in these standardised areas certain questions of detail are still – or in the case of the visa list, once again – unresolved and require an urgent solution. However, the entire system suffers particularly from the fact that in practice the standardisation covers only certain types of short-stay visas and no efforts have yet been made to reduce the countless number of national visas to a few types affording the same privileges in all Member States. The issue to be tackled here is particularly the harmonisation of medium- and long-term residence permits.
88. The situation with respect to transport company control is also ambiguous: on the one hand, it has been possible to introduce penalties for carriers into all Member States' legislation, while on the other we must acknowledge that in some respects these penalties differ considerably from one Member State to another. What has to be done here is to define exactly the duties of the carrier across the board and ensure that the same penalty or the same assistance is applied in respect of a particular infringement in every case.
89. The great majority of illegal immigrants into the EU do not come directly from their home countries but reach Union territory via third countries. It is therefore both sensible and necessary to involve the transit States in a control system. The process of cooperation currently being initiated with the applicant countries offers a unique opportunity to make full use of their control possibilities. In this connection, the earliest possible fulfilment of the requirements particularly of Schengen-type visa and external border control arrangements and comparable aliens law is of particular importance for preparation of the accession process.
90. The next filter in the control process is the control carried out at the external borders of Union territory. Here it is essential that the Schengen standard is implemented in its entirety and constantly improved at all external European Union borders.
91. The Schengen experience has in fact taught us that the measures introduced internally to harmonise security and aliens police provisions have in parallel with the dismantling of internal borders also proved extremely effective. Security nets in areas whose geographic or transport characteristics mean that they are particularly exposed, spot checks in the hinterland, unprompted by suspicion, and intensive cooperation on the part of the authorities beyond the sphere of competency of the individual State have proved their worth beyond any doubt.



92. Finally, an essential aspect of an effective system of entry control must be as far as possible to prevent the circumvention of the existing rules or to make their breach unattractive. In this connection an important role is played by the number and length of the procedures available to illegal immigrants – Aliens Act procedures, procedures for the award of residence permits, asylum procedures and appeals against sanctions. Here it is not only a matter of reducing the number of manifestly unwarranted asylum applications; procedures must also be tightened up – something that has still not been managed anywhere in Europe – and speeded up so that the temporary residence entitlement which normally accompanies such a procedure is valid for such a short period that it no longer acts as a draw in its own right. A comprehensive system would undoubtedly be extremely helpful whereby in every case where the border is crossed in other than the appropriate manner the status quo is first restored – i.e. the individual is put back on the other side of the border – and any procedures are initiated only after that has been done.

#### 4.5. Regulating the position of legal immigrants

93. In its 1994 communication the Commission attached a great deal of importance to this area: almost a quarter of the text is devoted to such problems. If one takes a closer look at the analyses and proposals made to strengthen integration policy vis-à-vis legal immigrants, to improve the position of third country nationals who are legally resident in Union territory, to improve the framework conditions for social integration, to develop communications systems and fora for dialogue and to combat racism and xenophobia, one is forced to admit that, with the exception of the last-named sphere, almost the entire range of suggestions has yet to be implemented.

94. This entire chapter of the original Commission communication can therefore be incorporated as it stands into an updated comprehensive concept for a European migration strategy, which is in fact what has been done for the list of individual proposals in the final part of this paper. This approach is also possible because – with a single exception – the social, political and economic framework conditions for integrating third-country nationals legally resident in the Union have hardly changed at all.

95. The sole exception is the labour market: in recent years unemployment has risen even further in the Member States of the European Union and it is clear that no effective strategies to combat this development have yet been found. The growth in unemployment affects immigrants disproportionately since they are disproportionately represented in vulnerable sectors and those where few qualifications are required, and their lack of roots in the host society gives them few defences against social pressures.
96. The challenge facing us in this context is to show whether and how migration-policy measures can be used to reduce unemployment. Reducing the potential workforce is clearly only one factor in any such strategy. Measures to improve individuals' level of qualification, economic exploitation of the skills acquired during the stay in the host country and making economic links possible were the individual to return to his country of origin are just as important here as is the sustained fight against all forms of the black economy profiting from the employment of illegal aliens.

#### 4.6. New refugee protection

97. As has been shown, the realities of asylum in recent years have undergone a significant change. These changes require wide-ranging reactions if we are to respond adequately to them, reactions which in any case go further than the undoubted successes registered to date in European asylum policy (unification of definitions of refugee and of procedures, stabilisation of influxes of refugees).
98. The concept of temporary admission, that of protection on grounds other than those of the Geneva Convention (particularly that of inter-ethnic persecution) and the concept of burden-sharing in crisis situations have not yet been implemented. The points set out in the original Commission communication are still relevant today for an overall strategy and we should return to them speedily. When we do so, the questions of
- how and when a particular protection and admission programme should begin and end,
  - the need to resolve the status of the persons admitted and

- the solidarity to be demonstrated in cooperation between countries particularly affected by influxes of refugees and those less affected can be answered by reference to the Commission proposals received in the meantime for two instruments. It is urgent that they be adopted.

99. No attempt has yet been made to tackle the problem of whether and/or to what extent the quantitatively much more significant grounds for flight adduced nowadays - which are not those set out in the Geneva Convention - should form the basis of particular entry and residence rules. This is not simply a matter of extending the list of persecution grounds in the Geneva Convention; what is needed is a restructuring of the protection system to take account of developments.
100. Such a system would also have to include the other grounds for *refoulement* as well as the traditional Geneva Convention asylum grounds, but also inter-ethnic conflicts, persecution by others than the State, and other threats to life on a large scale. However if such a step is taken, the implications are far-reaching both for the type of procedure used to establish whether the said circumstances obtain and for the status of the person involved in these circumstances in a host country.
101. Unlike the traditional claims of persecution by the State or those on particular grounds spelled out in the Geneva Convention, these new threats are much more difficult to prove or disprove; the administrative procedures used hitherto are bound to fail and will be incapable of producing satisfactory results for either side; the host States will be inclined to rely on global assessment of a specific situation rather than on the traditional persecution grounds, and see an individual case rather as part of a larger phenomenon. But, as a result, the possibilities and limits of a properly constituted legal procedure focusing on the individual case will be exceeded.

102. In this case the question actually arises as to whether a new approach should not also include initial steps harking back to the beginnings of the development of asylum law when the affording of protection was not seen as a subjective individual right but rather as a political offer on the part of the host country. Such an approach would allow potential reception and protection States to come up with their offers in a much more flexible and speedy way in certain circumstances. It would also release a considerable volume of personnel and material resources (which in quantitatively overburdened asylum procedure systems are used unproductively for direct assistance in the procedure and its administration) which could be much better used in direct assistance to the persons taken in and to be afforded protection. The asylum "business" could thus be transformed from a huge machine which at considerable expense produces no result at all in 90% of the problem cases it handles (viz. provides neither protection nor status) back again into an instrument of speedy assistance in the framework of the political possibilities.
103. A new direction of this kind can only be implemented on the basis of a Convention supplementing, amending or replacing the Geneva Convention. That formal factor alone means that a strategic step of this kind will require a fairly long preparation stage. However, that should not prevent the circle of Member States, which have shouldered a substantial share of the repercussions of the present asylum system from discussing the question and introducing it in the UNHCR opinion-forming bodies.
104. Another matter which still needs to be addressed in the European context is standardisation of the system and level of care and benefits available in the asylum procedure context or other reception and integration programmes. Experience in recent years has shown that the differing level of welfare provision for asylum seekers is one of the main causes of secondary movements between Union Member States and has just as much influence on the number of asylum seekers arriving in the individual Member States as any geographical proximity or historical ties such States may have to the asylum seeker's country of origin. The Dublin system and control of mass migrations will be operable only if what is on offer is more or less identical in all European States.

105. Finally, the experience of the last three years with returning and reintegrating Bosnian refugees should be analysed and the results used for the further development of the overall system. The European Union's activities in this connection have clearly revealed which type of return programmes work and which will inevitably fail; the factors on which the success or failure of reintegration programmes depends became clear; we now know which programmes are the most appropriate for which purpose, which organiser and which audience; and it has been demonstrated that, in the financing systems of the EU, the decision-making process has to be speeded up and the decision-making structures simplified.

#### 4.7. Agreements with countries of origin and of transit

106. Agreements with migrants' countries of origin can prove a most effective dissuasive instrument in migration management. This does not just involve economic assistance for poor areas of emigration, political support for unstable political structures and intervention to improve the human rights' situation; it is extremely important too that the country of origin and the country of destination cooperate to provide information about what lies ahead for illegal immigrants. It is not an exaggeration to say that a considerable number of illegal immigrants might well have changed their minds about emigrating if before setting out they had received an accurate picture of the conditions awaiting them rather than the promises of the illegal migration networks.

107. In future, return agreements between two neighbouring States – either within the EU, over its external borders or beyond Union territory – will assume greater importance than before. Not until it proves possible to ensure that the principle whereby the State of previous residence immediately and unconditionally takes back every single illegal border-crosser is put seamlessly into effect, will the overall migration-slowing effect come into play. Here a further aspect needs to be considered which has received inadequate attention in this context hitherto: returns between transit States must be made regardless of the submission of individual applications by the parties concerned, since otherwise the individual would be able in practice to void the international agreements of their effects thanks to the delaying effect of asylum applications.

108. Return agreements with the States of origin will be particularly important. In this connection it will be necessary to find a solution to the phenomenon whereby increasing numbers of countries of origin refuse to take back their own nationals. There are only two possible solutions to this problem; either the European Union as an entity manages to use its international political and economic muscle to persuade such States to adopt such an agreement, or consideration is given to an international legal instrument enabling a person's nationality to be determined by an EU host country as well and linking such determination to the legal consequence that the country of origin thus ascertained is obliged to take back its nationals.

109. Voluntary return agreements, agreements on the reception conditions after return and cooperation on reintegration could provide back-up in this area and create a link between return agreements on the one hand and other European Union agreements with such third States on the other.

#### 4.8. Europeanising migration policy

110. Not least thanks to the Amsterdam Treaty, the European Union States are committed to ongoing europeanisation of migration policy and optimum use of the new institutional framework. Here the steps towards communitarisation already initiated with Amsterdam and those yet to be taken are just as important as the restructuring of relations with the States of Central and European Europe. The objective is to see Europe increasingly as a single, common (im)migration area in which there are still admittedly three types of country, viz. primary (old) countries of immigration, new countries of immigration and countries of transit, but where these roles are seen to converge closely, and, in the end event, where all migration problems can only be solved by cooperation.

111. For the European Union, such europeanisation of migration policy also means that its institutions and decision-making processes must be tailored accordingly, a step which the Amsterdam Treaty merely sketched out but where a great deal of concrete implementation work is still required. The Action Programme proposed at Cardiff should be a first step, while a second should be the introduction of the necessary institutional changes and a third the implementation of the individual measures.



#### 4.9. Priority issues

112. Among the areas presented, there are currently a number of particularly pressing issues which need to be addressed immediately at a European level. These are listed once more in the following section, although it must be pointed out that they are not additional projects which come on top of the topics covered in sections 4.1 to 4.8, but are taken from among the most urgent sub-projects in each corresponding area.
113. If the European Union wishes to reduce the pressure of immigration, then all migration-related decisions within EU institutions must be linked up in a common approach to take account of their mutual impact as swiftly as possible. This not only concerns the area presently covered by the third pillar, but also essential areas of the Union's "foreign policy", bilateral relations with third countries particularly in the economic field, association agreements, structural dialogues, etc. There is a current tendency to regard and assess each of these areas of policy in its own right, as separate issues; it should be possible to curb this trend at least by the time the Amsterdam Treaty comes into force.
114. In this context, development cooperation and the Union's trade policy towards the main emigration areas are of particular importance: for instance, it is at present impossible to take any decisions involving Iraq, Pakistan, Afghanistan, the countries of former Yugoslavia or Turkey without taking account of the plainly visible tide of illegal migration currently taking place. In addition, any decisions affecting the countries of former Yugoslavia will have to tie in with the issues arising from the return of the people who left those countries. Lastly, the Union's measures to improve the situation in Kosovo require the immediate involvement of the Commissioners responsible for migration issues and the Justice and Home Affairs Council.
115. The comprehensive analytical assessment of third countries with regard to the Union's immigration policy towards citizens of those countries is still pending. A more systematic approach by the EU would greatly help in resolving the outstanding issues. If one goes back to the model developed in international discussions which is based on concentric circles and which allocates third countries to three or four circles, whose various aspects also require various treatment in terms of migration policy, then a fundamentally clearer idea of what the Union's actual strategy for dealing with this issue might emerge:

116. The first circle contains those countries which do not cause emigration, but which – like the EU Member States – have become target countries on account of their advanced economic and political structures. Such countries can be expected to assume all the obligations incumbent on a transit country – full guarantees for those with refugee status, return of all those who cross borders illegally, high levels of border controls, a policy on visas –, which is why the freedom to issue visas and close cooperation relations in these countries fall primarily within the scope of the police and the security services.
117. In the current phase, this role falls in practical terms to (all or some of) the applicants for accession, which calls for a tightening up of the pre-accession strategy towards the latter as far as issues of migration policy are concerned. Linking financial benefits and the granting of privileges to specific objectives in the migration field is clearly prohibited. The aim of these countries will be to achieve total freedom of movement with regard to those of their neighbouring states which are EU members by fully applying EU immigration policy and following Schengen guidelines.
118. The second circle contains transit countries which no longer themselves create emigration to any extent but which on account of a relatively stable internal economic and political situation accept only very limited control procedures and responsibility for migration policy. A cooperation and support policy has been developed for such countries which should make it easier for them to reach the next circle in the foreseeable future. As it is still not possible to abandon visa restrictions on such countries and bilateral agreements mostly concern the repatriation of third country nationals in illegal transit, their main tasks should be to concentrate on transit checks and combating those who facilitate illegal immigration. A number of states in the Budapest Group, the CIS area and the Mediterranean region currently provide good examples of countries in this circle.
119. The third circle contains the emigration countries, against which the whole range of migration policy measures on the EU side needs to be effective, and which make it vital that forms of cooperation be developed which will reduce migratory pressure at all levels, i.e. not only in demographic, economic, social and ecological terms but also in political and human rights terms. Progress in these areas should serve as an important criterion when development aid decisions are taken.

120. One of the most important tasks in migration policy currently facing the European Union is effectively combating the illegal, worldwide smuggling of human beings. Experience gained during the Action Plan on Iraq and analysis of the illegal trafficking of human beings in various Member States clearly show that the organised smuggling of human beings has reached an unprecedented level and an unparalleled degree of organisation. This is internationally organised crime at the highest level of organisation and combating it will require States to make concentrated use of every available means.
121. In this respect, it would be useful to conduct a rapid review of the experiences of the Action Plan on Iraq and the Schengen Task Force, to develop a more concise strategy based on those elements which have proved successful, to combine opportunities for cooperation between national police forces, Europol and the Schengen System and to lead an all-out attack throughout Europe against this form of crime over a period of about two years. By exploiting every opportunity for cooperation, including with third countries, a determined effort could be made to combat those who arrange to smuggle people out of emigration countries, the carriers and their helpers, those who organise the journey and the people and groups who are involved in EU Member States. The measures taken should range from applying a penal and police policy of zero tolerance towards those who facilitate illegal immigration, to effectively confiscating any proceeds, seizing all assets used in facilitating and preventing anyone from enjoying the rewards of such activities.
122. Following the partial success in standardising and approximating legislation in recent years, focus should now shift to further developing legal instruments and procedures which are not open to misuse and which actually make it possible to achieve objectives in migration policy. This is not the case with the systems developed so far in asylum and immigration law, which have proved far more useful in obtaining and securing medium-term stays after illegal entry in the target country and have thus already become pull factors in themselves.
123. Against this background, the further development and implementation of the Dublin system, together with the completion of Eurodac and the elimination of the delayed effects of certain means of redress in national legislation undoubtedly have an important part to play. This fact underlines the need to bring the first of the abovementioned points to a successful conclusion by the end of this year.

124. Another central concern of the Union should be the development of an external border policy with shared responsibility. What matters here is not so much whether all Member States formally proceed with implementation of the Schengen Agreement, but much more that the criteria on border controls drawn up under Schengen should be applied by all Member States during border checks, that there should be discussion on this between States and cooperation on a joint approach. A vital factor in this is the SIS, which must be guaranteed to operate smoothly when it comes to setting the date of the Amsterdam Treaty's entry into force; for this reason, the working parties responsible for this issue are under the greatest pressure to achieve results.
125. Another issue concerns the establishment of an independent, uniform and comprehensive EU asylum law to meet the requirements of today rather than of the geopolitical situation of yesterday. What is required in the next year or two is to conduct an analysis of the new challenges and of the developments over the past decade in protecting refugees and applying the Geneva Convention. It will then be possible to build on this and set to work on a comprehensive legal instrument which is based on minimum standards, a uniform notion of what constitutes a refugee, a law on temporary protection and a shared belief in joint responsibility.
126. Of course, this approach should also contain solutions for protecting refugees who have had to leave their countries not on account of individual political persecution by state entities, but because of civil war, ethnic displacement and reprisals by non-state (military) authorities, and should include protection against *refoulement*.
127. As far as these people are concerned, not only are the elements in the Geneva Convention no longer adequate, but also the procedure currently used is unsuitable in terms of taking a demonstrable need for protection into consideration; thirdly, the approach of the Geneva Convention, which by recognising a person as a refugee severs the link with the country of origin indefinitely and encourages him to settle permanently in the host country, does not match the widely held idea that it should be possible and internationally acceptable for such people to return home within a foreseeable period of time.

128. A new approach of this kind must also make room for the procedures and principles currently under discussion on sharing responsibility evenly and on the basis of solidarity. (This does not mean that we should wait until work on the abovementioned law is completed; another perfectly suitable way to proceed is to reach agreement on this now and to combine the conclusions in a comprehensive regulation at some later date.) Admitting refugees is only significant in terms of Western Europe's overall performance and organising their admission is acceptable to individual communities. A pattern of behaviour which, as in the case of the crisis in Yugoslavia, places the burden of the refugee problem on a small number of States in the long term will have disadvantages for the whole of Europe.
129. In view of the high level of unemployment, the budget problems and the socio-political difficulties facing many West European countries, it will still be necessary to develop programmes for the integration of refugees which are socially acceptable to the host States.
130. In this connection such programmes will have to relate not only to the, comparatively speaking, relatively small number of recognised refugees but to all the immigrants who have arrived in recent years and who have not yet integrated into the host societies. It is a matter here not only of housing and labour market policy, but also of questions of access to nationality, the raising of the level of education and linguistic and cultural integration. In political terms, the deciding issue is whether or not such integration is socially acceptable is above all whether we manage to avoid a situation where the host society has to bear financial burdens as a result of the immigration.
131. As far as the protection of refugees is concerned, it is also important to develop a consistent approach to the reintegration of displaced persons and refugees into their countries of origin. This certainly involves more than individual support for returnees and greater motivation to return home voluntarily; it depends more on actively safeguarding the possibilities of repatriation, if necessary using the same means of force employed by the international community for maintaining peace and bringing an end to conflicts as well. It is also a question of rapidly applicable and rapidly effective financing systems for the repatriation projects of Member States.

132. Lastly, in the context of a future comprehensive legal instrument, it will also be necessary to clarify the issue of whether the rule-of-law approach developed in Europe in totally different administrative connections and the model based on legally enforceable subjective rights are actually suitable as the sole instrument in the refugee sphere. Consideration could readily be given as well to a reform of the asylum sector with a move to less rule-of-law-oriented approaches to protection and more to politically-oriented approaches: alongside individual decision-taking procedures an extended quota take-up procedure could be established which, moreover, could also be combined fairly easily with new burden-sharing mechanisms.

133. Finally, there is a need for a concerted effort to ensure that illegal migrants are consistently and efficiently repatriated and to see to it that the return of illegal migrants to their country of origin is enforced. This requires a consistent policy on the part of the States of entry as well as their cooperation in carrying out deportations and a comprehensive system of rules on readmission and transit both within the European Union and in relation to the applicant countries and to problem States. Lastly, alternative solutions for the documentation and establishment of the identity of undocumented illegal immigrants also need to be discussed.



5. Operational plan: Implementation of the strategy by the Council and the Commission

134. The tasks to be performed, and the detailed elements of a European migration strategy were set out in the preceding chapters. Below the tasks are systematically grouped according to responsibility for performing them and according to priorities, this summary being restricted to key words.

5.1. Specific initiatives by the Council and, under the Amsterdam Treaty, by the Council together with the Commission

- (a) Adoption of a paper on European migration strategy in the Justice and Home Affairs Council
- (b) Drafting of a work programme with priorities and action plans on that basis
- (c) Development of a "model of concentric migration policy circles", comprehensive assessment of third states in the framework of that model and formulation of a medium-term plan for each circle
- (d) Full integration of the Schengen "acquis" into the European Union and securing of the smooth continuing effectiveness of all bodies and procedures established thereunder
- (e) Improvement of the current system for collecting and analysing precise data, in particular with respect to illegally present third-country nationals and to actual repatriation; establishment of specific powers for collecting, analysing and updating migration data
- (f) Improved exchange of information, in particular on illegal immigration networks
- (g) Formulation of a uniform, optional system for determining maximum immigration quotas
- (h) Migration policy measures for reducing unemployment
- (i) Development of a new, comprehensive model for protecting refugees
- (j) Reform of the framework conditions for national decision-taking procedures in areas relevant to migration policy
- (k) Establishment of an early warning system in the event of imminent migration crises
- (l) Establishment of contact authorities to combat illegal immigration networks, extension of police cooperation in this sphere
- (m) Clarification of the procedure concerning non-deportable persons (who are not refugees or *refoulement* cases)



- (n) Introduction of a zero tolerance policy towards persons who have entered illegally
- (o) Measures to discover illegally present aliens
- (p) Finalisation of the Eurodac system including all illegal entrants
- (q) Increased effectiveness of the Dublin system and extension of its scope
- (r) Setting up and definition of the instruments required for a permanent emergency task force which can be mobilised immediately when particular immigration problems arise
- (s) Revision of the current institutional and procedural framework, pooling of organisational resources

## 5.2. Specific initiatives by the Commission (including the Council if necessary)

- (a) Drawing up of a work plan and priorities for the phase following the entry into force of the Amsterdam Treaty
- (b) Development of effective forms of cross-pillar cooperation, overcoming of the institutional obstacles still existing; in particular practical simplification of the complicated mechanism for cooperation between the Council and the Commission
- (c) Networking of all decision-taking fora in connection with migration policy
- (d) Coordination of migration policy decisions with those taken in connection with common foreign and security policy
- (e) Legal verification and systematisation of the existing Community migration law or of the communitarised migration law introduced by the Treaty of Amsterdam
- (f) Settlement of the position of legally resident aliens on the basis of the proposals made in the 1994 communication from the Commission
- (g) Establishment of instruments to monitor the empirical reality of migration within the EU, in particular ensuring that data are comparable and accurate
- (h) Effective monitoring to ensure that all measures decided in the migration policy sector are observed
- (i) Concentration of all special funds which exist under the current third pillar and clear consistency with the relevant financing mechanisms in other sectors
- (j) Linking of the fora for migration policy decisions with those for financing decisions
- (k) Development of a funding and management programme for voluntary return

- (l) Definition of the uniform visa list
- (m) Concentration of all Commission powers over migration in the hands of a single Commissioner
- (n) Expansion of the current Task Force into a full Directorate-General

### 5.3. List of possible legal acts

- (a) Eurodac Convention and Protocol on the extension to aliens who have entered in an irregular manner
- (b) Legal act concerning the temporary protection of displaced persons
- (c) Legal act concerning cooperation in coping with major migration movements in a spirit of solidarity
- (d) Convention on the legal position of legal immigrants including their freedom of movement and its limits
- (e) Immigration Convention summarising immigration rules, in particular for employees, the self-employed and pensioners
- (f) Legal act concerning family reunification
- (g) Legal act concerning the admission and legal position of aliens who are only temporarily present, in particular seasonal workers and students
- (h) Legal act on acceptance on humanitarian grounds and leave to remain in individual cases
- (i) Preparation of an Asylum Convention covering the following areas:
  - consequences of inter-ethnic displacement
  - consequences of non-state persecution
  - assessment of national flight alternatives
  - third-state safety and how it is reflected in procedural and material terms
  - group assessment
  - quota take-up
  - tightening of procedures
- (j) Legal act concerning the treatment of unfounded asylum applications and their legal consequences for the applicant
- (k) Legal act on the criteria for assessing a State as a safe third State
- (l) Legal act implementing protection against refusal of entry and the legal position of the persons protected hereby in the Union
- (m) Further development of the integrated Schengen "acquis" into a Convention on External Frontiers
- (n) Legal act on the control and prevention of illegal employment
- (o) Legal act on the improved effectiveness of deportation

- (p) Legal act concerning voluntary repatriation in the case of a mass inflow
- (q) Legal act strengthening the criminal penalties against illegal immigration networks (sentences, forfeiture, prevention of economic gain)
- (r) Legal acts on the further uniformisation of visa and residence documents
- (s) Legal act concerning uniform penalties against carriers

#### 5.4. External relations

- (a) Priority inclusion of all migration policy aspects in the preparation of eastward enlargement, in the specially regulated bilateral relations with other countries and in the Transatlantic Dialogue
- (b) Adoption of a joint action plan to bring the applicant countries up to the migration policy standards of the European Union
- (c) Convention on the extension of the Schengen external frontier control standards to the applicant countries and monitoring of this development process
- (d) Extension of the Dublin Convention to the applicant countries
- (e) Development of a network of cooperative structures between the state agencies responsible for migration in the emigration, transit and destination countries
- (f) Early intervention through a series of appropriate measures tested on the spot in the event of the foreseeable occurrence of mass exodus and migration crises
- (g) Establishment of contacts with the relevant political and social authorities on the spot in the event of a crisis
- (h) Long-term activities to reduce the pressure of emigration in selected regions of origin of illegal immigrants and asylum applicants:
  - enhanced development of human rights, democracy and rule of law
  - influencing the population policy
  - gearing of trade, cooperation and development aid to migration policy viewpoints as well
- (i) Joint information policy vis-à-vis those sections of the main emigration groups who are willing to emigrate
- (j) Agreement on the exchange of migration data and on the provision of information in individual cases
- (k) Complete system of deportation agreements with States of transit and origin including ensuring that persons whose identity and nationality is established by an EU document are taken back
- (l) Linking of bilateral agreements in connection with the relaxation of visa requirements, the reduction of border controls, transport links as well as economic cooperation with repatriation agreements and migration control obligations