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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL

**on the monitoring and evaluation mechanism of the third countries in the field of the
fight against illegal immigration**

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1. MONITORING AND EVALUATION REPORT (PILOT 2004)

1.1. Introduction

The European Council resolved that EU dialogue and actions with third countries in the field of migration should be part of an overall integrated, comprehensive and balanced approach. In June 2003, the Council also recognised the importance of developing an evaluation mechanism to monitor relations with third countries. In conclusions adopted in December 2003, the aim of the mechanism is described as monitoring the migratory situation in the third countries concerned including their administrative and institutional capacity to manage asylum and migration and the actions being taken in order to tackle illegal migration. The Commission was accordingly invited to present an annual report on specific third countries. This first annual report is a pilot report for the monitoring and evaluation mechanism for third country cooperation on illegal immigration. It covers a limited number of countries¹: **Albania, China, Libya, Morocco, Russia, Serbia and Montenegro, Tunisia and Ukraine.**

The report contains a brief overview of the Commission's analysis of current relations with each country on migration and sets out some political recommendations as invited by the Council. These identify options through which the EU and its Member States might cooperate to support the relevant country in migration management. As this is the first report, technical recommendations to improve the mechanism are also included. The Annex contains further analysis of EU cooperation with the countries concerned and provides more detailed factual information on each country focusing on the main areas of interest identified by the Council. The information contained in this report and annexes has been gathered by the Commission services and its delegations in the third countries concerned. The report uses information supplied by Member States and/or collected directly in the third countries concerned, sometimes with the concurrence of the Member States, international organisations and representatives in the region and includes material collected through direct contact with third-country authorities. This report aims to cover principal developments until 20 December 2004.

There is strong variation between the countries in terms of the level of existing cooperation with the Community. The countries selected range from having no formal relationship with the Community to having very close cooperation and systematic monitoring of migration issues. Accordingly, not only the details

¹ These countries were identified as geographical priorities from the Council Conclusions of November 2002 and March 2003. Turkey is not included in this pilot report, although it was originally proposed as one of the countries as it is now a candidate country.

available but the conclusions and possibilities for enhancing cooperation vary extensively. It is hoped that this report will assist the Council in assessing the level of cooperation of each country in the fight against illegal immigration as set out in the Seville Council conclusions of 2002.

2. ALBANIA

2.1. Overview

The EU has several layers of interaction with the Albanian Government which are used, as appropriate, to touch on migration issues². The future Stabilisation and Association Agreement envisages that migration issues will be addressed in the framework of one of its sub-committees. FSJ matters are also discussed, as appropriate, in the framework of the implementation of EC assistance programmes to Albania.³ Albania has made progress in the control of illegal migration/trafficking towards the EU through the Adriatic/Ionian Sea but further and continued efforts in this area are needed. The framework legislation required in the area of migration and asylum has been adopted but it still lacks some of the necessary underpinning secondary legislation. Progress is hampered by Albania's limited administrative and financial capacity which results in under-implementation of existing legislation. The successful negotiation of a readmission agreement at Community level (which should enter into force in 2005) is a positive development in Albania's migration policy indicating a willingness to take responsibility on the international plane.

2.2. Recommendations

Albania has demonstrated positive cooperation with the Commission on migration issues.

Albania should be encouraged to take all necessary steps to ensure implementation and enforcement of its current legal framework in the fields of migration, asylum and connected areas (for example, penal legislation against organised crime and trafficking in human beings).

Albania should be encouraged and, where appropriate, diplomatically supported to conclude readmission agreements not only with its regional neighbours but with the countries of origin of migrants transiting through Albania.

Finally, in the broader context of integrating migration issues into development policy, it will be important to complement existing Community efforts by addressing in the future the issue of facilitating transfer of remittances, which are currently of fundamental importance for Albania's macro-economic stability. This could be done through further developing the Albanian financial sector and enhancing co-operation with the international banking entities, in order not only to facilitate the transfer of remittances but also to help to progressively reduce the level of cash circulating in the country and to limit, therefore, money laundering and tax evasion possibilities.

² See paragraph 1.2 of the Annex

³ See paragraph 1.2 of the Annex

3. CHINA

3.1. Overview

A broad EU-China political dialogue was confirmed in an exchange of letters in 1994, growing out of trade and economic cooperation during the 1980s. However, the specific dialogue with China on migration began after the tragedy in Dover of June 2000 when 58 would-be illegal immigrants lost their lives and 5 EU-China high-level consultations on the fight against illegal migration and trafficking in human beings have taken place since then.

Within the Community budget, €10 million had been put aside in 2002 for building up a co-operation project with China to fight illegal migration. Unfortunately, it proved impossible to develop such a project in collaboration with the Chinese authorities. However, the high-level consultations have undoubtedly facilitated constructive dialogue on matters of common interest.⁴ In February 2004, China and the EC signed the Approved Destination Status Agreement, allowing Chinese tourist groups to visit the EU and containing an obligation on the Chinese administration to readmit overstaying tourists. Exploratory discussions have recently taken place with a view to an EC-China readmission agreement. In this context and in view of expressed interests from both sides, the EU has agreed to discuss issues related to visa facilitation for certain categories of Chinese personnel. At the summit in December 2004, a joint statement was issued which expressed the common hope for an early opening of negotiations on these issues as soon as technically and legally possible.

3.2. Recommendations

There is a developing dialogue between the EU and China on migration management which should be welcomed. Moreover, the importance of legal migration for China (given the number of professionals and students who are being attracted to studying and working in the EU) should be recognised. The EU could propose a genuine discussion on two-way flows and that the remit of the high-level consultations be expanded for this purpose.

China's continued commitment should be sought to a reduction in illegal migration from China given the high humanitarian cost which often accompanies illegal migration. A reduction could be sought by fostering better cooperation and exchange of expertise between China and Member State administrations, including through the opportunities offered by the Aeneas programme. The Commission will build on the results of the EU-China Summit in particular by seeking to open negotiations on a future bilateral readmission agreement between the European Community and China and parallel discussions with China on visa facilitation for certain categories of personnel.

⁴ See paragraph 2.3 of the Annex

4. LIBYA

4.1. Overview

The EU has no formal relations with Libya and Libya is not a member of the Barcelona Process. Accordingly, there is at present no avenue for a formal EU-Libya dialogue on migration management. As noted by the General Affairs Council on 11 October 2004, however, Libya has made significant strides towards reintegration into the international community.

Following an exploratory mission to Libya in May 2003, a Commission-led technical mission on illegal immigration with the participation of Member States experts, was conducted in Libya between 27 November and 6 December 2004. It is acknowledged that migratory pressure on Libya is likely to increase. Libya has been identified as a potential priority for intervention and support by the Commission under the Aeneas programme for the period 2004-2006. However, whether Community support is provided to Libya to combat illegal immigration and in what form - directly or through regional policies - will be decided by the Council on the basis of the findings of technical mission. The mission report on Libya was presented to COREPER in April 2005 and will be discussed at the June Council.

4.2. Recommendations

The Commission recommends that Libya be encouraged to respond positively to the EU's policy of engagement whilst reiterating that the ultimate objective of any cooperation is Libya's full integration into the Barcelona Process. Dialogue and cooperation with Libya in areas such as institution building, training activities and the establishment of a system to manage asylum requires a long-term commitment by the EU and its Member States. The Commission notes that the regional dimension of migration challenges faced by Libya and other African countries must be taken into account in achieving lasting solutions. The Commission will explore ways of strengthening dialogue on migration issues with African regional organisations.

5. MOROCCO

5.1. Overview

Since the EC-Morocco Association Agreement entered into force on 1 March 2000, significant progress has been made in terms of building confidence between the EU and Morocco. The establishment of the Migration and Social Affairs Working Group represents a significant advance as does the agreement of the European Neighbourhood Policy Action Plan⁵. Morocco is also cooperating with its neighbour Spain in efforts to stem the flow of illegal migration by sea with the attendant humanitarian concerns. Morocco has also made efforts to cooperation with third countries, in particular with Nigeria.

Despite several rounds of negotiations, the EC has not yet been able to agree the text of a readmission agreement with Morocco. Most of the outstanding issues are minor

⁵ See paragraphs 4.2-4.3 of the Annex

but some, such as the readmission of non-nationals and the forms of evidence to be provided remain problematic.

Concrete cooperation on projects aimed at developing Morocco's ability to manage migration has begun in the context of the MEDA budget line. Morocco is also identified in the Aeneas programme as a focus for intervention in 2004-2006 as part of the Mahgreb region.⁶

5.2. Recommendations

Morocco displays a positive attitude in discussions with the EU. Morocco's significant progress in improving migration management to date should be noted and Morocco's open attitude to regional cooperation should be recognised.

At the same time, the importance of further efforts to stem the flow of illegal migration across the Mediterranean – with its high humanitarian cost – must be stressed. To that end, Morocco should work closely with the EU to implement the European Neighbourhood Policy Action Plan and to reach final agreement on and adoption of a EC readmission agreement in the near future.

Further dialogue should be encouraged not only between Morocco and its regional neighbours but also with the neighbouring countries of origin to the South in order to seek regional strategies for managing the migratory flows more successfully.

6. RUSSIA

6.1. Overview

The cornerstone of EU-Russia relations is the Partnership and Cooperation Agreement (PCA) which entered into force on 1 December 1997⁷. On a political level, FSJ issues are also regularly discussed at the six-monthly EU-Russia summits. At a practical level, the EU has developed specific instruments to strengthen FSJ cooperation such as the Joint Action Plan on organised crime from 2000 and its implementation tool, the EU liaison officers' network.

Over the past few years, Russia has become a country of origin, transit and destination for migrants. Although steps have been taken to strengthen the control of the Russian border with the Caucasus, Russia has indicated that a lack of resources has hampered significant progress on its Southern and Eastern border. More than €2.6 billion has been allocated to Russia under the TACIS programme since it began in 1991⁸ and an indicative sum of EUR 20 million has been set aside in the National Indicative Programme for 2004-2006 to enhance the Russian asylum system, to improve coordination between migration authorities and to pave the way for an EC-Russia readmission agreement. Russia is also one of the countries identified as a priority for intervention and assistance under the Aeneas Programme.

⁶ See paragraph 4.4 of the Annex

⁷ This agreement has an initial duration of ten years but will be extended automatically unless either party gives notice to the contrary.

⁸ See paragraph 5.4 of the Annex

6.2. Recommendations

The EU-Russia Common Space on Freedom, Security and Justice within the framework of the PCA will offer the main framework for developing and expanding our overall cooperation in the area of Freedom, Security and Justice. Cooperation with Russia on migration policy is an important matter of common concern and growing relevance. The EU should invite Russia to engage in a comprehensive dialogue within the framework of the Permanent Cooperation Council on all migration-related issues, including asylum, the fight against illegal migration and trafficking in human beings.

Progress in the ongoing readmission and visa facilitation negotiations with Russia is to be welcomed and Russia should be called on to conclude both agreements simultaneously in 2005. Russia should also be encouraged to conclude readmission agreements with neighbouring countries of origin. At the St. Petersburg Summit, the EU and Russia agreed to examine the conditions for visa-free travel as a long-term perspective. Russia should also be encouraged to finalise its border demarcation agreements with Estonia and Latvia and to progress its negotiations with Lithuania.

Both the EU and Russia need to respond positively to the challenge of balancing security concerns with freedom and justice. The balance achieved must secure the necessary conditions for effective integration of legal migrants, in particular through the development of coherent policies on managed labour migration.

7. SERBIA AND MONTENEGRO

7.1. Overview

Due to the long and complex constitutional reform which the country underwent in 2002 and 2003, Serbia and Montenegro⁹ still faces specific challenges relating to the actual articulation of powers between the State Union and the two constituent republics. The authorities of Serbia and Montenegro have made some progress in the area of migration and asylum but further effort is needed. While Serbia and Montenegro's readmission agreements with member states and regional neighbours are being implemented, a lack of resources makes reintegration of returnees difficult.

Practical cooperation projects at both national and regional level have already begun with Serbia and Montenegro in the framework of the CARDS programme¹⁰. The development of national policies based on a uniform approach (by the two state authorities) to migration has been identified by the Commission (including in the Aeneas Programme) as a key priority for Serbia and Montenegro. The Commission has also suggested that national and regional strategies be developed to prevent trafficking in human beings and to inform potential emigrants about the dangers of (and alternatives to) illegal immigration.

⁹ Kosovo under the United Nations Security Council Resolution 1244 of 1999 is still separately administered by the UN Interim Administration and so is not within the scope of this report.

¹⁰ See paragraph 6.4 of the Annex

7.2. Recommendations:

The Commission notes that the authorities of Serbia and Montenegro take a positive attitude to working with the European Community and her institutions. However, Serbia and Montenegro should be urged to improve cooperation between the State Union and the two Republics in order to effectively implement the European Partnership through the relevant Action plan. To this end, Serbia and Montenegro could be encouraged to put mechanisms in place to check whether policies developed at the State Union level are implemented consistently by the two republics.

Furthermore, the Council may wish to promote/facilitate dialogue between Belgrade and Pristina in order to tackle returns to Kosovo more effectively as outlined in the European Partnership Plan and to curtail transit of illegal migrants through this territory.

8. TUNISIA

8.1. Overview

The Association Agreement signed in 1995 and in force since 1 March 1998 governs bilateral relations between the EU and Tunisia and has provisions which envisage cooperation on migration issues. The move to include FSJ issues in cooperation activity with Tunisia has been gradual but represents a positive development. Tunisia has been identified as a priority for cooperation on migration with the EU. Accordingly, the establishment of a working group under the Association Agreement with a mandate which includes visas, illegal immigration and transit migration represents a significant advance which is confirmed by the European Neighbourhood Policy Action Plan which contains a comprehensive JLS chapter. During the ENP consultations, Tunisia expressed a particular interest in initiating dialogue on visa facilitation. In the migration field there are two key practical issues which deserve attention. The first is the scale of illegal migration (mainly transit migration from the sub-Saharan region and other Maghreb countries) and the second is the lack of a functioning asylum system. Tunisia has at present no functioning domestic system for determining protection claims and is reliant on the UNHCR.

8.2. Recommendations

Tunisia has shown a long-standing constructive approach to dialogue with the European Community and this cooperation has recently been extended to encompass FSJ issues, including migration management. The recent adoption of the European Neighbourhood Policy Action Plan should be welcomed. However, Tunisia and the EU should strengthen their dialogue on migration and social affairs and examine the issue of asylum and visa facilitation in order to see whether more can be achieved.

Given that the migrant flows through Tunisia are a regional phenomenon, Tunisia's efforts to seek regional strategies for migration management should be supported. Such solutions could encompass regional cooperation on border control, fostering dialogue and cooperation between Tunisia as a transit country and the countries of origin, assisting the Tunisian government in keeping links between the diaspora and home communities and supporting reintegration of those who return.

9. UKRAINE

9.1. Overview

The legal basis for relations between the EU and Ukraine is the Partnership and Cooperation Agreement which entered into force in 1998. A specific EU Action Plan on Justice and Home Affairs was signed with Ukraine in December 2001. Implementation of the Action Plan is monitored by a detailed Scoreboard. Cooperation between the EU and Ukraine has intensified over the last few years on FSJ issues, especially following the signature of the EU-Ukraine JHA Action Plan. Although Ukraine has achieved advanced progress in some sectors of asylum and migration, border management and trafficking in persons, much remains to be done. During 2004, consultations took place with Ukraine for a European Neighbourhood Policy Action Plan which was adopted at a special Co-operation Council meeting in February 2005.

Ukraine has benefited substantially from TACIS assistance, which has supported, *inter alia*, the strengthening of the border management, asylum and migration regimes. Approximately 34 M€ has been spent on such projects to date and projects worth 20.5 M€ are under development. The Aeneas programme will complement these efforts. These supporting measures will contribute to the implementation of the EC-Ukraine readmission agreement once it is signed and adopted. Ukraine actively participates in regional activities such as the Söderköping process and the Budapest process.

9.2. Recommendations

Cooperation with Ukraine on migration policy is a matter of common concern and of growing relevance. A cooperative approach can bring tangible results. The Commission has received good cooperation from Ukraine on FSJ issues. The endorsement of the EU-Ukraine European Neighbourhood Policy Action Plan is to be welcomed. The Action Plan offers the main framework for developing and expanding overall cooperation on a wide range of issues in the area of Justice, Freedom and Security.

The Commission and Ukraine look forward, in the context of the European Neighbourhood Policy Action Plan, to establishing a constructive dialogue on visa facilitation, with a view to preparing for negotiations on a formal agreement for visa facilitation, taking into account the need for parallel progress in the ongoing negotiations for an EC-Ukraine readmission agreement. The early conclusion of an EC readmission agreement remains of the utmost importance. Ukraine's new government should be encouraged to continue this comprehensive dialogue with the EU on all migration-related issues, including the fight against illegal migration, asylum and trafficking in human beings.

10. GENERAL RECOMMENDATIONS

10.1. Political recommendations

10.1.1. *Strengths and weaknesses of this first report*

This report aims to provide the information necessary for the Council to evaluate current levels of cooperation by the relevant country in combating illegal migration. This first report aims, in particular, to provide a benchmark against which progress made in cooperation by an individual country in future years can be more easily measured. Useful orientations for the future of the EU relationship with the countries concerned have, however, already emerged.

There is a lack of reliable and comprehensive information on migration management and migration flows. Moreover, the Council will also be aware that many third countries view discussions on illegal migration as being indivisible from broader issues of migration management such as visa facilitation/waiver, legal channels for migration, the provision of funding and border surveillance equipment (or closer links with the EU in general).

10.1.2. *The next report – additional countries?*

The Commission has been invited¹¹ to consider extending its report to those countries for which there is a mandate for a Community readmission agreement. This would require the addition of **Algeria, Hong Kong, Macau, Pakistan and Sri Lanka** in the next report. The Commission supports the inclusion of Algeria and Pakistan in the next report as the readmission negotiations could be assisted by more detailed knowledge of the migration challenges faced by these countries and their capacity to cooperate with the EU. The Commission suggests that the inclusion of Hong Kong and Macau be reviewed in the next annual report as this will enable the joint readmission committees (formed in both Macau and Hong Kong in September 2004 and meeting in Spring 2005) to make further progress. The inclusion of Sri Lanka should be reviewed in due course once the immediate pressures on that country following the humanitarian disaster of the Tsunami have receded.

Consideration could also be given to expanding the report to **include more of the European Neighbourhood Policy Partner countries.**

10.2. Technical recommendations

10.2.1. *Improving statistical information*

One of the key difficulties encountered in developing an accurate picture of the migratory situation for each country was the lack of accurate and comparable information and statistics on migration. This was primarily due to the fact that the countries either do not systematically collect even basic immigration statistics or do collect data but use very different methodologies to those used by the EU. There is a pressing need for all countries to improve data collection and treatment capacity and

¹¹ Draft Council Conclusions on the priorities for the successful development of a common readmission policy 13758/04 of 27 October 2004.

to put in place adequate methods and channels for comparing and exchanging this information and the Commission will continue to work towards developing the appropriate statistical bases.

10.2.2. Making better use of existing reporting mechanisms

The relationship between this reporting exercise and others (such as, for instance the regular reviews under the European Neighbourhood Policy¹² or the Association Agreement committees or the report foreseen by the Hague Programme on progress and achievements in asylum and migration in the context of the ENP (2005)) should be clarified and possible duplications avoided. The Commission will also in future years consult the Immigration Liaison Officers' Networks where appropriate and will make use of their regular reports on matters relating to illegal immigration in third countries.

10.2.3. Maintaining flexibility in the reporting mechanism

The Commission supports the production of an annual report to monitor third country cooperation on illegal immigration and suggests that each report deals with no more than 10 countries. The Commission also considers that the report must be repeated at regular intervals to allow a country's progress to be assessed. **However, the Commission recommends that the frequency of reporting on individual countries be reduced to not more than once every two years** as this will leave sufficient time for the countries concerned to pass amending legislation if required or to increase administrative or operational capacity. Each annual report may therefore cover a different group of countries.

¹² Reports on the implementation of the first wave of the ENP action plans (covering all areas including asylum and migration) are foreseen at the end of 2006 (2 years after adoption).