



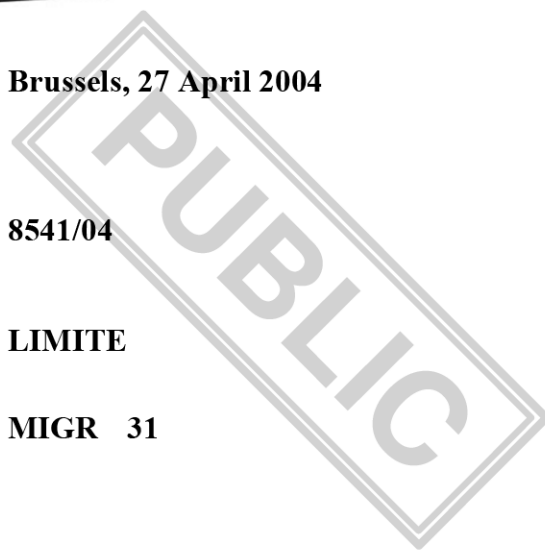
**COUNCIL OF
THE EUROPEAN UNION**

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LIMITE

MIGR 31



OUTCOME OF PROCEEDINGS

of:	Working Party on Migration and Expulsion
on :	15 April 2004
No. prev.doc.	8334/04 MIGR 28 COMIX 258
Subject :	Draft Council conclusions on elements for establishing preparatory actions for a financial instrument for return management in the area of migration

At its meeting held on 15 April 2004 the Working Party on Migration and Expulsion further considered the above conclusions.

The text of the draft conclusions, along with the comments made by delegations in relation with specific points of the draft conclusions are contained in the Annex to this Note.

Draft Council Conclusions on elements for establishing preparatory actions for a financial instrument for return management in the area of migration

Recalling that:

- (1) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, underlined the need for more efficient management of migration flows at all their stages
- (2) The Comprehensive Plan to combat illegal immigration and trafficking of human beings in the European Union ¹, adopted by the Council on 28 February 2002 and based on the Commission's Communication of 15 November 2001 on a common policy on illegal immigration², states that readmission and return policy is an integral and vital component of the fight against illegal immigration. To that end, the plan emphasises the necessity of analysing the advisability of establishing a financial instrument for implementing the return policy.
- (3) The European Council, at its meeting in Seville on 21 and 22 June 2002, highlighted the need for fighting against illegal migration and attached top priority – inter alia - to return policy.
- (4) The Return Action Programme, approved by the Council on 28 November 2002 and based on the Commission's Communication of 14 October 2002 on a Community return policy on illegal residents³, recommends that a decision be taken as how best to deploy any financial resources, which can be mobilised for return in order to effectively meet the requirements of the European Council in Seville in the field of return.
- (5) The European Council, at its meeting in Thessaloniki on 19 and 20 June 2003, noted that greater efficiency can be achieved, regarding the return of illegal migrants, by reinforcing existing EU co-operation in the Community and setting up mechanisms to that end, including a financial component.

¹ OJ C 142, 14.6.2002, p. 23.

² COM (2001) 672.

³ COM (2002) 564.

- (6) The European Council, at its meeting in Brussels on 16 and 17 October 2003, welcomed the Commission's intention, taking into account the financial perspectives, to provide financial support for the repatriation, in full compliance with humanitarian principles and respect for the dignity of the person, of illegal immigrants and unsuccessful applicants for asylum to countries of origin and transit.
- (7) Preparatory actions for return management should therefore be established, in order to better manage the return of illegal residents in the European Union to countries of origin, former residence or transit.
- (8) The issues arising from return management call for effective, flexible and in some cases speedy decision-making with a view to financing Community operations.
- (9) To ensure the consistency of the Community's action in the field of immigration and asylum, operations financed under preparatory actions should be specific and complementary to operations financed under other Community instruments, in particular Council Decision 2000/596/EC of 28 September 2000 establishing a European Refugee Fund¹, Council Decision 2002/463/EC of 13 June 2002 adopting an action programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO programme)² and the programme for financial and technical assistance to third countries in the area of migration and asylum³.
- (10) The protection of the Community's financial interests and the fight against fraud and irregularities form an integral part of these conclusions. In particular, contracts concluded under preparatory actions should authorise the Commission to carry out the measures provided for in Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities.⁴

¹ OJ L 252, 6.10.2000, p.12.
² OJ L 161, 19.6.2002, p. 11.
³ OJ L ...
⁴ OJ L 292, 15.11.1996, p.2.

(11) Preparatory actions in the field of return management should be implemented with due respect for human rights and fundamental freedoms, and in particular for the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment of 10 December 1984, the Geneva Convention of 28 July 1951 and the New York Protocol thereto of 31 January 1967, relating to the Status of Refugees, the Convention on the Rights of the Child of 20 November 1989, and the Charter of Fundamental Rights of the European Union of 18 December 2000.^{1 2}

The Council of the European Union, which calls upon the budgetary authority to provide appropriate funding, considers that preparatory actions for a financial instrument for return management in the area of migration should be established and implemented along the following lines:

Section I - Objectives

- 1 Preparatory actions in the field of return management should be established in order to better manage the return in all its dimensions of illegal residents in the European Union to countries of origin, former residence or transit. Such actions aim in particular to facilitate operational co-operation between Member States and to promote integrated return plans, which are conducive to effective and sustainable returns.
- 2 Integrated return plans shall be adopted and implemented with due respect for the rule of law as well as for human and minority rights and for fundamental freedoms.
- 3 The implementation of integrated return plans in third countries shall take place in close partnership with the countries concerned.

¹ OJ C 364, 18.12.2000, p. 1.

² UK maintained a reservation on point 11.

Section II – Complementarity¹

- 4 Taking into account the nature and objectives of the specific measures proposed for adoption in the preparatory actions, the Commission, in close consultation with Member States, should assess (i) whether the measures complement other existing Community instruments, where the scope of such instruments covers return related issues including the return of third-country nationals and (ii) whether the measures could be more effectively supported directly through those other instruments.

Such an assessment should take place when the return plans are drafted and implemented.

Section III – Elements for integrated return plans

- 5 Community support should be established for integrated return plans, the primary purpose of which will be the return of persons illegally resident on the territory of the European Union to the country of origin, former residence or transit.
- 6 Community support may be established for the return of irregular migrants in transit countries in their country of origin or former residence².
- 7 To ensure the sustainability of returns Community support may also be established, where appropriate, for the following elements of integrated return plans:
- (a) reception of readmitted persons in the country of origin, former residence or transit;
 - (b) actions to ensure the durable reintegration of the person concerned in the country of origin or former residence.

¹ **FR** maintained a reservation on this paragraph.

² Expressing doubts about the need to support this category of returns, **DE** and **FR** maintained reservations on paragraph 6.

8. In respect of returns to the country of origin, former residence or transit, the following measures could be considered¹.

(a) In cases of forced return, travel costs for returnees and escorts, in particular the costs for the means of transportation for joint removal operations²;

(b) In cases of voluntary return:

- pre-return information, assistance and counselling,
- travel costs,
- transport of personal belongings and,
- where appropriate, in respect of irregular migrants in transit countries, adequate temporary accommodation in the transit country before return³.

9. In order to ensure the sustainability of returns of readmitted persons in the country of origin, former residence or transit and, where feasible, to assist in the process of their durable reintegration the following specific measures may be supported as part of integrated return plans:

(a) For both voluntary and forced returns, reception assistance which could include, as necessary:

- adequate temporary accommodation for the first days after arrival⁴;
- essential initial expenses after return;
- transportation to the final destination in the country of return.

¹ Pointing out that, once the return has taken place, no assistance should be given to returnees, **SE** maintained a reservation on paragraphs 8 and 9.

² According to **ES**, financial support to forced return should be considered as a priority. For this reason, it suggested splitting the current paragraph 8 in two parts. The first part should clarify that costs relating to forced return **should** be covered, while the second should state that measures aimed at supporting voluntary return **could** be considered.

³ **DE** wanted the fourth bullet point to be deleted. **FR** is in favour of maintaining this bullet point, but under the condition that the words *in respect of irregular migrants* are deleted.

⁴ **DE** maintained a scrutiny reservation on the first bullet point.

(b) In cases of voluntary return in particular¹:

- training and employment assistance;
- limited start-up support for economic activities;
- post-return assistance and counselling.

Section IV – Adoption of integrated return plans

10. The Commission, in close consultation² with experts from Member States, should establish³ integrated return plans annually⁴.

11. The integrated return plans shall include, in accordance with the financial regulations:

- the grounds for the specific need for Community support for the designated target group of the return plan;
- an assessment of the feasibility of returning persons of the target group in order to ensure that their return takes place in safety and dignity as well as on the situation in the country or region of return, including the reception and reintegration capacity;
- a work plan defining the specific measures to be supported, the timetable of implementation of the measures, and the criteria for the evaluation and selection of projects.
- the duration of the return plan;

¹ **DE** wanted point b) to be deleted.

² **DE** wanted the words *in close consultation* to be replaced with the words *in close cooperation*.

³ **UK** wanted the word *establish* to be replaced with the word *draw up*.

⁴ According to **FR**, which maintained a reservation on paragraph 10, these conclusions should clearly indicate that the integrated return plans should be adopted by the Council. Noting that these conclusions deal with preparatory actions - which may be the basis for a future Return Fund, to be established with a Council decision -, the **Cion** drew attention to the fact that, under the applicable Community law, the integrated return plans to which the current conclusions refer do not need to be adopted by the Council.

- the maximum amount of resources for the return plan within the available means.
- In financing integrated return plans the Commission should have regard, where possible, to their anticipated results.

Section V – Implementation of integrated return plans

12. The Commission should be responsible for drawing up a framework for the management of the integrated return programmes and their financial management in partnership with Member States responsible for their implementation.
13. To implement the integrated return plans, the Commission shall where necessary, conclude bi- or multilateral arrangements with third countries and/or international organisations on the implementation of the return plans.
14. Partners eligible for financial support under this Decision from Member States and countries of origin, transit or former residence may include all the relevant government bodies with competent authority, their departments and agencies, institutions, associations and regional and international organisations and agencies, non-governmental organisations (NGOs) or other non-state actors as well as other public and private operators¹.

¹ According to **ES**, which was supported by **FR** and **UK**, paragraph 14 should clearly state that financial support should be provided to public institutions and only as a second option to non-governmental organisations (NGOs) or other non-state actors or other public and private operators

14. In respect of the selection of all projects for financial support, particular attention shall be given to the sustainability¹ of the measure. Without prejudice to the specific needs of the target group, preference shall be given to:

- projects, which involve joint actions between two or more Member States.
- projects, as defined in the respective return plan, which involve two or more specific elements as set out in paragraphs 5 through 9 of these draft Council Conclusions.

¹ According to E the words *efficiency and* should be added before the word *sustainability*.