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NOTE

from :	Presidency
to :	Working Party on Schengen Evaluation
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Subject :	Catalogue of recommendations for the proper application of the Schengen acquis and of best practices - removal and readmission

The fight against illegal immigration is a major concern for all the Member States of the Union. Freedom of movement within the Schengen area requires a corresponding reinforcement of the external borders around that area, and an effective and dissuasive policy on the removal of illegal aliens.

Article 23(1) of the Convention implementing the Schengen Agreement states that: "aliens who do not fulfil or who no longer fulfil the short-stay conditions applicable within the territory of a Contracting Party shall normally be required to leave the territories of the Contracting Parties immediately". When departure is not voluntary, or if the immediate departure of the alien is necessary for reasons of national security or public order, removal is to be carried out in accordance with the national law of the Contracting Party in which he was apprehended.

So while the Schengen Convention clearly states the need for removal, it leaves the Member States free to define the circumstances and implementation of such measures.

In order to clarify and build on the Schengen acquis and to help candidates for accession to the European Union determine what is expected of them, the Working Party on Schengen Evaluation has decided to draw up a catalogue of recommendations and best practices.

The purpose of these recommendations is to ensure efficiency and more extensive rationalisation of removal procedures. In formulating this objective, we must ensure that in all circumstances aliens are freely able to exercise their rights.

A summary of best practices based on the differing practices found in the various Member States of the Union is set out below.

<u>I. RECOMMENDATIONS</u>	<u>II. BEST PRACTICES</u>
<u>Removal measures</u> <ul style="list-style-type: none">– These must comply with the rule of law and be based on law.– <u>Objective</u>: To achieve the return to his country of origin or to a country which will admit him of an illegal alien or alien presenting a danger to national security.– <u>Two types of measure</u>:	<ul style="list-style-type: none">– Objective of effective removal from the territory, with a possible or even systematic ban on the alien returning to the territory for a sufficiently long period to be dissuasive; inclusion in the SIS. <p>Sanctions if the alien returns despite a ban on entering the territory</p>

<ul style="list-style-type: none"> – Administrative: <ul style="list-style-type: none"> . illegal alien . disruption or threat to public order – legal measure: <ul style="list-style-type: none"> . additional sanction in connection with criminal offences of a certain level of seriousness <p><u>Conditions for implementation</u></p> <ul style="list-style-type: none"> – Observance of the European Convention on Human Rights of 4 November 1950, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, of the Geneva Convention relating to the Status of Refugees of 28 July 1951 and of the International Convention on the Rights of the Child of 20 November 1989. – Cannot be expelled to a third country in which his life or freedom would be threatened because of his race, religion, nationality, membership of a particular social group, or political convictions, or in which he would be subjected to torture or condemned to death or prosecuted in proceedings in which he might incur the death penalty. 	
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<p><u>Unaccompanied Minors</u></p> <p>– The removal of minors while ensuring the best interests of the child and respect for the provisions of the International Convention on the Rights of the Child of 20 November 1989.</p>	<p>– Remove minors as soon as possible</p>
<p><u>Illegal aliens</u></p> <p>When an alien's application to stay in the country or his asylum application has been refused he is requested to leave the territory.</p> <p>If the alien does not comply with this decision, he must be removed.</p> <p>An alien apprehended for illegal entry or stay must also be removed.</p>	<p>In this case the request to leave the territory may be followed up with a check on departure from the territory.</p> <p>If the alien does not comply with the requirement to leave the territory, he should be placed on both the national and international wanted persons lists.</p> <p>Any deliberate resistance to removal must be subject to criminal sanctions so as to ensure the credibility of the entire system.</p>

<p><u>Detention</u></p> <p>Detention may be used to prevent the alien avoiding a measure for his removal and to prepare for implementation of the measure.</p> <ul style="list-style-type: none"> – <u>Need for specific premises</u> <p>Aliens subject to a removal order must be held in special centres with a proper legal status distinguishing them very clearly from prison institutions; they must be equipped in such a way as to guarantee that those accommodated there are kept in comfortable and hygienic conditions and are able to exercise their rights (interpreters, visits, health care, etc.).</p> <ul style="list-style-type: none"> – <u>Decision to detain</u> made by the authority responsible for issuing the removal order – <u>Special legal protection</u> for the detained alien, with the possibility of appeal. – Minors can be detained only in specific cases and in compliance with the European Convention on the Rights of the Child. 	
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<p><u>Duration</u></p> <p>The duration of the <u>period of detention</u> of aliens is a decisive factor in the removal measure, the aim being to allow the service responsible for removal the time strictly necessary for practical organisation of the departure</p>	<p>This objective requires an appropriate period of detention.</p>
<ul style="list-style-type: none"> – <u>Implementing the removal</u> – <u>The aliens police</u>, or the immigration services, have the administrative power to implement all measures relating to removal, transport to the border and expulsion. – Identification – <u>Recording</u> of illegal aliens who are subject to a removal order, and of asylum applicants (EURODAC). – <u>Inclusion in a data file</u> of aliens who apply for a visa or residence permit (Conclusions of JHA Council on 21 September 2001). 	

<ul style="list-style-type: none"> – <u>To shorten investigations</u>, access for investigating services to appropriate records, at both national and international level. – Issue of consular laissez-passer – Laissez-passer obtained from consular authorities – To this end, strengthen consular cooperation – <u>Financing removals</u> <p>Costs relating to the implementation of removal measures may be reimbursed by:</p> <ul style="list-style-type: none"> – the alien himself; – the carrier who brought him into the country; 	<p>Use all appropriate means, including consular authorities visiting detention centres.</p> <p>Costs relating to the implementation of removal measures are reimbursed by:</p> <ul style="list-style-type: none"> – the alien himself; – the person who provided accommodation for the alien or by whoever sponsored the alien in a sponsorship declaration when the alien was issued with a visa or residence permit; – the carrier who brought him into the country; – the person employing the alien illegally; – the facilitators. <p>Possibility of charging the removal and detention costs to the above-mentioned people.</p>
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<p>Escort</p> <p>Escorts are provided by officers of the law enforcement services specially trained for the task.</p>	<p>– Possibility of criminal sanctions if they do not pay.</p>
<p><u>Readmission</u></p> <p>Special procedure which consists of removing illegal aliens in State A to State B which is their State of origin and/or transit, and of requiring the latter to receive them.</p> <p>Readmission agreements generally provide for two categories of persons who may be readmitted: the country's own nationals, and nationals of third countries. There may also be provisions on transit.</p> <p>Readmission is a procedure intended to make the States and third States take responsibility for the failings of their border control systems.</p>	<p>Develop cross-border cooperation between all of the competent authorities concerned.</p> <p>Introduce effective readmission policies using all means available whether in legal instruments or otherwise (readmission agreements, arrangements, introduction of readmission clauses into other kinds of agreement, etc.).</p>

Readmission takes place at particular points determined in each agreement. It is indispensable that the authorities of the readmitting State should be physically capable of accepting returnees.	
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