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**NOTE**

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to    :            Working Party on Schengen Evaluation

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Subject:        Catalogue of recommendations for the correct application of the Schengen acquis  
                  and of best practices – removal and readmission

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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.

This exercise is the first phase in the definition of minimum standards by the technically competent Council working parties. It should help candidate States to put the Schengen acquis into effect on their territories and could, in a second phase, provide the technically competent working parties with a tool for improving and extending the substance of the acquis, with a view to defining minimum binding standards through legislative acts.

It is important to specify that the aim of drawing up this catalogue is not to introduce new requirements for Member States, associated countries and candidate countries, but rather to clarify and build on the existing acquis.

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, the Schengen acquis on the subject is very limited as the Member States are free to define the circumstances and implementation of such measures.

Harmonisation of legislation should take place in the context of the Directive on the mutual recognition of decisions on the expulsion of third-country nationals, the aim of which is to ensure more effective enforcement of these measures and better cooperation by Member States.

The method used to draw up the document was firstly to establish a snapshot of existing national practices and then to choose from this range those practices which seemed to be moving in the direction of greater effectiveness. The list thus drawn up is indicative and non-exhaustive.

**RECOMMENDATIONS**

**I. Removal measures**

These must comply with the rule of law and be based on law.

These must be adopted in compliance with the provisions laid down in:

- the European Convention on Human Rights of 4 November 1950,
- the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984,
- the Geneva Convention relating to the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967,
- the International Convention on the Rights of the Child of 20 November 1989.
- Objective: To achieve the return of the alien subject to the measure to his country of origin or to a country which will admit him.
- Two types of decision:

**BEST PRACTICES**

Effective removal from the territory.

To achieve this, combine the measure, if appropriate, with a ban on the alien returning to the territory for a sufficiently long period and incorporated into the SIS in order to be dissuasive.

Failure to comply with a ban on returning to the territory could incur sanctions.

<p>– Administrative based on:</p> <p>the failure to comply with rules on alien entry or residence,</p> <p>a threat to public order or national security.</p> <p>– Administrative or judicial sanction (an additional sanction in the case of the latter) in connection with criminal offences of a certain level of seriousness.</p> <p><b>Guarantees granted</b></p> <p>Possibility for the detained alien to appeal against the measures imposed on him.</p> <p><b><u>II. Persons concerned</u></b></p> <p><b>1. Illegal aliens</b></p> <p>If the alien does not comply with this decision, he must be removed.</p>	<p>Allow the alien to exercise the rights granted to him.</p> <p>In this case the decision requesting him 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, if appropriate, SIS wanted persons lists.</p>
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<p><b>2. Aliens whose presence constitutes a threat to public order or national security</b></p> <p><b>(1-2): Particular case of unaccompanied minors</b></p>	<p>To ensure the credibility of the system, deliberate resistance to removal may be subject to specific sanctions, which will obviously not affect the initial removal order, which must be enforced.</p>
<p><b>The following recommendations or best practices are only applicable where they are allowed by the national legislation of each country.</b></p>	
<p>- The removal of unaccompanied 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>- The removal of unaccompanied minors as soon as possible while preserving the interests of the child. As far as possible ensure that minors are accompanied and taken charge of upon arrival.</p>

**III. Implementation of removal measures**

**1. Identification**

- Identification, particularly by the fingerprinting of aliens subject to a removal measure.

- Inclusion in a data file of aliens who apply for a visa or residence permit. To be implemented for the future.  
(Conclusions of JHA Council on 21 September 2001).

- For the purposes of non-admission, complete the recording by indicating grounds.

**2. Detention**

Aliens who constitute a threat to public order or national security must be detained during the period preceding implementation of the removal order.

This is necessary when the person cannot be removed rapidly, in particular because he does not possess a travel document.

Detention may be used to prevent the alien avoiding a measure for his removal and to prepare for implementation of the measure.

Establishment of a national aliens file.

- Need for specific premises

Aliens subject to a removal order must in principle be held in special centres with a proper legal status distinguishing them very clearly from prison institutions, equipped with facilities which guarantee accommodation and hygiene conditions respecting human dignity. The facilities should also allow those detained there to exercise their rights (interpreters, visits, health care, etc.).

- Guarantees

Possibility for the detained alien to appeal against the measures imposed on him.

- Minors

They can be detained only in specific cases and in compliance with the International Convention on the Rights of the Child.

- Duration

The duration of the period of detention 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.

It would be appropriate to provide for alternatives to detention for minors.

This objective justifies an appropriate period of detention.

<p><b>3. Issue of consular laissez-passers</b></p> <p>Laissez-passers obtained from consular authorities within time limits compatible with the periods of detention.</p> <p>To this end, strengthen consular cooperation</p>	<p>Use all appropriate means, including consular authorities visiting detention centres.</p>
<p><b>4. Financing removals</b></p> <p>Examination of the possibility of the costs of removal being borne by:</p> <ul style="list-style-type: none"> <li>- the alien himself;</li> <li>- the facilitators.</li> </ul>	<p>Examination of the possibility of the costs of removal being borne by:</p> <ul style="list-style-type: none"> <li>- the alien himself;</li> <li>- 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;</li> <li>- the person employing the alien illegally;</li> <li>- the facilitators.</li> </ul> <p>Possibility of charging the removal and detention costs to the abovementioned people.</p> <ul style="list-style-type: none"> <li>- Possibility of sanctions if they do not pay.</li> </ul>
<p><b>5. Escort</b></p> <p>Where necessary, escorts are provided by officials specially trained for the task.</p>	<p>The introduction of special European charters could contribute to improving the removal</p>



	arrangements.
<p><b>- Readmission</b></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 makes the Member States and the third States responsible for controlling their borders efficiently.</p> <p>This special procedure 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 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 as soon as the decision of acceptance is taken.</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 (readmission agreements, introduction of readmission clauses into other kinds of agreement, etc.) or in practical terms.</p> <p>Response to the readmission request as soon as possible.</p>

