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GREEN PAPER

ON A COMMUNITY RETURN POLICY ON ILLEGAL RESIDENTS

(presented by the Commission)

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Annex

Foreword

The European Council on 14 and 15 December in Laeken asked the Council in its Conclusion No. 40 – inter alia - to develop an action plan on the basis of the Commission's Communication on a Common Policy on Illegal Immigration of 15 November 2001. Consequently the Council adopted, on 28 February 2002, a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union. This plan contains also a section on readmission and return policy, in which this policy area is identified as an integral and vital component in the fight against illegal immigration. The Council action plan asks for progress on the issues of transit and readmission, the identification of illegal residents, the issue of travel documents for return purposes and common standards for return procedures.

In the aforementioned Communication on illegal immigration the Commission already announced the release of this Green Paper referring to the need to create common standards and to initiate common measures on return.

The Green Paper builds upon the elements as defined in the Council's action plan and explores various issues related to the return of third-country nationals. In Part I it is emphasised that a Community return policy has to fit in and to complement the existing Community policies on immigration and asylum as described in the relevant Communications from the Commission, whose policy goals are explicitly acknowledged once again. The various dimensions of voluntary and forced returns in relation to migration, in the context of asylum and the relation to third-countries, are briefly sketched. The following parts are focussed on the future co-operation on return of illegal residents among Member States (Part II) and the development of the readmission policy together with third countries (Part III).

Due to the very complex and sensitive nature of return issues this paper only intends to open a discussion on the return of illegal residents and should not be seen as an effort to cover all dimensions connected with the return of third-country nationals.

The discussion on the return of illegal residents might start with a reflection on the following general issues before tackling some indicative questions and looking at the issues in more detail, as laid down in the following sections of the Green Paper:

- (1) The development of a common return policy as a contribution to a comprehensive immigration policy as advocated for by the Commission in its Communication of 22 November 2000.
- (2) The compatibility of a common return policy with the need for protection under international and European law in the evolving common European asylum system.
- (3) The implementation, with regard to return, of Conclusion No 40 of the European Council in Laeken, calling for the integration of the policy on migratory flows into the European Union's foreign policy.
- (4) The necessity of common standards for return procedures and the question of whether they should be legally binding.

- (5) The improvement of the co-operation of Member States' services and whether a future financial instrument could be conducive to that end.
- (6) The determination of the elements of a common readmission policy, which should encompass a balanced co-operation with the third countries concerned.

1. INTRODUCTION

Following the establishment in the Treaty of Amsterdam of Community competence in the areas of migration and asylum, the Heads of State and Government, at the European Council in Tampere in October 1999, called for the development of a common EU policy on these issues. Since then the Commission has put forward proposals for a Community asylum and immigration policy based on a two-step approach: the adoption of a common legal framework as outlined in the Treaty and the development of an open co-ordination method.

The objective of the Commission's proposals on immigration policy is to ensure more efficient management of migratory flows at all their stages. The comprehensive approach which has been put forward focuses on the adoption of common procedures for the legal admission of third-country nationals, involving closer dialogue with the countries of origin and supported by more co-ordinated integration policies at national level. The underlying assumption, which has been generally supported by the Member States in the debate on the Communication of November 2000¹ is a recognition that migratory pressures will continue and that, in the light of the current economic situation and of demographic forecasts, migration has a role to play in the economic and social development of the EU.

In the field of asylum, the aim is the establishment of a Common European Asylum System, based on a full and inclusive application of the 1951 Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement. Harmonisation is divided in two steps leading in the longer term to a common asylum procedure and a uniform status for those granted asylum.

The Commission has emphasised that these policies must be accompanied by additional measures to combat illegal migration and in particular smuggling and trafficking of human beings. The Commission has recently made comprehensive suggestions for the reinforcement of common actions in this area in its Communication on the Common Policy on Illegal Immigration². In this Communication, the Commission has underlined that the return and readmission of third-country nationals, who are illegally resident in the EU, must be an integral part of the common policy. Article 63 (3) b TEC lays down that the Council adopt measures on illegal immigration and illegal residence, including repatriation of illegal residents. In addition, the Treaty of Amsterdam has also integrated the – in this respect rather weak - Schengen acquis on return issues into the European Union, in particular Article 23 of the Convention implementing the Schengen Agreement^{3 4}.

¹ Cf. COM (2000) 755 final and COM (2000) 757 final of 22 November 2000.

² COM (2001) 672 final of 15 November 2001.

³ Cf. EU Schengen Catalogue, External borders control, Removal and readmission: Recommendations and best practices, Council of the European Union, 28 February 2002.

⁴ See also the proposal for a Council directive relating to the conditions in which third-country nationals shall have the freedom to travel in the territory of the Member States for periods not exceeding three months, introducing a specific travel authorisation and determining the conditions of entry and movement for periods not exceeding six months (COM (2001) 388 final) of 10 July 2001, which will communitarise Article 23 of the Schengen Convention.

As announced in the Communication on Illegal Immigration the Commission considers that the issue of return merits an in-depth reflection in order to develop a coherent Community approach which takes into account the complexities of this important subject. In preparation for this Green Paper various publications by international organisations, governmental bodies, non-governmental organisations and the academia have been taken into account⁵. The purpose of this Green Paper is to examine the complex return issues for people residing illegally in the EU and to put forward suggestions for a co-ordinated and efficient policy based on common principles and standards, and respectful of human rights and human dignity. The premise is that a return policy is needed in order to safeguard the integrity of the legal and humanitarian admission systems.

2. PART I – RETURN AS AN INTEGRAL PART OF A COMPREHENSIVE COMMUNITY IMMIGRATION AND ASYLUM POLICY

2.1. The Broader Context of Return

The return issue is a vast one, which covers a large number of situations. They can be broadly divided in two categories. The first one concerns persons **legally** residing in a country, who, after a certain time, express a wish to return to their country of origin. In several cases, these persons face difficulties in doing so, because they lack financial means or have lost everything in their country of origin or because it would affect their possibilities of returning to the Member State concerned either to take up residence again or for shorter periods to visit family and friends. People who have spent many years working legally in the EU might want to return to their country of origin on retirement but are prevented from doing so because this would affect their pension entitlements. Another situation might apply to entrepreneurs and highly-skilled workers who after some years of legal residence would like to be able to leave the host country for lengthy periods (temporary return). A specific situation in this category concerns recognised refugees who, when the situation in their country of origin has stabilised, would like to return, and, in particular for skilled people, take part in its reconstruction and development. This is now the case for Afghans residing in Europe. The EU is currently working on a programme to help them in this objective.

In general, concrete administrative solutions and supportive programmes could be developed to help migrants who wish to return. Ways to encourage these kinds of situations could be explored in the dialogue with countries of origin, in particular to improve the benefits they can obtain from the emigration of their citizens. As part of the open method of co-ordination for the Community immigration policy⁶, the

⁵ Cf. e.g. among many others: Recommendation No. R(99) 12 of the Committee of Ministers of the Council of Europe on the return of rejected asylum seekers; IOM, The return and reintegration of rejected asylum seekers and irregular migrants, Geneva, May 2001; UNHCR, Legal and practical aspects of the return of persons not in need of international protection, Geneva, May 2001; ICMPD, Study on comprehensive EU return policies and practices for displaced persons under temporary protection, other persons whose international protection has ended and rejected asylum seekers, Vienna, January 2002; IGC, Modular Structures on Return (not published); Nascimbene (ed.), Expulsion and detention of aliens in the European Union countries, Milan, 2001.

⁶ COM (2001) 387 final of 11 July 2001; see section 3.3..

Commission proposed European guidelines, which would encourage policies to support patterns of mobility between the EU and third countries:

- Reviewing legislation which restricts the possibility for legal migrants to move freely between their country of residence and their country of origin;
- Encouraging migrants to take an interest in development projects, business and training ventures in their countries of origin;
- Financial and other support, including the provision of venture capital, to assist returning migrants to re-settle in their countries of origin.

The second category of return concerns persons with no specific protection need and residing **illegally** in the EU. These persons do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories of the Member States of the European Union either because they entered illegally or overstayed their visa or residence permit, or because their asylum claim has been finally rejected. These persons have no legal status enabling them to stay in the territory of the Member States and can be either encouraged to leave the EU voluntarily, or forced to do so. It might well be the case that illegal migrants or rejected asylum seekers volunteer to return. This could be encouraged and supported by specific schemes.

This Green paper focuses on this second category i.e. the return of persons residing illegally in the EU, in its two aspects: forced or voluntary. The return of persons legally residing in the EU is not dealt with here. However, for many third-country nationals legally residing in the EU eventual return may be a desirable or relevant option. This is an important topic in its own right and deserves also to be discussed intensively, in particular with regard to the effects in relation to the countries of origin. It will be, therefore, subject to further reflection from the Commission at a later stage.

2.2. Immigration and Return

In its Communication on a Community Immigration Policy of 22 November 2000⁷, the Commission suggested that the EU could best achieve its objective of more efficient management of migration flows through a comprehensive approach. The Commission argued that, as part of a comprehensive immigration policy, the adoption of common procedures for labour migrants could to a certain extent also reduce pressure on channels for humanitarian admission and that illegal migrants would be further deterred by more effective joint action against smuggling and trafficking. The Commission noted that the practice of regularising illegal migrants who met certain criteria, notably that they were employed in a Member State, exists and that this could be seen as an acknowledgement of labour market needs and as a reflection on the difficulties of implementing return policies successfully.

In principle, third-country nationals without a legal status enabling them to stay, either on a permanent or a temporary basis, and for whom a Member State has no legal obligation to tolerate the residence have to leave the EU. This is essential to

⁷ COM (2000) 757 final.

ensure that admission policy is not undermined and to enforce the rule of law, which is a constituent element of an area of freedom, security and justice.

To all extents possible, priority should be given to voluntary return for obvious humane reasons. In addition, voluntary return requires less administrative efforts than forced return.

However, the forced return of illegal residents can have a signal effect both on illegal residents in the Member States and on potential illegal migrants outside the EU. Combined with further efforts to combat undeclared work in the EU, more transparent procedures, awareness raising campaigns against smuggling of human beings and better information about legal channels for admission, efficient return policies can encourage potential migrants to prefer to explore the possibilities of obtaining legal residence in the EU and discourage those who do not fulfil the necessary requirements for legal immigration. It can also help to ensure public acceptance for more openness towards new legal immigrants against the background of more open admission policies particularly for labour migrants.

2.3. Asylum and Return

Voluntary return is one of the three long- term solutions identified to the problem of refugees, together with integration and resettlement. At the same time, an efficient return policy for persons, whose applications for international protection are rejected, is needed in order to safeguard the integrity of a common asylum system and of the common asylum procedure as described in the Commission's Communication of 22 November 2000⁸. When a person seeking protection has benefited from a fair, qualitative and comprehensive procedure, when all protection needs have been examined and if there is no other ground for a legal stay in a Member State, the person must leave the territory and return to his/her country of origin or, where appropriate, of transit.

It is in the spirit of the common asylum procedure and the uniform status that persons seeking protection or having benefited from international protection in the EU must, in the long term, expect comparable treatment in all Member States, according to their respective situation, as far as returns are concerned. Improvement of the efficiency and quality of the asylum procedure and of the assessment of protection needs is a prerequisite. The effectiveness of the return policy must also be seen against the background of the fact that although an asylum claim has been rejected on the basis of the Geneva Convention, individuals might be still otherwise in need of international protection. Putting in place an appropriate subsidiary protection system is therefore crucial.

Again voluntary return must be given priority. However, forced returns may be necessary as a last resort. This may also apply to persons whose international protection needs (under refugee or subsidiary protection status or under a temporary protection scheme) have ceased to exist, after they have enjoyed such protection for a period of time in a Member State. These returns must also be in compliance with international protection and the human rights of returnees. This comprises the obligation to provide protection against refoulement under the Geneva Convention of

⁸ COM (2000) 755 final.

1951 on the status of refugees and the 1967 Protocol, in particular Art.32 and 33 thereof. Refugees shall not be expelled lawfully from the territory save on grounds of national security or public order. In addition, the ECHR, in particular Art.3 thereof, and the respective case law of the European Court of Human Rights must be mentioned in the context of the prohibition of torture and inhuman or degrading treatment or punishment as well as Art. 4 of the Charter of Fundamental Rights.

Art.18 and 19 of the Charter of Fundamental Rights of the EU are also relevant. According to Art. 18 the right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community. Art. 19 deals with the protection in the event of removal, expulsion or extradition and firstly states that collective expulsions are prohibited. Secondly, no one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Large return movements to countries of origin of people who have benefited from protection after a preceding mass influx situation due to, most of time, a situation of conflict, which usually go together with reconstruction and development challenges, may require, in some cases, certain specific solutions or a gradual approach in host Member States and in countries of origin and transit such as postponing the implementation of the removal decisions, allowing exploratory visits or stays, drawing up assistance “packages”, from basic ones (information, transport, small financial allowances) to more developed and tailored ones prepared some time in advance (training, incentives for non-skilled, skilled and high skilled persons etc...), and transit and transport agreements.

The open method of co-ordination for asylum as suggested by the Commission⁹ could also be utilised for return issues relating to rejected asylum seekers and persons who have been under protection regimes. Some of the areas of examination relating to voluntary and – where appropriate - forced returns might be relevant for return of illegal residents:

- by identifying measures to improve co-operation between receiving states, countries of origin, the UNHCR, IOM and NGOs with a view to facilitating voluntary and involuntary returns.
- by developing services providing information and helping to prepare people for return. This might include evaluating the merits of exploratory visits.
- by looking at ways of improving the number of expulsion decisions that are actually enforced, possibly by setting specific targets and assessing their practical impact.
- by preparing guides to good practice on the various issues raised by the return of individuals, including involuntary repatriation (escorts, means of transport, detention conditions prior to removal, etc.), which might serve as a basis for EU-wide guides.

⁹ COM (2001) 710 final of 28 November 2001, see section 5.2..

2.4. Human Rights and Return

A European return policy should be fully respectful of human rights and fundamental freedoms and as such be seen in the context of the European Union's human rights policies both within the European Union and in its external relations. Article 6 of the Treaty on European Union, reaffirms that the European Union “*is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States*”.

Both the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Charter of Fundamental Rights of the European Union proclaimed in Nice in December 2000¹⁰ contain provisions which are applicable to a policy on return of illegal residents (Art. 3, 5, 6, 8 and 13 of the ECHR and Art. 3, 4, 19, 24 and 47 of the Charter of Fundamental Rights). The articles specifically relevant to all forms of international protection have already been described in the section on “Asylum and Return”.

Furthermore, illegal residents must have adequate possibilities to lodge an appeal before a court during the return procedure. In this context, Art. 6 of the ECHR and Art. 47 of the Charter of Fundamental Rights, which ensure the right to an effective remedy and to a fair trial, are relevant. Human rights issues are at stake also in the context of detention of illegal residents: the principle of judicial control over detention must always be respected, in accordance with Art. 5 of the ECHR.

Family life is protected by Art. 8 of the ECHR and by Art. 7 of the Charter of Fundamental Rights; it should also be recalled that the rights of the child deserve special consideration, in accordance with Art. 24 of the Charter of Fundamental Rights and the Convention for the Right of the Child of 1989; in all actions related to children, the child’s best interest must be a primary consideration.

Finally, another issue that deserves careful consideration is the protection of personal data as enshrined in Art. 8 of the Charter of Fundamental Rights and the existing provisions on the protection of personal data.¹¹

2.5. Co-operation with Countries of Origin and Transit on Return and Readmission

A successful return policy regarding illegal residents depends on fruitful co-operation with the countries of origin or transit concerned. By its very nature, the mutual understanding and co-operation of all responsible authorities involved have to be developed. This co-operation is critical at various stages and levels of the return process. For example, assistance is needed at administrative level to obtain return travel documents for illegal residents who are not in possession of valid travel documents. In addition, when arriving in the country of return, the readmission process at the points of entry, often at airports, needs support. In fact, many countries co-operate on a very open and pragmatic basis and facilitate returns.

¹⁰ OJ C 364 of 18 December 2000, p. 1.

¹¹ Cf. the Directive 1995/46/EC, OJ L 281 of 23 November 1995, p. 31; the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data; and – when appropriate – the legally non-binding Recommendation No.R (87) 15 of the Committee of Ministers of the Council of Europe regulating the use of personal data in the police sector.

However, other countries are more reluctant to readmit returnees and often require more extensive administrative procedures to determine the nationality or the identity of the person concerned. In such cases it might be helpful to negotiate a readmission agreement at political level, which sets out the practical procedures and modes of transportation for return and readmission.

Nevertheless, the return of illegal residents has also significant implications for countries of origin and transit. The possibility of developing a return policy that would avoid negative effects on the situation in these countries should be carefully considered. Returning people on a large scale could have a considerable impact on the development of a country and on the willingness of the authorities to co-operate in controlling migration. Willingness to co-operate will be enhanced if the countries concerned have an interest in receiving illegal residents back. The EU should, therefore, consider, which forms of support are adequate also in order to ensure that returns are sustainable.

In particular, willingness to voluntary return will also be enhanced if returnees are given opportunities in their country of origin. Some voluntary return projects have seemingly been less successful because of a lack of preparation in the country to which people were returned. At the same time, it needs to be recognised that returnees must be given assurances that they will have basic means at their disposal to allow them to settle. In this respect, the establishment of a financial aid system to bridge the first period after return could be considered.

The European Council in Tampere of October 1999 put emphasis on the need for a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. Co-operation with third countries concerned was considered to be the key element for the success of the external migration policy and this includes the return aspect as well. Furthermore the European Council in Laeken of December 2001 stressed that the policy on migratory flows, in particular on readmission, must be integrated in the EU foreign policy. Return and readmission is, therefore, one dimension among others of a comprehensive EU migration policy towards third countries and a balance between admission and readmission needs to be found.

3. PART II- APPROXIMATION AND IMPROVED CO-OPERATION ON RETURN AMONG MEMBER STATES

3.1. Common Standards

Forced return is a very significant encroachment on the freedom and the wishes of the individual concerned. Common standards relating to expulsion, detention and removal could be set. These standards could establish an adequate and similar treatment of illegal residents, who are the subject of measures terminating a residence, regardless of the Member State, which enforces the removal. In addition, common standards could also aim to facilitate the work of the services involved and may result in more efficient procedures by applying best practices found in the Member States.

The Commission could propose and promote the establishment of common standards relating to all phases of return. Basic requirements for the ending of legal residence

could be set, in particular with regard to expulsion decisions. Moreover minimum standards for detention as well as for removal could be determined. To this end the Commission envisages to build upon the outcome of the discussion of this Green Paper to prepare a proposal for a Council Directive on Minimum Standards for Return Procedures, as has already been indicated in the Communication on illegal immigration¹².

3.1.1. *Definitions*

The terminology in the field of return differs substantially due to differences in the legal systems in the Member States. Often the synonymous uses for different terms create confusion. For clarification purposes common definitions are necessary in order to avoid any misunderstandings which might occur. A first set of proposed definitions is attached in Annex I.

Is this first set of common definitions suitable and which further definitions could be added?

3.1.2. *Ending of legal residence*

Enforcement measures are not only applicable for persons who have entered illegally and have no right to remain. A number of persons receive expulsion orders if they have become a danger to public security or public order e.g. due to conviction for serious crimes. Overstayers also, whose residence permits have expired, are the subject of return measures as well as legal residents whose residence permits have been revoked. All these persons have principally a legal obligation to leave the country immediately or, if a time limit for departure has been set, before the expiry of the time limit.

The legal obligation to leave might not be deemed to have been met by persons entering into another Member State, when the entry and residence is not permitted there. Member States should ensure that measures terminating illegal residence are applicable throughout the whole EU.

3.1.2.1. Preconditions for Expulsion Decisions

Legal residence can be terminated by an expulsion decision based on specified statutory preconditions. Initial standards for expulsion decisions have been set in Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals, which was adopted in May 2001¹³. Under this Directive a third-country national is the subject of an expulsion decision in cases of a serious and actual threat to public order or to national security in two groups of cases:

First an expulsion decision may be based upon the conviction of a third-country national for an offence punishable by a penalty involving deprivation of liberty of at least one year. Moreover, the existence of serious grounds for believing that a third-country national has committed serious criminal offences or the existence of solid evidence of his or her intention to commit such offences within the territory of a Member State are sufficient. Secondly a third-country national can be the subject of

¹² COM (2001) 672 final., cf. section 4.8..

¹³ Cf. OJ L 149 of 2 June 2001, p. 34.

an expulsion decision, when he or she fails to comply with rules on the entry or residence of aliens.

However, on the basis of these general definitions more detailed, specific statutory grounds for an expulsion decision could be developed. In doing so a distinction could e.g. be drawn between mandatory reasons for expulsion decisions on the grounds of extraordinary danger and other legitimate reasons, which would normally lead to an expulsion decision.

It could, therefore, be examined whether mandatory expulsion decisions could be foreseen in the following cases:

- 1) if a third-country national has been sentenced by a court to deprivation of liberty for one or more intentional criminal acts for a period to be commonly defined.
- 2) if the third-country national has been sentenced to deprivation of liberty for specified intentional criminal acts (such as production, transport and sale of drugs, the smuggling or trafficking of human beings, terrorism and other offences against national security).

Moreover, it could be assessed whether other compelling reasons, such as the threat to national or public security, can be identified.

Nonetheless expulsion decisions cannot be taken regardless of the character of the residence status. Certain groups require special protection against expulsion. Privileged third-country nationals such as long-term residents¹⁴, family members of a Union citizen or a national of the Member State concerned respectively and refugees as well as persons under other forms of international protection may only be removed for grave reasons of public security and public order. Special protection might also be envisaged for third-country nationals, who are born in a Member State and have never lived in their country of nationality. The existence of these grave reasons has to be thoroughly assessed and adequately motivated in the expulsion decision.

Finally it should be emphasised that in all cases the individual situation has to be taken into account. The human rights of the person concerned and the proportionality of the measure must be adequately considered, especially in cases of extreme hardship with regard to mandatory reasons for expulsion or unreasonable hardship in cases of other reasons for expulsion.

Should more detailed preconditions for expulsion decisions be set and which elements should they comprise?

In addition to the groups mentioned above, which other groups require special protection against expulsion and what should it look like?

3.1.2.2. Preconditions for Further Ending of Legal Residence

In cases where the residence permit has expired the person should be legally obliged to leave the country, if he or she has not obtained a renewal or another kind of a

¹⁴ Cf. Art. 13 of COM (2001) 127 final.

residence title. It could be considered that an appeal against a subsequent removal order would have a suspensive effect.

The obligation to leave the country could also apply in cases, where persons overstay their period of visa exemption. Legal residence could therefore end if someone enters a country legally where a visa is not required but fails to apply for a first residence permit within the statutory time limits.

The reasons for revocation of a residence permit could be restricted by law to a limited number of significant situations such as the absence of a valid passport or passport replacement, change or loss of nationality and other reasons of indispensable administrative orderliness. In any case responsible authorities should be obliged to consider and adequately motivate whether it is proportionate to revoke the residence permit due to the changes and if the person should be accountable or not.

Which further preconditions for the ending of legal residence should be set?

Which reasons should justify the revocation of a residence permit?

3.1.3. *Detention Pending Removal*

In order to safeguard enforcement measures, namely removals, it is often the practice to make use of coercive measures. It should be noted that all coercive measures are a significant encroachment on the personal liberty of those concerned. This is true, in particular, in the case of detention pending removal, which takes place to facilitate the identification of the illegal resident concerned in order to obtain return travel documents or to hinder the illegal resident from absconding before removal.

Minimum standards for detention orders could be set at the EU level defining the competence of responsible authorities and the preconditions for detention. They could cover the identification of the groups of persons who should generally not or only under specific conditions be detained. In any case, the detention order should be issued or confirmed without delay within statutory limits by a judicial authority.

Moreover minimum rules on the conditions of detention, in particular on accommodation standards, could be envisaged in order to ensure a humane treatment in all detention facilities in the Member States. In any case, it should be ensured, if specific detention facilities are not available or capacities are exhausted, that returnees, who are detained in ordinary prisons, might be separated from convicts in order to avoid any criminalisation.

The possible time limits for detention pending removal differ widely among Member States between statutory limits of a few days, extendable limits of several months up to no explicit statutory limits at all. Consequently, the possibility to give indications on the regular and maximum duration of detention for return purposes could be further explored. Finally, technical or legal alternatives for detention, which would be equally efficient, should also be thoroughly assessed.

Should binding standards on detention be established and which alternatives to detention should be considered?

Which binding standards in terms of legal preconditions and enforcement relating to detention pending removal should be set at Community level?

Which groups should not or only under exceptional circumstances be detained?

Which accommodation standards should apply to detained returnees?

Which time limits should be set to limit the maximum duration of detention?

3.1.4. *Removal*

Removal as the act of enforcing the return of the person concerned could also be subject of harmonisation efforts at EU level. Minimum standards could be created in four areas.

First a final safeguard for non-refoulement requirements according to obligations under international law could be considered in this framework as long as it is not covered by other Community legislation on international protection.

Secondly basic requirements for the physical state and mental capacity of the persons concerned could be set in order to react properly to an illness claimed by the returnee immediately before departure or the psychological health of the returnee. In addition the treatment of vulnerable groups such as minors could be tackled as well as the sensitive question, as to whether it could be possible to separate families during removal procedures.

Thirdly enforcement standards could be envisaged, viz., security standards for the removal itself, on the use of restraints and on the competencies of escorts.

Finally a mechanism could be considered, how the Member States could streamline their present return practise in relation to specific countries of origin, where the actual situation makes removals questionable due to compelling humanitarian reasons (a contemporary example is Angola). Member States might try to find a common assessment of the feasibility for removals and might establish a list of countries, to which persons should temporarily not be removed. To that end opinions of organisations such as UNHCR or UN Administrations (e.g. UNMIK in Kosovo) or other relevant actors could be adequately taken into account.

Is there a necessity to incorporate a final safeguard for non-refoulement requirements in a future Directive on Minimum Standards for Return Procedures?

Which standards should be considered relating to the physical state and mental capacity of the returnees?

Which standards should be defined as far as the use of restraints or the competencies of escorts are concerned?

Should a common assessment take place regarding the removal to specific countries, where the actual situation makes removals questionable?

3.1.5. *Mutual Recognition of Return Decisions*

The Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals¹⁵ must be seen as a very first step towards making it possible for an expulsion decision issued by one Member State to be enforced in another Member State without the latter's having to issue a new expulsion decision.

However, the Directive does not imply a binding framework for the mutual recognition of these decisions. Nevertheless, this is a logical step in order to provide for the efficient return of illegal residents, who have absconded after expulsion decisions issued by one Member State and have been apprehended in another Member State. The same legal consequence could be applied in cases of illegal residents, who have to transit through other Member States during removal. It could be appropriate to set up common legal standards in conjunction with the establishment of a legally binding framework for mutual recognition of all measures terminating a residence, in particular expulsion decisions.

A binding framework for the mutual recognition of return related administrative or judicial acts could be integrated in a future proposal on return procedures by taking also the necessary progress of harmonisation in the field of asylum duly into account. This could include appropriate criteria and practical arrangements relating to the financial imbalances which may result from such decisions.

Should a binding and comprehensive system of the mutual recognition of return decisions be established, which goes beyond the Directive 2001/40/EC?

Which approach would ensure a fair solution for possible financial imbalances which may result from the mutual recognition of return decisions?

3.1.6. *Proof of Exit and Re-entry*

A satisfactory proof of exit seems important, in particular in cases of voluntary return to ensure sustainable return and to allow giving preferential treatment to voluntary returnees, namely to avoid that in these cases persons are being banned from a later legal re-entry due to a lack of proof of their previous voluntary exit. Different possibilities for this proof could be considered. A certificate of crossing the border only provides information that the person concerned has crossed a border of a Member State, but not that he or she has reached the country of supposed destination. However, such a certificate can be delivered only at external border posts, since the abolition of internal border controls. Another option is to develop incentives for returnees to report back personally at a consular post of a Member State in the country of origin. If applicable, the proof of exit could also be issued by a reliable organisation, which has been involved in the return process. The co-operation of the returnee in this verification process could be promoted in different ways. First payments from a voluntary return programme, which are designated for initial expenditure after arrival or as a start-up could be paid in the destination country only, either by an authority conducting the voluntary return or a consular post of the Member State concerned.

¹⁵ Cf. OJ L 149 of 2 June 2001, p. 34.

The legal consequences of the return on an application for a subsequent re-entry could also be subject of further consideration. It might be desirable to establish a coherent approach to the grounds for future refusal of entry. To that end it would be necessary to define under which circumstances a new application for a visa or a residence permit is excluded. In this context better harmonised prerequisites of notification in the refusal of entry list of the SIS according to Art. 96 of the Convention implementing the Schengen agreement or respectively in a future European Visa Identification System could be discussed.

Applying the principle of the priority of voluntary return, it could be considered, whether a distinction could be introduced, in which persons who returned voluntarily are privileged over those who have had to be removed. A refusal of a future visa application in order to re-enter into the EU some time in the future might not be based only upon the fact, that he or she has previously stayed in a Member State illegally, if the person has returned voluntarily. The voluntary return could thereby destigmatize the previous illegal residence. In addition, this legal consequence would be an incentive to fulfil obligations to report back at the responsible authority in the country of origin. On the other hand restrictions could be imposed on persons, who have been expelled or removed. Certain time limits for different categories, such as third-country nationals, which have been convicted of serious crimes, or removed persons, could be introduced.

Should a mechanism be incorporated in a future proposal on return procedures, as to how the exit of the returnee can be proved and rules on the legal consequences of applications for re-entry to the EU?

Should the prerequisites for the notification in the refusal-of-entry-list of the Schengen Information System be defined? Which categories should be covered?

3.2. Readmission Rules Among Member States

Apart from the framework of the Dublin Convention and the mechanism for the determination of the responsibility for asylum claims, and Art. 11 of the Council Directive 2001/55/EC on temporary protection¹⁶, readmission among Member States takes place solely on the basis of bilateral readmission agreements or informal co-operation.¹⁷ In 1999 Finland presented an initiative with a view to the adoption of a Council Regulation determining obligations as between the Member States for the readmission of third-country nationals.¹⁸ However, this Community approach has not led yet to concrete results.

The possibilities of progress on the basis of the Finnish initiative or taking forward a revised proposal could be evaluated in order to establish a clear legal framework for readmission in the Member States, which appears to be necessary and useful. The scope of such a readmission system would be broader than the one for determination of the responsibility for asylum claims according to the Dublin Convention or its

¹⁶ Art. 11: "A Member State shall take back a person enjoying temporary protection on its territory, if the said person remains on, or, seeks to enter without authorisation onto, the territory of another Member State during the period covered by the Council Decision referred to in Article 5. Member States may, on the basis of a bilateral agreement, decide that this Article should not apply."

¹⁷ But cf. also COM (2001) 127 final., Art. 26 of the proposal on long-term residents.

¹⁸ OJ C 353 of 7 December 1999, p.6.

successor Council Regulation.¹⁹ It would comprise provisions on the readmission to another Member State concerning all illegally resident third-country nationals.

Should a legal framework for readmission among Member States concerning all illegal residents be put in place?

3.3. Transit Rules Among Member States

A common framework could be set for questions relating to transit during the return process. Often it is necessary to use airports of other Member States due to a lack of connections to the country of return. In such cases it seems important to establish a clear legal framework for the transit procedure, e. g. the use and competencies of escorts in transit and regulations on failure of return.

In addition it is necessary to find pragmatic solutions for returnees crossing internal borders of Member States, in particular in cases of voluntary return. This problem is particularly relevant when the returnee is a national of a country, which is under visa obligation, and would, therefore, need a visa to transit through the territory of other Member States. In such a case, the use of a secure standard travel document issued by the Member State returning the person – which would be recognised by all Member States and made equivalent to a visa – could be envisaged to make return as “unbureaucratic” as possible. An exemption from visa requirements might also be envisaged, bearing in mind that such an exemption would imply a change of the existing Community legislation.

Which proposals on transit issues during return procedures should be put forward taking current discussions in the Council duly in account?

3.4. Operational Co-operation

Member States often face numerous hurdles when implementing returns, in particular forced ones: unknown residence or identity of the person, missing travel documents or difficulties in co-operation with some states in issuing identity or travel documents; resistant behaviour of the returnee; absence of adequate means of transportation.

The improvement of co-operation between the Member States could contribute to solve these practical problems. Such co-operation could be facilitated by setting up the Technical Support Facility, which has been proposed in the recent Communication on the Common Policy on Illegal Immigration²⁰ as well as by a proper use of the financial support offered by the proposed action programme ARGO.²¹

How could the operational co-operation at technical level be improved?

¹⁹ Cf. COM (2001) 447 final.

²⁰ COM (2001) 672 final.

²¹ Cf. COM (2001) 567 final.

3.4.1. *Improved knowledge of the phenomenon*

Some figures on return are gathered at EU level. According to the available figures 367.552 persons have been removed in total in the year 2000²², for 1999²³ the number of removed aliens amounts to 324.206 persons. In the framework of assisted voluntary return programmes conducted by IOM 87628 persons emigrated in the year 2000 out of the EU voluntarily, for 1999 the number is 78273 persons.²⁴

Nevertheless, complete²⁵ and more detailed information on voluntary return and removals could be shared among Member States based on common definitions, which allow for a clear comparability. The Commission will bring forward an Action Plan²⁶ to implement the decision of the Council of May 2001 to introduce a public annual report on asylum and migration. This would include a section analysing data on return. A virtual European Migration Observatory, which is now being developed, might also contribute to an improved knowledge on return.

How could the basis for information on return be further improved?

3.4.2. *Identification and Documentation*

The main obstacle for return in due course is unclear identity and the lack of proper travel documents. Countries of origin often delay or deny the issuing of travel documents because of missing information on nationality or identity. EU Member States have, therefore, introduced a standard travel document for return purposes.²⁷ Nevertheless countries of return do not at all, only exceptionally, or only on a case-by-case basis, accept this EU laissez-passer and mostly insist on making use of their own return documents.

A key issue to solve return related-problems is, therefore, the carrying out of suitable identification measures during administrative procedures, when the person concerned has an interest in providing correct data. As far as this is not already done Member States could introduce appropriate identification measures during visa application procedures. In its Communication on illegal immigration, the Commission has expressed support for the establishment of an on-line European Visa Identification System whose data could also be made available for return purposes. This approach was endorsed in the Council's action plan on illegal immigration of 28 February 2002. Such a system must also address the question of the necessary balance between justified identification needs and the privacy of bona-fide migrants and travellers.

How could the identification of undocumented illegal residents and the issuance of return travel documents be improved?

²² Source: Eurostat - no data available from IRL, NL and UK, missing data from B, DK and LUX.

²³ Source: Eurostat - no data from DK, IRL, NL and UK, missing data from FIN.

²⁴ Source: IOM. Most assisted voluntary returns have taken place from Germany (year 2000: 68648; year 1999: 58469).

²⁵ Figures on removed aliens for 2001 cannot be presented yet due to missing delivery of data by some Member States.

²⁶ Cf. also SEC (2001) 602 of 9 April 2001.

²⁷ OJ C 274 of 19 September 1996, p. 18.

Which elements should be included in the future European Visa Identification System to ensure identification of an undocumented illegal resident?

3.4.3. *Role of Immigration Liaison Officers*

Immigration liaison officers, who are posted in countries of origin or transit, could also be available for return related tasks. Existing contacts with the local authorities might ensure a smoother handling of the admission to the country concerned, as well as assistance to incoming returnees and, where needed, escorts. The network of immigration liaison officers could be further developed to that end.

Could the Member States offer and provide mutual assistance in facilitating returns?

3.4.4. *Best Practices, Training and Information Exchange*

The situation of all staff, which is responsible for carrying out the very difficult and demanding task of return enforcement, could be improved. In that context it should be stressed that special training could be provided, which enables the staff to conduct removals in an appropriate manner.

To that end experience could be shared among Member States' experts and staff involved in both, voluntary return programmes and removal procedures. It could be considered not only to hold seminars, but also to have joint training of staff.

Furthermore the information exchange on concrete return operations could be built up in order to share resources. A Technical Support Facility could also be helpful to co-ordinate this specific information exchange.

How could the exchange of best practices be improved?

Should the idea of joint training be developed in the area of return?

How could the information exchange on concrete return operation be built up?

3.5. **Return Programmes**

3.5.1. *Lessons Learned from the Implementation of Return Programmes*

The Commission has experience in the management of projects to encourage the voluntary return of refugees, rejected asylum seekers and other migrants to their countries of origin. Since 1997 many projects have been financed both in the framework of the Joint Actions²⁸ and the European Refugee Fund²⁹. The orientation of these projects has been to finance projects run by government, both at national and regional level, as well as by international and non-governmental organisations. Thus the emphasis has been on influencing the individual and his or her family to take the decision to return, running the project essentially in the Member State itself. Experience showed that it was often very important for the project to have a follow up component in the country of origin otherwise the returnee had a tendency to

²⁸ Cf. OJ L 114 of 1 May 1999, p. 2; OJ L 138 of 9 May 1998, p. 6; OJ L 205 of 31 July 1997, p. 3.

²⁹ Following "ERF", cf. Council Decision of 28th September 2000 establishing a European Refugee Fund, OJ L 252, of 6 October 2000, p. 12 – 18.

attempt to go back to the host country in the face of physical hardship, lack of employment or other difficulties.

As far as the Joint Actions were concerned the projects concentrated on: vocational training, preparation for return through subsidised exploratory visits and general counselling concerning the situation in the country of origin, employment, assistance in creation of small enterprises in the country of origin, post-return assistance and follow-up. The difficulties encountered in running the projects were indeed very numerous but not insurmountable in many cases: political obstacles linked to the situation in the country of return, barriers relating to the reluctance to return to a country with little perspective, issue of travel documents to potential returnees who then had the right to go back to the host country if they so wished, and not infrequently an element of abuse by the target returnees. It was also found that unless return projects were carefully dovetailed with re-construction (for example in Bosnia) there was little point in trying to return people to villages with no housing or employment prospects.

In spite of these difficulties, the Commission can also point to return projects, which have had more success. There are some examples of training programmes to foster entrepreneurial skills, especially for Bosnians living in Germany, that exceeded their targets. Generally speaking, projects run by organisations with long experience and highly developed methodology had greater success.

However, the following elements, which formed part of the more successful projects leading to sustainable return, might be highlighted:

- sufficient knowledge on the part of the implementing organisation of the country of origin;
- implementing organisation's links to the country of origin, whether an office, contact person or use of another organisation's infrastructure in the country of origin and collaboration with local civil society organisations;
- selection of potential returnees according to their needs and what was offered by the project (professionally run small enterprise projects (e.g. that assessed marketability of enterprises, skills of would-be entrepreneurs, etc.);
- comprehensive projects tended to be more successful: i.e. those that included counselling, vocational training, pre and post-return assistance and follow-up;
- follow-up and (at least) counselling post-return often had a measurable impact on the sustainability of return;
- projects that helped the return community to a certain degree were more likely to succeed. Where local communities benefited from the return, local hostility to returnees was diminished or altogether avoided;
- given the fact that the projects were based in the EU Member States, those projects that managed to avail of what was on offer via other country of origin based projects and programmes (construction, infrastructure, creation of schools, creation of employment, etc.) improved their success rates.

Can you give a general assessment of existing return programmes?

Do the aforementioned elements ensure a better implementation of return programmes and which other elements should be mentioned as well?

3.5.2. *Consideration of a European Return Programme*

As Member States have also earmarked considerable budgets in view of implementing voluntary return programmes and forced return operations, all above-mentioned elements, and others, should be taken into consideration in a joint evaluation exercise to be conducted in the framework of the open co-ordination method. The conclusions of such an assessment should be taken into consideration at the time of the renewal of the European Refugee Fund, which will expire, in its present form, in 2004.

Following further evaluation of the experience with the European Refugee Fund the creation of an independent European Return Programme could be considered for the long-term insofar as an added value of a EC funded programme can be clearly identified. It might be considered necessary to support the efforts of Member States to return illegal residents appropriately based on the assumption that every sustainable return of an illegal resident is in the common interest of all Member States in order to avoid secondary movements. The scope of an autonomous European Return Programme could cover voluntary return, forced return and support for return of irregular migrants in transit countries.

Repatriation and reintegration could be the main policy goal in the framework of the voluntary return element in a return programme. Moreover it is conceivable to provide support for settlement in a third country which is willing to admit migrants. Financial assistance could be granted for individual travel costs, transport of personal possessions, the first expenses after return and a limited start-up support.

The financial support of enforcement measures could be an additional element of a European Return Programme and could also contribute emphasising the need for solidarity among Member States on the return with regard for instance to travel costs for returnees and escorts.

Furthermore third countries could be assisted in returning irregular migrants insofar as they do not fulfil the entry conditions of the country concerned and the persons are in transit with a view to entering the EU illegally.

Is the creation of an independent European Return Programme advisable?

Should such a programme cover voluntary return, forced returns and the assistance to third countries in their efforts to return persons to countries of origin?

4. **PART III - TOWARDS A COMMON READMISSION POLICY**

The European Council referred in No. 26 of its Tampere conclusions of October 1999 to the international obligation on states to readmit their own nationals. It also confirmed, in conclusion No. 27, that the Amsterdam Treaty conferred powers on the Community in the field of readmission. The Council was, therefore, invited to

conclude readmission agreements or to include readmission standard clauses in other agreements between the European Community and relevant third countries or groups of countries. This conclusion was based on the recognition that, generally, such agreements constitute a valuable instrument in an active return policy as they set out clear obligations and procedures in order to facilitate and speed-up returns. Moreover, they provide a reliable institutional framework for co-operation and help to undermine the credibility and financial interests of the smuggling networks involved.

These principles were reaffirmed and enhanced by conclusion No. 40 of the Laeken European Council of December 2001. Herein it was called for the integration of the policy on migratory flows into the European Union's foreign policy, in particular, that European readmission agreements must be concluded with the countries concerned on the basis of a new list of priorities and a clear action plan.

The assessment of future target countries could ensue from the following criteria:

- (1) the immigration pressure on the EU, and / or
- (2) regional coherence, and / or
- (3) the geographical proximity to the EU.

Should additional criteria for this assessment taken into consideration?

4.1. Readmission Agreements and Readmission Clauses in Association or Co-operation Treaties

4.1.1. Community Readmission Agreements

As far as Community readmission agreements are concerned, the Commission has so far been authorised to negotiate Community readmission agreements with Russia, Morocco, Pakistan, Sri Lanka and the Chinese Special Administrative Regions of Hong Kong and Macao in accordance with Art. 300 TEC. On 22 November 2001, the Commission initialled the Community readmission agreement with Hong Kong which is now likely to become the first ever readmission agreement to be concluded by the European Community.

The Commission will push forward the current negotiations in order to complete them in due time and – to the extent possible - in line with the negotiating directives. But from the very diverging course of negotiations with this first set of six countries, it is already possible to draw one important conclusion. As readmission agreements are solely in the interest of the Community, their successful conclusion depends very much of the "leverage" at the Commission's disposal. In that context it is important to note that, in the field of JHA, there is little that can be offered in return. In particular visa facilitation or the lifting of visa requirement can be a realistic option in exceptional cases only (e.g. Hong Kong, Macao); in most cases it is not. The Commission would, therefore, invite the Council to discuss this complex aspect in more depth, in particular by reflecting about the possibility of increasing complementarity with other Community policies in order to help achieving the Community's objectives in the field of return and readmission.

How could the complementarity and coherence between the various Community policies be further enhanced?

4.1.2. *Readmission Standard Clauses*

Parallel to these activities, the Commission will also continue to insert readmission standard clauses in all future association or co-operation agreements. The present clauses were adopted by the Council on 3 December 1999³⁰, revising the 1996 clauses³¹ in order to adapt them to the new legal situation arising from the entry into force of the Amsterdam Treaty. These clauses do not constitute readmission agreements in the strict sense as they are "enabling clauses" only, i.e. they are only intended to commit the contracting parties to readmit own nationals, third-country nationals and stateless persons. But the actual operational arrangements and procedural modalities are left to implementing agreements to be concluded bilaterally by the Community or individual Member States. When adopting the present clauses in December 1999, the Council made it clear that they would have to be inserted in all future agreements to be concluded by the Community whereas the "old" 1996 clauses were to be inserted on a case-by-case basis only which, in negotiations, often left the EU side open to accusations of discrimination. Although partly deviating from the standard text, since 1996, readmission clauses have been included, inter alia, in the agreements with Algeria³², Armenia³³, Azerbaijan³⁴, Croatia³⁵, Egypt³⁶, Georgia³⁷, Lebanon³⁸, Macedonia³⁹, Uzbekistan⁴⁰ and the Cotonou Agreement between the EU and the ACP-Countries⁴¹. They are currently subject of negotiations with a number of other countries.

4.2. **Transit and Admission Arrangements and Agreements With Other Third Countries**

Other avenues of collaboration with third countries on return-related matters could also be helpful in finding solutions when a direct return to the country of origin is not possible or appropriate. In cases of missing or lacking travel connections to the country concerned it could be assessed whether third countries are willing to help relating to the transit of persons to the country of origin. Where suitable, transit arrangements could be concluded.

Moreover, the feasibility of approaching third countries to find alternatives to repatriation could be assessed. Consideration could be given as to whether other third countries are willing to admit persons for a limited time or as a sustainable solution, if this is acceptable for the Member State and adequate for the returnee concerned.

Which alternative concepts for repatriation could be assessed in dialogue with other third countries?

³⁰ Cf. Council Doc. 13409/99.

³¹ Cf. Council Doc. 4272/96.

³² Initialled on 19 December 2001.

³³ OJ L 239 of 9 September 1999, p. 22.

³⁴ OJ L 246 of 17 September 1999, p. 23.

³⁵ COM (2001) 371 final of 9 July 2001, p. 46.

³⁶ OJ C 304E of 30 October 2001, p. 16.

³⁷ OJ L 205 of 4 August 1999, p. 22.

³⁸ Initialled on 10 January 2002.

³⁹ OJ C 213E of 31 July 2001, p. 44.

⁴⁰ OJ L 229 of 31 August 1999, p. 22.

⁴¹ OJ L 317 of 15 December 2000, p. 10/11.

5. CONCLUSION

The Commission has tried to shape a sketch for a Community return policy, which is a necessity in the process developing a comprehensive European asylum and immigration policy. The primary aim of the Green Paper is to call for reactions from interested parties and to launch a broad discussion among all relevant stakeholders. The European Parliament, the Council, the Economic and Social Committee, the Committee of the Regions, the candidate countries, third country partners, international governmental organisations, non-governmental organisations, the academia and other interested civil society organisations and individuals are invited to contribute to this discussion.

In order to integrate the results of the discussion launched by this Green Paper and to prepare a hearing on the Community Return Policy in summer 2002, the Commission invites all interested parties to comment in writing no later than 31 July 2002 to:

The Director General

Directorate General Justice and Home Affairs

European Commission

Rue de Luxembourg 46

B-1049 Brussels

jai-immigration-asile@cec.eu.int

ANNEX I – Proposed Definitions

Term	Definition
Return	Genus of the policy area. Return comprises comprehensively the preparation or implementation aiming at the way back to the country of origin or transit, irrespective of the question, whether the return takes place voluntarily or forced.
Illegal resident	Any person who does not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories of the Member States of the European Union
Voluntary return	The return to the country of origin or transit based on the decision of the returnee and without use of coercive measures.
Forced return	The return to the country of origin or transit with the threat with and/or the use of coercive measures.
Compliant forced return	Forced return with the threat and minor use of coercive measures such as escorts.
Non-compliant forced return	Forced return with the major use of coercive measures, such as restraints.
Readmission	Decision by a receiving state on the re-entry of an individual.
Readmission agreement	Agreement setting out the practical procedures and modes of transportation for the return and readmission by the contracting parties of persons illegally residing on the territory of one of the contracting parties.
Repatriation	Return to the country of origin, in both voluntary or forced return situations.
Expulsion	Administrative or judicial act, which terminates the legality of a previous lawful residence e.g. in case of criminal offences
Expulsion order	Administrative or judicial decision to lay the legal basis for the expulsion
Detention	Act of enforcement, deprivation of personal liberty for law enforcement purposes within a closed facility
Detention order	Administrative or judicial decision to lay the legal basis for the detention
Removal ⁴²	Act of enforcement, which means the physical transportation out of the country
Removal order	Administrative or judicial decision to lay the legal basis for the removal.
Re-entry	New admission to the territory of a state after prior departure.
Rejection	Refusal of (legal) entry at a border post
Transit	Sojourn in or passage through a third country while travelling from a country of departure to the country of destination.

⁴² The word “deportation” is also used in this context.