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REPORT

on the communication from the Commission to the European Parliament and the Council in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents (COM(2003) 323 - 2003/2156(INI))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Hubert Pirker

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PROCEDURAL PAGE

By letter of 3 June 2003 the Commission forwarded to Parliament the communication from the Commission to the European Parliament and the Council in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents (COM(2003) 323), which was forwarded for information to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Committee on Development and Cooperation.

At the sitting of 4 September 2003 the President of Parliament announced that the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had been authorised to draw up an own-initiative report, pursuant to Rules 47(2) and 163 of the Rules of Procedure, on this subject and that the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and the Committee on Development and Cooperation had been asked for their opinions.

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Hubert Pirker rapporteur at its meeting of 10 July 2003.

The committee considered the draft report at its meetings of 30 September, 4 November and 25 November 2003.

At the last meeting it adopted the draft resolution by 42 votes to 0, with 3 abstentions.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Robert J.E. Evans (vice-chairman), Hubert Pirker (rapporteur), Roberta Angelilli, Regina Bastos (for Charlotte Cederschiöld pursuant to Rule 153(2)), Maria Berger (for Gerhard Schmid), Christian Ulrik von Boetticher, Alima Boumediene-Thiery, Mogens N.J. Camre (for Niall Andrews), Marco Cappato (for Mario Borghezio), Michael Cashman, Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Adeline Hazan, Marie-Thérèse Hermange (for Mary Elizabeth Banotti), Sylvia-Yvonne Kaufmann (for Ilka Schröder), Margot Keßler, Timothy Kirkhope, Eva Klamt, Jean Lambert (for Pierre Jonckheer), Baroness Ludford, Lucio Manisco (for Ole Krarup), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Elena Ornella Paciotti, Paolo Pastorelli (for Marcello Dell'Utri), Bernd Posselt, José Ribeiro e Castro, Martine Roure, Heide Rühle, Ingo Schmitt (for Giacomo Santini), Ole Sørensen (for Johanna L.A. Boogerd-Quaak), Patsy Sørensen, Sérgio Sousa Pinto, The Earl of Stockton (for Giuseppe Brienza), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco, Ian Twinn and Olga Zrihen Zaari (for Martin Schulz).

The Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy decided on 7 October 2003 not to deliver an opinion and the Committee on Development and Cooperation decided on 1 October 2003 not to deliver an opinion.

The report was tabled on 27 November 2003.

DRAFT EUROPEAN PARLIAMENT RESOLUTION

**on the communication from the Commission to the European Parliament and the Council in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents
(COM(2003) 323 - 2003/2156(INI))**

The European Parliament,

- having regard to the Commission communication (COM(2003) 323 final),
 - having regard to the plan for the management of the external borders of the Member States of the European Union, adopted by the Justice and Home Affairs Council on 13 June 2002,
 - having regard to the conclusions of the Seville European Council of 21 and 22 June 2002 on the gradual introduction of coordinated, integrated management of external borders,
 - having regard to the conclusions of the Thessaloniki European Council of 19 and 20 June 2003 on the development of a common policy on illegal immigration, external borders, the return of illegal migrants and cooperation with third countries,
 - having regard to the conclusions of the Brussels European Council of 16 and 17 October 2003,
 - having regard to the proposal for a European Parliament and Council regulation establishing a programme for financial and technical assistance to third countries in the area of migration and asylum (COM(2003) 355 - C5-0267/2003 - 2003/0124(COD)),
 - having regard to the proposal for a Council regulation amending Council Regulation (EC) No 1683/95 laying down a uniform format for visas and the proposal for a Council regulation amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals (COM(2003) 558 - C5-0467/2003 - 2003/0218(CNS)),
 - having regard to Rules 47(2) and 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0419/2003),
- A. whereas combating terrorism, organised crime, trafficking in human beings and drug trafficking makes internal security a key area of EU policy,
- B. whereas the outcome of proceedings in the Convention clearly emphasises the Union's role in guaranteeing security internally and externally, in particular through the gradual introduction of the integrated management of external borders; whereas Parliament's role is clearly strengthened in this context,

- C. whereas the effective combating of trafficking in human beings, e.g. bringing to book the profiteers who earn huge sums of money from such trade, is a first step in the fight against illegal immigration into the EU,
- D. whereas illegal immigration and illegal employment pose a social problem not only for individual Member States, but for the EU as a whole, so that progress in the sphere of asylum and immigration policy must therefore be made at EU level to avoid the human tragedies which are a daily occurrence in the European Union,
- E. whereas people who leave their country to migrate to the European Union are people who, in their own eyes, have good, often vital reasons for doing so; whereas each of us, in the same economic, social, psychological and emotional conditions, would do likewise; whereas not all illegal immigrants are dangerous but rather people in danger,
- F. whereas a legal immigration policy, particularly in agriculture, forestry, the restaurant business and the building industry, accompanied by systematic combating of illegal employment in those sectors, may reduce the 'pull factor' in those sectors of the economy based on illegal immigration,
- G. whereas it is of the utmost importance that the victims of trafficking in human beings are not regarded as criminals but as victims of crime,
- H. whereas, in the continued development of the Area of Freedom, Security and Justice, coherent EU measures in the sphere of illegal immigration and border protection are necessary,
- I. whereas more stringent checks at the EU's external borders may curb the activities of smugglers of human beings and thus help to prevent trafficking,
- J. whereas a Community return policy, preventive measures taken in cooperation with third states and an integrated plan for measures to combat traffickers can only be effective if accompanied by an active policy of legal immigration and a common coherent asylum policy,
- K. whereas targeted stabilisation programmes in countries of origin and of transit can help to improve the economic, politic or social circumstances which potential migrants perceive as push factors,
- L. whereas the more widespread provision in countries of origin and of transit of information regarding the consequences of illegal immigration into the EU and the scope for legal immigration can offer a counterargument to the promises made by traffickers and thus help to prevent illegal immigration,
- 1. Endorses the conclusions reached at the Tampere, Brussels and Thessaloniki European Councils, and the legislative package presented by the Commission;

Securing the EU's external borders

2. Takes the view that the vital need for uniform security standards at all the external borders of the enlarged EU calls for both responsibility sharing in connection with the task of securing sections of those borders which are particularly at risk and improvements in the effectiveness of measures by means of joint action or coordination;
3. Reiterates its position set out in its resolution of 15 January 2003 in regard to the implementation of a joint basic and further training plan for the common management of borders, inter alia through further training programmes under ARGO and the establishment of a European College for senior officials;
4. Reiterates its support for the development of a European Corps of Border Guards, made up of special units, which would be financed by the Community and, if necessary and at the request of the Member States, would be temporarily detached to help the national authorities monitor at-risk sections of the EU's external borders, without, however, usurping Member States' competences;
5. Notes the Commission proposal to set up under its aegis a Community operational structure to improve cooperation in connection with the protection of external borders; opposes the establishment of a separate agency to carry out border checks;
6. Notes that the establishment of a European Corps of Border Guards would necessitate a new legal basis;
7. Looks to the new Member States to use the EU funding made available to them under the Schengen facility in such a way that the Schengen standards can be met at the EU's new external borders as quickly as possible;
8. Emphasises the need for a revision of the Schengen Manual and calls on the Commission to put forward proposals to that effect as quickly as possible;
9. Firmly believes that the borders must remain open to people who are fleeing repression and applying for asylum in the Member States of the Union;

Operational cooperation and exchange of information

10. Welcomes the Commission's communication to the Council and Parliament concerning an action plan for the collection and analysis of Community statistics in the field of migration; calls for the speedy and full implementation of the action plan for statistics so that the Union is in a better position to collect, exchange and process information on illegal immigration and, in particular, the trafficking of women and children, taking account of Parliament's opinion on the communication;
11. Calls for cooperation among the Member States and between the Member States and the Commission to be improved through the use of a standardised system for the provision and analysis of data concerning illegal and legal immigration;

12. Regards it as essential, further, that cooperation and arrangements for the exchange of information with countries of origin and of transit should be consolidated and developed;
13. Supports the Commission's initiatives on asylum and immigration policy and calls on the Council to adopt these proposals and to take account of Parliament's opinions;

Asylum, immigration and return policy

14. Affirms that the Member States have an exclusive right to lay down provisions governing the nature and scale of legal immigration; believes, however, that a common social integration policy is essential in an area of common policy in the social, economic and legal fields;
15. Stresses the need to maintain an overall, coherent approach to a common European policy on asylum and migration, which must include:
 - legal means for third-country nationals to enter the Union, taking into account reception capacity and enhanced cooperation with the countries of origin;
 - an EU integration policy that strikes a balance between rights and corresponding obligations of legally resident third-country nationals and the host societies, ensuring equality of treatment and non-discrimination;
 - highlighting best practice in respect of immigration and integration policies as practised by the Member States;
16. Stresses that the Member States must take the necessary measures quickly to put in place a legal and effective immigration policy;
17. Endorses the Council decision that the Member States should announce legal immigration quotas which could be used to establish at EU level a joint position in negotiations on readmission agreements;
18. Believes that the overriding priority must be a voluntary return policy, while stressing that any policy development should fully respect the principle of non-refoulement and the right to seek asylum;
19. Regards it as essential that existing readmission agreements with countries of origin and of transit should be continued and that current negotiations on new agreements should be concluded swiftly;
20. Takes the view that bilateral readmission agreements between Member States and countries of origin and of transit should be replaced, where possible, by Community agreements;
21. Takes the view that the ILO network should play a role, in view of its unique knowledge and connections, in successfully returning illegal immigrants to their countries of origin and reintegrating them;
22. Takes the view that readmission agreements concluded between the EU and third states impose requirements on both sides which must be met by both sides;

23. Takes the view that the return of illegal immigrants must take place in a manner consistent with fundamental rights and the highest possible security standards, as laid down in relevant international agreements;
24. Calls on the Member States to ensure that people who have entered their country legally do not fall outside the law as a result of poor practice on the part of their own national administrations;
25. Reiterates that, in accordance with Article 19 of the Charter of Fundamental Rights, collective expulsions are prohibited and that 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;

Introduction of unforgeable documents

26. Takes note of the Commission proposals on the introduction of biometric identifiers and biometric data in the visas and residence permits of third country nationals and as a second step in the passports for EU citizens, though this must be done while taking the utmost account of data protection requirements;
27. Calls on the Commission, in this connection, to make available as quickly as possible information on the long-term objectives, the legal and technical conditions for the introduction and the financial implications of the development of the visa information system (VIS);
28. Calls on the Council, in this connection, to ensure that there is control over personal data and to improve the development and adjustment of arrangements facilitating such control over the ever-increasing amount of data which is processed;

Information campaigns by countries of origin and of transit

29. Regards it as essential that the ideas concerning illegal immigration prevailing in countries of origin and of transit should be combated by means of information campaigns, particularly in audiovisual media, designed to raise awareness of the consequences of illegal immigration or the refusal of a residence permit or an asylum application;
30. Calls for support for all measures designed to raise awareness in countries of origin and of transit of the implications of illegal immigration and the activities of traffickers, in particular measures which can reach a wide audience through television broadcasts;
31. Takes the view, in that connection, that information campaigns on the scope and prospects for legal immigration as a genuine alternative to illegal immigration should also be stepped up;
32. Welcomes, in this connection, the Commission's proposal to establish a programme for financial and technical assistance to third countries in the area of migration and asylum, particularly in regard to the setting up of information campaigns on the consequences of illegal immigration and of clandestine employment in the European Union, the

establishment in the third countries concerned of an effective and preventive policy in the fight against illegal migration, including in particular the fight against trafficking in human beings and smuggling of migrants, and the dissemination of information on the possibilities of working legally in the European Union and on the procedures to be followed to this end; hopes that the Regulation can be adopted at first reading;

Financial aspects

33. Endorses the Commission's proposal to make available, over the period 2004-2006, further appropriations to cover the development of the VIS, the implementation of an integrated return programme and the establishment, under the aegis of the Commission, of an instrument of Community solidarity to protect external borders; agrees, in principle, to make the sum concerned available annually but expects to be informed in detail and to be involved on an annual basis, principally through the submission to Parliament of a transparent summary of measures, as a condition of its agreement;
34. Welcomes the fact that the increasing significance of the political objective of creating an area of freedom, security and justice will also be reflected in the European Union's budget; stresses that this step was overdue; considers it absolutely essential to make further efforts in the coming years, particularly in regard to the adoption of a new financial perspective in 2007;
35. Instructs its President to forward this resolution to the Council and Commission and the parliaments of the Member States.

EXPLANATORY STATEMENT

Commission communication

Both the Laeken (December 2001) and Seville (June 2002) European Councils emphasised the need to speed up the implementation of all aspects of the Tampere programme on the development of a common asylum and immigration policy. Despite the political will to make progress in this area, the process moved forward more slowly than had been hoped. This was partly the result of technical difficulties (e.g. asylum procedure) and genuine differences of opinion concerning the choice of instruments (e.g. reunification of families), but the slow progress can also be explained by the reluctance of Member States to accept political obligations outside the framework of their own national laws.

Nevertheless, on the basis of three Commission communications¹ a number of important measures have been taken to combat illegal immigration. The communication under consideration here is intended as the Commission's contribution to an interim assessment of the progress made. On the basis of that assessment, decisions could then be taken on the further steps required to complete the process of implementing the Tampere programme. With that aim in view, the Commission puts forward a number of specific recommendations, the main features of which are outlined below.

Visa policy. The Commission advocates the prompt establishment of the Visa Information System (VIS) and emphasises the need, with a view to increasing the security of visas and residence permits, to take a coherent approach to the issue of biometric identifiers. The Council should therefore draw up as quickly as possible the guidelines and the legal basis for the development of the VIS and take a prompt decision on the provision of the corresponding budget resources.

Border control policy. The Commission expresses doubts about the ability of the SCIFA+ formation to carry out effectively the day-to-day operational tasks which have been entrusted to it in connection with the management of external borders. Instead, it advocates the establishment of a new, permanent Community structure, under the Commission's control, leaving SCIFA+ with responsibility for certain long-term, strategic issues. This Community structure should, as the precursor of a European Corps of Border Guards, serve to complement the border protection measures taken by the Member States.

Return policy. The Commission emphasises the enormous importance of a common policy on the return of illegal immigrants for the credibility and integrity of European immigration and asylum policy. There is much still to be done in this area. Initially, the Council should consider the scope for entrusting the above-mentioned Community structure with organisational tasks in connection with the common return policy.

Operational cooperation and exchange of information. The Commission proposes an expansion of the capacity to compile, exchange and process information about illegal

¹ 'A common policy in the area of illegal immigration' (COM(2001) 672); 'Towards integrated management of the external borders of the Member States of the European Union' (COM(2002) 233); 'Integrating migration issues in the European Union's relations with third countries' (COM(2002) 703).

immigration with a view to dealing with the current problems in this area. Both the ILO network and Europol could play an important role in this connection.

Partnership with third countries. The Commission suggests that immigration issues might usefully be incorporated into the broader framework of the EU's external relations, with a view to exerting greater influence in third countries, by means of incentive schemes, and to combating the underlying causes of illegal immigration. Further moves should therefore be made to implement the political guidelines for incorporating immigration issues into relations with third countries, not least through the development of a common return policy.

Appropriateness of the financial resources and burden-sharing mechanism. The Commission calls for the budgetary dimension of the solidarity principle to be recognised, not least with a view to the post-2007 financial perspective. It therefore proposes that funding from the Community budget for political measures in the areas of immigration, border checks and the fight against the trafficking of human beings should be increased by some EUR 140 million over the period 2004-2006. These appropriations would primarily be used to co-finance cooperation projects at the EU's borders, a programme on the return of illegal immigrants and the establishment of the VIS.

Rapporteur's comments

Your rapporteur welcomes the Commission communication and, in overall terms, the relevant standpoints adopted by the European Councils of Thessaloniki (the Presidency conclusions of 20 June 2003 largely endorse the Commission's proposals) and Brussels.

Nevertheless, your rapporteur regards it as vital that Parliament should express its views on these matters. The ongoing threat to the internal security of the EU posed by cross-border terrorism, organised crime, illegal immigration and trafficking in human beings and drugs has already prompted Parliament to draw up a report¹ which sets out various priorities concerning measures to improve the protection of external borders.

This report takes up many of those priorities and, where appropriate, fleshes them out. First of all, it must be made clear once again that the protection of external borders is a fundamentally national matter and must therefore remain a Member State competence. However, it can hardly be denied that the acute need for uniform security standards at all the EU's external borders, above all in the new Member States, calls for both burden sharing in connection with the task of securing sections of those borders which are particularly at risk and general improvements in the effectiveness of measures by means of joint action.

Accordingly, some tasks could be carried out at EU level with a view to supporting, complementing or coordinating the work of national authorities. Examples might include: the definition of joint tasks, the financing of joint operations, the implementation of horizontal tasks, such as joint risk analyses or training programmes, the coordination of joint return programmes and the provision of additional equipment, staff and financial resources.

¹ Not yet published in the Official Journal.

There is still a need to step up operational cooperation and information exchange in the sphere of illegal immigration. This covers both cooperation among the Member States and between the Member States and the Commission, and cooperation with countries of origin and transit. Supporting the competent authorities in those countries in their efforts to combat illegal border crossings should be a particular priority. In that connection, the ILO network could be entrusted with additional tasks.

Special attention should be paid to the Commission proposal to set up a European Corps of Border Guards comprising special units and financed by the Community. If necessary, and at the request of the Member States, that Corps could be temporarily detached to help the national authorities monitor at-risk sections of the EU's external borders, without, however, usurping Member States' competences. The time is not yet ripe for such a body. However, a solution more commensurate with the current situation might be a Community operational structure set up, under the aegis of the Commission, to improve cooperation in connection with the protection of external borders. The relevant Commission proposal should therefore be explicitly endorsed.

However, this report also incorporates a completely new dimension, the implications of which go well beyond earlier Parliament reports and opinions: the close interplay between stricter measures to combat illegal immigration, on the one hand, and a policy in the sphere of legal immigration which is geared to the possibilities and needs of individual Member States, on the other.

There are three key aspects to this interplay between the policies on combating illegal and fostering legal immigration:

Asylum, immigration and return policy. The initial objective must be to develop a common return policy to complement an immigration policy geared to the interests of the Member States and a credible joint asylum policy. Firstly, it must be emphasised that the Member States have an exclusive right to lay down provisions governing the nature and scale of legal immigration. However, in connection with the negotiation of readmission agreements at EU level it would make sense for the Member States to lay down legal immigration quotas, as recently proposed by the Council. Secondly, with a view to increasing the effectiveness of European asylum policy, there is a need to develop existing readmission agreements with third countries and, wherever possible, to replace bilateral agreements between individual Member States and third countries with Community agreements. Thirdly, efforts must be made to ensure that third countries meet their obligations under readmission agreements. An additional incentive could be offered if, for their part, the Member States were to commit themselves to stabilisation programmes, in the form of economic or trade-related measures, the implementation of which would be contingent on compliance with the agreement. It is self-evident that in every case the return of illegal immigrants must take place in a manner consistent with certain security standards and fundamental rights, as laid down in relevant international agreements.

Introduction of unforgeable documents. Only once visas, residence permits and, ultimately, EU passports have been made less vulnerable to forgery than they currently are, through the use of biometric identifiers, will it be possible to combat 'identity theft' and 'asylum shopping' effectively through the implementation of a common asylum policy. Implementation of the

VIS is a precondition for progress in this area and a broader consensus on the long-term objectives and prompt agreement on the legal, technical and financial conditions governing the introduction of the system are therefore essential.

Information campaigns by countries of origin and of transit. Finally, information campaigns by countries of origin and of transit concerning the consequences of illegal immigration and the refusal of a residence permit or asylum application should be actively supported and promoted. Such campaigns can serve to correct the ideas prevailing in those countries regarding illegal immigration and so help to prevent such immigration and crime involving trafficking in human beings. At the same time, the provision of information regarding the scope and prospects for legal immigration should be stepped up with a view to offering people in countries of origin a genuine alternative to illegal immigration. In particular, the Council should support information campaigns which can reach a wide audience via television broadcasts.