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**STATISTICAL DATA ON ILLEGAL IMMIGRATION IN THE EUROPEAN UNION:
A DISCUSSION PAPER ON POLICY NEEDS AND DATA AVAILABILITY**

Submitted by the European Commission

Statistical data on illegal immigration in the European Union: a discussion paper on policy needs and data availability

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1. Summary

Asylum and migration have become matters of Community responsibility under the new Title IV of the amended Treaty establishing the European Community (Art. 63 TEC). One significant element of the development of relevant policies in the field is policy on illegal immigration policy. As in all areas of policy, statistical data are needed to underpin the development of policy and to monitor its implementation.

Unfortunately for policy-makers, illegal immigration is usually unrecorded, which means it is not possible to gather statistical data on the size and composition of this element of stocks and flows of international migration. At EU level the term “illegal immigration” is generally used to refer to the illegal entry and/or stay of international migrants who are citizens of third countries. As at national level, in the EU, shifts in policy change the focus of attention from one group or category to another, irrespective of data availability. The current focus is on the illegal immigration of non-EU citizens, rather than any other category which may exist in national definitions. There can also be a mismatch between those policy needs which create the demand for data and the policy priorities which influence the required definitions. This increases the complexity of the picture and the problems of collecting comparable data. In addition, “illegal immigrants” are not a homogenous group and people move in time between statuses of legality and illegality. The terms and definitions used can sometimes be as fluid as the phenomena under study.

There are also considerable difficulties in obtaining data, where they exist, because of the differences in definitions, legal terms and practice between the Member States. Nonetheless, these problems do not diminish the demand for such data or the expectation in many quarters that it is possible to quantify the numbers of migrants entering and/or staying illegally in the European Union.

Rather than illegal immigration and stay, however, it is in the return of migrants to third countries where there is some potential to collect statistical data. This is one field in which the Member States and the Commission have agreed a set of working definitions and some relevant data are already being collected by the Commission within the remit of the CIREFI data collection¹. The CIREFI data collection is also

¹ Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration

based on an agreed set of common definitions on enforcement measures implemented in relation to illegal immigration.

The following sections of the paper provide:

- an outline of some of the main policy requirements of the European Union which frame the need for statistical data in the field of illegal immigration;

- a description of the main elements of the CIREFI data collection, indicating the Commission's thinking on how this collection could be extended in the future.

2. Policy background: European Union Policies on Illegal Immigration

The European Council of Seville on 21 and 22 June 2002 called for the speeding up of the implementation of all aspects of the programme adopted by the European Council of Tampere in October 1999 for the creation of an area of freedom, security and justice in the European Union, in particular the common policy on immigration and

asylum. The need to fight effectively against illegal immigration was reaffirmed as an essential part of such a common and comprehensive policy.

Council Action Plan on Illegal Immigration

The European Council of Laeken on 14 and 15 December 2001 had already called for an action plan on illegal immigration. On the basis of the Commission's Communication on a common policy on illegal immigration of 15 November 2001 (COM (2001) 672 final), the JHA Council adopted on 28 February 2002 a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union. Return and readmission policies were identified as integral and vital components of that plan.

To follow up those aspects of this plan the Commission on 10 April 2002 tabled a **Green Paper on a Community Return Policy on Illegal Residents** (COM (2002) 175 final) in order to trigger a broad discussion among all relevant "stakeholders". As a result of an intensive discussion the Commission presented on 14 October 2002 a **Communication on a Community Return Policy on Illegal Residents** (COM (2002) 564) to put forward an outline for a return action programme, which was requested by the Seville European Council.

Return Action Programme

On the basis of the Commission's Green Paper and the Communication the Council adopted on 28 November 2002 the Return Action Programme, which suggested developing a number of short-, medium and long-term measures in the field of return. 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 their residence have to leave the EU. Voluntary return is seen to be a priority over "forced return" for obvious humane reasons, but also due to costs, efficiency and sustainability. Where voluntary return is seen to fail, the forced return of illegal residents is used. The idea is that presenting a credible threat of forced

return and its subsequent enforcement will send a clear message to illegal residents in the Member States and to potential illegal migrants outside the EU, that illegal entry and residence do not lead to the stable form of residence they hope to obtain.

3. Statistical data

The Council Conclusions of May 2001 underlined the need for improved statistical tools to develop and monitor the implementation of Community policies in the field of asylum and migration. In response, on 15th April 2003, the Commission adopted a Communication to the Council and the European Parliament to present an action plan for the collection and analysis of Community statistics in the field of migration. This action plan includes, inter alia, the CIREFI data collection, the only collection of statistics from all Member States and the Acceding countries on enforcement measures implemented in the field of illegal immigration and return policies.

CIREFI data collection

The Commission's current Action Plan on statistics succeeds the 1998 Action Plan, on the basis of which the Statistical Office of the European Communities, the Commission Directorate General Eurostat, started collecting monthly statistics on illegal entry within the context of the CIREFI Council working party.

The CIREFI monthly data collection consists of data on enforcement measures relating to illegal migration for the following categories:

- Refused aliens by citizenship and type of border
- Apprehended aliens illegally present by citizenship and type of border
- Apprehended facilitators by citizenship
- Apprehended facilitated aliens by citizenship and type of border
- Removed aliens

Possible extensions to the database

The Commission, in a staff working paper, discussed the possibility of extending the CIREFI collection on illegal migration statistics following new Community legislative action in the field of illegal migration, border controls and return within the framework of the management of migration flows. Possible extensions suggested include data on the detection of false documents by type of document (passport, visa, residence permit) and type of border crossed (land, sea, air) and data on sanctions against the crime of smuggling and/or trafficking in human beings. It was anticipated that a distinction could be made in the table on removed aliens according to the nature of the return action taken by the Member States (voluntary, escorted and forced escorted return) and the destination (country of origin, a third country). Moreover, the collection could be extended to cover measures taken under the Schengen Implementation Convention, such as the number and nature of measures imposed under Article 26 (carriers' liability) and Article 27 (sanctions concerning assistance to illegal entry or residence). Finally, following other provisions of the Schengen acquis the present collection could be refined by inter alia introducing a distinction between data relating to situations taking place either at external or internal borders or differentiating the reasons for refusal of entry in the present table on refused aliens.

4. Conclusion

Experience suggests that there will be considerable problems in improving the availability of data and that agreed policy definitions will not automatically translate into definitions which are applicable for the purposes of data collection. The Member States and the Commission have made some progress in establishing common definitions, on return policies (Annex A.) and in the form of the CIREFI definitions (Annex B) and such agreed common definitions will be an essential element of any future collection of Community statistics on illegal migration. It is likely that, for the foreseeable future, statistical data will continue to be obtainable on the implementation of enforcement measures, in particular on the return of migrants to third countries, rather than on “illegal immigration”.

Annex A. Working definitions relating to return policies

Term	Definition
Return	Comprises the process of going back to one's country of origin, transit or another third country, including preparation and implementation. The return may be voluntary or enforced.
Illegal resident	Any person who does not, or no longer, fulfill the conditions for presence in, or residence on the territory of the Member State of the European Union.
Illegal entrant	Any person who does not fulfil the conditions for entry in the territory of the Member States of the European Union.
Voluntary return	The assisted or independent departure to the country of origin, transit or another third country based on the will of the returnee.
Forced return	The compulsory return to the country of origin, transit or another third country, on the basis of an administrative or judicial act.
Readmission	Act by a state accepting the re-entry of an individual (own nationals, third-country nationals or stateless persons), who has been found illegally entering to, being present in or residing in another state.
Readmission agreement	Agreement setting out reciprocal obligations on the contracting parties, as well as detailed administrative and operational procedures, to facilitate the return and transit of persons who do not, or no longer fulfil the conditions of entry to, presence in or residence in the requesting state.
Expulsion	Administrative or judicial act, which states – where applicable – the illegality of the entry, stay or residence or 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 pending removal	Act of enforcement, deprivation of personal liberty for return enforcement purposes within a closed facility.
Detention order	Administrative or judicial decision which forms the legal basis for the detention pending removal
Removal	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 (in some legal systems synonymous with expulsion order).
Legal re-entry	Admission of a third-country national or stateless person to the territory of the Member State of the European Union after prior departure.
Rejection	Refusal of entry to a state
Transit	Passage through a country while travelling from a country of departure to the country of destination.

The above working definitions have been agreed by Member States and the Commission as a working basis for policy development and implementation.

Annex B

The CIREFI data collection: definitions

Refused aliens

"Persons not covered by Community law who are refused entry at the border owing to:

- ♦ a lack of, or counterfeit/falsified, border documents
- ♦ an existing entry or residence prohibition
- ♦ other grounds for refusal."

The purpose of this category is to record figures for third country nationals who are formally refused permission to enter the territory of a Member State. For most Member States such data will be generated only at the external border but where Member States do not, or are not able to make a distinction, data should relate to refusals of entry at any border post where such a control is exercised. Figures submitted for this category should, where national arrangements allow, relate to the actual number of decisions taken to refuse entry irrespective of whether those decisions necessarily resulted in removals. Furthermore, where Member States have administrative procedures which allow a decision whether to give formal permission to enter to be taken some time after the arrival of the third country national, such cases should be included in the figures for this category provided no more than three months has elapsed between arrival and the decision.

Apprehended aliens illegally present

"Persons other than those entitled under Community law who are officially found to be on the territory of a Member State having either entered:

- ♦ without being in possession of the requisite border documents (passport, residence permit, visa); or
- ♦ despite the fact that they were refused entry at the border; or
- ♦ despite the fact that they are subject to an entry or residence prohibition;
- ♦

or, having been given permission to enter, have become liable to expulsion on the grounds of their remaining illegally."

This purpose of category is to provide for the recording of data in relation to third country nationals who are detected by Member States' authorities and have been determined to be illegally present. The category covers those who have been found to have entered illegally (whether this be by avoiding immigration controls altogether, by employing some sort of deception, such as the use of a fraudulent document, in order to gain entry or by failing to comply with a decision to refuse or prohibit the subject's entry) and those who may have entered legitimately but have subsequently remained on an illegal basis (by, for example, overstaying their permission to remain or by taking unauthorised employment). It is a composite category in order to reflect the fact that not all Member States, for the purposes of collecting such data, distinguish illegal entry cases from other third country nationals found to be illegally present. Where Member

States are able to do so they should, in a separate column, provide figures relating specifically to illegal entry.

Figures submitted for this category should not relate to persons who are detected as having overstayed when they leave the territory of a Member State. The data should relate only to detections which have occurred during the reporting period.

Data should, where possible, be broken down to indicate whether the person found to be illegally present arrived via an air, land, or sea border. Again the provision of a separate return relating the data to specific external land borders is optional.

Facilitators

"Persons intercepted on the territory of the Member States who have intentionally assisted the unauthorised entry of persons other than those entitled under community law."

Data submitted for this category, which may derive from intelligence records rather than statistics derived from formal decisions, should relate to those apprehended and/or charged with an offence of this nature rather than those convicted. While this may result in the recording of some cases that are not pursued or proved, such an approach has the merit of relating the incidence of cases directly to the period for which data is collected. As defined, data should relate only to the facilitation of illegal entry and not assistance with the illegal stay of a third country national. Data for this category will include, but not solely relate to, traffickers.

Facilitated aliens

"Persons other than those entitled under Community law whose illegal entry and/or presence is found to have been assisted."

The purpose of this category is to provide information as to both the numbers and nationalities of third country nationals who have been found to have received help to evade a Member State's immigration controls. Data for this category is likely to derive from intelligence sources rather than statistics arising from formal administrative decisions. Data recorded for this category will include, but not solely relate to, those who have been trafficked.

The definition, which is similar to that employed by the IGC, covers facilitation in relation both to entry and presence. It is desirable that Member States provide distinct figures for each. The interpretation of the term 'assisted' will be in part determined by individual Member States' legislation and practice but the term should, at the minimum, relate to activity of a third party which has the specific purpose of helping a third country national to evade or fraudulently satisfy the requirements of a Member State's immigration controls.

In the case of facilitated entry such cases would, for example, include those who are:

- ♦ provided with fraudulent documents;
- ♦ provided with a guide in order to evade border controls;

- ♦ provided with some means of concealment in order to evade border controls;
- ♦ transported to a Member State's borders with a deliberate lack of regard for carriers liability or visa regulations.

♦

In the case of facilitated presence such cases might include those who are:

- ♦ provided with fraudulent documents;
- ♦ knowingly assisted in obtaining a residence or work permit under false pretences (for example, sham marriages);
- ♦ those employed illegally where there is systematic activity on the part of the employer (use of concealment, restrictions on freedom of movement, etc) to ensure that immigration controls are avoided.

Member States should as far as possible, in relation to facilitated entry figures, provide a breakdown as to whether the facilitated entry took place by air, sea or land.

Removed aliens

Persons other than those entitled under Community law who, having entered the country illegally, having resided in the country illegally or for other reasons, are returned to a third country."

The purpose of this category is to record figures for the number of third country nationals who are actually removed to a third country. Removals to another Member State (for example, Dublin Convention cases) are not to be included. Figures should relate to those who are expelled having been found to be liable for removal. The definition does, however, include those removed 'for other reasons' in recognition that expulsion may take place for reasons (criminal activity, security reasons) not directly related to a person's immigration status. Figures for this category may include voluntary departure where such a departure takes place in order to comply with a formal order to leave. Statistics for removals may, where possible, be broken down according to whether removal took place by land, sea or air.