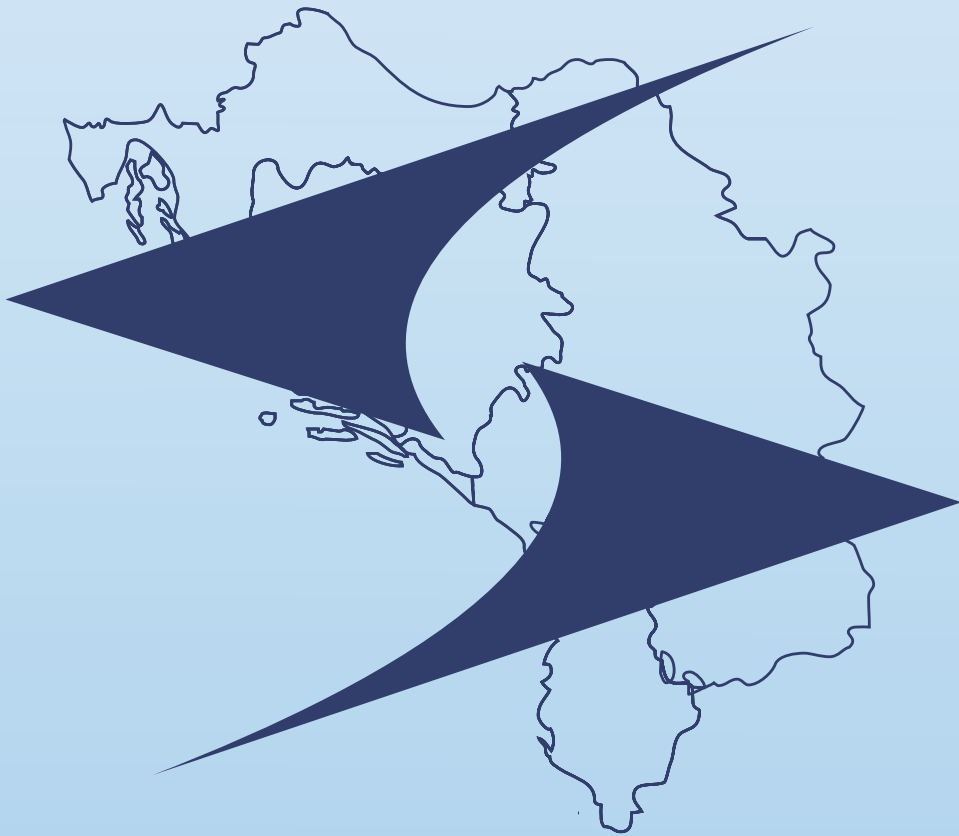


MARRI

Migration, Asylum, Refugees Regional Initiative



MARRI MIGRATION PAPER 2007

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SUMMARY

Introduction

The main recommendation of this paper is that each of the MARRI Member States formulates and adopts a document on comprehensive migration policy strategy in order to secure political commitment on principles and aims of the comprehensive and integrated policy and on its implementation. Political document which maps out clear political directions and contours of comprehensive migration policy would serve as a platform for adoption of further Action Plans and Operational Programmes on each of the policy areas in order to develop comprehensive and integrated migration management systems. Such a document could contribute to trust and confidence among the institutions/ agencies dealing with all forms of migration as well as among the States and as such contribute to the capacity of institutions necessary for the policy implementation and for the efficient and effective bilateral and multilateral cooperation. An adopted and well implemented migration policy adds to the credibility of the State on the international stage and in its relations with other countries.

The recommendation builds upon already agreed recommendations of several MARRI documents, particularly Recommendations of the MARRI Workshop on Migration Management Systems held in Ulcinj on 5-6 October 2006, Aspects of Implementation of Readmission Agreements held in Skopje, 15-16 June 2006, Recommendations of the Workshop on Management of Irregular Transit Migration in the MARRI Region held in Sarajevo, 29-30 June 2006. Recognising the relevance of the basic preconditions, i. e. good understanding of migration phenomenon and country-specific migration questions, it was agreed upon that the task and responsibility of comprehensive, integrated migration management systems is to provide answers to migration challenges ahead, development and implementation of legislation, coordination, capacity building and procedures within and between each of the elements of the system.

The following recommendations were outlined for MARRI Member States in order to tailor these systems in accordance with their specific needs:

- To adopt comprehensive and coherent migration policy that shall provide basic principles and guidance on timely co-ordinated response of state institutions about migration related issues in the area of other policies;
- To consolidate legal and regulatory framework;
- To establish governmental inter-agency working group;
- To establish/develop governmental agencies/institutions;
- To establish a Central Migration Authority tasked primarily to provide good and effective inter-agency co-operation;
- To develop regionally harmonised statistical data collection methods and sustainable system of data gathering mechanism;
- To develop information management support IT mechanisms for operational purposes, in accordance with data protection standards;
- To enhance capacity building for development of permanent training systems;
- To ensure sound budget lines in national budgets for increase of migration related activities;
- To raise the awareness of migration related issues, particularly among the parliamentarians;
- To increase regional cooperation and enhance regional ownership.

Bearing in mind the necessity of a comprehensive migration policy approach, it is a specific aim of this paper is to contribute towards draft recommendations and proposals for policy and in some areas to concrete instruments, programmes and measures for:

- legal migration
- a system of asylum
- integration
- fight against irregular/illegal migration
- information management and national institutional set-up
- regional co-operation

The recommendations are precise enough in terms of each policy area and broad enough so that they may be adapted and tailored to different national situations, specific needs or priorities of the MARRI Member States.

Comprehensive and integrated migration policy

Policy is the precise statement of agreed objectives and their translation into action. More complex are challenges more important it is that policy is sound. Migration policy deals with international migration as a form of human mobility that crosses state boundaries. In pursuing its goals migration policy also crosses a number of other policy areas such as, *inter alia*, economic, labour market and employment policies, taxation policy, demographic policy, education, social and health policies, security and defence policy. Migration policy should lead a national effort on migration management, providing guidance and bringing together a timely co-ordinated response of state agencies/institutions dealing with all aspects of policy. In addition, it is also important to coordinate efforts with other partners such as regional, international and non-governmental organisations, the private sector and various other stakeholders. It is very likely that migration policy will have an impact on public perceptions and opinions, generating a debate and controversy on a wide range of issues such as control of migration flows, organised crime, criminality, corruption, labour market, cultural, ethnic and national differences and integration.

Immigration policy is one of the most sacred areas of national jurisdiction. The State sovereignty in immigration regulation, migration governance and management is limited by obligations of the State deriving from binding international law and agreements concluded with other States. The principal aim of migration policy is to regulate migration in direction of its contribution to the welfare of the country's population, economic and social development, protection of health, security, and peace, applying human rights and humanitarian obligations, such as the 1950 European convention on Human Rights and Fundamental Freedoms, the 1951 Geneva Refugee Convention and the 1967 Protocol. States ought to give legal immigrants a possibility to remain, either temporarily or permanently and to integrate into their societies. The aims of migration policy should take into consideration both the internal and foreign policy dimensions of migration policy and respect the common valued principles of the rule of law, human rights, democracy, social justice and cultural pluralism. In seeking coherence between the State's internal and external policies, the migration policy should stress the need for more efficient management of migration flows at all their stages, in which the partnership with countries of origin and transit is of vital importance.

The objectives of migration policy should be defined as principles that will enable consistent policy implementation in different spheres of life and give a direction in which the policy is to proceed. The significance of the policy is in its role of an integrative authority for the executive-legislative and administrative and other implementation levels and in its informative value to various interest groups in the country and

abroad. Monitoring the implementation of policies and evaluating their impact in relation to intended effects ensures that an overall policy evolves in a dynamic manner and is capable of constantly refining its objectives and adapting and improving its actions and programmes in accordance with dynamic and interrelated migration, economic, social and political processes.

Policy areas

International migration occurs in three major forms:

- as regular, relatively free migration of individuals who change the country of residence on their own will and in accordance with existing laws;
- as forced or impelled migration, when people flee either as individuals in fear of persecution or massively in fear of collective violation of human rights or humanitarian law and other circumstances caused by various conflicts and natural or human induced catastrophes;
- as irregular/illegal migration, concerning illegal border crossing or unauthorised residence in a foreign state.

Migration policy should consider all types of migration as well as im/migrant population present in the State. Thus, a comprehensive migration policy should integrate both main types of policy approaches i.e. to deal with the flows, by implementing overall controls over the entry of new immigrants or through their selection and with the stocks of immigrants who are settled, either in regular or irregular situation.

However, due to complexity integrated migration policy is divided into different yet interconnected policy areas, which again comprise policy sub-fields, concerning:

- legal migration (immigration, but also emigration)
- asylum system
- integration
- irregular/illegal migration

All of these have, though to a different degree, an important external dimension and require regional and international cooperation as well as partnership with countries of origin, transit and destination.

In the broadest sense migration policy addresses a range of migration-related issues inspired by the overall objectives and as such needs the leadership of each State and should seek to involve the support of all members of society. In the more narrow sense, Action Plans and Operational Programmes seek to address specific areas and/or subfields and have to be designed and built in such a way that they are congruent with each other while pursuing their specific objectives and consistent with the overall aims of the migration policy in broadest sense. Otherwise one problem may be solved and the other occurs. Whether policies, plans, actions, programmes or projects are large or small, the criteria that are frequently used to guide their design are:

- Consistency – congruency of policies and programmes with each other and migration policy in broader sense;
- Compatibility – in order to determine if the response is the right one in one field or if they are unwanted responses/consequences in other field/s;
- Transparency – administrative and financial - in order to maintain public confidence;
- Sustainability – in order to design, prepare and deliver the follow-up.

Some of the main prerequisites to successful policies are also well known and include:

- Strong political will and commitment to policy reform
- Development of clear and effective strategies at the national and local levels
- Public accountability for progress made towards the goals of policy and the implementation of national and local strategies
- Innovative agencies/institutions in the country
- Public education and awareness campaign to develop broad-based support for the policy
- A national capacity to analyse, design and implement further policy interventions in response to changing circumstances
- Partnerships with states of origin, transit and destination
- Partnership with regional and international organisations, non-governmental organisations and other organisations of civil society, the private sector and other stakeholders.

MARRI Member States

In migration policy-making MARRI Member States have to consider conditions of each individual country, such as geographical and geopolitical position, their histories, population, economy, civic and political cultures.

Nevertheless, due to a need for a comprehensive migration policy in all of these States, and interdependency of various activities and the migration management systems implementation, the basic common principles for migration policy are suggested. They intersect with the above described migration types and are thought to contribute to the elaboration and organisation of various aspects of migration policy, including its legal and regulatory framework and administrative practice. These are:

- *the principle of solidarity* and international and regional responsibility/burden sharing; this principle primarily applies to forms of international protection and assistance and also extends to irregular migrations and their consequences such as return/readmission;
- *the principle of responsibility* to the State and its nationals, this principle primarily affects regular, relatively free immigration and emigration, integration and regulation of naturalisation.
- *the principle of long-term macroeconomic utility* which primarily applies to relatively free migrations that do not involve motivations based on legal or moral obligations such as family reunion and repatriation. According to this principle it is possible to define criteria for controlled and selected admission of foreign nationals in view of the labour and capital markets, concurrently combating irregular migration, including smuggling of migrants and trafficking in human beings.
- *the principle of rule of law* which means that neither emotional attachment to one's nation or cultural values neither arid utilitarianism should lead to a migration policy or regulation in violation of obligations deriving from international treaties, generally accepted principles and internal legislation. This principle demands respect for human rights of all persons and with some exceptions respect for civil rights of all legally present persons in the country; from the protection of personal data and personal freedom and principle of *non-refoulement* as set forth in international obligations

Due to the political time-frames, i.e. periods to which the coordinated system of migration policy principles, objectives and instruments refers, the time dimension of strategy concerning accession to the European Union calls for harmonisation/approximation of MARRI Member States migration policy to the European Union's migration as well as other policies, particularly in the field of Justice and Home Affairs and to the *acquis communautaire*, in accordance with different national situations and priorities of the MARRI Member States and institutional affiliations between these States and the European Union.

Legal Migration

Legal immigration policy should aim to synthesise migration policy goals with the economic as well as demographic policy goals. It should take into account humanitarian, non-economic types of migration such as family reunion and economic types of migration. Concerning the latter in particular it should attempt to balance between the interests of the State, business and individual migrants. It should also consider the close link between immigration and the integration of immigrants into the receiving societies.

Admission systems

The admission systems for immigration *for economic purposes* should be flexible and market oriented in order to help ease bottlenecks and long-term employment and economic goals in an attempt to maximise benefits and minimise costs of immigration. As such it should be reflected in legislative instruments concerning the conditions of entry and residence, employment, self employment and other economic activities of foreign nationals as well as in bilateral and multilateral agreements.

The MARRI Member States are advised, according to their specific needs, to consider devising programmes and procedures for the following types of immigration for economic purposes:

- Immigrants endowed with human capital i.e. high skilled workers
- Immigrants endowed with financial capital i.e. persons with business investment capital
- Labour migrants for sectors with temporary or seasonal labour shortages – temporary migration applying bilateral and multilateral agreements
- Atypical working, part-time flexible and occasional work - short-term migration of migrants such as contract workers, inter-company transferees, managers within multinational firms, paid trainees - also applying the provisions of the General Agreement on Trade and Services (GATS)

Non-economic type of immigration includes:

- family reuniting, a right recognised in various international legal instruments – such as the Universal Declaration of Human Rights, the European Convention on Human Rights and Fundamental Freedoms and the United Nations Convention on the Rights of the Child;
- refugees and persons under other types of international protection,
- education and research - students, researchers;
- different types of migrants, among them volunteers, artists, journalists, sportsmen and women, foreign nationals once already resident, co-ethnic foreign nationals (members of Diaspora) and some other types of migrants, which could have certain priorities when rules for entry and residence are devised.

Immigration levels

The assessment of appropriate immigration levels for economic purposes such as quotas, priorities or indicative targets, is clearly in the hands of the sovereign States, and usually involves a cooperation of a range of institutions - national, regional and local authorities, social partners, non-governmental organisations, migrants and international bodies. For this purpose a mechanism, based on co-operation, exchange of information and reporting could be established both within States as also on MARRI regional level.

The admission of economic migrants should be done within the framework of employment strategy i.e. in national plans for employment as well as business and investment strategies, but could also take in account other than labour market factors such as public acceptance or resources available for reception and integration. Nevertheless it has to be stressed that the nature of economic migration is no longer one where the State is the primary determiner of the need for labour. The economy has been moving from one where the State was the main employer of labour and thus having competence to recruit labour itself to one where many of the fields within State control have been moving into the private sector. Although in some areas e.g. health sector, the State retains an important remit in assessing the need for migrant labour, it is the market, which takes the lead. The deregulation of economy is a process that redefines the role of the government as framing the economic environment within which businesses flourish, not as one which the State should be directly involved in the economic decisions of those businesses. It is important to recognise that companies, particularly small and medium sized, often need to recruit migrants quickly. Finally, the principle of respect for the domestic labour force is important, however, the reality has been that migrants have always possessed skills and experience, often sectorally based, which could not be found in among domestic labour. Therefore, strict labour market testing which is sought to protect domestic labour markets, and is often maintained for political ends, does not always encourage enough flexibility on this issue.

Procedures

A coherent and transparent policy and procedures should be established for admission of foreign labour migrants and non-economic migrants. This should, as far as possible, be done also in partnership with the countries of origin respectively destination. In case of migrants under economic titles, procedures should take into account the move from the individual as employee to self-employed or business person.

Recommendations for economic-labour immigration:

- the MARRI Member States would need to set-up flexible and market oriented admission systems that help ease labour market bottlenecks and long-term deficits at all qualification levels – from unskilled workers to highly skilled professionals;
- labour markets should be granted a higher degree of flexibility in order to make sure that growing sectors take advantage of increased productivity and contribute to job creation;
- to lay down criteria for admitting foreign nationals to employed activities and self-employed economic activities as well as investment and opening different options for demonstrating compliance with these criteria;
- provide procedural and transparency safeguards, in order to assure a high level of legal certainty and information for all interested actors on rules and administrative practice in the field of entry and residence of foreign nationals for the purpose of paid employment and self-employed economic activities;
- to work towards providing a single application procedure leading to one combined title, encompassing both residence and work permit within one administrative act;
- provide rights to foreign nationals;
- to strive that any adopted measure would minimise the administrative burden for the State and foreign nationals;
- to grant long-term residence permits and improve the recognition of qualification and professional skills prior and after admission in order to attract high skilled migrants;
- to grant speedy access to the labour market non-economic migrants (reuniting family members and recognised refugees) should be granted

- recognised refugees as well as asylum seekers tolerated to stay for an undefined period of time need to be allowed and encouraged to accept jobs and to seek work at their qualification level
- asylum seekers should be given preferential access to temporary or seasonal employment.
- States ought to address the challenges of migrants' integration and help improving the labour market integration and performance of migrants by ensuring the recognition of qualifications, fighting against discrimination and racism,
- social and labour market inclusion of migrant women should be actively promoted.

Recommendations for migration policy towards Diaspora

Considering sizeable diasporas from the MARRI Member States, which include nationals of these States living abroad as well as migrants who, living abroad, have acquired the nationality of their country of residence and migrants' children born abroad, whatever their nationality, the MARRI Member States would be advised to consider formulating policy promoting forms of circulation of members of diaspora by facilitating dual nationality as well as repatriation, intersecting both immigration under economic and non-economic admission.

For this purpose, the MARRI Member States would have to:

- gather information on diaspora i.e. establish register of their members on voluntary basis, including voluntary skills and entrepreneur database;
- improve data on remittances and facilitate their use for investment and entrepreneurship;
- provide incentives or provisions to promote, ease and enhance investment and other economic activities;
- provide accurate information – on return possibilities, on regulations concerning customs, investment, study possibilities and on all other areas of interest;
- organise meeting and conferences with representatives of diaspora on topics of common interest.

Programmes could be prepared in cooperation and partnership with countries of destination/residence of members of diaspora, in particular in the context of diasporas - as actors of home country development. These would concern:

- improved transfer of remittances and measures that could facilitate their use for home country development;
- encouragement of circular migration and brain circulation;
- using the potential of temporary migration;
- facilitating voluntary return migration;
- facilitating virtual return,
- mitigating the adverse effect of brain drain.

Asylum

The aim of asylum policy is that a State gives a form of protection on its territory based on the principle of *non-refoulement* and internationally or nationally recognised refugee rights. Asylum policy is a part of a wider refugee policy which is oriented towards co-ordinated international activities for resolving refugee problems worldwide and to protect refugees, displaced persons and asylum seekers, their rights and well-being and to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country.

Policy context

In line with their legal and moral obligations and membership in international community as well as in view of approaching the European Union, the MARRI Member States should enhance the formulation and implementation of their asylum policy on following principles:

- to insure asylum by developing comprehensive asylum system directed towards treatment of individual asylum seekers as well as of mass refugee flows consistently respecting the principle of *non-refoulement*;
- to insure effective protection and assistance including programmes for repatriation with special attention paid to children, women and other specially or potentially vulnerable categories of refugees and asylum seekers;
- to cooperate with other states, international and intergovernmental organisations such as UNHCR, the EU and NGOs;
- to contribute to the refugee problem solving as well as the elimination of causes of refugee problems applying political, economic and moral means.

Legislation

It is essential for MARRI Member States that legislation is brought closer into line with international (UN and Council of Europe instruments) and the European Community *acquis*, particularly in terms of:

- forms of protection
- rights of asylum seekers
- accelerated procedure
- border procedures
- transparent asylum appeal process
- integration

In order to do this, the MARRI Member States are advised to progressively align:

- identification and admission of refugees to the evolving EU Asylum System, i. e. to introduce or clarify international protection/status and content of protection i.e. rights/benefits attached to each status:
 - refugee protection;
 - subsidiary protection as complementary protection to the protection regime enshrined in the Geneva Convention and its 1967 protocol. Measures of this form of protection are to be implemented in such a manner that they do not undermine but instead complement the Geneva Refugee Convention protection regime,
 - temporary protection as an exceptional measure meant for the immediate and temporary protection of displaced persons in case of mass influx.
- ensure/improve minimum standards for the reception of asylum-seekers, with special rules to be laid down for applicants with special needs such as minors, unaccompanied children and victims of torture and to the improvement of efficiency of the reception systems.
- enhance minimum standards for asylum procedures i.e. granting and withdrawing of asylum for both accelerated and regular procedures with guarantees that must be enjoyed by all vulnerable groups such as unaccompanied minors and in some cases women.

Integration

As recommended, integration policy in the MARRI Member States should be based on the following basic principles:

- not less favourable treatment of migrants than own nationals;
- right to cultural identity;
- mutual participation in society.¹

Policy context

For policy purposes integration can be defined as proposed by the EU principle, i.e. integration is “a dynamic, long-term and continuous process of mutual accommodation by all immigrants and residents of Member States.” The integration process thus involves adaptation and participation of immigrants, who all have rights and responsibilities in relation to their new country of residence and of every resident. Accordingly, States are encouraged to involve the whole population in integration policy, and to communicate clearly mutual rights and responsibilities of indigenous and immigrant population. In the process, the receiving society should provide the conditions and create the opportunities for the immigrants' full participation in various areas of the societal life.

In the latter sense, *immigrant integration policy* refers to conditions provided to immigrants and measures of the State and society which promote integration and enable immigrants to become responsible participants of the country's economic, social, cultural, civic and political development. The policy and its aims have to respect integrity and dignity of each individual, principles of democracy, human rights and fundamental freedoms, cultural plurality of society, coexistence and solidarity, social stability and the rule of law. Instruments, measures and actions of the policy to promote integration, prevent discrimination and enable immigrants to express their cultural identity have to be based on directions of policy-making in various areas of societal life. A gender perspective should be incorporated into all relevant actions and specific attention should be given to the situation of immigrant youth and children.

It is important that integration policy is a part or comprehensive migration policy, in particular:

- that integration interacts with immigration and is an important element of legal immigration and asylum policy;
- that mainstreaming of integration becomes the basic principle, i.e. integration issues are to be considered in all fields of public-policy formation and implementation, including due attention to the mainstreaming of gender equality and to the specific needs of migrant youth and children in integration policies;
- that targeted integration strategies are developed either for certain groups of persons or for particular policy or geographical areas.

Legislation

When drafting changes and amendments to current laws, the MARRI Member States are advised to:

- further develop immigration legislation (concerning the admission and stay of foreign nationals for various purposes such as employment, family reunion, education, asylum and other) in accordance with principles of immigrant integration;

¹ Refer to MARRI Workshop on Migration Management Systems, Recommendations, Ulcinj, Montenegro, 5-6 October 2006

- internally harmonise immigration legislation with legislation in other relevant fields, in particular employment, education, social services and health care, housing and others as appropriate;
- guarantee the right to non-discrimination within the State's jurisdiction: comprehensive legislation to combat discrimination rather than isolated provisions contained in various labour or criminal codes should be adopted, based on a review of signed/ratified international agreements, constitutional and ordinary provisions governing equal treatment and non-discrimination on grounds of racial and ethnic origin, religion or belief, disability, age and sexual orientation in various areas such as access to employment, remuneration and working conditions during employment.

Prevention and fight against irregular migration

The aim of the policy preventing and combating irregular migration is to substantially reduce irregular migration flows and irregular immigration. It is intended to complement policy on fair and efficient asylum system, legal im/migration and integration, in both their internal and external dimensions. This presupposes a comprehensive approach and common concepts and practices with regard to visa policies, document security and establishment of identity, protection of personal data, admission and border management, fight against trafficking in human beings and smuggling of migrants in view of penalisation of perpetrators and protection of victims, as well as on readmission, voluntary and forced return and measures to deter illegal employment. Dialogue between countries of destination, origin and transit as well as other political and development co-operation is vital for efficient fight against irregular migration. MARRI countries as primarily countries of transit shoulder a great obligation and responsibility in these efforts. Thus, regional co-operation, co-operation with the EU and EU Member States and countries of transit and origin in the spirit of solidarity, mutual trust and shared responsibility is of particular importance. Equally so, the continuous participation in other international forums as well as conclusion of bi- and multilateral agreements in this area is important.

Irregular/illegal im/migration is a complex phenomenon that must be tackled in all its dimensions. It involves different categories as regards the people concerned and the different networks through which they pass before arriving, transiting or remaining illegally. The fight against irregular migration has to strike a balance between prevention and repression and a balance between the right of a State to decide whether to accord or refuse admission to the territory to a foreign national and the obligation to protect those in need of international protection. Measures and co-operation for possible actions preventing and fighting irregular/illegal migration are thus interrelated, but can be divided into external measures (such as pre-entry measures, carriers liability, visa regime, border management); internal measures (such as sanctions for illegal employment, but also regularisations); and, the supportive infrastructure, instruments and operational co-operation for the first two groups of measures. Whatever measures are put into practice, they must be in compliance with international obligations and human rights and the specific needs of victims of trafficking and potentially vulnerable groups like minors and women need to be respected.

Visa policy

Visa regime should serve as a chief means to control who can legally enter the state's territory. Visa policy refers to visa as a *prevention pre-entry measure* to enter the territory and as *security and identification* issue which requires adequate *administrative and supportive infrastructure*.

For the MARRI Member States, visa policy issue has been a very sensitive question since it has multiple importances. Firstly, the countries' visa policy is a very important security aspect related to the fight against irregular migration, organised crime and terrorism. Secondly, a very important aspect is the visa regime that

has been imposed on the nationals of MARRI Member States for entry into EU territory with only Croatian nationals already enjoying short-term visa-free access to the EU. Furthermore, in view of broader objectives of the region, people's mobility and free movement of persons is directly related to the overall stabilisation of the region. Therefore the issues of visa liberalisation and facilitation of movement within the region is important as well.

The harmonisation/approximation of visa policies and procedures contribute to a more efficient prevention of irregular migration as well as to foreign policy and security considerations. When examining the need for visa obligations aspects of irregular migration and readmission are significant. Therefore, the MARRI countries are advised to:

- further align visa issuance policy and legislation with the *acquis* i.e. adopt or amend the relevant legislation in order to bring it into line with EU standards on visas;
- further align with the EU list of countries whose nationals must be in possession of visas when crossing the state border (negative list) and list of countries whose nationals are exempt from that requirement (positive list)
- extend visa-free regime for EU Member States to nationals of all new EU Member States
- improve security standards of visa stickers;
- introduce new types of passports that incorporate a number of security features against forgery and counterfeiting;
- strengthen institutional capacity in relation to:
 - visa issuing procedure and practice - to be aligned on EU standards, the practice of issuing visas at the borders had been prohibited;
 - staff shortages
 - technical equipment
 - proper resources
 - coordination between visa issuing authorities and border crossing points;
- establish /develop a national visa IT management system and a visa centre in order to:
 - establish or improve an on-line information system which links the central National Visa Centre with the country's consular offices in third countries;
 - establish a timely instrument to ensure proper admission for short-term stays and return after the expiration of the visa;
 - create a dual identification process based on secure documents and a corresponding database;
 - ensure that development of such a system, making use of the possibilities of modern communication and computer technology, is based on a clear legal definition of needs and objectives as well as resources;
 - ensure that the system is devised in conformity with the rules on the protection of personal data.

In order to achieve a visa-free regime in the MARRI region in a medium and long-term perspective the co-operation between participating States should also focus on the harmonisation of visa policy and practices in view of:

- common criteria for the granting of visas;
- closer consular cooperation among countries in the region;
- aims at harmonising visa obligations among MARRI participating States.

Document Security and Establishment of Identity

Secure travel and ID documents are closely connected with visa policy and to border controls as well as to post-entry measures and better implementation of readmission agreements. It is crucial not only to *secure travel and ID documents*, but also to *ensure data protection* and to *combat opportunities for fraud* and deception, for instance usage of falsified documents or identity theft as well as out-sourcing.

Certain properly undertaken measures in the context of pre-entry and entry screening, border control and personal identification contribute to the fight against irregular migration as well as organised crime and terrorism. In accordance with protection of personal data, MARRI Member States should reinforce their measures related to the *issuing and screening standards* of documents, including *information exchange* between institutions responsible for asylum, immigration and border management and security/intelligence agencies, at national as well as international level.

In order to improve document security and to recognise those who misuse the entry and residence regulations by false documents, deception or theft of identity, MARRI Member States should:

- introduce/improve issuing standards to enforce document security of identification documents (for both nationals and foreigners e.g. visa, residence documents) and travel documents; this,
- in tune with rapid technological development, including the biometric data (identifiers) that are very difficult to forge;
- reinforce screening of documents, including computerised information exchange nationally and internationally,
- provide special training for relevant staff.

Protection of personal data

Electronic data processing and setting up of databanks offers considerable advantages in terms of efficiency and productivity of migration management. It allows public administrators to improve and increase the collection, processing and interlinking of personal data on the one hand and gives rise to a clear trend towards massive electronic storage of data concerning the private sphere of individuals on the other. Therefore, it is essential that any IT management system has to be based on the protection of personal data.

In most of MARRI Member States personal data protection is a matter of concern. In order to rectify this situation MARRI Member States should:

- improve the implementation of the Council of Europe Convention 108;
- sign and ratify the 2001 Council of Europe Additional Protocol to the Convention 108 regarding supervisory authorities and trans-border data flows (Serbia, Macedonia, Montenegro);
- adopt or align legislation on the protection of personal data with the *acquis*, in particular with the Data Protection Directive;
- set up or ensure the functioning of an independent Data Protection Supervisory Authority with sufficient powers over the public and private sectors and sufficient means to effectively implement the law;
- ensure the capacity of state authorities, in particular law enforcement bodies, to implement the legislation on protection of personal data.

Integrated Border Management

The efficient handling of borders has become an issue of political priority in times marked by trends as diverse as economic globalisation, international migration and fear of organised crime and terrorism. The four-fold concept of Integrated Border Management (IBM), consisting of a comprehensive approach to border problems across administrative and central-local dividing lines under the management of professionally skilled staff serves as an international standard. IBM as it has emerged as a joint concept in the MARRI region from the assistance programmes (PHARE, TACIS and CARDS) and the Ohrid Border Process came to comprise the following basic elements:

- comprehensive tackling of the interrelated problems of trade, transport, insecurity, smuggling in migrants and trafficking in human beings and, where necessary, the development problems of the border regions themselves;
- strict requirements for the numerous authorities and agencies, especially border control and customs, but also transport, health, veterinary services and others, to co-operate on common problems, rather than working separately and often at cross purposes;
- strong encouragement for neighbouring countries to co-operate in managing shared borders;
- professionalism of border control services provided (under the responsibility of appropriate civilian authorities), based on the principles of democratic control, efficiency and proper implementation.

Due to different pace of progress, tailor-made projects and activities for the countries concerned are drafted for this year in the framework of the Ohrid Border Process together with common recommendations to:

- adopt, improve and implement the IBM Strategy and Action Plan;
- improving and implement the legal and judicial frameworks;
- enhance inter-agency cooperation, meaning a more integrated approach towards the four competent services (Border Police, Customs, Veterinary and Phyto-Sanitary) involved in border management, especially between the Border Police and Customs Services and strengthening cooperation between border police services and criminal police by e.g. memoranda of understanding clearly defining tasks and responsibilities;
- cross-border cooperation and regional cooperation - signing, ratifying and implementing international agreements;
- co-operation with neighbouring EU Member States in the field of border policing;
- co-operation with FRONTEX;
- enhance human resources and training;
- promote and exchange best practices amongst regional partners, especially on practical training;
- develop information technology and telecommunication - upgrading of information systems e.g. for document checking;
- upgrade of infrastructures and equipment e.g. at land border crossing points, sea- and airports according to European standards in terms of technical equipment and for increased efficiency of blue and green border management;
- improve risk analysis and threats assessment.²

² Cf. Ohrid Process on Border Security and Management Fourth Review Meeting, 8-9 November 2006, Podgorica, Republic of Montenegro: Conclusions. Brussels, 29 November 2006.

Fight against Human Trafficking

Trafficking in human beings constitutes a violation of human rights. At the individual level, it infringes a person's human dignity, personal liberty, freedom of movement, privacy and right of self-determination. At the societal level, trafficking in human beings violates the prohibition of slavery by subjecting trafficked person to slavery-like practices and compulsory work, and is to be equated with cruel and inhuman treatment. Trafficking in human beings is a criminal activity, which has been increasingly shown to be penetrated by transnational organised crime, often connected with other criminal activities such as drug trafficking and money laundering. Human trafficking has recently assumed remarkable dimensions within and across borders of many states. The "movement" perspective of trafficking in human beings has particularly influenced the perception of human trafficking as a migration issue, often confused with the smuggling of migrants. In the interest of states to secure their borders and control migration, the formulation of legal instruments and countervailing measures against trafficking in human beings has occurred within the framework of migration, particularly with a view to security concerns in relation to irregular/illegal migration.

The fight against human trafficking has to evolve within the framework of the fundamental principles of respect for human rights, the rule of law and democratic values. The human rights of victims of trafficking should become the guiding principle of all efforts to prevent and punish trafficking.

To successfully combat trafficking in persons a four-pronged approach is recommended:

- the prevention of trafficking and re-trafficking
- the prosecution of traffickers
- the protection of the human rights of and support to victims and witnesses
- repatriation (referral) and reintegration of victims of trafficking
-

In this context there is also a need to more forcefully address other issues such as the conditions of both the push/supply and pull/demand side of trafficking in human beings. This implies the formulation of sustainable development policies and co-operation in their implementation. Any proposed and adopted measures also need to be sensitive to gender issues and the particular condition of minors. The strengthening of national and international policies to manage the orderly movement of people would also be a further step towards the realisation of effective mechanisms to prevent and combat trafficking in people.

Given the scope of human trafficking in the MARRI region, the phenomenon has been addressed within the framework national and international co-operation, both through co-operation and agreements as well as through the European Union and international organisations (Council of Europe, OSCE, IOM, ILO, UNICEF, UNCHR), non-governmental organisations and other multi-lateral forums for cooperation.

The MARRI Member States are advised to upgrade their anti-trafficking policies and Action Plans to:

- prevent trafficking and re-trafficking with:
 - public awareness raising;
 - education mainstreaming;
 - reduction of vulnerability, particularly as regards women and children, and at-risk sectors;
 - socio-economic development and poverty reduction initiatives.
- investigate and prosecute traffickers with:
 - proactive and reactive investigation, *inter alia*, through improved co-operation and joint data collection and analysis by police and prosecutors;
 - effective prosecution and conviction of offenders;

- anti-corruption measures, particularly against complicit police, prosecutors, judges and other officials;
- legal redress and compensation for victims;
- human rights-oriented and victim-first approach police and judicial treatment of victims and victim/witnesses;
- victim/witness protection;
- international law enforcement and judicial co-operation.
- support and protect victims and witnesses:
 - improve victim identification;
 - shelter, social support, and protection of victims;
 - improve witness protection and secure in-court treatment of trafficking victims;
- return and integration of victims of trafficking:
 - improve procedures of return and integration for all victims;
 - develop/upgrade national referral mechanism for victims.³

Legislation

In addition to the implementation of recently enacted legislation, the MARRI Member States should further upgrade and harmonise their national legal frameworks in regard to trafficking, including:

- victim/witness protection law;
- criminal law, in particular, severe punishment of criminal activities and the seizure of illegally obtained financial advantages;
- immigration and asylum laws;
- labour law, social services and employment laws;
- contract law;
- laws on marriage and divorce; as well as,
- investigative, criminal and judicial procedures.

Return and readmission policies

Sustainable return and readmission and reintegration policies, the latter closely related to the issues of transit irregular migration, are integral parts of the fight against irregular/illegal immigration. To be effective, return and readmission must fit smoothly into a management of migration issues, requiring clear consolidation of legal immigration framework, an effective asylum system based on rapid procedures offering access to true protection for those needing it and enhanced dialogue with third countries. Return and readmission policies are more likely to be successful if based on a common understanding and principles of key issues concerning readmission and return process. Consequently common standards should be set in order to facilitate further development of measures and regulations which can enhance the work, co-operation and co-ordination of the authorities involved and to allow enhanced regional co-operation in the MARRI region as well as co-operation with other countries, the EU and international and national non-governmental organisations. The MARRI Member States concluded a significant number of bilateral readmission agreements in recent years, mainly with

³ Cf. the *Albanian National Strategy for Combating Trafficking in Human Beings: Strategic Framework and National Action Plan: 2005 – 2007*, which follows a structure based on international and EU standards, and, in particular, a model format for a comprehensive anti-trafficking response, endorsed in May 2004 by all countries of the SEE region as part of the CARDS programme *Enhancement of Implementation Strategies for National Anti-Trafficking Action Plans in Stabilisation and Association Process (SAP) Countries*, implemented by the International Centre for Migration Policy Development (ICMPD).
 Retrievable from http://www.caaht.com/resources/NationalStrategy_2005-7_ENGLISH.pdf

the EU Member States. Albania concluded a readmission agreement with the European Community, while majority of others expressed their readiness to do so. The latter issue is closely connected with the visa issue.

The MARRI Member States should:

- improve implementation of readmission agreements;
- explore the possibilities on how to maximise effective return policy of third-country nationals in conjunction with sustainable visa policy.
- develop/upgrade integrated return programmes (this could include international co-operation and collaboration with NGOs), tailored to specific situations of the countries as well as returnees (e.g. voluntary return with assistance, forced return with assistance, forced return by the State authorities with due regard to international law and the human rights of the person concerned) and to cover all relevant phases of the return process:
 - pre-departure measures (advice and counselling)
 - return as such (assistance for travelling when forced return, and/or for re-establishment in the country of origin);
 - reception and reintegration in cases of re-admittance (counselling, training/employment/housing)
- conclude readmission agreements, especially with all appropriate countries of origin and transit which are primarily responsible to readmit illegal migrants. In this context:
 - relations should be enhanced with these countries in order to begin dialogue and negotiations on return and readmission issues on bilateral or multilateral basis;
 - readmission agreements, preferably applying standard format for readmission agreements e.g. specimen bilateral readmission agreement of the EU, should contain clauses on nationals, third-country nationals, on transit for the sake of return and protection of personal data;
 - migration co-operation and readmission clauses could also be part of general economic and political co-operation agreements with countries from which irregular migrant flows originate;
 - more flexible and rapid forms of readmission could also be used.⁴
- harmonise/approximate standards to ensure efficient return and readmission policies and adequate and similar treatment of irregular/illegal migrants, which ought to approximate EU standards, concerning:
 - mutual recognition of return decisions - measures terminating residence, expulsion decision, preconditions for expulsion decisions;
 - removal should be subject to minimum standards, setting a final safeguard for *non-refoulement* requirements, safeguarding both the rights of the person concerned (physical state and mental capacity of the returnee as well as on the returnee's integrity during the removal operation) and the effectiveness of the removal;
 - *detention* pending removal defining competencies of responsible authorities, the preconditions for detention, minimum rules on the conditions of detention, in particular on accommodation standards, especially with regard to vulnerable groups;
 - *proof of exit and re-entry*.
 - standards covering the intensity of *coercive measures* (the basis being the IATA/CAWG Guidelines on Deportation and Escort).

⁴ Cf. Conference of Ministers of the Prevention of Irregular Migration in the Wider European Region, held in Rhodes on 25-26 June 2003 in the Framework of the Budapest Process, Recommendations, Recommendations 18-23 and 1997 Prague Recommendations 33-38 with regard to readmission.

- minimum standards and assessment mechanisms which would allow *assessment of the actual situation in certain countries* as to where removals are feasible or not; this could include consultation of organisations such as UNHCR or other relevant actors.

Minimum standards would facilitate operational co-operation between States in terms of assistance in individual cases in particular for cases of identification where the exchange of personal data is envisaged. They would also facilitate co-operation during transit, if not create the possibility of having joint operations e.g. in organising the transport of illegal migrants to be readmitted to their country of origin or last stay in particular into countries which are far away.

National institutional framework

The development and implementation of comprehensive integrated migration policy as well as each of its constituent parts ought to be responsibility of all relevant ministries as well as levels of government as elements of integrated management system.

In MAARI States, the barriers to the effective implementation of migration policy in as a whole as well as in its parts relate primarily to the lack of human resources and capacity in human resources, the insufficient financial resources, as well as to the poor, and at times non-existent, coordination among the respective institutions.

Inter-agency (multi-agency) approach is a necessary condition to address the many complex and interrelated issues of migration policy and management. Such an approach should be taken both, in policy formulation and in its implementation. Given the complexity of migration field and the expertise required to address each of sub-fields effectively, it is essential that an inter-agency approach is taken to any initiative. For inter-agency collaboration to work effectively, strong and effective leadership is important together with agreed management and operational arrangements.

Inter-agency working group for policy development should be responsible for ensuring that a holistic approach to migration is taken. This is essential for ensuring joint and properly structured co-operation in the area of migration management and for preparation of measures for accomplishing principles and objectives of migration policy. The tasks of governmental inter-agency working group would be to:

- Monitor migration flows on national, regional and international level on permanent basis;
- Evaluate situation in the field of migration;
- Analyse push and pull factors in the field of migration;
- Propose appropriate measures, change or amendment of existing material legislation;
- Monitor and evaluate the implementation of the right to appeal
- Follow EU legislation in the field of migration and to propose measures for harmonising domestic legislation;
- Co-ordinate inter-agency activities in the field of migration;
- Co-operate with research and educational institutions, NGOs which are dealing with migration;
- Development of efficient migration and integration policy.⁵

It would be advisable that the working group includes also representatives from relevant civil society organisation for instance employers' associations, trade unions and NGOs and the private sector as well as

⁵ Recommendations of MARRI Workshop on Migration Management Systems, Ulcinj, Montenegro, 5-6 October 2006.

representatives of inter-governmental organisations and international bodies, researchers and other stakeholders.

Government agencies/institutions

The establishment/development of governmental agencies/institutions dealing with all areas of migration management is among basic elements of integrated management system. Well developed institutions are a necessary condition for co-ordination and co-operation of migration management at the national level. That migration management would be well integrated an efficient and effective co-ordination and co-operation within and between all institutions in all relevant management fields must be incorporated into the system itself. This means that national integrated systems must provide for both vertical co-operation and co-ordination within each of the agencies/institutions responsible for specific areas as well as horizontal inter-agency co-operation and co-ordination. It also includes levels of government, from the national to the local. Well integrated national system is at same time required for increased bilateral and multilateral cooperation, particularly for MARRI regional cooperation.

Intra-agency co-operation should be based on the following objectives:

- Vertical co-operation within each agency/institution responsible for specific area;
- Clear and coherent regulatory framework;
- Transparency of responsibility concerning management, task report and follow-up with top-down and bottom-up communication procedures;
- Well established administrative/working procedures;
- Transparent flow of information to beneficiaries of services including their rights and obligations as well as information about the agency/institution's working procedures.⁶

Inter-agency co-operation and co-ordination mechanisms are prerequisite for the success of any national strategy to management of migration. These mechanisms should be competent to elaborate and implement migration and all other policies related to migration, coordinate the actions of all relevant actors within the national framework, monitor their implementation, and facilitate international co-operation. The successful co-operation mechanisms are based on a clear delineation of the respective roles of the various agencies involved. Thus, while developing such co-ordination mechanisms, it is important to clarify very precisely the role of each of the key agencies involved in implementing a comprehensive strategy and the ways of their communication and collaboration, if necessary by law. Inter-agency/multi-agency co-ordination or management groups need to ensure that the specific roles and responsibilities of the different agencies/institutions are agreed upon and understood by all involved. Equally important, the issues of leadership and accountability need to be addressed from the outset.

The establishment of the *Central Migration Authority* is essential for the accomplishment of the above mentioned objectives. Such an Authority should be a focal point national institution in the migration management system. It should be established by law and it should have a clear mandate on its tasks and functions. It could consist of divisions or units, mainly composed of staff on secondment from other agencies/institutions involved in migration management. It should promote a national consultation as part of the development of national policy and action plans in the field of migration. The Authority could also provide liaison functions between government agencies and non-governmental organisations involved in various migration- related initiatives. The principle functions of the Authority should be:

⁶ Ibid.

- Coordination of operative actions of the implementing bodies;
- Continuous monitoring of migration policy implementation with the task to report to the executive and legislative ruling powers;
- Monitor and analyse implementation of the objectives of the migration policy;
- Prepare expert basis for change or amendment of the legislation;
- Decide on appeals against first level decisions;
- Co-ordinate the initiatives with other ministries and agencies, other countries and international organisations;
- Co-ordinate dialogue with local authorities and civil society;
- Provide training and education of the staff;
- Provide the research of migration in cooperation with research institutions.⁷

Monitoring and evaluation

States should ensure the monitoring and evaluation mechanism. Migration flows and stocks on national, regional and international levels should be permanently or at least regularly monitored and periodically evaluated in order to find out how migration is evolving and to take specific actions and/or fine-tuning an ongoing policy. Migration policy implementation in all its elements should be monitored for the purpose of the ongoing assessment of progress made towards the achievement of strategic and operational objectives. It is to ensure that an overall migration policy evolves in a dynamic manner and is capable of constantly refining its objectives and adapting and improving its programmes and methods, thus providing feedback for the continuous improvement of current strategies. For the operational migration management, the monitoring process provides an early reaction mechanism that allows for the rapid identification and resolution of problems with minimal effort, costs and resources and can prevent these problems from compounding themselves. Evaluation has to assess the performance of the overall migration policy as well as the contribution and performance of all its individual elements, linking strategic and operational management goals to the impact of the policy at defined time intervals. As the point of reference and benchmarking, it has to be a participatory and joint process in which all agencies/institutions and other partners participate. In this way, the feedback on policy design, implementation and performance will allow for the improvement or realignment of the policy itself as well as to the quality and success of future policy initiatives.

Data

States should ensure uniformly regular, timely and rapid delivery and dissemination of reliable and comparable data as well as public availability of data in user-friendly outputs. This is vital for monitoring and evaluating migration and migration policy in all its areas as well as in relation to other public policy areas. The collection and compilation of *national official statistics* on migration flows and stocks should be regionally standardised and harmonised according to commonly agreed definitions and on what statistics is to be collected, on data sources and quality standards. This should be done in accordance with international statistical recommendations and practises and the evolving EU guidelines.

States should establish/develop *information management support IT mechanisms* to provide databases for more effective performance of operational procedures and monitoring and evaluation at the operational level. Preventive measures for the privacy of data and data protection contained in these databases need to be implemented in accordance with national and international legal standards, taking into account EU standards.

⁷ Ibid.

Regional networking consisting of national contacts points could contribute to the construction of statistical base and be a way to exchange information and experiences and to foster regional cooperation. The MARRI Regional Centre could institutionalise such a network in order to collect legislation and other documents in the field as well as other publications such as research reports and studies and upgrade its website with the Information Exchange System.

Capacity building in human resources

There is a need to enhance capacity building in all institutions dealing with all elements of comprehensive migration management by development and/or by strengthening permanent training systems specific for each profession category of the staff. Capacity-building measures should be built on:

- an assessment of the situation,
- a clear delineation of the role of various agencies,
- on existing knowledge and expertise, and,
- on an analysis of the roles and competencies required for the implementation of a comprehensive and integrated migration policy.

Training should be updated and continuous throughout professional careers of the civil servants. Common training courses could be eventually developed together with common manuals used for training of different professionals involved in migration management.

Regional co-operation

Given the complexity of international migration, it is unlikely that real success will ever be achieved without regional and international collaboration. Regional co-operation is imperative and of particular importance in the MARRI region. It represents an efficient tool to exchange information and best practices, supports regional ownership and harmonisation/approximation of exiting legislation and, notably, regional collaboration can better cope in matters related to the establishment of the identity and document security and with mixed migration flows, improve asylum systems, management of irregular migration and implementation of readmission agreements and improve combating human trafficking. It concerns administrative and technical co-operation, the institution and capacity building and joint activities.

It must be supported by a willingness and mutual trust of the Member States and their agencies involved in co-operation with each other and with other partners at regional and international level. The tools to be further utilised for these purposes are:

- Bilateral/multilateral agreements
- Readmission agreements
- Inter ministerial meetings with regular joint meetings between services and agencies on operational level
- Designation of authorised contact persons, exchange of liaison officers
- MARRI Regional Forum and MARRI Regional Centre

MARRI framework - Regional Forum and Regional Centre

The first element to further co-operation is *information exchange* i.e. the improvement of existing schemes to exchange know-how and best practices, including the exchange of statistics on regular and irregular migration and asylum seekers, the networking of authorities and the development of certain guidelines on best practices.

In the field of *prevention of irregular transit flows*, it has been already agreed:

- To enhance regional cooperation and information exchange mechanisms on:
 - national legislation, policies and practices relating to prevention of irregular transit migration,
 - operational structures and methods of perpetrators,
 - consular information, false documents, fraudulent invitation letters, fake travel agencies,
 - to promote the approximation of common standards.

A special MARRI Working Group, consisting of relevant experts from national institutions is to be established to deal with this issue.

- To enhance international cooperation and exchange of information on:
 - the trans-national character of irregular migration,
 - fight against organised crime.

The existing SECI and MARRI Regional centres as regional bodies could be more extensively used in this regards.

- To intensify cooperation among countries of origin, transit and destination along the migration routes is essential in combating irregular migration:

The South-East European Working Group of the Budapest Process can be utilised as a forum for presenting the existing capacities in the region, with the objective of:

- improving the awareness of the present situation in the region among the participating states of Budapest Process;
- identifying the priorities for inter-state cooperation.

Joint activities between the MARRI and the South-East European Working Group of the Budapest Process may address identified cooperation priorities.

- To continue co-operation of MARRI with other international organisations and actors (IOM, ICMPD, UNHCR, UNMIK, SECI, RACVIAC and others) ⁸

In the field of *technical aspects of implementation of readmission agreements* and on *document security and establishment of identity* it has been agreed to:

- *exchange information* on views, ideas, best practices and perceptions of what document security and establishment of identity represents; on practices in every day operational work, and on relevant legislation to recognise fraudulent documents;
- *demonstrate progress* and achievements of MARRI Member States in this area which should be shared and compiled in the catalogue of best practices of the Western Balkan states in order to improve: i) the image of the states and ii) the level of the progress achieved in this specific area and iii) to share the expertise of MARRI state experts with their EU colleagues and wider,
- *enhance efforts in bringing together all representatives of agencies on national level* in order to develop a *think-tank working group* consisting of the experts which must have good knowledge on the legislation and practice which must be empowered to act quickly on operational questions in particular when it comes to the frauds in terms of civil status;

⁸ See Recommendations, Workshop on Management of Irregular Transit Migration in the MARRI Region Sarajevo, 29-30 June 2006, Recommendations 1-5.

- *enhance capacity building* in the region by comprehensive integrated training in the field of im/migration and training of staff who deal with the civil status issues in order to establish the credibility of the documents which need to be recognised and accepted in other countries where the nationals of MARRI countries move regularly or irregularly.

In order to enhance capacity building in the region, the MARRI Regional Centre will set up the MARRI Regional Centre Working Group for Document Security and Establishment of Identity. The main objectives of the working group will be to:

- Facilitate permanent intra-agency cooperation between institutions in MARRI Member States dealing with document security and establishment of identity;
- Identify best practices in the area of document security and establishment of identity in the region;
- Increase regional harmonisation of the standards related to document security in regard to data protection;
- Develop solutions/recommendations on avoidance and prevention of possible misuse of legal channels (obtaining of nationality, registration of birth or death in the country or abroad, by marriage, by adoption, recognition of paternity, lack of registration of birth in the countries in particular children born in foreign countries residing legally or illegally, problems related to multiple identities, identifying gaps regarding establishing and confirmation of identity of foreigners, applicants for visa, residence permits, naturalisation, including questions related to the right on family reunification);
- Work on catalogue of good practice in the area of document security and establishment of identity for Western Balkan countries with standardised procedures on protective measures for the documents, establishment of identity for staff dealing with applications for different legal status (visa, naturalisation, residence permits, and asylum) and for staff dealing with control of aliens lawfully residing and irregularly as well;
- Provide practical solutions that will enable prompt exchange of information on misuse of legal/illegal channels on obtaining identity documents among regional institutions by development of appropriate IT tool;
- Contribute to the training of civil servants (e.g. border police, civil status officials, officials dealing with visa applications, nationality, residence permits) and explore modalities for enhancing such training;
- Elaborate follow-up strategies.⁹

Thus, MARRI Regional Centre - as a point for communication and co-operation between Member States would in accordance with its mandate intensify, *inter alia*, the following activities:

- foster teamwork and facilitate the process of exchange of information, experiences and cooperation between Member States: network of national contact points could be further developed or established as appropriate, and regularly meet in order to increase the exchange of information, share knowledge, learning and best practices; the process of exchange of information and experiences between the countries in the region and their cooperation on the local level could be facilitated by establishment of an early warning system using the liaison migration officers (for this purpose the Portuguese experience was suggested to be explored)
- raise awareness of migration related issues, among other among parliamentarians;
- support information gathering and analysis and disseminate statistics related to migration;

⁹ Cf. Recommendations, Workshop on Technical Aspects of Implementation of Readmission Agreements MARRI Regional Centre in Skopje, 15-16 June 2006, point 5.

- provide base for migration policy/policies through research;
- support Member States in legislative and non-legislative fields of policy making and implementing, e.g. by meeting with EU experts and practitioners,
- assist capacity-building in Member States, in human resources by developing continuous training system for staff and other actors involved in migration issues;
- assist Member States to put concrete measures into practice at national level e.g. to assist in finding funds for projects developed by state and local authorities, the social partners and civil society, particularly to explore and identify relevant EC Budget Lines as well as interest of EU Member States for financing migration related projects with emphasis on regional cooperation and explore modalities for assisting Member States national institutions to draft proposals for such budget lines;
- help engage national and local stakeholders in shaping their initiatives e.g. conferences, workshops and similar for bringing people from the region as well as from outside of the region – experts, operators in the sector, trade unions, employers’ associations, non-governmental and other civil society organisations, immigrant representatives, universities, journalists and others - together on the topic of migration issues, giving them greater visibility,
- evaluate national strategies, action plans and reports.

Conclusion

The document on comprehensive and integrated migration policy in the individual MARRI Member States in order to provide political guidelines on principles and aims of the policy and to secure political commitment to integrated migration management should be based on:

- an assessment of country specific conditions and needs;
- an assessment of the current legal framework;
- a survey of organisations and other actors involved in migration management.

The document ought to ensure:

- that all policy areas of migration policy interact into an integrated and comprehensive policy;
- that targeted strategies (Action and Operational plans) are to be developed/upgraded for each element of the comprehensive policy;
- that migration related issues are to be considered and included in all other relevant policies such as economic policy, labour market and employment, demographic policy, education, health and social policy, security and defence and other as appropriate;
- that mainstreaming, specifically of integration, becomes the basic principle, i.e. integration issues are to be considered in all fields of public-policy formation and implementation, including due attention to the mainstreaming of gender equality and to the specific needs of migrant youth and children;
- that a coherent approach to policy implementation requires consolidated legal and regulatory framework which on the one hand stipulates all relevant fields **and** clearly states rights and obligations of the authorities with due consideration to the competence of local and regional authorities on the other hand;
- that legislative and regulatory framework will be reviewed and changed or amended:
 - as necessary, to be in compliance with relevant instruments of international law; and,
 - as appropriate, approximating *acquis communautaire*;
 - that legislation will be internally harmonised with legislation in other relevant fields;
 - that the adopted legislation will, in a clear and unambiguous way, state the obligations and rights for the authorities implementing legislation;

- that it will be written in a simple, clear, coherent and effective common way so that it can be understood, applied and enforced by the staff;
- that, in order to apply the law in co-ordinated and correct way and provide good and effective service, legislation will be supplemented by by-laws, instructions, manuals and other documents as appropriate;
- support for co-operation, co-ordination and communication between stakeholders is ensured in the national dialogue-structure, both in the political decision-making process and policy implementation, if necessary on a legal basis;
- inter-agency co-ordination at ministerial and official levels, and with NGOs and international partners;
- that Central Migration Authority will function as a national focal point and that information is shared and co-ordinated with all tiers of government and other stakeholders, on local, regional and international level,
- resource and budget lines;
- accurate data collection and evaluation;
- capacity building in human resources;
- monitoring and evaluation mechanism are to be agreed upon,
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Felicita Medved
MARRI MIGRATION PAPER
APRIL 2007

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ANNEX

Table 1: Legislation governing the area of migration in MARRI Member States, May 2006

Table 2: International Agreements (Conventions) Regulating Labour Migration, MARRI Member States, May 2006

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Introductory note:

The states and territories participating in the Migration, Asylum, Refugees Regional Initiative (MARRI) – in the following text frequently referred to as the MARRI region – are: Albania, Croatia, Bosnia and Herzegovina, Macedonia, Montenegro, Serbia and Kosovo (under the administration of the United Nations Interim Administration Mission in Kosovo (UNMIK) pursuant to the 1999 UN Security Council Resolution 1244). More commonly used term for this region, particularly by the European Union as well as international organisations is the ‘Western Balkans’.

1.1 Migration context

Migration has become a very complex issue, not only in terms of the number of migrants, but above all in terms of the multifaceted economic, social and cultural dynamics of migrants. According to an analysis carried out by the Population Division of the United Nations Department of Economic and Social Affairs there were some 191 million people not living in their country of origin in 2005. About 115 million or 60 per cent of these migrants live in developed countries (1 in 5 in the United States) and almost 40 million or 12 per cent of them in the European Union (EU). Half of these migrants are women. Between 1990 and 2005, the number of immigrants in developed countries grew by 33 million, 4 million each going to Germany and Spain, and 15 million to the United States.

The data shows that Europe has become one of the main destinations on the world map of international migration. From a historical perspective, this is a relatively new phenomenon. In contrast to demographic realities, many Europeans still do not see their homelands as destination for immigration, nor do they assume that immigration could turn into a permanent and possibly even necessary and managed process. Today, this contra-factual perception of international migration realities has become a major obstacle for the management of migration and the implementation of proactive migration regimes. International migration is certainly increasing on a global scale, and the causes and underlying processes that have led to this shift from emigration to immigration in Europe are diverse. The most important causes are related to the considerable economic, social, and political imbalances that mark the gap between relatively rich, democratic and stable but ageing societies in Europe and the much poorer, less stable, but youthful and demographically growing societies in neighbouring and other world regions.

The last decade or so has been the most migratory for Europe since 1945, and the MARRI region in particular. Migrations of this period may be identified in a number of ways, but at their heart is the dynamic relationship between geopolitical and geoeconomic changes and evolving patterns and processes of migration, normally traced back to 1989.¹⁰ The wars in the Balkans dominated movements in the 1990s as they brought sudden and massive forced movements that have affected the flow regimes, created human rights difficulties and injected major uncertainties into the policy-making process. This recent history left marks in the region. Besides large numbers of displaced persons within the region, many have left their homelands to the EU or elsewhere looking for work together with asylum-seekers and irregular/illegal migrants.

The geographical patterning has also altered greatly: besides being primarily countries of emigration, the MARRI countries increasingly found themselves in the role of transit countries for migrants from the East and

¹⁰ See Medved, F. (2002), *Migration in Context of the European enlargement* presented at the ERA Conference *State of Play on European Immigration and Asylum Policy: Patching up Tampere?*, Trier, 25-26 April 2002. See also Castles, S. and M. J. Miller, (1993), *The Age of Migration*, London: Macmillan; Gould, W. T. S. and A. M. Findlay, (eds.), (1994), *Population Migration and the Changing World Order*, London: Belhaven; Richmond, A. H., (1995), *Global Apartheid*, Toronto: Oxford University Press.

the South, aiming to enter the EU and are and will become destination countries in their own right as the process of economic transition will advance. There are some differences in the migration fields of individual MARRI countries, which reflect a range of historical links and geographical, especially proximity processes. These patterns reinforce the diversity of migration experience across MARRI Member States.

In addition, the geography of migration is associated with types of migration and with changing migrants' profiles more generally. While the bulk of movement has consisted of refugees and displaced persons to whom the most attention in recent years has been accorded, the second element consists of irregular/illegal migration. Smuggling of migrants and trafficking in human beings has flourished. The latter, especially of women and children, continues to be a serious problem, and even increases in post-conflict regions. The global patterns of trafficking in persons¹¹ show that the MARRI Member States are origin, transit or destination for trafficking victims.

The region is strongly affected by irregular migration both in terms of inter- and intra-regional migratory movements. This type of migration is largely labour–market related, the process is controversial however. For example, even refugees and asylum seekers often appear to be little different as many are believed to be basically 'economic' refugees rather than people fleeing from fear of persecution. Furthermore, it is sometimes difficult to identify the differentiation of human trafficking from illegal immigration. Smuggling of migrants and particularly trafficking in human beings is currently one of the most urgent and complex human rights issues and one of the priority concerns of international cooperation in the fight against transnational organised crime. Additionally, a considerable emigration from the area, including highly skilled labour migration, contributed to the brain drain. Together these types of migration embody an increasing polarity in migration flows. Notably, this is manifested by a bipolar distribution according to skills, occupation and income. Another result of migration is family fragmentation, bringing about the growing participation of women and children in migration. A growing number of female migrants and minors are also reported as being the victims of trafficking in human beings, exploited in sexual and other industries in slavery-like situations.

An important overall comment is that there is a complex pattern of people entering but also leaving the MARRI region. Migration prospects the countries of the region face are rather complex: at the same time these are countries of origin, transit and partly also of destination of legal and irregular migrants.

In view of the above, one can argue that also the term 'migration' has in same way changed in the last decade or so. It is not immediately clear what is meant by 'migration' and 'immigration'. Migration is a sub-category of a more general concept of 'movement', embracing a wide variety of types and forms of human mobility each capable of metamorphosing into something else through a set of processes which are increasingly institutionally driven. What we then define as migration is an arbitrary choice, and may be time specific. In recent decades, 'immigration' has been associated with some notion of permanent settlement, which for the most part occurred indirectly as a development of previous temporary labour migration, mainly through family reunion. Most voluntary migration in recent decades has featured temporary labour migrants, yet this is an enormously diverse group, which can be blended with numerous other international movers. Today, 'permanent' settlement may be associated with return migration of former labour migrants or certain ethnic groups. It is important to see that diverse types of 'mobility' (permanent migration, temporary labour migrants, asylum seekers, refugees, displaced persons, temporary protected persons, family members coming to join settled migrants, students, working holidaymakers, highly skilled)

¹¹ Refer to United Nations Office on Drugs and Crime (UNODC): *Trafficking in Persons: Global Patterns* April 2006.

may easily be transposed into another. It does not therefore make sense to think in terms of rigid categories, nor to place 'im/migration' at some defined point on the mobility continuum.¹²

1.2 Policy context

Migration policy cannot be understood in isolation from the economic, political and social orientation of any state. Political transformations in the MARRI region have brought into sharper focus questions surrounding the definition of the Western Balkan states and migration is located at the centre of competition and conflict about the nature of organising principles, which can unify these states. Return or local integration of refugees and displaced persons has occupied much of the attention, as has irregular migration, smuggling and trafficking in human beings. National, regional and international efforts have been launched to solve and combat these phenomena. The demographic context, labour market and issues regarding the labour migration have not been high on the agenda. For example, the latest EC Stabilisation and Association Reports hardly report that migration policy would include anything else than fight against irregular migration and organised crime, including smuggling and trafficking. However, the first decades of the 21st century confront the MARRI region with challenges relating to various interrelated subjects, in particular: the urge to provide a sustainable basis for political, social and economic development and the approximation to the European Union. The latter, coupled with a need of regulating international migration, has already led to several documents recognising there is a 'common interest' in the field of asylum and migration policy of the MARRI Member States and a search for a forum for strategy creation and coordinated action as seen in the establishment of the MARRI Regional Centre.

Various factors seem to have contributed to such a development:

- first, there is the increasing recognition among origin, destination and transit countries alike of the link between migration and demographic, economic, social, political and human rights conditions;
- second, while the concepts of asylum and migration are distinct and entail different responses, the area of asylum constitutes a part of the larger migration debate;
- third, deficiencies of border control and migration management particularly contribute to illegal migration, smuggling of migrants and trafficking in persons,
- fourth, despite a desire to restrict immigration and to mitigate migration flows, the immigration debate in the EU and some of EU Member States reoriented itself from one of restrictionism to one of a guarded overture in order to meet labour shortages;
- fifth, the link between migration and integration has been recognised; and,
- finally, efforts on controlling migration and on approximation/harmonisation of migration policies and practice of the MARRI Member States with that of the EU calls for a clearer vision of a comprehensive policy and more concrete migration objectives within the individual MARRI Member States as well as the region as a whole.

It is becoming clear that migration in the MARRI region has a significance, which outweighs the before described changing patterns and processes alone. Migration has been assuming a growing importance on political agendas and it is essential to discuss these issues openly in order to reach a public and parliamentary consensus on the objectives of the policy to be followed.

The problems confronting the governments of MARRI Member States have resulted from a piecemeal approach to a specific problem-solving, which led to a series of (im)migration-related policies, addressing a series of

¹² Cf. Salt, J., (2000), *Current Trends in International Migration in Europe*, Consultant's Report to the Council of Europe.

issues (such as refugees and asylum, trafficking, illegal immigration and readmission/return) separately or in parallel rather than in an integrated fashion. An integrated management strategy is required to bring these together and to be applied over the long term. Failure to do so might lead to mistakes where action in one direction results in creating new problems in another.

The building of social and political consensus has been identified as a key element of any successful policy. This is especially valid for migration policy. Otherwise too much room is left for demagogical or xenophobic statements and deliberate dissemination of false information. Hence, the first question for the governments of MARRI Member States is how to structure the debate on migration policy. Migration is a complex and politically delicate process, which means that governments ought to strive for a consensus with all possible political and social stakeholders. In order to promote a need for comprehensive migration policy, including asylum, immigration and integration policy as well as fight against irregular migration and transnational organised crime involving human smuggling and trafficking, the society has to be aware of the fact that migration is a permanent feature of society and that if properly and effectively managed it can be beneficial for both immigrants and the receiving society. It is also important to see that immigration and integration policy, its measures and specific programmes are strategic investments in the economic and social well-being of society as a whole. Accurate information about migration and migrants is therefore an essential element in support of such a policy. This includes awareness-raising of migration related issues among the native population - from the politicians, parliamentarians, policy-makers and practitioners at all levels of the governments to trade unions, employers' associations, immigrant networks and associations, non-governmental organisations, recruitment agencies, schools and universities to local communities. Various possible actions for awareness-raising and for greater integration capacity may be envisaged. Among them the media can play an essential role in providing balanced coverage and responsibly informing the public debate on migration. Here, it should be noted that national parliaments can play an important role in sensitising the public and raising awareness on the phenomenon of migration. Apart from the use of their legislative competencies, it is important for the national parliaments to exert political pressure and influence on their governments.

1.3 Internal dimension

Policy is the precise statement of agreed goals and their translation into action. More complex are challenges more important it is that policy is sound. International migration is by definition a form of human mobility that crosses state boundaries. Immigration policy is one of the most sacred areas of national jurisdiction. The State sovereignty in immigration regulation, migration governance and management is limited by obligations of the State deriving from binding international law and agreements concluded with other States. In pursuing its goals migration policy also crosses a number of other policy areas, *inter alia*, economic, labour market and employment policies, demographic policy, social and health policies, education policy, security and defence policy. In addition, it is important to coordinate efforts with other partners such as regional, international and non-governmental organisations, the private sector and various other stakeholders.

1.3.1 Comprehensive and integrated migration policy

The principal aim of migration policy is to regulate migration in direction of its contribution to the welfare of the country's population, economic and social development, protection of health, security, and peace, applying human rights and humanitarian obligations, such as the 1950 European convention on Human Rights and Fundamental Freedoms, the 1951 Geneva Refugee Convention and the 1967 Protocol. Each of the states ought to give legal immigrants a possibility to remain, either temporarily or permanently, and to integrate into their societies. The aims of migration policy should take into consideration both the internal and foreign policy

dimensions of migration policy and respect the common valued principles of the rule of law, human rights, democracy, social justice and cultural pluralism. In seeking coherence between the State's internal and external policies, the migration policy should stress the need for more efficient management of migration flows at all their stages, in which the partnership with countries of origin and transit is of vital importance for the success of such a policy.

The objectives of migration policy should be defined as principles that will enable consistent policy implementation in different spheres of life and give a direction in which the policy is to proceed. The significance of the policy is in its role of an integrative authority for the executive-legislative and administrative and other implementation levels of migration policy and in its informative value to various interest groups in the country and abroad. Monitoring the implementation of policies and evaluating their impact in relation to intended effects ensures that an overall policy evolves in a dynamic manner and is capable of constantly refining its objectives and adapting and improving its actions and programmes in accordance with dynamic and interrelated migration, economic, social and political processes.¹³

In migration policy-making MARRI Member States have to consider conditions of each individual country, such as geographical and geopolitical position, their histories, population, economy, civic and political cultures.

Nevertheless, due to a need for a comprehensive migration policy in all of these States, and interdependency of various activities and the migration management systems implementation, the basic common principles for migration policy are suggested. They intersect with the above described migration types and are thought to contribute to the elaboration and organisation of various aspects of migration policy, including its legal and regulatory framework and administrative practice. These are:

- *the principle of solidarity* and international and regional responsibility/burden sharing; this principle primarily applies to forms of international protection and assistance and also extends to irregular migrations and their consequences such as return/readmission;
- *the principle of responsibility* to the State and its nationals, this principle primarily affects regular, relatively free immigration and emigration, integration and regulation of naturalisation.
- *the principle of long-term macroeconomic utility* which primarily applies to relatively free migrations that do not involve motivations based on legal or moral obligations such as family reunion and repatriation. According to this principle it is possible to define criteria for controlled and selected admission of foreign nationals in view of the labour and capital markets, concurrently combating irregular migration, including smuggling of migrants and trafficking in human beings.
- *the principle of rule of law* which means that neither emotional attachment to one's nation or cultural values neither arid utilitarianism should lead to a migration policy or regulation in violation of obligations deriving from international treaties, generally accepted principles and internal legislation. This principle demands respect for human rights of all persons and with some exceptions respect for civil rights of all legally present persons in the country; from the protection of personal data and personal freedom and principle of *non-refoulement* as set forth in international obligations

¹³ Medved, F. (1998): Izhodišča za oblikovanje politike priseljevanja Republike Slovenije, v Predlog resolucije o imigracijski Republike Slovenije (RelPRS) - EPA 507 -II - Poročevalec Državnega zbora Republike Slovenije, XXIV, No. 38, pp. 9 – 77; Medved, F. (1998): Predlog načel in ciljev imigracijske politike, *Javna uprava* 1998/38, No. 3, pp. 433– 456. Inštitut za javno upravo Pravne fakultete Univerze v Ljubljani.

Due to the political time-frames, i.e. periods to which the coordinated system of migration policy principles, objectives and instruments refers, the time dimension of strategy concerning accession to the European Union calls for harmonisation/approximation of MARRI Member States migration policy to the European Union's migration as well as other policies, particularly in the field of Justice and Home Affairs and to the *acquis communautaire*, in accordance with different national situations and priorities of MARRI Member States and institutional affiliations between these States and the European Union.

1.3.2 Policy areas

International migration occurs in three major forms:

- as regular, free migration of individuals who change the country of residence on their own will and in accordance with existing laws;
- as forced migration, when people flee either as individuals in fear of persecution or massively in fear of collective violation of human rights or humanitarian law and other circumstances caused by various conflicts and natural or human induced catastrophes;
- as irregular/illegal migration, concerning illegal border crossing or unauthorised residence in a foreign state.

Migration policy should consider all types of migration as well as migrant population present in the state. National policies are in general of two main types according to whether they deal with the flows, by implementing overall controls over the entry of new immigrants or through their selection or with the stocks of immigrants who are settled, either in regular or irregular situation. In essence, almost all countries try to select some immigrants and to keep others away. The current stance of national migration policies is towards managing and containing immigration flows and addressing the challenges of integration of immigrants present in the country. A comprehensive migration policy should integrate both main types of policy approaches. However, due to complexity integrated migration policy is divided into different yet interconnected subfield policies concerning:

- legal migration (immigration, but also emigration)
- asylum system
- integration
- irregular migration

All of these have, though to a different degree, an important external dimension and require regional and international cooperation as well as partnership with countries of origin, transit and destination.

In the broadest sense migration policy addresses a range of migration-related issues inspired by the overall objectives and as such needs the leadership of each State and should seek to involve the support of all members of society. In the more narrow sense, Action Plans and Operational Programmes or projects seek to address specific areas or subfields of this policy and have to be designed and built in such a way that they are congruent with each other while pursuing their specific objectives and consistent with the overall aims of the migration policy in broadest sense. Otherwise one problem may be solved and the other occurs. Whether policies, plans, actions, programmes or projects are large or small, it is important to devise a monitoring and evaluation mechanism.

Some of the criteria that are frequently used to guide the design of policies are:

- Consistency - congruency of policies and programmes with each other and migration policy in broader sense
- Compatibility - in order to determine if the response is the right one in one field or if they are unwanted responses/consequences in other field/s
- Transparency – administrative and financial - - in order to maintain public confidence
- Sustainability - in order to design, prepare and deliver the follow-up

Some of the main prerequisites to successful policies are also well known and include:

- Strong political will and commitment to policy reform
- Development of clear and effective strategies at the national and local levels
- Public accountability for progress made towards the goals of policy and the implementation of national and local strategies
- Innovative institutions in the country
- Public education and awareness campaign to develop broad-based support for the policy
- A national capacity to analyse, design and implement further policy interventions in response to changing circumstances
- Partnerships with states of origin, transit and destination, regional and international organisations, non-governmental organizations and other stakeholders.

An adopted and well implemented migration policy adds to the credibility of the State on the international stage and in its relations with other countries. In addition, faced with constraints such as conflicts between introduction of restrictive migration controls and economic interests, tighter borders and asylum systems that can penalise genuine refugees, the persistence of irregular migration and trafficking in human beings, governments often look for forms of international cooperation that can help address domestic migration management problems.

1.4 International and regional dimension

Forms of international cooperation that are particularly important in the Western Balkans are:

- European Union cooperation with countries of origin and transit to control, contain or prevent migration and refugee flows coupled with the EU attempts to develop common policies or approaches in the field of justice and home affairs. This cooperation is also prerequisite for integration of the Western Balkan (MARRI countries) into the EU;
- The Stability Pact as a political declaration of commitment and a framework agreement on international cooperation to develop shared strategy for stability and growth in South East Europe, specifically Ohrid coordinating initiatives of the region's border management in cooperation with NATO, OSCE and the EU Commission;
- MARRI Regional Initiative, with an aim to enhance regional ownership and cooperation in the field of population movements in the region.

1. 4. 1 The European Union and the Western Balkans

Following the EU Regional Approach for the Western Balkans adopted by the European Union in 1996 and 1997,¹⁴ which set out political and economic conditions for enhancing relations with the EU 1997, the Western Balkan countries were given a perspective of future European Union membership in May 1999. The **Stabilisation and Association Process (SAP)** was initiated as the overall 'Europenisation' instrument for the region in the framework of the EU's policy for the Western Balkan countries all the way to their eventual accession. In June 2000, the European Council in Feira had assured the countries that they were "potential candidates for EU membership" and adopted a strategy of support and EU approximation.¹⁵ This objective marked a shift in the EU's previous 'regional approach'. Against this background, the region's leaders declared a clear set of objectives and conditions by which to achieve EU integration at the 24 November 2000 Zagreb Summit and confirmed the Stabilisation and Association Process was as "the heart of the Union's policy towards the five countries concerned."¹⁶ The Thessaloniki European Council of 19 and 20 June 2003 reaffirmed its determination to fully and effectively support the European perspective of the Western Balkan countries and stated that "the Western Balkans countries will become an integral part of the EU, once they meet the established criteria" One of the criteria in question is the progress achieved by these countries in the area of Justice and Home Affairs. The EU-Western Balkans Summit in Thessaloniki on 21 June 2003 explicitly confirmed that the Stabilisation and Association process will remain the framework for the European course of the Western Balkan countries, all the way to their future accession. The process and the prospects it offers serve as the anchor for reform in the Western Balkans, in the same way as the accession process has done in Central and Eastern Europe.¹⁷

The *Thessaloniki Agenda for the Western Balkans: Moving Towards European Integration* enriched the Stabilisation and Association Process with elements inspired by the enlargement process. The most far-reaching of these new instruments are the European Partnerships, inspired by the Accession Partnerships employed in Central and Eastern Europe. The first set of European Partnerships was approved in 2004. Tailored to each country's particular situation by identifying short (1 to 2 years) and medium-term (3 to 4 years) priorities which the countries need to address, the European Partnerships will help the Western Balkans countries with their reforms and preparation for future membership. Enhanced regional co-operation is also one of the major objectives set down in the Thessaloniki Agenda.¹⁸

On 16–17 June 2005 the European Council, even under the influence of the failed referenda on the EU constitution, reaffirmed "its commitment to full implementation of the Thessaloniki agenda, which emphasises that the future of the Western Balkans lies in the European Union."¹⁹ It also underlined that each country's progress towards European integration would continue to depend on complying with the Copenhagen criteria and the SAP conditionality. Building on the Thessaloniki agenda, at Salzburg in March 2006, the EU reiterated its commitment that the future of the countries of the Western Balkans lies within the European Union and called on these countries to take stronger ownership of the process of regional co-operation.²⁰

¹⁴ See Council Conclusions on the Principle of Conditionality Governing the Development of the EU's Relations with Certain Countries of South-East Europe, 29.4.1997.

¹⁵ European Council: Presidency Conclusions of the Santa Maria de Feira European Council of 19–20 June 2000, SN200/1/00, Brussels, point 67.

¹⁶ Zagreb Summit, Final Declaration, 24.11.2000.

¹⁷ Declaration, EU-Western Balkans Summit, Thessaloniki, 21.6. 2003.

¹⁸ General Affairs and External Relations Council (GAERC), 16.6.2003: Western Balkans - Council Conclusions.

¹⁹ European Council, Presidency Conclusions, Brussels, 16 - 17. 06. 2005, para. 41.

²⁰ Refer to European Commission, Communication, Enlargement Strategy and Main Challenges 2006 – 2007, Including annexed special report on the EU's capacity to integrate new members, COM(2006) 649, Brussels, 8.11.2006.

The conditionality principle

The Stabilisation and Association Process (SAP) is aimed at assisting countries in the region “to move closer to the European Union” by “introducing European values, principles and standards in the region.” These include democracy, the rule of law, respect for human rights, protection of minorities and a market economy. The core of the SAP is the conclusion of a Stabilisation and Association Agreement (SAA) which commits the Western Balkan countries to a formal association with the EU over a transitional period. The SAP provides intensive technical assistance and support for improved governance, better functioning institutions, democratisation, protection of human rights, refugee return, economic development and the fight against corruption and organised crime.

The decisive cornerstone of the European Union’s strategy for the region is the strict conditionality principle applied to the progressive improvement of the EU’s relations with the respective countries to the fulfilment of a whole range of political and economic conditions by the latter. Each country is expected to progress at its own pace towards membership - regatta principle - according to its ability to take on the obligations of closer association with the EU. SAP conditionality emerges from the Copenhagen criteria, imposed in 1993, concerning democratic government and market economics. In addition, the EU asks for compliance with the conditions set out in the Regional Approach of 1997. These comprise general requirements that apply to all SAP countries, as well as country-specific conditions, relating, for instance, to obligations under the Dayton peace agreement and cooperation with the International Criminal Tribunal for the Former Yugoslavia (ICTY).²¹ The General Affairs Council of May 2002 reaffirmed the conditionality policy defined by the Council in 1997: “These conditions remain a fundamental element of the SAP and are integrated into the Stabilisation and Association Agreements.”²²

The most powerful incentive for the Western Balkan states to comply with EU conditionality is the access to different stages of the SAP, particularly concluding the Stabilisation and Association Agreements (SAA) and consequently being granted the status of candidate for EU membership. The EU also exerts conditionality at subordinated levels such as programmes and projects by delaying, suspending or cancelling assistance.²³

The main conditionality instruments are:

- provisions of legislative and institutional templates;
- aid and technical assistance;
- benchmarking and monitoring;
- advice and twinning;
- gate-keeping that is to allow a country to proceed step-by-step towards EU membership.²⁴

Concerning the first instrument, the SAP has been constructed in a way to link the agenda of European integration with stabilising and transforming the Western Balkan countries rather than defining the legal

²¹ Council conclusions on the principle of conditionality governing the development of the EU’s relations with certain countries of South East Europe, 29.4.1997.

²² European Commission, Report, The Stabilisation and Association Process for South East Europe, Second Annual Report, Brussels, COM (2003) 139 final, Brussels, 26.3. 2003, p. 5.

²³ Refer to European Commission: *CARDS Assistance Programme to the Western Balkans: Regional Strategy Paper 2002 – 2006*, DG for External Relations, Brussels 2001, p.25.

²⁴ For detailed discussion see Trauner, F., (2007), *EU Justice and Home Affairs Strategy in the Western Balkans; Conflicting Objectives in the Pre-Accession Strategy*, CEPS Working Document No. 259/February, pp. 2-7. For conditionality instruments as defined see Grabbe, Heather (2003), *Europeanization Goes East: Power and Uncertainty in the EU Accession Process*, in Kevin Featherstone and Claudio M. Radaelli (eds), *The Politics of Europeanization*, Oxford: Oxford University Press, pp. 303-31.

downloading of the EU's *acquis* - as expressed in the Treaties, the secondary legislation and the policies of the European Union - as a top priority.

The SAP has four major elements: trade, financial assistance, a new contractual relationship and regional cooperation. Within the Justice and Home Affairs field, which is accorded special importance in the EU Enlargement process and in the SAPp, the EU works along **two complementing strategies**:

- a country-by-country one, and,
- a regional one.

It focuses on **four main priority areas**:

- police, public order and organised crime;
- integrated border management;
- judicial reform; and,
- asylum and migration.

The overall aim of the EU's policies in Justice and Home Affairs was defined by the Commission as follows:

The aim is to help partners develop institutions, which function effectively at national and regional level. In some cases this will require the creation of institutions which do not yet exist and in others the strengthening of currently weak capacity. In addition to helping to build up a sound legislative basis and to develop an administrative culture which shares the common values which underpin EU action in these areas, the CARDS programme will also support training and provide equipment while working to develop self-sustaining capacity to implement EU compatible policy in the area of Justice and Home Affairs. This strategy will be implemented through the transfer of expertise, knowledge and professional working practices from Member States to the partner countries, working closely along other international bodies, to ensure streamlined and effective regional co-operation.²⁵

Country strategy papers outline JHA priorities for each country, the individual priority areas of action however depending on the specific domestic conditions. The regional strategy aims at improving regional cooperation through the establishment of contractual relationships in the policy fields of border management, visas, irregular/illegal migration and organised crime.

Nevertheless, the candidate countries are required to harmonise domestic regulations and standards to with EU rules and the entire EU *acquis* is to be integrated into the domestic legal order. The EU's *acquis* in Justice and Home Affairs is based on two legal sources: Title IV- Visas, asylum, immigration and other policies related to the free movement of persons - of the Treaty establishing the European Community and the Treaty on European Union, and the Schengen Protocol, as incorporated in the EU's legal framework in the Treaty of Amsterdam.²⁶

The Community financial assistance was offered through the Assistance for Reconstruction, Development and Stabilisation - CARDS programme which was officially launched in December 2000.²⁷ On 22 October 2001 the

²⁵ EU Justice and Home Affairs policy and the Western Balkans, Conference paper from the European Commission for the "Second Regional Conference for South East Europe", Brussels 2001, p. 3., retrieved from <http://www.seerecon.org/>

²⁶ See European Council, The Schengen *acquis*: Integrated into the European Union, General Secretariat of the European Council, Brussels 1999.

²⁷ Council Regulation (EC) No. 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No. 1628/96 and amending

EU adopted CARDS *Regional Strategy Paper* that provided a strategic framework for programming the regional envelope of the CARDS Assistance Programme to the Western Balkans in the period 2002-2006.²⁸ The four fields of action the strategic framework comprised integrated border management, institutional capacity building, democratic stabilisation and regional infrastructure development into the European networks. The programme amounted to €4.6 billion in the period 2000–2006, most of which was devoted to institution- and capacity-building.²⁹ In line with the set-up of the SAp, CARDS programmes had both country-specific and regional components. The latter particularly:

- to encourage the countries of the region to behave towards each other and work with each other in a manner comparable to the relationships that now exist between EU Member States; and,
- to persuade the authorities in the countries of the region to work together to respond effectively to the common threats to the region's and the EU's security which come from organised crime, irregular/illegal migration and forms of trafficking. In many cases, e.g. on visa policy, a common approach by all the countries is needed to deal with the threat effectively.

From 2007 onwards, in the framework of the next Financial Perspective (2007-13), the Commission introduced a new financial tool for promoting reform, modernisation and alignment with the *acquis*, the Instrument of Pre-Accession (IPA).³⁰ The Commission has proposed a sum of around EUR 14 billion to be spent over a period of seven years. The IPA entirely replaces previous assistance instruments such as Phare, Cards, Ispa and Sapard. 'Potential candidate countries' in the Western Balkans will continue to receive assistance along the lines defined in the CARDS regulation, 'candidate countries' will receive the same kind of assistance and extra help related to their preparations to fulfil accession criteria and build up proper administrative and judicial capacities for implementing the *acquis*.³¹ The objective is to prepare candidate countries better for the implementation of structural and rural development funds after accession. Additionally, the countries became eligible for support from the Technical Assistance Information Exchange Office (TAIEX), which was set up originally as part of the pre-accession strategy for the eastern enlargement to provide technical assistance to candidate countries to bring their systems in line with Community legislation.³² However, there is a serious risk that the candidates, given the tight timetable for accession, will receive a much greater share of assistance than the non-candidate countries of the Western Balkans.³³

Since 2002, the Commission assesses the performance of the Western Balkan states in its annual *Stabilisation and Association Reports* which are complemented by individual country reports. In a chapter on cooperation in Justice and Home Affairs, the European actors define priority areas of action in the fields of visa, border control, asylum and migration. A very powerful case of monitoring is the European Commission's opinion on a country's application for membership, also known as the *avis*. On the basis of *avis* the Council decides whether

Regulations (EEC) No. 3906/89 and (EEC) No. 1360/90 and Decision 97/256/EC and 1999/311 EC, *Official Journal of the European Communities* L 306/1, 7. 12.2000.

²⁸ European Commission, CARDS Assistance Programme to the western Balkans, Regional Strategy Paper 2002-2006, Brussels 2002.

²⁹ The programmes can be seen on European Commission's website at http://europa.eu.int/comm/enlargement/cards/index_en.htm and the European Agency of Reconstruction website at <http://www.ear.eu.int/sectors/sectors.htm>.

³⁰ Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession assistance (IPA), *Official Journal* L210/82, 31.7.2006.

³¹ European Commission, Communication, The Instruments for External Assistance under the Future Financial Perspective 2007-2013, COM(2004) 626 final, Brussels, 29.9.2004, p. 8.

³² See the TAIEX website at <http://taix.cec.eu.int/>

³³ For more information on international donor activities in the region see e.g. Calic, M-J, (2005), *The Western Balkans on the Road Towards European Integration*, Friedrich Ebert Stiftung, Internationale Politikanalyse Frieden und Sicherheit, December 2005.

to grant the status of candidate to the applicant country. Up to now, the Commission has expressed its opinion concerning Croatia and Macedonia.³⁴

The use of benchmarks is a new rigorous 'early stage' tool of the enlargement³⁵ and becomes very important at the moment when a Western Balkan country can shift its status from a 'potential' to a 'real' candidate country and can start accession talks with the EU. Upon a Commission's recommendation, the EU Member States decide on whether to open a chapter of the *acquis* for negotiations. They may include benchmarks to be met by the candidate country before the specific negotiations can start. So far this mechanism only concerns Croatia, for which some screening reports, including the one on JHA, have led to the stipulation of benchmarks to be attained before negotiations on the respective chapters can begin.

The twinning programme was invented for the eastern enlargement round and has just recently been extended to the Western Balkans. It is aimed at helping the respective countries to bring their administrative and democratic institutions in line with European standards, involving the secondment of civil servants from EU Member States as advisers to beneficiary institutions. Until 2003, twinning programmes were running or were in preparation only in Croatia and Albania. The Thessaloniki agenda however stated that the twinning programme had to be enlarged to all the Western Balkan states.³⁶

Gate-keeping is the most powerful mechanism to induce change. The pace of the respective state's progress towards EU membership depends on its own performance in this process. The Stabilisation and Association Agreements (SAA) as the most important cornerstones for achieving candidate status and EU accession, are legally binding international instruments that institutionalise the relationship between the contracting parties and are posited on respect for the conditionality of the SAA agreed by the Council.³⁷ The EU attaches a great deal of importance to the agreement and sees it as a chief means to ensure top-down reforms. Each SAA includes a title on JHA, which provides for an intense cooperation on issues such as reinforcing the rule of law, migration and asylum, money laundering and illicit drugs. A salient aspect of the title is dedicated to the field of prevention and control of illegal immigration, whereby the contracting parties agree to readmit any of their own nationals illegally residing in the other parties' territories. Furthermore, the EU reserves the right of the Stabilisation and Association Council to recommend additional subjects for cooperation in this field.³⁸

The proper implementation of the SAA opens the way to the next step on the integration process: following the application for membership and based on the Commission's *avis*, the EU may decide to grant the applicant country candidate status. This approval is an important political sign and implies, in practical terms, that the applicant country can use EU assistance "in all areas relevant to the ability of the country to assume the obligation of membership, such as the preparation for the implementation of the structural funds".³⁹ The candidate status however is insufficient condition to open next step, meaning accession negotiations. Before

³⁴ European Commission, Communication, Opinion on the application of Croatia for membership of the European Union, COM(2004) 257, Brussels, 20.4.2004; Communication, Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union, COM(2005) 562 final, Brussels, 9.11.2005.

³⁵ European Commission, Communication, Enlargement Strategy and Main Challenges 2006-07, including the annexed special report on the EU's capacity to integrate new members, COM(2006) 649 final, Brussels, 8.11.2006, , 2006, p. 6.

³⁶ European Council, EU-Western Balkans Forum: Joint Conclusions, 15578/03, JAI, 361, Brussels, 2.12.2003.

³⁷ See Annex, General Affairs Council Report – Review of the Stabilisation and Association Process, Luxembourg, 11.6.2001.

³⁸ See Article 77 of the Stabilisation and Association Agreement between the European Commission and their Member States, of the one part, and the Republic of Croatia, of the other part, *Official Journal* L 26, 28.1.2005.

³⁹ European Commission, Communication, 2005 enlargement strategy paper, COM(2005) 561 final, Brussels, 9.11.2005, p. 11.

the negotiations, the applicant country is supposed to reach a sufficient degree of general compliance with the Copenhagen criteria and full cooperation with the ICTY.

Briefly summed up, the Stabilisation and Association process pursues three aims: stabilisation, transition to a market economy and prospective integration into the EU structures. In addition this three-fold strategy is linked to the promotion of regional cooperation. The SAP is based on a progressive partnership, in which the EU offers a mixture of trade concessions (Autonomous Trade Measures), contractual relationships (Stabilisation and Association Agreements) and financial assistance. Each country moves forward on the basis of the fulfilment of its commitments in the framework of the SAP. Annual Progress Reports assess the readiness of the Western Balkan countries to move closer to the European Union. The centerpiece of the process is the conclusion of a Stabilisation and Association Agreement (SAA) that represents a contractual relationship between the EU and each Western Balkan country, entailing mutual rights and obligations. The Stabilisation and Association Agreements include a clear commitment to regional co-operation. The proper implementation of the SAA opens the way to the next step on the integration process towards the European Union.

Affiliation between the MARRI countries and European Union

The prospect of future membership of the European Union has had a profound transformative impact on the MARRI countries. In view of the Stabilisation and Association Process, these countries have undertaken considerable efforts to reform their institutions, economies and legal systems, but they have progressed at a different pace towards the goals of the EU. The most advanced on this way are Croatia and Macedonia. The first country in the region to sign a SAA was Macedonia in April 2001, followed by Croatia in October that year. Both have applied for EU membership. **Croatia** presented its application for membership on 21 February 2003, was granted the status of candidate in June 2004 and opened accession negotiations in October 2005. One month later, the Commission launched the process of screening Croatian laws and regulations as a first step towards accession negotiations with the country. The screening process for the 33 *acquis* chapters was completed on 18 October 2006. **Macedonia** applied for membership in March 2004 and received formal candidate status in December 2005. Yet, it was indicated that it may take years before the country will begin membership negotiations. The European Council namely stated that “the absorption capacity of the Union also has to be taken into account” for any further steps towards integration to occur.⁴⁰ **Albania** signed a SAA on 12 June 2006. With **Bosnia and Herzegovina** the SAA negotiations were opened in November 2005. A considerable amount of the text had been agreed by the end of 2006, the conclusion of an agreement however depends upon further progress in a number of priority areas, most notably on full cooperation with the ICTY, police reform and broadcasting legislation.⁴¹

⁴⁰ Presidency Conclusions of the Brussels European Council of 15–16 December, SN 15914/1/05 REV 1, Brussels, 30.01.2006. See also European Commission, Communication, Opinion on the application from the former Yugoslav Republic of Macedonia for membership of the European Union, COM(2005) 562 final, Brussels, 9.11.2005.

⁴¹ See European Commission Staff Working Document, Bosnia and Herzegovina 2006 Progress Report, SEC(2006) 1384 Brussels, 8.11.2006.

Table 1.1: Institutional affiliation between the MARRI Member States and the EU, December 2006

Country	Stabilisation and Association Agreement (SAA)	Candidate country or application for membership	Main contractual relations in Justice and Home Affairs (JHA)
Croatia	Yes, October 2001	Candidate since June 2004; Accession negotiations since October 2005	JHA clause in SAA incl. JHA sub-committee; Specific negotiations on the JHA acquis
Macedonia	Yes, April 2001	Candidate since December 2005; Without accession negotiations	JHA clause in SAA incl. JHA sub-committee; Agreement on EU monitoring mission and EU police mission Proxima and EUPAT
Albania	Yes, June 2006	Neither	JHA clause in SAA incl. JHA sub-committee; EC/Albania readmission agreement
Bosnia and Herzegovina	Negotiations ongoing since November 2005	Neither	No formal contractual relation
Montenegro	Negotiations ongoing since September 2006	Neither	No formal contractual relation
Serbia	Negotiations deadlocked since May 2006	Neither	No formal contractual relation
UN-administered Kosovo		Neither	No formal contractual relation

Source: Adapted after Trauner 2007, p. 9.

With State Union of **Serbia and Montenegro** negotiations started in 2005. Considering realities on the ground, the EU adopted a 'twin-track' approach which implied "a single Stabilisation and Association Agreement with distinct negotiations with the Republics on trade, economy and possibly on other relevant sectoral policies."⁴² The country did not meet its commitments on cooperation with the ICTY and the SAA negotiations were called off on 3 May 2006. The Council has adopted amended negotiating directives for an agreement with **Serbia**, since Serbia has become the successor state of the State Union of Serbia and Montenegro. At present, the SAA negotiations are still on hold. This problem does not concern **Montenegro** any longer. Montenegro proclaimed its independence on 3 June 2006 and the negotiations for an agreement were launched on 26 September 2006, based on the previous mandate for negotiations with the former State Union. The latest progress report defined as the key challenge for Montenegro the need to upgrade the country's administrative capacity to enable it to implement the provisions of the agreement.⁴³ On 15 March

⁴² European Council, Press Release from the 2069th meeting of the General Affairs and External Relations Council, 12770/04 (Press 276), held in Luxembourg on 11 October 2004, p. 23.

⁴³ See European Commission Staff Working Document, Montenegro 2006 Progress Report, Commission SEC(2006) 1388, Brussels, 8.11.2006, p.6.

2007 pre- entry on SAA was signed with a formal agreement that the SAA is to come only after Montenegro has carried out further reforms.⁴⁴ In **Kosovo**, UNSC Resolution remains in force. The EU holds no formal contractual relations with Kosovo, but depending on the outcome of status talks Kosovo might engage in contractual relations with the EU.⁴⁵

1.4.2 The Stability Pact for South Eastern Europe

The Stability Pact for South East Europe was created simultaneously with the Stabilisation and Association Process on 10 June 1999. It undertook to draw South East Europe "closer to the perspective of full integration ... into its structures," including eventual full membership into European Union. Although initiated by the European Union as part of its common Foreign and Security Policy, the Pact is not an EU instrument per se, but is vested under the auspices of the Organisation for Security and Co-operation in Europe (OSCE). More than 40 participating countries and organisations signed the founding document and committed themselves to strengthening the countries of south-eastern Europe "in their efforts to foster peace, democracy, respect for human rights and economic prosperity in order to achieve stability in the region".⁴⁶ Euro-Atlantic integration was promised to all the countries in the region. At a summit meeting in Sarajevo on 30 July 1999, the Pact was reaffirmed.

It needs to be noted that the Stability Pact is not another international organisation nor has it independent financial resources; rather it is a framework agreement to streamline the existing efforts in the region and to develop a shared strategy among all actors for stability and growth in South Eastern Europe. The Pact relies on the Special Coordinator, appointed by the EU in consultation with the OSCE and his/her mandate is renewed once a year.

The most important political structure of the Pact is Regional Table, which is chaired by the Special Coordinator. Three Working Tables operate under the Regional Table and cover specific themes:

- Working Table I: Democratisation and human rights;
- Working Table II: Economic reconstruction, cooperation and development;
- Working Table III: Security issues - with two sub-tables on security and defence, and justice and home affairs.

The sub-table on Justice and Home Affairs is split into four main areas of action: i) organised crime, ii) anti-corruption, iii) police and iv) Migration, Asylum, Refugees Regional Initiative (MARRI). The issue of border security and management lies across these four areas and constitutes an extra field (see Ohrid Border Process). In line with the Pact's objective, the policies in the field of JHA are also directed towards developing or strengthening regional cooperation.

The overall direction of the Pact is agreed upon at the Regional Table, which brings together all the participants and is held once, though often twice, a year. Contrary to the top-down method of the SAp, at Regional and Working Tables of the Stability Pact representatives of South Eastern European countries are on an equal footing with those of international organisations and financial institutions in advising on the future of their

⁴⁴ Reported by <http://euobserver.com/9/23720/?rk=1>, 16. 3. 2007.

⁴⁵ See European Commission, Communication: A European Future for Kosovo, COM (2005) 156, Brussels, 20.4.2005.

⁴⁶ See the Constituent Document of the Stability Pact for South Eastern Europe, signed in Cologne, 10 June 1999.

region and in setting priorities concerning the content of all three working areas.⁴⁷ At the Regional Table staged in Belgrade in May 2006, a far-reaching decision was taken with regard to the future of the Pact: the Stability Pact for South Eastern Europe should be phased out in its current form and be transformed into a **Regional Cooperation Council** with the countries themselves gradually taking over ownership of the entire cooperation process. The new main task is defined as “the facilitation of regional cooperation and support for European and Euro-Atlantic integration, while ensuring continued involvement of the donor community, thus preserving the legacy of the Pact.”⁴⁸ The conclusion also stated that the new council should closely work with the revitalised **South-East European Cooperation Process (SEECP)**, a non-institutionalised regional forum for regional cooperation in domains of common interest founded in 1996 on the initiative of Bulgaria. Although relationship between the two forums was not defined, the Regional Table has agreed that there still is and will remain a continued need for regional cooperation in the areas of economic and social development, infrastructure, building human capital, security cooperation and justice and home affairs.

In short, the Stability Pact constitutes the most prominent supplement to the SAp for bringing the states of the Western Balkans closer to the Euro-Atlantic structures and institutions. Its main aim is to strengthen regional cooperation and to give ownership of the process to the countries concerned.

1.4.3 Migration, Asylum, Refugees Regional Initiative - MARRI

Singled out as the first initiative to realise the frequently cited objective of ‘regional ownership’ is the Migration, Asylum, Refugees Regional Initiative (MARRI) within the justice and home affairs sub-table of the Stability Pact. MARRI is the result of a merger between the former Regional Return Initiative (RRI) and Migration and Asylum Initiative (MAI). It was formed in 2003. Since *Memorandum of Understanding done in Tirana* on 2 July 2004, the initiative is under regional ownership as part of the SEECP. However the Regional Forum and the Regional Centre shall have a special link to the Stability Pact as “associated initiative to the Stability Pact” and thereby being invited to the Stability Pact Regional Table Meetings.⁴⁹ The MARRI is governed by its participating States, Albania, Bosnia and Herzegovina, Croatia, Macedonia, Montenegro and Serbia, who meet twice a year at the MARRI Regional Forum. Since the MARRI Ministerial Regional Forum held in Belgrade on 7 April 2006, the Presidency is currently held by Bosnia and Herzegovina.⁵⁰ In September 2004 the MARRI Regional Centre was opened in Skopje to serve as a secretariat to the MARRI Regional Forum and to operationalise MARRI political commitments. All MARRI Regional Forum members have their representatives in the Centre.

MARRI deals with the issue of population movements in the Western Balkans by:

- Providing a strategic framework for a comprehensive, integrated, and coherent approach to the issues of asylum, migration, integrated border management, visa policies and consular cooperation, refugee and displaced persons return and/or integration and/or integration of these persons, stateless persons as well as minorities (Access to Rights Programme) in accordance with international and European standards and existing national legislations.

⁴⁷ See the homepage article about the Stability Pact at <http://www.stabilitypact.org/about/default.asp/>

⁴⁸ Chairman’s Conclusions, Regional Table of the Stability Pact, held in Belgrade on 30 May 2006, Special Coordinator of the Stability Pact for South Eastern Europe, Brussels.

⁴⁹ Memorandum of Understanding, Establishment of the Regional Forum of the Migration, Asylum and Refugees Return Initiative, Tirana, 2 July 2004.

⁵⁰ See Belgrade Declaration, Adopted at the MARRI Regional Forum, Belgrade, 7 April 2006.

- The top priority is to enhance cross-border/boundary and/or regional cooperation in its fields of activities in the areas of harmonised legislation, institutional and structural set-up, training and capacity building as well as information exchange among countries in the region, as a vital part of EU integration process and in line with the Thessaloniki Agenda for the Western Balkans.
- It offers a platform for co-ordinated action between the Western Balkans states and other member states of the Stability Pact as well as relevant international and non-governmental organisations, active in the areas of migration asylum, border management and refugee return or settlement. It also aims to bring together diverse actors in the fields of foreign, security and development policy as well as justice and home affairs to pursue the dual goal of security and the free flow of people in search of economic and social opportunities.⁵¹

Priorities of the Bosnia and Herzegovina Presidency of MARRI have been to:

- advance regional ownership and cooperation which is imperative for successful implementation of MARRI's objectives.
- emphasise the relevance of establishing and developing cooperation with other international organisations and initiatives in the region based on the principle of complementarity.
- increase cooperation between governmental agencies responsible for migration, asylum and refugees on regional and national level with objective to develop good migration governance in the MARRI region.
- endorse development of capacity building in the field of migration, asylum and refugees.
- support activities related to follow up of CARDS Regional Project on Asylum, Migration and Visa in the Western Balkans.
- encourage MARRI Member States in the process of strengthening harmonisation of existing policies, synergising acquired knowledge, experiences and best practices on the road towards EU integration.
- assist the MARRI Regional Centre to implement the Strategy and Programme of Action, in particular with promotion of activities.

Furthermore, the Presidency assists the MARRI Regional Centre in order to increase its visibility and strengthen its role as the voice of the region in the field of Migration, Asylum and Refugees and the implementation of the Centre's Strategy and Programme of Action prioritising:

- Implementation of readmission agreements in the MARRI region;
- Increased cooperation in the field of fight against illegal migration, anti-trafficking and anti-smuggling;
- To develop sustainable and effective asylum systems including protection of refugees and their integration as well;
- Exchanging the best practices on migration management;
- To develop orderly migration systems, in particular labour migration;
- To enhance durable solutions for reintegration of labour emigrants and explore possibilities of the impact of remittances on development in the region;
- To continue activities on visa and consular cooperation;
- To maintain and support durable solutions related to the access to rights of returnees;

⁵¹ Refer to the MARRI homepage at <http://www.marri-rc.org/>; See also Way Forward Document of the Ohrid Regional Conference on Border Security and Management, 22/23 May 2003; Minutes, Ministerial Meeting MARRI Regional Forum, Tirana, 5 April 2005.

- To pursue complementarity with other stakeholders in the region involved in border management process, namely Regional CARDS and Ohrid Border Process.⁵²

1.4.4 The Budapest Process

Among multilateral forums relevant for the international cooperation, the pan-European Budapest Process is of importance for the MARRI region as a consultative forum of more than 50 Governments and 10 international organisations, aiming at developing comprehensive and sustainable systems for orderly migration. The Process promotes good governance through a dialogue in the field of migration, a harmonised approach in dealing with irregular migration challenges and is supporting the transfer and common understanding of migration concepts and policies.

The Budapest Group meets once a year, gathering Senior Officials from all participating States and organisations taking stock of the developments and agreeing on the main policy directions and support for the Process. In addition, expert Working Group meetings on various concrete topics are held with a view of implementing the adopted recommendations and conclusions, as well as in response to emerging migration challenges. Among others, the Working Groups on return/readmission, visa harmonisation, irregular movements and asylum, penalty scales for trafficking and smuggling, immigration and admission policies have been particularly active. In January 2006 Turkey took over the Chairmanship of the Budapest Process in January 2006 (Hungary remains as Co-chair).

Through the years the Process has become a policy tool for identifying and addressing the evolving challenges related to irregular migration in Europe and its neighbours. Already at the first meeting in Berlin in 1991, the Process started to work on joint measures against the increase of irregular migration pressures in Europe. Two years later, the second Ministerial Conference in Budapest adopted a further set of recommendations, including the encouragement to conclude multilateral readmission agreements. The Budapest Group of Senior Officials was established and the International Centre for Migration Policy Development (ICMPD) was designated as the Secretariat. The Process gained momentum when the EU Member States and European Commission recognised that the informal and flexible character of the Process made it an excellent instrument for promoting the thinking and developments in the field of migration on an international and European level. In 1999, the third Ministerial Conference held in Prague adopted a set of 55 recommendations relating to legal harmonisation, approximation of pre-entry and entry controls, readmission agreements and return to countries of origin, information exchange, financial and technical assistance and the fight against organised crime. In Rhodes, in June 2003, the fourth Ministerial Conference was organised under the Greek EU Presidency and adopted 31 new recommendations, which reflected a shift towards a more comprehensive approach in promoting migration co-operation between countries of origin, transit and destination with a special emphasis on the countries of the Commonwealth of Independent States – CIS as well as linkages to migration processes in other parts of the world.⁵³

1.5 Objective and aim of the report

The overall objective of the present paper is to contribute to policy-making in the area of migration. **The main recommendation is that each of the MARRI Member States formulates and adopts a document on**

⁵² Bosnia and Herzegovina Presidency of MARRI, Priorities of the Presidency, 7 April 2006.

⁵³ Refer to ICMPD homepage at <http://www.icmpd.org/>

comprehensive migration policy strategy in order to secure political commitment on principles and aims of the comprehensive policy and on its implementation.

Political document which maps out the clear political directions and contours of comprehensive migration policy would serve as a platform for adoption of further Action Plans and Operational programmes on each of the policy areas in order to develop comprehensive and integrated migration management systems. Before submitting a policy proposal, governments should listen to the views and concerns of the stakeholders in the sector or in other words, attempt to apply bottom-up approach. Such a document could contribute to trust and confidence among the institutions/ agencies dealing with all forms of migration as well as among the States and as such contribute to the capacity of institutions necessary for the policy implementation and for the efficient and effective bilateral and multilateral cooperation.

Bearing in mind the necessity of a comprehensive migration policy approach, it is a specific aim of this report is to contribute towards draft recommendations and proposals for:

- a policy of legal migration
- a system of asylum
- an integration policy
- the fight against irregular/illegal migration
- information management and institutional set-up
- regional and international cooperation

The recommendations are precise enough in terms of each policy area and broad enough so that they may be adapted and tailored to different national situations, specific needs or priorities of the MARRI Member States.

1.6 Methodological Approach

In undertaking these steps, this paper builds on selected literature in the field, on the evolving European Union's policy, the relevant international, European Union's, Stability Pact and the Budapest Process documents and the MARRI documents, particularly Recommendations of the MARRI Workshop on Migration Management Systems held in Ulcinj on 5-6 October 2006, Aspects of Implementation of Readmission Agreements held in Skopje, 15-16 June 2006, Recommendations of the Workshop on Management of Irregular Transit Migration in the MARRI Region held in Sarajevo, 29-30 June 2006 and the MARRI Regional Centre survey concerning national migration management organisation, readmission agreements, international agreements (conventions) regulating labour migration and changes in legislation from May 2006 and partially on August 2006 questionnaire concerning Diaspora from the MARRI Member States.

1.7 Structure of this report

The paper is organised into five chapters of equal importance, addressing the main dimensions of the migration phenomenon and management in a comprehensive way. Following introduction, the first chapter presents legal migration policy and challenges posed to formulation for immigration policy in demographic and economic contexts. The second chapter deals with the asylum, the third with integration. The fourth chapter is dedicated to the fight against irregular/illegal migration. Each chapter attempts to show policy-making and current standards in the European Union, both the adopted and those in progress and provides recommendations for each sub-field of policy as well as for better cooperation among actors involved in the comprehensive migration management. The fifth chapter is dedicated to the national institutional set-up envisaging a Central Migration Authority and regional co-operation as well as providing some guidelines for data and other information gathering, exchange and capacity building in national and regional context.

2. LEGAL MIGRATION

In recent debates on immigration to Europe, we can identify a paradigmatic change. In the past, immigration was perceived rather as a fiscal burden or even as a threat to national identity and social cohesion. Meanwhile, the fears have shifted. Many deplore a lack of integration among immigrants with different ethnic and religious background or articulate scepticism about immigration due to security reasons. At the same time the pro-active recruitment of migrants is now regarded by many experts and several politicians as a feasible solution to Europe's demographic challenges and the inflow labour, particularly qualified, as a means for boosting economic development. Traditionally pro-active immigration policies were associated with guest worker schemes implemented during economic boom periods or sectoral labour market shortages. More recently such policies also try to establish a preferential admission of high skill migrants. Still, many European states, so far, are characterised by an absence of coherent pro-active immigration policies.

The aim of this chapter is an attempt to offer a better understanding of how the MARRI Member States and territories could formulate their legal migration policies in order to cope with economic and demographic challenges and to optimise benefits of international migration. It does not attempt to quantify current migration patterns i.e. stock and flows in the MARRI region, though it points to necessity of statistical data. It rather presents some arguments of why legal immigration is important, to what extent labour mobility and migration allows States to maintain or increase revenues from a successful economy in order to pay for the social costs of an ageing population without disrupting social solidarity, employers to recruit people with adequate skills in order to maintain a flexible labour market for competitiveness in the global economy and individuals to improve their job prospects and their living and working conditions. It refers to selected existing literature on demographic, economic and labour market effects of international migration.

2.1 Migration in the demographic context

The role of migration in population change has come under increasing scrutiny in recent years as a result of growing concerns about a cocktail of prospective changes to labour supply and demand. Issues raised include demographic ageing, shortages of working age populations, dependency ratios and payment of pensions, and possible shortages of both skilled and less-skilled labour. But while for demographers, migration is one of the three key variables affecting the size of population, for migration policy makers, the effects of migration on populations have mostly not appeared that interesting, perhaps because the slow demographic changes have been viewed as long-term concerns, which often appear to be beyond the politicians' horizon. The **need for interaction between demographic and migration policy goals** has also been overshadowed by concrete concerns for refugees and displaced persons, irregular/illegal immigration, smuggling of migrants and human trafficking or difficulties in the integration. However, in the 2000s, stimulated by various reports, such as the United Nations Population Division report *Replacement Migration – Is it a Solution to Declining and Ageing Populations?*, demographic facts and projections have been brought into the public debate on migration policy.⁵⁴

During the 1990s the world's population increased more rapidly than ever before and looks set to continue its rapid growth, (rising to around 9.4 billion by 2050), with Europe's share becoming increasingly modest, halving between 1995 and 2050. Whether or not one subscribes to the notion of a 'post-industrial society', both in economic and social terms, coming into being in Europe, it cannot be denied that contemporary demographic behaviour in Europe is very different from that prevailing during the main period of demographic transition. Indeed, it can be claimed that demography is one of the main driving forces for change in Europe. Over the last three decades the continent appears to have embarked on 'a second demographic transition', with the overall

⁵⁴ UN, 2000: *Replacement Migration. Is it a Solution to Declining and Ageing Populations?* New York: UN Population Division.

level of fertility moving below the replacement rate and alterations taking place in sexual and household-forming behaviour.

Europe's demographic situation is characterised by the generally low rates of fertility and mortality, an increasing life expectancy and overall by a projected shrinking of native populations in the decades to come. According to Eurostat data and projections by the United Nations, Western and Central Europe's 35 total population size will slightly increase during the next 20 years (from 472 million in 2005 to 479 million in 2025) and start to decrease only during the following decades (to 462 million by 2050). The situation in the MARRI region is similar to the one in the EU. Sustained endogenous population growth, however, is expected for Albania, Kosovo and Macedonia, but other countries of the region face considerable demographic decline.

In contrast, the situation in Europe's southern and south-eastern neighbour regions, i.e. in the Middle East and North Africa⁵⁵ is characterised by higher – but declining – fertility, rising life expectancy, and sustained demographic growth. Total population in this region will grow steadily from 313 million in 2005 to 438 million by 2025 (+ 40 per cent) and to 557 million by 2050 (+78 per cent). During this period, the number of people between ages 15 and 64 in the Middle East and North Africa will almost double: from 195 million in 2000 to 289 million by 2025 (+ 48 per cent) and to 365 million by 2050 (+ 78 per cent). At the same time, this region also faces an ageing problem and its population over age 65 will grow almost fivefold over the next 45 years.⁵⁶

As recorded by Eurostat, net migration to the EU-15 declined rapidly over the last decade after peaking in the early 1990s at over 1 million per year before starting to climb again and reaching just over 700 000 in 1999.⁵⁷ Between 2000 and 2005 the total population of EU-25 grew on average by some 1.8 million people per year. 80 per cent of this population growth was driven by international migration (average net gain 1.5 million per annum). In 2005, population growth was +2.0 million with a net gain from migration in the order of +1.7 million people. Of the EU-25 countries twenty had a positive migration balance (exceptions were the Baltic States, Poland and the Netherlands). The general trend among all the Central and Eastern European countries is one of even slower population growth than that of the EU-15 for the first quarter of this century. The various European countries fare differently in the demographic growth process but in spite these disparities **net migration is becoming the principal component of population growth.**

Irrespective of any future trends, the three basic aspects of population change (fertility, mortality and migration) have put in train a variety of consequences, which will have repercussions lasting well into this century, and raise a whole series of important policy issues. The direct impacts of the likely changes in numbers of people are modest compared with those arising from changes in the structure and composition of the population.

2.1.1 The 'greying' of population – demand/pull for labour force

The 'greying' of population is considered to be one of the most important changes to be affecting European populations. Certainly, the statistics on the growth of the aged population are impressive. All European countries have larger proportions of the elderly than ever before. As shown in the Table 2.1 the proportion of

⁵⁵ Algeria, Djibouti, Egypt, Iran, Iraq, Israel, Jordan, Lebanon, Libya, Morocco, Syria, Tunisia, West Bank and Gaza, and Yemen.

⁵⁶ Münz, R. Thomas Straubhaar, T. Florin Vadean, F. and Vadean N., (2006): The Costs and Benefits of European Immigration, HWWI Policy Report No.3, Hamburg Institute of International Economics (2006), *The Costs and Benefits of European Immigration*, HWWI Policy Report No.3, Hamburg Institute of International Economics, p. 28.

⁵⁷ Refer to European Commission, Communication on a Community Immigration Policy, COM (2000) 757 final, Annex 1, Brussels, 22.11.2000.

Europeans aged 65 years and over has been rising steadily over the past four decades being half as much again in 1990 as its 8.7 per cent level in 1950. Moreover, this growth is projected to accelerate as the baby boomers of the 1950s and early 1960s move into retirement age. It can also be seen that the phenomenon is widespread across Europe, though not entirely uniform, the biggest increases being for Western and Southern Europe (reflecting the very low birth rates there) and the smallest for Northern Europe.⁵⁸

Table 2.1: Proportion of the population aged 65 years or more, and elderly dependency ratio, 1950-2025

	1950	1970	1990	2010	2025
Age group 65+ (%) Europe total	8.7	11.4	13.4	16.1	20.1
Northern	10.3	12.7	15.5	16.1	19.8
Western	10.1	11.4	13.4	16.1	22.3
Central	7.4	9.9	12.7	16.3	20.0
Eastern	7.0	10.4	11.3	13.5	17.6
Dependency ratio Age group 65+ /age group 15-64 Europe	13.2	17.9	20.0	24.3	31.7

Note: Areas of Europe are arranged in order of percentage of persons 65+ in 1990.

Source: Medved (2003), p. 128.

As shown in the Table 2.2, demographic perspectives in the Balkans/South Eastern Europe indicate that the number of people between the ages of 15 and 64 would decrease from 36.8 million in 2005 to 6.5 million (or - 8 per cent) until 2025 and to 26.7 million (-18 per cent) by 2050. During the same period, the number of people over 65 years of age will increase from 7.8 million in 2005 to 9.5 million by 2025 (+ 22 per cent) and to 12 million in 2050 (+ 53 per cent). As a result, the demographic old age dependency ratio (population 65+ divided by population 15-65) is likely to increase from 21 per cent in 2005 to 28 per cent until 2025 and 45 per cent by 2050.

⁵⁸ Medved, F. (2003), The end of European 'Zero' Immigration Policy Model: Proactive Economic Migration policy and Actors' Interests, *Razprave in gradivo* 42, Institute for Ethnic Studies, Ljubljana, 116-151.

Table 2.2: Zero-migration variant: demographic and labour force development in the Balkans/South Eastern Europe(i) by age group, 2005-2050 (millions)

	2005	2015	2025	2050
Age group 0-14	8.9	8.0	7.5	6.5
<i>Index</i>	<i>100</i>	<i>90</i>	<i>84</i>	<i>73</i>
Age group 15-64	36.8	36.3	33.9	26.7
<i>Index</i>	<i>100</i>	<i>99</i>	<i>92</i>	<i>72</i>
Age group 65+	7.8	8.2	9.5	12.0
<i>Index</i>	<i>100</i>	<i>105</i>	<i>122</i>	<i>153</i>
Total	53.6	52.5	50.9	45.1
<i>Index</i>	<i>100</i>	<i>98</i>	<i>95</i>	<i>84</i>
Labour force (ii)	26.1	25.7	24.1	18.4
<i>Index</i>	<i>100</i>	<i>99</i>	<i>92</i>	<i>70</i>
Old-age dependency ratio				
Age group 65+/ age group 15-64	0.21	0.23	0.28	0.45
Age group 65+/ labour force	0.30	0.32	0.39	0.65

Notes: (i) States and territories of the MARRI region and Bulgaria.

(ii) Numbers for labour force calculated by aggregating country data, based on national participation rate projections for 2005 and 2010 over age group and sex by the ILO, and population projections for 2005, 2015, 2025, and 2050 over age group and sex by the UN, multiplying population projections for 2015-2050 with participation rate projections of 2010.

Sources: ILO 1997, UN 2005, Koettl 2005, Holzmann and Münz (2005), Münz et al. (2006).

The change in the economically active population, however, will be smaller than the projected changes for the age group 15-64, because only 60-80 per cent of this age group are currently employed or self-employed. Today, the size of South Eastern Europe labour force is 26.1 million. After 2010, South Eastern Europe can expect a decrease in the active population. By 2025, the decrease will reach - 2 million compared to 2005 and

is projected to fall to 70 per cent of the current rate in 2005 by 2050. In Serbia and Montenegro, the active or job-seeking population is already shrinking.

This ageing has at least three major consequences. First, it increases the costs of health treatment and personal care. Second, and particularly important for employment, is the ageing of the labour force. Third, there is the problem of raising money for people's pension, given that an increased pension-able-age population will have to be supported by a shrinking number of people of working age, representing a massive redistribution of economic, social and political power persons, i.e. old age support ratio. In the EU, with a projected employment rate of 70 per cent, the number of employed persons per person aged 65 and above will decline from 2.7 in 2010 to some 2.2 in 2020 and to only 1.5 in 2040. If, after reaching the so-called Lisbon target, the employment rate were to rise further to 75% between 2010 and 2020, the decline in this ratio would be attenuated, reaching 2.4 in 2020 and 1.8 in 2040.⁵⁹

2.1.2 Expansion of labour force – supply/push for labour force

This situation contrasts with the demographic prospects of Europe's neighbouring world regions to the south and south-east, where fertility is much higher, albeit declining, life expectancy is also increasing, and overall population is projected to continue to grow at a considerable pace. The potentially active population will continue to grow in North Africa and the Middle East (+ 118 million until 2050) and in Turkey (+ 16 million until 2050). The main challenge for these regions is how to absorb those currently unemployed and those entering the labour market during the next two decades. The current labour market conditions in many of the countries of the region raise doubts whether these economies will be able to absorb the significant expansion of the labour force. As a consequence of persistent, large-scale unemployment in most of these countries, migration pressures on the labour markets in Europe will increase.

Even if economic conditions in the countries of origin were to improve, one should not expect the economic push factors to disappear rapidly. The current levels of economic growth and job creation in countries of origin in Europe's neighbouring regions, i.e. Middle East, North Africa, Central Asia, and other parts of the world with migratory links to Europe such as Sub-Saharan Africa and South Asia, are not sufficient to absorb the projected demographic growth and, in particular, the growth of the labour force in these countries. Large cohorts will try to enter the labour market during the coming years, while unemployment and underemployment are already high. Also, the majority of migrants do not come from the lowest-income countries, but rather from the middle-income countries, or they come from low-income countries but have a middle-class background. It seems that emigration only occurs once a certain level of development has been reached, which allows a first generation of potential emigrants to acquire the necessary means for leaving their home country. Therefore, a successful development process does not necessarily translate into a decrease in migration, but higher incomes definitely have a lasting impact on the outflow of people.⁶⁰

In addition political, ethnic, or religious conflicts exist in almost all world regions. But as asylum and displacement figures show, only some of these conflicts create migration pressure, which explains, at least

⁵⁹ Münz et al. (2006), *The Costs and Benefits of European Immigration*, HWWI Policy Report No.3, Hamburg Institute of International Economics (2006), *The Costs and Benefits of European Immigration*, HWWI Policy Report No.3, Hamburg Institute of International Economics, p. 29.

⁶⁰ For an overview of current research and activities of relevant stakeholders on issues and causes and effects of international migration and international cooperation on migration issues, see Tamas, K., (2003), *Mapping Study of International Migration*, Swedish Future Studies No. 11, Stockholm: Institute for Futures Studies.

partly, the annual inflow of some 400,000- 450,000 people seeking asylum in Europe.⁶¹ In 2000-2003, Afghanistan, Iraq, the Russian Federation (in particular, Chechnya), Serbia and Montenegro (including Kosovo), and Turkey were the most important countries of origin of people seeking asylum in Europe.⁶² Despite all the possible imperfections in the constructions of such indicators as ranking of countries according to a political stability indicator and a rule of law, the exercise indicates differences in political stability, the human rights situation, and the general rule of law between Europe and neighbouring regions, with the EU countries at the top of the score, most Balkan and some CIS countries in the medium range, and many of the countries in the Middle East and North Africa in the lower segments.⁶³ When populations are confronted with some degree of political instability (or the prospects of such instability occurring) and no general rule of law, this may significantly reduce individual security and hence influence the decision to remain in the country of origin or to emigrate.

Besides the economic and demographic arguments, the political and human rights imbalance adds yet another dimension to decisions to migrate and therefore has to be taken into account when considering the realities of wider current and future migration flows. These imbalances explain why Europe is and will continue to be a major destination for migrants, even in times of slow economic growth, high domestic unemployment and growing efforts to control and eventually reduce the inflow of asylum seekers, as well as regular and irregular labour migrants. It is also reasonable to assume that the migration potential will continue to exceed capacities in the destination countries. Even in case when destination countries are prepared to accept significantly increased immigration levels, the states' limited capabilities in the area of integration policy or the existing lack of public support for immigration in general have to be taken in consideration. As a result, irregular migration is likely to continue to be a main concern. An adequate response to these challenges should include a careful development of comprehensive migration management policies, offering a framework for legal immigration with links to in particular preventing and reducing irregular migration and labour exploitation. At the same time there is the need to develop measures addressing the root causes of migration in countries of origin, which could comprise the fostering of economic growth and enhanced access to income opportunities through long-term development policies, as well as through promoting political stability and human rights in these countries.

2.1.3 Policy implications

Low fertility and increasing life expectancy in Europe both reverse the age pyramid, leading to a shrinking number of younger people, an ageing work force, and an increasing number and share of older people. Throughout the 21st century, Europe including the MARRI region will be confronted with a rapidly decreasing native work force and with choices concerning higher retirement age, higher labour force participation of women, and the recruitment of immigrants. Immigration has a positive effect on population and labour force growth. If natural population growth turns negative, immigration can help maintain the total population and the labour force constant. However, immigration is not a solution for tackling the consequences of demographic ageing in Europe. The level of net migration required to keep the old-age dependency ratio constant would demand increases of inflows well beyond socially desirable and politically sustainable levels. Based on the evidence from the EU where in the last decade net migration has been the main factor contributing to population growth, immigration could not offset the negative impact of the ageing society on the living

⁶¹ After the highest figure of 698,600 in 1992, the lowest figure of asylum seekers in the last 14 years was 260,100 in 1996.

⁶² See United Nations High Commissioner for Refugees (2004), *Asylum Applications Lodged in Industrialized Countries: Levels and Trends, 2000-2003*. Geneva: UNHCR.

⁶³ See Kaufmann, D., Kraay, A. and Mastruzzi, M., (2003), *Governance Matters III: Governance Indicators 1996-2002*, World Bank, Policy Research Working Paper 3106, Washington DC.

standard and the additional budgetary expenditures.⁶⁴ Legal immigration is only one of the main elements that could contribute to alleviating the challenges posed by a declining labour force and the resulting strains on their social systems. On the other hand, immigration can be a remedy to shortages of labour and skills that are unrelated to demographic processes.

2.2 Migration in the economic context

Economic migration involves at least three main actors or three main interests. First, there are the interests of the State. For the purposes of economic migration the state means a sovereign State, which has the capacity to confer nationality on individuals, and to recognise the nationality of non-nationals; this to promote, prevent and control their movement according to its purposes.⁶⁵ State can be subdivided into the state of destination, the state of origin as well as of transit. Secondly, there are the interests of the economic sector, more particularly of companies and business. These interests can be manifested in various ways. The employer may rely on the destination state to undertake recruitment of labour migrants, or it may recruit migrant labour directly, either in the destination state or abroad. Thirdly, there are interests of individuals, meaning the migrants themselves. An individual has an interest in economic migration both individually and as a part of a family and network structure and strategy.

For example, the fluctuations in the economy and the often changing needs for migrant labour highlight the differences between the competing interest groups. The interests of the State have historically been driven by the wish to have migrant labour for the shortest possible time (for example the Gastarbeiter approach when no commitment is given to the security of residence of individuals). From the employer's perspective, there is clearly no benefit having a continuing obligation to employ migrant labour in the event of an economic downswing. From the individual's perspective, migrants' priorities are clearly security of employment and residence, which will effectively compensate for their commitment to a specific labour market.⁶⁶

Immigration policy for economic purposes – labour immigration should tackle tensions between different actors involved in this process. An overall strategy to this end has to be in line with the State's strategic macro-economic goals to which legal migration can benefit. Controlled immigration may help to alleviate real and potential future shortages and miss-matches in supply and demand for labour provided it takes place within the context of an overall structural strategy to deal with labour market imbalances, which should be addressed by an overall strategy of structural policies in the field of employment and human resources development. Moreover, the need for a strategic initiative in immigration policy is strengthened by the fact that, in its absence and the absence of clear criteria for the admission of labour migrants, migration flows are more likely to be able to bypass national rules and legislation. It is also important to ensure that migration policy is complementary and consistent with other internal and external policy areas so that they are mutually reinforcing within a context of sustainable development.

⁶⁴ Coppel, J., Dumont J. and Visco, I., (2001), *Trends in Immigration and Economic Consequences*, OECD Economic Department Working Paper 284, Paris: OECD.

⁶⁵ Cf. Guild, E.: *Member States' Labour Markets: Impact on Immigration*. Paper presented at the conference "Extending the Area of Freedom, Justice and Security through Enlargement", Trier, 7-8 July, 2002.

⁶⁶ There is a risk that if no such security is provided migrants will be reluctant to take up employment and residence in a particular State. Such a reaction was evident in the poor response to the May 2000 German government's launch of a "green card" program, designed to recruit up to 20,000 highly skilled workers from outside the EU. After criticism from human rights groups and gentle reminders from experts about the difficulty of preventing "guest workers" from settling, the government quickly revised its policy to allow for the possibility of settlement and family reunification.

2.2.1 What model to develop for economic migration?

When constructing a viable immigration policy for economic purposes one should bear in mind successes and failures of the known models.⁶⁷ Two main models were dominant in the post World War Two period. The first model, prevailing in the period of massive effort to reconstruct the war-ravaged economies of Western Europe, was based on bilateral agreements with labour-rich countries in Southern Europe, among them the former Yugoslavia after 1965 and Turkey and allowed recruitment of millions of guest workers during the 1950s and 1960s. In spite of some distinctions between European states, guest worker migrations were primarily seen to be economic in nature.⁶⁸ Foreign workers constituted a kind of economic shock absorber (*Konjunkturpuffer*); they were brought into the labour market during periods of high growth and low unemployment, and they should be sent home during periods of recession and rising unemployment and it seemed logical that in such circumstances guest workers should behave according to the laws of supply and demand. The international stage for providing both state and non state collective recruitment of labour was set by the 1949 International Labour Organisation Convention 97 concerning migration for employment. The ILO framework, complemented by other ILO and the Council of Europe activities regarding the treatment of migrant workers, gives legitimacy to the authority of the State's monopoly over the means of movement to work and assists companies based in the destination state to find suitable workers. Individual is clearly the object of the labour recruitment activity, but there is little space allowed for the individual's active role. The protection of the individual migrant worker was, in theory at least, the responsibility of the state of nationality or protected in accordance with the interests of the host and home states. Security of work and residence and family reunification were excluded and State's monopoly over security for aliens was broken only by the decisions of the European Court of Human Rights specifically concerning the Article 8 of the ECHR.

Rising unemployment rates in northern Europe combined with the rise in oil prices led to a political 'stop' on state labour recruitment and sanction. The use of work permits changed and they became a mechanism of the State's protection of the domestic labour market. The political commitment to guarantee a right to work for their nationals created a direct conflict with the interests of companies in the recruitment of foreign labour. The test applied became one of the determining whether indeed there was a need for the admission of migrant workers to fill labour market gaps described by private enterprises. So long as the State's political priority was to ensure the availability of employment for domestic labour force, the interest of companies to import workers would be in principle illegitimate and only approved of as a matter of exception. The migrant's interest in a secure residence right independent of employment became paramount. A right to secure residence, which provides free access to the labour market has developed in most Western European States from approximately 1965 onwards.

With the rise of a new service industry, the corporate regulation of labour migration was negotiated within the World Trade Organisation Agreement. GATS as one of the integral parts of the WTO, includes services, which involve movement of persons. The provisions of GATS are designed to ensure market access for service providers or, in other words, to restrict the power of States to impede access to their territory by foreign competitor in the services field through the use of restrictive labour migration laws. The individual is dependent

⁶⁷ Medved, F., Towards a comprehensive management of labour migration, Paper presented at the *Workshop on Labour Migration in Central Asia*, organised jointly by OSCE and ICMPD, Almaty, Kazakhstan, 31 January – 1 February 2006.

⁶⁸ See e.g. Miller, M. J. and P. L. Martin, (1982), *Administering Foreign Worker Programs*. Lexington, Mass.: D.C. Heath, Castles, S. and G. Kosack, (1973), *Immigrant Workers and Class Structure in Western Europe*. London: Oxford University Press. Cornelius, W. A., Martin, P. L. and J. F. Hollifield, (eds.) (1994), *Controlling Immigration: A Global Perspective*. Stanford, California: Stanford University Press; Joppke, C., (1998), *Immigration and the Nation-State*, Oxford: Oxford University Press.

on the economic activity, both security of residence and family reunification are not regulated, and she or he is increasingly dependent on the company for the protection against the control capacities of the state.

Quite different legal framework for labour migration has been worked out within the European Community. Movement of persons is seen as an important part of European economic integration and for this vision the role of individuals, as the means of production, has been critical. Two of the four freedoms, i.e. freedom of movement of persons and services involve the right of movement of natural persons. This alternative approach, expressed in the EC Treaty (and earlier EEC Treaty), was developed for migration of nationals of the Member States and has been driven principally with a view to completing the Single Market. The Community put into a place a model for migration which placed a strong emphasis on the rights given to individual workers, the self-employed and service providers and recipients, rights guaranteed by the Community and subject only to derogations by Member States in very specific circumstances. The Community's model clearly sought to balance the interests of the Member States to protect their population from threats to public policy, the need of business for labour and the need of individual migrants to exercise a choice to move for economic purposes and to have security of residence and benefit from equal treatment. This has been a successful example of managing migration for an economic end, with the emphasis firmly placed on the right of the individual. However, the Community's experience of extending free movement provision to third country nationals has been less successful.

The extension of economic migration rights to nationals of European Economic Area countries was uncomplicated, but numerous agreements with other third countries, starting with the 1970 Protocol to the Turkey Agreement, the 1976 Maghreb Agreements (replaced by the 1995/96 Euro-Mediterranean Agreements), the Europe Agreements and the Cooperation and Partnership agreements with the CIS states (P&C Agreements) have proved more problematic. This has been due largely to the reluctance of EU Member States to accept the extent of the free movement provisions contained in those agreements and implementing decisions. For example, some provisions of the Europe Agreements were delayed for some Candidate States. There are also sectoral limitations, which are to be lifted in accordance with a timetable and the possibility of temporary suspension of the provisions under specified circumstances. Partly this is a result of the period of 'zero' immigration in which these agreements had been negotiated, and the strong emphasis on aspects of policing and security rather than thinking about the economic benefits or implications of migration policy.

In the Community's approach to economic migration within and from outside the EU we can find aspects of both the ILO and GATS models. The emphasis on equal treatment in working conditions, remuneration and social security is reminiscent of ILO 97. It is found in the EC Treaty and is incorporated into all Community's third country agreements, which include provisions on labour. Similarly the GATS approach is to be found in the Community's interpretation of the right of an enterprise within the Community to send its third country national personnel anywhere in the EU to carry out service provision. Further, the approach has been formally introduced into all of the post-1994 third country agreements of the Community, which include provisions on services. A more sophisticated version of the GATS provision is included in the Europe and the P&C Agreements, permitting enterprises to move their key personnel in order to carry out their service provision and establishment rights.

In conclusion, any immigration policy must take place within the framework which protects the rights of migrants, meaning that immigration policy should adopt a rights-based model. This does not mean advocating that there is a human right to migrate for any purpose whatsoever rather it means that migration law as regards any form of migration should be set out in legally binding rules that can be interpreted and enforced by courts and tribunals, which can consider the merits of the authorities' decisions when applying those rules.

This is of vital importance since due to complicated procedures migrants involuntarily easily turn irregular, which makes them vulnerable to exploitation. As a result many end up in a trafficking situation for forced labour e.g. in agriculture, construction or sexual industry. It has to be emphasised that a comprehensive migration policy needs to include also admission and visa policies, improved document security, border management, short/long term residence policies, readmission and return, as well as links to labour permit regulations to limit exploitation, labour standards (and their enforcement), measures for punishment penalties of traffickers in human beings and smugglers of migrants, victims oriented anti-trafficking responses. A balanced and comprehensive approach needs to be implemented so as to ensure the labour rights of migrants, as well as to avoid negative effects and abuse of the systems for labour migration.

In devising their immigration policies MARRI Member States should assess costs and benefits of immigration and the economic needs in their labour markets for different categories of migrant labour and accordingly devise programmes for their recruitment. One of the principal challenges facing policy makers is to provide a flexible immigration policy, which reflects the structural trends in the labour market. Furthermore, States also need to ensure that they will be able to attract foreign investment. This can only be done by recognising the way in which individuals and companies who succeed in a competitive environment operate. Another issue is the increased liberalisation of trade in cross-border services. A successful policy should provide a place for such short-term migration to take place and encourages the States to apply the provisions of the General Agreement on Trade and Services (GATS) in this respect. If immigration policies for economic purposes are to be successful, they must encompass all types of migrants who benefit to the individual State economy and the economy of the whole region.

It is recommendable that States take a realistic view as to the need for immigrant labour and should seek to influence the public debate on the need for migration in this context. Namely, it is often the case that even when a certain need for migrant labour is recognised, concerns are focused on the possible social difficulties of encouraging such labour migration. The question of immigration is frequently looked at in the context of a number of problem areas and weakness identified in the economy, notably the high unemployment figures. More should also be said about the positive aspects of immigration in general. When markets are functioning well, migration usually improves economic welfare, both for the migrant and for the indigenous population.

2.2.2 The costs and benefits of immigration

Immigration may contribute to economic growth, in so far as it constitutes additions to the labour force, increases the amount of available labour inputs in an economy, thereby raises potential output and allows for faster sustainable growth. The positive impact of immigration is perhaps less evident on an income per capita basis, given that most of the income gains probably accrue to the immigrants themselves. Nonetheless, economic theory suggests that free international movement of labour tends to be beneficial because of allocative reasons, at least for the economy as a whole, as the migrant goes from a place where he is less productive to a place where he is more productive. Moreover, with immigrants increasing and/or complementing the skills pool in an economy, inflows of foreign workers could well contribute to increasing dynamic efficiency in the economy of the county of destination. Most studies find a small overall net gain from immigration for the destination country, the 'immigration surplus', as termed by Diez Guardia and Pichelmann, but the benefits are not distributed evenly across the native population.⁶⁹

⁶⁹ For a review of recent selected studies on immigration, unemployment and wages and their main findings refer to Diez Guardia, N. and K. Pichelmann, (2006), Labour Migration Patterns in Europe: Recent Trends, Future Challenges, Directorate-General for Economic and Financial Affairs, N° 256, September 2006, pp. 20-21.

Empirical evidence provided by the recent study of *The Costs and Benefits of European Immigration*⁷⁰ shows the impact of international migration on labour market (wages, employment, efficiency), on the public finances, the balance of payments, trade creation and growth.

The effect of immigration on **wages and employment** is on average negative, but very small. This suggests that the potential downward effect is offset by additional creation of employment due to economies of scale and spillovers (which increase productivity) as well as higher demand for goods and services (due to population growth through immigration). The immigration impact on wages and employment was found to be more negative in EU countries when compared to the United States. However, this negative effect is not evenly distributed among EU Member States. In countries, where immigrants apparently acted as complements to native workers and competition causing downward pressure on wages and job displacement hardly arose, the negative effect is negligible or slightly positive, e.g. in Greece, Italy, Spain and the UK. For example, high-skilled immigrants filled in vacancies that went unmet by the native labour supply and thus increased productivity, while low-skilled migrants took jobs avoided by natives, that is dirty, difficult and dangerous jobs, low paid household and other service jobs and jobs in sectors that are traditionally affected by strong seasonal fluctuations such as farming, construction, and tourism. In Germany, due to the rigidity of the labour market and the comparatively low mobility of German workers, the labour market effects of immigration were found to be negative, in particular in the construction sector. This illustrates, that **market regulations that have the scope to protect native workers often have an unintended consequence**. In the long run they tend aggravating the negative impact of immigration on the labour market situation of the natives.⁷¹

With respect to **labour market efficiency**, the authors provide empirical evidence from several EU countries showing that it could be improved by immigration. Immigrants move to the most attractive regions, where salaries and employment opportunities are higher and their labour market integration induces a convergence effect on wages and unemployment between regions while at the same time the labour market shortages are reduced.⁷²

An important element in the public debate over immigration is the impact on public finances. Immigrants are often seen as a burden for the welfare state, causing additional costs for unemployment and social assistance systems, as well as for education and health care systems, with these costs, on average, usually not matched by additional tax payments. Empirical evidence shows that the implication of international migration on the **welfare systems** is diverse. The impact is strongly dependent upon the original way of admission, the labour market access and – as a result of the former – the socio-economic characteristics and labour market performance of the immigrants. Countries with high share of economic migration which implies that immigrants have a speedier access to work (e.g. UK, Italy, Greece, Portugal and Spain) experienced a positive contribution of immigrants to the treasury. In countries where immigration flows were dominated by families reuniting (e.g. Denmark, Sweden) and asylum seekers, who are permitted to work under restrictive conditions and families, immigrants were more dependent on welfare payments than natives. The same occurred in countries where immigrants had a low labour market performance, partly due to discrimination and inappropriate access to schooling and training, e.g. in the Netherlands. Because of the large-scale admission of ethnic Germans and their dependent family members, Germany partly also falls into this category. The lowest labour force

⁷⁰ Refer to Münz R. et al. (2006): *The Costs and Benefits of European Immigration*, HWWI Policy Report No.3, Hamburg Institute of International Economics. For a review of other recent selected studies on immigration, unemployment and wages and their main findings refer to Diez Guardia, N. and K. Pichelmann, (2006), *Labour Migration Patterns in Europe: Recent Trends, Future Challenges*, Directorate-General for Economic and Financial Affairs, N° 256, September 2006, pp. 21-26.

⁷¹ *Ibid.*, pp. 16-20 and 32-37.

⁷² *Ibid.*, pp. 20 and 37-38.

participation registered in the EU-15 in 2003 was that of immigrant women of Turkish and North African nationalities.⁷³

The overall effect on the balance of payments of destination states is uncertain. In the UK and Spain, immigration has a small but positive impact on **trade relations** between countries of origin and destination. Immigrants, in particular seasonal and temporary workers, remit a significant part of their income to their relatives back home. Remittances (US\$ 49.7 billion in 2004 from the EU-25) represent a drain on the balance of payments, although, they might support exports of goods and services too.⁷⁴

The influence of immigration **on growth** was found to be positive in the case of immigrants endowed with financial or human capital. Immigrants that provide financial capital have a positive effect on consumption and investments and high-skilled professionals are complementary to investment flows in the sectors they are employed in and thus attract more investments. The low-skilled migrants however, were estimated to reduce labour productivity in sectors that are employing them. It has to be added however, that low-skilled migrants are mostly taking jobs avoided by natives and in sectors with seasonal labour shortages (e.g. farming, road repairs and construction, tourism-related services). In those European countries, which have market shortages for low-skilled labour, they not only helped these sectors to survive, but also contributed to their development. Similar to the case of welfare systems, the impact of immigration on growth strongly depends on the labour market performance of the migrants. Several European countries experienced high skilled migrants being employed in low skilled jobs. This so called brain waste generates resource costs and alerts the questions about recognition of diplomas, assimilation and integration in the migrant receiving economy. Labour market integration often does not occur due to a combination of rigid labour markets, the reciprocal link between low labour market status and relatively poor school performance, and to some extent also because of labour market discrimination against immigrants. Discrimination not only hinders labour market performance of immigrants, but by decreasing returns to human capital lowers their incentive to invest in host-country-specific human capital, which in turn causes poorer labour market performance.⁷⁵

As the above described findings show labour market regulations and social standards are often inappropriate instruments for protecting native workers against low wage competition by immigrants. Minimum wages and dismissal protection, for example, attract more immigrants than it would have been the case in the absence of such regulations. As a result, this may amplify unemployment and/ or wage depression. High replacement incomes have the undesired consequences of raising unemployment, creating incentives for the expansion of irregular employment and putting an additional burden on the treasury. As an alternative, some States proposed wage subsidies that would provide supplementary income through government welfare payments if a person accepts to work in a low paid job. Furthermore, temporarily delaying wage subsidies payments to recent immigrants may prevent States from acting as welfare magnets. Examples are the UK and Ireland. For example, in 2004 with the EU enlargement they opened their labour markets to labour migrants from new Member States while at the same time these migrants are not entitled to similar welfare benefits as native workers.

Furthermore, an orientation towards a selective immigration policy based on individual characteristics of the migrants such as skills and age and particular shortages identified in the receiving country may assure more rapid labour market integration. As a result the migrant population would make positive net contributions to the public finance as is clearly demonstrated by the examples of Australia, Canada and New Zealand, the countries that have specific immigration programmes. However, if admission is dominated by family reunion and

⁷³ Ibid., pp. 38-41.

⁷⁴ Ibid., pp. 42-45.

⁷⁵ Ibid., pp. 45-47.

humanitarian protection, as in many EU States, a lower dependency rate on social transfer payments for these immigrant groups could be achieved when receiving countries would grant them access to work soon after admission. The efforts of addressing the challenges of migrants' integration and improvement of their labour market performance should include language training, amelioration of their educational attainment, assure affordable housing and fight against discrimination and racism. Integration policies have to be gender-sensitive and give special attention to the social situation and inclusion of migrant women. States of destination should also take measures to improve the recognition of professional skills and qualification and to promote labour market performance of immigrants and their dependants through access to language tuition, promotion of general basic education and lifelong learning and non-discrimination in labour markets.

2.2.3. The costs and benefits of emigration

The cost and benefits of emigration for countries of origin has perhaps been less well researched. In general the economic impact of emigration for the country of origin incurs production and tax losses particularly because of the 'brain drain' i.e. when skilled workers emigrate. This is strongly affecting some developing countries. However, a number of high skilled workers and professionals emigrate because there are no jobs available in their home-countries, so their potential output would not have necessarily been materialised. In a number of developing countries where public spending is higher in tertiary education relative to primary education, the education systems appear better suited to the needs of Western economies. Therefore, the impact of the emigration of skilled workers is diverse and depends on the situation of the country's education system and labour market. In theory, migration of skilled workers increases the return to education in countries of origin, which could lead to higher investment in education, i.e. 'brain gain' with a positive effect on growth and welfare. However, recent research showed that the brain drain can easily be larger than the brain gain. In particular, in the presence of unskilled migration, which reduces the return to education, and 'brain waste', when skilled workers only find a low-quality job in the host country, the brain gain is diminished.⁷⁶ In any case, the country of origin bears the cost of investment in human capital.

It is estimated that over one-third of individuals with tertiary education from certain African, the Caribbean and Central American countries emigrated to OECD countries. Although there may be remittances, technology and know-how transfers to the countries of origin by this Diaspora, it appears clear that expatriation on this scale represents a serious loss of human capital. This may not only be of concern to developing countries. Recent anecdotal evidence points to shortages of specialised and low skilled labour in mainly emigration countries such as Poland and Romania where temporary workers from Ukraine and China are recruited.⁷⁷

The negative impact of international migration in the countries of origin may well be offset by workers' remittances and the possible effects on trade and investment. Official data on migrants' remittances are poor and difficult to compare since states use different methodologies of estimating these capital flows in their respective balances of payments. There is a need for more and better data both on an aggregated level and differentiated by the country. Moreover, research is necessary to analyse the size and direction of the impact of migrants' remittances.

Nonetheless, most of the gains of migration accrue to immigrants themselves and, through remittances, to their families in their homelands. As reported by World Bank they are the second largest source of external finance

⁷⁶ Schiff, M. (2005), Brain Gain: Claims about its Size and Impact on Welfare and Growth are Greatly Exaggerated. IZA discussion paper No. 1599.

⁷⁷ Diez Guardia, N. and K. Pichelmann,(2006), Labour Migration Patterns in Europe: Recent Trends, Future Challenges, Directorate-General for Economic and Financial Affairs, N° 256, September 2006.

for developing countries, after Foreign Direct Investments (FDI) and often two to three times as large as the official development assistance flows. Middle-income developing countries receive smaller remittances as a percentage of their GDP than low-income countries. Remittances raise the income of recipients and contribute to the country's growth through investment or consumption. They can constitute an important part of foreign exchange earnings of poor countries. Furthermore, remittances are less volatile and less pro-cyclical than other private capital flows. They have been rising steadily in the 1990s, even in 1998-2001 when private capital flows declined following the Asian crisis. Remittances are more evenly spread than other private flows, which tend to concentrate into a few countries. In 2001, the top 10 recipients of worker's remittances received 60 per cent of total remittances sent to developing countries, whereas the ten countries that received the most FDI concentrated 74 per cent of total FDI.⁷⁸

Remittances have played a role in the development of countries, such as Italy, Portugal, Greece, Spain and more recently Turkey and Mexico.⁷⁹ Still, these flows are private transfers and the savings involved belong to the migrants and their families, who decide on their allocation even though governments may offer incentives to migrants to increase the volume of remittances or influence its use. Finally, migrants returning to their countries of origin bring gains in terms of acquired skills and savings and investment.

2.3 Legal immigration policy in the European Union

The Treaty of Maastricht, which entered into force on 1 November 1993, created the European Union and introduced new forms of cooperation in the sectors concerning foreign and security policy and justice and home affairs – the so-called 'second' and 'third pillars' of the European Union, the Community being the first. By the Treaty of Amsterdam, which entered into force on 1 May 1999 immigration and asylum have become the 'first pillar' issue.⁸⁰ Many of the cooperative initiatives in the sectors of justice, freedom and security are now subject to Community rules. These include, *inter alia*, visa policy, asylum procedures and even judicial cooperation in civil matters. In addition, the strengthened three-pillar structure has allowed the EU certain dynamics of action and gradual achievement of its objectives. The Treaty establishing a Constitution for Europe, signed on 29 October 2004 provides for these three pillars to merge, while retaining the specific procedures for common foreign and security policy and for defence policy. The initial ratification agenda came to a halt following the 2005 negative referendums in France and in the Netherlands.

In October 1999, the European Council meeting in Tampere discussed the establishment of an Area of Justice, Freedom and Security and elaborated the **political guidelines** for the coming years. It was agreed that "the separate but closely related issues of asylum and migration call for the development of a common EU policy".

This would include the following elements:

- partnership with countries of origin,
- a common European asylum system,
- fair treatment of third country nationals and
- management of migration flows.⁸¹

⁷⁸ Refer to World Bank (2006), Global Economic Prospects, November.

⁷⁹ Refer to OECD (2005), Trends in International Migration, Annual Report, 2004 edition.

⁸⁰ It is important to note that the common EU immigration policy does not apply to Denmark which has decided to opt out of Title IV of the Treaty establishing the European Community. The UK and Ireland decide on their involvement on a case-by-case basis (possibility of an 'opt-in').

⁸¹ Tampere European Council, 15 and 16 October 1999, Presidency Conclusions, particularly points 10-27.

As a result of the Amsterdam Treaty and the conclusions of the Tampere Council, the Member States agreed to elaborate a common EU-level immigration policy. The European Commission made a proposal for the development of this policy as a dual/ parallel approach:

- the elaboration of a common legislative (legal) framework regarding the conditions for acceptance and stay /residence of third-country nationals on the territory of the Union;
- the introduction of an open coordination procedure for the encouragement of an ongoing exchange of ideas and policies which have not been covered by the European *acquis*.

Until recently, partly because of the developments of the 1990s, the political and practical agendas have been influenced predominantly by asylum, irregular immigration, smuggling and trafficking in human beings. Recently, more attention has been paid to **family reunion**⁸², **long-term resident status**⁸³ and **integration of third country nationals**⁸⁴ and a debate has opened on the role that immigrant labour might play in enhancing the competitiveness of European national and regional economies. Instruments for the **admission of third-country students**⁸⁵ and **researchers**⁸⁶ have already been developed.⁸⁷

Regarding the competence the European Commission has in the field of immigration, the document on a Community immigration policy with such keywords as “common legal framework”, “new integrated approach” and “proactive immigration policy”, appeared relatively late in 2000.⁸⁸ It introduced a clear reference to “channels of legal immigration”, despite the fact that views differ appreciably from one Member State to another. It represents an attempt to synthesise the economic and demographic aspects of the arguments for a proactive immigration policy. It takes into account humanitarian, family reunion and economic types of migration and it implicitly recognises the number of tensions between Member States, business and individual migrants.⁸⁹ It also highlights the close link between migration dynamics and the integration of third-country nationals into the social fabric of Europe, which presupposes fair treatment and “the promotion of diversity”.

This fresh political mandate introduced by The Hague Programme in 2004 set new objectives and priorities and opened a new chapter of multi-annual planning through to 2009. It made the development of an area of freedom, security and justice one of the main priorities of the Member States of the EU. While guaranteeing respect for fundamental freedoms and rights, the EU is expected “to take a more effective, joint approach to

⁸² Refer to Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, *Official Journal of the European Communities* L 251/12, 3.10.2003.

⁸³ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, *Official Journal of the European Communities* L 16/44, 23.1. 2004.

⁸⁴ Refer to European Commission, Communication, A Common Agenda for Integration Framework for the Integration of Third-Country Nationals in the European Union, COM (2005) 389 final, Brussels, 1.9.12005.

⁸⁵ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, *Official Journal of the European Communities* L 375/12, 23.12.2004.

⁸⁶ Council Directive 2005/71/EC on specific procedure for admitting third-country nationals for the purposes of scientific research, *Official Journal of the European Communities* L 289, 3.11.2005.

⁸⁷ The first three Directives do not apply in the United Kingdom, Ireland and Denmark, the fourth does not apply to the United Kingdom and Denmark

⁸⁸ Refer to European Commission, Communication on a Community Immigration Policy, Com (2000) 757 final, Brussels, 22.11.2000.

⁸⁹ See Medved, F., (2003), A Common European Immigration Policy or How Common is Common Enough? in B. von Hoffmann (ed.). *Towards a Common European Immigration Policy*, Frankfurt am Main: Peter Lang, pp. 53-85.

cross-border problems such as illegal migration, trafficking in and smuggling of human beings, terrorism and organised crime, as well as the prevention thereof.⁹⁰

Still, there are diverging views on the issue of immigration policy for economic purposes – labour immigration, but in view of demographic ageing and decline and its impact on economy there is a rising consensus that immigration policies need to be reviewed. In the context of the Lisbon objectives, more sustained immigration flows could increasingly be required to meet the needs of the EU labour market and ensure Europe's prosperity. Decisions on the numbers of economic migrants to be admitted are a matter for the Member States. However, due to rights to travel within the Schengen area, to deliver services in other Member States and to move to other Member States once long-term residents status has been acquired, decisions in one Member State affect others. The EU also has international obligations in relation to some categories of economic migrants. The Commission therefore believes that there is a clear case for agreeing transparent and more harmonised common rules and criteria

After the failure of the 2001 proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities,⁹¹ which tried to respond to two needs: i) to find human resources quickly for the labour markets of Member States with perceived shortages in terms of quantity and quality and, ii) to harmonise the 'rules of entry' and residence throughout the EU, the Commission re-launched the debate on the need of common rules for the admission of economic migrants in 2005 and intensified both research and recommendations in the fields of immigration, migration management and migrant integration. In January 2005 it adopted a *Green Paper on an EU approach to managing economic migration* and identified the main issues at stake in managing economic migration.⁹² The *Policy Plan on Legal Migration*⁹³ was presented in December 2005. It defines a road-map for the remaining period of the Hague Programme and foresees four dimensions of legal immigration to be addressed in a comprehensive way:

- progressive presentation of five legislative instruments concerning **the conditions of entry and residence for third-country nationals in employment**: a common general framework directive of rights of all immigrants in legal employment together with other horizontal measures. The directive will not deal with conditions and procedures of admission for third-country nationals in employment nor with the volumes or persons to be admitted. Four specific directives will address the conditions of entry and residence of highly skilled and seasonal workers, intra-corporate transferees and remunerated trainees;⁹⁴
- development of a number of non-legislative initiatives to substantially improve the access to, exchange and coordination of available **information in the field of immigration** (these measures will include the

⁹⁰ Refer to European Commission, Communication, The Hague Programme: Ten priorities for the next five years, The Partnership for European renewal in the field of Freedom, Security and Justice, COM(2005)

184 final, Brussels, 10.5.2005. The Hague Programme was approved by the European Council of 4–5 November 2004. See Annex I of Presidency Conclusions adopted by the Brussels European Council, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, 14292/04, Brussels, 8.12.2004.

⁹¹ Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities (2001/C 332 E/08), COM(2001) 386 final, 2001/0154(CNS), *Official Journal of the European Communities*, C 332 E/248, 27.11.2001.

⁹² Refer to European Commission, Green Paper on an EU approach to managing economic migration, COM(2004) 811 final, Brussels, 11.1.2005.

⁹³ Refer to European Commission, Communication, Policy Plan on Legal Migration COM(2005) 669, final, {SEC(2005)1680}, Brussels, 21.12.2005.

⁹⁴ See also European Commission, Communication, Commission Legislative and Work Programme 2007, COM(2006) 629 final, Brussels, 24.10.2006.

setting up of an EU Immigration Portal, the revision and development of the European Job Mobility Portal (EURES) and of the European Migration Network);

- the **integration measures** proposed in a *Common Agenda for Integration* for economic immigrants and their dependents will be followed up by measures laying particular emphasis on the creation of information packages and language and civic orientation courses for newly arrived economic immigrants;
- **cooperation with the countries of origin of immigrants** will be enhanced in order to effectively manage immigration flows at the benefit of all interested parties. These measures will, *inter alia*, concern monitoring and other possible actions in order to limit the worse effects of brain drain; instruments to encourage return and circular migration; professional training and linguistic courses through the establishment of training structures in the countries of origin under the responsibility of local authorities or NGOs. The Commission's Communication on *Migration and Development*⁹⁵ highlighted the importance of enhancing collaboration with countries of origin on economic migration and of developing initiatives offering win-win-win opportunities to both countries of origin and destination as well as to labour migrants themselves. Concrete orientations were given regarding migrants' remittances, collaboration with Diasporas, circular migration, and mitigation of the adverse effect of brain drain.

In building a common policy on labour migration, the EU is now calling for the implementation of an EU wide 'global approach' to migration. In its November 2006 Communication *Global Approach to Migration one year on: Towards a Comprehensive European Migration Policy*, the European Commission, *inter alia*, identified the development of a common policy dealing with the conditions for admission and residence of third-country nationals for economic purposes as one of the priorities for building the global approach to migration.⁹⁶ Furthermore, the programme of the German EU presidency entitled *Europe – succeeding together* has identified as one of its priorities a focus on "the global approach to migration issues" and on a "coherent immigration policy", having the forthcoming European Commission's proposal for a directive for highly skilled immigrant workers as one of its most important features.⁹⁷

The prioritisation given to the development of a European scheme favouring the entry and stay of those qualified as 'highly skilled workers' appears to be based on the predominant positions and experiences of the Member States. The latter still have the final voice in the adoption of any proposals aimed at harmonisation of legal immigration. Current priorities, policy responses and legal trends on labour immigration in the Member States are characterised by wide diversity, which is inherent in their respective regulatory, political and institutional settings. The priorities and policy responses differ greatly from one state to another according to the perceived economic needs in their labour markets. Two general tendencies can be discerned, however. First, there is an increasing impact of European Community immigration law concerning access to employment by third-country nationals, for instance in relation to equality of treatment in working conditions and access to employment for those qualifying for or holding the EC status of long-term resident. On the other hand, there is a second trend consisting of the expansion of the selection approach in the rules on first admission and residence for reasons of employment, which follows a utilitarian, selective and economically-oriented rationale, which favours the economic interests of the state and provides special employment schemes with a facilitated administrative system for entry and residence only for the kind of labour force categorised as 'highly skilled', 'profitable' or 'talented'. Among the EU Member States that have specific labour schemes fostering the

⁹⁵ Refer to European Communities, Communication, Migration and Development: Some concrete orientations, COM (2005) 390 final, Brussels 1.9.2005.

⁹⁶ European Commission, Communication, The Global Approach to Migration one year on: Towards a Comprehensive European Migration Policy, COM(2006) 735 final, Brussels, 30.11.2006.

⁹⁷ The Federal Government of Germany, *Europe – succeeding together*, Presidency Programme, 1 January to 30 June 2007.

admission and residence of highly skilled immigrants are the Netherlands, Germany, Belgium, Austria and France.

The use of these policies raises a number of questions. The profit-oriented rationale institutionalises the state distinction between immigrants who are deemed useful, and are therefore wanted and most welcome, and those who are viewed as a potential threat, a burden on state welfare resources and an enemy of the economic stability and social cohesion of the country. Exclusion and expulsion are hence justified in order to offer protection to a supposedly threatened native labour market and social welfare system, and in the interest and safety of the citizen. In addition, the predominance of existing national regulations raises questions on coherence and comprehensiveness of an ongoing construction of EU immigration policy.⁹⁸

2.4 Recommendations for Immigration Policy Approach

2.4.1 Types of migrants /admission systems

The admission systems should be flexible and market oriented in order to help ease bottlenecks and long-term employment goals. The MARRI Member States are advised, according to their specific needs, to consider devising programmes and procedures for the following types of **immigration for economic purposes**:

- Immigrants endowed with human capital i.e. high skilled workers
- Immigrants endowed with financial capital i.e. persons with business investment capital
- Labour migrants for sectors with temporary or seasonal labour shortages – temporary migration applying bilateral and multilateral agreements
- Atypical working, part-time flexible and occasional work - short-term migration of migrants such as contract workers, inter-company transferees, managers within multinational firms, paid trainees (also applying the provisions of the General Agreement on Trade and Services (GATS))

Procedures should take into account the move from the individual as employee to self-employed or business person.

Non-economic type of immigration includes different types of migrants, among them artists, journalists, sportsmen and women, foreign nationals once already resident, co-ethnic foreign nationals and other which could have certain priorities when rules for entry and residence are devised. In specific this is valid for:

- family reuniting, a right already recognised for some time in various international legal instruments – such as the Universal Declaration of Human Rights, the European Convention on Human Rights and Fundamental Freedoms and the United Nations Convention on the Rights of the Child⁹⁹ (see chapter on Integration)
- refugees and persons under other types of international protection (see chapter on Asylum)
- students, volunteers, researchers

⁹⁸ For main reasons why the prevalence of national trends may undermine a common immigration policy see Carrera, S., (2007), *Building A Common Policy on Labour Migration: Towards a Comprehensive and Global Approach in the EU?* CEPS Working Document No. 256, Centre for European Policy Studies, Brussels.

⁹⁹ Also refer to Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, *Official Journal of the European Communities* L 251/12, 3.10.2003.

Considering sizeable **diasporas** from the MARRI Member States, as evidenced by the results of MARRI Questionnaires on Diaspora to the MARRI participating States,¹⁰⁰ which include nationals of these States living abroad as well as migrants who, living abroad, have acquired the nationality of their country of residence and migrants' children born abroad, whatever their nationality, the MARRI Member States would be advised to consider formulating policy promoting forms of circulation of diaspora members by facilitating dual nationality as well as repatriation, intersecting both immigration under economic and non-economic admission.

2.4.2 Immigration levels

The assessment of appropriate immigration levels for economic purposes (e.g. quotas, priorities, indicative targets) is clearly in the hands of the sovereign States, and usually involves a cooperation of a range of institutions - governments, regional and local authorities, social partners, non-governmental organisations, migrants and international bodies. For this purpose a mechanism, based on co-operation, exchange of information and reporting could be established both within the State as also on MARRI regional level.

The admission of economic migrants should be done within the framework of employment strategy (i.e. in national plans for employment) as well as business and investment strategies, but could also take in account other than labour market factors such as public acceptance or resources available for reception and integration. Nevertheless it has to be stressed that the nature of economic migration is no longer one where the State is the primary determiner of the need for labour. The economy has been moving from one where the State was the main employer of labour (and thus having competence to recruit labour itself) to one where many of the fields within State control have been moving into the private sector. Although in some areas (e.g. health sector), the State retains an important remit in assessing the need for migrant labour, it is the market, which takes the lead. The deregulation of economy is a process that redefines the role of the government as framing the economic environment within which businesses flourish, not as one which the State should be directly involved in the economic decisions of those businesses. It is important to recognise that industries, particularly small and medium sized, often need to recruit migrants quickly. Finally, the principle of respect for the domestic labour force is important, however, the reality has been that migrants have always possessed skills and experience, often sectorally based, which could not be found in among domestic labour. Therefore, strict labour market testing which is sought to protect local labour markets, and is often maintained for political ends, does not always encourage enough flexibility on this issue.

2.4.3 Procedures

A coherent and transparent policy and procedures should be established for admission of foreign labour migrants and non-economic migrants. This should, as far as possible, be done also in partnership with the countries of origin respectively destination.

Maximising benefits and minimising costs of immigration means that:

- MARRI Member States would need to set-up flexible and market oriented admission systems that help ease labour market bottlenecks and long-term deficits at all qualification levels – from unskilled workers to highly skilled professionals.
- Labour markets should be granted a higher degree of flexibility in order to make sure that growing sectors take advantage of increased productivity and contribute to job creation.

¹⁰⁰ See MARRI Questionnaires on Diaspora, MARRI Regional Centre, <http://www.marri-rc.org/>

- to lay down **criteria** for admitting foreign nationals to employed activities and self-employed economic activities as well as investment and opening different options for demonstrating compliance with these criteria.
- providing **procedural and transparency safeguards**, in order to assure a high level of legal certainty and information for all interested actors on rules and administrative practice in the field of entry and residence of foreign nationals for the purpose of paid employment and self-employed economic activities.
- to work towards providing a **single application procedure** leading to one combined title, encompassing both residence and work permit within one administrative act
- providing **rights to foreign nationals**
- strive that any adopted measure should minimise the administrative burden for the State and foreign nationals.
- in order to attract high skilled migrants States should grant long-term residence permits, improve the recognition of qualification and professional skills prior and after admission,
- non-economic migrants (reuniting family members and recognised refugees) should be granted speedy access to the labour market
- recognised refugees as well as asylum seekers tolerated to stay for an undefined period of time need to be allowed and encouraged to accept jobs and to seek work at their qualification level
- asylum seekers should be given preferential access to temporary or seasonal employment.
- States ought to address the challenges of migrants' integration and help improving the labour market performance of migrants by ensuring the recognition of qualifications, fighting against discrimination and racism, providing language training and assuring affordable housing (see also section on integration)
- social and labour market inclusion of migrant women should be actively promoted

2.5 Recommendations for policy towards diaspora

MARRI Member States have to consider promoting circulation and repatriation of members of their diasporas by facilitating, inter alia,

- dual (multiple) nationality,
- gathering information on diaspora, establish register of their members on voluntary basis, including voluntary skills and entrepreneur database.
- to improve data on remittances and facilitate their use for investment and entrepreneurship
- to provide incentives or provisions to promote, ease and enhance investment and other economic activities
- to provide accurate information – on return possibilities, on regulations concerning customs, investment, study possibilities and on all other relevant areas
- to organise meeting and conferences with representatives of diaspora on topics of common interest

Furthermore programmes could be prepared in cooperation and partnership with countries of destination/residence of diaspora members. These does not only concern rights of nationals living abroad as well as ensuring that those who decide to return can benefit from social security schemes, in particular health insurance and pension schemes. A number of issues pointed out above needs to be discussed and regulated in partnership between the countries concerned.

Diasporas - **as actors of home country development** - have come on the agenda in the framework of migration and development, which remains high on the global policy agenda. The European Union in particular

has been continuing efforts for integrating migration issues into its external relations¹⁰¹ and development policies and has taken a number of steps, notably in the framework of EC assistance to third countries in order to improve the impact of migration on development. In this endeavour the Commission has identified concrete orientations for improving the impact of migration on development. In addition to efforts concerning the improved **transfer of remittances**, thus making transfers cheaper, faster and safer and measures that could facilitate their use for home country development, the European Commission communicated some orientations for contributing to a stronger involvement of willing diaspora members in the development of their home countries by focusing on, in short:

- helping source countries **map their diasporas and build links** with them, for example by helping these countries create skills databases where such people can register voluntarily;
- encouragement of **circular migration and brain circulation**;
- using the potential of **temporary migration** - exploring possibilities of rewarding participating migrants e.g. by reimbursing pension contributions at the end of the worker's contract or include the payment by the country of residence of a top up on the worker's savings. Temporary return and more generally circular migration can also allow migrants or diaspora members who have succeeded in business activities in the EU to set up additional business activities – either directly connected or not to their main activity in the EU – in their country of origin.
- facilitating **voluntary return migration** - elaboration and management of assisted return programmes and support to countries of origin with the aim of successful reintegration of return migrants; the possibility of proposing measures in areas such as the transferability of pension rights, the recognition of qualifications or mechanisms to ensure that researchers or other professionals who have worked abroad can keep in touch with their former colleagues;
- facilitating **virtual return programmes** - diaspora members can contribute to the development of their country or region of origin by virtual return, relying on electronic communications. Diaspora skills databases can enable authorities or institutions to tap into the available skills potential. International organisations such as IOM and UNDP (with the Transfer of Knowledge through Expatriate Nationals scheme – TOKTEN) have developed significant expertise in this area.
- **mitigating the adverse effect of brain drain** tailored to the specific needs and challenges of each affected country, for example by encouraging Member States to limit recruitment in countries and sectors suffering from skill shortages and by fostering partnerships between institutions in developing countries and in the EU.¹⁰²

The MARRI Member States can reflect upon these EU orientations when designing their policy and programmes towards diasporas in the context of migration and enter into a dialogue with the relevant states in Europe or elsewhere.

¹⁰¹ Refer to European Commission, Communication: Integrating migration issues in the European Union's relations with third countries (Brussels, 3.12.2002 COM(2002) 703 final.

¹⁰² Refer to European Communities, Communication, Migration and Development: Some concrete orientations, COM (2005) 390 final, Brussels 1.9.2005.

3 ASYLUM

3.1 Asylum and refugee policy

The aim of asylum policy is that a State gives a form of protection on its territory based on the principle of *non-refoulement* and internationally or nationally recognised refugee rights. Asylum policy is a part of a wider **refugee policy** which is oriented towards co-ordinated international activities for resolving refugee problems worldwide and to protect refugees, displaced persons and asylum seekers, their rights and well-being and to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or to resettle in a third country.

The essential legal foundation for asylum policy and to address European and global refugee issues is the 1951 United Nations Convention relating to the Status of Refugees (Geneva Refugee Convention) and the so-called New York Protocol to the Convention of 1967. The “right to seek and to enjoy in other countries asylum from persecution” as written in the Article 14 of the Universal Declaration of Human Rights cannot be found in any other general international legal instrument in the field human rights, nor in the European Convention on Human Rights and Fundamental Freedoms (ECHR). In the European Union, the right to asylum is guaranteed by Article 18 of the Charter of Fundamental Rights of the European Union.¹⁰³

The key principle of international refugee law is the principle of *non-refoulement*. The legal basis of this principle is laid down in Article 33 of the Geneva Refugee Convention according to which no contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his (/her) life or freedom would be threatened on account of his(/her) race, religion, nationality, membership of a particular social group or political opinion.

3.1.1 Concept of refugee

The definition of the term ‘refugee’ is given by the Geneva Refugee Convention in Article 1A(2) and is applied to a person who owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his(/her) nationality and is unable or, owing to such fear, is unwilling to avail himself (/herself) of the protection of his(/her) country; or who, not having a nationality and being outside the country of his(/her) former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

Despite of this definition there is a wide variance amongst the States as far as the interpretation of this definition is concerned. Due to a gap in the protection regime of refugees, due to the increased number of persons fleeing from armed conflicts, generalised violence or civil war, natural and so-called complex catastrophes and restrictive interpretations of the Geneva Refugee Convention as well as various, in addition to others, procedural tools for reducing the number of persons granted refugee status, Geneva Refugee Convention remains an efficient instrument for an increasingly smaller number of people. The European Convention on Human Rights and Fundamental Freedoms (ECHR), mostly appealing to its Articles 3, 8, 13 and 5 and with its judicial control mechanisms can complement the Geneva Refugee Convention and might become in some cases the only means of protection against violation of human rights of refugees, asylum seekers and

¹⁰³ The Charter of Fundamental Rights of the European Union was proclaimed at the Nice European Council on 7–9 December 2000 and is, to date, is not yet legally binding.

other foreigners.¹⁰⁴ The Charter of Fundamental Rights of the European Union also states 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 death penalty, torture or other inhuman or degrading treatment or punishment (Article 19:2). In addition to refugee protection some states and world regions have developed other forms of protection. In the EU two forms have developed in addition to refugee protection: subsidiary and temporary protection.

3.1.2 Subsidiary protection

Subsidiary protection is considered as **complementary** protection to the protection regime enshrined in the Geneva Refugee Convention and its 1967 protocol. The definition of subsidiary protection as employed in the European Union¹⁰⁵ is based largely on international human rights instruments relevant to subsidiary protection such as Article 3 of the European Convention on Human Rights and Fundamental Freedoms (ECHR), Article 3 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment, and Article 7 of the International Covenant on Civil and Political Rights. Measures of this form of protection are to be implemented in such a manner that they do not undermine but instead complement the existing refugee protection regime.

3.1.3 Temporary protection

Temporary protection is an **exceptional measure** meant for the immediate and temporary protection of displaced persons in case of mass influx.

3.2 Asylum Policy in the European Union

3.2.1 Internal dimension aimed at the Common European Asylum System

From the late 1990s the establishment of the Common European Asylum System has become an important political goal of the European Union. Following major aims and principles agreed in Tampere, the rules should lead to a common asylum procedure and a uniform status for those granted asylum valid throughout the Union. Most of the elements of the first legislative phase (1999-2004) of commonly agreed principles, standards and measures are already in place. The main EU legal instruments on asylum concern:

- **prevention of multiple demands** by determining clear criteria, which, in general, allocate responsibility for examining an asylum application to the Member State that permitted the applicant to enter or to reside in the European Union. According to the Dublin Regulation¹⁰⁶ that Member State is responsible for examining the application according to its national law and is obliged to take back its applicants who are irregularly in another Member State;
- **reception conditions** establishing minimum standards for the reception of asylum seekers;¹⁰⁷

¹⁰⁴ Medved, F., (1998), On the human dilemma of human rights, *The European Convention on Human Rights and its Implementing Mechanisms for the Protection of Human Rights of Nationals, Foreigners and Refugees*, Ljubljana: UNCHR, Council of Europe and The Information and Documentation Centre on the Council of Europe, pp. 5-19.

¹⁰⁵ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. *Official Journal* L 304 , 30. 9.2004.

¹⁰⁶ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, *Official Journal of the European Communities* L 050 , 25. 2. 2003.

¹⁰⁷ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, *Official Journal of the European Communities* L 031, 6. 2. 2003.

- **minimum standards for the qualification and status** of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted; and,
- **minimum standards on asylum procedures** for granting or withdrawing refugee status.¹⁰⁸

All the adopted directives stress special attention to asylum-seekers with special needs and contain provisions on the situation of minors (in particular unaccompanied children) and women.

In addition the Directive on **temporary protection**¹⁰⁹ defines the decision-making procedure to trigger, extend or end this form of protection. The existing measures have been or are in the process of being transposed into national laws. While the Commission has a task to ensure the transposition and to monitor and report on what has been done, the European Court of Justice has a key role to play and its rulings on interpretation of the framework legislation.

In addition to the legislative work, the European Refugee Fund (ERF) fosters solidarity between Member States and promotes balance in the efforts they make in receiving asylum seekers, refugees and displaced persons and supports Member States action to promote the social and economic integration of refugees and their voluntary return to their countries of origin. The Fund also supports practical measures targeted at children and unaccompanied minors, in particular with regard to reception and integration measures.

In the context of the Dublin Convention, EURODAC system was created for the identification and comparison of finger-prints of asylum applicants and illegally present foreign nationals who have previously applied for asylum in another Member State. This IT system allows verification about previous apprehension of the asylum-seeker, when crossing illegally the border of a Member State coming from a third country. The database also keeps record of the date of the application, the Member State where the asylum application was filed and the gender of the applicant. These data are collected for any asylum applicant over 14 years of age and according to the type of search, the data can be kept for up to 10 years unless the individual obtains nationality of one of the Member States. The regulation establishing EURODAC lays down **strictly defined and harmonised rules** for all Member States in relation to the storage, comparison and erasure of fingerprints to be carried out in a central unit at the Commission. The EURODAC central unit is responsible for operating a **computerised central database** for comparing fingerprints, an **automated fingerprint identification system** (AFIS) and a secure communications system for data transmission from and towards the Member States. As from 17 January 2004 the European Data Protection Supervisor (EDPS) is the competent authority as regards the monitoring of the activities of Central unit to ensure that the rights of data subjects are not violated by the processing or use of the data held by the Central Unit. Directive on the **protection of individuals with regard to the processing of personal data and on the free movement of such data** applies.¹¹⁰

¹⁰⁸ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, *Official Journal L 326*, 13.1.2005. The EU Member States shall transpose this Directive into national law by 1 December 2007 (Article 15 by 1 December 2008). The Directive does not bar the Member States from enacting more favourable national provisions.

¹⁰⁹ Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. *Official Journal of the European Communities L 212*, 07.8.2001.

¹¹⁰ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, *Official Journal of European Communities L 281*, 23.1.1995.

The Hague Programme of November 2004 sets up the second phase instruments with a view to adoption by 2010. These concern mainly three areas:

- the establishment of the **common asylum procedure and uniform status for those granted asylum or subsidiary protection;**
- reinforced **practical cooperation** between Member States aimed at improvement of the quality of individual decisions by Member States within the framework of the rules set by the Community asylum legislation; and,
- the improvement of practical co-operation in the **exchange of information on migration and asylum issues.**

In February 2006, the European Commission presented a Communication on Strengthened **Practical Cooperation in the area of asylum.**¹¹¹ A work programme for operational cooperation between Member States should lead to improvements in the efficiency and quality of the asylum systems of Member States. In this context, the Commission is working on defining the appropriate structures to assist Member States achieve a **single procedure, to standardise country of origin information** and, to help address particular pressures arising from factors such as geographical location should lead to a **European Support Office** to oversee all forms of cooperation between Member States on the Common European Asylum System.

With the objective of improving the statistical knowledge of these issues a regulation on Community **statistics on migration and international protection** was proposed in autumn 2005.¹¹² With the aim to enhance mutual information of national immigration and asylum policies between Member States' policy-makers also the creation of a **mutual information procedure** on planned national asylum and immigration measures has been proposed.

3.2.2 External aspects aimed at improving protection in third countries

In recent years there has been an emphasis on responsibility-sharing for managing asylum and migration with third countries and countries of first asylum which pointed to a need for more effective cooperation to reinforce protection capacities in countries in the regions of origin; to deal more effectively with root causes and to provide for durable solutions to resolve refugee situations, particularly those refugee situations which have been continuing for some years. Financial help in the area of migration and asylum is designed by the Aeneas programme, whereas durable solutions for refugees are sought for in Regional Protection Programmes (RPP) for the regions most affected by refugee flows.

Since the vast majority of refugees remain in their regions of origin in circumstances of extreme poverty and questionable safety, the EU tries to ensure that those who need protection are able to access it as quickly as possible and as closely as possible to their needs. In this context, the Regional Protection Programmes in cooperation with UNHCR and the third countries are being developed and comprise agendas of actions to enhance protection capacity in countries in regions of origin as well as a resettlement programme. A Communication on Regional Protection Programmes was issued in September 2005.¹¹³ The programmes should deliver direct benefits to refugees as well as contribute to improvement of the protection and human rights

¹¹¹ Refer to European Commission, Communication on Strengthened Practical cooperation. New structures, New approaches: Improving the quality of Decision Making in the Common European Asylum System, COM(2006) 67 final, Brussels, 17.2.2006.

¹¹² Refer to Proposal for a Regulation of the European Parliament and of the Council on Community statistics on migration and international protection, COM(2005) 375 final, Brussels, 14.9. 2005.

¹¹³ Refer to the European Commission, Communication on Regional Protection Programmes, COM(2005) 388 final, Brussels, 1.9.2005.

situation in the host country. A programme of actions could therefore be envisaged which includes registration and other projects which are focused on the delivery of practical benefits such as training, infrastructure building or the provision of equipment. A joint resettlement programme, to be implemented on a voluntary basis, will be an important factor in every RPP. A new instrument, the Aeneas programme has been set in order for technical and financial assistance to migration and asylum related actions in third countries. The programme allows co-operation activities dealing with legal and illegal migration, readmission and reintegration of migrants, smuggling of migrants and trafficking in human beings, international protection of refugees and displaced persons. It is intended to be applicable to any third country, with a strong priority to the countries involved in the new neighbourhood policy.

Such a development makes sense in a Europe without borders. To aim for an approximation and harmonisation of conditions for asylum seekers is important for individual Member States as well as asylum applicants. In this way one country would not seem more attractive a destination than another, thereby encouraging unwarranted secondary movement. At the same time, it has to be ensured that wherever an asylum applicant makes his or her application in Europe, there would be a certainty that he or she would be able to access support, have a fair hearing and not be disadvantaged by a more or less generous interpretation of who was a refugee than if he or she had found themselves in another European country. It has been argued however, that the lack of support of UNHCR, created to be the guardian of the Geneva Refugee Convention, has given to EU measures on asylum clearly shows that “there is something wrong with the Common European Asylum System” and that UNCHR finds EU measures inadequate to fulfil the minimum obligations of the Member States to the protection of refugees.¹¹⁴

3.3 Asylum policy in the MARRI Member States

3.3.1 Internally displaced persons and refugees

Large population displacements took place in the MARRI region in the 1990s and since. The process of ensuring sustainable returns or local integration is complex and challenging. According to the European Commission 2006 Progress Reports for individual MARRI Member States¹¹⁵ voluntary repatriation and return or local integration of internally displaced persons and refugees continues and requires further efforts. Regional co-operation in this field and cooperation with UNCHR, OSCE, IOM, EC Delegations and other partners in the region is of utmost importance. The implementation of the **Sarajevo Ministerial Declaration** on Refugee Return and Integration of 31 January 2005, under which, the governments of Croatia, Bosnia and Herzegovina and Serbia and Montenegro committed themselves to solving the remaining population displacement in a finite time-frame (by the end of 2006) has not yet been completed. The process has been slowed down mainly due to the lack of political consensus on remaining “open issues” such as a fair settlement mechanism in Croatia for lost Occupancy Tenancy Rights (OTR) and convalidation of pension rights for working years spent in Serb controlled areas of Croatia during the civil war. The Road Map does not deal with all the subjects, which the local representatives of OSCE, UNHCR and EC have recommended to be included in the Road Maps. Further efforts are needed to reach agreements on the remaining issues and to fulfil the plans to present a comprehensive Road Map for each country and to agree on a Joint Implementation Matrix. As reported by the European Commission Staff, more than 60 per cent of internally displaced persons and refugees in Serbia are

¹¹⁴ See e.g. Garlick M., (2006), Asylum Legislation in the European Community and the 1951 Convention: Key Concerns regarding Asylum Instruments Adopted in the ‘First Phase’ of Harmonisation, in Balzacq T. and S. Carrera (eds), *Security versus Freedom: A Challenge for Europe’s Future?*, Hampshire: Ashgate.

¹¹⁵ Refer to the European Commission Staff Working Document Progress Reports, COM (2006) 649 final, Brussels, 08.11.2006.

opting for integration. Housing remains a constraint for both local integration and voluntary repatriation.¹¹⁶ Bosnia and Herzegovina estimates that approximately half a million people are considering returning, and there are still a considerable number of registered refugees and DPs within the country. Limited progress has been made in improving the conditions required to make return sustainable, including access to reconstruction assistance, employment, health care, pensions, utilities and an unbiased education system. Therefore, the sustainability of the Return Fund, operational since 2005, needs to be ensured.¹¹⁷ In Kosovo, the government promulgated updated return policies and procedures in May 2006. The Ministry of communities and returns however, despite the efforts in taking up its mandate, is not enough effective and the cooperation with other organisations has continued to be challenging. In June 2006, the community security council was established to fill the gap in cooperation between agencies by providing an executive forum to discuss and work towards common policies and activities. The plan will be led by the Prime Minister's office in close coordination and cooperation with all local and international stakeholders and includes a secretariat. In June 2006, the government of Serbia, the United Nations Interim Administration Mission in Kosovo (UNMIK) and Provisional Institutions of Self-Government (PISG) signed a **Protocol on the Voluntary and Sustainable Return** of internally displaced persons in order to improve the conditions for return and enhance capacity for the implementation of the process. The process of returns is on-going, including minority returnees, as well as mainly Kosovo Albanians from third countries (Germany, Switzerland and Sweden). The reception and integration mechanisms for the latter remain weak, no reconstruction assistance is provided and only a few are eligible for social assistance. UNMIK has started pilot projects with the International Organisation for Migration (IOM) and municipalities to ensure proper reception mechanisms.¹¹⁸ The number of internally displaced persons in Macedonia decreased from 1,420 to about 720. There are 2,096 refugees in the country (the vast majority Roma, Ashkalia and Egyptians from Kosovo). The Montenegrin government has pledged that the dissolution of the State Union of Serbia and Montenegro will not have a negative impact on the legal status and protection of refugees and displaced persons, in particular persons originating from Kosovo. The new legal and institutional framework is expected to adequately provide legal protection for displaced persons and refugees. The country has adopted a strategy on either repatriation or local integration, but implementation is limited, particularly in matters concerning local integration such as work and related rights of refugees and displaced persons.¹¹⁹

The process of ensuring sustainable returns or local integration of refugees and displaced persons is complex and challenging. Countries need to continue and intensify their efforts of creating for durable solutions of displaced persons and refugees by:

- creating, improving and ensuring conditions for sustainable returns or local integration
- giving access to rights and entitlements, including the right to housing, in line with international agreements
- enhancing capacity for the implementation through provisions that range from services for the returnees to promoting integration of internally displaced persons.

¹¹⁶ Commission Staff working document Serbia 2006 Progress Report COM (2006) 649 final, SEC (2006)1389, Brussels, 8.11.2006, SEC (2006)1389, Brussels, 08.11.2006 pp. 16-17.

¹¹⁷ Commission Staff working document Bosnia and Herzegovina 2006 Progress Report COM (2006) 649 final, SEC (2006)138 ,Brussels, 08.11.2006, pp. 17-18.

¹¹⁸ p. 16.

¹¹⁹ Commission Staff working document Montenegro 2006 Progress Report COM (2006) 649 final, SEC (2006)138, Brussels, 8.11.2006, SEC (2006)1389, Brussels, 08.11.2006 p. 15.

In this context, the governments are encouraged:

- to design or include these issues in their respective national action plans and road maps, discuss and resolve all outstanding issues
- to improve mechanisms to address these issues
- to establish suitable fora for development of common policies and activities and better cooperation and coordination between competent agencies, local, non-governmental and international stakeholders such as UNCHR, OSCE, IOM, EC Delegations and other partners in the region
- to continue dialogue with the governments of other affected states to discuss and resolve all outstanding issues, utilising the facilitating and advising capacity of international institutions

The MARRI Access to Rights Programme supported the return and/or integration of refugees and displaced persons in the region, as well as minorities and stateless persons in accordance with international standards and existing national legislation.¹²⁰

3.3.2 Asylum context

The level of asylum applications and recognised refugees in the MARRI Member States is generally low, but has been increasing in some states. For example, Bosnia and Herzegovina received 143 applications for asylum in 2005, and in 91 cases asylum was granted. In Croatia there has been no recognised refugee, but there were 210 applications in 2005. 28 persons have a recognised refugee status in Macedonia, while most of applicants have been granted 'humanitarian protection', which is a status with duration of up to 12 months. In Serbia, the number of asylum seekers remains limited. There were 47 applications in 2005, concerning 55 persons. Eleven of the applicators have been accepted. Temporary protection has been granted to 109 Iraqi nationals. On the other hand, 21,927 asylum claims were filed in 2005 by citizens of Serbia and Montenegro.

Most of the MARRI Member States have taken the necessary steps towards approximating their legislation in the area of asylum to that of the EU. For the candidate countries, Croatia and Macedonia section on asylum entails a lot of obligations. As reported by the EC 2006, Progress Reports the 2004 Asylum Act of **Croatia** brings the legislative framework closer into line with the *acquis* and the Geneva Refugee Convention, by guaranteeing the basic rights of asylum seekers. However, the legislative framework should be brought closer to the *acquis*, particularly concerning provisions for accelerated procedures, procedures at airports and harbours as well as temporary protection. The asylum appeal process needs reviewing and the role of the Administrative Court ought to be clarified in order to enhance transparency. Now appeals against the first-instance decisions of the Ministry of Interior are referred for decision to the Ministry of Interior Commission for addressing administrative procedures appeals, the Commission being the second-instance body. Within thirty days from the receipt of such decision, the party may institute an administrative procedure before the Administrative Court, being the third-instance institution, against the decision of the Commission. Croatia should also step up preparations for participation in Dublin and EURODAC systems. A temporary asylum reception centre was opened at Kutina last year. There are no detention facilities at the border, asylum seekers are transferred from the border immediately to Jezevo for registration and then on to Kutina. Often asylum seekers disappear during this transfer.¹²¹

¹²⁰ Refer to the MARRI homepage at <http://www.marri-rc.org/>

¹²¹ Commission Staff Working Document Croatia 2006 Progress Report, COM (2006) 649 final, SEC (2006) 1385, Brussels, 08.11.2006, Chapter 24: Justice, Freedom and Security. See also MARRI Questionnaire, May 2006.

In **Macedonia**, further legislative alignment and administrative strengthening are necessary. The Law on Asylum and Temporary Protection lacks provisions for subsidiary protection though Macedonia grants 'humanitarian protection'. The implementing legislation is still missing. There are concerns over the transparency and independence of the government commission competent to deal with appeals against first instance decisions on refugee status. The *Project in Macedonia: Refugee Integration Policy*,¹²² developed by the Ministry of Labour and Social Policy identifies a need for policy and administrative instruments for refugee integration policy concerning refugees, asylum seekers and others covered by the Law on Asylum.¹²³

Bosnia and Herzegovina has made progress in establishing a functioning asylum system. The asylum procedure is well established. The shortcomings concern the implementation capacity, due to the understaffing and small premises of the Asylum Sector at the Ministry of Security, which is responsible for individual refugee status determination. There is no country of origin information system in place. This all makes it difficult to properly conduct registration or eligibility assessments and status determination. In addition, further clarification and formalisation of the competences of the Ministry of Security and the Ministry of Human Rights and Refugees are necessary to prevent any confusion and potential inter-institutional conflicts. Bosnia and Herzegovina lacks an appropriate asylum reception centre with the capacity or required standards to serve as asylum centres. Funding of the centres is dependent on international support.¹²⁴

In **Serbia**, the 2005 State Union level framework law guarantees only the right to asylum. The implementing legislation to regulate procedures for reception and protection of the asylum seekers has not been adopted. This has been somewhat compensated through the 2004 by-laws allowing for the issuance of temporary residence permit. Twelve of those were granted so far by the Interior Minister. The competences in the area of asylum have been transferred to the Serbian Ministries of Justice and Interior. There is a lack of adequate infrastructure and qualified staff and the majority of cases are being handled by UNHCR. There are also cases of deportation without the right to appeal, after custody in the existing reception centre under inadequate conditions.¹²⁵

In **Kosovo**, no formal system is in place to deal with asylum seekers, as this issue is not mentioned in Regulation 2005/16 on the Movement of Persons into and out of Kosovo. As recommended by the EC report a review of the legislation is required to clarify certain areas and to create comprehensive guidelines for asylum seekers.¹²⁶

Following the independence of **Montenegro**, the Law on Asylum is pending its adoption. The draft generally provides for an adequate protection regime for asylum-seekers and refugees, although some provisions remain of concern - exclusion, revocation, judicial review, manifestly unfounded claims, rights and obligations of asylum seekers and refugees - and will require further elaboration through secondary legislation. The construction of a reception centre for asylum-seekers and refugees is in progress.¹²⁷

¹²² Retrieval from MARRI Regional Centre, <http://www.marri-rc.org/>

¹²³ Commission Staff Working Document The former Yugoslav Republic of Macedonia 2006 Progress Report, COM (2006) 649 final, SEC (2006) 1387, Brussels, 08.11.2006, Chapter 24: Justice, Freedom and Security, pp. 48-49.

¹²⁴ Commission Staff working document Bosnia and Herzegovina 2006 Progress Report, COM (2006) 649 final, SEC (2006)1384, Brussels, 8.11.2006.

¹²⁵ Commission Staff working document Serbia 2006 Progress Report COM (2006) 649 final, SEC (2006)1389, Brussels, 8.11.2006.

¹²⁶ Commission Staff working document Kosovo (under UNSCR 1244) 2006 Progress Report COM (2006) 649 final, SEC (2006)1386, Brussels, 8.11.2006.

¹²⁷ Commission Staff working document Montenegro 2006 Progress Report, COM (2006) 649 final, SEC (2006)1388, Brussels, 8.11.2006.

The **Albanian** overall legislative framework for asylum is in compliance with international standards. Progress is still needed on implementation of the legal framework, in particular as regards information to the claimants on their rights, judicial procedure and speeding up the decision making process. The Law on Foreigners still needs to be harmonised with the *acquis* and the law on asylum. Equipment for processing asylum applications has been significantly improved and a pre-screening process is now in place. Information on the country of origin is still lacking though. All asylum seekers and refugees are now provided with the necessary documents. The capacity of the Directorate for Refugees and Nationalities in the Ministry of Interior to implement the action plans for asylum and to properly process asylum applications is limited due to a lack of staff. Two shelters were recently constructed: a shelter for asylum seekers and a national reception centre for victims of trafficking. Attention should be paid to providing adequate expertise in the staff running new asylum centres.¹²⁸

3.4 Recommendations for MARRI Member States

3.4.1 Policy context

In line with their legal and moral obligations and membership in international community as well as in view of approaching the European Union, the MARRI Member States should enhance their formulation and implementation of asylum policy on following principles:

- to insure asylum by developing comprehensive asylum system directed towards treatment of individual asylum seekers as well as of mass refugee flows consistently respecting the principle of *non-refoulement*,
- to insure effective protection and assistance including programmes for repatriation with special attention paid to children, women and other specially vulnerable categories of refugees and asylum seekers,
- to cooperate with other states, international organisations, the EU and NGOs
- to contribute to the refugee problem solving as well as the elimination of causes of refugee problems applying political, economic and moral means.

3.4.2 Legal and regulatory framework

It is essential for MARRI Member States that legislative framework is brought closer into line with international (UN and Council of Europe instruments) and the European Community *acquis*, particularly it should cover:

- forms of protection
- rights of asylum seekers
- accelerated procedure
- border procedures
- transparent asylum appeal process
- integration

In order to do this, the MARRI Member States are advised to progressively align:

- 2) identification and admission of refugees to the evolving EU Asylum System, i. e. to introduce or clarify international protection (status) and content of protection (rights/benefits attached to each status):
 - **refugee protection**

¹²⁸ Commission Staff working document Albania 2006 Progress Report, COM (2006) 649 final, SEC (2006)1383, Brussels, 8.11.2006.

- **subsidiary protection as complementary** protection to the protection regime enshrined in the Geneva Convention and its 1967 protocol. Measures of this form of protection are to be implemented in such a manner that they do not undermine but instead complement the Geneva Refugee Convention protection regime.
- **temporary protection as an exceptional measure** meant for the immediate and temporary protection of displaced persons in case of mass influx.

In this context it is worth to point out that the Qualification Directive (2004/83/EC) *inter alia*:

- includes also non-State agents of persecution, i.e. the inflictors of the harm, where a State is unable or unwilling to provide effective protection. In such cases, refugee status can also be granted;
- includes several provisions on specific needs and position of refugee women, in particular an account shall be taken of the fact that persecution, within the meaning of the Geneva Convention, may be effected through sexual violence or other gender-specific means;
- entitles Member States to make use of the so-called internal protection alternative, allowing them to reject applications for international protection if it can be established that effective protection is available in at least part of the country of origin. In addition, non-State bodies can be considered as potential protectors in a similar manner to recognised States. In order to further combat the abuse of asylum claims, Member States may reject these claims when it is established that they have been manufactured after the arrival;
- obliges Member States not to grant refugee or subsidiary protection status to an applicant who has committed crimes against humanity or particularly cruel actions, even if committed with an allegedly political objective,
- includes provisions on the minimum rights and benefits to be enjoyed by the beneficiaries of both refugee and subsidiary protection status. In the main, the rights and benefits attached to both international protection statuses are the same. However, in recognition of the primacy of the Refugee Convention and of the fact that the need for subsidiary protection in principle is more temporary, entitlement to some important rights and benefits, such as the access to work and integration programmes, and the granting of a multi-annual residence permit, is incremental for beneficiaries of subsidiary protection.

2) ensure minimum standards for the reception of asylum-seekers.

Among these standards issues of information, documentation, freedom of movement, healthcare, housing, food, clothing, allowance for the daily expenses, schooling of minors, access to the labour market and to vocational training should be addressed. Special rules should also be laid down for applicants with special needs such as minors, unaccompanied children and victims of torture and to the improvement of efficiency of the reception systems. The special needs of minors should be taken into account, *inter alia*, with regard to access to the education system and appropriate medical assistance. It is important that governments take into consideration that child-specific forms of human rights violations do exist and that children may have different ways of communicating their fear of persecution. *The protection of children* is also indirectly enhanced through the consolidation of the situation of the family.

3) enhance minimum standards for asylum procedures (granting and withdrawing of asylum) for both accelerated and regular procedures.

Minimum standards as set in the EC Directive (2005/85/EC) include:

- procedural guarantees for applicants for asylum (information about the procedure, the right to be invited to a personal interview, as well as the basic principles and guarantees relating to interpretation and access to legal assistance and representation);
- minimum requirements regarding the decision-making process (decisions are to be taken individually, objectively and impartially, by personnel specialised in asylum and refugee matters and specifically trained for that purpose);
- common standards for the application of certain concepts and practices ('inadmissible applications', 'manifestly unfounded applications', 'safe third country' and 'safe country of origin');
- the right to an effective remedy before a court or tribunal against negative decisions on the application.

Provisions on 'safe country concepts' refer to:

- the application of a safe third country concept on the basis of a national list and/or an individual examination, provided the Member State concerned considers that the third country treats the applicant in accordance with international obligations and there is a connection between the applicant and that country;
- the introduction of an EU list of third countries as safe countries of origin, including a mechanism for amending the list;
- the possibility for Member States to introduce additional national lists of safe countries of origin on the basis of the same criteria as the EU list;
- the possibility for Member States which already have in place a national mechanism for national lists at the time of the adoption of the Directive, to retain this mechanism on the basis of the national criteria;
- the possibility not to examine an application for asylum and send the person to a 'supersafe' third country through which he/she has travelled where the Council has decided, on a proposal of the Commission and after consultation of the European Parliament, that the third country observes the Refugee Convention and the European Convention on Human Rights and has in place an asylum procedure prescribed by law.

The Directive includes a full set of provisions concerning guarantees that must be enjoyed by all **unaccompanied minors**, encompassing such instance as the way interviews are conducted. **Women** applying for asylum may seek protection from persecution due to their gender. Special attention is provided for women who have suffered gender persecution, torture, rape or other serious forms of psychological, physical or sexual violence. Furthermore, interviews shall be conducted, taking into account the personal or general circumstances surrounding the applicant's claim, including his/her cultural origin or vulnerability and Member States may decide to conduct also interviews with the spouse of an applicant who has not filed herself an application.

3.4.3 Non-legislative context

The barriers to the effective implementation relate primarily to the lack of administrative capacity, the insufficient financial resources, as well as to the poor, and at times non-existent, coordination among the respective judicial and law-enforcing institutions. Therefore, the MARRI Member States should:

- Enhance capacity building in the area of asylum by strengthening training of staff in asylum units, police officers, border officials and border guards in dealing with asylum seekers;¹²⁹

¹²⁹ Recommendations of the Workshop on Technical Aspects of Implementation of Readmission Agreements MARRI Regional Centre in Skopje, 15-16 June 2006, point 6.

- Develop and increase cooperation and preparation of the guiding rules on protection of vulnerable groups, in particular the minors need to be explored and developed;¹³⁰
- Enhance cooperation among competent institutions;
- Carry out the construction of the planned reception centres for asylum seekers and refugees.

¹³⁰ *Ibid.*, point 7.

4. INTEGRATION

The debate and policy on legal immigration does not only raise questions about how many and what sorts of newcomers to admit into national territories. Migration is not a complex issue solely in terms of the number of immigrants, but above all in terms of the multifaceted economic, social and cultural dynamics of immigrants. Thus, the need to develop integration policies that reflect the complexity of immigration has become more and more pressing. Particularly it brings to the fore challenges of the integration of long-term immigrants and/or ethnic minority groups. The concern here is not as much one of managing migration flows, but rather of how best to ensure the socio-economic and political incorporation of immigrants into receiving society. Nevertheless it has to be stressed that immigration policy can contribute to the success of integration policy (so-called 'immigrant integration policy') and that at the same time a successful integration of immigrants and their descendants is a critical aspect of managing migration. In addition to possible undermining of the respect for human rights and commitments to fulfilling international obligations to refugees and other persons in need of international protection, the success or failure of integration policy has implications both for the well-being of immigrants themselves and for many aspects of the social, economic and cultural life of the receiving societies. Concerns about the 'failed integration' on receiving societies have been articulated as worries about social tensions, rising welfare costs, rising criminality, declining standards of education or the dilution of the traditional values or identity of the receiving society. Whether or not these problems are in fact caused by the presence of immigrants, the debate on integration is likely to feed anxieties about the potential impact of legal immigration and impact the emerging labour migration agendas. Therefore, the perceived linkages between immigrant integration and broader socio-economic problems need to be taken seriously.

4.1 Concept of integration

Integration means various phenomena and processes. Integration as the relation between the whole and its parts represents the most poignant feature of society. As society has been built of multitude of complex, hierarchical and parallel subsystems and their remnants, the organisation of all these parts into a well functioning unity is the central question of the fundamentals of society. In this sense integration is a phenomenon that pertains to society as a whole, but also to its parts – groups, institutions and organisations. It builds both on members sharing the same values, norms and perceptions and on the complex interdependency relations, leading from complementary functions of professional, gender, generational or in democratic society political party differentiations. Common to the latter are institutionalised forms of conflict solving, if and when the differentiation leads to conflict. Differentiation in terms of culture, religion and ethnicity do not have an equivalent complementarity and are therefore more problematic, when it comes to integration. Integration in this meaning is a feature of the social system, not of the individuals or groups. Hence, society may be more or less integrated but not its individuals.

The concept of integration in the migration debate implies a process of incorporating immigrants into the economy, society and political life of their receiving societies. The economic and social dimensions of integration are probably the least difficult to define, implying, at a minimum, insertion into the labour market and education and welfare systems. Cultural integration is less easy to pin down, but is usually taken to involve knowledge of the receiving country's language, some understanding of its society and respect for its basic norms. Finally, political integration implies the right to vote and to stand for election usually acquired through naturalisation, which is in many countries understood as the final stage of a successful process of integration. Beyond this general concept, there are significant national and ideological variations as to how far immigrants are expected to adapt to the receiving society's culture and values to participate in its social and political life. Here it is useful to introduce a simplified distinction between two dominant concepts, closely linked to the way

different states conceive their own national identity and what it means to be a member. First, the concept of cultural pluralism/multiculturalism sets lower expectation about the degree to which immigrants should adapt to the receiving societies, thus allowing space for the coexistence of people with diverse culture, norms and language. The rationale may be pragmatic, insofar as it is considered unfeasible or counterproductive to put pressure on immigrants to give up their own identities. Or it may be defined out of a more normative commitment to the value of cultural pluralism, which sees diversity as desirable. Multicultural society, thus gives to an individual a possibility to freely choose to belong to either a minority or majority. But it involves more than culture, a simultaneous concern for political integration, social and economic emancipation. In this view it combines measures against socio-economic inequity on cultural lines with the acceptance of the principle of differential treatment of people with different characteristics, needs and desires. This is the reason that anti-discrimination legislation, positive action, measures against xenophobia and racism tend to be regarded as aspects of multiculturalism. The second more demanding assimilationist concept is premised on a more elaborate conception of what it means to be a member of society or a citizen, either expressed as a commitment to civic assimilation or deriving from a more ethnocentric concept of shared national and cultural identity. These two concepts are useful for identifying philosophies and goals of integration though in practice most European countries have opted for something between the two poles. The traditions of thought on nationality have been shaped in different European states through experiences of nation-building, international and civil conflicts and democratisation. Still, they should not be seen as unified or fixed. Moreover, influenced by more recent experiences of immigration many European states are re-evaluating and revising traditional notions of citizenship and identity. The fact of immigration, then, can itself shape broader conceptions of membership and national identity. Policy debates and changes are taking place almost everywhere though terms in which integration policy objectives are cast differ from country to country, as well as areas it targets. In part this reflects the very real problems of incorporating immigrants and ethnic minority groups. But integration has also become a symbolic issue challenging a range of other concerns about collective identity and security.¹³¹

4.2 Integration policy in the European Union

The issue of common integration policy has recently come to the fore as a major policy challenge in the promotion of social and economic cohesion throughout the EU territory. "Fair treatment of third country nationals" has been outlined as one of the essential elements of common migration and asylum policy in Tampere conclusions. Explicitly, the Council called for "a more vigorous integration policy" which "should aim to grant legally resident third-country nationals rights and obligations comparable to those of EU citizens" (point 18) to help them integrate in the receiving society. A good deal of consensus prevails that integration is a two-way process, involving adaptation on the part of both immigrant and society, and on what structural integration implies. Immigrants should benefit from comparable conditions, living and working, to those of nationals, including voting rights for long-term residents. The appreciation of the value of pluralism, is based on the recognition that membership of society is based on a series of rights but also responsibilities for all of its members, nationals or migrants. There should be respect for human rights and human dignity, respect for cultural and social differences and for fundamental shared principles and values. Furthermore, the Charter of Fundamental Rights of the European Union is seen as to provide a reference for the development of the concept of 'civic citizenship', guaranteeing a number of core rights and obligations to immigrants which they will acquire gradually over a period of years, so that eventually they are treated in the same way as nationals of their state of residence, without being naturalised. The promotion of fundamental rights, non discrimination

¹³¹ Medved, F. (2001), 'Interaction Between Citizenship and Integration', 2nd European Conference on Nationality: Challenges to national and international law on citizenship at the beginning of the new millennium', 23-39. September. Strasbourg: Council of Europe, Proceedings. www.coe.int.

and equal opportunities for all is key integration issue. EC legislation provides a strong framework of **anti-discrimination legislation**: a package of anti-discrimination measures was adopted in 2000,¹³² consisting of two legal instruments – a directive on racial discrimination¹³³ and a directive on discrimination in employment¹³⁴ - together with a Community action programme. Furthermore, a need for more effective policies to welcome the migrants in order for them to fulfil their potential and make their full contribution to economic development of the EU was pointed out in the Communication on immigration, integration and employment.¹³⁵ This means that the EU must not only do better to ensure migrants' full participation into the labour market, but also in social, cultural and civic life. The 2007 European Year of Equal Opportunities for All and the envisaged European Year of Inter-cultural Dialogue in 2008 will be major awareness-raising initiatives contributing to these objectives.

In the Hague Programme of November 2004, integration is the fifth strategic objective of a coherent EU framework, stressing that it is necessary, in terms of integration, to "maximise the positive impact of migration on our society and economy" and "to prevent isolation and social exclusion of immigrant communities." Already in the same month, Justice and Home Affairs Council agreed upon *Common Basic Principles* for a holistic approach to immigrant integration policy as a non-binding guide of principles for Member States in order for them to assess and formulate their integration policies.¹³⁶ It also serves as a basis of exploration of how EU, national, regional, and local authorities can interact in the development and implementation of integration policies; and assists the Council to reflect upon and eventually agree on EU-level mechanisms and policies needed to support national and local-level integration policy efforts, particularly through EU-wide learning and knowledge-sharing. In 2005, with a view of putting the basic principles into practice the Commission adopted *A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union*¹³⁷ and proposed a new Integration Fund¹³⁸ - complementary to the European Social Fund in case of some measures to the European Regional Development Fund - to support the development of comprehensive national integration strategies and action plans, the coordination of national integration policies and the promotion of structural exchange of experiences, best practices and information on integration.

The Second Annual Report on Migration and Integration¹³⁹ provides an overview of migration trends in the European Union, analysing the changes and describing actions taken regarding the admission and integration of immigrants at national and EU level. It should help to develop and promote policy initiatives for more effective management of migration in the future. All these initiatives together with the *Handbook on integration for policy-makers* and practitioners prepared by the Migration Policy Group, based on exchanged information of a

¹³² Refer to European Commission, Communication on certain Community measures to combat discrimination, COM (1999) 564 final, Brussels, 25.11.1999.

¹³³ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *Official Journal of the European Communities* L 180/22, 19.7.2000.

¹³⁴ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, *Official Journal of the European Communities* L303/16, 2.12.2000.

¹³⁵ Refer to European Commission, Communication on immigration, integration and employment, COM (2003) 336 final, Brussels, 3.6.2003.

¹³⁶ Refer to the Council of the European Union, Press Release 14615/04 (Presse 321) 2618th Council Meeting, Justice and Home Affairs, Brussels, 19 November 2004.

¹³⁷ Refer to European Commission, Communication, A Common Agenda for Integration Framework for the Integration of Third-Country Nationals in the European Union, COM (2005) 389 final, Brussels, 1.9.2005.

¹³⁸ Proposal for a Council Decision establishing the European Fund for the Integration of Third-country nationals for the period 2007-2013 as part of the General Programme 'Solidarity and Management of Migration Flows' COM/2005/0123 final.

¹³⁹ Refer to Commission Staff Working Document, Second Annual Report on Migration and Integration, SEC(2006) 892, Brussels, 30.6.2006.

network of National Contact Points on Integration are important sources on which to draw when promoting and developing integration policy.¹⁴⁰

4. 3 Integration policy in the MARRI Member States

As far as could be discerned, there are no integration policies developed for the MARRI region or MARRI Member States separately. Here it should be noted that there are substantial efforts for integration of refugees and displaced persons as pointed out in the section on asylum of this paper, and also some strategies targeting specific groups of migrants such as the Serbian integration strategy for returnees from readmission agreements¹⁴¹ or the Macedonian project concerning refugee integration policy.¹⁴²

The growing political and social recognition of integration issues however, is acknowledged in the Ulcinj Recommendations,¹⁴³ which call for a development of integration policy in individual MARRI Member States and point to the EU policy. In particular, the recommendations aim at integration policy that should be based on the following basic principles:

- not less favourable treatment of migrants than own nationals
- right to cultural identity
- mutual participation in society

Thus, the MARRI Member States have agreed upon shared goals of integration and are aware that development and successful implementation of integration policies and practices is in the interest of the whole region.

The formation and implementation of integration policy and integration of migrants represents a great challenge for MARRI region, going beyond the integration of minorities, refugees and displaced persons, which has been the main focus until recently. The development of integration policy and the measures a particular State chooses to adopt and implement however are a matter of a sovereign decision and responsibility of each state. This will depend on the needs, priorities and situations as well as the political, legal, social and cultural contexts of the individual MARRI Member States and societies. The actions of particular States will most probably target diverse areas and audiences. Nevertheless, attention should be given to all of the various categories of immigrants who could benefit from integration measures such as immigrant workers, members of their families, refugees and persons under other forms of international protection. Simultaneously, integration approach should be multifaceted in order to provide for the active involvement and participation of immigrants in economic, social, cultural and civil life. Integration measures and initiatives should be designed in such a way that they enable immigrants to integrate in the labour market and help provide access to education, training and the acquisition of language skills and to give access to accommodation and health and social services. Although the responsibility for integration policy lies solely in the individual State, there are many benefits which can accrue from exchanging information, learning and knowledge and co-operating together within the MARRI to tackle what are, so often, common problems.

¹⁴⁰ Refer to Directorate General Justice, Freedom and Security, Handbook on integration for policy-makers and practitioners, November 2004.

¹⁴¹ Refer to Ministarstvo za ljudska i manjinska prava Srbije i Crne Gore and MARRI (2006), Nacrt strategije za reintegraciju povratnika na osnovu sporazuma o readmisiji, Beograd.

¹⁴² Project in Macedonia: Refugee Integration Policy

¹⁴³ Refer to MARRI Workshop on Migration Management Systems Ulcinj, Recommendations, Montenegro, 5-6 October 2006.

4.4 Policy context

For policy purposes integration can be defined as proposed by the EU principle, i.e. integration is “a dynamic, long-term and continuous process of mutual accommodation by all immigrants and residents of Member States.” The integration process thus involves adaptation and participation of immigrants, who all have rights and responsibilities in relation to their new country of residence **and** of every resident. Accordingly, States are encouraged to consider and involve both immigrants and national citizens in integration policy, and to communicate clearly their mutual rights and responsibilities. In the process, the receiving society should provide the conditions and create the opportunities for the immigrants' full participation in various areas of the societal life.

In the latter sense, immigrant integration policy refers to conditions provided to immigrants and measures of the State and society which promote integration and enable immigrants to become responsible participants of the country's economic, social, cultural, civic and political development.

Integration policy and its aims have to respect integrity and dignity of each individual, principles of democracy, human rights and fundamental freedoms, cultural plurality of society, coexistence and solidarity, social stability and the rule of law. Instruments, measures and actions of the policy to promote integration, prevent discrimination and enable immigrants to express their cultural identity have to be based on directions of policy making in various areas of societal life. A gender perspective should be incorporated into all relevant actions and specific attention should be given to the situation of immigrant youth and children.

Integration cuts across various policy fields, such as employment, education, housing, health and social care and it needs to be reflected in a whole range of policies. Some measures and actions of integration policy are specifically targeted e.g. dealing with various target groups. However, integration should not be seen as an isolated issue. Therefore mainstreaming integration policies and measures in all relevant policies as well as levels of government, administration and services has to be an important consideration in public policy-formation and implementation.

4.4.1 Legal security of foreign nationals

In order to successfully integrate and participate in all aspects of life, migrants must be provided with basic rights with an aim at granting foreign residents rights and obligations comparable to those of citizens. At present, the level of rights in terms of access to education, housing, healthcare and social services varies greatly among European states. Whereas in some countries, most rights are obtained immediately upon receiving a residence permit, in others the situation differs according to the target group. While most rights are given to refugees immediately upon receiving their residence permit, immigrants usually acquire rights only after a certain period of time and under certain conditions or only in some of the fields mentioned above. It is important that integration policy provides protection of the rights of immigrants who are in legal employment and have already been admitted to the national territory. Residence, and not nationality, should be the linking factor to the set of rights and freedoms.

It should be noted that European Community legislation already included certain rights provided by Regulation (EEC) No. 1408/71 (application of social security schemes), Directive 2000/43/EC (principle of equal treatment) and Directive 2000/78/EC (equal treatment in employment and occupation) and Directive 2003/109/EC (on

long-term residents – as discussed below). As regards the right to health and safety, the existing Community legislation applies to all workers, regardless of nationality.¹⁴⁴

4.4.2 Residence and protection of family life

The principle of legal equality and rights to permanent residence and return to the country of one's nationality are the most important when distinguishing between nationals and foreigners. However, security of residence is an important element of integration policy and ranges from a visa to various residence permits and naturalisation. In certain cases also an extraordinary and limited possibility of access to the status of legal residents for those illegal foreign nationals (regularisation measures) might be considered e.g. for those who are working in the black economy, have a work contract and/or can substantiate that they have been continuously living in the country since certain date. In the dimension of labour immigration, legal security must be offered to all immigrant workers in order to avoid exploitation, discrimination and insecurity.

Protection of family is one of the most important civil rights which has to be considered in both admission and integration policies. The MARRI Member States are advised to consider the integration measures, as well as integration conditions authorised under EC Directives on family reunification and on the status of third-country nationals who are long-term residents.

Family reunification

The directive on the right of family reunification¹⁴⁵ entitles third-country nationals who hold a residence permit valid for at least one year, or refugees, to ask for family reunification, thereby confirming, at European level, the principle of protection of family unity and the integration of third-country nationals, a right already recognised for some time in various international legal instruments – such as the Universal Declaration of Human Rights, the European Convention on Human Rights and Fundamental Freedoms and the United Nations Convention on the Rights of the Child – but often abused by the different interpretations of national legal systems. The persons who are eligible under the family reunification directive procedure are spouses and minor children (Art. 4 (1)). For other members of the family however, Member States have the right to authorise residence at their discretion (Art. 4 (2) and (3)). These members are unmarried partners who present proof of a lasting relationship, children of the applicant or his/her spouse had with another parent who gives his/her consent (in the case of joint custody), dependent parents, unmarried and mentally or physically disabled adult sons and daughters. Member States can restrict family reunification rights for children if they apply after the age of fifteen and may also refuse to allow the entry of children over the age of twelve who travel separately from their family. Family reunification can be refused for spouses less than 21 years of age. The right to family reunification is subject to mandatory respect for public order and public security and also – even if these provisions are optional to conditions regarding resources and rules and matters of accommodation, medical insurance (Art. 7) and waiting periods of up to three years between members of the families of immigrants submitting a request for reunification and the residence permit being issued (Art. 8). Polygamy is not recognised, only one spouse and his/her children can benefit from the right to family reunification. Member states may also ask foreigners to comply with integration measures. Once in the European Union, eligible family members receive a residence permit and obtain access to education, employment and to vocational training. No later than after five years of residence, family members may apply for autonomous status if the family links

¹⁴⁴ See also R. Sussmuth and W. Weidenfeld (2005), *The EU's responsibilities towards immigrants*, Bertelsmann Foundation and Migration Policy Institute, Gütersloh and Washington, D.C.

¹⁴⁵ Refer to Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, *Official Journal of the European Communities* L 251/12, 3.10.2003.

still exist. Ad hoc rules are laid down to protect vulnerable categories of persons who are in a particularly difficult situation in the event of a traumatic break in the family links due to domestic violence, repudiation and the like. The Directive also contains rules providing for penalties in the event of fraud or marriages of convenience. Persons benefiting from the status of temporary or subsidiary protection are excluded from the scope of this directive (Art. 3 (2)).

Many analysts detect a contradiction between the political commitment confirmed at Tampere and the actual discrimination that exists.¹⁴⁶ It should also be noted that the European Parliament took the view that the provisions of the directive on the right of family reunion were contrary to fundamental rights, in particular the right to respect for family life and the right to non-discrimination, and it therefore brought an action for annulment before the Court of Justice of the European Communities. On 27 June 2006 the Court dismissed the action.¹⁴⁷ The directive had to be transposed into national law by Member States by 3 October 2005.¹⁴⁸

Long-term residents

The directive on EU long-term resident status¹⁴⁹ is designed to grant an EU status of long-term resident to third-country nationals who have status is recognised by Member States in respect of third-country nationals who have “resided legally and continuously within its territory for five years”¹⁵⁰ and have “stable and regular resources which are sufficient to maintain themselves and the members of their families, sickness insurance in respect of all risks” and, where required by the Member State if they “comply with integration conditions.” For example, proficiency in the language of the Member State could be one of the integration conditions. Article 3 sets out the scope of this legal instrument very clearly. It does not apply to anyone residing in a member state on a temporary basis, to refugees, asylum-seekers waiting for a decision on their applications, anyone benefiting from temporary protection or a subsidiary form of protection, or to seasonal or cross-border workers.¹⁵¹ Nor does it apply to persons residing for study or vocational training purposes. Furthermore, applicants must not constitute a threat to public security or public policy. These persons will receive permanent status, materialised by at least a 5-year residency permit, automatically renewable.

The new EU status will enable third-country nationals to enjoy a legal status comparable to that of nationals of the Member States. Long-term residents will enjoy equal treatment to nationals in a number of areas of socio-economic life such as access to employment and self-employed activity, education and vocational training, social protection and assistance or access to goods and services (Art. 11). The Directive also allows the person concerned to move from one Member State to another under certain conditions, such as exercising an economic activity in an employed or self-employed capacity, pursue studies or vocational training or go there for other purposes under the conditions of the directive. The directive also confirms that, once the status of long-term resident has been acquired, a third-country national is protected against expulsion, which can be justified solely where s/he constitutes an actual and sufficiently serious threat to public policy and public security (Art.6).

¹⁴⁶ See e.g. Jose Manuel Cortes Martin (2005), “Immigration et regroupement familial dans l’Union Européenne: un droit à géométrie variable”, *Revue du Droit de l’Union Européenne*, No. 4, pp. 721-760.

¹⁴⁷ Judgment of the Court of Justice in Case C-540/03, European Parliament v Council of the European Union.

¹⁴⁸ The Directive does not apply in the United Kingdom, Ireland and Denmark.

¹⁴⁹ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, *Official Journal of the European Communities* L 16/44, 23.1. 2004.

¹⁵⁰ Only half of the periods of residence for study purposes or vocational training may be taken into account in the calculation of the five-year period.

¹⁵¹ Seasonal and cross-border workers may be subject to specific conditions imposed by the Member States.

Thus, an expulsion decision cannot be justified by economic reasons, such as the loss of one's job. The deadline for transposition by Member States was 23 January 2006.¹⁵²

4.4.3 Access to institutions, goods and services

Access to institutions, to public and private goods and services should be non-discriminatory for all. Immigrants must be treated equally and fairly and be protected from discrimination. Any legal exceptions to this accessibility must be legitimate and transparent. Transparent rules, clearly articulated expectations and predictable benefits for law-abiding immigrants are prerequisites to better immigration and integration policies. Conversely, uncertainty and unequal treatment breed disrespect for the rules and can marginalise immigrants and their families, socially and economically.

Reference should be made here to the EC Directive 2000/43/EC, which confirms unequivocally the principle of equal treatment between persons irrespective of racial or ethnic origin. Under this legal instrument there should not be any form of discrimination as regards employment and working conditions. It also applies to education, social protection and access to goods and services, including housing. This ban on discrimination is also contained in Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁵³ and Article 21 of the Charter of Fundamental Rights of the European Union.

As regards equal treatment in terms of employment and working conditions, EC Directive 2000/78/EC defines a general reference framework and lays down minimum requirements to eliminate the inequalities and discrimination often encountered in the workplace. The aim of the Directive is to combat discrimination based on age, personal or religious convictions or sexual tendencies. The Directive also sets out specific measures, called "reasonable measures", which need to be taken to facilitate access for persons with disabilities, for example adapting premises and equipment. To make the fight against discrimination effective, a provision is also included to guarantee adequate legal protection to uphold the principle of equal treatment (Art. 11).

It is worth noting that the scope of neither of the two directives covers "difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned", as defined in Art. 3(2) of the Directive 2000/43/EC. Member states are obviously free to introduce rules and provisions that are more favourable than provided for by the Directive. The field of application embraces both the public and the private sector, including bodies governed by public law.

Equal, non-discriminatory access to institutions, goods and services implies that active steps ought to be taken to ensure that public institutions and services as well as policies are open to immigrants wherever possible. With this perspective in mind, the capacity of public and private service providers to interact with immigrants should be built up with specific measures. Another important area is the reinforcement and development of consultation mechanisms at local and regional level to maintain a dialogue between migrant communities and local people, institutions and others involved in the integration process.

For ways of doing this, the MARRI Member States can consider experiences in other countries and proposals of the EU Common Agenda for Integration, which specifically encourages:

¹⁵² The Directive does not apply in the United Kingdom, Ireland and Denmark.

¹⁵³ The Convention was signed in Rome on 4 November 1950. It is legally binding on all 46 Member States of the Council of Europe, with the sole exception of Belarus.

- strengthening of the capacity of service providers via intercultural interpretation and translation, mentoring, intermediary services by immigrant communities, 'one-stop-shop' information points;
- developing comprehensive information tools, e.g. manuals, websites, registers of staff's diversity skills;
- building sustainable organisational structures for integration and diversity management and developing modes of co-operation between governmental stakeholders enabling officials to exchange information and pool resources;
- introducing schemes to gather and analyse information about the needs of different categories of immigrants at local and regional level through platforms for consultation, exchange of information between stakeholders and surveys of immigrant communities;
- engaging companies in debates on integration and linking governmental programmes with companies' corporate social responsibility programmes and
- integrating intercultural competence into recruitment and training policies.

Furthermore, it is important to monitor and evaluate the success of public institutions in serving immigrants in order to make ongoing adjustments (see also the Council Directive concerning the status of third-country nationals who are long-term residents).

- MARRI as a regional initiative could play a role in the continuing monitoring and evaluation process, support exchange of best practices and promote development of transferable training activities for public officials.

4.4.4 Integration into labour market

Employment is of crucial importance for the integration process. Contribution of immigrants to the receiving society becomes visible by their employment or self-employment and influences their participation in other areas of societal life.

At the workplace integration of immigrants can be promoted, *inter alia*, by the recognition of qualifications acquired in another country, by training opportunities that provide skills demanded at the workplace and policies and programmes that facilitate access to jobs and the transition to work. It is also important that there are sufficient incentives and opportunities for immigrants, in particular for those with the prospect of remaining, to seek and obtain employment if unemployed and for immigrant women. In the latter cases, measures targeted at employers might be envisaged as well as for the support of migrant entrepreneurship.

Measures to support immigrants should be included in national employment as well as social inclusion strategies. Labour market integration measures should be elaborated and implemented in cooperation with the social partners. Particular attention and action should be given to the fight against discrimination in the recruitment policies of employers on the grounds of ethnic origin of the candidates as well as against all forms of discrimination at the workplace.

4.4.5 Socio-cultural dimension of integration

Education is an important way to prepare people to participate in society. This is valid for immigrants and native population, beneficial for an individual and also for the society as a whole. Efforts in education and training systems are critical in integration policy. However, these systems themselves have to adjust to manage ethnic, cultural and religious diversity amongst their pupils and students. It is important that they

identify areas of adjustment, such as incorporating diversity issues in the school curriculum and other educational programmes, as well as priority areas for intervention (e.g. underachievement or early-school leaving among immigrant children.)

Although the right to education is generally given, the MARRI Member States would be advised to facilitate the access of immigrants to all levels of education, including various training systems and vocational and work programmes which meet the needs of groups at risk of social and labour market exclusion. It is also important, as already pointed out above, to establish cross-border transparency and recognition of qualifications and thus aid migrants' access to education, training and work.

Enabling immigrants to acquire basic knowledge of language, history and institutions is indispensable to successful integration. In many states the increasing emphasis is placed on **introductory programmes** focusing on this basic knowledge and on putting together the most appropriate toolkit to start the integration process. Such programmes help immigrants to quickly find a place in the key domains of work, housing, education, and health, and help start the longer-term process of normative adaptation to the new society. They should target all categories of legal immigrants (workers, refugees, and family members, high or low skilled). It is especially important to children to ensure they do not fall behind in their education. A number of valuable suggestions are made in the *Handbook on integration for policy-makers and practitioners* for actions to increase efficiency of integration programmes, for their organisation at various levels, taking into consideration divergent educational background and experience of immigrants; for enhancing their flexibility via part-time courses, evening courses, distance and e-learning, allowing participants to work or study at the same time and for achieving synergies by greater co-operation between service providers. Furthermore, within the context of evolving a European approach to the admission of labour immigrants, recently more attention has been given to **pre-departure measures** which can improve the integration process on arrival. Such measures can be part of comprehensive migration and development strategies.

In some EU Member States introductory programmes are offered, in others required or imposed as an obligation of an immigrant e.g. integration contract in France, in others immigrants or some of them have to pay for their own integration programme. The examination is required in some countries, and the successful completion of compulsory integration courses is usually more or less directly linked to the granting or extension of residence permits or is intended to be so in the future.

In some countries integration obligation pertains to newly-arrived foreign nationals, in others also to long-established foreign residents (e.g. those who remain dependent for a long time upon social security assistance are obliged to follow specific integration measures in order to acquire necessary job skills). There are also plans for pre-departure measures, as it is the case in the Netherlands, where immigrants coming for reasons of family formation or reunification, as well as refugees, will in the future need to meet certain standards concerning language, as well as knowledge of the country's society and basic social skills necessary for societal participation already before entry. Some other EU Member States are currently preparing legislation intended to introduce compulsory integration measures, or are reflecting on the need to do so. In several countries, there is an emphasis on possible sanctions in case of non-compliance with obligations arising from compulsory integration measures, rather than on incentives in case of compliance. These sanctions comprise cuts in financial support or welfare aid, the issuing of fines or the refusal of compensation for the costs for integration courses.¹⁵⁴

¹⁵⁴ For more detail on various integration programmes see The Second Annual Report on Migration and Integration in the EU.

The process of integration goes on very largely in the **daily interaction**. Frequent interaction between people is thus a fundamental mechanism for integration. In this context actions can be taken to encourage interaction between immigrants and other residents, for example in common forums for discussions of daily problems or in common activities (e.g. in sports or culture) and similar projects that encourage mutual trust, intercultural and inter-religious dialogue, knowledge about immigrants and immigrant cultures and help to promote a shared sense of belonging.

Dealing with such issues underlines the central role of municipal authorities in the process of integration, but also requires a good co-operation between other levels of authority and the different involved actors, such as NGOs and other civil society associations.

Implementation of active anti-discrimination policies, anti-racism policies, and awareness-raising activities to promote the positive aspects of a diverse society are important in this regard. Furthermore, improving the living environment in terms of good condition of public spaces, decent housing, health care, neighbourhood safety, and the availability of opportunities for education, voluntary work and job training is also necessary.

Although all these measures are important for the process of integration with the *acquisition* of language the receiving society being vital for integration, the immigrants' and their descendants' own language and culture should be also an important element of integration policy. We must not forget that integrating is above all an individual choice. Right to cultural identity and freedom to practice (or not to) one's language, culture or religion has to be guaranteed and safeguarded in the framework of national laws.

4.4.6 Participation in the democratic process

A due consideration ought to be given to the importance of civic, cultural and political participation of immigrants. Integration policies directly affect immigrants. Therefore, allowing immigrants, their associations and organisations, to voice their interests, needs and wishes in integration policy making and in implementation of integration measures may increase the value of integration strategies. It is important that immigrants can become active participants in society and exercise active citizenship as residents, particularly at the local level. Ways of stimulating this participation and generating mutual trust and understanding could be reached by **structured dialogue** between immigrant groups, authorities and civil society. Immigrant's participation in mainstream organisations, should be facilitated and possibly immigrants could even join political parties and be involved in elections at the local level after a certain residence period in the county. The *Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level* (CETS No.144) to which solely Albania is a party among the MARRI Member States, suggests five years of 'actual and habitual' residence. Before the accession to the EU, some of now New EU Member States extended voting rights in municipal elections to residents of third-country nationality in addition to citizens of the European Union.¹⁵⁵ Finally, the prospect of naturalisation can be an important incentive for integration. Recently there have been changes in nationality law in several European countries relating to integration of immigrants and simultaneously responding to international standards in the field, particularly to the 1997 *European Convention on Nationality*

¹⁵⁵ For the case of Slovenia see Medved, F. (2002), Volilna pravica tujcev s stalnim prebivališčem kot prispevek integraciji in lokalni samoupravi, *Razprave in gradivo* 40, Institute for Ethnic Studies, Ljubljana, 22-39. Refer also to the Council Directive 94/80/EC of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals. *Official Journal of the European Communities* L 368, 31/12/1994 and Council Directive 96/30/EC of 13 May 1996. *Official Journal of the European Communities* L 122, 22.05.1996.

(ETS No.166), by introducing facilitated naturalisation for certain categories of persons such as second and third generation immigrants or recognised refugees.¹⁵⁶

4.5 Institutional infrastructure and mainstreaming integration issues

Integration takes place in various areas of individual and societal life. It simultaneously includes the levels of the individual, family, society and state. This suggests that integration policy must engage the local, regional and national institutions based on the principle that all subjects of authority have to promote and be responsible for the implementation of integration policy. The involvement of trade unions, businesses, employer organisations, political parties, the media, sports clubs and cultural, social and religious organisations is also necessary. Without communication, co-operation and co-ordination between all of these actors' integration policy objectives will hardly be achieved.

The integration of immigrants is deeply influenced by a broad array of policies that **cut across institutional competencies and levels of government**. Integration is a responsibility shared among different ministries (of internal affairs, justice, labour, social affairs, family, education, culture, equal opportunities, health, youth, housing and others). Usually co-ordination is placed at the Ministry of the Interior (e.g. in Greece, Germany, Hungary or Slovenia) or the Ministry of Labour and Social Affairs (e.g. in Finland, Spain or the Czech Republic). What is more, a number of countries that have chosen to set up **centralised offices** or bodies in charge of immigration and integration matters have grown considerably. For example: in the Netherlands, the co-ordination of integration policies is centralised at the Ministry of Justice, where a special Minister for Immigration and Integration has been appointed; in Portugal, a function of High Commissioner for Immigration and Ethnic Minorities has been created; in Denmark, the Ministry of Refugee, Immigration and Integration is responsible for integration policy.

There are also a growing number of countries who attach importance to the **national dialogue-structure in the political decision-making process**. A legal basis has been given in recent years to a national dialogue-structure with the largest ethnic minority groups in the Netherlands; in Portugal, decisions concerning legislative changes in the area of migration are compulsorily consulted with the Consultative Committee for Immigration Affairs, a body regrouping representatives of various immigrant communities and NGOs; in the Czech Republic, a Commission for Integration of Foreigners within the Ministry of Labour and Social Affairs, involves ministries, associations of foreigners, NGOs, trade unions, local and regional authorities.

Development and implementation of integration policies is generally shared between different tiers of government, i.e. national, regional and local, although arrangements differ widely.¹⁵⁷ Here also, there is an increasing recognition of the importance of involving local actors, including immigrants themselves, in the planning and delivery of integration measures.

Mainstreaming of integration policies and measures does not only concern all levels of government and public services. Integration issues should be considered in all fields of public-policy formation and implementation, in particular employment, education, social services and health care, housing and others.

Mainstreaming of integration issues is being applied in most EU Member States, though to a varying degree and in various ways. In Sweden and Finland, for instance, the mainstreaming is a **basic principle**. In Sweden all

¹⁵⁶ For a review of recent developments in New EU Member States and Turkey see Baubock, R., Perchinig B. and W. Sievers (2007), *Citizenship Policies in New Europe* Amsterdam University Press, Amsterdam (forthcoming).

¹⁵⁷ Refer to The Second Annual Report on Migration and Integration in the EU.

policy development initiatives of the Government are a common responsibility for all ministries. Consequently, every ministry has to approve the proposal, and the Division for Immigrant Integration and Diversity in the Ministry of Justice has a co-ordinating role. Also some of the new Member States are putting into practice the mainstreaming of integration issues. In the Czech Republic, each ministry is updating its own Plan of Integration Policies and Proposal for Legislative and Practical Action. In Poland, an Intra-departmental Group of Social Integration of Foreigners, whose task will be, amongst others, the mainstreaming of integration considerations, is being established.¹⁵⁸

4.5.1 Evaluation and information exchange mechanisms

Integration, as already pointed out, is a process rather than outcome. This means that it is difficult to measure and by so doing evaluate integration policies. Nevertheless, it is important to know where in the phases of integration process are we, are our efforts effective, do we make any progress, what we can learn from our common experiences, how do we proceed. Therefore it is important not only to set clear policy objectives, but also to have evaluation and information exchange mechanisms. The former enable to monitor trends and developments in view of policy goals, the latter enable us to share our information, experiences and knowledge and benefit from comparative learning in order to improve our policies. Adequate institutional infrastructure and structured dialogue procedure are facilitating evaluation and information exchange.

4.6 Recommendations for MARRI Member States

4.6.1 Policy context

It is important that integration policy is a part of comprehensive migration policy, in particular:

- that integration interacts with immigration and is an important element of legal immigration and asylum policy;
- that mainstreaming of integration becomes the basic principle, i.e. integration issues are to be considered in all fields of public-policy formation and implementation, including due attention to the mainstreaming of gender equality and to the specific needs of migrant youth and children in integration policies;
- that targeted integration strategies are developed either for certain groups of persons or for particular policy or geographical areas;
- that support for co-operation, co-ordination and communication between stakeholders is ensured both in the national dialogue-structure, both in the political decision-making process and policy implementation, if necessary on a legal basis;
- that Central Migration Authority functions as a national focal point and that information is shared and co-ordinated with all tiers of government and other stakeholders, in particular at regional and local level (see also chapter on Information Management and institutional framework).

Having a political mandate the competent central authority would prepare a programme of policy implementation in the relevant fields of action.

¹⁵⁸ Ibid.

4.6.2 Legal and regulatory framework

When drafting legislative frame or changes and amendments to current laws (see ANNEX, Table 1), the MARRI Member States have to align with relevant international instruments (UN and Council of Europe) and can base their provisions on *acquis* taking into account the best practices coming from the EU Member States. In particular this concerns:

- immigration legislation (concerning the admission and stay of foreign nationals for various purposes such as employment, family reunion, education, asylum and other) should be further developed in accordance with principles of immigrant integration;
- immigration legislation should be internally harmonised with legislation in other relevant fields in particular employment, education, social services and health care, housing and others;
- respect for the right to non-discrimination should be guaranteed within the State's jurisdiction (comprehensive legislation to combat discrimination rather than isolated provisions contained in various labour or criminal codes should be adopted, based on a review of signed/ratified international agreements, constitutional and ordinary provisions governing equal treatment and non-discrimination on grounds of racial and ethnic origin, religion or belief, disability, age and sexual orientation in various areas such as access to employment, remuneration and working conditions during employment).

4.6.3 Non-legislative initiatives

A number of non-legislative initiatives have already been listed above. Among them, strengthening of the capacity of service providers is of particular importance and requires investment into human resources and development of information tools, e.g. manuals both for service providers as well as for immigrants. In addition, special projects, programmes or campaigns in various spheres, such as healthcare, access to housing, fight against discrimination can be developed. These can include information services and advice, jobcentres, homework help for children, sport associations for the young, criminal preventive initiatives or distribution of leaflets, guides, brochures, websites explaining integration, giving information on rights and facilities which can be of use to immigrants. This can be done in cooperation between public authorities, MARRI, NGOs or other organisations.

4.6.4 National institutional infrastructure

The development and implementation of integration policy ought to be responsibility of all relevant ministries as well as levels of government as an element of integrated management system. A precondition for this is coordination and cooperation at the national level. As agreed by the participants or MARRI Member States in Ulcinj, the establishment of a Central Migration Authority tasked primarily to provide good and effective inter-agency cooperation is vital for the integrated migration management system. The growing political and social recognition of integration issues as part of migration management system means that States should include integration matters in principle tasks of the Central Migration Authority. This should also facilitate the mainstreaming of integration issues. Having a political mandate the competent central authority would prepare a programme of policy implementation in the relevant fields of action.

5 PREVENTION AND FIGHT AGAINST IRREGULAR MIGRATION

The aim of the policy combating irregular migration is to substantially reduce irregular migration flows and irregular immigration. This presupposes a comprehensive approach and common concepts and practices with

regard to visa policies, document security and establishment of identity, protection of personal data, admission and border management, fight against trafficking in human beings and smuggling of migrants in view of penalisation of perpetrators and protection of victims, as well as on readmission, voluntary and forced return and measures to deter illegal employment. Fight against irregular migration forms an integral part of the comprehensive and structural approach towards effective migration management. It should therefore complement policy on fair and efficient asylum system, legal migration and integration, in both their internal and external dimensions. Dialogue between countries of destination, origin and transit as well as other political and development co-operation is vital for efficient fight against irregular migration. MARRI countries as primarily countries of transit shoulder a great obligation and responsibility in these efforts. Thus, regional co-operation, co-operation with the EU and EU Member States and countries of origin in the spirit of solidarity, mutual trust and shared responsibility is of particular importance. It is also important to continue to participate actively in other international fora and to conclude bi- and multilateral agreements in this area.

Irregular/illegal im/migration is a complex phenomenon that must be tackled in all its dimensions. It involves different categories as regards the people concerned and the different networks through which they pass before arriving, transiting or remaining illegally.

The term '*illegal migrant*' refers to a status of someone which is not in compliance with the law on entry and/or residence and should not be perceived as qualifying the persons as being illegal. 'Illegal migrants' mainly include those foreign (third-country nationals) who are either:

- **illegal entrants** – persons who do not fulfil the conditions for entry in the territory of a State and illegally enter the territory of a State by land, sea or air, including airport transit zones, often by using false or forged documents or no documents at all. This may happen with the help of organised criminal networks of smugglers and traffickers.
- **illegal residents** – persons who do not, or no longer, fulfil the conditions for presence in, or residence on the territory of a State because:
 - they have entered with a valid visa or residence permit or under visa-free regime but have "overstayed" or changed the purpose of stay without the approval of the authorities;
 - their legal residence become illegal when they took up employed activity;
 - because they violate residence regulations in other ways;
 - they are unsuccessful asylum seekers who do not leave after their asylum claim has been finally rejected.
- **transit migrants** are on passage through a country while travelling from a country of departure to the country of destination, often not fulfilling the conditions for entry of the transit State.¹⁵⁹

The fight against irregular migration has to strike a balance between prevention and repression and a balance between the right of a State to decide whether to accord or refuse admission to the territory to a foreign national and the obligation to protect those in need of international protection.¹⁶⁰

¹⁵⁹ Cf. European Commission, Communication on a Community Return Policy on Illegal Residents, COM(2002) 564 final, Brussels, 14.10.2002, See Annex- Definitions.

¹⁶⁰ Medved, F.,(2002), Is illegal migration the 'missing link' to a comprehensive immigration and asylum policy? CEPS 23 March 2002 Meeting Report. Paper presented at the conference *Extending the Area of Freedom, Justice and Security through enlargement: Challenges for the European Union*, Trier, 4 - 6 July 2002.

Measures and cooperation for possible actions preventing and fighting irregular/illegal migration are thus interrelated, but can be divided into:

- external measures (such as pre-entry measures, visa regime, border management);
- internal measures (such as sanctions, but also regularisations)
- the supportive infrastructure, instruments and operational co-operation for the first two groups of measures.

Whatever measures are put into practice, they must be in compliance with international obligations and human rights and the specific needs of victims of trafficking and potentially vulnerable groups like minors and women need to be respected.

5. 1 The European Union approach to common policy on illegal migration

In the European Union, addressing illegal immigration of third-country nationals has been a central part of the common migration policy since its inception in Tampere in 1999. The Treaty of Amsterdam of 1997 foresaw Community competences in this field in its Title IV, with Article 62 as the legal basis for regulations relating to border controls and visa policy, and Art. 63 (3) as an explicit basis for measures on illegal immigration and illegal residence, including the repatriation of illegal residents. An effective fight against illegal immigration as an essential part of a common and comprehensive policy on immigration and asylum, was stressed at several European Council meetings, especially in Laeken in 2001¹⁶¹ and in Seville in 2002.¹⁶² A comprehensive approach to tackle this issue was announced in the 2001 Communication on a common policy on illegal immigration.¹⁶³ Six key elements of a coherent, comprehensive and balanced policy on illegal migration were identified and six areas outlined for possible measures and forms of co-operation that could lead to the proper development of an effective common fight against and also prevention of illegal immigration. These key elements of coherent policy comprise:

- *understanding the phenomenon* of illegal immigration, particularly the requirement of instruments and structures for in-depth analysis of different categories and patterns of illegal immigration
- *compliance with international obligations and human rights* in order to conduct the fight against illegal immigration in a sensitive and balanced way between:
 - the right to decide whether to accord or refuse admission to the territory to third country nationals and the obligation to protect those in need of international protection, in particular, obligations for protection arising from the Geneva Refugee Convention, most notably Articles 33 and 31 and the European Convention on Human Rights, particularly Article 3;
 - the sufficient refugee protection which would be compatible with a system of efficient countermeasures against irregular migratory flows; and,
 - finally, whatever measures are designed to fight illegal immigration, the specific needs of potentially vulnerable groups like minors and women need to be respected.
- *actors-in-the-chain approach* as an element of an efficient management of migration flows in order to monitor and influence irregular movements from the countries and regions of origins via the transit

¹⁶¹ Laeken European Council 14-15 December 2001, Presidency's conclusions on justice & home affairs, Laeken, 17/12/2001, point 40.

¹⁶² Seville European Council 21-22 June 2002, Presidency conclusions, point 30.

¹⁶³ Refer to European Commission, Communication on a common policy on illegal immigration, COM(2001) 672 final, Brussels, 15.11.2001.

countries to the destination countries, as well as within the external borders of the EU. This means that the fight against illegal immigration requires also the mobilisation of a number of external policy aspects.

- *prevention of illegal immigration* where the balance between repression and prevention is seen to be best modelled on a multidisciplinary approach that has been launched by the Commission in May 2001 at The European Forum on prevention of organised crime. There attention to the prevention has been devoted to the specific field of trafficking in human beings. The prevention dimension in the field of illegal immigration should include:
 - research on the causes, improving understanding of the phenomenon and detection of new trends;
 - launching of information campaigns;
 - promoting new partnerships and developing existing networks.
- *enforcement of existing rules in the Maastricht regime and more importantly Schengen and the monitoring of the existing common rules* (e.g. joint screenings on consular posts and external borders)
- *adequate sanctions for criminal activities* which are connected with irregular migration flows, especially trafficking in human beings and smuggling of migrants.

The six identified areas of possible action to prevent and fight illegal immigration at the different stages of the migration process are the following:

- Visa policy
- Infrastructure for information exchange, co-operation and co-ordination
- Border management
- Police co-operation
- Aliens law and criminal law
- Return and readmission policy

Three Council Action Plans - on illegal immigration, border controls and return - in 2002 listed a comprehensive set of measures and actions. The comprehensive plan to combat illegal immigration and trafficking in human beings in the European Union adopted on 28 of February 2002 aimed at defining a common and integrated approach to all the questions linked to illegal immigration and human trafficking and identified **seven areas** of action: visa policy, the exchange and analysis of information, readmission and repatriation policies, pre-frontiers measures, measures relating to border management, Europol and penalties. In addition to actions and measures designed to develop and complete existing Union's initiatives, the plan also envisaged new actions and measures for combating more effectively illegal immigration and human trafficking.¹⁶⁴

The 2004 Hague Programme sets out the multi-annual agenda to step up the fight against illegal immigration in a number of broad policy areas: **border security, illegal employment, return and cooperation with third countries**. In December 2005, the European Council responding to recent and ongoing illegal immigration in the Mediterranean region, underlined the need for a broad approach and agreed on a set of concrete priority actions, to be implemented in the short and mid-term.

The 2006 Communication on illegal immigration¹⁶⁵ complements recent EU policy initiatives of the comprehensive and structural approach towards effective migration management - the Policy Plan on Legal Migration, the Communication on Migration and Development, and the Communication proposing a Common

¹⁶⁴ Proposal for a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union, *Official Journal* C 142 of 14.06.2002. See also 6533/02, Presse 43 - G, p. 9.

¹⁶⁵ Refer to European Commission, Communication on Policy priorities in the fight against illegal immigration of third-country nationals, COM(2006) 402 final, Brussels, 19.7.2006COM(2006)402.

Agenda for Integration. It sets out new policy priorities and proposes a number of practical and action-oriented measures. Building on the progress made in fighting illegal immigration, the Communication identifies the policy priorities by promoting actions to counter irregular migratory flows in countries of origin and transit.

Five years after the first policy communication in the field, the EU approach is to be based on the following elements:

- **the credibility of the common immigration policy** is undermined by the illegal entry, transit and stay of third-country nationals who are not in need of international protection.
- **a set of fundamental principles** which guide the comprehensive EU approach to combat illegal immigration aims to reconcile the need for solidarity within the Union, fundamental rights, expectations of third countries, and public perception in Member States. These principles are:
 - *solidarity, mutual trust and shared responsibility between Member States*
 - *protection and promotion of fundamental rights and the right to seek asylum* meaning that irregular migrants must be offered a humane and dignified treatment particularly as they are often victims of traffickers' networks and exploited by employers. Any legislative initiative in this field therefore should be subject to an assessment to evaluate its impact on fundamental rights. Any limitation must be in compliance with the Charter on Fundamental Rights and the European Convention on Human Rights and Fundamental Freedoms, and thus be in accordance with the law and necessary in a democratic society. Due to a plethora of reasons for individuals' attempts to enter the EU, including for international protection, an effective policy on illegal immigration has to respond to different areas of concern and, at the same time, ensure that international human rights obligations are fully respected, including the right to seek asylum.
 - *partnership with third countries* is an essential component of EU migration management with a view to ensuring coherence between internal and external action and encompasses the immediate aim of reducing and preventing illegal immigration, measures to help countries of origin address the root causes and push-factors of irregular migration flows
 - *public perception* should also be taken into account. This would include a promotion of a rational debate based on objective information in order to eradicate racism and xenophobia including adoption and implementation effective legislation in this area. Nevertheless, it is important not to create false or disproportionate expectations in the public opinion that illegal immigration flows can be completely stopped.

Following a comprehensive approach with an aim to strike a balance between security and basic rights of individuals different priority areas are addressed at all stages of the illegal immigration process with perspectives for action and activities, in particular:

- **Dialogue and cooperation between the EU and third countries of origin and transit.** Concrete short and mid-term measures are currently implemented in response to recent and ongoing illegal immigration in the Mediterranean region. These include joint patrols, surveillance and enforced response capacity. In the longer perspective, push-factors for illegal immigration will continue to be addressed through development policies.
- **Further strengthening the external borders** – Integrated Management of External Borders whereby the Borders Code and the FRONTEX Agency for the management of operational Cooperation at the External Borders already represents a framework through which border controls can be further developed to a high standard.

- **Secure travel and ID documents.** In the future biometric technology, such as fingerprints and digital photographs, will have a significant impact on border control systems and should be exploited to enhance the effectiveness of border control operations. To that end, the creation of a generalised and automated entry-exit system for registration of third country nationals entering into or leaving EU territory is also considered. This would serve two purposes: first it would enable Member States to verify if a third-country national was “overstaying”, for example after expiry of a visa, or had done so in the past. Second, such a system could be used to facilitate legal migration management as a register of especially seasonal workers from third countries. A further approach would consist in an enhanced use of advance passenger data for border and illegal immigration control purposes – “e-borders”- in order to develop threat analyses and risk assessments. Both these systems would have considerable impacts in technical, financial and data protection terms. With respect to the set up of an entry-exit system, it is therefore suggested to first carry out a study to assess feasibility and proportionality.
- **Fight against human trafficking** with the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings, adopted by the Council on 1 December 2005 on the basis of a Commission proposal (IP/05/1298). The Plan sets the agenda in this field for the medium term and covers a range of issues such as measures to improve the understanding of the crime and its dimensions, prevent trafficking, reduce demand, more efficient investigation and prosecution, protection and support of victims, safe return and reintegration and also issues linked to anti-trafficking in third countries.
- **Tackling illegal employment** in the EU which remains a significant pull-factor for illegal immigration and employment, mostly in construction, catering and textile industries and very often under exploitative conditions. Member States are called upon to introduce sanctions for such rogue employers. Action at EU level with the aim of harmonising such sanctions could be an additional tool for preventing further illegal immigration.
- **Regularisations of illegal immigrants** who are unlikely, for whatever reason, to be returned to their countries of origin. These persons are not targeted by integration measures due to their status as illegal migrants. Given the difficulties in tolerating the sustained presence of significant numbers of illegally residing third country nationals on their territories, some Member States have undertaken large-scale regularisation programmes in recent years. These national measures gave rise to expressions of concern and interest in the other Member States, not least because of possible repercussions in an area without internal borders.
- **Return policy** remains a cornerstone of EU migration policy. An effective return policy is key in ensuring public support for elements such as legal migration and asylum. Priorities suggested in the Communication are the conclusion of further readmission agreements; progress on the proposed return Directive that is currently under negotiation in Council and Parliament; enhanced use of joint return flights by Member States; improved possibilities for documentation for return of third-country national who do not have travel documents; and the establishment of common training standards for officers involved in return..
- **Policy monitoring and evaluation:** The implementation of measures already agreed is an integral part of how the EU continues to address illegal immigration.
- **Carriers’ liability.** In this respect Article 26 of the Convention implementing the Schengen Agreement, the Carriers Liability Directive 2001/51/EC and Directive 2004/82/EC on the obligation of carriers to communicate passenger information are particularly relevant. It is suggested to evaluate legislation both on commercial carriers’ obligations to prevent illegal immigration and measures against the facilitation of unauthorised entry, transit and residence i.e. smuggling, with a view to identifying and shortcomings or gaps. This evaluation will be carried out in close cooperation with both Member States and relevant stakeholders such as transport industry and humanitarian organisations.

- **Improved information exchange** of a technical and strategic nature for successful operational cooperation between Member States. The Communication calls for enhanced use of existing instruments, such as ICONet (a web-based network for the exchange between Member States of strategic, tactical and operational information concerning illegal migratory movements - IP/06/57) and networks of Immigration Liaison Officers of Member States posted in countries of origin and Europol support
- **Policy monitoring and evaluation**

5. 2 Visa policy

Visas are a fundamental instrument of migration policy. Visa regime should serve as a chief means to control who can legally enter the state's territory. It is intended to function both as control to protect a given State own nationals and a mechanism by which to separate those to whom entry is allowed from those to whom it is not. The authority issuing a visa has thus responsibility to evaluate the validity of claims by applicants who choose the legal process to gain access to the state's territory, motives of a given foreign national to travel and probability of that person violating migration or other domestic laws.

Thus, visa policy refers to:

- visa as a *prevention pre-entry measure* to enter the territory, with states adopting:
 - list of countries whose nationals must be in possession of visas when crossing the state border (negative list); and,
 - list of countries whose nationals are exempt from that requirement (positive list)
- visa as *security and identification* issue
 - high security standards of visa stickers using new technologies should allow for clear identification of the person concerned.
- *administrative and supportive infrastructure*
 - in national context – institution/s responsible for visa related matters
 - in regional (international) context of information exchange on visa-issuing practices and trends in document forgery, cooperation, harmonisation of standards, the training of staff and similar.
 - *visa centre and visa management system* - electronic online system

In theory, a restrictive visa regime enables systematic control and regulation of entry by individuals from countries which have many nationals who are regarded as potential violators of immigration laws. In practice, strict visa regime can also be counter-productive with side-effects including irregular/illegal immigration and corruption: the more difficult the process of border crossing due to visa requirements or effective border police, the higher the value of "paying for an alternative service" to receive the visa, with a series of opportunities for bribery and forging of documents. Since the 11 September 2001 attacks in the U.S., the threat of international terrorism has meant the prioritising of security on state agendas, including increased restrictions on travel. This has resulted in disproportionate emphasis on the restrictive aspect of visas, which are increasingly used to address security fears about organised criminals and terrorists by blocking virtually all, including legitimate, entry. In regard to the EU visa policy, the International Crisis Group has argued that while there is a natural inclination to tighten up borders of the EU after events such as the London and Madrid bombings, the focus should be on increased cooperation with the EU Member States' intelligence services.¹⁶⁶

¹⁶⁶ International Crisis Group: EU Visas in the Western Balkans, Europe Report No. 168, 29 November 2005, p. 1.

5.2.1 The European Union's visa regime

Visa policies of the EU Member states were first brought into the Community framework with the Maastricht Treaty, more precisely the determination of those non-EU countries whose nationals must be in possession of visas when crossing the external borders of the Member States, and the establishment of a uniform format for visas. Consequently, the Member States agreed on the harmonisation of the different national visa policies. A joint 'negative' or 'black' list of countries whose nationals are subject to visa requirements was created in 1995 when the Council listed 101 non-EU countries whose nationals must be in possession of visas when crossing the external borders of the member states.¹⁶⁷ A uniform format for visas was also laid down in 1995.¹⁶⁸ Based on the Council Regulation No 1683/95 the EU/Schengen visa sticker has become a high standard document, effective against counterfeiting or attempts at falsification and an example of a successful co-operation in the field of security documents.

An expansion of the EU's visa policy occurred after the 1997 Amsterdam Treaty as visas were pooled under the newly introduced Title IV "Visas, asylum, immigration and other policies related to free movements of persons" and brought into the legal framework of the Community. With the Schengen *acquis*, now annexed to the Treaty, the harmonisation measures regarding visas upon which the Schengen signatory States had agreed to apply to those outside the Community became part of the Union's legal structure. The Schengen Protocol, however, had a longer negative visa list, containing 133 states whose national required visa for entering "Schengenland".

The 1995 regulation concerning those who must be in possession of visas was amended by Council in 1999.¹⁶⁹ In January 2000, the Commission sent a proposal to the Council for a new regulation, aimed at aligning the EU's visa list of 101 states with that of the Schengen list of 133. In March 2001, the Council agreed on a new Regulation No. 539/2001 and added to the negative list of third countries whose national require a visa when entering the European Union a 'positive' list of countries whose nationals are exempt from that requirement.¹⁷⁰ In this famous Regulation all the Western Balkan states with the notable exception of Croatia found themselves being placed on the negative visa list.

¹⁶⁷ Council Regulation (EC) No. 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the member states, based on Art. 100c TEC, *Official Journal of the European Communities* L 234, 3.10.1995.

¹⁶⁸ Council Regulation (EC) No. 1683/95 of 29 May 1995 laying down a uniform format for visas, *Official Journal* L 164, 14.7.1995. See also Council Regulation (EC) No 334/2002 of 18 February 2002 amending Regulation (EC) No. 1683/95 laying down a uniform format for visas. *Official Journal* L 053, 23.2002.

¹⁶⁹ Council Regulation (EC) No. 574/1999 of 12 March 1999 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States, *Official Journal of the European Communities* L 072, 18.3.1999.

¹⁷⁰ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, *Official Journal of the European Communities* L 081, 21.3.2001, p.1-7. The provisions of this Regulation are not applied by Ireland or the United Kingdom who declared in an extra protocol that they are refraining from the EU's cooperation on visa, immigration and asylum but may opt-in on certain provisions, if explicitly demanded. See also Information pursuant to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, *Official Journal of the European Union*, C 311/16, 19.12.2006. A monthly up date is available on the website of Directorate General Justice, Freedom and Security.

5.2.2 Visa policy in the MARRI region

For the MARRI region, visa policy issue has been a very sensitive question since it has dual importance. Firstly, the countries' visa policy is a very important security aspect related to the fight against irregular migration, organised crime and terrorism. On the other hand, a very important aspect is the visa regime that has been imposed on the nationals of the MARRI Member States for entry into EU territory. The present EU rigorous visa system entrenches a sense of isolation in the Balkans; only Croatian nationals already enjoy short-term visa-free access to the EU. This situation can be characterised as an essential problem producing various negative effects such as strong perception of humiliation among the people concerned. According to International Crisis Group (ICG), the feeling of being located in a 'Balkan ghetto', to which of the EU applies a "consular sadism" has created a strong sense of humiliation and of holding a pariah status. Isolation leads to intolerance, about which the ICG stated "[although] the EU claims that it does not want a Balkan region plagued with extreme nationalism and religious intolerance on its borders...that is what its visa policies are helping to create."¹⁷¹

It is not surprising that the issue of visa liberalisation has ranked high on the political agenda of the MARRI countries placed on the EU's negative visa list. The EU, in turn, has offered visa liberalisation or even facilitation as one of the benefits in the enlargement process, but expressed repeatedly that this relates to sufficient cooperation on security issues, in particular on the issue of illegal migration and organised crime. Most notably was this message was heard at the EU-Western Balkans summit in Thessaloniki 2003, which explicitly linked the fight against organised crime and illegal immigration with the liberalisation of the visa regime. This means that progress depends on the MARRI countries "implementing major reforms in areas such as the strengthening of the rule of law, combating organised crime, corruption and illegal migration and strengthening their administrative capacity in border control and security in documents."¹⁷² The primary responsibility for achieving progress in this respect was given to the countries themselves, as emphasised at several JHA ministerial meetings with the Western Balkans.¹⁷³

The Commission addressed the visa issue, stating its intention to initiate a dialogue with the aim of identifying achievable, measurable and realistic benchmarks to assess progress in Justice and Home Affairs.¹⁷⁴ Lately, the EU has nonetheless been willing to move slowly with a more progressive policy that permitted increased travel for education, research, business and tourism and reduced handling fees for all Western Balkan nationals. This softening derived from the Commission's Communication *Western Balkans on the road to the EU: Consolidating stability and raising prosperity*, which proposed visa relief as one of the major points.¹⁷⁵ The Council followed by laying out a concept of visa facilitation agreements to be concluded with neighbouring states.¹⁷⁶ These agreements pursue the aim of making travel easier for certain above mentioned purposes. The specific categories of persons who will obtain facilitated travel opportunities are not predefined but subject to the related negotiations. Any **successful negotiations, however, are closely linked to reform efforts in the field of fighting illegal immigration, and in particular to the signing of readmission agreements with**

¹⁷¹ International Crisis Group: *EU Visas in the Western Balkans*, Europe Report No. 168, 29 November 2005, p.10.

¹⁷² Refer to European Council, The Thessaloniki agenda for the Western Balkans: Moving towards European Integration, Western Balkans, Council Conclusions, General Affairs and External Relations Council, 16.6.2003.

¹⁷³ See European Council, EU-Western Balkans Forum: Joint Conclusions, 15578/03, JAI, 361, Brussels, 2.12.2003 and Presidency Statement on the EU-Western Balkan Forum on Justice and Home Affairs, Tirana, 16-17 November 2006.

¹⁷⁴ Refer to European Commission, Communication: The Western Balkans and European Integration, COM (2003) 285 final, Brussels, 21.5.2003.

¹⁷⁵ Refer to European Commission, Communication. The Western Balkans on the road to the EU: Consolidating stability and raising prosperity, COM(2006), 27 final, Brussels, 27.1.2006.

¹⁷⁶ Press Release from the 2725th Council Meeting on Justice and Home Affairs, 8402/06 (Press 106), held in Luxembourg, 27. 4. 2006.

the European Community. The clear go-ahead for the Commission to launch negotiations on visa facilitation and readmission agreements was granted at the Council meeting held on 13–14 November 2006.¹⁷⁷

The stated aim of the European Commission in the *Enlargement Strategy and Main Challenges 2006 – 2007* is that it will promote people-to-people contacts, both by making available more scholarships to students and researchers and by simplifying visa procedures as well as to negotiate visa facilitation agreements with the other countries of the region, with a view to concluding these agreements in 2007. The proposal covers also readmission, except for Albania with which the EU already signed a readmission agreement.¹⁷⁸ Thus, according to a speech by the Commissioner Franco Frattini, these agreements are only another step on the road towards full visa liberalisation. Negotiations for a visa-free regime should be initiated when the smooth and proper functioning of visa facilitation and readmission practices are guaranteed, along with efforts to improve cross-border police cooperation and the fight against corruption. In addition, Mr Frattini recommends that the Western Balkans speed up reform efforts in two policy areas considered crucial to effective border management: document security, including the introduction of biometric identifiers, and personal data-protection measures.¹⁷⁹ More recently, Olli Rehn, EU Commissioner for Enlargement, stressed that the European perspective for the Western Balkans can only successfully be implemented with active participation of citizens and that he is “fully aware of the importance that the peoples in the Western Balkans attach to the prospect of liberalising the visa regime.” Substantial progress has been achieved in the negotiations on visa facilitation and readmission agreements since last November.¹⁸⁰

The small success that can be envisaged in the visa issue relief is partly due to the growing pressure and lobbying from the MARRI Member States. The issue created a common cause and has become a catalyst for cooperation among different groups in the region which led to the whole range of activities launched in order to achieve visa-free travel. For instance, a study on liberalisation of visa regime was published by the Citizens’ Pact for South Eastern Europe, founded in response to the signing of the Stability Pact in 1999.¹⁸¹ The Citizens Pact, which functions as a network of non-governmental organisations and municipalities throughout south-eastern Europe, has launched the “Visa Abolishment Campaign”.

Furthermore, in view of broader objectives of the region, people’s mobility and free movement of persons is directly related to the overall stabilisation of the Western Balkans. Therefore the issues of visa liberalisation and facilitation of movement within the region is important as well. Following the Thessaloniki Agenda, the Stability Pact aims to achieve full visa freedom for travel between the Western Balkan countries for the nationals of these countries. *The South-East European Cooperation Process – SEECP and Regional Forum of MARRI Joint Statement in Herceg Novi 5 April 2004* agreed to proceed on implementation and co-ordination of activities with the aim of achieving the free movement of goods and capital on one hand and the free movement of persons on the other hand, which would require a harmonised visa policy.¹⁸² *Joint Declaration on regional cooperation in the field of asylum, migration, border management, visa regime and sustainable*

¹⁷⁷ See Council Conclusions on the Western Balkans, 2761st meeting of the General Affairs and External Relations Council Brussels, 13–14 November 2006.

¹⁷⁸ Refer to European Commission, Communication: Enlargement Strategy and Main Challenges 2006 – 2007, Including annexed special report on the EU’s capacity to integrate new members, COM(2006) 649, Brussels, 8.11.2006.

¹⁷⁹ Frattini, F. (2006), *The role of internal security in relations between the EU and its neighbours*, speech given at the Ministerial Conference in Vienna on 4 May 2006.

¹⁸⁰ Speech of Ms. Olli Rehn, EU Commissioner for Enlargement, EU Western Balkans relations, Western Balkans Forum, Brussels, 12 February 2007.

¹⁸¹ VC Experts Group Research (2004), *Liberalisation of Visa Regime in the Region of South Eastern Europe: Obstacles and Possible Solutions*, Citizens Pact for South East Europe at <http://www.citizenspact.org.yu>

¹⁸² Joint Statement Ministerial SEECP Meeting / Regional Forum of MARRI in Herceg Novi 5 April 2004, Point 12.

solutions for refugees and displaced persons adopted at the Ministerial Meeting of MARRI Regional Forum in Tirana on 5 April 2005, called for intensified efforts to simplify visa requirements in the region and the wider area. Along those lines, the Interior Ministers from the region expressed their readiness to enter into a dialogue with the EU and Schengen in finding concrete measures for easing the current visa restrictions and to promote labour mobility within the region. The Declaration also called for **closer consular cooperation among countries** in the region, as well as for the **warning and mutual alerting system on suspected illegal transit flows** to be developed with the objective develop common grounds for bilateral/regional cooperation, reducing irregular labour migration flows with the understanding that it contributes to the development of smuggling and trafficking in migrant workers and particularly of children and women.¹⁸³

Currently, there are reciprocal visa arrangements between the MARRI Member States. For illustration, Albania has reciprocal no visa requirement with Montenegro and arrangements with Bosnia and Herzegovina and Serbia where visa is available from embassies only. Albanians require a visa from embassies only to enter Croatia, while Croatians do not need a visa to enter Albania. Albanians require a visa available at the border or at embassies to enter Macedonia, but its nationals do not require a visa to enter Albania. Based on bilateral agreements, service and diplomatic passport holders do not need a visa to travel to the abovementioned countries.¹⁸⁴

Overall, the MARRI countries, particularly those listed on the negative EU visa list should continue to view the visa issue as a priority. The European Commission reports that there has been some progress in the area of visa policy in the Western Balkan States in 2006. Some states are more advanced than others however (Kosovo does not have a visa regime). **Croatia's** visa policy is broadly in line with the EU's, but alignment with the Council Regulation 539/2001 will need to be gradually completed before accession. There has been a noted progress on visa issuing procedures and technical equipment and further alignment to the EU visa negative list. The exemption of the visa regime for nationals of Serbia and of Montenegro was extended for the whole of 2006. Thirty two diplomatic missions and consular offices are now linked by online connection to IKOS, the information system of the Ministry of Foreign Affairs and European Integration. An Action Plan for linking up all diplomatic missions and consular offices into an information network was adopted in January 2006, under the coordination of the Ministry of Foreign Affairs.¹⁸⁵

Macedonia has also made a considerable progress. Alignment with the EU positive list has continued with the abolition of visa requirements for all remaining new Member States. The recent Law on Aliens brought the legislation largely in line with the *acquis*. Further efforts are needed to strengthen administrative capacity, notably by establishing a national visa IT management system and a visa centre, and by ensuring that the department for consular affairs is properly resourced and staffed. Preparations in this area are close to completion.¹⁸⁶

Bosnia and Herzegovina's preparations as regards visas are on the right track. All data entered into local systems in diplomatic missions and consular offices are transferred electronically to the Ministry of Security. The Law on Movement and Stay of Aliens and Asylum stipulates that visas can only in exceptional cases be issued at the border, as recommendation of the Ministry of Foreign Affairs, for a maximum period of 15 days without the possibility of extension. The number of visas issued at the border-crossing points has been reduced.

¹⁸³ Refer to Minutes, Ministerial Meeting MARRI Regional Forum, Tirana, 5 April 2005.

¹⁸⁵ Commission Staff working document Croatia 2006 Progress Report, COM (2006) 649 final, SEC (2006)1384, Brussels, 08.11.2006, p. 53.

¹⁸⁶ Commission Staff working document Macedonia 2006 Progress Report, SEC (2006)1387, Brussels, 08.11.2006, p.48.

Harmonisation of visas with Schengen requirements and the EU list have not taken place. However, the abolition of visa requirements for all EU citizens has been confirmed.¹⁸⁷

In **Serbia** the Law on Foreigners which is to define the future visa regime has still to be adopted. Serbia has taken over the State Union competences in defining visa policy as well as the State Union Ministry of Foreign Affairs and the diplomatic and consular missions abroad. Still, the law on ministries that aims at institutionalising the Foreign Affairs portfolio has not yet been adopted. The current visa regime is based on several by-laws adopted by the former State Union Ministry of Foreign Affairs to regulate the visa issuance procedure and on an instruction manual for consular staff responsible for issuing visas. The request for visas for 2,320 Chinese national, 1,693 Romanian and 149 Moldovan nationals have been refused.¹⁸⁸

In **Montenegro** a draft Law on Aliens is in parliamentary procedure, as well as laws on asylum and citizenship. In June 2006 the Government adopted decisions on the temporary use of travel documents and visas and a decision on a temporary visa regime. Montenegro will have to harmonise its visa policy with the *acquis*. The Ministry of Foreign Affairs is in the process of building its capacity in this field. Interim solutions have been found until Montenegro sets up its own diplomatic missions abroad. Concerning the issuing of visas it will have to make comprehensive agreements with some other country or countries for representation abroad. Strong coordination between visa issuing authorities and border crossing points will have also to be ensured. Montenegro has also announced plans to build up a central citizen registry.¹⁸⁹

Albania's preparations in the visa field are at an early stage and legal changes are still required in order to bring it into line with EU standards on visas. The country has made some progress in the field of visa administration though. Quality of training for border guards has increased and training has been conducted on visa issuance. Visa stickers have security elements. Albania has extended its visa-free regime to nationals of all new EU Member States. No centralised IT network and database for the administration of visas is in place.¹⁹⁰

5. 2. 3 Recommendations

The approximation or harmonisation of visa policies and procedures contribute to a more efficient prevention of irregular migration as well as to foreign policy and security considerations. When examining the need for visa obligations aspects of irregular migration and readmission are significant. Therefore, even though the MARRI Member States made a progress in visa policies, further alignment of their visa policies with the EU legislation and practice is needed. The countries on the EU's negative visa list may look into experiences of Bulgaria and Romania who were removed from that list after considerable efforts put into their performance with regard to border management, fight against irregular migration and organised crime and readmission. The alignment with the EU's visa regime would also enable a higher degree of harmonisation of visa policies and practices among all participating MARRI Member States themselves with an aim to achieve a visa-free regime in the region as a prerequisite for the establishment of free movement of persons.

¹⁸⁷ Commission Staff working document Bosnia and Herzegovina 2006 Progress Report, SEC (2006)1384, Brussels, 08.11.2006, pp.45-47.

¹⁸⁸ Commission Staff working document Serbia 2006 Progress Report COM (2006) 649 final, SEC (2006)1389, Brussels, 8.11.2006, pp. 35-36.

¹⁸⁹ Commission Staff working document Montenegro 2006 Progress Report COM (2006) 649 final SEC (2006)1388, Brussels, 08.11.2006, p. 37.

¹⁹⁰ Commission Staff working document Albania 2006 Progress Report, COM (2006) 649 final, SEC (2006)1383, Brussels, 08.11, p. 39.

In relation to visas the MARRI countries are recommended:

- To further align visa issuance policy and legislation with the *acquis communautaire* (adopt or amend the relevant legislation in order to bring it into line with EU standards on visas);
- To further align with the EU positive and negative list;
- To extend visa-free regime for EU Member States to nationals of all new EU Member States
- To further improve security standards of visa stickers; introduce new types of passports that incorporate a number of security features against forgery and counterfeiting (see also the following section).

- To further efforts to strengthen institutional capacity in relation to:
 - visa issuing procedure and practice - has to be aligned on EU standards; the practice of issuing visas at the borders had been prohibited;
 - staff shortages
 - technical equipment
 - proper resources
 - coordination between visa issuing authorities and border crossing points;

- To establish or further develop a national visa IT management system and a visa centre in order to:
 - Establish or improve an on-line information system which links the central National Visa Centre with the country's consular offices in third countries;
 - Establish a timely instrument to ensure proper admission for short-term stays and return after the expiration of the visa;
 - Create a dual identification process based on secure documents and a corresponding database;
 - The development of such a system, making use of the possibilities of modern communication and computer technology, has to be based on a clear legal definition of needs and objectives as well as resources;
 - The system has to be devised in conformity with the rules on the protection of personal data.

In order to achieve a visa-free regime in the MARRI region in a medium and long-term perspective the co-operation between participating States should also focus on the harmonisation of visa policy and practices in view of:

- common criteria for the granting of visas;
- efforts aiming at harmonising visa obligations among MARRI participating States.¹⁹¹

5. 3 Document Security and Establishment of Identity

Secure travel and ID documents are closely connected with visa policy and to border controls as well as to post entry measures and better implementation of readmission agreements. It is crucial not only to *secure travel and ID documents*, but also to *ensure data protection* and to *combat opportunities for fraud* and deception, for instance usage of falsified documents or identity theft as well as out-sourcing. MARRI Recommendations on

¹⁹¹ Cf. Conference of Ministers of the Prevention of Irregular Migration in the Wider European Region, held in Rhodes on 25-26 June 2003 in the Framework of the Budapest Process, Recommendations, Recommendation No. 8.

Technical Aspects of Implementation of Readmission Agreements¹⁹² emphasise that in addition to new types of travel documents, security features, biometrics, misuses and forgeries the legal content in terms of the credibility of the document is important as well. Proper risk assessment and the introduction of appropriate, strong democratic controls are essential in the field of document security.

Biometrics

One of the EU policy priorities in the fight against illegal immigration of third-country nationals is development of common guidelines on minimum security standards, in particular with respect to issue procedures. Furthermore, the Commission points out that the potential of biometric technology should be exploited to enhance the effectiveness of border control operations.¹⁹³ Also, the EU encourages and supports third countries to strengthen their efforts in order to render their travel documents more secure with biometrics.¹⁹⁴ The EU Member States tend to interpret biometrics as meaning a statistical measure of a physical characteristic of an individual that is unique to the individual. Biometrics in the context of passports refer mainly to fingerprints, and facial images, taken in a particular way.¹⁹⁵ They also refer to handprints, voice recognition, vein imaging or signatures. Iris recognition is a deployment of biometrics which allow for fast recognition of an individual providing his iris is stored in high quality resolution in a specified data bank. The EU Member States diverge over the choice of biometrics, ID cards and passports, inter-operability, format, document durability, technical scope of the attendant technology (including document readers, staff training), quality codes of practice, ability and interest in measures to combat malevolent insider action. As recently argued in the briefing paper requested by the European Parliament's committee on Civil Liberties, Justice and Home Affairs, the claims of biometrics are poorly communicated, soft law abounds with weak controls and inadequate levels of knowledge about the respective technologies and the possibilities opened by them. Therefore, national parliaments with a strong European Parliament must ensure accountability and legitimacy. There is also an urgent need for a framework directive on data protection for law enforcement purposes before realising the principle of availability and widespread inter-operability, and to set out an EU model on biometricised e-governance.¹⁹⁶

5.3.1 Document security in the MARRI region

In terms of document security, European Commission reports that **Croatia** needs to prepare for the introduction of biometric identifiers into passports and travel documents. In **Macedonia** significant preparations have been undertaken to start issuing new identification documents including biometric data. In **Bosnia and Herzegovina** steps have been taken to introduce biometrics and security features in passports and chips have been introduced in driving licenses and residence permits. **Serbia** took steps taken to include biometric indicators in travel and identity documents, but the progress was delayed due to the uncertainties on the future of the former State Union. Legislation on identification cards and travel documents is still lacking in **Montenegro**, however, the issuance of new travel documents is planned for early 2007, including biometric features. In **Kosovo**, travel documents, identity cards and driving licenses are issued by UNMIK, comply with

¹⁹² Recommendations of the Workshop on Technical Aspects of Implementation of Readmission Agreements MARRI Regional Centre in Skopje, 15-16 June 2006.

¹⁹³ See also the section on Border Management below.

¹⁹⁴ Refer to European Commission, Communication on Policy priorities in the fight against illegal immigration of third-country nationals, COM(2006) 402 final, Brussels, 19.7.200, points 31-32.

¹⁹⁵ See Article 29 Data Protection Working Party, Opinion 3/2005 on Implementing the Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, *Official Journal L 385*, 29.12. 2004, WP 112, 04/09/12, adopted on 30 September 2005.

¹⁹⁶ For further information on trends, arguments and relevant documents on biometrics see Lodge, J. *Trends in Biometrics*, Briefing Paper, 4 December 2006. <http://www.libertysecurity.org/article1191.html>

ICAO standards and include security features. The Serbian ministry of internal affairs also has several offices in Kosovo which deliver driving licences, passports and identity cards. A number of Kosovars rely on these services, especially for travel to Serbia, as UNMIK documents are not recognised there. In Albania work on new passports including biometric data and an electronic chip was expected to be completed by the end of 2006. Further progress is needed to ensure that the issuance of travel documents is in accordance with international standards. In particular, the safety of breeder documents and a reliable civil registry system are important in the context of the new passports with biometric data that Albania plans to issue in early 2007.¹⁹⁷

5.3.2 Recommendations

Certain properly undertaken measures in the context of pre-entry and entry screening, border control and personal identification contribute to the fight against irregular migration as well as organised crime and terrorism. In accordance with protection of personal data (see also below) MARRI Member States should reinforce their measure related to the **issuing and screening standards** of documents, including **information exchange** between institutions responsible for asylum, immigration and border management and security/intelligence agencies, at national as well as international level. In order to improve document security and to recognise those who misuse the entry and residence regulations by false documents, deception or theft of identity, it is recommended that MARRI participating States:

- introduce or further improve issuing standards to enforce document security of identification documents (for both nationals and foreigners e.g. visa, residence documents) and travel documents;
- in tune with rapid technological development, including the biometric data (identifiers) that are very difficult to forge;
- reinforce screening of documents, including computerised information exchange nationally and internationally (see also section on visa policy)
- provide special training for relevant staff

Regional co-operation - as agreed by the Workshops on *Technical Aspects of Implementation of Readmission Agreements* in 2006 and on *Document Security and Establishment of Identity* in November 2006 both organised by the MARRI Regional Centre- shall be enhanced in order to:

- *exchange information* on views, ideas, best practices and perceptions of what document security and establishment of identity represents; on practices in every day operational work, and on relevant legislation to recognise fraudulent documents;
- *demonstrate progress* and achievements of the MARRI Member States in this area which should be shared and compiled in the catalogue of best practices of the Western Balkan states in order to improve: i) the image of the states and ii) the level of the progress achieved in this specific area and iii) to share the expertise of MARRI state experts with their EU colleagues and wider,
- *enhance efforts in bringing together all representatives of agencies on national level* in order to develop a *think-tank working group* consisting of the experts which must have good knowledge on the legislation and practice which must be empowered to act quickly on operational questions in particular when it comes to the frauds in terms of civil status;
- *enhance capacity building* in the region by comprehensive integrated training in the field of im/migration and training of staff who deal with the civil status issues in order to establish the

¹⁹⁷ SEC (2006) 1385, Brussels, 08.11.2006, p. 53 ; SEC (2006)1387, p. 48 ; SEC (2006)1384, p. 45 ; SEC (2006)1389, p. 35; SEC (2006)1388, p. 37 ; SEC (2006)1386, pp. 36 and 9 ; SEC (2006)1383, p. 39.

credibility of the documents which need to be recognised and accepted in other countries where the nationals of MARRI countries move regularly or irregularly.

In order to enhance capacity building in the region, the MARRI Regional Centre has a mandate to identify which activities need to be implemented and will set up the **MARRI Regional Centre Working Group for Document Security and Establishment of Identity**. The main objectives of the working group will be to:

- Facilitate permanent intra-agency cooperation between institutions in the MARRI Member States dealing with document security and establishment of identity;
- Identify best practices in the area of document security and establishment of identity in the region;
- Increase regional harmonisation of the standards related to document security in regard to data protection;
- Develop solutions/recommendations on avoidance and prevention of possible misuse of legal channels (obtaining of nationality, registration of birth or death in the country or abroad, by marriage, by adoption, recognition of paternity, lack of registration of birth in the countries in particular children born in foreign countries residing legally or illegally, problems related to multiple identities, identifying gaps regarding establishing and confirmation of identity of foreigners, applicants for visa, residence permits, naturalisation, including questions related to the right on family reunification);
- Work on catalogue of good practice in the area of document security and establishment of identity for Western Balkan countries with standardised procedures on protective measures for the documents, establishment of identity for staff dealing with applications for different legal status (visa, naturalisation, residence permits, and asylum) and for staff dealing with control of aliens lawfully residing and irregularly as well;
- Provide practical solutions that will enable prompt exchange of information on misuse of legal/illegal channels on obtaining identity documents among regional institutions by development of appropriate IT tool;
- Contribute to the training of civil servants (border police, civil status officials, officials dealing with visa applications, nationality, residence permits, etc) and explore modalities for enhancing such training;
- Elaborate follow-up strategies from the conclusions reached during the workshop.

5.4 Protection of personal data

Electronic data processing and setting up of databanks offers considerable advantages in terms of efficiency and productivity of migration management. It allows public administrators to improve and increase the collection, processing and interlinking of personal data on the one hand and gives rise to a clear trend towards massive electronic storage of data concerning the private sphere of individuals on the other. Therefore it is essential that any IT management system has to be based on the protection of personal data.

5.4.1 Council of Europe Convention 108

International instruments relating to data protection are Universal Declaration of Human Rights (Article 12), the 1966 International Covenant on Civil and Political Rights (Article 17) and UN Guidelines concerning computerized personal data files of 14 December 1990. Organisation for Economic Co-operation and Development (OECD) also provides Guidelines for the Security of Information Systems and Networks: Towards

a Culture of Security as well as privacy.¹⁹⁸ The first legally binding international instrument with worldwide significance on data protection, however, is the 1981 Council of Europe *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*. Known as Convention 108, the instrument draws inspiration directly from the European Convention on Human Rights and Fundamental Freedoms, in particular, Articles 8 and 10 in order to secure for every individual, whatever his/her nationality or residence, respect for his/her rights and fundamental freedoms, and in particular his/her right to privacy, with regard to automatic processing of personal data relating to him/her. To this day, it still remains the only binding international legal instrument with a worldwide scope of application in this field, open to any country irrespective of membership in the Council of Europe. Contracting Parties to this Convention take the necessary measures, in their domestic law, to implement the principles laid down in it with regard to the personal data of everyone in their territory. These principles concern in particular fair and lawful collection and automatic processing of data, storage for specified legitimate purposes and not for use for ends incompatible with these purposes, nor kept for longer than is necessary. They concern also the quality of the data, in particular that they must be adequate, relevant and not excessive (proportionality); their accuracy; the confidentiality of sensitive data; information of the data subject; and his/her right of access and rectification. The Convention provides for free flow of personal data between states party to the Convention. This free flow may not be obstructed, for personal data protection reasons, unless Parties derogate from this provision, which they may do in two specific cases: where protection of personal data in the other Party is not "equivalent", or where the data are transferred to a third state which is not Party to the Convention. In 2001 the Council of Europe adopted the *Additional Protocol to the Convention* (ETS No.181) regarding exchanges of personal data across national borders. Parties are required to set up supervisory authorities, exercising their functions in complete independence. Amendments to the Convention 108 allowing the European Communities to accede were adopted in 1999. In addition, the Committee of Ministers also issued a number of Recommendations and Resolutions regulating data protection of personal data used for various purposes, among them, for research and statistics, internet, and use of personal data in the police sector.¹⁹⁹

5.4.2 The EU Data Protection Directive

At the EU level, the reference text is the *Data Protection Directive*,²⁰⁰ which seeks to strike a balance between protection for the privacy of individuals and the free movement of personal data within the European Union. To do so, the Directive sets strict limits on the collection and use of personal data and demands that each Member State set up an independent national body responsible for the protection of these data. This Directive applies to data processed by automated means (e.g. a computer database of customers) and data contained in or intended to be part of non automated filing systems (traditional paper files). Transfers of personal data from a Member State to a third country with an adequate level of protection are authorised, but may not be made to a third country which does not ensure this level of protection, except in the cases of the derogations listed. The Directive aims to encourage the drawing up of national and Community codes of conduct intended to contribute to the proper implementation of the national and Community provisions. Each Member State is to provide one or more independent public authorities responsible for monitoring the application within its territory of the

¹⁹⁸ See http://www.oecd.org/document/42/0,2340,en_2649_33703_15582250_1_1_1_1,00.html

¹⁹⁹ Refer to Recommendation No.R(95) 4 on the protection of personal data in the area of telecommunication services, with particular reference to telephone services (7 February 1995); Recommendation No.R (87) 15 of the Committee of Ministers to Member States regulating the use of personal data in the police sector (17 September 1987) and others on <http://www.coe.int>

²⁰⁰ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, *Official Journal* L 281, 23.11.1995. For further information on legislative documents, Commission proposals and Case law refer to http://ec.europa.eu/justice_home/fsj/privacy/law/index_en.htm

provisions adopted by the Member States pursuant to the Directive. A Working Party on the Protection of Individuals with regard to the Processing of Personal Data is set up, composed of representatives of the national supervisory authorities, representatives of the supervisory authorities of the Community institutions and bodies, and a representative of the Commission.

The Directive aims to protect the rights and freedoms of persons with respect to the processing of personal data by laying down guidelines determining when this processing is lawful. The guidelines relate to:

- the quality of the data: personal data must be processed fairly and lawfully, and collected for specified, explicit and legitimate purposes. They must also be accurate and, where necessary, kept up to date;
- the legitimacy of data processing: personal data may be processed only if the data subject has unambiguously given his/her consent or processing is necessary: i) for the performance of a contract to which the data subject is party or; ii) for compliance with a legal obligation to which the controller is subject or; iii) in order to protect the vital interests of the data subject or; iv) for the performance of a task carried out in the public interest or; v) for the purposes of the legitimate interests pursued by the controller;
- special categories of processing: it is forbidden to process personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life. This provision comes with certain qualifications concerning, for example, cases where processing is necessary to protect the vital interests of the data subject or for the purposes of preventive medicine and medical diagnosis;
- information to be given to the data subject: the controller must provide the data subject from whom data are collected with certain information relating to himself/herself (such as the identity of the controller, the purposes of the processing, recipients of the data);
- the data subject's right of access to data: every data subject should have the right to obtain from the controller: i) confirmation as to whether or not data relating to him/her are being processed and communication of the data undergoing processing; ii) the rectification, erasure or blocking of data the processing of which does not comply with the provisions of this Directive in particular, either because of the incomplete or inaccurate nature of the data, and iv) the notification of these changes to third parties to whom the data have been disclosed.
- exemptions and restrictions: the scope of the principles relating to the quality of the data, information to be given to the data subject, right of access and the publicising of processing may be restricted in order to safeguard aspects such as national security, defence, public security, the prosecution of criminal offences, an important economic or financial interest of a Member State or of the European Union or the protection of the data subject;
- the right to object to the processing of data: the data subject should have the right to object, on legitimate grounds, to the processing of data relating to him/her. He/she should also have the right to object, on request and free of charge, to the processing of personal data that the controller anticipates being processed for the purposes of direct marketing. He/she should finally be informed before personal data are disclosed to third parties for the purposes of direct marketing, and be expressly offered the right to object to such disclosures;
- the confidentiality and security of processing: any person acting under the authority of the controller or of the processor, including the processor himself, who has access to personal data must not process them except on instructions from the controller. In addition, the controller must implement appropriate measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access;

- *the notification of processing to a supervisory authority*: the controller must notify the national supervisory authority before carrying out any processing operation. Prior checks to determine specific risks to the rights and freedoms of data subjects are to be carried out by the supervisory authority following receipt of the notification. Measures are to be taken to ensure that processing operations are publicised and the supervisory authorities must keep a register of the processing operations notified.

Everyone shall have the right to a *judicial remedy* for any breach of the rights guaranteed by the national law applicable to the processing in question. In addition, any person who has suffered damage as a result of the unlawful processing of their personal data is entitled to receive compensation for the damage suffered.

The Directive does not apply to the processing of data by a natural person in the course of purely personal or household activities and in the course of an activity which falls outside the scope of Community law, such as operations concerning public security, defence or State security.²⁰¹

5.4.3 Protection of personal data in the MARRI region

All MARRI Member States have ratified the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, most of them in 2006. The Additional Protocol regarding supervisory authorities and trans-border data flows has not been signed by Serbia, Macedonia and Montenegro, a non-member state of the Council of Europe. In Serbia and Montenegro, the Convention 108 is not applied to automated databases containing personal data being kept in accordance with criminal records and state security regulations. In Albania, the Convention is not applied to personal data which are accessible to the public and to the personal data which are published in accordance with the law.

As reported by the EC Reports 2006, the alignment of **Croatia** with the data protection Directive and the Council of Europe recommendation regulating the use of personal data in the police sector remains to be completed. The Personal Data Protection Agency has been fully operational since April 2005. Effective application of its supervisory and control powers is still lacking, in particular as regards the public administration, especially the police, and the telecommunication sector.²⁰² **Macedonian** legislation on personal data protection was adopted in December 2005, with a two year transition period. The supervisory authority - the Directorate for personal data protection - is operational. The law on civil servants has been amended to enable the employees in the directorate for data protection to have the status of civil servants. The Directorate for personal data protection still needs greater capacity. In addition, in terms of non discrimination, there is no specific criminal provision related to acts of xenophobia.²⁰³ **Bosnia and Herzegovina** adopted in June 2006 a new Law on the Protection of Personal Data. The law foresees the establishment of a Data Protection Agency, but it is not yet in place.²⁰⁴ In **Serbia**, the 1998 Law on Personal Data Protection needs to be aligned with the *acquis*, in particular with the Data Protection Directive. Furthermore, an independent data protection supervisory authority is not yet in place.²⁰⁵

²⁰¹ For related Acts refer to <http://europa.eu/scadplus/leg/en/lvb/l14012.htm>

²⁰² Commission Staff Working Document Croatia 2006 Progress Report, COM (2006) 649 final, SEC (2006) 1385, Brussels, 08.11.2006, Chapter 24: Justice, Freedom and Security, p. 52.

²⁰³ Commission Staff Working Document The former Yugoslav Republic of Macedonia 2006 Progress Report, COM (2006) 649 final, SEC (2006) 1387, Brussels, 08.11.2006, Chapter 24: Justice, Freedom and Security, pp.46-47.

²⁰⁴ Commission Staff Working Document Bosnia and Herzegovina 2006 Progress Report, COM (2006) 649 final, SEC (2006) 1384, Brussels, 08.11.2006, p. 50.

²⁰⁵ Commission Staff working document Serbia 2006 Progress Report COM (2006) 649 final, SEC (2006)1389, Brussels, 8.11.2006, p. 39.

In **Kosovo** no general legislation transposing the Data Protection Directive is in place, and no independent data protection supervisory authority is set up. No progress with regard to the protection of personal data is a matter of concern.²⁰⁶

In **Montenegro** Laws on the Protection of Personal Data are under preparation, while current data protection rules (of the former State Union) are not implemented. An independent data protection supervisory authority is not yet in place. Montenegro needs to adopt legislation in line with the *acquis*, in particular with the Data Protection Directive. This is a European Partnership priority and a commitment of Montenegro negotiated under a Stabilisation and Association Agreement.²⁰⁷ In **Albania**, the current law on Personal Data protection is not in line with the *acquis*, notably the Data Protection Directive. Data protection laws are not applicable to police and prosecutors, and no data protection authority yet exists, potentially hindering data exchange with foreign law enforcement institutions and the conclusion of an operational agreement with Europol.²⁰⁸

5.4.4 Recommendations

In the MARRI region, with the exception of Croatia, personal data protection is a matter of concern as the existence of data protection rules remains purely theoretical and does not ensure their implementation. In order to rectify this situation the MARRI Member States should:

- Improve the implementation of the Council of Europe Convention;
- Sign and ratify the 2001 Council of Europe Additional Protocol to the Convention 108 regarding supervisory authorities and trans-border data flows (Serbia, Macedonia, Montenegro);
- Adopt or align legislation on the protection of personal data with the *acquis*, in particular with the Data Protection Directive;
- Set up or ensure the functioning of an independent Data Protection Supervisory Authority with sufficient powers over the public and private sectors and sufficient means to effectively implement the law;
- Ensure the capacity of state authorities, in particular law enforcement bodies, to implement the legislation on protection of personal data.

5.5 Border Management

The efficient handling of borders has become an issue of political priority in times marked by trends as diverse as economic globalisation, international migration and fear of organised crime and terrorism. In order to protect security of their nationals and at the same time facilitating trade, the *integrated border management* (IBM) is commonly used concept. It plays a vital role in combating irregular migration, trafficking in human beings, drugs and arms and smuggling of migrants as well as merchandise. For the MARRI Member States border security and management related issues remain key components of the dialogue that the European Union initiated with the Western Balkan countries in the field of Justice and Home Affairs. The Chairman of the Ohrid Border Process meeting in Bucharest on 15 November 2006 stressed that the establishment of safe, secure and open

²⁰⁶ Commission Staff working document Kosovo (under UNSCR 1244) 2006 Progress Report COM (2006) 649 final, SEC (2006)1386, Brussels, 8.11.2006, p. 39.

²⁰⁷ Commission Staff working document Montenegro 2006 Progress Report, COM (2006) 649 final, SEC (2006)1388, Brussels, 8.11.2006, p. 41.

²⁰⁸ Commission Staff working document Albania 2006 Progress Report, COM (2006) 649 final, SEC (2006)1383, Brussels, 8.11.2006, p. 45.

borders, in line with the EU *acquis* and EU model for external borders, is one of the prerequisites for the eventual integration of these countries into the EU.²⁰⁹

Nevertheless, 'the integrated border management system' is not a pre-defined concept. The term has a rather short history and a wide spectrum of meanings. Until the mid-1990s the IBM seemed unknown. Currently it is the keyword for innumerable reform projects around the world, the various contents being as heterogeneous as the regions involved. For example, the concept needed for the European Union borders is different from that appropriate for the NAFTA North American countries or even from that proposed by the European Union for new neighbours in the east. Outside the European Union the IBM has mainly to do with greater efficiency in border-related cooperation at the nation-state level. In North America, it is mainly seen as a strategy to pool the resources of the various government branches in a border-related assignment, whereby this increasingly implies the involvement of private operators and citizens - the so-called 'border community'. Cross-border ventures between border agencies of two countries are also undertaken. Although these varieties in IBM exist, there is a common understanding that IBM relates to 'lean government' approaches and that border procedures should be governed by modern economic strategies rather than slow bureaucratic structures.²¹⁰ This also illustrates that there is not one approach for all situations and that solutions must be tailor-made in accordance within the economic and political context.

5.5.1 Integrated Border Management (IBM) at the European Union level

The European Union approach to IBM is very complex. This is not surprising since the European Union is neither a nation-state nor a federation. Accordingly, the external border is subdivided into a number of national segments, each of them attended to by separate services. Presently, the EU consists of 27 separate legal systems, 13 of which are found - together with Norway and Iceland - within the Schengen territory. Border management is performed by 17 distinct national services, each responsible for one special section of external border. With the gradual abolition of internal border controls, the respective shares of the external border have become increasingly unbalanced. In addition, the EU border management requirements are complex. They are not confined to the checking of passports and the prevention of illicit movements across the green and blue border but have to take account, as stipulated in Article 6 of the 1990 Schengen Convention²¹¹ - which is widely considered the centre piece of the Schengen system - ²¹² the "interests of all parties" and in particular, refuse entry to foreigners "representing a threat to public policy, national security or international relations of any" Schengen member. The border staff must therefore possess a considerable knowledge of the political and legal situation in other countries as well as the appropriate other skills.

Cornerstones of the IBM system developed in the early Schengen phase of the 1990s. The specific border-related mechanisms were based on a very small number of instructions or the so-called 'common uniform principles'. Besides its external borders chapter of the Schengen Convention,²¹³ other cornerstones are found in the visa chapter, with its uniform set of visa rules for short-term visits not exceeding three months. There are also ancillary provisions with a border impact such as the liability of carriers, liability of those providing

²⁰⁹ Cf. Report on the Ohrid Process on Border Security and Management by the Chairman of the Ohrid Border Process Working Table III meeting Bucharest, 15 November 2006.

²¹⁰ See Hobbing, P. (2005), *Integrated Border Management at the EU Level*, CEPS Working Document No. 27/August.

²¹¹ Convention from 19 June 1990 Applying the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, Republic of Germany and the French Republic on the Gradual Abolition of Checks at Their Common Borders.

²¹² Niemenkari A., (2002), *EU/Schengen requirements for national border security systems*, DCAF Working Paper Series No.8, Geneva.

²¹³ See Chapter 2 of Title II.

assistance to unlawful immigration and, practically important, Schengen Information System (SIS), to which authorities responsible for border checks and issuing visas are expressly entitled to access.

Since these relatively few provisions were insufficient to thoroughly shape Schengen-wide border management in view of obtaining a uniform and high level control of external border, other elements were created outside the narrow context of the conventions. Examples of these are, as already presented above in the section on visa policy, the joint list of countries whose nationals are subject to visa requirements²¹⁴ and the uniform format for visas²¹⁵ established as part of the Single Market legislation in 1995.

However, once the Schengen had started its operation with seven Member States participating on 26 March 1995, the most pressing need occurred in the practical field. National services were incapable of implementing rules and practices in a uniform way.²¹⁶ Additional guidance was thus provided in a more informal way through the *Common Manual* adopted as an ad hoc emergency measure, established and regularly adjusted by the Schengen Executive Committee. The manual was largely confidential and not made public before its declassification in 2002.²¹⁷ Still, expectations at the external border were not met and the existing rules and resources turned out to be insufficient for ensuring coherent border management.²¹⁸ A great step forward was made by the Amsterdam Treaty of 1997 and the Community competence for, *inter alia*, the crossing of external borders, rules on visas and the integration of the *Schengen acquis* into the European Union legal framework on 1 May 1999. Yet in terms of IBM, progress was equally shared by the EU and Member States working at the bilateral level, as regards both border-related and internal measures.

It took rather long that the issue of external borders came into the spotlight of public attention; in spite of the long recognised crucial role that the external borders have for the Single Market, the Area of Freedom, Justice and Security and other basic objectives of the Union. The need for burden-sharing and solidarity became a part of an EU-wide debate with abolishment of internal borders. The Laeken European Council of December 2001 initiated a discussion on a topic called 'integrated border management', which would take into account the interests of those both on the border and far away from it. The Laeken meeting signalled for concrete action that a "better management of the Union's external borders will help in the fight against terrorism, illegal immigration networks and the traffic in human beings."²¹⁹ Although the identification of the problem did not lead to immediate solutions, the move towards IBM at the EU level accelerated. There were also other reasons contributing to this acceleration, primarily: i) the forthcoming enlargement which exercised considerable pressure on the EU to ensure a high degree of border security, all the more so as the shifting of control responsibilities to New Member States was considered an elevated risk, while public opinion seemed alarmed by the increase of organised crime "imported" from the east; ii) the September 2001 events increased the pressure to cope with terrorist risks in a coordinated way; and iii) the permanent need to reconfirm the mutual trust among those Member States that had already abolished internal border controls.

²¹⁴ Council Regulation (EC) No. 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the member states, based on Art. 100c TEC, *Official Journal* L 234, 3.10.1995, p. 1.

²¹⁵ Council Regulation (EC) No. 1683/95 of 29 May 1995 laying down a uniform format for visas, *Official Journal* L 164, 14.7.1995, p. 1.

²¹⁶ Callovi, G. (2004), *Securing External Frontiers in a Union of 25*, Migration Policy Institute, Washington, D.C.

²¹⁷ Council Decision 2002/535/EC, *Official Journal* L 123, 9.5.2002, p. 49.

²¹⁸ European Commission, (2002), Communication, Towards integrated management of the external borders of the Member States of the European Union, COM(2002) 233 final, Brussels, 7.5.2002, paras. 12-14.

²¹⁹ Presidency Conclusions of the Laeken European Council, 14-15 December 2001, SN 300/1/01, REV 1, conclusion No. 42.

The Commission programme of May 2002 as delivered in the Communication towards integrated management of the external borders of the Member States of the EU²²⁰ focused on the following suggestions:

- **Common legislation**

- the recasting of the Common Manual on Checks at the External Borders;
- the introduction, into the Common Manual, of best practices from the Schengen catalogue;
- the production of a practical handbook for use by border guards;
- the legal framework and practical procedures regarding “local border traffic”;
- the institutional and legal framework of the staff of a future European Corps of Border Guards.

- **Common mechanism for co-ordination and co-operation** whereby an External Borders Practitioners Common Unit²²¹ was intended to become the central steering body for the EU’s IBM, responsible for carrying out:

- *common integrated risk analysis*, in the first place the identification of common risk indicators. Constant monitoring of these indicators would then allow drawing conclusions for an EU-wide border risk-analysis;
- facilitating operational projects on the ground and devising a *common strategy for coordinating national policies*.

- **Staff and inter-operational equipment.** Suggestions were made to harmonise Member States’ border infrastructure, both in terms of staffing such as common training modules and joint language courses and equipment, for instance to develop joint policies for mobile high-tech equipment such as helicopters and radar or satellite-based external border surveillance network. This would gradually reduce quantitative and qualitative disparities likely to create security distortions. Long-term this strategy is expected to include the option of setting-up a college for European border guards.

- **Burden-sharing between the Member States and the Union**, the concept based on the observations that the responsibility for managing the common border is very unequally distributed among just a few Member States, which in addition tend to be among the least privileged in economic terms. The programme mainly concerned financing of the measures proposed. Another proposal concerned the establishment of a European Corps of Border Guards, the first function of which would be to handle “common surveillance” at certain parts of the external border and possibly later checks at border-crossing points. Despite its moderate ambitions, the project encountered strong objections from some of the Member States concerned, particularly those situated on the external border such as Poland and Finland. It was therefore abandoned and in November 2003 replaced by the proposal for a European Border Agency.²²² Furthermore, the ‘security procedure’ PROSECUR was proposed to establish direct links among the authorities involved in order to allow for permanent data and information exchange, whereby the technical infrastructure was provided by existing networks/databases such as SIS.

²²⁰ Refer to European Commission, Communication: Towards Integrated Management of the external borders of the Member States of the European Union, COM(2002) 233 final, Brussels, 7.5.2002.

²²¹ The Unit functions were initially attributed to the Council Working Group SCIFA+, but the idea of a permanent structure in the form of an agency soon came up.

²²² Another inspiration for the European Border Agency lies in the ad-hoc centres created by the Member States, each specialised in one type of border management field, i.e. Germany: land borders; Greece/Spain: maritime borders; Italy: airports; Finland: risk analysis; Austria: training; and the UK: control and surveillance technologies.

The 2004 Hague Programme sets new accents on border management helping to promote the specific requirements of IBM at the EU level.²²³ In addition, the EU Policy priorities in the fight against illegal immigration of third-country nationals stress a need for a common understanding of IBM and the identification of best practices for an integrated border management model.²²⁴ To support this, the Commission proposed a regulation to establish a mechanism to provide rapid assistance to a Member State facing a situation of particular pressure at the external border.²²⁵

The Hague programme contains a dozen assignments dealing with aspects of border management, which can be shortly summarised as:

- **Reinforced supervision of the level of control and surveillance** to ensure that it is equivalent all along the external border. The Commission is to propose a supervisory mechanism, based on Member States' experts and including unannounced inspections. This would replace the current peer-review function of the Working Party on Schengen.
- **Legal and operational framework**
 - European Border Agency – FRONTEX
 - Community Borders Code
 - Local border traffic

FRONTEX - the European Agency for the Management of Operational Cooperation at the External Borders with a seat in Warsaw was established in 2005.²²⁶ In comparison to the original concept of a European Border Guard, FRONTEX may appear a more modest achievement, given that it foresees no direct operational assignments and would not match the 'blue helmet' border force originally imagined back in 2001.²²⁷ Yet FRONTEX represents not only a realistic implementation but also one that seems able to adapt to challenges arising in the future. As a Community body it has a solid financial²²⁸ and organisational basis with a clear hierarchical structure. Unlike intergovernmental agencies such as Europol, FRONTEX has its own staff and does not have to rely on liaison officers detached from the Member States. In terms of assignments the Agency's role is to:

- assist Member States in training matters;
- carry out risk analyses;

²²³ Refer to European Council, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, Council Doc. 16054/04 of 13 December 2004.

²²⁴ Refer to European Commission, Communication on Policy priorities in the fight against illegal immigration of third-country nationals, COM(2006) 402 final, Brussels, 19.7.200, point 21.

²²⁵ See Commission staff working document - Annex to the Proposal for a Regulation of the European Parliament and of the Council establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism - Summary of the impact assessment COM(2006) 401, Brussels, 19.7.2006.

²²⁶ Council Regulation (EC) No. 2007/2004 of 26 October establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, *Official Journal* L 349 of 25.11.04.

²²⁷ On the Border Guard issue see Hobbing; P. (2003), Management of External EU Borders: Enlargement and the European Border Guard Issue, paper presented at the Workshop *Managing International and Inter-Agency Cooperation at the Border*, held in Geneva 13-15 March 2003, organized by the Working Group on the Democratic Control of Internal Security Services of the Geneva Centre for the Democratic Control of Armed Forces.

²²⁸ Besides the Community subsidy, revenues also include any voluntary contributions from the Member States as well as from the associated countries - Norway, Iceland and later Switzerland.

- follow-up on research relevant for border control and surveillance;
- support Member States in organising return operations, to facilitate technical cooperation and to conclude necessary arrangements with third countries, in particular neighbouring and candidate countries.

Although operational action remains the prerogative of the Member States the Agency appears to have sufficient means to put its own stamp onto this sector as well. It is responsible not only to coordinate operational co-operation among Member States, but also to evaluate, approve and coordinate proposals for joint operations and pilot projects made by Member States and to launch its own initiatives in this field. Further, Member States shall report to the FRONTEX on operational matters occurring outside its framework. Coherence of operational border management can further be promoted through FRONTEX competence over: i) evaluating the results of joint operations (including the establishment of a comparative analysis in view of enhancing the quality, coherence, and efficiency of future operations); ii) co-financing such operations; iii) developing and applying a common integrated risk analysis; iv) establishing a common core curriculum for border guards' training; v) following the development of research related to control and surveillance equipment and disseminating results to Member States; vi) providing organisational and operational assistance to Member States in cases of need and at their request, including the deployment of its experts for support and facilitating operational cooperation with third countries.²²⁹

With this wide spectrum of operations-related tasks, the Agency will be able to decisively contribute to the shaping of a Union model of operational cooperation. Further incentives such as financial subsidies and the offer of practical help through FRONTEX staff on the spot appear quite tempting and hard to resist in situations of need. One can thus assume that at mid-term, mutual trust between the Agency and national authorities will build up and requests for operational assistance will become more frequent. Also, doors seem to be open to any subsequent development. As the Agency is tasked to commission an independent external evaluation of its performance, such a study would include the item of the "need for and feasibility of setting-up a European Border Guard" as requested by the European Parliament.²³⁰

Community Borders Code - Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)²³¹ - developed in conformity with the Commission's announcement in its 2002 Communication and the invitation by the Hague Programme to "clarify, restructure, consolidate and develop rules on border controls on persons" developed within the Schengen intergovernmental framework and give it a "Community character". Presented in May 2004, the proposal was the first to be treated according to the new legislative procedure for border measures in force since April 2005 following agreement on the Hague Programme.²³² Major changes proposed by the European Parliament included the treatment of asylum seekers, checks on family members of EU citizens, non-discrimination standards to be respected by border guards and new procedural rights for persons checked at the border.

²²⁹ For a recent discussion on the Agency refer to Jorry, H., (2007), Construction of a European Institutional Model for Managing Operational Cooperation at the EU's External Borders: Is the FRONTEX Agency a Decisive Step Forward?, CEPS, Research Paper No. 6, March 2007.

²³⁰ Amendments 18 and 49 requested by the European Parliament legislative Resolution, *Official Journal* C 102, 28.4.04, p. 35.

²³¹ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) *Official Journal* L 105, 14.4.2006.

²³² Decision by the European Council of 5 November 2004.

The proposed regulation on **local border traffic**²³³ is to be seen in the context of the ‘fortress Europe’ discussions of recent years, in which the EU has been widely criticised for introducing a new ‘iron curtain’ between the New Member States and neighbours in the east. Although the regulation cannot do away with the basic visa requirements imposed by the Schengen mechanism, there are a number of ways to soften the rules. The facilitation measures proposed centre around a special ‘L’ visa (L standing for “local”) for border area residents. The advantages granted to holders of an ‘L’ visa would be numerous such as multiple-entry visa issued for at least one year and for a maximum of five years, entitling the holder to stay in the border area of the issuing Member State for seven consecutive days maximum and without exceeding, in any case, three months within any half-year period; the issuing Member State may decide to reduce or waive the visa fees normally foreseen; specific border crossing points open only to border residents may be set up or specific lanes reserved for border residents at ordinary border crossing points.

Biometrics and information systems contains another integrative task in order to examine how to maximise the effectiveness and inter-operability of EU information systems (SIS II, VIS, EURODAC) by using compatible biometric identifiers to make immigration documents secure against forgery and abuse. The same applies to EU travel documents.

In its 2006 Communication on illegal migration the Commission points out that the potential of biometric technology should be exploited to enhance the effectiveness of border control operations while taking into account ethical concerns and the protection of fundamental rights. To this end, **e-borders** as an integrated technological approach should be included in the fight against illegal immigration. In the context of intelligence-led border management - a process of gathering and analysing data for threat analysis and risk assessment, with a view to establishing certain risk criteria which would allow border control authorities to filter out passengers who fall under one of these categories, in order to carry out additional checks - advance passenger information is used for border control purposes. Directive 2004/82/EC²³⁴ provides for the obligation for certain carriers to communicate data contained in their passengers’ passports to the authorities which carry out checks on persons at the external border. After the implementation of the Directive by September 2006, this system should be extended to other carriers and further enhanced, with a view to developing threat analyses and risk assessments. Here, the pursuit of the interest to fight illegal immigration shall fully respect data protection obligations. Technology should also be used in the entry-exit context. Community rules currently do not provide for automated registration of third-country nationals on entry into or exit from the territory of the EU.²³⁵

Visa Information System – VIS - was adopted in June 2004. Council decision on VIS²³⁶ is the legal basis to allow for the inclusion of VIS in the budget of the European Communities, defines the architecture of the system and gives the Commission the mandate to develop the VIS at technical level, assisted by the SIS II committee, whereas the national systems shall be adapted and/or developed by the Member States. Because the further development of the VIS required the elaboration of a comprehensive legal framework, the Commission presented in presented a proposal for Regulation concerning the VIS and the exchange of data

²³³ Refer to the European Commission, Proposal for a Regulation of the European Parliament and of the Council laying down rules on local border traffic at the external land borders of the Member States and amending the Schengen Convention and the Common Consular Instructions, COM (2005) 56 final, Brussels, 23.8.2005.

²³⁴ Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data, Official Journal of the European Union L 261/24, 6.8. 2004.

²³⁵ See also European Commission, Communication on Improved Effectiveness, Enhanced Interoperability and Synergies among European Databases in the Area of Justice and Home Affairs, COM(2005) 597, 24.11.2005.

²³⁶ Council Decision of 8 June 2004 establishing the Visa Information System (VIS), 2004/512/EC, *Official Journal of the European Union* L 213 , 15. 6.2004.

between Member States on short stay-visas in December 2004.²³⁷ In the 2006 policy on fight against illegal immigration VIS is described as a system that will enable border control authorities to check a visa application history and to verify whether a person presenting a visa is the same person to whom it was issued. It will not keep track of the various entries of third-country nationals or check on whether persons have left by the end of their entitlement to stay. Moreover, the VIS does not concern third country nationals who are not required to hold a visa to enter the EU.

The second generation **Schengen Information System - SIS II** - will contribute to maintaining a high level of security within an area without internal border controls. The alerts registered in respect of third country nationals only concern persons to be refused entry into the Schengen area, which is a very limited number compared to those required to be registered by an entry-exit system.²³⁸

The creation of a generalised and automated **entry-exit system** to complement existing databases would facilitate checks on the immigration and residence status of third country nationals entering and exiting EU territory. This would reinforce Member States' capacity to verify if a third country national was 'overstaying' or had done so in the past. Such a system could also be used as a register of workers from third countries to facilitate legal migration management, in particular for seasonal workers schemes, in line with the 2005 Policy Plan on legal migration. Given the huge impact, the large financial implications, and the technological complexity of such a system, the Commission will carry out a comprehensive study, initiated in 2006, to assess the feasibility and proportionality of such a system, as well as its legal implications and here in particular the respect of data protection rules.

Operational co-operation can only be successful if countries are able to share information of a technical and strategic nature swiftly and easily. Improving exchange of information through existing instruments is one of priorities in the fights against irregular migration. **ICONet** could function as an early warning system in the future in the coordination of return operations, and as a platform for information exchange for Immigration Liaison Officers (ILOs). Priority regions for the establishment of ILO networks are relevant African countries and the Western Balkans.

In addition, **Europol** offers operational and strategic support to Member States as part of its mandate to prevent people smuggling. To improve operational co-operation and communication between Member States and Europol structured cooperation between national immigration services, border guards, police and other law enforcement agencies responsible for combating facilitated illegal immigration and human trafficking is envisaged, which should also include exchange of intelligence data and their joint analysis. Also, Member States should make enhanced use of Joint Investigation Teams to dismantle facilitators' networks, in accordance with the relevant Council Framework Decision²³⁹ and with the participation of Europol.

²³⁷ Refer to European Commission, Proposal for a Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas, COM (2005) 835 final. See also Article 29 Data Protection Working Party, Opinion 2/2005 on the Proposal adopted on 23 June 2005, WP 110.

²³⁸ Refer to European Commission, Communication on Policy priorities in the fight against illegal immigration of third-country nationals, COM(2006) 402 final, Brussels, 19.7.2006, point 25. See also European Commission, Communication, Development of the Schengen Information System II and possible synergies with a future Visa Information System (VIS), COM(2003) 771 final, Brussels, 11.12.2003; European Commission, "Schengen: From SIS to SIS II", MEMO/05/188, Brussels, 01.06.2005.

²³⁹ Refer to Council Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA) *Official Journal* L 162, 20. 6. 2002.

Measures at the international level

It is self-evident that a comprehensive IBM approach has to be seen in a wider context and that it covers aspects of international co-operation as well. This also includes the technical infrastructure. At the international level, EU action primarily concerns **partnership with third countries** with a view to ensuring coherence between the EU internal and external action. The focus in the dialogue on migration and asylum is on the issuing of visa as well as readmission/return matters. The immediate aim is to reduce and prevent illegal immigration, however, the activities and arrangements also encompasses measures to help countries of origin address the root causes and push-factors of irregular migration flows. In addition, there is the technical border cooperation with neighbouring countries as well as traditional trading and political partnerships. The intention is to enhance security and to create a smoother system of managing borders and anticipating problems.

Co-operation between the EU has been developed with the countries of the Eastern and Southern neighbourhood and the Balkans while intensified engagement with other key countries such as Libya is also required. Illegal immigration is also increasingly on the agenda of relations with Latin America and with certain Asian countries. The European Council of 15-16 December 2005 underlined the need for a global approach based on concrete actions and decided to allocate relevant financial instruments to intensify financial assistance in areas concerning or related to migration such as Migration Capacity Building Facilities, targeting mainly technical assistance for a better managed migration. In the context of development cooperation policies and programmes, the EU attempts to address the push-factors for illegal immigration, such as poverty, unemployment, conflict, environmental degradation, bad governance, lack of access to education, health. Migration aspects will continue to be integrated into the EU's strategies for assisting developing countries. Where appropriate and by mutual agreement, the EU will help partners in the developing world to enhance their capacity to better manage migration flows and fight against human trafficking. Furthermore, as announced in the Policy Plan on legal migration, steps will be taken to expand the sources of information available in countries of origin on the possibilities and conditions of legal immigration to the EU and establish an EU immigration portal with both information on legal migration opportunities and on the dangers and consequences of illegal immigration into the EU.

Conclusively, since there is no coherent EU territory characterised as yet by a single legal system and protected by a single border service, the EU integrated border management rules cannot easily be located within just one framework. Rules are spread across a number of legal and administrative instruments. They represent a multi-layered compilation of provisions, with only the basic ones found in formal legal texts such as the Treaty on the European Community or the Schengen instruments of 1985-90. Much of the rest has been adopted through informal arrangements, e. g. the *Common Manual* on external borders adopted by the Schengen Executive Committee²⁴⁰ and the *Catalogue of Best Practices* drawn up by the Working Party on Schengen Evaluation.²⁴¹ The text is explanatory and has no legally binding status. Not all measures from this tool set are directly related to border management but are still crucial to enhancing border efficiency, e.g. some measures that concern the internal territory.²⁴² Recently legal and operational framework has improved with the establishment of the European Border Agency – FRONTEX and Community Code. Further elements that make the IBM mechanism work practically are found in bilateral and multilateral arrangements among individual Member States or between them and third countries.

²⁴⁰ Council of the European Union: *Common Manual*, *Official Journal* C 313 of 16.12.2002, p. 97.

²⁴¹ *Catalogue of Best Practices on External Borders Control, Removal and Readmission: Recommendations and Best Practices* of February 2002.

²⁴² The Schengen catalogue also mentions “four tiers” of the border model: activities in third countries, international border cooperation, measures at external borders – border management (border checks and border surveillance).

5.5.2 Border Management and the MARRI Member States

In the framework of the EU policy in the Western Balkans, during the first phase of PHARE and TACIS programme assistance, considerable attention was paid to the development of efficient border structures, mainly under the auspices of the customs and transport regulation.²⁴³ The objective was then still phrased as 'improving the effectiveness of border controls', then switched to the more business and trade-oriented language of 'effective border management' and finally 'integrated border management strategy.' The Community Assistance for Reconstruction, Development and Stabilisation - CARDS - was adopted in December 2000²⁴⁴ to support the participation of the countries of the Western Balkans in the Stabilisation and Association process (SAP). The CARDS *Regional Strategy Paper* identified integrated border management among its fields of action to help to tackle cross-border crime, to facilitate trade across borders and to stabilise the border regions themselves.²⁴⁵ The new single Instrument for Pre-Accession assistance – IPA - came into force on 1 January 2007.²⁴⁶ The instrument would be working along the same lines as CARDS but with more flexibility. TAIEX funds can also be used by the EC to finance some activities in 2007.

Ohrid Border Process

The Ohrid Border Process is the common umbrella of the EU, NATO, the OSCE and the Stability Pact for streamlining the international efforts in border management and security and a joint effort by the countries of the MARRI region. The process is an integral part of the Stability Pact aim on managing and stabilising population movements, based on the implementation of concrete measures, described in the two founding documents, the *Common Platform* and the *Way Forward Document*, which were signed during the Ohrid Conference in May 2003.²⁴⁷ In order to promote local and regional ownership, the four Partner Organisations have agreed upon key political goals, objectives, principles and instruments to which the Western Balkan countries subscribed at the Ohrid Conference as well as review mechanisms.

The Partner Organisations reaffirmed their readiness to continue to support the committed countries' efforts to achieve these goals and objectives by specific assistance. The European Union would primarily support the development of three aspects of national IBM in each country, i.e. trade facilitation, border control and the build-up of border region co-operation mechanisms through the CARDS Programme. NATO would focus its support to the parts of the region where for exceptional reasons and on a temporary basis military units are involved in border control and smuggling interdiction activities during a transitional period (KFOR in co-ordination with UNMIK). The OSCE would provide practical contribution on civilian aspects of training of and advice to border police, assistance to and facilitation of institution building, in particular of national and regional co-ordinating bodies and promotion of regional co-operation, in particular cross-border bilateral co-

²⁴³ This was done by means of the Consortium Eurocustoms, created in 1991 by the 12 EU customs administrations. See Van Kuik, R. (2001), Practical experiences of an EU member state's customs administration in providing technical assistance, WTO Working Paper on Trade Facilitation, WTO, Geneva; Tacis Annual Report 1998. Allocation of Tacis resources, 1991-1998, Report from the Commission. COM (1999) 380 final, 23.07.1999.

²⁴⁴ Council Regulation (EC) No 2666/2000 of 5 December 2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia, repealing Regulation (EC) No 1628/96 and amending Regulations (EEC) No 3906/89 and (EEC) No 1360/90 and Decisions 97/256/EC and 1999/311/EC, *Official Journal of the European Communities* L 306/1, 7. 12.2000.

²⁴⁵ European Commission (2002), CARDS Assistance Programme to the western Balkans, Regional Strategy Paper 2002-2006, Brussels.

²⁴⁶ Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession assistance (IPA), *Official Journal of the European Communities* L210/82, 31.7.2006.

²⁴⁷ See the homepage article *Ohrid Process on Border Security and Management* on the website (retrieved from <http://www.stabilitypact.org/specials/030522-ohrid/index.asp>)

operation. The Stability Pact would offer its auspices for the continuation of the work of the Consultative Group in close co-ordination with the countries of the region. This Group would concentrate on civilian-military co-operation with possible assistance of Regional Arms Control, Verification and Implementation Assistance Centre - RACVIAC in Zagreb. Under the MARRI, formed in 2003 within the context of the Stability Pact, the newly created Working Groups on border and visa issues would aim to assist countries both in line with their efforts vis-à-vis their SAP obligations and also to foster bilateral and regional co-operation in broader spectrum. The Special Co-ordinator of the Stability Pact will, in his role as South East European Co-operative Initiative – SECI invite the Bucharest Centre for Combating Trans-Border Crime to fully support this initiative.²⁴⁸ Other contributions have been initiated by the Geneva-based Centre for the Democratic Control of Armed Forces – DCAF - in a close co-operation with the countries of the Western Balkans. DCAF dedicates considerable resources to the restructuring of border services in the countries concerned, as part of the security-sector reform in the Western Balkans. The ‘EU requirements’ are explicitly referred to as a benchmark for all these reforms of the security sector, the drafting of the necessary legislation, and the establishment of governmental, civilian and parliamentary oversight mechanisms over the security sector.²⁴⁹

As the long term overarching objective the Western Balkan countries undertook the commitment to develop an Integrated Border Security approach based on the European border model. This covers all aspects of border policy and aims at promoting internal security, combating illegal immigration, preventing the trafficking of human beings and economic exploitation of migrants. Concerning border control, the Integrated Border Management concept covers both surveillance of borders and checks. In order to achieve a high level of border security, it is essential to ensure a high level of co-operation and co-ordination between all national authorities working in the field of border security (including police, customs and the law enforcement services). As regards specific surveillance aspects military bodies may be entrusted with specific complementary tasks under the control of the civilian authorities.

The main objectives of the Ohrid Border process have been defined as:

- **demilitarisation** of all borders, meaning handing over of border control to civilian authorities
- development and/or update and implementation of an **Integrated Border Management Strategy and Action Plan**
- development and enhancement of **cross-border cooperation**²⁵⁰

The Common Platform suggested, inter alia, implementation of initial practical short-term measures as first steps in a longer-term joint effort aiming at enhancing significantly border management and security in the whole region such as:

- definition of national policy and strategy on integrated border management followed by corresponding national action plans;
- establishment of national co-ordinating structures and procedures;
- in the region, where and when required, Command and Control (C2) arrangements will be identified through appropriate civilian channels;

²⁴⁸ See Common Platform of the Ohrid Regional Conference on Border Security and Management, 22/23 May 2003.

²⁴⁹ See Ohrid Regional Conference on Border Security and Management, 22/23 May 2003: Way Forward Document; Geneva Centre for the Democratic Control of Armed Forces (DCAF): Input Paper for EAPC/SEEGROUP Conference on Integrated Border Management, Tirana, January 2004.

²⁵⁰ See Working Table III: Security Briefing on the Ohrid Process on Border Security and Management. To the COWEB, 18 January 2007 by Mr Pieter Verbeek, Director of the Stability Pact Working Table III.

and initial development of specific co-operation instruments:

- Establishment of internal, bilateral and multilateral mechanisms and procedures for the exchange of information on border and trafficking issues;
- Training and certification of all military personnel directly involved in border control and anti-trafficking activities.

The Way Forward Document, developed jointly by the countries of the region concerned and the four Partner Organisations, identified concrete and country specific measures necessary to achieve these objectives.

Since the Ohrid Border Process entered into its implementation phase at the end of 2003, the countries have been reporting regularly on progress achieved. In the founding documents of the process, it was spelled out that 2006 would represent the end of a transition period during which countries were to implement short and medium terms commitments. An assessment of the progress was carried out in 2006 in order to decide upon the future of the process. Ohrid Border Process Fourth Review Meeting of 8-9 November 2006 endorsed the one-year prolongation of the process, i.e. until the end of 2007.²⁵¹

To sum up, integrated border management as it has emerged as a joint concept from the assistance programmes (PHARE, TACIS and CARDS) and the Ohrid Border Process came to comprise the following basic elements:

- comprehensive tackling of the interrelated problems of trade, transport, insecurity, smuggling and trafficking and, where necessary, the development problems of the border regions themselves;
- strict requirements for the numerous authorities and agencies (especially border control and customs, but also transport, health, veterinary services and others) to co-operate on common problems, rather than working separately and often at cross purposes;
- and strong encouragement for neighbouring countries to co-operate in managing shared borders.²⁵²

These basic principles further include the understanding that the various administrative sectors upgrade their internal organisations by establishing smooth co-operation between their central and local levels, between border crossings and the green and blue border, and by setting-up an efficient equipment, communication and database infrastructure.

- Another feature is professionalism of services provided based on the principles of democratic control, efficiency and proper implementation. The countries concerned are advised to release the military from any functions in border control with the aim that border control services are put entirely under the responsibility of appropriate civilian authorities i.e. a Ministry working in the field of Justice and Home Affairs, in accordance with European standards.²⁵³ This means that border controls should be 'Schengen-compatible' in the sense that they conform to the Schengen Catalogue on external borders control.²⁵⁴

²⁵¹ Ohrid Process on Border Security and Management Fourth Review Meeting, 8-9 November 2006, Podgorica, Republic of Montenegro: Conclusions. Brussels, 29.11.2006.

²⁵² European Commission (2002), CARDS Assistance Programme to the western Balkans, Regional Strategy Paper 2002-2006, Brussels.

²⁵³ See Common Platform and Way Forward Document of the Ohrid Regional Conference on Border Security and Management, 22/23 May 2003.

²⁵⁴ Council of the European Union: EU Schengen Catalogue, External borders control, Removal and readmission: Recommendations and best practices, Brussels, February 2002.

This four-fold concept of IBM consisting of a comprehensive approach to border problems across administrative and central-local dividing lines under the management of professionally skilled staff serves as an international standard. It is widely referred to by international organisations such as NATO, OSCE, DCAF and in the Stability Pact.²⁵⁵ World Customs Organisation (WCO) has argued that although a strikingly concise and reliable guideline in many respects, this formula is missing one important feature for success, which is co-operation with the private sector, especially in the transport sector. Not only can due involvement of citizens and economic operators help to further streamline border-related procedures, insider tip-offs are also a valuable information source for the detection of illicit trafficking of all kinds.²⁵⁶

5.5.3 Progress and Recommendations

Briefing on the Ohrid Process on Border Security and Management of 18 January 2007 Mr Pieter Verbeek, Director of the Stability Pact Working Table III presented latest developments in terms of implementation of the Ohrid commitments, the evolution of the process and current status. Regarding the three objectives of the Process, the results of the demilitarisation objective are fairly satisfying. **Macedonia** has completed its transfer in August 2006. **Albania** is working on improving the links and cooperation between the military who are in charge of the blue borders and the civilian authorities, with in mind for the mid-term, complete civilian control of these borders. **Serbia** is currently completing the transfer to the Border Police of its border with Macedonia, getting closer to the completion of its process. Borders to Hungary, Romania, Bulgaria, Croatia, already are under the control of the Border Police. The completion of the transfer to civilian authorities is scheduled for the first half of 2007. Concerning the IBM Strategy and Action Plan, all six countries have adopted a National IBM Strategy. However, only four countries - Albania, Croatia, Macedonia and Serbia - have adopted a National IBM Action Plan. Two are still working on its development and should approve it soon. All countries but Montenegro have created an Inter-Agency Working Group to monitor the creation and implementation of the IBM Strategy and Action Plan. This is, in view of Mr Pieter Verbeek, another good sign, but more work should be dedicated to the implementation of the legal framework. Cross-border cooperation is marked by great disparities. This cooperation has been assessed through two indicators: the signing of formal agreements with neighbouring countries and practical cooperation on the ground such as exchange of information, joint patrols, exchange of liaison officers. While some countries have signed agreements with all or some of their neighbours, others have not signed agreements at all. The content of these agreements varies from one document to another, and some are more comprehensive than others. All countries have initiated practical cross-border cooperation, but while some countries have made significant progress, some are only in their initial stage.²⁵⁷

From the latest EC progress reports on the States and territories of the MARRI region it can be concluded that although there has been progress in the field of border management, the process has to improve. In the field of Schengen and external borders, **Croatia** made a noted progress, in particular regarding land borders management. The situation on the blue border requires special attention but is in the process of improving. A working group for IBM has been established. Inter-agency cooperation works well in practice at the border posts and has benefited from the separation of the Border Police from the general police structures. Shortage in staffing remains an issue and stands now at 4,643 border guards. The IBM strategy was adopted in April

²⁵⁵ See e.g. Common Platform of the Ohrid Regional Conference on Border Security and Management, 22/23 May 2003; Stability Pact: Report of the EU panel, OHRID Regional Conference on Border Security and Management.

²⁵⁶ See Hobbing, 2005.

²⁵⁷ See Working Table III: Security Briefing on the Ohrid Process on Border Security and Management. To the COWEB, 18 January 2007 by Mr Pieter Verbeek, Director of the Stability Pact Working Table III.

2005. Overall, staffing targets and training need to be clarified, based on an updated IBM Action Plan, which is a key element for accession negotiations in chapter 24.²⁵⁸

Some progress has been reported for **Macedonia**. The Law on Control of the State Border was adopted in May. It covers border checks at border crossing points and border surveillance, constitutes the legal framework for the implementation of the IBM strategy and regulates relations between the competent authorities. An IBM Action Plan was adopted in October 2005. The border crossing points data communication network is partially operational. A national border management co-ordination centre has been established, but is not yet operational. The infrastructure at the border crossing point in Tabanovce (a main crossing point with Serbia) has been upgraded and has been in use since April. The categorisation of border crossing points was decided in June. Implementation of the IBM strategy needs to be closely monitored. Further efforts are needed to change the operational behaviour of the border crossing guards from a military to a civilian approach. No progress has been made on the upgrading of technical equipment for document analysis at border crossing points. In the area of border control, Macedonia is well advanced in terms of alignment with the *acquis*. However, the implementation of the reform of the border police has been delayed by the late adoption of the new law on the police.²⁵⁹

Bosnia and Herzegovina has not yet signed the State Border Treaty with Serbia, while ratification of the 2005 Agreement on Demarcation of the Land and River Borders with Croatia is on hold. An update of the 2005 National Integrated Border Strategy for Bosnia and Herzegovina and an IBM Action Plan are being finalised. However, budgetary means for implementation are lacking. A number of agreements and memoranda of understanding on mutual co-operation between the State Border Service (SBS) and other agencies – mainly the State Investigation and Protection Agency (SIPA) and the Indirect Taxation Authority (ITA) – have been concluded. Clear guidelines for field officers are now necessary so that the agreements are effectively implemented. Cross-border cooperation with neighbouring countries exists, but mostly on an informal basis. SBS involvement in regional cooperation initiatives has increased, particularly through the Centre for Cooperation in Southeast Europe, the Programme for Democratic Control of Armed Forces, the Ohrid Process and the Stability Pact. The border control at present mainly consists of basic checks of the validity of driver's license and insurance papers. Equipment to detect falsified documents is not always properly used. Steps have been taken to introduce biometrics and security features in passports and chips have been introduced in driving licenses and residence permits.²⁶⁰

In **Serbia** the Law on State Borders has not been adopted, and the takeover of borders from the military has not been completed. After taking over the border with Hungary, in June 2006 the police took over a segment of the border with Romania. After the adoption of the national IBM in January 2006, the implementing action plan was adopted in June 2006. The reform of the border police is affected by the slow implementation of the new Law on Police. There is no proper training system for border police personnel, only basic courses available and occasional, donor driven specialised training. In addition to the serious lack of adequately trained staff, there is neither proper infrastructure nor modern equipment at the borders. As regards border demarcation with

²⁵⁸ Commission Staff Working Document Croatia 2006 Progress Report, COM (2006) 649 final, SEC (2006) 1385, Brussels, 08.11.2006, Chapter 24: Justice, Freedom and Security, p. 53.

²⁵⁹ Commission Staff Working Document The former Yugoslav Republic of Macedonia 2006 Progress Report, COM (2006) 649 final, SEC (2006) 1387, Brussels, 08.11.2006, Chapter 24: Justice, Freedom and Security, pp. 48-49.

²⁶⁰ Commission Staff Working Document Bosnia and Herzegovina 2006 Progress Report, COM (2006) 649 final, SEC (2006) 1384, Brussels, 08.11.2006, pp. 20 and 45.

Croatia, the two countries have agreed to re-launch the work in the near future.²⁶¹ To facilitate IBM of **Kosovo** a memorandum of understanding was signed between the border police and customs in January 2006. Working protocols have been established in key areas, with working groups for intelligence, operations, and administration/logistics. The agricultural border control is in the process of joining the MoU and its working groups. Co-operation on cross-boundary issues with the Serbian customs and tax administrations is proceeding relatively well under working protocols agreed by UNMIK customs acting on behalf of UNMIK. Furthermore, memoranda of understanding on border issues have been signed with Kosovo's neighbours. UNMIK Regulation 2005/16 has given the border/boundary police better control of people who enter, remain in or leave Kosovo and some positive results have been achieved regarding the trafficking of human beings.²⁶²

The Ministry of Interior of **Montenegro** had already taken over the control of the Montenegrin part of the borders of the State Union in 2003. The institutional strengthening of the border police has continued in particular through training. The reconstruction and equipment of nine border crossings is under way, with EU and donor and budget support. Cross-border cooperation with neighbouring countries is in the process of being upgraded with joint patrols and exchange of information. The legal framework has been completed by the adoption of the Law on the State Border in November 2005. A Strategy on integrated border management was adopted in February 2006. Four main bodies (Ministry of Interior, Customs, Veterinary Service, Phyto-sanitary Service) are currently controlling implementation. There is a further need for the adoption of secondary legislation on border crossings management and to establish a coordinating mechanism for integrated border management at national level.²⁶³

Albania has made progress in improving immigration checks and controls at Border Crossing Points (BCPs). New equipment and logistics support have increased the efficiency of green border surveillance. Use of Mobile Surveillance Units has brought positive results, particularly in combating trafficking of human beings and drugs. Installation of Total Information Management System and related document checking equipment has been completed in the main ten BCPs, and work is going on in another five. Cooperation between the Border Police Directorate and other Directorates of the Albanian State Police (ASP) and with counterparts in neighbouring countries has improved. The Border and Migration Police Directorate of the ASP has revised the Border Management policy according to the EU Guidelines for IBM in the Western Balkans but the strategy has not yet been adopted. A memorandum of understanding on cooperation between police and customs service exists, but the services' respective tasks and responsibilities are not yet clearly defined. Considerable efforts are still required to bring all Albanian BCPs up to European standards in terms of technical equipment and training of staff. Poor infrastructure in Durres and Vlora ports hampers proper border and migration control. Border management at these ports and at Tirana International Airport still falls short of international standards. Blue border surveillance remains relatively weak. Due to lack of funds to create a Police Coast Guard, military forces are involved in border control and anti-smuggling operations. This is not in line with European standards, NATO partnership goals or Albania's Ohrid commitments, which require civilian command of law enforcement agencies with police powers. Alongside effective customs management, Albania's border management will be

²⁶¹ Commission Staff working document Serbia 2006 Progress Report COM (2006) 649 final, SEC (2006)1389, Brussels, 8.11.2006, p. 35.

²⁶² Commission Staff working document Kosovo (under UNSCR 1244) 2006 Progress Report COM (2006) 649 final, SEC (2006)1386, Brussels, 8.11.2006, p. 36.

²⁶³ Commission Staff working document Montenegro 2006 Progress Report, COM (2006) 649 final, SEC (2006)1388, Brussels, 8.11.2006, p. 37.

important for trade under the SAA and Interim Agreement. Albania partially meets its objectives in the field of border management.²⁶⁴

Conclusively, the progress achieved within the framework of the IBM is quite substantial. However, much more work is needed in implementing existing legal frameworks and aligning them with EU standards, as well as enhancing cross border cooperation and implementing agreements already signed, such as Vienna Police Convention. Because of different pace of progress, tailor-made projects and activities for the countries concerned are drafted for this year in the framework of the Ohrid Border Process. The priority for the partner organisations will be coordination of activities designed for 2007 and cooperation in the implementation of these activities.

As concluded by Podgorica Review meeting of 8-9 November 2006 of the Ohrid Border Process, a list of specific areas for each country was to be drafted, producing a Roadmap for 2007.

Nevertheless, there are emerging common areas of work such as:

- Adopting, improving and implementing of the IBM Strategy and Action Plan;
- Improving and implementing the legal and judicial frameworks,
- Enhance inter-agency cooperation, meaning a more integrated approach towards the four competent services (Border Police, Customs, Veterinary and Phyto-Sanitary) involved in border management, especially between the Border Police and Customs Services and strengthening cooperation between border police services and criminal police by e.g. memoranda of understanding clearly defining tasks and responsibilities
- cross-border cooperation and regional cooperation - signing, ratifying and implementing international agreements;
- human resources and training;
- promoting and exchanging best practices amongst regional partners, especially on practical training;
- developing information technology and telecommunication -- upgrading of information systems e.g. for document checking
- Upgrading of infrastructures and equipment e.g. at land border crossing points, sea- and airports according to European standards in terms of technical equipment and for increased efficiency of blue and green border management

The concrete topics suggested for organising activities in the framework of Ohrid Border Process in 2007 are:

- Risk analysis and threats assessment;
- Inter-agency cooperation;
- Cooperation with neighbouring EU Member States in the field of border policing;
- Cooperation with FRONTEX;
- Need for a follow-up to the CARDS Regional Programme? The countries should come up with suggestions.²⁶⁵

²⁶⁴ Commission Staff working document Albania 2006 Progress Report, COM (2006) 649 final, SEC (2006)1383, Brussels, 08.11.2006, pp. 39-40.

²⁶⁵ Cf. Ohrid Process on Border Security and Management Fourth Review Meeting, 8-9 November 2006, Podgorica, Republic of Montenegro: Conclusions. Brussels, 29.11.2006.

5.6 Fight against Trafficking in Human Beings

Trafficking in human beings constitutes a violation of human rights. At the individual level, it infringes a person's human dignity, personal liberty, freedom of movement, privacy and right of self-determination. At the societal level, trafficking in human beings violates the prohibition of slavery by subjecting trafficked person to slavery-like practices and compulsory work, and is to be equated with cruel and inhuman treatment.²⁶⁶ As such it calls into question the fundamental principles of respect for human rights, the rule of law and democratic values. It is within the framework of these principles and values that the fight for the elimination of trafficking in human beings has to evolve. The human rights of victims of trafficking should become the guiding principle of all efforts to prevent and punish trafficking.

Trafficking in human beings is a criminal activity, which has been increasingly shown to be penetrated by transnational organised crime, often connected with other criminal activities such as drug trafficking and money laundering. Human trafficking has recently assumed remarkable dimensions within and across borders of many states. The "movement" perspective of trafficking in human beings has particularly influenced the perception of human trafficking as a migration issue, often confused with the smuggling of migrants. In the interest of states to secure their borders and control migration, the formulation of legal instruments and countervailing measures against trafficking in human beings has occurred within the framework of migration, particularly with a view to security concerns in relation to irregular/illegal migration. Furthermore, trafficking has often been seen in terms of prostitution, partly following from "traffic in persons" as at first defined with reference to exploitation of prostitution.²⁶⁷

To successfully combat trafficking in persons a four-pronged approach is recommended:

- the prevention of trafficking and re-trafficking
- the prosecution of traffickers
- the protection of the human rights of and support to victims and witnesses
- repatriation (referral) and reintegration of victims of trafficking

In this context there is also a need to more forcefully address other issues such as the conditions of both the push/supply and pull/demand side of trafficking in human beings. This implies the formulation of sustainable development policies and cooperation in their implementation. Any proposed and adopted measures would also need to be sensitive to gender issues and the particular condition of minors. The strengthening of international bodies to manage the orderly movement of people would be a further step towards the realisation of effective mechanisms to prevent and combat trafficking in people.

²⁶⁶ All are basic principles of the most important human rights documents such as the 1948 Universal Declaration of Human Rights (UN General Assembly, 10 December, Decision No. 217A (III)), the 1966 International Covenant on Civil and Political Rights (UN General Assembly, 16 December, Decision No. 2200 A (XXI)) and the 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950) as well as the Charter of Fundamental Rights of the European Union (*Official Journal of the European Communities*, 2000/C 364/1, 18 December 2000). See also Council of Europe action in the field of trafficking in human beings for the purpose of sexual exploitation: an emphasis on victim protection, Division Equality Between Women and Men, DG II, Council of Europe, September, 2002.

²⁶⁷ See the 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

5.6.1 The global level – United Nations Convention against Transnational Organised Crime

Perceptions of trafficking in persons have changed significantly over recent years with the adoption of two protocols supplementing the *United Nations Convention Against Transnational Organized Crime, of 15 November 2000*.²⁶⁸ The Protocol to Prevent, Suppress and Punish Trafficking in Persons (*Trafficking Protocol*) and the Protocol Against Smuggling of Migrants by Land, Air and Sea (*Smuggling Protocol*) distinguish between the terms trafficking in persons and smuggling of migrants. Each Protocol must be read and applied in conjunction with the Convention.

At first sight, the distinction between trafficking and smuggling appears to be clear. The key elements of a trafficking relationship are the threat or the use of force or other forms of coercion, abduction, fraud, deception or abuse of power. While smuggling implies a degree of consent between the transporting agent and the smuggled individual, trafficking implies an absence of such consent, at least during some stages of the trafficking process. These are the basic distinctions in the two separate UN Protocols. In practice, however, it can be difficult to establish the degree of coercion. Only in the case of trafficked children is the situation unambiguous.

Furthermore, there seems to be a growing realisation that exploitation as the main purpose of trafficking in persons is not confined to sexual exploitation, since it also includes, at a minimum forced labour or service, slavery or practices similar to slavery, servitude and the removal of organs. However, trafficking for labour exploitation, in spite of efforts to move it higher up on political agenda, and numerous conventions, particularly the *ILO Conventions*,²⁶⁹ including its widely ratified *Worst Forms of Child Labour Convention, 1999*, are less well understood.²⁷⁰

The aim of the Trafficking Protocol is to prevent and combat trafficking in persons and to protect and assist the victims of trafficking. As an instrument annexed to a crime prevention treaty, it is not primarily a human rights instrument. Yet, along with other instruments and changing conceptions and perceptions of trafficking, it has contributed to the acceptance that victims of trafficking in persons, who by definition are not in control of their fate, should not be seen as offenders but as victims. Consequently, in the development of anti-trafficking measures, the obligation of States to protect the human rights of victims of trafficking gained prominence and is clearly a matter of primordial importance in any anti-trafficking activity. The protection and assistance of victims plays a role beyond the merely humanitarian; the failure to attribute sufficient weight to the human rights dimension will reduce the chances of success in the fight against trafficking. It is more likely that this fight will succeed in both reducing the incidence of trafficking and improve the protection of those at risk when it is governed by the respect for human rights and interests of the victims. Therefore, a balance has to be struck between anti-trafficking measures and the protection of human rights.²⁷¹

²⁶⁸ UN General Assembly, A/RES/55/25, 8 January 2001.

²⁶⁹ Among them the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105).

²⁷⁰ See Forced Labour, Child Labour and Human Trafficking in Europe: an ILO Perspective Technical paper, *EU/IOM STOP European Conference on Preventing and Combating Trafficking in Human Beings*, 18-20 September 2002, Brussels, Belgium Special Action Programme to Combat Forced Labour (SAP-FL) and International Programme on the Elimination of Child Labour (IPEC), International Labour Office, Geneva, September 2002.

²⁷¹ See among others P. Sørensen, *New Perspectives and Policies on Protection of Victims, EU/IOM STOP European Conference on Preventing and Combating Trafficking in Human Beings: A Global Challenge for the Twenty-first Century*, 18-20 September, 2002, Brussels.

5.6.2 The European level – Council of Europe Convention on Action against Trafficking in Human Beings

The 2002 European Conference on Preventing and Combating Trafficking in Human Beings, held in Brussels, recognised the prevention and combating of trafficking in human beings as a *global* challenge for the twenty-first century. As a global phenomenon of various forms of exploitation, indeed too often “invisible exploitation”,²⁷² the fight for its elimination requires long-term global solutions. In this endeavour, the *Brussels Declaration on Preventing and Combating Trafficking in Human Beings* invited the international community and institutions at local, regional and governmental levels, as well as international, inter-governmental organizations and non-governmental organisations and the institutions of the European Union to take the necessary next steps towards an unambiguous, comprehensive, multidisciplinary and internationally coordinated response to fight this international phenomenon. Its recommendations, standards and best practices specifically refer to mechanisms for cooperation, prevention of trafficking in human beings, victim protection and assistance, and police and judicial cooperation. This response, which should involve actors from all fields concerned, must be consistent with and indeed be put at the front of the human rights standards, such as the Principles and Guidelines elaborated by the UN High Commissioner for Human Rights, and pay particular attention to trafficking in children by taking into account their best interests and the consistency with international instruments on the rights of the child.²⁷³

Council of Europe adopted *Convention on Action against Trafficking in Human Beings* on 3 May 2005.²⁷⁴ The Convention is a comprehensive treaty mainly focused on the protection of victims of trafficking and the safeguard of their rights. It also aims at preventing trafficking as well as prosecuting traffickers. The Convention applies to all forms of trafficking whether national or trans-national, whether or not related to organised crime. It applies whoever the victim: women, men or children and whatever the form of exploitation (sexual exploitation, forced labour or services. The Convention provides for the setting up of an independent monitoring mechanism guaranteeing parties’ compliance with its provisions.

These treaties are the most significant international instruments dealing with trafficking in persons/human beings to date. All MARRI Member States have ratified UN Trafficking and Smuggling Protocols. The Council of Europe Convention has been signed by the MARRI Member States, members of the Council of Europe. A non member state, Montenegro, has also signed the Convention. Albania is the fourth State that has ratified the Convention on 7 February 2007. The Convention will enter into force with 10 ratifications.

In addition to these instruments a number of international legal instruments form part of the international legal framework relevant to the fight against trafficking in persons. They include humanitarian, human rights and other instruments of general application, instruments against trafficking or slavery in general and instruments concerning slavery or trafficking related to sexual exploitation.²⁷⁵

²⁷² Cf. *Brussels Declaration on Preventing and Combating Trafficking in Human Beings*.

²⁷³ Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council: Recommended Principles and Guidelines on Human Rights and Human trafficking, United Nations E/2002/68/Add.1.

²⁷⁴ Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report (CETS N° 197) was adopted by the Committee of Ministers on 3 May 2005 and opened for signature in Warsaw on 16 May 2005.

²⁷⁵ The lists of main instruments with references to the Internet sites at which the instruments can be consulted electronically is provided by United Nations Office on Drugs and Crime, Vienna: Toolkit to Combat Trafficking in Persons, New York 2006: United Nations.

5.6.3 Concepts and definitions of trafficking and smuggling

While the concept of trafficking, in general meaning the illicit trade in goods, appears to be clear, the concept of trafficking in persons/human beings has been variously interpreted. The increasing scale of trafficking in human beings in the 1990s, and efforts to combat trafficking at national and international levels, brought into focus the need for clarification of the concept of trafficking to obtain a clearer, broader and commonly accepted definition. Whereas the international conventions of the first part of the twentieth century already provided some specific definitions,²⁷⁶ provisions against trafficking were either absent or left undefined and this led to divergent approaches in dealing with trafficking and, consequently, with victims of trafficking. Renewed debate over the precise definition of the concept of “trafficking in persons” started in the second half of the 1990s. Various non- and inter-governmental organisations formulated their own definitions, moving away from the sole focus on prostitution, in order to address the urgency of problems associated with contemporary forms of trafficking in human beings.

More clearly than in the past, this debate has been linked to international migration. Several issues arose in this connection:

- considerable confusion between trafficking and smuggling.
- the question whether trafficking should be considered a form of irregular/illegal migration.
- the general problem of separating regular from irregular migration.²⁷⁷

At the global level, this process led to the two UN Protocols,²⁷⁸ which carefully distinguish between the terms “trafficking in persons” and “smuggling of migrants”.

Thus Article 3 of the Trafficking Protocol adopted the following definition of trafficking:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used.

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under 18 years of age.

²⁷⁶ See International Convention for the Suppression of Trafficking in Women and Children (1921), Slavery Convention (1926), Protocol amending the Slavery Convention, (23 October 1953), Supplementary Convention on the Abolition of Slavery, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949).

²⁷⁷ See also Medved, F. and P. Cullen, (2002), Counteracting human trafficking: an analysis of European policy, in M. Anderson and J. Apap (eds.) *Police and Justice Co-operation and the New European Borders*, The Hague: Kluwer International, 183-218; Apap, J., Cullen, P. and F. Medved, (2002), Counteracting Human Trafficking: Protecting the Victims of Trafficking, *European Conference On Preventing and Combating Trafficking in Human Beings Global Challenge for the 21st Century*, 18-20 September 2002, Brussels. 45pp.

²⁷⁸ UN General Assembly, A/RES/55/25.

Article 4 of the Council of Europe Convention repeats the UN Protocol definition, replacing "Trafficking in persons" with "Trafficking in human beings" and adds subparagraph (e):

"Victim" shall mean any natural person who is subject to trafficking.

Article 3 (a-c) of the Smuggling Protocol adopted the following definition of smuggling:

- (a) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;
- (b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;
- (c) "Fraudulent travel or identity document" shall mean any travel or identity document;
 - (i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or
 - (ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
 - (iii) That is being used by a person other than the rightful holder.

In principle, the smuggling of persons constitutes an illegal border crossing and is, therefore, a violation against the State. In contrast, trafficking in persons is a violation of the rights of the individual, and the victims of that crime are the trafficked persons themselves. Therefore the term 'victim' is used throughout the Trafficking Protocol, whereas victim is only mentioned once in the Smuggling Protocol.²⁷⁹

Victims of trafficking are to be granted protection, yet: "There is little guidance in either instrument regarding how the identification process is to be undertaken and by whom. This is especially important because identifying an individual as a trafficked person carries different responsibilities for a State party than is the case if that person is identified as a smuggled migrant. It is hoped that State parties will address such issues in the near future."²⁸⁰

At the EU level, the process of defining trafficking and smuggling was taking place within the area of intergovernmental co-operation in criminal matters, though there is some cross-over of policy formulation between this "third pillar" area and the new Community provisions on migration introduced by the Amsterdam Treaty. In July 2002, the *Council Framework Decision on combating trafficking in human beings* was adopted.²⁸¹ In addition, in November 2002 the Council adopted *Directive defining the facilitation of unauthorised entry, transit and residence*.²⁸²

²⁷⁹ See Protocol against Smuggling in Migrants by Land, Air and Sea, Article 3 (a).

²⁸⁰ "Smuggling and trafficking in persons and the protection of their human rights", Note by the Secretary-General, E/CN.4/Sub.2/2001/26, 5 July 2001, p. 3.

²⁸¹ Council Framework Decision of 19 July 2002 on combating trafficking in human beings, *Official Journal of the European Communities* L 203/1, 1.8.2002. All Member States had to comply with this legal instrument before 1 August 2004. Framework stipulates, *inter alia*, that the penalty for trafficking in any Member State must be not be less than 8 years imprisonment if committed in circumstances endangering the life of the victim, against a victim who was particularly vulnerable, by the use of violence or causing serious harm, or within the context of criminal organisation. See also Medved and Cullen, 2002.

²⁸² Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence *Official Journal of the European Communities* L 328/17, 5.12.2002.

In the proposal of the framework, the Commission expressed the view that the existence of the two UN protocols “highlights the complexity of different forms of *criminal movements of people* that are operated by international criminal organizations.” The difference between ‘smuggling’ and ‘trafficking’ is made on the basis of crime: “smuggling of migrants could be said to constitute a crime against the state” and “trafficking in human beings [to] constitute a crime against a person;” the former “often involves a mutual interest between the smuggler and the smuggled” and the latter “involves an exploitative purpose.”²⁸³

As a matter of EU policy, ‘trafficking’ is now associated largely with the concept and purpose of exploitation, accompanied by human rights violations. ‘Smuggling’ implies the simple facilitation of the illegal crossing of a border or residence – usually for some financial or material gain.

Although this general distinction has now been made between ‘smuggling’ as a migration issue and ‘trafficking’ as a human rights issue, the understanding is by no means universal and it may be difficult to apply in practice (e.g. for prosecutors). In recent migration studies trafficking tends to describe movements of persons against their will, and smuggling refers to voluntary movement. In this sense we get two types of migrants: trafficked and smuggled. However, trafficking may sometimes involve an element of what has come to be defined as smuggling, particularly when it uses the same routes, forged documentation and networks as the smugglers. Most trafficked persons will share the wishes of smuggled persons to be moved, though they will not anticipate the exploitation to follow or the human rights breaches which accompany their removal. Equally those, who agree to be smuggled, will frequently have little idea of the degree and nature of exploitation which could await them. Some empirical studies have shown that the distinction between smuggling, trafficking and other forms of population movements have become blurred. For example, a study with a perspective from Asia shows that violence, coercion and exploitation are as much an integral part of smuggling as they are of trafficking.²⁸⁴ The acknowledgment, e.g. by the European Parliament, that smuggling does not necessarily preclude exploitation and suffering, reflects an awareness of the many contradictions raised by the issues of trafficking and smuggling.²⁸⁵ There is need for a wider understanding of the human rights abuses sustaining both the trafficking and smuggling processes. A human rights analysis should concentrate on the abuse of rights of both smuggled and trafficked persons taking into account the representations of human rights organisations.²⁸⁶ Questions relating to refugee protection and the right to seek and enjoy asylum arise here.

5.6.4 Victim Protection

Models of protection offered to trafficked persons too often accord major priority to the needs of law enforcement over the rights of victims of trafficking. Often protection still means repression of a victim’s rights. Victim protection needs to be redefined and reworked to support and empower those who have been trafficked. Protection of victims per se is not the same as protection of a victim’s human rights and human dignity. The challenge for governments is to assume their obligations under international law and make protection of all human rights a reality for trafficked persons who escape their situation. Trafficking is a

²⁸³ COM (2000) 854 final, Brussels 21 December 2000. Explanatory memorandum, p. 8., emphasis added. See also Fighting trafficking in human beings - an integrated approach and proposals for an action plan, MEMO/05/381, Brussels, 19 October 2005.

²⁸⁴ Skeldon, R.: Trafficking: A perspective from Asia. *International Migration*, Vol. 38 (1), SI 1/2000, pp. 7-30.

²⁸⁵ Refer to the European Parliament, Session document A5-0183/2001 FINAL, Report on the proposal for a Council framework decision on combating trafficking in human beings, 30 May 2001.

²⁸⁶ See among others Morrison, J., July 2000: *The trafficking and smuggling of refugees: the end game in European asylum policy?* Pre-publication Edition, UNCHR.

fundamental issue of human rights violation, whereby all victims, and not only witnesses or potential witnesses (who are victims of trafficking and who need protection for that very reason), need protection of their human rights.

Trans-national Crime Convention addresses the protection of witnesses in Article 24, and covers assistance to and protection of victims in Article 25. Part Two of the Trafficking Protocol (Articles 6-8) indicates more clearly what constitutes appropriate measures under Article 25 (1) in the context of trafficking for the protection of victims. They concern assistance and protection of victims of trafficking, their status in receiving countries and their repatriation. Article 6 provides for assistance and protection of victims of trafficking:

1. In appropriate cases, and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, *inter alia*, making legal proceedings relating to such trafficking confidential.
2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
 - (a) Information on relevant court and administrative proceedings;
 - (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society and, in particular, the provision of:
 - (a) Appropriate housing;
 - (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
 - (c) Medical, psychological and material assistance; and
 - (d) Employment, education and training opportunities.
4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons.
5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.
6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7 covers the status of victims of trafficking in persons in receiving States:

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently in appropriate cases.
2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8 covers the repatriation of victims of trafficking in persons:

1. The State Party of which a victim of trafficking in persons is a national, or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party, shall facilitate and

accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

Furthermore, comprehensive policies, programmes and other measures should be established in order to prevent a recurrence of victimisation (See Art 9 (b)). The focus on the victim is also important in the training of law enforcement, immigration or other relevant officials, and should be sensitive to the rights of the victims, and include protection from the traffickers, human rights and child- and gender-sensitive issues and encourage cooperation with non-governmental organisations, other relevant organisations and other elements of civil society (see Art 10).

The Council of Europe Convention covers measures to protect and promote the rights of victims, guaranteeing gender equality. Articles 10 – 17 address issues of identification of the victims, protection of private life, assistance for victims of trafficking, recovery and reflection period, residence permit, compensation and legal redress, repatriation and return of victims and gender equality.

5.6.5 Victim-witness protection in the European Union

The European Union's approach against trafficking in human beings has been focused mainly on law enforcement issues, such as creating standard penalties for trafficking and associated crimes. The recognition that trafficking victims have suffered grievous human rights abuse has given rise to certain obligations on the part of governments to protect against and penalise such violations. The Council Framework Decision on combating trafficking in human beings addresses the substantive criminal law aspects of trafficking and provides little protection for trafficking victims.

Article 7, Protection and Assistance to Victims, states:

1. Member States shall establish that investigations into or prosecution of offences covered by this Framework Decision shall not be dependent on the report or accusation made by a person subjected to the offence, at least in cases where Article 6(1)(a) applies.

2. Children who are victims of an offence referred to in Article 1 should be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings (1). OJ L 82, 22.3.2001, p. 1.

3. Where the victim is a child, each Member State shall take the measures possible to ensure appropriate assistance for his or her family. In particular, each Member State shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family referred to.

While there is a focus on the special vulnerability of children as victims of trafficking, the framework decision does not provide any concrete protection measures. These are partly addressed in separate documents.

In April 2004, the Council adopted a *Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or to third-country nationals who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*.²⁸⁷ The purpose of this Directive is to strengthen the European Union's legislative framework for combating illegal immigration by granting a residence permit of limited duration to the victims of action to facilitate illegal immigration and of trafficking in human beings. The granting of the residence permit to which a certain number of benefits is attached is subject to conditions designed to encourage these people to cooperate with the competent authorities against those suspected of committing the crimes in question. Although facilitating illegal immigration (i.e. smuggling) and trafficking in human beings are two separate offences, the proposal reflects the fact that the two crimes often overlap in practice. A continuum of trafficking and smuggling is thus recognised, but the two forms are seen as part of a more general problem: the increase in illegal immigration. The notion of victim of trafficking in human beings does not present any difficulties (featuring as it does in the Trafficking Protocol). The concept of victim of acts to facilitate illegal immigration has a very specific meaning in that it does not cover all those who seek assistance for illegal immigration, only those who might be reasonably regarded as victims who have suffered harm, for example having their lives endangered or sustaining physical injury.²⁸⁸

The aim of this Directive is to offer residence permits for victims prepared to give evidence, subject to their cooperation with the competent authorities against those suspected of having committed the crimes in question. The permit would be issued to third-country victims, who have suffered harm directly by action to facilitate illegal immigration or trafficking in human beings. Victims are defined as adults or possibly minors who fulfil certain conditions laid in domestic law. The scope of the Directive is limited to the issuing of a residence permit. Though the residence permit itself offers de facto protection against deportation, the proposal is not a victim-protection or a witness-protection measure as this is neither its aim nor its legal basis.

Victim protection and witness protection are matters falling under national or EU law. This refers to the 2001 *Council Framework Decision on the status of victims in criminal proceedings*²⁸⁹ and 1995 *Council Resolution on the protection of witnesses in the framework of the fight against international organised crime*²⁹⁰ and calls on Member States to ensure proper and effective protection of witnesses before, during and after trials. Such

²⁸⁷ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, *Official Journal of the European Communities* L 261, 06/08/2004 P. 0019 - 0023

²⁸⁸ Cf. Article 1 of the Council Directive.

²⁸⁹ Council Framework Decision of 15 March 2001 on the status of victims in criminal proceedings, *Official Journal the European Communities*, L 82/1, 22 March 2001.

²⁹⁰ Council Resolution of 23 November 1995 on the protection of witnesses in the framework of the fight against international organized crime, *Official Journal the European Communities*, C 327, 7 December 1995.

protection should, if necessary, be extended to the parents, children and other close relatives of witnesses also.

However, neither of these documents was adopted with a view to the special needs of victims of trafficking. Moreover, neither they nor the Directive on the residence permit applies to victims who do not cooperate with the authorities in the context of criminal proceedings. This means that those trafficking victims who cannot or will not cooperate with authorities could be subject to arrest, detention and deportation. As emphasised by Human Rights Watch, "this approach punishes the trafficking victim, categorising her or him solely as an undocumented migrant subject to expulsion, without any recognition that he or she is a victim of serious rights abuse".²⁹¹ Furthermore, this approach gives rise to two categories of victims, without any attention to the need for protection common to all of them.²⁹²

Summing up it may be said that in the European anti-trafficking regime there remains a serious gap in terms of specific protection measures for all victims. The general protections included in existing decisions and resolutions noted above do not fill the legal vacuum regarding victims who do not cooperate with authorities in criminal proceedings and are left without any protection. The absence of such protection for all victims of trafficking in human beings fails to meet the standards for protection of trafficking victims outlined in the Trafficking Protocol. That, however, may also be criticised for falling short of creating a basic human rights framework, as it is expressed in terms of "governments shall endeavour" and "shall consider".²⁹³

5.6.6 The European Union's anti-trafficking policy

The *Action plan on Trafficking in Human Beings*, adopted on 1 December 2005 with a view to preventing and combating trafficking in human beings recognises the importance of taking forward a human rights and victims-centred approach.²⁹⁴ The plan is based on the Communication: *Fighting trafficking in human beings: an integrated approach and proposals for an action plan*²⁹⁵ and the Framework Decision of 19 July 2002 on combating trafficking in human beings. The former stresses that there is a need for an integrated approach, having as its fundament the respect of human rights and taking into account its global nature. This approach calls for a coordinated policy response notably in the area of freedom, security and justice, external relations, development cooperation, employment, gender equality and non discrimination. It also aims to reinforce the broad public-private dialogue in this area.

Communication outlines the integrated approach in the following dimensions:

- **The protection of human rights** meaning clear commitment of EU institutions and Member States to follow such a approach and to promote it in their external relations and development policies.

²⁹¹ The Human Rights Dimension of EU Immigration Policy: Lessons from Member States, Human Rights Watch Statement on the Occasion of the Academy of European law Conference: *State of Play on European Immigration and Asylum Policy: Patching Up Tampere*, Trier, April 25-26, 2002: 8.

²⁹² Migration News Sheet, "European Union: Human Trafficking Must Not be Seen from the Angle of Illegal Immigration", April 2002.

²⁹³ Apap, A. and F. Medved, (2003), *Protection Schemes for Victims of Trafficking in Selected EU Member Countries, Candidate and Third Countries*, International Organization for Migration (IOM).

²⁹⁴ Council of the European Union, Draft Action Plan on Trafficking in Human Beings, 12402/3/05, Brussels, 18 November 2005, Point 3(i).

²⁹⁵ Refer to European Commission, Communication, Fighting trafficking in human beings - an integrated approach and proposals for an action plan, COM(2005) 514 final, Brussels, 18.10.2005; See also Fighting trafficking in human beings - an integrated approach and proposals for an action plan, MEMO/05/381, Brussels, 19 October 2005.

- **Organised crime dimension** - a clear law enforcement priority meaning that trafficking has to be converted from a “low risk – high reward enterprise for organised crime” into a “high risk - low reward” one. Law enforcement must use all the resources and capacity available to enforce the prohibition of human trafficking, to deprive it of any economic advantage. The investigation of human trafficking should be afforded the same priority as other areas of organised crime in that specialist investigative techniques and disruption strategies should be employed.
- **The illegal migration dimension** - an essential element of the efforts to improve the checks and surveillance at the external borders to prevent and fight human trafficking and to enhance the fight against illegal immigration. In this view action against human trafficking is to be reinforced by:
 - border control and migration management related measures; and
 - as improvement of the status of trafficked persons by speed-up the transposition of Directive 2004/81/EC of 29 April 2004, which defines the conditions for granting a residence permit to third-country nationals who are victims of human trafficking or who have been subject of an action to facilitate illegal immigration and who cooperate with the authorities. The possible access by victims of human trafficking to the national labour market, vocational training and education as well as to existing programmes and schemes aiming at the recovery of a normal life are important in this context.
- **Specific groups - the promotion of non-discrimination including gender equality, the rights of children, indigenous people and minority groups.** EU institutions and Member States should promote gender specific prevention strategies as a key element to combat trafficking in women and girls. Child trafficking must be tackled in the light of the EU Charter of Fundamental Rights that stresses the child's best interests as a primary consideration in all actions relating to children. The UN Trafficking Protocol must be read in the light of the 1989 *Convention on the Rights of the Child* that includes provisions on child trafficking and applies to every child under the age of 18 years.
- **Appropriate coordination and cooperation structures** - based on a clear picture, i.e. **reliable data** of the actual extent of the problem at EU and global level. These are necessary and must ensure that major aims of an anti-trafficking policy are effectively achieved, in particular **proper identification and referral of trafficked persons to protection and support mechanisms**. Therefore, Member States should consolidate the cooperation of public authorities with civil society organisations related to the prevention of and the fight against human trafficking. **National cooperation** and coordination mechanisms should form the basis for a corresponding mechanism at EU level providing for expert advice and a broad public-private dialogue. Furthermore, **cooperation at regional and global level**, in particular with countries of origin, transit and destination, must be further strengthened at the global level, notably, through advocating and assisting third countries in the swift ratification and implementation of the UN Trafficking Protocol, and by supporting the work of the UN Special Rapporteur on trafficking in persons, especially in women and children. Furthermore, close cooperation with relevant international organisations is necessary, e.g. UN, OSCE and Council of Europe. Regional initiatives that could complement and inspire EU wide cooperation must be promoted, e.g. the Nordic Baltic Task Force against Trafficking in Human Beings, the Southeast European Co-operative Initiative, the Budapest Process, the “5+5 dialogue” between the Western Mediterranean countries and the Mediterranean Transit Migration Dialogue.

Action Plan on Trafficking in Human Beings tables out best practices, standards and procedures for combating and preventing trafficking, details the objectives to be reached, a timetable and assessment tools.²⁹⁶

²⁹⁶ See Annex of the Draft Action Plan on Trafficking in Human Beings, 12402/3/05, Council of the European Union, Brussels, 18 November 2005.

The 2006 Communication on *Policy priorities in the fight against illegal immigration* of third-country nationals also brings into focus EU measures to combat trafficking in human beings, stressing, inter alia, that current Commission priorities with respect to the implementation of the Action Plan are:

- the development of **coordination and cooperation mechanisms** needed at EU level;
- promotion of **best practices in the identification of and support for victims**;
- **networking**, involving international and non-governmental organisations;
- the development of **guidelines for data collection**.²⁹⁷

5.6.7 Regional approach in the MARRI Region

Global patterns of trafficking in persons²⁹⁸ show that the MARRI Member States are **origin, transit or destination for trafficking victims**. At the country level, Albania is ranked very high in the citation index as origin country; other States have medium incidence of reporting of origin countries. Bosnia and Herzegovina, Kosovo, Macedonia, Serbia, Montenegro (in alphabetical order) rank high according to the citation index as transit countries. Albania is among the six highest transit countries in the world. Croatia is a medium country of transit and destination. Serbia, Macedonia and Montenegro are also among medium countries of destination, whereas Bosnia and Herzegovina and Kosovo are among twenty-one countries or territories that are listed as high reported countries of destination in the world.²⁹⁹ But, for example, according to the *UN Global Patterns* there were 19 victims identified by authorities in Croatia and 16 in Montenegro in 2004 and 43 in Serbia in 2003.³⁰⁰ The European Commission reports that there were 190 trafficking victims identified in Serbia/Montenegro from 2002 to end of 2005, another 22 in 2006, who were trafficked mostly from Ukraine, Romania, Moldova, Russia, Bulgaria, Lithuania and Georgia. There has been a worrying increase in number of children and nationals of Serbia/Montenegro identified as victims of trafficking. Twenty criminal charges have been filed in the past year and two sentences passed for the criminal groups.³⁰¹ Concerning criminal justice statistics nationals of some of these countries are also offenders; to illustrate, 22 Albanians were reported as offenders in Greece and 31 Serb-Montenegrens in Serbia in 2004.³⁰²

Given the scope of human trafficking in the region, the phenomenon has been addressed within the framework of international cooperation, both through co-operation and agreements as well as through the European Union and international organisations (Council of Europe, OSCE, IOM, ILO, UNICEF, UNCHR), non-governmental organisations and other multi-lateral forums for cooperation. These all have substantially contributed to the elaboration of comprehensive Regional and National Action Plans and Handbooks to combat trafficking in human beings, identified gaps and needs and suggested measures to overcome them. In particular they have extensively contributed in training, exchange and co-operation. Many have also supported and implemented numerous projects relating to anti-trafficking work on the ground.

²⁹⁷ Refer to the European Commission, Communication on Policy priorities in the fight against illegal immigration of third-country nationals, COM(2006) 402 final, Brussels, 19.7.2006, points 28-30.

²⁹⁸ United Nations Office on Drugs and Crime (UNODC): *Trafficking in Persons: Global Patterns* April 2006.

²⁹⁹ *Ibid.*, pp. 17-20.

³⁰⁰ *Ibid.*, p. 76.

³⁰¹ Commission Staff working document Serbia 2006 Progress Report COM (2006) 649 final SEC (2006)1389, Brussels, 8.11.2006, p. 39.

³⁰² United Nations Office on Drugs and Crime (UNODC): *Trafficking in Persons: Global Patterns* April 2006, p.35. See also Universal Human Rights Index of UN documents at <http://www.universalhumanrightsindex.org/>

The existing regional action plans include provisions on prevention, protection of victims and prosecution of trafficking as well as repatriation and reintegration of trafficking victims. Some regional action plans further promote information sharing, provision of education and vocational training and launching of public awareness-raising campaigns.

For example, the *OSCE Action Plan to Combat Trafficking in Human Beings*, adopted in 2003 takes a comprehensive multidimensional approach to trafficking in human beings which requires a focus on bringing to justice those responsible for this crime and on carrying out effective measures to prevent it, while maintaining a humanitarian and compassionate approach in rendering protection and assistance to its victims. It provides recommendations as to how participating States and relevant OSCE institutions and other bodies in field operations may best deal with political, economic, legal, law enforcement, educational and other aspects of the problem. It also aims to provide participating States with a follow-up mechanism, which promotes coordination between individual participating States, both within the OSCE structures and with other international organisations.³⁰³

Referral / return of victims of trafficking is also one of the elements of anti-trafficking policy. It has to be stressed that victims of trafficking should not be immediately returned to the country of origin when it may be reasonably suspected that they may suffer further harm through stigmatisation and discrimination, or risk reprisals. To the extent possible, return should be voluntary. The possibility of applying for permanent residence should be provided for if there is a real risk to the life of the victim of trafficking upon return to the country of origin. Immigration services should support and avail themselves of existing voluntary repatriation programmes being offered by a number of organisations involved in the return process. For example, the International Organization for Migration (IOM) in cooperation with other agencies, co-ordinates such programmes together with a comprehensive support approach for the victim's reintegration and recovery. After their return, victims of trafficking should be provided access to local NGOs for support and assistance. Also, they should receive adequate protection by the local institutions in the event that they are again contacted by their traffickers or threatened with reprisals. The OSCE has published a *Practical Handbook on National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons*,³⁰⁴ which provides guidance on how to design and implement sustainable mechanisms and structures to combat human trafficking and support victims and on how to build and monitor the capacity of such mechanisms and structures. The Handbook includes three useful instruments - questionnaires - that can be used in preparing for an assessment of the situation in a country, each concentrating on one aspect of a comprehensive assessment.

Together with other, numerous publications, it is a useful complementary tool to the United Nations' *Toolkit to Combat Trafficking in Persons*,³⁰⁵ aimed to increase awareness and to help policymakers in national Governments, criminal justice systems, law enforcement agencies, non-governmental organisations and intergovernmental organisations to understand and respond effectively to trafficking in persons. The toolkit is intended to suggest ways in which:

- national governmental and other relevant agencies and organisations can develop various elements of a comprehensive strategy to prevent and address the problem of trafficking in persons;

³⁰³ Organization for Security and Cooperation in Europe: Action Plan to Combat Trafficking in Human Beings, OSCE Permanent Council decision No. 557/Rev.1, 24 July 2003.

³⁰⁴ Retrieval from http://www.osce.org/publications/odihr/2004/05/12351_131_en.pdf

³⁰⁵ United Nations Office on Drugs and Crime, Vienna: Toolkit to Combat Trafficking in Persons, Global Programme Against Trafficking in Human Beings, United Nations, New York, 2006. Retrieval from http://www.unodc.org/pdf/Trafficking_toolkit_Oct06.pdf

- States and various relevant governmental and non-governmental organisations can become more able to identify victims of trafficking and offer effective protection and assistance;
- States, law enforcement agencies and various other governmental and non-governmental organisations can work in partnership with each other to combat trafficking in persons and to develop effective measures against it.

It is structured in such a way that different sections may be consulted directly by users who have a special interest in one particular aspect of the problem.³⁰⁶

Within the Stability Pact for South Eastern Europe there is also Task Force on Trafficking in Human Beings. Furthermore, the Southeast European Cooperative Initiative - SECI works on trans-border and regional initiatives in the fight against trafficking, specifically identifying, arresting and prosecuting those that participate in the trafficking in human beings; the return/repatriation of victims and the development of policy pertaining those found to be in possession of false documents. Operations are designed to share intelligence and coordinate investigation efforts into trafficking in human beings in the region. The SECI Crime Centre in Bucharest aims to serve as a coordinating hub for the transmission of information on crimes and criminals from one signatory state to another, with all MARRI Member States being part of the Initiative.

5.6.8 Progress and Recommendations

As evidenced by the latest EC Progress Reports, the European Commission finds that the fight against human trafficking is underway in the Western Balkan States, but substantial intensification of efforts is needed in all dimensions of the fight against trafficking in human being. In **Croatia**, police cooperation and the fight against organised crime continue to work well, with further progress expected as reorganisation plans get underway. The operational agreement with Europol has been ratified by Parliament in June 2006, but coordination unit has not been set up yet. In the field of organised crime, the strategy on the **confiscation of assets** from organised crime should be further developed and **regional cooperation** should be further promoted, in order to tackle, *inter alia*, trafficking in human beings in a joint approach by the **Government and all relevant law enforcement agencies, state prosecutors and judicial authorities**.³⁰⁷ In taking action to prevent trafficking in human beings, Croatia supplemented the Penal Code in 2004 and adopted National Program for 2005 to 2008, with operational plans for each year. Since 2002, 47 victims of trafficking in human beings have been identified.³⁰⁸

Macedonia has achieved some progress in this policy field. The government adopted a national strategy for combating illegal immigration and trafficking in human beings and action plan to combat trafficking together with an action plan for the protection of minors. The plan aims to better protect victims and witnesses and improve the investigation and the prosecution process of perpetrators. However, further action is needed to curb forced prostitution and trafficking in women and girls. **Training of judges, prosecutors, police and social workers** was carried out. The Law on Witness Protection was further implemented by the adoption in March of **rules on keeping the records of protected people** and keeping the original documents of a protected person. The witness protection programme needs further development to reach EU standards. Macedonia still needs to ensure full compliance with minimum standards for the elimination of trafficking. Preparations for closer cooperation with EUROPOL especially concerning input to the European organised crime

³⁰⁶ Ibid., p. X.

³⁰⁷ Commission Staff Working Document Croatia 2006 Progress Report, COM (2006) 649 final, SEC (2006) 1385, Brussels, 08.11.2006, Chapter 24: Justice, Freedom and Security, p. 54.

³⁰⁸ See also The Croatian Parliament, National Policy for the Promotion of Gender Equality 2006-2010.

threat assessment and analysis capacities need to be advanced. As regards international cooperation on organised crime, agreements were concluded with Slovenia, Switzerland and France³⁰⁹

Bosnia and Herzegovina has achieved some progress as regards the fight against organised crime and trafficking in human beings. The 2005-2007 National Action Plan for Combating Trafficking in Human Beings is being implemented. The State Investigation and Protection Agency SIPA has a specific department to deal with this issue. Nonetheless, remaining inconsistencies between legislation at State and Entity level undermine effective prosecution. Only a small proportion of the trafficking cases identified have been tried successfully and led to sentences. Sentences remain light. The country needs to ensure sustained efforts regarding the protection of witnesses and victims of trafficking. The country should allocate more financial resources to bring witness protection up to international standards. Approximately sixty persons have benefited from witness protection programmes, of which six were victims of trafficking. Protection for victims of trafficking is maintained only until they have given their evidence in court, putting them at risk thereafter. The country remains a country both of origin and of transit.³¹⁰

Serbia has amended the criminal legislation. The Criminal Code which came into force on January 2006 has broadened the definition of human trafficking. The terms of punishment have been increased for the basic and qualified form of the criminal act. A separate criminal offence of trafficking of children for adoption has been introduced. The main deficiency of the new legislation is the lowering of the penalty for trafficking of minors – from a minimum five to three years of imprisonment. The positive attempt to better protect the rights of the victims whose life and health are endangered has failed to include citizens of Serbia. The improvements in detection and prosecution of offenders resulted in first sentences pronounced against members of organised criminal groups. Victims have been offered more sustainable assistance, mainly through NGO-operated shelters. These were previously funded by international assistance although some inclusion of the authorities in cost sharing has been recorded recently. There is good cooperation established between the specialised law enforcement agencies, notably the National Anti trafficking Council and Team at the Ministry of Interior. There is a need to establish a fully operational network of specialised departments at the local level. Further efforts are needed for better protection of victims. The low level of professional training amongst the judiciary and the prolonged proceedings the absence of the effective witness protection, - in spite of the legislation that came into force in January 2006 - are serious impediments to successful trials. But, efforts have been undertaken to provide specialised training for greater numbers of police and judicial officials. Some 600 judges were trained, and a public awareness campaigns have been launched. In line with the present criminal legislation, which distinguishes between the offences of illegal border crossing and trafficking, there were 37 criminal charges filed against 87 perpetrators for trafficking of 219 migrants in 2005. Most of them were nationals of Albania. 19 charges were filed for illegal border crossing.³¹¹

Kosovo remains a source, transit, and destination point for trafficking. Efforts are underway to intensify the fight against organised crime, in terms of results however, the European Commission reports little progress. A Directorate for organised crime with one of the sections for the investigation of trafficking in human beings was created in January 2005 within the Kosovo police service. Its creation increased synergies in the

³⁰⁹ Commission Staff Working Document The former Yugoslav Republic of Macedonia 2006 Progress Report, COM (2006) 649 final, SEC (2006) 1387, Brussels, 08.11.2006, Chapter 24: Justice, Freedom and Security, p. 49.

³¹⁰ Commission Staff Working Document Bosnia and Herzegovina 2006 Progress Report, COM (2006) 649 final, SEC (2006) 1384, Brussels, 08.11.2006, p. 49.

³¹¹ Commission Staff working document Serbia 2006 Progress Report COM (2006) 649 final, SEC (2006)1389, Brussels, 8.11.2006, pp. 36 and 38-39.

investigation of organised crime and facilitated information-sharing between different departments, who receive intensive training to become specialists in their field of work. Border/boundary police consisting of UNMIK Police and KPS officers are running operation Stringent Security, a long-term and high-profile police action which involves anti-smuggling measures such as additional green border/boundary patrols, and joint operations with KFOR.³¹² A mounted police unit was established in March 2006 to patrol the green border with Albania. However, organised crime remains a serious problem in Kosovo. Criminal networks extend to various socio-economic sectors and into politics. Finding the highly skilled police personnel which the DOC needs remains a major challenge. Legislation is still lacking to keep the identity of informants confidential in court. 95 cases with 92 arrests (34 cases with charges) were opened in 2005. Two large-scale operations were conducted, resulting in twelve arrests for a variety of offences. Over 5,000 people across Kosovo participated in the anti-trafficking campaign 'Not for Sale'. The victims' advocacy and assistance unit (VAAU) has opened three new victims' Advocate Offices in various regions of Kosovo. The interim secure facility has continued to support victims of trafficking. However, Kosovo remains a source, transit, and destination point for trafficking. There has been a decline in international victims referred but an increase in Kosovo victims referred and an increase in trafficking children. Most trafficking cases concern women and girls, trafficked for sexual exploitation.³¹³

Montenegro is mainly a country of transit and destination for victims. Efforts and resources to fight trafficking have been increased. The government adopted a national strategy and action plan to combat trafficking together with an action plan for the protection of minors. Training of judges, prosecutors, police and social workers was carried out. The Law on Witness Protection was adopted and a ministerial commission for the implementation of the Witness Protection Programme and Protection Unit has been established. However, no efforts have been made to further develop the legal framework for witness protection in such a way as to ensure that the safety of vulnerable witnesses is appropriately balanced with the right of defence of the accused. The provisions on witness protection, under the current legislation, have also been extended to the victims of trafficking in justified cases. A Special Anti-Trafficking Team has also been established and has already achieved significant results at the level of police action. However, The Memorandum of Understanding signed between the Government and civil society organisations, for the provision of assistance to victims, has not been fully implemented. The draft Law on Aliens, currently tabled before the Parliament, introduces significant developments in regulating the status of victims – temporary residence for foreign victims of trafficking for a three months reflection period can be extended for a subsequent six months in cases where they participate in criminal proceedings. In 2005, assistance was provided to 28 victims and to an additional 3 in 2006. A shelter for victims has been established with public funding. The average stay in shelter is about 28 days, while there is a considerable delay in the prosecution of these offences. The lack of training of judges and prosecutors on trafficking issues affects the efficiency of justice in trafficking cases. Whereas in 2004 and 2005 32 presumed perpetrators have been brought to justice, only four persons have been convicted. The cooperation between government representatives, international organisations and the civil society has improved assistance to victims. The further engagement of the government should provide for an enhancement of victim support.³¹⁴

³¹² See also United Nations Administration Mission in Kosovo – UNMIK: Combating Human Trafficking in Kosovo Strategy & Commitment, May 2004

³¹³ Commission Staff working document Kosovo (under UNSCR 1244) 2006 Progress Report COM (2006) 649 final, SEC (2006)1386, Brussels, 8.11.2006, p. 38-39.

³¹⁴ Commission Staff working document Montenegro 2006 Progress Report, COM (2006) 649 final, SEC (2006)1388, Brussels, 8.11.2006, p. 40.

In **Albania**, strong political will to tackle organised crime has led to police operations against major criminal groups. Operational cooperation with Albania's neighbours has improved. Cooperation between police and the judiciary at central level has also improved, but much scope remains for improvement in concrete results. **Better coordination** between police and judiciary at local level and greater efforts to combat high level corruption in these bodies are needed. Albania continued to make significant efforts to combat human trafficking. The government has appointed a new full-time national anti-trafficking coordinator with staff and has adopted a National Strategy on Anti-Trafficking. An Inter-Ministerial Anti-Trafficking Committee chaired by the Deputy Minister of Interior has been created, and Vlora Anti-Trafficking Centre has been merged into the central police structures. Successful prosecutions and convictions of traffickers have continued. Improvement of the IT network within the Ministry of the Interior and the police contributed to the detection and arrest of several criminal groups mainly producing false passports and visas for Schengen countries, key tools for trafficking. Stronger **witness protection** is required. Victims are often unwilling to testify against their traffickers. However, trafficking remains a problem. Further resources and better domestic and international coordination are required. There has been a significant reduction of trafficking by speed-boats and dinghies across the Adriatic/Ionian Seas over the last two years. Albania has signed a bilateral anti-child-trafficking agreement with Greece and has begun to implement its witness protection law for trafficking victims. Trafficking through Albania's borders with its Western Balkan neighbours remains problematic. Further financial and human resources and steps to ensure effective coordination amongst the services operating on the border are required. The existing network of operational co-operation agreements with regional and international partners should be expanded. Implementation of the Government's protection and prevention programmes remains partial. Comprehensive reintegration and rehabilitation services are critical to preventing the re-trafficking of victims. Investigation and prosecution of trafficking-related corruption at all levels of law enforcement is not yet sufficiently determined. Albania only partially meets its objectives in the field of trafficking in human beings.³¹⁵

National strategies and Action Plans to prevent and suppress human trafficking have been outlined and upgraded in most of the MARRI participating States.

For instance, *Bosnia and Herzegovina State Action Plan for Combating Trafficking in Human Beings 2005-2007*,³¹⁶ outlines general principles of anti-trafficking response, the supporting legal and regulatory framework in areas of protection and prosecution as well as the institutional network, including capacity building needs, information management resource and budget mobilisation as well as review, monitoring and evaluation. The Action Plan is accompanied by the *Operational Plan for Combating Trafficking in Human Beings for 2006*.³¹⁷ Even though there are these Plans as well as relatively good regulation and rules on treatment of trafficking victims, Udružene žene Banja Luka, one of the non-governmental organisations, which ran a project on "Prevention of human trafficking through legal and regulatory norms and establishment of cooperation between various sectors involved in fight against human trafficking" in 2005, argues that they are rarely implemented and are not synchronised.³¹⁸

³¹⁵ Commission Staff working document Albania 2006 Progress Report, COM (2006) 649 final, SEC (2006)1383, Brussels, 8.11.2006, p. 44-45.

³¹⁶ Bosnia and Herzegovina, State Action Plan for Combating Trafficking in Human Beings 2005-2007, State Coordinator for Combating Trafficking in Human Beings and Illegal Migration: January 2005.

³¹⁷ Operational Plan for Combating Trafficking in Human Beings for 2006. State Coordinator for Combating Trafficking in Human Beings and illegal migration in BiH, December 2005

³¹⁸ Refer to Report on Trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina and Report on the Work of the State Coordinator for Combating Trafficking in Human Beings and Illegal Migration in 2005, pp. 56-57.

The *Albanian National Strategy for Combating Trafficking in Human Beings: Strategic Framework and National Action Plan: 2005 – 2007*³¹⁹ follows a structure based on international and EU standards, and, in particular, a model format for a comprehensive anti-trafficking response, endorsed in May 2004 by all countries of the SEE region as part of the CARDS programme *Enhancement of Implementation Strategies for National Anti-Trafficking Action Plans in Stabilisation and Association Process (SAP) Countries*, implemented by the International Centre for Migration Policy Development (ICMPD). Based on the ICMPD model regional format, the Action Plan has a two-level strategic and operational structure, consisting of strategic aims and specific objectives, and an operational framework identifying activities to be undertaken to implement the Plan and addresses the following main headings:

- **Investigation and Prosecution of Trafficking**
 - Proactive and reactive investigation, *inter alia* through improved cooperation and joint data collection and analysis by police and prosecutors
 - Effective prosecution and conviction of offenders
 - Anti-corruption measures, particularly against complicit police, prosecutors, judges and other officials.
 - Legal redress and compensation for victims
 - Police and judicial treatment of victims and victim/witnesses, based on human rights-oriented and victim-first approach
 - Victim/witness protection
 - International law enforcement and judicial co-operation
- **Support and Protection of Victims and Witnesses**
 - Improved victim identification
 - Development of a National Referral Mechanism for victims³²⁰
 - Shelter, social support, and protection of victims
 - Witness protection and secure in-court treatment of trafficking victims
 - Improved return and integration procedures for all victims
- **Prevention of Trafficking and Re-trafficking**
 - Public awareness raising
 - Education mainstreaming
 - Reduction of vulnerability, particularly as regards women and children, and at-risk sectors
 - Socio-economic development and poverty reduction initiatives
- **Coordinating Framework:**
 - Inter-agency co-ordination at ministerial and official levels, and with NGOs and international partners;
 - Accurate data collection and assessment;
 - Resource and budget mobilisation;
 - Review, monitoring and evaluation

³¹⁹ http://www.caaht.com/resources/NationalStrategy_2005-7_ENGLISH.pdf

³²⁰ See also the ICMPD project Programme to Support the Development of Transnational Referral Mechanisms (TRM) for Trafficked Persons in South-Eastern Europe, 2006 – 2008.

In particular, greater emphasis than in earlier plans³²¹ is given to:

- the need for **reliable inter-agency data collection and evaluation**;
- the need effective ministerial and official level coordination in mobilising adequate **financial resources** for its implementation;
- the importance of early **practical implementation of recently enacted legislative initiatives**;
- the importance of **sustainable trafficking awareness**; and,
- **capacity-building training for police and other state officials**.

In addition to the implementation of Action Plans in all the areas as the above cited, the MARRI should further upgrade and harmonise their **existing national legal frameworks** with regard to human trafficking, including:

- victim/witness protection law;
- criminal law, in particular, severe punishment of criminal activities and the seizure of illegally obtained financial advantages;
- immigration and asylum laws;
- labour law, social services and employment laws;
- contract law;
- laws on marriage and divorce; as well as,
- investigative, criminal and judicial procedures.

Return and reintegration

Victims of trafficking should not be immediately returned to the country of origin when it may be reasonably suspected that they may suffer further harm through stigmatization and discrimination, or risk reprisals. To the extent possible, return should be voluntary. The possibility of applying for permanent residence should be provided for if there is a real risk to the life of the victim of trafficking upon return to the country of origin. Immigration services should support and avail themselves of existing voluntary repatriation programmes being offered by a number of organizations involved in the return process. For example, the International Organization for Migration (IOM) in cooperation with other agencies, coordinates such programmes together with a comprehensive support approach for the victim's reintegration and recovery. After their return victims of trafficking should be provided access to local NGOs for support and assistance. Also, they should receive adequate protection by the local institutions in the event that they are again contacted by their traffickers or threatened with reprisals.

Thus, although actions to fight organised crime and trafficking in human beings are underway, sustained and co-ordinated efforts of all relevant governmental institutions/ agencies at state and local levels over the long term remain necessary in these sensitive areas. This concerns in particular immigration and border control, law-making, law enforcement, the judiciary, intelligence-gathering, social and housing, health and psychological care, financial management, public information and personnel training. Accordingly, cooperation with other states, inter-governmental and non-governmental organisations should be improved and the awareness of society in general raised regarding the human rights violations suffered by trafficked persons, and relate the protection and assistance measures to such experiences.

³²¹ See also Republic of Albania, Ministry of Interior, The Deputy Minister Anti-trafficking Unit Report on the Implementation of Albanian National Strategy for Combating Trafficking in Human Beings, January – June 2006, Tirana, June 2006, HDIM.DEL/57/06, 3 October 2006.

5.7 Return and readmission policies

Return and readmission policies, the latter closely related to the issues of transit irregular migration, are integral parts of the fight against irregular/illegal immigration. In order to more effectively manage and decrease irregular transit flows in the MARRI region, the participants of the Workshop on Management of Irregular Transit Migration held in Sarajevo on 29-30 June 2006 emphasised highlighted the need to further development of effective readmission and return policy as a cornerstone of combating irregular migration.³²²

Effective return and readmission policies are necessary components of a well managed and credible migration and asylum policy. As recognised at the abovementioned workshop, refugee protection and migration management are distinct but complementary. Refugees and asylum seekers who are unable to find protection where and when they need it may feel obliged to move on in an irregular manner. The fundamental obligation of states is to refrain from returning refugees and asylum seekers to countries where their life or liberty would be at risk and measures taken to curb irregular transit migration must not prevent persons in need of international protection from gaining access to the territory and asylum procedure of another state.³²³ Return and readmission are essential to ensure that admission policy is not undermined and to enforce the rule of law as well as vital in ensuring public acceptance and support for other elements of migration policy, such as legal migration and asylum. Equally, a credible threat of forced return and its subsequent enforcement send a clear message to those persons who entered illegally or subsequently became illegal as well as to potential irregular migrants that illegal entrance and staying do not lead to the stable form of residence. It must be made clear that, in principle, foreign (or third-country) nationals, without a legal status enabling them to stay, either on a permanent or a temporary basis, and for whom a state has no legal obligation to tolerate the residence, have to leave the country. This also relates to the finally rejected asylum applicants as recommended by the Committee of Ministers of the Council of Europe in 1999. However, any return policy, specifically forced return has to respect human rights of the persons concerned as stipulated in the international human rights instruments, such as: the 1951 Geneva Refugee Convention and the 1967 Protocol, in particular Articles 32 and 33 thereof and the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), in particular Articles 3, 5, 6, 8, 13 and 14. Also Articles 3, 4, 7, 18, 19, 21, 24 and 47 of the Charter of Fundamental Rights of the European Union proclaimed in 2000 are relevant in return policy. Furthermore, Finally the Charter of Fundamental Rights of the European Union proclaimed also contains several provisions applicable to return. According to the United Nations Convention on the Rights of the Child of 1989 in all actions related to children, the child's best interest must be a primary consideration.

Co-operation between countries of origin, transit and destination is important in all fields of management of migration and specifically in combating irregular migration, but it is of extreme importance for the success of the return and readmission policies. Countries are obliged to readmit their own nationals unlawfully present in another state and, as more recently developed particularly by the EU readmission policy, also nationals of other countries and stateless persons who can be shown to have passed through their territories before arriving in the European Union.³²⁴ Nevertheless, the problem of co-operation sometimes does not lie in strengthening the co-operation, but can be attributed to unwillingness of countries to take back their own or foreign nationals or stateless persons and to ensure sustainable return. The EU and Member States have the clear expectation that the third countries concerned should be put under pressure to be more co-operative. This does not only concern political and formal agreements, but concerns other levels such as administrative and operational level to obtain

³²² Recommendations, Workshop on Management of Irregular Transit Migration in the MARRI Region, Sarajevo, 29-30 June 2006, Point 7.

³²³ Ibid., Point 10.

³²⁴ Cf. Seville European Council 21 and 22 June 2002 Presidency Conclusions, Brussels, 24 October 2002, Conclusions No. 33-36.

return travel documents for illegal residents who are not in possession of valid travel documents, the practical procedures and modes of transportation for return and readmission as well as transit and the process at the points of entry and reintegration. Co-operation with countries of origin and transit on return and readmission might be backed up with technical or financial assistance from the EU side. Moreover, the refusal of constructive co-operation should trigger the phased mechanism as defined in the Seville Conclusion No. 36, which could, in case of persistent and unjustified denial of such a co-operation, include the unanimous adoption of measures or positions under the Common Foreign and Security Policy and other European Union policies after full use has been made of existing Community mechanisms without success.

5.7.1 Concepts and definitions

Due to different concepts and legal systems, the terminology in the field of return often causes confusion. This is partly due to different concepts and legal systems. In this sense already proposed EU definitions in this field, as presented by the Commission,³²⁵ can improve understanding of return and facilitate the practical cooperation between institutions within the MARRI Member States as well as internationally. They are also important for information exchange and statistics.

Return comprises the process of going back to one's country of origin, transit or another third country, including preparation and implementation of return. *Return policy* mainly concerns the return of 'illegal migrants' i.e. 'illegal residents' and 'illegal entrants'. In this context, *rejection* means refusal of entry to a state.

The return is *voluntary* when the independent or assisted departure to the country of origin, transit or another third country is based on the will of the returnee. The return policy should priorities voluntary return first because of humane reasons, but secondly also due to costs, efficiency and sustainability. Following this priority the ways to promote voluntary returns should therefore be developed and implemented. Return policy may also concern voluntary return of certain groups of legal residents, who have a temporary status or whose removal has been temporarily suspended. This relates in particular to persons under any form of international protection, which is principally of a temporary nature. In a wider sense return policy also relates to the promotion of return of legal residents to their country of origin.

Where voluntary return fails, the forced return of illegal residents becomes a necessity. *Forced* return is compulsory return to the country of origin, transit or another third country, on the basis of an administrative or judicial act. In this connection *expulsion* means 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. The *expulsion order* is administrative or judicial decision to lay legal basis for the expulsion. *Removal (or deportation)* is act of enforcement, which means the physical transportation out of the country. *Removal order*, which is in some legal systems synonymous with expulsion order, is administrative or judicial decision to lay the legal basis for the removal. Pending removal *detention* is an act of enforcement and deprivation of personal liberty for return enforcement purposes within a closed facility based on the detention order as administrative or judicial decision which forms the legal basis for the detention pending removal.

Readmission agreement is an 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. *Readmission* is an act by a state accepting the re-entry of an individual (own nationals, foreign or third country nationals or stateless persons), who has been found illegally entering to, being present in or residing in another state.

³²⁵ European Commission, Communication on a Community Return Policy on Illegal Residents, COM(2002) 564 final, Brussels, 14.10.2002, See Annex- Definitions.

5.7.2 Return and Readmission Policy in the European Union

Basic elements of the European Union return policy were laid down in the Communication on a common policy on illegal immigration of 15 November 2001,³²⁶ comprising:

- **common principles** such as the priority of voluntary return and the strengthening of the obligation under international law to readmit own nationals;
- **development of common standards** on expulsion, detention and deportation with a further consideration given to the consequences of illegal entry and residence regarding each individual illegal resident, including the feasibility of exit controls;
- **development of common measures and regulations** to tackle administrative co-operation of Member States. For instance, it should be noted that a European Visa Identification System (VIS), as described above, can significantly facilitate the process of identification of illegal residents and the provision of travel documents for return purposes;
- **visibility of a specific financial instrument** for return purposes in order to create an incentive for Member States to strengthen their efforts.

Against this background, the Council adopted a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union on 28 February 2002.³²⁷ The Plan, as already listed above, aimed to define a common and integrated approach, providing for measures and actions to be adopted and implemented in seven areas, with return and readmission policies being identified as integral and vital components of that plan.

In 2002, the *Green Paper*³²⁸ analysed possible measures and courses of action and highlighted the need for approximation and improved co-operation among Member States on return of illegal residents and the development of the readmission policy together with third countries. In the same year four basic elements of this policy were outlined in the *Communication on a Community Return Policy on Illegal Residents*:

- **The return of illegal residents**, voluntary or forced, and in the context of voluntary return also return of certain groups of legal residents, who have a temporary status or whose removal has been temporarily suspended, particularly of persons under any form of international protection, which is principally of a temporary nature;
- **Safeguarding the integrity of immigration and asylum systems** by the return of illegal residents;
- **Respecting international obligations and human rights**;
- **Co-operating with countries of origin and transit on return and readmission.**³²⁹

In relation to concrete programme of further measures valid for all regions or countries of origin or transit, the Commission highlighted four items in particular:

- **a need to step up operational cooperation** in order to make return policies more efficient in practice: essential for this is that contacts and the exchange of information be made easier on the basis of common terms of reference, practices and training in areas such as the identification and documentation of the persons concerned, co-ordination of return operations and mobilisation of the necessary resources;

³²⁶ Refer to European Commission, Communication on a common policy on illegal immigration, COM(2001) 672 final, Brussels, 15.11.2001

³²⁷ Council Doc. 6621/1/02 rev.1, JAI 30; Proposal for a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union, Official Journal C 142, 14.6.2002.

³²⁸ Refer to European Commission, Green Paper on a Community Return Policy on Illegal Residents, COM(2002) 175 final, Brussels, 10.04.2002.

³²⁹ Refer to European Commission, Communication on a Community Return Policy on Illegal Residents, COM(2002) 564 final, Brussels, 14.10.2002.

- **a suitable legal framework:** the adoption of common standards to facilitate the work of the national authorities handling return operations and in particular to ensure full mutual recognition of removal decisions;
- **a common sustainable framework** done jointly with international organisations in such a way that it could be adjusted to the specific needs of the populations and countries concerned covering return proper, preparation and follow-up;
- **a closer co-operation with third countries** first at administrative and operational level, concerning the documentation and reception of the persons concerned as well as transit in some cases and in formal terms conclusion of readmission agreements and measures to ensure profitable reintegration both for the returnee and for the place of origin. This requires both a firm commitment on the part of the third country and the readiness of the European Union and its Member States to provide the necessary assistance where required.

These two documents were followed by the Council November 2002 *Action Plan on Return*, which called for improved operational co-operation among Member States, intensified co-operation with third countries and the establishment of common standards with the aim of facilitating operational return. Concrete set of measures relate to:

- **mutual recognition of decisions on the expulsion:**
 - Council Directive on mutual recognition of decisions on the expulsion of third-country nationals,³³⁰ in combination with
 - Council Decision setting out the criteria and practical arrangements for the compensation of the financial imbalances.³³¹
- **the context of mutual cooperation:**
 - Council Directive on assistance in cases of transit for the purposes of removal by air- Council Directive.³³² In addition, the Commission will consider further proposals encouraging Member States to facilitate short-term transit by land or sea;
 - Council Directive on organisation of joint return flights³³³
- **the financial dimension of return:** the establishment of a European Return Fund for the period 2008-2013 as an instrument to support and encourage the efforts made by Member States to improve the management of return in all its dimensions, including enhanced cooperation, which will further increase solidarity between them.³³⁴ The future fund would be part of the general programme on solidarity and management of migration flows,³³⁵ which concerns financial solidarity mechanisms also for controls and

³³⁰ Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals, *Official Journal of the European Communities* L 149/34, 2.6.2001.

³³¹ Council Decision 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals, *Official Journal of the European Union* L 60/55, 27.2.2004.

³³² Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air, *Official Journal* L 321, 6.12.2003.

³³³ Council Directive 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders *Official Journal of the European Union* L 261/35, 6.8.2004.

³³⁴ European Commission, Communication on Policy priorities in the fight against illegal immigration of third-country nationals, COM(2006) 402 final, Brussels, 19.7.2006, para 45.

³³⁵ Communication from the Commission to the Council and the European Parliament establishing a framework programme on solidarity and management of migration flows for the period 2007-2013 COM (2005) 123 final, Brussels, 6.4.2005.

surveillance of external borders (External Frontiers Fund); integration of legally resident third-country nationals (European Integration Fund) and asylum (European Refugee Fund). The main objectives of the European Return Fund are the following:

- implementation of integrated return management by Member States;
- enhancement of cooperation between Member States;
- promotion of uniform application of common standards on return.

Preparatory actions for 2005-2007 will help phase in this planned financial instrument.³³⁶

● **the support provided by**

- the Information and Co-ordination Network (ICONet) web-based network for information exchange between Member States,³³⁷ and,
- FRONTEX providing assistance for organising and coordinating the joint return operations of Member States.

Next, the Hague Programme expressly asked for the establishment of effective removal and repatriation policy based on common standards for persons to be returned in a humane manner and with full respect for their human rights and dignity. In September 2005, the Commission submitted Proposal for a *Directive on common standards and procedures in Member States for returning illegally staying third-country nationals*,³³⁸ providing for common rules concerning return, removal, use of coercive measures, temporary custody and re-entry. Directive should establish a horizontal set of rules, applicable to all third-country nationals who do not or who no longer fulfil the conditions for stay in a Member State. The proposed provisions aim at:

- Establishing a rule that illegal stay should be ended through a fair and transparent procedure.
- Promoting the principle of voluntary return by establishing a general rule that a "period for departure" should normally be granted.
- Establishing – as a general principle – a harmonised two-step procedure: involving a return decision as a first step and – if necessary – the issuing of a removal order as a second step, thus aligning to a certain extent the currently divergent Member States systems.
- Addressing the situation of persons who are staying illegally but who cannot (as yet) be removed. Minimum standards for the conditions of stay of these persons should be established, with reference to the provisions of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.
- Providing for a minimum set of procedural safeguards.
- Limiting the use of coercive measures, binding it to the principle of proportionality³³⁹
- Establishing minimum safeguards for the conduct of forced return, taking into account Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint return flights.

³³⁶ For an exhaustive list of measures refer to European Commission, Staff Working Paper: Annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders, and the return of illegal residents, SEC(2004) 1349, 25.10.2004.

³³⁷ Council Decision 2005/267/EC of 16 March 2005 establishing a secure web-based Information and Coordination network for Member States' Migration Management Services, *Official Journal L 083, 1.4.2005*.

³³⁸ Refer to European Commission, Proposal for a Directive of the European Parliament and of Council on common standards and procedures in Member States for returning illegally staying third-country nationals, COM(2005) 391 final, Brussels, 1.9.2005

³³⁹ Proportionality meaning that the proposal does not fall under the exclusive competence of the Community.

- Giving a European dimension to the effects of national return measures by establishing a re-entry ban valid throughout the EU.
- Rewarding good compliance (including an option to withdraw any re-entry ban) and penalising non-compliance (including an option to extend any re-entry ban).
- Protecting the interests of the state in cases of serious threat to national and public security (including an option to extend any re-entry ban).³⁴⁰
- Addressing situations where a third-country national who is the subject of a removal order or return decision issued by a Member State is apprehended in the territory of another Member State.
- Rapid information sharing should take place within the Second Generation Schengen Information System (SIS II).

To the extent that it applies to third-country nationals who do not fulfil or who no longer fulfil the conditions of entry in accordance with the Convention Implementing the Schengen Agreement, the proposed Directive constitutes a development of the Schengen *acquis* which must be proposed and adopted in compliance with the Protocols annexed to the Amsterdam Treaty.

To sum up, the proposal provides for a two-step procedure. A return decision must be issued to any third-country national staying illegally. Priority must be given to voluntary return. If the third-country national concerned does not return voluntarily, Member States shall execute the obligation to return by means of a removal order. However, in order to avoid possible procedural delays, Member States should be allowed to issue both a return decision and a removal order within a single joint act or decision. The proposal provides for the introduction of a 're-entry ban', preventing re-entry into the territory of all the Member States, to accompany removal orders. This 'Europeanisation' of the effects of national return measures is intended to have preventative effects and to foster the credibility of return policy. The length of the re-entry ban will be determined with due consideration of all relevant circumstances of the individual case. Normally, the ban should not exceed 5 years. Only in cases of serious threat to public policy or public security, may the re-entry ban be issued for a longer period. The proposal provides for a right to an effective judicial remedy against return decisions and removal orders. The judicial remedy shall either have suspensive effect or comprise the right of the third country national to apply for the suspension of the enforcement of the return decision or removal order in which case the return decision or removal order shall be postponed until it is confirmed or is no longer subject to a remedy which has suspensive effects. Temporary custody shall only be used if this is necessary to prevent the risk of absconding and if the application of less coercive measures is not sufficient. The reasons for maintaining a person in temporary custody must be regularly reviewed by a judicial authority. Maximum time limits shall ensure that temporary custody cannot be unduly extended. This harmonisation of national rules on temporary custody is also aimed at preventing secondary movements between Member States: the proposal provides for a flexible set of rules, applicable if a third-country national who is the subject of a removal order or return decision issued in a Member State ("the first Member State") is apprehended in the territory of another Member State ("the second Member State"). Member States may select different options, depending on the circumstances of the particular case. On the one hand, the second Member State may recognise the return decision or removal order issued by the first Member State. Alternatively, a second Member State may ask the first Member State to take back an illegally staying third-country national or decide to launch a new/autonomous return procedure under its national legislation.

³⁴⁰ The proposal does not contain an express provision on the issue of *expulsion/removal for reasons of national and public security*, in particular with respect to the expulsion of presumed terrorists. See pp. 4-5.

5.7.3 Readmission agreements

Readmission agreements are part of return policy in order to implement return to countries of origin or transit. They form a part of the complex issue of return of nationals, foreign (or third-country) nationals and stateless persons who entered illegally or subsequently became illegal and who should be returned to the country of origin or the third country. Other aspects, as identified by the *IGC Report on Readmission Agreements*, a recommended text for policy-makers in this field, include:

- incentives and sanctions on countries of origin
- use of one way travel documents
- joint return operations

Agreements may be problematic primarily due to:

- Country of origin's refusal to readmit their own nationals and lack of co-operation in identifying nationals or issuing identity r travel documents
- Third country refusal to accept return of third country nationals and disputes whether there is documentary proof that person passed through its territory.³⁴¹

There exist different types of agreements, formal, informal, bilateral and multilateral agreements and those that include readmission clauses. The latter as well as categories of persons to be readmitted and other formal requirements of readmission agreements such as international obligations, channels of readmission, evidence on nationality, travel and length of stay, time limits on request and readmission as well as exceptions to the obligation to readmit are thoroughly examined in the IGC Report. Here we briefly describe developing readmission agreements and recommendations that are of particular importance for the MARRI Member States, particularly in the frameworks of the external EU migration policy and the Budapest process.

EC readmission agreements

Readmission agreements are a part of the external EU's migration strategy and law for combating illegal immigration. Such agreements involve reciprocal undertakings by the European Union and third country to co-operate over the return of illegal residents and entrants to their country of origin or transit. The Commission is seeking to integrate migration issues into the Union's overall relations with third countries. This policy involves insisting that more and more non-EU countries sign up to broad readmission obligations to the EU and has been frequently criticised as unbalanced, inhumane, and internally contradictory standard method of ensuring that persons are expelled from Member States individually, or from the EU as a whole.³⁴²

The **conclusion of readmission agreements** remain a priority of the EU's fight against illegal immigration and ongoing negotiations should be completed and new negotiating mandates be adopted, starting with the Western Balkan countries and, as soon as possible, with selected Neighbourhood countries. The Commission emphasises, *inter alia*, that lack of documentation remains an obstacle to the effective return of illegal migrants, in particular as the EU travel document is still not accepted by a large number of third countries. The current EU travel document is based on a 1994 Council recommendation, and the Council adopted conclusions

³⁴¹ Inter-Governmental Consultations for Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC), *Report on Readmission Agreements*, January 2002, p.8.

³⁴² See e.g. M. Schieffer, M., (2003) Community readmission agreements with third countries – objectives, substance and current state of negotiations, *European Journal of Migration and Law* 3, pp. 343-357; D. Bouteillet-Paquet, D. (2003), Passing the Buck: a critical analysis of the readmission policy implemented by the European Union and its Member States, *European Journal of Migration and Law* 3, pp. 359-377; Peers, S., (2003), *Readmission agreements and EC external migration law*, Statewatch analysis no 17.

in June 2004 on its re-examination. FRONTEX is to undertake work on the identification of **best practice on the acquisition of travel documents** and the return of third country nationals. It also calls for the establishment of **common standards for the training** of officers responsible for return, for instance through the elaboration of a common training manual and EU-wide standardised and specialised seminars.³⁴³

Still, readmission agreements are a relatively new phenomenon. The first major development in this area was the creation in 1998 of the Asylum and Migration Task Force (High-Level Working Group of civil servants from interior, development, trade and foreign ministries) which identified a list of countries of origin and transit of asylum seekers and migrants for which action plans for the implementation of an integrated cross-pillar approach will be prepared.³⁴⁴ Since the entry into force of the Treaty of Amsterdam in 1999, the field of 'repatriation' has been communalised and this also includes the conclusion of readmission agreements with third countries. Individual Member States are only allowed to negotiate and conclude bilateral readmission agreements if and when the Community has not entered into such agreement with the third state concerned and if the Council has not mandated the Community to take up negotiations. However, even before the Treaty of Amsterdam, since 1995, the European Community inserted **standard readmission clauses**³⁴⁵ into a number of its Association and Co-operation Agreements insisting that the other country readmit its own nationals when any EU Member State asked, and also agree to negotiate a further readmission treaty with any Member State that wishes dealing with two further issues. These issues were the details of the obligation to readmit nationals (for example, because readmission is often delayed because of disputes as to whether a person is a national of the State asked to readmit them) and a further obligation to readmit persons who are not nationals of the requested State but who have merely passed through that State on their way to the EU. Thus, these clauses do not constitute readmission agreements in themselves, but could establish a framework for negotiating such agreements in the future.

The policy was updated after 1999. In the Action Plan on illegal migration of February 2002, the Council agreed criteria for negotiation of readmission agreements and criteria for the identification of third countries with which new readmission agreements need to be negotiated were agreed in April 2002.³⁴⁶ In connection with this, the mandate of the High-Level Working Group was expanded beyond the development and implementation of Action Plans, to cover among other things broader issues of migration control.³⁴⁷ The Seville summit of June 2002 adopted conclusions on a number of immigration and asylum issues, including particularly the external relations aspects of migration law. The final conclusions provided that:

- each future EU association or cooperation agreement should include a clause on 'joint management of migration flows and compulsory readmission in the event of illegal immigration';
- the EU declared its willingness to offer financial assistance to third States to assist with readmission of their own and other countries' nationals and with broader joint migration management;
- inadequate cooperation by a third State could hamper further development of relations with the EU, following a systematic assessment of relations with that country;
- if a non-EU State has demonstrated "an unjustified lack of cooperation in joint management of migration flows", according to the Council, following a unanimous vote, then the Council, after "full use of existing Community mechanisms", could take measures or positions as part of the EU's foreign policy or other

³⁴³ European Commission, Communication on Policy priorities in the fight against illegal immigration of third-country nationals, COM(2006) 402 final, Brussels, 19.7.2006, paragraphs 42-48.

³⁴⁴ See General Affairs Council 5-6 December 1998, Press Release, 6/12/1998, Press:431 No. 13677/98.

³⁴⁵ See 1995 EU Council Conclusions on readmission clauses at <http://www.statewatch.org/news/2003/may/12a1995ccs.html>

³⁴⁶ Criteria for the identification of third countries with which new readmission agreements need to be negotiated, Council doc. 7990/02 COR 1, 16.4.02 approved by JHA Council 25/26 April 2002.

³⁴⁷ Modification of the terms of reference of the High Level Working Group on Asylum and Migration (HLWG), Council doc. 9433/02, 30.5.02.

policies, “while honouring the Union's contractual commitments and not jeopardising development cooperation objectives.”

The Seville summit did not spell out what measures might be taken or the grounds for concluding that there has been a failure to cooperate from the side of a third State. It fell to the General Affairs Council to implement these conclusions in more detail in November 2002. It agreed that criteria for deciding which States to target were the extent of migration flows towards the EU - geography, the need to build capacity, the framework for cooperation and the attitude of that State regarding cooperation on migration issues. Applying these criteria, the Council decided that the EU should intensify relations on migration issues among others with Albania and Yugoslavia (FRY) as regards cooperation on migration issues. The precise nature of this cooperation was not specified in detail. Nonetheless, the Council agreed on the future **migration cooperation clause** which will have to be included in all cooperation and association agreements with the Community.³⁴⁸ In December 2002 the Commission released the paper on two issues: the link between migration and development and the EC financial resources available for implementing internal and external migration policies.³⁴⁹ Council conclusions on migration and development in 2003 urged that any future cooperation, association or equivalent agreement which the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration.³⁵⁰ This means first, that there is now an obligation to negotiate a supplementary treaty with the entire Community, not just individual Member States, although there is still an obligation to negotiate with individual Member States in the meantime pending an agreement with the EC as a whole. Secondly, the EU policy is now that such clauses are mandatory.³⁵¹ The EC will no longer sign any association or cooperation agreement unless the other side agrees to the standard obligations.

The core part of the EC Readmission Agreement provides that:

- the contracting parties have to take back their own nationals (or permanent residents) who have entered or stayed illegally in the other party;
- the parties must also readmit nationals of non-contracting parties or stateless persons who have illegally entered or stayed on their territory, subject to certain conditions;
- the parties must permit transit of persons back to a non-contracting party if necessary;

In the EC/Albania readmission agreement - Albania being the sole among the MARRI Member States to sign EC readmission agreement on 14 April 14, 2005, which entered into force on 1 May 2006 - the obligation to readmit third country nationals and stateless persons is linked to the following prerequisites: (a) the person to be readmitted holds or at the time of entry held a valid residence authorisation or a valid visa of the requested Party, or (b) the person to be readmitted entered the territory of the requesting Party after having stayed on, or transited through (lawfully or unlawfully) the territory of the requested Party. Exempted from these obligations are persons in airside transit and all persons to whom the requesting Party has either issued a visa or residence

³⁴⁸ Draft Council conclusions on intensified cooperation on the management of migration flows with third countries, Council doc. 13894/02, 14.11.02.

³⁴⁹ European Commission, Communication: Integration migration issues in the European Union's relations with third countries, COM (2002) 703, Brussels, 3.12.02.

³⁵⁰ Draft Council conclusions on migration and development, Council doc. 8472/03, 15.4.03.

³⁵¹ See 1999 EU Council Conclusions on readmission clauses at <http://www.statewatch.org/news/2003/may/12b1999dec.html>

authorisation with a longer period of validity or where the visa or residence authorisation was obtained by using forged or falsified documents.³⁵²

- there are detailed rules on the procedure for handing back persons, including the types of documents which constitute proof or evidence that a person is a national or was on the territory;
- the parties must either issue their own travel documents or use of the EC's standard travel document;
- there are detailed provisions on data protection, the most advanced in this respect is the EC/Albania Agreement;
- each agreement provides that the agreement is "without prejudice to the rights, obligations and responsibilities" of the parties arising from "International Law," in the EC/Albania Agreement there is also a reference to human rights and refugee law and international instruments on extradition;³⁵³
- Member States can draw up special implementing protocols with the non-EC party, but each agreement takes precedence over any incompatible bilateral agreement between a Member State and the non-EC party;
- each party can denounce the agreement, but there is no procedure for settling disputes that might arise.

As these readmission agreements work mainly in the interest of the EU, third countries are reluctant to accept them. Their successful conclusion, therefore, depends very much on the positive incentives - "leverage" - at the Commission's disposal. It should be kept in mind however, that there is a second part of the EU readmission policy, as described above. By now a large number of EU association, cooperation or equivalent agreements contain clauses on joint management of migration flows and on compulsory readmission in the event of illegal immigration. These are usually similar or identical to the standard clauses described above, although in a few cases the EC has had to settle for a mere declaration instead of a binding obligation.

In general, readmission agreements have substantially grown in number in recent years as well as informal co-operation in these matters. For example, Germany has concluded agreements with a number of states (holding the second place among western European countries in this respect, following France)³⁵⁴ In separate cases, procedural agreements below the level of formal readmission agreements have been concluded with the countries of origin. The differing contents of these agreements take into account the particularities of the foreign nationals who are living in Germany and have to leave the country, and of the geographical and specific national features of the states concerned. The agreements with Croatia (1994) and Bosnia and Herzegovina (1996), for instance, reflect the conditions governing the return of the more than 400,000 refugees from the former Yugoslavia. Germany has also entered into transit agreements with Austria, Switzerland, Slovenia and Croatia to facilitate voluntary returns to Bosnia and Herzegovina, allowing visa-free transit. Along the same lines an agreement has been concluded between nine European states to promote the voluntary return by air and by land of Yugoslav nationals, especially ethnic Albanians. In a "Memorandum of Understanding" of 17 November 1999 the Federal Minister of the Interior and the Head of the United Nations Interim Administration in Kosovo agreed on the return modalities for Kosovars who have to leave Germany, regulating

³⁵² Refer to European Commission, Proposal for a Council Decision concerning the signing of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation, Proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation, COM(2004) 92 final, Brussels, 12.2.2004, Articles 3 and 5.

³⁵³ Ibid., Article 17.

³⁵⁴ Inter-Governmental Consultations for Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC), *Report on Readmission Agreements*, January 2002, p. 5.

aspects both of voluntary and forcible returns. Some 80,000 Croatian and 345,000 Bosnian refugees have meanwhile returned.³⁵⁵

5.7.4 Return and readmission policy in the MARRI Region

In **Croatia**, the legal framework for dealing with both legal and illegal migration is in place. Twenty-four readmission agreements are in force and further readmission agreements are under preparation with Moldova and Ukraine, as well as harmonisation of the agreements with Bosnia and Herzegovina, Serbia and Montenegro with the EU readmission agreement form.³⁵⁶ In 2005, 5,406 illegal border crossings were registered, although there are signs that only a fraction of actual cases are detected. The illegal migration deportation centre at Jezevo has a capacity of 116 beds, and overcrowding remains an issue. Forced expulsions from Croatia in 2005 were 1,760 and about 750 expulsions took place in the first half of 2006.³⁵⁷

Macedonia made significant progress in the area of migration. A new Law on Aliens was adopted and will enter into force in March 2007. It regulates entry and admission, stay and residence, expulsion and voluntary return, irregular migration, trafficking in human beings, migration statistics and data protection. The new legislation is largely in line with the *acquis*, but enforcement capacity needs to be strengthened. The Government adopted a strategy in March, together with a national action plan, for combating illegal immigration and trafficking in human beings. The border police has detected 1303 illegal migrants at border crossings and prevented 749 illegal attempts to cross the green border.³⁵⁸ The agreement on the status and activities of the Migration, Asylum and Refugees Regional Initiative was ratified. 12 readmission agreements are ratified. The country has expressed its readiness to conclude a readmission agreement with the European Community. Agreements with Sweden, the Czech Republic, Finland and Latvia are under negotiation and Macedonia is planning to intensify finalisation of current procedures and start negotiations with other EU countries that have a practice of concluding such agreements as well as with non – EU countries, Bosnia and Herzegovina, Turkey and other. For that purpose the Macedonian Ministry of the Interior created a draft text - bilateral Readmission Agreement and Protocol for its implementation and made a proposal for its delivering to the EU Member and Candidate states. The draft is in line with the EU recommendations such as the European Council recommendation No.311996 S 0919 (08) from July 24, 1995 for leading principles in creating readmission agreements and their implementation protocols. On April 09, 2004 the Macedonian draft – text was deliver to all EU Member States with which readmission agreements were not concluded, with exception of Cyprus and Malta with which the Republic of Macedonia does not have diplomatic relations, and to Turkey, Moldova and Norway. As a result of the implementation decision of the Macedonian Government for intensifying activities in this area, inter-ministerial working group was formed with a task to work on concluding readmission agreement procedures.³⁵⁹

According to data provided by the authorities of **Bosnia and Herzegovina**, in 2005 the number of persons attempting an illegal crossing of the state border, or discovered in the border strip after illegal entry, went down by 25 per cent compared with the same period of the previous year. The readmission rate has decreased

³⁵⁵ See Feredal Ministry of the Interior at http://www.bmi.bund.de/nn_148248/Internet/Content/Themen/Auslaender__Fluechtlinge__Asyl__Zuwanderung/Einzelseiten/Readmission_agreements_Id_57694_en.html

³⁵⁶ See MARRI Questionnaire, May 2006.

³⁵⁷ Commission Staff Working Document Croatia 2006 Progress Report ,COM (2006) 649 final, SEC (2006) 1385, Brussels, 08.11.2006, Chapter 24: Justice, Freedom and Security, p. 53-54.

³⁵⁸ Commission Staff Working Document The former Yugoslav Republic of Macedonia 2006 Progress Report, COM (2006) 649 final, SEC (2006) 1387, Brussels, 08.11.2006, Chapter 24: Justice, Freedom and Security, p. 48.

³⁵⁹ See MARRI Questionnaire, May 2006.

very significantly over recent years. The number of persons sent back to Bosnia and Herzegovina during 2005 was reduced by a further 28 % in relation to 2004. The country has negotiated readmission agreements on with a number of EU Member States - Austria, Belgium, Denmark, Greece, Hungary, Italy, Luxembourg, the Netherlands, Slovakia, Slovenia, Spain, Sweden, Bulgaria, Romania - and MARRI countries - Croatia, Montenegro, Serbia as well as with Norway and Switzerland. Negotiations with Macedonia and the Czech Republic are expected in the short term while draft agreements have been presented to the Governments of Poland, Turkey, France, Finland, Moldova and Albania. The country has also confirmed its readiness to conclude an EC readmission agreement.³⁶⁰ In **Serbia**, irregular migration continues to be a source of concern although some operational results are being achieved. The total number of illegal entries of 1,076 foreigners in 2005 represents only a 3 percent increase on the previous year. However, there has been a significant increase in the number of minors and women illegally entering the country. The possible connection with trafficking in human beings is a matter for concern. Following tighter controls at the borders, 24,535 foreign nationals were denied entry and 1,727 falsified documents were discovered. UNHCR provided assistance in identifying cases of potential asylum seekers. At present 15 readmission agreements in force with 17 countries. A number of other agreements that have been negotiated but not yet signed. Readmission agreements have been negotiated or signed so far with 20 EU Member states. Serbia has expressed its readiness to conclude a readmission agreement with the European Community. In 2005, out of 6,178 requests for readmission of the citizens of Serbia and Montenegro, 4,350 have been positively resolved. In cases of third country nationals, Croatia forwarded 584 requests in 2005 concerning mostly citizens of Albania, Moldova and Romania, 187 of them was positively resolved. In the case of Hungary, 11 requests out of 31 submitted in 2005 have been accepted. In December 2005, the Ministry for Human and Minority Rights opened a reception office for returnees at Belgrade airport, offering initial legal assistance and counselling. At present there is no normative framework for integration and basic social and financial preconditions are lacking. The national strategy for the reintegration of returnees which has been prepared with the significant involvement of the NGO sector has not yet been adopted.³⁶¹ The **Montenegrin** border authorities prevented 327 illegal border crossings in the period October 2005 to August 2006. Fifteen Readmission agreements have been signed, while negotiations on the conclusion of such agreements are ongoing with four further countries. Montenegro has expressed its readiness to conclude a readmission agreement with the European Community.³⁶² In Albania the legislative framework for migration is in compliance with international standards. The country has improved its internal coordination and cooperation with neighbouring countries to combat illegal migration. A Memorandum of Understanding between the Ministry of Interior and UNHCR, IOM and OSCE has been signed. The Council of Ministers has endorsed a decision on migration policy, as well as the Additional Protocol to ILO's Convention on migrant workers. Emigration remains a problem and the national strategy on migration approved by the Government in November 2004 has not provided tangible results. The EC/Albania readmission agreement came into force 1 May 2006 and initial steps have been taken towards a readmission agreement with Turkey. Lack of staff in the Border and Migration Directorate of Albanian State Police puts at risk Albania's ability to fulfil its obligations under readmission agreements and to implement the action plan for migration. An Agency for Migration has yet to be established. Illegal migration to Greece still remains a concern (although a cooperation protocol with Greek

³⁶⁰ Commission Staff Working Document Bosnia and Herzegovina 2006 Progress Report, COM (2006) 649 final, SEC (2006) 1384, Brussels, 08.11.2006, pp.45-46.

³⁶¹ Commission Staff working document Serbia 2006 Progress Report COM (2006) 649 final, SEC (2006)1389, Brussels, 8.11.2006, p. 36.

³⁶² Commission Staff working document Montenegro 2006 Progress Report, COM (2006) 649 final, SEC (2006)1388, Brussels, 8.11.2006, p. 38

border police and coast guard might help) and Albania continues to be a transit country for economic migrants, asylum seekers and trafficked persons.³⁶³

5.7.5 Recommendations

To be effective, return and readmission must fit smoothly into a management of migration issues, requiring clear consolidation of legal immigration channels, an effective asylum system based on rapid procedures offering access to true protection for those needing it and enhanced dialogue with third countries. Return and readmission policies are more likely to be successful if based on a common understanding and principles of key issues concerning readmission and return process. Consequently common standards should be set in order to facilitate further development of measures and regulations which can enhance the work, co-operation and co-ordination of the authorities involved and to allow enhanced regional co-operation of MARRI participating States as well as co-operation with other countries, the EU and international and non-governmental organisations. Moreover, the MARRI Member States should develop integrated return programmes at the national level, or make use of existing international programmes. The MARRI Member States should thus focus on:

Intensification of efforts at the national level in order to improve:

- **legal framework** in line with the *acquis*
- **the strategy and national action plan** to combat illegal migration and trafficking in human beings
- **national operational cooperation and coordination by:**
 - *establishment of a sub-working group* (within inter-ministerial and interagency working group for migration) mandated for specific tasks related to irregular migration to: coordinate operative actions of the implementing bodies, compare and analyse data for short and long term development strategies, to harmonise procedures and regulations to avoid overlapping, coordinate training, awareness raising/media strategy and similar.³⁶⁴
 - *development of systems for permanent training* of migration officials in all relevant areas such as identification and documentation of the persons, consular departments, asylum units, police officers, border officials and border guards.
 - *Reliable and comparable statistics gathered by regionally harmonised* and coherent data collection methods (e.g. figures may be collected on types of categories returned, according to the type of return - voluntary or forced).
 - *the IT Systems* should be developed; CIPS in Bosnia and Herzegovina may serve as model of good practice
 - *detention centres* for irregular migrants with minimum reception standards need to be established as soon as possible in all countries of the region.³⁶⁵
 - *Integrated return programmes*

The MARRI Member States should develop or make use of existing national and international return programmes that would cover all relevant phases of the return process, starting with the pre-departure

³⁶³ Commission Staff working document Alabani 2006 Progress Report, COM (2006) 649 final, SEC (2006)1383, Brussels, 8.11.2006, p. 38

³⁶⁴ See Recommendations, Workshop on Technical Aspects of Implementation of Readmission Agreements MARRI Regional Centre in Skopje, 15-16 June 2006.

³⁶⁵ Recommendations, Workshop on Management of Irregular Transit Migration in the MARRI Region Sarajevo, 29-30 June 2006, point 9.

measures and the return as such and particularly with the reception and reintegration in cases of re-admittance. These programmes should be tailored to specific situations of the countries as well as returnees. They should be also properly financed.

Models of return programmes that have been developed over the last decade in general fall into three groups. The first concerns voluntary return, where an individual decides to return on one's own decision and may be helped to do so; the second concerns forced return where the State authorities are obliged to return a person with due regard to international law and the human rights of the person concerned; the third model relates to a situation in which a person accepts the obligation to return but also accepts assistance from the authorities. It is important to note that return is a process and not just an act of return proper.

Return projects that have been developed over the last decade, with involvement of international organisations and managed both by EC and nationally-financed projects with varying degrees of success; have shown that successful return programmes require all or most of the following elements:

- pre-return advice and counselling;
- training/employment assistance;
- assistance for travelling to and/or re-establishment in the country of origin/housing;
- follow-up assistance and counselling post-return.

Moreover, the implementing agency must have sufficient links to the authorities and non-governmental sector in the country of origin as well as adequate facilities in the field such as locally-based staff and the skills necessary to select, where this is appropriate, returnees with the potential to succeed once returned.

Against these factors must be weighed the cost/benefit of return programmes. Some projects can be very costly. Furthermore, there are other factors at work. The likelihood of returnees once in the country of origin to remain there depends on a series of factors, such as economic and family circumstances as well as the legal status in the host country and the issuing of a travel document that permit re-immigration.

The general conclusion to be drawn from past experience in managing return programmes is that they must be flexible regarding their timing and administration in order to respond to circumstances on the ground. This requires that such programmes need to be backed by clear policy guidelines and financial assistance on the principle of solidarity and burden-sharing.³⁶⁶

Intensification of co-operation at regional and international level

The intensification of co-operation between the countries involved in return process should be enhanced. This concerns administrative and technical co-operation, the institution and capacity building for the reception and reintegration of returnees. The first element to further co-operation among States is **information exchange** i.e. the improvement of existing schemes to exchange know-how and best practices, including the exchange of statistics on regular and irregular migration and asylum seekers, the networking of authorities and the development of certain guidelines on best practices.

In order to more effectively manage and decrease irregular transit flows, the participants of the MARRI Region *Workshop on Management of Irregular Transit Migration* held in Sarajevo on 29-30 June 2006 agreed:

³⁶⁶ Refer to European Commission, Green Paper on a Community Return Policy on Illegal Residents, COM(2002) 175 final, Brussels, 10.04. 2002.

- To enhance **regional cooperation and information exchange mechanisms** on:
 - national legislation, policies and practices relating to prevention of irregular transit migration,
 - operational structures and methods of perpetrators,
 - consular information, false documents, fraudulent invitation letters, fake travel agencies,
 - to promote the approximation of common standards.³⁶⁷

A **special MARRI Working Group**, consisting of relevant experts from national institutions is to be established to deal with this issue

- To enhance **international cooperation and exchange of information** on
 - the trans-national character of irregular migration,
 - fight against organised crime

The **existing SECI and MARRI Regional centres** as regional bodies could be more extensively used in this regards.

- To intensify **cooperation among countries of origin, transit and destination** along the migration routes is essential in combating irregular migration:

The **South-East European Working Group of the Budapest Process** can be utilised as a forum for presenting the existing capacities in the region, with the objective of:

- improving the awareness of the present situation in the region among the participating states of Budapest Process
- identifying the priorities for inter-state cooperation

Joint activities between MARRI and the South-East European Working Group of the Budapest Process may address identified cooperation priorities.

- to continuous co-operation of MARRI with other international organisations and actors (IOM, ICMPD, UNHCR, UNMIK, SECI, RACVIAC and others)

The proposal that a joint meeting, organised by RACVIAC and MARRI for 2007, on the topic of border management and irregular migration has been endorsed by the participants.³⁶⁸

In the context of promoting **approximation of common standards**, the MARRI Member States are advised to consider minimum common standards to ensure efficient return and readmission policies for adequate and similar treatment of irregular/illegal migrants. These standards mainly concern – as briefly described above in terms of EU policy: mutual recognition of return decisions (measures terminating residence, expulsion decision, preconditions for expulsion decisions); removal should be subject to minimum standards, setting a final safeguard for *non-refoulement* requirements, safeguarding both the rights of the person concerned (physical state and mental capacity of the returnee as well as on the returnee's integrity during the removal operation) and the effectiveness of the removal; *detention* pending removal defining competencies of responsible authorities, the preconditions for detention, minimum rules on the conditions of detention, in particular on

³⁶⁷ Recommendations, Workshop on Management of Irregular Transit Migration in the MARRI Region Sarajevo, 29-30 June 2006, Recommendation 1.

³⁶⁸ See Recommendations, Workshop on Management of Irregular Transit Migration in the MARRI Region Sarajevo, 29-30 June 2006, Recommendations 2-5.

accommodation standards, especially with regard to vulnerable groups; *proof of exit and re-entry*. In addition, standards are also needed covering the intensity of *coercive measures* (the basis being the IATA/CAWG Guidelines on Deportation and Escort). There also have to be minimum standards and assessment mechanisms which would allow *assessment of the actual situation in certain countries* as to where removals are feasible or not. This could include consultation of organisations such as UNHCR or other relevant actors.

Minimum standards would facilitate operational co-operation between States in terms of assistance in individual cases in particular for cases of identification where the exchange of personal data is envisaged. They would also facilitate co-operation during transit, if not create the possibility of having joint operations e.g. in organising the transport of illegal migrants to be readmitted to their country of origin or last stay in particular into countries which are far away.

Difficulties to a successful return policy of illegal residents are often related to a lack of willingness to return voluntarily, unknown residence or identity of the person, missing travel documents or difficulties in co-operation with some states in issuing identity or travel documents; resistance to return of the returnee; absence of adequate means of transportation. Therefore, it is important to improve co-operation, taking into account a variety of already gained experiences that have been gained with different concepts or countries of return to solve practical problems. As shown in the EU policy, non-binding guidelines require to some extent mutual consent to the effect of a given best practice.³⁶⁹ Thus, when considering joint training of return practitioners, a basic common understanding or certain minimum rules on return enforcement appear indispensable.

Readmission agreements

MARRI Member States concluded a significant number of bilateral readmission agreements in recent years, mainly with the EU Member States (see ANNEX, Table 3). In June 2006, when holding a workshop in Skopje, it was agreed, that the MARRI Member States must successfully implement readmission agreements and develop reintegration policies in order to develop sustainable return policies. Furthermore, they should explore the possibilities on how to maximise effective return policy of third-country nationals in conjunction with sustainable visa policy.³⁷⁰

Concerning the implementation of readmission agreements, Macedonia has pointed out that other states, with exception of Germany and Switzerland, have not been honouring existing readmission agreements or have done so rarely: rather returning illegal migrants by direct request to Macedonian diplomatic and consular missions abroad with a demand for checking citizenship and issuing travel documents for returning in Macedonia than using procedural provisions from readmission agreements. Furthermore, the Macedonian authorities stressed the unusual provisions in the Readmission Agreement with Germany. Requests from all states except Germany have been submitted for Macedonian citizens and their underage children, while according to the agreement with Germany there has been bilateral obligation for admission of members of family of citizens of both parties to an agreement, i.e. marital partners with citizenship of third country or stateless persons, and unilateral obligation for the Macedonia for admission of persons who are not Macedonian citizens but were only born there. As a consequence of this, number of submitted requests for readmission from Germany is significantly higher in contrast to other states. In total, 2050 persons were readmitted to Macedonia during 2005.³⁷¹

³⁶⁹ Cf. the best practices found in the EU Schengen Catalogue, External borders control, Removal and readmission: Recommendations and best practices, Council of the European Union, 28 February 2002.

³⁷⁰ Recommendations, Workshop on Technical Aspects of Implementation of Readmission Agreements MARRI Regional Centre in Skopje, 15-16 June 2006, point 5.

³⁷¹ See the response of Macedonian authorities to the MARRI Questionnaire, May 2006.

Among the MARRI Member States only Albania concluded a readmission agreement with the European Community, while majority of others expressed their readiness to do so. The latter issue is closely connected, inter alia, with the abolishment of visa with regard to the MARRI Member States.

In the context of the above cited recommendation and in view of preventing and reducing irregular transit migration the MARRI Member States should make further efforts **to conclude readmission agreements especially with all appropriate countries of origin and transit which are primarily responsible to readmit illegal migrants:**

- Relations should be enhanced with these countries in order to begin dialogue and negotiations on return and readmission issues on bilateral or multilateral basis;
- Readmission agreements, preferably applying standard format for readmission agreements e.g. specimen bilateral readmission agreement of the EU, should contain clauses on nationals, third-country nationals, on transit for the sake of return and protection of personal data;
- Migration co-operation and readmission clauses could also be part of general economic and political co-operation agreements with countries from which irregular migrant flows originate;
- More flexible and rapid forms of readmission could also be used³⁷²

³⁷² Cf. Conference of Ministers of the Prevention of Irregular Migration in the Wider European Region, held in Rhodes on 25-26 June 2003 in the Framework of the Budapest Process, Recommendations, Recommendations 18-23 and 1997 Prague Recommendations 33-38 with regard to readmission.

6 INFORMATION MANAGEMENT AND INSTITUTIONAL FRAMEWORK

The MARRI Member States have agreed that there is a need to establish and develop comprehensive, integrated management systems tailored to their specific needs. In order to establish and develop well functioning systems there is, at minimum, a need for:

- an assessment of country specific conditions and needs;
- an assessment of the current legal framework;
- a survey of organisations and other players involved in migration management.

This suggests that both monitoring and evaluation are essential parts of a management system in respect to the phenomenon of migration and to the policy implementation. It has to take place both in national and regional context. Monitoring and evaluation should include an ongoing data and other information collection as well as recent national and European Union's legislation and recent and current publications in the field of migration.

Apart from the assessment that should review the nature and extent of migration in a given State, a systematic process that reviews circumstances and identify the existing institutions/agencies, their capacities and mechanisms involved in migration management, the degree of coordination between government institutions and challenges and recommendations for best practices in each of the MARRI Member States is also required. In order to assess properly the existing situation and to facilitate comparison, one assessment of the situation in each of the MARRI Member States was done by a standard questionnaire developed by the MARRI Regional Centre in May 2006.³⁷³ To get a better view into current circumstances, also other surveys could be designed, for example concerning the collection of data and statistics or for an assessment of training capacities, or to review services provided by non-governmental organisations, the extent to which their services are coordinated with government agencies, the challenges they encounter and their suggestions in terms of best practices. European Commission Progress Reports, which were referred to throughout this paper, and the participants of the October 2006 Ulcinj Workshop on migration management systems also pointed out the necessity of an evaluation and follow up of achieved objectives from the MARRI Member States' national reports, strategies and action plans that were the result of Regional CARDS Programme, especially its Regional Guideline on Integrated Asylum, Migration and Visa Management in the Western Balkans with particular emphasis on the progress made in the development/approximation of the national legislation.³⁷⁴

Recognising the relevance of the above mentioned basic preconditions, i.e. good understanding of migration phenomenon and country-specific migration questions, the task and responsibility of comprehensive, integrated migration management systems is to provide answers to migration challenges ahead, development and implementation of legislation, coordination, capacity building and procedures within and between each of the elements of the system. The following recommendations were outlined:

- To adopt comprehensive and coherent migration policy that shall provide basic principles and guidance on timely co-ordinated response of state institutions about migration related issues in the area of other policies;
- To consolidate legal and regulatory framework;
- To establish governmental inter-agency working group;

³⁷³ Refer to <http://www.marri-rc.org/>

³⁷⁴ Refer to MARRI Workshop on Migration Management Systems, Ulcinj, Montenegro, 5-6 October 2006, Recommendations.

- To establish/develop governmental agencies/institutions;
- To establish a Central Migration Authority tasked primarily to provide good and effective inter-agency co-operation;
- To develop regionally harmonised statistical data collection methods and sustainable system of data gathering mechanism;
- To develop information management support IT mechanisms for operational purposes, in accordance with data protection standards;
- To enhance capacity building for development of permanent training systems;
- To ensure sound budget lines in national budgets for increase of migration related activities;
- To raise the awareness of migration related issues, particularly among the parliamentarians;
- To increase regional cooperation and enhance regional ownership.³⁷⁵

6. 1 Monitoring and evaluation

Monitoring and evaluation are extensions of the analysis that originally identified the appropriate mix of policies and programmes needed to address migration challenges. Monitoring migration is permanent - or at least regular - observation of migration flows and stocks on national, regional and international levels in order to find out how migration is evolving for the purpose of studying and analysing it and taking specific actions and/or fine-tuning an ongoing policy. Evaluation is the process of assessing situation in the field of migration at defined time intervals. Both imply ongoing data collection. Monitoring as an ongoing data collection process provides information for progress towards impact of measures taken in the field, as well as to evaluate and show trends. The nature of the monitoring process will depend on the data requirements, means of verification, the possible or likely sources of data to be used and the methodologies to be utilised.

Monitoring policy implementation refers to the ongoing assessment of progress towards the achievement of strategic and operational objectives. Monitoring the implementation of all elements of migration policy and evaluating their impact in relation to intended effects ensures that an overall migration policy evolves in a dynamic manner and is capable of constantly refining its objectives and adapting and improving its programmes and methods, thus providing feedback for the continuous improvement of current strategies. For the operational migration management, the monitoring process provides an early reaction mechanism that allows for the rapid identification and resolution of problems with minimal effort, costs and resources and can prevent these problems from compounding themselves.

Evaluation or the assessment of impact and the analysis of attribution at a single point in time, attempts to provide an overall perspective of the policy and to identify any changes. It has to achieve a balance between the inside knowledge and understanding of stakeholders and migration management. As the point of reference and benchmarking, it has to be a participatory and joint process. Evaluation has to assess the performance of the overall migration policy as well as the contribution and performance of all its individual elements, linking strategic and operational management goals to the impact of the policy. In such a way we can, *inter alia*, assess efficiency and effectiveness, or assess whether desired outcomes were realised, for instance, was irregular migration reduced and if so, can this be attributed to designed measures and their implementation or did effects other than those predicted took place. Assessment should satisfy institutional evaluation requirements at many levels. Each element needs a clearly agreed upon monitoring and evaluation process in which all agencies/institutions and other partners will participate. In this way the evaluation mechanism

³⁷⁵ Refer to MARRI documents, particularly MARRI Workshop on Migration Management Systems, Ulcinj, Montenegro, 5-6 October 2006, Recommendations.

represents a good opportunity for the state to generate feedback on its policy design, implementation and performance and allows for the improvement or realignment of the policy itself as well as to the quality and success of future policy initiatives.

6.1.1 Data and other information

The problem of the scarcity and reliability of comparable up-to-date data on migration, international protection and other migration related issues is present almost everywhere. Statistics is indispensable not only for assessing – monitoring and evaluating - progress and impact made in the area of migration management but also for a better understanding of the challenges that lie ahead.

Several meeting of the MARRI participating States highlighted the need for better statistical information of comprehensive and comparable statistics on a range of migration-related issues and that to this end more effective mechanisms for the collection and analysis of information are needed. The regionally harmonised and coherent data collection methods are essential for gathering valid **statistical data** that would enable MARRI countries control and manage migration, therefore sustainable harmonised system of data gathering mechanisms in migration should be developed. This would enable the MARRI Member States to control and manage their migration, co-operate and exchange information bilaterally and multilaterally. Circulation of information and awareness-raising on information through the media on national and international level also needs to be ensured. Furthermore, in order to enhance migration control, the MARRI Member States should develop an **information management support IT mechanisms** in order to perform operational procedures more effectively and continue assessment, monitoring and evaluation in all elements of the migration management system.³⁷⁶

National official statistics

The availability of comparable statistics should be ensured for developing, monitoring and evaluating the effectiveness and fairness of migration policy in all its elements. The increasing importance of migration as a factor in many public policy areas means that reliable and comparable statistics are needed within the state and on the regional level.

This does not only concern EU-compliant national statistical infrastructure and the strategy for the development of official statistics in line with the objectives, general principles and criteria regarding the functioning and development of the MARRI Member States' statistical systems and the alignment of classifications and statistical registers that concern capacity to approximate and/or implement *acquis*. This is however important in migration policy context as well. Specifically, some of the sector statistics, such as for example population and economic statistics are of importance for migration policy-making and vice versa: good information on migration is needed for example when forecasting future developments in the labour market.

A need for better statistical information on migration has been found as essential in almost all states when devising their comprehensive migration policies and legislation as well as in the European Community policy. This is based on realisation that states, and quite frequently even authorities within the same state, differ greatly in terms of how statistics is produced and on what definitions and sources it is based. Consequently,

³⁷⁶ Recommendations of the Workshop on Technical Aspects of Implementation of Readmission Agreements MARRI Regional Centre in Skopje, 15-16 June 2006, point 3; Recommendations of MARRI Workshop on Migration Management Systems, Ulcinj, Montenegro, 5-6 October 2006; Recommendation of the Workshop on Management of Irregular Transit Migration in the MARRI Region, Sarajevo, 29-30 June 2006, point 6.

this makes data comparison and interpretation very difficult. In addition to improving definitions and counts of the numbers of migrants, there is an increasing need for better demographic and socio-economic information about migrants. For example, in the case of statistics on enforcement measures against irregular migration or in the case of policies against human trafficking. Similarly, better socio-economic information is needed to research issues such as the integration of migrants and their participation in labour markets. In the main, current practice does not sufficiently ensure uniformly regular, timely and rapid delivery and dissemination of data as well as public availability of data in user-friendly outputs. Better data collection and evaluation are thus not only important as a tool for self-assessment (or for example meeting international or EU reporting criteria), but also as a way of achieving greater convergence between official data and that collected by national and international non-governmental agencies.

In the European Union it was noted that legislation was required to ensure the production of comprehensive statistics necessary for the development of fair and effective Community policies on migration. In 2003, the Commission adopted an Action Plan³⁷⁷ setting out its short-to medium-term aims for the development of its statistical activities on migration and asylum. Two years later, a regulation to establish a common framework for the collection and compilation of statistics on international migration and asylum was proposed.³⁷⁸ Considering the current situation, it is expected that the harmonisation of statistics on migration and asylum will be a complex procedure that must take into account the policy needs for statistics, international practices and recommendations, particularly the *United Nations Recommendations on Statistics of International Migration* and the practicalities of applying the definitions in each of the Member States.

The Regulation establishes common rules for the collection and compilation of Community statistics on:

- immigration to and emigration from the Member State territories, including flows from the territory of one Member State to that of another Member State and flows between a Member State and the territory of a third country;
- the citizenship and country of birth of natural persons usually resident in the territory of the Member States;
- administrative and judicial procedures and processes in the Member States relating to immigration, granting of permission to reside, citizenship, asylum and other forms of international protection and the prevention of illegal immigration.³⁷⁹

It proposes regulation of **definitions** and **what statistics** States shall supply to the Statistical Office of the European Communities - Eurostat³⁸⁰ in terms of numbers, how these numbers shall be disaggregated (age, gender and other relevant characteristics) and to which reference periods they shall apply. Statistics will be collected:

- on international migration, usually resident population and acquisition of citizenship,
- on international protection,
- on the prevention of illegal entry and stay,

³⁷⁷ Refer to European Commission, Communication, Action Plan for the collection and analysis of Community Statistics in the field of migration, COM(2003) 179 final, Brussels, 15.4.2003.

³⁷⁸ Refer to Proposal for a Regulation of the European Parliament and of the Council on Community statistics on migration and international protection, COM(2005) 375 final, Brussels, 14.9. 2005.

³⁷⁹ Ibid., Article 1.

³⁸⁰ Eurostat collects annual statistics on legal migration in the framework of demographic statistics and monthly statistics within the context of the Council working groups of CIREA (now by Eurasil) and CIREFI on asylum and illegal migration respectively. The collection of monthly statistics on asylum and illegal migration was extended in 2000 to include the applicant countries, Norway and Iceland.

- on residence permits and residence of third-country nationals,
- on returns of third-country nationals

Furthermore, the regulation outlines **quality standards** and **data sources** according to their availability in the State and in accordance with national laws and practices:

- records of administrative and judicial actions
- registers relating to administrative actions
- registers of the population of natural persons or of a particular sub-group of that population
- censuses
- sample surveys
- other appropriate sources.

It is recommendable for the MARRI Member States to follow the guidelines of this Directive, along with international recommendations and practices, in order to standardise and regionally harmonise the collection of statistical information on migration flows and stocks.

Information management support IT mechanisms

The information management systems relating to all relevant elements of the migration management can provide databases for more effective performance of operational procedures and monitoring and evaluation at the operational level. The assessment of operational objectives and impact on e.g. irregular migrants, asylum seekers, trafficking victims is performed by specific monitoring systems. Tracking systems can potentially provide detailed information on the target group/s and form the basis for further impact assessment. Preventive measures for the privacy of data and data protection contained in these databases need to be implemented in accordance with national and international legal standards. Examples of these systems as they have been developing in the European Union were shortly described elsewhere in this paper. A good example in the MARRI region is the Information Migration System in Bosnia and Herzegovina and can serve as a model of good practice to be applied also in other MARRI Member States.

Regional Networking

Networking may be another block in the construction of a statistical base and a way to exchange information and experiences between the countries in MARRI region to foster regional cooperation. It can consist of national contact points in the MARRI Member States. One could recommend that the MARRI Regional Centre - already serving as information exchange point - would institutionalise such a network and upgrade its website with the Information Exchange System.

For example, in the European Union a similar network was established in 2002 with the aim to develop a comprehensive repository for data and information in the field of migration and asylum focused generally, although not wholly, on Europe. The European Migration Network (EMN) consists of national contact points (and observers) who collect, analyse, and then introduce information and data into the Information Exchange System in the following areas:

- legislation and case-law on migration and asylum, paying special attention to the implementation of EU legislation at the national level
- recent and current publications in the fields of migration and asylum, for example, research studies, research reports, policy-related material, NGO communiqués, party platforms, and other such materials

- contact details of researchers and research institutes, and specialised institutions and organisations on the national and European level dealing with migration and asylum matters information about other resources providing EMN with relevant documents.³⁸¹

6. 2 National framework

As already said above, the MARRI Regional Centre disseminated the questionnaire to all Member States in May 2006. The survey instruments consisted of total 14 (15) questions addressing the following issues:

- **National migration management organisation** concerning:
 - government agencies/institutions involved in migration management
 - agency responsible for asylum issues
 - agencies/institutions responsible for visa related matters
 - agencies/institutions responsible for border management
 - proposals pending for creation of new entities or reorganisation of migration functions
- **National legislation governing the area of migration** concerning:
 - Current legislation (Aliens Act, Asylum Act, Nationality Act, Law on Border Control and others)
 - All legislation changes (laws, by-laws) and specific modifications in government policy or practices in the field of migration, asylum, visas and border management which have been adopted since 1 January 2006 and those which are in the process of adoption at the Government or before the Parliament
- **International Agreements (Conventions) regulating Labour Migration** concerning:
 - Bilateral agreements (Conventions) regulating labour migration such as social insurance, health insurance, unemployment
 - Started negotiations on these agreements
 - Rights of labour migrants covered by these agreements
 - The application of the principle of reciprocity
 - Agencies/institutions responsible for implementation of these agreements and institutions directly involved in realisation of the rights of labour migrants
- **Contact Details**

The results of the questionnaire are in short presented in ANNEX. In broad terms, the structure of national migration management organisations is similar in all MARRI Member States, with the exception of Bosnia and Herzegovina due to the country's constitution (See ANNEX, Table 4). However, it is difficult to reveal the level of coordination within agencies/institutions and within the whole organisational structure as well as if there are any proposals pending for creation of new entities or reorganisation of migration functions. The question concerning the latter was posed only to Albania and there were no proposals in this direction at the time of the survey.

Assessment of the existing legal framework confirms that most of current laws were adopted in the period 2003-2006 or changes and amendments are in procedure since the beginning of 2006. For this purpose some States established inter-agency working groups, for example Croatia and Albania, the former to further align the legislation with the *acquis*, the latter because it is preparing a new Aliens Act. In December 2005, the Croatian Government submitted Migration Policy Strategy to the Parliament for procedure (see ANNEX, Table 1).

³⁸¹ Refer to <http://www.european-migration-network.org/>

6.2.1 Comprehensive migration policy

Policy is the precise statement of agreed goals and their translation into action. In the case of migration policy the challenges are complex and it is important that migration policy making is sound. The reality of international migration is that it crosses state boundaries as well as a number of policy areas such economic policy (labour immigration/emigration), demographic policy, social and health policy, taxation policy, education policy, security and defence policy and other policies as appropriate. Migration policy should lead a national effort on migration management, providing guidance and bringing together a timely co-ordinated response of state institutions such immigration, police and border control, law making and enforcement, the judiciary, intelligence-gathering, international diplomacy, social and human services and housing, health care, financial management, public information, personnel training and other as appropriate. In addition, it is also important to coordinate efforts with other partners such as regional, international and non-governmental organisations, the private sector and various other stakeholders. It is very likely that migration policy will have an impact on public perceptions and opinions, generating a debate and controversy on a wide range of issues such as control of migration flows, organised crime, criminality, corruption, labour market, cultural, ethnic and national differences and integration.

Inter-agency (multi-agency) approach

Against the background of the main criteria of policy design as tabled out in the introductory chapter of this paper, i.e. consistency, compatibility, transparency and sustainability and the main prerequisites to successful policies and, in view of addressing the many complex and interrelated issues of migration policy and management inter-agency (multi-agency) approaches are required. Such an approach should be taken in policy formulation and in ensuring joint and properly structured cooperation in its implementation. Given the complexity of the field and the expertise required to address each of sub-fields effectively, it is essential that an inter-agency approach is taken to any initiative. The need of such an approach has been emphasised at MARRI workshops, the one held in Skopje in June 2006 in particular stressed the necessity for setting up comprehensive migration policy with establishment of inter-ministerial and inter-agency working group for migration, with sub-working groups thematically mandated for specific tasks, among them: to coordinate operative actions of the implementing bodies, compare and analyse data for short and long term development strategies, to harmonise procedures and regulations to avoid overlapping, to coordinate training, awareness raising/media strategy.³⁸²

Inter-agency collaboration is not easy and it takes time and effort for it to work effectively. A management and operational framework therefore needs to be agreed that can steer and manage any subsequent specific initiative or intervention. This may build on existing arrangements, where these exist. What an establishing of such a framework involves and how it can be done is provided for in the UN toolkit, let me just point out that strong and effective leadership of inter-agency partnerships are of critical importance to their success.

Inter-agency working group

Inter-agency group for policy development should be essentially responsible for ensuring that a holistic approach to migration is taken. This is essential for ensuring joint and properly structured co-operation in the

³⁸² Recommendations of the Workshop on Technical Aspects of Implementation of Readmission Agreements MARRI Regional Centre in Skopje, 15-16 June 2006.

area of migration management and for preparation of measures for accomplishing principles and objective of migration policy. Accordingly, the tasks of governmental inter-agency working group are to:

- Monitor migration flows on national, regional and international level on permanent basis;
- Evaluate situation in the field of migration;
- Analyse push and pull factors in the field of migration;
- Propose appropriate measures, change or amendment of existing material legislation;
- Monitor and evaluate the implementation of the right to appeal
- Follow EU legislation in the field of migration and to propose measures for harmonising domestic legislation;
- Co-ordinate inter-agency activities in the field of migration;
- Co-operate with research and educational institutions, NGOs which are dealing with migration;
- Development of efficient integration policy.

Additional tasks could include:

- education and awareness-raising activities;
- ensuring that all relevant agencies and parties are informed and involved in decision-making and planning of activities;
- joint training initiatives;
- developing appropriate working practice protocols;
- ensuring information exchange between governmental and non-governmental and other civil society organisations as well as the private sector.

It would be advisable that the working group includes also representatives from relevant civil society organisation for instance employers' associations, trade unions and NGOs and the private sector as well as representatives of inter-governmental organisations and international bodies, researchers and other stakeholders.

6.2.2 Government agencies/institutions – Central Migration Authority

The establishment/development of governmental agencies/institutions dealing with all areas of migration management is an important element of integrated management system. Well developed institutions are a necessary condition for co-ordination and co-operation of migration management at the national level. That migration management would be well integrated an efficient and effective co-ordination and co-operation within and between all institutions in all relevant management fields must be incorporated into the system itself. All stakeholders responsible for the development and execution of a relevant regulatory framework must be involved. This means that national integrated systems must provide for both vertical co-operation and co-ordination within each of the agencies/institutions responsible for specific areas as well as horizontal inter-agency co-operation and co-ordination. Well integrated national system is at same time required for increased bilateral and multilateral cooperation, particularly for MARRI regional cooperation.

Intra-agency co-operation

Intra-agency co-operation should be based on the following objectives:

- Vertical co-operation with each agency/institution responsible for specific area;
- Clear and coherent regulatory framework;
- Transparency of responsibility concerning management, task report and follow-up with top-down and bottom-up communication procedures;

- Well established administrative/working procedures;
- Transparent flow of information to beneficiaries of services including their rights and obligations as well as information about the agency/institution's working procedures.³⁸³

Inter-agency co-operation and co-ordination mechanisms

Inter-agency co-ordination, collaboration and co-ordination is a prerequisite for the success of any national strategy to management of migration. Coordination mechanisms should be competent to elaborate and implement migration and migration related policies, coordinate the actions of all relevant actors at the national level, monitor their implementation, and facilitate international co-operation. The successful cooperation mechanisms are based on a clear delineation of the respective roles of the various agencies involved. Thus, while developing such co-ordination mechanisms, it is very important to clarify very precisely the role of each of the key agencies involved in implementing a comprehensive strategy. Inter-agency/multi-agency co-ordination or management groups need to ensure that the specific roles and responsibilities of the different agencies/institutions are agreed upon and understood by all involved. Equally, the issues of leadership and accountability need to be addressed from the outset.

The establishment of the **Central Migration Authority** is essential for the accomplishment of the above mentioned objectives. Such an Authority should be a focal point institution in the migration management system. It should be established by law and it should have a clear mandate on its tasks and functions. It could consist of divisions or units, mainly composed of staff on secondment from other agencies/institutions involved in migration management. It should promote a national consultation as part of the development of national policy and action plans in the field of migration. The Authority could also provide liaison functions between government agencies and non-governmental organisations involved in various migration- related initiatives.

The Central Migration Authority principle functions should be:

- Coordination of operative actions of the implementing bodies;
- Continuous monitoring of migration policy implementation with the task to report to the executive and legislative ruling powers;
- Monitor and analyse implementation of the objectives of the migration policy;
- Prepare expert basis for change or amendment of the legislation;
- Decide on appeals against first level decisions;
- Co-ordinate the initiatives with other ministries and agencies, other countries and international organisations;
- Co-ordinate dialogue with local authorities and civil society;
- Provide training and education of the staff;
- Provide the research of migration in cooperation with research institutions.³⁸⁴

6.3 Regional co-operation

Given the complexity of international migration, it is unlikely that real success will ever be achieved without regional and international collaboration. Regional co-operation is imperative and of particular importance in the MARRI region. It represents an efficient tool to exchange information and best practices, supports regional ownership and harmonisation/approximation of exiting legislation and, notably, regional collaboration can better

³⁸³ Recommendations of MARRI Workshop on Migration Management Systems, Ulcinj, Montenegro, 5-6 October 2006.

³⁸⁴ Ibid.

cope in matters related to the establishment of the identity and document security and with mixed migration flows, improve management of irregular migration and implementation of readmission agreements and improve combating human trafficking. It must be supported by a willingness and mutual trust of the Member States and their agencies involved in co-operation with each other and with other partners at regional and international level.

The following tools have been suggested to be utilised for these purposes:

- Bilateral/multilateral agreements
- Readmission agreements
- Inter ministerial meetings with regular joint meetings between services and agencies on operational level
- Designation of authorised contact persons, exchange of liaison officers
- MARRI Regional Forum and MARRI Regional Centre

6.3.1 MARRI framework

The MARRI Regional Forum and its Centre as a point for communication and co-operation between participating States in the region would in accordance with its mandate, *inter alia*,

- foster teamwork and facilitate the process of exchange of information, experiences and cooperation between the MARRI Member States: network of national contact points could be further developed or established as appropriate, and regularly meet in order to increase the exchange of information, share knowledge, learning and best practices; the process of exchange of information and experiences between the countries in the region and their cooperation on the local level could be facilitated by establishment of an early warning system using the liaison migration officers (for this purpose the Portuguese experience was suggested to be explored)
- raise awareness of migration related issues, among other among parliamentarians;
- support information gathering and analysis and disseminate statistics related to migration;
- provide base for migration policy/policies through research;
- support Member States in legislative and non-legislative fields of policy making and implementing, e.g. by meeting with EU experts and practitioners,
- assist capacity-building in the MARRI Member States, *inter alia* in human resources by developing continuous training system for staff and other actors involved in migration issues;
- assist the MARRI Member States to put concrete measures into practice at national level e.g. to assist in finding funds for projects developed by state and local authorities, the social partners and civil society, particularly to explore and identify relevant EC Budget Lines as well as interest of EU Member States for financing migration related projects with emphasis on regional cooperation and explore modalities for assisting the MARRI Member States national institutions to draft proposals for such budget lines;
- help engage national and local stakeholders in shaping their initiatives e.g. conferences, workshops and similar for bringing people from the region as well as from outside of the region – experts, operators in the sector, trade unions, employers' associations, non-governmental and other civil society organisations, immigrant representatives, universities, journalists and others - together on the topic of migration issues, giving them greater visibility,
- evaluate national strategies, action plans and reports.

6.4 Capacity building and training

In the MARRI Member States there is a need to enhance capacity building in all institutions dealing with all elements of comprehensive migration management by **development and/or by strengthening permanent training systems** specific for each profession category of the staff. Training should be updated and continuous throughout professional careers of the civil servants.³⁸⁵

Capacity-building measures should be built on:

- an assessment of the situation,
- a clear delineation of the role of various agencies,
- on existing knowledge and expertise, and,
- on an analysis of the roles and competencies required for the implementation of a comprehensive and integrated migration policy.

The MARRI Regional Centre survey on current number of skilled staff and the state of training capacities has been proposed at Ulcinj meeting. Common training courses could be also eventually developed together with common manuals. Some of these, used for training of different professionals involved in migration management in the European Union have already been pointed out in this paper.

6.5 Some other challenges for policy-makers

The main recommendation of this paper is that each of the MARRI Member States formulates and adopts a document on comprehensive migration policy strategy in order to secure political commitment on principles and aims of the comprehensive policy and on its implementation.

What should the document on comprehensive migration policy ensure?

The document ought to ensure:

- that all elements of migration policy interact into an integrated and comprehensive policy;
- that targeted strategies (Action and Operational plans) are to be developed/upgraded for each element of the comprehensive policy;
- that migration related issues are to be considered and included in all other relevant policies such as economic policy, labour market and employment, demographic policy, education, health and social policy, security and defence and other as appropriate;
- that mainstreaming, specifically of integration, becomes the basic principle, i.e. integration issues are to be considered in all fields of public-policy formation and implementation, including due attention to the mainstreaming of gender equality and to the specific needs of migrant youth and children;
- that a coherent approach to policy implementation requires consolidated legal and regulatory framework which on the one hand stipulates all relevant fields **and** clearly states rights and obligations of the authorities with due consideration to the competence of local and regional authorities on the other hand.
- that legislative and regulatory framework will be reviewed and changed or amended:
 - as necessary, to be in compliance with relevant instruments of international law; and,

³⁸⁵ Recommendations of MARRI Workshop on Migration Management Systems, Ulcinj, Montenegro, 5-6 October 2006. See also Recommendations of the Workshop on Technical Aspects of Implementation of Readmission Agreements MARRI Regional Centre in Skopje, 15-16 June 2006, point 6.

- as appropriate, approximating *acquis communautaire*;
 - that legislation will be internally harmonised with legislation in other relevant fields;
 - that the adopted legislation will, in a clear and unambiguous way, state the obligations and rights for the authorities implementing legislation;
 - that it will be written in a simple, clear, coherent and effective common way so that it can be understood, applied and enforced by the staff;
 - that, in order to apply the law in co-ordinated and correct way and provide good and effective service, legislation will be supplemented by by-laws, instructions, manuals and other documents as appropriate.
- that support for co-operation, co-ordination and communication between stakeholders is ensured in the national dialogue-structure, both in the political decision-making process and policy implementation, if necessary on a legal basis; and,
 - that Central Migration Authority will function as a national focal point and that information is shared and co-ordinated with all tiers of government and other stakeholders, on local, regional and international level,

The policy adoption procedure

In the process of policy adoption procedure the following steps could be considered:

- A policy paper, for example so-called Green Paper, could be offered to launch a process of discussion at national level;
- Policy should be co-ordinated across different levels of Government in order to be endorsed by National Parliaments as a political document clearly stating principles and aims of the comprehensive migration policy;
- It is important that a consensus is reached in a public, intra-governmental and parliamentary debate on principles and aims of the comprehensive policy.

Dialogue between Parliaments and Governments

The MARRI Workshop on Migration Management Systems document points out that the MARRI Regional Centre should support the workshop thematically dedicated to the dialogue between Parliaments and Governments on the relevance of migration policy for the development of the countries. It is intended to be partly organised by Stability Pact Inter-parliamentarian Initiative and Committee on Migration from the Parliamentary Assembly of Council of Europe with the support of the MARRI Regional Centre.

In view of this recommendation, it is important to note that Parliaments depend upon regular information from ministries, regional, local and other public authorities, international organisations, NGOs and specialised centres at national, regional and international level.

The national parliaments have important instruments at their disposal in the area of policy- making. Apart from the use of their legislative competencies, which have to be consistently implemented and strengthened, it is important for the national parliaments to exert political pressure and influence on their governments. In addition, parliaments play an important role in sensitising the public and raising awareness on various issues.

A research to analyse activities of the national parliaments in the MARRI Member States in migration related issues could assist in revealing the degree of commitment of parliaments to policy-making in the field of

migration. Nevertheless, the following suggestions might assist in strengthening the dialogue between governments and parliaments, facilitating the information exchange and highlighting the role of the national parliaments in the field of migration policy-making. Parliaments could:

- introduce or strengthen the instrument of parliamentary hearings with experts from politics, economy, civil society and international organisations, who inform on migration relevant issues at national and international level;
- organise regular expert meetings within the relevant parliamentary committees, in which experts from ministries and judicial authorities, regional (MARRI) and international organisations as well as from non-governmental organisations participate in order to intensify the information exchange and contacts;
- set up a commission on the issue of migration;
- appoint a parliamentary representative as the contact person for all questions regarding migration;
- send delegations of committees or single members of the parliaments to countries of origin, transit or destination in order to discuss the issues, to intensify the information exchange with the parliaments, governments and NGOs there, to establish co-operations and to exert political pressure on the relevant actors;
- establish partnerships between national parliaments in MARRI region, in EU Member States and in other countries;
- Set up or improve an internet forum on the subject on the internet site of the parliaments, which should provide the positions of parliamentary groups on the subject. In long term, such an internet forum could be further developed into a central information and contact pool at national level.

ANNEX

Table 1: Legislation governing the area of migration in MARRI Member States, May 2006

	Croatia	Macedonia	Bosnia and Herzegovina	Serbia	Montenegro	Albania
Legislation in the area of migration	<p>Aliens Act, applied from 1 January 2004.</p> <p>Sub-acts: Rulebook on the status of aliens in the Republic of Croatia, Rulebook on travel documents for aliens, visas, border passes and treatment of aliens, Rulebook on the issuance of laissez-passer, visas and special identity cards to aliens..</p> <p>Asylum Act, applied from 1 July 2004, Supplementary sub-acts of the Minister of Interior: Rulebook on the accommodation of asylum seekers, asylees and aliens under temporary protection, Rulebook on registration forms and manners of record keeping for asylum seekers, asylees and aliens under temporary protection and Rulebook on the amount of financial aid for the asylum seekers, asylees</p>	<p>Law on Aliens, applied from 1 April 2007</p> <p>The Law on Asylum and Temporary Protection, July, 2003</p> <p>The Law on Citizenship</p>	<p>Constitution</p> <p>- Law on Movement and Stay of Foreigners and Asylum, 2003/04</p> <p>- Law on Surveillance and Control of State Border, 2004</p> <p>- Law on Department for Services for Foreigners, 2005</p> <p>- By-Laws on: Conditions and Procedures of Entry and Stay of Foreigners 2005, - By-Law on Asylum, - Travel Documents for Foreigners, 2004, - Conditions and procedures for issuing visas to aliens, extension, annulment, types of visas and databases of issued visas, 2004, - Protection of Foreign Victims of Trafficking, 2004, - Instruction on the procedure of expulsion, control and obligations for expenditures related to control and return of foreigners from BiH, 2005, - Instruction on rules for keeping and using database on categories of foreigners, 2005.</p>	<p>□Law on Movement and Residence of Aliens</p> <p>□Law on Conditions for Employment of Aliens</p> <p>Labour Law of Serbia</p> <p>Law on Employment and Unemployment Allowance of Serbia</p> <p>□International agreements on scientific, technical, educational and cultural cooperation</p> <p>□Law on Conditions for Employment of Aliens</p> <p>Labour Law of Serbia</p> <p>Law on Work in State Administration</p> <p>□Law on Labour Documentation</p> <p>□Employment and Work Security Law of Serbia</p> <p>□Law on Pension and Disabled Persons Insurance</p> <p>□Law on Health Insurance</p>	<p>Law on the Employment of Foreigners</p> <p>Law on the Citizenship</p> <p>The Law on Border Control, 2005.</p>	<p>Law on Asylum</p> <p>Law on Aliens</p> <p>Law on Migration for Work purposes</p>

	<p>and persons under temporary protection.</p> <p>State Border Protection Act Criminal</p>		<p>BH Federation:</p> <ul style="list-style-type: none"> - Labour Law 1999, amended 2000 and 2003. - Law on Employment and Social Security of Unemployed Persons, 2000, emended 2005. - Law on Employment of Foreigners, 1999. <p>Republic Srpska:</p> <ul style="list-style-type: none"> - Labour Law 2000, amended 2003. - Employment Law 2005. - Law on Employment of Foreigners and Persons Without Citizenship 2004 amended 2005. 			
<p>Changes in legislation (laws, by-laws) and specific modifications in government policy or practices since 1 January 2006</p>	<p>Inter-agency working group for amending the Aliens Act was founded in April 2005.</p> <p>Working group for amending the Asylum Act was also set in September 2006 up.</p> <p>Migration policy strategy, submitted to the Parliament for procedure in December 2005.</p>	<p><i>In procedure:</i> The Law on Employment Work of Foreigners, The Law on State Border Control</p>	<ul style="list-style-type: none"> - Changes in the Instruction on rules for keeping and using database on categories of foreigners, 2006 Committee amendments on the Law on Movement and Stay of Foreigners and Asylum. 	<p><i>In procedure:</i> Bill on conditions of employment and work of aliens</p>	<p>Law on Foreigners, Law on Asylum Law on Nationality are still in the process of adoption of the Government</p>	<p>Working Group established to prepare the new Law on Foreigners (Jan. 2006).</p>

Source: Based on answers and data given by the MARRI Member States to MARRI Regional Centre, Questionnaire, May 2006.

Table 2: International Agreements (Conventions) Regulating Labour Migration, MARRI Member States, May 2006

	Croatia	Macedonia	Bosnia and Herzegovina (i)	Serbia (ii)	Montenegro (iii)	Albania
International Agreements (Conventions) Regulating the rights of labour migrants - social insurance, health insurance, unemployment	Agreements on Social Security: Bosnia and Herzegovina, Macedonia, Serbia and Montenegro.	Social Security Conventions, entry into force Austria, 4.1.1998 Croatia, 4.1. 2000 Turkey, 7..1.2000 Slovenia, 4.1.2001 Switzerland 1.1.2001 Denmark, FR Yugoslavia 4.1.2002 Bulgaria, 8.1.2003 Germany, 1.1.2005 Bosnia and Herzegovina 2.15.2006 Czech R, Netherlands, Romania,	Austria, 01.11.2001 Turkey, 01.09.2003 Croatia, 01.11.2001 Serbia and Montenegro, 01.01.2004 Macedonia -	SFRY Agreements on Social Security: Austria 1965, 1.5.2002** Belgium, 1954 Bulgaria, 1958 Great Britain, 1958 Denmark 1979 Italy 1957 Luxemburg 1954; ratified** Hungary, 1958 Germany, 1968 Norway, 1976 Poland, 1959 France, 1951 Netherlands, 1979 Czech Republic 1958, 1.1. 2002** Switzerland, 1963 Sweden, 1979 New Agreements Ex-YU Republics Macedonia 1.4. 2002 Croatia, 1.5. 2003 Bosnia and Herzegovina 1 1. 2004 Slovenia, Need for signing initialised several times by Serbia and Montenegro	Serbia and Montenegro, ratified ILO Conventions: No 48 on Migrants in Case of Illness, Old Age or Death, No 97 on Migration with the Aim of Employment (revised), No 143 on Labour Migrants. Bilateral, entry into force: **** Austria, 1.1.1967, New not ratified; Belgium, 1.10.1956; Bulgaria, 1.12.1957; Czechoslovakia , 12.1957 (valid for Slovakia and the Czech Republic); France, 1.04.1951; Italy, 1.01.1961; Luxemburg, 1.0 9.2005 (New ratified); Netherlands, 4.1957; Norway, 1.8.19 76; Germany, 1.9.1969; Poland, 1.1.1959; Sweden, 1.1.1979; Switzerland,	Italy – Agreement on seasonal employment and Implementation Protocol – concluded on November 18, 1997 Greece – Agreement on seasonal employment – 1996

					1.3.1964 (New in ratification) UK, 1.9.1958; Denmark, 1. 8.1983; Egypt,1.2.1989; Libya, 1.6.1990; Rumania, 1976; Panama, 1975; Macedonia, 1.4.2002; Croatia, 1.5.2003; Bosnia and Herzegovina, 1.1.2004; Turkey, needs to be ratified; Hungary,1.7.1958.	
Started negotiations	Albania is the only state within the MARRI initiative that does not have an agreement on social security with Croatia and there was no initiative undertaken to start the negotiations.	<ul style="list-style-type: none"> - Germany on employment of persons from the Macedonian enterprises with their main office on the territory of Macedonia. - Draft texts on such agreements with: Greece, Italy Slovenia - Agreement on regulation of the employment of the Macedonian employees for the season work with Greece and Slovenia. 	Switzerland, Netherlands, Denmark, Sweden, Belgium, Luxemburg, Slovenia	Bulgaria - New agreements in preparations, Hungary- New convention in final negotiations, Mutual interest for the conclusion of new agreement: Romania Turkey, 12.10.2005 Belarus Russian Federation Ukraine Greece Cyprus Canada	During 2005 texts of agreements on social security and specific questions of social security as well as administrative agreement have been concluded – they need to be ratified. The Montenegrin Ministry of Labour and Social Welfare suggests these agreements be taken over by Montenegro since this Ministry has taken part in the elaboration of the texts of the agreements.	None

					<p>According to the Montenegrin Ministry of Labour and Social Welfare the priority should be given to the elaboration and conclusion of agreements on social security with Serbia and Slovenia. Other above mentioned agreements, should be ratified by the Montenegrin Parliament.</p>	
<p>Rights of labour migrants covered by international agreements (conventions)</p>	<p>Within the agreement on health insurance and protection, pension and disability insurance, insurance for accidents at work and professional disorders, insurance at time of unemployment, child's allowance included in agreement with Macedonia.</p>	<p>Mainly social insurance.</p>		<p>Social security: pension, disabled persons, health insurance and insurance in the case of unemployment.</p> <p>If such an agreement is nonexistent with another state, insurance in case of unemployment is regulated by the Law on Employment and Unemployment Allowance of Serbia.</p>	<p>health insurance, pension insurance, unemployment rights, children allowance, administrative and legal assistance of the citizens of the parties to the agreements.</p>	
<p>The principle of reciprocity in bilateral agreements</p>	<p>Yes</p>	<p>Yes. In particular cases, exceptions are allowed.</p>	<p>Yes</p>		<p>Yes</p>	<p>Yes</p>

<p>Institutions responsible for implementation of international agreements and those directly involved in realisation of the rights of labour migrants</p>	<p>Ministry of Economy, Labour and Entrepreneurship, as well as the Ministry of Health and Social Welfare. Directly: Institute for Pension insurance, Institute for Health Insurance and Institute for Employment</p>	<p>No specialised agency Employment agency, □Pension and Invalid Insurance Fond, □Health Insurance Fond.</p>	<p>State level: Ministry of Civil Affairs is responsible for initiation of agreements. Federation of BH: implementation coordinated by Federal Ministry of Labour and Social Affairs and Federal Institute for Employment Republic Srpska: implementation coordinated by Ministry of Labour and Veterans and Republic Srpska Institute for Employment</p>	<p>On the basis of the Law on Employment of Aliens and the Law on Employment and Unemployment Allowance of Serbia, Serbian National Agency of Employment is responsible for issuing permission for employment to aliens.</p>	<p>Montenegro has taken over the responsibility of ILO Conventions implementation and reporting to the ILO.</p>	<p>Ministry of Labour and Social Affairs</p>
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- (i) According to BH Constitution, Entities autonomously regulate labour and employment issues including Labour Migration. Representatives of Republika Srpska and Federation. Therefore, each entity has different set of laws in accordance with international standards set in international agreements BH ratified so far. BH are participating in negotiations for international agreements (conventions) regarding social security with other countries.
- (ii) Serbia: * Conventions signed by SFRY and still in force, ** Ceased to be valid when the new agreement was signed, *** Agreements signed after the dissolution of SFRY.
- (iii) Montenegro: **** Compare with Serbia.

Source: Based on answers and data given by the MARRI Member States to MARRI Regional Centre, Questionnaire, May 2006.

Table 3: Readmission Agreements, MARRI Member States, May 2006

	Croatia	Macedonia	Bosnia - Herzegovina	Serbia	Montenegro	Albania
Readmission Agreements, entry into force	Switzerland on transit (escort) of third-country nationals, 01.09.1997; Sweden, 6 April 2003 Republic of Yugoslavia 17.06. 2004 Slovenia, 06.06.1994 Slovak Republic, 11.02.1996; Romania, 06.10.2002 Norway, 01.08.2005 Poland, 27 May 1995 Macedonia, 01.02.2003 Hungary, 27.12.2003 Lithuania, 01.01.2001 Latvia, 21.09. 1998 Italy , 01.06.1998 Iceland, 25.04. 2002 Greece, 15.03.1996 France, 19.12. 1995 Estonia, 28.04. 2001 Czech Republic, 01.05.2004 Bulgaria, 03.08. 2003 Bosnia and Herzegovina, 11.05.2001 Austria, 01.11. 1998 Benelux, 11 05. 2005 Albania, 15.06. 2005	Italy, 29. 10. 1997 Slovenia, 01. 02. 1999 France, 17. 06. 1999 Slovakia, 01. 11. 2002 Germany, 01. 05. 2004 Hungary, 13.08.2004 Poland, March 2006, not ratified) Spain, February 2006. (not ratified) Austria, May 2006. (not ratified) Switzerland, 22. 07. 1998 Bulgaria, June 2001 (not ratified by B.) Croatia, 01. 02. 2003 Romania, 16. 06. 2004 Albania, done 17.06.2004	Hungary, ratified Croatia, ratified Switzerland, ratified Serbia and Montenegro, signed Denmark, signed Norway, signed Sweden, signed Italy, signed Romania, signed Bulgaria, signed Greece, signed	Germany, 1.04. 2004 Sweden, 15.03.20 03 Denmark, 8 March 2003 Italy, 1 April 2005 Benelux, 29 May 2004 Austria, 29 April 2004 Slovakia, 27 July 2002 Hungary, 29 March 2003 Slovenia, 21 December 2001 Bulgaria, 9 August 2001 (Protocol part has not been signed yet) Croatia, 17 June 2004 Bosnia and Herzegovina (ratification instruments have not been exchanged yet) Switzerland, 29	Germany 01.11.2002 Switzerland, 01.09.1997 Sweden, 15.03.2003 Benelux, 12.12.2002 Italy 28.06.2003 Slovenia 21.12.2001 Austria, Denmark 08.03.2003; Croatia, Hungary 31.01.2003; Bulgaria 09.08.2001; Slovak Republic 15.06.2001; Bosnia and Herzegovina and France.	Italy –1998 Switzerland - 2000 Hungary - 2001 Bulgaria - 2002 Rumania - 2002 Germany - August 1, 2003 Belgium - November 1, 2004 Croatia - August 15, 2005 Great Britain and Northern Ireland - August 15, 2005 Macedonia - June 15, 2005

				April 2004 Canada, signed, to be ratified		
EC Readmission A.						Yes, 1 May 2006
Negotiations underway/foreseen signing date	Ukraine, in 2006 Moldova, in 2006	Sweden, Czech Republic, Finland Latvia Ukraine Turkey Moldova Bosnia and Herzegovina and Serbia Montenegro	with large number of countries	Czech Republic, finalised Norway, finalised France, 24 April 2006 Great Britain Latvia Greece, Romania	Czech Republic, finalised Norway, finalised Canada, finalised Romania Macedonia Great Britain Greece Latvia Lithuania	Turkey Norway Moldova Bosnia-Herzegovina
Agency/institutions responsible for preparation of readmission agreements	Ministry for Foreign Affairs and European Integration; Ministry of Interior	Inter-agency working group - consisted of representatives from the Ministry of Internal Affairs (Section on Aliens, Sector for Legal and Personnel Affairs, Sector for European Integration and International Cooperation) and the Ministry of Foreign Affairs	BH Presidency, Council of Ministers, Ministry of Foreign Affairs Ministry of Security.	Ministry of Human and Minority Rights.	Ministry of Human Rights and Right of Minorities (State Union) Ministry of Internal Affairs	Ministry of Interior Ministry for Foreign Affairs
Agency/institution responsible for the implementation of readmission agreements	Ministry of Interior - General Police Directorate - the Illegal Migration Department of the Border Police Directorate	The inter-agency working group - Ministry of Internal Affairs and Ministry of Foreign Affairs	Ministry of Security, Ministry of Foreign Affairs, Ministry of Civil Affairs, State Border Service.	Ministry of Interior - Section for Implementation of Readmission	Ministry of Internal Affairs	Ministry of Interior

Source: Based on answers and data given by the MARRI Member States to MARRI Regional Centre, Questionnaire, May 2006.

Table 4: Institutional structure of migration management in MARRI Member States, May 2006

	Croatia	Macedonia	Bosnia and Herzegovina	Serbia	Montenegro	Albania
Government Agencies	Ministry of Foreign Affairs and European Integration, Ministry of Interior General Inspectorate (alien work supervision).	Ministry of Internal Affairs Ministry of Foreign Affairs Ministry of Labour and Social Policy State Office for Statistics	Ministry of Security Ministry for Human Rights and Refugees Ministry of Civil Affairs Ministry of Foreign Affairs State Border Service Department for Foreigner Affairs (in establishment) Relevant Entity and Cantonal ministries and Brčko District institutions	Ministry of Interior Commissariat for Refugees of Serbia Ministry of Foreign Affairs	The Ministry of Interior, Ministry of Labour and Social Welfare, Directorate of Police Employment Agency Ministry of School and Science Ministry of Health Commissariat for Refugees and Displaced Persons.	Diaspora Institute Consular Directorate Ministry of Interior/ Directorate for Refugees Directorate for Borders and Aliens Ministry of Labour and Social Affairs Directorate for Migration
Agency responsible for asylum issues	Ministry of Interior - The Asylum Section of the Aliens and Asylum Department	Ministry of Internal Affairs - Asylum Section Ministry of Labour and Social Policy	Ministry of Security - Department for Asylum	Ministry of Interior – determination and decision making Commissariat for Refugees of Serbia Ministry of Foreign Affairs – assistance, accommodation Ministry of Labour and Social Welfare	Ministry of Interior Commissariat for refugees and displaced persons Ministry of Labour and Social Welfare. Ministry of School and Science. Ministry of Health.	Ministry of Interior//Directorate for Refugees
Agency/ies responsible for visas	Ministry of Foreign Affairs and European – Integration, Ministry of Interior.	Ministry of Foreign Affairs - for visa policy issues, Ministry of Internal Affairs - implementation of the visa regime	Ministry of Foreign Affairs – for visa issues. State Border Service - can issue visas Council of Ministers, based on recommendations from Ministry of Security and Ministry of Foreign	Ministry of Foreign Affairs of Serbia and Montenegro Ministry of Interior of the Republic of Serbia	Ministry of Exterior. Ministry of Interior. Directorate of Police.	Ministry of Foreign Affairs/Consular Directorate - Ministry of Interior/Directorate for Borders and Aliens

			Affairs determines visa regime			
Agency/ies responsible for border management	Ministry of Interior - carries out the Integrated Border Management Strategy in cooperation with other responsible agencies.	Ministry of Internal Affairs - Sector for Border Affairs.	Ministry of Security - BH State Border Service	Ministry of Interior -Border Police Directorate	Ministry of Interior- Directorate of Police – the Department of State Border and Borders Affairs. Customs. Ministry of Agriculture.	Ministry of Interior - Directorate for Borders and Aliens
Agency/institutions responsible for preparation of readmission agreements	Ministry for Foreign Affairs and European Integration; Ministry of Interior	Inter-agency working group - representatives from the Ministry of Internal Affairs and the Ministry of Foreign Affairs	BH Presidency, Council of Ministers, Ministry of Foreign Affairs Ministry of Security.	Ministry of Human and Minority Rights.	Ministry of Human Rights and Right of Minorities (State Union) Ministry of Internal Affairs	Ministry of Interior Ministry for Foreign Affairs
Agency/institution responsible for the implementation of readmission agreements	Ministry of Interior -. General Police Directorate - the Illegal Migration Department of the Border Police Directorate	The inter-agency working group - Ministry of Internal Affairs and Ministry of Foreign Affairs	Ministry of Security, Ministry of Foreign Affairs, Ministry of Civil Affairs, State Border Service.	Ministry of Interior - Section for Implementation of Readmission	Ministry of Internal Affairs	Ministry of Interior
Proposals pending for creation of new entities or reorganisation of migration functions	Question not included	Question not included	Question not included	Question not included		No

Source: Based on answers and data given by the MARRI Member States to MARRI Regional Centre, Questionnaire, May 2006.

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