



**STUDY ON  
DIFFERENT FORMS OF INCENTIVES TO  
PROMOTE THE RETURN  
OF  
REJECTED ASYLUM SEEKERS AND  
FORMERLY TEMPORARY PROTECTED PERSONS**

**Prepared by ICMPD  
for the European Refugee Fund**

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## **Preface**

Since the first study on *Comprehensive EU Return Policies and Practices*, which forms part of a series of ICMPD projects dealing with return policies and practices, went public in January 2002 the state of affairs with regard to return has changed significantly. While no consolidated piece of EU work on policies for the return of third country nationals without entitlement to residence existed, there is now the Green Paper on a Community Return Policy on Illegal Residents, the Communication from the Commission to the Council and the European Parliament on a Community Return Policy on Illegal Residents, including the outline of a Return Action Programme, and several other initiatives specifically dealing with return, emphasising its vital and integral role for an emerging comprehensive Community immigration and asylum policy.

The direction of development of a Community Return Policy seems to be defined now: European Union Member States are seeing the need for enhanced operational co-operation in return matters. At the European Council summit in Seville in June 2002, furthermore, it was agreed to introduce migration matters into MS' foreign policies and to seek to provide the necessary technical and financial assistance for third countries. Conversely, however, a staged mechanism was established to secure the much-needed co-operation on behalf of countries of origin and transit. According to this mechanism, the Council may adopt measures under the Common Foreign and Security Policy and other EU policies if a country shows "*unjustified lack of co-operation*".

As much as the described initiatives will contribute to the effectiveness of common return policies, they do not touch upon the difficulties return policies at times face with regard to the individual returnee, who proves to be reluctant to leave the territory of the host country. These circumstances have made it clear that means and ways have to be worked out to provide on one hand removal policies which are safe, sensitive and respectful of the rights and dignity of the individual concerned and on the other safeguard integrity and credibility of asylum and immigration systems.

In parallel to the ongoing developments, ICMPD has launched the present study on *Different Forms of Incentives to Promote the Return of Rejected Asylum Seekers and*

*Formerly Temporary Protected Persons* to analyse the field of incentives offered by the European Union Member States in order to secure the individual's co-operation in the various procedures and to sound the potential of such an approach, i.e. to present alternative ways which are more respectful of the individual's rights and dignity and at the same time enhance effectiveness of return policies and practices.

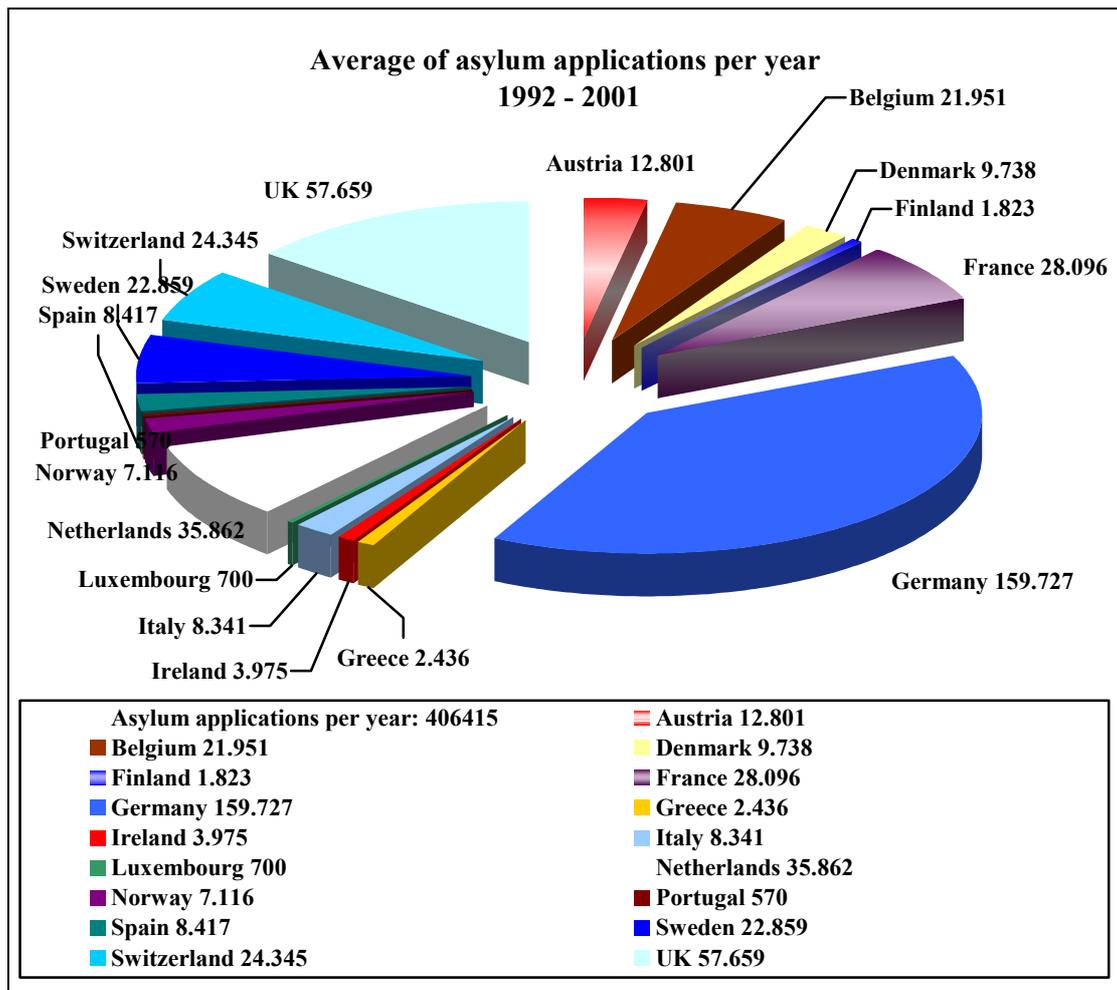
This study, drafted by Lukas Gehrke for ICMPD in the framework of the European Refugee Fund Community Actions 2001, has been prepared in close co-operation with a European-wide network of governmental experts in asylum and immigration laws, policies and practices, the European Commission, UNHCR and other international organisations as well as NGOs. In the preparation Dr. Khalid Koser, University College London, kindly served as an external consultant. We thank the European Refugee Fund for having co-financed this project.

Vienna, June 2003

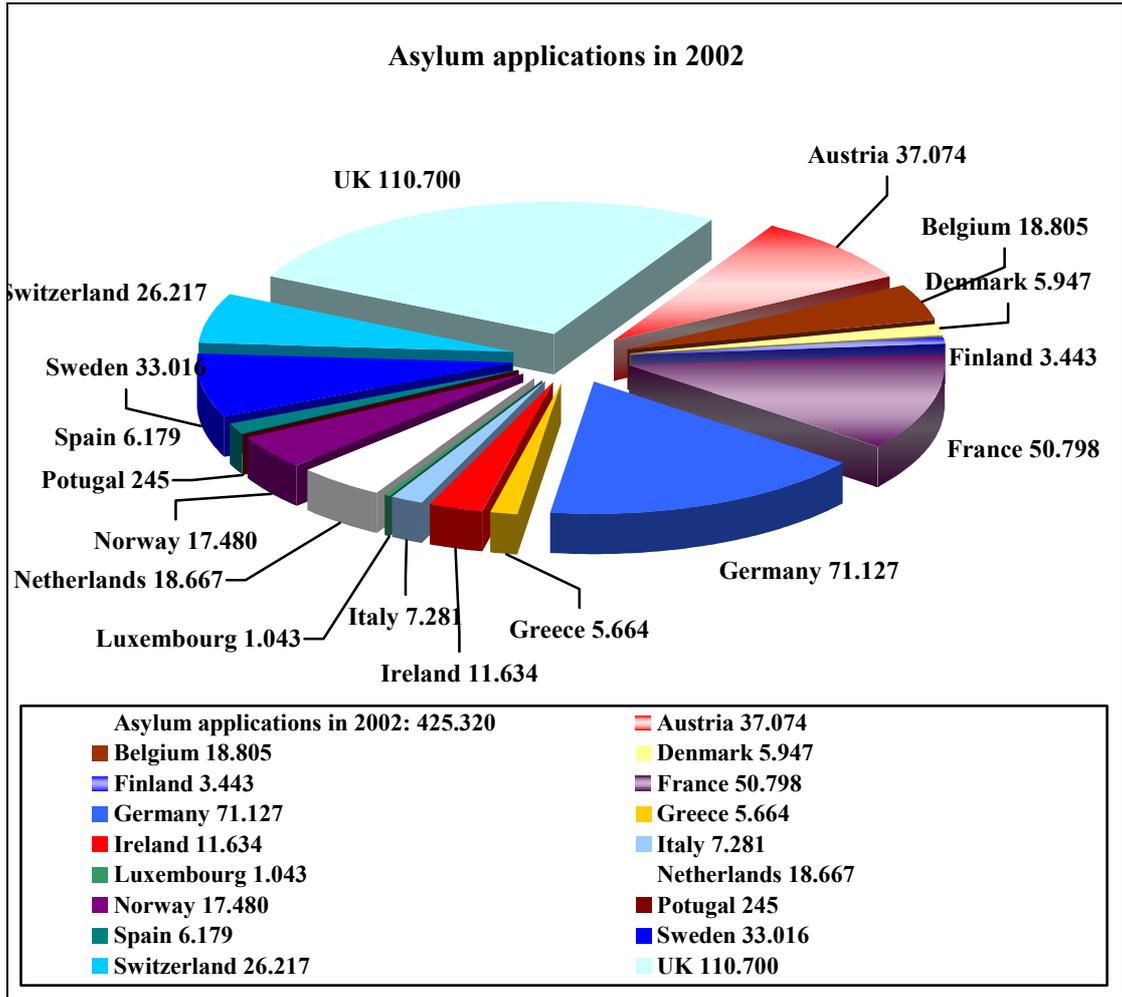
Jonas Widgren  
Director General  
ICMPD

**I. Introduction**

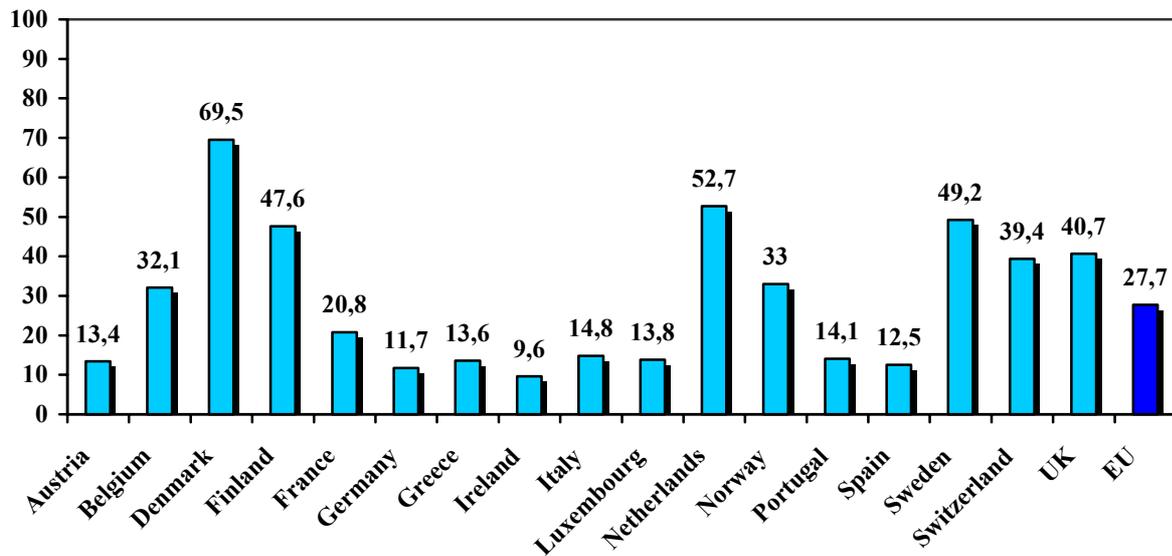
Many countries in the European Union have been confronted with the reality that it often proves difficult to stimulate rejected asylum seekers to voluntarily return to their country of origin. Although forced returns do increasingly take place, these are often very expensive and time consuming. Furthermore, such forced returns tend to be more invasive into the individual rights, dignity and integrity of the deportee. As a matter of fact, no exact statistical info exists describing the situation with regard to the stock of third country nationals under the obligation to leave who are currently present on the territory of the Member States of the European Union. According to recent trends in decision-making, however, it can be estimated that over 60%, in regard to certain nationalities reaching 90%, of all asylum seekers will face rejection, and will, in effect, have to leave the territory of the respective country. For illustration purposes, see the following graphs on average asylum applications, recognition and rejection rates.<sup>1</sup>



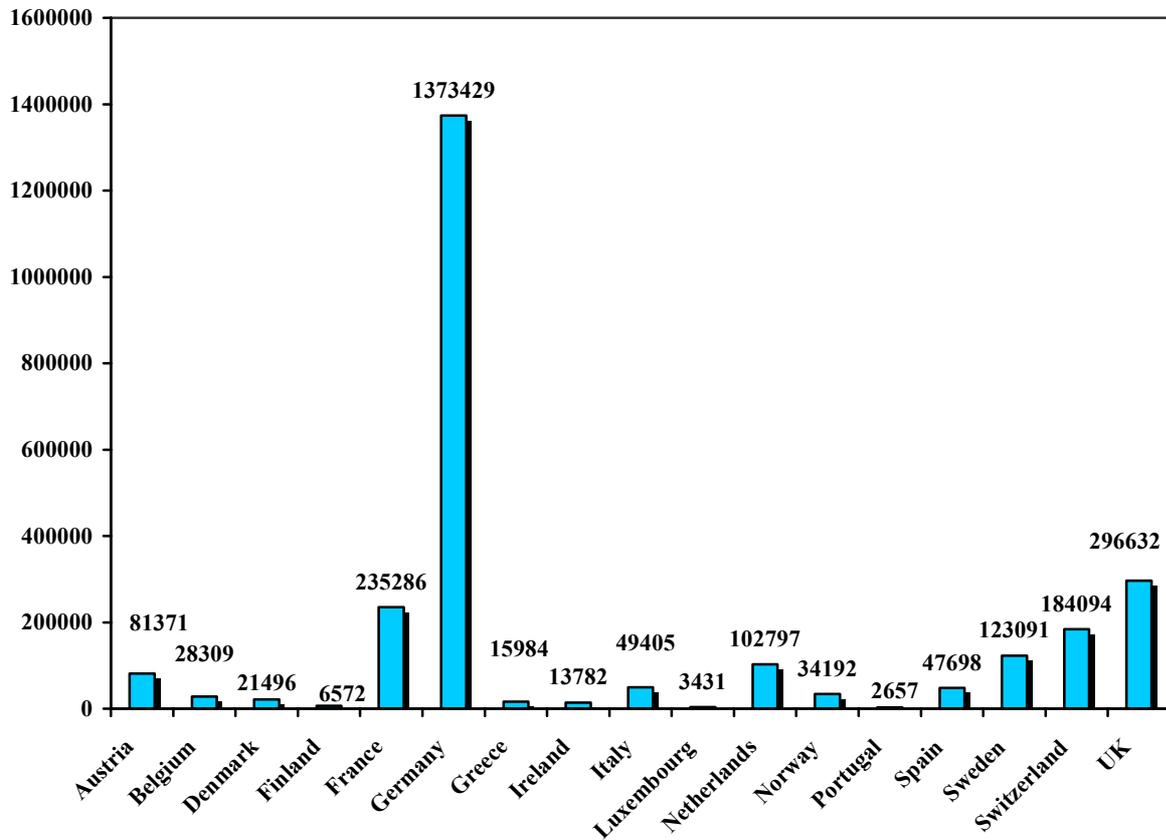
<sup>1</sup> Figures based on UNHCR, Statistical Yearbook 2001, ICMPD and data directly provided by national authorities.



**Total recognition rate in %, 1992-2001**  
(recognised and allowed to remain)



**Total rejection, 1992-2001**  
(first instance)



In the period between 1992 and 2001, the average recognition rate of all countries included in this survey was 28.7%. National recognition rates, however, differed to a significant degree, ranging from 9.6% in Ireland to 69,5% in Denmark. The average recognition rate for the 17 countries covered by this report, therefore, is approximately 28,74%. Apart from and in addition to refugees recognised according to the Geneva Convention, this figure, however, includes also third country nationals who are allowed to remain based on subsidiary, humanitarian and other grounds. This category of persons is governed by various differing national rules and regulations. As a consequence, the figures are not directly comparable. With regard to eventual returns it must, therefore, be borne in mind that a considerable number of third country nationals temporarily allowed to remain will come under the obligation to leave their respective host country. Moreover, the trend discernible in a number of EU states to even limit refugee statuses in duration will add to the numbers of third country nationals who are expected to leave.

Even though, the above figures do not lend themselves for calculating the exact number of rejected asylum seekers under the obligation to leave the country, they, nevertheless, provide the basis on which the significance of the problem can be highlighted. Applying the above figures, it can be estimated that in the ten-year period between 1992 and 2001 approximately a total of 2.6 million asylum seekers have finally been rejected in the 17 countries included in the present overview and have subsequently come under the obligation to leave. In recent years, therefore, it has become important for all actors involved that in order to maintain immigration and asylum systems' credibility and integrity purportedly rejected asylum seekers have to return.

Development of return policies is fuelled by the conviction that only with effective systems of return abuse of the system can be limited and over-burdening of the immigration and protection systems be avoided. At the same time, furthermore, efficient return and removal systems are to send signals to people in the host countries that abuse is not accepted, and only persons in need of protection are allowed to stay under protection systems. Most EU countries have taken on this problem, and besides using traditional channels, increasingly look for additional and alternative ways to create more efficient return processes. As will be shown in the chapters below, a number of initiatives envisage to comprehensively tackle the perceived problems. In the EU, the comprehensive approach is to include initiatives to improve operational co-operation between the EU Member States and to enhance co-operation with countries of origin and transit. Additionally, several programmes to support individuals to return have been developed, often in collaboration with international organisations, national and international NGOs. In many cases, such support programmes are evaluated with regard to their statistical effectiveness; however, no concerted, independent efforts have been made to compare the different policy approaches, methods and practices with respect to their potential to promote, convince and actively give priority to voluntary return.

Moreover, effects of specific return programmes for particular groups of returnees have not been fully analysed as they relate to overall return strategies. Experiences have shown that, following the lifting of the temporary protection status, displaced third-country nationals obliged to return to a country recovering from war need different

assistance and support than rejected asylum seekers who have to return after the rejection of their claims. Area of return, but also individual background of the persons to return can have a decisive influence on the success rate of return projects. EU-wide research is to assist the finding of best practices for different groups of returnees, linked to the issues described above. In order to increase the value of such research, the practices of selected non-EU countries will also be addressed.

In this exercise, the effect of specific projects should not only be measured by the sheer number of returned people, but also look in to the sustainability of such return, which is often linked to the social and economic situation of the returnees.

The objective of this project is to provide EU Member States with relevant information about the field of return incentives in order to make return projects more effective and to contribute to the ongoing pan-European efforts of managing return and sustainable reintegration of returnees in their home countries.

Via wide distribution of the study, all actors in the European Union involved in return of rejected asylum seekers will be able to further develop their return systems, taking into account the outcome of this overview.

## **II. Project activities**

The activities of the project are partly based on the information gathered during the implementation of the prior ERF project “*study and seminar on comprehensive EU repatriation policies and practices for displaced persons under temporary protection, other persons whose international protection has ended, and rejected asylum seekers*” and the network already established during this project was again utilised. As a rule, findings and conclusions of the first study are generally not repeated in the present study on return incentives. It shall be borne in mind that both reports form part of a series of research and policy evaluation and development of return systems and should, therefore, be read in this way.

During the start up phase of the project, relevant counterparts in different EU Member States have been approached and their main contacts in international organisations and NGOs with whom they co-operate in return operations have been identified. These focal points have also been invited to participate in the project.

Via a questionnaire, the focal points were asked to provide ICMPD with detailed information on their return activities and experiences. Among others the following information was asked for: target group of the projects, geographic area of return, number of persons involved, problems encountered during implementation, already recognised possible improvements, details on the implementation, including possible incentives and training schemes. Furthermore, additional information was sought, in particular relating to issues impacting on return policies, such as specific elements of asylum systems, regularisation schemes, etc.

A major event of the project was the two-day meeting held on 27 – 28 June 2002 in Vienna, during which some 40 participants from EU Member States, Norway, Accession States, the European Commission, international organisations and NGOs gathered to share their experiences with return policies and practices and to actively engage in discussions about the elements of the emerging EU return policy for irregular residents. Taking this opportunity, the notion of incentives to promote voluntary return has been presented and its potential as alternative and innovative concept fathomed.

Generally, the present project envisaged shedding light on measures which have a promoting effect towards voluntary return. Along the line of reasoning of the predominant conviction which understands voluntary and forced return as two elements of the same concept, i.e. including measures which affect behaviour of rejectees due to their coercive nature, as well as through the provision of support, assistance and benefits of financial and other character.

### **III. Background**

At the time of drafting by ICMPD of the previous European Refugee Fund supported study on *comprehensive European return policies and practices for displaced persons under temporary protection, other persons whose international protection has ended, and rejected asylum-seekers* no single instrument existed on a European level to deal with the sensitive and complex issue of return of persons who do not, or no longer, fulfil the legal conditions for entry to, presence in or residence on the territories of Member States. The situation with regard to a European return policy, however, has changed significantly in the past 18 months. The most concrete step in this development has been the tabling of the Commission's Green Paper on a Community Return Policy on Illegal Residents of 10 April 2002, the purpose of which has been to map out the constituent elements of such a policy as they appear to the MS governments for the first time. On 16 July 2002, the consultations culminated in a public European Commission hearing attended by some 200 experts in the field of return.

Even earlier, 21 – 22 June, the importance of a community return policy was further emphasised at the Seville European Council, at which it was decided to speed-up the implementation of all aspects of the Tampere programme for the creation of an Area of Freedom, Security and Justice in the EU. In this context, particular attention was drawn to the importance of a common policy on immigration and asylum. Specifically, the European Council requested the Council, the Commission and the Member States, each within its respective sphere of responsibility, to adopt the components of a return programme based on the Green Paper by the end of the year 2002.

At an informal Justice and Home Affairs ministerial meeting on 13 – 14 September 2002 in Copenhagen, priority was given to improving and enhancing practical operational co-operation among MS on return issues as well as for strengthening the co-operation with relevant third countries in combating illegal immigration.

On 14 October 2002 the Commission finally presented the Communication to the Council and the European Parliament on a Community Return Policy on Illegal Residents, the stated purpose of which was to *put forward an outline for a Return*

*Action Programme taking into account, inter alia, the contributions and discussions in response to the Green Paper<sup>2</sup>. Acknowledging the complexity of the matter, the Commission perceived of this Communication as being just one part of a much larger whole, the other components of which can be found in the many proposals and Communications, which the Commission has tabled in recent years.*

It will be shown below that the decisions taken on the EU level envisage to enhance what can be termed a “two-pronged” approach i.e. closer co-operation between MS themselves and between MS and third countries. Therefore, the present report aims at identifying the various ways in which European countries give effect to the much-acclaimed priority of voluntary return over forced removals, i.e. focussing on measures which target the third country nationals. In the abovementioned *Communication on a Community Return Policy* the Commission reiterated that “[T]o every extent possible, priority should be given to voluntary return for obvious humane reasons, but also due to costs, efficiency and sustainability. More efficient ways to promote voluntary returns should therefore be developed and implemented.” In the same Communication, the Commission, however, emphasised once more “[...] that in cases where voluntary return fails, the forced return of illegal residents becomes a necessity. A credible threat of forced return and its subsequent enforcement send a clear message to illegal residents in the Member States and to potential illegal migrants outside the EU that illegal entry and residence do not lead to the stable form of residence they hope to achieve.” These two paragraphs highlight the current political debate about a comprehensive EU return policy. The two approaches are seen as two sides of the same coin, or two complementary elements of the same concept, which rests on the conviction that credible immigration and asylum policies have to have a clear and effective return policy for those foreign nationals who are not, or no longer, fulfilling the legal requirements for entry to, presence in, or residence on the territory of the states. For asylum policies this concept means that those individuals who are not in need of any form of international protection must - reasons of integrity and credibility brought to bear – leave the country and return to the country of origin, or to any other country willing to admit them, presupposed there are no other grounds opposing the return. Consequently, the development and preservation of comprehensive EU

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<sup>2</sup> COM (2002) 564 final.

immigration and asylum regimes, as foreseen in the creation of an area of Freedom, Security and Justice at the European Council of Tampere in October 1999, simultaneously call for effective procedures to return those persons who do not meet eligibility criteria, i.e. who are not in need of international protection. Return and readmission policies are identified as integral and vital components of that plan.<sup>3</sup>

The MS of the EU, however, continue to perceive practical difficulties with the return of irregular migrants, and in particular with rejected asylum seekers. Even though, the problems encountered by the individual MS vary to a certain degree with respect to countries of origin and groups of returnees, they can be summarised or categorised as follows:

1. many countries of origin – for a variety of reasons – do not accept their nationals back

and

2. unwillingness of third country nationals unlawfully present on the territory of the MS to co-operate in return processes.

#### **IV. European Framework**

Briefly, this is the situation perceived by governments and for which they are striving to find solutions. To this end, a great number of initiatives has been taken by EU organs and the individual MS themselves. Most prominently in this regard are, as already mentioned, the developments surrounding the Commission's *Green Paper on a Community Return Policy on Illegal Residents*<sup>4</sup> of April 2002, which for the first time aimed at identifying the elements of a EU return policy in a comprehensive manner. Thus, it provided the conceptual framework within which the evolution of an emerging EU return policy gained pace. The Commission, however, pointed out

*“that a common approach on return would be inconceivable outside the general framework of the Community policy on immigration and asylum, the*

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<sup>3</sup> Ibid.

<sup>4</sup> COM (2002) 175 final.

*foundations of which were laid out in the Treaty of Amsterdam and in the conclusions of the Tampere, Laeken and Seville European Councils [...].”*

As mentioned, the situation with regard to asylum and migration has significantly changed since the entering into force of the Treaty of Amsterdam in 1999. New powers have been vested with the Community. Title IV of the Treaty establishing the European Community provides for measures upon which the Council has to act unanimously. Before the ending of the phasing-in period of 5 years the Commission and Member States share the right of initiative. After this period the Commission will have an exclusive right.<sup>5</sup> According to the Treaty visa, asylum, migration and other policies relating to the freedom of movement have become full Community responsibility.<sup>6</sup> Additionally, the provisions define specific voting rules in such matters and regulations regarding jurisdiction of the European Court of Justice, which will subsequently have practical influence on common asylum and migration regulations.<sup>7</sup>

Principally, having treated the issue of return and readmission as a question more or less isolated and without direct linkage to EU Member States' relations with third countries, since 1999, a broader approach is taken towards regarding the question of return and readmission in a more comprehensive perspective. In other words matters of return and readmission have gained increasing importance and weight in Member States' foreign policy, including development, trade and co-operation questions.

### **Co-operation with countries of origin**

The European Council in Tampere on 15-16 October 1999 agreed on a set of milestones on the way to creating an *Area of Freedom, Security and Justice*.<sup>8</sup> The conclusions adopted at the meeting stressed the need for more efficient management of migration flows at all stages. Paragraphs 26 and 27 promote the conclusion of readmission agreements or the inclusion of standard readmission clauses in other

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<sup>5</sup> Title IV of the EC Treaty is not applicable to the United Kingdom and Ireland unless the two countries decide otherwise. Furthermore, the Treaty is also not applicable to Denmark by virtue of the Protocol on the position of Denmark annexed to the Treaties.

<sup>6</sup> Articles 61, 62 and 63 of the Treaty establishing the European Community, as amended by the Treaty of Amsterdam, define the objectives to be achieved by the Union.

<sup>7</sup> The consequences on return and readmission remain to be seen.

<sup>8</sup> Tampere European Council Presidency Conclusions (full text): <http://ue.eu.int/Newsroom/LoadDoc.asp?BID=76&DID=59122&LANG=1>.

agreements between the European Community and relevant third countries or groups of countries; they call for consideration also to be given to rules on internal readmission.<sup>9</sup>

The Council also recognised the need to provide assistance to countries of origin in order for them to meet their readmission obligations and strengthen their ability to combat trafficking in human beings. The promotion of voluntary return was given priority. At the Tampere summit, the MS acknowledged that an efficient EU asylum and immigration policy must necessarily involve co-operation with countries of origin and transit and should address political and human rights, as well as economic and development issues in partnership with these countries.

As part of the process of strengthening the Commission competence, on 18 September 2000 the Council adopted a decision, which authorises the Commission to begin negotiations to conclude readmission agreements with the following countries: Albania, Algeria, Hong Kong, Morocco, Pakistan, Russia, Sri Lanka, Turkey, Ukraine and the Chinese Special Administrative Regions of Macao. Within this framework the first EU readmission agreements were concluded with Hong Kong and Macao. This was followed by an agreement with Sri Lanka, which has been signed on 29 May 2002. Negotiations are still under way with the rest of the mentioned states. Furthermore, it was decided that new negotiations are to be initiated with a number of other countries.

Another step towards harmonisation of the Union's migration system was the adoption of the *Council Directive 2001/40/EC of 28 May 2001 on mutual recognition of expulsion decisions*. It emphasises the need for Community action in enforcing the co-operation among Member States on expulsion of third country nationals and aims to ensure its efficiency. The Member States are to adopt the necessary measures for the implementation of this Directive no later than 2 December 2002.

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<sup>9</sup> There was a proposal put forward to the Council by Finland on a Regulation on obligations between Member States for the readmission of third country nationals: CNS 1999/0823. Discussion on the proposal has been postponed after a rejection by the European Parliament in May 2002.

### **A Common Policy on Illegal Migration**

In response to the Tampere conclusions, the Commission took the necessary steps towards their implementation by adopting in the autumn of 2001 a *Communication to the Council and the European Parliament on a Common Policy on Illegal Migration*.<sup>10</sup> It called for the promotion of the conclusion of readmission agreements in line with paragraph 27 of the conclusions. Such steps should be based on an assessment of the existing political and human rights situation in the respective countries of origin and transit. It recommends the inclusion of readmission clauses in all future Community Co-operation and Association Agreements. It explores the possibilities for exerting political weight to encourage countries of origin to fulfil their readmission obligations. The Communication builds upon the Tampere conclusions regarding more active co-operation with countries of origin and transit and touches upon the possibility to offer targeted technical assistance in appropriate cases, to help these countries to strengthen their capacity to combat trafficking in human beings and to cope with their readmission obligations.

The European Council meeting in Laeken in December 2001 listed a number of instruments needed for an efficient asylum and immigration policy.<sup>11</sup> Paragraph 40 of the conclusions calls for the integration of the migration policy into the framework of the Union's foreign policy. The Council calls for a comprehensive, integrated and balanced approach to tackle root causes of illegal immigration in the long term. This includes closer economic cooperation, trade expansion, development assistance and conflict prevention.

### **Green Paper on a Community Return Policy on Illegal Residents**

On the basis of the said Communication and as agreed in Laeken, a *Plan to Combat Illegal Immigration and Trafficking of Human Beings in the European Union*<sup>12</sup> was prepared by the Commission and adopted by the Council on 28 February 2002, which

<sup>10</sup> Communication from the Commission to the Council and the Parliament on a Common Policy on Illegal Immigration of 15 November 2001, COM(2001) 672 final.

<sup>11</sup> Laeken European Council Presidency Conclusions (full text): <http://ue.eu.int/pressData/en/ec/68827.pdf>.

<sup>12</sup> 6621/1/02 REV1 JAI 30 FRONT 19 MIGR 10 VISA 29.

inter alia calls for the elaboration of a Green Paper analysing possible measures and courses of actions towards the creation of a Community return policy and also the development of a financial instrument for implementing such a policy.

Adopted on 10 April 2002 the *Green Paper on a Community Return Policy on Illegal Residents*<sup>13</sup> explores various issues related to the return of third-country nationals. One of the many aspects is a development of the readmission policy of the Union, together with third countries. It considers the adoption of a more co-operative approach to the issue of controlling migration flows and the need to involve third and transit countries in the process. As to the specific policy on return, it should consider the need to recognise the possible negative effects for the countries of origin and transit. Since readmission agreements are in the interest solely of the Community, the GP states, the Council should increase the complementarities in the area of readmission with other Community policies, and use the existing “leverage” at its disposal, in particular with regard to the foreign policy of the Union, development aid and technical assistance. In order to ensure that returns are sustainable, the EU should consider adequate forms of support in the respective countries of origin and, in the long run, address the root causes of migration.

Harmonisation processes covering return and repatriation policies and practices have gained in speed since the issuing of the Green Paper, and especially since the European Council in Seville in June 2002. In conclusion 30 the Council calls for adoption, by the end of 2002, of the components of a return/repatriation programme based on the Green Paper, including the best possible facilities for early return to Afghanistan. To this end, the Commission presented a Communication on this topic after the informal JHA Ministerial meeting in September 2002, which will be discussed further below.

The discussion paper drafted by the incoming Danish Presidency on “improved operational cooperation between the Member States in the field of return”<sup>14</sup> already revealed the direction of development of a future common repatriation policy. The Danish Presidency particularly emphasised the need for common definitions in order to

<sup>13</sup> Green Paper on a Community Return Policy on Illegal Residents COM(2002) 175 final.

<sup>14</sup> 10835/02; 27 June 2002.

improve the exchange of more complete and detailed information on returns and voluntary repatriation. It calls for enhanced co-operation relating to the identification of illegal residents, improved co-operation relating to the issuing of relevant travel documents and transportation. Such improved co-operation should be comprised of the establishment of a visa identification system and pooling of experience in identification and procurement of travel documents. Furthermore, a set of best practices for return to a region or to specific countries of origin and transit is seen to positively contribute to implementing returns. The Danish paper further suggests that improved co-operation between and the use of immigration liaison officers and embassies in countries of origin and transit could be explored to further improve coordination and implementation of returns. Generally, it can be said that the proposed direction of a common approach strongly emphasises the operational dimension of return.

In regard to the Action Programme for Return/Repatriation based on the Commission's Green Paper the Danish Presidency noted that such an Action Programme should *“focus on issues specifically related to the practical return and repatriation phase”* and *“should at least include [...] common guidelines/standards for return/repatriation measures, including guidelines for operational cooperation between Member States, forced and voluntary return, introduction to specific country-related return programmes, including counselling of potential returnees, post-return counselling and possible financial assistance.”*<sup>15</sup>

On 27 June 2002, furthermore, Germany tabled an initiative for a Council Directive on assistance in cases of transit for the purposes of expulsion by air.<sup>16</sup> The envisaged purpose of this initiative is to facilitate and improve assistance in removal operations during which the territories of other Member States have to be transited.

These examples of initiatives show the line along which co-operation is to be developed in the short-term. Strong emphasis is given to closer co-operation in the practical return phase. The broader dimension of a migration dialogue is yet to be developed.

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<sup>15</sup> 10895/02; 11 July 2002.

<sup>16</sup> 10386/02; 27 June 2002.

### **Communication from the Commission to the Council and the European Parliament on a Community Return Policy on Illegal Residents**

In October 2002 the Commission forwarded to the Council and the European Parliament the *Communication on a Community Return Policy on Illegal Residents*<sup>17</sup>. In this Communication the Commission sets out the working premises on and the framework within which to progress towards a Community return policy. It reiterates the vital importance and the integral role a return policy plays in a comprehensive immigration and asylum policy. Essentially, the Commission emphasised again that in order to preserve integrity of immigration and asylum systems illegal residents must be returned. Such returns, however, must be respectful to international human rights and obligations. In particular, article 6 of the EU Treaty which provides that “ [...] *the full respect of human rights and fundamental freedoms is the natural and basic prerequisite for a European return policy [...]*”. Furthermore, the ECHR and the Charter of Fundamental Rights of the European Union of December 2000<sup>18</sup> lay down provisions which are relevant to a policy on return. Additionally, the Geneva Convention and its Protocol is of particular relevance. Finally the UN Convention on the Rights of the Child obliges that in all actions related to children, the child’s best interest must be a primary consideration. The Communication, moreover, recalls what has already been discussed at the Seville summit, namely that according to MS Justice and Interior Ministers “ [...] *the main problem does not lie in strengthening the co-operation between Member States, but is rather attributable to the unwillingness of third countries to take back their nationals and to ensure sustainable return*”. Consequently, recalling the phased measures as agreed in Seville in 2002 to secure the co-operation of countries of transit and origin:

*“[C]o-operation is needed at an administrative level to obtain return travel documents for illegal residents who are not in possession of valid travel documents. In addition, when arriving in the country of return, the readmission process at the points of entry, often at airports, requires support. In certain cases it might be helpful to negotiate a readmission agreement at political level,*

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<sup>17</sup> COM(2002) 564 final.

<sup>18</sup> OJ C 364 of 18 December 2000, p. 1.

*which goes further than establishing the principles of readmission and sets out the practical procedures and modes of transportation for return and readmission.”*

The second part of the Communication particularly deals with the Return Action Programme and sets out in detail the elements of such a programme. In brief, this Return Action Programme contains *inter alia* the following elements:

1. Short-term measures focusing on enhanced operational co-operation between the Member States.
2. The use of common definitions to improve the exchange of data.
3. Best practices and guidelines, esp. for obtaining of travel documents.
4. Joint training.
5. Improvement of identification and documentation; integration into the future Visa Information System, especially with regard to return. Joint return operations and better co-ordination.
6. Establishment of a legally binding framework for mutual recognition of all measures terminating a residence.
7. Readmission and transit rules among Member States
8. Minimum standards with regard to return procedures, expulsion decisions and detention in a future *Directive on Minimum Standards for Return Procedures*.
9. Development of EU approach for integrated return programmes, covering all phases of the return processes, i.e. pre-departure, return as such, reception and reintegration in country of return.
10. Enhanced administrative co-operation with third countries.

The Communication builds consequently on the areas identified in the Green Paper as well as on the subsequent discussions on various working levels. It provides a more concrete perspective as to the scope of a future comprehensive return policy, depicting how it might look like once implemented.

### **Criteria for new readmission agreements to be negotiated**

In response to the Laeken conclusions, on 16 April 2002 the Council adopted the Draft conclusions on the criteria for the identification of third countries with which new readmission agreements need to be negotiated<sup>19</sup>, establishing a set of criteria to be respected with regard to the conclusion of readmission agreements, such as assessments of the migration pressures exerted by flows of persons from or via third countries, exclusion of countries with which accession agreements are being negotiated, geographic proximity, particular interests of Member States and geographical balance between the various regions of origin and transit of illegal migration

Readmission agreements are a relatively new phenomenon, but they build on standard readmission clauses which have featured for some years in association and co-operation agreements. Since 1996, readmission clauses have been included in agreements *inter alia* with Algeria, Armenia, Azerbaijan, Croatia, Egypt, Georgia, Lebanon, FYROM, and Uzbekistan. These clauses do not constitute readmission agreements in themselves, but establish a framework for negotiating such agreements in the future. Furthermore, article 13 of the Cotonou agreement between the EU and 77 ACP countries addresses the question of migration. It calls for the negotiation of readmission agreements between the EU and ACP states. Signed in June 2000, the Cotonou agreement is currently being ratified by EU Member States. Ratification was completed by the ACP States in May 2002.

### **Seville Presidency Conclusions**

The conclusion adopted at the European Council meeting in Seville on 21-22 June 2002 follow the direction established by the Commission's Green Paper for a Common Return Policy.<sup>20</sup> Paragraph 27 underlined the crucial role of co-operation with countries of origin and transit in the management of migration flows to the Union. The European Council concluded that any form of future co-operation, association or equivalent agreement should include a clause on joint management of migration flows (paragraph 33). The Union is prepared to provide the necessary technical and financial assistance

<sup>19</sup> 7990/02 COR 1 MIGR 32.

<sup>20</sup> Seville European Council Presidency Conclusions (full text): <http://ue.eu.int/pressData/en/ec/71212.pdf>.

for the purpose (paragraph 34), however, if a country shows “unjustified lack of co-operation”, the Council may adopt respective measures under the Common Foreign and Security Policy and other EU policies (paragraph 36). The conclusions stressed that readmission by third countries should apply to their own nationals, as well as to third country nationals unlawfully present in a Member State.

## **V. Two-pronged approach**

Having regard to the initiatives and actions taken on the European level, the scope of the emerging framework for return becomes clear. The Council, the Commission and the MS have agreed to tackle the perceived problems pursuing what could be termed a *two-pronged* approach. On one hand, the need to closely engage countries of origin and transit in a migration dialogue based on partnership was identified. In the Commission’s own words:

*“[...] closer co-operation with third countries is a sine qua non for the success of the policy. This co-operation will, of course, have to develop first at administrative and operational level, concerning the documentation and reception of the persons concerned and also as regards transit in some cases. In formal terms it may involve conclusion of readmission agreements [...]. Care will also have to be taken to ensure that the ground is prepared for profitable reintegration both for the returnee and for the place of origin. This will require 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.”<sup>21</sup>*

It was understood that migration matters increasingly have become “*negotiable matters*” and that co-operation with third countries in return and readmission is vital and might be supported under certain preconditions with technical or financial assistance in order to receive back their own nationals. On the other hand, however, the Seville European Council concluded that persistent and unjustified denial of constructive co-operation on behalf of third countries could entail the unanimous

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<sup>21</sup> COM (2002) 564 final.

adoption of measures or positions under the Common Foreign and Security Policy and other European Union policies after full use of existing Community mechanisms has been made without success.<sup>22</sup>

Recapitulating, migration issues, including return and readmission, have increasingly developed into foreign policy matters and will now be debated in a migration dialogue between the EU and its MS on one side and third countries on the other.

The other element of this two-pronged approach aims at eliminating the persisting obstacles to an effective return policy through an enhanced operational co-operation between the EU MS themselves. In the short term (*rapid response*<sup>23</sup>), this includes *inter alia* that contacts and the exchange of information is made easier. This is to be achieved by creating common terms of reference, practices and training, by co-ordinating of resources, in particular with a view to the identification and documentation of the persons concerned, and of common return operations. In order to create the conditions in which such operational co-operation can effectively function, a common legal framework is to be developed consequently. In a first step, this should, according to the Commission's Communication, lead to "*full mutual recognition of removal decisions*", building upon the Council Directive of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals.<sup>24</sup>

Through this combined approach it is envisaged to ultimately reduce the problems perceived by EU countries with regard to third country nationals who do not, or no longer fulfil the conditions for entry to, presence in, or residence on the territories of the Member States of the European Union either because they entered illegally or overstayed their visa or residence permit, or because their asylum claim has been finally rejected. In other words, by way of this approach difficulties in establishing identities and nationalities, obtaining replacement documents for undocumented foreign nationals, general reluctance of countries of origin to receive back their nationals, especially if they do not return voluntarily, absconding, uncooperative or occasional hostile behaviour of persons under the obligation to leave are to be solved.

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<sup>22</sup> See Conclusion No 36.

<sup>23</sup> COM (2002) 564 final.

<sup>24</sup> 2001/40/EC.

The question which arises at this stage is as to how the envisaged measures and action included in this two pronged approach will affect the individual third country national who is concerned by the emerging return regime. It may appear to some that the individual returnee has been left out of the ongoing reflections in this respect. Nevertheless, any policy and any action which envisage the effective return of third country nationals without the need for protection must dully take into account the individual who is directly affected by such measures.

It is at this point that the concept of return incentives, in the meaning of actively giving priority to voluntary return, could offer a way of including the individual into the creation of a functioning return regime, which remains respectful to the human rights and dignity of the returnees in order to add a third prong.

## **VI. Return Incentives and voluntary return**

Before going further into a more detailed description of state practice with regard to incentives to promote the return of rejected asylum seekers and other third country nationals without legal entitlement to remain on the territory of their host countries, one should take a look at an issue surrounding the discussion of promoting voluntary return. Presently, some confusion is caused by the somewhat imprecise use of the term voluntary return, assistance and support programmes to facilitate return of persons not entitled to protection and residence. It is beyond the scope of this report to directly engage in the debate about the notion, quality and limitations of the concept of voluntary return in the present context.<sup>25</sup> Nevertheless, some observations from practice have emerged during the implementation of the various return-related projects.

As already noted before, accurate definitions are almost impossible to conceive. More often than not, the dividing line between voluntary and forced return may more appropriately be drawn between such cases in which the police or other enforcement agencies are directly involved in the actual operation and other cases in which there is no such direct involvement. But, as in the case of Denmark, this might not always lead to an accurate description of reality. However, also bearing in mind that this report only focuses on third country nationals not entitled to protection and hence to remain in the territory, the use of the term *voluntary*, in the sense of freedom to decide to either stay or leave, is misleading. As in the context of current debates about return of irregular migrants, the individuals concerned do not have this range of options. The freedom to decide is limited to the way in which return is to take place, in the best case this means the voluntary availment of assistance to follow the obligation to leave.

As mentioned above, however, it is apparent that some confusion in terms exists also in practice, as there is no consensus as to the actual quality and content of the notion of voluntariness. This may partly be explained by the origin of the concept of promoting return by way of offering support programmes. On one hand, the policy of stimulating returns by providing programmes originates in the labour migration context of Switzerland, Germany and to a certain extent France in the 70s, in particular after the first oil crisis of 1974. In the course of economic downturn and growing

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<sup>25</sup> For a detailed discussion see ECRE's forthcoming position paper on a comprehensive return policy.

unemployment, such policies aimed to facilitate the return of migrant workers who were most affected by the consequences of deteriorating labour market conditions and thus to reverse the flows of labour migration previously actively pursued. Another influence in the creation of such programmes can be ascribed to the (predominantly African and Asian) refugee context and to voluntary repatriation as one of UNHCR's three durable solutions.<sup>26</sup> Another reason might be seen in the fact that the mandates of the international key actors in return assistance set limitations as to their involvement only in voluntary returns, as in the case of IOM.

Regarding the roots of assistance programmes it becomes evident that contemporary programmes aimed to convince rejected asylum seekers to accept decisions which oblige them to return home are taking place in a decisively different setting. Such programmes could be seen as governments' pragmatic answers to a problem which is perceived to grow. Nevertheless, it is essential to distinguish between programmes which are intended to provide assistance and support to foreign nationals who have some form of stable residence entitlement and others which are designed for those who are, or soon might come, under the obligation to leave. This is of particular relevance for example with regard to the provision of information to the various target groups. Here, a clear distinction must be made in order to give unbiased information as to the legal possibilities available to the different categories of persons.

Voluntary return assistance schemes for aliens not holding any form of residence permit, i.a. rejected asylum seekers, do not always show the expected results. There are evidences that voluntary return measures do need enforcement regimes. Experiences have shown that only such voluntary return assistance programmes yielded numerical success which were accompanied and flanked by functioning enforcement regimes. Consequently, voluntary and forced return appear to be part of the same concept, based on the policy which emphasises that persons, who have been examined in a full and fair procedure not to be in need of international protection, have to leave the territory of the host state. It is assumed that voluntary and non-voluntary return are placed in a complex relationship of interdependence. A number of voluntary return assistance programmes have proven numerically unsuccessful, as there was a lack of enforcement

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<sup>26</sup> For a detailed discussion, see "UNHCR and Voluntary Repatriation of Refugees. A Legal Analysis"; Marjoleine Zieck; 1997, Kluwer Law International.

in case rejected asylum seekers did not opt for participation in such programmes. The fact that in cases where the abovementioned policy of not allowing screened-out asylum seekers to remain within the state boundaries of host countries was not effectively put into practice by enforcement measures more often than not also negatively impacted upon success of programmes to facilitate and assist return. Governments, therefore, often resort to a twofold “carrot and stick” approach: providing for return assistance for rejected asylum-seekers willing to return and emphasising enforcement if this option is not taken. It, nevertheless, appears that it is a question of factual alternatives available to the individuals. If it is in fact possible to remain on the host states’ territories a number of foreign nationals under the obligation to leave will likely – understandably or not – continue to remain in the country, even if illegal.

As a consequence of this conviction some countries do not clearly differentiate between the two concepts. In the Danish system, for instance, any form of repatriation of rejected asylum-seekers (be it voluntary or not) falls within police responsibility. According to the Danish police, return is voluntary as long as the person concerned is generally willing to comply with the order to leave. If, however, the rejectee proves to be uncooperative, police will introduce more “persuasive” measures.<sup>27</sup> As a result, rejected asylum-seekers may still opt for “voluntary” return even from within detention pending removal.

The Swedish Migration Board, on the other hand, holds responsible solely for voluntary returns, whereas all cases, which might involve the use of force, are handed over to the police. Nevertheless, individual risk assessments are carried out by the Board and as long as the Board considers possible the rejectee leaving voluntarily a case is not delegated to the police. As a consequence, this means that voluntary return, i.e. return without police involvement, is also possible from within detention pending removal.<sup>28</sup> These examples show the mentioned difficulties to clearly define and delimit the two concepts in the context of rejected asylum-seekers. The prevailing situation in the individual countries is described in the country report section below.

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<sup>27</sup> Information provided during an interview with Danish police officials.

<sup>28</sup> It may be worth noting, that in neither of the two countries general voluntary return assistance programmes for rejected asylum-seekers exist comparable to other countries, such as B, CH, FRG or NL.

A relatively recent development in migration management is the idea of offering assistance and support to persons to return voluntarily to their countries of origin, more precisely, the extension of voluntary return assistance programmes also to persons who do not or no longer have a valid claim for international protection, which means that such assistance which used to be available predominantly to persons holding a valid residence permit was now extended to also include persons not having a residence permit. Leaving aside the implications which such an extension bears the notion of voluntariness, as already discussed above, the question is whether such more co-operative approaches may also add additional value to the development on comprehensive return policies and practices - more than until today.

Most States, or one could say all States included in the two abovementioned ICMPD return projects have in place schemes to offer such assistance to persons who are willing to follow their obligation to leave without force. The benefits offered under such programmes, however, vary to some extent throughout Europe. The level of success (in numerical terms) of such programmes is not the same for each programme. There are several implications which have to be taken into account in designing and implementing such elements of return policies which prove influential with regard to success.

What is new to such approaches towards return and this was proven in several cases, is that a more co-operative approach in regard to persons who are under the obligation to leave (or who might come under such obligation at some point in the future) can significantly improve the return process in several aspects:

- make return processes more cost effective (cost reduction),
- make returns more respectful and responsive to the dignity and integrity of the returnees (less invasive),
- and last but not least (and probably most important from a government perspective) secure the co-operation of the individuals.

Since a clear-cut definition as to the precise content of the notion of return incentives has yet to be developed, it must be noted from the outset that for the time being a

somewhat undetermined concept is applied in the following. This, however, carries the advantage of providing as wide a scope as possible for the analysis of state action with regard to their “incentivising” effects. For the purpose of this study, consequently, incentives for return shall be understood in the following broad meaning: on one hand, the assistance programmes for asylum-seekers, TP-persons and others, which offer benefits, ranging from travel expenses and small travel grants to vocational training and business start-up grants and post-arrival monitoring. On the other hand, it is equally important that persons who might have to return home are informed at an early stage of asylum procedures and receive some form of counselling as preparation for the actual return. It is essential for both accepted and rejected asylum seekers that decisions are made within due time, since the element of time is decisive: the longer the process the more problematic the return. Moreover, there are examples of additional support offered to persons who have to return home apart from financial incentives and outside of return assistance programmes. The Swiss Returnees Counselling Offices (RCO) may serve as one such example within the regular procedures in the country. In Switzerland - in the context of returns to Sri Lanka – the authorities realised that persons had sometimes gained significant funds working during their presence. The perspective of losing such financial assets were making persons reluctant towards return. Therefore, the RCOs were created to offer assistance also regarding eventual re-claim of such assets. Re-claimed benefits were then transferred to an associated financial institution in Sri Lanka where the returnees were able to withdraw them after they have returned home.

Incentives to promote return are to include as the single-most important element, furthermore, assistance programmes, which can offer a great variety of different assistance and support measures embedded in a programme structure. The impacts programmes can have on root causes may be even more increased by extending their scope (and hence the design) by integrating elements of development assistance. In recent years, several countries increasingly made available facilitation measures to promote the return of rejected asylum-seekers. Such measures, as already mentioned, previously were in place predominantly for aliens holding residence permits for their respective host countries. Facilitation measures for rejected asylum-seekers are relatively recent tools to increase returns. The great majority of such measures are

embedded in so-called voluntary return assistance programmes which - as a policy tools - are state-funded and often executed in co-operation with IOM, but also cases in co-operation with national NGOs. Support and benefits offered to rejected asylum-seekers willing to return under a programme vary to some extent throughout Europe. Usually, such programmes are comprised of travel costs, some pocket money and transportation of luggage. Sometimes, vocational training and reintegration grants may additionally be made available.

A broad distinction can be made as to the target groups of voluntary return assistance programmes. On one hand, several states offer general return assistance programmes targeting asylum seekers who then have to withdraw from the process and already rejected asylum seekers, both groups irrespective of the countries of origin. Additionally, there are special programmes which are focused on specific regions or countries of origin, particularly upon ending of armed conflicts, often including elements of reconstruction. Such programmes frequently build upon existing general return programmes, but are adapted to the specific situation in the countries of origin.

Great differences exist as to the financial means provided for by national authorities. Consequently, the scope of voluntary return assistance programmes varies accordingly. Moreover, it appears that there are significant differences as to the organisational structures for providing such voluntary return assistance.

Some countries which are included in this report, however, do not provide any voluntary return assistance programmes at all. In these countries, a clear-cut distinction between voluntary and non-voluntary return cannot be made. Nevertheless, assistance for rejected asylum seekers wishing to return voluntarily is available, although not in form of programmes.

In addition, the concept of return incentives may be utilised to enhance the much needed co-operation with the individual concerned, by making the aliens sector more responsive on all levels to the endorsed primacy of voluntary return. To put it simple, the notion of return incentives in the present context may carry additional potential

which could be employed to create more effective return schemes if understood in this broad way.

A caveat shall be borne in mind: to the same degree as asylum systems' credibility will suffer if there is no effective return policy in place, the often quoted "public opinion" towards a comprehensive return policy will suffer if there are no clear and transparent regulations which include standards of human rights and dignity of the persons concerned to govern them. Only recently, the Council of Europe has published a disquieting report on expulsions and deportations which raises strong concerns in regard to the treatment of persons during escorted deportations. This stage of return operations, therefore, cannot be seen as primarily being a matter of physically strong escorting officers. There is more to it. And it calls for clear political will also in this regard to create conditions which are on one hand offering the escorting personnel specific training, including psychological skills to prepare them for their sensitive tasks and on the other hand to make it understood that return must take place, which includes that persons potentially under the obligation to leave receive necessary information and counselling.

#### Asylum systems and potential returnees

An equally decisive actor in the realm of return and readmission is, nevertheless, the individual person who is or soon will come under the obligation to leave the country and return to where s/he has come from or move on to another country which is willing to admit him/her. Success and effectiveness of most of the abovementioned approaches and strategies will continue to depend strongly upon the individual's will to co-operate in the respective procedures. As an obvious consequence of this fact, any policy dealing with return has to pay due regard to and take into account the situation of the individual who falls within the scope of it. It emerges from research as well as practical experience that differences prevail in regard to the level of co-operation shown by returnees<sup>29</sup> which to a great degree hinges upon the reasons why they came to the host country in the first place.

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<sup>29</sup> For example, John R. Rogge, "Repatriation of Refugees", in Tim Allen and Hubert Morsink, eds., "When refugees go home"; Geneva, 1994.

In the context of return of rejected asylum seekers an effective and fair asylum policy and system are of overriding importance. In a nutshell, in the case of a person who perceived his/her life and physical integrity threatened in the country of origin in a way which would engage the protection obligation of the respective host country, the asylum system, however – for whatever reason - does not afford him/her this protection, resistance to the return might be the ultimate way to avert the violation of non-refoulement obligations. As shown above, the discourse surrounding the justification of return policies oscillates between credibility and integrity of immigration and asylum systems. According to this line of reasoning it is suggested that there is no need for lengthy and costly determination procedures if a dismissive decision does not bear any consequences, i.e. the return of the rejectee.

Conversely, however, this argumentation at the same time demands that persons in need of international protection effectively have a chance of receiving it in the host countries. Otherwise, lacking return policies do not pose a threat to integrity and credibility of the system, if they do not exist anyway. In other words, integrity and credibility of asylum systems depend upon effective return policies for those not in need of protection to the same degree, as the justification of return policies hinges on fair and inclusive protection systems. Every increase in effectiveness of return policies consequently must therefore be accompanied by safeguarding provisions and measures to increase the quality of protection systems, in order not to violate international protection obligations.

The problems arising in connection with the implementation of obligations to leave a territory are well known, and the ways in which host countries aim at solving them have been mentioned and will be outlined in further detail below. However, too narrow a view of return as ending at the external borders of MS might not solve the problems. Ways have to be found to secure the co-operation of the individuals who are under the obligation to leave, in order to make return and reintegration durable and sustainable. In this context it might be timely to include underlying root causes of irregular migration and residence into policy development.

The concept of return incentives to promote the individual to leave voluntarily (in this context, i.e. without having to resort to coercive enforcement measures) might provide additional ways towards effective return policies and practices. It is meant to eventually offer new and more co-operative solutions to obstacles to return which are caused by situations of lacking co-operation.

What, however, becomes evident, as outlined below, is that there are only few if any other incentives available outside assistance programmes. Which means that, even if there is a tendency towards increased utilisation, the systems are yet to tap the full potential of *incentivising* return, i.e. pursuing more actively the promotion of voluntary return. Some measures, however, are worth considering: the abovementioned *Returnees Counselling Offices* providing professional assistance for potential returnees throughout Switzerland, particularly by offering specific and detailed information. Another measure which holds additional incentive for voluntary return - if used and promoted sensitively - is the fact that in some countries (e.g. Ireland) it is emphasised that foreign nationals may re-enter the country through legal channels if they leave voluntarily (that is, no residence ban is put upon them).

## VII. Country Reports

### Austria<sup>30</sup>

#### **Incentives**

Austria offers voluntary return assistance to persons who wish to return but lack sufficient means of their own to do so as an alternative to forced return. To this end, however, there are no general information campaigns being implemented, nevertheless, possible assistance for voluntary return is brought to the attention of target groups by NGOs, posters, leaflets and also aliens police provides information to foreign nationals. The general legal basis for voluntary return is § 12 “*Bundesbetreuungsgesetz*”, according to which persons who are not entitled to remain can receive assistance for organising return in line with social welfare regulations. The groups who fall within the scope of this regulation are refugees, asylum seekers and rejected asylum seekers. Asylum-seekers can apply at any stage of the procedure presupposed they withdraw from the asylum process.

At the moment, apart from possible exceptional financial support by the Ministry of Interior<sup>31</sup>, there are two return assistance programmes in operation. Caritas Austria receives funding from the ERF through the Ministry of Interior for the operation of a general return programme which is integrated in the overall services of the organisation and demand-driven. The pre-departure benefits provide for legal and social counselling, provisional accommodation, reintegration measures (vocational training, financial support, organising of medical treatment in country of origin) and organising of the return journey. The post-arrival benefits are provided for vulnerable groups only (e.g. locating family, jobs, and accommodation) and according to available resources.

Since 2001, a special and more specific return programme is run by the Association for Democracy in Africa. It operates also with ERF funding allocated by the Ministry of

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<sup>30</sup> While writing this report, the Austrian Ministry of Interior mandated the German private company European Homecare with return counselling of asylum seekers and rejectees on a trial basis. Accurate statistical information as to the numerical success was not available. Evidently, app. 20 persons returned after they received information and counselling by European Homecare. Furthermore, there are several proposals currently under consideration in the tendering procedure for the mandate of publicly funded return counselling.

<sup>31</sup> In particular cases of need persons may receive € 1.453 of financial reintegration support.

Interior. This programme focuses on the return and reintegration to African countries and provides counselling, vocational training, organising of the travel and reintegration.

The average cost of counselling, flight, procurement of documents, housing before departure and reintegration assistance amounts to € 2.180, -/person.

### **Sanctions**

Apart from detention to prevent absconding there are no specific regulations in place which would sanction behaviour deemed to be uncooperative. It is planned to speed up the asylum procedure drastically in a pre-screening stage. Furthermore, the obligation to co-operate on behalf of the asylum seeker is to be introduced.

Worth noting, however, is the fact that reception and accommodation is not generally provided for all asylum seekers. “Bundesbetreuungsgesetz” limits the scope of reception benefits to asylum seekers who do not avail of sufficient means of their own. Additionally, a ministerial directive further restricts the provision of reception support after the first negative decision to certain countries of origin. This provisions intend to confine federal support to those asylum seekers who are unable to support themselves and who, according to the authorities, have a realistic prospect to be granted asylum. This regulation can be seen to have a general deviating effect which, however, is beyond the scope of this report.<sup>32</sup>

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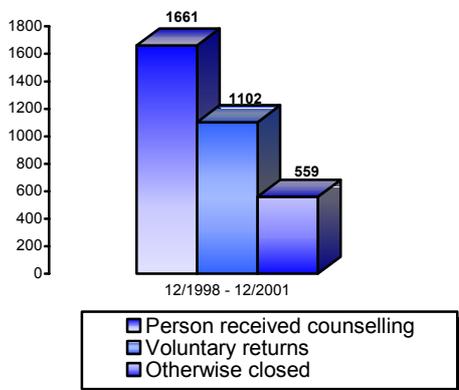
<sup>32</sup> There are plans to introduce a general system of reception in co-operation between the state and the Bundesländer. At the end of 2001, an overall of 4.679 asylum seekers received federal support.

Statistics

**Voluntary return**

**Removals**<sup>33</sup>

RückkehrHilfe - Caritas Austria



<i>Termination of stay in 2001</i>	
<i>Zurückweisungen (§ 52 FrG) (at border)</i>	<i>17.595 (-8%)</i>
<i>Zurückschiebungen (§ 55 FrG) (after illegal entry)</i>	<i>6.338 (-25%)</i>
<i>Schubhaftverhängungen (§ 61 FrG); (detention pending removal)</i>	<i>7.306 (+21%)</i>
<i>Aufenthaltsverbote (§ 36 FrG) (residence ban)</i>	<i>6.387 (+29%)</i>
<i>Ausweisungen (§§ 33 und 34 FrG) (i.a. after negative asylum decisions)</i>	<i>6.204 (-35%)</i>
<i>Abschiebungen (§ 56 FrG) (monitored departure or escorting)</i>	<i>8.324 (-14%)</i>

<sup>33</sup> The statistics include the whole area covered by the aliens legislation (FrG) and do consequently not differentiate between asylum and other sections.

## Belgium

In the past it was only after a final negative decision that rejected asylum seekers received information about the obligation to leave, including the option of voluntary return assistance. It appears that the situation has changed and that every asylum seeker receives an information brochure in his/her own language explaining the procedure and access to support during procedure. Officials also indicated that asylum seekers are clearly informed about the obligation to return in case a decision ends the asylum procedure negatively. The authorities plan to inform aliens whose asylum applications are deemed likely to be rejected at an early stage of the process.

### **Policy changes/naturalisation**

Belgium adopted a “*last in-first out*” policy for processing applications in an attempt to reduce the average duration of the asylum procedure to one year (from an average of three years in 1999). The government planned to apply this policy so as to issue decisions on the simpler cases within two months and thus, to eventually reduce the large caseload. This policy was accompanied by a large-scale regularisation scheme. According to the authorities, the regularisation campaign targeted approximately 65.000 persons.<sup>34</sup> The campaign was still ongoing but reaching its final stage.<sup>35</sup> It has targeted four groups of individuals, so-called *sans papier*: asylum seekers who, at the end of the process:

- have not received any enforceable decision within 4 years (3 for families with children)
- no concerns regarding public order and security
- no fraud in the asylum application or during the process
- aliens under an order to leave who cannot return for objective reasons, incl. serious illness, and aliens who could appeal to humanitarian grounds and who developed permanent social ties to Belgium.

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<sup>34</sup> In total 24.011 request were filed.

<sup>35</sup> 1.200 requests were still pending.

### Incentives

The main programme designed to assist and support the return of asylum seekers both during determination and after rejection is the IOM-run *Return and Emigration of Asylum seekers ex-Belgium* (REAB). Worth noting is the fact that since 1999 the programme is accessible also to individuals detained pending their removal if they explicitly express the wish to return under the auspices of the IOM. Even if the programme is generally open to foreign nationals of any nationality, some exceptions apply concerning *inter alia* nationals of Romania, Bulgaria, Poland and Albania. Belgian Immigration Service have special operational arrangements in place for these countries. Furthermore, individuals posing a threat to public order or security are not eligible to partake.

Support varies according to the time spent in the country. The applicant cannot receive any financial grant if present in Belgium for less than 3 months.<sup>36</sup> If the alien was present in Belgium between 3 and 6 months, s/he may receive the full amount, again, except for aliens from several Eastern European states. Other foreign nationals, however, present for more than 6 months may profit from the full contribution.

According to the Belgian authorities, 10 to 12 detainees avail themselves of voluntary return assistance every month. In 2001, the total expenditures for return, including tickets, fees and costs to obtain travel documents, costs for escorts, costs incurred by police and medical support reached € 5.741.685. For 2002 the Office des Étrangers was allocated an extra € 1.000.000. According to official estimations the budget would already be spent by the beginning of September of that year. An official demand for extra funding has been transmitted to the Ministry.

#### Benefits for voluntary return assistance programme in Belgium

	<i>Adult</i>	<i>Children 0 to 1 year of age</i>	<i>Children 1 to 2 years of age</i>	<i>Children 2 to 3 years of age</i>	<i>Children 3 to 4 years of age</i>	<i>Children 4 to 17 years of age</i>
<i>Financial grant</i>	€ 250	€ 25	€ 50	€ 75	€ 100	€ 125
<i>Extra travel costs</i>	€ 50	-	-	-	-	-

<sup>36</sup> Except nationals from India and Congo.

## Number of returnees and costs

	<i>Number of returnees with REAB</i>	<i>Total costs</i>	<i>Costs per returnee</i>
<b>2001</b>	3.546	€ 2.253.399,96	€ 635,48
<b>30.07.2002</b>	1.782	€ 1.033.108,40	€ 579,75

### Sanctions

According to the *Office des Étrangers*, the Belgian return policy emphasises strongly the operational elements. By sending “signals”, it is envisaged to reduce asylum applications. The reduction of benefits during the admissibility stage of the asylum process and the attempt to gather asylum-seekers in reception centres specialised in repatriation who launch appeals are all part of a more restrictive asylum regime.

Previously, rejected asylum seekers did not receive any financial assistance while in the appeals procedure before the “*Conseil d’État*”. However, the respective regulation was challenged before the “*Cour d’Arbitrage*” which decided that asylum seekers are entitled to receive social benefits even after rejection. The government applied the Court’s decision by substituting financial support with shelter and food, which is provided for at specific centres. Three open centres have been turned into open “repatriation” centres (Kappellen, Saint Trond and Florène). These centres aim to gather aliens in order to facilitate their return. In order to launch the appeal procedures against negative decisions of the first instance, asylum seekers have to move to such centres (so as not to lose appeal rights). Four categories of persons are in any case not placed in such centres: persons willing to return voluntarily, unaccompanied minors, persons suffering from serious illness and persons who cannot be returned for factual reasons. Several problems have been observed in these centres.<sup>37</sup> The rejected asylum seekers regularly decide not to go to such “repatriation” centres but rather disappear, in this way waving their rights.<sup>38</sup>

<sup>37</sup> The situation has created tensions in the reception centres leading to a strike of the employees in 2001, calling for a clear distinction to be made between reception and return tasks.

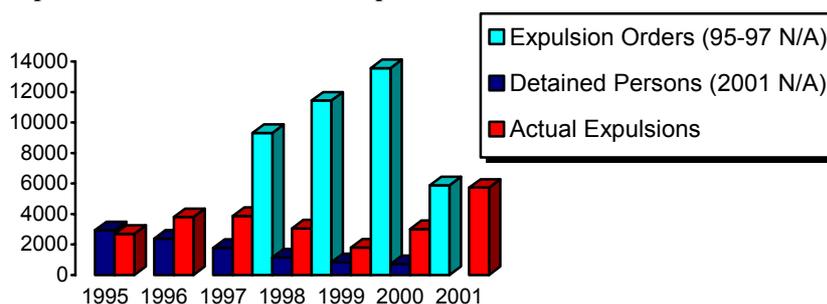
<sup>38</sup> According to the NGO *Coordination et Initiatives pour Réfugiés et Étrangers* 85% of persons launching an appeal disappear.

### Statistics

	1996	1997	1998	1999	2000	2001
<i>Asylum applications</i>	12.433	11.788	21.965	35.780	42.691	24.549
<i>Top five countries of origin</i>	FRY 2.843	FRY 1.290	Kosovo 5.626	FRY and Kosovo 13.067	FRY 4.921	Russian Federation 2.541
	Russian Federation 1.767	Congo/Zaire 1.230	Congo-Kinshasa 1.714	Romania 1.703	Russian Federation 3.594	FRY 1.932
	Zaire 841	Albania 1.007	Romania 1.572	Armenia 1.472	Iran 3.183	Algeria 1.709
	Romania 751	Romania 641	Albania 1.147	R.D.Congo 1.402	Albania 2.674	R.D.Congo 1.371
	Turkey 695	Armenia 604	Rwanda 1.049	-	-	Iran 1.705
<i>admitted</i>	5.932	6.479	3.659	-	4.325	2.481
<i>granted</i>	1.601	1.879	1.446	1.498 + 974 humanitarian status	1.381	1.160
<i>rejected</i>	5.430	7.300	4.830	-	-	-
<i>Expulsion orders</i>	N/A	N/A	9.315	11.443	13.563	-
<i>Actual expulsion</i>	3.794	3.863	3.042	1.802	3.002	5.722

### Removals

Expulsion orders - detention - expulsions



### Detailed removal figures

	1995	1996	1997	1998	1999	2000	2001	Destination	Number
<i>Expulsion orders</i>	N/A	N/A	N/A	9.315	11.44	13.56			5.884
<i>Detained persons</i>	2.935	2.374	1.771	1.148	82	699			N/A
<i>Total</i>					69	1.432		Total	1.600
<i>Removal after detention</i>					-	-		Albania	303
					-	-		Kosovo	178
					-	-		Romania	113
					-	-		Ukraine	109
					-	-		Russia	103
					-	-		Morocco	87
					-	-		Turkey	81
					-	-		China	37
				-	-		Others	589	
<i>Direct removals</i>					1.10	1.569		Total	4.122
<i>Total</i>	2.699	3.794	3.863	3.042	1.80	3.001			5.722
<i>Rejected asylum seekers</i>	N/A	N/A	N/A	N/A	N/A	1.196			2.452

Examples of expenditures for specific removal operations (incl. duration and costs)<sup>39</sup>

<i>From Brussels to</i>	<i>2 escorting officers</i>	<i>Total working hours</i>	Transportation costs		
<i>Amsterdam</i>	8 h 30 min x 2	17 h			
<i>Barcelona</i>	11 h x 2	22 h	Returnee	Escorting officers	Total
<i>Madrid</i>	11 h 50 min x 2	23 h 40 min	€ 978 <sup>40</sup>	€ 2.142 <sup>41</sup>	€ 3.120
<i>Casablanca via Rome</i>	18 h x 2	36 h	€ 464	€ 3.034	€ 3.498
<i>Istanbul via Rome</i>	20 h x 2	40 h	€ 395	€ 2.472	€ 2.687

<sup>39</sup> Information provided at the seminar on "*Different forms of incentives to promote the return of rejected asylum-seekers and formerly temporary protected persons*", Vienna, 27-28 June 2002.

<sup>40</sup> Based on the calculation for the most common destination in South America, Quito.

<sup>41</sup> Based on the calculation for 2 return tickets, Brussels – Madrid.

## Denmark

When the applicants are permitted to enter and transferred to the central reception centre, they receive audio-visual information about the asylum system, including their rights and duties. The information is disseminated consequently also in writing. At this stage, the asylum seekers are also informed about the obligation to leave the territory after a final negative decision of their claim.

The rejected asylum-seeker used to be given 15 days to leave Denmark once a final negative decision has been handed down by the Refugee Board in the normal procedure. As of July 2002, amendments to the law renounced this timeframe. Which means that rejected asylum-seekers in both procedures - in the normal as well as in the manifestly unfounded procedure – have to leave immediately after an application has been decided negatively. However, *immediately* in this context means that the return procedures are being initiated at this instance, it does not necessarily mean that the removal will be enforced straight away. According to the Danish police in keeping with the paradigm of humane returns some discretion as to the when and how of the enforcement still applies. According to the police, the flexible approach towards enforcement contributes positively to the implementation of returns.

### **Incentives**

General voluntary return assistance programmes for rejected asylum-seekers as such are currently not implemented in Denmark. However, a special programme designed to support the return of Afghan citizens still in the asylum procedure or after rejection has been established. The programme is implemented in co-operation with the IOM and the Danish Red Cross. The programme is voluntary. If a potential returnee decides to participate, s/he has to inform the Danish Immigration Service no later than 1 November 2002. If the returnee has an open application under consideration the person has to withdraw it to be able to participate in the return programme. Participants receive DKK 18.000.- (€ 2.423.-) and DKK 6.000.- (€ 1.211.-) for children. Moreover, travel and transportation expenses (maximum 2 m<sup>3</sup> for adults and 1 m<sup>3</sup> for children) are also included.

Apart from the abovementioned example, it must be noted that due to the particularities of the Danish system, a general and strict distinction between voluntary return and forced or involuntary return cannot be made. It is the task of the police to implement all return obligations. To this end, they avail of considerable discretion as to how to implement removals. The priority is that a rejected asylum seeker returns home by his/her own means, if s/he is not in the position to do so, the police can offer support. If the rejectee, however, proves to be uncooperative the police can change to a more forceful approach. As it appears, the differentiation between voluntary and non-voluntary return, therefore, does not bear significant differences in Danish return practice.

### **Repatriation**

Denmark is one of the few countries which avails of a regulatory framework for repatriation of refugees and other migrants who reside legally in the country. In 1999, the Danish Parliament adopted the Act No. 353 on Repatriation, which entered into force on 1 January 2000. The purpose of the Repatriation Act is to give aliens residing in Denmark information to facilitate their decision on whether or not to repatriate, and to support repatriation if the person so decides. The law applies to refugees, aliens with residence permit on humanitarian grounds and immigrants, although some distinctions are made between them in terms of requirements and rights.

The Ministry of Refugees, Immigrants and Integration who is generally responsible for providing individual counselling to aliens wishing to repatriate has delegated the task of providing such counselling to the Danish Refugee Council.

Financial support<sup>42</sup> is provided for in several ways. Upon submission of an application by the alien, municipalities may grant repatriation benefits, the amount of which varies according to the alien's own means. Furthermore, they may grant a monthly reintegration allowance, which is paid for a maximum period of 5 years, presupposed that the returnee:

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<sup>42</sup> The State reimburses 75% of the repatriation benefits and 100% of the reintegration allowance to the municipalities.

- is not able to cover his/her needs by other means,
- has had permanent residence permit in Denmark for a minimum period of 5 years,
- is over 65 years of age, or over 55 years but is considered as not able to care for himself, or
- has been granted a disability pension regardless of his/her age.

Aliens, who have repatriated to their home country but wish to return to Denmark, are allowed to do so within a regret period of one year following the repatriation. Upon application, the initial 1-year period can be extended for one year.

<i>Support</i>	<i>Amount</i>
<i>Transportation</i>	One way ticket, freight costs for personal belongings, (max. 2 sq. m. per person)
<i>Cash amount</i>	Up to DKK 19,688 (€ 2,652) per adult, DKK 6,563 (€ 884) per minor child
<i>Purchase of professional equipment</i>	Up to DKK 10,938 (€ 1,473)
<i>Transportation of professional equipment already owned by the returnee</i>	Up to DKK 10,938 (€ 1,473)
<i>Health</i>	1-year health insurance, if no public health insurance is available in the home country. Payment of prescribed medicaments brought from Denmark and limited to a 1-year consumption period.

<i>Group</i>	<i>Amount</i>
<i>Group 1</i>	DKK 700/month (€ 94), e.g. Vietnam and Pakistan.
<i>Group 2</i>	DKK 1.000/month (€ 135), e.g. Rwanda and Sri Lanka.
<i>Group 3</i>	DKK 1.400/month (€ 189), e.g. Turkey, Jordan and Macedonia.
<i>Group 4</i>	DKK 1.500/month (€ 202), e.g. BiH, Yugoslavia, Iraq and Afghanistan.
<i>Group 5</i>	DKK 2.700/month (€ 364), e.g. Chile and Iran.

### Sanctions

Asylum-seekers receive financial support awaiting a decision on their application. Rejected asylum-seekers remain entitled to support until they have actually returned. However, there is some leeway for the authorities to reduce benefits for asylum-seekers which are deemed to be uncooperative in the establishment of the facts. To this end, amendments to the aliens act instituted so-called “bread and water” regulations to induce asylum-seekers to cooperate with the Danish authorities. According to these regulations they may be deprived of their monthly allowance and only receive paper bags of food every two weeks. In cases where contributions are given in kind, accommodation and health care are nevertheless made available.

The aliens law provides for reporting obligations under which asylum-seekers may be put under certain conditions. The police may use such reporting obligations as a form of sanctioning disobliging asylum-seekers, since they may be required to report to the authorities on a daily basis. However, police experiences have shown that such measures generally prove to be ineffective and as a consequence, there is only limited use of these measures.

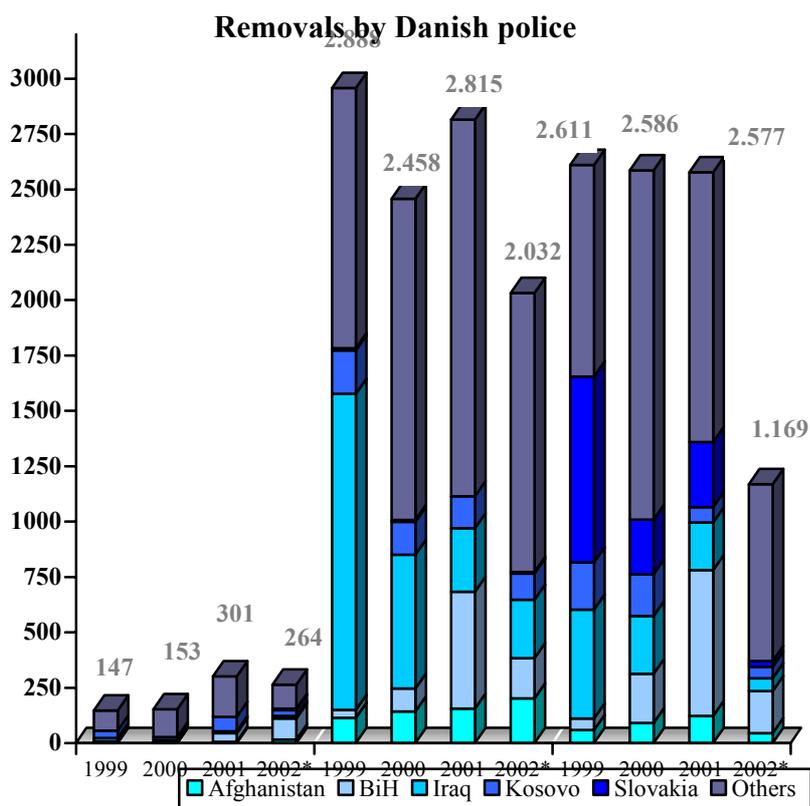
### **Other factors**

The Immigration Service can decide to grant a temporary permit on exceptional grounds if, after 18 months of implementation, a rejected asylum seeker could for objective reasons not be returned. Nevertheless, according to the government “[i]t must be the principal rule that refugees should return to their countries of origin. The Government will therefore change the rules so that a permanent residence permit is only granted after at least seven years in Denmark.”<sup>43</sup>

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<sup>43</sup> “A new policy for foreigners”; Danish Government, 17 January 2002; <http://www.inm.dk/Index/dokumenter.asp?o=25&n=0&d=1057&s=5>, visited 25 August 2002.

Statistics



Countries	Escorted				Absconders				Monitored			
	1999	2000	2001	31.8.02	1999	2000	2001	31.8.02	1999	2000	2001	31.8.02
<i>Afghanistan</i>	4	1	6	16	114	143	1.701	202	59	91	123	45
<i>BiH</i>	5	5	39	95	36	103	156	182	52	222	659	190
<i>Iraq</i>	14	8	9	12	1.427	604	527	263	491	261	214	58
<i>Kosovo</i>	34	14	64	26	196	149	287	119	214	189	69	52
<i>Slovakia</i>	-	-	-	6	10	8	144	6	839	246	294	26
<i>Others</i>	90	125	183	109	1.175	1.451	-	1.260	956	1.577	1.218	798
<b>Total</b>	<b>147</b>	<b>153</b>	<b>301</b>	<b>264</b>	<b>2.888</b>	<b>2.458</b>	<b>2.815</b>	<b>2.032</b>	<b>2.611</b>	<b>2.586</b>	<b>2.577</b>	<b>1.169</b>

## Finland

### **General Provisions**

During the interview the asylum applicant is informed about the different types of decisions that may be made. S/he is informed that if an asylum claim is refused a decision on refusal of entry will also be made. Consequently, in conjunction with a refusal of asylum or residence permit, the Directorate of Immigration makes a decision on refusal of entry. The asylum applicant is notified of the decision by the local police with help of an interpreter. An alien whose residence permit is not renewed will be notified of that decision by the local police. In case an alien does not leave Finland voluntarily the Directorate of Immigration makes a decision on deportation from Finland upon the proposal by the police. Temporary protected persons as defined in the EU Council directive 2001/55/EC concerning protection can be given temporary protection up to three years. Temporary protection status is intended to be short term and the persons concerned are informed from the outset to leave when protection comes to an end.

There is currently no counselling provided. According to official information, there is, however, a governmental working group planning new ways to promote voluntary return. It is envisaged that pre-departure counselling is one of the topics to be considered by the working group.

### **Voluntary return programmes (VRPs)**

Finland has been actively supporting return by offering assistance programmes. Since RAFIN III (Information, Counselling, Return and Reinsertion Assistance for Asylum Seekers Currently Residing in Finland) and DRITA III (Return and Occupational Reintegration of Kosovo Albanian Refugees from Finland) have ended, the Return of Qualified Afghans (RQA) is the only on-going voluntary return programme implemented in co-operation with IOM in Finland. Within the framework of the general Return of Qualified Afghans programme (IOM-RQA), this programme will provide an opportunity for 30 qualified and skilled Afghans residing in Finland to be placed in identified professional positions or assist them in starting up small businesses in Afghanistan. The project started in July 2002 and will continue for 18 months.

### Sanctions

In order to secure the presence of the foreign national sections 45 and 46 of the Finnish Alien's Act provide among other things for the following: when it has been decided that an alien is to be refused entry or if such a decision is under consideration, he may be required to report to the police at stipulated intervals until it has been decided whether he is to be allowed to enter the country, or until he has been refused entry. An alien may be obliged to surrender his passport or ticket to the police, post a bond set by the police or inform the police of the address at which he may be reached. If reasonable grounds exist to believe, taking into account the alien's personal and other circumstances, that s/he will hide or commit criminal offences in Finland, or if his/her identity has yet to be established, s/he may be placed in detention. However, prosecution is not foreseen if s/he remains unwilling to co-operate in the identification procedure. Furthermore, an alien not co-operating during the removal/return can be escorted by the police. Conversely, his/her co-operation, it is stated, has no other consequences than a possibility to return in dignity. The Directorate of Immigration may grant a foreign national who presently cannot be removed a temporary residence permit.

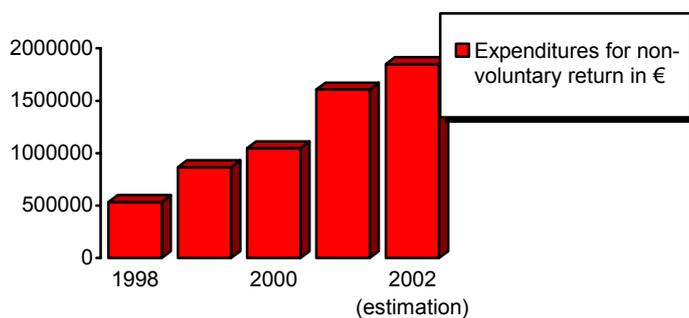
The departure of an individual who has been given a decision on refusal of entry is controlled by the police or the passport control authority. If no escorting is needed the police send the passport or other travel documents of the person to the passport control officer who then is responsible for exit control. If escorting is needed the person is taken to the passport control authority of the country of origin (normally at the main international airport of the country).<sup>44</sup> Generally, the arrival of the individual back home is not recorded or controlled in any way.

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<sup>44</sup> In case the travel route requires transiting a Schengen area the individual is always escorted and the departure from the Schengen area is controlled.

**Statistics**

Costs of non-voluntary return procedures



<i>Year</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>
<i>Costs</i> <sup>45</sup>	€ 533.828	€ 866.420	€1.046.563	€1.608.530	€ 1.850.000 (estimation)

Persons returned in 2001 and countries of origin

<i>2001</i> <sup>46</sup>	
<i>Destination</i>	<i>Number</i>
<i>Russia</i>	312
<i>Estonia</i>	153
<i>Thailand</i>	46
<i>Lithuania</i>	43
<i>Poland</i>	35
<i>Ukraine</i>	34
<i>Slovakia</i>	31
<i>Germany</i>	30
<i>Others</i>	837
<b><i>Total</i></b>	<b>1521</b>

<sup>45</sup> Detention costs are not included.

<sup>46</sup> Statistics for other years not available.

## France

In the French asylum system, the asylum seeker is only informed about the obligation to leave once a final negative decision has been issued. According to *OFPRA*, the competent authorities shall not raise the obligation to return during the asylum process. *OFPRA* points out that an eventual return obligation cannot be introduced at an earlier stage without contradicting its mandate. The issue of return, therefore, arises not until the *Préfecture* issues the “invitation” to leave territory.

### **Incentives**

The *Office des Migrations Internationales* (OMI), which is an autonomous body under control of the Ministry of Social Affairs, is charged with the design and implementation of support programmes to facilitate return.<sup>47</sup> Each programme is specific and targets an individual group of foreign nationals. In order to be eligible, persons under temporary protection, persons whose international protection has ended and rejected asylum seekers (i.e. “*sans papier*”) must have been subject to an “*invitation à quitter le territoire*” (IQF). Therefore, asylum-seekers are eligible only at the end of the procedures and upon exhaustion of appeal rights.<sup>48</sup> It has, moreover, been indicated by the *OMI* that it does not actively and directly seek to contact rejected asylum seekers but waits for them to approach the *Offices*. Furthermore, as indicated above *OMI* is categorically kept out of the asylum process and is accordingly only called in upon issuing of an IQF.

*OMI* has the responsibility to ensure that the support provided by the programmes is only available once. Consequently, *OMI* has to verify whether the individual has already received benefits from other programmes. Further criteria stipulate that the candidate must have lived in France upon application, as well as not having been issued an expulsion order (APRF). Though, programmes can differ with regard to conditions set regarding health care, voluntary return programmes are general in character.

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<sup>47</sup> *OMI* has a network of two offices in Paris, 8 in “*provinces*” and several abroad.

<sup>48</sup> Once a final negative decision has been issued the rejected asylum-seeker falls within the group of aliens in irregular situation. The *Préfecture* delivers an “*invitation à quitter le territoire*” (IQF) to the foreign national. The alien has to leave by his/her own means and is informed about subsequent judicial proceedings in case of non-compliance. If the rejected asylum-seeker does not leave within the territory 30 days, the Minister of Interior or the *Préfet* may issue the “*arrêté préfectorale de reconduite à la frontière*” (APRF). An expulsion order can be enforced as soon as it is issued.

A regularisation campaign took place in 1998. 140.000 aliens in irregular situations applied and approximately 50.000 have been regularised under this scheme. Notably, during this campaign only about 600 persons (approx. 0.7%) have made use of *OMI*-sponsored voluntary return programmes. No precise information was available regarding the whereabouts of the other 99.3% of persons not regularised and who also did not make use of the voluntary return option. According to *OMI* and the *Sous direction des étrangers et de la circulation transfrontière*, most are assumed to irregularly reside in France.

According to French authorities, the success of these programmes has, on the whole, been limited. As the only exception to this, the Kosovo programme has proven to be relatively successful.

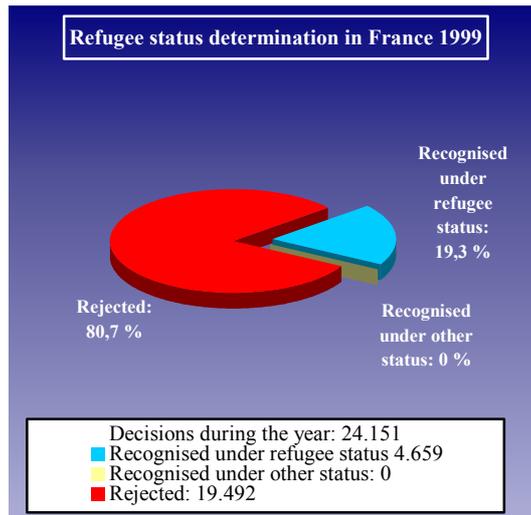
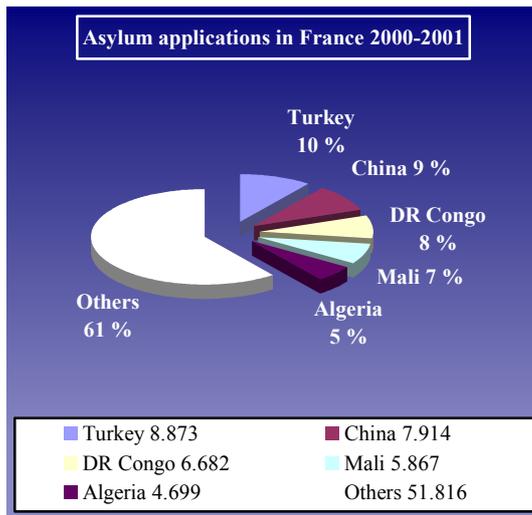
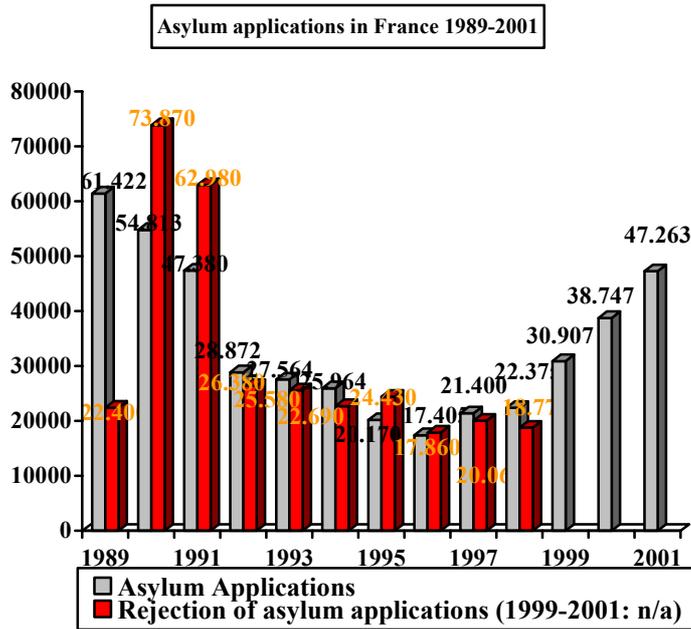
### **Sanctions**

The alien can be held in retention for a maximum duration of 12 days, which is the shortest compared to any other EU MS. The initial decision is administrative (préfectoral) and the detention may last for a maximum of 2 days. It can be prolonged twice for 5 days by a judicial decision. At the end of this period the alien must be released. Basically, consecutive detentions are possible under the same conditions as the initial one. In the meantime, the alien is either in an irregular situation or assigned to specific places of residence.

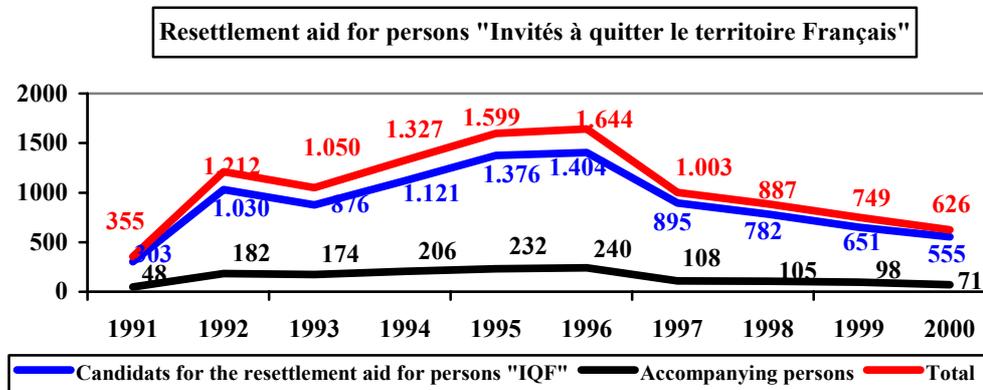
The Ministry of Interior has, however, stated its intention to extend the maximum duration of administrative detention.

If a removal operation is impeded due to the behaviour of the alien (resistance to deportation), the rejected asylum-seeker may face a maximum sentence of 3 years imprisonment. This information is provided to the returnee before the removal operation takes place.

Statistics



Voluntary return



	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>TOTAL</b>
<b><i>Candidates</i></b>	303	1.030	876	1.121	1.367	1.404	895	782	651	555	8.984
<b><i>Accompanying persons</i></b>	48	182	174	206	232	240	108	105	98	71	1.468
<b><i>Total</i></b>	<b>355</b>	<b>1.212</b>	<b>1.050</b>	<b>1.327</b>	<b>1.599</b>	<b>1.644</b>	<b>1.003</b>	<b>887</b>	<b>749</b>	<b>626</b>	<b>10.452</b>

Germany**Incentives**

Though the German aliens law is based on the principle of voluntary return, there are no specific legal provisions to regulate the voluntary return and repatriation of persons formerly under temporary or subsidiary protection regimes, persons whose international protection has ended and rejected asylum seekers. Yet, programmes that promote the voluntary return of refugees and rejected asylum-seekers are based on federal and states' budgetary provisions. Persons willing to make use of voluntary return programmes have, therefore, no legal claim to return assistance and support.

German voluntary return and repatriation policy primarily aims at asylum seekers and rejected asylum seekers, but it also includes refugees and persons under temporary or subsidiary protection schemes, such as war and civil war refugees who lack financial means of their own to return.

Target groups are informed by alien and social welfare authorities, NGOs, local UNHCR offices and IOM about the general possibility, availability and application procedures of return assistance. Moreover, persons interested in availing themselves of return assistance are informed about the legal situation in Germany and about the current affairs in their respective home countries. Asylum seekers can withdraw at any stage of the asylum process and apply for return assistance under the same conditions as other target groups. The situation changes once expulsion measures are being implemented. If the person decides to avail himself of voluntary return assistance at this stage, eligibility becomes a matter of discretion.

Certain conditions apply when availing of return assistance under a voluntary return programme, departure has to be

- durable and lasting and
- the returnee must avail of a valid passport or other travel documents;
- asylum seekers have to withdraw their asylum claims;
- Convention refugees have to renounce their status and residence permit; and

- a declaration of a lack of means has to be made.

Germany has set up several specific programmes to facilitate and assist the voluntary return of persons. Benefits vary depending on the respective programme. Under the general ‘Reintegration and Emigration Programme for Asylum Seekers in Germany’ (REAG), asylum seekers can receive their transportation costs, grants for their luggage and a small amount of pocket money to cover expenses incurred during the journey. As a supplement to REAG, the ‘Government Assisted Repatriation Programme’ (GARP) makes available additional financial support for the reintegration of people from specific countries of origin willing to return voluntarily. The federal government and the individual Länder share the funding of REAG and GARP on a per-capita rata, which is variable depending on the contribution of the respective Länder. However, today, the government is only involved in voluntary return assistance programmes that envisage the return of persons to FRY (Serbia, Montenegro, Kosovo). As of 2000, other return programmes have fallen within the exclusive powers of the Länder. Starting in January 2002, moreover, Germany has reorganised the scheme of promoting voluntary return by combining REAG/GARP, which, since then, is financed half by the Federal State and half by the Länder.

Based on its dominant political importance, German return planning in the years 2000 and 2001 mainly aimed at facilitating the voluntary return of persons from BiH and FRY.

Since German voluntary return policy emphasises the individual decision to return home, it is stated that no specific monitoring of the situation prevailing in the country of origin is made. Though the mentioned programmes generally promote and facilitate the journey home, and in some cases provide for reintegration assistance, as a rule they do not include post-arrival monitoring once the person has reached destination. The German voluntary return policy is, however, based on the paradigm that no legal basis exists which could prohibit persons to return home voluntarily whenever they wish to do so. This signifies that such obstacles as destroyed infrastructure or devastated public health system cannot impede return should the individual wish it.

### Experiences

Germany evaluates the success of voluntary return programmes by the number of persons who have availed themselves of this assistance and returned home. As pointed out, success depends to great degree on the prevailing situation in the respective target countries. By looking at the figures of persons who voluntarily returned to former Yugoslavia, these programmes can be considered very successful: within the framework of voluntary return programmes of the Federal Ministry of Interior and the Länder the IOM has supported the return of more than 187.000 persons to BiH. Between 1989 and 2000 some 262.500 persons returned under GARP, out of which the Bosnia programme alone accounted for some 180.000.<sup>49</sup> Officially, programmes are considered successful when comparing the number of persons having returned voluntarily to those whose removal had to be forced.

### Sanctions

Asylum-seekers whose applications are rejected for being manifestly unfounded will be granted one week to leave the territory. It is at the same time indicated that should voluntary compliance not be observed, the rejected asylum-seeker will be forcefully removed. All other rejectees will receive a respite of one month to leave the territory before deportation measures are taken. The new Immigration Act foresees that asylum seekers and persons under the obligation to leave, who themselves prolonged their stay by miscarriage of law, after 36 months receive reduced benefits under the “*Act on Benefits for Asylum-Seekers*”. The stated intention here is to reduce the incentive to delay the asylum and also return procedures.

In the case of detention pending deportation, German law provides for a preliminary duration of 6 months. This duration, however, may be extended for another 12 months in cases where the aliens are responsible for impeding deportation, e.g. where the alien does not co-operate in obtaining the necessary travel documents. Generally, though, aliens who cannot be returned are released after 6 months. The law does, however, provide, in aforementioned cases, for a maximum duration of detention of 18 months to

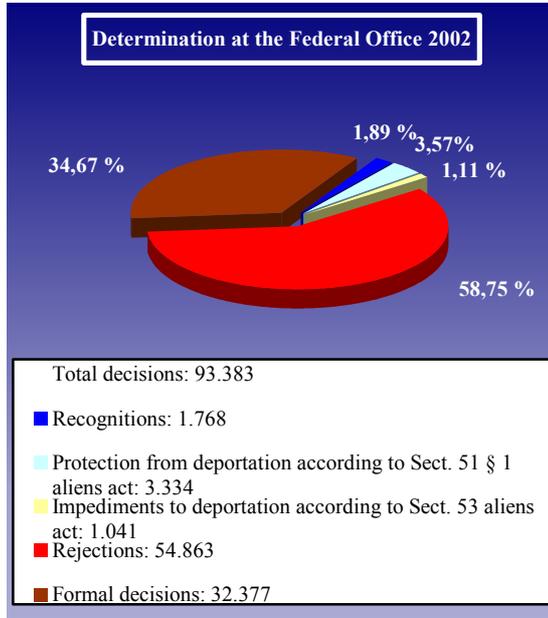
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<sup>49</sup> ICMPD STUDY ON COMPREHENSIVE EU RETURN POLICIES AND PRACTICES, VIENNA, JANUARY 2002. (HEREAFTER: ICMPD 2002).

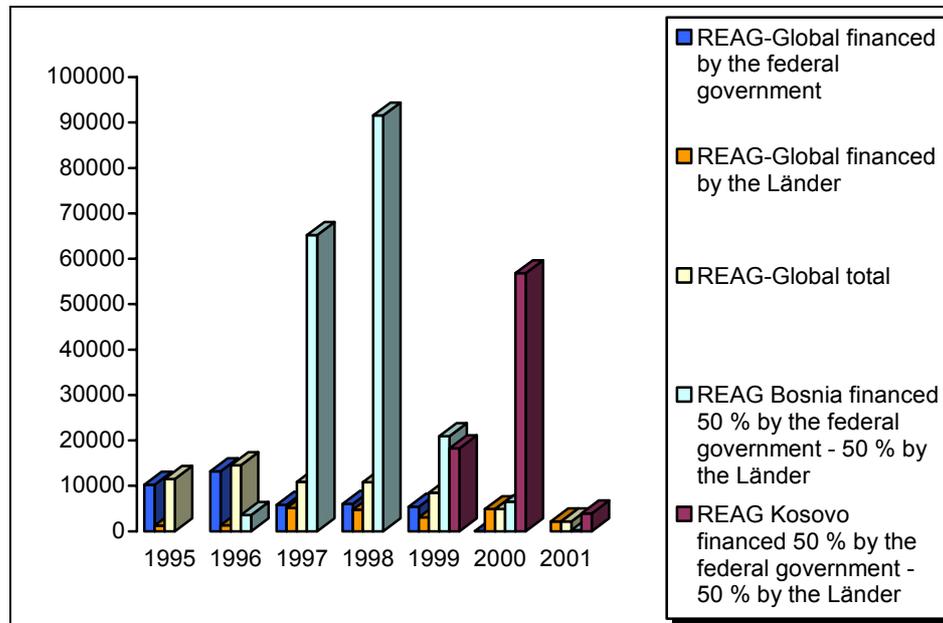
enforce an obligation to leave. According to the Federal Office for the Recognition of Refugees the average duration of detention amounts to 3 months.<sup>50</sup>

**Statistics**

**Figures on asylum applications**



**Voluntary return<sup>51</sup>**



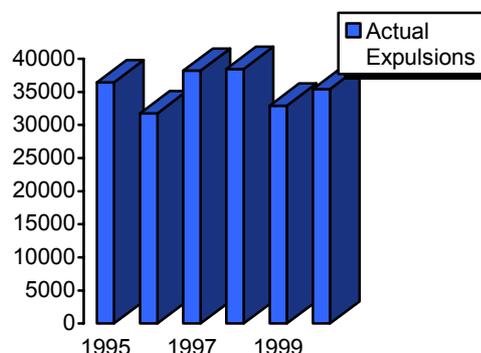
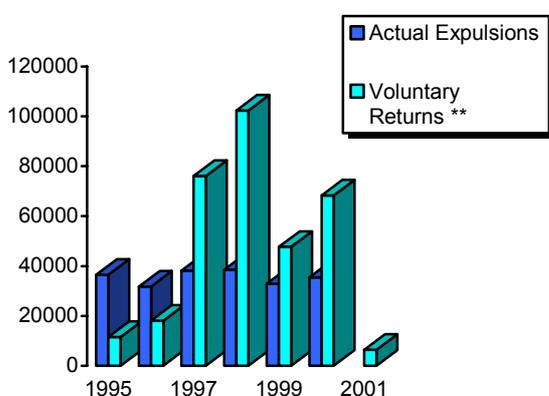
<sup>50</sup> ICMPD 2002.

<sup>51</sup> Starting January 2002, Germany reorganised the scheme of promoting voluntary return. There is now only one combined REAG/GARP programme which is financed half by the Federal State and half by the Länder.

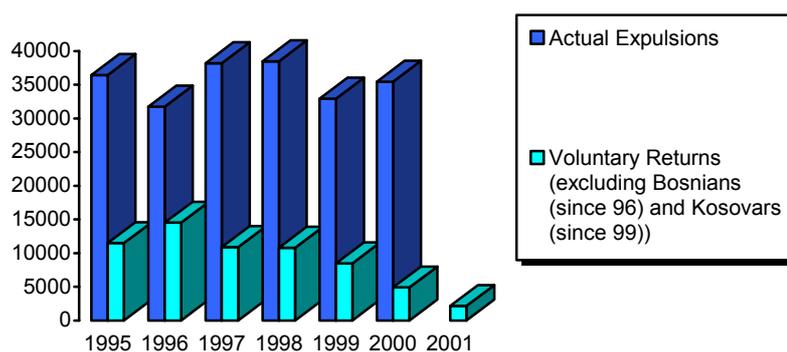
	<i>REAG-GLOBAL</i>		<i>REAG-BOSNIA</i>	<i>REAG-Kosovo</i>	
	Financed by the federal government	Financed by the Länder	Total	Financed 50 % by the federal government – 50 % by the Länder	Financed 50 % by the federal government – 50 % by the Länder
<b>1995</b>	10.258	1.243	11.501	0	0
<b>1996</b>	13.182	1.345	14.527	3.555	0
<b>1997</b>	5.798	5.092	10.890	65.197	0
<b>1998</b>	6.025	4.790	10.815	91.544	0
<b>1999</b>	5.372	3.103	8.475	20.956	18.268
<b>2000</b>	36	4.878	4.914	6.490	56.815
<b>2001</b>	0	2.167	2.167	291	3.917
<b>Total</b>	<b>40.671</b>	<b>22.618</b>	<b>63.289</b>	<b>188.033</b>	<b>79.000</b>

Removals

Expulsion and voluntary return



	1995	1996	1997	1998	1999	2000	2001
<b>ACTUAL EXPULSIONS<sup>52</sup></b>	36.456	31.761	38.205	38.479	32.929	35.444	N/A
<b>VOLUNTARY RETURNS**</b>	11.501	18.082	76.087	102.359	47.699	68.219	6.375

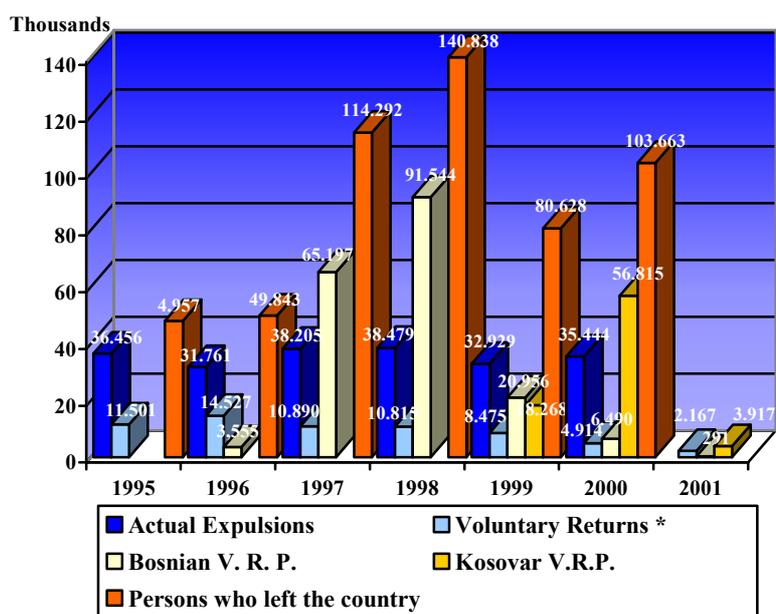


	1995	1996	1997	1998	1999	2000	2001
<b>Actual Expulsions</b>	36.456	31.716	38.205	38.479	32.929	35.444	-
<b>Voluntary Returns*</b>	11.501	14.527	10.890	10.815	8.475	4.914	2.167

<sup>52</sup>According to Bundesgrenzschutz (BGS).

\*\* Including Bosnians (since 96) and Kosovars (since 99).

Enforced removals – general and specific return assistance programme 1995 – 2001



	1995	1996	1997	1998	1999	2000	2001
<i>Actual Expulsion</i>	36.456	31.761	38.205	38.479	32.929	35.444	-
<i>Voluntary Returns *</i>	11.501	14.527	10.890	10.815	8.475	4.914	2.167
<i>Bosnian V.R.P.</i>	-	3.555	65.197	91.544	20.956	6.490	291
<i>Kosovar V.R.P.</i>	-	-	-	-	18.268	56.815	3.917
<i>Persons who left the country</i>	47.957	49.843	114.292	140.838	80.628	103.663	-

\* Excluding Bosnians and Kosovars

## Ireland

### **Irish Policy on Repatriation**

According to the Irish Government the principal objective is to ensure that those persons genuinely in need of asylum and who satisfy the refugee definition as defined in the 1951 Geneva Convention and the Refugee Act, 1996 receive protection as quickly as possible. Conversely, the government rests on the position that there is also a corresponding expectation that unsuccessful asylum applicants should return to their country of origin unless there are other protection grounds on which they should remain in the state.

If after the asylum process (including any appeal made), the asylum claim is found not to meet the criteria, the applicant is generally *prima facie* in the position of a person who has entered the state illegally or who has been refused leave to enter and may therefore be deported. It may be, in particular cases, that the failed applicant has a need for protection which does not fall within the Geneva Convention definition as given effect to in Irish law under the Refugee Act, 1996, or that the applicant's circumstances are such as to warrant a grant of permission to remain on grounds not related to the protection issue.

The *section 3 process*<sup>53</sup> of the Immigration Act 1996 gives the rejected asylum applicant an opportunity to demonstrate either or both of the abovementioned circumstances; but if neither can be demonstrated in a particular case, it is emphasised, then it is clear that to permit the person to stay would make a “*nonsense*” of Ireland's

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<sup>53</sup> Section 3 Process: a person refused refugee status and served with a notice of intention to deport under section 3(3)(a) of the Immigration Act, 1999 may leave the state voluntarily, consent to deportation or make representations to the Minister why he/she should not be deported but granted leave to remain in the state instead. The Minister must have regard to eleven considerations including any representations made for leave to remain in determining under section 3(6) of the Act whether to make a deportation order in relation to the person. Each case is considered on its individual merits. The eleven considerations are as follows: age of person, duration in the state, family and domestic circumstances, nature of person's connection with state, previous employment record, employment prospects in the state, character and conduct within and outside state, humanitarian considerations, representations made, common good and national security and public policy considerations. The Minister pursuant to section 3(1) of the Immigration Act, 1999 must also have regard to the safety of the person (prohibition of *refoulement*) if returned. If the Minister decides not to make a deportation order, the person is granted temporary leave to remain in the state, usually for an initial period of one year, which can be renewed on application. Temporary leave to remain confers virtually the same rights on the person as those enjoyed by Irish citizens including work rights, access to health care, social security, education and right to apply for family reunification.

immigration controls and the asylum system. It is also stated that the Irish policy on return is, therefore, based on the interests of the common good and upholding the immigration laws of the State.

### **Incentives**

Ireland states the preference of voluntary return as an option over forced deportation of refused asylum seekers that have not been granted some form of leave to remain and affords them the opportunity to return voluntarily rather than being deported. The preference may be borne out by the figures (see page 65 and 66), which show voluntary returns, and deportations occurring in approximately equal measure since 1999.

Only once an asylum application is finally refused, the rejected asylum seeker is informed in writing about the obligation to leave the country. Generally, however, rejectees do not receive any specific form of counselling with a view to return. Persons are legally required to co-operate with the removal process and to keep the authorities informed of the whereabouts. Residency and regular reporting requirements can also be placed on the person.

According to official information, independent voluntary return where the individual makes and pays for their own travel arrangements is possible to all nationalities. However, a pilot assisted return programme operated in conjunction with IOM is aimed at Nigerian and Romanian nationals, the two biggest cohort nationalities seeking asylum in Ireland.

Asylum applicants from the two target countries can apply at any stage of the asylum procedure, up until a deportation order is issued. This means that eligible persons may opt for voluntary return assistance even from within detention.

As a general benefit of people leaving voluntarily it is officially stressed, that no deportation order is made and the person can legally re-enter the country at a later stage, provided they meet the requirements of entry pertaining to their nationality. Yet, no specific evaluation has been carried out so far, which could corroborate the effects of such measures.

Nevertheless, the provision of such support programmes for the return of asylum seekers at least on the current pilot basis is generally estimated to positively contribute to the management of return of persons not in need of protection. Specifically, as a positive effect, it is stated, that such returns are cheaper and less time consuming to operate and more dignified for the person. As a negative aspect, however, it was suggested that some people return again illegally, yet requiring the making of a deportation to remove them. An indication of the satisfaction of the pilot may lie in the fact that greater emphases and resource allocation to VRPs is currently contemplated. Furthermore, it is being considered to extend voluntary assisted return programmes to CIS states. As regards potential pull-factors it was emphasised in a more general fashion that no financial assistance is offered to returns in a way which would attract others.

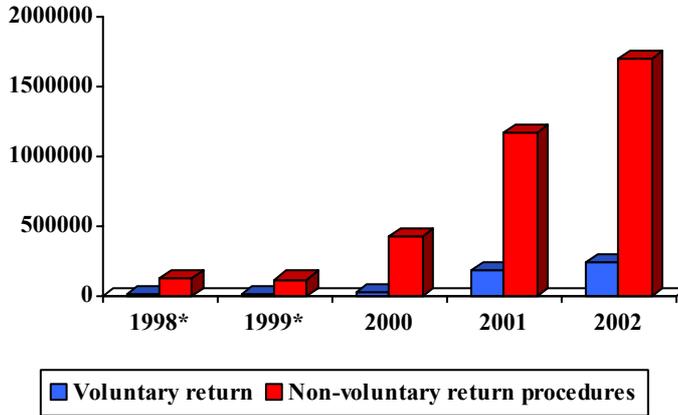
### **Sanctions**

In case of lacking co-operation, negative inferences can be drawn, either affecting the asylum application or the application can be abandoned all together. The person can also be detained, although this power, according to information, is rarely used. If the person does not progress their asylum application and becomes unreachable, the application is determined in their absence, regularly negatively. Usually individuals are not prosecuted if they are not willing to disclose their identity, but in the case of persons not co-operating with the removal process, or evading deportation they can be detained in custody for up to 8 weeks while arrangements for their removal are being made. Conversely, as a consequence of individuals co-operating positively in the return process they will usually not be detained.

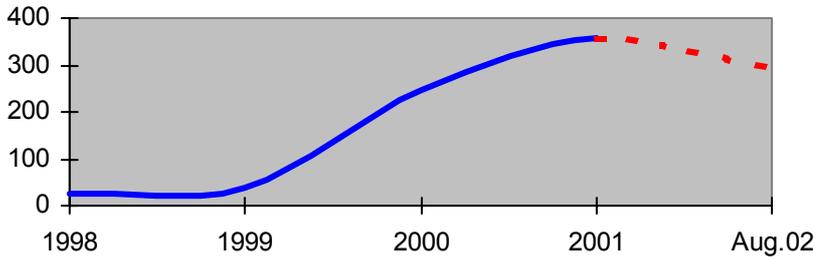
Statistics

Annual budget for 1998 -2002 for voluntary return programmes and non-voluntary return procedures (detention, escorting, deportation, etc.) in €

**Expenditures**



**Voluntary returns**



<i>Year</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>16 Aug. 2002</i>	<i>Total</i>
<b>Total</b>	27	37	248	356	293	<b>961</b>

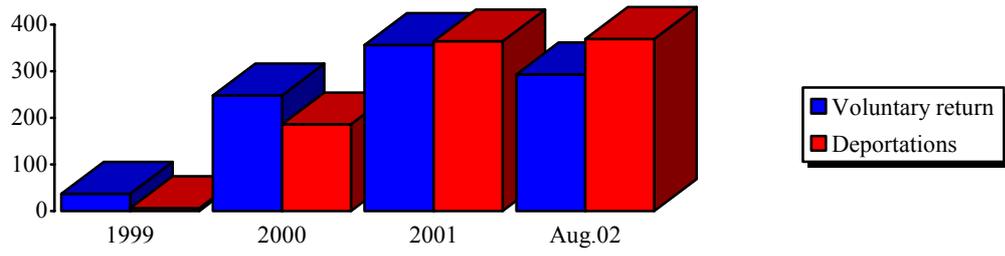
Deportations effected<sup>54</sup>

<i>Year</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>16 Aug. 2002</i>	<i>Total</i>
<b>Total</b>	-	6	186	364	369	<b>925</b>

\* Estimates only. Note: Flight costs of deportees and escorts only. Other costs not readily available.

<sup>54</sup> The above figures include the following removals under the Dublin Convention (DC) to other EU States: 1 (1999), 6 (2000), 29 (2001), 48 (2002).

**Voluntary returns compared to deportations effected**



## Italy

Like other traditional emigration countries there was not much need for regulation in the field of migration. Gradually, however, the situation has changed. Italy now has become an immigration country. Nevertheless, asylum matters have not received as much political and public attention as other migration related matters, such as illegal immigration and residence. According to information of the Italian Refugee Council, there are currently some 1.5 million non-EU citizens present in Italy and only about 25.000 persons under protection. This proportion may partly explain the political preoccupation with other forms of immigration and the neglect of the asylum system. During the Balkan wars finally, refugee protection and asylum have gained attention and became discussed more broadly. Today, asylum matters have moved up on the political agenda. Currently a new immigration law (the so-called “*Bossi-Fini*” law) is being implemented which also amends asylum procedures. The new regulations provide for a de-centralised, yet centrally co-ordinated asylum system.

### **Incentives**

Resembling in its make-up to the European Refugee Fund, the National Asylum Program (NAP) was created to provide a systematic and comprehensive structure to provide for and support reception, integration and voluntary return measures. NAP has jointly been established by the Ministry of Interior, the National Association of Italian Municipalities and UNHCR. It, furthermore, receives funding from the European Refugee Fund. Facilitated by IOM, NAP offers guidance and support for voluntary returns and up-to-date information about the situation in the countries of origin of the potential returnees. It is foreseen that local authorities may apply for financial contributions from the NAP for measures in the three key areas which may amount up to a maximum of 80% of the costs of the whole operation. Once having received the funding, communities may offer accommodation, support to asylum-seekers and also assistance for voluntary return.

Since 1986, Italy in an attempt to control illegal residence has implemented in several waves (5) regularisation schemes to regularise illegal immigrants present on Italian territory. This has also resulted in rather low figures of asylum applications.

Italy provides for limited public support for asylum-seekers during the procedure. Since 1990 asylum-seekers could apply for support which could amount up to € 17 per day for the maximum duration of 45 days. The abovementioned law, however, also changes the provision of social and economic support for asylum-seekers during the processing of their cases. This system of limited public support is going to be replaced by the new legislation. It is envisaged, that NAP will provide for the financial means to support asylum-seekers in the described way.

### Sanctions

According to the Bossi-Fini law, the right to appeal does not have any suspensive effect, except in cases where the *prefect* explicitly awards it. This, however, is more the exception than the rule. It is moreover foreseen that asylum-seekers implicitly withdraw their asylum applications if absconding.

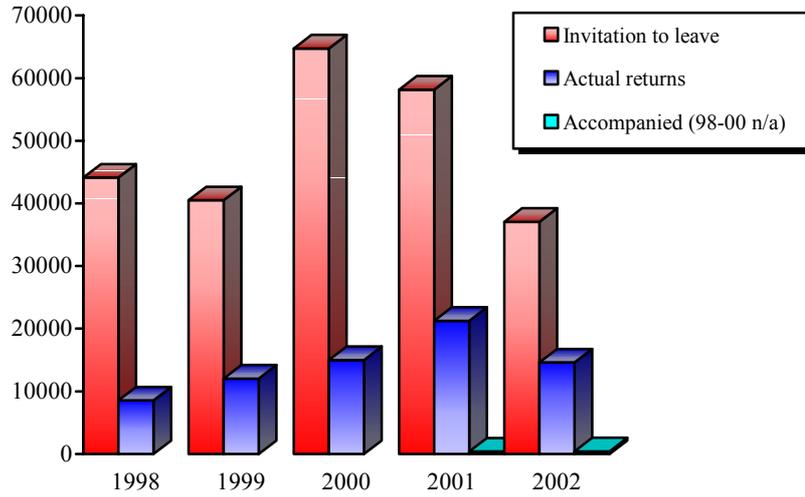
Once a negative asylum decision is made and an order to leave the territory issued, rejectees are ordered to leave the country within 15 days on their own account (the new legislation lies down immediate return for rejected asylum-seekers as the general rule, the *intimazione*, i.e. the order to leave, is going to be renounced. However, if maximum duration for detention pending removal is reached, persons will be released and have to leave within 5 days according to the new legislation). An appeal can be filed within 5 days (this, according to CIR, in practice, has had the result that the majority of rejectees has absconded or moved on to other countries). The new legislation on immigration now provides for immediate repatriation if the rejectee is in possession of proper documentation to allow for travel. In the case the individual, however, is lacking such travel documents, s/he will be placed in detention. After the maximum duration of detention, the new law foresees that illegal residence will be a criminal offence.

The new law foresees a maximum duration for detention pending removal for up to 60 days, hence doubling the maximum duration of 30 days previously provided. After the

60 days the rejectee will have to leave Italy within 5 additional days if the repatriation could not be implemented before that time.

**Statistics**

**Removal**



## The Netherlands

Dutch policy foresees that asylum seekers are informed throughout proceedings about the possible consequences of a negative decision, and the rejectee's obligation to leave. Information is given to this effect, including information on the possibilities for voluntary return and assistance programmes, such as those provided by IOM.

A fixed deadline applies to all cases and every rejected asylum seeker is, therefore, obliged to leave within 28 days. After this period, no assistance or support for those who still are present in the country will be provided. In fact, any support, such as reception and accommodation will be terminated.

In a nutshell, the underlying paradigm of Dutch return policy can be summarised as *return being the primary responsibility of the alien, not of the government*. Nevertheless, in some cases return assistance may be provided for rejected asylum seekers who wish to return voluntarily. A general voluntary return programme - "*Return and Emigration of Aliens from the Netherlands*" (REAN) – makes available assistance for asylum seekers still in the procedure, as well as rejected asylum seekers and illegal migrants. Special programmes have also been developed within this general framework, such as "*Reintegration of asylum seekers from Kosovo*", "*Reintegration of returning Iraqis*" and "*Reinforcement of the co-operation between EU member states and Central and Eastern Europe candidate states in the field of return and reintegration of asylum seekers*" (RCA II). The purpose of RCA II is to facilitate the return of Bulgarian, Czech, Romanian and Slovak asylum seekers who currently reside in Belgium, Ireland and the Netherlands by developing and improving existing counselling activities prior to and upon return.

After receiving a negative asylum decision, the rejectee is invited for an interview with "Centraal Orgaan opvang asielzoekers" (COA) officers where s/he is informed about return assistance programmes. The availability of departure assistance by the IOM is specifically mentioned during these interviews.<sup>55</sup>

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<sup>55</sup> For the purpose of offering return assistance IOM supports 4 offices in the Netherlands.

The Dutch authorities have also made additional provisions to support the reintegration of returnees of selected nationalities and regions of origin. These target group-oriented return programmes are funded by the Ministries of Foreign Affairs and Justice and serve to support and encourage the repatriation of specific groups or individuals. They include additional financial provisions, information dissemination about facilities in countries of origin which are relevant for the reintegration process, as well as facilitation contacts with local institutions. The current target group-oriented repatriation programmes are presently focused on Kosovo, Czech Republic, Slovakia, Romania, Bulgaria, Iraq and Somaliland. Employment programmes for aliens required to return to their country of origin are also being explored. The Dutch authorities emphasise that under no circumstances, however, are these programmes intended to attract more aliens.<sup>56</sup>

### Repatriation Act

In addition to the above-mentioned return assistance programmes focusing on asylum seekers at any stage of the procedure, there are special provisions for aliens enjoying a legal status. In April 2000, the Repatriation Act entered into force, aiming at *“individuals drawn from integration policy target groups, who wish to settle in their countries of origin, but do not have the financial means to do so”*.<sup>57</sup>

#### Benefits under certain return assistance programmes

	<i>Adult</i>	<i>Child</i>	<i>Family</i>
<i>REAN</i> <sup>58</sup>	€ 567		€ 794
<i>Kosovo programme</i>	REAN + € 511	REAN + € 255	Max. € 2.044
<i>Iraq programme</i>	REAN + € 570	REAN + € 285	Max. € 2.280
<i>RCA II</i>	REAN + plus advices <sup>59</sup>		

<sup>56</sup> “Update on repatriation policy implementation”.

<sup>57</sup> The Repatriation Act provides a one-off compensation for the expenses of travelling and moving, plus an allowance benefit, under certain conditions, for the first 2 months following the return (€ 2.850,-/adult, € 5.700,-/family), and a monthly remigration allowance for persons over 45 years old, i.e. a monthly pension to be paid in the country of destination until decease of the beneficiary.

<sup>58</sup> Return and Emigration of aliens from the Netherlands consists on IOM providing assistance with obtaining travel documents, repatriation grants, transport of luggage and transport costs.

<sup>59</sup> Advice about housing, schools, labour facilities and medical care in country of origin.

### Experiences

From a government's perspective, success is largely related to the ratio of voluntarily departures to the planned number of departures. The RCA, which in 2000 entered into its second phase, has been assessed successful in these terms. However, the GTAA (Facilitated Return of Rejected Asylum seekers to Ethiopia), which has qualitatively been assessed positively, has only received few applicants. Consequently, it depends to a great degree upon the criteria applied whether or not programmes are to be assessed successful.

### Sanctions

According to Dutch laws, once no further recourse to the courts is available, aliens shall be denied supply of any further benefits and provisions. Provision of support and other social benefits is terminated strictly 28 days after the asylum seeker has received his/her final decision. Consequently, in keeping with this policy, the individual behaviour of the rejected asylum seeker has no influence anymore on the actual termination of provisions.<sup>60</sup> They will be terminated in any case after the expiration of the set period of time of 28 days. This is the ultimate consequence of the underlying paradigm of *individual responsibility*. Although illegal residence in the Netherlands is not directly punishable, those with no further possible recourse to the courts, as it is phrased, and illegal aliens have restricted means of subsistence. The Dutch authorities are of the opinion that supervision and dedicated efforts serve to encourage these aliens to leave the Netherlands.<sup>61</sup> There might, however, be implications and side-effects of such policy, particularly in cases where rejectees, for whatever reason, continue to stay in the country.

### Statistics

REAN, as mentioned before, provides the basic framework upon which most additional programmes are based. This means that statistics of REAN include also the figures of other programmes.<sup>62</sup>

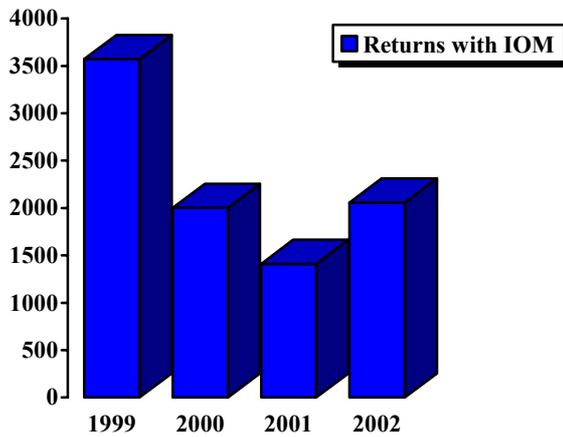
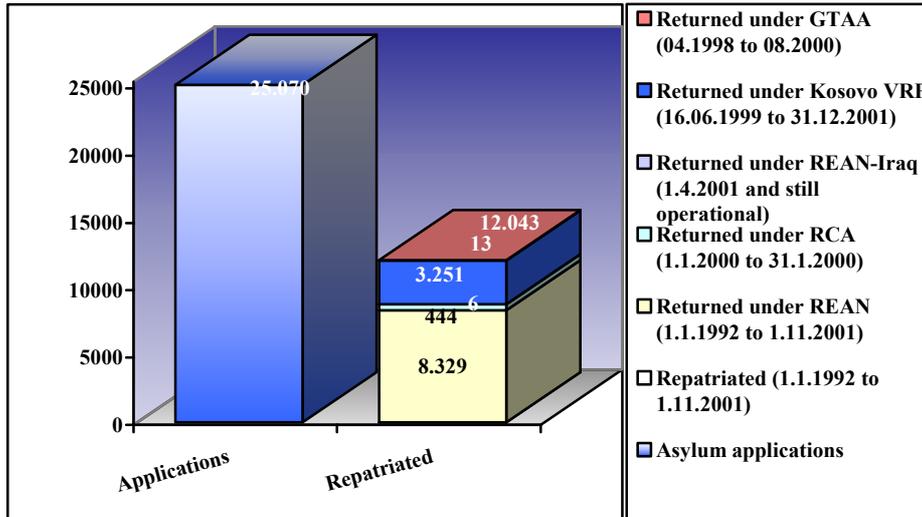
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<sup>60</sup> The right to reception, however, continues for individuals who are not removable under Article 64 of the 2000 Aliens Act, as long as their state of health prohibits return.

<sup>61</sup> "Update on repatriation policy implementation".

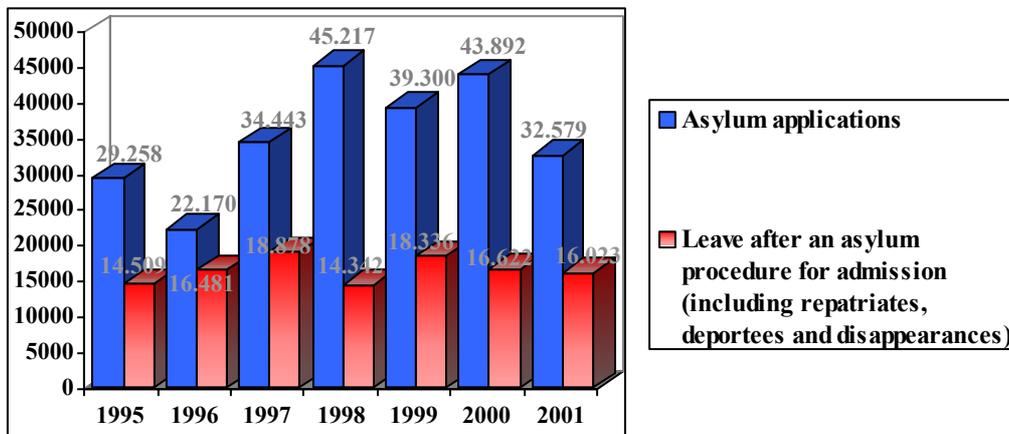
<sup>62</sup> Rejection under these programmes usually means that the applicant is still eligible for the basic REAN programme.

REAN programme between 1.1.1992 and 1.11.2001



**Removals**

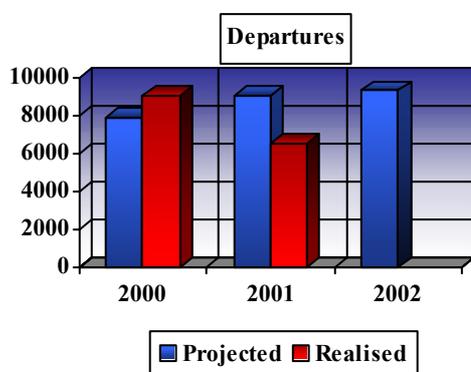
Asylum application and persons who left after an admission procedure



	1995	1996	1997	1998	1999	2000	2001
<i>Asylum applications</i>	29.258	22.170	34.443	45.217	39.300	43.892	32.579
<i>Leave after an asylum procedure for admission</i> <sup>63</sup>	14.509	16.481	18.878	14.342	18.336	16.622	<b>16.023</b>

## Detailed figures 2001

<i>Nationality</i>	<i>Address inspection</i>	<i>Surrender following MTV inspection</i>	<i>Expulsion</i>	<i>Supervised departure</i>	<i>Notice to leave following suspension alien's detention</i>	<i>Lapsed</i>	<i>Total ASYLUM</i>
<i>Iraq</i>	1.651	4	<b>38</b>	<b>43</b>	31	5	<b>1.772</b>
<i>Turkey</i>	892	27	<b>269</b>	<b>44</b>	24	3	<b>1.259</b>
<i>Afghanistan</i>	794	9	<b>175</b>	<b>49</b>	6	52	<b>1.085</b>
<i>BiH</i>	617	4	<b>88</b>	<b>221</b>	1	12	<b>943</b>
<i>Somalia</i>	884	2	<b>25</b>	<b>15</b>	12		<b>938</b>
<i>Yugoslavia</i>	508	13	<b>128</b>	<b>159</b>	15	16	<b>839</b>
<i>Iran</i>	470	3	<b>108</b>	<b>174</b>	20	3	<b>778</b>
<i>Sri Lanka</i>	447	-	<b>28</b>	<b>6</b>	17	1	<b>499</b>
<i>Sierra Leone</i>	392	1	<b>46</b>	<b>2</b>	42	1	<b>488</b>
<i>Guinea</i>	378	1	<b>41</b>	<b>2</b>	16		<b>438</b>
<i>Other</i>	4.934	17	<b>1.166</b>	<b>534</b>	326	7	<b>6.984</b>
<b>Grand total</b>	<b>11.976</b>	<b>81</b>	<b>2.112</b>	<b>1.253</b>	<b>510</b>	<b>100</b>	<b>16.023</b>



Year	Departures	
	Projected	Realised
2000	21.900	16.622
2001	21.000	16.023
2002	35.126 <sup>64</sup>	-

<sup>63</sup> The figure indicated in the table above in the departures column comprises various elements, and are the quantitative outcome either of decisions taken by aliens (voluntary departure or possibly supervised departure) or of efforts made by the authorities (forced departure or possibly supervised departures).

<sup>64</sup> Based on projections made in spring 2001, they will be adjusted according to current information.

## Portugal

The Aliens and Borders Office's (*Serviço de Estrangeiros e Fronteiras*) has the responsibility to provide information regarding rights and duties deriving from the asylum procedure, including the obligation to leave the country if the protection claim is rejected and to notify the asylum seeker of the outcome of the determination. The *Serviço de Estrangeiros e Fronteiras* is responsible to implement his/her return to the country of origin or to any other country where s/he might be admitted. Depending on the procedure, the asylum seeker is given a timeframe to leave the country on his/her own account. During admissibility stage this period is 10 days, otherwise the individual is given 30 days to leave. Specific preparation for return, however, is generally not offered. Nevertheless, after a negative decision returnees who need assistance may approach IOM for assistance.

Portuguese legislation does not foresee any regulation to secure the co-operation of a foreign national under the obligation to leave. Consequently, individuals who are not collaborating in the procedure are not facing any specific sanctions (in any case, persons lacking co-operation are not prosecuted). Nevertheless, during the asylum procedure, asylum seekers are obliged, according to Law 15/98, article 11 par. 5, to keep the Aliens and Borders Office informed about their current address and to appear at the office's premises every fortnight, otherwise proceedings shall not follow the normal course until the actual situation of the person concerned is clarified. Furthermore, in case the asylum seeker in bad faith provides false information, uses false or forged documents or destroys them to conceal his/her identity the application may be determined as unfounded.

### **Regularisation**

During the last ten years, two large-scale regularisation campaigns aimed at putting the situation of foreign nationals who illegally stayed in Portugal on a legal footing. The 1992 campaign primarily targeted on foreign nationals who:

- entered Portugal before 31 April 1992,
- speaking Portuguese as their native language, who were

- employed and
- without a criminal record.

In practice, that meant that mainly persons with either Brazilian or former Portuguese colonies' background were eligible under this regularisation scheme, which finally provided for residence entitlements for 39.166 foreign nationals. The campaign of 1996 aimed at a similar target group. It, additionally, included foreign nationals who were - due to the effects of the abolishment of internal borders - present in Portugal without any residence title. Thus, it granted residence titles to an additional number of 35.082 foreign nationals.

### **Incentives**

Currently, Portugal maintains two voluntary return programmes. The *General Return Programme* is run in co-operation with IOM and focuses on asylum seekers, rejected asylum seekers, persons under temporary protection, legal and irregular migrants - indifferent of their origins. The *Special Voluntary Return Programme* specifically provides assistance and support to nationals from Guinea-Bissau who remained under temporary protection statuses. The *General Return Programme* includes the provision of information, direct flight to the country of origin or a third country were the person would be admitted, and additional reintegration support.

The *Special Voluntary Return Programme* also foresees the provision of information, direct flight to the country of origin or a third country were the person would be admitted, luggage transportation by sea and reintegration support. According to official information, neither of the programmes includes specific post-arrival monitoring or evaluation of the impacts of the programmes once the person has returned. Due to the stated specific character no further evaluation of the impacts of voluntary return programmes in regard to cost, numbers of returnees, sustainability of return could be provided here.

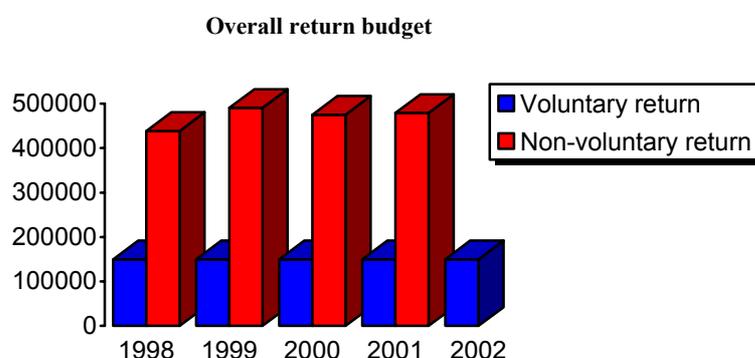
## Statistics

### Budget

<i>Year</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>
<b>Voluntary return programmes budget in €</b>	<b>150.000</b>	<b>150.000</b>	<b>150.000*</b>	<b>150.000*</b>	<b>150.000</b>

\* The budget exceeded the limits in 2000 and 2001.

<i>Year</i>	<i>1998</i>	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>
<b>Non-voluntary return procedures (detention, escorting, deportation, etc.) budget in €</b>	<b>438.708</b>	<b>490.669</b>	<b>475.028</b>	<b>479.019</b>	<b>n/a</b>



The graph shows that while the budget for voluntary return assistance remained steady at € 150.000 during the last 5 years, expenditures for the enforcement of return obligations varied slightly during the same period. Nevertheless, voluntary and non-voluntary return expenditures stayed at an even 1:3 ratio.

### Overall return figures

<i>1999</i>		<i>2000</i>		<i>2001</i>	
<i>Destination</i>	Number	<i>Destination</i>	Number	<i>Destination</i>	Number
<i>Guinea-Bissau</i>	369	<i>Ukraine</i>	56	<i>Ukraine</i>	160
<i>Moldova</i>	32	<i>Russia</i>	51	<i>Russia</i>	59
<i>Ukraine</i>	22	<i>Guinea-Bissau</i>	44	<i>Brazil</i>	53
<i>Russia</i>	14	<i>Brazil</i>	28	<i>Belarus</i>	17
<i>Senegal</i>	8	<i>S.Tome&amp;Principe</i>	11	<i>Lithuania</i>	11

### **Other features**

Persons who benefit from a programme may upon application receive information and assistance in reclaiming the rights they have gained legally during their stay in Portugal. Yet, specific agreements regulating the technical details of such transfers of rights do in fact not exist with countries of origin. However, pensions and benefits can be transferred to countries of origin of the candidates according to their directions.

## Spain

Once a final negative decision is issued and after consultations between the *Inter-Ministerial Commission for Asylum and Refugee Status (CIAR)* and the Ministry of Interior, the rejected asylum-seeker receives an order to leave territory, with which s/he has to comply within 72 hours, and shall be arrested and deported in case of non-compliance. The competent authorities do not refer to a possible return obligation before a final decision has been taken. Moreover, the possibility of voluntary return is raised neither before nor after the decision in a formal way.

### **Incentives**

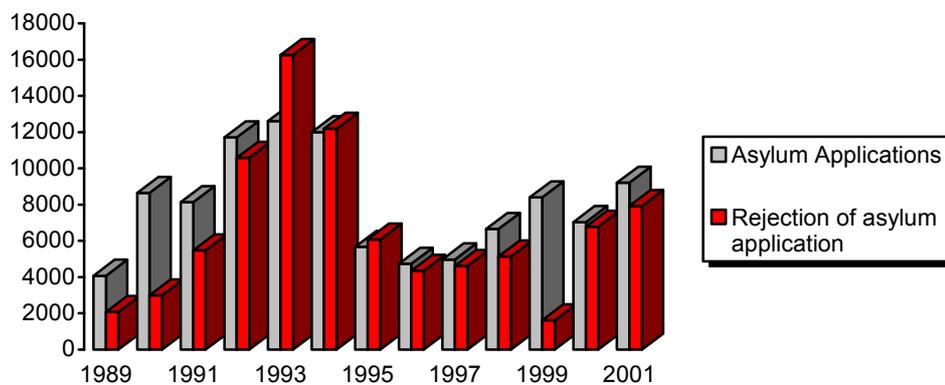
The Ministry of Labour and Social Affairs finances some voluntary return assistance programmes. These programmes are screened and evaluated by the Institute for Migrations and Social Affairs (IMSERSO), and carried out by NGOs (for the year 2001, the available budget was € 138.233.-). They target persons under temporary and subsidiary protection, refugees and rejected asylum seekers. Voluntary return is offered at any stage of the asylum determination process. As previously already mentioned, the authorities do not actively promote voluntary return. According to the Spanish authorities, it is the alien's wish to make use of an assistance programme which is the decisive element. The programmes generally offer information, assistance and, in certain cases, reintegration support in the country of origin.

### **Sanctions**

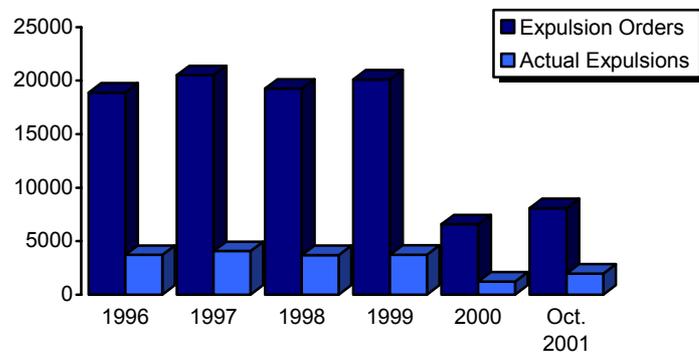
Detention of aliens pending deportation does not take place in “normal prisons”, but instead in one of the seven *Internment Centres for Migrants*, for a maximum duration of 40 days. If an expulsion is not only impeded but also impossible, the detainee may be released. The Police propose the release to the federal authorities. In any event, it is the judge who decides whether or not detention is still necessary. Apart from detention, other means can also be used in order to secure forced return, such as compulsory stay at designated residence and obligations to report to authorities.

### Statistics

#### Evolution of asylum applications



#### Removals



	1996	1997	1998	1999	2000	10.2001
<b>Expulsion orders</b>	18.880	20.511	19.258	20.103	6.576	8.090
<b>Actual expulsions</b>	3.725	4.071	3.699	3.734	1.226	1.982
	<i>per flight</i>		<i>per month</i>			
<b>Charter flights</b>	-		5 - 7			
<b>Persons transported</b>	50 - 60		250 - 420			

#### Voluntary return

Statistical data on voluntary return was not available.

## Sweden

The Swedish return policy differs to a significant degree from those of other European countries. The main responsibility lies with the Migration Board - the central authority for aliens affairs in Sweden.<sup>65</sup> The Board, however, implements returns only if they are “voluntary”.<sup>66</sup> It is in the Board’s discretion to hand over specific return cases to the police under certain preconditions. That is, where there is reason to believe that force may have to be used to enforce an order to leave. Additionally, such cases where the rejectee has absconded to evade his/her obligation to leave may be handed over to the police. Once the Migration Board made use of its discretionary powers in this way, police are responsible for the enforcement of the order. As an exception, police will not be made responsible for cases where the rejectee is not in possession of the necessary travel documents to be returned home.<sup>67</sup> In some areas, local police units have established special units for return matters. Additionally, the Migration Board offers advice to the police if there are any practical impediments to enforcement in specific cases. Hence, the Migration Board remains responsible for the return procedure only in cases where force may not have to be used to implement it or where a returnee has not gone into hiding, since the Board does not have the capacities and mandate to search for absconded persons. This signifies the Board’s paradigm of humane returns to which the preparatory works of the Aliens Act refer to as return in *dignified manner*.

Once a claim has been rejected, it is the respective reception officer who has to inform the rejectee of his/her obligation to leave the country within the set time frame. The rejectee is consequently invited to several meetings during which s/he is informed about the obligation to leave Sweden and moreover, his/her options and possibilities are going to be explored. These *motivation* meetings are used to *talk home* the rejected asylum-seeker. Consequently, the reception officer based on the assessment made during such conversations decides whether or not to hand over the case to the police. This risk assessment will also be influenced by the behaviour of the asylum applicant throughout the whole procedure. For instance, a question is pointed out at reception as

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<sup>65</sup> Until 1999, the responsibility for all repatriation matters has been vested with the police, which however, may even today still receive some responsible for specific tasks in the return procedure, if the Migration Board so decides.

<sup>66</sup> *Voluntary* in the Swedish context means that the individual agrees to follow the obligation to leave and that no use of force will become necessary.

<sup>67</sup> Nevertheless, the Board may hand over such cases where the undocumented rejectee has absconded.

to what the person would be doing if the case was decided negatively. The answer to which will be taken into account at this later stage, possibly having an influence on the measures taken and on the timeframe provided to the persons.

According to the Migration Board, the first ten days after a negative decision has been handed down are decisive. Since during this period of time, as experiences have shown, *motivation conversations* usually tend to be more successful in the sense that most rejectees can be convinced to leave Sweden without the police having to step in during this period.

According to the Migration Board, however, the enforcement of removal orders is not so much of a priority of the police.<sup>68</sup> Taking into account, though, that those cases which police have to take over tend to be more problematic, statistics from January 2002 to June 2002 may support the Board's view (see below).

Moreover, the Board distinguishes between such cases in which the risk assessment produces evidences that force might have to be employed and other cases where there is a risk that a person might try to evade the obligation to leave by absconding but at the same time having a positive estimation in regard to leaving Sweden voluntarily after some more motivation. This means that in Sweden a person might be placed in detention centres by police officers for preventive reasons, i.e. preventing evasion, but subsequently be released to leave voluntarily without any escorting. This is to point out the difference between handing over a case to police, that is making police fully responsible for the enforcement of orders to leave and calling in police to assist in carrying out the Migration Board's mandate to motivate persons to leave voluntarily.

A removal order will become void after 4 years if, until then, it has not been implemented. If the reasons for failure of enforcement are due to the alien's own action, a new order may nevertheless be made. If, however, the removal could not be implemented due to objective reasons the alien is usually granted a residence permit based on humanitarian grounds.

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<sup>68</sup> Information provided during personal interviews with officials of the Swedish Migration Board.

### Incentives

Unlike other countries Sweden does generally not provide voluntary return assistance programmes for asylum-seekers and rejected asylum-seekers apart from the support which is offered by the Migration Board. Nevertheless, the Board avails of approximately SEK 5 million per year (€ 547.573) for special return projects. According to the rules which regulate the use of these funds, special projects have to serve a group of people in general, rather than individual persons. Moreover, the Board may co-operate with other organisations, but not with governments. Private organisations, local authorities, foundations, and non profit-making businesses are eligible for project grants. Past projects, which received such funding, included *inter alia* mine-awareness training, provision of storage-room for persons returning to Kosovo, IES – Sri Lanka and a number of IOM projects. Apart from general repatriation assistance, a number of special repatriation programmes offer assistance to specifically targeted groups to return home, such as the Nordic Project for Elderly Bosnians. However, according to the Migration Board such projects have shown only limited success.

### Repatriation scheme

Sweden, nevertheless, has in place a voluntary repatriation scheme. The concept of repatriation in the Swedish context, however, includes only persons who have been granted residence permits<sup>69</sup> and who decide for one reason or another to return home voluntarily but lack means of their own to do so and are in possession of valid travel documents. In such cases of repatriation the Migration Board revokes the permanent residence permit. Returnees receive travel allowances and grants to help resettling. The maximum amount of such grants lies at SEK 10.000.

	<i>Resettlement Grants</i>
<i>Adult</i>	€ 1.092
<i>Children &lt; 18</i>	€ 546
<i>Family</i>	€ 4.369

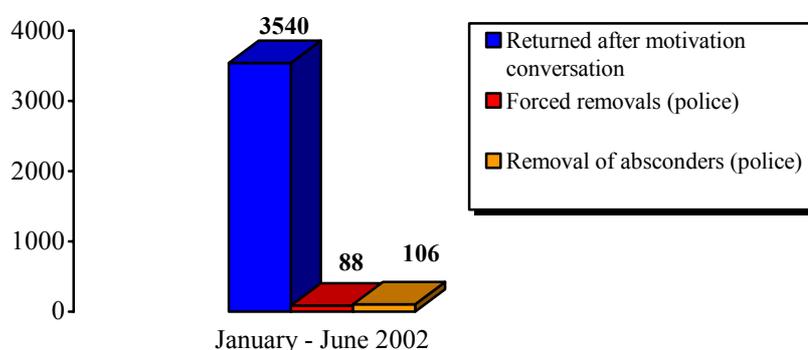
<sup>69</sup> Persons having received residence permits as refugees or for other humanitarian reasons or who have been part of the refugee quota.

In that sense such returns are truly voluntary, like in a number of other countries included in this report, as the participants are able to decide between staying and returning.

### Sanctions

An asylum seeker while in Sweden receives support and benefits from the Migration Board. Specifically, they are eligible for such assistance from the time of application until the granting of protection or the return to their country of origin. However, in case a rejected asylum seeker proves to be uncooperative in the processes which aim at his/her return the Board may react by gradually reducing the benefits. As a first step, the daily allowance<sup>70</sup> (DA) can be decreased. If necessary cooperation cannot be re-established by this measure, the DA can be completely withdrawn and for those living in private accommodations the monthly housing grant<sup>71</sup> can, moreover, be revoked. Both are replaced by substitutions, such as the provision of accommodation and food at reception centres.

### Statistics

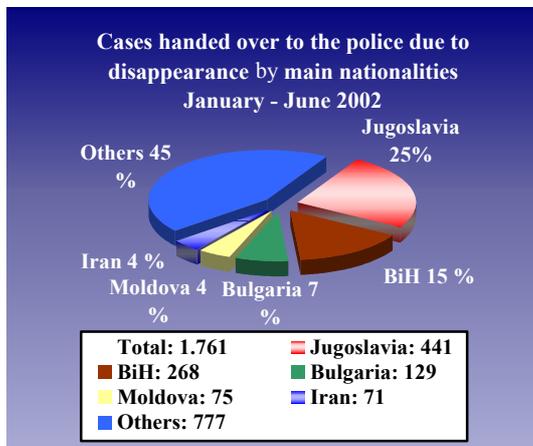
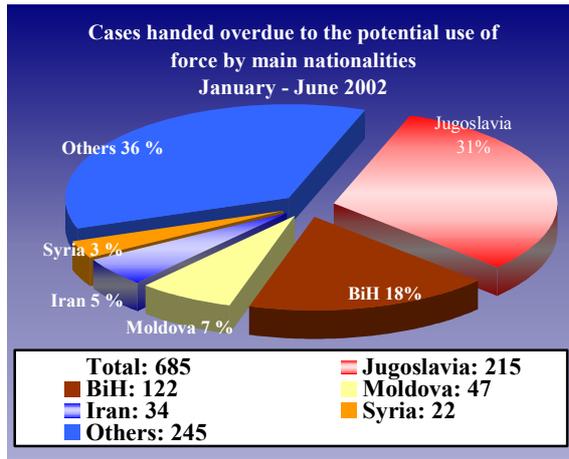
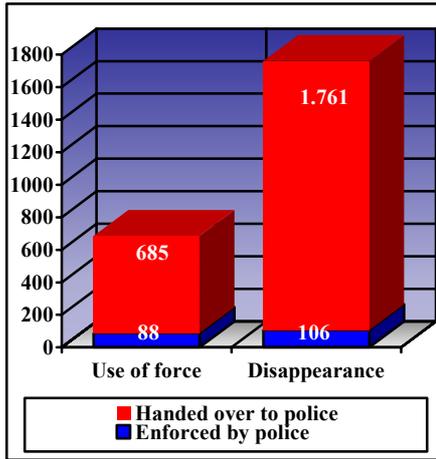


	<i>January – June 2002</i>
<i>Persons under the obligation to leave</i>	6.578
<i>Returned after the motivation conversations with the Migration Board</i>	3.540
<i>Cases handed over to the police after in which a potential need to use force has been established</i>	685
<i>Forced removals</i>	88
<i>Referred to the police due to disappearance</i>	1.761
<i>Removal of persons who absconded</i>	106
<i>Otherwise closed</i>	592

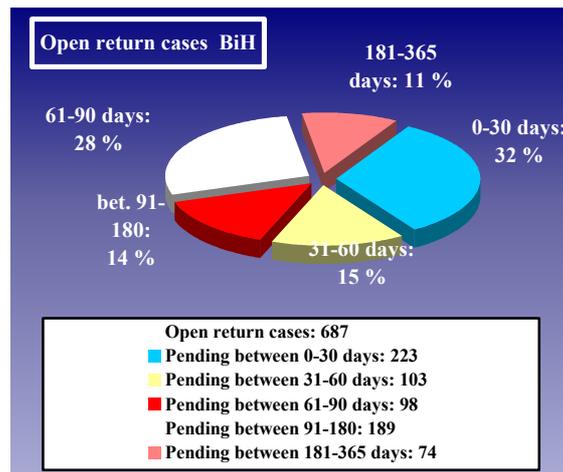
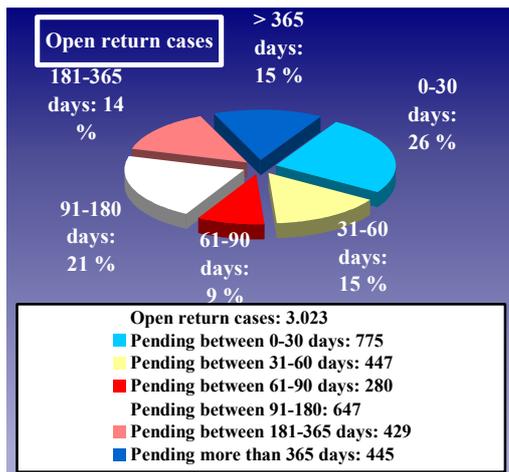
<sup>70</sup> SEK 71/day (€ 7,7) for adults, SEK 61/day (€ 6,6) for cohabiting partners and SEK 37–50/day (€ 4–5,4) for children (aged 0–17).

<sup>71</sup> SEK 500/month (€ 54,5) for single persons and SEK 1,000/month (€ 109) for families.

Removal operations



Open return cases



## Switzerland

According to Swiss authorities *“return assistance has been an asylum policy instrument in Switzerland since 1993. Promoting voluntary and orderly return as well as facilitating the reintegration in the country of origin are the main goals to be achieved with return assistance. If specific programmes were set up in order to respond to major crisis such as Bosnia or Kosovo, constant efforts were made to seek durable solutions in a more global migration approach.”*<sup>72</sup>

The consequences of an eventual negative decision are pointed out to asylum seekers already during the asylum procedure. Furthermore, the possibility of use of force in case the rejectee does not leave in due time is clearly stated in the removal order itself. In practice, information about voluntary and forced return is provided as soon as an asylum application is submitted.

### **Incentives**

Swiss policy gives priority to voluntary return, which is promoted by granting individual return and reintegration assistance as well as structural assistance and development in the countries of origin (or implementation of specific projects geared to the improvement of living conditions).

According to Swiss regulations governing return assistance, all persons who benefited from any asylum status; i.e. refugees, persons under temporary protection, asylum seekers at all stages of the asylum process and persons who benefit from a temporary admission are eligible. Art. 64 VO2, however, submits eligibility to various restrictions, i.e. in regard to “non-entrée en matière” decisions, cases of delinquency, lack of co-operation and availability of sufficient means. Moreover, return orders and deadlines laid down for leaving the country must generally be respected.

Return assistance is available in two forms, as general individual return assistance and as country specific return assistance. The former does not target specific countries but is available to all countries, whereas the latter focuses on specific crisis areas, and is set

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<sup>72</sup> ICMPD 2002.

up in order to respond to specific major crises, for example in BiH, Kosovo, Turkey, Northern Iraq, Sri Lanka, Somalia, Ethiopia and Angola. In such cases additional humanitarian and development features might be included in return assistance programmes. This was the case, for example, in Kosovo and BiH.

Examples of benefits:

	<i>Adult</i>	<i>Child</i>
<i>Angola</i>	€ 1.371	€ 1.371
<i>Bosnia</i>	€ 2.450	€ 1.225
<i>FRY</i>	€ 1.370	€ 684
<i>Kosovo (depending on the phase)</i>	€ 1.370/685	€ 685/340
<i>Sri Lanka</i>	€ 1.350	€ 675
<i>Turkey &amp; Northern Iraq (per person)</i>	€ 2.050	€ 2.050

Post-arrival benefits may consist of temporary housing, reconstruction material and assistance and reconstruction programmes. For the Sri Lanka programme, project support is available in some cases.

Specific return programmes for Turkey and DR Congo are currently being planned.<sup>73</sup> A specific return programme for Iran started in 2002, and providing SFR. 2000,-/adult, SFR. 500/child, as well as the financing of individual income generating projects in some cases. Regarding Afghanistan, financial return assistance of the same amount and transport to the destination is provided for.

#### **Other incentives<sup>74</sup>**

Regarding other facilitation measures, it is worth mentioning that all persons working are by law obliged to give a percentage of their wage to social insurance and the pension fund. In case of definitive departure from Switzerland, the person can reclaim such funds. In general such benefits may be transferred if a special agreement exists, though this is rarely the case for the majority of countries of origin. The amount accrued is then cancelled if a social insurance convention does not exist between Switzerland and the other country. The amount can, in some cases, reach a few

<sup>73</sup> “The FOR return policy”.

<sup>74</sup> To illustrate the level of co-operation, one might take account of the following figure: approximately 60 percent of all rejected asylum-seekers in Switzerland disappear prior to their removal. Upon expiration of the date at which they are allowed on Swiss territory, absconded rejectees are listed in the computerised RIPOL police search system. It is assumed by the Swiss authorities that most of them cross illegally into another country.

thousand Swiss francs and could be a factor in any deliberations about whether or not to return voluntarily. This fact has been acknowledged by the RCO in assisting to claim these funds gained while working in Switzerland.

As a special feature, the Sri Lankan programme provides support in recovering and in banking transfer of assets so recovered. The Swiss embassy and a local NGO also provide additional support and counselling in this area, as funds can only be recovered upon return.<sup>75</sup>

Generally speaking, however, to preserve the ability to remigrate, returnees are supported to develop professional prospects in their country of origin and to acquire or extend the know-how required to realise their plans. According to the Swiss authorities, a critical element of this approach is that while attempting to preserve and promote the returnees' ability to remigrate, such measures could impair self-responsibility, create or increase dependency.

After approximately four years of unsuccessful enforcement procedures, repatriation attempts shall – as a rule – be abandoned and the person finally admitted and integrated. The general policy in Switzerland does not favour regularisation (and is reluctant to run large scale regularisation programmes), based on the argument that it does not solve the problems but paves the way for the next one. Still, a significant number of persons every year receive a status through regularisation.

### **Experiences**

If the number of participants in a programme is the relevant indicator, then the Kosovo and Bosnia programmes are officially considered successful. However, according to this indicator, participation rates would make the remaining programmes look like failures. The difficulties encountered by respective programmes vary considerably. Nevertheless, Swiss authorities employ a rather elaborated way of measuring success of

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<sup>75</sup> Experiences have shown that there was an exceptionally high rate of employment among Sri Lankan nationals living in Switzerland. As a result of their gainful employment, some of them have substantial private resources, comprising in particular security account reimbursement deductions, AHV (Old Age and Survivors' Insurance) and pension scheme contributions. Their lack of knowledge about these claims as well as the administrative hurdles connected with payment faced by returnees once they are back in their native country often prevent their assertion of such claims. (FOR Fact Sheet, update February 2002).

voluntary return assistance programmes.<sup>76</sup> According to information supplied by FOR, a mixed assessment comprising of quantitative as well as qualitative indicators is used for evaluation purposes, since “*it would be false to limit the observation to statistics. The qualitative aspects of the programme (“the offer”) and its importance as an alternative - return with dignity - were considered as significant goals as such to be achieved*”.<sup>77</sup> Even though participation rates do not always reach expectations, the country-specific programmes are judged to be necessary and valuable.

### Sanctions

According to the authorities, the paradigm of the Swiss asylum policy conceives of an asylum system which shall be humanitarian and based on individual responsibility (“*to give the responsibility back to the individual*”). The Swiss Constitution does not permit a complete withdrawal of support but guarantees in any case the minimum level of subsistence. Consequently, every person has the constitutional right to receive social welfare for as long as it appears to be necessary (in other words, as long as the person relies on it and as long as s/he is physically present in Switzerland). The co-operation or lack of co-operation of the individual concerned has no bearing on this right. However, within these limits, possibilities do exist to secure the individual’s co-operation during the procedure. The authorities may compulsorily assign an uncooperative asylum seeker to specific places of accommodation, detain and/or reduce benefits to a minimum level. Reductions of social welfare due to lacking cooperation can vary from Canton to Canton. It is possible that provisions are supplied in kind (with no right to cash benefits and no free choice of accommodation/food).

Other means, apart from detention, exist to secure the presence of individuals which are less intrusive. Either the person concerned may not be allowed to leave a certain prescribed area, such as cantonal, municipal or town limits,<sup>78</sup> or the person concerned may not be allowed to enter a certain area.<sup>79</sup> Other measures, such as regular presentation to the authorities exist, based on Cantonal laws.

<sup>76</sup> See, also, IOM Migration Research Series No. 4, “The Return and Reintegration of Rejected Asylum Seekers and Irregular Migrants”, prepared by Khalid Koser, IOM 2001.

<sup>77</sup> Information taken from questionnaire on comprehensive EU return policies and practices, ICMPD 2002.

<sup>78</sup> “Eingrenzung” (Art. 13e ANAG).

<sup>79</sup> “Ausgrenzung” (Art. 13e ANAG).

## Statistics

## Persons in the Swiss asylum sector

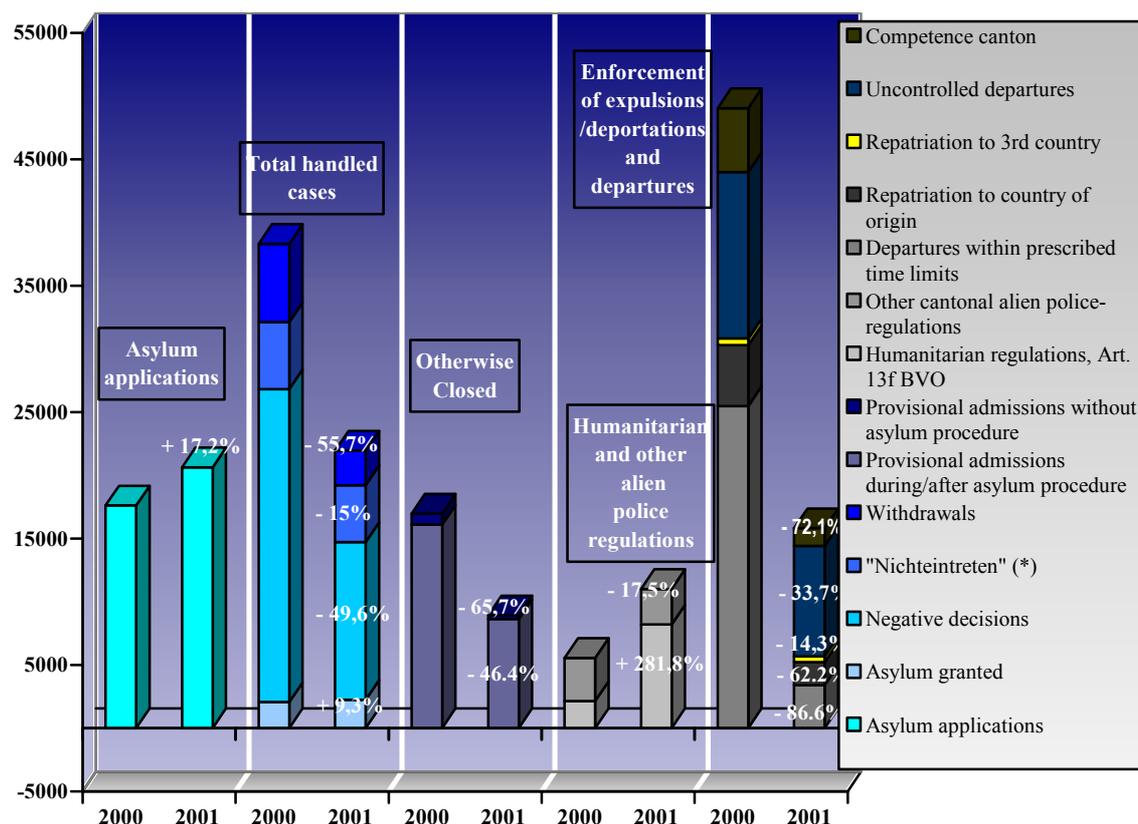
	31.12.2000	31.12.2001
<i>First instance pending applications</i>	15.137	14.603
<i>Second instance pending applications</i>	12.332	11.050
<i>Regulation / enforcement pending or blocked<sup>80</sup></i>	13.363	10.398
<i>Provisionally admitted</i>	32.114	30.734
<i>Recognized refugees</i>	25.534	26.577
<b><i>Total of persons in the asylum sector</i></b>	<b>98.480</b>	<b>93.363</b>

The figures represent the deviation in percentage.

	2000	2001	%
<i>Asylum applications</i>	17.611	20.633	+17,2
<i>Total handled cases</i>	38.307	21.963	- 42,7
<i>Asylum granted</i>	2.061	2.253	
<i>Negative decisions</i>	24.759	12.470	
<i>“Nichteintreten” (*)</i>	5.292	4.498	
<i>Withdrawals</i>	6.195	2.742	
<i>Otherwise closed</i>	16.966	8.922	- 47,4
<i>Provisional admissions during/after procedure</i>	16.102	8.626	
<i>Provisional admissions without asylum procedure</i>	864	296	
<i>Humanitarian and other alien police-regulations</i>	5.556	11.012	+98,2
<i>Humanitarian regulations, Art. 13f BVO</i>	2.148	8.201	
<i>Other cantonal alien police-regulations</i>	3.408	2.811	
<i>Enforcement of expulsions/deportations and departures</i>	49.030	15.823	- 67,7
<i>Departures within prescribed time limits</i>	25.483	3.415	
<i>Repatriation to country of origin</i>	4.813	1.818	
<i>Repatriation to third country</i>	533	457	
<i>Uncontrolled departures</i>	13.155	8.725	
<i>Competence canton</i>	5.046	1.408	

<sup>80</sup> Residence regulations or enforcement of the expulsion still outstanding or at the moment technically blocked.

### Decisions in Switzerland



The figures represent the deviation in percentage

(\*) Decision, where the question of protection is not examined, because of enumerated reasons: another state is competent, cases of deception of identity, refusal of co-operation by individual, safe country of origin – will enter asylum procedure only if especially strong reasons exist (in such cases, the presumption that an alien is not in need of protection is rebuttable); “Nichteintreten”-decisions do not carry suspensive effect (Art. 45 Abs. 2 Asylum Law).

### Voluntary return

Country of return	Target <sup>81</sup>	Applications <sup>82</sup>	Returned <sup>83</sup>	Status of the programme
Bosnia	18.000	12.800	10.007	Ended
Kosovo	64.000	32.679	32.356	Ended
Northern Iraq	2.000	32	10	Ongoing
Sri Lanka	100 per year	38	15	Ongoing
Somalia	80	25	6	Ended
Ethiopia	400	0	0	Ended
FRY	1.790	579	4	Ongoing
Angola	-	-	-	Started November 2002

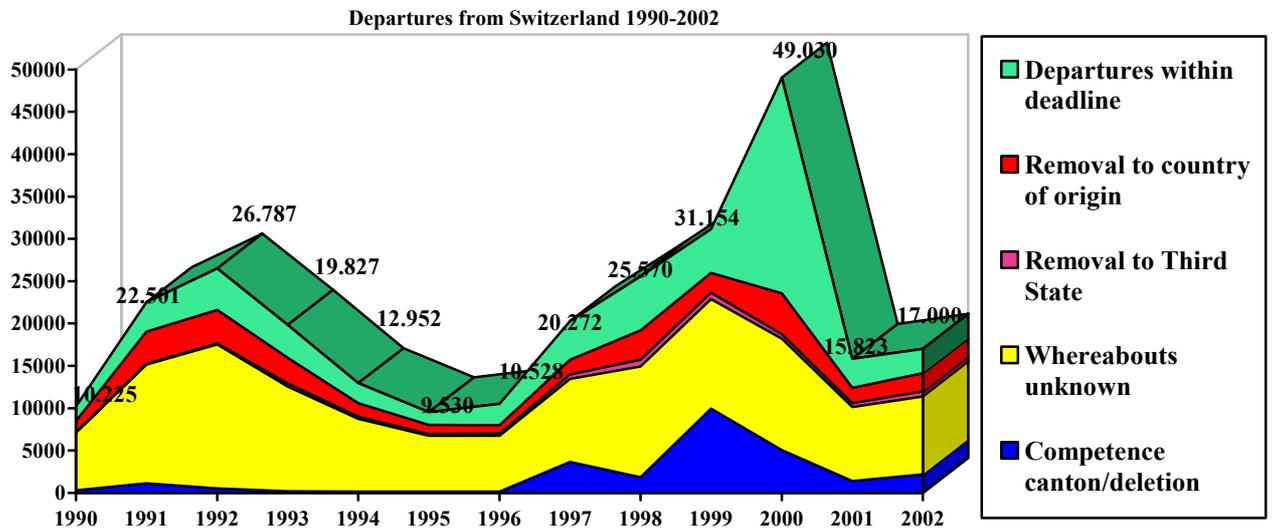
<sup>81</sup> The overall figures for each respective target group on which governmental planning in regard to voluntary repatriation programmes is based upon.

<sup>82</sup> Number of applications since 1995 (or since the respective program is in operation).

<sup>83</sup> The number of persons who have already repatriated voluntarily through such programmes since 1995 (or since the respective programme is in operation).

Overall return statistics

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
<i>Competence canton/deletion</i>	295	1.134	545	180	150	150	140	3.650	1.864	9.941	5.046	1.408	2.193
<i>Whereabouts unknown</i>	6.824	14.017	17.000	12.377	8.601	6.598	6.604	9.799	13.060	12.933	13.155	8.725	9.189
<i>Removal to thir. State</i>	28	65	100	367	267	193	269	542	806	753	533	457	605
<i>Removal to country of origin</i>	1.327	3.808	3.968	3.005	1.588	1.082	990	1.730	3.456	2.347	4.810	1.818	2.143
<i>Departures within deadline</i>	1.751	3.477	4.871	3.898	2.346	1.507	2.505	4.551	6.384	5.180	25.483	3.415	2.870



## United Kingdom

The UK asylum system was in a stage of permanent change<sup>84</sup> in the last years and is at present undergoing a further changing. In February 2002, the UK government published its White Paper *Secure Borders, Safe Haven: Integration with Diversity*. Furthermore, the Government came out with the Nationality, Immigration and Asylum Bill in April 2002. The contents of the Bill are part of the package of measures outlined in the Government's *Secure Borders, Safe Haven* White Paper on asylum, migration and citizenship. The consultation period on the White Paper ended on 21 March 2002. The Bill, having had its Commons Third Reading, passed to the House of Lords on 13 June 2002. The White Paper proposes a three-stage support process for asylum seekers; from induction to accommodation to, depending on the outcome of the asylum claim, integration or removal. The asylum aspects of the Bill can be said to concentrate on control and removal of rejected asylum seekers.

Furthermore, measures on appeals and judicial review (e.g. to reduce duration of the judicial review process in cases where removal directions have been set) have been introduced as amendments to the Nationality, Immigration and Asylum Bill. The aim of these measures is to make the appeal process faster to cut costs and delay. The White Paper stressed beforehand the streamlining of the appeals system to minimise delay and cut down barriers to removal.

According to the White Paper, Induction Centres are a first stage in achieving a holistic approach to the handling of asylum seekers' applications – from arrival to the removal of failed applicants, or the integration into the community of those recognised as refugees. According to the Government, Induction Centres are to provide the opportunity for a comprehensive service to asylum seekers so that they are fully aware of how the procedures work and understand exactly what is expected of them. The Government intends to provide briefing explaining in detail the processes involved, including information about the area to which the asylum seeker will be dispersed and how to make a voluntary departure should they no longer wish to pursue an asylum claim. Before leaving the induction centre, there will be a requirement for all asylum seekers to sign a document confirming that they understand:

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<sup>84</sup> Four bills in ten years.

- the processes that accompany their claim for asylum and support,
- their obligations to comply with temporary admission and reporting arrangements,
- the requirement to leave the UK should their asylum claim fail and
- how they can obtain assistance to return.

### **Incentives**

The IND jointly with the European Refugee Fund funds the “*Voluntary Assisted Returns Programme*” (VARP) which is operated by IOM and Refugee Action. It is designed to facilitate the voluntary and orderly return of individuals who have decided to return to their countries of origin, but who do not have the means to do so.

The Immigration Act 1971 empowers the Secretary of State to make contributions to meet expenses of non-British citizens leaving the United Kingdom for a country or territory where they intend to reside permanently. On this basis, the pilot VARP was introduced in February 1999 in the light of a perceived need signified by an increase in the numbers of asylum seekers demanding advice, information and assistance from IOM London regarding the facilitation of returning to their home countries. VARP aims at asylum seekers of any nationality<sup>85</sup> at any stage of the procedure, rejected asylum-seekers and persons granted temporary protection.<sup>86</sup>

The returnees must sign a disclaimer making clear that they are freely withdrawing their asylum application and returning home on their own accord. It is not expected that returnees will seek to come back to the UK but, should they do so, their applications will be considered against the requirements of the Immigration Rules in the legally prescribed way.

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<sup>85</sup> Since September 2001, however, a specific programme for Somalia (primarily Somaliland and Puntland) exists.

<sup>86</sup> However, an alien is not eligible when detained by the Immigration Service, or when a deportation order has been issued against him/her.

### **Experiences**

VARP has been assessed by external consultants (Deloitte&Touche) as a cost effective alternative to enforced returns of rejected asylum seekers.<sup>87</sup> Furthermore, the White Paper also emphasises that the programme contributes to the return of people in an orderly, sustainable, and cost effective manner. The government proposes further to build on the programme's success using forthcoming legislation to increase its return capability, and also to facilitate early access to the programme through the new Induction and Accommodation Centres.

### **Sanctions**

As mentioned before, according to the White Paper, residents of accommodation centres will be subject to a residence requirement. This means that they will be obliged to reside at the centre throughout the processing of their application and to report regularly to confirm that they are complying with this requirement. Residents who breach these requirements may affect the outcome of their asylum claim negatively. Additionally, the Bill enables reporting and residence requirements to be imposed on all asylum-seekers and allows for the discontinuation of support to asylum seekers who fail without reasonable cause to report as required.

Following the issue of a “notice of intention to deport”, an immigration officer may opt for making an order restricting a person in regard to residence, employment or occupation and requiring him to report to the police, pending the removal.

Furthermore, the White Paper points out that detention has a key role to play in the removal of failed asylum seekers. Reinforcing, the government shall be designate existing detention centres, other than Oakington Reception Centre, as ‘removal centres’. According to the authorities, detention remains an essential element in the effective enforcement of immigration control. The primary focus of detention will continue to be its use in support of the removals strategy. To this effect, the authorities have expanded the number of immigration detention places from about 900 in 1997 to just under 2,800 by the end of 2001 and have decided to increase detention capacity by a further 40%, to 4,000 places, in order to facilitate an increased rate of removals of

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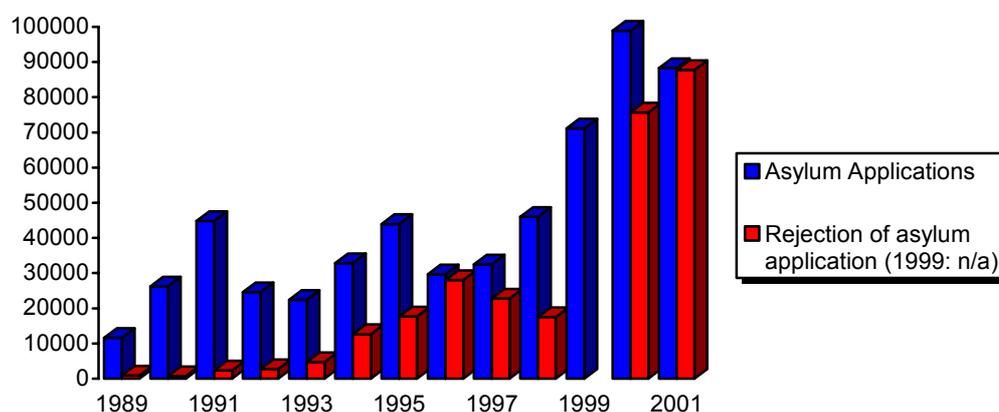
<sup>87</sup> ICMPD 2002.

failed asylum seekers and others with no legal basis of stay in the UK. The government expects to have all the additional places in operation by spring 2003.

### Other measures

If a forced removal may not be practicable due to instability in the country of origin or because of lacking travel documents, the person’s legal status is not changed. The foreign national will be “tolerated” providing he is complying and co-operating in efforts to effect his/her removal. Nevertheless, individuals may be granted either refugee status or “exceptional leave to remain” on humanitarian grounds if appropriate.

### Statistics



### Asylum decisions 2000-2001

	2000		2001	
<i>Asylum decisions</i>			118,195	
<i>Refugee status granted</i>	10,375	11 %	10,960	9 %
<i>"Exceptional leave to remain"</i>	11,495	12 %	19,510	17 %
<i>Rejected applicants</i>	75,680	78 %	87,725	74 %
<i>Appeal to Immigration Appellate Authority (IAA)</i>	19,395		43,415	
<i>Refugee status granted</i>	3,340	17 %	8,155	9 %
<i>Withdrawn</i>	475	3 %	825	2 %
<i>Rejected applicants</i>	15,580	80 %	34,440	79 %

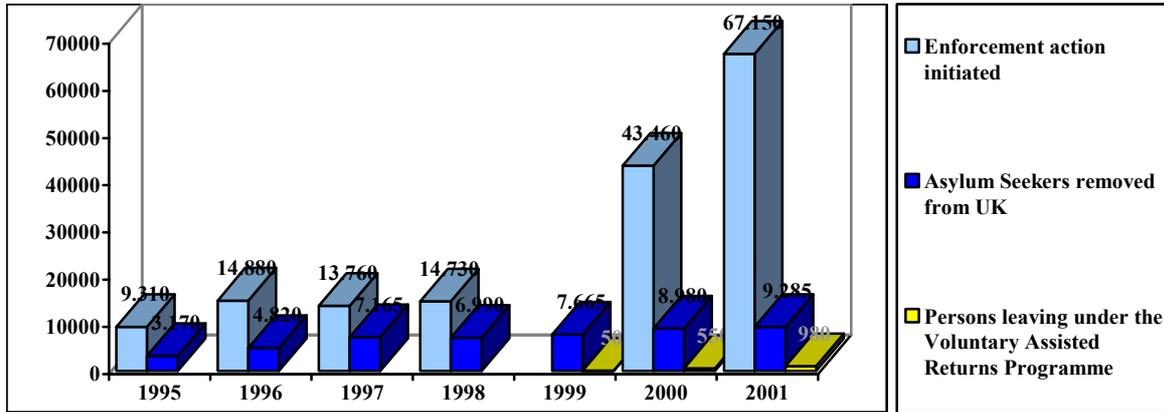
### Voluntary return

The overall budget for the period September 2000 – August 2001 was around € 1,500.000,-. From February 1999 to August 2001 IOM received 1.767 applications under VARP. For the same period, 1.347 persons were returned under VARP. The

Immigration Service and IOM intend to expand the programme to 3.000 returns in 2002. Currently, 43% of those applying under the programme seek assistance from IOM before their claim for asylum has finally been determined.

**Removals**

Enforcement action initiated – Removals – Voluntary assisted return 1995-2001



	1995	1996	1997	1998	1999	2000	2001
<i>Enforcement action initiated</i>	9.310	14.880	13.760	14.730	-	43.460	67.150
<i>Asylum-seeker removed from UK</i>	3.170	4.820	7.165	6.990	7.665	8.980	9.285
<i>Persons leaving under VARP</i>	-	-	-	-	50	550	980

### **VIII. Synthesis of country reports**

In the previous chapter a number of different measures and approaches have emerged which stand for and form part of sometimes diverging conceptualisations of return policies. Despite the fact that significant developments have taken place on the national levels of the individual Member States and also on the European level it becomes apparent that practices in the field of return are still far from being uniform. This holds particularly true with regard to voluntary returns and its role within the national return systems, i.e. the goals authorities pursue in providing return assistance and support.

The question which arises at this stage is which of the approaches of the countries included in this report works effectively or successfully? Which of the measures could serve as examples and which are, in turn, apt to be transposed to other countries and their respective systems? And, conversely, what can be learned from such measures which proved to be ineffective in a given state, or in more general terms, how can experiences be made fruitful for other countries?

From the outset, however, it must be clear that an analytical impact analysis of individual measures tuned to promote voluntary returns of rejected asylum seekers can only be provided in a very limited and cautious way. As it holds true for all migration related matters – or even more generally for any kind of human behaviour – the number of variables influencing decisions – in this case, to leave voluntarily – is just too great to provide clear-cut predictions as to how a single measure will affect the actions of members of a group as inhomogeneous as rejected asylum seekers and persons whose temporary protection has ended. Furthermore, a commonplace, the migration domain reacts highly sensitive to influences from other socio-political domains, such as (grey) labour market and housing sectors, existence and composition of refugee and migrant communities, etc. In other words, ascribing effects to individual measures is especially difficult in the area of migration management.

In this context, however, some observers state that all migration systems in Europe, particularly including asylum systems, provide incentives on the wrong side: once within the scope of European immigration and asylum regimes, it is suggested, the individual “migratory project” is more or less successfully completed, since the system

allows third country nationals to extend their presence in the receiving country by displaying uncooperative behaviour with regard to their obligations to leave the country. Therefore, single measures bear only little effect and will more often than not be superposed and outweighed by implications of other measures. For these reasons, in order to be able to provide an impact analysis of incentive measures of such quality a comprehensive analysis also including the mentioned areas must be carried out. This, however, is beyond the scope of this report.

In this situation, it is furthermore stated, states increasingly emphasise and strengthen their policies of negative incentives or sanctions. In the understanding of the present report incentives to promote the return of rejected asylum seekers are to be read to also include such negative incentives. They are closely related to enforcement measures, however, they cannot be equated with them. There is broad consensus among European governments today that efficacy of return regimes continues to depend on enforcement measures. Hence, negative incentives function as the “stick” in the “carrot and stick” approach. Negative incentives, as regularly applied by states, include the whole range of measures pertinent to the initiation of enforcement measures, such as detention, escorting, etc. Furthermore, in a number of countries any provision of benefits and support for rejected asylum seekers will be terminated after certain periods of time, increasing the pressures to force them to leave. Additionally, if a third country national is expelled and/or deported authorities frequently stamp the passport and enter the person in the list of persons to be refused entry to the country. In the European Union context this means a person will be filed in the national Schengen Information System (N.SIS) and the central Schengen Information System (SIS) in Strasbourg and he will for a specified period of time be refused an entry visa to the Schengen zone.

It is in this area that positive incentives to promote return come to bear. It is suggested to the rejectee that all of the above is not going to be employed if he leaves the country voluntarily. In this respect, positive incentives appear as a reversal of the negative incentives. If a third country national is willing to leave voluntarily he will not be detained, or forcibly deported and in some cases, the person may be permitted to re-enter using the regular entry channels, i.e. no ban is imposed and no entry in the “blacklist” is made. Furthermore, in contrary to deportations where it is up to the

enforcement agency to set time and date of the enforcement, the returnee may be given time to prepare for the return if he decides to leave the country voluntarily. In this regard, positive (immaterial) return incentives can contribute to a softer, more cooperative approach.

In this respect the authorities may have some measures at their direct disposal which can have some “incentivising” effect. Apart from the incentive measures described above which allow the implementing authorities some leeway with regard to the enforcement of return obligations (i.e. deportation), still the single most important way in which incentives to promote the return of rejected asylum seekers is provided today by states, however, continues to be return assistance embedded in programmes. It is not intended here to provide individual assessments and evaluations of the various different programmes which are currently implemented in the EU MS, but rather to assess the potential of such programmes as elements of comprehensive migration management policies and to describe the ways in which states make use of them. It can be said that this way of creating incentives has received the greatest attention in recent time and has, therefore, become the most developed form of return incentives. Such programmes combine notions of systems’ integrity and co-operation with the returnee.

What is normally offered to third country nationals who avail themselves of return assistance programmes? A number of elements feature regularly in the make-up of return assistance programmes:

- information and counselling,
- motivation,
- assistance in obtaining necessary travel documentation,
- material and financial support and
- transportation.

Additionally, individual support “packages” may be made available to returnees, providing for vocational training and job creation measures, creating further incentives to return. Moreover, return assistance programmes are, in certain circumstances,

coupled with structural support measures aimed at the country of origin to improve reception capacities and enhance willingness to receive back own nationals.

How are return assistance programmes offered? On one hand, as it was shown in chapter 7, states make eligibility for assistance programmes independent of membership to a certain group of third country nationals or region of origin, but provide support to all asylum seekers and rejectees present in the country. Such programmes tend to be longer in duration, sometimes even indefinite. On the other hand, often reacting on specific and more urgent migratory pressures, states provide for special assistance and support programmes. Eligibility and duration of such programmes tend to be more limited than in general programmes and assistance and support is closer adjusted to the situation of the group of potential returnees and the respective country of origin. The advantages of the former consist in the building up of permanent organisational and operational structures and the increasing “professionalisation” of the staff. The disadvantage could be seen in less specific a scope and the great number of different countries to which returns are to be organised. Whereas in the case of specific return programmes, in turn, necessary structures often have to be built and staff trained, before return assistance can take place. Such programmes, however, carry the advantage of being specifically designed to the needs of the circumstances and of the individuals’ situation. This has led a number of countries to run general return assistance programmes on a relatively constant and durable basis and to create special and individual programmes based on the former and making use of their organisational and operational structures if need may be.

Specific return programmes are predominantly being implemented in situations of temporary protection and similar circumstances (i.e. lifting of a general halt of returns, significant numbers of enforceable expulsion orders, etc.) in which a relatively large group of displaced persons are to return home once the situation has durably and significantly changed. In such situations, return programmes tend to provide a somewhat larger support and assistance package particularly, as the examples of Bosnia and Herzegovina, Kosovo and most recently Afghanistan have shown. Such programmes may provide for additional incentives, such as *go-and-see visits*, *housing* and other *reconstruction grants*, *medical support* in the country of origin, etc.

Programmes may even foresee some form of monitoring in the country of origin. This can take place either in a passive fashion, i.e. providing for a focal point to which returnees can turn to for assistance once returned, or the return is being actively monitored. As mentioned already, the remarkable numerical success of some of the return programmes created upon ending of temporary protection may be explained by the coinciding of interests of the host state and the majority of third country nationals.

Worth mentioning, even though not directly relevant for the topic of this report, some countries examined in this report additionally provide for repatriation support for refugees and other third country nationals holding residence permits for their respective host countries. Such repatriation schemes provide generally for the most comprehensive “package”. Apart from the basic provision of transportation costs, support often also includes among other things, significant financial assistance to cover some of the expenditures occurred upon return, health care provision and even transfer of pensions. Such repatriation schemes, furthermore, often provide for so-called “regret clauses” which allow third country nationals during an extended period of time, sometimes amounting to several years, to return to the host country should they so decide.

Recapitulating, it can, as a rule, be said that the more stable the residence status the more extensive and generous the incentives to promote the return of third country nationals:

- Rejected asylum seekers receive generally solely a basic package comprising of transportation costs and sometimes small amounts of financial support.
- Formerly temporary protected persons or similar groups may be provided additional support, such as reconstruction grants, medication, sometimes post-arrival monitoring. Such programmes may also include some form of structural reconstruction elements.
- Refugees who return home voluntary often receive greater financial assistance, health care and medical supply in the country of origin, transfer of pensions, preferential treatment with regard to immigration regulations of their former host country (“regret clauses”), etc.

Having described the different typologies of incentives to return, the report now turns to the way in which states make use of such measures in their efforts to manage and regulate migration. In doing so, it is envisaged to assess how states try to tap the potential of the concept of incentives. What will be shown below, furthermore, is that states pursue different goals with their respective return policies and, as a consequence, the measures taken to these ends are highly contextual and their effectiveness must be assessed correspondingly.

The following chapter aims at introducing a number of categories within which the various approaches taken by states with regard to return incentives can be grouped. By way of categorising the different elements of such policies it is envisaged to carve out prototypes of systems within which incentives to promote return are provided. By this, it is attempted to further explain the different roles and the potential voluntary return and return incentives can have in the respective national systems. It should be borne in mind, as with any prototype, often complex systems are being simplified to arrive at the core and distinctive features.

#### Active and passive approaches

The first distinction can be drawn between countries which *actively* pursue the promotion of return and such countries which provide for return in a *passive* way. In other words, the first distinction is based on the approach states take with regard to return promotion. What constitutes an active approach? Drawing on examples provided in the country sections of the previous chapter 7, active promoting regularly takes place in form of return counselling and advice, including the offer to provide material support which exceeds mere transportation costs (flight ticket and luggage transportation). The third country national is directly approached and it is not waited until s/he decides to make use of the support offered. Such active promotion can take place in various ways: either the whole range of services (information, counselling, preparation, planning and implementation) is provided by one single organisation or the individual tasks are divided between organisations, such as governmental, non-governmental and international organisations. Third country nationals who are, or soon might come under the obligation to leave are actively approached and “confronted” with the option of voluntary return and the possibility to receive support (at this occasion the

consequences of the not following the order to leave are also made clear). For example, according to the Swedish model such “motivation” meetings can be held repeatedly several times in order to convince and prepare the individual for the return.

On the other hand, the passive approach may also foresee support similar to the one provided in the active approach but here it is the individual who decides to approach the provider. Even though, the rejectee may have received information about the existence of respective programmes it is on him to go to the provider, rather than the provider to him. In other words, return assistance is merely made available rather than pursued. The practice of some states to provide return counselling which aims at clarifying the full range of options at the disposal of the rejectee, i.e. also including possibilities to remain in the country, falls within this category. Such practices mix two very important but distinct features: advice with regard to options to remain in the country has a complete different perspective than counselling in order to prepare for return. Such a setting appears to be specifically receptive to the respective agenda of the providing organisation.

### Linear and integrated approaches

Another distinction can be drawn between *isolated* or *linear* and *integrated* or *comprehensive* approaches towards voluntary return. The *isolated/linear* approach can be seen as the more traditional one. Its focus rests on the individual case and employs the concept of voluntary return as a means to effectuate obligations of rejected asylum seekers to leave the country in a more economic way, i.e. reduce costs and to facilitate enforcement by way of additional means. This approach is, furthermore, pursued also in an attempt to raise public acceptance. The perspective of the linear approach remains strongly directed towards the integrity of asylum and immigration systems.

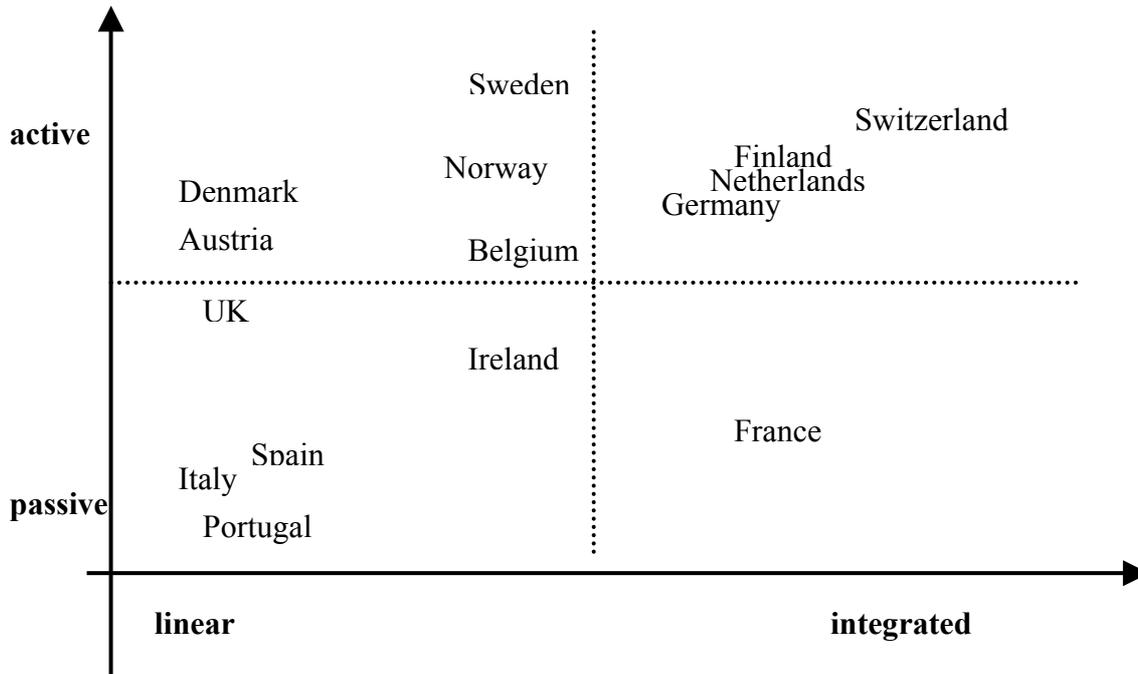
The integrated way of promoting return, on the other hand, includes in addition to the above also aspects of reintegration into the home country. Furthermore, the integrated approach is concerned with questions of increasing sustainability of return. It is integrated in that it attempts to combine traditional notions of systems’ integrity with deliberations concerning the individual “migration project” of the third country national, that is, why s/he has left his/her home country in the first place. It aims to

contribute to the establishment of orderly migration in a comprehensive way by reducing irregular migration durably. In doing so, this conceptualisation places the issue of return to the nexus between migration and development. Having regard to the direction of developments in the field of migration envisaged in several of the more recent measures taken by the European Commission (particularly the Communication on Migration and Development) this approach may provide further possibilities to combine directly notions of migration management with elements of development of countries of origin. This combined and integrated approach, thus, may, if further developed, contribute to alleviating emigration pressures stemming from countries of origin.

As it was mentioned before, incentive measures to promote the return of rejected asylum seekers and formerly temporary protected persons have proven to be more successful in terms of referrals when a balancing of interests between the policies of host countries and the interests of the individual third country nationals took place. This is where currently most problems with regard to promoting return arise: in case asylum systems were used to circumvent immigration rules in order to get access to the country a balancing of interests, i.e. including also the interests of the individual migrant (“migration project”), does not take place. Moreover, at this stage states appear to be vary cautious not to create any pull factors in that they provide overtly generous integrated support to rejected asylum seekers, thus, as it is perceived, reward irregular migration. In any case, this approach is only emerging and only few experiences were gained so far.

A major exception to the above can be seen in situations of temporary protection after mass influxes of displaced persons. In such circumstances, as experiences have shown, the majority of formerly displaced persons is generally prepared to return home once the situation in the country of origin permits it. In this context, programmes designed to facilitate returns have shown some remarkable success. The reason for this can be seen in the fact that interests of third country nationals coincide with deliberations of host countries, i.e. return shall take place once the circumstances have substantially changed.

The following graph is to provide an overview of the approaches taken by states with regard to providing incentives to promote return. The x-axis shows the level at which the respective approaches appear integrated in the abovementioned sense. Along the y-axis the level of “activeness” of states in their promotion of return is described. In any case, this overview shall be understood as an indication only. States’ practices



vary sometimes significantly in certain respects. For example, states may provide very actively integrated support with regard to formerly temporary protected persons but appear rather passively and linear in their promotion of return of rejected asylum seekers, or vice versa. This graph shall not be read as laying down a ranking of states’ actions and approaches. It does not at all mean that those countries which are further up to the right are doing “better” by any means than those which are down on the left side. As mentioned above already the political importance of return policies vary to some extent from country to country and the situation with regard to return is specific in each of the countries. Each approach includes specific advantages and disadvantages and, therefore, it is not possible to state which policy is most appropriate in absolute terms. Applying different categories of indicators the graph would without doubt look different. Having said this, a trend can, nevertheless, be seen from a passive and isolated approach towards an active and integrated one.

## **IX. Conclusions and Recommendations**

The following conclusions and recommendations emerged during the research conducted for this overview and during the conference held in the framework of this project held in Vienna in June 2002. They shall be understood to inform and reinforce what has been discussed in the previous chapter.

- I. Offering programmes to assist and support the return of rejected asylum seekers appears to be the single most important incentive tool to promote voluntary returns. The report identified major differences regarding scope, financial means, organisational structures, political and financial support, integration into the preceding asylum determination system and further interlinking with other policy domains, such as foreign and development policies. Such criteria provide indications about the level in which voluntary return is actively pursued, rather than passively favoured.
- II. Apart from such programmes, the concept of incentives to encourage the return of rejected asylum seekers appears to be less developed. This project has shown that only few other measures are taken to enhance preparedness of rejectees to return voluntarily. However, voluntary return does not exclusively have to be promoted by way of offering financial incentives. Obviously, financial incentives have a strong “convincing” effect, nevertheless, but a more structural approach can provide more sustainable results in the long term. Incentive measures to promote the voluntary return of rejected asylum seekers outside of assistance and support programmes must necessarily vary from host country to host country depending on the specific national circumstances. Nevertheless, the potential of *incentivised* returns is hardly exhausted and leaves significant room for further development.
- III. Post-arrival monitoring contributes positively to sustainability of return. Such monitoring can take place in either active or passive fashion.

- IV. There are several examples of regional co-operation in the provision of programmes to support the return, including such particularly designed for rejected asylum-seekers. An emerging common EU programme could draw upon the experiences gained in the execution of such regional programmes.
- V. The results of the present study show that the various sections of foreign population residing legally in the host countries are hardly ever involved in the design and implementation of return support programmes. However, engaging these sections of the population may further the knowledge and insight into the specific situations of the individuals concerned and ultimately lead to greater acceptance of, confidence and participation in return programmes.
- VI. It must, however, be borne in mind that not much practical experiences are readily available to draw upon. Consequently, the concept still needs further research to unleash the full potential of return incentives to promote the voluntary return of rejected asylum seekers.
- VII. There is overwhelming consensus among states that priority should be given to voluntary return over forced removal. In practice, however, there are great differences as to the degree this priority is given effect. Some countries merely state this priority without developing the structures, while others invest great efforts to create comprehensive systems to assist and support voluntary returns. Experience has shown that promotion of voluntary return achieves better results if organisational and supporting structures are in place. This affords long-term planning. Too short-lived a funding cycle negatively affects the ability of assistance providers to develop and maintain the needed structures and facilities, both in the host country and the countries of origin.
- VIII. Solid organisational structures contributed at several occasions to increase the numbers of persons returning voluntarily to their countries of origin. Therefore,

several states maintain general assistance and support programmes which can be adapted for a specific country or region if need may arise without having to develop the necessary infrastructure from scratch. NGOs, as well as international organisations, such as UNHCR, IOM and others can provide very valuable assistance and expertise to this effect. Increasing the number of organisations involved in the provision of return assistance will enhance diversity of support, which in turn leads to broader attraction of programmes and may ultimately contribute to increased numbers of voluntary returns.

- IX. The advantages of persons who are not entitled to international protection leaving the respective country without the use of force are manifold. Such returns are genuinely better apt to preserve dignity and physical integrity of the individual returnee. They are, moreover, more responsive to the individuals' needs. There are evidences that problems related to the individual's behaviour, ranging from lacking co-operation in the various procedures to determine identity and to obtain travel documents, to violent resistance to forced deportation can be reduced if the individual leaves voluntarily. Thus, by actively giving greater priority to the voluntary return of persons who are refused admission to a Member State social, financial and political costs normally involved in forced returns can significantly be reduced.
- X. The notion of voluntary return in the sense that rejected asylum seekers follow their obligation to leave needs to be stronger integrated in an emerging comprehensive EU return policy.
- XI. Yet, there are evidences that voluntary returns achieve greater results if removals can effectively be enforced. For this reason, all systems analysed in this report see voluntary and non-voluntary returns as two mutually reinforcing elements of the same concept. In particular, all states covered in this report see integrity and credibility of asylum systems threatened and undermined if those foreign

nationals, who - after full and fair determination procedures - are not eligible for protection and who do not have any other residence entitlement, remain in the territory. Therefore, a balanced approach to develop both elements can enhance efficacy and contribute to the creation of a comprehensive return policy.

- XII. As voluntary and non-voluntary return are understood as two elements of the same concept, attractiveness of programmes and other incentives to promote the former depend to a significant extent upon efficiency of the latter. Apparently, to this end, states continue to perceive effective measures to secure presence, and a certain level of co-operation of the foreign nationals to be indispensable.
- XIII. Voluntary return is highly sensitive to measures in other related domains, such as general decisions to suspend returns to specific areas, naturalisation, and even labour market conditions, etc. Consequently, the side effects of policy decisions in related areas must be taken into account in the planning of return assistance programmes.
- XIV. Experiences in some countries show that the numerical success of voluntary returns in general decreases with time. Some examples suggest that the first ten days after a final negative asylum decision is decisive.
- XV. The line of reasoning of preserving integrity and credibility of protection systems in turn also means that return policies lack justification if preceding asylum procedures exclude persecuted persons to effectively receive protection. Consequently, efforts to enhance efficiency of return policies must be flanked simultaneously by improvements in the asylum systems themselves so as to afford protection to people in need of it.

- XVI. The preceding asylum procedures have significant effects in regard to the return of rejected asylum seekers. A tendency to introduce co-operation obligations into the asylum system can currently be observed. It must, however, be borne in mind that such measures may ultimately not increase the number of returns, but rather exclude persons from the asylum system, thus, merely shifting the problems to the aliens sector.
- XVII. An important element of preparing rejected asylum seekers for return lies in the provision of comprehensive information about the possible consequences of a final negative asylum decision. Even though, a clear trend in the EU MS can be seen towards information provision as early as possible in the procedure there appears to be room for further improvement of such efforts.
- XVIII. As the Commission suggests in its *Return Communication* information should comprise information on return programmes, vocational or other training available, on the situation in the country of return and on possibilities for establishing a new life. In this respect it is important that the information is transmitted in an unbiased fashion, as otherwise credibility, and consequently also persuasiveness will suffer.
- XIX. Relating to the provision of information, the findings of the study suggest that further and clearer emphasis of the positive consequences of voluntary return over forced removal could increase the number of referrals.
- XX. To establish, maintain and utilise closer contacts to asylum seekers, the asylum procedures and practices have been changed in a number of countries in such a way that reception staff now “accompany” asylum seekers through the procedures. They have the responsibility to inform the applicants about an

eventual rejection and, to a certain degree, also to prepare them for an impending return.

XXI. Measures, including the reduction or complete withdrawal of social and financial support, the obligation to stay at specific accommodations, to report regularly to the authorities, restrictions and limitations to the freedom of movement within a country, including detention, for uncooperative asylum seekers and rejectees or a mixed application of such measures are most commonly applied by states to control and regulate the behaviour of asylum seekers. However, such approaches have not always delivered unambiguous results. The review of states' practices has shown quite diverging experiences with such measures, some have worked in some states, while they failed to bring about the expected results in others. It must be clear that there is no "one-size-fits-all approach".

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