



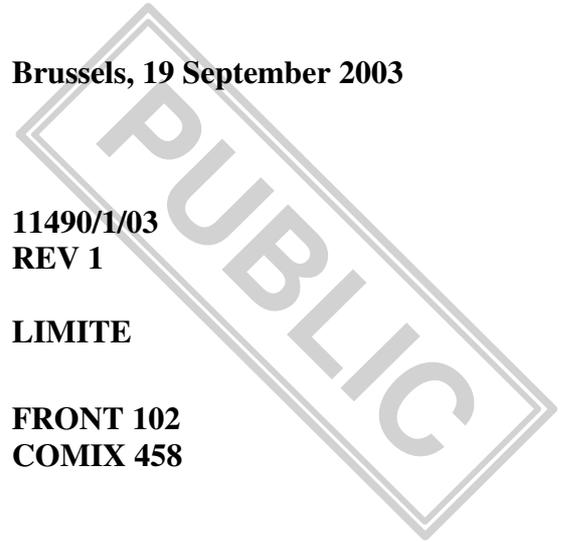
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**from:** the Secretariat General

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**to:** Strategic Committee on Immigration, Frontiers and Asylum

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**Subject:** **Feasibility study on the control of the European Union's maritime borders  
- Final report**

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Delegations will find attached the final report on the Feasibility study on the control of the European Union's maritime borders, transmitted by CIVIPOL to the Commission.



**Project 114410**

**“Feasibility study  
on the control of the European Union’s  
maritime borders”**

**Final report**  
Transmitted to DG JAI on 4 July 2003

A handwritten signature in blue ink, appearing to be "L7".

Bernard Dujardin  
State controller  
Project leader

# Contents

<b>Contents.....</b>	<b>3</b>
<b>A. Summary Report .....</b>	<b>4</b>
<b>A1 - Introduction .....</b>	<b>4</b>
<b>A2 - Surveillance and control of maritime borders.....</b>	<b>8</b>
<b>A3 - Existing operational and legislative provisions .....</b>	<b>21</b>
<b>B. Recommendations.....</b>	<b>44</b>
<b>B1- A priority requirement: to put in place a risk analysis system, the basis for the whole border management system.....</b>	<b>44</b>
<b>B2 - An absolute necessity: to put in place a comprehensive system of integrated management of all kinds of borders (Annex B.2) .....</b>	<b>46</b>
<b>B3 - The heart of the matter: organising Europe's sea borders.....</b>	<b>50</b>
<b>B4 - Legal initiatives to combat illegal immigration by sea (Annex B.5) .....</b>	<b>55</b>
<b>B5 - No organisational, operational or legal proposal can be implemented unless technical systems for controlling and preventing illegal immigration by sea are deployed at European level (Annex B.6) .....</b>	<b>64</b>
<b>C. The European initiative for improving the security of maritime borders .....</b>	<b>71</b>
<b>C1 - Hold talks with other countries on frontier security.....</b>	<b>72</b>
<b>C2 - Organisation .....</b>	<b>74</b>
<b>C3 - Law .....</b>	<b>75</b>
<b>C4 - Operational matters .....</b>	<b>75</b>
<b>C5 - Community finance .....</b>	<b>77</b>
<b>D. Means of implementing the initiative .....</b>	<b>79</b>
<b>D1 - Shared financing - the lay of the land.....</b>	<b>80</b>
<b>D2 - The need for targeted European financing.....</b>	<b>83</b>
<b>D3 - Pilot operations .....</b>	<b>85</b>
<b>D4 - More mutual support .....</b>	<b>88</b>

# A. Summary Report

## A1 - Introduction

The management of external borders is a area in which powers are shared between the European Union and the Member States. The management of migration policy is primarily within the powers of the Member States, though a common policy is beginning to emerge. The credibility of both these policies depends on there being a sound interaction between them. The territory of a Member State of the European Union is at the same time part of the European territory within which there is freedom of movement. This applies to airports and land borders as it does to maritime borders. But the latter pose specific problems, in particular the specific difficulties of surveillance, which is very expensive for the States concerned.

According to Eurostat, 325 million passengers transited through European ports in 2001, but “only” 7.3 million came from non-European ports. The Spanish ports of Ceuta and Melilla on the North African coast already account for 2.8 million passengers a year. And there is the phenomenon of migration outside ports. The supervision and control of the maritime borders of the European Union and the Schengen States are essential if the aim of controlling 100% of entries is to be credible and illegal immigration is to be reduced to the minimum. Some illegal immigrants are repatriated at the expense of the Member States, but others – the majority in fact – remain in Europe in the precarious situation of undocumented aliens. In practice, and in the current context of the migration policy of the Member States, the best way of switching from illegal to legal status is to be regularised by way of international protection, in particular the right of asylum in one or the other of the EU Member States.

In February 2002 the JAI Council asked the Commission to have a feasibility study carried out on strengthening controls at maritime borders in order to combat illegal immigration.

This feasibility study carried out by CIVIPOL during the first half of 2003 ran up against three types of difficulties.

- The first difficulty concerns the movement of illegal immigrants at Schengen maritime borders. Under the Schengen Convention, any maritime border is regarded as an external border except for intra-Community ferry routes. Thus one and same illegal migrant, depending on the place where he was caught, might be recorded as travelling between Asia Minor and Greece (entering Schengen), between Italy and Greece (inside Schengen) or between France and the United Kingdom (leaving Schengen but still in Europe). Beyond

the appraisal of flows, illegal migrants must therefore be identified and their identity must be compared with persons already identified as illegally in the Schengen area or previously recognised at the borders.

By definition, part of the illegal migration phenomenon is not known about, whatever the type of border. Precise statistical criteria should be developed to assess the permeability of maritime borders. Admittedly it is impossible to count every passage. People who cross the border without undergoing controls and monitoring mechanisms have basically reached their objective and so cannot be recorded unless they are apprehended without identification documents in the Schengen area.

But there are many correlations that can be made but are not made. For instance, as regards authorised crossing points (ACPs), annual totals of movements between non-member countries and Member States, broken down by nationality and including all travellers irrespective of the mode of transport, would make it possible to measure the number of travellers not intending to return who disappear en route. The same figures could be compared with the number of visas issued in the year, broken down by type and nationality, in each Schengen State. Likewise, it would be a good administrative practice to check with shipping companies whether their passengers have actually used their return ticket. As long as the route taken by immigrants to enter the Schengen area and their travel schedules are not recorded in asylum applications, it will be difficult to survey and identify them. There should be biometric identification of any person entering Europe illegally, with both a photograph and fingerprints taken in accordance with uniform standards. Once collected, the data should be assembled in a database accessible to immigration and border control services. More sophisticated knowledge of movement would then be possible. This is necessary for the sound management of Schengen.

- The second difficulty is that it is not known how effective the current mechanisms for the management of maritime borders really are. The feasibility study ran up against the absence of a real audit of the Schengen borders. The Schengen evaluation (Scheval) is admittedly a first step. The comments made by the joint missions on the technical quality of the permeability of maritime borders and port ACPs are instructive. They made it possible to come to assessments, identify good practices and make recommendations that subsequent missions might check. But the situation is not satisfactory as is clear from the following points:
  - Missions record situations and practices in various points of entry in Europe. But their recommendations tend to be firm suggestions rather than obligations to achieve particular results. States are subjected to no constraints in terms of means to be deployed and results to be attained. For the moment the only form of external communication is the mutual assessment by public officials of the Member States of

the operation of their joint missions by their counterparts in other Member States. These assessments are couched in courteous, diplomatic terms, and the procedure is basically a peer review of the relevant administrative bodies, so that what the outside observer sees is an exchange of compliments allowing the Member State being visited to basically look good (*window dressing*).

- The Schengen evaluation of the issuance of visas by the Schengen States is not fully satisfactory and needs to be deepened. Some African sources suggest that there is some laxity in the Schengen visa procedure.
- It is therefore essential to review the methods of assessing the application of the Schengen Convention at maritime borders. It is precisely because there is no European capacity for effective control, definition and enforcement (“hard control”) that the American Customs have taken the initiative of “policing the police” in European ports since the beginning of 2002 through the container security initiative and other security initiatives.
- The third difficulty is the lack of information on the cost of surveillance and controls at maritime borders. Unlike customs practices, based for a long time on an appreciation of the cost of processing goods, the cost of managing border crossings by third-country nationals, and even more so by illegal migrants, is not known. The only costs that are recorded tend to be confined to capital expenditure on technology. But any operation consisting of partly pooling border controls at the most sensitive points requires measurement of the specific financial effort made by the States to cover the surveillance of their maritime borders and control port entry points. The effectiveness of the financial resources used must then be evaluated, using objective data making it possible to allocate available resources according to the results sought in terms of border controls. But this problem will be less difficult to solve than the others:
  - a common cost accounting standard should be established. It must be so conceived as to evaluate the cost of possessing the control and surveillance systems. This is common practice regarding weapon systems and makes it possible to take investment decisions on the basis of the real price to be paid;
  - thus, by establishing distribution keys between the various public service functions exercised by the maritime surveillance system, it is possible to evaluate the effort devoted solely to combating illegal immigration by sea and the relative effectiveness of the mechanisms and thus to contribute to a continuous adaptation of the mechanisms selected according to the risks anticipated and the results obtained.

In spite of these difficulties, we were able to address all the questions listed in the terms of reference. It emerges that while illegal immigration by sea is confined to 50 000 or so illegal immigrants caught each year at maritime borders,<sup>1</sup> there are a variety of forms of *modus operandi*. Moreover they evolve very quickly, and are sometimes visually striking and endanger the migrants' lives, which raises public awareness of this form of illegal immigration, sometimes complaining, sometimes expressing concern. Thus, at a time when many regulatory and operational instruments for internal freedom of movement and external border controls are being reviewed and redefined in Europe, the need was felt to undertake this study and identify the means of checking the phenomenon better in the medium term while ensuring that the great majority who travel legally enjoy proper freedom of movement.

To begin with, a questionnaire was formalised. It is annexed to this study. This information-gathering exercise supplied the basis on which the diagnosis exercise was then undertaken. The questionnaire was sent to all the Member States. Denmark, Germany and Italy provided answers (cf. annex on questionnaires). The project team travelled to Belgium, Denmark, France, Germany, Greece, Italy, the Netherlands, Spain and the United Kingdom. Its visits there were supplemented by a meeting with the Finnish Permanent Representative in Brussels. Given the short time-frame and the absence of answers, the project team was unable to visit Ireland, Portugal and Sweden. The personalities met are listed in an annex. The best practices are also set out in an annex.

The feasibility study begins by considering the findings reached during the study (part A), then recommends measures to reduce the "permeability" of maritime borders to illegal immigration (part B). Once these recommendations are validated, it is proposed that there be a general initiative to implement them (part C), combining operational, legal and organisational measures to halt the illegal migratory flows observed and thus helping to lend credibility to a policy on legal and controlled flow. Finally the recommended initiative will be considered in terms of its cost with a view to burden-sharing between the European Union and the Member States (part D).

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<sup>1</sup> The number of illegal immigrants entering Europe by a maritime border and checked by police within European territory is not known, of course.

## **A2 - Surveillance and control of maritime borders**

### **A2 - 1 The methods of migration by sea**

A maritime border is a two-dimensional space. Strictly speaking it is the line of the coast, the land immediately behind it and the adjacent territorial sea. In a broader sense, it sometimes includes part of the open sea (the Canary Islands Channel or the Gulf of Sirte) where surveillance operations actually take place.

One of the characteristics of the management of maritime borders is that by nature it is not a shared responsibility between neighbouring States. What makes surveillance of the adjacent territorial sea and the open sea from which it is approached difficult is that these areas are open to freedom of navigation, and surveillance, without exception, is confined to shipping safety concerns. Lastly, the general principle of the freedom of the seas, which it is Europe's interest to preserve, does not make easy to subordinate the entry of a ship in the maritime approaches to Europe to a declaration or prior authorisation.<sup>2</sup>

Surveillance therefore has to cover not just an entry point, as in an airport, nor a line, such as a land border, but a variable-depth surface. As on a land border, there are obligatory crossing points on the coastline (authorised crossing points (ACPs) in the Schengen terminology) located in ports for persons who come by sea from a foreign country. Another characteristic of the maritime border is that the 387 maritime ACPs declared in Europe are not the only possible landing points: other accessible ports and beaches are crossing points for illegal immigrants.

Most legal arrivals, of course, are at these ACPs,<sup>3</sup> primarily via ferries and cruise ships. Most legal travellers by sea travel by car or coach.

The points of arrival of the illegal immigrants by sea are classified in two categories:

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<sup>2</sup> Which is not the case of the movements in the airspace. Aircraft always have to submit a flight plan.

<sup>3</sup> Pleasure vessels do not touch down at ACPs. Their skippers must in theory deposit a list of passengers with the police when they arrive from a foreign country. In many ports, their formal statement is transmitted by harbour masters to the immigration authorities.

1. The coast, where disembarkations are from boats that are voluntarily beached or wrecked. Depending on their features, these passages will be referred to in this study as *focal routes (filières à flux focal)* or *random routes (filières stochastiques)*.
2. Ports, where a distinction must be made between specialised harbour areas (trade, fishing or pleasure) and *authorised crossing points (ACPs)* on ferry routes where illegal immigrants can be brought in. These are two aspects of what in this study is called *port-to-port routes*.

It also is in the ports that persons rescued at sea (shipwreck victims) are landed under the control of the authorities.

Both focal and port-to-port routes require surveillance, control or intervention mechanisms to remain in place virtually permanently. Another characteristic of the maritime border is that these routes are distinctly seasonal. The control of ferries is a major technical problem in view of the number of passengers embarking or disembarking in the high season. On the other hand there are virtually no irregular landings in times of bad weather.

### **A2 - 1 - 1 The coastal procedures**

The two types of coastal route are of uneven importance. The first, and the most important, which accounts for more than 70%–80% of detected cases of illegal immigration by sea is the focal route. Geography dictates the locations – straits or narrow passages where Schengen countries lie close to countries of transit or migration: the Straits of Gibraltar, the Sicilian Channel, Adriatic Sea, the Dodecanese island channels, the Canary Islands Channel and the Gulf of Finland. The usual practice here is that a (disposable) light boat, overloaded and having absolutely no safety equipment, makes at night crossing.

These are in fact the densest routes: 48 000 illegal immigrants were intercepted in these places in 2002 (see annexes B1). When a standard destination is shut off by surveillance and interception measures, attempts to enter tend to shift to another, generally more difficult, destination on a broader and therefore riskier stretch of water. This explains the recent growth in the use of the Canary Islands Channel and the Gulf of Sirte by illegal immigrants from Africa.

The second is what we have called the random route. This is much rarer but it has a great impact on public opinion on account of the number of immigrants involved each time (several hundred). But only 2%–3% of detected cases of illegal immigration by sea are involved here. A few thousand illegal immigrants are intercepted – often temporarily – each year. The case of the East Sea<sup>4</sup> on the French coast on 17 February 2001 was a spectacular example, but Southern Italy is the major destination of this channel. For five years, there several ships have been landing every year from the Eastern Mediterranean<sup>5</sup> and Libya.<sup>6</sup> They are ships from 300 to 500 GRT on their last legs, chartered by transnational criminal organisations with investment capacities and local accomplices in the port of departure. The ultimate destination – unless there mechanical problems, some ships having been assisted by the Greek coastguards – is usually Italy, where it is possible to enter a continuous Schengen area, unlike Greece. Departure requires the authorities of the country of departure to turn a blind eye. Ships take their passengers on board in a port or widely-used harbour-roads. When several hundred aliens wishing to immigrate all gather at the same place on the coast and then embark on a small coaster where they crowd together on outside decks, the operation is unusual and is bound to be conspicuous.

The countries of Europe must evaluate the risk of cases like the Tampa in Australia in September 2001. A ship on a scheduled service encounters a ship in distress, involuntary or not, loaded with undocumented immigrants. The captain rescues the shipwreck victims at sea but no country wants to let them in, least of all the scheduled country of destination. It is easy to imagine a ship sailing from Africa and putting itself in a distress situation in the north-bound Ushant lane to understand that this is a likely situation for which there must be a legal solution that avoids repeating the odyssey of the Afghans of the Tampa as it sailed eventually to Nauru.

What these two types of route have in common is that they use substandard ships. The focal route mainly uses boats (generally pneumatic) with outboard motors. Ships used on random routes are bound for the breaker's yard. They are chartered for their last trip under the flag of convenience of a country located far from the Mediterranean basin. The ships in both these channels are unseaworthy, slow and highly dangerous both for their passengers and for regular navigation (merchant, fishing or pleasure).

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<sup>4</sup> European police forces reconstituted the turnover of the East Sea at €2 million, with a maximum adult fare of €4000 and a child fare of €1500 (source: "Confluences Méditerranée – No 42 – L'Harmattan)

<sup>5</sup> Occasionally via the Suez Canal, as in the case of ships sailing from Sri Lanka).

<sup>6</sup> Where sub-Saharan Africans can now come as far as the coast without a visa.

At sea, international law and custom define any human being in a distress situation as a shipwreck victim. Article 98 of the United Nations Montego Bay Convention on the Law of the Sea of 10 December 1982 (Duty to render assistance) formalises it expressly. Every State must require the master of a ship flying its flag to respect these provisions strictly. This is the principle on which the authorities intervene on the high seas or in their territorial waters to intercept these ships, take the passengers off them and prevent accidents. Thus the freedom of navigation transforms into a potential shipwreck victim an illegal immigrant on a light (disposable) boat that is overloaded and has no safety equipment (channel with focal flow in straits or narrow passages) or the participant in a collective trip organised by a criminal organisation chartering a ship on its last legs - cases of the 910 passengers of the East Sea (stochastic channel).

## **A2 - 1 - 2 Port channels**

The port-to-port route concerns merchant ships.<sup>7</sup> They transport illegal immigrants against their will in the course of regular commercial operations. There are two types of case. The first is a freighter which takes illegal immigrants on board as stowaways unknowingly (though the crew may know about it). Although the practice is probably underestimated, probably by a factor of two or even three according to the shipowners questioned, it remains rare and accounts for scarcely more than 2%–3% of detected cases of illegal immigration by sea, i.e. a few hundred a year.

If the stowaway embarked in an exotic port on a merchant ship sailing for Europe, the illegal immigrant becomes “a seductive dream person who dared to cut his ties, to risk not being missed by anybody in their home country and not to be expected by anybody on arrival. But when the same person disembarks and asks to live an ordinary life in the country of arrival, then, like all nomads, he is seen as a threat by the sedentary population”,<sup>8</sup> reports the Swedish writer Björn Larrson in *Le Monde* (7 March 2003). The procedures set up by European States to treat these illegal immigrants are a heavy constraint on the crew of the ship, whose work at the stopover is already subject to heavy commercial requirements. They are likely to lengthen the stopover, which has to fit into a tight schedule. It is then preferable (with the agreement of the shipowner) to solve the problem in a discreet (and in the interested parties’ eyes more

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<sup>7</sup> It is conceivable that a fishing vessel might embark illegal immigrants. The penalties (seizure of the vessel) are dissuasive. The same is true for cruise ships, whose activity of which would be disrupted if passengers did not re-embark. Pleasure vessels could also be used to transport illegal immigrants. While the risk exists, it does not seem to have materialised to a great extent. Pleasure vessels are extensively – and successfully – inspected for drug or cigarette trafficking.

<sup>8</sup> Public opinion in Western Europe looks sympathetically on stowaways, sometimes regarded as the adventurers of the seas. Their arrival in port prompts a response from charitable organisations.

human) way by allowing the stowaways to disappear in a European port considered more permeable than another. The potential penalties are not dissuasive because, according to statements made by the harbour authorities questioned, they are applied only in exceptional cases where the court is given formal evidence of the illegal immigrant's discovery and dissimulation and of assistance given him at the time of disembarkation. But on modern ships with relatively small crews, an illegal immigrant who managed to embark can be discovered at sea only if he approaches a crew member. In practice it is only when more than two illegal immigrants are located on board that the authorities in the first port reached in Europe are informed of them.

The genuine port-to-port route is via authorised crossing points. Nowadays the ferry companies are the vectors of this migration. This route must therefore be considered attentively as the European Union is planning to encourage a greater share for maritime transport, including passengers. Cruise ships are not concerned, given that they sail for purely tourist purposes and the shipowners apply very strict security conditions for obvious commercial reasons (if the customer's security is not guaranteed, he simply will not go on the cruise), in particular following the hijacking of the Achilles Lauro (1984).

Three types of port-to-port shuttle services are concerned:

- The first is between two ports in Schengen States. Examples are the Baltic routes between Germany, Denmark, Finland, Norway and Sweden, the link between Patras in Greece and Ancona in Italy which expanded during the Balkan war from 1995 and, within a single State, the links between Ceuta and Melilla and the Iberian Peninsula. Travelling by ferry between one Schengen State and another is not regarded as leaving and re-entering Schengen. Checks on passengers' identity, theoretically not necessary in Schengen, are left to the initiative of the States. Travellers in irregular situations are systematically readmitted between Schengen States in the Mediterranean. For example, an illegal immigrant attempting to go from Greece to Italy and intercepted during the attempt will remain an undocumented person within Schengen (in Greece, once returned to the country of departure). On the whole, this type of port-to-port shuttle involves several thousand illegal immigrants each year.
- The second type of shuttle concerns links between Schengen and non-Schengen States in Europe. Examples are the routes between the United Kingdom and Ireland and France, Spain, Belgium and the Netherlands. The vast majority of illegal migratory movements on these routes are out of Schengen. Identity checks on high-density routes such as Calais-Dover are handled by joint offices located on the continent. The very high density of traffic, the size of the ships and their rapid turnaround mean that controls are not very

productive, but the main objective pursued is deterrent. Few illegal immigrants are stopped at control barriers, whereas large numbers are challenged on the quay attempting to embark clandestinely or else in the port of destination while awaiting transport onwards other cities. In all 18 000 illegal immigrants, were identified on this route in 2002, and there were other North Sea routes also (Oostende, Zeebrugge, Hoek van Holland etc. to England); moreover it is not possible to determine the number of “recidivists” or “multi-recidivists” in the absence of reliable identification of those concerned.

These first two types of shuttles do not in practice have any quantitative impact on the number of undocumented people in the European Union. They therefore constitute a “zero-sum game” and cannot be regarded as warranting priority. But they consolidate the view taken by the people of Europe that illegal immigration is neither controlled nor penalised.

- The third type of shuttle concerns the connections between Schengen and non-Schengen States. Examples are the regular and occasional Baltic routes between Finland and Estonia and between Germany and Lithuania and the Western Mediterranean routes between Spain and Algeria and Morocco and between France and the three Maghreb countries. Immigrants try to enter Europe illegally via these routes.

While Finnish and Danish sources state that in the Baltic, controls are in practice in conformity with the Schengen Common Manual, i.e. they cover almost 100% of persons crossing and the passports of travellers subject to the visa requirement are date-stamped on entry, the position is not the same in the Mediterranean. The annual number of sea-crossings from or into countries that are neither in the European Union nor in Schengen is estimated at 4.5 million, of which 2.5 million via Spanish ports, 1 million via Baltic (mainly Finnish) ports and 0.5 via French ports.

The number of illegal movements, successful or not, in Algeciras, Tarifa, Almeira, Sète and Marseille can be estimated at 15%. This is obviously not an easy estimate to make, but it is based on evaluations by the immigration services, admittedly on the basis of interceptions of attempted illegal entries (2000 a year in Algeciras, 100 a year in Marseille) but especially from the assessment of offenders’ modus operandi. The peak summer season is a particularly promising period. Given the density of summer traffic and the application of methods to relax controls under the Common Manual in the event of very intense traffic, only 20% to 30% of passengers entering European territory are actually checked. Even if controls on persons are selective, the low number of

interceptions recorded, correlated with the number of asylum requests<sup>9</sup> submitted in the same area shows the how ineffective the mechanism is.

Two types of methods are used. The first is to abuse a lawful right of entry. This involves obtaining a genuine travel document – a passport – and a tourist visa with it. As a three-month visa is only rarely date-stamped on entry,<sup>10</sup> it is practically impossible to record whether the traveller has return to his own country on time. Some (how many?) do not return. No penalty is therefore applied.

The second method is purely illegal. Failure to hold a travel document or holding a false document shows that the emigration services of the country of departure did not do their preliminary job (lack of thoroughness, or corruption). Destroying the document during the sea crossing does not really help the defrauder (unlike the case of air travel). Port stations, unlike air terminals, are used (arrival and departure) for a single destination at a given time, making it possible to identify with certainty the country of embarkation of an undocumented traveller. Falsified documents are more difficult to detect. Control barriers at ACPs must therefore be given trained personnel and proper technical detection tools in working condition. Finally the true document used by someone other than the holder requires the control personnel to show a rare ability to spot a face when, for example, the passengers in a vehicle disembarking from a ferry are checked without leaving the vehicle. It is impossible, without preliminary warning signals, to ask the immigration officer to check the authenticity of visa of the country of departure in a Schengen passport and the dates of entry and of exit in that country.

## **A2 - 2 Illegal immigrants by sea**

According to findings in Spain and Italy, the average cost of illegal migration in Europe via a non-ACP maritime sector from Asia or Africa ranges from €7 000 to €10 000.<sup>11</sup>

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<sup>9</sup> At Marseille, 106 illegal immigrants caught in 2002 for 7000 asylum requests. Admittedly, they do not come all enter via the port-to-port route (source: Secretariat-General for the Sea).

<sup>10</sup> The effect of special fare schemes is that outward journey-and-return tickets are generally cheaper than single tickets. To obtain a tourist visa, it is essential to have a return ticket.

<sup>11</sup> Although they are almost still under-employment in their countries, their average resources are well above those of the local people. Compared to the minimum annual insertion income in France of €4690, the per capita gross national product in Mali is €840 (2001).

For port-to-port routes, information supplied by persons intercepted suggests that a European passport issued in a name that is common in an African country can be hired for €3 000 to €5 000 and a false passport retails at €3 000. The ferry fare must be added to this. The port-to-port route is cheaper and currently seems to be the easiest maritime method, because it is less dangerous and controls are weak in countries of departure and incomplete in the countries of arrival. By way of comparison, an outward-and-return economy-class air ticket between London and the Gulf of Guinea (Lagos in Nigeria) costs €700.

Contrary, therefore, to a widely-held opinion, immigrants by sea are neither the poorest nor the lowest-educated of the inhabitants of their countries of origin. They belong to the top population decile in terms of cultural level. They practically all understand a European language. The largest category (80 %) consists primarily of young men aged 20 to 30 and occasionally of young women of the same age. The latter prefer the less dangerous air route. The maritime route is certainly more expensive and riskier, but is thought to have a higher success rate than the air route. Beyond these unmarried people, the remaining 20% are entire families on the boat people model, the head of family being aged forty-plus. They sell their assets to move towards a safer life in countries where life is expected to be better and possibly to join a child (or parent) already settled there who provides the main source of finance for the migration.

On the maritime borders of Spain and Italy, there were a hundred accidental deaths a year for about forty thousand crossings in 2001 and 2002. The increasing deterrent effective of improving the surveillance and control mechanisms of the Spanish and Italian authorities on the Straits of Gibraltar and the Sicilian Channel is shifting the focus towards riskier passages, the Canary Islands Channel and the Gulf of Sirte. There were consequently a number of serious accidents in the first half of 2003 and an estimate of 400 drowned does not seem exaggerated. On the Greek-Turkish border, the absence of figures does not necessarily mean that there were no accidents.

Those attempting to immigrate illegally do not know the risk involved in crossing straits, and after having invested in a long and expensive land journey they do not hesitate to invest in a dangerous sea passage. Does the public attention drawn by the European media to the serious accidents facing shipwreck victims on their journeys of despair affect the people attracted by the idea of immigration? By no means. Plans should be made to provide such people with specific information on this topic, but the impact would probably not be very great, given what successful migrants stand to gain.

Illegal immigration by sea requires maritime resources: ships and crews that the migrant must pay for. The financial stakes are so high that the people-smuggling business attracts a large number of entrants. In the Eastern Mediterranean, this business is mainly in the hands of transnational criminal organisations. In the Western Mediterranean, organised crime is less visible. People-smuggling is practised on a smaller scale. Organised travel “companies” cannot propose an all-in price for sub-Saharan migrants. Long intermediate stages are sometimes necessary. The fact that responsibility for crossing the Sahara – according to the evidence from well-informed sources - is often assumed by certain Algerian military elements breaks the service chain. Europol points out that, paradoxically, the improvement of monitoring methods by European States strengthens the power of criminal organisations. Isolated attempts are increasingly doomed to fail. Recourse to professionals is necessary.

Two categories of immigrants should be distinguished: political refugees and economic migrants tempted by the adventure of settling in Europe. The former represent between 5% and 10%, depending on the continent of origin (source: UNHCR). These refugees must be given access to the international protection that most States in the world have granted them by ratifying the Geneva Convention. The illegality of economic migration does not have the same significance as the illegality of the political refugee’s situation: for the latter, the temporary illegality, declared as soon as the European border is crossed, is the only “way out”.

It is accordingly very important to identify authentic political refugees and to be able to have their request examined by the relevant authorities. It should therefore be ensured that their asylum request can be made either to a Member State – and only one – or to a non-member country regarded as safe. A related problem is that border control measures are so effective that they prevent the asylum-seekers from leaving their country and making their request. Advance mechanisms in countries of transit will have to be devised.

However the minority of genuine refugees conceals the mass of economic migrants. Whereas the former declare their nationality, the latter are often undocumented and claim a nationality that is known to give easy entitlement to refugee status. They often also apply to the authorities of the Member States for political asylum to benefit from the longest possible period for examination of their situation. The longer it lasts, the more likely they are to be able to integrate into the host society, even without legal status.

This study will therefore focus mainly on economic migration, which is the only type that really needs clamping down on. As regards economic immigration, the practice of migration is a matter of custom connected with the migrant's original social environment. The young migrant is chosen to go to Europe on account of his supposed qualities (physical strength, sense of initiative) and his training. His responsibility is to work there and remit a large part of his income to his home country (on the basis of custom or of maintenance or family responsibilities). If he succeeds in staying in Europe and settling there legally, he will then try for family reunification. His passage is financed by the family, tribal or ethnic group. The transfers of family income from north to south are thus probably reinvested to some extent in financing illegal immigration.

In a country like Mali, the cost of migration by sea is between eight and twelve times the per capita gross national product. Between 2% and 5% of the north-south income remittances by immigrants settled in Europe are used to finance the migratory movement, which is a circular process given the turnover of those involved.

Legal transfers of funds from European countries to countries of emigration feed part of the circuit of illegal economic immigration by sea throughout the Mediterranean basin. The sale of assets – in particular in Asia Minor, for people such as Kurds suffering local ostracism in the country of departure and undertaking a trip without return – finances the rest. These are resources from the countries of second line which finance the immigrants whom the countries of first line then try to exclude or expel.

The difference in demographic potential, combined with the development gap which has been widening for a quarter of a century between the south and the European Union, the attractiveness of the images of European life broadcast by the African media and the public insecurity which settles in a whole belt of the third world, feeds migratory pressures. When economic immigrants illegally cross the maritime border of Schengen, the public perception is not automatically that they are criminals. They come to Europe to sell their labour for “decent” wages, about twelve times higher than they could earn in their countries of origin,<sup>12</sup> when they are not actually unemployed.

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<sup>12</sup> For a Malian immigrant, the ratio is far higher. Whereas the Malian annual per capita GNP is €840, the guaranteed minimum wage to which he is entitled when working legally in France is €13 848 in 2002.

The migrant population is qualified in terms of the training criteria of the countries they come from. The economic migrant is not illiterate and generally speaks a European foreign language. But, working clandestinely on precarious terms, the non-regularised immigrant will be exploited in the black economy for low-grade work below his level of qualification.<sup>13</sup> Undocumented people create a state in which employment law does not apply. In certain countries, and in particular in certain major European conurbations, the situation is reaching a critical points threatening industrial peace.

Unlike legal immigration, illegal immigration is much more expensive for the migrant. We are not talking about temporary or seasonal migration but long-term or definitive settlement. Because it is well known that maritime borders in the Baltic are impenetrable, the two major areas of origin of illegal immigration by sea are around the Mediterranean. They are Asia Minor on the one hand and the Maghreb and sub-Saharan Africa on the other. It should be pointed out that Europe is not currently experiencing transoceanic migration of the type of that the United States observes on its coasts with ships from China.

Routes can be reconstituted from various statements that have been made. From Asia (mainly Kurdistan and Afghanistan), group travel is organised by a criminal organisation, using all the resources offered by humanitarian law<sup>14</sup> to cut their costs and maximise profits. Criminal organisations are generally run by crime bosses from the countries of emigration who have settled in the countries of immigration. Their profits are recycled in Europe. They use groups of people-smugglers in each country crossed, where they bribe public servants who are so low-paid that they find the opportunity of extra income difficult to resist. Organised crime appreciates the economic benefit of trafficking in illegal immigrants, even though this is a less profitable business than drug-trafficking. Until recently the risk from enforcement authorities was out of all proportion and the balance was very much in favour of organising travel for illegal migrants.

In black Africa, circuits are organised differently. According to statements we received, criminal organisations are not involved but other categories are. Migrants from sub-Saharan Africa cross the Sahara<sup>15</sup> from the borders of Niger or Mali to the borders of Morocco (near Oujda), Libya or Tunisia. The service is “invoiced” at least €1 500 to €2 000. Migrants then pay a cross-border people-smuggler to get them into Morocco, Libya or Tunisia, followed by a maritime frontier-crosser to enter Spain or Italy. The cost of the Gibraltar crossing – paid net to the frontier-crosser but excluding corruption expenses – is €800 for a sub-Saharan

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<sup>13</sup> Which the indigenous people do not want to do: personal services (servants, child-carers, assistance to elderly people), selling in late-opening local shops, small local restaurants, security services and construction companies (in the latter cases, the regular holder of the employment contract sub-contracts and is “replaced” without the employer necessarily being an accomplice).

<sup>14</sup> An undocumented alien is trained to declare citizenship of a country for which there is a right of asylum. The Turkish Kurds on the *East Sea* claimed to be from Iraq. Checking their claims will take too long in relation to legal limits on the duration of administrative detention.

<sup>15</sup> If the candidates for emigration are not solvent, they are escorted to the border of Mali or Niger.

national, as against the €1 600 paid by a Moroccan, though for this price the Moroccan is entitled to a second attempt if the readmission procedure is applied.<sup>16</sup> The average annual net profit of a maritime frontier-crosser in 2000, the most profitable year before the new Spanish inspection scheme came into operation, was €60 000 for four crossings.

So far organised crime has not been involved, only regional crime.<sup>17</sup> Henceforth, owing to the very tight surveillance of the Straits of Gibraltar by Spain and of the Sicilian Channel by Italy, illegal immigrants from Morocco and Tunisia are most commonly defrauded by frontier-crossers who know that their fellow-citizens are generally most unlikely to succeed in entering Europe this way and sell their services without obligation as to results. Morocco does not for the moment apply the principle of readmission<sup>18</sup> for sub-Saharan Africans. Tunisia partly accepts the readmission of non-nationals travelling from Tunisia. The Eastern Maghreb connection is accordingly shifting towards Libya.

The business of illegal immigration into Europe by sea seems a prosperous business. It is capable of adapting very quickly to the enforcement and operational mechanisms set up by the Member States. Annual turnover is estimated to be at the very least €750 million.<sup>19</sup> This underground economy is one of the most active stimulants for corruption of enforcement agencies in countries of departure and transit. That is why it is so difficult for Mediterranean countries to abide by their commitments to prevent ships from sailing and passengers embarking in unlawful situations. Observers point out that far from combating trafficking in the migrants, certain authorities in Turkey seem to adapt to it. For one thing, the local economy benefits from the repercussions and frontier-crossers are not prosecuted; and for another, what looks like a blind eye turned to this traffic might be part of a long-term policy on the Kurdish question.

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<sup>16</sup> Return to the port of departure by the next ferry under the Spain-Morocco readmission agreement.

<sup>17</sup> The risks that frontier-crossers make their customers take are often crime-related; in 2001, 27 drownings were recorded in the strait.

<sup>18</sup> Under the Meda European programme of support for Morocco, that country may apparently review its position.

<sup>19</sup> Assuming an average fare of €8000 for an illegal immigrant excluding port-to-port routes (illegal crossing of maritime borders) and 65 000 immigrants who enter or try to enter Europe this way, and an average fare of €6 000 for an illegal immigrant via the maritime ACPs and 35 000 immigrants who enter or try to enter Europe this way. The Spanish authorities estimate that attempts to cross the Straits of Gibraltar alone generate an annual net turnover of €30 million just for the frontier-crossers.

When immigrants from distant countries enter Schengen, they often tell the authorities they are stateless. No consulate can therefore deliver readmission documents, and after a stay in an administrative detention centre of 12 days in France (soon to be 30 days), 40 days in Spain, 60 days in Italy or Germany and 90 days in Greece, they are released as undocumented aliens. With the assistance of volunteers from humanitarian associations they then go to a reception “facility”, sometimes held by a “parent”.

### **A2 - 3 Legal instruments**

Above all they are subject to international law on two grounds.

Seen from the sea, for the coastal channels, the legal bases for combating illegal immigration are laid by Articles 19(2)(g) and 33 of the *Montego Bay Convention on the Law of the Sea* of 10 December 1982, since passage through the territorial sea is no longer innocent if persons are loaded or unloaded contrary to the immigration laws and regulations of the coastal State. The right of readmission, when it is implemented, is not based on this text but on a contractual basis depending on the good will of the country from which the offence is committed. The resultant question is how to ensure that a flag or port state that allows ships carrying illegal travellers to sail from its coast or ports.

Seen from on land, the right of asylum is the criterion which distinguishes a political refugee from an illegal immigrant as regards the right to enter and stay in a European country. All the Member States or Schengen States have ratified the Geneva Convention. They are required to apply it. An illegal immigrant will therefore, naturally, claim refugee status as long as possible one way or another. As an asylum-seeker, he will be eligible for a tolerated stay for as long as it takes to examine his application.

The resources of international law are generally not used to the full. It is not currently standard practice in maritime law for the international community to impose a minimum of liability on the flag state. For this reason port state control has been in operation since 1981 (Paris and Tokyo memoranda) to protect against the risks of substandard flags. Controls are therefore applied to shipowners and masters but not to the flag states certifying seaworthiness.

National laws applicable to migration controls are based on the Convention Implementing the Schengen agreements and other Community rules relating to the crossing of external borders (Schengen catalogue). They are being harmonised as regards the administrative procedures applicable to illegal immigrants. National sovereignty considerations in practice prevent second-line countries from assisting first-line countries: a State ship on public business cannot intervene in the waters of another Member State and on its behalf.

Whether out of timidity or inadequate legislation, the potential of national laws is under-utilised. In practice, economic migrants are not penalised for being in an illegal situation because many State authorities are unable to examine asylum applications within a reasonable time. And when there are provisions of criminal law regarding unlawful stays, they are sometimes applied laxly. The harmonised Schengen visa policy is reflected by a lack of both transparency and rigour.<sup>20</sup> The penalties provided for (Article 26 of the Schengen Convention) when shippers carry an illegal passenger are never actually imposed.

Events unrelated to illegal immigration by sea are behind changing opinions. Governments are responding to the terrorist acts of 11 September 2001 and the pollution of European coasts caused by the *Erika* and the *Prestige* by revising an approach that is excessively indifferent to the results and consequences of this illegal immigration. The Law of the Sea is under review, under pressure from the American administration.

### **A3 - Existing operational and legislative provisions**

This effectiveness must be appreciated at two levels – Europe, where the Schengen Agreement must be evaluated, and the Member States. A distinction must be made here between States in the first line for illegal immigration by sea by the three types of route we have identified. In the first line are Spain (mainly focal routes), France (mainly port-to-port routes), Italy (mainly focal and random routes), Greece (mainly focal routes) and Finland (apparently no particular routes in view of the measures taken). They differ from second-line States, where undocumented aliens arrive by sea either because they crossed maritime borders undetected or because they came out of an administrative detention centre in a first-line country where their case could not be treated within the legal detention period and were

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<sup>20</sup> The impression is that visas are sometimes issued to satisfy the foreign communities settled in Europe and sometimes refused to avoid permitting stays of unverifiable duration.

expelled. For these second-line countries the maritime aspect is secondary and the illegality of the stay justifies the same treatment as other illegal migrants. In their case it is therefore the entire set of rules applying to the conditions of stay for the foreigners which must be appreciated, and that goes beyond this study. Effectiveness will be examined in terms of the external borders of the first-line countries, which are all in Schengen.

### **A3 - 1 A body of international law shared by the Schengen States**

#### **A3 - 1 - 1 The common management of Schengen**

The law as formalised in the Schengen convention is particularly full and clear. The primary aim is to facilitate the free movement of persons within Schengen, but after that it seeks to ensure that access for third-country nationals respects the law (passports, visas if necessary, and compliance with the Geneva Convention for the political refugees).

There is a common list of States whose nationals are subject to the visa requirement. The principles of consular cooperation make it possible to evaluate the risks in the countries where visas are applied for and to standardise the response. The VISION computer system makes it possible to check for simultaneous visa requests and refusals, if any. The VIS (*Visa Information System*) project confirmed at Thessaloniki will subsequently facilitate the exchange of information between ACPs and the identification of visa applicants (identified in particular by biometric data).

With regard to the management of external borders, Schengen's only land border is on the continent at the borders separating the Schengen States from the other European States not belonging to it. Schengen's maritime border, on the other hand, is much longer. It is made up of the coast of all the Schengen States, which can be entered anywhere on that coast. But the Schengen Convention accepts that a ferry passenger travelling between two Schengen ports does not in fact leave Schengen.

The management of Schengen is formalised in provisions that signatory States have undertaken to comply with. For instance, 100% of persons entering Schengen are to be checked, and the passports of foreign nationals subject to the visa requirement are to be stamped with the date and place of entry and exit. But the handbook of immigration practices allows officials a degree of "flexibility" in interpretation.

For example, cruise passengers can be managed on a more relaxed basis. Admittedly, cruise passengers rarely embark in non-Schengen countries and they are easy to check with the shippers' assistance.

The States bear the ultimate responsibility for border controls, and in particular the ACPs. It seems that 100% controls are carried out in northern Europe – Finland, Denmark, Sweden and Germany. Things are different in southern Europe, where migratory pressure is currently higher, there are far more non-Community passengers and the border police authorities can ensure only partial sample controls at peak times in summer.

Moreover all maritime ACPs do not have similar tools: optical passport scanners, instruments to detect false documents and access to the relevant databases (*False and Authentic Documents*, FADO), more or less easy access to the Schengen Information System, specific premises to process suspect cases without blocking the passage of persons in order.

But where the Community level falls short of expectations is that Schengen evaluations (Scheval) are not formalised to the extent of becoming a genuine inspection of the relevant State services. Admittedly an evaluation is not an inspection; it does not aim to penalise situations not in conformity with common standards but to identify good and bad practices, recommending that the former be preserved and the latter abandoned. However, the credibility of the management of the Union's external borders now requires greater uniformity and rigour of control, based on a permanent and independent professional inspection and control capacity. A new stage in the process of evaluating the mechanisms set up by the Member States should be launched, to progress towards more effective controls.

Methods using, for example, the adversarial procedure familiar to the French public service through the Inspectorate-General of Finance should be applied (principle of hard control). It is not satisfactory for the effectiveness of an evaluation mission that it is announced a long time in advance. It is not satisfactory that an evaluation mission consists exclusively of counterparts of the public officials checked or that it remains in an ACP port on a day when no ferries arrive from a non-Schengen State. Nor is it satisfactory that the comments made give place only to purely formal answers by the services checked and that the requests for "corrections" to the situations not in conformity with Schengen law are not mandatory for the administration evaluated, that the recommendations made are not followed up in actual implementation, and lastly that no penalties are possible for serious failures by Schengen States to meet their commitments.

### **A3 - 1 - 2 European States are subject to the same international commitments**

Following imminent ratification by Denmark they will all apply the United Nations Convention on the Law of the Sea, sometimes known as known as the *Montego Bay* Convention, establishing “the rule of the flag”, whereby a State can intervene on the high seas only in relation to ships flying its flag.

In the Mediterranean, a uniform approach of the Law of the Sea led the coastal states to agree to refrain from exercising their rights to an exclusive economic area in view of the dimension of the sea.

The European States have ratified the conventions of the International Maritime Organisation, and in particular the SOLAS (*Safety of Life and Sea*) Convention and the SAR (*Search and Rescue*) Convention.

And they have ratified both the Geneva Convention on Refugees of 1951 and the United Nations Convention against Transnational Crime of 15 November 2000 with the Palermo Protocol against the smuggling of migrants by land, sea and air.

### **A3 - 2 Resources deployed by frontline states**

The main characteristic of frontline states is a maritime border with countries via which maritime immigration may occur, either because of the short distance separating them from the countries of departure or because of ferry links between their part of the Schengen area and the countries of departure. A secondary characteristic is the “specific” nature of their relations with the potential country of departure: Spain with Morocco, Finland with Russia, France with Algeria, Greece with Turkey, Italy with Libya.

#### **A3 - 2 - 1 Spain**

##### **A3 - 2 - 1 - 1 Illegal maritime immigration**

Two regions of Spain are directly affected by illegal immigration: the southern coast bordering the Straits of Gibraltar and, more recently, the Canary Islands. A large majority of immigrants comes from two regions of Morocco (near the Iberian peninsula in the north and the Canaries in the south) and the Sub-Saharan countries.

18 517 illegal immigrants were intercepted trying to enter the country by sea in 2001, of whom 6 114 were nationals of the Sub-Saharan countries. The corresponding figures for 2002 are 16 670 and 8 550 respectively.

Illegal maritime immigration takes three forms:

- the port-to-port route via authorised crossing points (ACPs), namely the ferry terminals on the straits linking Morocco and Algeria to Spain (Almeria, Algeiras and Tariffa). Transport capacity per ferry is ten times higher between Spain and Morocco than between Spain and Algeria. Traffic is heavy, with 5.3 million passengers in 2000, including 2.8 million on the routes between Ceuta and Melilla and the Iberian peninsula.

According to the immigration authorities, entry checks are carried out on land and the length of time which illegal immigrants remain on Spanish soil varies between a few minutes to a few hours depending on how frequently ferries leave and the time taken to consult databases and the archives of the *Cuerpo Nacional de Policia* and implement legal aid procedures.

Ferry passengers who have paid their fare but do not have the proper travel documents are systematically readmitted. Carriers may be fined under the law of 22 December 2000, but the *Policia nacional*, which does not collect the fines itself, is not informed of follow-up. Carriers do their best to assist checks on their passengers without actually refusing customers.<sup>21</sup> During the high season, in view of the large numbers travelling and the reduced checks provided for in the Common Manual in cases of very heavy traffic, exhaustive checks are selective and affect about 30% of passengers on a sample basis.

- It should be noted that in the case of freight ports, and in particular the Algeiras container port, one of the largest in Europe, the police are not aware of illegals hiding in containers (exceptional cases). The risk of an accident is so great that containers are either not used for long journeys or used only by people who are wholly unaware of the dangers (as in the case of illegals who hide in the undercarriages of passenger planes). The *Guardia Civil's* priorities in freight ports are drugs, the arms trade and cigarette smuggling.

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<sup>21</sup> Since return fares are cheaper than singles, illegal immigrants pay for their return passage in cases of readmission. Companies are not penalised for transporting illegal immigrants. Even if they declare themselves willing to abide by Spanish requests, they cannot afford to ignore illegal immigrants as a market segment. This is also true of the lines between North Africa and France which operators regard as unprofitable.

- The focal route, using boats known as *pateras* which hold between 30 and 50 passengers. This is the most common route, in spite of the high risks involved (the death rate per crossing was 0.2% in 2002, or 35 deaths for 16 670 passengers intercepted). It is characterised by the substantial income generated for people-smugglers (approximately €30 000 per crossing of the Straits of Gibraltar) and the *omertà* observed by all passengers, which enables the people-smugglers to pass unnoticed and ensures that they are prosecuted only in exceptional cases.

Only one case of immigration via the random route occurred in 1999.

### **A3 - 2 - 1 - 2 Legislation**

Legislation in this area is recent, because until 1998 foreigners accounted for only 0.7% of the total population. By 2002 this had risen to 2.7% (1 million foreigners). Legislation focuses on:

- Reception arrangements: two laws dated 11 January and 22 December 2000 laying down procedures and reinforcing ministerial powers. A Government appointment (State Secretary) was attached to the Ministry of the Interior and an aliens and immigration directorate was set up.

The legislation does not provide for penalties in civil or criminal law concerning illegal immigrants, but it does make provision for a fast-track procedure for returning aliens who attempt to enter Spain illegally.

- Asylum and refugee status are governed by Law No 5/1984, as amended by Law No 9/1994 of May 1994.
- Penalties against people-smugglers and persons who promote, assist or facilitate the trade in human beings: prison sentences are applied under national and international law. Spain would be prepared to increase the maximum prison sentence for people-smugglers from six to eight years if a European directive were adopted.
- The rights and freedoms of foreigners in Spain and their integration into society: Constitutional Law No 8/2000 of 22 December 2000 introduces stricter rules.

### **A3 - 2 - 1 - 3 Operational measures**

The *Sistema Integrado de Vigilancia Exterior (SIVE)* is the idea of the *Guardia Civil* and will be operational by end-June along the whole length of Spain's sensitive southern coast. It reduces a *patera's* chances of completing a crossing without being detected and inspected, either on the high seas or in coastal waters, to 10%.

Cooperation with the other Member States: so far, the *Ulysses* actions of February and May 2003 to evaluate cooperation arrangements between the Member States have produced inconclusive results: learning about police cooperation between naval and air units from several Member States and departments. The first operation between the Straits of Gibraltar and the Sicilian Channel in winter involved naval forces only and resulted in the interception of 11 vessels carrying 326 immigrants. The second, around the Canary Islands in spring, consisted of air and sea patrols by the Royal Air Force (*Nimrod*) and the Spanish navy (*Falcon*), which provided back-up for interventions by the Spanish *Guardia Civil* and a Portuguese Army corvette (139 immigrants and seven vessels intercepted). Legislation has not been adapted to enable a Member State's ships to intervene in the waters of another Member State and under its direction. The question does not arise when third-country planes taking part in maritime surveillance operations guide the interception vessels of the Member State in whose coastal waters the search is taking place towards their objectives.

A committee has been set up to deal with the eventuality of a massive wave of illegals arriving via the random route. The committee, chaired by the Government's immigration minister, consists of representatives of the main bodies involved, from the *Guardia Civil* to the Department of Social Welfare as well as local representatives.

### **A3 - 2 - 2 Finland**

#### **A3 - 2 - 2 - 1 Illegal maritime immigration**

Although Finland is in the front line vis-à-vis the Baltic States and Russia, illegal maritime immigration is virtually non-existent, and on those rare occasions when it is detected it is followed by immediate readmission, which is accepted by Russia and Estonia.

In theory, the Gulf of Finland should be ideal territory for the focal route. There are two main reasons why this is not the case in practice: in summer, the short nights make it impossible to travel undetected across the 20 nautical miles between Estonia and Finland or across the 10 nautical miles separating the Russian islands and Finland; moreover, in winter, the cold would kill anybody sailing across the gulf in an open vessel at night.

The second reason is the quality of monitoring operations carried out on a joint basis by the Finnish civil and military authorities. These arrangements are a throwback to the special relationship between Finland and the USSR. Persons from the former USSR attempting to enter Finland illegally (by land or sea) had to be readmitted to avoid potentially dangerous diplomatic conflicts. Efficient border guard and coastguard services were therefore an imperative. As a result, Finland acquired experience which has proved useful at European level, particularly in risk assessment terms.

The port-to-port route has also been neutralised. In theory, 100% of passengers travelling between Tallinn and Helsinki by ferry are subject to checks. Three quarters of these shipping lines' passengers are Schengen citizens. Anybody arriving in Finland without the proper documents is put on the next boat back.

### **A3 - 2 - 2 - 2 Legislation**

Finland has legislation on illegal immigration in accordance with the international agreements it has ratified in this area. Since joining the European Union, Finland has implemented the Geneva Convention on Refugees.

Finland is a privileged partner of the agreement establishing the Baltic Sea Conference. The organisation was set up in 1993 and reflects a common political will to tackle all forms of crime in the Baltic Sea Area. It was not until 1997 that specific cooperation on border management was organised between the relevant administrations in the participating countries.

Using a working intranet network which operates day and night (alert, early warning and cooperation system) between the Member States, every year each country takes its turn to coordinate border management from its national coordination centre, usually the police's Interpol office. Information of all types, be it strategic or tactical, is shared without restriction between the participating countries' border guards. The vitally important list of suspicious ships (LOSS) is drawn up on a common basis and information on these ships' movements is exchanged. Common ad-hoc cooperation formula enable exchanges of reports, requests and

replies to be speeded up. The principle of sharing sea monitoring goes hand in hand with identical checks in ports. Joint operations and exercises are organised to improve overall effectiveness through cooperation with the operational objective of keeping track of high-risk vessels in the area.

Interbaltic cooperation is also organised on a bilateral basis. Within the BSC, Finland acts as a partner for Estonia; the other partnerships are Germany/Poland, Denmark/Lithuania and Sweden/Latvia. These bilateral arrangements are especially productive and promote regional cooperation through sectorisation. Police attachés from one of the Nordic Passport Union countries (Denmark, Finland, Sweden, Norway, Iceland) have powers in all the other states. These arrangements are also possible because each of the non-Schengen states concerned hopes either to join the Europe of 25 (Baltic States, Poland) or to be closely associated with it (Russia).

### **A3 - 2 - 2 - 3 Operational measures**

The Vessel Traffic Monitoring Information System (VTMIS) enables authorities to coordinate maritime surveillance. Intervention on the high seas is carried out by the navy, the Ministry of Transport and the coastguards (the border guards' maritime unit). Management of maritime borders is based on the principle that the coastguards coordinate maritime surveillance and each administration deals with high-risk vessels in its own waters. This principle has been applied in the Gulf of Helsinki with an integrated VTMIS.

Coordination of surveillance entails establishing a common reference system using all information received by electromagnetic sensors (military radar or others), optical and optronic sensors located on certain islands in the Gulf and fixed or mobile sensors (e.g. AIS and VMS) in a single centre (at present four centres are used, two being managed by the coastguards and the other two by the Ministry of Transport) and communicating the information received to the operational centres of each administration, which deploys the resources at its disposal against the target.

In comparison with the Spanish SIVE system, the Finnish VTMIS is characterised by a much higher degree of integration; for example, it takes account of commercial shipping movements in the Gulf of Finland. However, the radar technology it uses is less effective than the Spanish system as regards long-distance detection of small boats.

## **Checks in ports**

Schengen standards are applied: in theory, 100% of travellers are checked at ACPs and visas for persons from non-Schengen countries are date-stamped. The physical infrastructure (harbour station and checking equipment) processes up to 1 500 passengers in a time-frame of 30 to 45 minutes, thus ensuring that fluidity is maintained. In the high season, special arrangements may be applied to ensure that the fifty daily ferry arrivals are processed quickly. The time taken to examine the travel documents of 1 500 passengers on foot or in vehicles seems short.

### **The Common Integrated Risk Assessment Model (CIRAM) and the principles on which management of maritime borders is based**

The CIRAM is based on Finnish risk assessment technology. The purpose of this European evaluation instrument is to implement the requirements of the Schengen catalogue by incorporating national contributions into a common model and approximating risk assessment principles (strategic, operational and tactical levels) in order to come up with practical solutions to border management problems.

Strategic, operational and tactical planning of border management, risk assessment and joint information management, close cooperation between States in processing information, joint operations and permanent liaisons between all parties concerned are the principles underpinning joint, integrated management of maritime borders.

## **A3 - 2 - 3 France**

France has two maritime borders, one in the west facing the Atlantic, the English Channel and the North Sea, and one in the south facing the Mediterranean. Illegal maritime immigration is less of a problem than in Spain, Italy or Greece.

### **A3 - 2 - 3 - 1 Illegal maritime immigration**

- France is the only Mediterranean country in the Schengen area which is so far from the countries of departure (North Africa) that it is not really affected by the focal route, which concerns straits or maritime spaces of less than one hundred nautical miles between the source or transit countries and the Schengen area. These maritime spaces, located in relatively warm areas, can be crossed by open vessels filled with immigrants in a few hours.

- The random route: the concerns raised by the 910 illegal immigrants on the *East Sea* (17 February 2001) have not been confirmed. However, an impressive, comprehensive system of surveillance, prevention and interministerial coordination has been set up and maintained for the time being. That notwithstanding, it is quite possible that something similar to the Tampa incident in Australia could occur on the Atlantic seaboard, although this has not happened to date.
  
- The port-to-port route  
Illegal immigration into France tends to take other routes, via airports or seaports, where the chances of success are greater. France has ferry links with the countries of North Africa (with Morocco via Sète (80 000 crossings per annum) and with Algeria and Tunisia via Marseille (320 000 and 200 000 crossings per annum respectively). In theory, the ACPs in these ports are designed for 100% checks on boarding and disembarking passengers on foot or in vehicles. In practice, however, during the high season checks are carried out on only 20% of passengers. Fewer than 1000 illegals per annum are apprehended in the port of Marseille (the total number of passengers is 600 000 per annum, 80% of whom are foreigners subject to visa requirements.

This situation raises questions as to the effectiveness of checks. If a new in-depth Schengen assessment were to be carried out in Marseille, it would show that visas are not always checked, that passports are not always date-stamped and that passages in the passengers' international area between the ferry and the checkpoints are not always completely watertight. It would probably also show that consular arrangements for issuing visas contain loopholes enabling the Schengen area to be entered legally by sea. As long as tourist visas are not subject to strict scrutiny (and registration) on entry, the port-to-port route will remain attractive. An examination of illegal immigration between North Africa and southern Europe shows that Moroccans travel via Spain and Tunisians via Italy. No figures are available for immigration from Algeria which reflect that country's population. It therefore seems likely that Algerian immigrants travel via ACPs in the French seaports using legal or ostensibly legal methods.

Although France has declared its willingness to cooperate with other Member States to reduce illegal maritime immigration by tackling the problem at source, its position is undermined by its “special” relationship with Algeria, as is evidenced by the checks carried out by the French authorities in the port of Marseille<sup>22</sup> on ferries owned by *Compagnie nationale algérienne de navigation*. To take another example which, although separate, is closely related to maritime border checks, whereas the Algerian national flag is regarded as one of the ten most problematic world-wide in terms of safety standards (cf. Tokyo Memorandum publications), the very limited checks<sup>23</sup> carried out by the French authorities in Marseille (cf. Equasis database) cannot be explained by a lack of inspectors, since significant resources have been assigned to the Italian fleet of ferries serving Corsica.

### A3 - 2 - 3 - 2 Legislation

The main items of legislation are:

- the 1945 Ordinance on entry and residence conditions for foreigners in France;
- Decree No 85 185 of 6 February 1985 on “inoffensive passage”;
- Law No 94 589 of 15 July 1994 on the conditions governing the exercise by the State of its powers to carry out checks on sea;
- the customs code;
- the seaports code.

Two laws are currently being amended to take account of the Convention against Transnational Organised Crime and the Protocol against the Smuggling of Migrants as well as the lessons of the *East Sea* incident and the following discussions:

- the Ordinance on entry and residence conditions for foreigners in France of 2 November 1945;
- Law No 94 589 of 15 July 1994 on the conditions governing the exercise by the State of its powers to carry out checks on sea.

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<sup>22</sup> Checks carried out in the Spanish ports reveal a far higher number of irregularities on the same vessels.  
<sup>23</sup> The Equasis database makes no mention of the *Tarik*, which means that no checks have been carried out on this ferry. No checks have been carried out on the *El Djazair* at Marseille. On neither ferry are checks carried out on even an annual basis. Whereas the *Zéralda* was inspected twice at Alicante between 1998 and 2002, it has undergone only superficial checks (on only one occasion) at Marseille and has never been detained. No checks are carried out on whether Algerian passenger ferries leaving Marseille are overloaded. While there are no grounds for assuming that those ferries are in the same condition as the *Joola*, it would be a wise precaution to check that SOLAS safety standards (lifejackets and lifeboats) are complied with.

A draft law amending Law No 52 893 of 25 July 1952 on asylum and bringing the way illegal immigrants are treated into line with the arrangements applicable in other Mediterranean countries is being discussed in Parliament.

In terms of international maritime law, France has provided funding for action in its contiguous zone but only as regards customs offences and not for illegal immigration.

### **A3 - 2 - 3 - 3 Operational measures**

Operational measures reflect the relatively low level of the threat at present and the action taken following the *East Sea* incident, being limited to principles and the setting-up of surveillance networks.

To date, the only “random” threat taken into account is the one involving small commercial vessels (e.g. less than 500 GRT at the end of their useful lives) used in the Mediterranean to transport immigrants of African or Middle Eastern origin from the Libyan, Syrian, Lebanese or Turkish coasts.

Alert and preventive measures have been taken on the basis of inventory assessments, boats flying flags of convenience, escheated vessels and unexplained shipping movements. Joint naval patrols carried out by Member States in the eastern Mediterranean have had a certain dissuasive impact, the most striking example being the inspection of the *Monica* in Italian waters in 2001. Preventive measures have also been taken by the local police, with local authorities in the Lebanon proving far more cooperative than their counterparts in Syria. In addition, the *East Sea* incident gave rise to prosecutions for people-smuggling as a result of which the investigating judge issued international letters rogatory. However, judicial cooperation has been a somewhat one-sided affair. While it has been possible to prosecute organisers living in the country of final destination (Germany), outside the European Union the impact has been limited.

The port-to-port route via maritime ACPs has been observed, but for the time being has not resulted in an operational response. Indeed, this seems unlikely to happen until the Marseille terminal has been brought into line with Schengen requirements, although the real problem remains the lack of inspectors and detection equipment (e.g. for false or forged travel documents), particularly during the busy summer period.

- in terms of principles:

Illegal maritime immigration is the responsibility of the Ministry of the Interior, which takes the necessary measures in the event of a crisis.

Systems have been set up for locating information in networks to which France has access, for cooperation with the other countries bordering the Mediterranean and for rapid intervention arrangements to ensure that migrants' lives are not put at risk.

The main measure in respect of the port-to-port route is based on cooperation with the Algerian authorities designed to step up checks in the port of departure by the Algerian border police.<sup>24</sup>

- in terms of operations:

A surveillance system for shipping movements in the eastern Mediterranean involving warships and maritime patrol aircraft has been set up in cooperation with European navies, either directly or via Euromarfor's anti-terrorist unit.

Follow-up and tracking measures for target vessels have been taken and arrangements have been adopted to ensure the most comprehensive monitoring possible of the Mediterranean coastline in terms of time and space.

### **A3 - 2 - 4 Greece**

#### **A3 - 2 - 4 - 1 Illegal maritime immigration**

Greece's geographical position on the edge of Schengen Europe and the eastern Mediterranean, with more than 3 000 islands and 16 000 km of coast, makes it a very attractive transit country for illegal immigrants from Turkey, Asia Minor and the Middle East, even Africa and the Indian sub-continent.

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<sup>24</sup> The effectiveness of this measure is limited in view of the low pay of Algerian civil servants.

### *The focal route*

The bulk of immigration via the sea comes from the Turkish Aegean coast, with innumerable landing points, a large number of islands and complex boundaries between Greek and Turkish territorial waters. People-smugglers and immigrants have adopted strategies which reflect these geographical realities. In a country of eleven million inhabitants, it is particularly difficult for the authorities to monitor shipping movements and identify illegal vessels in view of the vast number of fishing boats and yachts plying these waters.

In spite of the fact that Turkey hopes to develop good relations with the European Union and join eventually, it has not taken any action against people-smuggling, which is regarded as a legitimate business activity there. Statements made to the Greek authorities and by intercepted illegals suggest that unless people-smugglers pose a threat to law and order they are unlikely to meet with difficulties on the Turkish coast. Greece's Aegean border is the most vulnerable point of the Schengen area's maritime border. In the light of the above, the Greek Government's request for burden-sharing at European level is understandable. Relations between Greece and Turkey leave little hope for effective cooperation, which would give rise to a spontaneous improvement in the situation.

On the other hand, illegal immigration from Albania via the Ionian Sea is negligible.

The number of persons detained by coastguards increased from 3 664 in 2000 to 6 864 in 2001, declining again to 3 920 in 2002, whereas the number of confiscated vessels exceeded 200 over the period as a whole. These figures may seem low, and indeed they are in comparison with the numbers of illegals intercepted on land. They may be explained by the significant dissuasive effect of Greek navy and coastguard patrols, by the possibility that vessels of a certain tonnage are avoiding Greek waters altogether and heading for Italy and, of course, by the fact that the existing systems are not sufficient.

People-smugglers use a wide variety of craft (small cargo vessels, yachts, inflatable dinghies, fishing boats, etc.) depending on whether they intend to accompany the would-be immigrants, drop them off at different points or leave them on tiny islands. The cost of a sea crossing may vary from 1500 to 3 000 per person.

The main starting point of focal routes is Turkey; in exceptional cases vessels depart from the eastern Mediterranean (Turkish part of Cyprus, Syria, Lebanon). Statistics show that a high proportion of illegal immigrants are Iraqis, Turks, Afghans and Iranians.

### The random route

Greece is affected by random immigration only when a vessel heading for the western Mediterranean is in distress or immobilised in the international waters of the Aegean. That is what happened in the case of the *Erenler*, a Turkish cargo ship which was towed to the port of Zakynthos on 5 November 2001 with 714 passengers on board, of whom 451 were Turkish Kurds and 31 ethnic Turks, 103 Iraqi Kurds and five ethnic Iraqis, 36 Afghans, 12 Iranians, 8 Sri Lankans, 7 Ethiopians, 19 Erytreans, 13 Indians, 28 Palestians and one Pakistani. The cost of the sea crossing was between 1 500 and 2 000 (source: Greek coastguards).

In view of the gravity of the situation on its borders, Greece has developed an active policy of combating illegal immigration, with a panoply of legal and organisational measures. However, a number of factors contributing to inertia have been noted, resulting from coordination problems at central government level between the departments responsible for monitoring and surveillance of land borders (border guards under the Ministry of the Interior) and the departments in charge of maritime borders (coastguards answerable to the Ministry responsible for the merchant navy).

### The port-to-port route

Greece does not have ferry links with countries outside the Schengen area, and so there is no illegal immigration via authorised crossing points in ports. The only problem concerns the link between Patras and Ancona (Italy), which illegal residents in Greece use as a way of getting into Italy. Readmissions of illegals intercepted in Italian ports on their way from Greece exceeded 5 000 in 2002. More efficient arrangements for detecting illegals boarding vessels in Greece were established in 2003.

## **A3 - 2 - 4 - 2 Legislation**

In domestic law, entry and residence conditions for foreigners are governed by Law No 2901 of 2 May 2001, complemented by the Decree of 2 December 2002. Asylum is governed by Laws Nos 2452 of 1996 and 61 of 1999 and by Law No 189 of 1998 on work permits for asylum seekers.

Under international maritime law, Greek territorial waters, set at six nautical miles by Law No 230 of 17 September 1936, cannot be unilaterally extended to twelve miles pursuant to the Montego Bay Agreement; such action would be regarded as an aggression by Turkey. In addition, Greece does not have archipelago status.

Its territorial waters follow the Aegean FIR boundaries (Flight Information Region) and those of its SAR (Search and Rescue) area.

Greece is a signatory to the United Nations Convention against Transnational Organised Crime and the Palermo Protocol against the Smuggling of Migrants of 15 November 2000. Ratification is pending.

Judicial and administrative follow-up of illegals after they have been arrested is carried out by the coastguards and the Greek border police, whose respective responsibilities are clearly delineated. Responsibility for implementing Law No 2910 of 2 May 2001 governing entry and residence conditions for foreigners in Greece lies with the Ministry of Justice.

### **A3 - 2 - 4 - 3 Operational measures**

The difference between the Greek measures and the Spanish/Italian ones is that their main objective is not to escort boats loaded with illegals to the shore and process them on land in accordance with Greek entry and residence legislation. Instead, the measures form part of a containment strategy designed to send boats back to the country of departure and prevent them from landing in Greece. These measures are implemented, apparently with some success, by the coastguards, who have been given significant human resources and equipment over the last three years.

Operations are carried out with the help of specific vessels and equipment depending on local conditions. Local cooperation with the Turkish coastguards would also be useful, and it seems that the Greek authorities are currently trying to set this up in spite of the two countries' sensitive relations.

At international level, Greece is developing cooperation agreements with various countries (Albania, Bulgaria, Cyprus, Egypt, Italy and, of course, Turkey) in a number of fields, including illegal immigration. It has immigration liaison officers in Albania, Bulgaria and Cyprus but not in Turkey.

Lastly, Greece is taking part in European initiatives on illegal immigration (*Ulysses*, *Triton*, *Rio*, etc). The international police cooperation division, which is attached to the Greek police's directorate-general in the Ministry of Public Order, acts as the national contact point for CIREFI and coordinates Greece's participation in these initiatives. Thus Greece is responsible for the *Triton* operation.

### **A3 - 2 - 5 Italy**

#### **A3 - 2 - 5 - 1 Illegal maritime immigration**

Three parts of Italy are directly affected by illegal maritime immigration. For many years Puglia was the most frequent point of entry (often linked to drug-trafficking) for immigrants from Albania and, exceptionally, Croatia and Montenegro, but the problem has been virtually eradicated since 2000 thanks to the Italian authorities' action on sea and in the countries of departure (especially Albania, where they literally took over the border guards' duties).

The second main landing point is Calabria. The province's maritime border represents the Schengen area's most vulnerable point in terms of the random route. Boats of 300 to 500 GRT moored in Turkish ports or, occasionally, in Cyprus, the Lebanon, Syria or even further afield (as in the case of the Sri Lankan connection) and - above all in the last year or so - along the Libyan coast cram illegals on board for their final journey. For example, in the night of 6 to 7 September 2000 the *Professor Kolesnikov*, drifting off Santa-Maria de Leuca with 1 200 illegals on board, was towed into the port of Otrante by the Italian navy.

However, the focal route is still the main one used. It concerns the Sicilian Channel and, as a result, the coast of Sicily, the island of Pantelleria and the Pelagie Islands. Immigration flows arrive from the Tunisian coast, Malta and now - indeed mainly - from Libya. The boats used (*scafi*) hold between 20 and 30 passengers.

Statistics on the numbers of immigrants intercepted point to a steady improvement in the situation, demonstrating the measures' effectiveness. Where areas are affected by maritime immigration, the Italian authorities - mainly the *Guardia di Finanza* - take steps to gradually close the route. Italy's main problem is that immigration flows via the sea are gradually moving from north (the Adriatic) to south (Pelagie Islands). Four immigration phases have been observed which resulted in international agreements being concluded: along the coast of Puglia (cooperation with Albania), along the coast of Calabria (intergovernmental agreements

to make Greece and Turkey amongst others aware of the problem), via the Suez Canal (agreement with Egypt and, lastly via Tunisia (readmission agreement) and Libya, with which Italy does not have the same friendly relations. Because Libya, motivated by militant Pan-africanism, no longer has a visa requirement for nationals of other African countries, it attracts illegals wishing to travel to Europe by boat.

Interception activities on the high seas are handled more like sea rescue bids than police operations. But upstream activities also have a role to play. When a vessel carrying Sri Lankans arrived in Italy, the Italians asked the Egyptian authorities to intercept the next one on the Suez Canal and to repatriate the passengers by EgyptAir at the Italian Government's expense. The 60 000 seasonal work visas granted to Tunisia each year are used as leverage to ensure that Tunisia takes steps to improve its coastal surveillance. The results are encouraging.

Illegal maritime immigration does not take place via ACPs in the ports because there are no longer any ferry links between Italy and non-Schengen countries. There is still the issue of links between Greece and Italy, which persons resident illegally in Greece use in an attempt to reach second-line states.

Immigration via freight ports is virtually unknown. As in the other European countries, the phenomenon is marginal but probably underestimated. Gioia Tauro is one of the main European hubs for international operators. The safety checks carried out on containers there are not sufficient to determine whether illegals are using that particular transit route.

### **A3 - 2 - 5 - 2 Legislation**

The relevant legislation is derived from Law No 286 of 6 March 1998 and the new provisions adopted by Law No 189 of 30 July 2002. The provisions of the Criminal Code concerning criminal gangs may also be applied.

It should be noted that to date the navy is the only force entitled to intervene: a draft interministerial decree should extend intervention powers to all departments. Responsibility for coordinating judicial proceedings, currently with the department which initiates proceedings (Guardia di Finanza or Carabinieri di Mare), the navy in its specific field and the Capitaneria di Porto for sea rescues, will be entrusted to the judicial authorities responsible for Italian territorial waters.

Administrative procedures for identifying immigrants and organising detention in holding centres have been developed and are implemented by the police, including in the Lampedusa and Agrigente initial reception centres, with a view to receiving, caring for, identifying and classifying illegals. Special treatment applies in two cases: asylum applications and notice to leave Italian territory. Illegal immigrants cannot be kept in a holding centre for more than 90 days.

### **A3 - 2 - 5 - 3 Operational measures**

At domestic level, prevention is the responsibility of the Ministry of the Interior and the chief of police, who has operational authority over the persons responsible for maintaining law and order.

In technical terms, the navy and Guardia di Finanza have great hopes for the arrangements currently being set up: the SOLAS and Montego Bay Agreements, the NATO maritime surveillance project and the VTS system, which will be operational by the year-end on the north Adriatic coast.

At international level, Italy participates in operations carried out with the Member States of the European Union (*Ulysses* and *Triton*) and has concluded cooperation agreements and entered into administrative arrangements with various states bordering the Mediterranean, with the notable exception of Libya.

### **A3 - 3 Second-line countries**

Second-line countries are affected by three types of illegal maritime immigration. The first is common to all countries, whether they are frontline or second-line states, namely the port-to-port route (not via ACPs); the second is readmission of persons without papers arriving from frontline states and the third is whether the cost of monitoring and surveillance of maritime borders should be shared with the frontline states.

#### **A3 - 3 - 1 Illegals arriving via the freight route**

Border control units – whether in the frontline states (for which this route is of negligible importance) or in the second-line maritime states (for which this is the sole sea route taken by illegal immigrants from non-European countries) - are unanimous in declaring that this is not a serious problem. A quantitative approach is inevitably subjective given that, at best, one-third of stowaways are detected and identified by the immigration authorities in European ports.

The main vector is liner shipping which, because of the way it is organised, i.e. the way in which vessels call at several European ports in turn. Container ships arriving from the east (Far East and Indian sub-continent via the Suez Canal) visit a Mediterranean hub (Malta, Italy or Spain) then sail on to the northern ports (France, Belgium, the Netherlands and Germany). Stopovers in these ports take several hours (between four and twelve hours at the quayside). Intensive operational movements mean that there is little time left to deal with stowaways in accordance with the law of the states in question, whose authorities sometimes have a vested interest - in the light of their national law - of ignoring the presence of stowaways on board.

For example, in a judgment given on 29 July 1998, the French Council of State prohibited the authorities from detaining illegals on board ships calling at French ports. Such persons must be accommodated on land in a holding area and may not leave with the ship. This demotivates the police, who are obliged to follow cumbersome readmission or expulsion procedures. These arrangements appear to be specific to France. However, they provide provisional protection for the interests of shipowners, whose vessels are no longer detained.

Unless and until the status of vessels flying a national or foreign flag - under jus soli - is laid down in law, it will not be possible to establish an effective method of managing illegal immigration. It is worth noting that ports such as Rotterdam, which have set up highly effective expert systems for high-risk vessels,<sup>25</sup> do not regard illegals as a danger of the same magnitude as trafficking, substandard ships or terrorism. In any event, their inspection capacity<sup>26</sup> is too limited to really get to grips with this issue, which is deemed as being of secondary importance. In the world's largest port, full checks are actually carried out on just one vessel a week.

### **A3 - 3 - 2 Readmission of illegal immigrants (entering via the maritime route) between European countries**

The principles on which the Schengen area is based are designed to transfer responsibility to the parties. Illegal immigrants arrested on a border between two Schengen countries are immediately readmitted to the country from which they came. On the Patras-Ancona link (which since the Yugoslav crisis has been the main route for commercial vehicles between Greece and its EU partners), readmissions are automatic. Readmissions are also automatic between the United Kingdom on the one hand and France, Spain, Belgium and the Netherlands on the other.

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<sup>25</sup> The alert threshold is very high. Inspections of vessels and exhaustive, physical checks on passengers are rare. The number of such checks is determined by the operational capacity of a force which is very depleted for a port of Rotterdam's importance.

<sup>26</sup> Only one hundred vessels are subjected to full physical inspections each year (source: Schengen evaluation).

Where two Schengen states do not share a maritime border, however, these arrangements no longer apply. Illegals leaving the Algeiras holding centre cross the Schengen area by road or rail. When the *East Sea's* 910 passengers disembarked on France's Mediterranean coast, their main final destination was Germany, and no checks were carried out on the "German" taxis which came to collect them at the Franco-German border. If the Kurds had disembarked in a country where illegals were kept in holding centres for two months instead of twelve days, they would probably not have been able to maintain the fiction that they were Iraqis.

To prevent routes developing on the basis of perceived weak points in the Schengen area's maritime borders, disparities in Member States' legislation which highlight such weak points should be eradicated. As a consequence, the Member States need to align arrangements for dealing with illegals (readmission, time limits for detention, efforts by Member States and countries of origin to determine the nationality of illegals).

### **A3 - 3 - 3 Support for frontline states from second-line states**

In line with the principle of European solidarity, maritime surveillance arrangements have been set up involving joint action by the intervention forces of several countries. One such example is Euromarfor, set up in 1995 to coordinate joint naval action by Member States. In June 2003, for the third time since the start of the year, a Euromarfor force (comprising vessels from the Italian, French and Portuguese navies) was deployed as part of a peace-keeping mission.

Could the same approach be applied to Schengen maritime borders for security and domestic law and order purposes? *Ulysses* and *Triton*, which bring together the navies and airforces of various countries, are a step in that direction. But the different "maritime cultures" of the European countries means that, in each country, surveillance is the responsibility either of a civilian police force with military status (Guardia Civil (Spain), of customs (United Kingdom)), or of a mixed force (Guardia di Finanza (Italy), the maritime police (Greek coastguards) or the navy (France and Portugal)). Hence the resources deployed are not homogeneous in terms of either legal capacity or equipment, which ranges from light patrol vessels to helicopter carriers and heavy sea patrol planes.

The main obstacles to policing by joint forces are of a legal nature. Can a vessel belonging to a Member State intervene in the territorial waters of another Member State? What asylum and immigration rights apply, those of the ship's flag or the country of destination? It is possible simply to treat illegals on the high seas as shipwrecked persons on the basis that they are not actually illegals until they land in a European area port? What if they claim asylum on board ship?

In any event, maritime border surveillance with a view to neutralising maritime transit routes is effected on an occasional basis. The recent past suggests that once a route has been neutralised, surveillance must be maintained, even if it does not need to be as intense. Experience (in Finland and Spain) also suggests that effective maritime surveillance is best organised on land, using modern technology, and that this solution is less costly than deploying naval resources on the high seas.

## B. Recommendations

A diagnosis of the problem of surveillance and control of European sea borders, the subject of Part A, leads on to three major categories of measures which could improve the existing provisions. The aim is to control illegal immigration by sea by strengthening or creating operational and legislative measures and proposing new organisational measures. Part B gives details of all these measures.

### **B1- A priority requirement: to put in place a risk analysis system, the basis for the whole border management system**

Whatever the nature of the measures to be strengthened or created, they are based on a prior risk analysis which describes all the aspects of the problem of illegal immigration by sea identified in Part A. This analysis divides possible new measures into three distinct areas: operational, organisational or legal. It takes its inspiration from the practices already in place in Member States (notably those which participate in the Baltic Sea Conference) which, along with extensive exchanges of operational information, form the basis of targeted control policies. Annex B.1 presents the risk analysis method.

The risk analysis distinguishes and assigns relative levels of importance to the three types of route for illegal immigration by sea and at the same time identifies the zones or points of sea passage in Europe affected by this immigration:

- The Mediterranean, centre of the focal route, is the entry route for most illegal immigration by sea into Europe,<sup>27</sup> which takes place in five specific zones: Canary Islands Channel, Straits of Gibraltar, Sicilian Channel, Gulf of Sirte, Aegean Sea. It is also the centre of the random route<sup>28</sup> followed in the Eastern and Central Mediterranean basins (destined for southern Italy),
- The Baltic Sea, where illegal immigration by sea is negligible to non-existent,

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<sup>27</sup> This refers to the only relevant figures, "persons intercepted", from the countries affected by this route.

<sup>28</sup> By its very nature, this route varies from one year to the next in absolute terms. Just one ship with 1 200 illegal passengers has to land on a coast to create an anomaly in the statistical series.

- Ports, either as authorised crossing points (ACPs) for entry of flows of persons and accompanied vehicles into Schengen from third countries (ferry lines), or as freight ports where clandestine passengers disembark from cargo ships.

The groundwork for the CIRAM group, carried out by a project team led by Finland, shows that there is now an inescapable need for risk analysis. It is an essential tool for describing and quantifying flows and incorporating these results into a broader view of the analysis and surveillance of migratory flows into Europe via all routes (air, land, or sea); this is why it has been proposed that a specific maritime section be set up, the CIBBRAM (*Common Integrated Blue Border Risk Analysis Model*) as well as a section to do the same work for ACPs of all types - including ports, the CIACRAM (*Common Integrated Authorised Crossing Point Risk Analysis Model*), within the CIRAM (*Common Integrated Risk Analysis Model*) centre.

Operational risk analysis is based on checks (kinematic checks, administrative checks, passenger checks, processing of any irregularity found) on the various types of boat: ferries, cruise ships, cargo ships, fishing boats, pleasure boats, ships or other vessels with a large number of illegal passengers on board.

Risk analysis makes it possible to measure the effectiveness of any counter-measures taken (operational risk analysis), whether strictly operational in nature or legal or economic, and to plan appropriate operational measures, both in the strictly maritime segment of the routes and in the upstream and downstream land segments.

Risk analysis can also lead to the introduction of common methods of data input, evaluation of real flows, risks and threats among the Member States' various departments responsible for immigration in all the countries of arrival concerned. It also acts as a measure of the effectiveness of the overall policy, the principles for action and organisation for the control of sea borders and the fight against illegal immigration.

Lastly, risk analysis makes it possible to establish an objective link between the migratory flows into Europe and all the actors involved in the routes, including the transnational criminal organisations which represent a major threat in the field of all kinds of illicit trafficking: the risk analysis makes it possible to partially identify the "transport function" common to all forms of trafficking and used by the transnational criminal organisations. It goes without saying that this aspect must be closely associated with the work done by EUROPOL.

## **B2 - An absolute necessity: to put in place a comprehensive system of integrated management of all kinds of borders (Annex B.2)**

### **B2 - 1 A system for comprehensive border management**

The risk analysis of illegal immigration by sea shows that sea borders are exposed to the same general migratory pressure as affects air and land borders.

The results to date of the fight against illegal immigration by sea are not satisfactory and bear out the idea that the current system is not effective in the face of this pressure. Some of the flow of illegal migrants arriving via a front-line state turn into undocumented migrants in the second-line countries. This leads the Member States to offload the associated costs onto their neighbours. In the field of border management as elsewhere, Europe's inadequacy has a political and economic cost.

The transnational criminal organisations which organise passage via the three types of border are the same. Their activities cover various illicit forms of trafficking (drugs, arms, human beings) without regard for the borders of the Schengen area. They disembark their clients on the coast of one state to then transport them to another.

The coordination of the fight against illegal immigration and with the fight against the transnational criminal organisations which thrive on it requires an **single, comprehensive, ad hoc operational structure for cooperation** at European level. There are various forms that this structure might take and this is not the place to discuss the issue. However, it is possible to give an outline of the key features. It must be a single structure: there must be no dispersion of the European effort by task or type of border. It is comprehensive and must tackle all illegal migration channels in Europe.

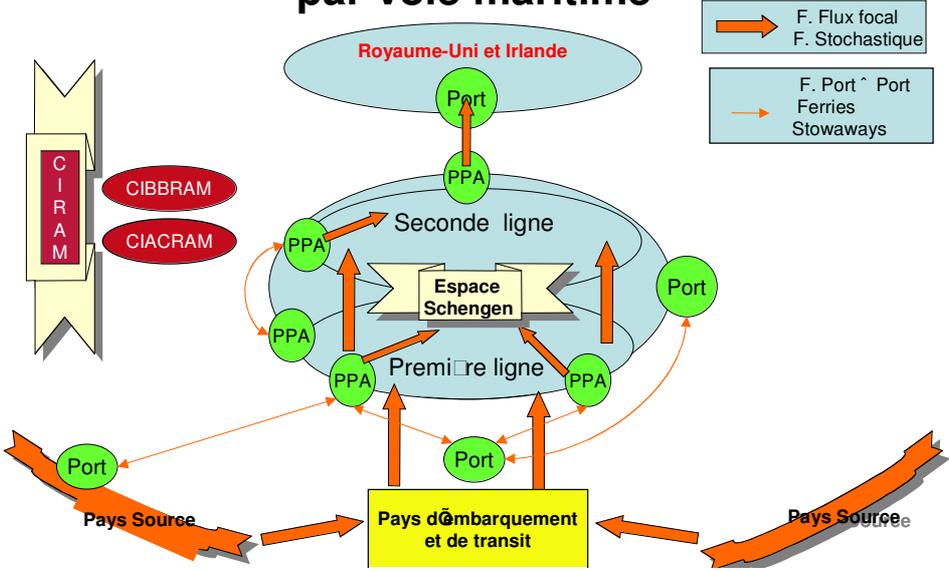
The sole purpose of this structure (cf. diagram)<sup>29</sup> is to manage borders in terms of the migration aspect (Annex B.2). It coordinates its action with the Commission's other fields of action, notably those falling under the responsibility of the Directorates-General for Justice and Home Affairs, Energy and Transport, Environment, Agriculture and Fisheries, Taxation and Customs Union, and with the relevant Council working groups (notably SCIFA and police and customs directors committees).

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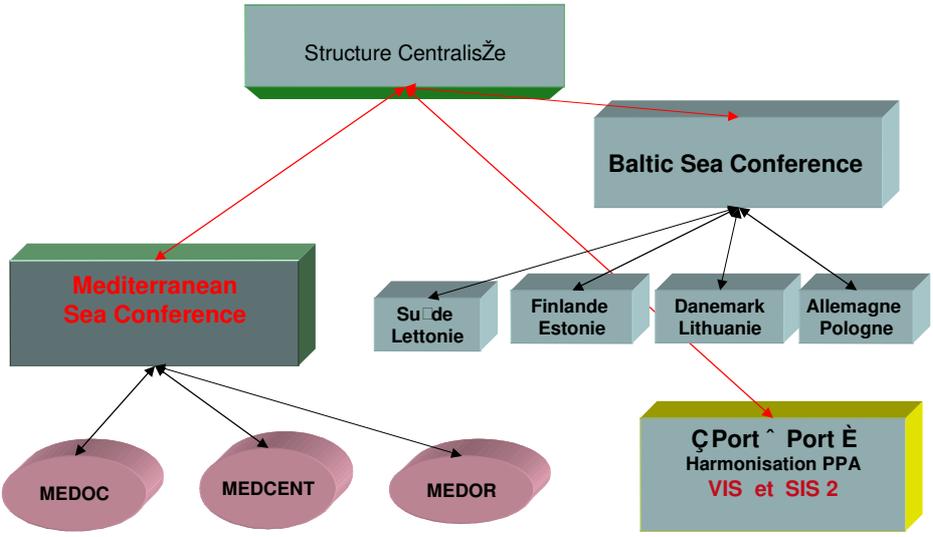
<sup>29</sup> If the Member States confer on Europe the task of implementing a common migration policy (visa policy, asylum and migration policy), this will be the natural structure to take responsibility for it.

The task of this ad hoc structure is to prepare and implement the integrated management of external borders, and to coordinate operational activities. Its key department is **the CIRAM centre**. Either (preferably) alongside this centre, or within it, a monitoring centre for migration is in charge of the necessary statistical apparatus to monitor migration flows.

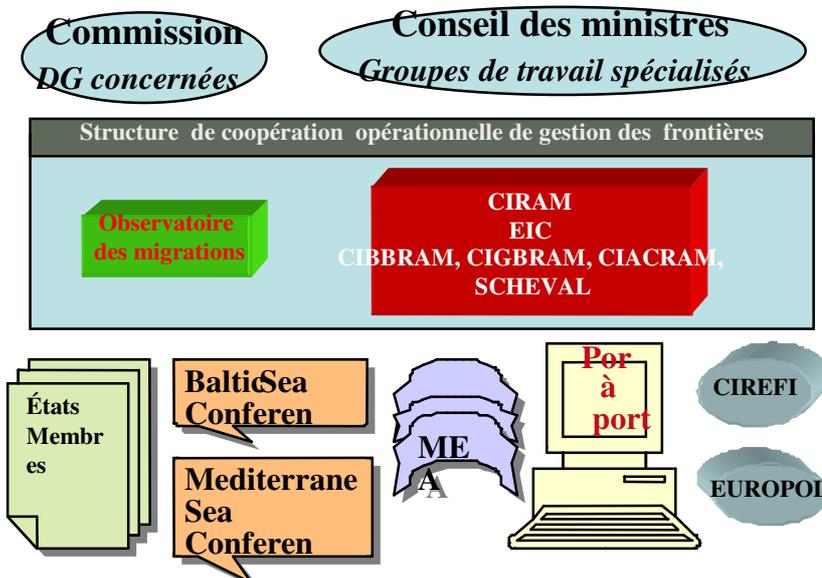
### Formalisation fonctionnelle des filières de l'immigration illégale par voie maritime



### Le schéma d'organisation du contrôle des frontières maritimes



# Le schéma du contrôle intégré des frontières



CIRAM's tasks is to evaluate the threat and the risk analysis for all external borders. It comprises four divisions:

- A *steering body* in charge of the general coordination to consolidate all the immigration channels and routes, draw up a map of migration flows and provide the migration office with any information that could be used to develop visa, migration and border control policy, and draw up the general procedures and methods applicable to all types of border.
- A *division responsible for risk analysis* divided into three sections by type of border, **CIBBRAM** (*Common Integrated Blue Border Risk Analysis Model*) for **sea borders**, **CIACRAM** (*Common Integrated Authorised Crossing Point Risk Analysis Model*) for **ACPs** at airports, land borders and **ports**, and **CIGBRAM** (*Common Integrated Green Border Risk Analysis Model*) for the land border. Each section implements the directives, procedures and methods decreed by the coordination centre, but deals with the problems specific to each type of border.
- An *information centre*, the **EIC** (*European Intelligence Center*): via collaboration with EUROPOL and the network of Member States' ILOs in post abroad, it evaluates the risk of criminal undertakings and provides the necessary information to plan border control and surveillance operations, particularly operations tracking random routes and detecting upstream movements in the source countries. As far as the identification of suspect ships is

concerned, the EIC, in liaison with the economic players in the maritime sector, could give all the Member States access to the EISICS database and to other information on risk.

→ *An evaluation and audit service, SCHEVAL (hard control)* to audit the implementation of Schengen policy, including the action programmes policy decided on by CIRAM. This service extends the model and the powers of the Schengen evaluation group. For the Union's external border control to be credible, it will, in future, require greater homogeneity and rigour based on a professional, permanent, independent inspection and control capacity. The *SCHEVAL* service is made up of a body of a dozen high-level independent inspectors (auditors). The evaluation process, modernised with a view to more effective controls, uses adversarial procedures.

The CIBBRAM section is the coordination tool for all sea border control and surveillance activities (except ACP): evaluation of the specific threat to sea borders, centralisation of specifically maritime information, notably by drawing up of lists of suspect ships (stowaways, random routes and focal routes), risk analysis and monitoring of sea routes in permanent liaison with the services responsible for risk analysis in the first-line countries (Spain, Italy, Greece) which are responsible for the regional management of flows entering the Mediterranean, putting in place of common methods and procedures, assistance to joint operations carried out by a Member State on the *Ulysses and Triton* model and drawing up of assessments of these operations.

## **B2 - 2 A policy coordinated with the other aspects of sea border security**

The integrated management of borders creates an area of shared responsibility: the control of migration flows by sea, with an overview of the security of approaches to Europe covering surveillance of trafficking in illicit goods, security of port areas, control of maritime fisheries and safety (European Maritime Safety Agency – EMSA). These two integrated entities remain distinct, even though they partly share the two functions of maritime surveillance and risk analysis. The Union will consequently have to consider coordinating them.

Port and airport security, notably the commitments made at the IMO (*International Ship and Port Facility System - ISPS*) and the provisions imposed by the United States and implemented by the *Homeland Security Department*, will have an impact on the port-to-port route, though this will not undermine the principles and organisation proposed for integrated border management.

Equally, the links between different types of trafficking (cigarettes, drugs, trafficking in human beings, arms, terrorism), notably as a result of possible involvement by the same transnational criminal organisations, open the possibility of the coordination of all issues relating to the internal security of the Community area (cf. reorganisation in the United States into the *Homeland Security Department* ).

### **B3 - The heart of the matter: organising Europe's sea borders**

The management of Europe's sea borders is organised in one central body and two regional entities (Annex B.2):

- *The CIRAM centre* centralises the functions of assessment of the threat, management of information and risk analysis at European level. Through the CIBBRAM section, it coordinates the bodies responsible for risk analysis in each front-line country in the Mediterranean (Spain, Italy, Greece). Through the CIACRAM section, it provides integrated management for the "port-to-port" route in order to apply the standards and procedures laid down by the Schengen Agreement and applicable in all ACPs.
- *The Baltic Sea Conference (BSC)*, which coordinates with the CIRAM centre on questions of migration.
- *The Mediterranean Sea Conference (MSC)*, yet to be created, to deal with the biggest illegal immigration flows by sea in Europe, via a "North-South" type partnership between the coastal states. Its remit would go beyond the strict limits of illegal immigration by sea to deal, like the BSC, with all problems of safety and security in the Mediterranean basin.

The following proposals concern the Mediterranean Sea Conference (MSC) and the "port-to-port" route.

#### **B3 - 1 Setting up the Mediterranean Sea Conference (MSC) (Annex B.3)**

The Mediterranean Sea Conference (MSC) is a partnership, under the aegis of the EU, between the coastal states of the Mediterranean contact zone. The overall policy aim of this partnership is North-South cooperation in all fields, including economic cooperation: the *MEDA* programme is the standard instrument for European assistance, one of the components of which is cooperation on legal and illegal immigration control. If bilateral relations between a front-line Member State and the country opposite it on the south side (Spain - Morocco,

France - Algeria, Italy - Libya, Greece - Turkey) do not lead to effective cooperation, the institutional presence of the EU can offer powerful resources. The immigration aspect is currently a key feature of the proposed partnership mission, even though the structure clearly makes it possible to address any problem of security, safety and the environment in the Mediterranean Sea area and to take up various issues initiated by the current Euro-Mediterranean dialogue. The specific position of Turkey should be noted: it is an official candidate for accession but apparently it is an insufficiently cooperative transit country in the fight against illegal immigration by sea, and it cannot yet be described as safe in terms of political asylum. Some serious work needs to be done with Turkey for it to fully play the role of buffer state before one day potentially becoming a member and manager of the external border.

The centralised level of the MSC covers both the assistance programmes run by the European Union and the main tasks coordinated by CIRAM:

- readmission agreements to transit countries and source countries,
- aid to transit countries for the management of illegals from the source countries,
- evaluation of the threat, risk analysis in front-line countries.

All legal proposals which could halt or prevent illegal immigration by sea or modify the approach to action at sea to pick up illegal immigrants are being debated and implemented. They are listed in a paragraph below. The MSC could also look at agreements on legal immigration, notably the management of immigration quotas and visa policy.

The MSC has a permanent secretariat at European Union level and a rotating annual presidency between the partner states. It draws up the action programmes, as does the BSC Task Force, for the sake of efficiency, which are then run by a partner country. Lastly it draws up an annual report on its action in coordination with the CIBBRAM (evaluation of flows, routes, the effectiveness of counter-measures).

In the Baltic Sea, the partnership between coastal countries within the BSC framework is fully operational (cf. A3 – 2.2.2). This is far from being the case in the Mediterranean. The southern partners (except possibly Turkey) are not likely to join the European Union at any point as Poland and the Baltic states are. The result is that intervention by the European Union is essential in order to neutralise as far as possible the sensitivities which sometimes characterise the delicate North-South bilateral relations. MEDA-type economic proposals are therefore at the heart of the successful functioning of the MSC.

Three principles should apply to the way interventions at sea to combat illegal immigration are carried out:

- **Decentralisation of surveillance and intervention**, conferring operational responsibility on the three pilot front-line countries, Spain, Italy and Greece, to manage **focal routes** in each of the three regional basins: the western Mediterranean (MEDOC), the central Mediterranean (MEDCENT) and the eastern Mediterranean (MEDOR).
- **Coordination of actions at sea** by one of these three countries, depending on the basin concerned, using the maritime air resources of the front-line and second-line Member States, in operations relating to the **random route** (arrangements for devolving operational *hand-over* type responsibilities (to avoid pointless investment in setting up a single centre for the whole of the Mediterranean) as part of large-scale maritime operations).
- **Coordination of information** led by the EIC. In particular the work of police attachés and liaison officers on migration from the Member States to the transit countries must be coordinated and possibly rationalised, with the Member State that is best placed locally being given a mandate to represent all the European States. The information may also come from port managers and the economic players in the maritime sector.

### **B3 - 2 Managing the port-to-port route in accordance with the principles and standards applicable for Schengen area ACPs (Annex B.4)**

The priority objective is to apply the 100% control provided by the agreement for Schengen area ACPs to port ACPs dealing with passengers and vehicles arriving by ferry from third countries. This objective is particularly demanding for the Mediterranean Member States. At the same time, care must be taken not to weigh economic players down with excessive or anti-commercial constraints. While cooperation by these players, which can generally be taken as read, is important, it cannot replace the responsibilities of the States and their departments responsible for border controls.

This control must be rigorously coordinated with a common visa policy, systematic checks on travel documents and their validation, and systematic use of biometric techniques. The decision taken at the Thessaloniki summit to develop the Visa Information System should make it possible to achieve this objective.

Warnings and collection of fines imposed on carriers in accordance with the carrier's liability directive should be more systematic and part of the revenue could be pooled for the technical improvement of controls.

The flow of stowaways on merchant ships, although minor compared to the preceding flow, can be controlled by the generalised use and systematic application of EISICS and ZUIS practices from the ports in the northern European Member States. This objective must dovetail with the need to be in harmony with the very short-term impact of the new CSI, CTPAT and ISPS coded provisions in all the EU's ports.

Each State will, it is true, have to apply these new standards and ensure that the economic players in the maritime sector contribute as appropriate. It is proposed below (cf. B.5.2) that the ferry companies carry out more extensive pre-boarding checks on their extra-Community lines and transmit personal data allowing an advance pre-check by the services in charge of border control.

Each State could also consider what practical arrangements there should be to deal with the discovery of stowaways which would avoid fears of immobilisation of the boat and a disturbance of commercial operations, and would thus allow more spontaneous declarations by the captains and shipowners.

### **B3 - 3 Supporting and reinforcing physical border controls on an upstream "virtual border" for the operational management of the three types of route**

Concept of *virtual border* developed by the UK in the Channel/North Sea, which consists of shifting the initial border controls to the ports where the flows originate from: Calais, Dunkirk, Zeebrugge, using equipment and personnel from the UK. The same principle is implemented in transatlantic links by sending the American authorities lists of passengers and, in the future, a copy of their travel document.

In the three types of route, control of the physical border should be reinforced at a "virtual border" upstream, by bringing control and prevention actions forward in the arc between the countries of transit or depart, principally those on the eastern and southern coasts of the Mediterranean.<sup>30</sup>

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<sup>30</sup> "The arc of countries in the first circle", as stated by Mr Javier Solana in his common security doctrine.

- port-to-port route: as the British immigration services do at Calais, shift equipment and checks to the ports of embarkation in the Maghreb,
- focal route: put together a comprehensive system in three layers:
  - encouraging checks by the countries of embarkation on land, on the coastlines and in their ports,
  - taking action on vessels, as close as possible to the coasts of embarkation, with patrols authorised by the European Union,
  - intervening on vessels which have managed to get past these first obstacles, close to or on the coasts of embarkation, using SIVE-type surveillance systems in line with the rules on rescue at sea,
- random route: put together a four-layer system:
  - by providing information (EIC, EUROPOL, ILOs, list of suspect ships) in order to detect the planning of operations of this type at the earliest possible stage,
  - by intervening with the countries of departure, in order to encourage them to intervene on their coasts and in their ports to prevent these operations from starting,
  - by tracking or patrols (transit countries, front-line countries, EU patrols) with the aim of taking over this type of ship,
  - by maritime surveillance with SIVE-type systems where they exist.

The results expected from interventions at sea on focal routes and random routes are apparently limited. If they are defined, as we propose, in terms of humanitarian intervention (saving of vessels in actual or potential distress), it becomes clear that these concerns are not those of the smugglers and the transnational criminal organisations, which have no compunction in threatening to imperil or actually imperilling the lives of their passengers at sea. Thus intervention on the coasts of the countries of embarkation are preferable to rescue operations at sea.

## **B4 - Legal initiatives to combat illegal immigration by sea (Annex B.5)**

Details of the legal proposals may be found in Annex B.5. They are grouped according to the three types of law involved (international law, Community law and contract law).

### **B4 - 1 International law**

#### **B4 - 1 - 1 Enforce the law of the sea**

by forcing flag States to fulfil their obligations, particularly within their territorial waters, and ensure effective control of the ships that fly their flag and are on their national registers.

- Maritime law should be enforced to tackle focal routes. The States of departure must be made to take responsibility for law enforcement in the case of vessels sailing from their coast. Whatever its size, a ship setting sail from the recognised coast of a State must fly the flag of its country of registration, if it is a foreign vessel, or of the coastal State itself. Compliance with international shipping rules on flags is the basis of proper enforcement of the various provisions on vessel safety and the protection of human life at sea. The flag State is responsible for the seaworthiness of the ship. An unseaworthy vessel cannot put to sea without endangering its crew, the passengers, the marine environment and other vessels. It must be prohibited from putting to sea by the authorities of the flag country. However, the criteria of unseaworthiness should be classified according to whether they are the responsibility of the flag State or the owner. It is essential that a direct causal link can be established between the sub-standard condition of the vessel and the lack of effective control by the flag State. A vessel without navigation lights, for example, is not fit to sail. The State is responsible if the ship that is flying its flag is not equipped with lights, but not if the lights are defective (responsibility of the owner) or are not turned on (responsibility of the master).

There is a need for measures. Flag States should be obliged by law to ensure that vessels flying their flag, whatever their size, comply with international rules of navigation. This applies both on the high seas and in the territorial waters, particularly where these are international shipping routes (Canary Islands Channel, Straits of Gibraltar, Sicilian Channel, Adriatic Sea, Aegean Sea).

- No cases have ever been brought in an international court of justice against a flag State (or port State) concerning compliance with its obligations. There is no case law dealing with the pain and suffering of the State that suffers the consequences of the negligence of the flag State.

This is hardly surprising. There are numerous reasons why no legal action is taken, not least the desire to maintain normal diplomatic and trade relations with the countries concerned. However, the enforcement of the rules of international law could be a practical tool in negotiations with such States. The measures to be taken are in line with those adopted by the Council of Ministers to tackle hydrocarbon pollution at sea. An explicit international procedure for bringing to justice flag States that are negligent in monitoring the seaworthiness of their vessels is needed to complement the Montego Bay Convention. The Commission should suggest that the Schengen states follow this approach and explicitly spell out the responsibility of the flag State under maritime law.

**B4 - 1 - 2 Use the provisions of the SOLAS convention** to the advantage of the European Union, in order to legitimise emergency intervention by the European Union to ensure the safety of passengers aboard unseaworthy ships, who have the same status as those shipwrecked in international navigation channels.

The principle of the duty to render assistance to persons in danger at sea can be applied to focal routes. Under the SOLAS Convention, the master of any ship has a duty to change course to respond to a distress call. IMO Resolution A 867 of 27 November 1997 called on governments "to cooperate in the interests of safety of life at sea by increasing their efforts to suppress and prevent unsafe practices associated with the trafficking or transport of migrants by sea and by ensuring that effective and prompt action is taken against such unsafe practices."

The measures to implement this Resolution, set out in the IMO's Maritime Safety Committee circular 896 of 1998, so far exist only on paper. They are interim measures and they are not mandatory.

- States may operate patrols to intercept vessels or carry out rescues at sea (along the lines of the rescue tugs in the busy coastal shipping lanes). These are civilian security operations, not police law enforcement operations. Their purpose is primarily

preventive, to protect human life at sea by taking passengers off overloaded boats and taking them back to where they came from. Such vessels are a danger both to their passengers and to ships legally exercising their right of free movement at sea. These provisions should be applied to vessels operated by traffickers in illegal migrants that are unseaworthy and for this reason regarded as in a state of distress.

Marine rescue patrols, consisting of vessels flying the flag of European Union countries, should therefore be introduced on European navigation routes and in their vicinity. The right to intervene could be exercised under the terms of navigation in accordance with the principle of "innocent passage or transit" both close to the coast and in the territorial waters of those countries in whose waters these navigation routes are located. These provisions reinforce the concept of "particularly vulnerable maritime area", applied in this case not to marine pollution but to the protection of the safety of illegal immigrants at sea. This measure requires, at the least, the tacit acquiescence of the country of departure. It would be for only a limited duration, until it had had a deterrent effect.

These recommendations could be put into effect quickly because they could be introduced without an amendment to international law, which invariably takes a long time to negotiate, sign and ratify.

## **B4 - 2 Amend international law**

### **B4 - 2 - 1 Amend the law of the sea**

by explicitly spelling out the responsibility of the flag State

If existing legislation is to be enforced, cases must be brought and damages sought by States that are victims of illegal immigration against States whose civilian vessels use their territorial sea for non-peaceful purposes.<sup>31</sup> The point is to supplement international law to ensure its effectiveness, bearing in mind that any amendment to international maritime law can only be achieved in the long term, in so far as it relates to the law of the sea as such: amendments would have to be proposed as part of the revision of the Montego Bay Convention in 2004,

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<sup>31</sup> Article 21(4) of the Convention on the Law of the Sea: "*Foreign ships exercising the right of innocent passage through the territorial sea shall comply with all ... generally accepted international regulations relating to the prevention of collisions at sea.*" This is not the case of vessels transporting illegal immigrants.

the amendments proposed by the European Union would have to be endorsed by the revision conference, the new texts would have to be ratified and the date of entry into force would depend on the terms of ratification.<sup>32</sup>

As things stand, the law represents a threat rather than an operational tool, because of the lack of sanctions other than those that might exist in a necessarily hypothetical future scenario where the courts did enforce the responsibility of the flag State. In the case of pollution we can already see the need for an international procedure for challenging flag States that neglect their duty to control vessels' seaworthiness. This is equally necessary in the case of vessels that endanger the life of their passengers and the safety of navigation, as is the case with ships operated by traffickers of illegal immigrants that are unseaworthy.

The law of the sea should therefore formally spell out the responsibility of the State that agrees to register sub-standard ships or allows them to sail from its coast and does not carry out any checks.<sup>33</sup> What is needed are additional collective sanctions that are sufficiently deterrent<sup>34</sup> when a direct causal link has been established between the vessel's sub-standard condition and the lack of effective control by the flag State.

#### **B4 - 2 - 2 Extend the principle of freedom of navigation to unmanned vehicles operated at sea**

The aim of this measure is to deploy semi-permanent surveillance stations<sup>35</sup> at sea or in the airspace above coasts at risk, in order to improve maritime surveillance by developing an early warning system. The UN Montego Bay Convention on the Law of the Sea, which dates from 1982 when unmanned vehicles did not exist, contains the following provisions in Articles 92 and 94 of its section on the high seas:

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<sup>32</sup> It took three UN conferences on the law of the sea between 1958 and 1982 before the Convention was signed on 10 December 1982 in Montego Bay (Jamaica). The Convention formally entered into force on 16 November 1994, after its ratification by 60 States. The EU countries ratified the Convention after its entry into force.

<sup>33</sup> At the very least, under Article 25(1) of the Montego Bay Convention "The coastal State may take the necessary steps in its territorial sea to prevent passage which is not innocent."

<sup>34</sup> In addition to financial sanctions, which are rarely effective against States, collective sanctions might include a partial or total boycott of a State's flag in the ports of other countries in the international community.

<sup>35</sup> Detection and identification station along the lines of the integrated external surveillance system (SIVE), but at sea or over the sea. The *US Coast Guard's* deepwater programme is partly based on the use of unmanned vehicles.

"Ships shall sail under the flag of one State only and ... shall be subject to its exclusive jurisdiction on the high seas. ... Every State shall ... assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew ... Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to ... the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments. ... Such measures shall include those necessary to ensure ... that each ship is in the charge of a master and officers who possess appropriate qualifications ... and that the crew is appropriate in qualification and numbers for the type, size, machinery and equipment of the ship."

- Under current law, a ship that is not in the charge of a master and does not have a sufficiently large crew cannot fly the flag of a State party to the Convention. Yet a ship that has no crew because it is an unmanned vessel cannot be regarded as a pirate ship. Article 103 defines as a pirate ship one that "is intended by the persons in dominant control to be used for the purpose of committing one of the acts referred to in Article 101," and in the case of a remote-controlled vessel there is nobody on board..
- The legal advisor Christophe Écoche-Duval, writing in *Le droit maritime français* – n° 629, September 2002, points out that "Since 1992 the SOLAS Convention has required every ship of over 500 GRT to carry on board a document specifying the size of the crew that is prescribed by the flag State". This implicitly creates a way of bringing unmanned vessels within the law. They would carry on board, in a box, a sealed document stating that the flag State requires a crew of zero on this vessel. However, this legalistic solution is inadequate.
- Like the solo yachtsman, the remote-controlled vessel is in a legal vacuum. Will the sort of derogations from the rules of international law that are allowed for sporting events or military activities be applied to coastal surveillance by a State-operated UV? The answer is probably no. Regulation 4(b) of Chapter I of the SOLAS Convention, which deals with exemptions, allows a State to "exempt any ship which embodies features of a novel kind from any of the provisions of Chapters II-1, II-2, III and IV of these Regulations the application of which might seriously impede research into the development of such features and their incorporation in ships engaged on international voyages". Regulation 13 of Chapter 5, however, is not included in the authorised exemptions, and it requires States to "undertake, each for its national ships, to

maintain, or, if it is necessary, to adopt, measures for the purpose of ensuring that, from the point of view of safety of life at sea, all ships shall be sufficiently and efficiently manned."

The use of remote-controlled ships must therefore be recognised either by an explicit addition to the Convention on the Law of the Sea or, at the very least, by an *ad hoc* extension of the exemptions provided for in the SOLAS Convention.

**B4 - 2 - 3 Harmonise the conditions for intervention under the Palermo Protocol with those of the Vienna Convention (Cf. Annex on questions of international law)**

- The Palermo Protocol contains three articles specifically on illegal trafficking of migrants by sea. The aim is essentially to widen the scope of the mutual aid and cooperation measures that already exist in the area of combating drug trafficking under Article 17 of the Vienna Convention of 20 December 1988 against illicit traffic in narcotic drugs and psychotropic substances. Article 8 of the Palermo Protocol allows a third State to take steps with regard to a ship suspected of smuggling migrants, either at the request of the flag State or after obtaining the agreement of the flag State, given either explicitly or implicitly. It is not intended as a cooperation instrument and does not provide for coercive powers to be granted to the signatory States. It must therefore be supplemented by the provisions of Article 9 of the Vienna Convention (Cf. Annex on questions of international law).

The Palermo Protocol states that the offences it defines should be the subject of preventive and repressive measures in accordance with the law of the sea. It is therefore essential, in order to make it effective, to amend Article 108 of the Montego Bay Convention on the Law of the Sea so as to link the fight against illegal immigration with the fight against drug trafficking.

An essential pre-requisite for such changes is the entry into force of the Palermo Protocol. To date, 23 States have deposited their instruments of ratification. They include Spain and France for the EU. 40 ratifications are needed for the Protocol to enter into force. The Commission should urge the 25 States of the future EU and, particularly, the 15 Schengen Member States, to ratify the Convention without delay.

## **B4 - 3 Supplement European law**

### **B4 - 3 - 1 Create a set of European rules for Member States' ships: does territoriality (*ius soli*) apply to ships or not?**

The duty to provide assistance to ships in distress is a general principle of law. It is set out in Regulation 10 of Chapter 5 of the SOLAS Convention. Those shipwrecked must be taken to a place of safety. This may be a port or coastal shelter like a protected bay on the coast of the country of departure of those shipwrecked. There is a need for clarification of the law applying to illegal migrants picked up at sea - outside the port or inland water - on a ship, whether publicly owned or chartered by a Member State for carrying out civilian or military duties or fitted out for commercial purposes, fisheries or pleasure. Formal recognition must be given to the legal principle that the deck of a ship flying the flag of a Member State is not national territory and, consequently, the law applicable is not that of the territory of the flag State. A shipwrecked person who is picked up on the high seas or in the territorial waters of the country of departure or destination cannot claim to have crossed the frontier into the territory of the country whose flag the rescue ship is flying.

The proposed *Euros* registration system, an initiative by the European Commission to promote fair competition between the Member States, put forward in 1989 but never adopted by the Member States, effectively excluded the idea of European ships having national territoriality. Rulings by the US Supreme Court have formally confirmed the extraterritoriality of ships flying the US flag. A European directive should lay down the conditions for including the principle of the extraterritoriality of ships in the national laws of the Member States that do not apply it.<sup>36</sup> In the maritime countries of northern Europe the *dry foot, wet foot* policy means that while a person is on board a ship flying the flag of the country he or she is not on the territory of that country. This makes it possible for the ships of one Member State to operate on behalf of another Member State in that State's territorial waters, and at the same time allows shipwrecked immigrants to be returned directly to the country of departure or sent to a host country without crossing a European maritime frontier.

This provision should also mean that on a ship that is in the internal (or port) waters of a European country, whatever the flag it is flying, the law applicable will not be the one of the territory of the port State (Cf. legal protection and the Yangtze gunboat). Thus stowaways can be kept on board the ship that brought them into a European port so that the same ship can return them to their country of origin under the responsibility of its master. This provision should also apply to those who voluntarily place themselves in a state of distress and are picked up at sea.

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<sup>36</sup> The differences in legal interpretations found in the Member States make it currently impossible to pool their naval resources to carry out joint operations.

### **B4 - 3 - 2 Harmonise criminal procedures and procedures for identifying illegal migrants** undergoing questioning in the Member States

It seems unrealistic to suggest harmonising criminal procedures at this point. There are numerous obstacles to such harmonisation, although the criminal law on illegal immigration is being harmonised throughout the Community. Harmonising procedural law would impinge on national sovereignty.

However, it is essential to create a common European maritime area for this before long. A common criminal procedure is essential to ensure effective pooling of resources and joint use of Community means and intervention at sea. The investigation following the commission of a criminal offence at sea would then be subject to the same procedures, thus allowing ships from one Member State to operate on behalf of another Member State, if necessary in waters over which it has jurisdiction. This measure complements the previous one on the territoriality of the ship.

This is a long-term proposal, but there is nothing to prevent immediate action being taken to harmonise the criminal penalties for traffickers. The reasons for doing so, put forward by Spain and Italy in particular, are twofold: trafficking in illegal immigrants should not be less severely punished than other types of trafficking (drugs, cigarettes) using the same means, and if trafficking is inadequately punished in certain Member States, these will become a magnet for traffickers.

It is also essential to consolidate Community rules on identifying illegal immigrants in EURODAC, by making it into a more permanent database in the interests of measuring and pinpointing migratory movements, carrying out risk analyses, improving controls and the allocation of resources for such controls and closing off the routes. Visa applicants should also be identified in an equally rigorous way (VIS proposal confirmed in Thessaloniki). Biometric identification procedures exist, provided uniform legal bases are available in all the Member States.

#### **B4 - 4 Create a "Mediterranean law"**

##### **B4 - 4 - 1 Adapt the principles of the Aruba Agreement (Caribbean and drugs) to the Mediterranean and migration:**

A Mediterranean agreement modelled on the Aruba Agreement would be helpful in the area of illegal immigration by sea. It could not be based solely on the current provisions of the Palermo Protocol. The first step is therefore to improve that Convention (see above) so that it can serve as a basis for judicial cooperation at sea in the area of combating the trafficking of illegal migrants.

Negotiations should start immediately within the Mediterranean Sea Conference.

#### **B4 - 5 Supplement contract law**

##### **B4 - 5 - 1 Transform readmission agreements between Member States and source or transit countries into Europe-wide agreements and conclude admission agreements with host countries for migrants claiming to be stateless**

A "fabric" of readmission agreements should be woven between the Schengen area and the source and transit countries, working on the principle of the "most cooperative nation", i.e. all EU countries should be able to benefit from the most favourable readmission facilities existing in bilateral agreements.

All types of migration are affected by these agreements, which at the moment are reached bilaterally by the States most heavily affected. The European Union should extend these readmission agreements to the Schengen area as a whole and make them more effective. It should also encourage the conclusion of readmission agreements between States of embarkation, which are merely transit States, and the source States.

These provisions do not, however, deal with the repatriation of immigrants intercepted at the maritime frontier (focal and random routes) who, when interviewed by the authorities, claim to be stateless or falsely claim the nationality of a country for which the right of asylum is granted. Nor do they solve situations such as the *Tampa* case, where a commercial vessel, after fulfilling its duty to render assistance to those in distress, must be allowed to dock in a port where the migrants will be treated either as asylum-seekers or as illegal immigrants.

At Thessaloniki in June 2003 the British Government suggested setting up holding centres in transit countries, to which illegal immigrants would be sent while their cases were being examined. This proposal, which draws on American experience, is explicitly based on intercepting vessels at sea before they reach Europe. But immigrants can only be found to have entered the territory illegally once they have actually landed.

Instead of following this approach, therefore, it is recommended that a two-tier system be introduced, using reception areas in third countries. In an initial stage the case of illegal immigrants without any stated nationality or giving a false nationality will be examined on land in Europe, to assess possible refugee status. In a second stage, those who are not granted asylum will be issued with a residence permit for a host country. Agreements should therefore be negotiated with volunteer host countries (along the lines of the agreement between the US and Jamaica) for the readmission of illegal immigrants who declare no nationality or a false nationality. These agreements would be accompanied by a sizeable financial contribution, both to help these countries to cater for the migrants with the help of the UNHCR and national NGOs providing assistance to foreigners, and to finance the ultimate repatriation of the migrants to their country of origin once they remember what their nationality is.

**B5 - No organisational, operational or legal proposal can be implemented unless technical systems for controlling and preventing illegal immigration by sea are deployed at European level (Annex B.6)**

The first part of Annex B.6 presents the different sorts of systems architecture, by type of migration route, grouped together in a proposal for a global architecture to manage maritime frontiers. The second part looks ahead to the likely technological developments and identifies the key points of future systems to be set up. The results of the technological survey are presented in the third part of the Annex.

It is hardly necessary to point out that the public officials employed on the surveillance and control of maritime frontiers or the checks on ferry passengers at ACPs are performing difficult and particularly thankless tasks. They must be motivated in their work by equipping them with high-quality and appropriate tools and by minimising tedious and repetitive activities and replacing them with worthwhile ones. The motivation of the agents of the Guardia Civil, for example, attests to the operational quality of the SIVE integrated external surveillance system and its value. This premise underlies the thinking behind the following proposals.

It is important to remember that in the case of port-to-port routes, all the control systems and equipment are designed to identify individuals and target checks, whereas with focal and random routes the systems are designed to detect and identify rafts, ships and other craft. The first category are present at all ACPs and European frontiers, while the second are specific to certain conditions and depend on the extent of the maritime frontier and the geographical situation of the coastlines in relation to source countries and countries of embarkation.

## **B5 - 1 Maritime surveillance systems**

### **B5 - 1 - 1 Background**

There is a growing need for surveillance of all kinds of vessels in European coastal waters: the nature of the surveillance required (intensity, level of detail, permanence) varies according to the nature of the targets under observation, which may be fishing boats, ships suspected of illegal trafficking, vessels that are potentially dangerous, etc. Certain classes of vessels are already equipped with identification systems (AIS - *Automatic Identification System* - for ships of over 500 GRT, VMS - *Vessel Monitoring System* - for Community controls on fishing boats over 24m, which is soon to be extended to boats of 16m or more). This equipment provides data for the specialised surveillance systems. It helps to meet the demand for comprehensive surveillance in the areas where such systems exist.

It would now be technically feasible to combine all the available data (all types of information picked up by every kind of fixed and mobile sensor) in a given area, in order to establish a centralised overview of the area, were this felt to be necessary. The VTMISS (*Vessel Traffic Monitoring Information System*) used by Finland in the Gulf of Finland is one such system. The department responsible for the border controls is the lead agency for establishing the overall situation in the Gulf, which is relayed to other agencies which intervene using their own resources once they have carried out a risk analysis for particular maritime targets.

The VTMISS model is exemplary, based as it is on two fundamental principles: establishment of a common reference situation and optimal cooperation between the agencies responsible for action at sea.

## B5 - 1 - 2 Illegal immigration by sea

Action to prevent and combat illegal immigration by sea should be designed against this background.

- *Focal routes*: the surveillance required is highly intensive, detailed and semi-permanent in virtually constant areas. Each of the three zones of the Mediterranean should have their own surveillance systems to tackle focal routes. The local geography and the parameters of the targets will dictate the main characteristics of the type of system to be installed in a sensitive area. The electromagnetic and optronic parameters will be specially adapted to this type of mission.

The Integrated External Surveillance System (SIVE) is a prime example of a custom-built system that has proved itself effective and well-suited to the conditions in the Straits of Gibraltar. Information is gathered in real time (radar detection and optronic identification) about vessels leaving the Moroccan coast, allowing immediate action to be targeted at the "*pateras*" (flat-bottomed launches used for the crossing).

SIVE-type systems, tailored to local conditions, should be installed in the three other key areas:

- Canary Islands channel<sup>37</sup> for the southern contact zone between Spain and Morocco,
- Sicilian Channel, Pantelleria, Pelagian islands (Lampedusa), Gulf of Sirte, for the contact zone between Italy, Tunisia and Libya,
- Aegean Sea and the Dodecanese, for the contact zone between Greece and Turkey.

Feasibility studies should be started as soon as possible (they take four months to carry out), before the systems are set up (12 months for the first version). These specific systems for focal routes will initially operate autonomously. They could subsequently be incorporated into regional systems along the lines of the VTMIS

- *Random routes and suspect ships*: the surveillance should be selective and moderately detailed and will involve the sort of tracking carried out by naval vessels. It should cover large areas.

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<sup>37</sup> The SIVE is starting to be deployed: in June 2003 equipment was installed on Lanzarote and Fuerteventura.

The aim would be to carry out classic tracking and interception operations on the basis of information from the EIC. The initial detection is essential: it may be the result of a specific piece of operational intelligence or be obtained from sifting data or an assessment of the threat by the risk analysis unit of the agency responsible for the region, which would have real-time data on classes of ships equipped with AIS or VMS. The State responsible for the zone would take the decision to intervene and direct operations, which might involve aircraft and ships from several Member States.

## **B5 - 2 Information systems**

The purpose of the information systems is to collect, centralise, process and circulate information about the threat (transnational criminal organisations), the ships (the ships themselves, the flags, the owners, the charterers) and the individuals (foreign nationals with visas, asylum-seekers, legal and illegal immigrants).

The vessel monitoring systems and risk analysis systems are of relevance to illegal immigration by sea. Likewise, the data control systems of the Schengen area - SIS, VISION and others in the future relating to migrants - are relevant from the point of view of port-to-port migration.

### **B5 - 2 - 1 Centralised systems: CIRAM and other bodies**

The EIC should be the coordination centre for the various databases on ships, with a view to producing lists of suspect vessels. It will assist EUROPOL in its investigations of international criminal organisations. Working with the centres analysing the risks by type of frontier and the networks of immigration liaison officers, it will supply the CIRAM centres with the means to predict shifts in migratory flows, in conjunction with the countries of embarkation and the new types of counter-measures to be introduced.

The Early Warning System is a key element in these centralised systems. An absolute priority for this network must be to switch to intranet technologies at the earliest possible opportunity. It could use the Commission's secure ICONET network.

## **B5 - 2 - 2 Regional systems: in ports**

- Systems monitoring ships arriving in ports: the existing EISICS-type communication systems should be extended to link all ports of the Member States, grouped into regional sub-systems. (Here, too, the switch to intranet technologies is a priority.) ZUIS-type expert systems should be extended to all ports. This program, which is connected to the NSIS (*Dutch Schengen Information System*), is an expert risk analysis system which can be used to identify high-risk ships<sup>38</sup> (all types of risk: sub-standard vessels, illegal trafficking, terrorism, illegal immigration). The databases operated by administrative agencies (e.g. EQUASIS for the Paris Memorandum of Understanding on Port State Control) and economic operators (*Lloyd's Register* or the database of the shipbrokers Barry Rogliano Salles, for example) are also extremely useful at this level.
- Equipment and systems for checking vehicles and individuals arriving at ACPs in the Schengen area in order to control port-to-port routes. This means:
  - Monitoring vehicles (cars, buses and lorries) using ferries, using the Spanish system of checking in real time the number plates of vehicles embarking and disembarking against anomalies listed on a central European file (stolen vehicles, vehicles said to have been scrapped, etc.)
  - Making it compulsory for States that are party to the agreement to catalogue best practice in the Schengen area.

Firstly, there should be thorough checks on ferry passengers entering the Schengen area, and the same standards should be applied in the south of Europe as in the north, i.e. exhaustive checks should be carried out on the routes Tangier-Algeciras, Algiers-Marseille, etc. at all times of the year.<sup>39</sup> Maritime stations should meet Schengen standards (along the model of Algeciras), and there should be sufficient numbers of frontier police to process ferry passengers reasonably quickly at peak periods.

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<sup>38</sup> The eight criteria used for the weighting are: the ship's flag, the port of registration, the nationality of the crew, high-risk ship (based on the record of its ports of call), the last ports visited before Rotterdam, being engaged in trade on a high-risk route, high-risk consignee (based on the record of incidents with ships used by this consignee) and level of risk of the quay (high or low level of security).

<sup>39</sup> In particular, passports containing visas should be date-stamped.

Various measures could be introduced upstream, in order to assist border officials. Although on-board identity checks seems to be ruled out on practical grounds for the time being, advance electronic notification of passenger lists, of the sort used for air travel to the United States, might be an option. At the check-in, the ferry company would digitally scan passengers' passports and take an electronic picture of their faces. The resulting passenger list would be sent by rapid Internet to the frontier authority of the port of destination, once check-in had closed. The frontier police would use the crossing time to prepare identity checks on landing, and specifically to "greenlist" passengers who pose no problems.

Secondly, the Schengen Information System (containing data on individuals) should be used to coordinate the *Visa Information System* - VIS - and its facilities in ACPs and the information collected by the Member States' immigration liaison officers in the countries of departure or transit. Pooled Community-wide information about illegal immigration by sea should be accessible to all European control and surveillance agencies. The current SIS will form the nucleus. Steps should be taken to upgrade it, in conjunction with the VIS, and to make it more reliable (SIS 2). In deference to concerns about data protection, the centralised data should be confined to what is strictly necessary for its purposes.<sup>40</sup> The computer system will have to have all the essential security features, including logs of incoming and outgoing transactions. There should be a permanent independent audit (possibly by a judicial authority) to check that the information transactions carried out were not used for purposes other than those intended.

### **B5 - 3 New technologies**

Although not strictly speaking a matter of new technologies, the urgent priorities in the first stage must be to promote the adoption of intranet technology by all the parties involved, to introduce biometric technologies on a large scale at ACPs (as provided for in the VIS system) and to promote the VTMIS model.

The *GALILEO* system, dubbed by the press "the European GPS", which is actually a European tool for fleet management, [will be extended] to all types of purpose, from 2008, thus providing "European positions" in the AIS and VMS systems that currently use "American positions".

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<sup>40</sup> Files of biometric data, for example, could be designed which do not contain the subject's name: ID photo and fingerprints where illegal immigrants can be monitored without using names.

Airborne electromagnetic detection systems (of the sort used for SAR) have the advantage that they are all-weather, but they may not provide results sufficiently quickly, given the characteristics of the *pateras* and *scafi* that are being targeted. Without specific feasibility studies it is impossible to say whether this sort of technique is appropriate for these targets.

Research into HF radars has been under way for about fifteen years. The choice and effectiveness of these radars, which are classed as electronic barrier systems, depends primarily on the patterns of movement and size of the targets. Optimisation studies must be carried out into this aspect, with a view to analysing the possibility of installing this kind of radar in SIVE-type surveillance systems designed for wide sea channels.

Finally, there is one particularly promising option in the very short term, which is the use of drones - or UAVs (*Unmanned Air Vehicles*) - to carry a valuable range of electromagnetic and optronic detection equipment for the SIVE-type systems being proposed in the central Mediterranean, the Canary Islands Channel or the Aegean Sea. Studies must be carried out with a view to using this sort of military technology (which is already highly developed) for the first time in civilian applications in the security field in Europe. This equipment is already readily available. USVs (*Unmanned Surface Vehicles*) which would serve as radar and optronic pickets off the coast, on the other hand, are not yet available. This is an area where research is needed into feasibility and cost so that a comparison can be made with the use of naval or UAV patrols.

## C. The European initiative for improving the security of maritime borders

*A wide-ranging European initiative to improve the control of immigration by sea and to prevent the hecatomb of shipwrecked asylum-seekers.*

The proposed initiative is part and parcel of the Member States' current agreed emphasis on Schengen<sup>41</sup> border controls.

This study has identified a certain number of weaknesses. Some of these question the credibility of the overall approach to border control of the Schengen area. The others specifically concern maritime borders.

Some of these flaws arise from an under-estimation of the actual levels of illegal immigration by sea, particularly through port ACPs (especially in France and Spain), others from the more general problem of how to deal with illegal immigrants who are picked up at sea and cannot be sent back across a border, and who are often bogus asylum-seekers. Other failings come from the gaps in existing surveillance systems, particularly along the vast maritime border between Greece and Turkey and in very dangerous channels such as the Canary Island Channel and the Gulf of Sirte, with ships making their way across the Mediterranean with an average of a thousand illegal passengers (Italy and sometimes Greece).

It is a sensitive subject which touches on many issues:

- civil liberties in the various countries involved, and in particular the effectiveness of the right to asylum,
- the extent to which immigration and security policies are linked in each country,
- subsidiarity and the responsibility of each of the Member States to defend the common interests of the Union (holding a maritime border which exists by accident of geography),<sup>42</sup>
- the effectiveness of national measures for the surveillance and control of borders,

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<sup>41</sup> We make no distinction between the area designated by the 15 States parties to the Schengen Agreement and the European Economic Area, to which, for the purposes of immigration, we have added Switzerland, which has the same concerns as its neighbours.

<sup>42</sup> Illegal immigration by sea is not a common problem in Ireland or the Greek islands.

- public opinion which swings between an almost xenophobic disapproval of illegal immigrants and pity for the people who risk their lives in search of their "Eldorado".

However, the issue of illegal immigration also strengthens the sense of belonging to an area with shared interests and a common destiny. National territory is also part of European territory, particularly as regards the free movement of people within the Schengen area and immigration.

The purpose of this initiative is to keep illegal immigration by sea in check by vigorously targeting focal routes and random routes where they exist, while ensuring that mechanisms are in place, in accordance with common undertakings, to monitor entry flows at ports in the Schengen area. It involves simultaneous and consistent implementation of four types of measure relating to the organisation of border controls, legal instruments, operational systems and the use of European public funding.

It should be noted that this initiative includes the measures recommended in Part B above, which are to be implemented at the following five levels: the Member States, cooperation between Member States, the European Union, the Mediterranean basin and the Baltic, and the United Nations.

The proposals below aim to provide a coherent framework for the measures to be taken over the coming 36 months, after which control of illegal immigration by sea will become more integrated and more efficient.

### **C1 - Hold talks with other countries on frontier security**

This means stepping up dialogue with other developed countries with similar problems and with our "new neighbours", who have often vigorously defended the countries of transit and departure.

The current approach to immigration and border control is to hold back on checks which could hinder movement and trade from countries of origin and transit. This is the "virtual border" concept. Such an approach is only possible, of course, between countries which share the same philosophy on civil liberties. We must remember that someone who is escaping with their life from a dictatorship is indeed outside the law, but is also a legitimate refugee who must be given asylum. The status of political refugee which he now merits can only be bestowed on him because he broke the immigration rules.

It is proposed that talks be held between large developed countries, principally the United States, Canada and Europe, to:

- study the movement of people between the main developed countries,<sup>43</sup>
- define future common technical measures<sup>44</sup> to facilitate free movement while improving the exchange of information, the understanding of the various forms of immigration and the level of internal security in countries where free movement is enjoyed,
- define a reception policy for real political refugees.

The European initiative could then be integrated with other initiatives in similar fields, particularly American initiatives, so that common - or at least compatible - rules can be drawn up and implemented rather than Europe having to fall into line with provisions introduced by foreign countries to suit their own needs on border control and internal security. This sort of coordinated approach could be used for the forthcoming review of the *Montego Bay* Convention in 2004, the amendment and ratification of the Palermo Protocol and the drawing up of rules by the IMO (SOLAS), the ILO or the WCO.

Dialogue with our "new neighbours", particularly those in the Mediterranean (principally Morocco, Algeria, Tunisia, Libya and Turkey), on migration by sea, is a priority. It is vital to establish with the country from whose port or shoreline boats transporting illegal passengers might arrive what provisions are to be made for the surveillance of its coastline, how travel documents are checked and what the readmission procedure is. Such cooperation is a crucial obligation: without it, legal action would have to be taken. The general idea is that the more cooperative a country is, the more its ships will be facilitated on entry into European ports.<sup>45</sup>

The dialogue should cover:

- definition of a migration policy (in accordance with the model developed by Tunisia and Italy),
- instruments to implement the latter: quotas, travel documents, readmission agreements,<sup>46</sup>
- classification of countries as "sound" in relation to the reception of immigrants whose nationality cannot be established,
- security measures in the ports of departure.

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<sup>43</sup> The debate on the transmission of information on airline passenger lists for transatlantic flights is an illustration of this.

<sup>44</sup> Such as standard machine-readable passports and visas.

<sup>45</sup> The model to consider is the "container security initiative".

<sup>46</sup> Any illegal immigration is punished by a corresponding reduction in immigration quotas.

The Euro-Mediterranean policy which started in the 1990s opened the way, but it has to be said that progress has mostly been made in technical areas (transport of goods, environment). The emphasis must now be placed more directly on the movement of people, in the light of the fact that the declaration on the "new neighbourhood" adopted at the Thessaloniki summit on 20 June 2003, envisages eventual free movement within Europe and neighbouring countries.

When the dialogue becomes more intense and the European Union's voice clearer and more intelligible, the European initiative can be pursued in line with the four lines set out above.

## **C2 - Organisation**

This flows from the recommendations proposed at points B.1, B.2, B.3 and B.4 above. It involves putting in place bodies to coordinate European policy on illegal immigration and rationalising Community systems.

The proposed system should support rather than replace national provisions, which should be strengthened where necessary. The setting up of a single, general ad-hoc structure for operational cooperation at European level aims to rationalise the existing measures at Commission, Council and Member State level to make them more efficient and coherent, to achieve in the long term a managed European migration policy rather than the passive one we have today.

These measures are inspired by the Convention on the future of Europe, which identified the need to write into the new constitution enhanced instruments for action on immigration, the right to asylum and cooperation between the judicial authorities and the police.

It is proposed :

- to coordinate this initiative with the various Commission departments with responsibility for maritime borders (JAI, TREN, TAXUD, RELEX, FISH), and with EUROPOL, EMSA and the relevant Council working groups (SCIFA and SCIFA+ and CIREFI) (6 months);
- to put in place a structure for cooperation so as to have access to an immigration monitoring centre and a CIRAM risk analysis centre as soon as possible (risk analysis, centralisation of information through connection to current and future operational intelligence tools) networked with the corresponding departments in the countries concerned and with the other partner organisations (EUROPOL, etc.), and to the

*SCHEVAL* service (recruitment and training of a team of independent auditors to audit border crossings and the issuing of visas) (12 months);

- during the second phase, to give it other tasks such as organising a Community EISICS (next 24 months);
- to engage in formal dialogue by setting up the Mediterranean Sea Conference (MSC) to inaugurate a partnership with the countries of departure on the southern shores (12 months).

### **C3 - Law**

The aim is to give greater credibility to European maritime border control policy through a more determined and united approach from Member States when the time comes to improve international legislation in accordance with the recommendations set out at B.5 above.

It is proposed to:

- launch an "Aruba" style process (on illegal immigration ) in the Mediterranean, and to harmonise readmission agreements at European level (24 months) ;
- establish a joint European mandate to amend the principal instruments of international maritime law starting with the Montego Bay Convention and SOLAS(IMO), through the Palermo Protocol, once it has been ratified by all the Member States so that it may enter into force quickly; to establish a Community-level legal status for ships flying the flag of a European country (12 months);
- draw up a Jamaica-United States style accommodation with host countries for the reception of illegal immigrants who declare no nationality or a false nationality (24 months).

### **C4 - Operational matters**

The initiative incorporates the main measures recommended at B.6 above. It aims to use reasonably-priced, currently available technology to ease the flow of legal immigrants at borders while simultaneously carrying out more stringent and targeted controls to identify illegal immigrants. The principle is to aim for 100% security along the coastlines of the Schengen area as well as at the ACPs, in line with the Schengen Agreement. It involves improving surveillance of approaches, streamlining and automating control of entry and exit

points and boosting operational intelligence capabilities through more rapid and reliable circulation of relevant information both on ships and illegal immigrants.

It is proposed to:

- carry out SIVE feasibility studies (Canaries, Sicily, Aegean) (4 months);
- put in place these integrated systems, each adapted to suit the particular characteristics of the maritime area concerned (30 months);
- launch a conceptual study followed by a feasibility study of non-piloted vehicles adapted to maritime surveillance missions (UAV (*Unmanned Air Vehicle*) and USV (*Unmanned Surface Vehicle*), to detect, identify (and intercept) boats used by focal-route couriers (6 months);
- test prototype versions of these systems (24 months) and subsequently deploy more operational versions (36 months);
- develop intranet networks to coordinate the exchange of information (SAR, EISICS) between the organisations involved (EIC, EUROPOL, ILO, etc.) (18 months);
- begin studies on consistency and subsequently construct databases and develop or adapt expert systems (such as ZUIS of Rotterdam) (18 months);
- put in place a harmonised statistical tool for immigration and standard accounting procedures for the cost of border control in all the European countries concerned (18 months);
- improve EURODAC functionalities, while ensuring consistency with other information systems, including the equipment in the CIRAM centre, to be networked with the corresponding departments in the countries concerned between 2004 to 2007;
- rationalise identification of persons in an irregular situation:
  - introduction of biometric identification techniques in entry ports (6 months) and general introduction by the countries concerned in the VIS system, in coordination with EURODAC (30 months). This investment is part of an overall bringing up to standard of all the ACPs of the Schengen area;

introduction of the same biometric techniques for identifying persons in an irregular situation intercepted outside of port ACPs (6 months) and general introduction by the countries concerned (30 months);

- plan the upgrading of control equipment for maritime ACPs in the Member States and in the main countries of departure with a view to increasing throughput and enhancing exhaustiveness of entry and exit controls (100%);
- involve shipping companies in the control, listing and early submission of passenger lists for ferries to France and Spain<sup>47</sup> (and to sanction them unhesitatingly in case of breaches of the rules) (24 months) ;
- make sanctions against ferry owners work and increase the penalties imposed on couriers to the extent that they will act as a deterrent.

### **C5 - Community finance**

The vast differences as to how each Member State is affected by illegal immigration begs the question of how the burden should be shared. All or part of the funding for the technical proposals described in C3 should be provided by the Community. This question will be looked at more closely in part D.

Dialogue between Member States and countries of departure is only credible once the principle of shared interests is established. Some countries are countries of departure because of their geographical location near Europe. Once this is recognised, a consensual agreement in the interests of both parties is preferable to a policy of power relationships. The initiative therefore proposes that budgetary and economic provisions be incorporated in future association agreements to:

- examine illegal immigration (seasonal or otherwise) to Member States and related quota systems (24 months) ;

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<sup>47</sup> These provisions will not apply between Finland and Estonia, where the Community rules on the free movement of persons will apply in a few months time.

- hold discussions at the Mediterranean Sea Conference (MSC) and launch integrated programmes like the *MEDA* programme which incorporate provisions on cooperation on legal and illegal immigration (36 months);
- provide financial help, independently or under these programmes, for detention centres in transit countries for illegal immigrants coming from the source country and the return of these people to the country of origin (6 months).

## **D. Means of implementing the initiative**

European policy on curbing sea-borne illegal immigration is part of an overall policy of managing the European Union's borders. Illegal immigration does not affect all European countries equally. Member States, such as Ireland and Luxembourg, and Schengen countries such as Iceland and Norway, have too few transport connections with - and are too far away from - the countries of emigration that a certain portion of the population are keen to leave to reach the "European Eldorado". This means that the burden of tackling illegal immigration falls primarily on the European Union's eastern land borders and southern maritime borders (along the coast and at ACPs at ports) and then on major European air hubs where the ACPs are, for the most part, the entry points for long-haul would-be entrants. Policing ACPs, including those at ports, is a delicate job, since it requires keeping passenger flow moving freely (less than 1% of passengers turn out to be travelling unlawfully), while at the same time ensuring that the few illegal immigrants who do try their luck are intercepted. Policing maritime borders is a major undertaking. It involves keeping watch day and night over vast expanses of water to pick out - from among all the commercial, fishing and pleasure vessels - the boats and small craft seeking to enter European waters and dump their illegal cargo.

The front-line Member States (Greece, Italy and Spain in the Mediterranean, and Finland in the Baltic) are particularly vulnerable to illegal immigration by sea. Spain and France are also on the front line with their ACPs at ports, given their ferry links with North Africa. In protecting their maritime borders, they are protecting the Schengen area on behalf of all European countries. If they were not making the necessary efforts to prevent this immigration, it would be the second-line countries who would be the first to suffer the consequences of their laxness. Fortunately this is not the case.

The Thessaloniki European Council of 19 and 20 June stressed that the principle of solidarity should be consolidated and put into practice by, for example, setting up operational cooperation. It, therefore, accepts that the burden borne by the Member States in the front line of protecting Europe's borders should be shared and that they should in the first instance (pending the post-2006 financial perspective) receive financial assistance from the European Union for the most pressing structural needs. There is consequently a need for shared European financing.

## D1 - Shared financing - the lay of the land

**D1 - 1 No EU or Schengen countries keep detailed accounts** of the public expenditure involved in policing illegal immigration at their borders. In the case of maritime borders, two types of expenditure need to be distinguished. The first relates to ACPs at ports, the second to surveillance and enforcement operations in respect of maritime borders. In the case of the former, it has to be acknowledged that the resources<sup>48</sup> are inadequate for busy periods and suffer from a lack of available specialised staff; the infrastructure envisaged (access to databases, separation of passengers before and after checks, false travel document detectors) is a long way from being up and running at all port ACPs, as noted by the Schengen evaluations. Although the costs of staffing ACPs is high, the infrastructure costs are rather limited. The second type of expenditure involving the deployment of air-sea police surveillance forces (with limited availability) responsible for guarding the vast maritime border - which is rather like looking for a needle in a haystack - can hardly be seen as the best use of public funds, as shown by the enormous costs borne by Greece for patrols by its navy and coastguard. France's *veille sémaphorique* network,<sup>49</sup> which was rapidly revived after the *East Sea* incident, is not a truly operational model in terms of cost-effectiveness. With its Integrated External Surveillance System (SIVE), Spain has opted for unmanned watch towers.<sup>50</sup> The capital costs are high, but the running costs of surveillance across an extensive sea area are limited. This technological option should be promoted.

However, these arrangements are only partly concerned with illegal immigration and human trafficking. They are also used for other public service missions, such as shipping safety and protecting the marine environment, search and rescue, fisheries monitoring, interception of illegal trade and smuggling, and port and coastal security.<sup>51</sup> In most instances, the same operational resources and techniques are used for these various missions. This means that without an allocation formula (for each coast) it is difficult to allocate precise amounts for expenditure on maritime border surveillance and enforcement measures specifically targeting illegal immigration.<sup>52</sup>

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<sup>48</sup> Needless to say, the resources are used to positively clear more than 99% of passengers; less than 1% are found not to be in order.

<sup>49</sup> Used by the navy.

<sup>50</sup> Air-sea resources are deployed only on the basis of intelligence for missions with objectives clearly identified in advance. Where it is possible to use land resources to intercept illegals on shore, these are preferred to interception at sea, which is much more expensive (and dangerous).

<sup>51</sup> Principally as regards the risk of terrorists arriving by sea.

<sup>52</sup> The same problem arises with land borders.

Greece is without a doubt the country that does the most to curb illegal immigration through its land and maritime borders, even though it is not in the same economic or demographic league as the other EU Mediterranean countries. But when the government announces expenditure of €600 million in 2002 on guarding its borders, it is difficult to work out exactly how much is accounted for by illegal immigration and how much on the other missions.

**D1 - 2 The cost evaluation must be carried out on the basis of lifetime** cost rather than on a strictly budget-by-budget basis. What is needed is to work out for a given system, such as the Gibraltar SIVE or the border post at Marseille's *Gare Maritime*, a multiannual cost for the lifetime of the system comprising:

- depreciation of capital costs;
- maintenance costs for the system, including technical updating;
- staffing costs;
- an estimate of the dismantling cost, if necessary.

The content of the system to be deployed should also be devised on the basis of a functional analysis. SIVE is a comprehensive sea surveillance and enforcement system, comprising an information system for detecting and identifying threats (radar and optronic sensors) and a land and air-sea intervention system for intercepting suspicious ships and small craft on the shore and at sea. The ACP has control booths equipped with systems for detecting forged documents, linked to databases accessible in real time; there are enough of these to handle the checking of all passengers in a reasonable amount of time (around half an hour). In addition, the ACP has a technical workshop for identification in cases where there are doubts, as well as an administrative detention centre where people not asking for asylum but whose documents are not in order can be held pending their readmission.

**D1 - 3 A European financial contribution** towards maritime border policing can be envisaged, if it forms part of an overall "borders and migration" financial contribution, also including operations at EU and Schengen land and airport borders and specific measures to be undertaken in the countries of departure and transit as part of the dialogue with the "*new neighbours*".

However, Community financing does not seem appropriate for expenditure entered into by Member States in respect of intra-European borders, such as the Straits of Dover, the Strait of Otranto, the Sound between Denmark and Sweden and the border with Switzerland.

**D1 - 4 Instructive comparison with "blue Europe"** Since 1992 the European Union has been contributing financially to Member States' work on fisheries monitoring. The contribution concerns investments on acquiring or modernising the vessels and aircraft used for monitoring, inspecting and supervision of fishing activities, as well as for expenditure on the training of fisheries inspectors and the implementation of the systems evaluating the expenditure allocated to common fisheries policy monitoring. The data collected relate to France for the period 1992-2002 and the Community budget for all European countries for 2001.

France's structural expenditure on monitoring the common fisheries policy totalled €85.2 million at current prices. The expenditure principally concerns the fitting out of the CROSS centres, the Maritime Affairs and Maritime Police patrol boats, Navy patrol boats, customs surveillance equipment (port and coastal detection equipment, helicopters and boats), VMS beacons for fishing vessels and the training of inspectors. The European contribution paid between 1992 and 2000 (eight years) totals €15.25 million at current prices. Over the ten-year period, the expected total is €16.2 million at current prices. This means that the burden is shared only in respect of structural expenditure and amounts to 19%. The Commission fixes contributions of between 35% and 50% for the financing of equipment, but makes a distinction - and rightly so - between equipment used exclusively for fisheries monitoring and equipment also used for other sea surveillance duties.

In 2002 the Commission financed 50% of the training measures for fisheries inspectors in the Member States (€827 176 allocated to the nine Member States concerned), 50% of the expenditure on implementing the systems for evaluating expenditure on common fisheries policy monitoring (€150 000 allocated to Germany), and 35% of the expenditure on the acquisition and modernisation of vessels and aircraft used for the monitoring, inspection and surveillance of fishing activities (€31 479 386 allocated to the ten Member States concerned).

Over 92% of the expenditure on vessels and aircraft goes to four Member States, in order of importance: Portugal, the United Kingdom, Spain and Ireland. Spain takes up more than 16% of the European allocation for its *Guardia Civil*, which is responsible for both fisheries monitoring and controlling illegal immigration. The same naval and air equipment is used for both types of work. Greece and Italy<sup>53</sup> do not appear to ask for significant financial contributions in this area. Consequently, any financial contribution from Europe towards maritime border surveillance should be coordinated with its financing for fisheries monitoring.

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<sup>53</sup> Only €490 000 in 2002.

It should be noted that European fisheries policy and the monitoring of stock management are well established, known quantities. This is far from the case with the arrangements for monitoring the maritime border. Checks on passengers at port ACPs are a structural element changing as ferry services open and close (for example, in the Baltic services between the Baltic countries and Germany are rather seasonal and experimental; there are plans for services between Italy and Tunisia). The situation will also change with EU enlargement. Once Estonia joins the European Union, the Tallinn-Helsinki service will become a European cabotage route.

The situation as regards curbing illegal immigration along the coast is very changeable. The operations and measures undertaken are designed to cut off the routes. Once a route is cut off, the (deterrence) work involved in keeping it closed is no longer the same as during the interception phase. The borders still need to be guarded, of course, but the SIVE system in Gibraltar shows that the air-sea and land operations (the resources that are the most costly to deploy) are far fewer.

## **D2 - The need for targeted European financing**

The set-up described is conducive to a rather cautious approach towards European financing for maritime border surveillance and monitoring, but it does not rule it out. Three possible areas of action can be distinguished: joint European services, measures targeting the countries of departure, and pilot operations.

### **D2 - 1 Joint services**

'Joint services' refers to the maritime border management tools that need to be centralised to be more effective. Many of these tools are resources that can be used for all types of migration, not just migration by sea.

There are four such programmes that should be financed exclusively by the European Union:

- the statistical system to be developed by the Migration Monitoring Centre attached to the Migration Bureau;
- the accounting system to be designed for standardising the method of measuring each country's border control and surveillance work; the method would be used by all Member States;<sup>54</sup>

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<sup>54</sup> This would make it possible to compare the actual work involved, the effectiveness of the surveillance and control arrangements at Schengen entry points and productivity progress.

- the SCHEVAL inspection and audit system;
- the introduction of a real-time joint operational database shared by all relevant departments throughout the European Union.

On this last point, the associated maritime databases are extremely important for combating the random routing operated by cross-border criminal organisations. This work relies on an early warning system in the source countries, based on on-going information from the immigration liaison officers in the Member States. The aim is to optimise the intelligence side of maritime surveillance.

The gathering of information on suspicious vessels should be organised at European level. The United Kingdom reminded the meeting of the strategic committee on immigration, borders and asylum of 16 September 2002 that the conclusions of the meeting of maritime experts on 25 October 2001 (13141/01) had called for this database to be set up, covering information and analyses on all types of vessel, including cargo ships, liners, ferries, fishing boats and yachts. This concern is shared by the Directorate-General for Transport as regards the issue of maritime safety and tracking down substandard vessels in European waters.

Initially the Commission could finance the feasibility of a database for all types of commercial, fishing and pleasure craft registered in all the countries of the Mediterranean Sea Conference (MSC).

Joint services would also be responsible for training Member States' staff and providing them with the relevant information. The aim is to ensure that the Schengen rules are applied uniformly throughout the area. As in the case of fisheries, the rule of a 50/50 split between the EU and the Member States should apply to the financing of training measures. A Community nucleus of trainers should be convened, made up of staff from the different national authorities concerned.

## **D2 - 2 European measures in the countries of departure or embarkation**

The feasibility study shows that the surveillance and inspection work should kick in at as early a stage as possible, given the legal and technical difficulties of intervening at sea and the danger of drowning to which the would-be immigrants are exposed.

The case of Morocco (an associated State) is highly instructive in this regard. The *MEDA* PIN 2002-2004 programme has virtually an entire section devoted to immigration control, supporting the economic development of the regions from which the migrants come, which are principally in the north (€70 million); providing support for legal emigration (€5 million) and strengthening resources for curbing illegal emigration (€40 million). The second and third aspects of this programme are extremely important, and the third is clearly relevant from the maritime point of view. If it successfully intercepts overloaded vessels at sea and escorts

them back to Morocco or - better still - prevents them from setting sail and stops the traffickers, it will have a maximum-impact deterrent effect.

The programme is under way. The assessment of the results will make it possible to gauge the programme's effectiveness. It already appears to be incomplete in two respects.

First, there is the introduction and maintenance of administrative detention centres in the transit countries. In order to safeguard refugees' rights, where a sub-Saharan migrant is stopped at the Moroccan maritime border, he or she should be allowed to remain there in decent conditions for the time it takes an application for asylum in Europe to be processed. Where turned down, the applicant would then have to be repatriated to their country of origin.

Second, there is the issue of repatriating non-Moroccans (sub-Saharans attempting to enter the Schengen area via Morocco) to their country of origin (source country). European financing is essential to meet the readmission costs. Italy has already contributed financially for this type of measure,<sup>55</sup> which proved to be perfectly feasible and highly effective for a small outlay. The outlay was a genuine display of Community solidarity: a one-off investment with an immediate return. The deterrent effect is maximised, because long-distance readmissions like this undermine the credibility of the transit routes. The one-off cost is strictly linked to the number of illegal migrants intercepted.

### **D3 - Pilot operations**

These operations are intended to demonstrate the European institutions' commitment to curbing illegal immigration in the front-line countries. Public opinion in these countries is bound to be receptive to costs being shared. The countries concerned by these maritime border pilot operations are the four Mediterranean Member States. The programme should not be restricted to just the maritime borders. Illegal entry by land and the management of port ACPs are also hot issues.

A European contribution towards this type of investment could take as its model the measures implemented for fisheries monitoring, taking into account:

- penalties available under national legislation and actually applied that are proportional to the seriousness of the offences and effectively deter repeat offending;

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<sup>55</sup> Repatriation of Sri Lankans intercepted on the Suez Canal by Egyptair (€600 000).

- the scale and effectiveness of the human and material resources assigned by the Member State to border control;
- the level of control cooperation achieved between the beneficiary Member State, the other Member States and the Commission.

On this basis, the European Union could meet 50% of the development expenditure and 35% of the investment expenditure for the pilot operations undertaken.

### **D3 - 1 Extending SIVE**

The Spanish Government's investment in the Straits of Gibraltar (according to figures, which still need to be further analysed) totals €142 million over six years, including €50 (35%) for the first version over 3 years. Three other focal routes are being fitted out with a surveillance system having the same specifications, but with additional features making it more compatible with other maritime border surveillance missions, such as shipping safety. Here any information gathered should be distributed on a cooperative basis to all authorities concerned; the model for this is the Finnish VTMS (Vessel Traffic Monitoring Information System).

A feasibility and optimisation study should be carried out in Greece with a view to setting up an archipelago SIVE in the Aegean and the islands of the Dodecanese. The techniques deployed in the Straits of Gibraltar look to be transferable without any need for fresh development research, given the distances separating the territories of departure from the territories of landing.

In Italy (Sicilian Channel) and Spain (Canary Channel) the difficulties associated with the sea distances (beyond the horizon) between the territories of departure and the territories of landing rule out taking over the Gibraltar Strait SIVE directly. The Spanish authorities have nonetheless begun to deploy a SIVE-type system in the Canaries in Lanzarote and Fuerteventura. Fixed and semi-fixed radar/optronic stations need to be deployable at sea. This means that the project cannot be put into effect with the SIVE objectives unless new technologies are deployed.

Therefore, it is proposed that the European Union should, if given the go-ahead by a feasibility study, launch a research and development programme for unmanned vehicles (both unmanned aerial vehicles and unmanned surface vehicles) enabling surveillance to be carried out at sea in the same way as from the SIVE unmanned watch towers. The unmanned vehicles are positioned on a radar/optronic surveillance "track",<sup>56</sup> so as to watch

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<sup>56</sup> There is no need for dynamic positioning of the unmanned vehicles. They carry out their surveillance work by orbiting (on a track) around a focal point in a configuration that optimises coverage on the basis of the estimated manoeuvrability of the objectives sought. The unmanned sea vehicles have the capability to eject lifeboats around a vessel in distress pending rescue.

over the territorial waters of the places of departure and to raise early warnings that are needed both to come to the assistance of any persons shipwrecked and to improve the deterrent effect sought. The Ulysses 2 operation in the Canaries in May 2003 showed the deterrent effect of using Royal Airforce Nimrod and National Navy *Atlantic* Surmar patrols.<sup>57</sup> The purpose of using unmanned vehicles is to make it technically possible to carry out round-the-clock surveillance of this type, while reducing costs and without having to deploy highly qualified staff to watch over sea areas that are in fact more than 99% devoid of any suspicious vessels.

The capital costs would come to about €150 million per SIVE.

### **D3 - 2 Improving checks at port ACPs**

This pilot project relates to ferry links between EU States and non-member countries. This concerns two countries in the front line: Spain and France. At port ACPs, responsibility for the checking equipment and infrastructure called for by the Schengen Convention should remain a matter for the countries themselves. Having said this, a pilot project on passenger lists should be evaluated and launched. The issue is applying the new IATA rules to the transport of passengers by sea on routes outside the European Union.

After passengers have been checked in at the port of departure, advance electronic declaration of passenger lists involves passing on digital scanned images of the passenger's passport, visa (if required) and ticket as well as a facial photograph of the passenger taken by electronic camera. The list is sent by high-speed internet to the border control authorities at the port of destination, who can then get ready for the passengers' disembarkation by greenlisting all those who do not pose any identification problem. The implementation and support costs for the ferry companies to introduce the system have been estimated at €15 million for the three countries concerned.

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<sup>57</sup> Carried out using long-distance heavy anti-submarine aircraft.

#### **D4 - More mutual support**

The cost burden borne by the countries in the front line needs to be shared by the second-line countries. If those in the front line leave their borders open to illegal immigration, it is the second-line countries that will suffer the consequences. The countries need to share the burden. Arrangements need to be made for second-line countries to contribute public funds for border control of the front-line countries' maritime border.

**D4 - 1 In the case of the straits (focal routes)** the second-line countries would be able to intervene in the territorial waters of the countries of departure in a Red Cross type humanitarian capacity to save lives at sea, without taking any law enforcement action; the front-line countries could not do this, because any action they take, even on humanitarian grounds, could be construed as hostile. Thought should, therefore, be given to pooling Member States' naval rescue resources on or near international shipping routes for the purpose of ensuring the security of free circulation; the front-line country would operate exclusively in its own territorial waters, while the second-line countries would operate throughout the waters concerned (the Straits of Gibraltar, the Sicilian Channel, the Aegean) under the operational control of the front-line country.

Operations of the *Ulysses* type in February 2003, which yielded useful results, although limited to just devising coordinated communication and surveillance procedures, should also be pursued further following adaptation. Once precise European maritime border control objectives have been fixed and realistic legal instruments formalised, the result should be state-level cooperation between the Member States on a virtually permanent basis. This will make for better sharing of the costs.

**D4 - 2 To deal with the random routes**, the front-line and second-line countries have already undertaken and coordinated joint sea rescue measures; in this respect, the *Monica* affair is extremely instructive as regards what should and should not be done.<sup>58</sup> These joint operations are part of the coordination of public resources for enforcement action on illegal immigration and European naval forces in the Mediterranean (particularly the eastern Mediterranean).

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<sup>58</sup> Zone control should have been given to the country responsible for the zone and not to the country fitting out the control vessel responsible for trailing the suspicious boat.

"Feasibility study on the control of the European Union's maritime borders" - list of participants:

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**GLOSSARY**

ACP	Authorised Crossing Point, within the meaning of Schengen
AIS	<i>Automatic Identification System</i> - made compulsory by the IMO for vessels of over 500 GRT
APIS	<i>Advanced Passenger Information System</i> : list of air passengers communicated electronically to US Customs concerning flights outside the United States
BASC	<i>Business Anti-Smuggling Coalition</i> : goods transport security
BSC	Baltic Sea Conference
CCO	Cross-border criminal organisation
CIACRAM	<i>Common Integrated Authorised Crossing Point Risk Analysis Model</i>
CIBBRAM	<i>Common Integrated Blue Border Risk Analysis Model</i>
CIGBRAM	<i>Common Integrated Green Border Risk Analysis Model</i>
CIRAM	<i>Common Integrated Risk Analysis Model Centre</i>
CIREFI	Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration, bringing together operational liaison officers from European border police forces
CROSS/MRCC	Centre régional opérationnel de surveillance et de secours/ <i>Marine Rescue Coordination Centre</i>
CSI	Container Security Initiative
CTPAT	Customs Trade Partnership Against Terrorism
EIC	<i>European Intelligence Centre</i> , operational intelligence division of the CIRAM Centre
EISICS	<i>European Information System on Immigration Control in Seaport</i>
EMSA	European Maritime Safety Agency
EURODAC	Information system for identifying asylum-seekers by taking fingerprints for the purpose of facilitating the implementation of the Dublin Convention determining the State responsible for examining applications for asylum
EUROPOL	European Police Office
EWS	Early Warning System, system currently put in place by SCIFA to identify vessels that could be used for the random route
FADO	<i>False and Authentic Documents</i> : European system of filing images of travel documents

ICONET	<i>Information and Coordination Network</i> : European Commission secure network
ILO	Immigration liaison officer, usually living in the countries of departure or transit from which migrants arrive
IMO	International Maritime Organisation
Montego Bay	United Nations Convention on the law of the sea (1982)
MSC	<i>Mediterranean Sea Conference</i> , proposed body to deal with security cooperation between countries bordering on the Mediterranean, along the lines of the Baltic Sea Conference
Palermo	International convention (1992) on curbing the trafficking of illegal immigrants
SAR	Search And Rescue, maritime safety mission, whereby each country with a coastline is allocated a priority responsibility zone outside its territorial waters
SCHEVAL	<i>Schengen evaluation</i> , border audit and inspection unit
SCIFA and CSIFA+	Strategic Committee on Immigration, Frontiers and Asylum, bringing together the heads of the departments responsible for immigration control, plus the heads of border police
SIRENE	Round-the-clock national operational office providing information and instructions to SIS users dealing with illegal situations
SIS	Schengen Information System: European central records (stolen vehicles, vehicle declared scrap etc.)
SIVE	<i>Sistema Integral de Vigilancia Exterior</i> : operational and technical system operated by Spain for surveillance of the movements of suspicious craft in the Straits of Gibraltar
SOLAS	<i>Safety of Life At Sea</i> (IMO): international protocol (1974) entrusted to the IMO
Stowaways	Illegal passengers hiding aboard commercial vessels, in particular cargo vessels
UAV	Unmanned aerial vehicle
USV	Unmanned surface vehicle
UV	Unmanned vehicle
Vienna	International convention (1978) on curbing drug trafficking

VISION/VIS	European information system on visas issued by member countries to foreign nationals subject to a visa requirement
VMS	<i>Vessel Monitoring System</i> - for Community monitoring of fishing vessels over 24m, soon to be extended to those over 16m
VTMIS	<i>Vessel Traffic Monitoring Information System</i> - implemented by Finland in the Gulf of Finland to cover all traffic-related signals
WCO	World Customs Organisation
WLO	World Labour Organisation
ZUIS	Expert risk analysis system used by the port of Rotterdam to target suspicious vessels warranting a physical inspection in view of possible trafficking

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