



# ■ Five years of EU migration and asylum policy-making under the Amsterdam and Tampere mandates

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The Migration Policy Group (MPG) is an independent organisation committed to policy development on migration and mobility, and diversity and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

This paper reviews five years of EU migration and asylum policy-making under the Amsterdam and Tampere mandates, looking in turn at the Justice and Home Affairs agenda, the socio-economic agenda, and the foreign policy agenda. In its concluding chapter, the paper offers elements for assessing the achievements of five years of EU policy-making in these areas (September 1999 – May 2004) and makes suggestions as to how to work on the unfinished agendas.

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- Yongmi Schibel, Monitoring and influencing the transposition of EU immigration law: the family reunion and long term residents Directives (2004)
- Jan Niessen and Yongmi Schibel, Demographic changes and the consequences for Europe's future - is immigration an option? (2003)

## **CONTENTS**

Introduction	1
Chapter I The Justice and Home Affairs Agenda	2
Chapter II The Socio-Economic Agenda	17
Chapter III The Foreign Policy Agenda	29
Chapter IV The Unfinished Agendas	42
Annex	59



## INTRODUCTION

Policies regarding the admission and residence of non-nationals are in many countries primarily and sometimes exclusively the responsibility of Justice and Home Affairs Ministries. Consequently, these ministries play a prominent and often leading role in international co-operation on migration and asylum. While European co-operation on migration dates back to the early years of the European Communities, the topics, intensity and modalities of this co-operation changed considerably over time. Nowadays, migration and asylum are shared responsibilities of national justice and internal affairs ministries and the Commission's Directorate General for Justice and Home Affairs. The Union's mandate to act on these related but distinct issues stems from the 1997 Amsterdam Treaty which sets out the legislative agenda for the creation of an area of freedom, justice and security. This includes the promotion of freedom of movement of persons and policies with respect to external border control, asylum and immigration, as well as measures preventing and combating crime. In these areas it was agreed that measures should be proposed and adopted within five years after the entry into force of the Treaty, that is by 1 May 2004. The European Commission shares the right of initiative with the Member States. The decision-making power rests collectively with the Member States meeting in the Council of Ministers. Justice and home affairs are, to a limited degree, brought under (European) parliamentary and judicial control.

In addition to the legal mandate, one or both of the European Council meetings held during the rotating EU Presidencies gave impetus and guidance to the formation of policies at European level, thus providing a political mandate for action on migration and asylum. The 1999 Tampere European Council laid out a programme for establishing an area of freedom, security and justice and for the development of common immigration and asylum policies. Subsequent European Councils, in particular the 2001 Laeken European Council, 2002 Seville European Council and the 2003 Thessaloniki European Council reconfirmed this mandate, reviewed the progress made and formulated new policy goals and objectives. The Tampere agenda contains the goal of establishing a common European asylum system, a common system for the management of migration, co-operation with countries of origin and transit, and fair treatment of third country nationals.

This paper gives an overview of the developing EU policies in these areas and takes stock of the measures proposed and adopted at European level since the Amsterdam Treaty came into force in 1999. Chapter I looks at the justice and home affairs agenda and summarises the main legislative and other measures proposed and adopted under what is often called the Amsterdam and Tampere mandate. Chapter II looks at the socio-economic agenda and describes how migration made its comeback on that agenda. It shows how immigration became gradually considered as a complementary labour market strategy and how immigrant integration measures were adopted (including the adoption of anti-discrimination legislation). Chapter III looks at how migration and asylum were inserted into the foreign policy agenda. In its concluding chapter, the paper offers elements for assessing the achievements of five years of EU policy-making in these areas (September 1999 – May 2004) and makes suggestions as to how to work on the unfinished agendas.

The EU Commission's websites proved to be invaluable sources of information. Extensive use is also made of the Migration News Sheet (published by the Migration Policy Group) and the European Journal of Migration and Law (published by the University of Nijmegen (NL) in co-operation with the Migration Policy Group). The paper has been written at the request of the German Council of Experts for Immigration and Integration (Immigration Council). The views expressed in the paper are of the author and not necessarily of the Immigration Council.

Brussels, 1 May 2004

## **1. THE JUSTICE AND HOME AFFAIRS AGENDA**

Member States have a long tradition of working together on justice and home affairs, ranging from combating crime and terrorism to migration and asylum. The Amsterdam Treaty put these issues firmly on the European Union's agenda, making them not any longer a purely intergovernmental affair. In addition to a chapter on the free movement of persons, a new chapter of the EC treaty deals with visas, asylum, immigration and other policies related to the free movement of persons. As part of the establishment of an area of freedom, security and justice, the Treaty sets out a programme with a five years' deadline for the adoption of a common asylum and migration policy. Europe's commitment to human rights is reiterated as a basis for the further integration and enlargement of the European Union.

The 1999 Tampere European Council took a number of decisions providing a political mandate and programme for action. A high-level working group on asylum and immigration was set up and a 'Scoreboard' was introduced which was to biannually review progress made in the implementation of the programme of action. A new Directorate General Justice and Home Affairs was created and headed by a Commissioner. In the years following the entry into force of the Treaty a great number of legislative initiatives were taken, the large majority of them initiated by the European Commission. Individual Member States also regularly used their right to take legislative initiatives. This chapter gives an overview of the most important legislative measures proposed and adopted.

### **1.1 Internal borders**

The removal of obstacles for the free movement of goods, services, capital and persons is part and parcel of the establishment of the European single market. The elimination of controls at internal borders proved to be problematic and a limited number of Member States started already in the mid-eighties to work together on this under the Schengen Agreement, leading to the removal of internal border control among participating countries (the majority of Member States by the time of the entry into force of the Amsterdam Treaty).

### **INCORPORATION OF SCHENGEN**

One of the first series of activities undertaken by the EU institutions after the Amsterdam Treaty came into force was the integration of the Schengen *acquis* into the EU framework. This included decisions dealing with purely legal matters (how to bring the Schengen *acquis* under the legal authority of the EC-Treaty) as well as the incorporation of Greece, Norway, Iceland, Sweden, Denmark and, in a limited number of areas, the UK and Ireland into the Schengen arrangements. The Ministers of Justice and/or Home Affairs of the non-EU Member States take part in Schengen-related matters in Council of Ministers meetings in the so-called Mixed Committee. In 2001, the Council adopted measures on the development of the second generation of the Schengen Information System (SIS). This system is a multi-access international database on cross border crime used by police and border authorities of Schengen Member States. It lists information on wanted persons and stolen goods. SIS II introduced new categories of information and facilitated technical updating. In fact, most decisions concerning entry into the Schengen Area have been of a technical and/or administrative nature, including the production of the SIRENE manual (SIRENE, standing for Supplementary Information

at the National Entry), describing in detail the rules and procedures governing the bilateral or multilateral exchange of information.<sup>1</sup>

## FREEDOM OF TRAVEL FOR THIRD-COUNTRY NATIONALS

All Member States have taken specific and different measures in relation to free travel of third-country nationals within the European Union. The Commission felt that it was appropriate to present a proposal combining in a single legal instrument all the fragmented components of free travel of third-country nationals. Consequently, it submitted a proposal for a Council Directive relating to the conditions under which third-country nationals have the freedom to travel in the territory of the Member States for periods not exceeding three months, introducing a travel authorisation and determining the conditions of entry and movement for periods not exceeding six months.<sup>2</sup>

### ***1.2 Legal migration***

The Tampere European Council acknowledged the need for the approximation of national legislation on the conditions for admission and residence of third-country nationals and for a more efficient management of migration flows. Consequently, the Commission presented proposals for the admission of persons for the purposes of family reunion, work, study or other non-remunerative activities. It also presented legislative proposals on residence permits.

## FAMILY REUNION

The Commission submitted no less than three different proposals on family reunion, moving from a rather liberal approach in the first one presented in 1999<sup>3</sup> to more restrictive texts presented in 2000<sup>4</sup> and 2002.<sup>5</sup> In 2003, an agreement was reached on a compromise text after lengthy negotiations.<sup>6</sup> Denmark, Ireland and the UK have exercised their right to opt out of this Directive. Moreover, the contents may not be final because some of its provisions relating essentially to the minimum age of children allowed to join their parents have been challenged by the European Parliament.<sup>7</sup>

The right to family reunion applies to spouse and minor children (unmarried and below the age of majority set by the law of the Member State concerned) of a person legally residing in a Member State. It does not apply to asylum-seekers awaiting a final decision on their status and persons with a temporary status. For EU citizens other rules apply. When a child is more than 12 years old and arrives independently from the rest of the family, who are already established in a Member State, Member States may –before allowing reunion– verify whether the person concerned meets a condition for integration, as is provided for by national legislation already in force on the date of the implementation of this Directive.

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<sup>1</sup> O.J. of the E.U. of 02.03.2004, L-64.

<sup>2</sup> COM(2001) 388.

<sup>3</sup> COM(1999) 638.

<sup>4</sup> COM(2000) 624.

<sup>5</sup> COM(2002) 225.

<sup>6</sup> O.J. of the E.U. of 03.10.2003, L 251/12.

<sup>7</sup> O.J. of the E.U. of 21.02.2004, C 47.



Member States may require that requests for the reunion of children be made before they reach the age of 15. If such a request is made after the age of 15, entry and residence of the person concerned may be authorised on other grounds than family reunion. The European Parliament challenged this provision. To promote integration and avoid forced marriages, Member States may require the applicant and his/her spouse to be of a minimum age, and at maximum 21. Member States may authorize reunion of first-degree relatives in the direct ascending line, as well as of unmarried children (who are unable to provide for their own needs for health reasons) and unmarried partners (with a stable long-term relationship with the applicant).

The right to exercise family reunion will be given after a maximum period of two years of applicants' lawful residence in a Member State. However, depending on their reception capacity, Member States may set a waiting period of not more than three years. Family reunification is granted after documentary evidence is given of family relationships, proof of accommodation, sickness insurance and sufficient economic resources. Once the application is accepted, a renewable residence permit of the same duration as the applicant's residence permit will be issued. Family members will be entitled to an autonomous residence permit at the latest after 5 years of residence (provided that the family relationship still exists). Family members are entitled to education, employed and self-employed activities and vocational training.

#### MIGRATION FOR EMPLOYMENT

In 2001, the Commission put forward a draft Directive determining common definitions, criteria and procedures regarding the conditions of entry and residence of third-country nationals for the purpose of paid and self-employment.<sup>8</sup> This proposal was inspired by the 1994 Resolution on the admission of third-country workers and by the 1997 draft Convention on rules for the admission of third-country nationals to the Member States. It proposes a single national application procedure and a combined residence and work permit. While respecting Member States' discretion to limit economic migration on grounds of public policy, public security or public health, Member States are under an obligation to accept migrants that comply with the requirements set by the proposed Directive.

The proposal also aims at setting a flexible framework for Member States to react quickly to changing economic and demographic circumstances. A 'residence permit for work' shall be issued for a predetermined period of up to three years and shall be renewable for periods of up to three years. In the case of self-employed workers, they are restricted to the exercise of the specific activities aimed at for up to three years. The work permit entitles the holder to enter and reside in the issuing Member State and to equal treatment with EU citizens regarding working conditions (dismissals and remuneration), access to vocational training, recognition of diplomas and qualifications, social security (including healthcare), and freedom of association, affiliation and membership of (professional) organisations. It shall be revoked, suspended or withdrawn where there has been fraud or it is considered necessary for reasons of public policy or public security. Unemployment in itself is not a sufficient reason for revocation unless the period of unemployment exceeds three months for permit holders working in a Member State for less than two years and six months for holders working in a Member State for two years or more.

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<sup>8</sup> COM(2001) 386.

The application for a work permit is submitted by the applicant or the future employer and has to include a valid contract or offer of work (or location of exercise of activities and detailed business plan in case of self-employment), description of activities, proof of good conduct, health certificate, documents proving the skills necessary for the job, and evidence of sufficient resources to support himself/herself and family members. Payment of a handling fee is compulsory. It must be demonstrated that the job vacancy, posted for at least 4 weeks by the employment services of several Member States, cannot be filled in the short-term by an EU citizen or a legal resident. Seasonal workers may be granted a work permit for up to 6 months only.

Member States may maintain or introduce more favourable provisions for certain categories of persons (researchers and academic specialists, members of religious orders, sport professionals, artists, journalists, representatives of NGOs). Thus intra-corporate transferees, trainees, and people carrying out activities in the context of youth exchange or youth mobility schemes may be granted a special permit, for which applicants do not need to prove that the job vacancy cannot be filled by a local worker. Instead, they must demonstrate that they are 'key personnel' (senior management or executive position) or 'specialists' for corporations, or that the planned activity is strictly limited in duration (up to one year) and aimed at improving their skills and qualifications for trainees or part of a youth scheme for 'au pairs' or young exchange workers.

The draft Directive is still under discussion at the Council and is blocked because of, inter alia, strong opposition from Germany.

#### MIGRATION FOR NON-REMUNERATIVE PURPOSES

In 2002, the European Commission adopted a proposal for a Council Directive on the conditions of entry and residence of third country nationals for the purposes of studies, vocational training or voluntary service.<sup>9</sup> It stressed the importance of having such an EU instrument by underlining that migration for the purpose of studies constitutes a form of mutual enrichment for the persons concerned, their country of origin and the host country, and helps to promote better understanding between cultures. The residence permit of variable duration (but no less than 12 months) in the draft Directive is in general tied to four conditions: a valid passport, health care insurance, a public policy reservation and payment of a fee for the handling of the application. Further conditions are imposed on certain categories of immigrants and may concern sufficient resources, language skills and definite enrolment in the educational institution.

The Council reached political agreement on this text in early 2004 and it is expected that formal agreement will be secured before 1 May 2004.

#### LONG-TERM RESIDENCE

Following a draft prepared by the Commission in 2001,<sup>10</sup> the Council approved the Directive on the status of third-country nationals who are long-term residents in 2003.<sup>11</sup> According to the Directive, the status of long-term resident will be obtained after legal and continuous residence of 5 years. The Directive is supposed to give long-stay residents from third countries a more secure permit after 5 years of continued residence,

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<sup>9</sup> COM(2002) 548.

<sup>10</sup> COM(2001) 127.

<sup>11</sup> Council Doc 2003/109, O.J. of the E.U. of 23.01.2004, L 16.

instead of obliging them to apply for a renewal of their stay every one or 2 years. Moreover, the Directive allows the person concerned to move under certain conditions from one Member State to another while maintaining the rights and benefits acquired in the first Member State. The status of long-term residence is permanent as evidenced by a permit valid for at least 5 years and automatically renewable. Parallel to this, the European Commission submitted a proposal for a Council Regulation laying down a uniform format for residence permits for third country nationals. The proposal was approved in 2002.<sup>12</sup>

The period of 5 years corresponds with the period for EU citizens to obtain permanent residence rights,<sup>13</sup> thus giving third-country nationals a comparable legal status to EU Citizens. However, third-country nationals do not have the full right to move freely and to seek employment (they should have a job offer). The Directive also includes a provision (added during the negotiations in the Council) stipulating that Member States may require third-country nationals to comply with integration conditions, in accordance with national law. The original proposal included refugees and persons benefiting from subsidiary protection but in the subsequent negotiations in the Council these persons were removed as beneficiaries of their right. It was decided that a separate Directive shall deal with them.

#### SHORT-TERM RESIDENCE PERMITS FOR VICTIMS OF TRAFFICKERS

In 2002, the European Commission submitted a proposal for a Council Directive on a short-term residence permit to be issued to victims trafficking and of an 'action to facilitate illegal immigration' and who co-operate with the competent authorities.<sup>14</sup> A political agreement was reached in 2003.

#### EXPULSION

In 2003, Italy submitted a proposal for a Council Directive on assistance in cases of transit through the territory of one or more Member States in the context of removal orders taken by Member States against third-country nationals,<sup>15</sup> as well as a proposal for a Council Decision on the organisation of joint flights for removals of third-country nationals illegally present in the territory of two or more Member States.<sup>16</sup> These proposals were adopted.

### **1.3 External borders**

With the abolition of internal borders the need for a reinforcement of the external borders of the EU became apparent. Initiatives in this area were already undertaken before the entry into force of the Amsterdam Treaty, among others in the framework of the Schengen Agreement. They include visa policies, border control measures, transfer of border control to air carriers, and administrative co-operation on issues relating to external borders, visas, asylum and immigration.

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<sup>12</sup> O.J. of the E.U. of 15.06.2002, L-157.

<sup>13</sup> See section 2.2 on mobility in chapter 2.

<sup>14</sup> COM(2002) 0071.

<sup>15</sup> 2003/0822/CNS.

<sup>16</sup> 2003/0821/CNS.

## VISA POLICIES

In 2000, the European Commission adopted a proposal for a Council Regulation determining the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.<sup>17</sup> This proposal was subsequently amended and a new one was proposed in the same year.<sup>18</sup> The amended version was approved by the Council in 2001 and laid down a common list of countries, whose nationals should be in the possession of a visa when travelling to EU Member States.<sup>19</sup>

The determination of the lists is governed by a case-by-case assessment of a variety of criteria relating, *inter alia*, to illegal immigration from the country concerned, consideration of public policy and security, and more general considerations concerning the European Union's external relations with third countries (implications of regional coherence and reciprocity). This Regulation and thus the lists have been modified by two Regulations, which, respectively, consolidated the position of Romania on the no-need-for-visa list and moved Ecuador to the need-for-visa list. The countries set by the regulation whose nationals do not require a visa to enter the EU are the ones the EU has closer links with: East European countries, Latin American countries, Asian countries as Japan, South Korea, Hong Kong or Singapore, and the US, Australia, New Zealand and Canada (note that Turkey is not on this list).

In 2004, the Commission adopted a proposal for a Council Decision establishing the Visa Information System (VIS).<sup>20</sup> The VIS is the future European-wide visa database which will help counter visa fraud and improve exchanges of information between Member States on visa applications and the responses given.

## UNIFORM FORMAT FOR VISAS

In 2001, the Commission submitted a proposal for a Council Regulation amending Regulation No 1683/95 laying down a uniform format for visas.<sup>21</sup> This proposal failed to receive the approval of the Council and, in 2003, the Commission submitted another proposal for a Council Regulation amending Regulation No 1683/95.<sup>22</sup> The Council considered that the implementation of the proposal on a uniform format for visas required an additional legal instrument, creating the obligation of recording fingerprints on the storage medium of the uniform format for visas. It therefore invited the Commission to present a proposal on the amendment of the common consular instructions, and to begin as soon as possible with the development of the technical specifications necessary for implementing these measures.

In 2001, the European Commission adopted a proposal for a Council Regulation on a uniform format for forms affixing the visa issued by Member States to persons holding

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<sup>17</sup> COM(2000) 27.

<sup>18</sup> COM(2000) 577.

<sup>19</sup> Annex I and Annex II of Council Regulation No 539/2001 list, respectively, the third countries whose nationals must be in possession of visas when crossing the external borders of the EU and those whose nationals are exempt of that requirement. O.J. of the E.U. of 21.03.2001, L-81/7.

<sup>20</sup> COM(2004) 0099.

<sup>21</sup> COM(2001) 157-1.

<sup>22</sup> COM(2003) 558-1.

travel documents which are not recognised by the Member State drawing up the form.<sup>23</sup> The Council approved the proposal in 2002.<sup>24</sup>

## BORDER CONTROL

In 2004, the Council formally adopted a Regulation on the creation of an Immigration Liaison Officers Network.<sup>25</sup> Political agreement was reached on a draft Council Regulation establishing a European Agency for the Management of Operational Co-operation at the External Borders. The proposal to set up such a new body was put forward by the European Commission in November 2003.<sup>26</sup> The Council pointed out that since responsibility for the management of the external borders lies primarily with the Member States, it considered the creation of a European Border Management Agency to be necessary for co-ordination of operational co-operation at the external borders.

After setting out the tasks of the Agency, the Council did not rule out subsequent extensions of its responsibilities. It stressed that the Agency and the European institutions would have to co-ordinate their work closely and that the Agency should be entitled to set up specialised, decentralised branches in the respective Member States. It was agreed that Iceland and Norway should participate in the Agency, while the position of Ireland and the United Kingdom would be clarified at a later stage.

In 2000, Finland submitted a proposal for a Council Regulation on reserving to the Council implementing powers with regard to provisions and practical procedures for examining visa applications.<sup>27</sup> In 2001, the Council adopted this Regulation.<sup>28</sup> In 2001, Portugal took the initiative for a Council Regulation on reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for carrying out border checks and surveillance.<sup>29</sup> This proposal was adopted the same year.<sup>30</sup> The Council also adopted a Decision updating the Common Consular Instructions and the Common Manual.<sup>31</sup> In 2002, the Council adopted a Decision approving an action programme for administrative co-operation in the fields of external borders, visas, asylum and immigration (ARGO).<sup>32</sup> This was at the initiative of the European Commission.<sup>33</sup>

The Commission was asked by Member States to take action in order to improve document security as it was seen as essential to detect persons who tried to use forged documents in order to gain entry to European Union territory. The Commission declared that pre-entry screening through strict visa policy and the possible use of biometric data, together with measures aimed at increasing co-operation between border guards,

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<sup>23</sup> COM(2001) 157-2.

<sup>24</sup> O.J. of the E.U. of 23.02.2002, L-53.

<sup>25</sup> O.J. of the E.U. of 02.03.2004, L-64.

<sup>26</sup> COM(2003) 687.

<sup>27</sup> O.J. of the E.U. of 14.06.2000, C-164.

<sup>28</sup> O.J. of the E.U. of 26.04.2001, L-116.

<sup>29</sup> O.J. of the E.U. of 06.03.2001, C-73.

<sup>30</sup> O.J. of the E.U. of 26.04.2001, L-116.

<sup>31</sup> O.J. of the E.U. of 26.04.2001, L-116.

<sup>32</sup> O.J. of the E.U. of 19.06.2002, L-161.

<sup>33</sup> COM(2001) 567.

intelligence services, and immigration and asylum authorities, offered real possibilities to detect potential terrorists at an early stage.<sup>34</sup>

## TRANSFER OF IMMIGRATION CONTROL TO CARRIERS

In 2000, France presented a proposal for a Council Directive concerning the harmonization of financial penalties imposed on carriers transporting into the territory of Member States third-country nationals lacking the documents necessary for admission.<sup>35</sup> This text was formally approved by the Council in 2001.<sup>36</sup> An initiative to have another Directive aimed at transferring even more responsibilities to carriers was presented by Spain in March 2003.<sup>37</sup> The aim was to oblige carriers to communicate flight passenger data before arrival in a EU Member State. In 2004, the Council reached a 'common approach' on this proposal and the Directive is expected to be formally approved before 1 May 2004.

### **1.4 Irregular migration**

The Amsterdam Treaty had clearly identified irregular immigration as an area in which measures should be adopted. More particularly, it referred to measures targeting illegal residence and repatriation of irregular residents. In this way, immigration policy envisaged by the Treaty would be accompanied by a strengthening of efforts to combat illegal immigration, smuggling and trafficking. The Laeken (2001), Seville (2002) and Thessaloniki (2003) European Councils strongly endorsed this approach leading to a comprehensive plan to combat illegal immigration and human trafficking. The Council's activities in this area have been many and have focused on preventing the (facilitation) of unauthorised entry, transit and residence, combating trafficking in human beings, mutual recognition of decisions as well as mutual assistance of Member States on expulsions.

In 2002, the Council adopted a Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence,<sup>38</sup> as well as a Directive defining the facilitation of unauthorised entry, transit and residence.<sup>39</sup> The two texts were French initiatives, presented in 2000.<sup>40</sup> In 2002, the Council also adopted a Framework Decision on combating trafficking in human beings.<sup>41</sup> The initiative was presented by the European Commission in 2000, together with a proposal for a Council Framework Decision on combating the sexual exploitation of children and child pornography and a Communication on combating trafficking in human beings and combating the sexual exploitation of children and child pornography.<sup>42</sup>

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<sup>34</sup> European Commission, *The relationship between safeguarding internal security and complying with international protection obligations and instruments*, Working Document, 5 December 2001, COM(2001) 743, p.6.

<sup>35</sup> O.J. of the E.U. of 20.09.2000, C-269.

<sup>36</sup> O.J. of the E.U. of 10.07.2001, L-187.

<sup>37</sup> O.J. of the E.U. of 05.04.2003, C-082.

<sup>38</sup> O.J. of the E.U. of 05.12.2002, L-328.

<sup>39</sup> O.J. of the E.U. of 05.12.2002, L-328.

<sup>40</sup> O.J. of the E.U. of 04.09.2000, C-253.

<sup>41</sup> O.J. of the E.U. of 01.08.2002, L-203.

<sup>42</sup> COM(2001) 854, O.J. of the E.U. of 27.02.2001, 62E.

In 2000, France proposed a Council Directive on mutual recognition of decisions on the expulsion of third country nationals.<sup>43</sup> The Council formally adopted this Directive in 2001.<sup>44</sup> Related to this is the adoption by the Council in 2004 of a Council Decision setting out the criteria and practical arrangements for the compensation of financial imbalances resulting from the application of Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals.<sup>45</sup> In 2003, the Council adopted a Directive on assistance in cases of transit for the purposes of removal of illegal residents by air.<sup>46</sup> This was a German initiative, presented in 2002.<sup>47</sup>

### ***1.5 Common asylum policies***

The Tampere conclusions reaffirmed the Union's commitment to respect the right to seek asylum and agreed to work towards establishing a Common European Asylum System. The asylum agenda was set around the following issues: determination of the State responsible for the examination of an asylum application; temporary protection in the event of a mass influx of refugees; common minimum conditions on reception of asylum seekers; common definition and criteria for qualification for different forms of protection; and common asylum-determination procedures.

#### **DETERMINATION OF RESPONSIBILITY**

In 2001, the Commission presented a proposal for a Council Regulation laying down the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.<sup>48</sup> This Regulation intended to adapt and replace the Dublin Convention, which had been in force since 1997. The implementation of the Convention was beset with problems. Not only was it often extremely difficult, if not impossible, to obtain the supporting evidence to attribute the responsibility for an asylum-seeker to another Member State, but when this was possible, the designated State refused, for one reason or another, to take back the asylum-seeker or was spared of the responsibility because it was not considered to be sufficiently "safe" for the asylum-seeker (e.g. decisions of British courts to block the sending back of asylum-seekers to France or Germany).

The instrument proposed by the Commission, often referred to as Dublin II, received the approval of the Council in 2003.<sup>49</sup> This Regulation could, however, not be effectively implemented without the European Automated Fingerprint Recognition System (EURODAC), which was supposed to have been in place when the Dublin Convention came into force. Member States had, in fact, been dragging their feet on this issue since the early 1990s and after the Amsterdam Treaty came into force the European Commission submitted its proposal for a Council Regulation concerning the establishment of EURODAC for the comparison of fingerprints of applicants for asylum and certain other third-country nationals with a view to facilitate the implementation of the Dublin Convention.<sup>50</sup>

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<sup>43</sup> O.J. of the E.U. of 24.08.2000, C-243.

<sup>44</sup> O.J. of the E.U. of 02.06.2001, L-149.

<sup>45</sup> O.J. of the E.U. of 27.02.2004, L-60.

<sup>46</sup> O.J. of the E.U. of 06.12.2003, L-321.

<sup>47</sup> O.J. of the E.U. of 09.01.2003, C-4E.

<sup>48</sup> COM(2001) 0447.

<sup>49</sup> O.J. of the E.U. of 25.02.2003, L-50.

<sup>50</sup> COM(1999) 260.

An amended proposal was submitted by the European Commission in 2000.<sup>51</sup> The new Regulation was adopted in December of the same year.<sup>52</sup> EURODAC did not, however, become effectively operational until January 2004. The Council approved the implementing rules contained in the Regulation in 2002.<sup>53</sup> Norway and Iceland are also party to “Dublin II”. The Commission presented a proposal for a Council Decision concerning the signing of the “Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway” concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State, Iceland or Norway.<sup>54</sup> In 2001, the Council adopted this proposal.<sup>55</sup>

## TEMPORARY PROTECTION

Given the past conflicts in the Balkans and the ensuing influx of war refugees, the European Commission submitted in May 2000 a proposal for a Council Directive on minimum standards for granting temporary protection in the event of a mass influx of displaced persons.<sup>56</sup> This was, in fact, the fourth proposal of the European Commission on the same matter and, when it was finally approved by the Council in July 2001,<sup>57</sup> it was the culmination of more than six years of tough negotiations.

Under the terms of the Directive, the temporary protection mechanism is put in place by a decision of the Council of Ministers, voting by qualified majority on the basis of a proposal by the European Commission. The text sets out the norms for co-operating with the UNHCR. The decision is valid for one year, with the possibility of an automatic extension of two more periods of six months. A further extension of one year is possible, but this requires again the approval of the Council of Ministers, voting by qualified majority.

The Council can also decide to put an end to the temporary protection mechanisms if this is justified by a significant improvement of the situation in the country of origin. The granting of temporary protection status is without prejudice to the possibility of applying for political asylum and the Directive establishes access to the normal asylum procedure for those wishing to apply. In addition to the right to work, accommodation, social assistance, health care and education, those granted temporary protection will also have the right to be reunited with close family members.

## MINIMUM RECEPTION CONDITIONS

In 2001, the European Commission tabled a proposal for a Council Directive laying down minimum standards on the reception of asylum-seekers by Member States.<sup>58</sup> The proposal required states to ensure a dignified standard of living to all asylum-seekers, paying specific attention to the situation of applicants with special needs or in detention.

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<sup>51</sup> COM(2000) 100.

<sup>52</sup> O.J. of the E.U. of 15.12.2000, L-316.

<sup>53</sup> O.J. of the E.U. of 05.03.2002, L-62.

<sup>54</sup> COM(2000) 0833.

<sup>55</sup> O.J. of the E.U. of 03.04.2001, L-93.

<sup>56</sup> COM(2000) 0303.

<sup>57</sup> O.J. of the E.U. of 07.08.2001, L-212.

<sup>58</sup> COM(2001) 181.



The text was formally adopted<sup>59</sup> and came into force in 2003. The Directive is designed to meet two important objectives of the common asylum system: it guarantees a dignified standard of living for people coming within the scope of the Directive and it limits the movements of asylum applicants (to prevent the so-called 'asylum shopping').

The Directive is in particular concerned with issues of information, documentation, freedom of movement, but also with healthcare, accommodation, schooling of minors, and access to the labour market and vocational training. Special rules are set for persons with special needs, minors, unaccompanied children and victims of torture. Rules are also laid down to improve the efficiency of the reception systems in Member States. Some elements of the Directive concern the possibility for asylum-seekers to access the labour market. However, access to the labour market will de facto be left to each and every Member State to decide. Also, Member States can require from asylum seekers who can afford it, e.g. after they have been working for some time, to cover or contribute to the cost of their reception and healthcare. Member States also retain the right to decide whether to grant asylum-seekers access to vocational training, since Member States are "permitted" (and not requested) to grant this access.

The Council gave its approval in 2003, but not after having heavily amended the original proposal of the Commission. There is no longer harmonisation on the issue of asylum-seekers' family members. The notion of family member has been reduced to the spouse (or the unmarried partner, where applicable) and minor children. Moreover, the Directive will cover these family members only if they are included in the applicant's request for asylum according to national law. The possibility of freedom of movement for asylum-seekers is curtailed. Each Member State will be able to limit an asylum-seeker's movement without having to refer to agreed grounds (as listed in the proposal). Moreover, Member States have added a list of grounds that allow them to impose a specific place of residence on asylum-seekers. In addition, reference is made to the national legislation to identify the situations allowing a Member State to detain asylum-seekers.

As for the reception conditions themselves, the minimum standards have been lowered to a standard of living adequate for the health and to enable the subsistence of the applicants, whereas the Commission suggested a standard of living adequate for the health and the well-being of applicants as well as the protection of their fundamental rights. The Directive also gives Member States the possibility to reduce or withdraw reception conditions from applicants in specific circumstances if, among others, applicants have disappeared from the place they were ordered to await the result of their applications, if they have introduced a previous asylum claim in the Member State concerned, if they conceal financial resources or if they do not introduce their asylum claim as soon as *reasonably* possible after their arrival in the Member State's territory.

Concerning the latter, on the initiative of the UK – the only one of the three Member States with the right to opt-out that will consider itself bound to the terms of the Directive – an amendment was introduced enabling Member States to put the burden on the asylum-seeker and thus refuse reception conditions in cases where an asylum-seeker 'has failed to demonstrate' that his/her claim was made as soon as *reasonably* practicable after arrival. The asylum seeker concerned is however entitled to appeal, at least at last instance, to a judicial body.

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<sup>59</sup> Council Doc. 2003/9/EC, O.J. of the E.U. of 06.02.2003, L-31/18.

## CRITERIA FOR QUALIFICATION FOR PROTECTION

In 2001, the European Commission submitted a proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection.<sup>60</sup> In 2004, the Council reached an agreement on a version hardly bearing resemblance to the one submitted by the European Commission.

Under the adopted version, protection can be denied to those asylum-seekers if it is deemed that their safety can be guaranteed not only by their own State, but also if it can be guaranteed by parties or organisations, including international organisations controlling a region or a larger area within the territory of the State. The UNHCR criticised the text because the organisation maintains that it is inappropriate to equate national protection provided by States with the exercise of a certain administrative authority and control over a territory by international organisations on a transitional or temporary basis. Under international law international organisations do not have the attributes of a State.

## ASYLUM DETERMINATION PROCEDURES

In 2000, the Commission proposed a text for a Directive on minimum standards of procedures in Member States for granting and withdrawing refugee status.<sup>61</sup> The proposal failed to secure the Council's approval and an amended version was submitted in 2002.<sup>62</sup> The opposition of the Council revolved around four points, which were: the 'safe third country' concept, the exceptional application of the 'safe third country' concept, the 'safe country of origin' concept and the appeal provisions. A final proposal for a text was adopted in 2004. Delay in adopting this Directive has, in part, been caused by the initiative taken in 2002 by Austria (and supported by quite a number of Member States) for a Council Regulation establishing the criteria for determining the States which qualify as safe third States for the purpose of taking the responsibility for examining an application for asylum lodged in a Member State by a third country national and drawing up a list of European safe third States.<sup>63</sup>

## EUROPEAN REFUGEE FUND

The first measure adopted in the field of asylum was the sharing of EU resources to cope with the reception of asylum-seekers. In 1999 the European Commission submitted a proposal on creating a European Refugee Fund (ERF) covering the period of 2000 to 2004. The total amount set aside to cover the five-year period was 216 million Euros. The Council adopted the proposal in 2000.<sup>64</sup> In 2004, the European Commission presented another proposal for a Council Decision establishing the European Refugee Fund II (ERF II), this time covering the period 2005-2010.<sup>65</sup>

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<sup>60</sup> COM(2001) 510.

<sup>61</sup> COM(2000) 0578.

<sup>62</sup> COM(2002) 0326.

<sup>63</sup> O.J. of the E.U. of 24.01.2003, C-17.

<sup>64</sup> O.J. of the E.U. of 06.10.2000, L-252.

<sup>65</sup> COM (2004) 0102.

## 1.6 Migration and security

Security issues became a higher priority in Europe after the 11 September 2001 terrorist attacks in the United States. Since these attacks the Council of Ministers has considered a number of measures, some of which had been tabled before the attacks. An extraordinary Justice and Home Affairs Council was organised and called for a common Action Plan for a common definition of terrorism, a common arrest warrant, joint investigation teams and enhanced judicial, police and intelligence co-operation. Other matters were standardised airport security across the EU, emergency planning, pooling of medical and scientific expertise on weapons of mass destruction and on terrorist financing.

The Council asked the Commission to analyse the relationship between guaranteeing internal security and compliance with obligations related to international protection. In 2001 the European Commission issued a Working Paper which encouraged Member States to "scrupulously and rigorously" apply the exclusion clauses contained in Article 1(F) of the Geneva Convention in order to prevent persons suspected of terrorist acts from seeking asylum. Furthermore, a Common Position on combating terrorism<sup>66</sup> was adopted by the EU in December 2001. In line with the UN Security Council Resolution 1373 of 28 September 2001, in which states were called to take measures in the fight against terrorism, the Common Position underlines the need for effective border control and controls on the issuing of identity papers and travel documents. It called for measures to prevent terrorists from being granted refugee status and the abuse of refugee status by terrorists. Member States are to investigate refugees and asylum seekers so as to ensure that an asylum seeker has not planned, facilitated or participated in terrorist acts.

The link between border control and the fight against terrorism was also made in the conclusions of the 2001 Laeken European Council which stated that terrorism, illegal immigration networks and the traffic in human beings could be fought through an improved management of the Union's external border controls. In 2002 the Commission issued a Communication on the integrated management of the EU external borders<sup>67</sup> in which it recommended that measures concerning the crossing of these borders should be reinforced by the introduction of standards and procedures to be followed when Member States carry out border checks. The Communication also advocated the establishment of a common unit for external border practitioners, which was expected to develop from the Strategic Committee for Immigration, Frontiers and Asylum (SCIFA).<sup>68</sup> This recommendation was endorsed by the 2002 Seville European Council, which urged Member States to introduce as soon as possible the common unit for external border practitioners who would co-ordinate the measures included in the Action Plan.

The Danish Presidency proceeded with the creation of the Common Unit under the existing formation of SCIFA+, with the remit of initiating operational forms of joint co-operation, approving a series of plans for joint operations and pilot projects submitted by the Member States. SCIFA+ has adopted a series of joint operations at land, air and sea borders as well as pilot projects and *ad hoc* centres, seventeen in total. These notably

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<sup>66</sup> 2001/930, O.J. of the E.U. of 28.12.2001, L 344-90.

<sup>67</sup> COM(2002) 233.

<sup>68</sup> SCIFA was established following the Treaty of Amsterdam as a high-level expert group of immigration officials, reporting to COREPER (Committee of Permanent Representatives) and in charge of taking a strategic view on immigration and asylum issues. SCIFA+ is the same group plus the heads of Member States' border guards.

include an *ad hoc* Risk Analysis Centre, which will produce, on the basis of a common integrated risk analysis model, regular risk assessments regarding irregular migration. SCIFA+ has also created a network of national contact points for the management of external borders.

The 2003 Thessaloniki European Council confirmed that a coherent approach was necessary at EU level on biometric identifiers or biometric data, which would lead to harmonised solutions for documents of third country nationals, EU citizens' passports and Schengen and Visa Information Systems VIS and SIS II, and invited the Commission to make appropriate proposals, with visas as a priority. As a result, in September 2003, the Commission produced two draft Council Regulations<sup>69</sup> with a view to introducing two sets of biometric data (fingerprints and facial image) on visas and resident permits for third country nationals by 2005. These proposals were explicitly presented as a response to 11 September and intended to improve document security so as to identify people attempting to use forged documents to gain entry into the Union's territory. Recently States called again for a Commission proposal to integrate biometric identifiers into the uniform format for visas and residence permits for third country nationals.

Following the terrorist attacks in Madrid, the EU Presidency announced that it would, together with the European Commission, prepare a package of new anti-terrorist measures. This resulted in the adoption by the Council of a Declaration on Combating Terrorism that called for the development and implementation of such measures. The Declaration insists on the need to enable the Draft Council Regulation and Draft Decision on the introduction of new functions for the Schengen Information System (SIS) to come into force by June 2004, and urges the Commission and the Council to take forward work on the Visa Information System (VIS). Furthermore, the Declaration acknowledges that improved border controls and document security play an important role in combating terrorism: therefore, work on measures in this area needs to be speeded up, in particular with regard to the proposed start of the European Border Management Agency by 1 January 2005.

The Council is to adopt the Commission's proposals for the incorporation of biometric features into passports and visas by the end of 2004. The document stresses that external relations actions targeted at certain third countries need to be enhanced in order to provide support to these countries in combating terrorism. The EU should co-operate with these countries, in particular through the development of technical assistance strategies and by addressing counter-terrorism concerns in all relevant external assistance programmes to promote good governance and the rule of law. The document highlights the fact that the EU will evaluate the commitment of countries to combat terrorism on an ongoing basis, and that this will be an influencing factor in EU relations with these countries. In view of these considerations, the European Council agreed on new strategic objectives to enhance the EU Action Plan to combat terrorism. These include ensuring effective systems of border control and developing EU external relations actions targeting third countries where counter-terrorist capacity or commitment to combating terrorism needs to be increased.

In a meeting a few weeks after the Madrid terrorist bombings, the Council agreed on a general approach to the Directive on the obligation of carriers to communicate passenger data, which aims at improving border controls and combating illegal

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<sup>69</sup> COM(2003) 558.

immigration by the transmission in advance of passenger data by air carriers to border authorities.

## **2. THE SOCIO-ECONOMIC AGENDA**

The socio-economic agenda is characterised by the emergence of a Community-wide labour market, which has been matched by attempts to manage it at the European level. The drive for a joint labour market strategy gained momentum after the inclusion of an Employment Title in the Amsterdam Treaty, which declared employment a matter of common concern. This formed the basis for the European Employment Strategy, which was initiated at the 1997 Luxembourg Jobs Summit.

An annual cycle of programming, reporting, peer review, assessment and adjustment of the objectives was established and formally adopted as an 'open method of co-ordination' at the 2000 Lisbon European Council. As Member States set the goal for the Union to become 'the most competitive and dynamic knowledge based economy in the world capable of sustained economic growth with more and better jobs and greater social cohesion', the Employment Strategy became an important vehicle for setting objectives and measuring progress. Other dimensions of the so-called Lisbon strategy are addressed through an Open Method on social inclusion, one on pensions, and related policy instruments.

This chapter charts the gradual (re-)insertion of immigration into the European Union's socio-economic agenda. Demographic changes and labour market mismatches led to the recognition that without immigration, achieving the ambitious 'Lisbon goals' would be even more difficult. While the European Commission set out the rationale for moving away from zero immigration in successive Communications, Member States began to mention immigration in their National Action Plans submitted under the European Employment Strategy. As alternative strategies to increase labour supply, such as raising the participation rates of women and of older workers and encouraging the mobility of EU nationals continued to play a prominent role, immigration came to be considered a complementary strategy.

This development culminated in the 2003 Communication on immigration, integration and employment adopted during the 2003 Greek Presidency. Even though the economic downturn has put the highlight on unemployment rather than the fall in labour supply, immigration has come to be considered seriously as an element of Europe's economic future. At the same time, the issue of (intra-European) mobility, which has long been on the European agenda, has become more connected to the question of immigration from outside the Union.

Immigrant integration has become a key topic since the 2002 Danish Presidency. Already since 2001, the Open Method on social inclusion addresses the vulnerability of immigrants and ethnic minorities to poverty. In the absence of European competence on integration, countries influence each other's policies through an ongoing exchange of experience and policy models. An exception is the anti-discrimination field, where two Directives have been adopted and are in the process of being transposed into national law.

### ***2.1 The Employment Strategy***

Immigration was re-instated on the socio-economic agenda of Europe and its Member States through a combination of demographic and labour market factors. The issue of demographic change moved from being an academic topic to the centre of debates

about Europe's growth potential and about the sustainability of pensions and welfare and health benefits. Key to this shift was the recognition that the ageing of Europe's population would gradually lead to a contraction in the labour force. With fertility rates at 1.47 in 2001, well below the replacement level of 2.1, and life expectancy growing, it was projected that by 2030 there would be 110 million people over the age of 65 in the EU25, up from 71 million in 2000. At the same time, the old age dependency ratio – the percentage of people aged 65 and above compared to the number of people aged 15-64 – would increase from 23% in 2000 to 39% in 2030.

In response to the projected decline in the labour force, the 2000 Lisbon Summit set a number of targets, including an increase in the EU employment rate from 61% to 70% by 2010, and an increase in the number of employed women from 51% to 60%. The 2001 Stockholm European Council then agreed that half of the EU population in the 55-64 age group should be in employment by 2010, and the 2002 Barcelona European Council concluded that a progressive increase of about 5 years in the effective average age at which people stop working in the European Union should be sought by 2010.

That reaching these targets would be difficult was already clear in 2000. In this context, the Commission's Communication on a Community immigration policy suggested that sufficient attention had not been given to the role of third-country nationals in the labour market.<sup>70</sup> In an annex on 'the economic and demographic context', the Communication noted that 'shortages could threaten the EU competitiveness in the global economy'. It was therefore necessary to recognise that the 'zero' immigration policies of the past 30 years were no longer appropriate.

While the declared aim of the 2000 Communication was to stimulate debate, the 2001 Communication on an open method of coordination for the Community immigration policy went further in suggesting that Member States should work together on regulating migration.<sup>71</sup> It suggested that in parallel with the existing Employment Strategy, Member States should prepare National Action Plans on immigration in response to guidelines adopted by the Council. The Commission would then prepare a synthesis report drawing attention to common problems and identifying areas where European solutions might be appropriate. The Communication referred to the proposed Directive on the admission of third country nationals for the purpose of taking up employment and suggested that the Open Method could ensure its transparent and coherent application.

Despite the fact that more and more governments publicly acknowledged Europe's need for immigration, the proposed Directive on the entry and residence of third-country nationals for the purpose of employment and self-employed economic activities continued to meet strong resistance in the relevant Council Migration Admission Working Group. Similarly, the proposed open method on immigration was not received warmly by Member States. However, immigration for labour market reasons started to play a role in the framework of the Employment Strategy by appearing in Guidelines, National Action Plans and Joint Employment Reports, i.e. the key points in the Employment Strategy's annual cycle.

The cycle starts with the Commission drafting guidelines which recommend a range of policies and seek to form an integrated set of objectives and targets. These guidelines are passed by qualified majority voting in the Council. Each Member State then draws

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<sup>70</sup> COM(2000)757.

<sup>71</sup> COM (2001)387.

up a National Action Plan (NAP) describing how the guidelines are being put into practice. The Commission assesses each Member State's compliance with the guidelines and can propose to the Council that recommendations be directed at specific countries. At the end of the annual cycle, the Commission and the Council present a Joint Employment Report to the European Council. While the Joint Employment Report is being written, guidelines for the following year are developed and the cycle begins again.

The 2000 Joint Employment Report, for instance, mentioned the tightening of the labour market supply of high tech professionals, leading to adaptations of immigration policies in a few Member States.<sup>72</sup> Specifically, the report identified a tightening of the labour market supply in Sweden, Denmark, Ireland, the Netherlands, Northern Italy and Belgium. Adjustment in immigration provisions for high tech professionals was recorded for Germany, Denmark, Sweden, Ireland, the UK, and Finland. However, the report only mentioned these developments in passing, moving on to point out the importance of lifelong learning and training initiatives in Member States.

The 2001 Joint Employment Report reported on Member States' answers under Guideline 6, which asked Member States to identify and prevent emerging bottlenecks. It commented on the National Action Plans, in which Italy, Finland, Sweden, the United Kingdom and France stated that their labour shortages were mainly limited to a few occupations/sectors and regions. At the other end of the spectrum, it noted that Finland, Ireland and the Netherlands found themselves in very tight labour markets, with shortages in both high and low skill occupations. It concluded that 'most Member States anticipate the problems becoming more serious in the near and mid term future, based on combined economic and demographic forecasts'.

In commenting on the policies adopted to alleviate this problem, the report noted that Luxembourg and Ireland resort to bringing in a significant number of foreign workers compared to other Member States, with Ireland conducting active recruitment campaigns inside and outside the European Union. The United Kingdom, Finland, Austria, Germany and Portugal were listed as reforming their system on work permits to allow for more flexible recruitment of foreign workers for bottleneck occupations. Policies to legalise ethnic minorities and migrant workers were recorded for Portugal and Greece.<sup>73</sup>

The worsening economic climate was apparent in the 2002 NAPs, in which references to immigration were made only by Finland, Germany, the Netherlands, Ireland, and Austria. Nevertheless, the Draft Joint Employment Report 2002 summed up that 'several Member States present labour immigration as part of the solution to labour shortages, thus recognising the importance of a better integrated European labour market'.<sup>74</sup>

After five years of operation, the Employment Strategy was reviewed and modified in some of its aspects. In particular, Member States decided that the Strategy should be co-ordinated more closely with economic policy instruments. In a new 'streamlined' process, the Commission now presents an 'implementation package' each January, which includes the Broad Economic Policy Guidelines Implementation Report, the Draft Joint Employment Report and the Implementation Report on the Internal Market Strategy.

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<sup>72</sup> European Commission, *Joint Employment Report 2000*, COM(2000)551, p 56.

<sup>73</sup> European Commission, 'Assessment of the Implementation of the 2001 Employment Guidelines,' Supporting Document to the *Joint Employment report 2001*, p.71.

<sup>74</sup> European Commission, *Draft Joint Employment Report 2002*, COM(2002) 621, p. 38.



The 2003/2004 Draft Joint Employment Report notes that immigration is considered by most Member States as an important source of additional labour supply, but only for professions or sectors encountering recruitment difficulties.<sup>75</sup> Belgium, Germany, Spain and Ireland are cited as aiming to simplify the system of work permits and regulations for recruiting immigrants. The report suggests that most Member States give increased attention to migrants currently living in the EU, responding to the fact that the unemployment gap between EU and non-EU nationals remains stable at the high level of 7.7%. Indeed, the Swedish NAP of 2003 notes that 37.0% of foreign-born women and 27.2% of foreign-born men aged 16-64 are excluded from the labour market and says that it is necessary to study the causes of this high percentage, 'particularly in view of the future efforts that will be necessary to make full use of the potential labour supply'.

Similarly, the Dutch NAP sets the target of increasing labour force participation amongst ethnic minorities to 54% by 2005. Beyond that, the Netherlands maintains that it is 'pursuing a restrictive, demand-driven labour migration policy', but one which 'allows for the (temporary) admission of highly qualified migrants, in particular, to combat labour shortages, or to boost the knowledge economy on a demand-driven basis'. Finland most explicitly refers to demographic changes and announces that 'preparations are being made for a possible increase in the immigration of foreign labour through an immigration policy programme that will be ready in spring 2005. If the economic dependency ratio so requires, the Government will promote immigration in support of labour supply'.

The brief overview shows that within the context of the Employment Strategy, immigration has been considered as a possible policy response to both the projected overall drop in labour supply and specific skill shortages and mismatches. It also shows that immigration has been considered most seriously in times of high economic growth and widespread labour shortages. While the economic downturn has not completely eliminated references to immigration from Member States' National Action Plans, there is a real danger that the more serious structural challenges of economic transformation and demographics will be forgotten in times of job cuts and increasing unemployment. The future of the 'immigration option' on the European socio-economic agenda, then, depends partly on the foresight of policy makers. It also depends on the success of alternative strategies to increase labour supply, in particular by raising employment rates.

The Joint Employment Report 2003/2004 indicates that progress towards the target of a 70% overall employment rate has come to a standstill and that, at 64.3%, it is now clear that the EU will miss the intermediate employment target of 67% for 2005. The employment rate for women improved in 2002 (55.6%), and the report considers that it remains on track towards the intermediate target for 2005 (57%). However, progress towards the target for 2010 will most crucially depend upon improvements in the employment rate of older workers. Although this rate has increased to just over 40% in 2002, the 2005 target of 50 % for 2010 is a considerable way off.<sup>76</sup>

The Commission has produced numerous documents on the subject of older workers, most recently a Communication on increasing the employment of older workers and delaying their exit from the labour market.<sup>77</sup> One of the sections, entitled 'Member States

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<sup>75</sup> European Commission, *Draft Joint Employment Report 2003/2004*, COM(2004) 24.

<sup>76</sup> European Commission, *Draft Joint Employment Report 2003/2004*, COM(2004) 24.

<sup>77</sup> COM(2004) 146.

must take drastic action', declares that Belgium, Luxembourg and Italy have the worst record with regard to the employment of older workers. On the other hand, it remarks that Finland, France and Portugal have set targets to raise the average exit age.

The problems with implementing policies such as active ageing across the board indicate that while the Lisbon Strategy has been a success in terms of setting goals and objectives, it does not always lead to swift changes in the actions of Member States. Only seven out of the forty directives due for transposition by the end of 2003 have been transposed by all Member States. With an average transposition rate of 58.3%, Denmark, Spain and Italy have the best records (75 to 85% of 'Lisbon' directives transposed), while France, Germany and Greece are the furthest behind (42 to 35%). As for the policy development of countries since 1999, the Commission estimates that Belgium, France and Greece have made rather good progress, while progress in Germany, Luxembourg, Austria and Portugal has been rather disappointing.<sup>78</sup> The Commission and Council agree that the pace of reform at Member State level has to be stepped up in order to safeguard the credibility of the process.

It is therefore unlikely that the drop in labour supply which European countries will face can be compensated through quick increases in participation rates. Aware of this situation, the European Commission unambiguously states that 'given ageing and related skills gaps, fulfilling the Lisbon objectives by 2010 and beyond will notably depend on the shape and dynamics of immigration in the EU'.<sup>79</sup> Member States must make use of the additional labour supply resulting from immigration. This is also recognised within the Open Method on pensions, which was launched by the 2001 Laeken European Council. The 2003 Joint Report on Pensions<sup>80</sup> cites Spain and Greece as countries expecting that immigrants will generate an important extra supply of labour. The Spanish report in particular stresses the important contribution of foreign workers to the current favourable financial situation of the social insurance system, as the number of foreigners covered by the social security system more than doubled from 332,000 in 1999 to 792,000 in 2002.

## **2.2 Mobility**

The free movement of persons has been a part of European Union integration from the beginning, and has consistently been extended and promoted by Member States. For instance, free movement rights were extended from workers to students, pensioners and others not taking up a gainful activity. With the completion of the internal market (i.e. the removal of internal border control between most of the Member States) and the introduction of EU citizenship in the early 1990s, the movement of Member States nationals from one Member State to another ceased to be regarded as migration. These persons were merely exercising their free movement rights. Intra-Union migration became simply 'internal mobility'.

Member States promote internal mobility because the free movement of persons is one of the four freedoms anchored in the 1957 *Treaty establishing the European Community*,

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<sup>78</sup> European Commission, *Delivering Lisbon - Reforms for the Enlarged Union*, report to the Spring European Council, COM(2004) 29-2.

<sup>79</sup> European Commission, *Communication on the Future of the European Employment Strategy (EES) - A strategy for full employment and better jobs for all*, COM(2003)6, p.13.

<sup>80</sup> European Commission and Council, *Draft Joint Report on Adequate and Sustainable Pensions 2003*, p. 46.

alongside the freedom of movement for services, capital and goods. They also promote internal mobility because of its contribution to a genuinely pan-European labour market, which could alleviate skills gaps and labour market mismatches in individual countries.

These efforts are long-standing and cover a wide range of areas and mechanisms. They have intensified significantly since the 2000 Nice European Council, which stressed the need to break down barriers to mobility. An Action Plan for mobility was adopted which included a 'toolbox' of 42 measures, ranging from financial support to linguistic and cultural preparation for mobility.<sup>81</sup> The 2001 Stockholm European Council endorsed this Plan.

In 2001, the Commission proposed a Directive on the freedom of movement of Union citizens, which was adopted in 2004.<sup>82</sup> This Directive eliminates the need for EU citizens to obtain a residence card, introduces a permanent right of residence –which is no longer subject to any conditions– after five years of uninterrupted residence in the host Member State, clarifies the situation of family members, and restricts the scope for refusing or terminating residence.

Mobility also plays a key role in the Strategy on Building New European Labour Markets by 2005, which the Commission launched in February 2001. As part of the Strategy, the Commission established a High Level Task Force on Skills and Mobility in 2001, whose findings, presented in the same year, laid the foundation for an Action Plan developed by the Commission in 2002.<sup>83</sup> This Action Plan makes proposals for adapting education and training systems and for facilitating access to mobility, but also notes that 'a declining EU workforce due to demographic changes suggests that immigration of third country nationals would also help satisfy some of the skill needs'. In fact, a recent report on the Action Plan's implementation notes that the increase in geographical mobility has remained minute, growing from 1.45% in 1998 to a mere 1.50% in 2001.<sup>84</sup> The report reiterates that obstacles and disincentives to labour mobility –both geographical and occupational– impede the proper functioning of the labour market and that the match between job openings and the human resources available to fill them should be improved.

The 2004 Brussels Spring Council Conclusions devote a paragraph to 'Enhancing the free movement of workers' and mention the reform of Regulation No 1408/71, which simplifies and modernizes the provisions protecting the social security rights and schemes applying to EU workers and families moving within the Union, as an example of progress.<sup>85</sup> The Conclusions also note that this reform, based on a Commission's proposal in 2002<sup>86</sup> and adopted by the Council in 2003,<sup>87</sup> also provides for the extension

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<sup>81</sup> Council and Representatives of the Governments of the Member States meeting within the Council, Resolution 13649/00 concerning an Action Plan for Mobility, O.J. of the E.U. of 23.12.00, C-371.

<sup>82</sup> European Commission, *Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States*, COM(2001) 257.

<sup>83</sup> European Commission, *Action Plan for skills and mobility in the European Union*, COM(2002) 72. In response, the 'Employment and Social Policy' Council in June 2002 adopted a resolution on skills and mobility, CSL 9614/2002.

<sup>84</sup> European Commission, *Report on the Implementation of the Commission's Action Plan for Skills and Mobility*, COM(2002) 72 and COM(2004) 66.

<sup>85</sup> Presidency Conclusions, 2004 Brussels European Council.

<sup>86</sup> COM(2002) 59.

<sup>87</sup> Regulation No 859/2003, O.J. of the E.U. of 20.05.2003, L-124.

of the Regulation provisions to third country nationals not covered by the original Regulation solely on grounds of their nationality.

The adoption in 2003 of the Directive on long-term residents provided for a limited measure of mobility for third-country nationals but left many obstacles in place. The extension of social security rights to third country nationals further facilitated their mobility within the Union; an issue which emerged as part of the free movement agenda over the past years. As the continuously low rates of movement indicated that European Union citizens were adverse to the risk of moving even under improved conditions, third-country nationals who had already taken a migration decision became a significant target of mobility policies. At the same time, extending free movement rights was considered to be a step towards equal treatment for third-country nationals. The extension was brought forward, thus, to honour the commitment in the European Council of Tampere to ensure fair treatment of third-country nationals who reside legally in the territory of the Union and grant them rights and obligations comparable to those of EU citizens.

The debate on the socio-economic aspects of immigration was strongly encouraged by the 2003 Greek Presidency, which declared itself committed to 'develop migration regimes that contribute tangibly to economic needs'. In 2003, a Communication on immigration, integration and employment was published and reinforced the positive attention given to the socio-economic dimension of migration.<sup>88</sup> The Communication reiterates that both migration pressures and migration needs will persist. In particular, it underlines that immigration helps reduce labour shortages and bottlenecks, which are increasing in sectors such as information and communication technologies or healthcare, but also among some low-skilled occupations. The Communication argues that these labour shortages are expected to grow in the medium term and that economic immigration could play a role in tackling labour market imbalances provided the qualifications of immigrants are appropriate.

Lastly, the Communication's analysis suggests that immigration could also contribute to improve the sustainability of pensions even though, on its own, it cannot solve all the effects of population ageing. The Communication then goes on to call for a more coherent European framework for integration to ensure that immigration contributes more effectively to the new demographic and economic environment. It claims that the successful integration of immigrants is both a matter of social cohesion and a prerequisite for economic efficiency. Calling for a holistic approach, the Communication touches upon economic and social aspects of integration as well as issues related to cultural and religious diversity, citizenship, social participation and political rights. Education and access to housing, health and social services are all mentioned.

### **2.3 Integration**

In the framework of the Employment Strategy, the labour market integration of migrants is a priority in the Commission guidelines and many National Action Plans. For instance, the 2003 Guidelines propose a related target to be achieved by 2010, namely to achieve a significant reduction in the unemployment gaps between non-EU and EU nationals.<sup>89</sup> In 2002, the unemployment rate was more than twice as high among non-EU nationals

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<sup>88</sup> COM(2003) 336.

<sup>89</sup> Council decision on employment guidelines, O.J. of the E.U. of 05.08.03, L-197.

than among EU nationals. The biggest gaps were reported for Belgium and France. Moreover, the employment rate of non-EU nationals is on average much lower than for EU nationals (13.8 percentage points lower in 2002). The gap is wider for women (17.6 percentage points lower) than for men (10.0 percentage points lower). In Belgium, the overall gap is 30 percentage points, and it exceeds 20 percentage points in Denmark, the Netherlands, Sweden and France.

On the other hand, employment rates are lower for EU nationals than for non-EU nationals in Spain, Greece and Portugal. With regard to wages, the non-adjusted wage gap between EU nationals and non-EU nationals in 2000 amounted to 6 percent (10 percent for women and 4 percent for men).<sup>90</sup> Summarising the above developments, a recent report argued that more attention to the integration of minorities and immigrants in the labour market was especially needed in Belgium, France, Sweden, Finland, Denmark, Germany, the Netherlands and the UK. Within the new Member States, the Czech Republic, Hungary, Slovakia, as well as the Baltic countries, face a particular challenge in integrating minorities.<sup>91</sup>

Besides the Employment Strategy, the Social Inclusion Process also addresses the socio-economic situation of migrants. The Social Inclusion Process was initiated at the 2000 Lisbon Summit and the ideas developed there were further detailed in a Commission communication on the European Social Agenda.<sup>92</sup> The 2001 Stockholm European Council called for a social inclusion programme, saying that 'the fight against social exclusion is of utmost importance for the Union'. Building on this work, the 2000 Nice European Council approved the European Social Agenda, which includes the goal of 'fighting poverty and all forms of exclusion and discrimination in order to promote social integration'. It also called for an 'open method' approach such as that followed by the Employment Strategy, with the difference that Member States would submit their National Action Plans every two years instead of every year.

The first National Action Plans against poverty and social exclusion were submitted in 2001. In the Common Outline for the second round – due in July 2003 – making a drive to reduce poverty and social exclusion of immigrants and ethnic minorities was made a key priority.<sup>93</sup> As a result, the higher risk of poverty and social exclusion linked to immigration or as a result of coming from an ethnic minority was highlighted far more in the 2003 NAPs by many Member States. The second Joint Inclusion Report<sup>94</sup> summarises the particular aspects mentioned by Member States, including difficulties in finding accommodation, acquiring a well-paid job, and barriers in access to training, especially in languages. While the German NAP highlights older immigrants, Sweden refers to the poorer health of many immigrants and gender differences are also highlighted (as they are in the Irish NAP).

However, in its evaluation of the NAPs, the Commission notes that the lack of data on vulnerable groups, and in particular migrant and ethnic groups continues to be a major problem. Only a small number of countries (including the United Kingdom, Belgium,

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<sup>90</sup> Figures taken from the European Commission's 'Immigration and employment in the EU', *Employment in Europe report 2003*, chapter 6, pp. 185-198.

<sup>91</sup> *Jobs, Jobs, Jobs – Creating more Employment in Europe* (2003), Report of the Employment Task Force chaired by Wim Kok, p. 46.

<sup>92</sup> COM(2000) 379.

<sup>93</sup> Social Protection Committee, *Common Outline for the 2003/2005 NAPs/inclusion*, p. 2.

<sup>94</sup> *Joint report on social inclusion summarising the results of the examination of the National Action Plans for Social Inclusion (2003-2005)*, COM(2003) 773.

Netherlands, Spain and France) list data or indicators for people of immigrant origin. In the Commission's view, the lack of detailed data and indicators hinders any thorough analysis of the situation facing these groups. Moreover, only a few countries attempt to identify trends, negative or positive, in the living and working conditions of immigrants. Few NAPs give clear evidence that the situation facing migrant populations has improved since the submission of the first action plans in 2001.

In its Joint Inclusion Report, the Commission also voices grave concerns about the lack of rights-based integration policies in many Member States. It criticizes that little attention is paid to promoting the access of immigrants and ethnic minorities to resources, rights, goods and services, in particular to social protection schemes, to decent and sanitary housing, to appropriate healthcare and to education. Rather, the report identifies a 'narrow integrationist approach, comprising mainly language and training measures' and notes that 'in many cases the emphasis is on the need for immigrants to adapt'.<sup>95</sup>

At the European level, integration has steadily gained prominence since the 2002 Danish Presidency. A group of National Contact Points on Integration is meeting regularly under the coordination of the European Commission's DG Justice and Home Affairs. The group was set up following the October 2002 Justice and Home Affairs Council and was endorsed at the 2003 Thessaloniki European Council. It is currently working on producing a Handbook on Integration, including general guidelines and principles as well as best practice examples. A new budget line on the integration of third country nationals (INTI) came into existence in 2003 with a budget allocation of four million Euros for the first year. The INTI programme funds pilot projects for the integration of third country nationals, with an emphasis on promoting dialogue with civil society, developing integration models, seeking out and evaluating best practices in the integration field and setting up networks at European level.

The social and economic integration of refugees is supported through the European Refugee Fund, which was established in 2000 (see also chapter I). 216 million Euros were allocated in total; the budget available for the year 2003 was 2,113.550 Euros. Integration activities accounted for 28% of national activities supported by the Fund between 2000 and 2002. Aid went in particular to language training; activities promoting employability and providing advice on housing, education, understanding and accessing social benefits; public information campaigns on refugee issues; and to developing partnerships between public authorities, community organisations, and employers and housing associations. In its current form, the European Refugee Fund comes to an end in December 2004.

The Commission's proposal for a new ERF (ERF II for 2005-2010) gives more detail on integration measures to be funded, suggesting that eligible actions could include social assistance; actions to promote the 'rights and obligations of European citizenship' as well as participation in civil and cultural life; education, vocational training and recognition of qualifications; actions designed to enable [these persons] to provide for themselves; and actions to 'promote the integration of [these persons] involving local authorities, the general public or refugee associations, for example via voluntary work, sponsorship or the participation of socio-economic interest groups or trade unions' (Article 6).<sup>96</sup> As in the ERF first phase, the target group includes recognized refugees as

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<sup>95</sup> Idem, pp. 94 and 95.

<sup>96</sup> European Commission, *Proposal for a Council Decision establishing the European Refugee Fund for the period 2005-2010*, COM(2004) 102.

well as asylum seekers and those with subsidiary protection. Resettled refugees are specifically mentioned in the proposal for the next phase.

## **2.4 Anti-discrimination**

The Commission's recent Social Inclusion report warns that the Social Inclusion Process may not have a close enough connection to anti-discrimination. It observes that only four Member States highlight the Council Directive on combating discrimination on the grounds of ethnic or racial origin, which was to be implemented into national law during 2003.

The Amsterdam Treaty provides a legal basis for Community measures to combat discrimination on the grounds of sex, racial or ethnic origin, religion or belief, disability, age and sexual orientation. In 2000, European legislation was adopted in the form of the Directive implementing the principle of equal treatment irrespective of racial or ethnic origin (the Racial Equality Directive) and Council Directive establishing a general framework for equal treatment in employment and occupation prohibiting discrimination on the grounds of religion or belief, disability, age or sexual orientation (the Framework Directive). The provisions of the Racial Equality Directive and the Framework Directive are largely parallel, with some distinctions for individual grounds. Both Directives outlaw discrimination in employment-related situations, but the Racial Equality Directive goes beyond employment relationships, prohibiting discrimination in social protection, education and access to and supply of public goods and services.

The concept of discrimination is broken down into four key concepts: direct discrimination, indirect discrimination, harassment and instruction to discriminate.<sup>97</sup> Direct discrimination occurs when one person is treated less favourably than another is, has been or would be treated in a comparable situation on the grounds of racial or ethnic origin, or religion or belief. Direct discrimination may be overt or covert, and it may be intentional or sub-conscious. The reasons behind discrimination are irrelevant; it is the discriminatory result that counts. The prohibition covers situations in which a person is perceived to be of a certain racial or ethnic origin, and where a person is discriminated against on the basis of their association with a person who is of a certain racial or ethnic origin. The less favourable treatment may have occurred in the past, may be currently taking place, or it may be purely hypothetical.

Indirect discrimination occurs when an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin –or having a particular religion or belief– at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. An example of probable indirect discrimination is requiring fluency in a particular language for a cleaning job. The nature of the job in question will determine whether such a requirement is objectively justified and therefore valid. The concept 'objectively justified' must be interpreted strictly, taking into account whether the aim is legitimate and proportionate by weighing the discrimination against the needs of the discriminator.

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<sup>97</sup> The following overview considers first and foremost the provisions of the Racial Equality Directive.

Harassment is unwanted conduct with the purpose or effect of violating the dignity of a person and creating an intimidating, hostile, degrading, humiliating or offensive environment. This prohibition covers jokes, offensive remarks, inappropriate use of email or bullying in the office by colleagues or a third party. It is important that the employer or other persons to whom the Directive applies have a duty to take steps to prevent harassment. An instruction to discriminate on any of the prohibited grounds constitutes an act of discrimination. Thus, for example, an employer cannot instruct a recruitment agency not to send persons of a particular ethnic origin for interview.

Discrimination on the ground of nationality is excluded from the protection afforded by the Directives, though third country nationals would be protected from discrimination on the grounds of race or ethnicity. Furthermore, direct nationality-based discrimination may also be found to be indirect discrimination on the grounds of racial or ethnic origin. In addition, the Directives are without prejudice to provisions and conditions relating to the entry and residence of third-country nationals and stateless persons in the territory of Member States, and to any treatment arising from the legal status of third-country nationals and stateless persons.

States may provide that 'a difference in treatment which is based on a characteristic related to any of the protected grounds shall not constitute discrimination where, by reason of the particular occupational activities concerned or the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement provided that the objective is legitimate and the requirement is proportionate'. However, these exceptions may occur 'in very limited circumstances' and must be included in the information provided by Member States to the European Commission. Special exceptions related to the ethos of religious organisations may be maintained. This may allow churches to insist that teachers in their religious schools are of that religion, although the same could not be said for posts such as care takers or cleaners whose religion should be irrelevant to the completion of their tasks.

In order to achieve equality it may be necessary to treat (groups of) individuals differently. Positive action measures can be taken to overcome disadvantages of a particular group. The provision on positive action in the Directives is likely to be interpreted in accordance with the European Court of Justice's rulings on positive action in relation to sex discrimination, in particular the requirements that measures be limited in time to the period necessary to overcome the disadvantage being targeted, and that they be sufficiently flexible to allow exceptions in particular cases. Measures should be assessed and evaluated on a regular basis.

The anti-discrimination Directives set out a series of guarantees designed to improve the chances of justice for victims of discrimination. Firstly, all persons who consider themselves wronged must have access to judicial or administrative procedures, and conciliation procedures may provide an additional alternative forum to seek justice. These remedies must be available even after the relationship in which the discrimination took place has ended. Secondly, associations, organisations or other legal entities with a legitimate interest in ensuring compliance with the Directives' provisions may engage in proceedings in support of or on behalf of the complainant with their approval. Member States must define the criteria that govern the rights of associations to support a complainant, and 'a legitimate interest' should not be construed narrowly. Member States can go yet further by providing that organisations can act in their own name or by allowing class actions. The Directives provide for a partial shift in the burden of proof to the defender of the discrimination claim once the complainant has established facts from



which discrimination can be presumed. It is for the national authorities to determine the point at which such facts have been established.

Member States of the EU are under an obligation to introduce measures as are necessary to protect individuals against victimisation, described as 'adverse treatment or adverse consequences as a reaction to a complaint or proceedings aimed at enforcing compliance with the principle of equal treatment'. It protects against 'dismissal or other adverse treatment by the employer as a reaction...'. It is important that measures protect not only complainants, but also witnesses who provide evidence to support the complainant.

The Racial Equality Directive places a duty upon Member States to designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin. They may form part of agencies charged at national level with the defence of human rights or the safeguarding of individual rights. The competences of these bodies must include providing independent assistance to victims of discrimination in pursuing their complaints, conducting independent surveys on discrimination, publishing independent reports and making recommendations on any issue relating to such discrimination.

### 3. THE FOREIGN POLICY AGENDA

Development co-operation, trade and political co-operation with third countries are the main components of the European Union's external relations. The Union's foreign and security policy is a complement and not a supplement of policies of the individual Member States. It is a mix of intergovernmental co-operation and Community action. Enlargement and the relationship with accession and candidate countries and with (new) neighbouring states are important items on the foreign policy agenda. The promotion of peace and stability and the relationship with Mediterranean countries are recurrent issues on the agenda as is development co-operation. The objectives of the Union's external relations can be described in terms of enhancing democracy, the rule of law, good governance and human rights protection; promoting peace and stability; and fostering sustainable economic and social development of developing countries and their gradual integration into the world economy.

The Union's actions in all these fields and co-operation with most third countries are relevant for and have a bearing on international migratory and refugee movements. As migration and asylum are primarily the responsibility of the justice and home affairs ministers and the EU Commissioner, these officials' priorities gradually found a place on the foreign policy agenda, including the fight against economic crime (especially corruption and money laundering), organised crime, terrorism, illegal immigration and trafficking in human beings. Their approach of control and restriction of (all kinds of forced) migration as well as of protection of rights of and assistance to refugees and migrants prevailed in the way the justice and home affairs and foreign affairs agendas were partially linked. Consequently issues as migration prevention, irregular migration, return and readmission began to rank more prominently on the foreign policy agenda. This chapter briefly describes how migration and asylum feature on the EU's foreign policy agenda. It looks first at development co-operation, then at trade and finally at (political) co-operation with groups of third countries.

#### 3.1 *Migration and development*

One of the *migration* objectives of the EU external policy is to address the root causes of migration.<sup>98</sup> Stimulating social and economic development is seen as a way to reduce push factors of migration, even though it is recognised that economic growth tends to stimulate migration initially. Attention is paid not only to poverty reduction, economic growth and job creation, but also to the promotion of good governance, human rights and conflict prevention.

Just before the 1999 Tampere Summit, Germany and France jointly submitted a paper that revitalised the debates on migration and development. The paper linked the two issues, arguing that migratory movements cannot be controlled without addressing development needs. The paper echoed earlier calls for a comprehensive approach to migration and asylum, one that addresses political, human rights and development issues in countries of origin. This was exactly what the intergovernmental High Level Working Group on Asylum and Migration intended to do.

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<sup>98</sup> Presidency Conclusions, 1992 Edinburgh European Council, and 2003 Annual Report on EC development policy and the implementation of external assistance in 2002 (COM(2003)527).

The Group, established in 1998 on the initiative of the Dutch Ministry of Foreign Affairs, developed action plans for six countries from which a great number of refugees and migrants originate, namely Morocco, Sri Lanka, Albania, Somalia, Iraq and Afghanistan. They contained a mix of diplomatic, humanitarian and development assistance measures aimed at eliminating root causes of migration. In 2002, the Group's mandate was expanded to developing a strategic approach for the most important countries and regions of origin and transit of asylum seekers and migrants. Action plans on such countries should contain an analysis of the causes of the migratory movements towards the European Union and of the political and human rights situation in the countries concerned. On the basis of this analysis the High Level Working Group should make recommendations for measures preventing economic migration, providing humanitarian aid and rehabilitation assistance and providing assistance for receiving displaced persons in their own region.<sup>99</sup>

The 2002 Seville European Council stressed the importance of preventing and combating irregular immigration. Closer economic co-operation, trade expansion, development assistance and conflict prevention are expected to promote economic prosperity in the countries of origin and in this way reduce migration. The Council favoured the inclusion of clauses on the joint management of migration flows and compulsory readmission in the event of irregular migration in existing and future Association and Co-operation Agreements.

In 2002, the Commission published its Communication 'Integrating Migration in the European Union's Relations with Third Countries'.<sup>100</sup> The Communication looked at the driving forces of international migration and how these already are and could be better addressed by the Union's foreign policies. The Union's efforts to address the root causes of migration are substantial, from human rights protection to economic and social development. They remain important elements in the Union's strategy to increase co-operation with third countries in the area of migration. The regular reviews of the Union's development policies provide a platform to enhance co-operation on migration. Another vehicle is political co-operation. The dialogue with third-countries should include discussions on regular and irregular migration and define common interests in managing migration. A final element is the support for specific and concrete initiatives to assist third-countries in managing migration.

## AID AND ASSISTANCE

Official Development Assistance (ODA) is an important development instrument and is nowadays focussing on achieving the Millennium Development Goals of which poverty reduction is the core. In 2002, Official Development Assistance distributed by the EU amounted to €6,962 million.<sup>101</sup> Although European ODA is still far from the United Nations target of 0.7% of the gross national income, the EU has agreed to increase its aid to the point where collectively the EU and the Member States would reach 0.39% of the gross national income by 2006.<sup>102</sup> In terms of humanitarian assistance, over the last decade, Europe has consistently provided the largest part of the financial support given by the international community, including over fifty per cent for refugees and displaced persons.

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<sup>99</sup> Council doc. 9433/02.

<sup>100</sup> COM(2002) 703. The writing of this Communication involved various Directorates General.

<sup>101</sup> OECD aid statistics, 2004.

<sup>102</sup> Presidency Conclusions, 2002 Barcelona European Council, 15-16 March.

The assistance provided by the European Commission tends to be increasingly channelled directly to the countries concerned or through NGOs and less through UN agencies. The top ten recipients of European ODA are, in descending order, Poland, Romania, Hungary, the Czech Republic, ex-Yugoslavia, Turkey, Tunisia, Morocco and South Africa. The total ODA received by the principal migrant sending countries to the European Union constitutes an important source of support for their development, but these countries are generally not among the largest ODA recipients.

At the 2002 Seville Summit, Spain and the UK proposed that development assistance would be made conditional to the recipient country's willingness to co-operate on migration. Non-co-operation with the European Union on re-admission would lead to cuts in development assistance. The proposal met with strong opposition from such countries as Sweden, France and Luxembourg. The Council decided to increase co-operation with countries of origin and to back this up with financial and technical support. When after making a careful assessment a country was found not to be co-operative the EU would take measures under its various co-operation programmes and this could include the diminishing of aid.

### EMERGENCY AID AND REFUGEES

The European Commission is the third largest donor to the UNHCR, contributing more than €60 million in 2003. The European Communities' Humanitarian Office (ECHO) gives 70% of the overall Commission contribution, the rest being provided by DG External Relations, DG Development and DG Justice and Home Affairs. ECHO has contributed more than €770 million to UNHCR since 1994.<sup>103</sup> The European Refugee Fund supports repatriation, which represented approximately 20% of sponsored activities between 2000 and 2002 and was used to increase practical assistance to returns, including advice, vocational training geared to reintegration and finding a job in the countries of origin, as well as to develop networks between organisations in Europe and/or countries of origin, and information strategies on the situation in countries of origin.

### MIGRATION MANAGEMENT SUPPORT

In 2001, the European Union's budget included support for migration and asylum management in countries of origin, in particular in those countries for which the Council of Ministers had adopted migration action plans.<sup>104</sup> Initially, it supported projects aimed at developing the asylum systems of countries of transit and on voluntary return of migrants and refugees. The Union then began to support projects aimed at strengthening developing countries' capacity to manage migration and combat trafficking and smuggling of human beings. The projects were part of programmes to strengthen police co-operation and to reinforce the capacity of law enforcement bodies in the framework of such programmes as PHARE, TACIS, MEDA and CARDS.

In 2003, the Commission published a Proposal for a Regulation '*Establishing a programme for financial and technical assistance to third countries in the area of migration and asylum*' (AENEAS).<sup>105</sup> The overall budget for this multi-annual co-operation programme is €250 million. The programme is due to last five years (2004-

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<sup>103</sup> European Commission, 'Protection of refugees and strengthening of humanitarian staff security', press release, 08.03.04.

<sup>104</sup> Budget line B7-667 'Co-operation with third countries in the field of migration'.

<sup>105</sup> The proposal was adopted in 2004, Regulation (EC) No 491/2004.

2009) and to provide specific and complementary aid for third countries in order to help them to manage migration. The programme is particularly intended for those countries actively engaged in preparing or implementing a readmission agreement with the European Union.

Five major action areas are identified, namely the development of immigration policies in third countries, the promotion of legal migration channels, international protection, combating illegal immigration, including human trafficking, and readmission and durable reintegration of returnees. A variety of activities are eligible for support, including measures to improve capacity in third countries in the areas of migration and asylum policy, the development of legislation, information campaigns, the dissemination of information on legal migration channels, the establishment of regional dialogue, the socio-economic reintegration of migrants, promoting migrants' contribution to the development of their countries of origin, etc.

## REFOCUSING DEVELOPMENT POLICIES

In 1999, the European Union began discussions on a new strategy for the Community's development policy, involving individual Member States' ministries, the European Commission and Parliament and non-governmental actors. This would imply the refocusing of international co-operation. The Commission proposed an integrated framework for Community action and a limited number of priority fields in which Community development activities would be concentrated. These are: the integration of developing countries in the multilateral trading system (including the strengthening of the competitiveness of the private sector); regional integration and co-operation (including tackling trans-border economic, social and environmental problems); support for macro-economic policies (with an explicit link to poverty reduction, health and education); food security and sustainable rural development; institutional capacity building, good governance and rule of law. By using the external policy instruments, the Union should seek the highest possible degree of coherence between the various elements of the Union's foreign relations and other European policies (including migration).<sup>106</sup>

### **3.2 Migration and trade**

The Union's trade policy aims at liberalising world trade through the progressive abolition of restrictions on international trade in goods and services and the establishment of a multilateral trade regime. This includes the conclusion of bilateral and multilateral treaties establishing free trade zones (from treaties with Mexico and Chile to the Euro-Mediterranean Partnership) and granting preferential treatment to certain countries (in the case of ACP). The Union's members participate in the World Trade Organisation as individual Member States and as the Community. The Commission negotiates on behalf of the Member States. Migration has also become an issue in global trade negotiations during the conclusion of the General Agreement on Trade in Services (GATS).

In the context of GATS, labour mobility refers to the movement of service providers and can take place within either mode 3 or mode 4 of the agreement. Mode 4 within GATS refers to the mobility of natural persons – that is, individuals, as opposed to juridical persons such as companies and organisations, whose movement is provided for in

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<sup>106</sup> European Commission, *Communication on the European Community's development policies*, COM(2000) 212.

mode 3 by way of commercial presence. These provisions for the movement of persons are qualified by the “Annex on Movement of Natural Persons Supplying Services under the Agreement”, which guarantees the autonomy of national immigration controls from GATS, specifying that the agreement does not apply to measures affecting individuals seeking access to the employment market of a member, or to measures regarding citizenship, residence, or permanent employment.

Liberalisation of the movement of service providers has so far been limited and accounts for less than 2 percent of the total value of services trade. The reluctance to make significant commitments under GATS in this area is common to both developed and developing countries. In so far as developed countries have made commitments, they privilege high-skilled personnel and especially service providers associated with a multinational company, which has an international commercial presence (intra-corporate transferees). Developing countries have pressed for more openness from the side of developed countries for professional services (such as information processing), health services, tourism, construction, audiovisual and transport services. To serve their interests they also proposed a couple of procedural changes in the negotiations and wanted to add to the negotiations a few mobility related topics (such as the use of the International Standard Classification of Occupations and the use of Mutual Recognition Agreements).

Over the past years, the EU has shown some caution, but it is not principally closed to using GATS more for regulating the mobility of certain types of highly skilled migrants. It has proposed that corporate managers and specialists be allowed to stay for an extended period of three years. Graduate corporate trainees will be allowed to stay for a maximum period of 12 months. In either case, an economic needs test will not be required. Foreign companies with a contract to provide services to a client in the EU will be allowed to send highly skilled corporate employees to the EU for a maximum period of six months (within a period of 12 months). This period was previously limited to three months.

The proposal does not, however, apply to important services sectors such as research and development, construction, higher education and entertainment. A new category of contractual services is proposed, namely self-employed, highly skilled people who will be allowed to enter the EU for up to six months. This applies only to architectural, engineering and integrated engineering services, computer, management consulting and translation services. The entry of individual service suppliers is subject to a numerical ceiling, for which the modalities and level are still to be determined.<sup>107</sup>

In regional economic and trade agreements between the EU and third countries the movement of persons has traditionally been an issue. Classic examples are the Association and Co-operation Agreements with countries such as Turkey, Morocco and Algeria. These agreements hardly regulate admission of nationals of these countries, but include clauses granting these persons equal treatment once admitted. Other agreements contain clauses on human exchanges and anti-discrimination (see below).

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<sup>107</sup> Communication from the European Communities and their Member States, *GATS 2000: Temporary Movement of Service Suppliers*, S/CSS/W/45 WTO, 14.03.01.

### **3.3 Political co-operation**

Political co-operation between the European Union and third countries covers many issues, from general issues of external relations to very specific topics for co-operation, from trade to development and from justice and home affairs to scientific co-operation. The Union organises its co-operation with third countries notably around agreements and treaties with individual countries and with groups of countries. Neighbouring states and states with which EU Member States have historical links have a special place in the EU external relations. The movement of people is a recurring issue for co-operation. The 1999 Tampere European Council explicitly called for co-operation on the management of migration with countries of origin of immigrants and refugees. Subsequent Summit meetings began to focus on the management of "illegal migration", return and readmission.

The 2001 Laeken European Council called for an action plan on illegal immigration. The 2002 Seville European Council was largely devoted to the issue of illegal migration and the 2003 Thessaloniki European Council described migration, and particularly illegal migration, as a "top priority". In order to counter irregular migratory flows into its territory, the European Union promotes and supports actions in countries of origin and transit to strengthen border control. The EU is progressively developing a common return and readmission policy.

#### **IRREGULAR MIGRATION, RETURN AND READMISSION**

In 2001, the Commission published a Communication on a common policy on illegal immigration,<sup>108</sup> which contained an action plan to reinforce the EU efforts to combat illegal migration. It proposed action to be undertaken in a number of areas and after being discussed at the 2001 Laeken Summit these proposals were adopted.<sup>109</sup> The Action Plan focussed on visa policies, the exchange and analysis of information, readmission and repatriation, pre-frontier measures (co-operation between immigration liaison officers, support measures to migration and asylum projects in countries of origin and transit, and campaigns of awareness on the risks related to illegal migration), border management measures, the strengthening of Europol's role in the field of combating illegal immigration.

The Action Plan also made recommendations regarding the adoption and harmonisation of sanctions against people guilty of smuggling and trafficking in human beings or illegal employment of third country nationals, and carriers transporting undocumented aliens. It included short-term measures such as conducting feasibility studies on border controls or running a pilot project on using joint infrastructures, which were to be implemented within one year, and medium-term measures such as including biometric data on documents or concluding new readmission agreements, which were to be implemented within three years. The plan also contained a section on readmission and return policy, in which this policy area was identified as an integral and vital component in the fight against illegal immigration.

In 2002, the Commission published a Green Paper on a Community Return Policy on Illegal Residents<sup>110</sup> by which it aimed to launch a debate on the need for a common

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<sup>108</sup> COM(2001) 672.

<sup>109</sup> Council Doc. 6621/1/02.

<sup>110</sup> COM(2002) 175.

return policy for people residing illegally in the EU and to consider legal and human rights issues relevant for a return policy. This document called for the establishment of common standards regarding the expulsion, detention and removal of third country nationals in order to improve co-operation on return among Member States. Furthermore, it suggested the development of a common re-admission policy for the EU, which was then already seeking the signature of readmission agreements with the main transit and sending countries of origin of migrants in order to ensure their co-operation. On the basis of the responses to the Green Paper, the Commission adopted a Communication to the Community on a Return Policy on Illegal Residents<sup>111</sup> and it presented an outline for a Return Action Programme. Such a programme was subsequently adopted by the Council of Ministers.<sup>112</sup>

The Return Action Programme aims to improve the exchange of information and best practice between Member States and covers forced and voluntary return. It has four components. First, it deals with practical co-operation issues such as common training, mutual assistance of immigration officers and joint return operations. Second, it proposes common guidelines and minimum standards for implementing return policies (including mutual recognition of return decisions whereby an expulsion decision issued by one Member State would be enforced by another Member State, and common standards on detention prior to removal). Third, it promotes co-operation on country specific programmes, for example the Afghanistan return programme. Fourth, it aims at intensified co-operation with third countries on return and readmission. The establishment of a European Return Programme and Return Fund<sup>113</sup> is also suggested.

Readmission agreements are an important migration management instrument and a tool for the fight against illegal immigration. On the basis of the Amsterdam Treaty the Community can conclude re-admission agreements and the European Commission is on a case by case basis requested to start the negotiations with a third country. Target countries for the conclusion of readmission agreements have been identified on the basis of criteria progressively developed by the Member States and then agreed upon by the Council of Ministers.<sup>114</sup>

Six selection criteria were identified. The first is the migration pressure from a country. The others were the geographical position vis-à-vis the EU, while maintaining a regional balance (accession states are not included); the existence of a EU association or co-operation agreement, the added value of a Community agreement in comparison to individual Member State agreements.<sup>115</sup> Additionally, the High Level Working Group, in its Action Plan on Afghanistan,<sup>116</sup> recommended concluding a Community readmission agreement with Pakistan. The Action Plan on Sri Lanka<sup>117</sup> recommended concluding such an agreement with Sri Lanka. In December 1999, the Council agreed to adapt the standard readmission clauses used in Community and mixed agreements.

Negotiations on readmission agreements were opened successively with Morocco, Sri Lanka, Russia and Pakistan (September 2000), Hong Kong and Macao (May 2001),

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<sup>111</sup> COM(2002) 564.

<sup>112</sup> Council Doc. 14673/02.

<sup>113</sup> 2004 Irish Presidency. *Positions on Migration Issues*.

<sup>114</sup> Criteria for the identification of third countries with which new readmission agreements need to be negotiated, Council Doc. 7990/02.

<sup>115</sup> Council Doc. 7990/02 COR.

<sup>116</sup> Council Doc. 11424/99.

<sup>117</sup> Council Doc. 11428/99.



Ukraine (June 2002) and Turkey, Albania, Algeria and China (November 2002). Subsequently, in November 2002, the Council selected eight countries with a view to developing intensified co-operation in the readmission of their nationals. These countries were Albania, China, the Federal Republic of Yugoslavia, Morocco, Russia, Tunisia, Ukraine and Turkey. The Council also decided to initiate similar co-operation with Libya.

Currently, there are great difficulties in the progress of negotiations of these readmission agreements. Some of them have not yet formally begun. Agreements have been concluded with Hong Kong and Macao, but the readmission agreement with Hong Kong is the only one to have entered into force so far (on 1 March 2004).<sup>118</sup> In the case of Macao, the Council formally adopted in October 2003 a Decision concerning the signing of the Agreement on the readmission of persons residing without authorisation, but the proposal for a Council Decision concerning the conclusion of such an Agreement is still pending.<sup>119</sup>

Further agreements have been initiated with Albania and Sri Lanka. As far as Albania is concerned, the European Commission presented in February 2004 the two proposals for a Council Decision, one on the signing and the other on the conclusion of the readmission agreement.<sup>120</sup> Regarding Sri Lanka, the Council formally adopted, in November 2003, a Decision concerning the signing of the Agreement on the readmission of persons residing without authorisation, but the proposal for a Council Decision concerning the conclusion of this Agreement is still pending.<sup>121</sup>

Concerning China, a Memorandum of Understanding on Agreed Destination Status was initiated during a EU-China Summit in 2003. This Memorandum aims to facilitate Chinese tourism to Europe and also contains a readmission clause obliging China to take back illegal migrants. Furthermore, during high-level consultations between the EU and China on illegal immigration and trafficking in human beings, China showed readiness to discuss return and readmission issues. In March 2004, the Council adopted a Decision concerning the conclusion of the Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China on visa and related issues concerning tourist groups from the People's Republic of China (ADS).<sup>122</sup> The European Commission had submitted this proposal in December 2003,<sup>123</sup> at the same time as another one concerning the signing of the Memorandum of Understanding,<sup>124</sup> which was approved by the Council in January 2004.

In the 2003 Communication 'Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours',<sup>125</sup> the Commission promoted the idea of assisting neighbouring countries to combat illegal migration and to establish efficient mechanisms for return of especially illegal transit migrants. The possibility of creating a new instrument in the form of a programme, which would build on the experience of promoting cross-border co-operation as with the PHARE and TACIS programmes, is considered. Such a programme could focus on ensuring the well

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<sup>118</sup> O.J. of the EU of 02.03.04, L-64/38.

<sup>119</sup> COM(2003) 151-1 and COM(2003) 151-2.

<sup>120</sup> COM(2004) 92-1 and COM (2004) 92-2.

<sup>121</sup> SEC(2003) 255-1 and SEC(2003) 255-2

<sup>122</sup> O.J. of the E.U. of 20.03.2004, L-83.

<sup>123</sup> COM(2003) 790-2.

<sup>124</sup> COM(2003) 790-1.

<sup>125</sup> COM(2003) 104.

functioning and secure management of the future Eastern and Mediterranean borders, while at the same time promote sustainable economic and social development of the border regions.

The General Affairs and External Relations Council welcomed the Communication and invited the Commission to develop ideas for a new instrument which would also include measures to improve the coherence between various existing instruments. In a new Communication 'Paving the Way for a New Neighbourhood Instrument',<sup>126</sup> the Commission introduced the new 'Neighbourhood Programmes for the external borders of the enlarged Union for 2004-2006'. The programmes cover a broad range of actions and include, indeed, the management of the movement of people. They also support institution building on justice and home affairs.

In its 2003 Communication on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents,<sup>127</sup> the Commission declared that, ultimately, the credibility and integrity of the legal immigration and asylum policies of the EU would be in danger if there was not an efficient Community return policy. All efforts to fight illegal immigration would be called into question if immigrants who were supposed to leave, managed to stay illegally. The Commission also pointed to the fact that readmission negotiations could only succeed if they were part of a broader co-operation agenda, which would take into account the problems encountered by these countries to address migration issues effectively. It argued that the necessary incentives for such co-operation should come from the field of justice and home affairs, but also from other policy areas and should encompass measures such as closer economic co-operation, trade expansion, additional development assistance, better market access or WTO-compatible tariff preferences.

In January 2004, the Commission announced that it would make €30 million available over the period 2005-2006 in order to finance the deportation of illegal immigrants, in particular through the organisation of joint flights. Furthermore, in 2004, the Commission intends to present a proposal for a Council Directive on minimum standards for return procedures and mutual recognition of return decisions. The European Union has progressively introduced provisions pertaining to the prevention of illegal migration, as well as the return and readmission of illegal immigrants in the various agreements signed with countries and regions of origin (see below).

## ACCESSION STATES

In the 1990s, Association Agreements (the so-called "Europe Agreements") were signed between the EU and Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. They formed the legal framework for the association between the applicant countries and the European Union and covered their political and economic relations. In terms of labour migration, the Europe Agreements offered openings for the free movement of self-employed persons and service providers. The Agreements covered the main areas in which the Community *acquis* was to be adopted, helping the applicant countries to draw up schedules for incorporating the *acquis* into their national law prior to accession.

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<sup>126</sup> COM(2003) 393.

<sup>127</sup> COM(2003) 323.

Following the adoption of the pre-accession strategy at the 1993 Copenhagen European Council, one of the most important tasks for the preparation of the accession states was to ensure their adaptation to the EU framework for justice and home affairs, especially in the migration field. This involved the harmonization of measures in the visa policy and practice on the part of accession states, consistent protection of state borders especially against illegal migration, the preparation of legislation for the standard principles applied by EU Members States in the sphere of foreigners' admission and residence, asylum procedure, deportation and the conclusion of bilateral readmission agreements. The Union has actively monitored the development in these areas in all accession countries and assisted individual countries by providing know-how through the PHARE programme.

Closer to the date of accession, discussions intensified on the free movement of EU citizens, including those from the new Member States. With borders neighbouring Eastern Europe, some of the old Member States feared that they would be overwhelmed by immigrants attracted by higher wages. This has led to the proposal of a transition period on the movement of labour by Austria and Germany. This transition period gives Member States the possibility to prevent workers from new Member States to settle and work on their territory for a period of between two and seven years following accession.

This is known as the model "2+3+2". According to this model, after the first two years, Member States believing that their labour markets are still strongly influenced by migration and concerned about serious labour market disturbances as a consequence may insist on keeping labour permits for an additional three years. After three years, these Member States will be requested to completely open their labour markets, but may refuse to do so for another two-year period. They must, however, justify this. After this period nationals of all Member States will enjoy full freedom of movement. Both Germany and Austria have decided to apply the first limitation of two years and have declared that they may extend it to seven years, but they are certainly not alone. Almost all Europe-15 Member States announced that they also would put in place restrictions – Sweden is the exception and the UK and Ireland restricted access to social security – and a few new Member States are considering to limit freedom of movement to nationals of (some) Member States.

#### THE EURO-MEDITERRANEAN PARTNERSHIP

The Euro-Mediterranean Partnership, launched at the 1995 Barcelona Euro-Mediterranean Conference, set ambitious and long-term objectives of political and security partnership, economic and financial partnership, and social and cultural partnership. The so-called Barcelona process would lead to a Euro-Mediterranean free trade area by 2010. At the same time the Euro-Mediterranean Charter for Peace and Stability aims to prevent tensions and crises and to maintain peace and stability in the region. The Euro-Mediterranean Partnership would strengthen economic and political reforms, improve living standards and protect human rights. Human exchanges between the countries involved and migration from the Southern Mediterranean countries to the EU became a major concern. At the 5<sup>th</sup> Euro-Mediterranean Conference of Foreign Ministers (Valencia, 2002) an Action Plan for co-operation on justice and internal affairs was adopted in which migration issues figure prominently.

Within the framework of the Barcelona process, the EU has concluded Association Agreements or Co-operation Agreements governing bilateral relations with individual

countries. Such agreements have been concluded with Algeria, Egypt, Jordan, Lebanon and Syria, Tunisia, Israel, Morocco and the Palestinian Authority. They cover three main areas: political dialogue, economic relations, and co-operation in social and cultural affairs. The provisions of the agreements vary from one country to another, but have certain aspects in common, among which are co-operation in the field of justice and home affairs and migration. Association Agreements are to include re-admission clauses.

The Common Strategy of the European Union on the Mediterranean Region will develop effective co-operation mechanisms to fight illegal immigration networks, but also to conclude re-admission agreements. Despite the fact that the governments concerned have expressed the view that migration can be a positive factor for the socio-economic growth of the whole region and would therefore facilitate the movement of persons, they were more focused on reducing migratory movements, increasing border control and promoting readmission. There have been repeated calls on the Mediterranean partners to improve border control arrangements and to live up to their obligations regarding readmission. In the case of Morocco, negotiations for the conclusion of a readmission agreement have begun recently whereby Morocco insisted on obtaining guarantees on legal migration to the EU for its citizens.

The MEDA programme, the financial support instrument of the Euro-Mediterranean Partnership, has a budget of €5.35 billion over the period 2000-2006. MEDA resources are attributed bilaterally, within the framework of the National Indicative Programmes, while the Regional Indicative Programme covers multilateral activities. The Moroccan National Indicative Programme, accompanying the Association Agreement (which was signed in 1996 and entered into force in 2000) gives priority to economic reforms, particularly in the form of sectorial adjustment programmes, the development of the private sector through direct support for Moroccan companies, and support to the development of a better social balance and the fight against poverty. Under MEDA I (1995-1999) Morocco received a total amount of €656 million.<sup>128</sup>

Through the MEDA programme, the Commission also addresses other issues, including the fight against organised crime, smuggling of migrants and trafficking of human beings. There is support for socio-economic development projects in regions of high out-migration, for migration management border control and for the fight against illegal migration. Migration and social affairs working groups are set up with Morocco and Tunisia and are being set up with Israel. Justice and Security subcommittees (responsible for discussing the implementation of the Association Agreements in that field) have been created with Morocco, Tunisia, Jordan and Israel. The Country Strategy Paper for Morocco for the period 2002-2006, which served as a basis for the National Indicative Programme 2000-2002, focuses efforts on implementing the Association Agreement, on fostering growth and job creation, and on reducing poverty. The €426 million programme will focus on five priority areas, one of which being migration (€115 million) with programmes to improve the socio-economic development of poorer regions, better manage legal migration, and improve the control of illegal immigration.

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<sup>128</sup> *Regional Strategy Paper 2002-2006 & Regional Indicative Programme 2002-2004*, Euro-Med Partnership, Table 1, p. 16.

## EASTERN EUROPE AND CENTRAL ASIA

Similar issues are addressed in Eastern Europe and Central Asia with the TACIS programme. One of the key areas of the programme is the development of a comprehensive system for border management, migration and asylum in order to combat smuggling of illegal migrants and reduce illegal migration flows. A Ukraine Action Plan on justice and home affairs was agreed in 2001. A scoreboard was established in consultation with Ukrainian authorities as a tool for implementation, monitoring, evaluation and setting of annual priorities. The scoreboard aims to improve migration management, including readmission, and to intensify the fight against trafficking in human beings. It contains specific objectives, such as the development of a system of efficient, comprehensive border management on all Ukrainian borders, the establishment of a monitoring procedure of illegal migration through the territory of Ukraine, and the conclusion of a readmission agreement between the EU and Ukraine, and between Ukraine and its neighbouring countries (Russia and Belarus).

The Regional Indicative Programme 2004-2006 for the Newly Independent States foresees a continued and enhanced co-operation at regional level in the field of asylum and migration with a view to better managing migratory movements. In Central Asia, the Regional Indicative Programme 2004-2006 focuses on strengthening border management through the reform and the training of border guards. With Russia and the Ukraine readmission negotiations are taking place. As far as Pakistan is concerned, preparatory talks on readmission were held in 2003 and negotiations on an agreement are expected to start in 2004.

## SOUTH EASTERN EUROPE

The EU is by far the single largest assistance donor to the Western Balkans as a whole. Since 1991 and including 2001, through its various assistance programmes, the European Union has provided more than €6.1 billion, while for the year 2001 over €845 million was made available. This represents a significant, long-term commitment on the part of the EU to peace, stability and prosperity in South East Europe. The framework for the EU approach to South East Europe is designed to encourage and support the domestic reform processes that these countries have embarked upon. The 1999 Stability Pact for South Eastern Europe provides a framework to discuss human rights, economic and security issues to support countries in South Eastern Europe in their efforts to foster peace, democracy, respect for human rights and economic prosperity in order to achieve stability in the region. In the founding document of the Stability Pact, the EU, which has assumed a leading role in the Pact, undertakes to draw South Eastern Europe "closer to the perspective of full integration... into its structures", including eventual full membership.

As a contribution to the Stability Pact and an interim step towards membership, the EU concluded Stabilisation and Association Agreements with Albania, Bosnia-Herzegovina, Croatia, FYR Macedonia and Serbia and Montenegro. The intention is to increase economic, political and social co-operation between the EU and the countries concerned through the so-called CARDS programme. This programme aims to foster regional co-operation *inter alia* in the field of justice and home affairs. As a neighbouring region, with porous borders and weak infrastructure, the support to regional co-operation on migration issues is of particular importance. For the period 2000-2004, some €117 million have been allocated to border management.

One of the commitments made by the contracting states is to prevent forced population displacement caused by war, persecution and civil strife. In addition, the 2003 Thessaloniki Summit stressed the importance of migration related issues in South Eastern Europe and into the European Union. Against this background, the Stability Pact for South Eastern Europe launched a Regional Programme of Action in 2003 aiming at a better management of, and sustainable solutions to, the problems of migration, asylum and refugee return in the Western Balkans. The initiative MARRI (Migration, Asylum, Refugees Regional Initiative) aims to enhance state and human security and initiate, facilitate and co-ordinate developments in the fields of asylum, migration, visa, border management and sustainability of return, and to meet international and European standards. It covers asylum, legal migration, illegal migration, border management, visa and entry policies, and return/resettlement of refugees and displaced persons.

The geographical scope of MARRI covers Albania, Bosnia and Herzegovina, Croatia, FYR of Macedonia, Serbia and Montenegro, Bulgaria, Romania and Moldova. The programme highlights the fact that control measures to manage migration should be complemented by alternative channels to promote freedom of movement for the citizens within the region and eventually within the larger Europe. Additionally, it is based on the principle that Integrated Border Management is part of an overall regional security policy and can succeed only if it is an integral part of national and regional management policies covering the issues of asylum, migration and visa policies.

#### AFRICAN, CARIBBEAN AND PACIFIC COUNTRIES (ACP)

The Cotonou Agreement<sup>129</sup> was signed in 2000 and came into force in 2003. It will run from 2007-2020. The Agreement contains provisions on co-operation and migration, in particular on the prevention of and fight against illegal migration. It provides for a legal obligation for all parties to readmit their own nationals illegally present on the territory of another party. Furthermore, it includes a standard readmission clause, as well as the commitment to negotiate readmission agreements, if requested by one of the parties.

The Mid-Term Reviews of ACP Country Strategy Papers (CSPs), which will be carried out over the course of 2004, constitute a very important dialogue mechanism and commitment to aid programmes. Mid-Term Reviews are supposed to evaluate an ACP country's five-year CSP at the halfway stage of its implementation by examining, among other things, the speed of the use of funds and results achieved in poverty eradication. Based on the conclusions of this evaluation, a country's co-operation strategy may be adapted with a change in the focal sectors, or the resource allocations revised to reflect current needs and performance. According to the Council conclusions on the use of the common framework for CSPs, Mid-Term Reviews should take into account and operationalize new EU policy initiatives, while respecting the objectives and priorities of EU development policy and that of existing partnerships of the EU with third-countries. The Commission's guidelines<sup>130</sup> for the Mid-Term Reviews of Country and Regional Strategy Papers identify new policy initiatives that could be integrated in country strategy papers, one of them being migration, fight against terrorism and other issues resulting from the EU domestic agenda.

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<sup>129</sup> [http://europa.eu.int/comm/development/body/cotonou/agreement\\_en.htm](http://europa.eu.int/comm/development/body/cotonou/agreement_en.htm).

<sup>130</sup> European Commission, *Guidelines for 2004 Mid-Term Reviews*.

#### 4. THE UNFINISHED AGENDAS

This paper traced the development towards common European immigration and asylum policies since the Treaty of Amsterdam. This was done in three chapters, corresponding to the three major agendas: the justice and home affairs agenda, the socio-economic agenda and the foreign policy agenda. This concluding chapter undertakes an evaluation of the progress to date following the same structure. For each of the three chapters, it sets out the issues that have dominated EU activity over the past five years. It also evaluates to what extent the Union has been successful in developing common migration and asylum policies. The role of the different actors, in particular EU institutions and individual Member States, are highlighted where appropriate. What the Union has said needs to be compared with what it has done.

Most issues set out in the Amsterdam Treaty have indeed been tackled during the last five years. A great many legislative measures were proposed aiming at harmonising European policies and at shaping common policies in the asylum and migration fields. A much smaller number were adopted. In many instances they concerned agreements on minimum standards or rather technical matters. Green papers and Communications provided the background for Community action. They defined the issues and explored (new) ways of dealing with them thus stimulating debates among a wide variety of stakeholders. Progress is being made in linking migration with the Union's socio-economic development and its relations with other countries.

That it has been rather difficult to reach agreement on so many legislative proposals and that real common European migration and asylum policies do not yet exist has two main reasons. First, Member States remained reluctant to share more sovereignty and were not prepared to give up the unanimity rule applying to decision-making on migration and asylum matters. Policy making at European level engages Member States in a double debate, namely on the issues at hand and on how best to co-operate. There is often a lack of understanding of how issues play out differently in Member States and efforts must be made to arrive at common definitions and concepts. National approaches seem to be preferred instinctively whereas the case for European approaches has to be made constantly. This has a tremendous and not always positive impact on the output and outcome of European policy-making processes. At the same time that the Union wants to come to grips with the complex and multifaceted phenomenon of the international movement of people, the Union and its Member States have to invent and defend ways of working together on it in a complicated and cumbersome system of combined supranationalism and inter-governmentalism.

While working on the Amsterdam mandate with a self-imposed deadline of five years, the Union was engaged in a 'Constitutional Convention' and prepared for an expansion of its membership of at least 10 new members. Arguably this has slowed down policy-making in the justice and home affairs area as difficult choices could be postponed until mandate and decision-making rules would be more favourable. The coinciding dates for the entry of new members and the end of the Amsterdam mandate has put the decision-making process under enormous pressure leading to decisions which are not necessarily the best ones. However, the negotiations of the last 5 years, if acrimonious at times, have allowed Member States to understand each other better and to build confidence. Much depends on how in a next mandate period fresh European players in the Council of Ministers, a new European Commission and a new European Parliament build on the previous years.

The second reason that Europe still lacks vision and determination for a coherent asylum and migration policy has to do with the perception of these phenomena, which has been and still is mostly negative. The arrival of people meant either asylum or illegal migration, or family reunification which could not be avoided but which was certainly not welcome. As a result, European action has mostly been more reactive, dealing with crises over unwanted arrivals, than pro-active, making efforts to attract and integrate migrants and generously protect and receive asylum-seekers. Migration management was at best migration crisis management. In terms of policy initiatives there was an emphasis on irregular migration and asylum. In some Member States the integration of immigrants was perceived as having failed and anti-immigration and anti-immigrant feelings and opinions began to play up in national and local elections. The terrorist attacks aggravated the situation and migration became more associated with external threats and security.

Traditionally, Justice and Home Affairs Ministries are responsible for issues related to entry and residence of non-nationals, for civil liberties and internal security. These ministries were and still are considered to be best placed to control and restrict migration. Since the Amsterdam Treaty made these issues the responsibility of the Justice and Home Affairs Council of Ministers and Commissioner, these officials have set the European agenda and most policy initiatives were proposed by them. Other ministries and Commissioners have long kept a low profile and entered the debate reluctantly and belatedly. This applies, although for different reasons, to the Social Affairs and Employment Ministries and Commissioner and to the Foreign Affairs and Development Ministries and Commissioners.

Strong leadership at all levels of government and a serious dialogue with civil society are required to put the debates on all aspects of international migratory movements on the right track. This will engage the other relevant national ministries, organs of European institutions and civil society organisations. While the European migration policy agenda remains unfinished, it is not blocked. In each of the policy fields –justice and home affairs, socio-economic development and external relations– possibilities exist for evolution. This chapter gives some perspectives on the unfinished agendas and refers to the European Constitution as a potential source of change.

#### ***4.1 Justice and home affairs***

With the implementation of the Amsterdam Treaty on 1 May 1999, a period of almost 15 years came to an end during which Member States worked together on a purely intergovernmental basis on asylum and migration. This co-operation laid the foundation for an approach that includes the major European institutions. The development of the justice and home affairs agenda illustrates the characteristic difficulties of European co-operation. Commission, Council, the European Parliament, individual Member States and groups of Member States often appear to work in contrary ways with little co-ordination. At the same time, all actors are aware of each other's positions and adjust their own actions accordingly.

Starting with Amsterdam and Tampere, European Councils have consistently given impetus to the Union's work on immigration and asylum. Many European Councils have accorded a prominent place to justice and home affairs and have made statements calling for intensified cooperation in this area. This has provided the Commission with room to manoeuvre, an opportunity which it has used to the full. An activist



Commissioner set up the Directorate General of Justice and Home Affairs and started to present a comprehensive set of proposals covering all points of the Amsterdam agenda. Since he was able to build on inter-governmental co-operation since the Treaty of Maastricht, there were not many additions in terms of content.

However, by presenting concrete proposals and by placing them on the Council's agenda, the ball was placed in Member States' court. Despite the shared right of initiative, the Member States let the Commission put forward most of the proposals. Member State initiatives were few in number and tended to deal only with narrow fields relating to operational and technical measures (the many measures on border control are examples). Rather than presenting own proposals, Member States expressed their preferences to the Commission, which listened to them and considered them in their formulation of the proposed measures. The rotating Presidency offered Member States an opportunity to put certain issues on the agenda and to push for the adoption of outstanding measures in long EU pipelines.

The Commission took on board the dominant preoccupations of Member States such as irregular migration and return, for instance by publishing regular Communications, Action Plans or Green Papers on these subjects. In comparison, only two Communications (2000 and 2001) accompanied the legislative proposals on legal migration. For its legislative initiatives the Commission frequently commissioned studies on Member State laws and practices in a particular area ahead of preparing legislative or other proposals. Consequently, rather than working in isolation and from 'Brussels', the Commission was acutely aware of the positions of the Member States throughout the drafting process. That it presented more liberal proposals than the Council was expected to accept was, in a sense, 'part of the game'. The premise seems to have been that the liberal standard would not be reached, but that the negotiations would at least make clear what such a standard would look like. In other words, the negotiations in the justice and home affairs field developed in a close interplay between the Commission and the Council.

Clearly the Commission did not reach many of the goals it had set and which were based on the Amsterdam Treaty and European Councils. In fact, of all the legislative measures on migration presented at European level, it was mostly modest proposals that secured adoption, while most draft Directives dealing with migration management have remained pending (for example, the draft Directive on migration for employment). Some measures were adopted but at such a low level of harmonisation that they were almost meaningless except as a 'first step' towards common legislation (the Directive on family reunion is a case in point, as is the Directive on reception conditions in the asylum field). Member States were reluctant to make significant changes to their national laws and only agreed on relatively low minimum standards. Moreover, Member States did not translate into reality the proposed open method of co-ordination on migration, which should have supported and complemented Community legislation by providing a framework for review.

The reluctance to agree to European measures was often shared by a majority of Member States. Overall, Member States were more disposed to come to an agreement on asylum rather than on migration issues, partly because of a practical interest in solving the question of burden sharing and partly because international conventions and commitments required action. Nevertheless, negotiations on the asylum dossiers often lasted for many months if not years (an example is the Directive on Criteria for Qualification for Protection, which was introduced in 2001 and agreed upon in 2004), which limited the share of Council working time available to migration measures. While

the role of individual Member States in the negotiations cannot be described comprehensively, some striking examples do exist. For instance, the German and Austrian position on the draft Directive on family reunification strongly influenced both the duration of the negotiations and the eventual outcome. Despite its opt-out, the UK played an active role in the negotiations and invested a considerable amount of energy in the European co-operation on justice and home affairs, particularly in the first years after the Amsterdam Treaty. In contrast, after an initial show of interest, the French presence and initiative in the negotiations became more and more negligible. Sweden seemed to have lost interest in EU policy-making on asylum and migration. Several countries were affected by an anti-immigrant climate, which either removed governments or made them unwilling to appear too co-operative on the European stage.

## THE SECURITY AGENDA

At the same time as negotiations were proceeding –often at an agonisingly slow pace– certain Member States formed smaller groups of common interest. Interior ministers from the biggest European countries, namely Germany, France, the UK, Italy and Spain, found a mode for closer cooperation in the so-called “G5” framework. They held a series of intergovernmental meetings to speed up certain justice and home affairs dossiers, namely the fight against terrorism, organised crime and illegal immigration. The first meeting, just after the May 2003 terrorist attacks in Casablanca, was held in Spain and focused on the fight against terrorism. They discussed legal reforms in the field and announced that national security services would meet to join efforts and discuss a new strategy against terrorism. They assessed the strength and capacity of Islamic terrorism and linked it with immigration mafias.

Terrorism and immigration were also prominently on the agenda for the second meeting in 2003. They agreed on a number of measures against illegal immigration, which they described as a ‘European problem’ which should receive EU funding. The Spanish and French ministers stated they would further raise the issue at subsequent European summits. Spain, Italy and France pushed for a European front against migratory pressure on the Mediterranean from Africa, a ‘security zone’, which would involve co-operation with Morocco, Algeria and Tunisia as the main sources of immigration to Europe. The G5 discussed plans to establish a common list of ‘safe countries’ and to incorporate digital fingerprints into visas. France in particular considered that the European Commission was taking too long to deliver in the area of fighting illegal immigration. The five countries stated they could jointly negotiate the readmission agreements with countries of transit and origin. As an anti-terrorism measure, they proposed drafting a European law to oblige air carriers to transmit passengers’ personal data to authorities. They also decided on a quicker and more efficient exchange of information on criminal networks among them and called for the re-organisation of Europol and assigning more tasks to this agency. The European police agency was an agenda item at the third most recent meeting in 2004 where police cooperation was the main theme. A fourth meeting is scheduled to take place in the UK in the second semester of 2004.

Maybe because national and intergovernmental frameworks were seen to be more appropriate for dealing with security issues, the European agenda was only moderately affected by September 11 and the threat of terrorism. The clampdown on civil liberties was not as forceful as could have been expected and as was the case in the United States. The European Parliament and non-governmental watchdogs may have prevented some of the stronger responses. While the Union acted with relative restraint,

the emphasis on terrorism and internal security did have the effect of pushing other issues off the agenda. In this way, the security issue served to reinforce the primacy of the migration control theme in European co-operation on migration and asylum. However, while security concerns strengthened the Union's focus on irregular migration and, more generally, on the restrictionist approach to migration and asylum, they were not its cause. The preoccupation with migration control pre-dated the new security agenda as a key element in European policies, which only slowly began to be challenged by socio-economic arguments.

## OTHER ACTORS

The European Parliament was actively involved in the European migration and asylum policy debates, as well as the EU Economic and Social Committee and the Committee of the Regions. They had to prepare reports on every major policy proposal presented either by the Commission or Member States. Apart from its general budgetary powers, the weight the European Parliament carried in the decision-making varied according to the fields covered by a particular measure: less on the justice and home affairs agenda and the social policy agenda, free movement and internal market; less on foreign relations in general (but not enlargement) and trade; and more on development assistance. The European Parliament, the two afore-mentioned Committees and civil society organisations are bridges between 'Brussels' and Europe's citizens. It is only logical that the proposal for a European Constitution gives the European Parliament a bigger role in the formation of migration and asylum policies. Enhancing the role of the European Parliament improves the quality of democracy, stimulates public debates and increases support for measures concerning these sensitive issues. The European Parliament showed its teeth when it challenged the text of the final and adopted version of the Directive on family reunion and took the Council of Ministers to the European Court of Justice. It felt that fundamental rights of citizens and immigrants were on the line.

Of all the Directorates General relevant for migration the one responsible for justice and home affairs seems to have the least developed practice of a dialogue with civil society. A structured dialogue with social partners and NGOs is well established in the areas of social policies and development. In the first two years after the entry into force of the Treaty, when the newly created DG Justice and Home Affairs started to prepare what became an impressive number of policy proposals, it issued non-papers for informal consultation with a selected and limited group of civil society organisations. A practice that was not sustained over time and only a modest attempt is made to set up a structure for regular dialogue and consultation with non-governmental key stakeholders. This includes a network of academics and most recently one of other non-governmental actors. This is partly a matter of budget, but looking at the available means there is an emphasis on support for intergovernmental co-operation and projects.

Arguably more consultation and dialogue with civil society could have generated more support for European migration and asylum policies. A 2004 European opinion poll demonstrates that European citizens tend to favour European measures to facilitate certain types of immigration, something the European Commission failed to capitalise on. In a policy field relevant for migration, namely anti-racism, civil society played a crucial and recognised role in the design and adoption of legislation against racial and ethnic discrimination. It would almost seem that the Commission's DG Justice and Home Affairs was not present at nor interested in the debates on governance which during the last couple of years looked critically at European policy-making. Co-operation with civil

society was one of the topics considered. In contrast, the Justice and Home Affairs Commissioner played an active and constructive role in the debates on the constitutional convention.

The UNHCR played an important role in the policy debates on asylum reviewing and commenting on policy proposals as well as consulting with NGOs. In contrast, UNHCR counterpart in the migration field, the International Organisation for Migration (IOM), was engaged mostly in the practical implementation of policies and refrained from commenting on the wider policy context, limiting its role to offering technical proposals.

## IMPLEMENTATION OF TREATY PROVISIONS

Overall, of the issues listed in the Treaty provisions under Title IV, those relating to border control were tackled most successfully. The abolition of internal border control allowing for the free travel of both EU citizens and third-country nationals was achieved, although the groundwork had already been laid under the Schengen agreement which was expeditiously and successfully incorporated into the EC Treaty. With regard to external border control, Member States took considerable steps towards implementing uniform procedures, which serve to make life easier for citizens but also for businesses operating with international staff. Administrative cooperation, police and judicial cooperation between Member States increased, in particular relating to combating crime, external border control and return.

On asylum, the Treaty called for measures to be adopted in the following areas: determining which Member State is responsible for considering an application for asylum (this was achieved with Dublin II), minimum standards on the reception of asylum-seekers (Directive adopted), minimum standards with respect to qualification as refugees (Directive adopted), and minimum standards on procedures (an agreement was reached after long deliberations). On temporary protection and burden sharing, a Directive on minimum standards for granting temporary protection was adopted and a European Refugee Fund was established, which foresaw the release of funds for refugee reception purposes.

Three groups of measures on immigration are listed in the Treaty, referring to conditions of entry and residence, to illegal immigration, and to the mobility of third country nationals between Member States. The measures on conditions of entry and residence have only partially been successful, with agreed measures on family reunion and entry for non-remunerative purposes but none on admission for employment. On illegal immigration, several instruments have been adopted to prevent (the facilitation of) unauthorised entry, transit and residence, to combat trafficking in human beings, and to provide for mutual recognition of decisions as well as mutual assistance of Member States on expulsions. On the mobility of third-country nationals, the adopted Directive on long-term residents allows those with long-term residents permits to move from one Member State to another but foresees limitations: for instance, third-country nationals moving to a second Member States may be required to attend language courses in the second Member State and may have limited access to employed activities. Member States may also respect quotas for granting the right of long-term residence to third-country nationals if a provision already exists in national law when the Directive is adopted.

## **4.2 Socio-economic development**

The idea of assessing immigration needs came from outside the justice and home affairs agenda, namely from various governmental and non-governmental actors in the field of social and economic policy. Over a period of several years, the 'isolation' of the immigration issue in the justice and home affairs field was ended, and migration was again connected to the debates on Europe's economic future and on the completion of the internal market. In this context, the link between free movement policies for EU nationals and mobility provisions for third country nationals was also made. However, the status of immigration as a recognised part of the overall social and economic policies of the European Union and its Member States is not unchallenged. In particular, concerns over integration have sometimes been used to argue against future immigration from outside the European Union.

The admission of immigrants from outside the Union made a comeback on the agenda for a mixture of labour market and demographic reasons. Especially in 2000 and 2001, skill gaps emerged in several European regions and countries. Many Member States found themselves in tight labour markets with shortages in both high and low skill occupations. The demand for high skilled workers in the IT sector was the most publicised example of this development. However, low skilled workers in the health, leisure and construction industries were also in demand. Many of these jobs were filled by (documented or undocumented) immigrants which entered European countries despite publicly declared closed-door or zero immigration policies. However, this non-declared and inconsistent immigration policy led to complicated and non-transparent immigration rules and procedures. In an effort to manage the growing number of undocumented migrants, some governments launched successive legalisation programmes that, in essence, became a form of *de facto* 'post-immigration' policy.

Beyond the immediate needs of the labour market, Europe also began to realise the extent of demographic change and the gravity of its consequences. The effects of ageing on pension and health care systems came to be discussed more widely. In this context immigration emerged as an important potential strategy for strengthening European labour markets and welfare systems. With the realisation that Europe may after all need immigrants, the way in which Europe valued migration began to change gradually. Employers were particularly vocal in calling for a proactive immigration policy that could facilitate the recruitment and mobility of temporary or permanent workers through a single and simplified procedure. They sought to stimulate a debate on how migration needs could be assessed. In most countries, this debate remains at an early stage. The goals of national immigration policies are seldom precisely formulated and usually amount to a belief that 'immigration must be in the interests of the country'. However, this perspective may differ from country to country, and also from group to group within a particular country. Immigration policies in most countries are still not grounded on well-founded answers to the following questions: Who should come? How many should come? From where should they come? For how long should they come?

The Greek Presidency in the first half of 2003 strongly encouraged the debate on the socio-economic aspects of immigration. For instance, it sponsored a conference in May 2003 at which civil society, Commission and government representatives discussed ways of systematically admitting the workers needed by Europe while at the same time standing by refugee obligations and reducing the trafficking of people. There was a strong emphasis on convincing the public and on developing policies that would make immigration a visible contributor to the growth of European societies and economies.

The focus on visibility partly grew out of a concern that the high unemployment in many European countries would block the debate about long-term labour market needs and demographic changes. Indeed, the 'immigration option' has become less prominent on the economic and social agendas of European policymakers since the economic downturn of 2001-2002. Despite the emergence of the debate on immigration needs, the place of immigration on the socio-economic agenda of the European Union is thus not secured. While immigration can and does appear in the Union's socio-economic policy mechanisms such as the Employment Strategy and the Open Method on pensions, it is a minor element of these mechanisms. The relative importance given to immigration has depended on the current economic conditions as much as on the initiative of the Commission or of particular Member States.

## BALANCING INTERESTS AND SELECTION

Mechanisms to determine the level and profile of immigration for employment should be designed to balance the interests of various groups. In particular, groups of persons who are already disadvantaged in the labour market and in society should be protected against unfair competition. At the same time, selection mechanisms should contain instruments to identify and respond to immigration needs. Government-managed point systems and employer-driven systems using quotas or labour market tests for regulation can both be options for countries wishing to align their immigration policy with their overall socio-economic strategies. In most cases, elements of both systems will be used. A structured dialogue with the social partners can help to achieve the balancing act inherent in any selection procedure.

Whatever the mechanism, States are entitled to decide who may and who may not enter their territory. In this process they necessarily make distinctions between persons and thus 'discriminate' in the most basic meaning of the word. Such discrimination is not unlawful as long as the selection criteria are transparent, justified and proportionate. The criteria used in practice range from human rights' and humanitarian commitments, interests and obligations derived from economic or historical ties between countries, to characteristics of individual persons such as family ties and special skills.

Legislative measures taken on immigration typically contain anti-discrimination clauses. For instance, the draft Directive on admission for employment, in its Article 32, determines that "Member States shall give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation". The same wording is contained in recital (5) of the Directive on the right to family reunification. A notable omission here is 'nationality'. Similarly, the two EC Equality Directives 2000/43 and 2000/78 do not cover differences of treatment based on nationality and are without prejudice to provisions and conditions relating to entry and residence of third country nationals and their access to employment and occupation.

It is unlikely that *direct* discrimination will find its way into European policies of selecting immigrants, such as where a person is refused entry at the border because he or she is black or a Muslim. Close monitoring of the implementation level is nevertheless necessary. *Indirect* discrimination can be 'hidden' behind lofty goals such as, for example, immigrant integration. Persons can be required to speak the national language before receiving a residence permit. The rationale behind it could be that knowledge of

the language would enhance integration into the receiving society. This could, however, amount to indirect discrimination. The Schengen system also poses the risk of discrimination. By putting states under the obligation to deny access to individuals who have been put on the Schengen 'black list' by any of the other participating states, it removes the obligation for states to make their own assessment of the refusal of entry.

While the trend towards a more deliberate selection of entrants –rather than an official policy of zero immigration combined with high levels of undocumented immigration– is positive, the criteria for selection must be non-discriminatory. A constant assessment should therefore be made to evaluate whether preference on certain grounds is not a cover-up for forms of indirect discrimination. Non-governmental monitoring organisations have an important role here. More discussion is also needed to determine the relationship between economic criteria for immigration and immigration based on humanitarian commitment, which remains a key element of European justice and home affairs policies.

## FREE MOVEMENT

In addition to demographic and labour market arguments, the free movement policies of the European Union also brought immigration back into the debate about European integration and the completion of the internal market. The migration of nationals of Member States within the Union has long been addressed under the heading of 'free movement' or 'mobility' rather than migration. In fact, the freedom of movement of persons belongs to the European Union's core objectives and long-term goals that are defined in economic and social terms. The European Union made considerable progress in achieving this objective by establishing the right of EU citizens to reside in another Member States than their own and by subsequently developing common policies aiming to remove the numerous obstacles for free movement

In contrast, immigration from outside and movement of third-country nationals within the Union remained primarily within the domain of the individual Member States. This resulted in the emergence of 15 (soon 25 different migration regimes) within an integrating European Union with a common market and a single currency. It also resulted in significant differences in treatment between EU citizens exercising their free movement rights and immigrants from outside the Union. The costs for the public sector to run so many different regimes are very high, not to speak of the enormous costs for the private sector to operate in such a complex situation. The removal of internal border control for EU citizens and third-country nationals and the introduction of common visa policies are major steps forwards (see previous section), which must be followed by the removal of more of the many remaining obstacles of free movement for EU citizens and third-country nationals.

Treating third-country nationals fairly and giving them rights comparable to those of EU citizens is a stated goal in the Tampere Presidency Conclusions. From a legal perspective the wording may be vague (and less clear than equal treatment), but attempts were made to translate this goal into concrete measures. The best example is probably the adopted Directive on long-term residence of legally residing third-country nationals. These persons are not given full free movement rights but rights which are indeed comparable. Once admitted into a Member State they are entitled to take up a job offer in another Member State. Expanding this right and making it more comparable with free movement rights of EU citizens should feature prominently on the agenda in the years to come. In the same way as internal migration of EU nationals turned gradually into mobility of EU citizens so could internal migration of third-country nationals. This approach would probably be more

productive than trying to arrive at a common set of conditions for entry and residence (see the fate of the proposed Directive on migration for employment). Member States would admit third-country nationals on the basis of their own economic and social needs assessments but these persons can move increasingly freely to other Member States. A mechanism such as the open method of co-ordination could make Member States more aware of other Member States' needs and build confidence in each others' policies.

## IMMIGRANT INTEGRATION

The socio-economic agenda also includes the topic of immigrant integration. Here, the Amsterdam Treaty did not grant any legislative competence to the Union. Therefore, the Commission presented no legal instruments on integration as such. However, certain other proposals nonetheless contained elements of integration policy. The Directive on family reunification and the Directive on long-term residents were also conceived as integration instruments, but the Council chose to treat family reunification primarily under the admission aspect (while using integration capacity as a possibility to restrict this right) and also focused on the 'admission' implications of third country nationals' mobility as proposed in the long-term residents Directive.

The fields of application of the two anti-discrimination Directives are primarily labour market related. They are powerful instruments to promote equality, the cornerstone of integration policies, and were adopted in a record time after many years of preparation including national and European campaigns and dialogue with all sectors of society. These legal instruments are now being transposed into national laws and the European Commission has set up an independent monitoring system for the transposition and future implementation of the Directives (a network of academics). Infringement procedures are being prepared for Member States not yet having sufficiently incorporated these European pieces of law into their national laws Germany being one of them). The Commission also launched an action programme to assist governmental and non-governmental agencies to implement the Directives at national level.

The open method on social inclusion, as one of the policy mechanisms under the Lisbon Strategy, started addressing the vulnerability of immigrants and ethnic minorities to poverty through its regular reports. It also entailed a Community Action Programme, which funded a considerable number of projects dealing directly or indirectly with immigrant integration. However, in the absence of Union competence, European countries mainly influenced each other's policies through an ongoing exchange of experience and policy models. Integration also became an issue on the justice and home affairs agenda in particular after the 2002 Danish Presidency. In a limited number of countries, integration of immigrants was perceived as having failed and there was a shift in emphasis, as more responsibility was placed on individual migrants.

In many European countries, integration indeed poses a major challenge. Taking up the issue of integration may have been for some a way to further the debates on immigration. Without successful integration the case for immigration is difficult to make, and the perception of overwhelming integration problems could block the discussion about immigration needs and admission. Conversely, the successful integration of immigrants would provide powerful arguments in the debates on future immigration. The Justice and Home Affairs Commissioner therefore launched several initiatives on integration, among others the concept of 'civic citizenship', which would promote the active participation of immigrants in European societies and political systems. The work



of the intergovernmental National Contact Points on Integration has also taken up these concerns in the context of the drafting of a Handbook on integration.

#### ***4.3 Foreign relations***

Whereas in most policy debates, migration and asylum are mainly perceived as matters for home affairs and justice ministries, current and global patterns of international migration and cross-border mobility require their inclusion in the foreign policy agenda. Gradually the priorities of the Justice and Home Affairs ministers and Commissioner found a place on the foreign policy agenda. Consequently issues such as migration prevention, irregular migration, return and readmission figured more prominently on the foreign policy agenda. This meant that migration management came to mean control and restrictive admission. External relations were a way of asking source or transit countries to close their borders where those of European countries themselves proved to be too permeable. This has been done through technical programmes (assisting countries of origin and transit to set up their own migration management, border guards, etc) and through the conclusion of readmission agreements or the insertion of readmission clauses in other agreements between the EU and third countries from which many migrants originate. Proposals on reception in the region are also being discussed in this context.

Unsurprisingly, the foreign and development policy communities have been reluctant to engage in the debate on these terms. These communities and the justice and home affairs policy-makers do not relate to each other easily which dates back to before the entry into force of the Amsterdam Treaty. The Seville proposal by Spain and the UK, which suggested that non-co-operation with the European Union on re-admission should lead to cuts in development assistance, has further deepened the suspicions on the part of development actors. They have been unwilling to be associated with any policy that could imply making aid conditional upon compliance with migration control objectives. Some have pointed out that the bulk of official development aid from the EU is not in fact sent to the principal migrant sending countries (with the exception of a few accession states) and that ODA often does not constitute a significant proportion of countries' GDP. This calls into doubt the effectiveness that ODA would have as an instrument of immigration control. Moreover, ODA flows are typically concentrated in the education and health sectors, and reducing funds would likely punish the most disadvantaged parts of society and undercut longer-term development goals. This is particularly true as total flows of ODA have been in decline over the last decade.

#### **FORCED MIGRATION**

Spain and the UK have not been the only Member States to take initiatives in the area of foreign relations and migration. For instance, a policy paper jointly produced by the German and French ministers of the interior has put migration and development on the Union's agenda. The creation of the High Level Working Group can to a large extent be credited to the work of the Dutch Ministry of Foreign Affairs. However, not all Member State initiatives have had a sustained influence. The Spanish-UK proposal received a great deal of attention, but was met with strong opposition from countries such as Sweden, France and Luxembourg and has not become an official policy of the European Union. The UK proposal on reception in the region may have a lasting impact, though not in its original form.

The Tampere approach to migration and foreign relations did not initially look at aid as a tool in the fight against illegal migration, but rather highlighted the role of development in migration prevention, or 'addressing the root causes of migration'. In this, it built on earlier Council and Commission documents which advocated reducing migration pressures in the framework of a 'comprehensive approach' to migration. Many migrants are indeed 'survival' migrants, who even if they do not fit the refugee definition have little choice in leaving their home countries. The factors that compel them to leave include extreme poverty, the collapse of the social (and political) fabric, political instability, brutal violations of human rights as well as generalised violence, ecological degradation and man-made natural disasters. The promotion of civil as well as social and economic rights in countries of origin can help to prevent such forced or survival migration by tackling the reasons behind it. The Union's foreign and development policies are addressing these issues without being inspired or explicitly referring to forced migratory movements. The evidence is mixed as to whether the attention paid to forced migration has resulted in stronger policies advocating human rights and development co-operation. While the justice and home affairs agenda has rather easily taken on elements of foreign policy with its focus on readmission and return, the foreign and development agendas have found it more difficult to accommodate migration.

#### MIGRATION FOR DEVELOPMENT

While the foreign and development actors are rightly concerned about the integrity of their programmes, they also tend to have a limited view of international migration. They overlook that, beyond the restrictionist logic, there is another dimension to the migration-development nexus, namely the immense potential of 'making migration work for development'. Migrants contributing to the development of their country of origin through remittances, transnational activities while in the host country and (temporary or permanent) return can have an impact far surpassing that of official development aid. This potential has not so far been given adequate recognition by development specialists.

The World Bank estimates global remittance flows at US\$88 billion for the year 2002. They were projected to exceed US\$90 billion in 2003 based on trends in the first half of the year. Remittances are essentially private flows but they can be used to stimulate development in the communities of the mainly poor recipients. Where in Europe are remittances sent from, and where do they go? Such knowledge is an important first step in starting to devise policies that can maximise their impact for development. Large gaps still exist in the data concerning remittances from Europe. Similarly, the potential of 'brain circulation' for development has been overshadowed by the negative debate about 'brain drain'. It has not been adequately recognised that migrants and minority communities with a migration history maintain links with their countries of origin both directly and indirectly. They may travel back and forth, have business interests at home, or even vote in elections.

While there is an increasing awareness of transnational migration networks in which migrants move between two or more countries, this has not been translated into policy terms. For instance, European efforts towards democracy promotion in countries of origin of migrants could work in partnership with members of the diaspora. Some of the above elements are contained in documents such as the December 2003 Communication on migration and development or have been the subject of small pilot programmes. The Council, in its May 2003 Draft Council conclusions on migration and development, has invited the Commission to present proposals on 'remittances as a

development potential' by the end of 2004. However, none of these insights have been firmly integrated into the relevant policy mechanisms.

The potential of migration for development has also been raised in the context of the GATS mode 4 negotiations in the framework of the World Trade Organisation. Mutually beneficial agreements on the mobility of highly skilled service providers could be reached in this forum. More generally, the link between migration and trade is an important element of an approach that does not isolate migration but integrates it into the overall economic relations between Europe and third countries.

#### **4.4 A new mandate**

The adoption of the Constitution may go some way towards the development of more fully-fledged European policies. In particular it may provide a new legal and political mandate to act on migration and asylum. The current decision making procedure, in which the Council must act unanimously on a Commission proposal or a Member State initiative, has frequently led to legislative deadlock.

This has been the case despite the fact that the proposed measures were not among the most specific among the Union's range of instruments. In Community law distinctions are made between Regulations and Directives. A Regulation is a piece of legislation that is binding in its entirety and applicable in all Member States. It is normally precise and limited in scope and is used to introduce uniform measures in all Member States. A Directive is binding, as a result to be achieved, upon each Member State and leaves to the national authorities the choice of the forms and methods of implementation. This instrument is being used to promote harmonisation of Member State policies in certain areas by defining goals to be achieved, while maintaining flexibility as to how to achieve them. A Framework Directive is yet more general, setting out principles to be observed by Member States. A Protocol to the Amsterdam Treaty states that Directives are preferred to Regulations, as are framework Directives to more detailed measures.

Under the current Treaties policymakers have sought to find the right balance between national policies and Community policies. A major change may come about if the Constitution is adopted and ratified. In terms of procedures, the Commission's sole right of initiative would be confirmed and migration and asylum would come under the co-decision procedure. This procedure gives the European Parliament the power to adopt measures jointly with the Council of Ministers. Following the European Commission's submission of a proposal for a legislative measure, the Council of Ministers can adopt the proposal by a qualified majority after obtaining the Opinion of the Parliament. In those cases where the Council does not approve possible amendments contained in the Parliament's Opinion, the Council must notify the Parliament in a so-called Common Position. The Parliament may approve, reject or amend this Common Position by an absolute majority of its component members.

The Council may then adopt the Parliament's position by unanimous vote. If the Council does not approve the amendments, a Conciliation Committee will be convened. This Committee, composed of an equal number of Council and Parliament members, and assisted by the European Commission, must produce an agreement on a joint text. In those instances where agreement is not reached on a joint text, the proposed act is not adopted. In those cases where a joint text is produced, the Council and Parliament must adopt it by a qualified majority and an absolute majority, respectively. If either of the two

institutions fails to approve it, the text is rejected. The whole procedure should take place in less than one year. In this process the Economic and Social Committee is consulted. The Court of Justice in Luxembourg gives rulings in case of dispute, but also plays a vital role in the uniform interpretation of Community law through its preliminary rulings.

The switch to the ordinary legal procedure including qualified majority voting would end the current situation where the opposition of one or a few Member States can block a proposed measure indefinitely. The adoption of the Constitution would also extend the Union's range of competences in the area of migration and asylum. On the latter, the Constitution incorporates the concept of a common European asylum system, which was used in the Conclusions of the Tampere European Council. The adoption of minimum rules would be abandoned in favour of the establishment of a uniform status and common procedures, and the notion of burden sharing would be extended beyond the event of a large-scale influx. Responding to a request from the United Kingdom, the provisions on asylum would also make it possible to adopt measures concerning partnership and co-operation with third countries.

On migration, the Constitution also uses the terms of the Conclusions of the Tampere European Council. The Union would have explicit competence to conclude readmission agreements. A new provision would allow the Union to adopt measures on integration, provided that they do not harmonise national legislation. Issues relating to conditions of employment would remain under the decision-making procedure by unanimity, although there is a transitional provision leading to qualified majority voting. Following a German request, the Constitution would stipulate that each Member State remains responsible for determining the volumes of admission of third-country nationals coming from third countries in order to seek work, whether employed or self-employed. Overall, the adoption and ratification of the Constitution would advance the communitarisation of migration policies both in terms of procedure and in terms of fields covered.

The development of European policies goes beyond procedural questions. Essentially, it has to do with how Europe feels about migration. For a long time European countries felt that migration was unwanted, something that had to be curbed and controlled. They were preoccupied with various forms of forced migration (refugees and asylum) and adopted increasingly restrictive policies. To underpin these policies, they declared categorically that they were not immigration countries. This attitude softened primarily in response to socio-economic conditions and arguments because Europe cannot afford to lose sight of the immigration option in the context of its ambitious programme of becoming 'the most competitive and dynamic knowledge-based economy in the world capable of sustained economic growth with more and better jobs and greater social cohesion'. The demands of globalisation make it clear that Europe must look realistically at all possibilities which could help it to reach these goals, which appear increasingly elusive. Therefore, Europe must continue moving from a debate that is almost exclusively looking at admission issues to one where these issues are discussed in the context of Europe's immigration needs, its humanitarian commitments and contribution to global sustainable development.

Therefore, migration must be given an important place in the mainstream mechanisms of European socio-economic policy, above all the European Employment Strategy. This would clarify that migration is a complementary labour market strategy, rather than purely a control and security issue. It would enable immigration policies to be proactive and designed to meet economic and demographic projections (economic and labour market developments, the required quantity and quality of workers, and the size,

composition and skills of the population). Here, legislation is not the only relevant instrument. Benchmarking and a continuous policy dialogue can equally lead to results, as has been shown by the positive record of the 'open methods of co-ordination' applied in the employment and social inclusion fields. Through the 'soft approach' of information exchange and deliberation over time, Member States have in fact modified their policies and taken on new ideas. The drafting of the National Action Plans has also contributed to co-ordination among levels of government, helped to integrate separate policy domains, and enhanced participation of the social partners.

A notable strength of the open method and of the socio-economic field in general is that they lend themselves to an articulation of differences and to negotiation more than the justice and home affairs field, where Member States often invoke 'non-negotiable' values such as security or sovereignty. In contrast, the socio-economic field is an area where trade-offs are common and where conflicting interests can be discussed openly. For instance, the business sector and trade and industry ministries give priority to the introduction of adaptable immigration procedures in order to have access to readily available workers and intra-corporate mobility. NGOs are calling for a rights-based immigration policy. Some governmental departments and trade unions draw attention to the need to increase the participation rate of women in the labour market, to re-adjust the retirement age and to include marginal groups (such as young people with an immigrant and refugee background) in the economy. They also point to frictions between the demand for certain types of (foreign) labour and the growing number of members of ethnic minority groups (including refugees) whose skills remain largely untapped. These different priorities and interests must be debated by the stakeholders concerned and inform the public debate as well as policy-making.

A more socio-economic approach to migration would also have an impact on the degree of communitarisation desired by Member States. While governments may still argue that in order to be effective, migration policies must be designed and implemented at the national level as they are responses to national labour market and demographic developments, it is also clear that European integration has reached such a stage that many policies of one Member State affect those of the others. This is especially true for a migration policy which is closely linked to the development of the internal market and the common European effort to become more competitive in the global economy. While the way that Europe feels about migration may become more influenced by labour market issues, the arrival of refugees and family members will remain important elements. Likewise, the integration of all groups will stay high on the agenda. Here, it is important that a strong link is made with anti-discrimination and equality. In a European Union where opportunities and entitlements are granted irrespective of race, ethnicity and national origin, it is difficult to defend a position that this only applies to those who are already present and not to those who want to come in.

The foreign policy agenda needs to include migration in ways broader than is currently the case. Governmental and non-governmental actors should not only see (potential) migrants as targets to be addressed by development policies, but also utilise their competences and transnational links. In the foreign relations as well as the socio-economic field, European immigration policies will benefit from recognising and promoting the benefits of migration for the people and countries concerned. Migration is now being taken into consideration in the context of the EU development policy. In the various programmes (from ACP to MEDA) strategy papers target individual countries or groups of countries. The mid-term review of the ACP Country Strategy Papers (CSPs), in particular, constitutes an important dialogue mechanism and commitment to aid

programmes. By introducing it in this framework, migration can be considered in a less abstract and general way. An examination of particular regions allows policymakers to look more closely at the ways in which, for instance, migration pressure builds or forced migration is generated.

The question whether migration is good or bad for sending countries cannot be answered in the abstract. For some countries, migration has become a strategy to attract remittances and the business investments of diaspora members or returnees. Others suffer from brain drain because not enough educated persons are available to fill essential jobs. The implications of migration for sending countries need to be assessed for each individual case, and policies developed accordingly. This can be done in negotiations with the countries concerned, and by involving foreign and development actors, the EU can build on relationships of trust and co-operation that have been built up in decades of foreign policy relations.



## Annex: European Migration Monitor<sup>131</sup>

### 1. Asylum

#### a. Determination of State responsible for examination of asylum claims

- On 21 March 2000, the European Commission presented a Working Paper entitled "Revisiting the Dublin Convention: developing Community legislation for determining which Member State is responsible for considering an asylum application submitted in one of the Member States" [SEC (2000) 522]. It analyses the extent to which Dublin has been effective and presents policy options for future improvement of the system. NGOs have been invited to comment on the paper.

In May 2000, the European Commission sent a questionnaire to Member States on problems and potential solutions with a view to doing a detailed evaluation of the implementation of the Dublin Convention. Discussions were subsequently held in autumn 2000 with experts from the departments responsible for the day-to-day implementation of the Convention in the Member States. The conclusions drawn from these research activities were presented on 13 June 2001 in the Commission staff working paper entitled "Evaluation of the Dublin Convention" [SEC (2001) 756].

On 27 July 2001, the European Commission adopted its proposal for a Council Regulation laying down the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a Third-Country National [COM(2001)447], also known as Dublin II.

Opinion of the European Parliament is adopted on 9 April 2002 [Report by Luis MARINHO (Doc. A5-0081/2002)].

Political agreement was reached on this text by the Justice and Home Affairs Council (JHA) meeting on 19 December 2002 and formal approval was granted by the Council at its meeting on 18 February 2003. This Regulation, No. 343/2003, was published in the O.J. of the E.C. on 25 February 2003 (L-50-1-10).

- On 29 May 2000, the European Commission was authorised by the Council to negotiate an Agreement with the Republic of Iceland and the Kingdom of Norway on the criteria and mechanisms for determining the State responsible for examining an application for asylum lodged in one of the EU Member States, in Iceland or in Norway.

On 22 December 2000, the European Commission presented a proposal for a Council Decision concerning the signing of the Agreement between the European Community and the Republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or Iceland or Norway [COM(2000) 883 final].

Council Decision of 15 March 2001 concerning the conclusion of an Agreement between the European Community and the Republic of Iceland, and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or Iceland or Norway (O.J. of the E.C. of 3.04.2001, L- 93/38-47).

- Decision No 1/2000 of 31 October 2000 of the Committee set up by Article 18 of the Dublin Convention concerning the transfer of responsibility for family members in accordance with Article 3 (4) and Article 9 of that Convention (O.J. of the E.C of 7.11.2000, L 281/1-2).
- European Commission's proposal for a EURODAC Regulation adopted on 26 May 1999. Opinion of the European Parliament is adopted on 18 November 1999. [Report by Hubert PIRKER (Doc. A5-0059/99)]  
In March 2000, the European Commission issued its revised proposal for a EURODAC Regulation.

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<sup>131</sup> This Monitor is accessible on MPG's website [www.migpolgroup.com](http://www.migpolgroup.com) and is updated regularly.



- Opinion of the European Parliament is adopted on 21 September 2000. [Report by Hubert PIRKER (Doc. A5-0219/2000)]  
 Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of EURODAC for the comparison of fingerprints for the effective application of the Dublin Convention (O.J. of the E.C. of 15.12.2000, L 316/1-10).
- On 28 February 2002, the Justice and Home Affairs Council adopted a Regulation laying down certain rules implementing Regulation (EC) No. 2725/2000 concerning the establishment of EURODAC (Doc. 6328/02 + 6345/02 ADD 1).  
 On 16 January 2003, EURODAC became effectively operational.
- b. Reception conditions for asylum-seekers
- French Presidency submitted a Discussion Paper to the Council on common minimum standards for reception conditions in July 2000.  
 On 30 November 2000, the JHA meeting adopted a set of Conclusions on conditions for the reception of asylum-seekers as well as Guidelines for the future Community instrument on conditions for the reception of asylum-seekers.  
 On 3 April 2001, the European Commission submitted a proposal for a Council Directive setting out minimum standards on the reception of asylum-seekers by EU Member States [COM(2001)181].  
 Opinion of the European Parliament is adopted on 25 April 2002. [Report by Jorge HERNANDEZ MOLLAR (Doc. A5-112/2002).  
 A “general understanding” on a very much amended version of this proposal was reached by the JHA meeting on 25-26 April 2002. This was followed by a “political agreement” by the JHA meeting on 19 December 2002 on an even more watered down version. Formal approval was given by the General Affairs and External Relations Council on 27 January 2003 (O.J. of the E.U., L 31 of 6.02.2003). Of the three Member States with the right to opt in or out, only the UK will consider itself bound to the terms of the Directive, not Denmark nor Ireland. The deadline for transposition is 6 February 2005.
- c. Definition of a refugee
- On 12 September 2001, the European Commission submitted a proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and Stateless persons as refugees or as persons who otherwise need international protection [COM(2001) 510 final]. (O.J. of the E.C. of 26.02.2002, C 51 E, p. 325).  
 Opinion of the European Parliament is approved on 22 October 2002 [Report by Jean LAMBERT [Doc. A5-0333/2002]].  
 On 28 November 2002, the Council, under the Danish presidency, reached political agreement on a great number of Articles regarding this proposal, but the dossier subsequently remained blocked, essentially on issues relating to the grants to be granted to the beneficiaries of subsidiary protection status.  
 On 30 March 2004, presented with a considerably water-downed version with hardly any resemblance to the proposal submitted by the European Commission on 12 September 2001, the Council reached political agreement on it. Formal approval was given on 29 April 2004 and the text was finally published some five months later (O.J. of the E.U., L-304 of 30.09.2004, pp. 12-23)
- d. Common asylum determination procedures
- European Commission's Working Document on "Towards common standards for asylum procedures" adopted on 3 March 1999 [SEC(1999) 271 final].  
 Opinion of the European Parliament is adopted on 15 June 2000. [Report by Ingo SCHMITT (Doc. A5-0123/2000).

- European Commission's proposal for a Council Directive on "Minimum standards on procedures in Member States for granting and withdrawing refugee status", presented on 20 September 2000 [COM(2000)578 final - 2000/0238(CNS)]. (O.J. of the E.C. of 27.02.2001, C 62, p.231).  
Opinion of the European Parliament id adopted on 20 September 2001 [Report by Ingo SCHMITT (Doc. A5-0291/2001)].
- Communication from the European Commission to the Council and the European Parliament "Towards a common asylum procedure for a uniform status, valid throughout the Union, for persons granted asylum?" Presented on 22 November 2000 [COM(2000) 755 final].  
Opinion of the European Parliament is adopted on 3 October 2001 [Report by Robert J.E. EVANS (Doc. A5-0304/2001)].
- On 28 November 2001, the European Commission adopted a Communication to the Council and the European Parliament on the common asylum policy, introducing an open coordination method [COM(2001) 710].- First report by the Commission on the application of Communication COM(2000)755 final of 22 November 2000/\* COM/2001/0710 final.
- On 18 June 2002, the European Commission adopted a modified proposal for a Council Directive on "Minimum standards on procedures in Member States for granting and withdrawing refugee status" [COM(2002) 326 final].
- On 10 December 2002, Austria presented an initiative with a view to adopting a Council Regulation establishing the criteria for determining the States which qualify as safe third States for the purpose of taking the responsibility for examining an application for asylum lodged in a Member State by a third country national and drawing up a list of European safe third States (O.J. of the E.U. of 24.01.2003, C 17 E, p. 6).  
Opinion of the European Parliament recommending that the Austrian initiative be rejected was adopted on 23 September 2003 [Report by Olle SCHMIDT (Doc. A5-0210/2003)].
- On 15 October 2002, the Ministers of Justice and Home Affairs of the Member States of the EU adopted a Declaration on Asylum, aimed at having the EU Candidate States declared "safe countries of origin for all legal and practical purposes in relation to asylum matters, as from the date of signature of such accession treaty".
- On 28 November 2002, the JHA Council adopted a Statement on "Safe Third Countries". Apart from the Member States and the EFTA States, "it is above all desirable to include (in the list of safe third countries) those Candidate States which are already engaged in the accession process", affirmed the Council.
- On 29 April 2004, just a day before the expiry of the deadline to reach approval, the Justice and Home Affairs Council agreed on a general approach to the proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status. Once again, the text on which the Council was able to agree differs considerably not only from the original proposal presented by the European Commission on 20 September 2000, but also from its modified version of 18 June 2002. Even the Council acknowledged that there had been "fundamental changes with respect to the text on which the European Parliament was originally consulted" and therefore decided to seek the Opinion of the European Parliament again.

e. Temporary protection

- European Commission's proposal for a Directive on minimum standards for granting temporary protection in the event of a mass influx of displaced persons tabled on 24 May 2000 [COM(2000)303].

Opinion of the European Parliament is adopted on 13 March 2001. [Report by Jan-Kees WIEBENGA (Doc. A5-077/2001)]

On 28 May 2001, the Justice and Home Affairs Council reached political agreement on the draft Directive. The Council formally adopted the Directive (2001/55/EC) on 20 July 2001 (O.J. of the E.C. of 7.08.2001, L-212/12-23).

f. European Refugee Fund

- European Commission's proposal for a Council Decision creating a European Refugee Fund presented on 14 December 1999 [COM(1999)686 final].  
Opinion of the European Parliament is adopted on 11 April 2000. [Report of Pernille FRAHM (Doc. A5-0091/2000)].  
Council Decision of 28 September 2000 creating a European Refugee Fund (O.J. of the E.C. of 6.10.2000, L-252).  
Call for Proposals. European Refugee Fund - Community Actions (O.J. of the E.C. of 30.12.2000, C-380/19-20).  
Council Decision of 20 March 2001 laying down rules for the implementation of Council Decision 2000/596/EC as regards the eligibility of expenditure and reports on implementation in the context of actions co-financed by the European Refugee Fund (O.J. of the E.C. of 5.04. 2001, L-95/27-40).
- On 12 February 2004, the European Commission presented another proposal for a Council Decision establishing the European Refugee Fund (also known as ERF II), this time covering the period 2005-2010 [COM(2004)0102].  
Opinion of the European Parliament is adopted on 20 April 2004. [Report by Gérard DEPRez (Doc. A5-267/2001)]. The text was formally approved by the Council on 8 June 2004.

g. Statistics on asylum and immigration

- On 28 May 2001, the Justice and Home Affairs Council adopted Conclusions regarding common analysis and the improved exchange of statistics on asylum and migration.
- On 30 June 2002, the Centre for Information, Discussion and Exchange on Asylum (CIREA) will be replaced by a permanent migration observatory.
- On 15 April 2003, the European Commission adopted a Communication to the Council and the European Parliament to present an Action Plan for the collection and analysis of Community Statistics in the field of migration [COM(2003) 179]  
Opinion of the European Parliament is pending [Report of Arie M. OOSTLANDER (Doc. A5-0352/2003)].

h. Balance between improving security and protecting refugees' rights

- On 19 September 2001, the European Commission adopted a proposal for a Council Framework Decision on combating terrorism [COM(2001) 521 final 2001/0217 (CNS)].  
Opinion of the European Parliament is adopted on 29 November 2001 [Report by Graham WATSON (Doc. A5-0397/2001)]  
At its meeting on 6-7 December 2001, the Justice and Home Affairs Council reached political agreement on the text. The text was formally approved on 13 June 2002.
- On 19 September 2001, the European Commission adopted a proposal for a Council Framework Decision on the European Arrest Warrant and the surrender procedures between Member States [COM(2001) 522 final - 2001/0215 (CNS)].  
Opinion of the European Parliament is adopted on 29 November 2001 [Report by Graham WATSON (Doc. A5-0397/2001)].  
On 6-7 December 2001, the Justice and Home Affairs Council reached political agreement, subject to parliamentary scrutiny reservations by three delegations, on the Framework Decision on combating terrorism.

Second Opinion of the European Parliament is adopted on 6 February 2002 [Report by Graham WATSON (Doc. A5-0003/2002).  
The text was formally adopted on 13 June 2002.

- On 6 December 2001, the European Commission presented a Working Document on "The Relationship between Safeguarding Internal Security and Complying with International Protection Obligations and Instruments" [COM(2001) 743 final]. Opinion of the European Parliament is still pending [Report by Robert J.E. EVANS (Doc. A5-0257/2002)].

## **2. Family reunion**

- European Commission's proposal for a Directive on the right to family reunification submitted to the Parliament and Council on 1 December 1999 [COM(1999) 638 final]. Opinion of the European Parliament is adopted on 6 September 2000. [Report of Eva KLAMT (Doc. A5-0201/2000)]
- The European Commission presented a revised version of its proposal on 10 October 2000 [COM (2000) 624 final].  
On 2 May 2002, the European Commission submitted yet another revised proposal for a Council Directive on the right to family reunification [COM(2002) 225 final].
- On 2 May 2002, the European Commission presented its third proposal for a Council Directive on the right to family reunion [COM(2002) 225 final]. On 27 February 2003, the Justice and Home Affairs Council reached political agreement on this draft Directive. Political agreement was reached in spite of the fact that the European Parliament had not yet issued its Opinion, which was adopted later, on 9 April 2003 [Report of Carmen CERDEIRA MORTERERO (Doc. A5-0086/2003)] in which the Council is requested to amend a number of provisions of the text. The Opinion was ignored and on 22 September 2003 the Competitiveness Council gave its formal approval (O.J. of the E.U. of 3.10.2003, L-251).  
The European Parliament subsequently lodged a complaint with the European Court of Justice, calling for the annulment of several provisions in the text (O.J. of the E.U. of 21.02.2004, C-47).

## **3. Long-term residents**

- Study sponsored by the European Commission on the legal status of third country nationals who are long-term residents completed in July 2000.  
Conclusions of the Council adopted in November 2000.
- A set of draft Council Conclusions on conditions for harmonising the status of third-country nationals residing on a long-term basis were discussed by the Justice and Home Affairs Council on 30 November – 1 December 2000. However, it did not prove possible to reach an agreement.
- Proposal by the European Commission for a Council Directive concerning the status of third-country nationals who are long-term residents, submitted on 13 March 2001 [COM(2001)127].  
Opinion of the European Parliament is adopted on 5 February 2002. [Report by Sarah LUDFORD (Doc. A5-0436/2001)]  
On 5 June 2003, the Council reached political agreement and formal adoption was secured on 25 November 2003 (O.J. of the E.U. of 23.01.2004, L-16). The scope of the Directive, which came into force on 12 February 2004, has been narrowed down and excludes refugees and persons benefiting from subsidiary protection. They will be dealt

with in a separate Directive, which the European Commission was supposed to propose before the end of 2003 or early 2004. This has, so far, not happened owing to the lack of interest and political will.

- On 11 July 2001, the European Commission submitted a proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities [COM(2001) 0386 final]. (O.J. of the E.C. of 27.11.2001, C 332E).  
Opinion of the European Parliament is approved on 12 February 2003 [Report by Ana Terrón I Cusi (Doc. A5-0010/2003)]. Since then, the text has been blocked at the Council.
- On 23 March 2001, the European Commission submitted a proposal for a Council Regulation laying down a uniform format for residence permits for third-country nationals [COM(2001) 157 - C5-0217/2001 - 2001/0082(CNS)] (O.J. of the E.C. of 26.06.2001, C-180 E/29, p. 304).  
Opinion of the European Parliament is adopted on 12 December 2001 [Report by Sérgio Sousa Pinto (Doc. A5-0445/2001)].
- On 13 June 2002, the Justice and Home Affairs Council adopted the Regulation laying down a uniform format for residence permits for third-country nationals (O.J. of the E.U. of 15.06.2002, L-157). The UK has exercised its right to “opt in”.
- On 6 February 2002, the European Commission adopted a proposal for a Council Regulation extending the provisions of Regulation (EEC) No 1408/71 to nationals of third countries who are not already covered by these provisions solely on the ground of their nationality [COM(2002) 59 final].  
On 3 June 2002, on the basis of a compromise prepared by the Spanish presidency of the EU, the Social Affairs Council agreed on a general approach on the text of the Regulation extending the provisions of Regulation (EEC) No 1408/71 to nationals of third countries who are legally resident in the Community and are not already covered by those provisions solely on the ground of nationality.  
Opinion of the European Parliament adopted on 21 November 2002 [Report by Ria G.H.C. Oomen-Ruijten (Doc. A5-369/2002)].  
On 3 December 2002, the Council reached political agreement on the text, which was formally approved on 14 May 2003 (O.J. of the E.U., 20.05.2003, L-124).
- On 15 October 2002, the JHA Council adopted a set of Conclusions on the “Integration of Third Country Nationals with a Legal Stay in the Member States”.
- On 3 June 2003, the European Commission adopted a Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on “Immigration, Integration and Employment” [COM(2003) 336 final].  
On 20 October 2003, the Council adopted a resolution on transforming undeclared work into regular employment (O.J. of the E.U. of 29.10.2003, C-260-1).

#### **4. Visas and border controls**

- Council Recommendation of 29 April 1999 on the provision for the detection of false or falsified documents in the visa department of representations abroad and in the offices of domestic authorities dealing with the issue or extension of visas (O.J. of the E.C. of 20.05.1999, C-140/1-3).

- Commission Staff Working Paper on “Visa Policy consequent upon the Treaty of Amsterdam and the Integration of the Schengen Acquis in the EU”, of 17 July 1999 [SEC(1999) 1213].
- Proposal by the European Commission for a Council Regulation determining the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, presented on 26 January 2000 [COM(2000) 27 final (O.J. of the E.C. of 27.06.2000, C-177, E/66). Opinion of the European Parliament is adopted on 5 July 2000. [Report by Klaus-Heiner LEHNE (Doc. A5-0179/2000)]  
Amended proposal by the European Commission for a Council Regulation determining the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, submitted on 21 September 2000 [COM (2000) 577 final (O.J. of the E.C. of 29.12.2000, C-376 E/1-5)]  
On 1 December 2000, the Council reached a political agreement on a text.  
Second Opinion of the European Parliament is adopted on 1 March 2001. [Report by Klaus-Heiner LEHNE (Doc. A5-0056/2001)].  
Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third country whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (O.J. of the E.C. of 21.03.2001, L-81/1-7).
- Initiative of the French Republic with a view to the adoption of a Council Regulation on freedom of movement with a long-stay visa, presented at the beginning of the French Presidency of the EU, second semester of 2000 (O.J. of the E.C. of 13.07.2000, C-200/4-5).  
Opinion of the European Parliament is adopted on 18 January 2001. [Report by Gérard DEPRez (Doc. A5-0388/2000)]  
On 28 May 2001, the Justice and Home Affairs Council adopted this Regulation.
- Resolution on minimum security standards for travel documents of Member States of the EU, adopted by the Council on 17 October 2000.
- Initiative of the French Republic with a view to the adoption of a Council Directive concerning the harmonisation of financial penalties imposed on carriers transporting into the territory of the Member States third-country nationals lacking the documents necessary for admission, presented during the French presidency of the EU, second semester of 2000 (O.J. of the E.C. of 20.09.2000, C-269/8-9).  
Opinion of the European Parliament is adopted on 13 March 2001. [Report by Timothy KIRKHOPE (Doc. A5-0069/2001)]  
Political agreement was reached on this text on 28 May 2001 and formal approval was given on 27-28 June 2001 (O.J. of the E.C. of 10.07.2001, L-187).
- Initiative of the Republic of Finland with a view to adopting of a Regulation reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications, presented in the first semester of 2000. (O.J. of the E.C. of 14.06.2000, C-164/7).  
Opinion of the European Parliament is adopted on 13 March 2001 [Report by Gérard DEPRez (Doc. A5-0066/2001)].  
On 24 April 2001, the Council adopted this Regulation (O.J. of the E.U. of 26.04.2001, L-116).
- Initiative of the Portuguese Republic with a view to adopting a Council Regulation reserving to the Council implementing powers with regard to certain detailed provisions and practical procedures for examining visa applications and for carrying out border

checks and surveillance, presented in the first semester of 2001. (O.J. of the E.C. of 6.03.2001, C-73/8)

Opinion of the European Parliament is adopted on 13 March 2001. [Report by Gérard DEPRez (Doc. A5-0066/2001)].

On 24 April 2001, the Council adopted this Regulation (O.J. of the E.U. of 26.04.2001, L-116).

- Initiative of the Portuguese Republic with a view to adopting a Council Regulation on the period during which third-country nationals exempt from visa requirements are free to travel within the territory of the Member States, presented in the first semester of 2000. (O.J. of the E.C. of 14.06.2000, C-164/6)  
In its Opinion adopted on 13 March 2001 [Report by Pernille FRAHM (Doc. A5-0075-2001)], the European Parliament requested that this Portuguese initiative be rejected (O.J. of the E.U. of 5.12.2001, C-343/91).
- On 29 June 2001, the European Commission presented a report to the Council on the exemption of Romanian citizens from the visa requirement [COM(2001) 361 final]. Even before this report, Regulation (EC) No 539/2001, which determines the list of third countries whose nationals are exempt from the visa requirement when crossing the external borders of the Member States, already classifies Romania in this category of third countries. However, the effective application of the visa exemption for Romanian nationals is subject to a second decision which must be taken by the Council on the basis of a report by the Commission. In this report, the Commission noted that Romania had made undeniable progress on border controls and visa policy, and had made important commitments in these fields, particularly to curb the illegal emigration of Romanian nationals. It therefore concluded that the exemption from the visa requirement for Romanian citizens should be implemented as from 1 January 2002, and that the Romanian authorities should therefore undertake to inform their citizens of the rules applicable for entering the territory of Member States for nationals who are exempt from the visa requirement.
- On 23 March 2001, the European Commission submitted a proposal for a Council Regulation amending Regulation (EC) No 1683/95 laying down a uniform format for visas [COM(2001) 157 final - 2001/0080 (CNS)] (O.J. of the E.C. of 26.06.2001, C-180 E/30, p. 310)
- On 9 October 2001, the European Commission submitted a (second) proposal for a Council regulation amending Regulation (EC) No 1683/95 laying down a uniform format for visas [COM(2001) 577 - C5-0511/2001 - 2001/0232 (CNS)]. This proposal modifies the proposal of the Commission amending Regulation 1683/95 laying down a uniform format for visas of 23 March 2001 (see above).  
Opinion of the European Parliament is adopted on 12 December 2001 [Report by Sérgio SOUSA PINTO (Doc. A5-0445/2001)].  
The Council formally approved this Regulation on 12 February 2002 (O.J. of the E.U. of 23.02.2002, L-53/7).
- On 23 March 2001, the European Commission submitted a proposal for a Council Regulation on a uniform format for forms for affixing the visa issued by Member States to persons holding travel documents which are not recognised by the Member State drawing up the form [COM(2001) 157 final - C5-0216/2001 - 2001/0081 (CNS)] (O.J. of the E.C. of 26.06.2001, C-180 E/28, p.301).  
Opinion of the European Parliament is adopted on 12 December 2001 [Report by Sérgio SOUSA PINTO (Doc. A5-0445/2001)].  
The Council formally approved this Regulation on 12 February 2002 (O.J. of the E.U. of 23.02.2002, L-53/4).

- On 27 May 2001, the Spanish delegation submitted a proposal for a Draft Council Regulation on the issue of visas at the border, including the issue of such visas to seamen in transit (O.J. of the E.U. of 12.06.2002, C9, P. 6). On 19 December 2002, the Mixed Committee noted agreement on the text.  
Opinion of the European Parliament is adopted on 11 February 2003 [Report by Anna KARAMANOU (Doc. A5-0006/2003)].  
On 27 February 2003, the Council formally adopted Regulation (EC) 415/2003 on the issue of visas at the border, including the issue of such visas to seamen in transit (O.J. of the E.U. of 07.03.2003, L-064/1-8).
- On 28 May 2001, the Justice and Home Affairs Council approved a report on local consular co-operation, drawn up under the French presidency in second semester of 2000, which highlights a number of areas in which Member States' consular missions interpret or apply the Schengen Convention or the Common Consular Instructions on Visas (CCI) in different ways.
- On 28 May 2001, the Justice and Home Affairs Council adopted Conclusions concerning controls on minors at the external borders of the Member States.
- On 28 May 2001, the Justice and Home Affairs Council adopted a Decision on the adaptation of Parts V and VI and Annex 13 of the Common Consular Instructions on Visas and Annex 6a to the Common Manual with regard to long-stay visas valid concurrently as short-stay visas. This Decision contains the necessary adaptations of the Common Consular Instructions on visas and the Common Manual in order to facilitate the application of the Council Regulation on freedom of movement with a long stay visa valid currently as a short stay visa in other Member States (see above).
- On 10 July 2001, the European Commission submitted a proposal for a Council Directive relating to the conditions in which third-country nationals shall have the freedom to travel in the territory of the Member States for periods not exceeding three months, introducing a travel authorisation and determining the conditions of entry and movement for periods not exceeding six months[COM(2001) 388 final].  
Opinion of the European Parliament is adopted on 5 February 2002 [Report by Margot KESSLER (Doc. A5-0455/2001)]  
This dossier is still pending before the Council.
- On 16 October 2001, the European Commission submitted a proposal for a Council Decision adopting an action programme for administrative co-operation in the fields of external borders, visas, asylum and immigration (ARGO) [COM(2001) 567].  
Opinion of the European Parliament adopted on 9 April 2002 [Report by Arie M. OOSTLANDER (Doc. A5-0085/2002)].  
On 25 April 2002, the Council reached political agreement on the ARGO.  
On 13 June 2002, the Justice and Home Affairs Council formally approved the ARGO programme (O.J. of the E.U. of 19.06.2002, L-161/11-15).  
On 19 May 2004, the European Commission adopted a proposal for a Council decision amending Decision 2002/463/EC adopting an action programme for administration co-operation in the fields of external borders, visas, asylum and immigration (ARGO programme). Martine ROURE was subsequently appointed the Rapporteur for the European Parliament.
- On 27 November 2001, the Belgian Government, who was holding the EU Presidency at that time, submitted a note to the Council on the concept of border management (Council Document 14570/01 FRONT 69).
- On 6-7 December 2001, the Justice and Home Affairs Council endorsed the Mixed Committee's work on the lifting, with effect from 1 January 2002, of the visa requirement



for Romanian nationals to cross EU borders and decided to waive the visa requirement for Romanian nationals as from the afore-mentioned date.

- In mid-February 2002, the idea of putting forward a proposal on a regulation on an airport transit visa - which was supposed to have been adopted by the end of June 2001 - appeared to have been definitively abandoned. The Spanish presidency put forward a kind of draft proposal on such a regulation, but as no Member State appeared to show any interest, the initiative was abandoned. The matter of an airport transit visa is, in any case, dealt with in Annex III of the Common Schengen Consular Manual. Moreover, there is the Joint Action of 4 March 1996 on airport transit arrangement, which, unlike the Schengen Consular Manual, applies also to the United Kingdom and Ireland.
- On 25 April 2002, the Justice and Home Affairs Council adopted a Decision amending Part III of, and creation of an Annex 16 to, the Common Consular Instructions which lays down a harmonised uniform visa application form for all EU visa applications.
- On 7 May 2002, the European Commission adopted a Communication to the Council and the European Parliament "Towards Integrated Management of the External Borders of the Member States of the European Union" [COM(2002) 233 final]. Opinion of the European Parliament is adopted on 15 January 2003 [Report by Hubert PIRKER (Doc. A5-0449/2002)].
- On 13 June 2002, the Justice and Home Affairs Council approved guidelines for the introduction of a common system for an exchange of visa data. It invited the European Commission to prepare a feasibility study on setting up the system, taking account of the aspects covered in the guidelines, before March 2003, in accordance with the time limit laid down in the comprehensive plan to combat illegal immigration and trafficking in human beings in the European Union.
- On 9 July 2002, the Kingdom of Denmark presented an initiative with a view to adopting a Council Decision on the common use of liaison officers posted abroad by the law enforcement agencies of the Member States [10507/02 – C5-0357/2002 – 2002/0815(CNS)]. (O.J. of the E.U. of 24.07.2002, C-176/8-11). Opinion of the European Parliament is approved on 20 November 2002 [Report by José RIBEIRO e CASTRO (Doc. A5-0374/2002)]. On 19 December 2002, the Mixed Committee, subject to the opinion of the European Parliament and the lifting of a parliamentary scrutiny reservation, noted agreement on the text of the Draft Council Decision on the common use of liaison officers posted abroad by the law enforcement agencies of the Member States. On 27 February 2003, the Council adopted this Decision (O.J. of the E.U. of 12.03.2003, L-67/27).
- On 28 October 2002, the JHA Council adopted Conclusions on the "Improvement of the Immigration Liaison Officers (ILO) network".
- On 28 October 2002, the JHA Council adopted Conclusions on "Consular co-operation with respect to the issuing of entry visas".
- On 28 November 2003, the European Commission presented a proposal for a Council regulation amending Regulation 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement [COM(2002) 679]. The only substantial change concerns Ecuador whose nationals are to require entry visas as from 1 April 2003. Opinion of the European Parliament is adopted on 11 February 2003 [Report by Jorge Salvador HERNÁNDEZ MOLLAR (Doc. A5-0005/2003)]. The Council gave its formally approved the amended text on 6 March 2003 and it came into force on 2 April 2003 (O.J. of the E.U. of 13.03.2003, L-69/10-11).

- On 5 February 2003, the European Commission presented:
  1. A proposal for a Council Regulation establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transport Document (FRTD) and amending the Common Consular Instructions and Common Manual;
  2. A proposal for a Council Regulation on uniform formats for Facilitated Transport Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) No... [Doc. COM(2003) 60].

Opinion of the European Parliament is adopted on 8 April 2003 [Report by Arie M. OOSTLANDER (Doc. A5-0075/2003)].

On 14 April 2003, the Council formally adopted Regulation (EC) No. 693/2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual (O.J. of the E.U. of 17.04.2003, L 099, p. 8-14).
- On 25 March 2003, Spain presented an initiative with a view to adopting a Council Directive on the obligation of carriers to communicate passenger data (2003/0809/CNS; O.J. of the E.U. of 05.04.2003, C 082-23/24). The Council reached a “common approach” on this proposal and the Directive was formally approved on 29 April 2004 (O.J. of the E.U. of 6.08.2004, L-261/24-27).
- On 13 May 2003, the Hellenic Republic presented an initiative with a view to adopting a Council Decision determining the minimum indications to be used on signs at external border crossing points (2003/0815/CNS; O.J. of the E.U. of 27.05.2003, C-125 E, p. 6). Opinion of the European Parliament is adopted on 18 November 2003.[Report by Gérard M.J. DEPRez (Doc. A5-0366/2003)]. The Council formally adopted this Decision on 29 April 2004 (O.J. of the E.U. of 6.08.2004, L-261/119).
- On 3 June 2003, the Hellenic Republic presented an initiative with a view to adopting a Council Regulation on the creation of an immigration liaison officers network (2003/0817/CNS; O.J. of the E.U. of 14.06.2003, C 140 E, p. 12). Opinion of the European Parliament is adopted on 6 November 2003 [Report by Martine ROURE (Doc. A5-0344/2003)]. On 19 February 2004, the Council formally adopted this Regulation (O.J. of the E.U. of 2.03.2004; L-64/1-4).
- On 8 April 2003, the European Commission presented a proposal for a Council Regulation relating to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic and/or Paralympic Games in Athens [COM(2003) 172 final]. Opinion of the European Parliament is adopted on 19 June 2003 [Report by Marjo MATIKAINEN-KALLSTRÖM (Doc. A5-0211/2003)]. On 15 July 2003, the Council formally approved this Regulation (O.J. of the E.U. of 22.07.2003 of L-183/1-5).
- On 24 September 2003, the European Commission adopted :
  1. A proposal for a Council Regulation amending Regulation (EC) 1683/95 laying down a uniform format for visas [COM(2003) 558 final];
  2. A proposal for a Council Regulation amending Regulation (EC) 1030/2002 laying down a uniform format for residence permits for third-country nationals [COM(2003) 558 final].

Carlos COELHO was appointed as the European Parliament’s rapporteur for both proposals.
- At its summit in Brussels on 16-17 October 2003, the European Council took note of the study carried out for the Commission on maritime borders.

## 5. **Illegal immigration**

- Council Resolution on the creation of an early warning system for the transmission of information on illegal immigration and facilitator networks is adopted on 27 May 1999.
- Decision of the Council of 27 May 1999 to publish an initiative by Germany with a view to the adoption of a decision on the improved exchange of information to combat counterfeit travel documents.
- Initiative of the Federal Republic of Germany with a view to the adoption of a Council Decision on the improved exchange of information to combat counterfeit travel documents, presented to the Council on 27 May 1999 (1999/0904/CNS; O.J. of the E.C. of 22.06.1999, C-176-1)  
Opinion of the European Parliament is adopted on 19 November 1999. [Report by William Francis NEWTON DUNN (Doc. A5-0050/99)]  
On 27 March 2000, the Council formally approved this Decision (O.J. of the E.U. of 1.04.2000, L-81/1-3).
- Initiative of the French Republic with a view to the adoption of a Council Framework Decision on the strengthening of the penal framework to prevent the facilitation of unauthorised entry and residence, presented during the French Presidency of the EU, second semester of 2000 (2000/0820/CNS; O.J. of the E.C. of 4.09.2000, C-253/6-8)  
Opinion of the European Parliament is adopted on 15 February 2001. [Report by Ozan CEYHUN (Doc. A5-0315/2000)]  
A political agreement was reached on this text on 28 May 2001. This Council Framework Decision finally received formal approval at a JHA meeting on 28 November 2002 (O.J. of the E.U. of 5.12.2002, L-328/1-3).
- Initiative of the French Republic with a view to the adoption of a Council Directive defining the facilitation of unauthorised entry, movement and residence, presented during the French Presidency of the EU, second semester of 2000 (O.J. of the E.C. of 4.09.2000, C-253/1-2)  
Opinion of the European Parliament is adopted on 15 February 2001. [Report by Ozan CEYHUN (Doc. A5-0315/2000)]  
A political agreement was reached on this text on 28 May 2001. This Council Framework Decision finally received formal approval at a JHA meeting on 28 November 2002 (O.J. of the E.U. of 5.12.2002, L-328/17).
- Council Decision of 8 December 2000 on the signing, on behalf of the European Community, of the United Nations Convention against trans-national organised crime and its Protocols on combating trafficking in persons, especially women and children, and the smuggling of migrants by land, air and sea (O.J. of the E.C. of 1.2.2001, L- 30/44).
- On 21 December 2000, the European Commission submitted a proposal for a Council Framework Decision on combating trafficking in human beings [COM(2000) 845 final 2 - 2001/0024(CNS)] (O.J. of the E.C. of 27.02.2001, 62 E, p. 324).  
Opinion of the European Parliament is adopted on 12 June 2001 [Report by Eva KLAMT (Doc. A5-0183/2001)].  
On 19 July 2002, the Council formally adopted this Framework Decision. (O.J. of the E.U. of 1.08.2002, L-203/1-4).
- On 28 May 2001, the Justice and Home Affairs Council adopted Conclusions concerning the creation of a network of national immigration liaison officers to help control illegal migration flows through the Western Balkan region.

- On 28 May 2001, the Mixed Committee took note of the progress report drawn up by the Swedish Presidency on activities in the Western Balkans in the field of asylum and migration since January 2001 as well as progress achieved by the United Kingdom in the Framework of its initiative on the stationing of Immigration experts in the Western Balkans.
- On 16 November 2001, the European Commission presented its Communication to the Council and the European Parliament on "A Common Policy on Illegal Immigration" [COM(2001) 672 final].
- On 16 November 2001, the Justice and Home Affairs Council approved the practical arrangements for intensifying co-operation between the Centre for Information, Discussion and Exchange (CIREFI) and Europol in the field of illegal immigration and related questions.
- On 11 February 2002, the European Commission submitted a proposal for a Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who co-operate with the competent authorities [COM(2002) 0071 final].  
Opinion of the European Parliament is approved on 5 December 2002 [Report by Patsy SÖRENSEN (Doc. A5-0397/2002)].  
In November 2003, the Council adopted its own draft, deleting, inter alia, the 30-day reflection period for victims to decide whether or not to co-operate with the authorities. The changes introduced by the Council required that the European Parliament be consulted once again.  
On 9 March 2004, the European Parliament's second opinion is approved [Report by Patsy SÖRENSEN (Doc. A5-099/2004)].  
The Council formally adopted this Directive on 29 April 2004 (see O.J. of the E.U. of 6.08.2004, L-261/19-23).
- On 28 February 2002, the Justice and Home Affairs Council adopted a comprehensive action plan to combat illegal immigration and trafficking in human beings in the European Union (O.J. of the E.U., C 142, of 14.06.2002). The comprehensive plan, which aims at defining a common and integrated approach to all the questions linked to illegal immigration and human trafficking, identifies seven areas where action is necessary: visa policy, the exchange and analysis of information, readmission and repatriation policies, pre-frontier measures, measures relating to border management, Europol and penalties. The plan is largely inspired by the European Commission's Communication on "A Common Policy on Illegal immigration", presented on 15 November 2001 (see above).
- On 4-5 April 2002, a ministerial of EU Member States and the 10 South East Asian States acting within the framework of the ASEM (Asia – Europe meeting) took place on the Canary Island of Fuerteventura. An 11-point text on combating illegal immigration was adopted.
- On 12 April 2002, the EU's Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) met with US officials and responded positively to American proposals for co-operation on border control and migration management forwarded by the US Government on 26 October 2001.
- On 15 April 2002, the General Affairs Council adopted conclusions on illegal immigration.
- At its meeting on 25-26 April 2002, the Justice and Home Affairs Council adopted conclusions on illegal immigration and human trafficking by sea.
- At its meeting on 25-26 April 2002, the Justice and Home Affairs Council adopted a Joint EU-Russia Declaration on the designation of central contact points to exchange

information on organised crime in areas such as trafficking in human beings, drugs, stolen vehicles, terrorism, etc.

- At its meeting on 25-26 April 2002, the Justice and Home Affairs Council adopted a set of conclusions on the exchange of information and closer co-operation between the Working Party on Frontiers/False Documents and Europol, Interpol, the USA and Canada.
- On 30 May 2002, Ministers of Justice and/or Home Affairs of the EU Member States attending a meeting with their counterparts from countries of Central and Eastern Europe gave their backing, in principle, to the proposal of creating an EU border police force. Italy, which organised the conference, presented a feasibility study containing this proposal. The feasibility study's proposals include common legislation, shared information and a mobile police rapid reaction unit.
- On 13 June 2002, the Spanish Presidency presented a progress report on implementing the comprehensive plan to combat illegal immigration and trafficking in human beings in the EU, which was adopted on 28 February 2002.
- On 13 June 2002, the Justice and Home Affairs Council approved a set of conclusions on the measures to be applied to prevent and combat illegal immigration and trafficking in human beings by sea.
- On 13 June 2002, the Justice and Home Affairs Council approved a plan for the management of external borders.
- On 22 June 2002, EU Council in Seville adopted a (watered-down) proposal linking development aid to co-operation by the recipient countries in combating irregular migration.
- On 15 October 2002, the JHA Council adopted a set of conclusions concerning the prevention and combating of illegal immigration and trafficking in human beings.
- On 19 December 2002, the Mixed Committee took note of a Council's Presidency report on the follow-up to the Seville conclusions, in particular with regard to the implementation of the Plan for the management of the external borders and the comprehensive plan to combat illegal immigration and trafficking in human beings.
- On 19 December 2002, the Council adopted a set of conclusions on "External Border Checks and Combating Illegal Immigration" aimed at introducing the obligation to put an entry stamp on the travel document of all third-country nationals entering the Schengen Area. The absence of an entry stamp may constitute a ground for presumption of irregular stay.
- On 19 December 2002, the JHA Council reached a "general approach" on the text of the draft protocol amending the Europol Convention, which is aimed at improving the effectiveness and co-operation of the competent authorities in the EU in preventing and combating "serious international crime", a terminology that includes, inter alia, illegal immigrant smuggling and trade in human beings.
- On 3 June 2003, the European Commission adopted a Communication to the European Parliament and the Council in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents [COM (2003) 323 final]. Resolution of the European Parliament is adopted on 15 January 2004. [Report by Hubert PIRKER (Doc. A5-419/2004).

- In mid 2003, the European Commission initiated a study into the relationship between legal and illegal immigration.
- In September 2003, the European Commission presented the final report on the feasibility study on the control of the Union's maritime borders.
- On 27-28 November 2003, the Council adopted a programme of measures to combat illegal immigration across the maritime borders of the Member States.
- On 11 November 2003, the European Commission presented on a proposal for a Council Regulation establishing a European Agency for the Management of Operational Co-operation at the External Borders (COM(2003) 687 - C5-0613/2003 - 2003/0273(CNS)). Opinion of the European Parliament is adopted on 9 March 2004 (Report by Christian VON BÖTTICHER (Doc. A5-0093/2004). Text is still pending before the Council.

## 6. Expulsion

- Initiative of the French Republic with a view to adopting a Council Directive on mutual recognition of decisions on the expulsion of third country nationals, presented on 20 July 2000. (2000/0819.CNS; O.J. of E.C. of 24.08.2000, C-243/1)  
Opinion of the European Parliament is adopted on 13 March 2001. [Report by Hartmut NASSAUER (Doc. A5-0065/2001)]  
On 28 May 2001, the Justice and Home Affairs Council adopted this Directive (O.J. of E.U. of 2.06.2001, L-149/34-36).
- On 28 February 2002, the Justice and Home Affairs Council adopted Conclusions on Member States' methods and arrangements for obtaining travel documents for the repatriation of people who do not fulfil or no longer fulfil entry or residence conditions.
- On 28 February 2002, the Justice and Home Affairs Council adopted the "EU Schengen Catalogue: External borders, control, removal and readmission: Recommendations and best practice".
- On 10 April 2002, the European Commission presented a Green Paper on a Community Return Policy on Illegal Residents [COM(2002) 175 final].
- On 14 October 2002, the European Commission adopted a Communication to the European Parliament and to the Council on the Community Return Policy on Illegal Residents [(COM(2002) 564 final].
- On 28 November 2002, the JHA Council adopted the Return Action Programme. On the same day, the Council adopted the Return Plan for Afghanistan, the first application of the Return Action Programme.
- On 27 June 2002, Germany presented an initiative with a view to adopting a Council Directive on assistance in cases of transit for the purposes of removal by air (2003/0801/CNS; O.J. of the E.U. of 09.01.2003, C 4 E, p. 4).  
Opinion of the European Parliament is adopted on 23 September 2003 [Report by Timonhy KIRKHOPE (Doc. A5-0291/2003)].  
The Council formally approved this Directive on 25 November 2003 (O.J. of the E.U. of 6.12.2003, L-321/26-31).
- On 3 February 2003, the European Commission presented a proposal for a Council Decision setting out the criteria and practical arrangements for the compensation of the

financial imbalances resulting from the application of Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals (see above) [COM(2003) 49 final].

Opinion of the European Parliament is adopted on 3 June 2003, rejecting the Commission's proposal [Report by Marcelino OREJA ARBURÚA (Doc. A5-0166/2003)].

On 23 February 2004, the Council formally adopted this Decision (O.J. of the E.U. of 27.02.2004, L-60/55-57).

- On 9 September 2003, the Italian Republic presented an initiative with a view to adopting a Council Directive on assistance in cases of transit through the territory of one or more Member States in the context of removal orders taken by Member States against third-country nationals (2003/0822/CNS).

On 19 February 2004, the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament adopted the report by Adeline HAZAN (PES, F) rejecting the proposal under the consultation procedure. It argued that the EU had yet to reach agreement on a common asylum policy and that it was therefore premature to draw up a common policy on removing illegal third country nationals. Moreover, it viewed collective returns as a "deplorable practice", which should be resorted to only by way of exception. The report was also critical of the fact that the 'common guidelines' on the state of health of returnees, a code of conduct applicable to escorts and the use of coercive measures were merely listed in an annex to the proposal -which was in no way binding - rather than in the proposal itself. Moreover, none of the provisions of the annex allowed for the operations to be monitored by organisations such as the Red Cross. Lastly, the Committee pointed out that the Council had reached political agreement on the substance of the proposal while Parliament was awaiting the revised version of the Italian initiative before delivering an opinion. It concluded that the consultation exercise - which was already a pure formality as a rule for initiatives of this kind - had thus been rendered completely superfluous.

- On 8 August 2003, the Italian Republic presented an initiative for the adoption of a Council Decision on the organisation of joint flights for removals of third-country nationals illegally present in the territory of two or more Member States (2003/0821/CNS; O.J. of the E.U. of 19 September 2003, C-223/3-5).  
The Council formally adopted this Decision on 29 April 2004 (O.J. of the E.U. of 6.08.2004, L-261/28-35).

## **7. Schengen**

- Council Decision of 1 December 2000 on the application of the Schengen Acquis in Denmark, Finland and Sweden, and in Iceland and Norway (O.J. of the E.C. of 9.12.2000, L-309/24-28). Since then, the Ministers of Justice and/or Home Affairs of the two non-EU Member States (Iceland and Norway) take part in Schengen-related matters in JHA meetings within the framework of the "Mixed Committee".
- Initiative of the Portuguese Republic with a view to the adoption of a Council Decision establishing a Secretariat for the Joint Supervisory Data Protection Bodies set up by the Convention on the Establishment of a European Police Office (Europol Convention), the Convention on the use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention), presented on 1 February 2000 (2000/0804/CNS; O.J. of the E.C. of 19.05.2000, C-141/20).  
Opinion of the European Parliament is adopted on 21 September 2000. [Report by Jorge Salvador HERNÁNDEZ MOLLAR (Doc. A5-0225/2000)].  
The Council formally adopted this Decision on 17 October 2000 (O.J. of the E.U. of 24.10.2000, L-271/1-3).

- On 28 May 2001, the Justice and Home Affairs Council approved a document specifying the objectives of the evaluations provided for by the Schengen acquis which contains a mechanisms for evaluating States before they apply the Schengen acquis as well as for monitoring its application where it is already applied. The document also defines a programme of evaluations for the coming years.
- Initiative of the Kingdom of Belgium and of the Kingdom of Sweden with a view to the adoption of a Council Regulation on the development of the second generation Schengen Information System [SIS II (9844/2001 - C5-0315/2001 - 2001/0818(CNS))] (O.J. of the E.C. of 29.06.2001, C 183, p. 12), presented on 19 June 2001.  
Opinion of the European Parliament is adopted on 23 October 2001 [Report by Christian Ulrik von BÖTTICHER (Doc. A5-0333/2001).  
The Council formally adopted this Regulation on 6 December 2001 (O.J. of the E.U. of 13.12.2001, L-328/4-6).
- Initiative of the Kingdom of Belgium and of the Kingdom of Sweden with a view to the adoption of a Council Decision on the development of the second generation Schengen Information System [SIS II (9845/2001 - C5-0316/2001 - 2001/0819(CNS))] (O.J. of the E.C. of 29.06.2001, C 183, p. 14), presented on 19 June 2001.  
Opinion of the European Parliament is adopted on 23 October 2001 [Report by Christian Ulrik von BÖTTICHER (Doc. A5-0333/2001).  
The Council formally adopted this Decision on 6 December 2001 (O.J. of the E.U. of 12.12.2001, L-328/1-3).
- Initiative of the Kingdom of Belgium, the Kingdom of Spain, and the French Republic with a view to the adoption by the Council of a Decision amending Article 40(1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at the common borders (O.J. of the E.C. of 11.10.2001, C-285/3).
- At its meeting on 6-7 December 2001, the Mixed Committee gave its approval for a study to put in place technology with adequate capacity to integrate all the Member States of an enlarged Europe into SIS II.
- On 28 February 2002, the Justice and Home Affairs Council adopted a Decision concerning Ireland's request to take part in some of the provisions of the Schengen acquis. On the basis of this decision, Ireland as of 1 April 2002 will participate in all aspects of the Schengen acquis with the exception of those elements linked to border controls as well as cross border surveillance and hot pursuit.
- On 28 February 2002, the Justice and Home Affairs Council adopted a catalogue of recommendations for the correct application of the Schengen acquis and best practices - Frontiers + Removal and Readmission. The Council also adopted conclusions concerning recommendations for the further development of the Schengen acquis.
- On 25 April 2002, the Justice and Home Affairs Council adopted a Decision on the revision of Part I of the Common Manual on Border Controls laying down certain detailed provisions and practical procedures for carrying out border checks and surveillance, and declassified Part II of the Common (Schengen) Manual.
- On 13 June 2002, the JHA Council approved conclusions on the Schengen evaluation of France.
- On 19 December 2002, the JHA Council approved the second volume of a Catalogue for the correct application of the Schengen acquis. This volume deals with the Schengen Information System, notably the application of the SIRENE manual. The Catalogue will serve as a reference tool for future evaluations undertaken in the candidate countries.



- On 18 February 2003, the European Commission submitted a Staff Working Paper on the development of the second generation Schengen Information System (SIS II) [SEC(2003) 206] in response to the obligation of Article 6 of the Council Regulation no. 2424/2001 of 6 December 2001 on the development of the second generation Schengen Information System (SIS II) (O.J. of the E.U., L-328 of 13.12.2001).  
Opinion of the European Parliament is still pending. [Report by Carlos COELHO (Doc. 2003/2180 (INI))].
- On 19 March 2003, Greece presented an initiative for a Council Decision on procedures on amending the Sirene Manual and an initiative for a Council Regulation on procedures on amending the Sirene Manual (O.J. of the E.U. of 05.04.2003, C 82, p. 25).  
Opinion of the European Parliament adopted on 23 September 2003 [Report by Carlos COELHO (Doc. A5-0288/2003)].  
On 19 February 2004, the Council formally adopted both the Decision and the Regulation (O.J. of the E.U. of 2.03.2004, L-64).
- On 2 June 2003, the European Parliament presented a Working Document on the Schengen Information System II: future developments (Rapporteur: Carlos COELHO)
- On 4 June 2003, the European Parliament presented a Working Document on the Schengen Information System II (SIS II): current developments (timetable, new functionalities and users currently under discussion) (Rapporteur: Carlos COELHO).
- On 4 June 2003, the MEP Carlos COELHO presented, on behalf of the PPE-DE Group, a proposal for a European Parliament recommendation to the Council on the second-generation Schengen Information System (SIS II) (Doc. B5-0268/2003).  
Opinion of the European Parliament is adopted on 20 November 2003. [Report of Carlos COELHO (Doc. A5-0398/2003)].
- On 21 August 2003, the European Commission adopted a proposal for a Regulation of the European Parliament and of the Council amending the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders as regards access to the Schengen Information System by the services in the Member States responsible for issuing registration certificates for vehicles [COM(2003) 510 final].  
Opinion of the European Parliament is adopted on 1 April 2004 (Report of Carlos COELHO (Doc. A5-205/2004)).

## **8. Immigration policy**

- Communication from the Commission to the Council and the European Parliament on "A Community Immigration Policy", presented on 22 November 2000 [COM(2000)757 final].  
Opinion of the European Parliament is adopted on 3 October 2001 [Report by Hubert PIRKER (Doc. A5-0305/2001)].
- Communication from the Commission to the Council and the European Parliament on an open method of co-ordination for the Community immigration policy, presented on 11 July 2001 [COM (2001) 387 final].  
Opinion of the European Parliament is adopted on 19 June 2003. [Report by Anna TERRÓN I CUSÍ (Doc. A5-0224/2003)].
- On 23 May 2001, the European Commission presented a proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States [COM(2001) 257 final].

Opinion (first reading) of the European Parliament is adopted on 11 February 2003 [Report by Giacomo SANTINI (Doc. A5-9/2003)].

Opinion (second reading) of the European Parliament is adopted on 10 March 2004 [Report by Giacomo SANTINI (Doc. A5-90/2004)].

On 29 April, the Directive is signed by the European Parliament and the Council. It replaces the instruments of Community law concerning freedom of movement and residence with a single text, aimed at reinforcing this fundamental right of EU citizens by means of more flexible conditions and formalities and better protection against expulsion (O.J. of the E.U. of 30.40.2004, L-158).

- On 11 July 2001, the European Commission adopted a proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities [COM (2001) 386].  
Opinion of the European Parliament is adopted on 12 February 2003. [Report by Anna TERRÓN I CUSÍ (Doc. A5-0010/2003)].  
This dossier is still pending before the Council.
- Initiative of the Greek Republic to propose a Regulation on the establishment of a European Observatory for migration which should collect information on migration flows and co-operation with other European institutions dealing with information gathering, such as CIREFI, EUROPOL and EUROSTAT, announced on 28 May 2001.
- On 11 April 2001, the European Commission adopted the proposal on imposing a transition period of up to seven years before future new Member States would be allowed to exercise the right of free movement of workers.
- On 16-17 June 2001, the Belgian Presidency of the EU organised a European Conference on Migration which discussed, inter alia, the concept of partnership in the countries of origin in the management of migration.
- On 7 October 2002, the European Commission adopted a proposal for a Council Directive on the entry and residence conditions for third country nationals for the purposes of study, vocational training or voluntary service [COM(2002) 548].  
Opinion of the European Parliament is adopted on 3 June 2003. [Report by Martine ROURE (Doc. A5-0137/2003)].  
Political agreement on this Directive was reached on 30 March 2004.
- On 3 December 2002, the European Commission adopted its Communication to the European Parliament and to the Council on "Integrating Migration Issues in the EU's Relations with Third Countries [COM(2002) 703 final].  
First resolution of the European Parliament is adopted on 19 June 2003 [Report by Anna TERRÓN I CUSÍ (Doc. A5-0224/2003)].  
Second resolution of the European Parliament is adopted on 15 January 2004 [Report by Claude MORAES (Doc. A5-445/2004)].
- On 3 June 2003, the European Commission adopted a Staff Working Paper entitled "Extended Impact Assessment on the Communication on immigration, integration and employment [SEC(2003) 694].
- On 3 June 2003, the European Commission adopted a Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment [COM(2003) 336 final].  
Resolution of the European Parliament is adopted on 15 January 2004 [Report by Claude MORAES (Doc. A5-0445/2003)]. Arguing for properly controlled immigration, Parliament insisted that managed immigration should not mean 'cherry-picking' certain skilled workers/entrepreneurs from developing countries or exploiting migrant workers under

unacceptable conditions. It also stressed that the European Union could learn from existing experiences with the 'green card' in the United States. It stressed also that integration is a matter for society as a whole, and that efforts are needed both from migrants and from indigenous populations as well as local and regional authorities, and called on the Member States to promote better knowledge of other cultures as a standard in education and in public life.

- On 11 June 2003, the European Commission presented a proposal for a Regulation of the European Parliament and of the Council establishing a programme for financial and technical assistance to third countries in the area of migration and asylum [COM(2003) 355 final].  
Opinion of the European Parliament is adopted on 4 December 2003 [Report by Giacomo SANTINI (Doc. A5-405/2003)]  
On 10 March 2004, the European Parliament and the Council formally signed this Regulation (O.J. of the E.U. of 18.03.2004, L-80/1-5).
- On 16 March 2004, the European Commission adopted a Communication to the Council and the European Parliament on the presentation of a proposal for a directive and two proposals for recommendations on the admission of third-country nationals to carry out scientific research in the European Community [COM(2004) 178-1].
- On 16 March 2004, the European Commission presented a proposal for a Council Recommendation to facilitate the admission of third-country nationals to carry out scientific research in the European Community [COM(2004) 178-3] (2004/0062/CNS).  
On 8 June 2004, pending the Opinion of the European Parliament, the Justice and Home Affairs Council adopted a general approach on this proposal.

## 9. Readmission agreements

- On 2 December 1999, the Council agreed to adapt the standard readmission clauses used in Community and mixed agreements. The clauses were first defined in 1995.
- Initiative of the Republic of Finland in view of the adoption of a Council Regulation determining obligations as between the Member States for the readmission of third-country nationals, presented on 22 November 1999 (1999/0823/CNS).  
In its Opinion adopted on 19 May 2000, the European Parliament called for the rejection of the proposal. [Report by Anna KARAMANOU (Doc. A5-0110/2000)]
- In September 2000, the Council adopted mandates authorising the Commission to negotiate EC readmission agreements with Russia, Morocco, Pakistan and Sri Lanka.
- On 28 May 2001, the Justice and Home Affairs Council took note of a progress report on activities undertaken during the Swedish Presidency in the High Level Working Group on Asylum and Migration, covering the dialogue with countries of origin and transit, the dialogue with interested third party countries and with international organisations and NGOs as well as thematic issues.
- On 22 November 2001, the EU initialled a readmission agreement with the Government of Hong Kong Special Administrative Region (SAR) of the People's Republic of China. The agreement was formally signed on 27 November 2002, the first ever between the EU and a third country.  
On 17 December 2003, the Council adopted the Decision concerning the conclusion of the Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation (O.J. of the E.U. of 24.01.2004, L-17/23-24).

- On 10 April 2002, the European Commission adopted a "Green Paper on a Community Return Policy on Illegal Residents" [COM(2002) 175 final].
- On 18 April 2002, the European Commission adopted:
  1. A proposal for a Council decision concerning the signing of the Agreement between the European Community and the Government of the Special Administrative Region (Hong Kong) of the People's Republic of China on the readmission of persons residing without authorisation [SEC(2002) 412-1] and
  2. A proposal for a Council decision concerning the conclusions of the Agreement between the European Community and the Government of the Special Administrative Region (Hong Kong) of the People's Republic of China on the readmission of persons residing without authorisation [SEC(2002) 412-2].

Opinion of the European Parliament is approved on 19 December 2002. [Report by Graham WATSON (Doc. A5-0381/2002)].
- On 25 April 2002, the Justice and Home Affairs Council adopted criteria for identifying third countries with which new readmission agreements need to be negotiated.
- On 13 June 2002, the Justice and Home Affairs Council decided to authorise the European Commission to negotiate with Ukraine a readmission agreement.
- On 28 November 2002, the JHA Council selected eight countries, namely Albania, China, the Federal Republic of Yugoslavia, Morocco, Russia, Tunisia, Ukraine (already selected on 13 June 2002) and Turkey with a view to developing intensified co-operation in the readmission of their nationals. The Council also decided to initiate similar co-operation with Libya.
- On 19 December 2002, the JHA Council decided to appoint the Migration and Expulsion Working Party as the responsible body for assistance and consultations to the Commission in relation to the negotiation of readmission agreements.
- On 21 March 2003, the European Commission adopted:
  1. A proposal for a Council Decision concerning the signing of the Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation;
  2. A proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation [SEC(2003) 255 final].

The Agreement was initialled on 30 May 2002. The Decision concerning the signing of the Agreement was formally approved by the Council on 25 November 2003.
- On 1 March 2003, the European Commission adopted:
  1. A proposal for a Council Decision concerning the signing of the Agreement between the European Community and the Government of the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation;
  2. A proposal for a Council Decision concerning the conclusion of the Agreement between the European Community and the Government of the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation [COM(2003) 151 final].

The Agreement was initialled on 18 October 2002. The Decision concerning the signing of the Agreement was formally approved by the Council on 13 October 2003. The Decision concerning the conclusion of the Agreement was formally approved by the Council on 21 April 2004 (O.J. of the E.U. of 30.04.2004, L-143/97-98).

- On 3 June 2003, the European Commission adopted a Communication to the European Parliament and the Council in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents [COM(2003) 323].  
On 15 January 2004, the European Parliament adopted a resolution on this matter [Report by Hubert PIRKER (Doc. A5-419/2003)], endorsing the (Thessaloniki) European Council's conclusions and the legislative package presented by the Commission.

## **10. Racism and Xenophobia**

- On 28 November 2001, the European Commission adopted a proposal for a Council Framework Decision on combating racism and xenophobia [COM(2001)664 final]. (O.J. of the E.C. of 26.03.2002, C 75E).  
Opinion of the European Parliament is adopted on 4 July 2002 [Report by Ozan CEYHUN (Doc. A5-189/2002)].
- On 25 April 2002, the JHA meeting adopted a set of conclusions to condemn the wave of attacks against Jews and Jewish properties and sites.
- On 25 April 2002, the Council adopted a Decision concerning security in connexion with football matches with an international dimension (O.J. L 121, 8.05.2002)
- On 16 October 2002, the European Commission presented a proposal for a Council Directive on compensation to crime victims [COM(2002) 562 final].  
Opinion of the European Parliament is adopted on 23 October 2003. [Report by Robert ANGELILLI (Doc. A5-0330/2003)].  
On 29 April 2004, the Council formally adopted this Directive (O.J. of the E.U. of 6.08.2004, L-261/15-18).
- On 5 August 2003, the European Commission adopted a Communication to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the Activities of the European Monitoring Centre on Racism and Xenophobia, together with proposals to recast Council Regulation (EC) 1035/97 [COM(2003) 483-1 final].
- On 5 August, the European Commission adopted a Proposal for a Council Regulation on the European Monitoring Centre on Racism and Xenophobia [COM(2003) 483-2 final].  
On 6 August 2004, the European Commission formally withdrew this Proposal [COM(2004) 542(02)].

## **11. Progress reports**

- On 30 November 2000, the European Commission presented its first Communication to the Council and the European Parliament on a "Biannual Update of the Scoreboard to Review Progress on the Creation of an Area of 'Freedom, Security and Justice' in the European Union" [COM(2000) 782].
- On 23 May 2001, the European Commission presented its second Communication to the Council and the European Parliament on a "Biannual Update of the Scoreboard to Review Progress on the Creation of an Area of 'Freedom, Security and Justice' in the European Union" [COM(2001) 278].
- On 26 October 2001 the European Commission presented a Communication to the Council and the European Parliament on a "Biannual Update of the Scoreboard to

Review Progress on the Creation of an Area of 'Freedom, Security and Justice' in the European Union" (Second half of 2001) [COM(2001) 628].

- On 16 November 2001, the Belgian Presidency of the European Union presented a report on the progress on the implementation of measures mentioned in the Treaty of Amsterdam, the Vienna Action Plan and the European Council of Tampere.
- On 30 May 2002, the European Commission presented a Communication to the Council and the European Parliament on a "Biannual Update of the Scoreboard to Review Progress on the Creation of an Area of 'Freedom, Security and Justice' in the European Union" (First half of 2002) [COM(2002) 261 final].
- On 16 December 2002, the European Commission presented a Communication to the Council and the European Parliament on a "Biannual Update of the Scoreboard to Review Progress on the Creation of an Area of 'Freedom, Security and Justice' in the European Union" (Second half of 2002) [COM(2002) 738 final].

## **12. Miscellaneous**

- On 22 May 2002, the European Commission adopted a Communication on "A Project for the European Union"[COM(2002) 247 final].
- On 2 June 2004, the European Commission adopted a Communication to the Council and the European Parliament on an "Area of Freedom, Security and Justice: Assessment of the Tampere Programme and future orientations [COM(2004) 4002].
- On 2 June 2004, the European Commission presented a Staff Working Paper on "The Area of Freedom, Security and Justice: assessment of the Tampere Programme and future orientations – List of the most important instruments adopted [SEC(2004) 680] [COM(2004) 401].

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