

Background document

The EU Policy on Migration and Asylum

The Treaty establishing the European Economic Community in 1957 introduced for the first time the free movement of workers within the Community. The Single Act of 1986 set up the creation of a single internal market based on the free movement of goods, capital, services and persons. However, in order to effectively abolish internal border controls, it was also necessary to agree on common measures on visa, migration and asylum. The first development in this field took place outside the framework of the European Community.

THE SCHENGEN AGREEMENT

In 1985, Germany, France and the Benelux countries signed on their own initiative an intergovernmental agreement to establish a genuine free movement of persons within the so-called “Schengen area”. It was implemented in 1990 and finally integrated into the European Union framework by the Amsterdam Treaty.

In order to offset the loss of security suffered as a consequence of the abolition of border controls the following security measures were adopted:

- A joint automated search system – the ‘Schengen Information System’;
- Close checks on all crossing points on external borders of the Schengen area;
- Increased police cooperation.

THE DUBLIN CONVENTION

This convention adopted in 1990 aims to prevent multiple asylum applications. The convention provides: the mutual recognition of each states’ asylum regulations, asylum applications can only be processed by the member state in which the asylum-seeker first arrives in the EU and other member state are not obliged to process an application once it has been filed in another member state.

THE MAASTRICHT TREATY

The Treaty of Maastricht brought this informal intergovernmental cooperation into the framework of the European Union. The Treaty formally recognized ‘justice and home affairs’ as ‘matters of common interest’. However, this development was more an institutionalization of the existing intergovernmental provisions than a new competence of the EU. Decision-making remained by unanimity, the Commission had no right of initiative and there was no role for the European Parliament or the European Court of Justice.

THE AMSTERDAM TREATY

It was with the entry into force of the Treaty of Amsterdam in 1999 that the policies on migration, asylum and free movement of persons were integrated in the European Community section of the EU Treaty.

These policies are now combined with the provisions for the removal of internal borders and separated from the provisions on police and judicial cooperation on criminal matters. The new amended Title IV (Articles 62 and 63) of the Treaty establishing the European Community specifies the following objectives for the next five years:

- Standards and procedures for checks on persons crossing the EU's external borders;
- Rules on visas for stays longer than three months, including a single list of countries whose citizens require visas to visit the EU;
- Conditions under which third country nationals shall have the freedom to travel in the EU for up to three months;
- Standards and procedures for granting and withdrawing asylum and refugee status, including minimum standards for the reception of asylum seekers and refugees;
- Minimum standards for the temporary protection of displaced persons (de facto refugees rather than asylum-seekers);
- Measure on immigration policy, including common conditions of entry and residence and common rules on illegal immigration and repatriation; and
- Measures defining the rights and conditions under which third-country nationals can work and reside anywhere in the EU.

DECISION MAKING PROCEDURES

'Policies are still adopted through intergovernmental procedures, as the Council must agree by unanimity, and any government can initiate a policy proposal. However, the Commission shares the right of initiative with the Council, and the Council can adopt legally binding and directly effective directives or regulations. Decision-making is also more transparent, as the European Parliament must be consulted. The European Court of Justice has jurisdiction over these areas, but only if all national legal remedies have been exhausted (which places a financial burden on individuals who wish to pursue cases under these provisions at the European level). And, in most areas there is a five-year deadline, after which the Council shall decide by unanimity whether policies can be adopted by qualified majority voting and the codecision procedure. Finally, if one or more member states faces a migration emergency, the Council can adopt temporary immigration and refugee policies through qualified-majority voting'

THE EUROPEAN COUNCIL OF TAMPERE

The European Council held in Tampere in 1999 provided the political guidelines on the creation of an 'area of freedom, security and justice' in the EU. The Tampere conclusions focused on the partnership with countries of origin, the fair treatment of third country nationals and the management of migration flows. As one of the working method, the Commission was asked to keep track of the proposals and achievements in migration and asylum in a "scoreboard" updated every six months.

You will find in the next points a list of the most important initiatives in the field of migration and asylum that have recently been adopted, those which are now under

negotiations and other initiatives that will be taken according to the working programme. These measures apply to United Kingdom and Ireland only when they decide to 'opt in', Denmark may also decide to 'opt out' according to the declarations annexed to the Treaty of Amsterdam.

THE PROPOSALS ON MIGRATION

ADOPTED

Communication from the Commission to the Council and the European Parliament on a Community immigration policy (COM (2000) 757 Final).

One of the first initiative of the Commission was to present in November 2000 two general communications on migration and asylum. The idea was to launch a global debate on these issues and to present the conclusions at the Laeken Summit. The main message of the communication is to dismiss the 'immigration zero policy' and to call for the development of a new immigration policy reflecting the economic and demographic reality of the EU.

Council Regulation of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

Bulgaria, Romania and territories as Hong Kong and Macao have recently been included among the countries exempt from visa obligations.

Readmission agreements with third countries.

Communication from the Commission to the Council and the European Parliament on an open method of coordination for the community immigration policy (COM (2001) 387).

Communication from the Commission to the Council and European Parliament on combating trafficking in human beings and combating the sexual exploitation of children and child pornography (Com 2000 854 final/2).

Council Directive of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals.

Council regulation of 28 May 2001 on freedom of movement with a long stay visa.

Council Directive of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (Directive on Carriers' Sanctions).

French Initiative for a Framework Decision on strengthening the penal framework for preventing the facilitation on unauthorized entry and residence (12025/00, 6 October 2000).

French Initiative for a Council Directive defining the facilitation of unauthorized entry,

movement and residence (12026/00, 6 October 2000).

Political agreement reached at the May JHA Council. Member States will decide to apply or not a humanitarian clause. The minimum maximum custodial sentence under aggravating circumstances should be eight years.

UNDER NEGOCIATIONS

Proposal for a Council Framework decision on combating trafficking in human beings (COM (2000) 0854).

The definition of trafficking includes “ the recruitment, transportation, or transfer of a person, including harboring and subsequent reception of and the exchange of control over him or her for the purpose of exploiting him or her in the production of goods or provisions of services”. The proposal also defines the concepts of labour exploitation and sexual exploitation. It specifies the penalties for each criminal action and provides for jurisdictional competencies. The Parliament called for an increased protection to the victims (temporary residence permits during the investigation and a compensation fund) but the last Justice and Home Affairs’ Council in September 2001 had already reached an agreement without waiting for the EP’s vote.

Proposal for a Council Directive on the right to family reunification (COM (2000) 624 final).

No political agreement has yet been reached on this proposal. One of the main controversies is the definition of ‘family’. The Belgian Presidency has presented a compromise that identifies three different categories of family members with different rights: spouse and minor children, ascendants, and unmarried partners. Each Member State should be free to grant family unification to the last two categories. A political agreement should be reached during the next JHA Council on the 6/7th December 2001.

Proposal for a council directive concerning the status of third country nationals who are long-term residents (COM (2001) 127 final).

This proposal aims at approximating the status of third country nationals who are long-term residents with the one of European citizens’. After five years of being legally residents (with a minimum level of resources and a health insurance), third-country nationals may acquire a ten-year residence permit. This status will allow them to study, work and settle within the European Union. However, there is no mention of the right to vote, which constitutes one of the key demands for many migrants’ organisations.

Proposal for a directive on conditions of admission and stay of third country nationals for the purpose of paid employment or self-employed economic activities (COM (2001) 386 final).

The proposal tries to improve the management of migration flows taking into account the needs of the labour market in the Member States. It provides common criteria in all the Member States and a single procedure and document (‘the residence permit-worker’).

UNDER PREPARATION

Communication on a common policy on repatriation (2nd Semester 2001)

Communication on a common fight against illegal immigration (2nd Semester 2001)

Proposal for a directive on the conditions of admission and stay of third country nationals for the purposes of study (2nd Semester 2001)

Proposal for a directive on the conditions of admission and stay of third country nationals for the purpose of unpaid activities (2nd Semester 2001)

Proposal for a Council Decision adopting an action programme for administrative co-operation in the fields of visas, asylum, immigration and other policies related to free movement of persons (2nd Semester 2001)

THE PROPOSALS ON ASYLUM

The Conclusions of Tampere reaffirmed the importance of the right to seek asylum according to the Geneva Convention of 1951 and of the principle of 'non-refoulement'.

A 'Common European Asylum System' should lead towards a common asylum procedure and a uniform status valid throughout the European Union.

The objectives in the short term should be the determination of the State responsible for the examination of an asylum application, common standards for an asylum procedure, common minimum conditions of reception for asylum seekers, the approximation of rules on the recognition and content of refugee status, and complementary measures on subsidiary forms of protection.

The European Council also urged the Council to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States. The last Commission's initiative to set up a "Common European Asylum System" has been recently presented (on common definition of refugee and a common standard of refugee rights). According to the Commissioner, 'the ball is now in the court of the Member States'.

ADOPTED

Communication from the Commission to the Council and the European Parliament:

"Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum" (COM (2000) 755).

Decision of 28 September 2000 establishing a European Refugee Fund as a solidarity measure to balance the efforts made by Member States in receiving and bearing the consequences of receiving refugees and displaced persons.

Regulation of 11 December 2000 concerning the establishment of 'Eurodac' for the

comparison of fingerprints for the effective application of the Dublin Convention on the State responsible for examining applications for asylum lodged in one of the European Union Member States.

Directive of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

This exceptional mechanism can only be put in action by the Council (qualified majority) on the basis of a Commission proposal. It is valid for one year, with the possibility of an automatic extension for two further six-month periods (up to three years). This status comprises residence permits, the right to work, accommodation, social assistance, health care, education and the possibility of family reunification. In addition, beneficiaries may apply the normal asylum procedure.

UNDER NEGOTIATIONS

Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (COM (2000) 578).

This is the first Community initiative on asylum procedures leading to a common European asylum system. It aims to provide with common definitions, common requirements for inadmissible and manifestly unfounded cases (including the safe country concepts), time-limits for deciding in first instance and in appeal, a minimum level of procedural safeguards, and minimum requirements for decisions and decision-making authorities with a view to reducing disparities in examination processes in Member States. A political agreement should be reached in the next JHA Council in December 2001.

Proposal for a directive on minimum standards for conditions for the reception of asylum-seekers (COM (2001) 181).

Harmonisation of the legal situation and the assistance granted to asylum seekers and their families to assure a "dignified standard of living" during the asylum procedure. It includes: access to primary health care (only for asylum seekers under the regular procedure), right to education for children, access to non-governmental organisations and legal advisors, access to the labour market (at latest six months after), and special provisions for vulnerable groups.

Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national (COM (2001) 447 final).

This community regulation replaces the actual Dublin Convention of 1990 that entered into force in 1997. Its objective is to ensure that the applications are examined by at least one Member State. Therefore it establishes a set of criteria to determine that the Member State where the asylum application was lodged may only transfer his responsibility to another Member State in case of existing family and cultural links, the possession of a residence permit or a visa, the irregular entry into the territory or the regular entry when the requirement of a visa is waived.

Proposal for a Council Directive laying down minimum standards for the qualification

and status of third country nationals and stateless persons as refugees, in accordance with the 1951 Convention relating to the status of refugees and the 1967 protocol, or as persons who otherwise need international protection (COM (2001) 510 provisional).

This proposal aims at a common definition of refugee and a minimum level of for the beneficiaries of both refugee and subsidiary protection status in all Member States. It aims to avoid secondary movements when asylum seekers apply in countries, which offer them the most favorable protection (the so called “asylum shopping”). It states that persecution can also originate from non-state agents and contains specific provisions for women and children.

WIDER DEBATES AT THE EUROPEAN LEVEL

Asylum and migration in the context of enlargement

The accession negotiations that are taking place between EU and Countries of Central and Eastern Europe are sources of many difficulties when it comes to asylum and migration issues. If these issues are not addressed at a political level there is a serious risk of alienation of public opinions both in the EU and outside the EU. Should candidate countries obtain freedom of movement of workers immediately after their accession? Is the tightening of border control (i.e. restrictive visa policy) between accession countries and countries like Ukraine, Belarus, Moldova, Russia compatible with security principles (good neighborhood, interregional development)?

The repeated attack on the ‘asylum’ principle

The building of the Fortress Europe has seriously undermined the international obligations towards asylum seekers. Refugees are prevented in all possible ways to reach the EU (‘safe third country’, readmission agreement, carriers liability). In Europe they are often criminalized, put in detention centers and rushed into accelerated asylum procedure. This approach needs to be challenged at the highest level to bring more consistency with the fundamental rights that bind the EU and to safeguard the state of law.

Beyond the ‘zero immigration’ policy

Finally the European Commission and some Member States start to admit the need to go beyond the unsustainable ‘immigration zero’ policy. Italy for instance has introduced a system of new entry quotas for non-EU citizens (63,000 work permits has been set for the year 2000). Debate is now taking place in Germany. However ‘progressive’ this policy may appear it is important to be extremely careful. What statute will be given to these migrants? Will they just temporarily fill the gap and then be sent home? Which rights will they be given? Will it include family reunification? Which profile will these migrants have: highly educated or low skilled? What about the regularisation of undocumented migrants already working in Europe?

Integration of migrants: Fighting discrimination and the access to citizens’ rights

The Article 13 of the Amsterdam Treaty providing that EU institutions ‘may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation’ has open the way for the adoption of directives combating racism.

However the fact that the discrimination on the base of nationality is deliberately not addressed under this article means that discrimination that affects non EU nationals are

not tackled i.e. right to vote, access to profession reserved to nationals, right not to be sanctioned twice for the same offense (i.e. in France non EU nationals can in addition of having served their prison term be expelled). This opens the debate on the modalities of the accession to citizen's rights. Is naturalization the only way? What about a citizenship of residence?

SOURCES OF INFORMATION

The 'Europa website' offers very detailed information on the issue as well as all official documents that have already been adopted or are being negotiated:

http://europa.eu.int/pol/justice/index_en.htm (European Union: Justice and Home Affairs (JHA) policy)

http://europa.eu.int/comm/justice_home/unit/immigration_en.htm (European Commission: Directorate General for JHA)

<http://ue.eu.int/jai/default.asp?lang=en> (Council of the European Union: JHA)

http://www.europarl.eu.int/committees/libe_home.htm (Parliament: Committee on Citizens' Freedoms and Rights, JHA)

<http://europa.eu.int/eur-lex/en/index.html> (Search for documents: Eurolex)

<http://wwwdb.europarl.eu.int/dors/oeil/en/search.shtm> (Search for documents: The Legislative Observatory)

http://europa.eu.int/comm/justice_home/jai/prog_en.htm (Funding opportunities)

Other interesting website of inter-governmental organisations and NGO's:

<http://www.unhcr.ch> (United Nations High Commissioner for Refugees (UNHCR))

<http://www.ecre.org/> (European Council on Refugees and Exiles)

<http://www.amnesty-eu.org/> (Amnesty International, European Union Office)