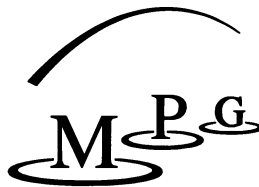


THE MANAGEMENT  
AND  
MANAGERS OF IMMIGRATION

BY

JAN NIESSEN



The Migration Policy Group (MPG) is an independent organisation based in Brussels. MPG is committed to improving policy development on migration and related issues of diversity through the promotion of facilitated exchange between key stakeholders in Europe, North America and the international community, and through the production of substantive, comparative policy analysis. MPG bases its activities on the belief that high-level discussion and debate within and between countries among representatives of all sectors of society - public, private, and business - can contribute to the identification and implementation of innovative and effective solutions to the challenges posed by migration and diversity.

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# Preface

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Immigration is one of the oldest phenomena known to mankind; yet in an age when travel has never been easier, there are more man-made obstacles to the free movement of people than at almost any time in history. Man is born free but too often finds his path blocked by his fellow man. In an age of globalisation, with ever freer movement of goods, services and capital, denial of such freedom to labour seems increasingly perverse.

Almost everything which nature bequeathed to humankind is designed to ensure the survival and prosperity of our species. Diversity of language is the prime exception; diversity of culture has grown above it. If we fail to transcend the fear of the unfamiliar to which so many of our citizens succumb we will propagate conflict and misery. Yet if we expand the capacity of our fellow human beings for curiosity, generosity and experiment we create the conditions for enrichment - economic, social and spiritual.

Political discourse on immigration in Western Europe, which this policy paper rightly identifies as an area of new dynamism, is based largely on economic imperatives. Too often the humanitarian is overlooked. This is regrettable, since the contribution of migrants to economic growth, important though it has always been and remains, pales into minor significance alongside the social and cultural fruits of human exchange. Yet perhaps it is logical in a capitalist social order.

What is less logical is the extreme reluctance of economic and political leaders to make the case for greater immigration to Western Europe when economic conditions require it.

Immigration is a delicate political subject. Democracy, which is capable of bringing out the best in society, too easily falls prey to the ravages of the worst. Those of us who hoped that Western Europe had learned the lessons of a twentieth century which nationalism and intolerance soaked in blood have had a rude awakening in recent months.

The lessons of this are threefold. First, in our global village we are increasingly interdependent and need to foster good neighbourliness. Second, intolerance impoverishes us not only socially but also in economic terms. Third, the advance of humankind requires society to declare war on racism, xenophobia, intolerance and discrimination.

Increasingly, this policy can be co-ordinated centrally. The European Union, in establishing within its borders an area of freedom, security and justice, can serve as a forum for debate between its member states on the best way to solve this dilemma and as the well-spring of policy.

With this policy paper the Migration Policy Group is laying the groundwork for that debate. I salute their efforts and I welcome this publication as a major and timely contribution to our work.

**Graham Watson,**  
**Chairman of the European Parliament's Committee on Citizens' Rights and Freedoms, Justice and Home Affairs**

## Introduction

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Immigration is making a comeback on the European agenda. What is unique about this moment, however, is that unlike the previous policy debates over immigration, which have focused almost entirely on enforcing borders and combating irregular movements, current discussions are considering how immigration could help to address Europe's current labour market situation. A report published in 1999 by the Council of Europe on managing migration may have been the first sign of this shifting view. Although the report - produced by a group of experts at the request of the sixth Conference of Ministers responsible for migration affairs - was not officially approved, it did lead to many discussions within the Council which, for once, were not focused exclusively on closing borders and combating irregular migration. Following various legalisation and recruitment programmes adopted in a significant number of EU member states during the last five years, EU ministers of justice and home affairs have started to look more seriously at possibilities to design immigration policies that would better respond to current labour market needs (Marseilles, July 2000). The recent publication of a UN report on replacement migration (March 2000), which projected that Europe would need millions of immigrants in the years to come, has also fuelled discussions among governmental and non-governmental actors.

Since the cessation of guestworker recruitment in the mid-seventies, most west European states gradually adopted measures restricting the admission of migrant workers and refugees. Changing labour market needs, high unemployment, shrinking public budgets, less charitable public opinion and social stability are among the reasons cited by governments for such policies. Consequently, migration was regarded as primarily a matter for justice and home affairs. These ministries were considered to be best placed to control migration, that is: to restrict immigration. However, governments are waking up to the fact that control measures have not kept migrants and refugees out. On the contrary, statistics show a steady increase, primarily as a result of the implementation of international and national laws and humanitarian commitments (pertaining to family reunion and refugee reception), as well as irregular migration. Moreover, traditional sending countries such as Finland, Greece, Ireland, Italy, Portugal and Spain, have become receiving countries. In other words, the movement of people towards and within Europe is, to a certain extent, outside the control of the ministries of justice and home affairs.

Governmental policies pertaining to immigrants have often been inconsistent and contradictory. In an effort to manage the growing number of undocumented migrants, some governments have launched successive legalisation programmes, which have become in essence a form of *de facto* 'post-immigration' policy. Notwithstanding publicly declared closed-door policies and measures, economic factors have led governments to leave the backdoor open for certain categories of immigrants, such as high, semi and low skilled workers, business-immigrants and self-employed persons. International treaties oblige governments to liberalise immigration rules, as in the General Agreement on Trade in Services (GATS) call for the removal of barriers to the movement of service providers, and in the EU Agreements with accession countries removal of obstacles for the establishment of self-employed persons in a state other than their own.

Many countries are now experiencing high economic growth and job creation, leading to pressures on the trade, industry and the employment branches of government to reopen legal immigration channels for high-, semi- and low-skilled workers. In March 2000, the German government announced plans to admit 20,000 foreign computer experts over the next three years to fill jobs in the information technology (IT) sector. Others branches of German industry that are also experiencing labour shortages subsequently called for similar measures. At the same time, the Irish government decided to ease entry requirements for non-EU workers to fill jobs in technology, nursing and construction. Italy has introduced measures to admit 63,000 migrants a year to relieve shortages in the industrial sector, while Spain has allowed for the entry of migrant workers to work in agriculture and food processing. However, most (if not all) of these plans provide for the temporary import of labour and not permanent immigration. This raises concerns that such labour recruitment programmes may resemble the guestworker-style policies of the recent past.

The possible reintroduction of the guestworker system may best be explained by the fact that European countries still do not consider themselves to be immigration countries. An honest look at Europe's history to the present, however, shows that immigration is an integral part of Europe's past and current reality. The recognition that Europe is a region of immigration would do justice to immigrants, since its denial essentially overlooks the important contributions they have made and continue to make to receiving societies. The guestworker philosophy of the past prevented many governments from taking timely measures to facilitate the full societal participation of those who were initially considered to be 'temporary' workers, but who eventually became permanent immigrants.



This to a certain extent accounts for the vulnerable and often marginal position of a significant number of these persons in the restructuring western economies.

This publication aims to contribute to the emerging policy debates on how to shape European immigration policies by proposing a management strategy that both regulates the admission of immigrants into European countries for (self-) employment purposes, while promoting their integration into receiving societies. It takes as its starting point the following positions:

- Immigrants are economic actors and potential citizens. Temporary employment and residence may be an option for immigrants, but should not form the basis of an immigration system. Provided that voluntary migration is managed well, it can be beneficial for immigrants and receiving and sending countries.
- Immigration for (self-) employment should be a proactive response designed to meet projections of economic and labour market need (economic and labour market developments, the required quantity and quality of workers, and the size, composition and skills of the population).
- Immigration policies are to be the result of engaging and balancing the interests of the various stakeholders, namely, immigrants, employers' organisations, trade unions and governments.
- Immigration policies are to include a full range of measures in the areas of admission (such as entry conditions, family reunion, border control and visa policies) and the integration of immigrants into receiving societies (such as secure residence rights, equal treatment, acquisition of nationality, anti-discrimination and diversity).
- Immigration policies are to be designed parallel to, but separately from, asylum policies that are based on humanitarian principles embodied in the 1951 Convention relating to the Status of Refugees, the European Convention on Human Rights, and UNHCR Executive Committee Conclusions.
- Forced migration - as an escape from generalised violence, violations of social, economic and cultural rights, the collapse of the political and social fabric, or environmental degradation - must be addressed by foreign policies and development policies.

Chapter I looks at the management of immigration for employment and self-employment and examines who the managers of immigration are and should be. Chapter II outlines eight reasons for adopting an immigration policy. Chapter III elaborates on these reasons by describing three main benefits of immigration, while Chapter IV attempts to shed some light on four major outstanding issues connected to immigration. Chapter V focuses on the European Union, whose immigration and asylum policies greatly influence those of other European states, in particular: the three non-EU Member States that are part of the European Economic Area, the twelve accession states, Turkey and Switzerland. The Council of Europe, of which these states are all members, has nine more members, further demonstrating the importance of the European Union as a forum for policy making in Europe.

# I. The management and managers of immigration

Immigration is and will continue to be part of Europe's reality and policies should therefore be adopted that facilitate international mobility and voluntary migration. Without ignoring or underestimating the fact that there are challenges connected to it, if managed well, immigration can be beneficial for all parties concerned. Modern management is all about mobilising human resources and matching them with other resources. It is about leadership, the sharing of responsibilities, using the skills of individuals and valuing diversity. It is about designing strategies that serve and balance the various interests of a variety of stakeholders. These principles can be applied to the management of immigration.

## 1. Who manages immigration?

European governments should critically review their immigration policies of the last forty years and draw some conclusions as to these policies' future involvement in immigration management.

The post-war policies of temporary labour migration in reality led to the permanent settlement of immigrants. The cessation of recruitment in the seventies was followed by restrictive 'zero immigration' policies. Concerns about the potential (real or imagined) economic and social effects of immigrant influxes led to the reinforcement of border controls and the imposition of tighter visa restrictions and carrier sanctions. Focus subsequently turned almost exclusively to how to deal with mounting asylum applications. Despite these restrictive measures, however, both regular and irregular migratory and refugee movements continued<sup>1</sup>. As a consequence, and although reluctant to admit it, most member states of the European Economic Area (EEA), including traditional sending countries, are countries of immigration.

The closing of legal channels to immigration has led to a rise in irregular movements, the development of sophisticated human trafficking and smuggling networks, and, to some extent, the use of the asylum system for immigration purposes, leading governments to realise that it is impossible to have complete control of their borders. Despite control measures designed to restrict immigration, migrants still find ways to 'beat the system' by overstaying their visitors' visas or finding ways to enter a country through unofficial channels and

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<sup>1</sup> For statistical evidence, see Eurostat, *European social statistics - Migration (Luxembourg, 2000)*.

then securing employment. Governments then try to manage the growing number of irregular migrants residing on their territories by launching recurrent and successive legalisation programmes that ultimately reveal a lack of foresight in immigration policy.

Economic interests, including those of migrants, dictate to a great extent immigration patterns. While states try to maintain their sovereign right to control immigration, the global economy transcends borders, giving states more limited control over the movement of capital, goods, services and persons. This friction between the needs of the globalising economy and national sovereignty cause contradictions in immigration policy. The movement of high-skilled workers, managers and businesspeople are subject to fewer restrictions. The GATS' framework for the international mobility of service workers, for instance, is based on the premise that private companies have the right to select, recruit and move workers in response to market demands. The role played by the state in this process is thus diminishing, while the role of the business sector is being enhanced. At the same time, states are affirming their right of discretion with regard to the entry of un- and semi-skilled migrants in order to protect their labour markets and prevent the alleged negative economic effects of this form of immigration. Another contradiction stems from the fact that while there are very few limitations on the freedom of movement and residence of EEA nationals within the European Economic Area, this is not the case for the majority of the legally-residing third-country nationals whose movement is subject to restrictions imposed by the EEA member states.

Governments could draw lessons from these developments and reconsider their role in the management of immigration. While migration is a concern that currently falls under the jurisdiction of the ministries of justice and home affairs in most countries, other government departments should play a more significant role in this field, namely, the ministries of trade, industry and employment. In addition, governments should give non-governmental actors a more prominent place in the management of immigration that corresponds with the realities of migration dynamics. The main actors are the immigrants themselves and their support organisations, trade unions and employers organisations, and governments at various levels.

- *Immigrants and support organisations*

Immigrants ought to be considered as the prime actors in the migration process since they make the decision to migrate in search of better opportunities and a

higher quality of life. Cheaper and improved international travel and communications have made migration easier and have helped immigrants maintain close contacts with their home countries. Those already abroad can provide valuable information to prospective migrants in their home countries about employment opportunities and immigration procedures, act as sponsors or provide letters of invitation if required, and possibly provide financial support. Support organisations (human rights NGOs, church-based organisations, etc.) and migrant associations in receiving countries assist with the settlement and integration of immigrants into receiving societies.

• *Employers' organisations and trade unions*

Economic developments and labour market needs have often dictated immigration policies. Consequently, employers are usually the first to ask for the opening of labour markets to foreign workers and the removal of obstacles for the movement of service providers and the establishment of self-employed persons. They have then had to convince the government and their other social partner, the trade unions, that immigration is not detrimental to unemployed workers (among them, minorities and settled immigrants) or potential labourers (such as women). Trade unions have also sought to avoid 'social dumping' and have demanded equal treatment of immigrants. The social partners have responsibilities that extend beyond the labour market and should therefore contribute substantially to the incorporation of immigrants into society<sup>2</sup>.

The social partners are among the organisations best placed to make an assessment of labour market needs and to reach agreement on immigration as part of labour market strategies. This system of assessment and negotiation should be flexible and responsive to economic and labour market needs. For this reason, a fixed quota system for immigrant admissions is not recommended. The social partners are also well placed to promote equal treatment for immigrant workers and the value of diversity, and to combat discrimination.

• *Governments and international forums*

Governments of receiving countries play an important role both as facilitator and legislator. They can (financially) support the continuous process of labour market assessment and facilitate and participate in the dialogue between the social

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<sup>2</sup> See Lori Lindburg, in consultation with Jan Niessen, *Plus-Sum Gain: business investment in the socio-economic inclusion of Europe's immigrant and ethnic minority communities* (Brussels, 1997).

partners. Governments must balance the various and sometimes conflicting long- and short-term interests of the social partners, various segments of the labour market, and economic and social interests. On the basis of clear objectives formulated in consultation with these actors, governments can decide on workable immigration targets or ceilings. As legislators, governments provide a legal framework for immigration, which includes the protection of the rights of individual migrants and rules concerning their recruitment and employment. Governments must also protect the integrity of the immigration system by removing those who are unlawfully present from their territory. And finally, governments need to devote considerable efforts to the design and implementation of policies aimed at incorporating immigrants into society.

By adopting clear policies, providing protection of rights and engaging the relevant stakeholders, governments create a social and political climate that is attractive for potential immigrants. This could be of crucial importance in competitive markets and with the current high demand for persons with particular skills.

Governments of sending countries can also play an active role in the migration process. Some sending countries actively encourage the emigration of their nationals as a strategy to reduce unemployment, and gain valuable income through migrants' remittances, passport fees and travel taxes. Vietnam, China and South Korea have all sent workers abroad in the past via state-owned corporations. In the Philippines, recruitment agencies are licensed and supervised by a government-managed agency and the government has even established an official procedure for the transfer of remittances. Because of the potential benefits, developing countries were pressing for the liberalisation of rules for migration for (self-) employment from developing to developed countries, during the GATS negotiations.

International migration is not only the subject of national policy-making, but also of international forums. International human rights treaties originating from such bodies as the United Nations, the International Labour Organisation and the Council of Europe, define and protect migrants' rights. Co-operation between states impacts on migratory movements between those states (e.g. free movement of workers within the European Economic Area). International trade agreements have consequences for the mobility of (self-) employed persons and service providers (i.e. EU Agreements with accession states), while international trade and development organisations, such as the World Trade Organisation (WTO) and the United Nations Conference on Trade and Development (UNCTAD),

provide a platform for negotiations on international mobility of persons between sending and receiving countries. Additionally, in order to deal with the dramatically increased number of forced movements of persons, governments and intergovernmental organisations have begun to call for an international migration regime. In other words, international commitments and obligations greatly influence national policies and will do so even more in the near future.

## IMMIGRATION NEGOTIATIONS INTERESTS AND CONCERNS OF THE STAKEHOLDERS IN RECEIVING COUNTRIES

- Immigrants:      1. improvement of economic and social position  
                         2. fulfilment of aspirations and protection of rights  
                         3. contribution to receiving society
- Trade Unions:    1. protection of workers  
                         2. equal treatment  
                         3. social and economic development
- Employers:        1. remaining competitive in global markets  
                         2. equal opportunities  
                         3. economic and social development
- Governments:    1. economic development and full employment  
                         2. equality and anti-discrimination  
                         3. diversity and cohesion

### CONFLICTING INTERESTS AND POSSIBLE OUTCOMES OF THE NEGOTIATIONS

#### *1. Own interests*

Immigrants have migrated to improve their position, which coincides with employers' interests in having access to readily available workers in order to remain competitive. Trade unions will encourage the employment of women and the unemployed among minority and immigrant groups, a position that will be supported by the governments' aim of full employment and the labour market incorporation of the potential work force already present in their countries.

Outcome: limited and targeted immigration accompanied by measures to facilitate, in the short and medium term, unemployed groups' entry into the labour market.



## *2. Rights and opportunities*

Immigrants are interested in fulfilling their aspirations and in protection from exploitation. These goals coincide with the objectives of the trade unions (equal treatment in order to avoid 'social dumping'), employers (equal opportunities for those who qualify for the job, irrespective of national origin), and governments (application of equal treatment and anti-discrimination principles). A problem may arise between immigrants (backed by trade unions) and governments (backed by employers objecting to over regulation) over levels of equality and protections against discrimination.

Outcome: agreement on the strict application of equal treatment principles concerning working and living conditions and the gradual introduction of legal and other measures to promote equal treatment and to combat racial and ethnic discrimination.

## *3. Society's overall interests*

Immigrants are very keen to participate and contribute to the receiving society, a fact welcomed by all stakeholders. Problems arise when governments are not convinced that trade unions and employers see immigrant workers as citizens worthy of support and societal investment. Governments themselves may be under pressure from (vulnerable) groups in society that compete for relatively scarce goods and services, such as education, housing and health, and who see immigrants as their competitors or from groups fearing the loss of national identity as a consequence of immigration.

Outcome:

- The adoption of policies aimed at the full economic, cultural and political participation of immigrants.
- The promotion of social cohesion by targeted programmes designed to serve a diverse population, with special attention to vulnerable groups, irrespective of national origin.
- The active involvement of all stakeholders in the policy formation and implementation of diversity and cohesion policies.

## 2. Elements and principles

Clearly defined and rights-based immigration policies could liberalise and regulate the admission and the integration of immigrants. Liberalisation of immigration and the removal of obstacles for human exchanges should keep pace with the liberalisation of trade and the (gradual) removal of barriers for the movement of capital, services and goods. Just as trade liberalisation is based on rules and regulations, immigration should be based on the rights and obligations of the concerned parties. Such policies should contain the following elements:

- *Admission*

Immigration policies should establish a right to admission for persons seeking employment or self-employment. These persons should have equal rights with nationals with regard to family reunion<sup>3</sup>.

- **Admission for employment or self-employment**

Foreign nationals should be admitted entry for a period of up to six months for the purposes of seeking an employment contract for a job that has been vacant for at least one year and is duly registered in an employment clearance system. A contract for such a job can also be offered to foreign nationals while they are not in the country in which the job offer is made. This allows an employer to offer a contract to a foreign national when no nationals are available to fill a position, while leaving the system's preference for nationals or non-nationals with a special status intact (for example, EEA citizens within the EEA member states). The foreign national concerned must be a named worker who has specialised qualifications and experience. This would avoid abuse and reduce the possibilities for irregular employment.

A work and residence authorisation (combined in one 'residence card') shall be issued for a period equivalent to at least the duration of the work contract, for a maximum of four years. Persons duly registered as belonging to the labour market shall be entitled, after one year of legal employment, to renewal of their work and residence permits and to respond to another job offer (in the same occupation) with an employer of their choice. After two years of legal

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<sup>3</sup> *Based on Immigration Law Practitioners' Association and Migration Policy Group, The Amsterdam Proposals: The ILPA/MPG proposed directives on immigration and asylum. (London/Brussels, 2000).*

employment, they shall enjoy free access to any paid employment. After three years of legal employment and residence, these persons will be entitled to permanent residence.

Those seeking entry for the purposes of self-employment should have sufficient resources to establish the proposed business and must comply with the rules governing the exercising of the activity concerned. In this case, a residence authorisation should be valid for two years with the possibility of renewal. Foreign nationals should enjoy the right to provide professional services on an independent basis under the condition that they can show evidence of a contract for the provision of such services. After three years of legal self-employment and residence, these persons will be entitled to permanent residence.

This system is based on permanent residence because a residence status is granted for a maximum of four (for employed persons) and two years but renewable for another two years (for self-employed persons). Within these four years, an immigrant may acquire the status of permanent resident. The system does not preclude temporary migration. Depending on the labour market situation, immigrants may or may not be able to renew their work contract or find another employer.

#### **- Family reunion**

Immigrants shall be entitled to family reunion as soon as possible and at the latest after they have been legally resident in a state for one year and possess the right of residence for at least one additional year. Immigrants with a permanent residence status should enjoy an immediate right to family reunion. In both cases, the person in question should have the right to be joined by a spouse or unmarried partner (including fiancés and partners in a relationship akin to marriage), children under 21, and any dependent family members over 21. Family members admitted under these provisions should enjoy equal treatment with nationals with regard to access to employment, social advantages, housing, trade union participation and education.

#### **• *Integration***

Immigration policies should be premised on the permanent settlement of immigrants, even though many may stay for a limited period of time and return or move on to other places. Therefore, policies to integrate immigrants into receiving societies are part and parcel of immigration policies. This includes the

securing of legal residence rights, the promotion of equal treatment, the acquisition of nationality and combating racial and ethnic discrimination<sup>4</sup>.

**- Residence rights**

A simple system of residence permits that secures the residence rights of immigrants promotes and fosters their integration. Immigrants should acquire the status of permanent residence after three years of legal employment or self-employment or five years of habitual residence. A permanent residence card shall be issued that must be valid for at least five years and be automatically renewable. States shall not expel long-term residents from their territories, except on grounds of public policy, public security or public health. Permanent residents shall be entitled to the immediate right of family reunion and their family members granted with an immediate right to work. Holders of the permanent residence card will have access to any paid employment or self-employment, and will possess the right to receive services, study, reside after retirement, or for other purposes. Cardholders (and their family members) shall retain their status notwithstanding any absence from the territory of the receiving country as long as the absence does not exceed three years.

**- Equal treatment**

Equal treatment policies provide immigrants with equal rights (including family reunion rights) and equal access to the labour market, education, health and other services. Equal treatment is seen as a major instrument to bring about justice and to promote solidarity among various groups in society. Legal and other measures to promote equality enable immigrants to participate fully in a society's economic, social, cultural and political life. Exceptions to equal treatment are strictly limited to certain areas (i.e. occupations related to the exercise of public power or representation of the state). Positive action measures help to support the implementation of equal treatment policies.

**- Nationality**

Acquiring the nationality of the country of residence is a means of facilitating integration into that country. Naturalisation secures, once and for all, the legal

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<sup>4</sup> *Based on A review of the implementation of community relations policies. A report prepared by the Migration Policy Group for the 6th Conference of European Ministers responsible for migration affairs' (Strasbourg 1996).*

status of immigrants and establishes complete equality before the law. Equally as important, naturalisation facilitates the development of a sense of belonging to society. For these reasons, the acquisition of nationality should be made possible after a maximum of five years of legal residence. According to the European Convention on Nationality, the rules of the state on nationality shall not contain distinctions or include any practice that amounts to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin. The Convention sets out clear rules regarding the procedures of applying for nationality (reasonable costs and delays, right of judicial review, etc.). Children having different nationalities acquired automatically at birth shall retain these nationalities. When nationality is acquired by marriage, spouses shall retain the nationality they previously possessed. States could also go one step further and recognise dual nationality for everyone.

### **- Combating discrimination**

Racial and ethnic discrimination prevents immigrants and persons with immigrant backgrounds from participating fully and on an equal basis in society, and deprives society of the benefits of the skills and aptitudes of its entire population. Therefore, legal and other measures should be adopted that aim to eliminate discrimination. These measures include the prohibition of direct and indirect discrimination, as well as harassment, victimisation and instruction to discrimination. They guarantee access without discrimination to employment, housing, education, health services, social protection, social advantages and goods and services. They require that the burden of proof be more equally divided between a victim of racism and the perpetrator. Independent bodies should be set up to monitor the implementation of anti-discrimination legislation and to assist victims of discrimination<sup>5</sup>.

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<sup>5</sup> *Isabelle Chopin and Jan Niessen, Proposals for legislative measures to combat racism and to promote equal rights in the European Union (Starting Line Group and Commission for Racial Equality, Brussels/London 1998).*



## **II. Eight reasons to adopt an immigration policy**

Immigration has at times been kept out of public and policy debates, while in other instances, it has been hotly debated and used to mobilise support for isolationist, nationalistic, or xenophobic and racist political parties and movements. More recently, the debate has begun to shift towards a more positive outlook on immigration. In this spirit, there are at least eight reasons why governments should consider adopting an immigration policy:

### **1. Valuing voluntary migration**

Mobility is inherent to human nature and human exchanges, migration and settlement are an integral part of the history of humankind. Voluntary migration has always been and should remain an option for individuals who are looking for a higher quality of life and better opportunities to fulfil their aspirations. Although not enshrined in clear and unambiguous terms in international law, voluntary migration is a fundamental right and requires policies to regulate migratory processes. The rights of migrants, on the other hand, are enshrined in national and international law and require determined application and regular reviews. Policies should not complicate, but rather, facilitate immigration on the basis of clear rules.

### **2. Facilitating international migration**

Globalisation can be characterised by intensifying global exchanges involving more people than ever before. The liberalisation of trade and the gradual removal of obstacles for the movement of capital, services, goods and information will all have consequences for the mobility of persons. The globalisation of the world economy calls for increased flexibility and the deregulation of labour markets. This entails the need for the free movement of skilled and unskilled workers. Persons will move to deliver services or to become temporarily or permanently employed in countries other than their own. Transnational companies operate in an almost borderless economy and move their personnel around the globe. Human mobility will also increase for purposes of study or family visits. Scientific and cultural exchanges and international tourism are valued by an increasing number of people and represent a growing sector of the economy.

Immigration policies are part of an overall strategy to facilitate mobility and human exchanges. Similar to the ways in which trade liberalisation is

accompanied by the application of trade rules and regulations, a migration regime would manage the voluntary movement of persons.

### 3. Labour market dynamics

Notwithstanding the fact that unemployment remains a problem in certain regions, among some segments of the population and in certain industry sectors, economic growth and increased job creation in Europe have raised employment levels and increased business investment and consumer spending in the past few years. Increased job creation in the service sector, the fastest growing sector of the economy, has led to shortages in certain service sector activities, most notably, in information technology, health and construction.

Migration for (self-) employment can be one way of responding to labour market pressures, and can have a number of positive effects on the economy of the receiving country. Immigrants relieve labour shortages, contribute to increased production and economic growth and lower inflation, increase consumption and growth in tax income, and help to create more jobs.

### 4. Demographic considerations

In March 2000, the UN published a report on replacement migration as a solution to declining and ageing populations<sup>6</sup>. It predicts that the EU would need net migration levels of 701 million migrants from 1995 to 2050 in order to maintain the potential support ratio of the working-age population to the retired-age population, so as to ensure adequate health and pension schemes for the elderly. The report acknowledges the fact that such high levels of immigration would be unrealistic and infeasible, however, it has opened up the debate on the implications of ageing populations on the labour market and whether immigration can be a viable solution to population decline.

According to a recent report by the Council of Europe<sup>7</sup>, fears that an ageing workforce could negatively affect productivity and the capacity to adapt to technological change are unfounded. The report maintains that an ageing workforce may require adaptations in training methods and the management of

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<sup>6</sup> *United Nations Population Division, Replacement migration: is it a solution to declining and ageing populations? (United Nations, 2000).*

<sup>7</sup> *Council of Europe, Europe's Population and labour market beyond 2000 (Strasbourg, 2000).*



human resources within a firm or company, but that older workers can be as productive and flexible as younger workers. A report by the European Commission further acknowledges that with the shift to a service economy and the continuing development of information technologies, automated production methods and improvements in health, age has little effect on employability<sup>8</sup>. However, both reports do not exclude immigration as a complementary strategy to relieve labour market pressures.

## **5. Immigrant integration**

Regulated immigration for employment and self-employment provides a sound basis for the integration of immigrants. Clear immigration rules define who will qualify for immigration and on the basis of which criteria. This is important both for immigrants and receiving societies. Quick, correct and considerate processing of immigration applications reduces the long waiting periods and limits arbitrariness. This fosters the confidence of immigrants and the public in the authorities.

By implementing an immigration policy, governments recognise the need and benefits of such a policy and the value of immigrants. This can foster a sense of belonging on the part of the immigrant who feels that he or she is not seen as an economic burden, but rather, as a contributing member of the wider society whose presence is needed and accepted. Family reunion may strengthen immigrants' links with the receiving society. Visa policies could facilitate visits by family members living in countries of origin. Permanent residence permits would enable immigrants to regularly visit their country of origin for short or extended stays. These measures would put immigrants on a par with EU nationals and promote equal treatment, which is the cornerstone of integration policies.

## **6. Reducing irregular migration**

The majority of irregular migrants finds employment and contributes to the economy of the receiving societies. In most cases, they work in sectors and occupations that are not attractive or acceptable to the local workforce, but which are nevertheless important, if not vital, for the overall economy. The absence of an immigration policy keeps them in an extremely vulnerable position. Many countries, on an almost regular basis, take legalisation measures that put an end

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<sup>8</sup> *European Commission, Employment in Europe 1999 (Brussels, 1999).*

to these situations, but only after many years of irregular employment. The adoption of immigration policies, accompanied by the enforcement of labour laws, could put an end to the need to implement post-immigration policies. The adoption of clear admission rules and the implementation of labour standards could terminate the exploitation of this category of immigrants, reduce irregular movements of people and take some wind out of the sails of human traffickers.

## **7. Distinguishing immigration from asylum**

The adoption of clear immigration policies clarifies the differences and similarities between asylum and immigration, which is instrumental in increasing public and political support for both immigration and refugee policies. A more positive stance towards immigration creates a more positive attitude towards foreigners in general, from which both immigrants and refugees could benefit. Both groups could benefit additionally from integration policies.

Persons often have multiple reasons to move internationally. They may seek protection against persecution, as defined in the Refugee Convention, and be escaping generalised violence, violations of social, economic and cultural rights, the collapse of the political and social fabric, or environmental degradation. Whether these persons apply for asylum, emphasising 'Refugee Convention reasons', or seek access to take up (self-) employment depends very much on their assessment of the viability of refugee and immigration policies and practices. The opening of legal immigration channels provides them with an option other than applying for asylum. This occurred in the past when, during dictatorships or political repression in their country of origin, Greek, Spanish, Portuguese, Turkish and Moroccan immigrants did not apply for asylum, but instead found employment in other European states. In this way, the adoption of immigration policies may lead to the easing of some pressure on the asylum system.

## **8. Increasing public support**

Any policy needs to receive the support of the public, and those who design and implement policies need to actively seek such support. Claims by some governments that they are not countries of immigration, while the numbers of immigrants in their countries steadily increase, undermine these governments' credibility. The recurrent and successive legalisation of irregular migrants, justified as it might be from the point of view of the irregular migrant, is an example of a non-anticipatory, non-forward looking and ad-hoc style of policy-

making. The way in which labour market needs assessments often deal with immigration as an afterthought or as something to be avoided, is clear evidence of a lack of leadership. Continuing to hide behind the many challenges still surrounding the integration of immigrants not only overlooks the many contributions immigrants are making to receiving societies, but is also an expression of apathy when it comes to solving problems in partnership with non-governmental actors.

The design and implementation of immigration policies could reverse these tendencies and secure popular support. Governments can show leadership by making assessments of the need for immigrants and by entering into dialogue with the population on immigration and immigrant incorporation. They can design a long-term strategy that balances the interests of all parties concerned, while sharing responsibilities with other actors in society.

IMMIGRATION POLICIES	REFUGEE POLICIES
<p><b>Basis</b> Responding to immigrant aspirations and the economic needs of receiving and sending countries</p> <p>Conventions concerning recruitment and equal treatment; national socio-economic policies</p>	<p><b>Basis</b> Responding to protection needs</p> <p>The 1951 Refugee Convention and 1967 Protocol UNHCR ExCom Conclusions Human Rights Conventions Humanitarian commitments</p>
<p><b>Admission</b> Employed and self-employed persons and service providers</p>	<p><b>Admission</b> Those who have a well-founded fear of persecution on grounds listed in the Refugee Convention; those who need protection on other grounds, such as indiscriminate violence arising in such situations of war and conflict</p>
<p><b>Residence rights</b> After three years of employment a permanent residence card valid for five years and automatically renewable Family reunion after not longer than one year Liberal visa regime to facilitate family visits</p>	<p><b>Residence rights</b> After the granting of refugee status or other -complementary - forms of long-term protection, a permanent residence card that is valid for five years and automatically renewable Family reunion as soon as an application is lodged Liberal visa regime to facilitate family visits</p>
<p><b>Equal treatment and anti-discrimination</b> Application of equal treatment legislation and policies Implementation of legislation against-discrimination on the basis of gender, handicap, sexual orientation, age, colour, ethnic and national origin, religion and belief</p>	<p><b>Equal treatment and anti-discrimination</b> Application of equal treatment legislation and policies Implementation of legislation against discrimination on the basis of gender, handicap, sexual orientation, age, colour, ethnic and national origin, religion and belief</p>
<p><b>Access to nationality</b> Access to nationality after a period not longer than five years</p>	<p><b>Access to nationality</b> Access to nationality after a period not longer than five years</p>
<p><b>Diversity</b> Policies that serve and benefit from a diverse population</p>	<p><b>Diversity</b> Policies that serve and benefit from a diverse population</p>

### **III. The benefits of immigration**

There are many benefits that accompany immigration. For immigrants, it could mean the fulfilment of aspirations or a way to build up a new and better life. Receiving countries can capitalise on the qualities and 'entrepreneurial' spirit of immigrants, while a diverse society is better equipped to respond to global challenges. The links immigrants establish between receiving and sending countries may also be beneficial for sending countries through increased economic, social and cultural exchanges. This chapter elaborates on the eight reasons for adopting an immigration policy, outlined in the previous chapter, by focusing on three issues, namely: the labour market benefits to the receiving countries, the value of diversity, and the potential for remittances and business links for sending countries.

#### **1. Meeting labour market needs**

Economic prospects for the European Union seem to be better now than at any other time in the past decade. Following an economic downturn in 1998 and 1999, the economy recovered and GDP has grown steadily at an annual rate of 3.5 percent. Rising employment levels and an increase in business investment have boosted confidence and consumer spending.

The service sector is the fastest growing sector of the economy, creating both high-skilled and low-skilled jobs. Between 1991 and 1994, employment fell in manufacturing and agriculture, while employment in services expanded. There has been a 6% increase in growth in the service sector between 1994 and 1998, with the highest growth in business activities, health and social services and recreational activities. Other growing service sectors include the hotel and restaurant industry, education, the computer industry, and the retail trade. Most EU countries are on the road to becoming service economies, though, for some, the transition is slow. High job growth in the service sector is leading to shortages in certain service sector activities, most notably, in the information technology industry, but also in health and construction.

The Lisbon European Council held in March 2000 concluded that a radical transformation of the European economy is necessary in order to effectively respond to the challenges of globalisation and the new knowledge-driven economy. The Presidency Conclusions stated that long-term structural unemployment remains a problem despite increased economic growth and job

creation, while some sectors, such as telecommunications and information technology, are experiencing serious labour shortages. The Council called for increased flexibility and deregulation in order to effectively respond to the demands of the labour market.

In response to these challenges, many member states are examining ways to ensure the health of their economies and social systems in the short- and long-term. Better planning and increased investments in education and training could help meet projected labour market needs. In addition, encouraging the labour market participation of those who have traditionally had lower rates of employment, namely, women and older people, can increase the size of the labour pool. Another strategy is to increase the age of retirement. While governments have encouraged early retirement during periods of unemployment, in order to open up opportunities for younger members of the population, this trend has since been reversed, with the aim of keeping workers employed longer. The development of more efficient production methods and increased investments in technology can also decrease the demand for workers.

A complementary approach would be to import workers through labour migration programmes, an approach many member states are currently adopting. Immigration has a number of positive effects on the economy and labour market of the receiving country. Migrant workers relieve labour shortages, thus reducing labour costs, and contributing to increased production, economic growth and lower inflation. Having gained their training and education abroad, no upfront investment would be required in their education. There are also benefits from increased tax income and the growth of markets and economies. Fears that immigrants displace indigenous workers are largely unfounded, as the number of jobs available is not absolute. Immigration also contributes to economic growth by stimulating economic development. Immigrants are not only workers but also consumers who need goods, services, and accommodation, thus increasing demand and creating new jobs in the process. Increased demand also lowers the cost of goods and services.

The effect of immigration on wage levels is more complex. This largely depends on the skill level of immigrants and whether they substitute or complement indigenous workers. If unskilled migrants take jobs held by unskilled indigenous workers, this may have a negative effect on wage levels and job opportunities. This will not be the case, however, if migrant workers take up jobs that indigenous workers will not do. In taking such jobs, indigenous workers are free to move into higher professional positions, thus increasing their labour market mobility. If

immigrants are mostly skilled workers, the employment level of indigenous workers may not be affected, though wage levels may fall. European research on immigration's impact on the labour market participation of the indigenous population is scarce. However, similar studies undertaken in the United States have determined these effects to be minimal, except in the case of low-wage workers, where the impact may be slightly greater.

## 2. The value of diversity<sup>9</sup>

In Europe, diversity and pluralism have developed over the centuries, with immigrants playing an important part in that process. By adding to Europe's diversity, immigrants have enriched and continue to enrich European societies. Almost every European country has been or is currently being affected by immigration. In many countries, there are established communities of immigrants who, in varying degrees, maintain their own cultural identity and merge elements of their own cultures with the changing host countries' cultures.

Particularly in a globalising society, diversity and pluralism are not hindrances, but rather, requisites for societal and personal development. Europe has always been inextricably linked to and is still characterised by the dynamics of global exchanges between people and cultures. The world economy is becoming increasingly borderless and European countries are among the motors of the globalising economy. Diverse national and regional cultures and identities are being supplemented by global and transnational cultures. The international mobility of high-, semi- and low-skilled workers, service providers and businesspersons, and human exchanges through art, science, serving the world-wide web and tourism, reinforce the processes of economic and cultural globalisation.

It can be argued that recognition of difference works better to foster societal cohesion than the denial and repression of difference. Heterogeneous societies are more dynamic than homogeneous societies and offer individuals more choice and freedom. In such societies, people possess multiple identities, group membership and cultural affiliations. These affiliations are voluntary and less ascribed. Pluralist societies allow for multiple identities and loyalties. People may define themselves as national citizens, European citizens and global citizens. They regularly reside outside their country of birth or, like immigrants, have a residence history in more than one country. They may also carry more than one passport.

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<sup>9</sup> *This paragraph is based on the report, prepared by the Migration Policy Group for the Council of Europe, Diversity and cohesion: new challenges for the integration of immigrants and minorities (Strasbourg, 2000).*

### 3. Remittances and business links

Sending countries could also benefit from migration. In particular, sending countries could profit from remittances and investments made by immigrants in their countries of origin. Immigrants may also facilitate the establishment of trade and other links between sending and receiving countries.

The role played by migrants' funds sent home as remittances on the economic development of countries of origin should not be underestimated. These remittances benefit not only the livelihoods of immigrants' families, but can also stimulate economic development in countries of origin. For some countries, remittances are a major source of foreign income and exchange. A frequent criticism of the actual economic effect of remittances is that they have little or no effect on local economies, as they tend to be spent on the consumption of consumer goods rather than investment. Others, however, argue that spending on consumer consumption contributes to economic development by stimulating economic activity and creating employment. Remittances are often spent on housing or agriculture, invested in education, or used to create small businesses. A study on the role played by migrant remittances in Bangladesh, for instance, estimated that remittances totalling \$610 million produced a demand for \$351 million worth of Bangladeshi goods and services and created at least 577,000 jobs<sup>10</sup>.

As they become settled and integrated into the host country, however, immigrants' links with their countries of origin weaken and the volume of direct financial transfers is often reduced. Attachment to the countries of origin takes other forms that may also contribute to these countries' development. The impact of the Armenian diaspora, for example, is visible in Armenia at all levels from the world of business to politics. It alone accounts for \$350 million sent to Armenia in 1997, and for 85 percent of foreign investment. Armenia has also become the third greatest beneficiary (per inhabitant) of American aid. In the same way, Chinese communities across the world maintain intensive trade relations with China and constitute the principal avenue for the introduction of Chinese products into American and European markets. Immigrant and minority businesses often establish trade links with their countries of (distant) origin and build bridges between these countries and mainstream businesses in the receiving countries.

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<sup>10</sup> F. Arnold, 1992, In Peter Stalker, *Workers Without Frontiers: The Impact of Globalization on International Migration* (ILO, 2000).



## IV. Outstanding issues

There are a number of issues that should be carefully considered when designing immigration policies, which frequently arise in current policy and public debates. First, the issue of regulation and control. Policies that facilitate international migration are to be accompanied by rules establishing who qualifies for immigration and sanctions for those who do not comply with the rules. Second, there are arguments that claim that the disadvantages of immigration outweigh the advantages (such as the drain of human resources, particularly from sending countries), while others maintain that immigration does not solve issues related to migration (such as the integration of immigrants and the need to reduce migratory pressures).

### 1. Regulation and control

In the European mindset, immigration is still strongly associated with the goal of populating vast empty areas and with open-door policies. The term 'immigration country' is usually reserved for what are referred to as traditional immigration countries, such as Australia, Canada and the United States. These countries are considered to be vast and (relatively) unpopulated, thus justifying the need for successive waves of immigration (colonial immigration). Immigration thus played an important role in nation-building. Consequently, immigration policies in these countries are far more open to immigrants. In contrast, European countries are regarded as well populated, and therefore not in need of immigrants or immigration policies. Immigration is not, however, uniquely a matter of populating empty spaces, and immigration policies should not be equated with or considered as open-door policies. Despite the fact that Europe was and still is more densely populated than North America, immigration has been as much a part of Europe's history as out-migration. The traditional immigration countries have adopted immigration policies that at times restricted or temporarily stopped immigration, according to perceptions of their needs and interests. That is the basis of immigration policy: setting objectives based on interests and humanitarian obligations.

Clear immigration rules define who qualifies for immigration for employment or self-employment (see Chapter I). Those who do not qualify may not be permitted entry and should leave a country voluntarily if they have already entered or be removed involuntarily. The enforcement of the law in immigration-related areas is an absolute necessity and protects the integrity of the immigration system.

There are, however, two restraints on the implementation of immigration controls.

First, in democratic societies there are limits to the control of persons who move around within and between countries. Insistent controls may reach a stage where they violate the civil rights of individuals and breach their privacy, regardless of whether these persons are citizens of the state concerned or irregular immigrants. Immigration countries must learn to live with the fact that there will always be a small number of people working and living without authorisation and the proper papers. Regular migration is almost always accompanied by irregular migration.

Second, immigrants in an irregular situation must not be deprived of their basic rights. There are circumstances under which an irregular migrant cannot be expelled, and procedural protection against expulsion should thus be provided. Collective expulsion of irregular migrants should be prohibited, and each case for expulsion should be examined on an individual basis. Expulsion should also be prohibited when persons find themselves in an irregular situation as a consequence of an accidental or inadvertent breach of national or European law (for example, the late submission of an application for the renewal of a residence permit due to illness). In addition, procedural rights should be respected, and include access to the services of an interpreter and legal advice, and the right to appeal an expulsion decision. In cases of expulsion, procedural rights should also guarantee that authorities comply with national or international human rights law.

States should not impose penalties on an employer of persons in an irregular situation unless it can be proved that the employer was aware that the person in question did not have an authorisation for employment. Similarly, states should not impose penalties on transporters or harbourers of irregular migrants unless it can be proved that such persons did so for financial gain and were aware of the irregular status of the persons in question. Furthermore, persons in an irregular situation should not be deprived of any employment rights by reason of any irregularity in their stay or employment, and their equal treatment should be guaranteed with regard to social security, health care and education.

## **2. Immigration and social cohesion**

Designing immigration policies necessitates the balancing of varying interests. Maintaining social cohesion is a key interest put forward by governmental

departments responsible for the incorporation of immigrants. The interrelationship between immigration and integration is complex. Clear immigration policies and rules contribute to the incorporation of immigrants into receiving societies, while disorderly and sudden movements of people, irregular migration, and trafficking in human beings, pose serious reception and integration challenges for governments. Shrinking public budgets and less charitable public opinion have also made it difficult for governments to justify the admission of large numbers of immigrants as well as their equal access to the labour market and services of the welfare state. Racism and xenophobia feed nationalistic and isolationist feelings and endanger relations between various groups in society. Consequently, governments often come to the conclusion that solutions other than relying on immigrant labour to relieve labour market pressures should be found. For this purpose, governments develop programmes aimed at the inclusion of women, long-term unemployed, refugees and persons belonging to minority groups, and consider prolonging the working age. If an immigration policy is based on labour market considerations, this is perfectly understandable and acceptable. It is much less understandable, however, when immigration for employment or self-employment is rejected as a complementary labour market strategy for reasons of social cohesion. Economic stagnation or downturn, triggered by labour market shortages, may in fact pose a much larger threat to social cohesion than the recruitment and incorporation of immigrants.

Immigrants are depicted by some groups as the cause of many social ills, when in reality these ills are the by-products of rapid and profound economic and social changes. For these reasons, strong leadership from governmental and non-governmental actors is needed to make the case for immigration for employment or self-employment reasons. Such leadership can spell out the advantages of immigration and explain why immigrants are an asset to the economy. The integration of immigrants into the economy is key to their incorporation into society, and while this may lead to some temporary problems, as history shows, immigrants will eventually find their way in receiving societies and be accepted.

### **3. Migration pressure and forced migration<sup>11</sup>**

Immigration policies can do little to ease migration pressures that result from such factors as extreme poverty and the lack of opportunities to lead a dignified life, social deprivation and collapse of the social fabric, ecological degradation and

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<sup>11</sup> *Based on Jan Niessen and France Mochel, EU external relations and international migration (MPG, 1999).*

man-made natural disasters. These factors, which force millions of people to move internationally and internally, can best be addressed by foreign policies that include not only foreign relations and trade, but also development assistance and human rights policies. Which types of foreign policies promote or foster the socio-economic development of sending countries is the subject of numerous academic and policy debates. There is general consensus, however, that socio-economic development is a complicated, long-term process, and that development strategies must involve a variety of actors (governments, intergovernmental institutions, non-governmental organisations and the private sector).

The presumed relationship between socio-economic development and reduced or increased migration has not yet been sufficiently proven. While some studies demonstrate that economic development of migrant-sending countries reduces pressures to emigrate, other analyses project that it is precisely this economic restructuring that spawns increased emigration from the region. The two positions may be reconciled by recognising that socio-economic development likely increases voluntary migration and reduces forced migration.

International co-operation has its own dynamic that determines the priorities of the foreign policy agenda. Although there is some recognition that international migration should be placed on this agenda, in practice, this has turned out to be very difficult if not impossible. Consequently, international migration remains almost exclusively in the domain of interior and labour ministries. This may change when sending countries, supported by non-governmental actors and human rights organisations, increase pressures to include forced migration on the foreign policy agenda. Addressing the root causes of forced migration is not about keeping migrants out, but rather, allowing them to stay in their countries of origin.

#### **4. Drain of human resources**

Emigration can result in a loss of much needed human resources to the detriment of economic development. For developing countries, out-migration could very well constitute a drain of human resources and has in many cases a discernible negative effect on the development of these countries. This is often used as an argument against immigration, however the question this raises is whether these macroeconomic considerations should deprive individuals from the choice to build a life elsewhere. Such limits on the freedom to migrate are primarily associated with dictatorial regimes and police states. An alternative question that

arises is whether the prevention of out-migration leads to a climate that stimulates economic development and attracts investors. In both cases, the fact that is underscored is that (forced) migration is a development issue.

The effects of the drain of human resources on economic development vary between countries and are not always easy to evaluate. There are countries that actively promote the 'export of labour', whereas others suffer from the departure of their (skilled) workers. Therefore, the losses need to be weighed against the possible gains for the individual countries concerned.

Advantages may include the reduction of unemployment and population pressure, increased national income through remittances, the establishment of trade and other links between sending and receiving countries, and the improved skills of those who return to their countries of origin. In some countries, emigration can have a negative effect on unemployment and wages, however, depending on the size of the labour market, this may be negligible<sup>12</sup>.

The disadvantage most often associated with out-migration is the loss of educated and highly qualified persons (so-called 'brain drain'), a problem not exclusive to developing countries. Canada, for instance, is losing high-skilled workers to the United States, while the UK is experiencing an emigration of its doctors to Canada, and its scientists, to the United States. As restrictions on international labour mobility are removed and skilled workers move to countries that offer the greatest opportunities and benefits, this may become a worrying phenomenon for an increasing number of countries. The loss of educational investment is most acutely felt by developing countries. There have been suggestions that this could be resolved by the establishment of an international code on ethical guidelines for the recruitment of highly-educated persons from less-developed countries, which could include a provision on reimbursement for the loss of educational investment<sup>13</sup>.

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<sup>12</sup> Peter Stalker, *Workers Without Frontiers: The Impact of Globalization on International Migration* (ILO, 2000).

<sup>13</sup> See Peter E. Bundred and Cheryl Levitt, *Medical migration: who are the real losers?* In: *The Lancet* (Volume 356, July 15, 2000).

## V. Rules governing EU immigration policies

The previous chapters have set out how individual countries can adopt immigration policies that correspond to their national and international interests. As far as the European Union is concerned, its steady process of economic, social and political integration also requires the adoption of common immigration policies. Rules governing EU immigration policies should be based on human rights commitments, the European Treaties and international agreements to which the member states and the European Community are parties. Of crucial importance is the co-operation and consultation between the European institutions, the member states and non-governmental actors in Europe as well as between governmental and non-governmental actors in other countries.

### 1. Human rights standards

The European Union is founded on the respect of human rights and the rule of law. Consequently, immigration policies must respect international human rights obligations with regard to recruitment, family reunion, working and living conditions, equal treatment, acquisition of nationality and elimination of discrimination.

The protection of human rights is a matter for governmental and non-governmental actors alike when they act in partnership. For example, under the auspices of governments, international human rights treaties are adopted, which in many cases commit not only governments, but also the social partners, to uphold human rights. Traditionally, civil society organisations monitor the implementation of human rights standards by governments, but increasingly they have begun to look at the business sector as a critical player in promoting values and upholding rights. The European Parliament's annual human rights report monitors governmental and non-governmental human rights activities and is an important instrument for the furthering of the European Union's human rights agenda<sup>14</sup>.

### 2. European Treaties

The establishment of a common market requires the removal of barriers for the free movement of goods, services, capital and persons between member states.

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<sup>14</sup> *Annual report on respect for human rights in the European Union (1988-1999).*

Following this logic, not only should the free movement of EU nationals be promoted, but also that of legally-residing third-country nationals. Third-country nationals should profit from labour mobility, student exchanges, provision of services and entrepreneurship across the EU's internal borders, as in the case of EU nationals, in order to further develop the development of the common market. The abolition of the EU's internal borders depends to a great extent on common rules regarding external borders. Applying this logic to immigration, the promotion of free movement of third-country nationals within the EU could be enhanced when there is a common policy on immigration from outside the EU. Consequently, EU immigration policies should be based on Community legislation in the fields pertaining to the completion of the internal market, free movement, equal treatment and anti-discrimination.

The Amsterdam Treaty has empowered the European Union institutions to act on immigration issues. Title IV of the EC-Treaty provides the basis for the adoption of legislative and other measures in the fields of admission of immigrants and family members and their equal treatment. On the basis of this Title, measures in these areas will have to be adopted within a period of five years. Articles 13 and 137 of the EC-Treaty provide the basis for the adoption of measures to combat discrimination and to promote equal treatment. The Tampere European Council has reconfirmed the Union's commitment to develop common policies in the migration field and to promote equal treatment of third-country nationals. The Council of Ministers have already adopted two Directives on combating discrimination and a proposal for a Directive on family reunion<sup>15</sup>. Preceding and paralleling these efforts, non-governmental organisations have launched a series of proposals for European immigration policies<sup>16</sup>.

### 3. International agreements

EU immigration policies should comply with and build upon association, co-operation and other agreements concluded by member states and by the

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<sup>15</sup> *Council Directive implementing the principle of equal treatment between persons irrespective of race or ethnic origin; Council Directive establishing a general framework for employment equality; Proposal for a Council Directive on the right of family reunion.*

<sup>16</sup> *Examples are: European Council on Refugees and Exiles, European Network Against Racism and Migration Policy Group, Guarding standards - shaping the agenda (Brussels, 1999) and Immigration Law Practitioners' Association and Migration Policy Group, The Amsterdam Proposals: The ILPA/MPG proposed directives on immigration and asylum (London/Brussels, 2000).*

European Communities with third countries. The structured dialogue between these (groups of) countries provides a platform for the development of common approaches to migration. Examples include the negotiations with the twelve accession states, the Association and Co-operation Councils, the Barcelona Process and the ACP-EU Co-operation<sup>17</sup>.

Most, if not all, accession, association and co-operation treaties deal with issues related to migration for (self-) employment and with equal treatment of immigrants from their signatory countries. In most treaties concluded with accession states (the Europe Agreements), self-employed persons are granted the right to establish themselves in a contracting party other than their own. Free movement will be granted to citizens of the accession states when these countries enter the Union, possibly after a short transitory period that must be kept to a minimum. The Association Treaty with Turkey to a very limited degree regulates the admission of Turkish citizens, but does include equal treatment and anti-discrimination clauses. The Co-operation Agreements with the Maghreb countries (to be replaced by the Euro-Mediterranean Association Agreements) and with the ACP countries include equal treatment and anti-discrimination clauses, though not as detailed as those of the Turkey Association Agreement. Non-governmental organisations have pleaded for measures to end the unequal treatment of various groups of third-country nationals and have put forward concrete policy proposals to that effect (see note 16]). As a consequence, NGOs may now challenge the current interpretation of Article 12 of the EC-Treaty in the light of the extended scope of the Treaty. Article 12 prohibits discrimination on the ground of nationality, which is thus far interpreted as the nationality of a member state. The new Title IV is covering issues related to the position of third-country nationals.

The EC Treaty lays out precise legally binding rules on the admission of capital and payments from third countries into the EU. The General Agreements on Tariffs and Trade (GATT) set legally binding rules governing the entry of goods into the Union. EU member states are also subject to obligations under the General Agreement on Trade in Services (GATS), which defines obligations for the provision of services, including the movement of persons over borders to provide services. This issue has been discussed extensively during the GATS negotiations, leading to the adoption of an annex to GATS on the movement of natural persons who supply services. Individual parties to GATS can conclude

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<sup>17</sup> Jan Niessen, *International migration on the foreign policy agenda. In: European Journal for Migration and Law (1: 485-496, 1999).*



so-called 'schedules of commitments', which define rules on the admission of service providers. Six parties have concluded such commitments including the European Union. Thus far, the conclusion and review of the schedules has been virtually overlooked by non-governmental organisations active in the migration field. However, for the development of European immigration policies, GATS provides a platform that should not be ignored, particularly as it could promote or slow the further liberalisation of the movement of persons.

#### **4. Co-operation and consultation**

The Employment Title of the Amsterdam Treaty provides the basis for intensive co-operation on employment between the member states. This co-operation takes place in what is referred to as the Luxembourg Process. This process includes the annual adoption of guidelines for the member states' employment policies, recommendations for their implementation, the drafting by the member states of annual 'National Action Plans for Employment', and the production of a joint employment report. The Luxembourg Process provides member states with a valuable platform to make assessments of labour market needs, to consult on employment strategies (including immigration) and to prepare the adoption of rules on immigration for (self-) employment<sup>18</sup>.

Given the fact that immigration also has implications for other policy areas (social policies and justice and home affairs), a co-ordinating mechanism between the various EU bodies could be established, which would also need to consult with the various stakeholders (social partners and non-governmental organisations).

#### **5. External relations**

EU immigration policies should be consistent with the foreign policy objectives of the European Union and be developed in consultation with the immigrants' countries of origin. This consultation could deal with a number of issues, such as recruitment procedures, free travel arrangements between sending and receiving countries, facilitation of transfer of remittances and information campaigns on immigration opportunities and procedures. Re-admission agreements should also be concluded, including clauses to abolish the practice of expelling second-generation immigrants to the country of origin of their parents (double jeopardy).

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<sup>18</sup> *European Commission, Joint employment report 2000 (Brussels, September 2000).*

In addition, programmes could be adopted to offset 'brain drain', to establish trade links, and to promote cultural and scientific exchanges.

Co-operation in all these areas involves a great number of organisations, from foreign policy and academic institutes, to human rights and development organisations. The EU High Level Working Group on Asylum and Immigration could provide a platform for developing joint strategies, involving the various European institutions and agencies and intergovernmental and non-governmental organisations. In other regions of the world various forms of intergovernmental co-operation on international migration are established, often facilitated or supported by the International Organisation for Migration. The European Union should seek co-operation with these forums.

## Further reading

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The following publications have been used for the preparation of this publication:

### *Immigration and asylum policies*

Council of Europe, Managing migration in the wider Europe (Strasbourg, 1999).

Migration Policy Group, European Council on Refugees and Exiles, European Network Against Racism, Guarding standards - shaping the agenda (Brussels, 1999).

Immigration Law Practitioners' Association and Migration Policy Group, The Amsterdam Proposals: The ILPA/MPG proposed directives on immigration and asylum (London/Brussels, 2000).

Presidency Conclusions, Tampere European Council, 15 and 16 October 1999.

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## Acknowledgements

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In March 2000, the Immigration Law Practitioners' Association (ILPA) and the Migration Policy Group (MPG) launched a set of comprehensive legislative proposals for EU directives on immigration and asylum (the Amsterdam Proposals). This publication elaborates on the proposals on immigration, translates them into policy terms and links them with socio-economic objectives. It also incorporates many stimulating comments on the Amsterdam Proposals made at a series of seminars organised in the member states and at the European level after the launch of the Amsterdam Proposals. Other papers published or prepared by MPG have been used for this publication. The author also benefited from his membership of the Council of Europe's Reflection Group on Managing migration in the wider Europe. Isabel Putinja has contributed to the research and drafting of this publication. Lori Lindburg was responsible for the final editing and Murielle Chiltz for the production of this paper.