



International migration and relations with third countries: European and US approaches

Jan Niessen and Yongmi Schibel (eds.)

European Union

Jan Niessen, MPG

Project supported by the German
Marshall Fund of the United States



International migration and relations with third countries
THE EUROPEAN UNION

Jan Niessen, Migration Policy Group

**This report is part of the publication “International migration and relations with third countries: European and US approaches”
Supported by the German Marshall Fund of the United States**

Migration Policy Group, May 2004

THE EUROPEAN UNION¹

Jan Niessen, Migration Policy Group

Development co-operation, trade and political co-operation with third countries are the main components of the European Union's external relations. The Union's foreign and security policy is a complement and not a supplement of policies of the individual Member States. It is a mix of intergovernmental co-operation and Community action.

Enlargement and the relationship with accession and candidate countries and with (new) neighbouring states are important items on the foreign policy agenda. The promotion of peace and stability and the relationship with Mediterranean countries are recurrent issues on the agenda as is development co-operation. The objectives of the Union's external relations can be described in terms of enhancing democracy, the rule of law, good governance and human rights protection; promoting peace and stability; and fostering sustainable economic and social development of developing countries and their gradual integration into the world economy. The Union's actions in all these fields and co-operation with most third countries are relevant for and have a bearing on international migratory and refugee movements. As migration and asylum are primarily the responsibility of the Justice and Home Affairs Ministers and the EU Commissioner, these officials' priorities gradually found a place on the foreign policy agenda, including the fight against economic crime (especially corruption and money laundering), organised crime, terrorism, illegal immigration and trafficking in human beings. Their approach of control and restriction of (all kinds of forced) migration as well as of protection of rights of and assistance to refugees and migrants prevailed in the way the Justice and Home Affairs and Foreign Affairs agendas were partially linked. Consequently issues as migration prevention, irregular migration, return and readmission began to rank more prominently on the foreign policy agenda.

This chapter briefly describes how migration and asylum feature on the EU's foreign policy agenda. It looks first at development co-operation, then at trade and finally at (political) co-operation with groups of third countries.

1. Migration and development

One of the *migration* objectives of the EU's external policy is to address the root causes of migration.² Stimulating social and economic development is seen as a way to reduce push factors of migration, even though it is recognised that economic growth tends to stimulate migration initially. Attention is paid not only to poverty reduction, economic growth and job creation, but also to the promotion of good governance, human rights and conflict prevention.

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

¹ This report is extracted from "The unfinished agenda of European migration and asylum policies", Jan Niessen, paper prepared for the German Migration Council, April 2004.

² From the 1992 Edinburgh European Council to the 2003 Annual Report on EC development policy and the implementation of external assistance in 2002, COM(2003)527.

intergovernmental High Level Working Group on Asylum and Migration intended to do. The Group, established in 1998 at the initiative of the Dutch Ministry of Foreign Affairs, developed action plans for six countries from which a great number of refugees and migrants originate, namely Morocco, Sri Lanka, Albania, Somalia, Iraq and Afghanistan. They contained a mix of diplomatic, humanitarian and development assistance measures aimed at eliminating root causes of migration. In 2002, the Group's mandate was expanded to developing a strategic approach for the most important countries and regions of origin and transit of asylum seekers and migrants. Action plans on such countries should contain an analysis of the causes of the migratory movements towards the European Union and of the political and human rights situation in the countries concerned. On the basis of this analysis the High Level Working Group should make recommendations for measures preventing economic migration, providing humanitarian aid and rehabilitation assistance and providing assistance for receiving displaced persons in their own region.³ The 2002 Seville European Council stressed the importance of preventing and combating irregular immigration. Closer economic co-operation, trade expansion, development assistance and conflict prevention are expected to promote economic prosperity in the countries of origin and in this way reduce migration. The Council favoured the inclusion of clauses on the joint management of migration flows and compulsory readmission in the event of irregular migration in existing and future Association and Co-operation Agreements.

In 2002, the Commission published its Communication "Integrating Migration in the European Union's Relations with Third Countries".⁴ The Communication looked at the driving forces of international migration and how these already are and could be better addressed by the Union's foreign policies. The Union's efforts to address the root causes of migration are substantial, from human rights protection to economic and social development. They remain important elements in the Union's strategy to increase co-operation with third countries in the area of migration. The regular reviews of the Union's development policies provide a platform to enhance co-operation on migration. Another vehicle is political co-operation. The dialogue with third-countries should include discussions on regular and irregular migration and define common interests in managing migration. A final element is the support for specific and concrete initiatives to assist third-countries in managing migration.

Aid and assistance

Official Development Assistance (ODA) is an important development instrument and is nowadays focussing on achieving the Millennium Development Goals of which poverty reduction is the core. In 2002, Official Development Assistance distributed by the EU amounted to €6,962 million.⁵ Although European ODA is still far from the United Nations target of 0.7% of the gross national income, the EU has agreed to increase its aid to the point where collectively the EU and the Member States would reach 0.39% of the gross national income by 2006.⁶ In terms of humanitarian assistance, over the last decade, Europe has consistently provided the largest part of the financial support given by the international community, including over fifty per cent for refugees and displaced persons. The assistance provided by the European Commission tends to be increasingly channelled directly to the countries concerned or through NGOs and less through UN agencies. The top ten recipients of European

³ Council doc. 9433/02.

⁴ COM(2002) 703. The writing of this Communication involved various Directorates General.

⁵ OECD aid statistics, 2004.

⁶ Presidency Conclusions, Barcelona European Council, 15-16 March 2002.

ODA are, in descending order, Poland, Romania, Hungary, the Czech Republic, ex-Yugoslavia, Turkey, Tunisia, Morocco and South Africa. The total ODA received by the principal migrant-sending countries to the European Union constitutes an important source of support for their development, but these countries are generally not among the largest ODA recipients.

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

The European Commission is the third largest donor to the UNHCR, contributing more than €60 million in 2003. The European Communities' Humanitarian Office (ECHO) gives 70% of the overall Commission contribution, the rest being provided by DG External Relations, DG Development and DG Justice and Home Affairs. ECHO has contributed more than €770 million to UNHCR since 1994.⁷ The European Refugee Fund supports repatriation, which represented approximately 20% of sponsored activities between 2000 and 2002 and was used to increase practical assistance to returns, including advice, vocational training geared to reintegration and finding a job in the countries of origin, as well as to develop networks between organisations in Europe and/or countries of origin, and information strategies on the situation in countries of origin.

In 2003, there were over 20 million refugees and displaced persons in the world of which 14 million were to be found in Africa and Asia. The top ten refugee hosting countries are Iran, Pakistan, Germany, Tanzania, the United States, Serbia and Montenegro, the Democratic Republic of Congo, Sudan, China and Armenia. The majority of asylum-seekers in the European Union comes from a relatively small number of countries. The former Yugoslavia, Turkey, Iraq and Afghanistan together account for almost half of the total number of asylum-seekers. In the past decade refugees to Western Europe have come from Europe, the Middle East and Western Asia and among the top four countries of origin are the former Yugoslavia, Romania, Turkey and the former USSR.⁸ Refugees not only escape poverty, but also grave internal disorder and civil strife or severe repression. Industrialised countries are estimated to spend each year \$10 billion on their asylum systems which is a substantially higher amount than the \$800 million the UNHCR spent on the millions of refugees and displaced persons in less prosperous places.

Migration management support

In 2001, the European Union's budget included support for migration and asylum management in countries of origin, in particular in those countries for which the Council of Ministers had adopted migration action plans.⁹ Initially, it supported projects aimed at developing the asylum systems of countries of transit and on

⁷ European Commission press release "Protection of refugees and strengthening of humanitarian staff security", 8 March 2004.

⁸ UNHCR (2000). "The state of the world's refugees: fifty years of humanitarian action."

⁹ Budget line B7-667 "Co-operation with third countries in the field of migration".

voluntary return of migrants and refugees. The Union then began to support projects aimed at strengthening developing countries' capacity to manage migration and combat trafficking and smuggling of human beings. The projects were part of programmes to strengthen police co-operation and to reinforce the capacity of law enforcement bodies in the framework of PHARE, TACIS for Eastern Europe and Central Asia and MEDA for Mediterranean countries.

In 2003, the Commission published a Proposal for a Regulation "*Establishing a programme for financial and technical assistance to third countries in the area of migration and asylum*" (AENEAS).¹⁰ The overall budget for this multi-annual co-operation programme is €250 million. The programme is due to last five years (2004-2008) and to provide specific and complementary aid for third countries in order to help them to manage migration. The programme is particularly intended for those countries actively engaged in preparing or implementing a readmission agreement with the European Union. Five major action areas are identified, namely the development of immigration policies in third countries, the promotion of legal migration channels, international protection, combating illegal immigration, including human trafficking, and readmission and durable reintegration of returnees. A variety of activities are eligible for support, including measures to improve capacity in third countries in the areas of migration and asylum policy, the development of legislation, information campaigns, the dissemination of information on legal migration channels, the establishment of regional dialogue, the socio-economic reintegration of migrants, promoting migrants' contribution to the development of their countries of origin, etc.

Refocusing development policies

In 1999, the European Union began discussions on a new strategy for the Community's development policy, involving individual Member States' ministries, the European Commission and Parliament and non-governmental actors. This would imply the refocusing of international co-operation. The Commission proposed an integrated framework for Community action and a limited number of priority fields in which Community development activities would be concentrated. These are: the integration of developing countries in the multilateral trading system (including the strengthening of the competitiveness of the private sector); regional integration and co-operation (including tackling trans-border economic, social and environmental problems); support for macro-economic policies (with an explicit link to poverty reduction, health and education); food security and sustainable rural development; institutional capacity building, good governance and rule of law. By using the external policy instruments, the Union should seek the highest possible degree of coherence between the various elements of the Union's foreign relations and other European policies (including migration).¹¹

¹⁰ The proposal was adopted in 2004, Regulation (EC) n° 491/2004.

¹¹ Commission Communication on the European Community's development policies, COM(2000) 212.

2. Migration and trade

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

In the context of GATS, labour mobility refers to the movement of service providers and can take place within either mode 3 or mode 4 of the agreement. Mode 4 within GATS refers to the mobility of natural persons – that is, individuals, as opposed to juridical persons such as companies and organisations, whose movement is provided for in mode 3 by way of commercial presence. These provisions for the movement of persons are qualified by the “Annex on Movement of Natural Persons Supplying Services under the Agreement”, which guarantees the autonomy of national immigration controls from GATS, specifying that the agreement does not apply to measures affecting individuals seeking access to the employment market of a member, or to measures regarding citizenship, residence, or permanent employment.

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

Over the past years, the EU has shown some caution, but it is not principally closed to using GATS more for regulating the mobility of certain types of highly skilled migrants. It has proposed that corporate managers and specialists be allowed to stay for an extended period of three years. Graduate corporate trainees will be allowed to stay for a maximum period of 12 months. In either case, an economic needs test will not be required. Foreign companies with a contract to provide services to a client in the EU will be allowed to send highly skilled corporate employees to the EU for a maximum period of six months (within a period of 12 months). This period was previously limited to three months. The proposal does not, however, apply to important services sectors such as research and development, construction, higher education and entertainment. A new category of contractual services is proposed, namely self-employed, highly skilled people who will be allowed to enter the EU for up to six months. This applies only to architectural, engineering and integrated engineering services, computer, management consulting and translation services.

The entry of individual service suppliers is subject to a numerical ceiling, for which the modalities and level are still to be determined.¹²

In regional economic and trade agreements between the EU and third countries the movement of persons has traditionally been an issue. Classic examples are the Association and Co-operation Agreements with countries such as Turkey, Morocco and Algeria. These agreements regulated only to some extent the conditions of entry and residence of nationals of these countries, but included clauses granting these persons equal treatment once admitted. Other agreements contain clauses on human exchanges and anti-discrimination (see next section).

3. Political co-operation

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

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

Irregular migration, return and readmission

In 2001, the Commission published a Communication on a common policy on illegal immigration¹³, which contained an action plan to reinforce the EU's efforts to combat illegal migration. It proposed action to be undertaken in a number of areas and after being discussed at the 2001 Laeken Summit these proposals were adopted.¹⁴ The Action Plan focussed on visa policies, the exchange and analysis of information, readmission and repatriation, pre-frontier measures (co-operation between immigration liaison officers, support measures to migration and asylum projects in countries of origin and transit, and campaigns of awareness on the risks related to illegal migration), border management measures, the strengthening of Europol's role in the field of combating illegal immigration. The Action Plan also made recommendations regarding the adoption and harmonisation of sanctions against people guilty of smuggling and trafficking in human beings or illegal employment of third country nationals, and carriers transporting undocumented aliens. It included

¹² Communication from the European Communities and their Member States, "GATS 2000: Temporary Movement of Service Suppliers", S/CSS/W/45 WTO, 14 March 2001.

¹³ COM(2001) 672.

¹⁴ Council Doc. 6621/1/02.

short-term measures such as conducting feasibility studies on border controls or running a pilot project on using joint infrastructures, which were to be implemented within one year, and medium-term measures such as including biometric data on documents or concluding new readmission agreements, which were to be implemented within three years. The plan also contained a section on readmission and return policy, in which this policy area was identified as an integral and vital component in the fight against illegal immigration.

In 2002, the Commission published a Green Paper on a Community Return Policy on Illegal Residents¹⁵ by which it aimed to launch a debate on the need for a common return policy for people residing illegally in the EU and to consider legal and human rights issues relevant for a return policy. This document called for the establishment of common standards regarding the expulsion, detention and removal of third country nationals in order to improve co-operation on return among Member States. Furthermore, it suggested the development of a common re-admission policy for the EU, which was then already seeking the signature of readmission agreements with the main transit and sending countries of origin of migrants in order to ensure their co-operation. On the basis of the responses to the Green Paper, the Commission adopted a Communication to the Community on a Return Policy on Illegal Residents¹⁶ and it presented an outline for a Return Action Programme. Such a programme was subsequently adopted by the Council of Ministers.¹⁷ The Return Action Programme aims to improve the exchange of information and best practice between Member States and covers forced and voluntary return. It has four components. First, it deals with practical co-operation issues such as common training, mutual assistance of immigration officers and joint return operations. Second, it proposes common guidelines and minimum standards for implementing return policies (including mutual recognition of return decisions whereby an expulsion decision issued by one Member State would be enforced by another Member State, and common standards on detention prior to removal). Third, it promotes co-operation on country specific programmes, for example the Afghanistan return programme. Fourth, it aims at intensified co-operation with third countries on return and readmission. The establishment of a European Return Programme and Return Fund¹⁸ is also suggested.

Readmission agreements are an important migration management instrument and a tool for the fight against illegal immigration. On the basis of the Amsterdam Treaty the Community can conclude re-admission agreements and the European Commission is on a case by case basis requested to start the negotiations with a third country. Target countries for the conclusion of readmission agreements have been identified on the basis of criteria progressively developed by the Member States and then agreed upon by the Council of Ministers.¹⁹ Six selection criteria were identified. The first is the migration pressure from a country. The others were the geographical position vis-à-vis the EU, while maintaining a regional balance (accession states are not included); the existence of a EU association or co-operation agreement, the added value of a Community agreement in comparison to individual Member State agreements.²⁰ Additionally, the High Level Working Group,

¹⁵ COM(2002) 175.

¹⁶ COM(2002) 564.

¹⁷ Council Doc. 14673/02.

¹⁸ 2004 Irish Presidency. "Positions on Migration Issues".

¹⁹ "Criteria for the identification of third countries with which new readmission agreements need to be negotiated", Council Doc. 7990/02.

²⁰ Council Doc. 7990/02 COR.

in its Action Plan on Afghanistan,²¹ recommended concluding a Community readmission agreement with Pakistan. The Action Plan on Sri Lanka²² recommended concluding such an agreement with Sri Lanka. In December 1999, the Council agreed to adapt the standard readmission clauses used in Community and mixed agreements.

Negotiations on readmission agreements were opened successively with Morocco, Sri Lanka, Russia and Pakistan (September 2000), Hong Kong and Macao (May 2001), Ukraine (June 2002) and Turkey, Albania, Algeria and China (November 2002). Subsequently, in November 2002, the Council selected eight countries with a view to developing intensified co-operation in the readmission of their nationals. These countries were Albania, China, the Federal Republic of Yugoslavia, Morocco, Russia, Tunisia, Ukraine and Turkey. The Council also decided to initiate similar co-operation with Libya.

Currently, there are great difficulties in the progress of negotiations of these readmission agreements. Some of them have not yet formally begun. Agreements have been concluded with Hong Kong and Macao, but the readmission agreement with Hong Kong is the only one to have entered into force so far (on 1 March 2004).²³ In the case of Macao, the Council formally adopted in October 2003 a Decision concerning the signing of the Agreement on the readmission of persons residing without authorisation, but the proposal for a Council Decision concerning the conclusion of such an Agreement is still pending.²⁴ Further agreements have been initiated with Albania and Sri Lanka. As far as Albania is concerned, the European Commission presented in February 2004 the two proposals for a Council Decision, one on the signing and the other on the conclusion of the readmission agreement.²⁵ Regarding Sri Lanka, the Council formally adopted, in November 2003, a Decision concerning the signing of the Agreement on the readmission of persons residing without authorisation, but the proposal for a Council Decision concerning the conclusion of this Agreement is still pending.²⁶ Concerning China, a Memorandum of Understanding on Agreed Destination Status was initiated during a EU-China Summit in 2003. This Memorandum aims to facilitate Chinese tourism to Europe and also contains a readmission clause which obliges China to take back illegal migrants. Furthermore, during high level consultations between the EU and China on illegal immigration and trafficking in human beings, China showed readiness to discuss return and readmission issues. In March 2004, the Council adopted a Decision concerning the conclusion of the Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China on visa and related issues concerning tourist groups from the People's Republic of China (ADS).²⁷ The European Commission had submitted this proposal in December 2003,²⁸ at the same time as another one concerning the signing of the Memorandum of Understanding,²⁹ which was approved by the Council in January 2004.

²¹ Council Doc. 11424/99.

²² Council Doc. 11428/99.

²³ O.J. of the EU , of 2 March 2004, L-64/38.

²⁴ COM(2003) 151-1 and COM(2003) 151-2.

²⁵ COM(2004) 92-1 and COM (2004) 92-2.

²⁶ SEC(2003) 255-1 and SEC(2003) 255-2

²⁷ O.J. of the E.U. of 20.03.2004, L-83.

²⁸ COM(2003) 790-2.

²⁹ COM(2003) 790-1.

In the 2003 Communication "Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours",³⁰ the Commission promoted the idea of assisting neighbouring countries to combat illegal migration and to establish efficient mechanisms for return of especially illegal transit migrants. The possibility of creating a new instrument in the form of a programme, which would build on the experience of promoting cross-border co-operation as with the PHARE and TACIS programmes, is considered. Such a programme could focus on ensuring the well functioning and secure management of the future Eastern and Mediterranean borders, while at the same time promote sustainable economic and social development of the border regions. The General Affairs and External Relations Council welcomed the Communication and invited the Commission to develop ideas for a new instrument which would also include measures to improve the coherence between various existing instruments. In a new Communication "Paving the Way for a New Neighbourhood Instrument",³¹ the Commission introduced the new "Neighbourhood Programmes for the external borders of the enlarged Union for 2004-2006". The programmes cover a broad range of actions and include, indeed, the management of the movement of people. They also support institution building on Justice and Home Affairs matters.

In its 2003 Communication on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents,³² the Commission declared that, ultimately, the credibility and integrity of the legal immigration and asylum policies of the EU would be in danger if there was not an efficient Community return policy. All efforts to fight illegal immigration would be called into question if immigrants who were supposed to leave, managed to stay illegally. The Commission also pointed to the fact that readmission negotiations could only succeed if they were part of a broader co-operation agenda, which would take into account the problems encountered by these countries to address migration issues effectively. It argued that the necessary incentives for such co-operation should come from the field of Justice and Home Affairs, but also from other policy areas and should encompass measures such as closer economic co-operation, trade expansion, additional development assistance, better market access or WTO-compatible tariff preferences. In January 2004, the Commission announced that it would make €30 million available over the period 2005-2006 in order to finance the deportation of illegal immigrants, in particular through the organisation of joint flights. Furthermore, in 2004, the Commission intends to present a proposal for a Council Directive on minimum standards for return procedures and mutual recognition of return decisions.

The European Union has progressively introduced provisions pertaining to the prevention of illegal migration, as well as the return and readmission of illegal immigrants in the various agreements signed with countries and regions of origin (see below).

Accession States

In the 1990s, Association Agreements (the so-called "Europe Agreements") were signed between the EU and Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. They formed the legal framework for the association between the applicant countries and the European

³⁰ COM(2003) 104.

³¹ COM(2003) 393.

³² COM(2003) 323.

Union and covered their political and economic relations. In terms of labour migration, the Europe Agreements offered openings for the free movement of self-employed persons and service providers. The Agreements covered the main areas in which the Community *acquis* was to be adopted, helping the applicant countries to draw up schedules for incorporating the *acquis* into their national law prior to accession. Following the adoption of the pre-accession strategy at the 1993 Copenhagen European Council, one of the most important tasks for the preparation of the accession states was to ensure their adaptation to the EU's framework for Justice and Home Affairs, especially in the migration field. This involved the harmonization of measures in the visa policy and practice on the part of accession states, consistent protection of state borders especially against illegal migration, the preparation of legislation for the standard principles applied by EU Member States in the sphere of foreigners' admission and residence, asylum procedure, deportation and the conclusion of bilateral readmission agreements. The Union has actively monitored the development in these areas in all accession countries and assisted individual countries by providing know-how through the PHARE Programme.

Closer to the date of accession discussions intensified on the free movement of EU citizens, including those from the new Member States. With borders neighbouring Eastern Europe, some of the current Member States feared that they would be overwhelmed by immigrants attracted by higher wages. This has led to the proposal of a transition period on the movement of labour by Austria and Germany. This transition period gives current Member States the possibility to prevent workers from new Member States to settle and work on their territory for a period of between two and seven years following accession: this is known as the model "2+3+2". According to this model, after the first two years, current Member States which believe that their labour markets are still strongly influenced by migration and are still concerned about serious disturbances on their labour markets may insist on keeping labour permits for an additional three years. After these three years, these Member States will be invited again to completely open their labour markets but may still refuse to do so. Finally, after another two years, current Member States will no longer be allowed to require nationals from new Member States to obtain a labour permit to work on their territory. Both Germany and Austria have decided to apply the first limitation of two years and have declared that they may extend it to seven years if necessary. In addition, they will have the right to apply flanking national measures to address serious disturbances in specific sensitive service sectors on their labour markets, which could arise in certain regions from cross-border provision of services.

The Euro-Mediterranean Partnership

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

Within the framework of the Barcelona process, the EU has concluded Association Agreements or Co-operation Agreements governing bilateral relations with individual countries. Such agreements have been concluded with Algeria, Egypt, Jordan, Lebanon and Syria, Tunisia, Israel, Morocco and the Palestinian Authority. They cover three main areas: political dialogue, economic relations, and co-operation in social and cultural affairs. The provisions of the agreements vary from one country to another, but have certain aspects in common, among which are co-operation in the field of Justice and Home Affairs and migration. Association Agreements are to include re-admission clauses.

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

The MEDA programme, the financial support instrument of the Euro-Mediterranean Partnership, has a budget of €5.35 billion over the period 2000-2006. MEDA resources are attributed bilaterally, within the framework of the National Indicative Programmes, while the Regional Indicative Programme covers multilateral activities. The Moroccan National Indicative Programme, accompanying the Association Agreement (which was signed in 1996 and entered into force in 2000) gives priority to economic reforms, particularly in the form of sectorial adjustment programmes, the development of the private sector through direct support for Moroccan companies, and support to the development of a better social balance and the fight against poverty. Under MEDA I (1995-1999) Morocco received a total amount of €656 million.³³ Through the MEDA programme, the Commission also addresses other issues, including the fight against organised crime, smuggling of migrants and trafficking of human beings. There is support for socio-economic development projects in regions of high out-migration, for migration management border control and for the fight against illegal migration. Migration and social affairs working groups are set up with Morocco and Tunisia and are being set up with Israel. Justice and Security subcommittees (responsible for discussing the implementation of the Association Agreements in that field) have been created with Morocco, Tunisia, Jordan and Israel. The Country Strategy Paper for Morocco for the period 2002-2006, which served as a basis for the National Indicative Programme 2000-2002, focuses efforts on implementing the Association Agreement, on fostering growth and job creation, and on reducing poverty. The €426 million programme will focus on five priority areas, one of which being migration (€115 million) with programmes to improve the socio-economic development of poorer regions, better manage legal migration, and improve the control of illegal immigration.

³³ "Regional Strategy Paper 2002-2006 & Regional Indicative Programme 2002-2004". Euro-Med Partnership, Table 1, p. 16.

Eastern Europe and Central Asia

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

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

South Eastern Europe

The EU is by far the single largest assistance donor to the Western Balkans as a whole. Since 1991 and including 2001, through its various assistance programmes, the European Union has provided more than €6.1 billion, while for the year 2001 over €845 million was made available. This represents a significant, long-term commitment on the part of the EU to peace, stability and prosperity in South East Europe. The framework for the EU's approach to South East Europe is designed to encourage and support the domestic reform processes that these countries have embarked upon. The 1999 Stability Pact for South Eastern Europe provides a framework to discuss human rights, economic and security issues to support countries in South Eastern Europe in their efforts to foster peace, democracy, respect for human rights and economic prosperity in order to achieve stability in the region. In the founding document of the Stability Pact, the EU, which has assumed a leading role in the Pact, undertakes to draw South Eastern Europe "closer to the perspective of full integration... into its structures", including eventual full membership. As a contribution to the Stability Pact and an interim step towards membership, the EU concluded Stabilisation and Association Agreements with Albania, Bosnia-Herzegovina, Croatia, FYR Macedonia and Serbia and Montenegro. The intention is to increase economic, political and social co-operation between the EU and the countries concerned through the so-called CARDS programme. This programme aims to foster regional co-operation *inter alia* in the field of Justice and Home Affairs. As a neighbouring region, with poor borders and weak infrastructure, the support to regional co-operation on migration issues is of particular importance. For the period 2000-2004, some €117 million have been allocated to border management.

One of the commitments made by the contracting states is to prevent forced population displacement caused by war, persecution and civil strife. In addition, the

2003 Thessaloniki Summit stressed the importance of migration related issues in South Eastern Europe and into the European Union. Against this background, the Stability Pact for South Eastern Europe launched a Regional Programme of Action in 2003 aiming at a better management of, and sustainable solutions to, the problems of migration, asylum and refugee return in the Western Balkans. The initiative MARRI (Migration, Asylum, Refugees Regional Initiative) aims to enhance state and human security and initiate, facilitate and co-ordinate developments in the fields of asylum, migration, visa, border management and sustainability of return, and to meet international and European standards. It covers asylum, legal migration, illegal migration, border management, visa and entry policies, and return/resettlement of refugees and displaced persons. The geographical scope of MARRI covers Albania, Bosnia and Herzegovina, Croatia, FYR of Macedonia, Serbia and Montenegro, Bulgaria, Romania and Moldova. The programme highlights the fact that control measures to manage migration should be complemented by alternative channels to promote freedom of movement for the citizens within the region and eventually within the larger Europe. Additionally, it is based on the principle that Integrated Border Management is part of an overall regional security policy and can succeed only if it is an integral part of national and regional management policies covering the issues of asylum, migration and visa policies.

African, Caribbean and Pacific Countries (ACP)

The Cotonou Agreement³⁴ was signed in 2000 and entered into force in 2003. It will run from 2007-2020. The Agreement contains provisions on co-operation and migration, in particular on the prevention of and fight against illegal migration. It provides for a legal obligation for all parties to readmit their own nationals illegally present on the territory of another party. Furthermore, it includes a standard readmission clause, as well as the commitment to negotiate readmission agreements, if requested by one of the parties.

The Mid-Term Reviews of ACP Country Strategy Papers (CSPs), which will be carried out over the course of 2004, constitute a very important dialogue mechanism and commitment to aid programmes. Mid-Term Reviews are supposed to evaluate an ACP country's five-year CSP at the halfway stage of its implementation by examining, among other things, the speed of the use of funds and results achieved in poverty eradication. Based on the conclusions of this evaluation, a country's co-operation strategy may be adapted with a change in the focal sectors, or the resource allocations revised to reflect current needs and performance. According to the Council conclusions on the use of the common framework for CSPs, Mid-Term Reviews should take into account and operationalise new EU policy initiatives, while respecting the objectives and priorities of EU's Development Policy and that of existing partnerships of the EU with third-countries. The Commission's guidelines³⁵ for the Mid-Term Reviews of Country and Regional Strategy Papers identify new policy initiatives that could be integrated in country strategy papers, one of them being migration, fight against terrorism and other issues resulting from the EU domestic agenda.

³⁴ http://europa.eu.int/comm/development/body/cotonou/agreement_en.htm.

³⁵ European Commission. "Guidelines for 2004 Mid-Term Reviews".

Migration Policy Group
Rue Belliard 205, box 1
B-1040 Brussels
Tel. +32 2 230 5930
Fax. +32 2 280 0925
email: info@migpolgroup.com
www.migpolgroup.com