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## Executive Summary

As the EU enlarges to include ten new members, the spotlight is on migration. Aware of the economic and opportunity differentials across the new EU, and sensing their electorates' broad anti-immigration mood, governments of the EU-15 have imposed measures to protect their labor markets and welfare systems from westward movement by citizens of eight of the ten new Member States – those of Central and Eastern Europe.

Many analysts argue that the nationals of the new Member States are unlikely to seek employment in the EU-15 in large numbers. They cite the lack of language skills, the absence of a “natural” or proven propensity to migrate, and the fact that there is not much internal mobility in the Central and Eastern European countries as supporting evidence. The young and the skilled are most likely to leave, they note, which puts a responsibility on new and old Member States, as well as the European Commission, to continue to invest wisely in the east and encourage private investors to do so as well.

Enlargement, along with the May 1, 2004 deadline for completion of their five-year work plan on immigration, asylum and border control issues, put pressure on the EU-15 to conclude the required agreements on asylum measures. That these basic agreements have been reached can be seen as positive, even if few of the agreements have been well received by most observers.

Inertia is to be expected in the early days of enlargement. The need to appoint a new Commission, finalize a Treaty on a Constitution for Europe, and await the outcome of the European Parliamentary elections this June means that time will be available to take stock of progress made on migration issues and to think about the best way forward. Immigration and asylum seeking, however, will not stop. During the policy pause, the new environment can be assessed and the extent of East-West intra-EU migration can be observed in fact rather than in theory.

The migration agenda for the next few years will be prepared in this context. Old issues will appear again on the new agenda. Old Member States may have to alter entrenched positions, as the enlargement shifts the balance within the Union. New Member States will at last have a voice, after having had to accept all previously agreed measures as a condition of entry to the EU.

With their different experiences with immigration, asylum and border control, the new members may refresh debate. The EU might at last build a **common** policy, rather than constantly seeking harmonization of existing national laws. It may, thus, even be possible for the EU to start to consolidate and unify its migration stance, rather than making agreements that merely chip away at the concrete blocks of national sovereignty.

The EU-15 must quickly learn to trust and fully incorporate the new Member States. If they do not, the EU may suffer the consequences of creating a tier of second-class citizenship, and thereby, membership. Borders might remain more porous than anticipated, as claims to sovereignty obscure the need to act collectively. If trust and full incorporation do not come quickly, this latest enlargement may see a shift away from opportunities and towards costs and challenges – something EU populations at large may be unwilling to tolerate. Only by grasping the opportunities presented by both enlargement and cooperatively managed migration policies will the EU find the stability to realize the still distant goal of creating an “area of freedom, security and justice”.

## The Enlargement of an “Area of Freedom, Security and Justice”: Managing Migration in a European Union of 25 Members

By Joanne van Selm and Eleni Tsolakis

### I. Welcome to the European Union

Anyone walking around Brussels in April 2004 could hardly avoid the sense of anticipation of a major change. A Hungarian beauty queen smiled down from billboards: ‘one of us’ read the slogan, ‘come see beautiful Hungary’. Cheap flights to Bratislava were advertised on the side of trams. May 1 was coming: enlargement of the European Union (EU) was on its way. Ten new countries would join the 15 existing members of the EU, and they were promoting themselves as exotic weekend getaway destinations for Brussels’ EU bureaucrats and others at the heart of Western Europe. But would the warm welcome be reciprocated if citizens of those new Member States wished to experience the delights of the EU-15 capitals – particularly if they came not as tourists for the weekend but as workers for the longer term?

The spotlight is on migration with the May 2004 enlargement. Two issues collide: the potential for migration from the new Member States to the existing ones and the need to develop a coherent immigration, asylum and border control policy for the entire EU. A new context will be created for policy development and for population flows within the Union. The old Member States did not achieve all they set out to do on migration issues prior to enlargement. They will have to rethink some entrenched positions in order to deal with old issues in the new reality.

Migration is one of the hottest issues on the political agenda across Europe. Domestic immigration and immigrant integration policies - and politics - are among the top electoral issues in states across the EU-15. There are three reasons for this:

1. The electorates and elements of the media across the Union are increasingly vocal about their concerns relating to the admission of outsiders.
2. Many of the undocumented immigrant workers and rejected asylum seekers of the last decade have come from eight of the ten new Member States (the Central and Eastern European ones).
3. The ‘asylum crisis’ in evidence across the EU since the early 1990s has not been resolved by more than a decade of talk in Brussels about a common approach.

All in all, this picture is fairly grim. But does it need to be? Is there any chance that the May 2004 enlargement could brighten the picture? What will be the role of the new Member States in shifting the migration debate in Europe? Are domestic immigration politics trumping desires for effective European integration? How much time will elapse between the ten new Member States becoming part of the common EU space, and them becoming full and equal members in Europe's primary club?

The citizens of the new Central and Eastern European Member States are falling victim to the wider context of concern about immigration and immigrants, which preoccupies people, political debate and the media across Europe. This puts the EU-15 in a quandary: they seek a common policy on immigration, asylum and borders, but see every step towards one as relinquishing sovereignty. At the same time, they do not trust the ability of eight of the ten new Member States to carry out their sovereign roles of controlling their borders, keeping their citizens prosperous and happy at home, and managing immigration and asylum systems in a way which meets established EU norms and standards. This latter mistrust prevails, in spite of the fact that all ten new Member States had to accept all existing EU decisions on immigration, asylum and border control policies, including the Schengen Protocol, which are included in the body of EU law (known the *acquis*) prior to accession.

All 25 Member States are supposed to be fully involved in taking the EU's common asylum system and immigration policy into a new stage of development. How can this happen in such a climate of apparent prejudice and distrust? What challenges does enlargement really bring from the migration perspective — and, more importantly, what opportunities?

## **II. Citizenship and migration in the European Union today**

May 1, 2004 was an important milestone for the EU for another reason much less well known than enlargement. The EU-15 had committed to having in place by that date several key building blocks of what has been termed "An Area of Freedom, Security and Justice". This refers to the entire territory of the EU Member States, which the EU aspires to make into a space in which:

- Citizens are free to circulate;
- Immigration is well managed;
- Access to the humanitarian protection of asylum is well regulated;
- Citizens and other residents are secure; and
- Justice is upheld for all.

The evolution of the idea of an EU area of freedom, security and justice will be examined below, along with the implications of EU citizenship, the likely migration impact of enlargement and the implications of excluding eight of the new Member States from full participation in the EU provisions for free movement. The following section will then give an overview of the immigration, asylum and border controls agreements in place on May 1, 2004, and an assessment of what to expect in the coming ten years.

### *Building an Area of Freedom, Security and Justice*

The idea of a common EU territory in which there is freedom, security and justice was set out in the Treaty of Amsterdam, signed in 1997. This Treaty built on the 1992 Maastricht Treaty on European Union, which included the concept of EU citizenship and a basis for inter-governmental cooperation on immigration, asylum and border control policies.

Discussion of immigration, asylum and border policy issues had started in the mid-1980s, as some Member States sought to bring down the frontiers between them, to facilitate the movement of goods and consequently workers. (See Timeline, below, for key developments from the mid-1980s onwards.) The decision, elaborated in the Treaty of Amsterdam, to create a **common** policy on immigration, asylum and borders was reinforced through a special summit held in Tampere, Finland, in October 1999. Subsequent formal Conclusions of European Council meetings<sup>1</sup> laid out plans, timelines and processes through which the basic 'building block' agreements could be reached.

Deciding to do something is not enough to make it happen. The Member States have found it hard to reach agreement on the fundamentals of a common asylum system, and even harder to agree on immigration and border control measures. Any agreement seems to chip away at the concrete block of sovereignty rather than to cement the new European relationship. The five essential building blocks of the asylum system, discussed below, were completed only in the last weeks (and days) before the May 1, 2004 deadline. The final impulse to reach agreement came not from the need to integrate, or even from the pressure of the May 1 deadline for completing the Amsterdam/Tampere programme. Rather, it was the need to get agreements, even imperfect ones, in place before ten new Members came to the table and made it impossible to get the perfect agreement for any, let alone all, of the Member States. If the 15 had a hard time deciding unanimously, how would 25 manage? Yet, as we will see, the agreements reached among the 15 are not satisfactory, and are sure to be re-opened in the years to come.

## Timeline: Key Dates, Treaties, Council Conclusions and their content

- 1985: **Schengen Agreement negotiated.** Frustrated by the absence of movement on bringing down internal frontiers for the movement of people, which was hampering intra-EC movement of goods, a sub-group of 5 European Community Member States (Belgium, France, Germany, the Netherlands and Luxembourg) made the Schengen Agreement on the gradual abolition of checks at their mutual frontiers.
- 1986: **Establishment of the Ad Hoc Working Group on Immigration and Asylum.** This was the first, informal arena for discussion of immigration and asylum issues in the European Communities of 12 Member States.
- 1990: **Schengen Convention signed,** preparing for implementation of the 1985 Agreement, and putting practical matters in place for uniform visas, for example.
- 1990: **Signing of the Inter-governmental Dublin Convention** determining which Member State is responsible for assessing an asylum claim.
- 1992: **Maastricht Treaty on European Union signed.** Informal cooperation on asylum and migration issues was converted to formal cooperation among governments. They set out to discuss issues like the definition of a refugee, intending to make inter-governmental agreements, which would be non-binding.
- 1993: **The Treaty on European Union (1992) enters into force.**
- 1995: **The Schengen Agreement (1985) and Schengen Convention (1990) come into effect,** removing borders between the Schengen Members (the original five plus Spain and Portugal).
- 1997: **Amsterdam Treaty is signed,** moving asylum and immigration into ‘semi-community’ activity, with unanimous voting required, and a shared right of initiative for the European Commission. Agreements would be binding, and should be the basis for a Common Policy. The UK and Ireland are allowed to ‘opt-in’ on each agreement. Denmark has a full opt out.
- 1997: **The Dublin Convention (1990) enters into force.**
- 1998: **Austrian Presidency proposals** question the continued relevance of the 1951 Convention relating to the Status of Refugees.
- 1998: **Vienna Council Conclusions** set out a technical path for future European discussion of asylum issues contained in an action plan drafted by the Commission, and endorsed by the Council, which set out a path of priorities for pursuing the various aims of the Treaty of Amsterdam.
- 1999: **The Amsterdam Treaty (1997) enters into force.** A timetable is set out for moving to full community activity on asylum by 2004. An “Area of Freedom, Security and Justice” is to be created for EU Member States, with free movement for citizens and a common asylum system. Five directives (binding agreements) should be made on asylum. Several immigration policy decisions should also be made. A five-year deadline is set for the first set of agreements.
- 1999: **Schengen** is incorporated into the European Union’s basic laws as part of the Amsterdam Treaty, with special provisions for Denmark, and an opt-out for the UK and Ireland. All other EU Member States have adopted Schengen, and Norway and Iceland also participate.
- 1999: **Tampere Summit** meeting sets out a clear agenda for developing the Area of Freedom, Security and Justice. The elements on this agenda are a common asylum system, managed migration and partnership with countries in regions of origin. This agenda is set out as “Milestones for progress on the Area of Freedom, Security and Justice”: promoting the project of developing an area of free movement, in which citizens would feel assured of an environment of security and justice.
- 2001: **Laeken Conclusions** (Belgian Presidency) notes the slow progress of building a common European asylum system. In the light of 9-11, the focus in Laeken in December 2001 was inevitably on security issues. Some governments pointed to the Commission as the cause of the slow progress on the asylum agenda items, although proposals were on the table and discussions within the Council were under way.
- 2002: **Seville Council** (Spanish Presidency) makes a decision to try to speed up the implementation of the Tampere Programme.
- 2002: **The Danish Presidency draws up a “Road Map”** of the work ahead on border control, immigration, asylum and cooperation with third countries, in an attempt to reinforce the need for decisions and action.
- 2003: **The UK introduces its ‘Vision Paper’** for processing asylum claims in ‘transit’ centres outside the EU, and returning asylum seekers to those centres or to reception centres in countries neighbouring their own in their regions of origin. The plan has been effectively dropped.
- 2003: **Thessaloniki Conclusions** (Greek Presidency) ask the European Commission to look at new ideas such as an EU-wide resettlement programme, and pilot programmes for building capacity to protect more refugees in a better way in their regions of origin. It also put the policy and political spotlight squarely on issues of immigrant integration.

## *EU citizenship*

European Union citizenship, as established in the 1992 Treaty on European Union, confers three key rights to the citizens of all EU Member States. One of these—the right to move to, reside, and take up employment in all Member States—is at the heart of the EU integration project.<sup>2</sup> It not only broadens the personal horizons of EU citizens, but also offers the Union as a whole an opportunity to forge a common identity that crosses geographical, linguistic, and cultural boundaries.<sup>3</sup> As the Union enlarged on May 1, 2004, the citizens of eight of the ten new Member States entered it as ‘second-class EU citizens’, prevented from exercising this right in full. They will be able to move and reside across the EU, but they will not be able to take up employment freely in all Member States. This seems at odds with the second key right, which is to equal treatment and non-discrimination on the grounds of nationality. The third key right is the right to vote and stand for election in European Parliament elections in all EU countries.

Previous enlargements, in the 1980s, also excluded the citizens of new, Southern Member States, from free movement rights. At that point, however, the concept of EU citizenship, and the rights attached to it, was not in place. Will the fact of EU citizenship and the rights associated with it provoke a large migration of nationals from the acceding countries?

It certainly was not reason enough for Austrians, Finns, and Swedes to move in significant numbers when the EU expanded to take in their countries in 1995. The argument most often heard on that score is that the economies of those three states were very advanced—stronger, in fact, than those of several other EU Member States. Thus Austrian, Finnish, and Swedish citizens had little incentive to move. By contrast, the fear of many of the EU-15’s leaders is that the economic weakness of eight of the new Member States (all except Cyprus and Malta) gives their citizens greater motivation to migrate once they attain EU citizenship. As a consequence, most of the EU-15 are limiting the opportunities available to potential migrants from the new ten.

### *The migration impact of enlargements past and present*

How likely are the nationals of Hungary, Poland, the Czech and Slovak Republics, Slovenia, Lithuania, Estonia, and Latvia to pack their bags and move westward soon after May 1? In 1989, the EU-12 feared a massive influx from the newly liberated countries of Central and Eastern Europe, and in 1990 some 300,000 people actually made that move.<sup>4</sup> But then the number quickly dropped. Since the mid-1990s, an estimated

### **The EU\* at its different stages:**

1952 – EU-6 – Belgium, France, Germany, Italy, Luxembourg and the Netherlands

1973 – EU-9 – Britain, Denmark and Ireland join

1981 – EU-10 – Greece joins

1986 – EU-12 – Spain and Portugal join

1995 – EU-15 – Austria, Finland and Sweden join

2004 – EU-25 – Cyprus, Czech Republic, Estonia, Latvia, Lithuania, Malta, Poland, Slovak Republic, Slovenia join

\*To simplify matters, we use the abbreviation ‘EU’ throughout, including for those phases prior to the Treaty on European Union, when the Member States formed a European Economic Community and later the European Communities.

50,000 people have moved annually from the ten Central and Eastern European Countries [CEECs] (the eight new EU members plus Romania and Bulgaria) to the EU. By 2002, about 1 million people from those ten countries were living in the EU, about 700,000 of whom are from the eight countries that joined the EU on May 1.<sup>5</sup>

The effect the upcoming enlargement will have on migratory trends, many analysts conclude, is likely to be similar to that of two previous EU enlargements (Greece in 1981 and Spain and Portugal in 1986). Those enlargements prompted only small-scale emigration from the new Member States, despite differences in per-capita income that were roughly similar to those that exist today between the EU-15 and the acceding countries. In the cases of Greece, Spain, and Portugal, migration continued to be negligible even after the end of transition periods that restricted freedom of employment for their citizens.<sup>6</sup> Many of those who did emigrate returned to their country of origin after a few years, when economic opportunities back home became competitive with those available elsewhere in the EU.

The best way to make any migration a genuine choice, rather than a reaction to significant inequalities across the EU, is to narrow the opportunity gap between the states of the EU-15 and the eight new Member States that are CEECs. Sustained large-scale investment in the Southern European newcomers of the 1980s helped ensure that little migration resulted from that enlargement. Similar high-level investments will be necessary now: but the available pot of EU money must stretch to cover more countries at this point – and the size of the pot is already limited by the stagnant economies of much of the Euro-zone. For the benefit of the EU as a whole, the EU-15 governments and the Commission need to minimize opportunity differentials, both through public funding and the encouragement of private investment.

Studies carried out in the seven years leading up to the 2004 enlargement show no consensus on migratory projections. Estimates have varied between 0.5 million over a 10-year period, and 6.3 million. Most settle for a 1 million figure (just 0.27 per cent of the current total EU population) and roughly equal to the current Eastern European population in the EU-15.<sup>7</sup> This is negligible. Analysts cite a lack of language skills, an absence of a natural or proven propensity to migrate, and the fact that there is not much internal mobility in the CEECs when arguing that the nationals of the eight new Member States are unlikely to seek employment in the EU-15. Two groups are thought more likely to move than others: the young and the relatives of earlier emigrants who, before May 1, 2004, had no right to family reunification. The latter will now be allowed to move, but are thought unlikely to enter the labour force in the short term. Entry into the labour force and use of welfare benefits are the key concerns to the EU-15; moving and residing, without working or claiming benefits, is just fine.

#### *Enlarging the Union: eight wait for full participation*

Out of concern for reactions amongst their electorates, the EU-15 and the European Commission sought to protect their labour markets and social welfare resources. They did so by establishing a transition agreement to phase in the entry of the eight new Member States that are CEECs to the freedom of movement in order to work enjoyed by EU citizens generally.

Under the pressure of economic downturns, and increased anti-immigration sentiment, EU-15 governments have one by one taken advantage of the transition arrangements. Falling like dominos, Member States imposed restrictions, until Goran Persson, Prime Minister of the last holdout, Sweden, was prompted to say, “We have to be realistic and understand that if everyone else says transition arrangements are necessary, then we must also be aware of the risks and protect ourselves”.<sup>11</sup> In February 2004, the Swedish government also proposed restrictions. It seemed the last domino had fallen. However, the proposals were defeated in a Parliamentary vote on April 28, 2004, making Sweden the only Member State of the EU-15 to place no immediate restrictions on citizens of the new Member States.

According to the agreement, the EU-15 cannot impose rules more restrictive than those that applied before May 1, 2004 to nationals from the new Member States. There are two exceptions to this transition agreement. First, it does not apply to Cyprus or Malta because of their size and their relative economic strength. Greek Cypriots and Maltese citizens can thus take up employment in the EU-15 without any restrictions; in addition, Malta has the

#### **Ethnic Composition:**

**Cyprus:** Greek Cypriot 85%, Turkish Cypriot 12% \* **Czech Republic:** Czech 81%, Moravian 13%, Slovakian 3% \* **Estonia:** Estonian 68%, Russian 26% \* **Hungary:** Hungarian (97%) \* **Latvia:** Latvian 58.2%, Russian 29.2%, Other 12.6% \* **Lithuania:** Lithuanian 81%, Russian 9%, Polish 7% \* **Malta:** Maltese 100% \* **Poland:** Polish 98% \* **Slovak Republic:** Slovakian 86%, Hungarian 11%, Roma 2% \* **Slovenia:** Slovene 88%, Croat 3%, Serbs 2%, Bosnians 1%

Source: Lijn 25 (Route 25), Nederlandse Omroep Stichting (Dutch Broadcasting Foundation), <http://www.nos.nl/lijn25/uitbreiding/index.html>

right to impose a safeguard of its own if it fears large movements of workers from other EU Member States into its economy. Second, Germany and Austria—which for historical and geographic reasons will probably be most significantly affected by enlargement – will be able to restrict access to their labour markets to a greater degree than the rest of the EU-15. They will, for example, be able to restrict self-employed persons from providing certain services, particularly in the construction sector.

The transition agreement puts in place a complicated arrangement which is in fact expected to have little impact on actual migration. It seems to be a measure made for domestic political consumption in the context of slow-moving economies, continuing high unemployment and anti-immigration sentiment in the EU-15. The net result will be two levels of EU citizenship and participation, and a feeling of exclusion in eight of the new Member States. How long will it take before that exclusion translates into a bargaining chip to be traded for support in some difficult immigration, asylum or border control policy-making discussion? What discussions lie ahead? We turn first to the state of play in the immediate aftermath of enlargement, as the Tampere agenda comes to an end.

### **III. Tampere & Beyond: The EU's Actions in Asylum & Migration Policy 1999 to 2004**

The EU-15 and the Commission have not met their self-imposed targets for the five-year Amsterdam/Tampere programme, which has been regularly reinforced by European Council Conclusions. Three policy realms were included in the programme: migration (both immigration and intra-EU migration), asylum, and borders.<sup>13</sup> What progress has been made?

## Immigration

According to the Amsterdam Treaty, EU Members would adopt several measures on immigration policy and on the movement between EU Member States of people who had immigrated to one of them.<sup>14</sup> Denmark opted out of these arrangements; the UK and Ireland reserved the possibility of opting in. The measures cover:

- Conditions of entry and residence, and standards on procedures for the issuance by Member States of long-term visas and residence permits, including those for the purpose of family reunion,
- Illegal immigration and illegal residence, including repatriation of illegal residents; and
- The rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.

The Member States also decided to take action to make movement between them more straightforward for citizens and their family members, regardless of the nationality of those family members (whether EU or non-EU citizens).

The measures on illegal immigration and residence, including repatriation, were subject to the five-year rule requiring that they be in place by May 1, 2004. Some of these measures are in place – although they are not yet necessarily operational, as they remain to be approved by the parliaments of some Member States.

**Table 1: Immigration Policy Agreements<sup>15</sup>**

| Agreement Name  | Done | Partially Done | Date Agreed    | Comment  |
|---|------|----------------|----------------|--|
| Right of citizens of the Union and their family members to move and reside freely within the territory of the Member States   | ✓    |                | January 2004   | A Common position replacing several previous agreements, and with provisions to actively promote the movement of EU citizens between the Member States |
| Approximation of legislation on the rights, including residence, of immigrants (called 'long-term resident third country nationals') – allowing them to move between Member States and work and live in all Member States | ✓    |                | November 2003  | Not subject to the five-year rule  |
| The Right to Family Reunification   | ✓    |                | September 2003 | Not subject to the five-year rule  |
| Conditions for admission of Third Country Nationals for the purposes of Studies, Pupil Exchange, Unremunerated Training or Voluntary Service  | ✓    |                | March 2004     | Political agreement reached. Not subject to the five-year rule   |
| Information campaigns about legal immigration programmes  |      | ✓              |                | Still being worked on although some action is being taken  |
| Information campaigns to stop smuggling and trafficking   |      | ✓              |                | Still being worked on although some action is being taken  |
| Voluntary return programmes   |      | ✓              |                | Discussion under way   |
| Readmission agreements with countries of origin or transit to take back people who went to the EU irregularly   |      | ✓              |                | Concluded with Albania, Sri Lanka, Hong Kong. Several others in progress   |

Some progress has been made towards a common policy concerning already-present immigrants, with a key decision granting third country nationals legally present for more than five years in a Member State the right to move around a frontier-free Union and to work. No real progress has been made, however, on developing an immigration policy, except for limited family unity and the admission of students and trainees. Whether it is dealing with limiting irregular immigration, combating trafficking and smuggling, return and repatriation programmes or agreeing with non-EU governments on migration-related subjects, the EU has faced either internal dissent or external obstruction. This latter

exposes a potential weakness of the Justice and Home Affairs approach to immigration in the EU, in the absence of a clear EU-level Foreign Policy apparatus.

## Asylum

Four of the five initial building blocks of a Common Asylum Policy were, according to the Amsterdam Treaty, to be in place by May 1, 2004. These are:<sup>16</sup>

- A system of temporary protection to be used in case of mass influx into any Member State;

- Agreement on common standards for the reception of asylum seekers;
- Agreement on common understandings of the qualifications required for refugee and subsidiary protection status (Qualification Directive);
- Agreement on common asylum procedures (Procedures Directive).

**Unemployment rates, 2003:**

*Cyprus: 4.4% \* Czech Republic: 7.8% \* Estonia: 10.1% \* Hungary: 5.8% \* Latvia: 10.5% \* Lithuania: 12.7% \* Malta: 8.2% \* Poland: 19.2% \* Slovak Republic: 17.1% \* Slovenia: 6.5%*

Source: Eurostat

The fifth building block was not subject to the five-year deadline. It is an arrangement for deciding which Member State is responsible for determining individual asylum applications. Known as Dublin II, it is a revision of the 1990 Dublin Convention, with the addition of the Eurodac fingerprint data system, providing evidence of any previous asylum application by an individual in any Member State.

The final agreement, on common asylum procedures, went down to the May 1 wire. Political agreement was finally reached on April 28, but the Directive must go back to the European Parliament, as it is so different from the original version on which the Parliament had

expressed its opinion. Two Member States were able to push through elements opposed by the others simply because none were willing to leave the decision to be dealt with after enlargement. The UK's desire to exclude people from a wide range of 'safe countries of origin', and Germany's desire to exclude people who traveled through a 'safe third country', with no appeals allowed about the actual safety of the countries concerned, would not have got past some other Member States if it was not for the prospect of having 25 Member States vote instead of 15. If the citizens of the eight new Member States may have fallen victim to wider concerns about immigration, the ability of refugees to seek asylum in Europe has surely fallen victim to enlargement.

**Table 2: Agreements for a Common Asylum System<sup>17</sup>**

| Agreement Name   | Done | Date Agreed  | Comment  |
|--|------|--------------|--|
| Agreed approach to temporary protection  | ✓    | July 2001    | Agreed on schedule according to the Vienna work schedule. This was the first decision reached, perhaps as a result of the Kosovo experience  |
| Deciding which State is responsible for examining an asylum application (Replacing the Dublin Convention)              | ✓    | March 2003   | 2 years after the target date set in the Vienna work schedule, although this measure was not, according to the Amsterdam Treaty, subject to the five-year rule   |
| Common minimum conditions for the reception of asylum seekers  | ✓    | January 2003 | 1 year and 9 months late   |
| Approximation of rules on recognizing refugees, what refugee status means, and 'subsidiary' or humanitarian protection | ✓    | March 2004   | Agreement was reached on time according to the work schedule, although the discussions were lengthy  |
| Common standards for asylum procedures   | ✓    | April 2004   | 3 years late and coming very close to the May 1 deadline. The Agreement reached is purely political, and must go back to the European Parliament – an unusual step, casting doubt on the actual completion of the work programme |

Since 1999, when the Amsterdam Treaty came into force, Member States have had the explicit goal of formulating a common asylum system. One might expect them to set out with a 'clean sheet' to ask how the European Union Members can best meet their obligations to provide asylum for refugees arriving in EU territory. Instead, the Member States have focused on harmonizing their existing national policies under a loose-fitting common mantle. Each directive on which a decision has been taken offers a bottom line – a minimum standard that each Member State can exceed. Instead of setting a single and common policy, each directive sets an outline, which the policies of Member States must reflect without having to match exactly. It is as if the directives set out a basic pattern for making a jacket: but the colour, type of material, stitching style, buttons and final finishing are all very much up to each Member State.

Critics find many of the EU's decisions in this realm to be weak. They argue that the EU's 'lowest common denominator' approach – which reflects the triumph of the harmonization reflex over the clean slate approach – infringes on the rights of those who would seek asylum in the EU. One response to these critics is that at least the first steps toward a common asylum policy have now been taken. Even if some issues need to be reopened in order to reach stronger agreements, a start has been made.

It is most likely that several of the subjects of the first five asylum directives will be reopened for further discussion in the coming years, once there is some experience of operating the basic 'common approach'. How will the new Member States adapt and fit into the decision-making process? So far they have had to accept policies without voting and without the choice of opting out. What will their positions be on the new issues? And on the old ones which they previously simply had to accept in order to accede to the EU at all? Will the older Member States take this opportunity to change their positions on previously hard-fought amendments to the directives? Will new alliances be forged? Could the new geography of the EU affect the standpoint of some of the EU-15?

### *Borders*

In the Amsterdam Treaty, the Council decided that within five years (by May 1, 2004) they should adopt a series of measures related to border controls. These were:<sup>18</sup>

- Measures to ensure the absence of any controls on persons crossing internal borders, be they citizens of the Union or nationals of third countries;

### **Total Population of New Member States (in thousands):**

*Cyprus: 715.1 \* Czech Republic: 10203.3 \* Estonia: 1356.0 \* Hungary: 10142.4 \* Latvia: 2334.5 \* Lithuania: 3462.6 \* Malta: 397.3 \* Poland: 38218.5 \* Slovak Republic: 5379.2 \* Slovenia: 1995.0*

Source: Eurostat (January 2003)

- Measures on external border-crossing, including:
  - (a) Standards and procedures to be followed by Member States in carrying out checks on persons at such borders;
  - (b) Rules on visas for stays of no more than three months, including lists of countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement; the procedures and conditions for issuing visas by Member States; a uniform format for visas and rules on a uniform visa;
- Measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months.

In addition, proposals have been tabled to establish collective border-control services. In many cases, where measures have been requested in the Treaties or by the Member States during their high-level Council meetings, the European Commission has drafted and submitted proposals, but agreement on these has been limited. The border-control issues, perhaps more than any other, have been affected by requests and requirements of Member States and other countries following the terrorist attacks of September 11, 2001 in the US and of March 11, 2004 in Madrid. In particular, visa measures have been affected by the desire to obtain information about those crossing frontiers and ensure maximum security.

As on immigration policy, little agreement on how to implement collective border control approaches is apparent. In the three areas of immigration, asylum and border control, there is a history of 'getting to know you' approaches, of finding ways to talk together but act separately on a subject which is at the heart of sovereign control and national presences. The desire to find an EU-level answer to a common question is hampered by the fact that the issues are experienced differently, and priorities differ in each of the EU-15. With the very different experiences again of eight Central and Eastern European countries and two Mediterranean islands, how will enlargement impact the 2005-2010 agenda?

**Table 3: Border and visa-related policy agreements<sup>19</sup>**

| Agreement name                                  | Done | Partially done | Not done | Date Agreed                    | Comment  |
|---|------|----------------|----------|--------------------------------|--|
| Common policy on visas:<br>Lists and Exemptions | ✓    |                |          | March 2001                     | Initial decision amended in 2001 & 2003  |
| Issuance  | ✓    |                |          | Various 2001-2003              | Several measures have been suggested. Some measures have not been agreed. Proposals have not even been introduced for some of the planned measures |
| Uniform format                                  | ✓    |                | X        | Various short-term 2001 - 2002 |  |
| Cooperation on border control services Agency   |      | ✓              |          | November 2003                  | Agreed, but not established  |
| Maritime Border Centre                          |      | ✓              |          |                                | 2003 agreement that 2 centres will be established  |
| Air Border Centre                               |      | ✓              |          |                                | In progress  |

labour markets fully. They will be allowed to maintain restrictions only if they can prove serious or considerable threats of disturbances. Two years later, in May 2011– seven years after accession – all Member States must allow all EU-25 citizens to move to, reside in, *and* work in their countries.

It is likely that the transition will run more smoothly and quickly than the seven years laid out. Restrictions may even be lifted before the first formal opportunity to remove them, in 2006.

Perhaps the main reason that immigration has become the most divisive issue in European politics is the failure of the EU-15 to integrate immigrants effectively. Policy-making on integration has been left to national governments, and sometimes sub-national governments of regions or even cities – on the principle of ‘subsidiarity’, which requires placing policy-making at the lowest effective level of government. An EU-level discussion on integration is long overdue. The Greek Presidency laid a foundation to this through Conclusions requiring an annual report on immigrant integration from the Commission. The Dutch Presidency (July-December 2004) looks set to take up the challenge too, focusing attention on the integration issue, and calling for a Ministerial-level conference on the subject.

Enlargement could offer policy-makers a prime opportunity to begin to deal with the problems of racism and xenophobia that already plague many immigrant communities within the EU. This opportunity is especially important because the new Member States bring with them national minorities of a scale not

#### IV. Opportunities and Challenges 2005-2010

What role might the new Member States play in the areas of migration, asylum and border controls? What effect will exclusion of their nationals from certain of the benefits of EU citizenship have on them? This section sets out some of the opportunities and challenges facing the EU-25 in the years ahead.

##### *Migration Issues: immigration, intra-EU migration and integration*

The major issue on the intra-EU migration agenda in coming years will be the equalization of citizenship rights for all EU nationals. The westward migration of citizens of the eight new Member States that are CEECs was viewed with extreme caution prior to enlargement. The moment they enjoy freedom of movement and can work anywhere in the EU on the same terms as citizens of the other 17 Member States, we will know that this 2004 enlargement is complete.

According to the transition arrangements, two years after accession, in May 2006, the Commission will report on the levels of migration from the eight new Member States and its impact on the economies and labour markets of the EU-15. At that time, Member States will be able to choose to maintain or eliminate the work-permit requirements and other limitations on welfare access. The Commission suggests only a few Member States will want to continue restricting access. Three years later, in May 2009, the EU-15 should open their

previously known within the EU. Integration will no longer be exclusively about newcomers, but also about the incorporation of ethnic kin communities such as Slovak-Hungarians; of national minorities with links to countries beyond the EU such as the Russian minorities (often without citizenship) in the Baltic States; and of widespread Roma populations, in the Czech and Slovak Republics in particular, who are much discriminated against.

The EU-15 have not been without ethnic or nationalist tensions: the Northern Ireland 'troubles', and the situations of the Basques and the Bretons are just three examples. But the role of these tensions has never been so closely associated with migration or citizenship issues. Incorporating all of these people as EU citizens is a challenge that lies ahead. It might not be facilitated by the second-class status of the nationals of the eight new Member States that are CEECs for too long after accession.

### *Asylum*

Many of the directives agreed upon during the five-year Amsterdam work programme include clauses that refer to revisiting them at a future date. This means that much of the future agenda will reflect that of the past. Nonetheless, setting the agenda for 2005-2010 in the new, enlarged EU context presents both opportunities and challenges on the asylum front.

Two challenges may dominate the agenda, depending on how events unfold. The first arises from the fact that any new Balkan conflict—whether in Kosovo, elsewhere in Serbia and Montenegro, or in the former Yugoslav Republic of Macedonia—would be physically closer to a broader stretch of the EU border than were the conflicts in Bosnia and Kosovo in the 1990s. The Temporary Protection directive was a response to the *ad hoc* measures instituted to cope with a mass exodus that threatened to become a mass influx to EU Member States. With Slovenia and Hungary as well as Greece now bordering the Balkan states, another conflict there would mean an almost certain influx of protection seekers to the EU. With the EU border moving eastward, Belarus becomes a neighbouring state and the relatively unsettled states in the Caucasus (including Georgia and Azerbaijan) also come closer – requiring either a new 'buffer zone' of first asylum states (Turkey, Ukraine and Russia) or new thinking on how to manage refugee protection in the extended region.

The second challenge is one that Member States thought they had dealt with in the Protocol to the Amsterdam Treaty on asylum, which referred to nationals of EU Member States. According to that Protocol, other

Member States should only exceptionally deal with applications for asylum from EU citizens, given that each considers all the others to be safe. Some residents of some accession countries are, however, stateless. They were not granted citizenship in the process of revolution and dissolution in the early 1990s. These include thousands of Roma in Slovakia as well as several thousand people in Slovenia and Latvia. This issue was not fully resolved during the accession process, as indicated in the discussion on integration above. What will happen when a stateless person, previously resident in a new Member State, requests asylum from persecution in another EU Member State? The persecution they claim to fear might even include their exclusion from citizenship (and EU citizenship) as an expression of discrimination. What kind of intra-EU discussions would be sparked by a grant of asylum to a person in this situation? It is conceivable that the Member State in which asylum is sought might reject the claim and wish to return the person only to find that he or she is refused admission on the grounds that he or she is not a citizen.

Despite these challenges, setting the agenda for the next five years is a time of opportunity for the EU and for refugees. Once the pre-May 1 agenda is fully cleared, and the Procedures directive has been truly finalized, the Member States and European Commission will be able to raise new issues. These could include comprehensive refugee-protection policies, going beyond asylum and including resettlement, as well as EU efforts to build capacity for better refugee protection in regions of origin. (Only six Member States currently resettle refugees identified by UNHCR.<sup>23</sup>)

These issues should encourage Member States to step away from the basic technocratic work agenda of Tampere and the Amsterdam Treaty and move into the terrain of general refugee-protection policy. Even during the technical work of the last five years, politicians across the EU have tried to set out more philosophical 'big picture' thinking on how Europe could better deal with refugees. At the time these attempts seemed to serve only as distractions from the technical work and timetable for its completion. But the agenda-setting moment could provide an opportunity to take on the big, global challenges. The new agenda should involve a shift away from thinking about managing the EU's approach to refugees exclusively through its asylum policies.

Nine of the countries of today's enlarged European Union have been sources of refugees and displaced persons during the 53-year history of the 1951 Convention relating to the Status of Refugees. This gives the EU a unique opportunity to generate a new and better

### **GNP Per Capita, in Euros 2002:**

*Cyprus: 15,000 \* Czech Republic: 7,200 \* Estonia: 5,100  
\* Hungary: 11,700 \* Latvia: 3,800 \* Lithuania: 4,200 \*  
Malta: 10,400 \* Poland: 5,200 \* Slovak Republic: 6,900 \*  
Slovenia: 11,700*

Source: Lijn 25 (Route 25), Nederlandse Omroep Stichting (Dutch Broadcasting Foundation), <http://www.nos.nl/lijn25/uitbreiding/index.html>

understanding of the situation of refugees. Might the populations of and policy-makers from the new Member States, particularly those emerging from a decade of transition after Communist rule, bring a greater depth of understanding and empathy?

Some commentators in Eastern and Central Europe suggest their governments and publics will be as reluctant to see asylum arrivals and grant refugee status as the pre-enlargement 15 Member States have been. This reluctance may stem from a decade of performing the task of 'buffer zone' to the European Union. Until May 2004, the new Member States had to accept the policies handed to them, including the prevailing mood of toughness towards asylum dictated by the 15, or risk not being admitted to the EU club. They are now going to be full partners in the post-Tampere decisions on a more developed common EU asylum policy. Will they find their voices rooted in the past experience of persecution and exile, or will they sing to the EU-15 tune? Now inside the Union, they will, at last, be able to make their position clear.

### *Borders*

What are the implications of the EU borders being pushed further east? The eight new Member States in the east have provided an important, if permeable, 'buffer zone' for immigration and the movement of asylum seekers to the EU-15 for more than a decade. The Mediterranean countries that joined the Union in the 1980s, without an immigration policy and without a strong border guard, became a gateway for irregular entry to the EU as a whole. EU membership did not dramatically change the situation for them, and may not for the new Members either.

New Member States are under pressure to control immigration at their borders, even though onward movement to the EU-15 will still be subject to further controls for some time. The EU has already invested heavily in new technology and institutional assistance to help manage its new eastern border. In 2003, the EU's PHARE programme, in cooperation with the Hungarian government, spent over €3.6 million developing the National Operational Control System of the Hungarian Border Guard. In Poland the PHARE Small Infrastructure Project Fund is focusing on increasing cooperation between Polish border institutions and their counterparts in neighbouring countries. Funding is also being directed towards projects such as fighting human trafficking and bringing the accession countries into the Schengen Information System. However, with problems like human trafficking and smuggling on the rise, it will take more than technology to maintain control of the new borders of the EU. The establishment of an EU-

wide border authority, on land and at sea, has been inhibited by difficulties of coordination and a lack of willingness on the part of some states to surrender this symbol of national sovereignty. In the absence of collective border control institutions—which would potentially mean being able to put experienced German border guards on the Polish external border, for example—what other measures can be taken? It seems unrealistic to expect Ukraine, Turkey, Georgia, Russia and Serbia and Montenegro to become the new buffer zone when they are some of the countries from which migrants and refugees are coming.

Relations with States that are not members of the EU will clearly become more important than ever for the management of migration. The EU-15 have had limited success in eliciting cooperation on border security when they have not had the carrot of future EU membership to dangle, as they did with the new Member States. Will the new Member States be able to use existing bilateral relations to benefit wider EU relations with the new eastern neighbors? How far can enlargement go?

The Schengen Protocol is central to the issue of movement within the European Union. Because the Schengen Protocol was incorporated into the European Union *acquis*, the new Member States were again compelled to adopt it with no right to opt out. However, as was the case in previous enlargements, the new 'internal borders' did not open immediately upon enlargement on May 1. As with past enlargements, the expectation is that the transition period will see the development of stringent border control standards before controls at the internal borders are abolished. Anyone crossing into Poland from Ukraine, for example, and then travelling onwards to Germany, will, for the foreseeable future, have their papers checked twice – on the two frontiers – just as they did prior to enlargement.

### **V. Conclusion**

The first months after enlargement are likely to be fairly quiet on migration issues. The need to appoint a new Commission, await the outcome of European Parliament elections and complete the negotiations on the Treaty on a Constitution for Europe, with associated referenda in several Member States, will divert attention from concrete policy areas. Those developments, like

enlargement, will alter the context within which migration issues are discussed, and will bring in new actors at a high level.

Some of the migration opportunities and challenges which enlargement presents to the EU-25 have been set out above. Many of the questions we need to ask about the future of migration, immigration, asylum and border control policies in the European Union have also been posed. Three key questions emerge from this overview, to which only time will give the answers:

1. Will the eight Central and Eastern European Member States come together in a common negotiating stance to rid themselves of the work restrictions imposed on their citizens by the EU-15? If so, will they do that in the context of an immigration or asylum policy negotiation? How much leverage could they exert to change the rules?
2. Could the new Member States return the humanitarian features of the past to the face of the EU's asylum and refugee protection policies?
3. Is a common border guard the only way in which the full length of the EU borders can be managed to standards that satisfy all 25 Members?

In the end, the question is: Do the EU-15 have any alternative to full inclusion of the ten new states? If they do not follow the path of inclusion, the end result is likely to be a Union divided into two classes of citizens **and** with porous borders. Surely it would make more sense, and result in greater stability for all, if the EU would quickly learn to trust its new members, and grasp this opportunity to put the goal of an area of freedom, security and justice truly into practice.

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<sup>1</sup> Council conclusions reached at summits in Vienna in 1998, Laeken in 2001, Seville in 2002 and Thessaloniki in 2003 are particularly important.

<sup>2</sup> Some EU Member States may require nationals of other Member States to register with authorities once they have been in the country for three months, and to show independent income of some sort.

<sup>3</sup> Relatively few EU citizens have taken advantage of this right. Only some 0.1 per cent did so in 2002, for example.

<sup>4</sup> Tom Arbuthnott, **Migration in an expanding EU**, BBC News, April 8, 2002, <http://news.bbc.co.uk/1/hi/world/europe/1912956.stm> puts the figure at 330,000. Centraal Planbureau (The Netherlands Central Planning Office), **Arbeidsmigratie uit de Midden-en Oost-Europese toetredingslanden** (Labour Migration from the Central and Eastern European Accession Countries) 14 January 2004 indicates 300,000 people moved. This figure does not include the approximately 400,000 Aussiedler [ethnic

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Germans] who moved from Eastern Europe and Russia to Germany in 1990 (Veysel Oezcan, **Germany: Immigration in Transition**, Migration Information Source, [www.migrationinformation.org](http://www.migrationinformation.org), May 2002 indicates 400,000 Aussiedler arriving in 1990, while Elmar Hoenekopp, **Labour Migration to Germany from Central and Eastern Europe - Old and New Trends**, IAB (Institut fuer Arbeitsmarkt- und Berufsforschung) Labour Market Research Topics 23, 1997 <http://doku.iab.de/topics/1997/topics23.pdf> puts the number at around 350,000)

<sup>5</sup> Centraal Planbureau (The Netherlands Central Planning Office), **Arbeidsmigratie uit de Midden-en Oost-Europese toetredingslanden** (Labour Migration from the Central and Eastern European Accession Countries) 14 January 2004.

<sup>6</sup> UK Home Office Online Report 25/03, **The impact of EU enlargement on migration flows**, 2003 <http://www.homeoffice.gov.uk/rds/pdfs2/rdsolr2503.pdf> and Simone Goedings, **EU Enlargement to the East and Labour Migration to the West**, International Institute of Social History (IISG), Amsterdam, 1999, <http://www.iisg.nl/publications/respap36.pdf>.

<sup>7</sup> Centre for European Reform, **Does Enlargement matter for the EU economy?** 27 March 2003 and European Commission (Employment and Social Affairs), **Potential Migration from Central and Eastern Europe into the EU-15: An Update**, Brussels, October 2003.

<sup>8</sup> Some EU Member States may require nationals of other Member States to register with authorities once they have been in the country for three months, and to show independent income of some sort.

<sup>9</sup> Centraal Planbureau (The Netherlands Central Planning Office), **Arbeidsmigratie uit de Midden-en Oost-Europese toetredingslanden** (Labour Migration from the Central and Eastern European Accession Countries) 14 January 2004.

<sup>10</sup> Centre for European Reform, **Does Enlargement matter for the EU economy?** 27 March 2003 and European Commission (Employment and Social Affairs), **Potential Migration from Central and Eastern Europe into the EU-15: An Update**, Brussels, October 2003.

<sup>11</sup> International Herald Tribune, "**Sweden to limit benefits**", 31 January, 2004.

<sup>12</sup> The European Foundation for the Improvement of Living and Working Conditions, **Migration Trends in an Enlarged Europe**, 2004.

<sup>13</sup> The Tampere Conclusions set out these measures under four headings: partnerships with countries of origin; management of migration flows; fair treatment of third country nationals; asylum.

<sup>14</sup> Article 63 of the Treaty establishing the European Community [TEC] (ex Article 73k).

<sup>15</sup> Table based on COM (2003) 812(01), **Communication from the Commission to the Council and the European Parliament, Biannual Update of the Scoreboard to Review Progress on the Creation of an Area of "Freedom, Security and Justice" in the European Union**, 30 December, 2003.

<sup>16</sup> Article 63 of the TEC (ex Article 73k).

<sup>17</sup> Table based on COM (2003) 812(01), **Communication from the Commission to the Council and the European Parliament, Biannual Update of the Scoreboard to Review Progress on the Creation of an Area of "Freedom, Security and Justice" in the European Union**, 30 December, 2003.

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<sup>18</sup> Article 62 TEC (ex Article 73j).

<sup>19</sup> Tables based on COM (2003) 812(01), **Communication from the Commission to the Council and the European Parliament, Biannual Update of the Scoreboard to Review Progress on the Creation of an Area of “Freedom, Security and Justice” in the European Union**, 30 December, 2003.

<sup>20</sup> Centraal Planbureau (The Netherlands Central Planning Office), **Arbeidsmigratie uit de Midden-en Oost-Europese toetredingslanden** (Labour Migration from the Central and Eastern European Accession Countries) 14 January 2004.

<sup>21</sup> Centraal Planbureau (The Netherlands Central Planning Office), **Arbeidsmigratie uit de Midden-en Oost-Europese toetredingslanden** (Labour Migration from the Central and Eastern European Accession Countries) 14 January 2004.

<sup>22</sup> International Herald Tribune, **“Sweden to limit benefits”**, 31 January, 2004.

<sup>23</sup> A European Commission contracted feasibility study on resettlement was completed by MPI in September 2003. It is available online at [http://www.europa.eu.int/comm/justice\\_home/doc\\_centre/asylum/studies/docs/resettlement-study-full\\_2003\\_en.pdf](http://www.europa.eu.int/comm/justice_home/doc_centre/asylum/studies/docs/resettlement-study-full_2003_en.pdf)