

Building a Common European Refugee and Migration Policy: What are the challenges?

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The year 2004 marks an important point in the building of a common European Asylum and Migration policy. We are in a transition between two phases of its development. On the one hand we have a new institutional and political context. With a new European Parliament flexing its muscles and intent on playing a greater role in decision-making, the adoption by the European Council of the Constitutional Treaty, and on Monday next week we will, finally, have a new Commission (including a new Commissioner for Justice and Home Affairs – or Justice Liberty and Security as the DG is to be renamed – Franco Frattini). All this against the background of an unprecedented enlargement of the Union to 25 Member States.

On the other hand we are at the crossing point between the first and the second phase of the delivery of the common policies on immigration and asylum. The European Council, meeting in Tampere in October 1999, set the objectives, translated them into more detailed policy orientations and asked for a series of concrete measures to be completed within 5 years, i.e. by 1 May 2004. Earlier this month, another European Council, meeting this time in Brussels agreed on a programme for the next five years (“The Hague Programme Strengthening Freedom, Security and Justice in the European Union”).

I would like today firstly to present a brief assessment of the Tampere programme and then to give you an overview of future priorities and the challenges which we are facing in the next five years.

The Commission’s assessment of the first phase of Tampere was adopted on 2 June 2004 and is a positive one. Back in 1999, few would have predicted the level of progress we have achieved in such a new and sensitive area. Justice and home affairs are now firmly at the centre of European debate and reflected in our relations with third countries. The dynamism in this sector is undeniable.

The first stage of the Common European Asylum system is complete. The four main legal instruments on asylum – constituting its “building blocks”- are in place: the Reception Conditions Directive, the Asylum Procedures Directive, the Qualification Directive and the Dublin II Regulation with the EURODAC system to support it. They all aim at a general objective – to

level the asylum playing field and lay the foundations for a Common European Asylum System. The aim was to create minimum standards which fully respect the Geneva Convention and the other international obligations of Member States, and I believe that we have done that. Some may say that the standards are too low – and I certainly admit that they are often not those which the Commission originally proposed. Nevertheless, they are set in European law and therefore a process of monitoring and evaluation is now beginning which can lead to improvements in the future.

On these foundations further structures have to be built to safeguard the EU as a single asylum space and to ensure that we have in place a system that gives protection to those who require it and deals fairly and efficiently with those who do not.

The results on the side of the Common Migration Policy are also clear to see. On the one hand, much progress has been made in the fight against illegal migration. The Council has adopted three action plans in this area: on the fight against illegal migration, on control of external borders and on return policy. These action plans require legislative measures as well as operational coordination, and they are currently being implemented.

On the other hand, the level of ambition reached by the Directives adopted in the field of legal migration – family reunification, admission of students, and admission of researchers (which should be adopted by the Council tomorrow) – is not sufficient and will need further improvement. However, in this field too, the first building blocks are in place and we will be able to build on that. A major step has been taken with the adoption of the long-term resident status Directive which will offer equality of treatment with nationals in a number of fields and the possibility to move and settle in another Member State.

Unfortunately, no progress has been made on the issue of economic migration. This is the area where Europe has to find a way forward in the years ahead if it is to overcome the challenges of both an ageing and shrinking population without losing its economic competitiveness. A debate with all stakeholders will be launched early next year with the publication of a Green Paper on the type of approach which the EU needs in this field. A new proposal on the admission of economic migrants will be made in 2005 in the light of the discussions which take place.

The Commission has also turned its attention to the integration of migrants, a policy area which requires an approach which addresses the specificities of each Member State while recognising that there are many common problems. This will be a major theme in the future. Exchange of information and experience between Member States has been promoted through the activities of the National Contact Points on integration established in 2002. A handbook of good practice was published last week based on the work of a number of experts and coordinated by the Contact Points. Tomorrow the JAI Council is expected to adopt a series of basic principles on integration which will increase coherence within the EU on the objectives which integration policies should aim to meet. They will also underpin the European framework which will help us to structure the further development of cooperation at EU level.

As far as border controls are concerned, we have made huge progress, in particular with the agreement to set up an Agency responsible for external border management at European level. The Agency is expected to take up its responsibilities on 1 May 2005. Its tasks will include

operational coordination between Member States, training of border guards, carrying out risk analyses and providing Member States with technical support for joint return operations. It will play a substantial role in facilitating co-operation between the Union and third countries in controlling the EU's external borders.

Issues of security have been high on the political agenda in recent months and the Commission has responded in a number of ways, including presenting concrete proposals for the integration of biometrics into visas, residence permits, passports and other travel documents issued by Member States.

In this area, the development and establishment of a Visa Information System (VIS) has had top priority. The VIS will be a system for the exchange of visa data between Member States and thus primarily an instrument to support the implementation of the common visa policy. It will significantly improve the examination of visa applications and ease checks at the external borders and within the Member States. In parallel the modernising and updating of the Schengen Information System (SIS II) is currently underway together with its extension to the New Member States.

The external dimension of immigration, asylum and border policy has also been developed. It is now recognised that a close dialogue with third countries is essential. We need to create partnerships and cooperation over issues which are more and more seen as of common interest - it will be impossible to manage EU policy successfully without this. Discussions must be broad, ranging from procedures for admitting legal migrants to issues of integration, the control of illegal migration, readmission and return. Here again we have made considerable progress in creating trust and understanding and in developing forums and regional processes in which to develop partnership activities.

Finally, the financial dimension, till now almost a phantom in these areas, has been steadily growing. Cooperation between Member States administrations has been supported through the ARGO Programme, whose budget has been steadily increasing. The principle of burden sharing has been given substance through the development of the EUROPEAN REFUGEE FUND, which will soon enter into its second phase. The European Parliament has made funds available through the INTI programme to support networking and transfer of experience in the area of integration. The first call for projects to be supported by the AENEAS programme, specially designed to provide third countries with technical and financial assistance in their efforts to better manage migration, is about to be launched.

With the new financial perspectives for 2007-2013, the EU budget should finally provide substantial funds for applying the solidarity principle between the Member States and to support the development of the common policies. We foresee three major framework programmes in the areas of freedom, justice and security. Besides the European Refugee Fund they are expected to include a new Fund for Integration and a fund to develop a Community Return Programme together with substantial funds for border management.

So what of the future, the second phase which has been set out in the new multi-annual programme in Justice and Home Affairs (the Hague Programme) and the challenges which this brings with it.

The Hague Programme was adopted by the European Council on 5 November. It covers the whole area of work of DG JAI which will from next Monday be renamed DG for Freedom, Security and Justice. It is a new agenda which builds on the work achieved under the Tampere mandate and prepares for the coming into force of the new Constitutional Treaty. Its objectives reflect those of Tampere: protection for those in need, better management of migration flows, strong integration policies and control of external borders but they are clarified and some new priorities are set.

There is an increased emphasis on the need to strengthen security and prevent terrorism but anchored in an approach based on the strengthening of freedom, justice, mutual trust and the rule of law. The Programme is based on respect for fundamental rights as set out in the European Convention on Human Rights and the Charter of Fundamental Rights as well as the Geneva Convention on Refugees. It also maintains the principle of subsidiarity, and gives greater weight to proportionality and solidarity between Member States as well as respect for the different legal systems and traditions in the EU. There is a new focus on operational delivery on the ground, making the tools and legislation already in place work to their full potential, improving practical cooperation and exchanging information on good practices. This is combined with the reinforcement of the exchange of information and statistics and common analysis of migratory phenomena. The Commission will respond following an evaluation of the existing European Migration Network and make proposals in 2005 for a more solid legal basis for its work. Finally there is increased emphasis on the need to monitor and evaluate policies and legislation. In particular there will be a mid-term review in 2006 prior to the entry into force of the Constitutional Treaty.

What are the particular issues that concern the common immigration and asylum policies?

Common European Asylum System

The Tampere objectives are endorsed, that is the establishment of a common asylum procedure and a uniform status for those granted asylum or subsidiary protection. Again, as in Tampere, a clear timetable is set: the evaluation of the first phase directives must be undertaken by 2007 and the second phase directives adopted by 2010. There is an emphasis on strengthening practical cooperation between Member States which is already underway through such structures as the EURASIL network. But we are asked to move ahead quickly and establish next year a cooperation structure involving national asylum services in order to facilitate the establishment of a single procedure for assessing asylum applications. This should become a European Support Office for all forms of cooperation as soon as the common asylum procedure has been established.

The Commission is asked to carry out two studies – one on the possibilities of joint processing of asylum applications within the Union and the other on the feasibility of joint processing outside EU territory. The need for burden sharing in receiving asylum seekers is recognised. This is in particular with reference to the moving of the external borders which will impose considerable pressures on some of the New Member States with the requirement for re-allocation of ERF funds to help those countries in the greatest need.

Legal migration

The importance of legal migration to economic development is acknowledged and the need to fill the gap in the existing EU legislation on legal immigration by setting up a common framework for the admission of labour migrants. While reiterating that decisions on the numbers of labour migrants will remain the prerogative of the Member States, the Hague Programme asks the Commission to present a policy plan on legal migration and admission procedures before the end of 2005.

Integration of immigrants

A substantial boost is given to the strengthening of integration policies already highlighted in the Tampere Programme but ever more topical and necessary, as recent events in The Netherlands have shown. The Hague Programme calls for more effective cooperation based on a common recognition of objectives and the establishment of a coherent European framework. The Constitutional Treaty provides for the Commission to take initiatives to promote integration which must have clear goals and an effective evaluation system.

The external dimension of immigration and asylum

New emphasis is given to the external dimension of asylum and immigration. There is a need for better targeting and coordination of EU policies in partnership with third countries to manage migration better, to deal more effectively with root causes and provide for durable solutions to resolve refugee situations. In this context the Commission is invited to develop EU Regional Protection Programmes in close cooperation with the UNHR.

The interactions between **migration and development** are acknowledged and the Commission is asked to present, by the spring of 2005, detailed proposals which link migration, development cooperation and humanitarian assistance. Special attention is to be given to cooperation and capacity building with the countries on the southern and eastern borders of the EU via the European Neighbourhood and Partnership Instrument. Subjects such as labour movement, strengthening the links between diaspora and their countries of origin and the possibilities of making migrant remittances cheaper and more reliable can now be discussed with the neighbouring countries on a structural basis.

Management of Borders

The European Border Agency will be the cornerstone of enhanced cooperation on management of the external borders and its initial remit will be re-examined on the basis of an evaluation to be made before the end of 2007. Meanwhile the importance of the application of the Schengen acquis and the adherence of all Member States to the SIS II Schengen Information System is underlined so as to remove controls at internal borders as soon as possible. Considerable efforts will be needed by the Member States in order to ensure that SIS II is fully operational in 2007 as planned and this will be a major practical and technical challenge.

Preventing illegal migration

New initiatives in the prevention of illegal immigration and trafficking are set: the Commission is asked to prepare in 2005 a plan for developing common standards, best practices and mechanisms

to combat trafficking; enhanced cooperation in the exchange of information on routes used by smugglers; the establishment of immigration liaison networks in third countries and further cooperation at sea. Finally the Programme outlines new initiatives to develop the common visa policy including greater harmonisation with respect to biometric identifiers and data.

Managing the challenges

This is a vast programme which will require new resources and the re-focussing of existing resources both human and financial. This will be a challenge in itself. There are, however, a number of factors which will facilitate progress with the building of the second stage.

Tomorrow, the JAI Council should decide to implement article 67§2 of the EC Treaty and this means that all measures regarding asylum, immigration (with the exception of legal migration) and external borders, will be taken by the co-decision procedure and Qualified Majority Voting. Apart from the fact that this will be a political commitment by Member States, it will also reflect the recognition that immigration and asylum are truly matters of common concern and that there needs to be a joint response to them. In some areas further legislation will be needed. The co-decision procedure, with greater democratic input in the form of the views of the European Parliament, should lead to swifter decision-making and higher standards.

Secondly immigration and asylum are no longer new areas of EU competence. Over the past 5 years trust and confidence has built up between Member States at the political and administrative level. All now recognise that there are many common problems and that while European solutions are necessary in many cases, sharing experience and good practice is helpful in almost all cases. The emphasis on practical cooperation in the next five years will improve understanding between Member States, strengthen trust and facilitate cooperation.

Our remit for the next five years is clear. We have come halfway to a Common European Immigration and Asylum Policy and to a more coordinated approach to managing our external borders – but there is still some way to go. We can be proud of what has been achieved at EU level and in so short a time. The foundations of a new – European – approach to immigration, asylum and border management have been laid. We now have the blue print to continue the construction so as to achieve a true single European area of justice, security and freedom for all the residents of the Union. There are many challenges ahead and the future of the EU depends on our meeting them. I am confident that in the coming years the EU will be able to maintain the balanced approach we have been developing since Tampere and that we will be able to successfully address the challenges and make the most of the opportunities for both the EU, migrants and their countries of origin.