European Union

Whereas the right of EU citizens to move and reside freely within the territory of member states is one of the fundamental freedoms of the European Single Market, and was already provided for in the Treaties establishing the European Community[1], the European Union originally had no powers where migration policy was concerned. Cooperation in matters of immigration and asylum is one of the most recently addressed aspects of European integration. Its significance has expanded rapidly since the matter was first introduced at the end of the 1980s, and today it is without doubt one of the core areas of the European integration project. Member states' claims to sovereignty are nevertheless ever-present, not least due to the sensitive nature of immigration policy matters internally and their relevance to national sovereignty and national identity. The significant expansion of European powers and responsibilities has, therefore, led as yet only to isolated common policies, and these matters are generally handled intergovernmentally. Any cooperation is concentrated on areas in which the member states are pursuing common interests. This concern, above all, improved state control over migration, cooperation between border police and strengthened the fight against irregular immigration and asylum abuse. By contrast, there has been less progress in relation to the rights of immigrants within the EU.[2] The rights of legally settled foreigners have been only partially harmonised; cooperation in the area of labour migration has been difficult to achieve, due to member states' claims to sovereignty; and only tentative steps have been taken to coordinate foreign integration. This selective focus, along with the difficulty of surrendering national powers and responsibilities, arises not least from the highly heterogeneous positions of the member states with regard to immigration and their immigration histories. The following section provides a brief overview of these differing positions before turning to the content of European regulations.
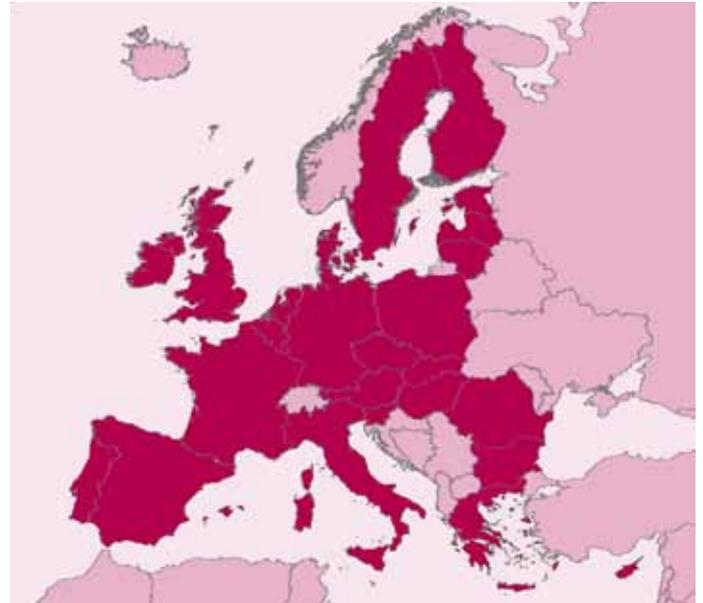
Historical Development of Migration

Historically, experiences with international migration have differed from country to country within the European Union, and continue to do so. This diversity in the nature of the problems associated with immigration represents a substantial obstacle to the development of a common European migration policy. Whereas on the one hand former colonial states such as Belgium, France or the United Kingdom were already immigration countries in the 19th century, other European states, such as Germany and Austria, did not become countries of immigration

Background Information

Seats of Government: Brussels (Council of the European Union, European Commission), Brussels and Strasbourg (European Parliament), Luxembourg (Court of Justice)

Official languages: French and English (main working languages) plus 21 other official languages

Area: 4.2 million km[2]

Population (2007): 497 million

Population density (2006): 114.8 persons per km[2]

Population growth (2005): + 297,300

Labour force participation rate (2006): 64.4%

Foreign population (2007): 28,861,974 (5.8%) (Eurostat - EU 25)

Percentage of foreign employees amongst gainfully employed (2007): 6.7%

Unemployment rate (2006): 7.9%

bpb: Bundeszentrale für politische Bildung

NETZWERK **MIGRATION** IN EUROPA

Hamburgisches WeltWirtschafts Institut HWWI

until after the Second World War. In contrast with the colonial states, which granted the citizens of their colonies extensive immigration and residency rights, the guest worker model – whereby foreign workers were always intended only to be temporary immigrants – dominated in the latter countries. However, many former guest workers settled permanently and brought their families to join them. By contrast, the southern member states, such as EU founding member Italy, but also Portugal, Spain (both of whom joined in 1986) and Greece (joined in 1981), did not become attractive to immigrants until the 1980s. For a long time they regarded themselves as transit countries at the gates of Europe. The new member states in the east and southeast of the EU had essentially been emigration countries since the fall of the Iron Curtain, but since joining the EU in 2004 and 2007 they have rapidly developed into receiving countries, even though some of them currently still record more emigrants than immigrants. Although some of these countries already have considerable foreign minorities in their resident population, for the most part they still regard themselves primarily as transit countries for migrants from all over the world seeking to try their luck in Western Europe.

Altogether there are about 28,861,974 foreigners living today in the EU member states (5.8% of the total population). The main countries of origin vary from one member state to another and are, to a large extent, a reflection of the individual EU states' historical experiences and cultural contacts.

Since as early as 1992, immigration has been the most significant source of population growth in the European Union. In 2007, immigration made up 80% of population growth compared with natural factors (births less deaths). In that same year, net immigration across the EU comprised 1.9 million persons from a total of 497 million living in the EU; the birth surplus (excess of births over deaths) was just 483,000 people. The percentage of population growth made up by immigration has increased continually since the mid 1980s, and so forms a central factor in the battle against the ageing of the European communities.[3]

The Many Faces of Migration in the EU

The present immigration situation among EU member states is highly heterogeneous. This is apparent at first glance in the different migration figures, specifically the balance between those moving into a country and those leaving it. European Statistical Office (Eurostat) data for 2007 indicate the continuation of highly differing forms of immigration, with a clear shift in the relationship between "old" and "new" immigration countries. Thus countries on the southern border of the EU (Spain and Italy) are experiencing the highest level of immigration, and even the Czech Republic, a new member, has already

Figure 1: Migration balances for 2007 in selected EU member states
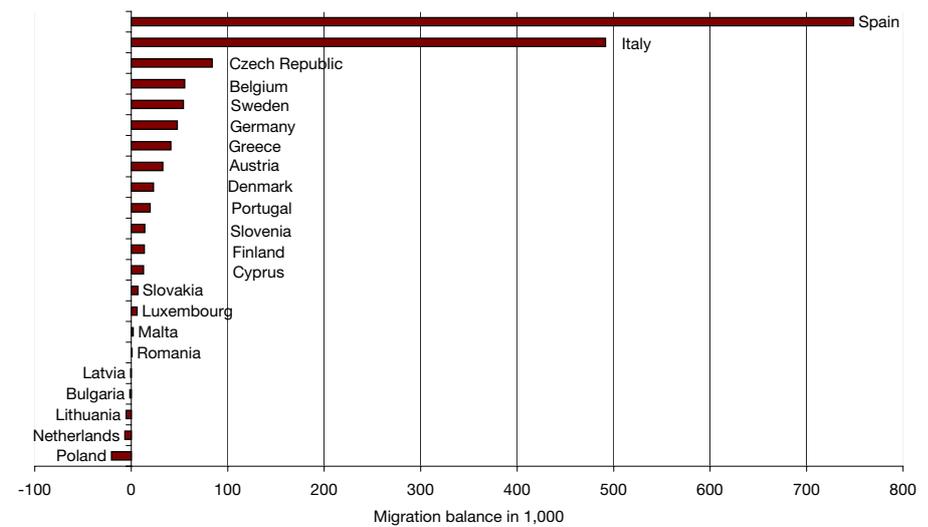
Source: Eurostat, Population and Social Conditions, Statistics in Focus 81/2008
* no data available for France, Estonia, Ireland, Hungary and the United Kingdom

overtaken the traditional receiving countries of central and northern Europe. Only the Baltic States, Bulgaria and Poland now show negative immigration balances, although even the Netherlands recorded more emigration than immigration in 2007 (Figure 1).

The percentage of foreign population in the EU member states extends from less than 1% of the total population (Slovakia) through to 39% (Luxemburg). In most countries, however, the foreign percentage is between 2% and 8% of the total population (see Table 1). In all EU member states excluding Luxemburg, Belgium, Ireland and Cyprus, the majority of the foreign population is made up of so-called third country nationals, i.e. non-EU citizens.

It is not only in terms of numbers that the immigration situation differs in the various EU states. There are also strong differences with regard to the legal categories on which the immigration flows are based. Thus labour migration dominates in countries with less regulated labour markets (e.g. the United Kingdom, Ireland, the Czech Republic and Denmark), whereas in most other states family reunification represents the strongest immigration category (especially apparent in France and Sweden). In this regard, Italy and Germany adopt a middle position, i.e. similar percentages are attributable to labour migration and family reunification, although in Germany "other" migration also makes up a large percentage. The latter is attributable above all to the immigration of *Spätaussiedler* (ethnic German immigrants from the countries of the former Soviet Union).[4]

The geographical origin of the biggest immigrant groups also varies conspicuously from one member state to another and reflects primarily historical experiences and geographical proximity. Thus, for example, in Germany, Denmark and the Netherlands, Turkish citizens make up the biggest group of foreigners. By contrast, citizens of former colonies are numerous in Portugal (Cape Verde, Brazil and Angola) and in Spain (Ecuador and Morocco). For historic reasons, and for reasons of proximity, the majority of foreigners in Greece are from Albania, the majority in Slovenia from other parts of the former Yugoslavia,

Table 1: Native and foreign populations in the member states of the European Union, 2004 and 1990

	Year	Foreigners (%)	Largest foreigner groups (by country of citizenship)	Year	Foreigners (%)
Belgium	2004	8.3	Italy	1990	8.9
Czech Republic	2004	1.9	Ukraine	1990	0.3
Denmark	2004	5.0	Turkey	1990	2.9
Germany	2004	8.9	Turkey	1990	6.1
Estonia	2000c	20.0	Russian Federation	1990	-
Greece	2004e	8.1	Albania	1990	1.4
Spain	2004	6.6	Ecuador	1990	1.0
France	1999c	5.6	Portugal	1990	6.3
Ireland	2002c	7.1	United Kingdom	1990	2.3
Italy	2004	3.4	Albania	1990	0.6
Cyprus	2002c	9.4	Greece	1992	4.2
Latvia	2004	22.2	Russian Federation	1998	27.3
Lithuania	2001c	1.0	Russian Federation	1990	-
Luxembourg	2004	38.6	Portugal	1990	28.7
Hungary	2004	1.3	Romania	1995	1.3
Malta	2004	2.8	United Kingdom	1990	1.6
Netherlands	2004	4.3	Turkey	1990	4.3
Austria	2004	9.4	Serbia/Montenegro	1990	5.7
Poland	2002c	1.8	Germany	1990	-
Portugal	2003p	2.3	Cape Verde	1990	1.0
Slovenia	2004	2.3	Bosnia-Herzegovina	1990	-
Slovakia	2004	0.6	Czech Republic	1990	-
Finland	2004	2.0	Russian Federation	1990	0.4
Sweden	2004	5.3	Finland	1990	5.3
United Kingdom	2003	4.7	Ireland	1990	4.2

Source: Eurostat 2006
c - Census data, e - Estimations, p - Provisional data

and citizens from the former Soviet Union are most significant among the foreign populations of Estonia, Latvia and Lithuania.

Finally, immigrants' levels of qualification play an increasing role in political debate. At the present time, all Western states have become anxious to increase the number of people with a good education or university degree among their immigrants. Nonetheless, in most of the member states immigration is dominated by the low skilled. Only the United Kingdom records almost equal percentages of highly and low-skilled migrants. In Italy, Austria and Germany, by contrast, immigration is dominated now as ever by the lower skilled.[5]

Institutional Basis of European Migration Policy

European cooperation on matters of asylum and migration policy has been communitised[6] step-by-step. Until the end of the 1990s, intergovernmental decision-making procedures predominated, and this concentrated influence over common policies in the hands of representatives of the member states in the Council of the European Union (also called the Council of Ministers), in this case the Ministers of Justice and Home Affairs. Under the now communitised decision rules, member states share central powers and responsibilities with the supranational institutions of the EU. The European Commission now has the exclusive right to adopt legislative initiatives. The European Parliament has the right to participate in decision-making (under the "co-decision procedure"), which means that its agreement is necessary in the legislation process. The Council of Ministers adopts resolutions based on a qualified majority, which means that individual states cannot exercise a veto and a minority can be overruled. The most important EU instruments on asylum and migration policy, however, were adopted under the earlier intergovernmental procedures. To a large extent, they represent the lowest common denominator among the member states.

Cooperation between EU member states in matters of immigration policy has its origin in the realisation of freedom of movement, particularly the decision taken by France, Germany and the Benelux countries with the first Schengen Agreement in 1985 to abolish all checks on persons at their internal borders.

Although the European Commission simultaneously formulated the first guidelines for a Community policy on migration, its power was called into question by the member states, and any cooperation unfolded initially outside of European institutions on an intergovernmental level. Thus the Schengen Agreement specified that the states would determine measures to safeguard inner security after the abolition of border checks. These flanking measures were concluded with the 1990 Convention implementing the Schengen Agreement. Alongside cooperation on the part of the police and judiciary in criminal matters, this included the standardisation of regulations for foreigners entering and remaining for short stays within the "Schengen area" (a single Schengen visa), border police cooperation, and in asylum matters, the determination of the member states responsible for an asylum application. The provisions relating to asylum policy were adopted in the same year in the Dublin Asylum Convention, which was ratified by all EU member states and, after difficult internal policy ratification processes, came into force in 1997. Similarly, the Convention implementing the Schengen Agreement was subjected to considerable delay and did not come into force until 1995. Whereas the so-called "Schengen acquis" of 1997 was transferred into European law with the Treaty of Amsterdam, the "Schengen area" was expanded step by step beyond the original five member states. Today the Schengen regulations apply in all EU member states with the exception of Ireland and the United Kingdom, Bulgaria, Romania and Cyprus. Iceland, Norway and Switzerland are associated with the Agreement as non-EU member states.

Intergovernmental cooperation within the Schengen framework can be regarded as the driving force and laboratory for EU-wide cooperation in matters of migration policy and, over and above that, in criminal and police issues.[7] The coupling of cooperation on migration policy with questions of internal security has also given rise to a focus on control aspects of immigration policy.[8]

This focus also determined the second phase of cooperation on migration policy under the Treaty of Maastricht. Influenced by the fall of the "Iron Curtain" and strongly growing numbers of asylum-seekers, the 1990s were markedly characterised by member states' domestic priorities. In the absence of strong European powers and responsibilities, changing EU presidencies were, to a large extent, able to shape the agenda, which resulted in a lack of coherence in, and commitment to, the integration process. The Maastricht Treaty of 1992 formalised the previously purely intergovernmental cooperation and set it on a new basis in the so-called "third pillar"[9] of the European Union.

However, no such clear basis of power was established at the European level until the Treaty of Amsterdam in 1997, which reflects the central priority that asylum and immigration policies now enjoy in the EU. The Treaty of Amsterdam transferred these policy areas to the supranational first, or Community, "pillar", integrated the Schengen *acquis* into the treaties, and determined – after a transition period of five years (de facto six) and with slight restrictions – the introduction of supranational decision-making rules. The Amsterdam treaty also contained a detailed list of measures to be adopted within these five years. The five years after the 1999 treaty entered into force coincided with the date of the accession of eight new member states on

1 April 2004, and so pointed to the urgent need to come to an agreement on central matters before the admission of so many new members.

Whereas the 2001 Treaty of Nice made no appreciable changes to this basis of power, the Treaty of Lisbon negotiated in 2007 extends decision-making rules based on qualified majority voting and increased the involvement of Parliament by extending its co-decision powers to the one field that had hitherto been excluded: labour migration. Germany in particular adheres firmly to its sovereignty over this policy area; during negotiations, it secured the right of member states to maintain control over the volume of admissions. Due to Ireland's failure to ratify it, however, the Treaty of Lisbon cannot currently come into force.

In addition to the reforms in the treaties, decisions taken by the European Council[10] in recent years have also had a powerful influence on the dynamics and direction in which European cooperation has developed. Thus the 1999 Tampere European Council underlined the humanitarian basis of European asylum policy and the binding force of the 1951 Geneva Refugee Convention. A programme of action was agreed for five years to accompany the implementation of the Amsterdam treaty. In 2004 in Den Haag, the European Council extended this action plan for the following five years to include new focal points, in particular the external dimension of EU asylum and immigration policy. This aims at a stronger involvement of transit states and countries of origin outside the EU in the control of migration flows.

The directives and regulations concluded in the context of these institutional and political principles are discussed in the following sections.

Immigration Policy

Although the Treaty of Lisbon, also to be known as the Reform Treaty, should it ever enter into force, contains the aim of a "common immigration policy" (Article 17 Treaty of Lisbon), to date the EU has no comprehensive common regulations regarding the admission of third-country nationals or labour migration, with the exception of the right to family unification and two regulations concerning the admission of students and researchers. Instead, any cooperation has concentrated on formulating common regulations for crossing the external border, including a common visa policy.

Visa policy is one of the most communitised aspects of European cooperation where asylum and migration policy are concerned. The European Union has a list of currently 101 states whose citizens have to be in possession of a visa in order to cross the EU's external border. While member states may extend the requirement of a compulsory visa to certain other nationalities, there is, by contrast, no exception possible for countries in the list. This regulation has repeatedly turned out to be problematic for countries wishing to join the EU. This is because such countries are required to impose compulsory visas on socially, economically and culturally related neighbour states. In addition to uniform determination of countries for which a visa is compulsory, the procedure for issuing visas

has also been brought into line in recent years. The common visa policy is supported by an electronic visa information system (VIS) in which data for all visa applications in the European Union are stored, including the applicants' fingerprints and biometric data.

The central European instruments in relation to legal migration are the family reunification directive and the directive concerning the rights of settled third-country nationals. Both directives aim to harmonise national laws by specifying minimum standards. The directive concerning the status of third-country nationals who are long-term residents (2003/109) provides a framework for harmonising the legal status of third-country nationals (with a settlement permit, i.e. after five years of legal residence) with that of EU citizens. The original aim of extending EU citizens' rights of free movement to settled third-country nationals was only partly fulfilled due to numerous limitation clauses. Thus, for example, member states may determine numerical quotas for the immigration of third-country nationals who have settled in another member state or demand certain integration measures of such third-country nationals.

Directive 2003/86 establishes common minimum standards for the right to family reunification. Apart from the directives on the admission of students and researchers (see below), it is to date the only regulation at European level concerning the influx of third-country nationals. Third-country nationals may apply for family reunification if they possess a residence permit issued by a member state and valid for at least a year, and if they have justified prospects of obtaining a permanent residence permit. Refugees are excluded. The spouses and unmarried or underage children of legally resident third-country nationals can exercise the right to family reunification (core family concept). Within the context of national law, however, member states may consider the admission of other family members under the right to family reunification (extended family). Human rights groups and the European Parliament are especially critical of the possibility that member states may refuse residence to minors who have passed the age of 12 if they do not satisfy more strictly defined integration requirements. The power of member states to require potential family migrants to take steps towards integration even before entering the country (such as acquiring a command of the language) has also been met with criticism. A complaint brought before the European Court of Justice by the European Parliament that these regulations were contrary to international human rights standards was, however, dismissed.

Attempts by the European Commission to bring about European regulations for employment-related immigration, over and above the right to family reunification guaranteed by human rights, have failed, so far, due to the resistance of the member states. Only two directives concerning the conditions of admission of third-country nationals for the purposes of studies and for the purpose of scientific research have been adopted, the first in 2004 and the second in 2005.

In light of resistance to European regulations on labour migration, the European Commission has concentrated on areas where, in the eyes of the governments of the member states, the harmonisation of European regulations brings with it clear added value. This concerns first and foremost highly skilled migrants for whom there is strong international competition. Consequently the "Blue Card" initiative proposed by the European Commission for highly skilled persons from third countries provides for simplified, fast-track admission procedures and preferential rights of residence for such third-country nationals. According to this proposal, Blue Card holders would immediately receive the right to family reunification as well as the right, after two years' legal residence in a member country, to look for work in other EU countries without having to return to their home country. At the same time, the member states would retain the right to make the issuing of a Blue Card dependent upon the labour market situation within their country as well as to apply national law to the filling of available posts. Following European Parliament approval in November 2008, it is expected that the Council of Ministers will formally pass a corresponding directive in early 2009.

Directives concerning labour migration are planned solely for specific groups of people, such as seasonal workers, trainees and those employed by multinational companies.

Integration Policy

At the European level, the search for the most suitable concepts and measures for integrating immigrants into the receiving societies only began at the end of the 1990s. In any case, where integration policy is concerned, the EU has no power to make regulations. Instead, it can only be active at the level of coordination and the exchange of information. As a result, a network of national contact points on integration has been set up, with regular meetings providing a forum for the exchange of information and best practice for all member states. The outcome of this network cooperation is, among other things, the publication every two to three years of the Handbook on Integration.

In November 2004, on the initiative of the Dutch presidency, the Council of Ministers adopted a series of Common Basic Principles on Integration (CBPs). These include, among other things, the following: that integration is a two-way process between the immigrants and the receiving society; that immigrants must have respect for the basic principles of the EU as well as basic knowledge of the guest country's language, history and institutions; that an occupation and training are central to integration; and that immigrants should be involved as far as possible in the development of integration policies. Additionally, it was agreed to incorporate the integration of migrants in all public policies as a general principle and to introduce clear goals, indicators and evaluation mechanisms in order to facilitate the measuring of progress. To date, these general principles have not been further specified in a legal sense, and no accompanying measures have been adopted for their implementation. An independent instrument of integration policy at the European level is the European Commission's annual report on migration and integration. In a 2005 communication the Commission also put forward non-binding proposals on integration policy under the title "A common agenda for integration – framework for the integration of third-country nationals in the European Union". Some of these proposals were adopted by the Council of Ministers in its likewise non-legally binding 2007

conclusions on the strengthening of integration policies in the European Union by promoting unity in diversity.

Although the effect of such an approach is limited, reduced as it is to an exchange of information and being entirely on a voluntary basis, the member states also omitted in the Lisbon Reform Treaty giving EU bodies and institutions new powers to act within the field of integration. Instead, Article 79(4) of the Treaty of Lisbon states that the envisaged so-called "common immigration policy" should be developed "excluding any har-monisation" in the field of integration.

Irregular Migration

In light of increasingly selective immigration regulations since the 1970s and ever more restrictions with regard to asy-lum, there has been a strong increase in irregular migration across Europe. Naturally there are no reliable figures on this phenomenon. Estimates of the number of migrants who are not in possession of regulated residence and/or work permits are mostly based on the number of persons seized. According to one current estimate, there are between 2,8 and 6 million persons in the EU who do not have regular residence status.[11] Moreover, it is assumed that about 350,000 to 500,000 new irregular migrants are added to this figure each year.

If we consider the large number of regulations, measures and high level of cooperation in this area, then, without a doubt, the fight against irregular immigration can be regarded as the focal point of European cooperation in matters of migration. Even the 1990 Convention implementing the Schengen Agree-ment contained strict rules on checks at external borders, pro-visions concerning penalties for haulage companies that trans-port people with no entry documents, as well as restrictive visa regulations. In addition, cooperation in matters of repatriation and migration control with countries of origin and transit forms a focal point of measures against irregular migration. The Council of Ministers has yet to agree on a 2007 European Commission proposal for a Europe-wide directive intended to harmonise the prosecution and penalising of employers who employ irregular migrants from third countries.

To a certain extent, as compensation for the symbolic loss of controls on internal borders, provisions concerning checks at external borders have been particularly far-reaching, crossing over, among other things, into the foundation of the European border security agency, Frontex. Frontex, brought into being in 2005 as an agency to coordinate national border patrols, has seen its scope of activity constantly expanded. The creation of rapid border intervention teams (so-called "Rabits") merits special mention; these may be regarded as the forerunners of a possible European border police. The expansion of the border security agency's operative capacities and of its budget from EUR 19 million in 2006 to EUR 70 million in 2008 points to the political priority member states give to securing the external border. This priority setting adds fuel to complaints that the EU is building a "fortress Europe", an accusation made in scientific literature as well as by numerous non-governmental organisations.[12] The strengthening of this agency can likewise be regarded as an act of solidarity towards countries on the external borders of the EU, which are confronted to a particu-larly large degree by the problems of irregular immigration, not least due to tightened immigration controls.

A further dynamic focal point of measures to combat irregu-lar immigration concerns cooperation with countries of origin and transit as well as repatriation policy. The Schengen states recognised early on the advantages of a coordinated proce-dure for matters of repatriation by concluding a multilateral readmission agreement with Poland in 1991. The Treaty of Amsterdam transferred the power and responsibility for con-cluding readmission agreements with countries of origin or transit to the European Commission. The insistence on estab-lishing an obligation in the agreement to readmit even persons who are neither citizens of an EU member state nor of the third country concerned, however, has considerably limited the suc-cess of negotiations for such agreements. Since under interna-tional law a country is only obliged to readmit those of its own citizens who have been staying illegally in another country, to date important transit states such as Morocco have resisted concluding such a comprehensive readmission agreement. By contrast, it has been possible to secure the agreement of eastern European neighbours such as Ukraine and Russia in exchange for eased visa issuance procedures.

Repatriation policy is embedded in a more comprehensive cooperation with countries of origin and transit, which has become the true focal point of European cooperation in mat-ters of asylum and immigration policy, especially since the 1999 European Council meeting in Tampere.[13] Thus more recent cooperation and association agreements between the EU and third countries contain regulations pertinent to coopera-tion in matters of migration policy. While this cooperation was limited at first to aspects of migration control, border protec-tion and readmission, the cooperation agenda has expanded continuously in recent years. Financial instruments such as the "thematic programme" for asylum and immigration, which has been allotted a budget of EUR 380 million for 2007-2013, are recent additions. Other approaches endeavour to take a more comprehensive view of migration problems, incorporat-ing aspects of prevention and information alongside those of repression. The aim is to foster the links between migration and development policies and their priorities by optimising finan-cial transfers, introducing a targeted information policy and promoting circular migration. Since, however, the admission of third-country nationals for labour purposes remains within the power of the member states (see above), the EU has to work within narrow boundaries to implement such a two-way rela-tionship between migration and development or "migration-development nexus."[14]

Refuge and Asylum

Whereas migration balances for EU member countries have grown continuously since the 1990s, the number of asylum-seekers has declined sharply since 1993 (see Figure 2). This is attributable not so much to a diminution in reasons for leav-ing the countries of origin as to the tightening of asylum policy, which to a large extent has been coordinated at the European

level (see below). The sharpest decrease is recorded in Germany: compared with the absolute peak of 438,190 in 1992, the number of asylum applicants has declined significantly, comprising around 20,000 applications a year since 2006. Whereas the total number of asylum applications in the EU has decreased by almost half since 1999, individual countries on the external EU borders such as Greece, Malta, Spain and Hungary record growing numbers.

Figure 2: Numbers of asylum-seekers in Europe 1985-2007
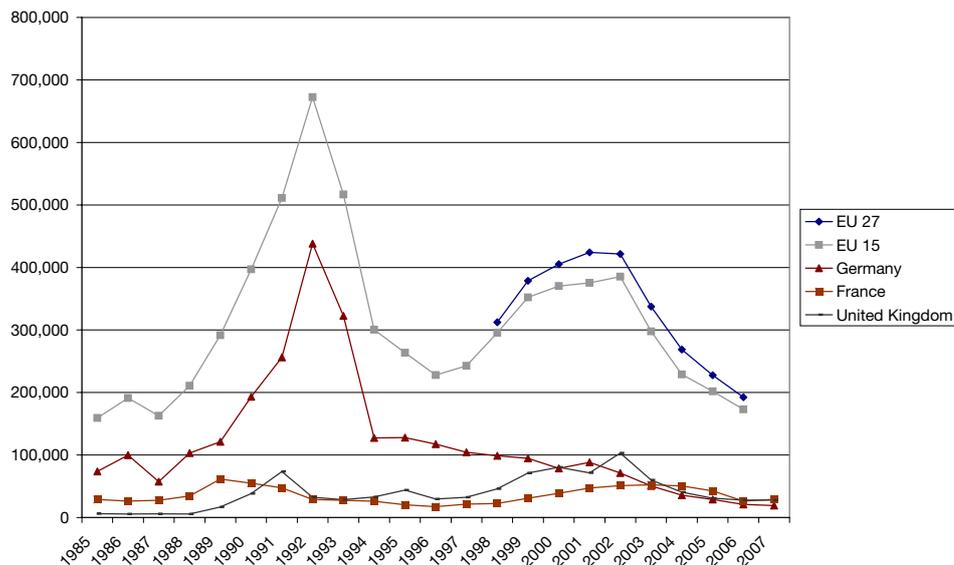
Source: Eurostat

The regulations of jurisdiction over the application review process contained in the 1990 Dublin Convention and, since 2003, the corresponding EC regulation (343/2003) make up the core of European policy for cooperation in matters of asylum. In cases where no member state has granted an asylum-seeker legal admission by means of a visa or residence permit, or where there is not already another member of the asylum-seeker's family who has been granted asylum, the first state on whose territory the asylum applicant sets foot is responsible for reviewing the asylum application. To enforce this regulation, an electronic information system was adopted to record the fingerprints of asylum-seekers and irregular immigrants ("Eurodac" Regulation 2725/2000).

It was already clear from the 1992 Maastricht Treaty work programme that national asylum standards would need to be harmonised to a certain minimum extent before it could be implemented. Nevertheless, it was not until the Treaty of Amsterdam established a binding timetable that minimum standards were successfully adopted for harmonising procedural and substantive asylum requirements. In real terms, these steps towards harmonisation were intended to ensure that there would be no incentives for asylum-seekers to undertake further migrations that would allow them to have their application for asylum reviewed in several successive member states, thereby extending their stay in the EU ("asylum shopping"). However, such a system of exclusive regulation of jurisdiction is only legitimate if the member states are using roughly the same criteria and procedures for recognising refugees. Directive 2003/9, which specifies minimum standards for the admission of asylum-seekers, aims to harmonise the living conditions of asylum-seekers in all member states. However, the directive leaves central questions unanswered, such as the right to gainful employment while applicants' papers are processed, and grants member states wide discretion in its implementation, leading only to a rudimentary harmonisation of admission conditions. Due to their sensitivity with regard to core aspects of national sovereignty, directives to harmonise the definition of a refugee and asylum procedures were greatly disputed and were adopted only after considerable delays.

Common criteria for recognising refugee status were adopted in Directive 2004/83 (also known as the Qualification Directive). The directive is based on and appropriates the definition of a refugee used in the 1951 Geneva Refugee Convention. Since the directive furthermore recognises non-state persecution, its unanimous acceptance in the Council of Ministers presupposed that legislation in member states, especially Germany, be brought in line. In recognising acts of a gender-specific, child, and non-state persecution as grounds for awarding refugee status, the directive pursues quite a progressive definition of this status. However, it also includes some points that have been criticised by refugee organisations, such as the exclusion of EU citizens from a right to asylum and the recognition of refugee protection granted by non-state actors (which, they say, could allow states to divest themselves of the responsibility), and a lack of clarity with regard to the application of the requirement to seek an internal flight alternative (which implies that asylum can be refused if the person concerned can live free from persecution in another region of their country of origin). This last point in particular leaves plenty of room for interpretation in the way the member states recognise refugee status – and for unequal application of the law. Finally, the third central asylum directive is the one on the minimum standards on procedures for granting and withdrawing refugee status (2005/85). Although it aims to define minimum standards on procedures for granting and withdrawing refugee status, the directive contains many exceptions which once again allow member states a great deal of discretion in its implementation. The vague provisions relating to safe third countries and so-called "super-safe" European third countries in particular have met with criticism from the European Parliament (2005), among others. Thus in these cases it is not only the "suspensive effect", i.e. the right of an asylum-seeker to remain in the member state pending appeal, that is left open. The possibility of excluding from asylum procedures asylum-seekers who have travelled illegally out of a safe European third country is regarded as particularly sensitive for observing the principles of non-refoulment contained in international refugee law,

which prohibit the removal of refugees if that removal puts them at danger.

The European Council of The Hague in 2004 envisaged the completion of a common European asylum system by 2010. In an evaluation of the harmonisation process to date, the European Commission delivered a relatively gloomy prognosis

Table 2: Jus soli regulations in the old EU member states (as at 2007)

Jus soli for second generation upon reaching age of majority	Jus soli for second generation upon birth	Jus soli for third generation	No jus soli
Belgium, Finland France, United Kingdom, Italy, Netherlands, (Sweden)[18], United Kingdom	Belgium, Germany, Ireland, Portugal United Kingdom,	Belgium, France, Netherlands, Portugal, Spain	Austria Denmark, Greece, Luxembourg

Source: Bauböck 2006

for achieving this goal.[15] Firstly, the directives adopted to date contain many loopholes and a lot of room for interpretation, which, upon closer examination, would require more extensive harmonisation. In light of member states' previous reluctance to adopt supranational regulations, this harmonisation will take place initially through the promotion of the exchange of information, in part by creating a European Support Office to oversee asylum matters. On the other hand, there is the question of solidarity among member states in admitting asylum-seekers and refugees. Contrary to the idea of a communitised asylum policy, the numbers of asylum-seekers in individual countries continue to differ greatly, and despite increased cooperation to protect the external border and the setting up of a refugee fund, mechanisms for member states to share the burden are still lacking. The proposal of the French EU presidency in the summer of 2008 to create, as part of the "Pact on Immigration and Asylum", a supranational European asylum office as a central body responsible for processing asylum applications could not be agreed on since the majority of the member states will not contemplate transferring sovereignty over asylum recognition to a central body. As a countermove, Malta was able to advance its demand that this declaratory Pact should include the possibility of setting up a coordinated resettlement system within the EU for recognised refugees.

As is the case with irregular migration, foreign policy is an increasingly important dimension in asylum and refugee policy. Not only does the EU support associated states in developing asylum systems, but it also promotes the development of admission capacities and the protection of refugees in or near the regions from which they originate by means of so-called refugee protection programmes. In the context of these foreign policy activities, the EU works with international organisations such as the UNHCR.[16] The falling numbers of asylum-seekers in the EU documents the effect of restrictive regulations in policies on admission, visa and asylum procedures, while states on the periphery of Europe such as Ukraine, Morocco and Libya are confronted by an ever growing refugee problem.

European Union Citizenship

The Maastricht Treaty introduced EU citizenship, which refers to the rights and obligations of citizens of member states that result from their right to free movement within EU territory. Every person holding the nationality of a member state

is automatically also an EU citizen. EU citizenship complements, but does not replace, national citizenship. The Treaty established the right, previously confirmed by the European Court of Justice, of every European citizen to free movement and residence within the EU, whether they are economically active or not. The Maastricht Treaty also established the active and passive right to vote in European and local government elections. Ultimately, EU citizenship also improved diplomatic and consular protection by giving EU citizens the right to turn for help to the diplomatic or consular authorities of any other member state represented in a third country, if the citizen's own state is not represented there. The Treaty of Amsterdam, finally, extended the rights of EU citizens by prohibiting discrimination on grounds of gender, race, ethnic origin, religion or ideology, disability, age or sexual orientation.

The existence of common EU citizenship, however, in no way affects the highly heterogeneous nature of citizenship regulations within the individual states. Although nearly all member states acknowledge the right to citizenship based on parentage (*jus sanguinis*) as well as the principle of awarding citizenship to persons born within their territories (*jus soli*) (see Table 2), there is no comparable liberal trend discernible where naturalisation regulations are concerned.[17] Despite the institution of Union citizenship, the EU has no powers that could touch upon national citizenship regulations.

Future Challenges

In the fifteen years of its formal existence, European asylum and migration policy has developed dynamically and is today one of the European Union's priorities. Central to the argument in this cooperation, time and again, is reference to the expectations of citizens who credit the EU with a special role in solving these matters, as can be seen in Eurobarometer surveys.[19]

The process of integration, however, is not always straightforward or without contestation. Two controversies have determined the development of this policy area to date: firstly, the tension between standardisation based on supranational regulations and the desire to safeguard sovereignty; and secondly, the tension between the priority nations attribute to internal security and universal human rights, humanitarian values and economic priorities. During and beyond the five-year transition phase allowed for in the Treaty of Amsterdam, cooperation has been based on intergovernmental decision-making procedures, particularly those requiring unanimity in the Council of

Ministers and the "co-decision procedure" involving the Council and the European Parliament. This has fostered forms of integration that safeguard sovereignty and support security policy priorities. The harmonisation of strict entry requirements and the assignment of responsibilities for checking asylum applications, however, have demanded more extensive harmonisation of substantive law. As presented above, European directives on family reunification and on the rights of settled foreigners as well as asylum procedures and the definition of a refugee come closer to this aim, without, however, significantly limiting the options for member states to formulate their own policies.[20]

With the strengthening of supranational actors, the Commission, the Parliament, and also the European Court of Justice, the thematic agenda of cooperation has been extended significantly in recent years. On the agenda today are first steps towards a common admission policy for labour migrants, greater standardisation of asylum systems, the creation of instruments for member states to share the burdens of migration policy in a spirit of solidarity, plus a comprehensive foreign policy agenda linking migration policy goals with development policy priorities. In view of the heterogeneity that has evolved within the Union and the continuing emotional debate on migration on the domestic front, a preference can be seen for less prescriptive, predominantly operative coordination, coinciding with cautious and somewhat reluctant harmonisation. Continuing external migration pressure as well as the demographic development within the EU will, however, continue to promote integration towards a common European asylum and immigration policy.

Endnotes

[1] In the following text we use the term European Union (EU) both for earlier European Communities and for those areas that, in the treaty, come under the "first pillar" of the European Community.

[2] See Lavenex 2006a.

[3] See Eurostat 2008.

[4] See OECD 2007.

[5] See OECD 2007.

[6] "Communitisation" is a term used within EU institutions to denote the transferring of a matter from the second or third "pillar" to the EU first "pillar" (see Endnote 9) so that it can be dealt with using the "Community method" described in this paragraph. See the EU's plain language guide to Eurojargon http://europa.eu/abc/eurojargon/index_en.htm

[7] See Monar 2001.

[8] See Boswell 2003, Geddes 2007, Lavenex 2001.

[9] The Maastricht Treaty on the European Union organised EU policy areas into three so-called "pillars". The original treaties, particularly the Treaty establishing the European Community with its supranational decision-making procedure, became the first pillar. The newly-founded Common Foreign and Security Policy became the second pillar, and the relatively non-binding cooperation in the area of justice and home affairs, which until the Treaty of Amsterdam also comprised matters of asylum and migration policy, constituted the third pillar.

[10] The European Council brings together the heads of state and government of the member states, plus the President of the European Commission.

[11] For more information, see the hompage of the CLANDESTINO project, which is sponsored by the European Commission. http://www.irregular-migration.hwwi.net/Home.2560.0.html

[12] See, for example, Geddes 2008.

[13] See Lavenex 2006b.

[14] See Lavenex and Kunz 2008.

[15] See Green Paper 2007.

[16] See Lavenex 2007.

[17] See Bauböck 2006.

[18] Sweden recognises a regulation by which, regardless of birthplace, minors are granted Swedish citizenship after five years' residence without the imposition of any further conditions and simply by informing the authorities.

[19] See Eurobarometer 2008.

[20] See Ette and Faist 2007.

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