

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 23 final

Brussels, 23.02.1994

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL
AND THE EUROPEAN PARLIAMENT

ON IMMIGRATION AND ASYLUM POLICIES

FOREWORD - PURPOSE AND CONTENT OF THE COMMUNICATION

Immigration, together with the separate but related subject of asylum, has continued to occupy an increasingly prominent place in the political agenda of the European Union and its Member States. It gives rise to public and parliamentary debate of growing intensity, and occasionally is the focus of acts of violence totally out of character with Europe's traditions and laws.

There is increased recognition that the issues involved need to be tackled on a cooperative basis. That has found expression in the provisions of the Treaty on European Union which formally designates the subjects as being matters of common interest, to be addressed in the context of a single institutional framework.

That is as it should be. The deepening of the European integration process calls for an integrated and coherent response, which combines realism with solidarity, to the challenges which migration pressures and the integration of legal immigrants pose for the Union as a whole. Failure to meet those challenges would be to the detriment of attempts to promote cohesion and solidarity within the Union and could, indeed, endanger the future stability of the Union itself.

The Commission therefore looks to this Communication as a basis to stimulate a new and wide-ranging debate as to how the new possibilities which the Treaty on European Union creates can be used to provide the coordinated response necessary, and the framework, to guide the Union in its future work.

To that end the Communication takes account of the work already done and developments on the ground. In addition, it takes as its base a number of agreed starting points drawn from earlier discussion, in particular the need for a comprehensive approach which addresses the key components of an effective immigration policy:

- action on migration pressure, particularly through co-operation with the main countries of would-be emigration to Europe;
- action on controlling immigration in order to keep it within manageable structures;
- action to strengthen policies for legal immigrants.

The advantage of a comprehensive approach of that kind is that it enables control and admission measures to be matched by long-term co-operation with countries and regions of origin and an active policy of advancing the situation of those third country nationals already legally resident in the Union.

The Communication looks beyond the existing work programmes of the Union in the relevant areas in ways designed to complement those programmes. It seeks to be realistic while putting forward new ideas and a new emphasis on how policy objectives can be pursued in operational terms:

Action on the causes of migration pressure

The Communication argues that this requires ensuring that immigration and asylum policies are fully integrated into the Union's external policies, and that the various external policy instruments available to the Union are used to address the root causes of those pressures. That could involve action at a number of different levels such as in the areas of trade, development and co-operation policies, humanitarian assistance and human rights policies.

Effective action in this area also requires ensuring the availability of accurate information on current migration patterns and likely future trends.

Action on controlling migration flows

Action to control migration flows will also require a policy response at a number of levels. It will mean defining and implementing common approaches to admission policies as regards admission of workers, self-employed persons and students and the approximation of admission policies for humanitarian reasons. It calls for policies to deal more effectively with the problem of illegal immigration by way of preventive measures and measures to address the issue of persons illegally resident in the Community, with a particular focus on combatting illegal employment.

Policies in respect of refugees and other persons in need of international protection also need to be addressed but the Communication suggests that the focus here is of necessity different. The focus for the purpose of asylum policies should be on ensuring that the examination of asylum applications can continue to operate in a fair and efficient manner. The Communication also deals with new issues thrown up by the war in ex-Yugoslavia by way of the development of schemes for

temporary protection. It suggests that a Union committed to cooperative action could examine how best to show solidarity to help Member States caught in a front-line position in responding to such situations.

Action to strengthen integration policies for legal immigrants

The Communication stresses that action in this area remains an essential element of the wider need to promote solidarity and integration in the Union. What this requires will be to ensure that integration policies are directed in a meaningful way towards improving the situation of third country nationals legally resident within the Community by taking steps which will go further towards assimilating their rights with those of citizens of the Member States.

Strengthening integration policies will also involve action to create the right economic and socio-cultural conditions for successful integration by way, for example, of actions in the field of employment and education. Equally it requires promoting information and dialogue and combatting racial discrimination and all forms of racism and xenophobia.

The various ideas which the Commission invites the Parliament and Council to examine are set out in summary form in Chapter IV of the Communication in terms of a possible new framework for action by the Union. The ideas set out there are not intended to lay down a definitive work plan at this stage. They do, however, represent a coherent set of proposals which Member States and the Commission itself will want to consider in drawing up a long term action programme that is now required to take account of both the new challenges and new possibilities offered by European Union. The proposals contained in Chapter IV should therefore be regarded as ideas to be discussed and elaborated upon in the debate which the Commission would wish this Communication to launch.

Translating those ideas into action will represent the next phase. The Commission will equally seek to contribute to that process by using the various instruments at its disposal, both in relation to the Plan of Action adopted by the European Council in December 1993, and the new framework for action by the Union suggested in Chapter IV.

TABLE OF CONTENTS

I.	INTRODUCTION - Background to Preparation of the Communication	1
II.	FACTUAL DEVELOPMENTS.....	4
II.1.	Evolution of public and political perceptions of immigration and asylum issues.....	4
II.2.	The Treaty on European Union.....	5
II.3.	Developments on the ground.....	7
II.4.	Legislative changes in Member States.....	7
II.5.	Developments in regard to the 1991 work programme.....	9
III.	THE DEVELOPMENT OF A EUROPEAN MIGRATION AND ASYLUM POLICY....	11
III.1.	Introduction.....	11
III.2.	Taking action on migration pressure.....	12
III.2.1.	The need for accurate information.....	12
III.2.2.	Dealing with root causes of migration pressure.....	13
III.3.	Controlling migration flows.....	20
III.3.1.	Introduction.....	20
III.3.2.	Admission policies.....	20
III.3.3.	Refugees and other persons in need of international protection.....	22
III.3.4.	Illegal immigration.....	27
III.4.	Strengthening integration policies for the benefit of legal immigrants.....	32
III.4.1.	Improving the situation of third country nationals legally resident within the Community.....	33
III.4.2.	Creating the right economic and socio-cultural conditions for successful integration.....	36
III.4.3.	Information and dialogue.....	37
III.4.4.	Combating racial discrimination and tackling the problem of racism and xenophobia.....	38
IV.	SUMMARY: A NEW FRAMEWORK FOR ACTION BY THE UNION.....	41
ANNEX I:	DESCRIPTION OF MAIN MIGRATORY FLOWS	
ANNEX II:	IMPLEMENTATION OF THE 1991 WORK PROGRAMME ON ASYLUM AND IMMIGRATION POLICIES	
ANNEX III:	RECENT DEVELOPMENTS WITHIN THE UNION	
ANNEX IV:	RECENT DEVELOPMENTS IN INTERNATIONAL FORA	

1. INTRODUCTION - Background to Preparation of the Communication

1. In October 1991 the Commission submitted two separate Communications on the Right of Asylum and Immigration respectively (SEC(91)1855 final and SEC(91)1857 final). The purpose of this Communication is to develop further the ideas contained in those Communications against the background of the new possibilities created by the Treaty on European Union (TEU) in the fields of asylum and Immigration. The decision to submit two separate Communications in 1991 was intended to underline the humanitarian basis of asylum rights as distinct from questions raised by Immigration issues in general. This distinction is as valid today as it was then; but it has become increasingly difficult to examine either subject without reference to the other. In this Communication, therefore, both subjects are addressed in a single document without losing sight of the characteristics of each which continue to make them distinct in nature.
2. The Communication also deals, as did the 1991 Communication on Immigration, with the important issue of the measures now necessary to strengthen integration policies for the benefit of legal immigrants. It has long been recognised that immigration is not a temporary phenomenon and that assumptions to that effect which were sometimes current in the 1950s and 1960s were based on fundamental misconception as to the nature of the migration patterns which became established in the post-war period. More importantly, immigration has been a positive process which has brought economic and broader cultural benefits both to the host countries and the immigrants themselves. Some have called for a complete halt to immigration: this is neither feasible nor desirable: what is necessary is proper management of immigration policy. The Community has always been a multi-cultural and multi-ethnic entity whose diversity enriches the Community itself and benefits all its citizens, but not without creating challenges for society as a whole and its immigrant communities. A .. comprehensive approach needs, therefore, to take account of that fact and address the issue of the presence of those third country nationals and their families - which often include a second generation born in the Community - and of newly arrived immigrants in terms of integration policies.
3. The Commission's earlier Communications on Immigration and Asylum were tabled in response to the invitation from the Luxembourg European Council in June 1991 to Ministers responsible for Immigration to submit to the following meeting of Heads of State and Government in Maastricht proposals on the harmonisation of policy in these areas. That decision introduced a new dimension to Member States' co-operation in these fields. Hitherto the efforts of the Community and its Member States had been primarily directed towards preparing new forms of co-operation in immigration and asylum policies that would be needed to manage the frontier-free area due to come into existence on 1 January 1993. To this end, they had drawn to a successful conclusion the negotiations which had led to the signature of the Dublin Convention and the resolution of all questions related to the External Frontiers Convention, except that of its territorial application. The Luxembourg European Council's invitation

to Ministers to move beyond this important but clearly limited objective reflected not only the fact that the substantive work on this first phase was now virtually complete, but also a recognition that the geopolitical and socio-economic background against which immigration and asylum issues had to be viewed was changing rapidly and called for a different level of co-operation than before, moving beyond procedure into substance.

4. If the Luxembourg European Council decision represented an important turning point in the way in which the Community and its Member States approached co-operation in these areas, the entry into force of the Treaty on European Union constitutes an even more significant advance, introducing as it does a Treaty obligation to co-operate within a single institutional structure on matters now recognised formally as being of common interest. The possibilities offered by the coming into force of the TEU were recognised by the European Council at its meeting on 10 and 11 December in Brussels. On that occasion, the Council expressed its determination to use to the full those new possibilities. The Council also approved a Plan of Action drawn up by the Council of Ministers of Justice and Home Affairs and a work programme which includes a number of measures in the area of immigration and asylum which are to receive priority during 1994.
5. In addition to these important institutional developments within the Union, other relevant changes which have taken place since 1991 make this a good moment to look again at these subjects. Although one thing that has not changed is the continuing, indeed increasing, high level of political and public interest surrounding them, some recent developments have made the development of an effective approach on immigration and asylum even more urgent now than before. The tragedy of ex-Yugoslavia has opened up a range of refugee-related questions, both old and new, which need answers of a co-operative nature. Legislation in certain key countries has changed or is changing. Public opinion has been further perturbed by and reacted to a number of violent and well-publicised incidents involving immigrants and asylum seekers. The subject in general now forms part of much wider international debate going beyond the European Union and on to the agendas of the UN Agencies, the CSCE, the OECD, the Council of Europe, the G-7 and the Transatlantic dialogue.
6. Just as the Commission felt it right to contribute, through its Communications of October 1991 on Immigration and on the Right of Asylum, to the debate which led to the adoption at the Maastricht European Council of the existing work programmes in these areas, it now considers it appropriate to transmit this further Communication to the European Parliament and the Council in order to stimulate debate in the new framework of the TEU. The Communication takes stock of what has been achieved so far and identifies what remains to be done either within or going beyond those programmes. It therefore looks beyond the scope of the Plan of Action adopted by the European Council in December 1993, and offers a framework for a long-term strategy on immigration and asylum which it believes can

provide the basis for the comprehensive and active policies the Union needs in these fields. The Communication is confined to immigration and integration of third country nationals. With regard to citizens of the Member States, asylum as between Member States should in general not proceed, because all Member States of the Union are fully committed to the respect of human rights and fundamental freedoms.

7. The Communication is presented in two parts: a factual and a policy-oriented part. The factual part covers the following subjects:
- (a) the evolution of public and political perceptions of immigration and asylum issues, including suggestions on how these might be made less negative;
 - (b) the institutional changes which the TEU introduces;
 - (c) the factual changes on the ground in the sense of migratory movements and the extent to which these correspond with what was expected;
 - (d) changes in legislation and attitude in Member States and elsewhere;
 - (e) the state of progress in implementing the work programmes approved by the European Council in December 1991.

The Communication is supported by the following Annexes:

- Annex I: Description of main migratory flows;
- Annex II: Implementation of the 1991 work programme on asylum and immigration policies;
- Annex III: Recent developments in the Union;
- Annex IV: Recent developments in international fora.

II. FACTUAL DEVELOPMENTS

II.1. Evolution of public and political perceptions of immigration and asylum issues

8. The migration phenomenon is as old as the world, linked as it is to human nature. Europe itself experienced significant emigration during the 19th and early 20th centuries. The very large scale population movements which took place then were to benefit both the countries of destination and Europe itself.
9. That situation was reversed in the 1950s and 1960s when some European countries relied on immigration both from within Europe and from outside to meet their labour requirements. Those immigrants were in turn to make a significant contribution to the reconstruction of Europe and the economic expansion which followed. Workforce immigration was slowed down progressively in the face of the recessions caused by the oil crises of the 1970s and the possibilities for legal immigration to the Community were greatly reduced. Nevertheless, former EU-emigration countries started evolving slowly into de facto immigration ones. Taking such a long-term perspective, it should not be excluded that this process would once again be reversed and that in the long run, for example, for demographic reasons Europe would have to increase possibilities for legal immigration.
10. Today's debate in which immigration policy continues to have an important place on the political agenda needs to be seen against that longer term background. Western Europe has a well-established and solidly anchored tradition of respect for human values and social justice. At the same time, there has been something of a polarisation in the attitudes of different sectors of society towards the issue of new immigration and towards established immigrant communities. This development has been aggravated by the present economic situation which is characterised by high unemployment rates generating social tension.
11. The vast majority of people retain their positive attitudes towards non-nationals. Those attitudes are better reflected in the public protest marches against racist attacks than in such attacks themselves. There are also people who are genuinely concerned by the perception that large numbers of people are immigrating to Europe. This, however, is often based on feeling rather than facts. But equally, it is perhaps this perception which has played its part in the increase in the number and ferocity of racially motivated attacks which have scarred the immediate past.
12. This poses an increasing problem for governments. They must retain credibility with moderate people on both sides of the argument in a situation where anti-democratic elements have sought to exploit the immigration issue. To counter the dangers this poses, governments need to build on the public's tradition of tolerance, by putting more energetic emphasis on the benefits of immigration, both economic and social, while at the same time showing that immigration is under control by putting a coherent long-term strategy in place.

13. An essential element of such a strategy would be to ensure that the public is well-informed: public perceptions could be influenced by providing reliable information on actual and potential migratory flows. At present, such figures are primarily available concerning asylum applicants. As a consequence, the public debate tends to concentrate quite heavily on asylum, whereas other migratory movements, such as illegal migration, are generally more substantial. A good information policy is therefore indispensable.
14. These national concerns are also European concerns. Not only have Member States recognized this through increased co-operation and institutional reform, but the European Parliament has become more active in this domain as well. In November 1992 the Parliament adopted two important resolutions as its response to the Commission's 1991 Communications on Immigration and Asylum¹. Since then it has discussed a number of further reports on subjects referred to in this Communication. One of the latest resolutions in this respect has been the resolution adopted by the Parliament on 19 January 1994 on the basis of the Lambrias report on a European refugee policy².
15. The Union has to tackle these issues and, although each national situation may require a specific solution, it should examine how it might contribute by providing a general framework within which a European Immigration and Asylum Policy can be developed.

11.2. The Treaty on European Union

16. The Treaty on European Union offers new opportunities for the development of policies relating to immigration and asylum, as it brings into the single framework of the Treaty aspects of foreign and security policy (Title V) and of justice and home affairs (Title VI). As argued in Chapter III, the development of a comprehensive approach requires a combination of policies: it requires the co-ordination of traditional areas of activity, such as social policy, aspects of common foreign and security policy and trade, co-operation and development instruments as well as migration and migration management policies. The TEU brings all of these policies within a single institutional framework and therefore creates new possibilities for the development of the comprehensive approach which is now required.
17. Title VI of the Treaty enshrines in a binding instrument the obligation, which Member States of the Union have assumed, to cooperate in a number of areas of identified "common interest", including in particular asylum and immigration. To some extent, this formal commitment consolidates and codifies a cooperation which was already happening through more ad hoc machinery to deal with questions agreed to require a joint rather than a dispersed response.

1 Resolutions A3-0280/92 and A3-0337/92. Annex III contains a summary of the major paragraphs of these resolutions.

2 A3-0402/93.

The move from ad hoc intergovernmental cooperation, theoretically reversible at any moment, to a Treaty commitment to cooperate on a permanent basis nevertheless constitutes a considerable political signal both to public opinion in Member States and to the outside world.

18. Title VI also lays down clear rules and procedures for cooperation in these new areas, spelling out the respective roles of Member States, the Commission and the European Parliament, and opening up the possibility of engaging the interpretative authority of the Court of Justice. If less streamlined than the most evolved of the Community's decision making procedures as introduced by the Single European Act, Title VI nevertheless allows, where immigration and asylum are concerned, for all Member States and the Commission to come forward with initiatives; for the European Parliament to be regularly informed and consulted; for joint positions, joint actions and conventions as instruments of cooperation; and for a more rational, more stratified and more coordinated structure of official committees and groups leading to political decision-making in the Council within the unified framework of a Single Treaty.
19. Article K9 of Title VI also creates the possibility for further institutional developments in that it provides that "the Council acting unanimously on the initiative of the Commission or a Member State, may decide to apply Article 100C of the EC Treaty establishing the European Community to action in areas referred to in Article K1(1) to (6)". This Article therefore opens the door for a possible transfer of certain areas of Title VI, including asylum and immigration policies, to the EC Treaty domain. The Declaration on Asylum attached to the Final Act of the Treaty required the Council to consider, by the end of 1993 the possibility of applying Article K9 to asylum policy. In November 1993 the Commission submitted a report on that issue to the Council. In its report the Commission stated that in its view "despite the advantages offered by Article 100C ... the time (was) not yet right to propose the application of Article K9 so soon after the entry into force of TEU", but also indicated its belief that "those advantages demonstrate that the question of the possible application of Article K9 to asylum policy should be examined again in the light of experience."
20. The Treaty on European Union provides, therefore, a new political commitment; a clear set of rules, procedures and possible instruments; an opportunity for all the institutions and Member States of the Union to involve themselves in new areas of major public and political concern; and rationalised and better coordinated structures for preparing political-level decisions. Since there is also a potentially significant agenda for these new structures to address, the Union owes it to itself and to its citizens to put the possibilities offered by the Treaty to early and effective use.

11.3. Developments on the ground

21. Annex I gives an indication, albeit on the basis of available statistics which are not always directly comparable, of the trends in migratory movements since the Commission's 1991 Communications. It is clear that, although there have been changes in the patterns and a number of unanticipated developments, the overall pressures have not diminished and are unlikely to do so. According to EUROSTAT, total immigration into the Union in 1992 has been estimated as involving 2 million persons, half of which related to third country nationals. In 1992, Member States received about 570.000 asylum applications, but figures available for 1993 indicate a significant drop. In addition, the figures in the Annex show that despite some common trends, the situation with regard to immigration and asylum differs between the Member States with Germany, for example, receiving more asylum applications than all other Member States taken together.
22. On one side of the balance sheet, the concerns about mass movements of people towards Western Europe from the ex-Soviet Union and its previous sphere of influence have not yet materialised, even if significant movements have taken place within the area east of the former Iron Curtain, particularly within the component parts of the ex-Soviet Union itself. On the other hand, migration pressures from the South, particularly from North Africa, have if anything increased for both demographic and economic reasons. Furthermore, on the Union's own doorstep, the tragedy of the former Yugoslavia has produced large-scale movements of people forced from their homes by developments which do not fit patterns with which Western Europe is familiar or equipped and which require new and tailored responses. Moreover, a combination of modern travel possibilities and the readiness of unscrupulous traffickers in human beings to exploit them has swelled the numbers of would-be immigrants into Europe from more distant parts of the world.
23. Changes which have taken place since 1991 do not imply that there will not be further changes in future. They merely point to the increasing need for close monitoring of what is happening at any given moment and for putting to maximum use whatever instruments may exist for predicting accurately what might happen next.

11.4. Legislative changes in Member States

24. One of the most important developments since 1991 has been the introduction of the concept of "temporary protection". This has been developed to avoid an over-burdening of asylum procedures in cases of mass influxes. Responding primarily to developments in former Yugoslavia, many Member States have adopted special legislative provisions on temporary protection. These provisions generally constitute the legal basis for temporary admission of people in need of international protection. Although the actual contents of these provisions vary among Member States, some common features can be distinguished:

- the schemes are set up for mass influx situations only;
 - although the persons concerned may have applied for asylum, or may do so at a later stage, their asylum applications are often not being dealt with, i.e. as long as the temporary protection scheme is applicable;
 - the temporary nature of the need for protection makes it particularly important to develop and, the situation in the country of origin allowing, to implement orderly return and rehabilitation policies.
25. There is no uniform pattern in the secondary rights of those who enjoy temporary protection: the right to family reunification, for example, differs between Member States. There is a tendency in Member States to allow people under the temporary protection scheme to work during their stay but the right to work is sometimes limited to vacancies that cannot be filled by the resident workforce.
26. Since 1991, all Member States have adopted measures to deal with the increasing numbers of asylum applicants. In general, the measures taken can be sub-divided into two categories: measures aimed at reducing the number of asylum applications to be considered in substance by introducing new procedures for the receivability of such applications; and measures aimed at reducing the time needed for the substantive examination of asylum applications, for example, by reducing the appeal rights of applicants.
27. The introduction by Member States of rapid procedures for manifestly unfounded applications and the implementation of the third host country principle are examples of the first set of measures. Although the majority of Member States have introduced such procedures, this is not to say that the procedures are similar. The third host country principle, for instance, has been interpreted differently in various Member States. According to this principle, an asylum applicant can be sent to a third country if he or she has already received protection from that country or had the possibility of asking for asylum while transiting through it or if it is clear that he or she will be admitted to the third country. Differences between Member States in applying this principle relate in particular to the interpretation of the criteria with respect to the general situation in the host third country.
28. The most common measure to speed up substantive procedures for dealing with asylum applications is the increase of staff. France, Germany, the UK, Belgium and the Netherlands, for example, have considerably increased the number of staff dealing with individual asylum applications, but similar developments can be noted in other Member States as well. Some Member States have also limited the appeal rights of applicants. Alongside a restriction of appeal rights, a withdrawal of the suspensive effect of an appeal in certain cases has been introduced in some Member States.
29. Special mention should be made of recent constitutional changes in Germany and France. In both cases the amendments adopted were aimed at making it possible to apply the Dublin Convention and other similar arrangements in relation to the issue of which country has responsibility for dealing with individual asylum applications.

