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COMMISSION COMMUNICATION TO THE COUNCIL  
AND THE EUROPEAN PARLIAMENT ON  
IMMIGRATION

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As an important migration crossroads, Europe has always witnessed striking population movements. Over recent decades, though, there has been a major shift in that the kind of traditional immigration which often had its origin in the search for work and was generally regarded as a short or at most medium-term phenomenon has now given way to a trend towards the reunification of families and the arrival of refugees and asylum-seekers.

As a result, the whole immigration issue has been pushed to the forefront of political debate in the Member States, all the more so with the southern countries in the Community - long-standing countries of emigration - now themselves becoming the target for inward migration, sometimes on a substantial scale. Each country, with its own history, its own traditions and its own peculiar geographical situation, tends to take the line it thinks most appropriate. The problem is, though, that whatever one country does may affect the situation in the others.

The prospect, born of the Single Act, of a single economic area with no internal frontiers, coupled with the need to guarantee the free movement of persons, has led the Commission, at the instigation of the European Council, to set this debate in motion. Such is the aim of two communications on immigration and the right of asylum which have been transmitted to the Council and to the European Parliament: to stimulate discussion on the attitudes and practices of Member States facing similar problems in advance of the intergovernmental conference on Political Union getting down to looking at the new institutional framework within which the problem might be addressed.

Hence, adopting a global approach to the problem, this document develops proposals for action based on three main considerations which combine realism with solidarity:

- **Taking action on migration pressure.** The point here is to make migration an integral element of Community external policy. The most promising approach in the long term is still to seek the right level and to aim for cooperation between the Community and the Member States, coupled with moves by the countries of emigration, and especially the developing countries, to strike the right balance between immediate measures and demographic trends.
- **Controlling migration flows.** Without seeking to prejudge the question of the Member States' capacity for absorbing immigrants (which, in some cases, would seem to have reached its limits), and on the basis of an agreed stance on migration flows, the point must be to control existing immigration channels, bearing in mind the fact that all Member States have now adopted restrictive provisions: measures to combat

Illegal immigration, a joint approach to the right of asylum, approximation of criteria for reuniting families, formulation of a joint code on temporary contracts.

- **Strengthening integration policies for the benefit of legal immigrants.** Action at Community level can boost the chances of success of national integration policies, in themselves an essential element in terms of guaranteeing democracy and solidarity.

## I. INTRODUCTION

1. An awareness of the reality of immigration and of the considerable role it had played in postwar economic growth dates from the 1980s. Governments have gradually become convinced of the need to adopt more specific policies on immigration in order to make them more effective.

Another feature of the end of this decade was the European dimension gradually assumed by this problem. The European Council discussed the issue at regular intervals (Hanover 1988, Strasbourg 1989, Rome 1990, Luxembourg 1991) while the European Parliament has also examined it especially in the Malangre report adopted in September 1991. It accordingly became accepted that unilateral action was no longer possible and that any effective action would require joint analysis of the situation and even joint initiatives.

### Greater public awareness

2. The constant demographic pressure from the south and the emergence of a potential source of migration in central and eastern Europe, coinciding with completion of the internal market and the consequent free movement of persons, has heightened public awareness to the problems of immigration. After all, in a Community where there will no longer be passport checks at the internal borders, it is essential that this new freedom is not misused to bypass the legal/administrative system established to control immigration. The Community has a responsibility to act in such a way as to safeguard its own objectives while respecting the economic and social equilibrium of society in each of its Member States.

3. The growing unease in public opinion derives from the paradox that characterises immigration: despite the move in the majority of Member States in the mid 1970s to halt permanent legal immigration, it still continues. The facts contradict policy statements, which are becoming increasingly out of step with reality. This reality reflects a certain powerlessness in the face of an immigration not fully under control. In this context, the problems of integration facing legal immigrants in the Member States are particularly revealing. A society cannot afford to tolerate a split which would result in the exclusion of part of its population. There is a social imperative to maintain the equilibrium of our societies.

With public attention polarising around the arrival of new immigrants, measures concerning migration flows are linked to any integration policy as traditionally found in western democracies. This dual requirement arises against an international background where complacency can prove a luxury in view of the profound changes in the structure of immigration.

#### Structural changes in immigration

4. During the 1950s and 1960s, the Member States relied consistently and repeatedly on workforce immigration. Essentially, this was for economic reasons. It was presumed that it would be for a limited period. Indeed, the intention was to meet the needs of the host country and not to resolve the structural imbalances potentially affecting the countries from which the immigrants came. For this reason, immigration policies were not based on any deliberate intention to increase the host country's population (as was the case in the United States, Israel, etc.). Immigration was not seen as a phenomenon with long term consequences.

5. During the 1980s, two phenomena affected the structure of immigration and permanently changed its nature:

- On the one hand, as a result of the economic crisis after the oil crises, which led to considerably worse unemployment than in the past, limiting immigration could appear to be one way of solving the economic problems of western societies. Accordingly, permanent legal immigration on economic grounds was progressively halted in the majority of Member States, giving rise to official comments about the end of immigration.
- On the other hand, the retention of exemptions on humanitarian grounds (right of asylum and family reunification) were twin challenges to the official line:
  - albeit to a limited extent, immigration remained possible because specific procedures such as the right of asylum were increasingly used by potential emigrants for purposes other than those for which they were originally designed;
  - the policy of family reunification, and the emergence of a second generation often born in the host country, transformed this workforce immigration into settlement immigration. This profound transformation of the structure of immigration makes it essential for governments to review their approach in order to deal with a quite different situation.

Moreover, illegal immigration persists in cases where persons enter the territory of a Member State legally but extend their stay beyond the authorised period. Clandestine immigration across frontiers is less of a problem.

Finally, some Member States have to cope with sudden and major migration surges (e.g. Albanian nationals fleeing to Italy and Greece) which do not fit the traditional analysis. These unregulated movements are treated legally on a case-by-case basis.

6. The link progressively established between immigration in its wider sense and the right of asylum gave rise to a feeling that the ever greater recourse to the right of asylum was becoming a parallel but legal immigration route. Indeed, exercising this right is subject to a procedure inappropriate for dealing with the present huge number of applications. The resulting perverse effects rob the right of asylum of its special nature. This is a perilous trend which is in danger of obscuring the humanitarian basis of the right of asylum, which our societies must keep intact.

The Commission considers it vital to act against this confusion. For this reason, it is submitting to the Council and to the European Parliament a parallel and separate communication on the right of asylum, examining this issue as such. It sets out the fields in which greater cooperation and a degree of harmonisation between the Member States would be a way of safeguarding the real essence of this right, in order to avoid its practical application blurring the distinction between it and immigration.

7. Migration flows are also affecting a wider area. Immigration no longer affects only the most industrialised northern Member States. In recent years, those southern countries traditionally supplying immigrants now receive them. Accordingly, with the exception of Ireland, all Member States are affected by immigration. Traditional national policies, generally comprising the supervision and management of immigration, no longer seem able to supply satisfactory solutions to the problems affecting almost all Member States and which are, accordingly, of a quite different nature.

#### The international context

8. This structural change is taking place in an international context which gives rise to a vague sense of unease. Demographic pressure, particularly in the southern countries, plays a key role here. Certain countries with which there are already traditional migrant links (countries in the Mediterranean Basin, former colonies) have now implicitly built into their development policies the potential for emigration as a contribution to their structural economic problems. This issue poses the problem of north-south relations, the relations between these countries and the industrialised world. Demographic pressure from these countries is also a function of the success of their development policies.

9. Recent developments within Europe have only heightened the sensitivity of Member States. The freeing of central and eastern Europe has given rise to visions of the possible effects of these peoples rediscovering the freedom to travel in Europe denied them for the past 40 years. The difficulties arising from the transition towards a market economy and a constitutional democracy are an illustration of this tendency, which arises from the following oversimplification: anyone becoming unemployed is a potential emigrant. This change has had two effects:

- on the one hand, citizens of these countries can generally no longer benefit from the right of asylum to settle in a Member State, because they happily no longer risk persecution in their country of origin;
- on the other hand, the new freedoms achieved in central and eastern Europe may lead to such a desire to emigrate as to overwhelm the economic and legal structures of the host countries.

The collapse of the Soviet empire and the abrupt revival of nationalities (for some of whom a diaspora is in prospect), introduces an additional element of uncertainty. The collective subconscious is increasingly taking note of these events, with uncertainty quickly giving way to fear. The new situation arising from the events in Moscow in August 1991 forces a response which must go beyond the management of immigration in the host country to deal with the causes of emigration in the source country.

10. In this delicate series of changes, the duty of meeting the expectations of other European countries with awakening democracy and liberty must be made compatible with the economic and social realities of the Member States. For this reason, it is imperative to resist reaching hasty conclusions. Whilst it is, of course, not possible to anticipate the consequences of extreme events such as civil war, it is the Community's duty to clarify the conditions of economic development. The Community would undoubtedly bear some responsibility if it permitted the loss from these countries of their elites, particularly in the intellectual and technical fields.

The Community would also bear responsibility if, in failing to control migration flows, it allowed the disruption of the social equilibrium of the Member States by new populations which could not be integrated. The Member States must avoid any split in society which would exclude those persons the society could not absorb. The responsible approach of the Member States has to lie between these two extremes.

11. The Community is aware it must take action on all the factors contributing to migration flows. Economic aid, however, is primarily aimed at the first objective of development and therefore has only an indirect effect on the specific causes of emigration. Despite increasing such aid (tripling the funding under the new Mediterranean policies, new provisions under the Lomé IV agreement), and the implementation of new initiatives (PHARE programme for the countries of central and eastern Europe), these measures are not designed to prevent all emigration. They can, of course, contribute to the organisation of exchanges which meet the real needs (e.g. with regard to training), this being preferable to spontaneous, and hence uncontrolled, emigration. Such a response is fundamentally inadequate because it begs the question of north-south relationships and the transition problems of the former "popular democracies".

To a certain extent, emigration is a reflection of the difficulties encountered by these countries. In this connection, it is important to limit the "brain drain"; to do so will require the strengthening of scientific cooperation activities, thereby contributing to the development of resources in the countries of origin. In addition, there is the need to achieve greater responsibility in development policies.

12. This new international situation coincides with the inauguration within the European Community of the free movement of persons on 31 December 1992 and the abolition of internal frontiers. The Commission considers that, unless prompt action is taken, this development could entail a risk that the absence of checks at internal borders will render any control of immigration impossible. It is the Community's duty to act to prevent such perverse effects, which would hinder the achievement of objectives set out in the Single Act. This has led the Member States to recognise the need for a common approach by the Twelve and to discuss ways in which they can cooperate. The interdependence of various national situations, taken together with the permeability of borders, requires joint action, if only on grounds of efficiency.

13. These discussions, progressively becoming more extensive, have resulted in the identification of two key concepts:

- on the one hand, control of migration flows as a fundamental aspect of any immigration policy; the goal of free movement of persons within the Community justifies such joint measures;
- on the other hand, the equilibrium of our societies makes it vital to integrate immigrants, particularly where it is established that immigration is for settlement. Only in this way can the Member States remain faithful to their democratic and humanist tradition.



It became clear, moreover, that there was a close link between these two aspects. Accordingly, the principle gradually became established that integration of immigrants could only be achieved by controlling migration flows. It is this principle which must guide all joint action. A joint approach is justified by the logic of free movement. Given that the problem extends beyond the geographic boundaries of any single country, joint solutions are better able to solve these problems than national strategies.

14. In spite of sharing principles, objectives and similar problems, the Member States' implementation of a restrictive legal/administrative framework has proved insufficient to either control migration flows or to ensure the integration of immigrants legally settled in the country. Current responses by Member States remain incomplete and limited, inasmuch as cooperation must be more than just the implementation of a Europe without internal frontiers.

Better control of migration flows, the prerequisite for any harmonious integration, can only be achieved by an approach which blends realism and solidarity. Moreover, the prospect of the treaty on political union and, in particular, the German initiative to be found in the annex to the conclusions of the European Council in Luxembourg, represents a challenge and an opportunity for the Community to consider, here and now, the pointers it can give on the future framework of political union.

#### 11. THE COMMUNITY AND ITS MEMBER STATES: SHARED PRINCIPLES AND INDIVIDUAL VARIATION

15. All Member States have the same conception of constitutional democracies. This is an important point because it implies both obligations towards those legally resident and the guarantee of fundamental rights for those in contravention of the law or persecuted. Underlying the legislative codification of these principles, this means that there is a set of principles shared by all Member States.

#### Shared fundamental principles: respect for the law and integration

16. At the present time, all Member States have adopted restrictive provisions concerning permanent legal immigration for economic, social and hence political reasons. This reflects the discretionary powers retained by Member States with regard to economic migration. Generally, these powers are invoked in line with the economic and social realities and the capacities of the host country, without examining the motives of the source country. This principle has become less effective because it includes exceptions which have gradually come to overshadow the principle.

17. There are two kinds of exception:

- humanitarian exceptions, which by definition cannot be easily controlled:
  - family reunification: given that a family unit living together remains one of the basic pillars of western societies, Member States permit the arrival of other members of the family. However, a number of Member States are challenging the scope of this concept, which is not interpreted in a uniform manner.
  - the right of asylum, codified under international agreements by which the Member States accept in advance the presence on their territory of those persons shown, after completion of a specific procedure, to have been the victim of persecution in their country of origin.
  - Secondly, exceptions on economic grounds: in particular temporary work contracts which have controllable quantitative consequences inasmuch as these merely reflect an ad hoc response to the needs of specific economic sectors. The weakness of this system lies in the fact that legal temporary immigrants may, by extending their stay beyond the authorised period, become illegal immigrants.

18. Integration of legal immigrants within the host societies comprises the final part of this set of principles. Legislation has progressively granted new economic and social rights to immigrants in view of the increasingly permanent nature of their settlement. Moreover, a return to the country of origin, even where measures are taken to encourage it, is becoming increasingly difficult to implement. Integration is made even more imperative by the emergence of a second generation which, often born in the host country, has much greater links with it than with the country from which the first generation came.

19. As early as 7 March 1985, in its "Guidelines for a Community policy on migration", the Commission emphasised that integration should only be the result of joint efforts by the host population and the migrants themselves. This is a dynamic process based on joining the system of the host society because it permits participation by those belonging to it. The Member States enshrine this fundamental principle of integration in their national legislation by using the parameter of the length of legal and permanent residence.

Comparable problems in all Member States

20. In spite of this principle that no immigration is possible save for exceptions, particularly on humanitarian grounds, immigration continues in all Member States. Migration currents continue over a long period, reflecting historical and geographical realities.

A new use of the right of asylum

21. Exceptions on humanitarian grounds have become an increasingly significant constituent of immigration. This is true of the right of asylum. Since the middle of the 1980s, there has been an unprecedented increase in all Member States in the number of persons requesting the right of asylum. Originally limited to those suffering real persecution, this specific procedure has been swamped by persons seeking particularly the social rights (work, social security benefits and, especially, right of residence) granted to asylum applicants but no longer being granted in other cases as a consequence of the halting of economic immigration. The rapid fall in the proportion of applicants accorded the status of refugee, even though in absolute terms there has been an increase in the approved applications, has been interpreted as showing that this procedure is now being increasingly invoked by economic migrants seeking to use the right of asylum as a parallel immigration route.

This trend, which has gradually overwhelmed the bodies responsible for the right of asylum, has had two effects:

- firstly, it has made the procedure more time-consuming, lasting up to several years. During this period residence is legal if temporary;
- secondly, once this long procedure has been completed, governments hesitate to take the appropriate action when an application is refused. After all, it becomes difficult to deport humanely a foreigner who has already begun to become economically, socially and culturally integrated, or even impossible if, during this period, the person has simultaneously entered another legal category (e.g. by marriage) which makes deportation impossible.

22. One accordingly reaches the limits of the system in that, because the legal consequences cannot be invoked, asylum becomes a parallel immigration route. The crisis in the right of asylum in all Member States cannot be accepted unchallenged and the perverse effects have to be corrected if one is to avoid a backlash to an overlong period of inaction resulting in the abolition of this fundamental right. One must not lose sight of the fact that this situation is prejudicial to "bona fide" asylum seekers, the existence of whom cannot be ignored. The 1986 London European Council clearly stated this desire to attack the abuses alone, so as to demonstrate that there was no desire to challenge the principle itself.

### Illegal immigration

23. The growing significance of humanitarian exceptions has been accompanied by illegal immigration, even if only a minority actually enter the Member States illegally. This is the central question for the future and is undoubtedly the most difficult to resolve. Clandestine migrants are usually those overstaying their residence permits. Initially, the person enters legally, either as a tourist or as a temporary worker, hence it is only once this period has passed that the person's illegal and clandestine residence begins. There are also specific situations where a person is legally resident but illegally working (students doing undeclared work, seasonal agricultural workers working in other sectors). However, this attitude also reflects the economic reality of certain sectors where employers exploit low cost labour (low wages, no social security contributions, etc.), thus creating unfair competition. Firm action against undeclared work and the combatting of such recruitment is a government responsibility which should be assumed fully.

24. In recent years, immigration has accordingly become an important aspect of the national political debate. Often the subject of polemics, it gives rise to ad hoc legislative and administrative reforms designed to reassure a public opinion increasingly sensitive to this issue but rarely tackling all aspects of the problem. This reaction is all the more acute where immigration is something of which the public has recently become aware.

### The challenge of integration

25. There is no alternative to integration. After all, forced repatriation of immigrants legally settled in a Member State is not an option and voluntary repatriation has only a marginal influence. Integration requires the implementation of a legal/administrative system which allows the immigrant population to achieve parity with the national population. Educational measures to enhance public awareness must accompany such action. Lessons drawn from past instances of successful integration show that both of these types of action are needed if integration is to succeed.

The scale of integration difficulties is affected by the fact that some immigrants do not encounter these problems. Moreover, this social exclusion is not a matter of immigration alone because it also affects certain categories of the national population. This exclusion accordingly takes the form of difficulties in such strategic areas for integration as education, vocational training, employment, accommodation and access to social rights.

Awareness of the need for a joint approach

26. The Twelve now clearly desire a joint response. Accordingly, they adopted a common position at the Vienna Conference in January 1991, organised under the aegis of the Council of Europe, on the movements of Eastern and Central European populations, as well as at the March 1991 migration conference in Rome organised by the OECD. Moving beyond the legal debates as to which authorities should be competent to take such measures, the Member States have become aware that they have to act together. This decisive step forward allowed the "Free movement of persons" Coordinators to summarise, in the report which the European Council in Strasbourg commissioned for the General Affairs Council of 4 December 1990, the basic approach by emphasising that "control of the migration flows is a particularly significant aspect of immigrant integration policy".

27. The Member States and the Community are henceforth confronted by four major common problems:

- the manipulation of the right of asylum procedure to enable immigration on economic grounds;
- the constant need for management of the effects of continued immigrant pressure;
- control of migration flows, itself a prerequisite for:
- the integration of legally settled immigrants.

Variations between countries

28. Although shared principles have led to comparable difficulties, there are nevertheless differences between the situations in which the Member States find themselves. Indeed, for historical and geographical reasons, not all Member States face difficulties on the same scale: the proportion of non-EC nationals varies from 0.5% to more than 5% of the population. These rates reflect national realities. Far more significant variations are noted if the analysis is focused on restricted territorial areas. The immediate proximity of source countries (Mediterranean Basin, Central and Eastern Europe) may create particular sensitivity to this issue. These realities comprise a distinct element of national sensitivities which any joint approach cannot ignore.

