

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(91) 1855 final

Brussels, 23 October 1991

COMMISSION COMMUNICATION TO THE COUNCIL
AND THE EUROPEAN PARLIAMENT ON
IMMIGRATION

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.

29. A decisive role is, however, played by exceptions on humanitarian grounds. The right of asylum enshrined in the Geneva Convention is, for example, interpreted differently by the Member States. The major cause of this variation is differing views of the concept of "persecution". Legislative harmonization is achieved by the Convention itself, and in particular its First Article. It is therefore not this aspect which the Twelve must examine but rather its interpretation. The Community faces the need to ensure a joint approach to the right of asylum.

30. The same is true of family reunification. Indeed, the qualifying criteria (age, length of residence, etc.) are not always the same in the varying Member States. Here, too, divergences affect practices from one Member State to another. The resultant exponential effects, together with certain abuses, call into question the extent of this traditional principle. Again, only a common message can avoid the challenging of a fundamental principle. It is by means of such action that abuses can best be checked.

31. There are also differences between Member States in the sanctions applicable to illegal immigration and in their actual application. Indeed, such non-application is a basic problem. Many measures, repressive to be sure but indispensable for the control of immigration, are no longer being applied. In this way, public criticism primarily directed at illegal residents is also prejudicial to legal immigrants because of the inability to control migration flows. It seems essential that Member States show greater determination, as emphasised in their report by the "Free movement of persons" Coordinators.

32. Schemes to give legal resident status to illegal residents, as carried out in certain Member States, make this responsibility weigh even heavier inasmuch as this tends to make illegal residence a long-term route to legal immigration. Irrespective of the humanitarian motives behind such steps, it comprises a fundamental problem. It is even more serious where it is a way of escaping the paralysis of the procedures for granting right of asylum.

33. The problems raised by integration reveal a split in the social equilibrium of our societies. Totally new problems arise and traditional social assistance methods prove insufficient to resolve the problems of the exclusion of those people an overly structured society can no longer absorb. Experience demonstrates that there are a range of historically based integration routes.

One possibility is that the principle of equality and non-discrimination takes precedence over the recognition of ethnic minorities. In this case, integration problems are dealt with by applying common law. This approach may also be supplemented by the implementation of support mechanisms to give the least favoured groups greater equality of access to the socio-economic system. An alternative approach is to say that equality of opportunity between nationals and ethnic minorities should be directly managed by the social groups concerned. The decisive factors here are the length of the immigrant's residence and the government's institutional approach to the major integratory mechanisms (school, work, accommodation, implementation of exchange and dialogue structures).

34. A common approach to immigration must take into account these national variations and conflicting realities. Such steps are needed to remedy current divergences in practice and their consequences. Given that such measures are an indispensable prerequisite, it would be escapist to seek to avoid them by a unilateral attempt to manage these flows. Moreover, such realism seems indispensable in the light of the proposed political union. Indeed, the current responses of the Community and its Member States must be reinforced.

III. CURRENT RESPONSES REMAIN INCOMPLETE AND LIMITED

35. Over the past three years, the European Council has regularly discussed this question. In June 1988, at Hanover, it requested a report on the conditions of social integration of immigrants: this it received in June 1989. In December 1989, at Strasbourg, it asked for an inventory of immigration policies. As far as the conditions of access to the territory of Member States was concerned, this was provided by the "Free movement of persons" Coordinators, while a group of independent experts nominated by the Commission reported on integration policies.

On this basis, the General Affairs Council of 4 December 1990 conducted an initial debate. The Rome European Council asked the Council and the Commission to "examine the most appropriate measures and actions regarding aid to countries of immigration, entry conditions and aid for social integration, taking particular account for the need of a harmonised policy on the right of asylum". The Luxembourg European Council went further in suggesting a framework setting out the major lines of Community action as part of a future treaty on political union.

Intergovernmental cooperation

36. The planned free movement within an area devoid of internal frontiers required the Twelve to deal with a particularly sensitive dimension. The necessary measures have to be taken to ensure free movement of persons for all. However, the right of free movement does not automatically give non-EEC nationals legally resident in an initial Member State the freedom to settle in another Member State. It is within the framework of intergovernmental cooperation that the dimension of access to the territory of Member States is tackled. The Ad Hoc Immigration Group has drawn up two international conventions to this effect.

Asylum and the Dublin Convention of 15 June 1990

37. All Member States have signed the Dublin Convention of 15 June 1990, setting out which Member State is responsible for examining an asylum request. Under this Convention, the Member State responsible, designated on the basis of objective criteria indicating the country's explicit or tacit agreement to the asylum seeker's entry to its territory, is required to complete the procedure and to allow the applicant to remain on its territory throughout the processing of the application. This Convention, which is a useful supplement to the international humanitarian law not mentioned in the Geneva Convention, leaves the responsible Member State entirely free to grant or refuse the status of refugee. National divergences in the granting of asylum are not regulated by the Dublin Convention.

38. In order to move towards harmonisation of the conditions under which asylum is granted, the Strasbourg European Council asked the Immigration Group to carry out an "inventory of asylum policies with a view to their harmonisation". This is currently being done. In concentrating on the key points raised by an asylum application (the concept of initial host country, concept of a "safe" country, a condition that asylum applicants denied the status of refugee should be repatriated, better reciprocal flows of information between governments), substantial progress towards a joint approach can be envisaged. These aspects, and the background to them, are analysed in detail in the Commission's communication specifically devoted to asylum.

The Convention on the crossing of external frontiers

39. The Convention on the crossing of external frontiers, which was due to be signed in June 1991¹, appears more decisive still. This Convention, which defines the concept of external frontiers and sets out the conditions for crossing them and for issuing and using visas, also governs:

- the conditions for granting visas and their territorial validity, by sketching out a system which permits a common visa policy. These provisions cover only the conditions under which foreigners can travel to another country for a stay of less than three months, without taking up employment. The procedure permitting mutual recognition of a national visa by the other Member States, allowing travel in Europe without a multiplicity of visas, will nevertheless be the first tangible effect, for non-EC nationals, of the frontier-free area.
- abolition of the visa requirement for non-EC nationals legally resident in one Member State when entering another Member State for less than three months without taking up employment. This approach differs from extending these rights to the free settlement of non-EC nationals. All Member States regard this restriction as essential. Movement without visas by legal immigrants is a second tangible effect of free movement within an area with no internal frontiers.

At Community level

40. Community initiatives are designed to promote concerted migration policies through the Community's powers to regulate the labour market. The Commission has established an information and consultation mechanism based on Article 118 of the Treaty to encourage the adoption of joint positions, to progress towards the harmonisation of aliens legislation and to encourage the inclusion of provisions in bilateral agreements.

41. In any case, the ongoing efforts had no reason to deal with certain questions such as the choice of domicile or coordination of efforts to combat illegal immigration. Nevertheless, experience over the past few years shows that an economic upturn is accompanied by an increase in labour force immigration, both legal (temporary) and clandestine. Illegal immigration, however, like the direct infractions of Community legislation, often in the form of temporary immigration contracts, demonstrated the limits of the current approach.

1 A bilateral difficulty between Spain and Britain with regard to the territorial field of application is still holding up the signing of the convention, whereas all the other articles of the convention have been agreed and its signing can be expected in the near future.

42. The Community is also concerned about the integration of legal immigrants. This issue has been examined in general terms at the request of the European Council. Since 1974, there has been an action programme on behalf of migrant workers and their families, followed in 1985 by the "Guidelines for a Community policy on migration". These two texts were the subject of Council resolutions. There is one consistent feature of both: the Community approach is designed to achieve equal treatment in living and working conditions between legal migrants, whatever their origin, and citizens of the host country.

At the moment, all the traditional countries of emigration towards the Community already enjoy preferential cooperation agreements, especially in the commercial field. Over the last few years, the Community has proposed that cooperation agreements with these countries be substantially reinforced:

- the new Mediterranean policy, in respect of which financial resources have been trebled, is geared to promoting, as a matter of priority, an environment conducive to job-creating private investment; in terms of developing human resources, it is designed also to take account of the development potential within immigrant groups resident in the Community;
- the new Lomé IV agreements also provide for considerable strengthening of aid and cooperation with ACP countries, along with the introduction of new aspects such as decentralised cooperation and promotion of the private sector.

Moreover, the Community, through its economic aid to countries of central and eastern Europe in the context of the PHARE operation, and through the planned technical assistance to be given to the USSR, aims to improve economic conditions in these countries, as a factor in reducing emigration pressure.

43. More recently, the report requested by the Hanover European Council noted that, despite the efforts made, immigrants continued to experience less favourable socio-economic conditions than the nationals of Member States, particularly with regard to employment, accommodation and education. The second report requested by the Strasbourg European Council as part of the run-up to 1993 set out:

- on the one hand, the impact on integration of discrimination that would arise if certain rights remained reserved for Community citizens and were not opened up to legal immigrants;
- on the other, the consequences of contradictory practices with regard to integration policies: some of these differences are regarded as a potential distortion of the labour market and hence hindering the integration efforts of certain Member States.

Analysis of the current approach illustrates the limited nature of the partial responses applied to date. In the light of a future treaty on political union, and the recent conclusions of the Luxembourg European Council in June 1991, it is already essential to consider a new dimension in order to cope with the challenge of immigration.

IV. THE NEED FOR A JOINT RESPONSE WHICH IS BOTH REALISTIC AND COMPREHENSIVE

44. A Community response must be geared to improving control over immigration, without in any way prejudicing the right of asylum available to refugees who are genuine victims of persecution. An overall review must be carried out, with the aim of assessing the appropriateness of methods employed up to now in the twin context of controlling migratory flows and integrating immigrants. The question of whether a Community approach is now desirable may then be considered.

45. The policies outlined by Germany at the last European Council in Luxembourg, described in Annex I of the conclusions, open up new perspectives. A joint approach to policy in matters of asylum and immigration, and as regards foreigners generally, could lead to the adoption of legislative measures deriving from specific provisions in the future Treaty on Political Union. Without anticipating the institutional framework, which is still being discussed within the inter-governmental conference, the results of which are to be awaited, the Commission is keen to add its views to the discussion on essential aspects.

46. The report on immigration and asylum, which the Luxembourg European Council instructed the Immigration Ministers to prepare for submission to the Maastricht European Council, will have a crucial bearing on future work. This communication and the one on right of asylum are the principal elements in the Commission's contribution. The report will also be required to contain a detailed description and timetable of work leading up to future harmonisation projects. This can be achieved only through dialogue between the Member States and the Commission within the ad hoc Immigration Group. In this way, it will be possible to define more precisely the content of future action in the context of the Treaty on Political Union.

47. Whilst every effort should be made to take immigration fully into account in the various Community policies concerned, given the three key aspects of immigration, an overall approach can be guaranteed only by means of complementary, comprehensive and realistic responses:

- To counter external migration pressure: More extensive incorporation of migration into the Community's external policy;

- Control of migration flows, especially at the Community's external frontiers;
- Integration into the host society is essential for legally resident immigrants.

Countering migration pressure: Incorporation of migration into the Community's external policy.

48. Any move towards a common foreign and security policy will need to be based on closer coordination of national and Community development policies. This will help to improve the level of cooperation in respect of the political, social and cultural aspects affecting the labour market and, to a certain extent, the demographic balance.

In this connection, it would be necessary to favour targeted cooperation projects entailing specific measures mainly for the benefit of:

- poor rural and suburban regions of large urban centres identified as principal migration sources;
- educated members of the intellectual élite (brain drain) who are more likely to emigrate, through the creation of networks linking professionals in these countries and their European colleagues, with the aim of motivating them to participate in the development of their own country.

49. This is why the Community will be required to address the migration issue in future cooperation agreements, wherever necessary, dealing with such aspects as:

- the treatment of migrants in Europe, not only by the European authorities but also by the authorities in the country of origin;
- facilities made available to migrant populations by both parties, enabling them to contribute to the development of their country of origin;
- how, in each of the countries concerned, potential migrant populations can be kept in their areas of origin.

Control of migration flows

50. A common view and analysis on the part of the Twelve of migration-related problems is a prerequisite. The creation of harmonised statistical facilities providing reliable information over a satisfactory timescale is essential. During the General Affairs Council of 4 December 1990, the Commission proposed the setting up of a migration "observatory" in the form of an uncomplicated, informal structure based on cooperation and the exchange of information. It would comprise two complementary aspects: continuous monitoring of migration flows (a kind of early warning system) and the acquisition of information on immigrant populations on Community territory, with a view to analysis and evaluation of the various policies in this field.

Harmonised monitoring of migration flows

51. The first aspect (monitoring of flows) is being taken in hand by the ad hoc Immigration Group in close cooperation with the Commission, one of whose major contributions will be the resources of the Statistical Office. A questionnaire has been prepared by the Commission. The Member States have undertaken to provide, from 15 October 1991, the first batch of data covering the first six months of 1991.

52. As to the second aspect, one possible approach would be to draw up a report on the situation of immigrant populations resident in the Community and on integration policies, within the framework of the consultation mechanism set up by the Commission's decision of 8 June 1988. To this end, steps must be taken to improve the operation of this mechanism, with greater cooperation between Member States, particularly in terms of notifying measures.

Measures to combat illegal immigration

53. Parallel to the implementation of the Convention on the crossing of external frontiers, with a view to stepping up measures to combat illegal immigration, the Commission would be prepared, in the interest of efficiency, to submit a suitably revised version of its proposal on the approximation of Member States' legislation on measures to combat illegal immigration and the attendant question of unauthorised work. In this connection, successful public contract tenderers could be obliged to provide evidence of compliance with the rules of labour law and principals could be held liable in the event of non-compliance with the rules on clandestine employment by their sub-contractors, or the temporary employment businesses used by them.

54. Additionally, it would be appropriate to provide for an agreement between the Twelve laying down the common principles and procedures for the repatriation of immigrants in an irregular situation. As in the case of the repatriation agreement concluded between the Schengen group countries and Poland, it is essential that steps be taken to reconcile an effective, rapid clampdown on illegal residence with the new pan-European freedom of travel. An agreement of this kind would deal with intra-Community disputes and should be supplemented by bilateral or Community agreements with non-EC countries, by introducing the legal obligation to deport an irregular immigrant not to the country he was in prior to the illegal entry (in many cases, another Member State), but to a non-EC country.

A common approach to right of asylum

55. The separate communication on asylum leaves no doubt as to the importance of a joint approach in this field. Whilst not intended to replace that communication, this paragraph and the following one cover certain areas dealt with in the communication on asylum, since there is an inescapable direct link with the problem of immigration. Thus, besides ratification of the Dublin Convention and the development of contacts with non-EC countries wishing to undertake similar commitments, it would be desirable for the Community to participate in "informal consultations" organised under the aegis of the UNHCR. Such an initiative would be welcome not only as a source of mutual information but also in terms of the opportunity offered for carrying out a comprehensive review of the migration problem.

56. Abuse of the right of asylum as a vehicle for immigration and the adverse effects which it produces would be successfully countered only through a joint approach. This is in line with the European Council's desire to adopt, within the context of the new treaties, formal and practical harmonisation of the right of asylum. A joint approach of this kind could combine the following three key ideas:

- a) Specific procedure for applications which are clearly without foundation.

The introduction of shortened procedures for applications which are clearly without foundation should, on the one hand, deal with the admissibility of the application and, on the other hand, should entail rapid examination of the merit of the case. With due regard to the applicant's rights (personal hearing, right of appeal), clear evidence that an application is unwarranted will provide grounds for expelling the applicant, since he or she will consequently have failed to satisfy the conditions of the Geneva Convention and will be ineligible for admission as a de facto refugee.

b) Harmonisation of the procedure for granting refugee status.

The diversity of administrative and/or legal structures involved in decisions relating to the granting of refugee status, complicated further by the number of opportunities for appealing, extend the length of the procedure and therefore the applicant's period of stay. In view of the fact that the length of stay, even if temporary, becomes one of the reasons why it is impossible to expel those for whom refugee status is refused, it is essential to consider introducing a scheme whereby the applicant is given certain fundamental guarantees. In the first instance, the national authority will retain sole responsibility for taking a decision on the application, which must remain liable to appeal. It would be possible, through the appeal procedure, to move towards harmonisation of substantive law. Finally, if the executive refuses, for another reason, to grant right of residence to an applicant whose application has been finally rejected, it must immediately ensure that the person concerned is returned to a non-EC country. In this connection, it is worth considering steps to harmonise the terms of deportation, and exceptions where right of residence is granted on another basis.

c) Harmonisation of the criteria for granting refugee status.

Differing approaches to implementing the right of asylum derive from the national authorities' interpretation of the concept of persecution under the Geneva Convention. Legislative harmonisation would therefore seem inappropriate. It might, however, be worthwhile setting up a mechanism allowing a common interpretation of the criteria for granting refugee status. The first stage could entail the setting up of a system for preparing joint analyses of the political situation in countries of emigration, with a view to assessing the risks of persecution.

All these aspects of a joint approach are developed in the specific communication on right of asylum referred to in paragraph 55.

Approximation of criteria for reuniting families

57. There is also a pressing need to adopt common principles concerning the reuniting of families, taking account of fundamental rights such as are already enshrined in various areas of case law. The right to live with one's family is a fundamental right which cannot be denied by authorities. It is, however, possible to regulate procedures. Analysis of Member States' practices shows that procedures vary. They reflect not only socio-economic constraints but also the desire to control migration flows. The decision as to whether or not to allow a family to join an immigrant is a key factor in integration strategy. To avoid the adverse effects of divergent practices, the Member States should consider approximating their practices, as a means of creating greater mutual trust as to the respective flows.

With this in mind, it seems that the first step should be to draw up an exhaustive inventory of national practices. It would thus be possible to determine the strategic parameters underlying a Community approach ensuring greater consistency in the legitimate procedures for reuniting families in the various Member States (e.g. maximum age, concept of family, guarantee of personal rights, etc.).

A common framework for temporary contracts

58. A further potential area of activity is the establishment of a common framework for temporary employment contracts included with non-EC nationals: based on current practice in the Member States, the principles involved could be given a common basis, in the same way as the principles set out in the ILO Recommendation².

Legal immigrants: strengthening of integration policies

59. The Commission reiterates its belief that, without going so far as to introduce right of establishment automatically extended to the whole Community, equality of treatment for legally resident immigrants is a fundamental objective for the whole of society. Integration into the host society stems firstly from acceptance of the immigrant population, as reflected in the removal of inequalities and socio-legal uncertainties surrounding their status and, secondly, from the desire of the migrants themselves to adapt to the lifestyle in the country in which they are living. Equality of rights and obligations is an essential condition for achieving solidarity between the various elements of a society.

60. Security of stay and permanent residence for all those satisfying the stability criteria constitute the fundamental prerequisite for any successful integration. Without this foundation, uncertainty will pervade the other aspects of the integration process (reuniting of families, access to employment, housing, vocational training, culture, nationality, etc.). Security of stay is an essential condition in any integration process. This is why consideration should be given to the creation of a jointly agreed permanent residence entitlement which could be granted within a period fixed at half the time needed for naturalisation.

61. Looking more closely at the experts' report on "Policies on immigration and the social integration of migrants in the European Community", two specific proposals may be developed without delay:

² 1949, No 86, revised.

- Ensuring the observance of commitments already undertaken in agreements concluded by the Community with non-EC countries providing for non-discrimination of their nationals in matters of remuneration, working conditions and social security;
- Ensuring that non-EC nationals who are resident on a regular basis in a Member State are genuinely able to participate in Community exchange programmes (students, young workers, teachers and others).

62. Additionally, the logic of the internal market should entail the elimination of legal obstacles whereby the exercise of certain rights is subject to a condition of nationality. In this respect, consideration could be given to:

- granting access to employment in another Member State (at least the right to reply to existing job vacancies) to certain categories of non-EC nationals already allowed to reside permanently in one of the Member States; initially, this could apply to refugees whose status is recognised under the Geneva Convention and to non-EC nationals who have a chance of being employed as a frontier worker;
- ensuring the full implementation of the principle whereby the staff of a firm, including non-EC nationals, may move with the firm to another Member State in the context of free provision of services.

63. It is imperative that the implementation of policies regarding schooling, vocational training, employment and housing is consistent and non-discriminatory, as the Community cannot afford to waste these human resources. Additionally, long-term unemployment amongst migrant workers must be given specific attention. The immigrant population in work has been severely hit by the economic crisis and accompanying restructuring. Specific measures, especially in the linguistic field (illiteracy, learning of the language of the host country) should be incorporated into training measures, with special attention paid to women.

64. The situation of young people of the second generation born in the territory of the host country, some of whom possess the nationality of that country, poses a particularly acute problem. For reasons which are both cultural and economic, these young people are often marginalised in the educational system, in receiving guidance and in access to employment.

With a view to avoiding any social rupture leading to a two-speed society, it is important to develop specific information-based services for families, dealing with linguistic questions and providing guidance so that these young people may enjoy the same opportunities of employment as their native peers. One instrument to be noted in this respect is the Resolution attached to the Council Directive of 25 July 1987 on the schooling of children of migrant workers, which has already outlawed any discrimination based on the pupil's nationality.

65. With a view to creating a harmonious society, we need to emphasise the role of the mediators or advisory bodies created in various Member States, through which immigrants can put their views across and engage in dialogue.

The implementation of pilot projects for training the staff of local authorities in contact with immigrants will also help to improve information and increase awareness.

66. Each Member State and the Community as a whole has an interest in devising a successful integration policy and also in demonstrating their democratic values and sense of solidarity. The joint declaration by the Commission, the Council and the European Parliament against racism and xenophobia takes on importance in the context of immigration, insofar as the principles of combating all forms of discrimination are translated into everyday life, as stressed in the preamble to the Community Charter of the Fundamental Social Rights of Workers which states that "in order to ensure equal treatment, it is important to combat every form of discrimination, including discrimination on grounds of sex, colour, race, opinions and beliefs, and whereas, in a spirit of solidarity, it is important to combat social exclusion". In this respect, it would be appropriate to draw up a "code of good conduct" based on common principles, taking account of the various aspects of integrating migrants (training, housing, employment, etc.), with a view to countering the various discriminatory practices which act as an obstacle to integration. The Commission's decision of 8 June 1988 setting up a consultation procedure, already mentioned, could provide the framework for a consistent package of joint measures promoting integration.

67. By acting on the three aspects of immigration, the Community would demonstrate not only its keenness to tackle the matter comprehensively but also, and more particularly, its concern to adopt an approach characterised by solidarity.

V. CONCLUSION

68. In the interest of consistency, the Community is obliged to adopt a combined three-pronged approach as the only means of influencing the various elements of immigration:

- Incorporating migration into the Community's external policy to counter migration pressure;
- Controlling migration flows through harmonised monitoring, measures to combat illegal immigration, a joint approach to right of asylum and approximation of criteria for reuniting families;
- Strengthening integration policies for the benefit of legal immigrants.

69. The question of immigration is now at the centre of political debate in the Member States. Besides these considerations, the Community has an obligation to emphasise the social dimension. Our societies cannot allow themselves to be riven by the fact that part of the population is not integrated in the mechanisms of solidarity set up by the Welfare State. Such an approach now has its limitations. The time has come to give serious consideration jointly to the various elements of integration, with a view to taking the necessary steps to ensure that the social fabric is not disrupted.

70. The European dimension is one of the areas in which dialogue must be continued. The Community's activity is still hampered by the fact that areas of competence are too narrow, thus denying it the opportunity to take comprehensive, consistent action. However, it has proved to be essential for fostering the necessary climate of trust between Member States, in order to achieve common objectives, especially the creation of a frontier-free area as provided for by the Single Act. The implementation of this objective justifies the Community's action. The Commission has no wish to shirk this obligation. This is why it is now essential to lay down measures, on the basis of dialogue through the competent channels (General Affairs Council and Conference of Immigration Ministers), which will pave the way for the free movement of persons, incorporating immigration-linked aspects.

71. The analyses and proposals contained in this communication are designed to promote consideration of the advantages for the Member States of approximating their analyses and strategies regarding a matter of common interest and growing importance. Preliminary discussion of this kind is an essential forerunner to determining the future institutional framework within which the immigration question will be pursued (to be established in the context of the Treaty on Political Union, with particular reference to the German proposal put forward at the Luxembourg European Council).