

European pact on immigration and asylum

(Version II)

In the last half-century, the political and civilisational project that underlay the creation and deepening of the European Union has achieved considerable progress. One of the most remarkable benefits of this enterprise is the creation of a wide area of free movement that now covers most of Europe. This development has provided an unprecedented increase in freedom for European citizens and nationals of third countries who travel freely across this common territory. It is also a major factor for growth and prosperity. Recent and future enlargements of the Schengen Area are further strengthening the freedom of movement for individuals.

International migration is a reality that will persist as long as there are differentials of wealth and development between the various regions of the world. It can be an opportunity, because it is a factor of human and economic exchange. It contributes to the economic growth of the European Union and of those Member-States which need migrants because of their demography or the state of their labour markets. Not least, it provides resources for the migrants and their home countries, and thus contributes to their development. The hypothesis of zero immigration is both unrealistic and dangerous.

In December 2005, the European Council adopted the Global Approach to Migration, and considers it still relevant. It reaffirms its conviction that migration issues are an integral part of the EU's external relations and that any harmonious and effective management of migration must be comprehensive and consequently address the organisation of legal migration, the control of irregular immigration and the ways of encouraging the synergy between migration and development. The European Council is convinced that the Global Approach to Migration can only make sense within a close partnership between the countries of origin, transit and destination.

The European Union, however, does not have the resources to decently receive all the migrants who hope to find a better life here. Poorly managed immigration may disrupt the social cohesion of the host countries. The organisation of immigration must consequently take account of Europe's reception capacity in terms of its labour market, housing, and health, education and social services, and protect migrants against possible exploitation by criminal networks.

The creation of a common area of free movement also brings Member States new challenges. One Member State's actions may affect the interests of the others. Access to the territory of one Member State may be followed by access to the others. It is consequently imperative that each Member State take account of its partners' interests in the design and implementation of its immigration, integration and asylum policies.

EU Member States have sought for some twenty years to bring their policies in these areas closer together. The European Council recognises the progress already made in this direction: abolition of internal border controls across most of Europe, adoption of a common visa policy, harmonisation of external border controls and asylum standards, cooperation in controlling irregular immigration, establishment of the Frontex agency, and creation of dedicated funds for solidarity between Member States. The European Council particularly welcomes the major advances achieved under the Tampere (1999-2003) and Hague (2004-2009) programmes, which it undertakes to fully implement.

In line with the values that have always inspired the European project and the policies implemented, the European Council solemnly reaffirms that migration and asylum policies must comply with the norms of international law, particularly those that concern human rights, human dignity and refugees.

Although real progress has been achieved on the path to a common immigration and asylum policy, it is insufficient.

The European Council considers that the time has come to provide a new impetus, in a spirit of mutual responsibility and solidarity between Member States and also of partnership with third countries, to the definition of a common immigration and asylum policy that will take account of both the collective interest of the European Union and the specific needs of each Member State.

In this spirit and in the light of the Commission's communication of 17 June 2008, the European Council decides to solemnly adopt the present European Pact on Immigration and Asylum. Aware that the full implementation of the Pact will require changes to the legal framework and treaty bases, the European Council makes five basic commitments:

- to organise legal immigration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration;
- to control irregular immigration by ensuring the return of irregular aliens to their country of origin or a country of transit;
- to make border controls more effective;
- to construct a Europe of asylum;
- to create a comprehensive partnership with the countries of origin and transit to encourage the synergy between migration and development.

I) Organise legal immigration to take account of the priorities, needs and reception capacities determined by each Member State, and encourage integration

The European Council considers that legal immigration should be the result of a desire on the part of both the migrant and the host country to their mutual

benefit. It recalls that it is for each Member State to decide on the conditions of admission of legal migrants to its territory and, where necessary, to set the number of migrants. The implementation of the quotas that may be involved might be achieved in partnership with the countries of origin. The European Council calls on Member States to implement an immigration policy that is both selective, particularly with respect to all the needs of the labour market, and concerted, given the impact it may have on other Member States. The European Council stresses the importance of adopting a policy that enables the harmonious integration of migrants into the societies of their host countries.

To that end, the European Council agrees to:

- a) invite Member States to devise policies for economic migration, with Community preference and using the resources they deem most appropriate, that take account of the needs of their labour markets, pursuant to the conclusions of the European Council of 13 and 14 March 2008; to increase the attractiveness of the European Union for highly qualified workers and take new measures to promote the reception of students and facilitate their movement within the EU;
- b) give priority to temporary or circular migration, pursuant to the conclusions of the European Council of 14 December 2007, to ensure that these policies do not aggravate the brain drain;
- c) regulate family migration more effectively by inviting each Member State, in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, to take account in its national legislation of its own reception capacities and families' integration capacities as evaluated by their resources and accommodation in the host country and, for example, their knowledge of that country's language;
- d) strengthen mutual information about migration by improving existing instruments where necessary;
- e) invite Member States, in line with the common principles approved by the Council in 2004, to establish ambitious policies, in a manner and with resources they deem appropriate, to promote the harmonious integration in host countries of immigrants who are likely to settle permanently; these policies should be based on a balance between migrants' rights (to education, work, security and public and social services) and duties (compliance with host country laws, etc.). They will include specific measures to promote language-learning and access to employment, an essential factor in integration; they will stress respect both for the national identities of Member States and the European Union and their fundamental values such as human rights, freedom of expression, tolerance, equality between men and women, and compulsory school attendance;

- f) promote information exchange on best practice implemented, in line with the common principles approved by the Council in 2004, in terms of reception and integration, and EU measures to support national integration policies.

II) Control irregular immigration by ensuring the return of irregular aliens to their country of origin or a country of transit

The European Council reaffirms its determination to control irregular immigration. It recalls its attachment to the effective application of three basic principles:

- greater cooperation between Member States and the countries of origin and transit to control irregular immigration under the Global Approach to Migration is a necessity;
- irregular aliens on Member States' territory must leave that territory. Each Member State undertakes to see that this principle is effectively applied, within the law, and each Member State shall recognise return orders made by another Member State;
- all States are required to readmit their own nationals who are residing irregularly on the territory of another State.

To that end, the European Council agrees to:

- a) use only case-by-case rather than general regularisation for humanitarian or economic reasons, within national legislation;
- b) conclude readmission agreements at EU or bilateral level with those countries where it is necessary so that each Member State has the legal instruments to ensure the deportation of irregular aliens; the effectiveness of EU readmission agreements will be evaluated; negotiation mandates that have not succeeded will be reviewed; Member States and the Commission will consult closely when future EU readmission agreements are negotiated;
- c) develop cooperation between Member States, using common arrangements on a voluntary basis, where necessary, to ensure the deportation of irregular aliens (biometric identification of illegal entrants, joint flights, etc.);
- d) invite Member States to increase their cooperation with countries of origin and transit to control irregular immigration under the Global Approach to Migration, in particular to follow an ambitious policy with them for law enforcement cooperation to combat international criminal organisations engaged in human trafficking, and provide better information for communities under threat;
- e) invite Member States to devise national systems of incentives for voluntary return and to keep each other informed on this point in order to prevent the fraudulent return to the European Union of those who receive such aid;

- f) invite Member States to take the most rigorous action, by way of dissuasive and proportionate penalties, against those who exploit irregular aliens (employers, etc.);
- g) invite each Member State to apply the principle, adopted in 2001,¹ that a deportation order made by one Member State is applicable in all parts of the EU.

III) Make border controls more effective

The European Council recalls that external border controls are the responsibility of each Member State for that section that belongs to them. This control, giving access to a common area of free movement, is exercised in a spirit of joint responsibility on behalf of all Member States. Conditions for granting visas outside the external border should contribute to the integrated management of border control. Those Member States which are exposed by their geographical location to large numbers of immigrants, or whose resources are limited, should be able to count on the solidarity of the European Union.

To that end, the European Council agrees to:

- a) invite Member States and the Commission to mobilise all available resources to ensure more effective control of the external land, sea and air borders;
- b) issue only biometric visas as from 1 January 2012 at the latest, immediately improve cooperation between Member States' consulates, pool resources as far as possible and gradually set up, on a voluntary basis, joint consular services for visas;
- c) give the Frontex agency the resources to fulfil its mission of coordinating the control of the external border, cope with crisis situations and undertake, at the request of Member States, any necessary operations, whether temporary or permanent, pursuant to the conclusions of the Council on 5 and 6 June 2008. In the light of the results of an evaluation of the agency and its operations centres, its role and operational resources will be strengthened and it may be decided to create specialised offices to account for the diversity of situations, particularly for the land border to the East and the sea border to the South. Ultimately, the possibility may be examined of setting up a system of European border guards;
- d) deploy modern technological means to ensure systems are interoperable and enable the effective integrated management of the external border, in line with the conclusions of the European Council on 19 and 20 June 2008 and of the Council on 5 and 6 June 2008. From 2012, depending on the Commission's proposals, the focus should be on establishing electronic

¹ Directive 2001/40/CE of 28 May on the mutual recognition of decisions to deport nationals of third countries.

recording of entry and exit, together with a fast-track procedure for European citizens and other travellers;

- e) intensify cooperation with the countries of origin and transit to strengthen external border control and combat irregular immigration by increasing the European Union's aid for the training and equipment of those countries' staff in charge of managing migration;
- f) improve the form and frequency of the Schengen evaluation process.

IV) Construct a Europe of asylum

The European Council solemnly reiterates that any persecuted foreigner is entitled to obtain aid and protection on the territory of the European Union in application of the Geneva Convention of 28 July 1951 on refugee status, modified by the New York Protocol of 31 January 1967, and other relevant treaties. The European Council welcomes the progress achieved in recent years as a result of the implementation of common minimum standards with a view to harmonising asylum policies. It observes, however, that considerable disparities continue between one Member State and another concerning the grant of protection and the forms this protection takes. While reiterating that the grant of protection and refugee status is the responsibility of each Member State, the European Council considers that the time has come to take new initiatives to complete the establishment of a common European asylum system, provided for in the Hague programme, and thus to offer a higher degree of protection, as proposed by the Commission in its asylum action plan. The European Council stresses that the necessary strengthening of European border controls should not prevent access to the protection systems by those people entitled to them.

To that end, the European Council agrees to:

- a) establish in 2009 a European support office, which will have the task of facilitating the exchange of information, analyses and experience among Member States, and developing practical cooperation between the administrations in charge of examining asylum applications. This office will not have the power to examine applications or take decisions but will use the shared knowledge of countries of origin to harmonise national practices, procedures, and consequently decisions;
- b) invite the Commission to present proposals for establishing a single asylum procedure in 2012 comprising common guarantees and for adopting a uniform status for refugees and the beneficiaries of subsidiary protection;
- c) establish procedures, in the case of crisis in a Member State faced with a massive influx of asylum-seekers, to enable the secondment of officials from other Member States to help that State and the demonstration of effective solidarity with that State by mobilising existing EU programmes more rapidly;

- d) strengthen cooperation with the United Nations High Commissioner for Refugees to ensure better protection for people outside European Union Member States who request it, in particular by
- examining on a voluntary basis the resettlement within the European Union of people placed under the protection of the UNHCR, particularly as part of regional protection programmes;
 - inviting the Commission, in liaison with the UNHCR, to present proposals for cooperation with third countries in order to strengthen the capacities of their protection systems.

V) Create a comprehensive partnership with the countries of origin and transit to encourage the synergy between migration and development

Recalling its conclusions of December 2005 and June 2007, the European Council reaffirms its attachment to the Global Approach to Migration that was the inspiration for the Euro-African conferences in Rabat and Tripoli in 2006 and the Euro-African summit in Lisbon in 2007. It is convinced that this approach, which addresses the organisation of legal migration, the control of irregular immigration, and the development of the countries of origin and transit, is a highly valuable approach to the East and South of Europe. Migration must become a major component in Member States' and EU external relations, which presupposes examination of the quality of the existing dialogue with each third country on migration.

The European Council commits itself, on this basis, to supporting the development of these countries and to build a close partnership encouraging the synergy between migration and development.

To that end, the European Council agrees to:

- a) conclude EU-level or bilateral agreements with the countries of origin and transit containing clauses on the opportunities for legal migration, adapted to the labour market situation in Member States, the control of irregular immigration, readmission and the development of the countries of origin and transit; the European Council invites Member States to inform and consult each other concerning the objectives and limits of these bilateral agreements and also readmission agreements;
- b) encourage Member States, as far as they can, to offer the nationals of partner countries to the East and South of Europe opportunities for legal immigration adapted to the state of the labour market in Member States, enabling these nationals to acquire training or professional experience and accumulate savings that they can use for the benefit of their home country. The European Council invites Member States to give priority to forms of temporary migration, in order not to deprive home countries of their skilled people;

- c) pursue policies of cooperation with the countries of origin and transit in order to deter or prevent illegal immigration, in particular by capacity-building in those countries;
- d) integrate migration and development policies more effectively by examining how these policies may benefit the regions of origin of immigration, consistent with other aspects of development policy. The European Council invites Member States and the Commission to focus, within the sectoral priorities identified with the partner countries, on solidarity development projects that raise the living standards of citizens, for example in the areas of diet, health care, education, vocational training and employment;
- e) promote co-development actions that enable migrants to take part in the development of their home countries. The European Council recommends that Member States support the adoption of specific financial instruments for transferring migrants' savings more cheaply for the purposes of investment and welfare insurance;
- f) firmly implement the partnership between the European Union and Africa agreed in Lisbon in December 2007, and the Rabat action plan and call on the second Euro-African ministerial conference on development and migration in Paris, on 20 and 21 October 2008, to decide on practical measures;
- g) speed up the deployment of the key tools of the Global Approach to Migration that are cooperation platforms and partnerships for mobility, to ensure a balance between the migration routes from the South and those from the East and South-East, and to take account of experience in these matters when negotiating EU and bilateral agreements on migration and readmission with the countries of origin and transit;
- h) ensure when implementing these various actions that they are consistent with other aspects of the EU's development cooperation policy and other policies, particularly the neighbourhood policy.

The European Council invites the Council, the Commission and Member States, insofar as each is concerned, to take the necessary decisions for the implementation of the commitments contained in the present Pact.

It decides, for its own part, to hold an annual debate on immigration and asylum policies. To that end, it requests the Council, together with the Commission, to present a report each year on the implementation of the commitments contained in the present Pact. Furthermore, it invites Member States to devise quantitative indicators to assess the impact and effectiveness of their policies and to keep each other informed of any new measure or legislative reform they intend to enact. Finally, it reaffirms the need to find appropriate resources to meet the requirements relating to immigration and asylum policies.