

Informal JHA Ministerial Meeting
Tampere, 20-22 September 2006

MIGRATION MANAGEMENT; EXTENDED EUROPEAN SOLIDARITY IN IMMIGRATION, BORDER CONTROL AND ASYLUM POLICIES

On the basis of the Tampere European Council conclusions and the Hague Programme, the European Union is in the process of developing ambitious common immigration, border control and asylum policies. These policies build on the solidarity, mutual trust and shared responsibility of the Member States while at the same time fully respecting human rights and fundamental freedoms, including the Geneva Convention and respect for right to seek asylum in the territory of the European Union. As endorsed once more by the Hague Programme, responsibility for the control of external borders and the carrying out of immigration control and asylum procedures rests with the Member States and their authorities.

It is a central principle of EU immigration policy to guarantee the legal protection of individuals by ensuring that uniform and more effective procedures are applied when determining their right to reside in the territory of the Union. At the same time, entry to EU territory by third-country nationals must be controlled.

Illegal immigration is a problem that needs to be addressed comprehensively when developing common European migration, border control and asylum policies. This problem is caused, *inter alia*, by differences in living standards, personal aspirations for a better life, serious humanitarian problems, and crises in third countries. In addition, the illegal employment markets that exist within the European Union are a significant pull factor. In its recent Communication on illegal immigration (COM 2006 402 final), the Commission gives a detailed account of the different reasons while also outlining measures to address these pull factors more effectively.

There are significant regional and Member State specific differences in the numbers of illegal immigrants and asylum seekers in Europe. In the area of free movement, especially as implemented within the Schengen area, the way one Member State implements common rules affects the rest of the Union. At the same time, national measures by one Member State are often not sufficient to tackle such problems. The security needs of the Union, such as combating terrorism and organised crime (for example in respect of the fight against human trafficking), will in future require more efficient border control and immigration procedures.

Initiative

Building on the abovementioned Commission Communication on illegal immigration and the excellent analysis it includes, the Presidency wishes to launch a discussion – as part of the review of the Hague Programme - on "*extended European solidarity in immigration, border control and asylum policies*". The aim is to set up a comprehensive debate on how to increase burden-sharing and solidarity in respect of illegal immigrants and asylum seekers. Increasing burden-sharing and solidarity would form an integral part of the enhanced migration management of the Union, alongside other parts of the same process, such as the further development of the common European asylum system and the development of common European rules on legal migration. The Presidency's initiative is four-faceted.

Firstly, the initiative proposes that EU financing would be used to cover a significant part of the actual and verifiable costs incurred by the Member States during the process of determining whether a third-country national who has entered the EU illegally, or an asylum seeker, has the right to reside in the EU territory. Such costs include the reception, maintenance and possible return costs of the persons concerned as well as all administrative costs incurred. All payments to be paid progressively by the Union would be subject to the verified registration of the persons concerned in the appropriate European databases. All Member States would receive equal payments per each registration, and thus, the financial support provided by the Union would reflect the existing migratory pressures. The details of the financial solidarity would be discussed in more detail later.

Secondly, registration would be based on the use of biometric identifiers, guaranteeing the physical presence of the person concerned at the moment of registration.

Thirdly, only the first registering State (principally the State of entry to the EU) would be entitled to receive the payments. Based on that, the State concerned would have a responsibility over the person; including an obligation to later readmit the person concerned from another Member State (unless a verified return has already been registered or a principal change in conditions of the said person has occurred).

Fourthly, the initiative would require that the immigration and border authorities apply common European rules in a uniform and transparent manner and in their entirety. The rules for determining the right to seek asylum, the right to residence on grounds of subsidiary protection, and the rules on return to the country of origin or residence would be covered. The implementation regime would be verified by inspection mechanisms to be established within the EU institutions. The application of the rules would be further supported by the use of uniform risk analysis. The correct application of the rules subsequently verified by inspections would have an effect on the payments to be made by the EU. Combined, these four facets would lead to a situation where all Member States, even when their immigration and border authorities are put under significant pressure, would be able to take full responsibility for the implementation of common European rules.

Prerequisites

Currently, the Member States' responsibility for asylum seekers is regulated in the Regulation on determining the responsible State (the Dublin II Regulation) and the related Eurodac Regulation. It is of the utmost importance that the existing instruments are complied with in full so that the responsibility of a first asylum country is clearly determined and can be unambiguously ascertained. There is no similar comprehensive system in place for illegal immigrants, although the Eurodac Regulation obliges the Member States to store the fingerprints of a third-country national who is apprehended by the competent control authorities in connection with the illegal crossing of the border of that Member State and who is not turned back.

A central part of the initiative on extended solidarity would be to determine and develop a database and procedure for registering illegal immigrants. This system would have to be based on biometric identifiers. In addition, the issue of whether other existing or planned databases could be used for this purpose should be explored. The Presidency sees this discussion as being linked to the overall discussion on the improved effectiveness and interoperability of the European databases.

The inspection measures should be carried out by an appropriate EU institution. Such an activity would best suit the Commission since it also monitors the application and implementation of the Union provisions on the initiative in the Member States. Other possible institutions in this context include Frontex or the Council Secretariat.

The EU funding of this initiative would not influence or change the finalisation of the proposed JHA Financial Programmes for 2007-2013 as they stand. The initiative would be taken into account later, for example in connection with the mid-term review of the JHA Financial Programmes foreseen for 2010.

Questions:

1) What kind of experiences do the Member States have of the duration and costs of processing the cases of illegal immigrants and asylum seekers?

2) Do the Ministers agree on the four-faceted approach proposed by the initiative - financial burden-sharing, direct payments based on registrations combined with a principal obligation of readmission, and inspection mechanisms ensuring compliance with common rules in the Member States?

3) What would be the appropriate European database for the purposes of the initiative and what would be the appropriate EU institution to host the proposed inspection functions?