

# **PREVENTING ILLEGAL IMMIGRATION: JUGGLING ECONOMIC IMPERATIVES, POLITICAL RISKS AND INDIVIDUAL RIGHTS**

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# Introduction

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Illegal immigration has been near the top of the political agendas of the member states of the Council of Europe for almost two decades. They are all worried about the scale of the phenomenon and the ways in which it is changing, as well as its effects on the countries involved, and are concerned that it should not exacerbate social tensions and conflicts. It is a major domestic policy issue for all of them. No government wants to give its electorate the impression that it has lost control of its borders, and this goes some way to explaining the eagerness to strengthen control mechanisms rather than bother about the root causes of the problem, which are to be found in the unequal development of north and south.

The new factor over the last decade has been the often tragic nature of this type of migration, which increasingly often involves human deaths at sea, in lorries, on planes, or, notoriously, in the Channel Tunnel. Such events have in some cases had serious repercussions on public opinion. For example, the Dover tragedy, which saw the death of fifty-eight illegal immigrants, elicited strong emotional reactions throughout western Europe, as well as in China, where the immigrants had come from.

There was a similar reaction to the two African teenagers who tried to reach the Europe of their dreams by stowing away in the undercarriage of a plane and whose story became all the more poignant when their letter explaining their choice was made public. But who remembers them now? One might even conclude that such tragedies have become so commonplace as to lose all impact, public opinion no longer being mobilised except to protest against the inconvenience caused by the "presence" of foreigners (Sangatte), rather than being moved by the deaths announced almost daily.

The other lesson of the last decade is the change in how international migration is perceived. It is now accepted that it can no longer be dealt with simply in terms of relations between host countries and countries of origin. The acceleration of population movements at global level, the proliferation of channels of mobility, the repeated reactive movements, the accumulation within a single country of the functions of departure, transit and settlement, all require a new political approach to "international population movements".

They are now part of a new geopolitical environment produced by the fall of the Berlin Wall, the collapse of the Communist bloc, the prospect of EU enlargement, the resultant redistribution of interests to the east and south of Europe and, obviously, the concomitant sovereignty issues. Despite their profound differences, the debates (even the potential conflicts) over the Spanish enclaves on the Mediterranean or the Russian enclave of Kaliningrad on the future eastern border of the Union are evidence of this.

All the countries of the former eastern bloc are now simultaneously countries of origin, transit and, increasingly, fairly long-term settlement. The tightening of control procedures in western Europe immediately made itself felt, blocking groups that had seen them simply as places of transit. The migrants themselves are from all corners of the globe: central and eastern Europe, North Africa, sub-Saharan Africa, Afghanistan, Sri Lanka, India, Bangladesh and elsewhere. Countries clearly do not have the means to deal with them and yet there is no shortage of pressure on them to do so, particularly on candidates for membership of the European Union. Those countries know that their ability to control the waves of migrants who pass through their territories will be taken into consideration when the final decision is made.

This new European migratory area and the diversity of the forces to be observed there are also part of the new environment. They strengthen the hypothesis of new "migratory movements" in which the patterns, the strategies of the protagonists, the itineraries, the methods of interacting with the world of politics and administrative departments and the very conception of migration constitute a break with traditional models.

There is therefore a need for a different perception of international and transnational population movements, particularly since the new migration patterns concern not only the east, but also the south,

although the underlying rationales and the relationships of domination of which they are a part are not identical.

The political situation has also changed on the domestic front. The climate surrounding the issue of immigration is steadily deteriorating. Distrust and suspicion are everywhere. Growing sections of the population regard it not merely as a serious problem but as a threat. While the success of populist movements cannot be attributed to this issue alone, a significant part of their attraction for the electorate lies in their talk of invasion, insecurity and loss of identity.

Already, before this situation developed, the two major preoccupations of governments of every political persuasion were to combat illegal immigration and reduce asylum applications. Nothing seems to have prompted them to change their view.

In the last decade all countries have tightened the conditions governing the entry, residence and employment of foreigners and the right to asylum. At the same time, techniques for identifying individuals have become more sophisticated and administrative powers have been strengthened, while the possibilities for appealing against decisions not to admit someone or to deport have been restricted.

These changes have been made by widely varying legal means ranging from simply adjusting regulations to constitutional amendment, by way of transforming the regulations in force into acts of parliament. This gradation is significant: it shows that the question of immigration and its control affects three issues of fundamental concern to states: the exercise of sovereignty, the control of territory and the definition of citizenship.

The inextricable link between immigration policy and the social model a country aspires to could not be more clearly underlined. This highlights the need for a careful study, not only of the laws passed and the regulations adopted, but also of the principles on which they are based.<sup>1</sup>

Of all the reforms introduced, the most emblematic of the spirit of the age are without doubt those on asylum, family reunification and mixed marriages. In each case, the concern has been less to lay down the conditions under which foreigners should be received than to set out measures that make it possible to turn away as many as possible. The ambition has been, and remains, to police foreigners rather than have an immigration policy.

The amendments made to the right of asylum are indicative of this choice. The rule is not to legalise established situations or open the doors to more potential candidates. The issue is epitomised in the strict distinction between "economic refugees", whose applications are considered groundless and are therefore doomed by their very nature to be rejected, and "genuine political refugees", whose profile is constantly remodelled according to ever more stringent criteria.

But the unanimous choice of stringency (strict control of immigration and limiting long-term settlement) does not prevent countries giving themselves the means of reintroducing (selective and/or temporary) labour policies. They have all been careful, through various mechanisms (quotas, temporary contracts, secondment, international provision of services, etc.), to leave the door open to further temporary foreign arrivals, striving to see that they correspond strictly to market demand.

This dual approach is only superficially contradictory. Even in a period of slower growth, employment potential has remained significant for foreigners in both northern and southern Europe and was still greater when accelerated growth at the turn of the millennium made more obvious both the shortage of labour and the reluctance of those on the market to accept simply anything in terms of conditions of employment and pay.

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1. The debates in Germany on the reform of Article 16 of the Basic Act in the early 1990s are examples of this, as are the more recent debates on nationality and immigration legislation, officially recognising Germany as a country of immigration.

In the early 1990s the words of the President of the Federation of German Industries, to the effect that the deteriorating employment situation did not prevent the enterprises of his country recruiting foreigners, were echoed at the other end of Europe by the Managing Director of Confindustria in Italy: "We need immigrant labour. There is no competition between Italians and immigrants on the labour market"<sup>1</sup>

This echo can still be heard today and is indeed resonating and becoming louder since, to strictly economic concerns, are now being added those imposed by demography: Europe is getting old. On 6 January 2000, the General Secretary of the French Union of Metallurgical and Mining Industries (UIMM), Denis Gautier-Sauvagnac, was reported in the French daily *Le Monde* as stating, "In view of the demographic crisis there will be in 2005, it would not be absurd to reverse migratory flows". The myth of "zero immigration" certainly seems to have had its day, but perhaps not yet the ideological use made of it.

The question is which fundamental ideas underlie the choices now being made. While a desire for openness is now being expressed, it is also explicitly confined to an élite, the imperatives of control being strengthened for others with respect to both family reunification and political asylum. All the legislation countries have recently passed and the proposals under discussion reflect this desire to reconcile the needs of the economy and the fears of the electorate.

The concern is no longer simply to ensure "closure", but also to "select" and to ensure "rotation". How can "flows" be adjusted to "demand" in terms of quality and quantity? According to what criteria should the selection be made? How is the emergent competition for the best qualified to be tackled? How can the temporary nature of residence be ensured? In short: how can the best be attracted, those who have become useless be got rid of and the undesirables kept out?

The Seville Summit was a perfect reflection of this rationale. The programme adopted is far from the ambition of a common comprehensive policy formulated a few years earlier at Tampere. In the forefront of this ambition was, for example, the wish for a new approach to relations with countries of origin and transit. "The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit." Even the rejected proposal that development aid to countries of origin and transit be made subject to conditions seems far from the real step forward at the Tampere Summit.

Once again, the ambition of a genuine European immigration and asylum policy has given way to the policing of foreigners, which does not preclude a selective labour policy.

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1. *Le Monde diplomatique*, No. 478, January 1994, page 21.



# Immigration flows in Europe: an objectively controllable situation

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Since the fall of the Berlin Wall there have been three major phases in the development of immigration to the European Union. The first, which covered roughly the first half of the 1990s (1989-94), saw a net volume of between 1 and 1.5 million entries per year, with a preference for Germany, while some member states (Ireland and Portugal) still experienced net emigration. From 1995, the effects of the restrictive policies adopted began to be felt. The EU as a whole saw a sharp fall in entries and above all a change in the direction of flows: fewer entries in Germany, but a sharp increase in entries in the United Kingdom and, still more so, the countries of southern Europe. From “traditional countries of emigration”, the latter became “countries of immigration”. Economic recovery at the turn of the millennium saw the trend reverse again and significantly more entries: 700 000 in the EU as a whole in 1999 and 2000, as against 500 000 in 1997. They particularly concerned the Nordic countries and the United Kingdom, but also Ireland, Spain, Italy and Portugal, strengthening their status as countries of immigration.

The factors accelerating international migration are the same everywhere. There are first those specific to the countries of origin, which drive people into exile: social and political upheaval, a deteriorating environment, economic instability and low incomes, lack of social and economic prospects, and lack of education and health services. There are then the factors that facilitate their “dispatch”: a more accessible travel market, the weakness of border controls or a legal vacuum in the transit countries, and contradictions in legislation and administrative rules in the countries of arrival, of which traffickers take full advantage. Lastly, there are the factors that favour settlement in a host country: demand for illegal labour, access to education and social and medical services, the presence of an established community of the same origin, how asylum applications are processed and whether or not there are identity checks.

Applying for asylum is now one of the main ways of entering Europe. The majority of migrants, that is about 300 000 every year, lodge such an application on their arrival in one of the countries of the EU. The countries most concerned are Germany (78 000) and Great Britain (98 000), but others such as the Netherlands and Denmark also receive large numbers. This situation and the fear to which it gives rise is strongly exploited by populist and xenophobic parties and goes some way to explaining their electoral success in Europe. Only Greece and Portugal seem for now to be spared. Be that as it may, the question of asylum is among the prime concerns of governments, which have constantly amended their legislation over the last ten years to make it more restrictive.

Available official data set at 19 million the number of non-nationals living legally in one of the fifteen member states of the European Union. Fewer than a third (30%, that is 6 million) are citizens of member states. This proportion has barely changed over the last twenty years, an indication of the very low level of mobility within the EU.<sup>1</sup> The European Commission and business leaders are extremely concerned about this situation. They believe such “rigidity” accentuates imbalances between regions with high levels of unemployment and those with shortages of labour. Economic decision makers see it as a handicap for European competitiveness. This reluctance to move to another country is an extension of that seen within member states themselves, where there is strong compartmentalisation between employment catchment areas. When questioned on this point, the great majority (70%) of business leaders said they believed their need for labour would increase and almost half mentioned problems in recruiting experienced executives. But, according to two-thirds of them, “The problem is not lack of ability in Europe; it is just that the people are not in the right place”.

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1. Mobility within the EU is declining steadily. Of 375 million Europeans, only 6 million, that is 1.5%, live in a country other than their country of birth. In 2000, only 225 000 people, namely 0.1% of the total population of the EU, changed their official residence to another country. The situation is very different from the United States, where 6% of the population changes county every year.

This structural rigidity and the apparent shortage that results to a great extent explain the increase in immigration by people from other countries, whose numbers increased from 2.3% of the total population in 1985 to more than 3.4% in 2000.<sup>1</sup> More specifically, with respect to asylum applications, after the peak of the years 1990-93 (the wars in the former Yugoslavia), they have, overall, remained stable: according to the HCR, 384 000 in 2001, as against 393 000 in 1999.

In the countries with a long migratory tradition, most new arrivals tend to go to large cities because of the great concentrations of immigrants and the employment prospects on offer. This is the case, in the United Kingdom, of Greater London; in Germany, around major cities such as Frankfurt, Stuttgart, Munich, Dusseldorf, Hamburg and Berlin;<sup>2</sup> and in France, in the Paris region, the north and around Lyons. In the last few years, however, there has been a trend towards less concentration or even dispersal to new towns and cities. This is either because the authorities want to disperse asylum seekers (Great Britain), or the result of the action of the criminal networks themselves, which favour the settlement of new arrivals in provincial towns and cities. Where migrants go may also depend on the opportunities a particular place offers from the point of view of their strategy: this is the case of Dover, the primary port of arrival in the United Kingdom, and its environs, and of Sangatte and the Nord-Pas-de-Calais region in France. In Austria, it is the *Länder* of Lower Austria and Burgenland that are the most affected.

Foreigners of all origins account for a total of 5.1% of the population; for people from third countries the percentage falls to 3.5% or 13 million out of a population of almost 380 million. Added to this there are, obviously, illegal migrants, the number of whom – by definition unknown – is the subject of wide speculation. When all is said and done, the figures are relatively small. Thus, contrary to what populist, xenophobic movements suggest to lend credence to fantasies of “invasion”, the data do not support the idea of a Europe submerged by uncontrolled waves of immigration. They reflect objectively “controllable” migratory movements, the realities of which support neither the contention of an “invaded Europe” nor that of a “besieged fortress”.

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1. Eurostat data for 2000.

2. More than 70% of the 7.3 million foreigners live in the *Länder* of North Rhine-Westphalia (27%), Baden-Württemberg (17%), Bavaria (15%) and Hesse (11%).

# What is illegal migration?

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As a preamble, a few general remarks are needed to introduce the subject of illegal migration. The first is to point out that it is not something new in Europe and we should take care not to forget that it has sometimes been the subject of highly official encouragement and is often still tolerated (despite firm denials) when there is much at stake economically. What is new in the last ten years, on the other hand, is the scale of trafficking in illegal immigrants and of the tragic consequences for the populations who are victims of it. And we shall see later that there is still a significant gap between the energy used to tackle migrants and that exerted to combat traffickers.

The second remark concerns the expressions used to refer to the situations in question. I have decided never to use the term “clandestine” in this report to refer to foreigners living illegally in a country. This is not simply a question of nice semantics, but in my opinion a fundamental issue. The words used influence the way the situation in question is regarded and, by extension, the political philosophy governing how it is dealt with. The term “clandestine” has the major effect of strengthening the public perception that migrants themselves generate crime and are a potential “threat”, thus seeming to justify their situation being dealt with by policing alone, and a policy in which a rationale of security prevails over all others.<sup>1</sup>

Thus, more than illegal immigration itself, what has been new over the past fifteen years is the political construct of migration as a “threat” to European societies and its “criminalisation” through mechanisms introduced to protect ourselves against it. It has therefore been decided to use the term “non-documented or irregular migrant workers”, according to the recommendation made by the United Nations General Assembly in Resolution 3449 (XXX) of 9 December 1975.

The third remark concerns the apparent contradiction between the rights of migrants, whether documented or not, and the exercise of state sovereignty. It should first be pointed out that the “illegal situation” of a migrant derives from legal rules establishing the right to enter and reside in the country in which he or she is settled.<sup>2</sup> While infringement of such rules is unquestionably an offence, it does not make the individuals concerned criminals or deprive them of their rights. On the contrary, freedom of movement and the choice of place of residence are regarded as fundamental human rights.<sup>3</sup> The contradiction is that this “fundamental freedom” clashes with the right recognised to states to decide who is authorised to enter, settle and work in their territory.

One of the major issues of immigration policies is precisely the limitations fundamental rights place on the exercise of state sovereignty. The right to live with one’s family is a good example of this. Since it is guaranteed by international law, states may not prohibit it save in exceptional circumstances. They never fail, however, to try to limit access by introducing ever more restrictive legislation, thus increasing the risk that those affected will find themselves in an illegal situation.

An even more tricky conflict between state sovereignty and fundamental rights exists with respect to the rights of illegal migrants, which are generally contested on the grounds that such rights would be an official encouragement to illegal immigration. They are therefore either ignored or impeded. The risk, here again, is not just that protection for illegal migrants will be affected but that the rule of law itself will be undermined.

This does not mean, however, that the right of states or groups of states (Schengen) to control their borders should be contested, every distinction abolished between legal and illegal situations or the idea of complete freedom of settlement advocated on the basis of “fundamental rights”. This would be a mistake, and indeed wrong.

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1. See on this point Claude-Valentin Marie, “Entre économie et politique: le ‘clandestin’ une figure sociale à géométrie variable”, *Pouvoirs*, No. 47, Paris, 1988.

2. In contrast to the previous situation, when many countries prohibited the departure of their citizens.

3. Recognised by the Universal Declaration of Human Rights of 1948 and by the United Nations Charter.

On the other hand, “security” cannot be used as an absolute justification for constant violations of human rights. It is this permanent tension between two apparently contradictory requirements that any genuine immigration policy must strive to address. While state sovereignty in this area cannot be contested, it can no longer be unbridled if the democratic nature of the state itself is to survive intact.

The fourth and final remark, directly following from the previous one, concerns illegal immigration itself, which is generally presented as a single, homogeneous phenomenon, though, on the contrary, attention should be given to its diversity. Foreigners in an illegal situation cannot be lumped together: there are varying situations which do not obey the same rules and whose prevention requires different solutions. Firstly, it should be remembered that most illegal situations are not the result of the illegal crossing of borders. Specialists are fully aware of this and the public, who are rightly appalled by the most spectacular situations presented by the media, should also be made aware of it.

In fact, only a minority enter illegally: some present forged documents at the border, others try to cross it away from border posts or to elude control by hiding in trains, lorries, cars, coaches or caravans, merchant ships, containers (on ferries, goods trains or ships) and even the undercarriage of aircraft. There are also attempts at arrival in small craft, rubber dinghies or, less frequently, light aircraft, via unguarded ports and airports or uninhabited parts of the coast, not forgetting those who try to get through the now famous Channel Tunnel.

While these situations and real dangers (above all for those who risk them) exist, they do not concern the majority of illegal migrants in Europe, who enter legally with a visa (sometimes fraudulently obtained). Their stay becomes illegal only later for a wide variety of reasons: some do not leave when their permit expires (visa, temporary work permit, student card, seasonal worker's card, etc.); others use a permit obtained for other purposes (working with only a tourist visa); and still others try to legalise their situation fraudulently by a “marriage of convenience” to a citizen of the country of residence, a citizen of an EU member state or a citizen of another state who has legal residence. Then again, there are those whose applications for asylum have been rejected but who refuse to comply with a deportation order.

One last word on the uncertainties surrounding the actual scale of illegal immigration: it is still almost impossible to establish. The figures usually provided are based on computation methods too diverse to indicate anything more than trends. Only the results of police questioning and legalisation operations are verifiable.

# Organised trafficking in human beings

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## Trafficking in immigrants: routes and networks

Trafficking in human beings has been growing steadily since the early 1990s and is now ranked fifth among the activities of organised crime.<sup>1</sup> International<sup>2</sup> and European<sup>3</sup> law encourage a distinction between “illegal trafficking in migrants” and “trafficking in human beings” since they refer to specific legal situations, forms of organisation and regional locations. The data available on “illegal trafficking in migrants” show it to be the work of flexible criminal organisations capable of adapting rapidly to changes in measures taken by the various states (changes in the law and regulations or progress in police investigations) by changing their *modus operandi* and constantly reorganising their networks and routes.<sup>4</sup> They set up a complete system of division of labour and use the most sophisticated mobile communications technologies (CB, private mobile radio and cell phones) in order to keep track of new initiatives by the border police of the countries passed through and to direct “convoys” to the least policed crossing points. They prefer areas where they can pick people up and set them down quickly so as to escape the intervention of the border police of the countries they pass through.

Over the years the networks have become more “professional”, not hesitating to improve the deal they offer. In Albania, for example, the price demanded gives a sort of guarantee. In the event of failure, the smugglers guarantee their “customers” other attempts. This practice is also found in Morocco, where some smugglers guarantee a second attempt if the first fails, unless the migrant is apprehended after landing. The actual routes have not changed radically over the past ten years, although the flows have to some extent been redistributed from one to another. The main gateways to the EU are still the Strait of Gibraltar between Morocco and Spain, the Italian coast in Puglia and Sicily, and the land crossing from the countries of eastern Europe via Bulgaria and Poland to Turkey.

## Trafficking in visas

Upstream, the system fuels a thriving business in trafficking in visas based on more hierarchical commercial set-ups which take advantage of every possible type and level of corruption. While the traffickers do provide their customers with forged or falsified travel documents, they make still greater use of agreements between European countries authorising cross-border movement without visas and the corruption of officials (whether or not they are civil servants) occupying diplomatic posts in the countries of origin or transit.

An example of this type of corruption was recently revealed in France following the arrest of Bulgarian prostitutes in possession of business visas issued by the French Embassy in Sofia, (falsely) certifying that they were to be trainees in various French enterprises. When they were questioned, the young women immediately implicated the officials of the visa section in Sofia. A French Ministry of Foreign Affairs inspection (November 2000) concluded that the section concerned was “seriously dysfunctional”.<sup>5</sup> Suspicions of corruption were strengthened by an investigation by the Belgian police of prostitutes checked in Belgium who had visas from the same source. In spring 2001, Bulgarian newspapers disclosed that a French civil servant was providing his accomplice, an employee of a Sofia travel agency, with visas and that she then sold them for between 1 000 and 3 000 francs.<sup>6</sup> In May 2001, the French

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1. Behind drugs, white-collar crime, crimes against property and crime connected with nightlife, but ahead of violence, forgery and arms dealing. Report on organised crime by the Federal Bureau of Investigation.
  2. The two protocols to the United Nations Convention against Transnational Organised Crime.
  3. Draft general resolutions to combat illegal migration/illegal entry/trafficking in human beings.
  4. According to German police investigations, most of the people responsible are foreigners, only 16% being German.
  5. At the end of 2000 the number of visas issued had reached 60 000, as against 30 000 the previous year, total applications being 85 000.
  6. In August 2001, four people, the senior French civil servant, his Bulgarian partner and a couple running a business in Sofia, were under investigation for “assisting illegal residence” and “aiding and abetting procuring”. Their misconduct apparently resulted in the issue of tens of thousands of visas.

investigators found a large number of forged documents that had been accepted as documentary evidence, agreements with travel agencies which did not possess an international tourism licence<sup>1</sup> and a doubtful choice of firms supposed to employ young Bulgarian women as trainees.

In this connection, it should also be noted that the French Ministry of Foreign Affairs has admitted the existence of eight complaints against diplomatic staff for trafficking in visas or passports over the past two years. Five of them – in Iran, Armenia, Togo, Tunisia and Benin – have led the ministry to initiate legal proceedings. Two other cases have been revealed by complaints by private individuals in Rwanda and Bulgaria. The ministry has given assurances that it has instituted a policy of “zero tolerance” and that every suspect situation will lead to court proceedings and internal investigations.

### Widely varying itineraries for different communities

Afghans are usually handled by their national networks, which are involved in large-scale trafficking (often in lorries). Sometimes they have people from other countries of the Indian sub-continent or Southeast Asia as travelling companions. The main route used crosses five states of the CIS (Tajikistan, Turkmenistan, Uzbekistan, Kyrgyzstan and Kazakhstan) to the Russian Federation and arrives in Germany via Ukraine, Slovakia and the Czech Republic. Some go from the Russian Federation to Germany via Belarus and Poland; others go through Slovakia via Poland or Austria.<sup>2</sup> They are usually set down near the border in order to avoid identification of the vehicles and transit countries and being sent back to a “safe” neighbouring country. Some are transported by air: direct flights are avoided in favour of transit through Moscow or Prague, which are gateways to Germany. It should also be noted that the large number of Afghan refugees living in Iran (between 1 and 2 million) has led to the opening of a route via Iran and Turkey.

Turkey is the hub for illegal entry to the EU by Iraqis,<sup>3</sup> who then go to Italy, where they are encouraged to apply for asylum. The time it takes for their cases to be examined is used by the traffickers to organise the onward journey and by the immigrants to recover from the rigours of the first part of the journey. Their identity papers are usually confiscated and they learn a “traveller’s tale” (the same for everyone) to tell in the event of questioning. There is a twofold objective here: to conceal the trafficking routes and methods and to provide credible information for the acceptance of an application for asylum. Moscow is also used as the main transit city for Indian immigration, following a flight from New Delhi. Subsequent transportation is clandestine, by lorry, bus or train to Poland or the Czech Republic, through Belarus, Ukraine or Slovakia. Some fly on from Moscow to Prague or Warsaw.<sup>4</sup> The onward journey is by road to the German frontier, which is crossed at night on foot in small groups of five to ten. Once they are in Germany, the migrants are again picked up by small lorries or cars, which take them to the interior of the country.

Most of the Sri Lankans transported in this way belong to the Hindu minority fighting the Buddhist Sinhalese majority for an autonomous state (Tamil Eelan). Their journeys are usually very long and expensive, the favoured destinations being Great Britain, Canada and Australia. Germany is often used as a country of transit, despite the lack of direct flights, which complicates the journey, entailing a flight to a first country of transit, then travel to Germany by road. Germany is also an important country of transit for Romanians, who go first to Prague to contact smugglers who will organise the crossing of the German border. From there, they are taken to Belgium in cars (often rented for the purpose) before continuing their journey to Great Britain or Ireland.

### The host country: the United Kingdom supplants Germany

Germany and the United Kingdom are unquestionably the favourite countries of settlement. In recent years the latter has experienced a considerable increase in both illegal entries and asylum applications,

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1. It is suspected that some of them are directly controlled by traffickers.

2. The journey to Germany takes between two weeks and three months.

3. Most of whom belong to the Kurdish minority and come from the north.

4. Their identity papers are then confiscated for use in other operations. It should be noted that Indians sometimes spend quite a long time in countries of transit.

no longer concerning only single young men, but increasingly whole families and female heads of families. The nationalities are more and more varied,<sup>1</sup> including the former Soviet Union, the Baltic States, by way of central Europe, central Asia, Latin America and various parts of Africa. Of these, the Chinese and Pakistanis favour Great Britain more than do the others. After going through Hong Kong, Thailand or Singapore, where they are given false passports (generally those of dead compatriots), the Chinese fly to Paris. The Iraqis, Iranians and Pakistanis go through Istanbul, where they receive false passports before going on to Brussels or Amsterdam.

As is the case everywhere else, the increase in illegal immigration has been accompanied by the growing role of traffickers and a worrying increase in the corruption connected with their activities both abroad and in the UK. Another change is the scale of trafficking in women, which did not involve the United Kingdom until very recently. Most of them come from eastern Europe, particularly Albania and the former Yugoslavia, or from the Far East. Their increasing presence confirms the growing involvement of organised criminal gangs.

There seems to be a division of "territory" among the gangs. The Chinese, for example, wield their influence only over their fellow citizens. The Albanians who run the Adriatic crossing seem to control the traffic in women from the Republic of Moldova, the former Yugoslavia, Ukraine and the Baltic States destined for prostitution. Nigerian traffickers use the United Kingdom as a transit point for the traffic in women and girls from West Africa, also destined for prostitution in the other countries of the EU. But alliances between different ethnic groups or nationalities are now developing more frequently in order to confront a particular problem or take advantage of a skill. This explains the increasing numbers of arrests of large groups of migrants of different nationalities. The United Kingdom is also used as a transit point by those wanting to settle in Canada or the United States, which they try to reach after obtaining forged documents of a better quality than those used to cross Europe.<sup>2</sup> They are joined in their attempt by those whose applications for asylum have been refused.

#### *Germany: the favoured destination of east Europeans*

Germany is affected by two main illegal immigration routes. The first, which goes through south-eastern Europe, with Turkey as the hub, has replaced the more traditional route through the Balkans since the war in the former Yugoslavia. It is used mainly to transport people from the Arab world and the Middle East, and has a number of possible itineraries: one via Bulgaria, Romania, Hungary, Slovakia and the Czech Republic, another via Bulgaria, Romania, Slovakia and Austria, while a third goes by sea via Greece, and Italy or Spain.

The second is an eastern route from the Russian Federation, transiting through Ukraine, the main points of entry or transit being the airports of Moscow, Kiev and, increasingly, Belgrade and Sarajevo, particularly for immigrants from Asia. The onward journeys take various routes through Romania, Hungary and Austria to Germany; Slovakia – the Czech Republic – Austria – Germany; Slovakia – Germany; or Belarus – Poland – Germany.

The services responsible<sup>3</sup> deported more than 33 000 foreigners in 1999 and counted during eleven months of the following year 29 000 illegal entries (mainly by people from Romania, Afghanistan, Yugoslavia, Moldova and Iraq) and 22 000 illegal foreign residents (from Ukraine, Turkey, the former Yugoslavia, the Russian Federation and Poland).

Germany remains the prime destination for people from eastern Europe travelling by land through the "green border" (illegal crossings) or the Austrian post of Heiligenkreuz. Romanians take various routes

1. The most numerous are from China, Albania, Sri Lanka, Afghanistan, Somalia, Turkey, Iran, Iraq, Pakistan, India, Romania and the former Yugoslavia.

2. Most go by air, but some stow away in cargo ships.

3. The federal border police, the police forces of the federal *Länder* responsible for policing frontiers and the customs authorities all along the German border.

according to the region they come from: people from Transylvania go through Barcelona via Prague, while those from Moldova and the area of Bistrita go to Turin before taking the train to Barcelona. According to Europol, Tirana airport is also used.

However, Germany is also an important country of transit, particularly to the Scandinavian countries (for people from Iraq and the former Yugoslavia), Great Britain or Ireland (for people from Romania and Moldova)<sup>1</sup> and to the Iberian peninsula<sup>2</sup> (for people from other east European countries). The same is true of Switzerland, which is for some above all a country of transit. This is, in particular, the case for Chinese smugglers working the Balkan route, who use it to transport their fellow citizens to the EU, Canada and the United States. Controls at Zurich airport show that there has been a significant increase in this traffic in recent years.

In 2001, there were 48 700 arrests for illegal crossing on the eastern border (Czech Republic, Slovakia, Hungary, Slovenia), namely two-and-a-half times the number of arrests in 1998. The largest group were Romanians, followed by nationals of Ukraine, Afghanistan, Iran, Iraq and the former Yugoslavia. Many were trying to reach Germany via Carinthia and the Tyrol. The itineraries followed to reach Austria vary according to the migrants' country of origin and their ultimate destination. For example, people from Kosovo usually arrive by coach via the Federal Republic of Yugoslavia and Hungary; those from Romania go through Slovakia and the Czech Republic.

#### *Spain: from amateurism to organised networks at the southern gateway to Europe*

Arrests on the Spanish coast of foreigners trying to enter illegally by crossing the 12 kilometres of the Strait of Gibraltar have been increasing steadily since the early 1990s: the number rose from 3 600 in 1999 to 18 000 in 2001. Arrests by the Moroccan authorities on land or sea – some 15 000 in 2001 – have to be added to this figure. It is known that the Strait of Gibraltar is one of the main gateways for illegal entry to the EU. The very dangerous crossing (more than 200 deaths by drowning were recorded in 2001) is organised by smuggling networks established on both sides of the strait.

For a long time departures were principally from the northern coast of Morocco in the coastal region between Tangier and Kenitra, not far from the capital, Rabat. Although only 13 kilometres separate Spain from Morocco at the narrowest point of the strait, the smugglers are often forced to make crossings of several hundred kilometres in order to escape the ever more rigorous controls. The increased security of the strait also explains the shift of the departure area towards Al-Aioun (the principal city of Western Sahara, 1 250 kilometres south of Rabat) and the surrounding area,<sup>3</sup> from where the *pateras* leave for the islands of Lanzarote and Fuerteventura in the Canaries. The increased security of the strait, on top of more stringent controls at Melilla and Ceuta, has forced the smugglers to introduce this new route. In December 2001, the price of a place was 200 000 pesetas (€1 200), namely double what it had been two years previously. Employment contracts in Spain were selling for 800 000 pesetas (€4 800). Over 4 000 foreigners were arrested in this area in 2001. Between 1 January 2001 and 1 March 2002, total arrests had already exceeded 5 000.

Two-thirds are accounted for by Moroccans, the others by people from the countries of sub-Saharan Africa who converge on Morocco with the aid of organised networks. Some arrive by air at Casablanca airport, while others arrive only after a long journey before leaving for the Europe they have dreamed about. They arrive in Al-Aioun after crossing Mauritania<sup>4</sup> and Western Sahara packed into lorries, although the border is considered uncrossable, being protected by radar and landmines supposed to protect Western Sahara from attacks by the Polisario Front.<sup>5</sup> Another route leaves Mali or Nigeria,

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1. Via Belgium.

2. Via France.

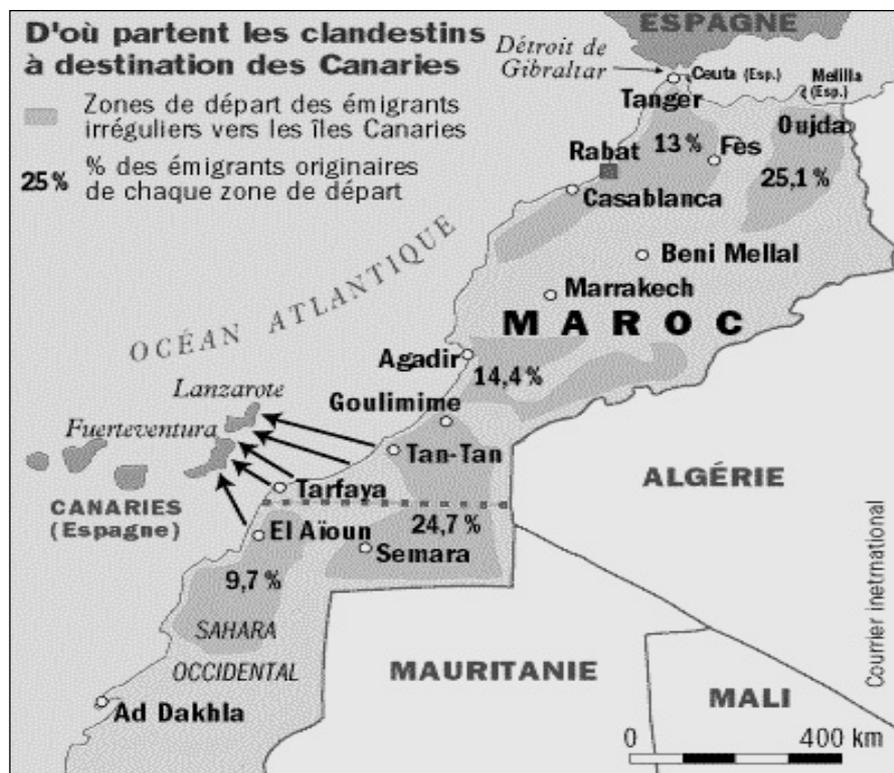
3. Along the coastline extending from the mouth of the Saquia al-Hamra to the Moroccan town of Tan-Tan.

4. Mauritania does not have the resources to police its 3 600-kilometre desert border.

5. Trafficking in migrants is only one part of intensive smuggling. According to a report by the Government of the Canaries, Royal Moroccan Armed Forces officers aid and abet these activities.

transits through Algeria (at Maghnia) before arriving in Oujda (in Morocco). The other possibility is to go by sea by stowing away on ships that put in at ports in Senegal, Liberia, Nigeria and Côte d'Ivoire.

We are a long way from the little bit of illegal work fishermen allowed themselves in the early 1990s, disembarking their passengers on the Spanish coast. Petty "smuggling" has given way to actual trafficking, which is less risky than trafficking in drugs. The small fishermen's wooden *pateras* have been replaced by the powerful Zodiacs of the networks established on both sides of the strait. Departures are from the beaches between Tangier and the Spanish enclave of Ceuta. North Africans, most of them Moroccans, are among the main "customers" of the *pateras*.<sup>1</sup> On the Spanish coast the new arrivals are put into "taxis" which take them to the farms, building-sites and restaurants where, according to the season, the need for cheap labour is greatest. The farms of Murcia, Almeria and Huelva have for years been the main clients. "Sometimes, even before the boats have left the Moroccan coast, we notice a movement of cars with Murcia or Almeria number plates looking out for the arrivals," says the head of the Tarifa civil defence services.



Not all foreigners arrive in Spain on board *pateras*, however. As is the case elsewhere, most arrive by plane with a valid three-month residence permit (or visa), which they extend by changing country, relying on the provisions of the Schengen Agreement. This happens in the case of Latin American nationals, for whom it is obviously the only possible way and who are increasingly spared the need for a Spanish entry visa, even if they transit through other European airports (usually Amsterdam or Lisbon). Some of those who land at Lisbon go on to Spain by car.<sup>2</sup> Others, such as the Peruvians, who are required to obtain a visa, try to do so, thus fuelling a trade in false Ecuadorian passports. Some then travel overland to São Paulo or Rio de Janeiro in Brazil, where they board a plane to Lisbon. They then go on to Spain by road.

1. According to the Moroccan Human Rights Association these departures are an expression of the despair of Moroccans, more of whom venture abroad every day because of increasing unemployment and poverty.
2. This is the journey made by Ecuadorians, Venezuelans and Colombians.

## Portugal

Portugal is one of the smugglers' favourite routes of entry into the EU. People of widely varying nationalities, using every possible mode of transport (land, air and sea), account for the increase in illegal immigration. They come from India, Pakistan, China, Senegal, Guinea (Conakry), Morocco, Algeria and Mauritania. Many arrive legally with a visa or residence permit and then stay on after it has expired. It is also very common, especially among people from the ACPOL<sup>1</sup> countries (Angola, Cape Verde, Guinea-Bissau and Mozambique), to use a student visa with the intention of working illegally.

The greatest increase in recent years has been in Brazilians and, above all, east Europeans (Ukrainians, Russians, Moldovans and Romanians). A large number are highly qualified (doctors, engineers, academics, etc.) and become building workers, nurses, nursing auxiliaries or waiters. Many of them have taken advantage of the act which, from January 2001, has enabled foreigners in an illegal situation but with an employment contract to obtain a temporary one-year permit renewable for five years. Small Portuguese enterprises have been more than willing to offer such contracts and legalise the situations of the people they were employing illegally.

Traffickers usually ask people from eastern Europe for a lump sum of between US\$1 000 and US\$2 000 in return for a two-week tourist visa, transport, a job and accommodation.<sup>2</sup> When they arrive, other members of the network<sup>3</sup> put them in contact with the heads of small "local" enterprises. These are often sub-contractors of large construction companies, Africans from former Portuguese colonies. The route taken is via Poland, Germany, France and Spain. Some 50 000 Ukrainians, Moldovans and Russians are thought to have entered Portugal in this way.

The Portuguese services specialising in organised crime stress the importance of the role of the traffickers who, long after migrants have arrived, continue to demand 5% to 10% of their monthly wages on pain of reprisals against their relatives who have remained at home. A Moldovan network of this type known as the Borman Network was recently disbanded and its members prosecuted for membership of a criminal organisation. They are liable to prison sentences of between fifteen and twenty years. The case continues.

Conversely, Portugal as yet has received few asylum applications (an average of 250 a year between 1995 and 1999). Romanians accounted for the majority at first, but have now been outstripped by Africans (from Sierra Leone, Ghana, Nigeria and Angola), most of whose cases do not fit the criteria of the Geneva Convention. They are fleeing the consequences of widespread conflict rather than individual persecution and therefore have little chance of being granted refugee status. Some of them obtain "humanitarian" protection.

## Italy: the threat of mass landing

Italy, which has about 1.7 million legal foreign residents (that is, less than 3% of the working population), has been haunted by the spectre of mass landings since 10 000 disembarked together. One of the most recent involved was the *Monica*, which brought 1 000 migrants (including 200 women and 300 children, most of them Kurds, Syrians and Iraqis) into the port of Catania in Sicily on 17 March 2002. Spotted by the French Navy, the merchant vessel was escorted there by the Italian Navy. In order to obtain assurances that the ship would not be sent back into international waters, some passengers and members of the crew threatened to "throw the children overboard".

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1. African countries with Portuguese as official language.

2. Recruitment advertisements are published in the leading Kiev, Moscow and Kishinev newspapers by bogus travel agencies. The situation is confirmed by the head of mission of the IOM in Lisbon, who states that they have completely valid Schengen visas issued by the consulates of countries like France, Germany and Spain. Local travel agencies run by the local mafia do all the necessary work. So there is no way they can be turned back. Quoted in *Le Point*, 21 June 2002.

3. Who are in Portugal legally and have been for a long time.

The cargo ship, which was controlled by criminal organisations, had apparently left Lebanon a week earlier. These mass landings are one of the strategies of the Albanian and Turkish criminal organisations. As in the case of the *East Sea*,<sup>1</sup> which was scuttled off the Var coast of France, the objective of most of the migrants is to gain access somewhere on the southern coast of the EU and then try to reach Germany, their “ultimate destination”, as quickly as possible. The passengers of the *Monica* and the *East Sea* had paid between US\$2 000 and US\$4 000 for the journey.

Turks, Albanians and Kosovars transported by smugglers are usually landed on the Adriatic coast, while North Africans tend to be sent to Sicily. Since an agreement concluded with Morocco and Tunisia in August 1998, would-be immigrants have been repatriated in air force planes. As Turks of Kurdish origin and Albanians are “freed”, the number of non-documented foreigners in Italy is constantly increasing. In order to remedy this situation, the Berlusconi government decided to declare a state of emergency in the ports. Since then, the police have intensified their operations: in six months, deportations rose by 30% (76 000) and 208 smugglers’ craft were impounded, as compared with 148 in the previous eleven months.

Until the new act was passed, all foreigners arrested without papers in Italy were ordered by the courts to leave the territory. They were issued with a “travel warrant” containing the injunction and then released. Some of them remained in Italy without papers and tried to organise their lives, others used the warrant to “emigrate” to another European country. Asylum seekers who could not be deported were given a temporary renewable one-year residence permit, valid only in Italian territory, on “humanitarian” grounds. For many of these people too, Italy was only a staging-post: they remained in touch with the people who had organised their journey and the police took no interest in their next destination.

Under the new act, asylum seekers are taken to a “reception centre” guarded by the police. If they are unable to legalise their situation within two months, they will be taken to the border. Ten new centres are to be opened. The authorities anticipate an influx of 36 000 migrants per year. On an official visit to Morocco in mid-May, President Carlo Azeglio Ciampi took care to stress to his hosts that “Italy and the rest of Europe have a limited reception capacity”. Coming from a head of state widely respected for his moderation and concern for social justice, this statement highlighted the urgent need for a new order between north and south.

### *Turkey as a hub*

“It is as easy to enter this country as it is to leave it for Europe,” explains Ahmet Icduygu, a professor of politics specialising in illegal immigration in Turkey. It would indeed seem difficult to close the 7 000-kilometre Turkish coastline and the 2 800 kilometres of its mountainous border with Iraq, Iran and the former Soviet republics. Turkey is first and foremost a country of origin.

The eastern route is in the process of supplanting the crossing of the Strait of Gibraltar (which is increasingly difficult and too often fatal) and making the country one of the main “gateways” to Europe for would-be immigrants. The European Police Office (Europol) estimates that a significant proportion of illegal migrants (or people on the way to becoming such) enter Europe through what they call the “eastern and Balkan flank”, one of the five major migration routes into the European Union.

This situation began to emerge in the mid-1990s. The restrictive visa policies of the European countries which blocked other ways of entry and turned would-be immigrants towards new channels played a major part. They arrive from the Middle East (Iranians and Iraqis for the most part), Asia (Pakistanis, Bangladeshis and Sri Lankans,) and Africa (Nigerians, Somalis and Congolese). Others are people who

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1. The ship, which was carrying hundreds of Kurds, was scuttled in February 2001.

have been refused asylum and settle more or less permanently without papers, either looking for work or awaiting another opportunity to leave. Still others (from the countries of eastern Europe) arrive in Turkey hoping to be able to work there illegally.

The Turkish Ministry of the Interior admits that Turkey is “a country of transit for migrants from Afghanistan, Pakistan, Iraq, Iran and Bangladesh”. The ways of crossing the border have been changing. The land border between Turkey and Greece<sup>1</sup> has gradually been supplanted by the sea route – large cargo vessels leaving the Aegean or Mediterranean coasts of Turkey for Italy or small craft going to the Greek islands near the Turkish coast, with the risk of frequent accidents. The cost of the passage is around US\$3 000. With 300 to 500 people aboard, the income from one crossing may be as much as US\$1 million per vessel, generally in a very poor state and bought for a tenth of that.<sup>2</sup> The would-be immigrants are taken after nightfall to quiet creeks near Istanbul or on the Aegean coast beyond the straits in order to reach international waters as quickly as possible and avoid being sent straight back to Turkey. Where checks are made on the road prior to embarkation, attempts to corrupt Turkish security officers are frequent.

The situation is, however, beginning to change. This is a result, firstly, of strengthened controls in the EU. On top of this there is the increasing burden of long-term transit by those hoping to immigrate to the EU. There are now thousands of Iraqi Kurds, Afghans, Iranians, Pakistanis and West Africans (Guineans, Ghanaians, Gambians and Senegalese)<sup>3</sup> waiting in Istanbul for a possible departure to Greece or Italy. For some, it is a long time before an opportunity presents itself. Furthermore, Turkey is also becoming a final destination for others (Moldovans, Ukrainians, Romanians and Bulgarians) who work there illegally for varying periods before returning home. The management of these new situations, which are gradually transforming Turkey into a “country of immigration”, is a serious problem for the Turkish authorities, which are not equipped for the purpose.

In spite of everything, arrests of foreigners without papers are increasing. According to the Turkish authorities, who refute EU accusations of laxness, there were 95 000 and 93 000 arrests in 2000 and 2001 respectively, as against 11 000 in 1995. According to an Interior Ministry report, more than 360 000 foreigners have been apprehended in this way over the last five years, and 175 000 deported. In July 2002, the Turkish security forces played an important role in the dismantling of the Turkish part of an international network.<sup>4</sup> From Turkey, the organisation offered entry to Italy by boat or lorry for about €300 and provided false papers. The traffic was organised by a group of Turkish smugglers,<sup>5</sup> who accompanied would-be immigrants to Italy and then helped them to cross the various European borders. According to the Italian police, during the first six months of this year the traffic brought in some €360 000 in Italy alone.<sup>6</sup>

Despite the arrests made, the Turkish authorities admit that, given the scale of the problem, they still have a great deal to do. The country has neither the funds to set up holding centres, nor the means of sending home people who do not come from neighbouring countries.<sup>7</sup> It is therefore demanding EU aid to strengthen its land borders, first of all those with Iran and Iraq, and organise the repatriation of arrested foreigners. “We are a country of transit, but the increasing number of arrests shows that we are also a barrier. And we expect major co-operation from the Fifteen to help us confront this problem, which is primarily theirs,” said a senior official in the Ministry of Foreign Affairs. A project costing at

1. Going by land over the Greek border costs half as much but is far more dangerous. It is necessary to cross the border at night, avoiding minefields. Once in Greece, migrants must get out of the border area as quickly as possible so as not to be sent straight back to Turkey. The recent readmission agreement between Greece and Turkey has made prospects even more uncertain.
2. Hence the interest of large organised gangs in this profitable, risk-free form of trafficking.
3. In the Beyoglu neighbourhood of Istanbul.
4. The network had been set up in Turkey but its ramifications extended from Italy to countries in central and eastern Europe.
5. Fifteen people were arrested and charged, including five Turks and three Kurds.
6. Some 1 200 Kurds from Turkey have entered Europe via Italy since January.
7. Turkey refuses to finance the repatriation of illegal immigrants from countries that are too distant, in particular nationals of African countries. When they are arrested, they are taken to Istanbul and released.

least €1 billion is being studied. It provides for radar surveillance and, in the long term, the construction of an electronic fence.

A joint action programme was drawn up in Ankara on 19 June 2002. Three working groups were to be formed by 1 September to study, as in the case of other candidates for membership, ways of developing technical assistance and integrated management. The project is scheduled to be set up in 2003. One of the remaining delicate problems concerns agreements for the readmission of migrants from Turkey without papers arrested in an EU member state. Only an agreement with Greece enables illegal migrants to be sent back across the border, if the Greek authorities can prove the route taken.

The reputation for being a “trafficking hub” is undeniably prejudicial to Turkey’s candidacy for admission to the EU. Hence the historic vote by the Turkish Parliament (3 August 2002), which, in adopting its programme, was careful not to forget the EU’s requirements regarding immigration, asylum and combating traffickers in human beings.

### Agadez revives its past: a crossroads of trafficking – Slaves yesterday, migrants today

The trafficking across the Sahel is not well known and receives little media coverage. Nothing is known about those who venture into the region, let alone those who lose their lives there. Their death is shrouded in anonymity and upsets no one except, one day, one family, sometimes long after they thought “he got through”. Only the exceptional events are “news”.<sup>1</sup> In a recent study, Ali Bensaad<sup>2</sup> showed that Niger was the hub of migration across the Sahel. The flows from West Africa, including those from English-speaking Nigeria and Ghana, converge on Agadez, beyond the Ténéré Desert. Nigerians account for about 50% of such migrants, Ghanaians for 30%, and people from Niger for 15%.<sup>3</sup> They have tripled in number since 1999.

The transit is manna from heaven for northern Niger, the most deprived region of a country which is one of the poorest in the world. Starting from Agadez, the journey is made in lorryloads of more than 100 people.<sup>4</sup> Transporting people is far more lucrative than transporting millet and salt and the lorry owners have been easily persuaded. Part of the town has been reorganised as a result. The local people<sup>5</sup> run the “authorised travel agencies”, lorries and food stores for provisioning the crossing. Former migrants have specialised in providing “services” to their compatriots: they run cheap eating-houses, boarding-houses and shops selling odds and ends (jerrycans for transporting water, torches, blankets, etc.). They are also “touts” who direct new arrivals to agencies in return for a commission. According to the authorities of Niger, “It is all perfectly legal. These are Africans who have a perfect right to transit through Niger. The rest is their responsibility”. Furthermore, every “agency” has to register those leaving with the local police and pay a tax for each person. The sum varies between 1 000 and 2 000 CFA francs (between €1.53 and €3.06). This does not stop the police later putting up numerous road-blocks in order to extort money from the migrants, on the pretext of checks.

Ali Bensaad emphasises that Agadez is thus giving itself the illusion of reviving its history and the splendour it enjoyed, in the sixteenth century, when it was a pivot of trade across the Sahara, the meeting point of the major caravan routes linking the Mediterranean with the Hausa country and Mali with Egypt. In the then prestigious city of 50 000 inhabitants, apart from gold, the major trade was in slaves. According to Ali Bensaad, at that time as many slaves were transported to Libya and Algeria as migrant workers travel today to the same countries. History is never lacking in irony nor the human mind in cynicism.

1. Such as in May 2001, when forty bodies were found in a lorry, *Le Monde*, 20 May 2001.

2. Ali Bensaad, lecturer at the Institute of Geography of the University of Aix-Marseilles I and researcher at the Institut de recherche et d'étude du monde arabe et musulman (Institute of Research and Study of the Arab and Muslim World). *Le Monde diplomatique*, September 2001.

3. In his study, Ali Bensaad observes that there are more and more well-educated migrants (one-fifth of those interviewed).

4. Departures for Algeria are considered more dangerous and take place in Toyota pick-ups carrying twenty-five to thirty passengers, which make it possible to escape controls.

5. The Toubou traders, an ethnic group with more freedom of movement in Libya, many of whom have Libyan nationality, are among the most active.

## From transit to permanent settlement: a tricky business for the countries of eastern Europe

Ukraine has rapidly become a significant country of transit, particularly for people from Afghanistan, but also for Sri Lankans, Indians, Bangladeshis and Chinese.<sup>1</sup> Some use study as a pretext for obtaining a residence permit. Checks in universities by border police and the security services have shown that half of the 15 200 students who arrived in 1999-2000 did not attend university and had no known domicile. The tightening up of entry procedures in the countries of central and western Europe has forced most to stay in Ukraine, although they were only in transit there. They are therefore taking advantage of the social and political stabilisation of the country, the improvement in the economic situation, the proliferation of undeclared jobs, the comparatively low cost of living and a still inadequate immigration control system. At the same time, a great many Ukrainians try to emigrate, hoping to find better paid jobs abroad, and often end up in a similarly illegal situation.

Like its neighbours, Bulgaria is suffering the effects of transit migration from the Middle East, the CIS countries (particularly Moldova, Georgia and Ukraine) and Romania, without being equipped to cope.<sup>2</sup> Some migrants enter legally through the northern border and then try to cross the frontier to Greece or "the former Yugoslav Republic of Macedonia" illegally. Others make numerous attempts at illegal entry (false passports, visas and safe-conducts, hidden away in trains, ships and motorised vehicles). Still others apply for asylum to give themselves time to organise their onward journey (alone or with the assistance of organised networks) to an EU country. As for those who settle, many enter legally and stay on after their residence permit has expired (Romanians, Ukrainians, Moldovans, Iraqis, Tunisians and Russians), others have been refused asylum and failed in their attempts to enter an EU country (people from Iraq, Afghanistan, Armenia and Sierra Leone).

In most cases, the traffickers working in Bulgaria are nationals who receive logistic support from fellow citizens involved in other criminal activities. According to the Ministry of the Interior, some 270 Bulgarians (working within the national territory or in the Netherlands, the Czech Republic, Poland, etc.) are involved in trafficking in women for the purposes of prostitution. As for the foreign traffickers, they live legally in the country, from where they build up their network with other gangs organising the transfer of people from the CIS, other parts of the former Soviet Union, Afghanistan, China, India, Sri Lanka, etc.

Estonia sees itself as a "second country of transit" for routes to the Scandinavian countries or the EU, either by ferry (to the Nordic countries) or by plane (to the countries of western Europe). The first transit is usually through the Russian Federation, from where the would-be immigrants (from India, Pakistan, China, Afghanistan, etc.) arrive by bus or train. The smugglers are usually nationals of the countries crossed and therefore include Estonians. The Chinese are the only exception: while other migrants use traffickers in each country of transit to help them through each stage to their ultimate destination, the Chinese are generally handled by the same network for the entire journey from China to the final destination. Here, as elsewhere, the Chinese traffickers take complete charge of their compatriots and strive to maintain control of the whole route organised for their illegal immigration, except when they transit through the Russian Federation, where they use Russian smugglers.

The foreigners who settle illegally in Estonia are for the most part nationals of the republics born of the dismantling of the Soviet empire (the Russian Federation, Belarus and Ukraine). Some enter and live illegally, others work illegally (mainly in restaurants and shops) while holding only a tourist visa; still others, after an initial legal stay, have failed to obtain an extension of their permit. The latter often then apply for asylum or contract a marriage of convenience in order to legalise their situation. Very few people who have been refused asylum settle in the long term.

1. In 1999, 9 500 foreigners who had entered illegally were arrested by the border police, the highest number ever. Half of them were from Afghanistan.
2. The pressure is felt mainly in the region of the frontier posts of Kapitan Andreevo, Kulata, Ruse, Sofia and Varna.
3. They are now more numerous than people from Croatia, Bosnia and Herzegovina and Kosovo, who formed the majority during the conflicts concerning them.

In Slovenia, the most frequent type of illegality is the organised crossing of borders. Migrants enter from the Republic of Croatia and leave for Italy. They are mainly Iranians, Turks and Romanians.<sup>3</sup> In view of the small area of the national territory, however, the whole country is in fact affected by their transit, except for the mountainous northern region. The majority of the migrants (principally the Iranians and Turks) arrive by taking the route Istanbul (Turkey) – Sarajevo – Tuzla (Bosnia and Herzegovina) – Croatia – Slovenia. Others stay longer in the country, mainly nationals of the Federal Republic of Yugoslavia, Bosnia and Herzegovina and “the former Yugoslav Republic of Macedonia”. They arrive legally with short-term residence permits and stay on after they have expired. They settle mainly in the major urban and industrial areas, where they hope to find employment. Other forms of illegality are statistically negligible.

In the former Yugoslavia, illegal transit immigration organised by Macedonians and a few foreigners has accelerated greatly, both with respect to the border with Albania *en route* for Italy and other EU countries and towards Greece. There are two major routes across the Greek or Albanian border: from the Yugoslav-Macedonian border to Greece, and from Bulgaria to Greece or Albania. The route starting from the northern border is the one most commonly followed, often by Romanians hoping to work in Greece, and also by the trafficking networks that control the route between Greece and the countries of western Europe. The Yugoslav-Macedonian border is particularly heavily used by Bulgarians and people from the former Soviet Union, most of whom try to enter Greece illegally (a few stay in “the former Yugoslav Republic of Macedonia” to find illegal work there). There are also Turks of Kurdish origin, who stay briefly before leaving for Albania. However, few people settle in the country illegally. Few foreigners stay on illegally after their residence permit or seasonal work contract has expired or try to enter except to join their families. Few arrive with an educational pretext.<sup>1</sup>

Most illegal migrants in Latvia arrive from the Russian Federation, Ukraine, Belarus, Armenia and Azerbaijan. Most of them try to cross the “green border” legally or illegally. In many cases, they enter legally with visas, some of them obtained thanks to an invitation (sometimes issued simply to oblige) from relatives living in the country. During their legal stay they try to obtain false passports from trafficking networks to enable them to stay in Latvia or, conversely, to leave the country for western Europe or Scandinavia. Some stay on after their visas have expired and work illegally. There is also another group composed of Asians and Africans, whose itineraries vary greatly. There are Ghanaians, some of whom are enrolled as students at the university; Indians, Nigerians and Moroccans who have disembarked illegally at the port of Ventspils, some intending to go on to Sweden; and Iraqis, some of whom have come via the Russian Federation (with official papers issued in their country of origin), others via Estonia or Finland (with forged papers).

It was in 1992, when independence had only just been declared and its borders opened, that Lithuania first found itself confronting the problem of illegal immigration, with the first transits *en route* to western Europe. The migrants and particularly the traffickers immediately tried to take advantage of the new situation. At first the smugglers were exclusively Asians resident in Europe. They gradually forged ties with members of the law enforcement agencies and other people familiar with the situation in the border area and its system of control. They also turned tourism to their advantage. A number of tourist agencies opened branches in Lithuania.

Lithuania’s borders with the Russian Federation and Belarus are the most commonly used access points. The main route crosses the eastern border between Lithuania and Belarus and goes on westward across the border with Poland. Most illegal entries therefore take place from Belarus territory and the migrants then try to reach Poland. Attempts to leave Lithuania are also made through the port of Klaipeda or the frontier between Lithuania and the enclave of Kaliningrad (Russian Federation).

Most of the victims of this traffic are from Asian or Far Eastern countries such as Afghanistan, Pakistan, India, Sri Lanka, Bangladesh, China and Vietnam. They include people looking for jobs, young women

1. Except for a few Iranians trying to avoid military service in their country of origin.

destined for prostitution (from Ukraine, Belarus and the Russian Federation) and asylum seekers. The cost of the illegal journey from Belarus to Poland has quintupled since 1992 (from US\$500 to \$2 500 per person). The traffic continues throughout the year, even in winter, an indication of how well organised it is.

Recently, immigrants have begun to make a detour along internal routes linking Moscow and Kaliningrad. The possibility that they will try to enter Lithuania cannot be ruled out. According to the border police, many foreigners deported from Lithuania in 1999 managed to reach Kaliningrad, although their itinerary of return to their countries took them from Belarus to Moscow, then to Turkmenistan and on to Kabul and they were escorted by representatives of the Afghan Embassy in Moscow. Another, less common, type of traffic, seen for the first time in 1994, is the illegal transportation of foreigners from Belarus to Poland through Lithuanian air space in light aircraft, which are usually burned on arrival.

Having long been a favoured country of transit, Lithuania is also having to cope with a substantial rise in asylum applications. While some put forward unquestionable political grounds (people from Afghanistan and Chechnya), others (Sri Lankans, Indians, Pakistanis, Bangladeshis, Belarusians, Chinese and Russians) use the procedure for want of any other option. Furthermore, most of them soon escape from the reception centre or withdraw their application before the examination procedure has been completed.<sup>1</sup> The very particular case of imprisoned foreigners should also be mentioned. Most of them are from Azerbaijan, Armenia, the Russian Federation, Georgia, Belarus and Ukraine. The majority do not have valid identity papers and cannot be repatriated since they did not acquire citizenship of one of the CIS countries when the Soviet Union broke up.

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1. If their application is refused, they have to leave the country. Between 1994 and 2000, 6 410 people whose applications for asylum had been refused were ordered to leave Lithuania, most of them Russians, Belarusians and Ukrainians.

# Strict control of entries and measures to deter settlement: a strategy of policing foreigners rather than an immigration policy

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The fall of the Berlin Wall, the end of the Soviet system, and then the conflict in Yugoslavia gave rise to much anxiety in Europe, which was exacerbated by the racist attacks in Germany in the early 1990s, particularly the burning of the immigrant centre in Rostock by neo-Nazis. These events were a very significant factor in states' determination to overhaul their control policy and strengthen co-operation on migration issues.

The early 1990s saw legislation and regulations on this subject introduced in every EU member state at a rate as fast as that of recent months. Furthermore, the work has not stopped since, either domestically or at bilateral, intergovernmental or Community level. One can only deplore the competition or even contradictions resulting from all these many levels of initiatives and decision-making. One thing has, however, remained constant and is common to all: the priority given to "security" in the approach to the issue.

As a result, all aspects of immigration have been the subject of restrictive measures. Identity checks have been stepped up, the conditions for issuing residence and work permits have been made more stringent and the categories of persons who may not be deported reduced. The rules for issuing visas have been revised, the accommodation of foreign visitors has been more closely monitored, rights of appeal limited, possibilities for detaining foreigners who can be deported have been broadened and the penalties for assisting the illegal immigration and employment of foreigners have been made tougher. New, automated systems for the registration of foreigners and for seeking information about them have been developed and work is under way to make official papers inviolable. These changes have been accompanied everywhere by a transfer of the main powers in this area to ministers responsible for internal security. Three areas are symbolic of the general policy thrust: family reunification, mixed marriages and political asylum.

## Family reunification constantly called into question

The full scale of family reunification was evident immediately the decision was taken to halt labour immigration in the mid-1970s. Since that time it has been one of the major means of migration. It is also a constant target for states which have consistently tried, if not to oppose,<sup>1</sup> at least to restrict it. The restrictive policies of the last fifteen years have accentuated the trend, increased the obstacles to exercising the right and as a consequence put the families concerned in a precarious situation.

Controlling family reunification is now an important means of restricting the movement of nationals of third countries:<sup>2</sup> generally it is authorised only subject to conditions regarding the applicant's length of residence, appropriate housing and resources enabling him or her to support the family. Some countries have added more specific conditions to these general rules, such as requiring foreigners wishing their family to join them to have renewed their work and/or residence permit at least once. In the United Kingdom, the bill now being discussed by parliament seeks to extend to two years the period during which the applicant must have lived with the foreign spouse before the spouse will be authorised to stay permanently. In France, the prefect's decision depends upon the opinion of the mayor of the district of residence, who must give reasons. Once the prefect's authorisation has been obtained, reunification

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1. In some cases, court decisions were required for this to be the case, for example that of the Conseil d'Etat in France in 1976.  
2. A resolution on the harmonisation of legislation was adopted in Copenhagen on 1 and 2 June 1993.

has to take place in one go, unless this is not in the children's interests. Even in this case, it must take place within six months, and the reunification of the family may be called into question if the conditions that led it to be authorised no longer obtain upon arrival in France.

### "Mixed" marriages under scrutiny

Long regarded as an indicator of "integration", "mixed" marriages have also started to come under suspicion. They are therefore now the subject of increasing vigilance and measures have been taken to decrease their number, in particular by giving mayors powers to refuse to celebrate unions they suspect of being marriages of convenience. Legislation on this matter is increasingly stringent everywhere; there is a risk that systematic doubt will deteriorate into prima-facie suspicion.

Thus the Dutch Civil Code allows public registry officials to authorise or refuse a marriage between a Dutch citizen and a foreigner. The public prosecutor may also annul a marriage that has already been contracted. Similar provisions have been introduced in France. Mayors may inform the public prosecutor when they doubt the sincerity of a union they are due to celebrate. The prosecutor may then postpone celebration of the marriage for a month and may subsequently oppose it; the couple may contest the decision before the courts. When a marriage has been contracted, a residence card is issued to the foreign spouse only after one year of marriage and on condition that the spouses have lived together during that period.

In Austria, the 1997 Foreigners Act<sup>1</sup> limited the period of validity of the first two residence permits issued to a national of a non-EU country after marriage to one year. An open-ended residence permit is issued only in the third year. The authorities may also check the applicant's family situation after the first year of residence. It has recently been made an offence to act as "a professional intermediary for fictitious marriages". It is also an offence to make false declarations regarding kinship in order to abuse family reunification. The new Foreigners Act (2000) allows family members to work only after five years' legal residence.

In the United Kingdom this subject has received a great deal of attention in recent years. Section 24 of the 1999 Immigration and Asylum Act, which came into force on 1 January 2001, requires superintendent registrars to inform the Home Office of marriages they suspect of having been entered into for the purposes of avoiding immigration controls.<sup>2</sup> It gives superintendent registrars powers to ask couples to submit evidence of the names, ages, marital status and nationalities of both parties. They may refuse to conduct the ceremony if they are not convinced that the man or woman is exercising freedom of choice in entering into the marriage.

An Immigration Service office has special responsibility for receiving such information from registrars. As soon as it is received it is examined and its relevance immediately assessed. If further investigation is required or if a specific measure appears justified, the case is transmitted to the appropriate immigration office so that further investigations may be made. Staff has been recruited for this purpose and special training organised. The Immigration Service has also allocated new resources for the prosecution of people who arrange this type of marriage. A team has recently been set up in London with the express task of combating this sort of abuse. It has arrested more than 236 people involved in the offence. Of these, 118 have been charged or received a warning and forty-two turned away or deported. Some have received prison sentences, of up to seven years.

For all that, significant progress has been made on these matters. The first is the shift from the notion of "the right to family reunification" to that of "the right to family life". A growing number of countries

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1. In force since 1 January 1998.

2. Previously, the Home Office was supposed to be informed of suspicious cases by an informal procedure, which was not always complied with.

refer to it in their legislation on the entry and residence of foreigners<sup>1</sup> or in regulations.<sup>2</sup> Some give it a constitutional value. In Germany, for example, Article 6 of the Basic Law states: "Marriage and the family shall enjoy the special protection of the government". The 1990 Act on the entry and residence of foreigners states that family reunification is a right deriving from the constitutional protection given to marriage and the family. This substitution is not merely a question of semantics, but should allow a greater degree of equal treatment among all foreigners whatever their national origin. The other progress that has been made, also in the field of equal treatment, stems from the contribution of international instruments,<sup>3</sup> pending the adoption of the directive drawn up by the European Commission. Furthermore, unmarried couples have been given the right to benefit from family reunification<sup>4</sup> in the Netherlands and the United Kingdom (including homosexuals, 1997). It should also be noted that in June 1997 the United Kingdom repealed the "primary purpose rule", which required the spouse or future spouse to prove that the primary purpose of the marriage was not immigration. It had been very strictly applied by British civil servants and the courts.<sup>5</sup>

### Political asylum

It is the approach to asylum which is unquestionably most indicative of the general policy adopted since the early 1990s. There is a shared wish to reduce as much as possible access to the protective status of "refugee" under the terms of the Geneva Convention. The rule everywhere is to distinguish between "genuine political refugees", whose profile is determined according to ever more selective criteria, and "economic refugees", whose requests for asylum are regarded as illegitimate in principle. The standards and criteria drawn up have led to ever more differentiated treatment of populations according to their origin and status ("refugees", "tolerated persons", "humanitarian status", etc.), the concern being to prevent people transferring from one of these categories to another.

Essentially, all countries have adopted the same general measures: more stringent entry criteria, speedier examination of cases and lengthening of the list of countries whose nationals are not authorised to apply. Objectives have been the same everywhere: to avoid the submission of so-called "manifestly unfounded" applications, speed up procedures so as to weed out "spurious applicants" quickly and remove those who have been refused refugee status from national territory. To this common policy emphasis, each country has added other, more specific measures, all of which are aimed at strengthening the powers and means of investigation<sup>6</sup> of the government departments responsible.

At the same time, appeal procedures have been revised, rarely in favour of the applicants. The stated objective is to relieve the appeals system of "superfluous" duties so as to "keep it" for major decisions. The result is that, without having been altogether eliminated, the right of appeal has everywhere been made more difficult.<sup>7</sup> This is what happened in the Netherlands in the early 1990s, for example

1. In Portugal, in the 1992 Act and the Decree of March 1993, in France in the Pasqua Act of August 1993, as amended by the Chevènement Act of 1998, and in Belgium in the Act on Access to the Territory, Residence, Establishment and Removal of Aliens. In Spain the principle is set out in the Implementing Act of 1985, which gives foreigners the same fundamental rights as nationals. Consequently, the implementing regulations lay down that "the members of the families of foreigners legally resident in Spain shall be able to reside with them". In the United Kingdom, on the other hand, the right to family reunification does not appear anywhere in legislation.
2. In the Netherlands, the law contains no provision on family reunification, which is governed by a circular on foreigners and by case-law. In Spain and France, it has been mentioned in texts establishing legalisation: the Chevènement circular of June 1997 and the Regulation of February 1993.
3. The Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).
4. The conditions are stricter than those for married couples, however. The relationship must be serious and enduring, the partners must live together and both must produce certification of their single status. A foreigner who has settled in the Netherlands must sign a declaration guaranteeing to bear the costs of his or her partner's stay.
5. Although it is to be feared that its spirit remains and that the habits acquired will not be quickly forgotten.
6. For example, the compulsory recording of asylum seekers' fingerprints and photographs when they submit their applications.
7. The war in the former Yugoslavia did not affect this convergence. After an initial reaction of sympathy and openness "on humanitarian grounds", the imperatives of restriction and selectivity regained the upper hand, the aim being to avoid any breach in the control system that would provoke further population movements.

(Foreigners Act of September 1993), Belgium (Act of 6 May 1993) and the United Kingdom (Act of 1 July 1993).

It was certainly in Germany that the amendments were most symbolic of the changed attitude to asylum in Europe. In 1993 the three reference acts governing the entry and residence of foreigners (the Basic Act, the Foreigners Act and the Asylum Procedures Act) were substantially amended with the threefold objective of preventing “abuse of the right to asylum”, falling into line with the general principles of the Schengen Agreement, and deciding which countries were “safe”.<sup>1</sup> The approach was crowned by the most symbolic change of all: the amendment of Article 16 of the Basic Law (the German Constitution).

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1. Countries whose situation seemed to guarantee the absence of political persecution and inhuman or degrading treatment or punishment.

# New provisions recently adopted or under discussion

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In Denmark, the legislation on foreigners, which had already been strengthened by the previous Social Democrat government, was further tightened by the Prime Minister, the Liberal Anders Fogh Rasmussen, shortly after his victory in the general election of November 2001. The new act was passed on 31 May 2002 and came into force on 1 July as Denmark was taking over the rotating presidency of the European Union. The Prime Minister said that Denmark would serve as an example to other countries. The act tightens restrictions in three essential areas: the right to asylum, family reunification and acquisition of Danish nationality.

Asylum is now restricted to refugees covered by international conventions, in other words, persons suffering or threatened with persecution on the grounds of race, religion or political convictions. Permanent residence permits will now be issued to them only after seven years, instead of the present three. It is only after that period has elapsed that they will be covered by the social protection system. If the situation in their country improves, they will be sent back, and their cases will be re-examined if they visit their country for a holiday. The duty of local authorities to provide refugees with housing within three months of their arrival has been abolished: they are now required to do so "as soon as possible".

The conditions for family reunification have been made more stringent. This right will in future only be granted to persons who have first deposited security of €7 000 in a bank account, proved their ability to support the new arrivals and have adequate housing. Persons over the age of 60 no longer have the right to family reunification. The rules on marriage to a foreigner wishing to come and settle in Denmark have also been amended. The minimum age for this type of marriage is now 24, and this also applies to Danes. The foreigner wishing to marry must prove that his or her "ties" with Denmark are stronger than those with his or her country of origin. It will be increasingly difficult for Danes of foreign origin to bring a spouse of foreign nationality to Denmark. Nationals of EU and Nordic countries are excluded from these measures.

In Italy the purpose of the new act<sup>1</sup> is to facilitate deportations, tighten control over the conditions of renewal of residence permits, prolong the length of time people are held in reception centres and restrict family reunification. The key measures include taking the fingerprints of all non-EU nationals when they apply for a residence permit or renewal of one; detention in a police-guarded "reception centre" of foreigners with no residence papers, who will then have two months to try to legalise their situation and, if they fail, will be deported;<sup>2</sup> immediate deportation of those not admitted and those refused asylum; a maximum of one year's imprisonment for people who have been deported and are again arrested on Italian soil; speeding up deportation procedures; using naval vessels to combat the illegal landing of migrants; preliminary requirement of an employment contract in order to obtain a two-year residence permit with the risk of losing the permit if the job is lost and being required to leave the country within six months; and tightening of the criteria for family reunification. The penalties for employers taking on foreigners without work permits have been increased (three to five years' imprisonment and a €5 000 fine for each person employed illegally).

Portugal has amended its legislation on immigration for the second time in two years<sup>3</sup> with the declared objective of reducing entries by nationals of non-EU countries. Any foreigner who arrives or stays in Portugal illegally is liable to an administrative deportation order and likely to be forbidden to enter national territory or the EU for a period. Furthermore, the fines imposed on enterprises employing foreigners have been supplemented by one to four years' imprisonment and they are required to pay

1. Passed by the Chamber of Deputies on 4 June 2002 and approved by the Senate on 11 July 2002.

2. Some ten new centres are to be opened. The authorities anticipate a flow of 36 000 people a year.

3. The previous legislation passed in January 2001 instituted a sort of permanent legalisation, with the offer of a temporary visa on arrival on Portuguese soil.

the costs of repatriation. As in the rest of the EU, the new Act attempts to respond to the public's "fears" and at the same time satisfy employers' demand for foreign labour. The government is to set annual quotas according to the situation of the employment market and rigorous selection will favour the entry of those most highly qualified.

In the United Kingdom, the Nationality, Immigration and Asylum Bill is now going through Parliament under an accelerated procedure. It has been passed by the House of Commons, been submitted to the Lords for approval and is likely to receive the Royal Assent in October. It, too, gives priority to the way applications for asylum are processed, speeding up procedures so as to avoid the long-term settlement of applicants awaiting a decision. Those who have passed through a "safe country" (France or Germany, for example) will be sent back there while their appeal is being considered, and those whose applications are "manifestly without foundation" will be sent back to their countries. In addition to placing tight restrictions on judicial appeals, the government plans to use charter flights for the speedy deportation of those whose applications have failed. According to the Home Secretary, David Blunkett, the decision to deport will be taken literally within a day or two of the submission of an application for asylum. It is planned to repatriate forcibly those people who refuse to leave the United Kingdom. Registration and assessment offices may be set up abroad. The government is also considering the possibility of putting "pressure" on countries that refuse to co-operate with the repatriation of their nationals. The Secretary of State for International Development, Clare Short, has made it known that she disagrees with this last idea.

In the Netherlands, the new coalition government<sup>1</sup> has placed the matter at the top of its agenda along with security, intending to make speedy legislative amendments. It is planned to place still more stringent limitations on new arrivals and to overhaul procedures for processing asylum applications. Applicants without "papers" will have to prove their identity quickly and show that it was impossible for them to apply before they entered the Netherlands. The new minister responsible for immigration, Hilbrand Nawijn, suggests that they should be kept in "detention centres" for at least two months while their applications are processed.<sup>2</sup> If their applications are rejected, they will be deported. Unaccompanied minors, who will not be admitted, will be deported, and assistance may be granted to their country of origin. Countries which refuse to readmit their nationals risk losing their development aid. Family reunification will be more strictly controlled. This right will, in particular, be refused to foreign residents who do not earn at least 130% of the minimum wage, that is about €1 600 a month.<sup>3</sup> Only children under 16 will be admitted and the minimum age for claiming it will be raised from 18 to 21. Security of €6 600 will be required (half of which may be recovered) to finance the integration of the new arrival.

The new government in France is also preparing a reform of the asylum laws. What is known about the planned reform is similar to what has been done elsewhere: shortening the time taken to process applications and simplifying procedures. It is thus planned to weed out "unfounded" applications quickly by making more frequent use of the fast-track, forty-eight-hour examination procedure (known as the priority procedure) in the case of those whose asylum applications are considered "manifestly unfounded". Unlike other applicants, they will not receive a temporary residence permit or benefit or accommodation. Similarly, the clause on the suspension of the Geneva Convention will be amended.<sup>4</sup> Lastly, in response to endless criticism, the two forms of asylum (under the convention and territorial) will be brought together under a single heading under the authority of OFPRA (which will be given increased resources); everyone will therefore be able to appeal to the Refugee Appeals Commission.<sup>5</sup> The act will probably also require applicants for asylum to be interviewed. In 2001, only 60% were interviewed and many cases were therefore processed without any contact with the person concerned.

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1. It includes Christian Democrats of the CDA, liberals of the VVD and populists from the Pim Fortuyn List.

2. Associated Press, Amsterdam, 16 August 2002.

3. A third of Dutch people earn less than this.

4. The clause enables states to decide that the nationals of some countries will no longer enjoy protection as a result of what is considered an improvement in the political situation in those countries. The amendment will therefore consist in increasing the number of countries whose political situation has changed in such a way as to make it unnecessary to grant refuge and protection to their nationals.

5. Up to now, only refusals by OFPRA have been subject to appeal.

## Proving that one is "integrated"

The new and highly symbolic aspect of the reforms introduced in the last few years is the requirement that foreigners show themselves to be "integrated". Enshrined in law, the requirement is now laid down as a condition for any improvement in their administrative situation and for the stable reunification of their families. The foreigner is required, usually in the "integration contract" offered, to bear the cost (fully or in part) of the training inherent in the "duty of integration". In some cases, the courses offered are themselves compulsory and failure in the final examination may be punished by refusal to issue a residence permit.

In Denmark, the new act, in force since July, provides that a permanent residence permit and the related social advantages will be granted only after a period of seven years, instead of the previous three. But the permit will be issued only if the tests on the language, culture and history of the kingdom have been passed and a written commitment made of "willingness to abide by the legislation" of the country. Furthermore, the permit will be refused if the applicant has debts. Foreigners who have been sentenced in Denmark to a prison sentence of between six months and two years will have to wait ten years. A longer sentence will deprive them of the right to a permanent residence permit. Danish nationality will be granted only after nine years in the country, as opposed to seven previously.

In Austria, the new Foreigners Act, applicable from January 2003, requires foreigners from third countries who have lived in Austria for less than five years or are newly arrived to sign an "integration contract" requiring them to learn the language and familiarise themselves with the "customs" of the country on pain of withdrawal of the residence permit. Each person is required to attend 100 hours of classes (with attendance checks), half of the cost of which will be funded by the authorities, half by the individual concerned, at the end of which he or she will be required to demonstrate satisfactory knowledge of Austrian culture. In the event of failure to do so, a further quota of hours will be imposed entirely at the individual's expense. If he or she fails a second time, his or her residence permit may be withdrawn. Any lack of assiduity will be penalised by a reduction in or complete withdrawal of the government contribution. The ultimate penalty may be refusal to extend the residence permit. Long-term unemployed people who are reluctant to attend classes may find their benefit suspended. Furthermore, an amendment now makes knowledge of German compulsory for the acquisition of Austrian nationality. The act applies to all foreigners from non-EU countries, including Swiss and Americans, and covers family members who arrive for the purpose of family reunification. Only certain highly specialised "executives" and technicians whose skills are in great demand may be exempted, but their spouses will not be granted exemption under any circumstances.<sup>1</sup> In the Netherlands too, all newly admitted foreigners must take part in an "integration programme" at their own expense, half of the cost of which will be refunded if they pass the final examinations.

The United Kingdom government wants to strengthen "Britishness". To this end, new arrivals will first have to learn English: the authorities will provide classes and an examination will test their ability to read and write everyday English. They must also know how the institutions work, absorb British culture and be inculcated with British public-spiritedness. They will have to take a citizenship test before being integrated. The Home Secretary has said that everyone who comes to live in the country should accept the values on which citizenship is based so that the acquisition of nationality is no longer reduced simply to the advantages of the passport, the Home Secretary has suggested changing the procedure by holding a "citizenship ceremony" during which the applicant will swear an oath of allegiance to the Queen, undertaking to defend the laws and democratic values of the United Kingdom. A language examination would be introduced for people applying for British nationality. Immigrants who fail would be offered training.

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1. According to a recent poll, 64% of Austrians approve of the requirement to speak German as a *sine qua non* of the right to live in their country.

## The Seville package: police co-operation before policy harmonisation

May and June 2002 saw intense activity by EU governments on the issues of asylum and collective policing of the external borders of the Union, subjects that were among the priorities of the agenda of the Seville Summit of 21 and 22 June 2002. In preparation for the summit, ministers of justice and home affairs meeting in Santiago de Compostela (February 2002) relaunched work on a "Comprehensive plan to combat illegal immigration" which provides for tighter border controls, improved security of visas and travel documents, improved exchange of information, the formulation of common standards for the repatriation of illegal immigrants, measures against employers recruiting illegally, a database for visas with scanning of travel documents, radar and satellite surveillance of the coast, greater co-operation with countries of origin, and harmonisation of legislation against the organisers of illegal immigration networks and the traffic in human beings.

The Dover tragedy, the frequent boats full of migrants that run aground and the repeated incidents at the entry to the Channel Tunnel have convinced EU leaders that no country can curb illegal immigration on its own. They have therefore agreed to strengthen co-operation at their common external borders. This governmental mobilisation was also, however, a response to the electoral success of populist and extreme right-wing movements almost everywhere in Europe and, still more, to the growing influence of their ideas at every level of society.

In addition to the proliferation of bilateral meetings (between heads of government or ministers responsible for the matter), preparatory work was done by ministers, in particular the EU Home Affairs Ministers in Rome on 30 May 2002. It is of interest, not only because of the importance and detail of the measures considered,<sup>1</sup> but because the ministers' thirteen counterparts from the candidate countries were invited, including those whose commitment to combating illegal immigration was regarded as inadequate. This step is indicative of the new context in which the action of European governments on the subject is taking place. Moreover, the subject of their discussions – the idea of new European borders – clearly showed the importance of the issue.

An action programme "for administrative co-operation in the fields of external borders, visas, asylum and immigration" was drawn up and examined two weeks later (13 and 14 June 2002) by a Justice-Home Affairs Council meeting in Luxembourg, before being submitted to the heads of state or government in Seville for approval. It provides for tighter security at ports and airports and on coastal borders, repatriation of foreigners refused entry, a co-financing mechanism and the running of pilot schemes by interested states.<sup>2</sup> A series of measures was decided upon: exchanges of border officials; the creation of an encrypted Intranet for the exchange of information on forged documents; setting up a common training programme; creating networks of immigration officers in member states and networks of liaison officers in the major airports of the Union and third countries; joint investigation of crime related to illegal immigration; adoption of a common procedure for border controls and the repatriation of non-documented immigrants; gradual harmonisation of procedures for issuing visas; joint operations in emergency situations and on high-risk borders, etc.<sup>3</sup> The countries also agreed to co-ordinate their efforts to help the countries of emigration which are trying to prevent the departure of their nationals. "Readmission" agreements are to be negotiated with Algeria, Morocco, the Russian Federation, Albania, Turkey, China, Sri Lanka, Macao, Hong Kong and Pakistan. Most of the measures should be operational within a year.

Pilot operations could quickly be launched. Italy has offered to supervise joint action in airports. France has offered to pilot a "specialised centre for combating criminal networks", and joint repatriation

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1. The German Minister of the Interior welcomed the change in the French position, which, according to him, had previously been to regard police and immigration issues as being part of "the hard core of national sovereignty".
  2. This course of action had been suggested in the White Paper of 1985, but the priorities then were to harmonise visa policy and co-ordinate regulations on the entry, residence and employment of nationals of third countries. Times and concerns have certainly changed.
  3. All the provisions should benefit from the Galileo satellite system due to come into operation in 2006.

schemes for foreigners present illegally. It was decided to move forward in stages, with co-operation restricted to small groups of countries.<sup>1</sup> According to the German Minister of Justice, Otto Schily, it is primarily a question of pooling the resources of the various national police forces in a spirit of co-operation and co-ordination. The Italian minister believed the ultimate objective was not so much a single border police force as to link up sources of data and information and harmonise police training. The action plan emphasises that teams drawn from two or more member states would have the role of backing up the national services of member states, but would not replace them. Such pilot schemes, open to interested countries, might become the linchpin of a future European corps of border guards.

This “intergovernmental” co-operation and its ongoing monitoring and evaluation will be co-ordinated by a body which will take over and extend the tasks of the Strategic Committee on Immigration, Frontiers and Asylum<sup>2</sup> set up in 1997 under the Treaty of Amsterdam.<sup>3</sup> The chiefs of the border police of the Fifteen will sit on it in order to give it greater authority. The committee might become the linchpin of a future European border police force. The Commission is proposing to speed up and extend the organisation of joint missions at certain borders and is considering the possibility of setting up an integrated European unit.

### Distributing the burden

The principle of assisting countries directly faced with an influx of immigrants from Africa, the Middle East and the Balkans, in particular Italy,<sup>4</sup> Spain and Greece,<sup>5</sup> was also approved, as was sharing the cost of border controls by using ships and aircraft in order to follow and intercept boats transporting migrants and trying to land them illegally.

The question of distributing the burden of mass arrivals of migrants is not new. Germany and Austria, for example, raised it during the wars in the former Yugoslavia, when they found themselves in the front line of population movements. Italy has also been concerned with the question since the first mass landings on its shores. Recently, the Berlusconi government again criticised the European institutions for not shouldering their responsibilities in this regard. According to Mr Bossi, Italy, “the third largest contributor to the European budget”, should have demanded that the EU pay for the defence of external borders. “Europe should play its part. Europe should bear the cost of returning illegal immigrants. We have been left to face the Mediterranean alone,”<sup>6</sup> he said to the Italian paper *La Repubblica*. The Greek Prime Minister, Costas Simitis, whose country is faced with the same risk, said in Athens on 19 March 2002 that he would make it the top priority of the Greek presidency of the Union at the beginning of 2003.

In reality, the EU has only two instruments at its disposal for confronting the problems arising from the mass arrival of migrants: the Directive on Temporary Protection and the European Refugee Fund. The first provides that the Council may “in the event of a mass influx” activate an exceptional reception procedure at EU level requiring each member state to issue temporary residence permits. The second, which was set up in September 2000, provides for the co-financing of reception facilities for asylum seekers and integration measures, as well as limited assistance in the event of a mass, unforeseen influx. It should be pointed out that the fund has a budget of only €216 million for the period 2001-04 and that mass landings are not regarded as “situations of mass influx”.

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1. Such as the co-operation organised between France and Belgium, and Germany, Italy and Austria at the Brenner Pass.

2. This body is at present working on legislative harmonisation and does not have any operational role.

3. The treaty also advocated improved co-ordination of immigration policy.

4. As early as the European Council meeting in Tampere (Finland) late in 1999, Italy expressed serious concern about illegal landings of foreigners transported by criminal organisations and stressed that it was unable to halt them single-handedly.

5. Beginning with Greece and its borders with “the former Yugoslav Republic of Macedonia”, Turkey, Albania and Bulgaria. The Commission will make proposals on distributing the financial burden. The European Commissioner for Home Affairs said that the principle of solidarity had to be strengthened and the burden shared more fairly.

6. Italy, which has a 7 600-kilometre coastline, counted 20 000 illegal landings in 2001.

## The "European border guards" rejected as a violation of sovereignty

The idea of a border police force was launched by Italy and taken up by the German Minister of the Interior and then the French Prime Minister, Lionel Jospin, in his speech on the future of the Union. The plan was then formalised by Antonio Vitorino, the Commissioner for Justice and Home Affairs.<sup>1</sup> But it is a very delicate subject: in addition to the important legal, including constitutional, problems it raises, it goes to the very heart of the question of sovereignty. For example, how can public authority prerogatives be delegated to officers who do not have the nationality of the member state to which they are posted? The Nordic countries strongly opposed the idea and reject any idea of shared surveillance of their borders. The proposal was not therefore included in the conclusions of the Seville Summit. However, the Commission believed the process was under way with the immediate launching of pilot projects open to all member states interested in closer co-operation between their police forces at borders.

An example of a new type of co-ordinated control is the experiment conducted between 24 April and 21 May 2002 in the twenty-five major airports most affected by illegal immigration.<sup>2</sup> Christened "Risk Immigration Operation", it was conducted by five member states (Italy, France, Spain, Germany and Belgium)<sup>3</sup> in co-operation with their other EU partners, as well as Norway, Poland, Hungary, Bulgaria and Lithuania.<sup>4</sup> The ministers meeting in Rome made an initial review of the operation. In one month, 4 600 people had been turned away and 993 false passports found. Some thirty-four traffickers had been arrested. Most of the foreigners apprehended came, in descending order, from China, Ecuador, Brazil, Angola, Nigeria and Senegal.

The experiment showed that Roissy was one of the airports in the Schengen area most targeted by the networks, either as an ultimate destination or as a place of transit, followed by Amsterdam, London, Milan, Lisbon and Madrid. The main places of embarkation were Beijing, Quito, Hong Kong, Rio de Janeiro, São Paulo and Lagos. The Home Office Ministers believed the operation was typical of the kind of pragmatic initiative capable of being organised without delay in order to strengthen illegal immigration controls and test joint action procedures, in particular by exchanging observers. They therefore decided to renew the experiment and, on a proposal from France, to extend it to the major ports of the EU.<sup>5</sup> Italy pleaded for immediate intergovernmental measures to be taken, suggesting the establishment of a "rapid reaction force" that could be deployed in "critical" areas. The prospective "European border guards" would not replace national forces but back them up in emergency situations or for the control of border areas usually left unguarded.

## Sanctions against non-EU countries

The other major issues discussed in Seville included the "conditional nature" of development aid. The Spanish presidency proposed including in agreements concluded between the EU and third countries (of origin or transit) a clause on co-operation on the joint management of migratory flows requiring the countries to strengthen controls, combat trafficking in migrants more effectively, readmit their non-documented citizens and foreigners who transited through their country and, if necessary, amend their legislation accordingly. The continuance or suspension of the agreement would be dependent on compliance with these requirements and the least co-operative countries would see their aid revised downwards or even stopped altogether. The approach might be extended to new co-operation or association agreements, which could be suspended for the same reasons.

1. He believed, however, that member states had first to harmonise their legislation, devise arrangements for genuine co-operation with respect to training and equipment, undertake a joint analysis of the threats and, above all, settle the question of the sharing of costs.
2. The Laeken Summit entrusted Italy with the task of organising it.
3. Europol co-ordinated the operation and centralised the information gathered.
4. A similar, more limited, initiative had been conducted by Italy and Spain in April.
5. Many qualified observers believe, however, that, to be successful, combating arrivals by sea requires the co-operation of the countries of transit and embarkation, in particular those which have agreements with the European Union (such as Turkey and Egypt).

The idea of using development aid in this way as a “weapon” to combat illegal immigration had been put forward by the United Kingdom and taken up by the Spanish presidency. It was approved by Italy and Denmark, and Germany was in favour of it for a time: “It is impossible for a country that does not comply with its international obligations not to suffer any consequence,” the German Minister Otto Schily stressed. “Firmness is required,” his Italian counterpart Claudio Scajola concurred.

The proposal was rejected, however.<sup>1</sup> It came up against stout opposition from Sweden and France, followed by Luxembourg, Finland and Portugal. According to the opponents of the measure, it would above all penalise populations, worsen the economic situation of the country punished and, paradoxically, result in an increase in migratory flows.<sup>2</sup> The summit therefore refused to project the image of a “Fortress Europe”. “We cannot accuse and punish the developing world because unfortunate people who have no hope of subsistence at home want to come here,” said the French Minister of the Interior, Nicolas Sarkozy.<sup>3</sup> While wanting more effective control of illegal immigration, he believed it was not possible “to convince the countries of origin simply by dint of punishments at the end of it all”. Sweden took the opportunity to say that the European timetable should not be set by “xenophobes”.

The refusal to penalise third countries of origin and transit leaves the question of their involvement in the regulation of international migration and the fight against trafficking in people entirely open. How can they be brought into a genuine, equitable partnership over this issue? How can distrust of such co-operation be dispelled? More broadly, what links should be made between immigration policies and development aid?

All in all, the programme submitted in Seville was designed to be detailed and precise with respect to everything connected with border controls and combating illegal immigration.<sup>4</sup> In this regard, it unquestionably responded to the concern for “security” expressed by the Tampere Summit in March 1999. On the other hand, it did not put states on the road towards the common asylum and immigration policy envisaged at the same summit. The Laeken Summit (December 2001) had already deplored the many delays and wanted the common policy to be relaunched. No progress has been made since then. Once again, no decision has been taken, no deadline set. The Commission’s proposals have been set aside for the time being. For lack of political will, the harmonisation of immigration and asylum policies will continue to have to wait.

It will be remembered that the Amsterdam Treaty set 2004 as the deadline for the introduction of a single European asylum system. At the Tampere Summit in October 1999, the European Council solemnly reaffirmed the importance the Union and member states attached to absolute respect for the right to seek asylum. We are far from that now. In Seville, priority was clearly given to control and security in a rationale of intergovernmental co-operation, to the detriment of a real Community approach. The aim seems to be to convince public opinion in the member states that the governments have taken a firm decision to take action in order to guarantee their “security”.

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1. It went much further than what is provided for in the Cotonou Accords with the countries of the ACP (Africa, Caribbean, Pacific) area.

2. Not to mention the political and legal problems it would create.

3. In the view of the French minister Nicolas Sarkozy, the EU “cannot simply send out the message that the rich are threatening to punish the poor”; on the contrary, what is needed was “an aggressive development strategy”. He publicly supported the statement of the Swedish minister, Jan Karlsson, to the effect that our timetable should not be set by xenophobes (AFP, Seville, 31 May 2002).

4. A number of other important measures had already been agreed, such as the establishment of a central database of asylum seekers’ fingerprints (Eurodac), which will be in operation in 2003, the joint visa management policy, common rules on the repatriation of illegals, the principle of fining traffickers and mutual recognition of deportation orders.



# The effects of enlargement in eastern Europe: EU requirements

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In order to assert their right to join the EU, it is imperative for the twelve candidates for the first wave of enlargement planned for 2004 (Cyprus, Malta, Slovenia, Poland, Hungary, Czech Republic, Slovakia, Lithuania, Estonia, Latvia, Romania and Bulgaria)<sup>1</sup> to strengthen their border controls. Poland and Romania are at the top of the list of those being pressed by the EU to ensure that their eastern borders, (soon) to be those of an enlarged Europe, are watertight. They are both aware that the membership process will also depend on the progress made in this area. The analysis made by the Romanian General Alexandru Ionas, Director of the Regional Centre for Combating Cross-Border Crime, emphasises that this amounts to a complete turnaround: "Until 1990, the obsession was to secure the western border against the 'imperialists'. The priorities now lie in the east. Police mentalities will have to be changed and we must work against trafficking networks"<sup>2</sup>. At the end of July 2002, an agreement was signed on this matter between Poland and the EU. The number of border guards is to be increased by 5 300 to bring it to 18 000 within 4 years. A dozen new border posts are to be set up, equipped with helicopters and infra-red detection equipment.

The same requirements have been made of Romania. "It is in our interest to show Brussels that we are capable of managing our borders, which will become the eastern borders of the Union." In an interview with the French paper *Le Monde*, the Romanian Prime Minister clearly emphasised the importance of the issue for his government and did not hesitate to give assurances of its willingness, not least with respect to controlling the emigration of its nationals.<sup>3</sup> "Since visas for Romanians going to the Schengen area were abolished, we have refused to allow almost 200 000 persons who did not have sufficient guarantees to leave the territory. In 2001, 450 non-documented Romanians were repatriated under the readmission agreements we have signed with many states."

Romania has therefore undertaken a huge programme to secure its borders and stop illegal immigration, that of its own nationals as well as that of foreigners transiting through its territory, sometimes requesting assistance from the European Commission. "It is difficult for us to fulfil the role of the guardians of Europe by ourselves," stresses the Minister of the Interior. "We have 2 000 kilometres of frontiers to guard, a section of which borders the former Soviet Union." The call seems to have been heard since the EU has made a considerable contribution to the modernisation of border policing (equipment, training and legislation). Between 1998 and 2001, such aid amounted to approximately €28 million.

The authorities have been working to adapt their legislative, regulatory and administrative arsenal to bring it into line with Community standards. "Romania is so obsessed with its entry into the Union that the question of migration is being dealt with as a priority," says one western diplomat. The conditions for the granting of visas to nationals of countries with high migratory potential have been tightened,<sup>4</sup> the legislative and regulatory framework has been amended and co-operation improved between the services responsible for border policing. A special effort has been made with respect to the northern border (with Hungary, the gateway to the EU) and the eastern border (with Ukraine and Moldova as ways of entry): the "future borders of the European Union", in the words of the chief of the border police.

A large number of technical co-operation initiatives have been taken in order to help candidate countries. Phare is one of the main ones. Most EU countries and all the candidates for membership are involved in it. Its aim is to help the latter supplement or revise their national legislation, adapt their

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1. Romania and Bulgaria will have to wait until 2007.

2. Quoted in *Le Monde*, 3 August 2002.

3. Some 217 traffickers were arrested in 2001.

4. It is in particular a matter of combating the transit of pseudo-businessmen and pseudo-students who have taken advantage of the administrative loopholes in Romania to gain access to the European Union via its territory.

institutions and procedures to EU standards and acquire practical experience of co-operation with member states. Their civil servants are provided with training and working seminars in all these areas.<sup>1</sup>

The co-operation established between Bulgaria, Austria and Germany is a good example of this. It aims to set up a computerised system and draw up rules and procedures for a visa policy that complies with the Schengen requirements. In May 2000, a programme focusing on combating illegal immigration was embarked upon with the involvement of the European Commission delegation in Sofia. A training centre has been established for the consular staff of the Bulgarian Republic. Bulgarian experts have gone to member states, in particular to find out about the latest developments in visa policy, border controls, the authenticity of identity documents, police co-operation, etc.

At the same time, European experts have gone to Bulgaria to improve Bulgarian legislation and practice in the fight against illegal immigration. The exchange ended in September 2000 with an international seminar on the subject of illegal immigration (transit and settlement), to which experts from the other candidate countries were invited. Another example of co-operation and training involves Estonia, where the officials of the Border Guards Administration (BGA) and the Citizenship and Migration Office (CMO) received training on the United Nations Convention Relating to the Status of Refugees and the Declaration on Territorial Asylum. A national action programme was drawn up for 1999 and 2000 with the Council of Europe and the UNHCR as principal partners.

### **New borders or a new "wall": the Russian Federation concerned about the "enlargement/closure" of Europe**

Measures to make the new eastern borders with the Russian Federation, Belarus, Ukraine and Moldova secure, and particularly the introduction of visas, have had a major, direct effect on movements in an area where border trade plays an important role for the people of countries that have been seriously impoverished by the transition to a market economy. A significant proportion of those populations lives in fear of the end of their barter trade.<sup>2</sup> Some 10 million people cross the borders between Poland and Ukraine and Belarus every year and their trade is estimated to be worth more than US\$1 billion to Poland.

But there are also hundreds of thousands of Russians in Estonia, Ukrainians in Poland, Poles in Ukraine, Hungarians in Ukraine and Romanian-speaking Moldovans who will have to reorganise their ways of life and relationships with their families. The Romanian Prime Minister admits this straightforwardly, taking full responsibility for the consequences of the choice: "It is more difficult for Moldovans to enter Romania in the hope of going further west. This has complicated our relations with Chişinău, but this is the price we have to pay". It should be pointed out that the majority of the population of the Moldovan capital is Romanian-speaking. The case of Kaliningrad, a future Russian enclave between Poland and Lithuania, is emblematic of the changes in prospect. The Russian President, Vladimir Putin, rejects the idea of a visa for the population of the enclave (even a cheap one) since he sees it as a violation of Russian sovereignty. The comparison with the iron curtain is systematically made, so much so as to force politicians to justify themselves on this point: "We want a friendly border, not an iron curtain," says the Polish Deputy Interior Minister, Piotr Stachanczyk. Should one fear that there will be another Berlin Wall, further east? This is what the Russian Federation is concerned about.

#### *The militarisation of controls*

The use of military models and metaphors to discuss the issue of international migration is steadily increasing. In London, for example, the Prime Minister's plan to use Royal Navy vessels to secure the Mediterranean and RAF aircraft for "charter flights" for the deportation of foreigners refused entry were immediately referred to by the press, public opinion and the political classes as "the new Battle of

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1. Enfpopol 118, a training programme for security forces in central and eastern Europe, has been set up for the purposes of training, experience sharing and the development of contacts between the police forces of EU member states and candidate countries.

2. Particularly between Kraków and Lvov, Helsinki and St Petersburg, Iasi in Romania and Chişinău in Moldova.

Britain". In Italy a few years ago, faced with the spectacle of coastguards powerless to inspect the cargo ships and other fast launches landing their cargoes of would-be migrants, politicians did not hesitate to speak of a "new *Caporetto*", an allusion to a first world war disaster for the Italian army.

And this militarisation of immigration controls is not merely a matter of words. While the prospect of the Royal Navy in the Mediterranean is still at the planning stage, in Italy the equivalent is already a reality. The systematic use of the Navy to prevent landings on the Italian coast by boats loaded with foreigners has been approved by the Chamber of Deputies (29 May 2002).

In fact, all this is nothing new. In Austria, the 1 420 kilometres of the eastern border (with the Czech Republic, Slovakia, Hungary and Slovenia), which is a favourite area for crossing into EU territory, are guarded by the Austrian army.<sup>1</sup>

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1. Over 2 000 conscripts are stationed there.



## ERRATUM

*Page 45*

Le chapitre "La politique communautaire sur l'asile dans l'impasse" a été inexactement attribué à M. Maxime Trandonnet, alors qu'il a été écrit par l'auteur du rapport : M. Claude-Valentin MARIE.

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## CORRIGENDUM

*Page 43*

The chapter « Community policy on asylum reaches an impasse » is incorrectly attributed to Mr. Maxime Trandonnet, whereas it has been written by the author of the report: Mr. Claude-Valentin MARIE.

# Community policy on asylum reaches an impasse

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*Maxime Tandonnet, French Senior Official<sup>1</sup>*

The initiatives of recent months follow the same pattern as those implemented over the last ten years: they are independent initiatives which further accentuate the already strong disparities between the fifteen member states. As in the past, each passes legislation with no concern as to how it will affect its neighbours. It may be the time-limit for administrative detention that differs (twelve days in France, unlimited in the United Kingdom), or the criteria for examining asylum applications: some (Germany) examine only those from nationals of countries on the list of those where human rights are threatened, while others (France) examine all of them. Here, applicants are refused the right to work (France), there (the United Kingdom) the right is granted after six months. The right to family reunification is restricted everywhere, but legislation differs from one country to the next: it is limited to children under 12 in Germany, but allowed up to the age of 16 in France. The differences are even greater with respect to prosecution for people trafficking.

To a very great extent, it is the “intergovernmental” rationale, based purely on security considerations, which prevails when changes are made and each time it seems to move further away from the idea of Community harmonisation. Another effect of the differences is a constant change of direction in the flows of migrants, to the countries which at that particular time seem “most liberal” to the would-be immigrants or the traffickers. This is now having serious consequences. The planned harmonisation of asylum policies (reception, ways of examining applications, conditions for granting asylum and the status of refugee) seem now to have reached an impasse and the instruments already introduced do not seem to be achieving their objectives.

## **Sangatte: a symbol of the inconsistencies of national asylum policies**

The Sangatte affair, over which there has been a long dispute between the French and British Governments, is a good illustration of this. According to the former, the residents of the centre “do not want to apply for asylum in France; they want to go to Great Britain” and it considers them humanitarian cases that it cannot expel. Until recently, the latter was accusing the French of laxity and constantly demanding the closure of the centre. Sangatte has thus become the symbol of the inconsistencies of asylum policies in EU countries. The people living there find themselves in a sort of legal no man’s land. Their situation does not correspond to any precise status. They cannot be returned to their countries of origin because of the risks they would run but nor can their cases be processed for asylum since they have not applied for it in France as they consider themselves to be in transit. As the United Kingdom is not part of the Schengen area, it is the Dublin Convention that applies.

The Franco-British disagreement mentioned above confirms that, in the absence of any real progress towards harmonising asylum policies, it is always the security angle that prevails, to the detriment of the rights of the refugees. The tragedies that have marked the lives of the people housed in the Sangatte Centre in the last few years are a good example of the negative consequences of procrastination over asylum policy harmonisation. By failing to harmonise their policies, countries paradoxically leave the traffickers great room for manoeuvre, enabling them to adapt their routes according to opportunity and direct their “customers” towards the destination they present to them as the most “welcoming”. For the Kurds and Afghans of Sangatte, this unquestionably means the United Kingdom, and they have succeeded in making the Dublin Convention ineffective.

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1. Maxime Tandonnet is the author of *Migrations – La nouvelle vague*, L’Harmattan, Paris, 2003.

By laying down the principle that the asylum application should be examined by the first country in which the foreigner arrives, the convention sought, *inter alia*, to improve the processing of asylum applications through better co-ordination of the action of member states. The decision of the “state responsible” was to be valid for all the EU partners. Applicants were therefore sure of having their application examined, but lost the possibility of choosing the country that would process their case. The convention was intended to result in sound management of asylum policy by putting an end to two equally damaging practices. The first, known as “asylum shopping”, involved asylum seekers submitting several applications, looking for the country which seemed to them most favourable. Conversely, the second, which led to so-called “refugees in orbit”, was a way for countries to avoid shouldering their responsibilities by not processing applications.

The plan was not proof against reality: when applicants arrive without identity papers or a visa, it is impossible to trace their previous itinerary and so establish which country is responsible for their application. Instructed by the traffickers, asylum seekers do their best to cloud the issue. If their itinerary cannot be established, it is impossible to determine the country “responsible” or in most cases to deport those whose safety is threatened in their own countries. As in the past, states then try to pass responsibility for handling the case on to one another.

As a result, by refusing to apply for asylum in the country of transit (France, in the case of Sangatte), the asylum seekers to some extent regained their ability to “choose” their destination. The impasse thus became absolute and the two countries concerned each said the other was responsible. In the meantime, the people hoping to cross the Channel continued to pay the traffickers who held sway in the centre so as to keep trying to cross, whatever the difficulties and risks. The figures speak for themselves: since it opened, 55 000 immigrants have been housed in Sangatte, but only 400 have applied for asylum in France and half of those went to Great Britain before even receiving a reply.<sup>1</sup>

The sinking of the *East Sea* off the French coast in 2001, followed by the departure of the Syrian and Iraqi Kurds from the Modane and Béziers Accommodation Centres for Germany, obeyed the same rationale. The migrants preferred the welcome of their community across the Rhine to the status of asylum seekers in France. These examples emphasise the powerlessness of autonomous “lines of defence” when they are confronted with the determination of migrants and, above all, the strategies of traffickers who exploit the contradictions between states to the benefit of their business.

Sangatte symbolises the bankruptcy of asylum policy in the European Union, and the absurdity of the situation there underlines the need for such a policy. Nick Hardwick, Chief Executive of the British Refugee Council, seemed to accept this when he said that Sangatte was the symptom rather than the cause of the refugee problem and that closing Sangatte would not solve the problem of the inconsistencies of asylum policy in Europe or the failure of the French authorities to attend to refugees in France.

The French Minister of the Interior does not disagree: “The sudden, precipitate closure of the centre would create more problems than it solved [...]. There is a problem downstream, which is England, and a problem upstream before arrival in our territory. The possibility of working on British soil when one has been granted asylum attracts illegal immigrants. We will not be able to solve the problem of Sangatte as long as British legislation is favourable. Upstream of Sangatte, there are Belgium, Italy and other European countries with which we have to draw up a co-ordinated Community immigration policy. Sangatte does not concern only the British and the French. We need to establish a new policy on immigration and the definition of asylum status”.

A Commission working paper of June 2001 accepted that the Dublin Convention had not worked and had had no perceptible effect on the number of requests for asylum in the European Union, and stressed its excessively high operational costs. On 26 July of the same year, the Commission presented a draft regulation reforming the convention with a special “Sangatte article” laying down that any state that has

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1. There are an estimated 400 to 500 new arrivals every week.

“knowingly tolerated” the illegal presence of foreigners for more than two months shall be responsible for processing their applications for asylum. People working in the voluntary sector are worried that the objective of the draft regulation is more to enable countries to “restrict access to their territory” than to give refugees better guarantees. They believe the solution would be to process the asylum application in the place where the foreigner submits it for the first time.

It should be remembered that the Treaty of Amsterdam set 2004 as the deadline for introducing a single European asylum system. This requirement was solemnly recalled at the Tampere Council meeting in October 1999, which drew attention to the importance the Union and member states attached to absolute respect for the right to seek asylum. We are far from that now. For the moment, border controls at their most repressive continue to prevail over the wish to protect individuals. This is in any case the trend manifest in the most recent legislative reforms in many member states, once again without there being any particular attempt to co-ordinate or harmonise the new provisions introduced.

### Bilateral co-operation

The threefold priority given to security, combating illegal immigration and intergovernmental action is in perfect harmony with the numerous bilateral co-operation initiatives in recent months. The French Minister of the Interior has been among the most active in this respect, having numerous meetings with his Belgian, Italian, German and British counterparts. A series of agreements has been signed with the particular aim of speeding up the introduction of joint police controls along common internal borders in order to combat illegal immigration and “cross-border crime”. For instance, on 5 March 2002, France and Belgium signed an agreement authorising combined Franco-Belgian teams to patrol the border between the two countries.<sup>1</sup>

Another agreement of a similar sort has been ratified by France and Italy, providing for land, rail and sea patrols and extending the powers of the security forces concerned by giving them the right of pursuit beyond the Franco-Italian border. Their numbers are to be increased and their premises enlarged. The French minister described the objective in the following terms: “Joint investigations of illegal immigrants and the traffickers who exploit human suffering are needed straight away and the areas where there is a ‘right of pursuit’ need to be extended. For France, this means the five *départements* bordering on Italy: Savoie, Haute-Savoie, Hautes-Alpes, Alpes de Haute-Provence and Alpes-Maritimes”.

More recently, Great Britain and Belgium also agreed a new programme for joint border control. The former has undertaken to fund the introduction of detection systems capable of checking lorries and other containers on their way to the British Isles in the Belgian ports of Zeebrugge<sup>2</sup> and Ostend. The agreement also provides for joint control of Eurostar passengers to Great Britain in the international station at Brussels.

The programme is similar to the one agreed upon by France and Great Britain on the Sangatte Accommodation Centre. On 12 July 2002, the French Interior Minister and the British Home Secretary agreed that the centre would be closed by the end of the first quarter of 2003,<sup>3</sup> on condition the new British legislation on asylum has entered into force. In order to make the United Kingdom less attractive, the country has, according to Mr Blunkett, undertaken to dispel asylum seekers’ illusion that their applications have more chance of success there than in France. New measures (in particular, combating illegal working) are to be included in the Nationality, Immigration and Asylum Bill now under discussion in the British Parliament.

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1. The agreement came into force on 24 May of the same year. Five days later the patrols were suspended: the Belgian police refused to lay down their arms in order to patrol in France. “Working groups” have been trying to iron out the problems and in the mean time the officers concerned are to be issued with temporary firearms permits.
  2. The two European ports of Zeebrugge and Calais account for the great majority of European maritime traffic to Great Britain.
  3. Messrs Sarkozy and Blunkett had met several times over the previous months.

The agreement provides for increased security around the centre. A fence will be erected round the goods station of Calais-Fréthun by September and new machines capable of detecting the heartbeat of someone concealed in a lorry are to be installed in the port of Calais. They are already in operation on the British side of the Channel in the port of Dover. The United Kingdom will contribute to the financing of these installations and collaboration between the British and French police forces is to be strengthened.

Franco-British police teams will co-ordinate their efforts to tackle the smugglers working in and around the centre. They will be deployed throughout north-western France, far beyond the borders of the Pas-de-Calais. The centre is to be closed within three to six months of the entry into force of the new legislation in the United Kingdom. The strengthening of security around Fréthun is to be completed by the end of July. The ministers are to meet there in September to see how work is progressing and "set a date for closure". The problem is that the announcement of the impending closure of Sangatte and the increased security in its environs will probably have the effect of speedily scattering the immigrants all along the north coast, where they will look for new ways of crossing in ports with maritime links with England. This means that the problems mentioned above remain and the risks for the would-be immigrants still more so.

# The foreseeable risks

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## A challenge to fundamental rights

Faced with the severity of the mechanisms introduced to restrict the movement, entry and residence of foreigners, control family reunification and marriage and limit the right of asylum, many voices were raised to denounce the threat to human rights. Principles, including those enshrined in law, were too often flouted and it was feared that a legal deficit prejudicial to nationals of non-EU countries and the inequality of treatment they received as compared to EU nationals and citizens would be exacerbated.

The drastic reduction in the possibilities of appeal is a factor in this. Administrative decisions on entry, residence and the right to visit, the right to family reunification and, above all, the right to asylum have been affected. For example, in the Netherlands lawyers and judges have protested against the distinction established in law between Dutch citizens and asylum seekers with respect to the right of appeal. While the former have the right of appeal in almost all, even the most frivolous, circumstances, the latter are refused the right sometimes even in circumstances that are dangerous for them. At the time, the Council of Presiding Judges shared these objections and considered the restrictions placed on asylum seekers' right of appeal irresponsible, given that their lives might be at stake.

The risks mentioned also include those connected with the reliability of the ways in which data on personal identity are recorded, stored and cross-referenced. Despite the assurances that have been given concerning conditions of access to such files, many non-governmental organisations have complained that the development of identification procedures for, and digital files on, asylum seekers threatens to undermine public freedoms. They also complain that the practice amounts to lending credence to the tendency to lump together asylum seekers, fraud and crime, which, in their view, infringes fundamental human rights.

## The risk of arbitrary decision-making and family instability

In this context, the risks of administrative and social instability are proliferating. One of the most important concerns family reunification and the loss of the rights given to a spouse from abroad in the event of divorce or separation. In Germany, a spouse from abroad obtains an independent permit only after four years of living with his or her spouse<sup>1</sup> or on the death of the latter. In the Netherlands, the residence permit is withdrawn if the partners stop living together (through separation or divorce) less than three years after reunification. After that time, an independent permit is issued on condition that there has been at least one year's residence within the marriage. The permit issued is valid for only one year, a "period for seeking employment", and its renewal is subject to a job being found. The same rules apply to unmarried partners. All observers consider this lack of independent status a significant obstacle to integration, in particular for women who come to join their husbands.

Furthermore, the law of the "counter" is operating at its worst and there is a plethora of problems resulting from pernicky, suspicious and too often arbitrary administrative practices. Some people are refused reunification because their marriage is not recognised in the country or because they do not have their children's birth certificates. Others, who are non-documented and married to a foreigner with a residence permit, come up against grave suspicions (marriage of convenience, polygamy, prostitution, etc.) with the risk of their insecurity, whether administrative (refusal to legalise) or social (refusal or cancellation of welfare benefits), continuing indefinitely.

Still others suffer the sometimes tragic effects of the "one-off reunification" rule<sup>2</sup> or from the age-limit set for the arrival of children. Then there are the cases of spouses of refugees awaiting a reunification

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1. The period may be reduced to three years where failure to issue an independent residence permit would be seriously prejudicial to the individual concerned.
  2. For example, since the Act of 28 June 1984, repeat reunification ("family reunification in stages") has been prohibited in Belgium once two years has elapsed since the time when the right to reunification was exercised.

decision, not to mention family members who arrive without complying with all the procedural requirements. The problems do not end once reunification has taken place. The most punitive are the obstacles to access to the labour market connected with the delay before a permit is issued, which may vary from six months (France) to two years (Germany and Denmark), when indeed it is not refused.

In each of these cases there is a high risk of administrative (right of residence) and/or social (right to welfare and family benefits) destabilisation. In the case of women more specifically, it exacerbates the inequality of treatment to which they are generally subject in the implementation of migration policies, which still, to a very great extent, bear the stamp of their origin. They have been conceived and drawn up according to the model of the single, male migrant worker going abroad only temporarily. Women had no place, or no place of their own, in this model. They have had to fight for one as spouses and still more so as women with their own lives, their own plans and their own strategies.<sup>1</sup> These issues are far from being resolved and the consequences are all the more serious because all types of migratory movements – including illegal immigration for employment purposes – include high proportions of women. Women are now estimated to account for 46% of the 13 million foreigners living in the EU, and for the majority of new arrivals.

This shows that the unequal treatment between EU nationals and nationals of third countries has been constantly growing in this respect. While the former enjoy the effective guarantees of Community law, the latter have to be content with a reference to the “right to family life”, which gives states discretionary power over its application.<sup>2</sup> For the moment, the Community system contains no regulations on the matter, each country making its own laws, so the status of spouses varies from one to another.<sup>3</sup>

It is for this very good reason that NGOs have put the issue of family reunification (and the related issue of the place and status of women) at the top of their agendas. The European Co-ordination for Foreigners’ Right to Family Life and the European Union Migrants’ Forum have taken legal and political action against the obstacles placed in its way and the consequent pernicious effects.<sup>4</sup> They have a threefold objective: recognition of the universal nature of the principle itself, recognition of equality of rights for men and women, and protection of the rights of the child. Similarly, the European Convention for the Right to Family Life, drafted in 1995 and adopted in 1998, demands equality of treatment for the nationals of EU and third countries, the possibility of phased family reunification, compliance with the Convention on the Rights of the Child, and equal status for men and women.

## A high human cost

However, we also need to examine the extent to which the means (legislative, regulatory and institutional) thus devised are really effective and what actual impact they have. The fear expressed very early on that making individual migration a criminal offence would have the effect of favouring organised trafficking has proved justified. The paradoxical cost of the policy implemented has been its

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1. The right to family reunification is restricted to men in some countries.

2. In France, for example, the system for family reunification for EU nationals was introduced by a decree of 11 March 1994, while the one for nationals of third countries remains the one established by the Pasqua Act of 24 August 1993. The Chevènement Act of 11 May 1998 did not introduce any significant change.

3. For example, the period of marriage required for reunification to be allowed varies (two years in the Netherlands, one in Belgium and France). Only foreigners who are legally resident in Spain and whose residence permit has already been renewed once may apply for their families to join them. If they have permission to work, the work permit must have been renewed at least once. In the Netherlands, a distinction is made between “family reunification” and “founding a family”, according to whether the marriage takes place before or after the foreigner has settled in the Netherlands. In the latter case, the foreigner must have at least three years’ residence in the country in order to be allowed to form a household there. This condition is not required for “family reunification” properly so-called. Assessment of housing and income criteria is often left to the fluctuating judgment of the authorities. The existence or lack of bilateral agreements with the countries of origin may accentuate discriminatory practices, or make women even more dependent on their husbands (being subject to their husbands’ personal status).

4. For example, in October 1995 the European Co-ordination for Foreigners’ Right to Family Life proposed an amendment to the Maastricht Treaty which would have taken the family dimension of immigration into account.

development on an unprecedented scale, with the setting up of networks that sometimes cover the whole route and provide smugglers, transport and false papers and then “deliver” the migrants to their future “employers”.

In its first report on trafficking in persons in the world, published on 12 July 2001, the US State Department estimated that more than 700 000 persons were victims of traffickers every year. Presenting the report, Secretary of State Colin Powell wished to draw the world’s attention to the problem and trigger international reactions so that firm action was taken against such trafficking. It is particularly important to follow the recommendation since such trafficking increasingly often leads to the death of its victims at sea, in lorries or in the Channel Tunnel. The number of deaths has been estimated at more than 2 000 in 7 years (1993-2000) on the frontiers of Europe,<sup>1</sup> some by drowning in the Strait of Gibraltar, some because migrants were thrown into the sea by smugglers fleeing coastguards, others by suffocation during transport – the list is not exhaustive.

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1. *Source:* United for Intercultural Action, an international network of more than 500 associations.



# Closure of and controlled access to the labour market

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The control of access to the labour market is also a major instrument of control policy. Since labour immigration was halted,<sup>1</sup> the rule has been to limit to a strict minimum the arrival of workers from non-EU countries with permanent status. Two objectives were put forward: to protect the national labour market and give priority in employment to the unemployed, whether nationals or legally resident foreigners.

## More severe restrictions on permanent access to employment

Since then, restrictions on the admission of permanent workers have been made ever more stringent. Two principles have been adopted everywhere. The first is that no foreigner<sup>2</sup> may work without first having obtained the permission of the competent authorities. The second is that none of those authorities may issue permission without first examining the employment situation in its country, or even within the EU, in order to ensure that preference is given to nationals or foreigners who have already been admitted.<sup>3</sup> This rule, known as the “labour test”, is considered the best means of regulating the entry of migrant workers. These common principles explain the great similarity in the legislation of European states. They are regarded as essential, but are also subject to numerous exceptions.

## The link between residence and work

When it is granted (or renewed), permission to work is accompanied by permission to reside in the country for the same period. Both are usually issued by agreement between the competent departments and embodied in an administrative document, either specific to each or combining the two. However, joint management of work and residence permits is not always effective. Sometimes the departments concerned maintain a high degree of autonomy in the exercise of their respective powers in respect of the right to reside, on the one hand, and the right to work, on the other. This makes examples of dysfunction not infrequent.<sup>4</sup>

The practical consequence of this link between the right to work and the right to reside is that entry to the territory of a state that has refused to issue a work permit is prohibited or that an individual whose permit has been withdrawn or has not been renewed is obliged to leave. While the loss of the job does not always have the direct effect of ending the right to reside, in some cases the latter may be withdrawn if the authorities consider the foreigner does not have the means to provide for himself or herself.

## Penalties for employers

In all countries the employment of a foreigner who has no work permit is subject to penalties, which also apply to failure to comply with restrictions (geographic and/or sectoral) particular to the permit

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1. The first countries to take this decision were the Federal Republic of Germany and Denmark in 1973, followed the next year by France (circular of 5 July 1974) and Belgium (government decision of 1 August 1974). But the measure concerns only permanent labour immigration and not seasonal immigration, which is still permitted.
  2. In the EU, the notion of “foreigner” applies to nationals of states which are not members of the European Economic Area (EEA).
  3. The authorities have to check that the lists of those registered as unemployed do not include a person capable of occupying the post for which the application for a work permit has been made. This requirement is sometimes accompanied by further restrictions, such as compulsory advertising of the vacancy, the requirement that an employee who is already available be trained or promoted or inspection of the general employment conditions in the company.
  4. The main consequence being the illegal employment of foreigners who have permanent residence permits but who do not have permission to work.

issued and when the person continues to work once it has been withdrawn or it has not been renewed. In all cases re-offenders are liable to heavier penalties. Generally speaking, it is the employer who is regarded as the instigator and main beneficiary of the fraud and therefore bears responsibility for it and is the only person liable to prosecution.

In some countries legislation only provides for fines, the amount of which depends on the number of people illegally employed. Other countries are more severe and add a prison sentence. Sometimes the courts may order further penalties such as temporary closure of the company, confiscation of the proceeds from the work of illegally employed foreigners and any means used for this purpose, and even debarment from public contracts. The employer may also suffer administrative penalties requiring him or her to bear the cost of expulsion of the illegally recruited workers and, possibly, their families residing with them illegally. In France employers are liable to a "special contribution" to the International Organisation for Migration. It is also in France that we find – with the Act of 17 October 1981 – the (much less common) example of a civil law penalty. This act provides that, even where they have been illegally recruited, foreigners have rights resulting from their status as employed persons: salary and compensation is provided for in the event of termination of the employment contract.<sup>1</sup> Employees may also go to court to demand compensation for any damage they believe they have suffered.

Compared with the severity of the penalties for employers, those provided for foreigners with no work permit may seem lenient. They are usually threatened only with administrative penalties. In fact, it is the threat of being accompanied to the border or deported which is the major deterrent. This is sometimes accompanied by an administrative fine (Spain, Italy and Portugal). In contrast to the situation described above, where the main liability lies with the employer, some countries divide liability between employer and foreign worker: in the event of an offence being committed, both are liable to a similar penalty.

### Penalties for principals

The persistence, recurrence and above all increasing sophistication of illegalities have led most states to make penalties more severe and amend legislation so as to punish more effectively those who break the law through sub-contracting operations. The legislation makes it possible to prosecute the principals or owners regarded as the real beneficiaries of illegal employment. It also seeks to solve the problem of punishing employers domiciled abroad. This is the case in France, where the notion of "employment through an intermediary", introduced by the Act of 10 July 1989, makes it possible to charge a principal who profits from labour provided by a foreign worker with no work permit. It is still more evident in the spirit of the Illegal Employment Act passed in 1997. The Netherlands has similar regulations that render liable a principal whose co-contractor employs workers with no work permit in sectors in which illegal working is frequent. The same principle has been adopted in Germany,<sup>2</sup> making it possible to penalise a principal who knows (or whose ignorance is the result of failure to take reasonable care) that his or her co-contractor is employing people without work permits.

### New services, new powers and increased co-ordination

The persistence of these forms of employment and new illegal employment patterns have made it essential to strengthen control mechanisms in three main ways: by setting up new departments, broadening the powers of those which have none in this area, and developing interdepartmental co-operation. France and Germany were the most innovative countries in this respect in the 1990s, first with the establishment of specialised departments with powers over entry, residence and illegal

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1. In all cases they have the right at least to a lump sum equal to one month's salary in the event of termination of their contract.  
2. Act of 26 July 1994.

working,<sup>1</sup> then with the development of co-operation in order to pool their skills and powers and mount larger-scale operations.

In Germany, co-operation between the departments concerned with illegal working (labour office, customs, taxation authorities, police, social security bodies, etc.) was enshrined in the Act of 26 July 1994. In France it is co-ordinated by the Interministerial Delegation for Combating Illegal Working (DILTI). The delegation, which has no operational powers, is linked to local Committees to Combat Illegal Working (COLTIs) which, under the leadership of public prosecutors, bring together the competent local services (labour inspectorate, police, gendarmerie, taxation authorities and social protection bodies). In Luxembourg, a working group to combat "social dumping" brings together the various competent departments (labour inspectorate, staff from the ministry responsible for small and medium-sized businesses, the police, etc.) and, in particular, has the task of organising concerted action by those services.

Co-operation benefits from the increased powers of each of the services<sup>2</sup> and the introduction of new means of control.<sup>3</sup> The aim is to see that offences connected with illegal employment do not escape prosecution for lack of information or because each department has specific, but limited, powers. This pooling of both information and powers is supplemented by the close relations maintained with prosecutors.

However, as we shall see later, stronger control mechanisms and interdepartmental co-operation at national level are often powerless against illegal practices organised at international level. The need for joint action by several countries to prevent or punish new fraudulent activities connected with the relocation of enterprises and their employees from one country to another is clear to everyone.

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1. Germany set up the central department for combating the illegal entry of foreigners in the early 1990s in the Directorate of the Federal Border Protection Corps in Koblenz. It gathers and analyses information on, in particular, the nature and scale of illegal entries, the illegal activities of smugglers and the illegal entry and employment of foreigners. Under the supervision of the Federal Ministry of the Interior, and in co-operation with all the other departments responsible for studying these issues, it devises strategies and measures for the border authorities and other services concerned.
  2. In Germany, since 1 January 1993 (27 June 1993 for the customs service), the inspection services have been able to enter companies without any presumption that an offence has been committed.
  3. Declaration prior to recruitment in France; certified individual form in Belgium.



# The pragmatic management of temporary labour immigration

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Clearly, the decision to block the official recruitment of foreign workers has not prevented the use of foreign labour – whatever the states’ real intention may have been – or its reappearance in other forms for other enterprises in other sectors. Furthermore, as soon as it was decided to halt official labour immigration, numerous applications for exemptions were made and granted “on an exceptional basis”. This was, for example, the case as early as 1974 with the food, hotel and catering industry in Germany; it was also the case with the steel and mining industries in France in 1975-76, and in the Netherlands, where in 1974 the authorities advocated setting up a system of temporary admission guaranteeing genuine rotation of the migrant workers in demand.<sup>1</sup> These examples suffice to show that, as early as the mid-1970s, the need for flexible management of temporary labour immigration was making itself felt in all countries of the future European Union.

This explains why the principle of prior authorisation for the issuing of long-term work permits has been the subject of numerous exceptions, on a number of grounds: the specific nature of the applicant’s right to residence, his or her family ties, the work concerned (its nature and/or duration), or, again, the links between the host country and the third country of origin. As a result, some foreigners have quite simply been exempted from the prior authorisation requirement. Other exemptions have been granted for reasons connected with the nature or type of activity. Examples of the categories concerned include sailors, the domestic staff of foreigners staying for a short time and people working in a family business.

This apparently contradictory management of manpower policy was observed in Germany in the early 1990s. While the Foreigners Act was reformed to strengthen the prohibition on recruiting foreign workers in 1991, at the same time, the Employment of Foreign Manpower Act was amended to establish a series of exceptions to that prohibition, while the order on exemption from the prohibition on recruitment was amended to extend the list of occupations exempt from special authorisation (for example, professional athletes and professional coaches). Together these texts constituted a sort of catalogue of new forms of temporary employment for foreign labour.

Still more than prior permission to work, it is the rule that permits are issued subject to the employment situation that has been used very “pragmatically” everywhere. In every country it has been the subject of exceptions that vary according to the economic situation and are justified on the grounds either of the applicant’s legal status or, especially, of the specific nature of the jobs in question: some highly skilled and highly paid, others, on the contrary, requiring very little skill and poorly paid. The employment situation is rarely used as an argument against issuing permits in the former case and prior permission is almost never refused, even if it is formally required. This is the case of “key” staff in the Netherlands involved in in-company transfers and trainees taking part in international exchange programmes, and, in France, of seconded executives and highly skilled staff whose monthly salary exceeds a certain amount. With respect to the latter, Spain provides a good example of the special measures taken during that period to authorise the employment of domestic staff from the Philippines or the Dominican Republic. Still other measures were taken, maintained or amended in response to market needs and, above all, changes in those needs, in particular seasonal work and co-operation agreements with non-EU countries.<sup>2</sup>

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1. Parliament rejected the proposal, which would have made departure compulsory after two years, in return for a “return bonus” paid by the state.
  2. Quota systems, recruitment programmes specific to certain sectors, secondment, sub-contracting and the limited use of foreign workers as part of a rotating migration scheme might also be mentioned here.

### Seasonal work ...

Most west European countries have a very long tradition of seasonal labour immigration, particularly in agriculture, while the phenomenon is more recent in the service sector (particularly tourism) and the building industry.<sup>1</sup> It is not tradition alone, however, that is responsible, since the countries of southern Europe are now very much concerned. Seasonal work is usually governed by bilateral agreements with countries of origin and ad hoc social protection rules. Added to these are special procedures for issuing visas or special permits generally valid for three to six months, renewable for a maximum of nine to twelve months. The intention is always the same: to discourage permanent settlement.<sup>2</sup>

The dispute in the Netherlands between the Ministry of Social Affairs and Dutch producers (of asparagus, strawberries and flowers) in the early 1990s was significant for its importance in the overall functioning of the labour market. The ministry wanted to put an end to the great tolerance agricultural employers had enjoyed throughout the 1980s with respect to the recruitment of seasonal foreign workers. In addition to the illegalities observed, the government was motivated by the deterioration in the national employment market and the wish to give priority to the employment of unemployed people who were registered and drawing benefit, particularly the long-term unemployed. The Dutch farmers then clearly stated their preference for foreign seasonal workers. The dispute culminated with a court ruling in the summer of 1994 authorising the farmers to recruit Poles.

This example, far from being specific, is on the contrary indicative of the issues involved in the seasonal employment of foreign workers in European agriculture and the responses to them (sometimes closely linked to immediate economic conditions). It is also of interest because it underlines one of the practical effects of the political changes under way in Poland from the early 1980s onwards. The liberalisation already taking place there very soon had a twofold consequence: it opened up new employment prospects in the west for Polish nationals and at the same time provided farmers in western Europe with new recruitment opportunities for their seasonal activities. The practice then spread to other employers. For example, during that period Germany concluded agreements on seasonal employment with a number of east European countries (Croatia, Poland, Romania, Slovakia, Bulgaria and the Czech Republic). The situations observed in recent years not only confirm the trend but emphasise the spread of the practice to the new countries of immigration in southern Europe.

### ... is here to stay on the European labour market

Moroccans for the tomatoes in Andalusian glasshouses in Spain, Poles for the vegetables in Germany, Russians for the harvest in Ireland ... seasonal work in Europe is ever "prosperous". Seasonal workers escape all the restrictions mentioned above, and quotas, where they exist, are often increased. This is the case in Austria, for example, where the Act of July 2002 relaxed conditions of recruitment, increased quotas and extended the list of sectors able to employ them. The government was responding to a long-standing demand by employers' organisations by giving them the possibility of having available a very flexible labour force adjustable to fluctuating orders.

Thousands are also recruited every year in the United Kingdom from April to November under an official entry scheme. There are Latvians, Ukrainians, Lithuanians, Poles, Czechs and Belarusians. They are paid the minimum wage, which is nevertheless substantially more than they could hope to earn in their own countries. British farmers do extremely well out of this, considering them to be reliable and good workers, especially when the problems they have recruiting locally are borne in mind. As one put

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1. The presence of seasonal workers in this sector was a characteristic of Germany for many years as is shown by the number of workers recruited in this way in the 1990s and the relative flexibility of the legislation governing this form of employment. The practice involved foreigners who had already settled and nationals, as well as new migrants brought in for the purpose.

2. In Germany, for any recruitment of a seasonal worker for more than three months the law requires a work permit issued subject to the state of the labour market.

it, local youngsters of 18 have no desire to work on a farm and, anyway, are such poor workers they can only be asked to perform the simplest tasks, such as picking daffodils.<sup>1</sup> Here too, in May 2002, the Home Secretary announced an increase in the quota. While some farmers go through official channels and recruit legally, many use intermediaries who very quickly provide them with day-labourers, many of them non-documented. In Italy, the quota was set at 83 000 for 2001. In the first five months of the year, 47 000 nationals of non-EU countries had already obtained temporary residence permits for seasonal work.

### Bilateral agreements and association agreements with the countries of eastern Europe

Germany was the first to promote this type of initiative, in the late 1980s. Since the fall of the Berlin Wall in 1989, in order to respond to migratory pressure from the countries of central and eastern Europe in its best interests, it drew up a series of innovative measures to favour the use of foreign workers, under the cloak of temporary employment contracts under bilateral co-operation agreements. Agreements of this type which opened access to its labour market to their citizens on certain conditions were concluded with the central and east European countries,<sup>2</sup> the Baltic States and Turkey. Examples are the contracts which set quotas for labour bilaterally each year, taking account of the needs of German enterprises. The Central Association of the German Construction Industry estimated that more than 130 000 workers, considered by many to be in direct competition with the national labour force, were recruited in the years 1990-92. In 1992 the SPD demanded that their number should be limited to 100 000. In 1995, the overall total was set at 57 000. The most recent such contracts are those concluded with Latvia, "the former Yugoslav Republic of Macedonia" and Romania.

These agreements were immediately the subject of controversy. The SPD and the IGban Union criticised them for infringing the rules on competition and lowering wages. The advantage of this type of contract is that the contracting enterprise does not have to pay the contributions to the construction industry social insurance fund provided for in the collective agreement, which are used to finance leave, benefits, vocational training and supplementary pensions. The persistent complaints by unions, certain employers and politicians about the increase in illegal employment resulted in an act being passed (18 December 1992) authorising the officials of the Federal Labour Office and other services to inspect companies employing foreign workers. The aim was to strengthen legislation on work permits and see that foreign workers had the same pay and conditions as their German colleagues. A 1994 amendment to the order on residence permits empowered the Federal Minister for Labour to link the number of work permits issued for construction industry contractual workers to the total size of the workforce of the company concerned. The objective was to protect the interests of small and medium-sized national enterprises. The measure was clearly inadequate. For a whole week in March 1997 tens of thousands of construction workers protested in Berlin against "wage dumping", and on one occasion even tried to attack foreign workers.

Association agreements preparing for membership of the EU were signed with the candidate countries of eastern Europe,<sup>3</sup> with somewhat similar objectives. They made it possible, *inter alia*, to depart from the principle of taking the employment situation into account by introducing a right to settle and provide services freely. Officially, only workers described as "key personnel" of the companies concerned were able to benefit from this, on condition that they had been employed for more than a year. The wish to prevent illegal immigration was clearly stated by the initiators of the agreements. They had two objectives with respect to immigration: to curb the movement of labour and channel the inevitable inflows by offering immigrants a legal framework. The agreements were presented as contributing to the

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1. The *Economist*, London.

2. In particular with Poland, Hungary, the Czech Republic and the Slovak Republic.

3. First with Poland, the Czech Republic and the Slovak Republic and later with Romania, Bulgaria and Slovenia.

economic development of the countries concerned<sup>1</sup> by liberalising trade. The same preventive objective was central to the negotiations between the European Union and the Mediterranean countries.<sup>2</sup> The agreement with Tunisia explicitly underlined this, recommending co-operation on social issues in order to reduce migratory pressure and reintegrate people repatriated because of their illegal status.

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1. In a different context and perhaps less ambitiously, the same desire for renewed co-operation was behind the agreement between Spain and Morocco following the *pateras* affair in 1992.
  2. The countries concerned are Tunisia, Morocco, Algeria, Egypt, Lebanon, Jordan, Syria, Israel, the Palestinian Autonomous Territories, Turkey, Cyprus and Malta.

# Persistence of illegality and new illegal practices on the labour market

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The fact that legal labour immigration (permanent and temporary) is continuing makes the persistence of illegal working and, indeed, new illegal employment practices all the more remarkable. Whether or not it is associated with illegal immigration, illegal employment is highly symptomatic of the way in which the labour market operates, or fails to operate, in all member states. It is evidence of the large gap between the supply of and the demand for labour. Assessments of the phenomenon still vary widely. Generally regarded as “a scourge” and “a factor of underdevelopment”, illegal working also has its defenders, who see it as “a sign of vitality” and “a safety valve” making it possible to offset the structural rigidities of the economy. For the moment, the prevailing position in the EU – at least the one expressed officially by politicians – is that strong action should be taken against it.

For a long time, the irregularities at issue were limited to the employment of foreigners without work permits. This explains why the mechanisms and measures adopted to combat it gave pride of place to monitoring this type of employment, increasing the penalties for employers, strengthening inspection of companies and sometimes laying down recruitment quotas. But first France, then Germany, followed by other member states, gradually agreed upon a broader approach to “illegal working”, which was considered to include other illegal practices concerning the work and employment of Community nationals and citizens.

## Illegal working does not only mean the illegal employment of foreigners

As early as the first half of the 1990s the approach to illegal working began to change in a growing number of EU countries, which no longer restricted the term to the employment of foreigners without work permits. Thus, in 1993 the Luxembourg authorities considered that “the regulation of flows of workers from third countries is not an end in itself; it can be used for other purposes such as combating social dumping and the black economy, and safeguarding health and safety at work”.<sup>1</sup>

During the same period it was agreed in Germany that the employment of foreigners without work permits was not the cause of the sharp rise in illegal working in the construction industry, and that the illegalities were to be sought in the area of working conditions, pay below the authorised minimum and sub-contracting of dubious legality.<sup>2</sup> As though to strengthen this point of view, the Portuguese Government approached the German authorities to defend the interests of its nationals employed with no social protection and sometimes without pay in the context of sub-contracting operations in Germany. The following year the Federal Government decided to take tougher measures against all forms of illegal working. The Federal Office for Employment was then given the task of tackling all the abuses in the social and fiscal domain, using every means available to it under the Labour Act and the Promotion of Employment Act.

In Italy, it was also demonstrated, but in a different way, that, far from concerning only foreigners without work permits, employers’ illegal practices also affected people with work permits and, in even greater numbers, Italian nationals. A study comparing data on work permits and National Social Protection Institute (INPS) data showed that only half (114 554) the 228 229 foreigners who had work permits in 1991 were declared to the INPS for social protection purposes as required by the Civil Code and regulations. This corroborated the observations made by labour inspectors when they visited

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1. Bill 28/1993.

2. This was the approach taken at the time by the SPD, which deplored the consequences of the agreements signed with the countries of central and eastern Europe (*Werkvertragsabkommen*).

companies.<sup>1</sup> Here again, the most common offences were failure to enter foreigners in registers of employees and failure to pay social security contributions.

### The provision of services diverted from its purpose

In addition to the traditional employment of foreigners without work permits, attention has focused on “the abuse of secondment”, in other words the temporary employment of European Union workers under the conditions prevailing in their countries of origin. In Germany, the unions have for several years been demanding that the labour market be protected from this form of “salary dumping”, which is very common in the building industry. The authorities then showed themselves to be increasingly concerned about the spread of new, often more sophisticated, illegal practices, observed in sub-contracting and provision-of-service operations, in particular those involving foreign companies: “bogus self-employed workers”, “bogus sub-contracting and unlawful loaning of staff” and abuse of temporary work.

Using “bogus self-employed workers” involves dissimulating an employer-employee relationship under the cloak of a commercial provision-of-service contract. The workers are presented as self-employed but are in fact used by the company in the same way as employees. This is a common practice in Germany, Belgium, France and the Netherlands. It makes it possible both to get round the regulations on the employment of foreigners and to escape other social obligations incumbent upon employers. It is sometimes made easier by international agreements and treaties on the freedom to provide services.

“Unlawful loaning of staff” involves one company making staff available to another in return for money under cover of a sub-contracting operation. The principal uses the employees placed at its disposal by its “bogus sub-contractor” without the expense and responsibility resulting from employing people and, when they are foreign workers, without complying with the relevant obligations. Such unlawful staff-lending operations organised by non-EU enterprises taking significant advantage of the development of transnational provision of services have been observed in a number of member states.

The unlawfulness of these sorts of operations may derive from the violation of provisions on temporary work and/or failure to comply with regulations applicable to foreign employees.<sup>2</sup> It may also derive from failure to comply with the social legislation of the country in which the service is provided or from the specific prohibition on lending labour in agreements authorising international provision of services. As a rule, the speed of performance and high worker mobility which these practices necessitate make it extremely difficult for inspection services to intervene effectively.

### An example of current forms of illegal working: the transport sector

The transport sector is only one of many providing a perfect example of these new forms of illegal working where the law is broken in a combination of ways as a result of transnational activities. Luxembourg is a sort of hub for the organisation of this type of operation. Furthermore, this is not a new phenomenon: the Luxembourg Transport Union (the FNCTTFEL) has been complaining about it for over ten years. In the early 1990s, it began to protest against the illegal practices of transport companies from other EU states (Austria, Denmark, France and Germany), fictitiously domiciled in Luxembourg. Even at the time, one official of the union estimated that, of the 400 foreign transport companies then established in Luxembourg, no fewer than 250 were, in his words, “letter-box firms”. They had the required authorisation and worked – mainly or exclusively – abroad with drivers who

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1. In 1993 they visited 29 822 enterprises employing foreigners.

2. In the early 1990s, in order to avoid this risk, Germany introduced the requirement that foreign workers should receive equal pay for equal work as compared with German workers, otherwise the work permit would be refused. In most EU countries, compliance with the social legislation of the country in which the service is provided is not a matter of course. This is because of uncertainty as to the law applicable to the employment contract and the difficulties of monitoring the situation. A Community directive has been adopted on the subject. The problems of monitoring remain: their resolution would require genuine co-operation between the countries concerned.

were, for the most part, from central and eastern Europe. They disappeared at the slightest problem and in any event when their manager was accused of wrongful dismissal or failure to comply with labour legislation.<sup>1</sup>

Illegal practices in the sector take a number of forms. The simplest is failure to comply with labour legislation and collective agreements (a driver paid for 173 hours work when he has worked for 416). Recent checks in Austria confirm the scale of the phenomenon, even if its scale in Europe as a whole has yet to be established. Half the 600 companies checked were guilty of exceeding the legal limit on hours and 40 were employing foreign workers illegally. However, there have long been more innovative and more serious practices. An example is the use of “driver-managers”, who are often employees (sometimes undeclared) to whom the employer has sold shares in the company. As the former employees have now become the “owners” of “their” lorry (purchase, rental or leasing), the employer is no longer required to affiliate them to social security (the drivers being responsible for their own insurance) or to comply with the Luxembourg collective agreement. In order to make enough money to fund their debts, these “bogus self-employed” people have to work a huge number of hours and drive to the limits of their physical capacity, with all the risks that involves.

The practice has not been curbed in the last ten years or so. After the Willy Betz affair, named after the German company that became famous for this type of operation, the Kralowetz affair, named after an Austrian company based in Luxembourg, is a new example. This company employed its Romanian and Polish drivers at salaries that undercut all the competition and exploited them and exposed them to danger even more than its predecessor, which had already been prosecuted for unacceptable practices of this kind.<sup>2</sup> Some of the drivers were driving day and night, sometimes up to 30 000 kilometres a month. The recent liquidation of one of the largest French companies following checks by the labour inspectorate and a judicial investigation showed another “exemplary” case. The investigation showed that the company (illegally) used Polish drivers to drive its French-registered lorries. They were employed by a Polish subsidiary and were (illegally) transporting goods within Europe<sup>3</sup> for a salary far lower than that paid to French drivers. The labour inspectorate showed that the Polish subsidiary existed only on paper and was used merely to provide labour. According to people working in the sector, the practice is very common.

The European road hauliers’ organisation (OTRE) criticises the lack of harmony in European social legislation: “There are, for example, huge differences between social legislation in France (220 hours work per month including waiting, unloading, etc.) and Spain (60 hours’ driving per week, not including loading),” complains its President, Jean-Pierre Morlin.<sup>4</sup> The FNTR, the French hauliers’ organisation, says, “French companies can only watch the Willy Betz lorries going by and wonder if this is an example we should follow or something they should fight”. As for the trade unions, they denounce the effect of the complete liberalisation of road haulage and the heightened competition that followed it. The spokesperson for the European Federation of Transport Workers’ Unions (FEST) said, “Liberalisation has been destructive. There is strong pressure on prices. We are in an industrial relations jungle”.

Great hopes are placed in “regulatory” intervention by Europe. A regulation should soon make a driver attestation compulsory and begin to tidy up the situation, while the directive adopted in February should harmonise maximum driving time at sixty hours’ work per week.<sup>5</sup> Its transposition is planned for 2004. The FEST spokesperson makes a point of stressing that seven years will have elapsed “between the complete liberalisation of the sector in 1997 and the transposition of the first major text setting standards”. For the moment, relocations are numerous and sub-contracting is prospering. A provisional

1. Delays in court proceedings (several years) guaranteed them a long period of impunity.

2. The directors of Kralowetz were given prison sentences.

3. After performing their assignments, they returned to their country by coach.

4. “The French industry, which was one of the largest in Europe, is experiencing a dramatic fall in market share. Between 1999 and 2000 it lost 25% of its market share. We are generally losing our competitiveness. What happens in France should be the model. It is not healthy to drive for sixty hours a week, but the model is being destroyed.”

5. Provided appropriate checks are carried out to ensure that the rule is applied.

conclusion can be drawn from the words of a Portuguese driver sub-contracted to work for a Swedish company under a Portuguese contract enabling him to be paid far less than a Swedish driver: "We are immigrants. The Poles work in Portugal. The Portuguese work in Sweden".

### Preventing and punishing transnational illegal working in the EU

Unfair competition, social dumping, job losses, tax and social insurance contribution evasion – such are the consequences of the spread of illegal working, the transnational dimension of which is becoming ever more clearly established in the EU. As we have seen, the practices involved take various forms: failure to comply with the social legislation of the country in which the service is temporarily being provided; the organisation of international loans of staff in order to evade regulations on temporary work; abuse of "secondment" and failure to pay social security contributions; and abuse of welfare benefits by people registered as unemployed and receiving benefit and retired people working in a country other than the one paying their replacement incomes.

The concept of transnational illegal working put forward to refer to such fraudulent practices does not therefore refer to a strictly determined, legally defined homogeneous situation, but covers a wide range of illegal practices to which the international provision of services may give rise. Conceived in this way, transnational illegal working is threatening states' economic and social stability and is prejudicial to the development of legal employment. Furthermore, foreign service providers' failure to comply with domestic social legislation may lead national companies to contest its application in their turn. Awareness of these dangers has led to the devising of specific legislation and measures and to tighter controls.

There is no question that the international provision of services is advantageous for the development of trade between developed and less developed countries and may eventually curb illegal migration. However, the risk inherent in the sorts of fraudulent activities described above cannot be ignored because of, firstly, the lack of resources of the services responsible for seeing that the legislation in force is complied with and, secondly, the ambiguity of the concept of "key personnel", which makes it difficult to determine those who are actually permitted to move around in connection with the service in question. Here again, the situation is not new.<sup>2</sup> The abuses observed have led, on the one hand, to principals being asked to take greater care with operations involving sub-contracting chains and, on the other, to a definition of the terms under which services may be provided by foreign partners.

### A steady demand that is constantly changing in nature

Contrary to the objective announced when labour immigration was halted in the mid-1970s, the declared aim and what has been said until recently, foreign workers have continued to contribute to economic development throughout the EU. This applies even in periods of recession and at times when there has been a significant rise in unemployment. All countries have organised ways of using foreign labour in various ways – seasonal work, secondment, the employment of inhabitants of the border zone and sub-contracting – forms of employment which, for the host countries, are a rapid, flexible and low-cost response to demand that may be both specific and occasional. On top of such new entries, labour markets have also profited from the contribution of foreigners with the right to a long-term work permit that is not conditional on the employment situation. These "favoured categories" are mainly the result of family reunification, but also include political refugees and those who are sometimes referred to as "*de facto* refugees", having obtained permits on humanitarian grounds.

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1. "We do Göteborg to Albacete (Spain). Why should our employer work with a Swedish driver who has to be paid €1 500 more a month for the same trip?" They buy their provisions in Portugal and sleep in the driver's cab. They do not go to hotels or restaurants, except sometimes "in Portugal and Spain".

2. Suffice it to recall the European Court of Justice rulings in the cases of *Rush Portuguesa* (27 March 1990, Case C-113/89) and *Van der Elst* (9 August 1994, Case C-43/93) concerning the links between freedom to provide services and permitting nationals of third countries to work.

Foreign workers have continued to enter the labour market legally in almost every EU country for the last thirty years and their contribution to economic development has been significant and certainly much greater than is generally admitted. This is true both of the countries with a long-standing tradition of immigration and of those where it is a newer phenomenon. Despite this more than significant contribution by legal labour immigration (whether permanent or temporary), illegal working has continued to prosper everywhere, whatever the mechanisms introduced to curb it. This threefold observation – the legal entry of workers, the continuation of illegal immigration, and the spread and changing patterns of illegal working – explains why attention has constantly been paid to the regulation of labour immigration, even though this has for long been pursued under the cloak of the unrealistic slogan “zero immigration”.

On the one hand, control mechanisms have been strengthened, the powers of the services responsible extended and penalties made more severe. On the other, recruitment has been facilitated, either by more flexible application of the laws in force or through new co-operation arrangements with non-EU countries. To consider labour market needs alone, the issues involved in a genuine labour policy are more topical than ever, whether we consider the traditional direct recruitment by a particular company or contracts for the provision of services. The difficulty remains of the dividing line between temporary legal working and illegal working. In this respect, the control mechanisms countries have adopted have not always proved effective.

A debate is therefore needed for two purposes: the first, to establish arrangements for genuine co-operation between the control services of member states, taking into account the case-law of the European Court of Justice, which prohibits countries from imposing excessive limitations on service enterprises for control purposes, on the grounds of the principle of not restricting free provision of services. The second is to take stock of the legislation passed, the reorganisation of control services and the co-ordination of their actions. An attempt should also be made to assess the dissuasive effect of the new charges and penalties available to the courts.

Although punishment is necessary, it will be futile as long as it is not supported by constantly renewed prevention. Accordingly, combating illegal working also means examining the new requirements and needs stemming from changes in the economic and social sphere in Europe. It means considering forms of regulation capable of taking new economic constraints into account, without making any concessions on the social protection of workers and therefore the cohesion of European societies. There is also a need, this time with the focus on prevention, for an in-depth analysis of the illegal practices observed, what they tell us about the functioning of labour markets, and the means of remedying them, not least by positive, overt regulation of labour migration. What instruments should be introduced for the purposes of such regulation? What benefits have the countries most heavily committed to this path derived from it? What abuses has the implementation of these instruments revealed? How can they be remedied? What lessons can be drawn for the benefit of others?



# The desire for control, market needs and demographic forecasts

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The contradiction between governments' wish to curb the influence of populists on their electorates and employers' impatience with the lack of manpower seems to be becoming ever more acute. While the former say they want to curb immigration, the latter are lobbying for an active manpower policy. However, politicians themselves have known for a long time that the slogan "zero immigration" is a myth, even though they say officially that they are in favour of combating illegal immigration and strengthening border controls. In order to counter the proposals of the most populist groups, some have on occasion contented themselves with a simplistic response to a question they know to be infinitely more complex.

The present debate within the British Government is a good example of an apparently contradictory approach of this kind. It is, indeed, remarkable to set the stands taken and statements made by the United Kingdom Chancellor of the Exchequer (Gordon Brown) to the effect that high rates of growth were in part due to the presence of immigrant labour – which stressed the benefits to the country of immigration – alongside those of his colleague the Home Secretary warning of the threat it poses to "internal security". In other words, the market needs further immigration, but the electorate does not want it.

In order to justify the maintenance or even strengthening of restrictive migration policies, the partisans of closure put forward as arguments the relatively low rate of employment in Europe (61% for the 15 to 64 age-group; 51% for women) and the number of people unemployed. The observation is well founded, particularly since the rather euphoric growth of the last few years has run out of steam and the situation has started to worsen again. In June 2002, the unemployment rate in the twelve countries of the euro zone was 8.4%, namely there were 11.6 million people out of work, a rise of 0.4% over June 2001.<sup>1</sup>

The trouble is that, in the face of unemployment which is becoming increasingly structural in nature, active employment policies are not having the hoped-for results, despite their sometimes impressive cost: more and more vacancies (for both skilled and unskilled workers) are not being filled and shortages are becoming more acute in some regions and sectors. The economic upturn at the turn of the millennium accentuated the trend. Everywhere – not only in the countries experiencing strong growth – employers are putting pressure on governments, either directly or through their organisations, for a more active labour immigration policy.

For instance, Ireland, whose economy was flourishing, was considering the possibility of the immigration of 200 000 skilled workers over 7 years, just as Germany, where the situation was less rosy, decided to open up jobs (20 000) to high-level computer specialists from India and eastern Europe.<sup>2</sup> The situation was so difficult that German company heads<sup>3</sup> complained of the slowness and complexity of the procedures. Great Britain was no different and launched a campaign to recruit technicians, offering one-year renewable visas.<sup>4</sup> In Austria, the research institute Synthesis has estimated that there is a shortage of 17 600 skilled workers in key sectors such as computer science, technology and commerce for 2003 alone. In France, in addition to the consultation initiated by the employers' confederation (Medef) with its regional federations in order to identify "shortages", important political

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1. Eurostat. Compared with 5.9% in the United States and 5.4% in Japan in the same month. The best figures are those for Luxembourg (2.3%), Austria (4.1%), Portugal (4.4%). Germany was above the average with 8.3% but the situation was deteriorating sharply (7.7% a year previously). France had the second highest rate at 9.2% (as against 8.6% in June 2001). Spain's was the most worrying figure (11.5%). According to Eurostat, this classification should be treated with some caution since no data for Italy, Greece or the Netherlands were available for June.
  2. The programme, known as "Green Card", got under way in August 2000. It has concerned some 10 000 foreign computer experts, most of them recruited in India, followed by eastern Europe, but also including almost 300 Algerians.
  3. They had 75 000 vacancies and there were 6 000 new university graduates a year.
  4. The Chancellor of the Exchequer, Gordon Brown, stressed the contribution immigration had made to high rates of growth.

leaders<sup>1</sup> have spoken in favour of opening borders to the most highly skilled. As far back as 1995 a (government investment) Plan<sup>2</sup> report – drafted during a period when there was both a difficult economic situation and mobilisation by the far right – said there was a “shortage of manpower” which meant there might be “an upturn in immigration, as was the case from 1950 to 1970”. The government noted employers’ demands, in particular those of artisans and SMEs. In 2001, the Commissariat Général du Plan launched a huge seminar on the issue. The National Institute for Labour, Employment and Vocational Training (INTEP) is conducting a debate on the subject involving unions, enterprises and government departments. As Denis Gautier-Savagnac of Medef points out, “in view of the ageing population, by 2006 companies are going to need skilled immigrant workers ...”.

### Germany: an eye on the American model

While the rapid changes in information technology and their effects on the demand for labour led the German authorities to launch an emergency programme in 2000,<sup>3</sup> the government did not believe the problem of shortages was confined to computer specialists. Consequently, the Federal Ministry of the Interior gave an independent committee the task of undertaking a completely impartial study of all immigration-related issues, including shortages of manpower (nationally and in the EU) and the possible need, despite the existing training programmes, to use immigrant labour to ensure that the German economy was competitive. The committee was therefore required to make all the recommendations it considered relevant on the subject of “migration, shortage of manpower and population trends”<sup>4</sup>.

Furthermore, a new Immigration Act was to have come into force on 1 January 2003, which provides for a “selection procedure” for foreign workers useful to the national economy and the programming of entry flows.<sup>5</sup> Selection was to be carried out in co-operation with German consulates abroad. The basic criteria being: good health, a “good reputation”, a recognised professional qualification and the ability to be financially independent. A points system is to be introduced to take account, at least, of age, qualifications, professional experience, family situation, command of the language, and links with Germany and the country of origin. Priority will be given to nationals of countries which are candidates for membership of the EU. This “selection on the basis of points”<sup>6</sup> will be combined with a system of quotas to be set annually by the new Migration and Refugee Office in co-operation with the Federal Employment Office. The proposed new act provides for the settlement of 50 000 skilled people in Germany every year. “Highly qualified” foreigners (researchers, specialists, etc.) will not be subject to this selection procedure, but will continue to obtain the right to indefinite residence. Furthermore, in order to avoid “bottlenecks”, employment offices will be authorised to admit quotas of workers on a temporary basis.

### Confronting global competition for the most highly skilled

The British Government also agrees on the need to be attentive to recent and foreseeable changes in internal and international labour markets. This policy emphasis is epitomised in the title of Home Office Aim 6: “Regulation of entry to and settlement in the United Kingdom in the interests of social stability and economic growth, and facilitation of travel by UK citizens”.

1. In *Le Monde* on 1 October 1999, the former Prime Minister Alain Juppé confirmed that Europe was going to “need supplies of foreign labour”.
2. Commissariat Général du Plan, *Le Travail dans vingt ans*, La Documentation française, Paris, 1995.
3. Order of 11 July 2000 on work permits and Order of 25 July 2000 on residence permits for highly skilled information and communication technology specialists. Despite unemployment and the prohibition on recruiting foreigners, the objective was to attract 20 000 such people with 5-year permits by means of a fast-track procedure. Measures were taken to train nationals.
4. The committee was to submit its recommendations in mid-2001.
5. Implementation of these proposals was delayed by a ruling of the constitutional court, requiring the legislative procedure to be recommenced.
6. It will not enter into force before 2010, “when Germany’s demographic problems will be worsening”, Minister of the Interior Otto Schily has said. Germany recognises that, in addition to the needs of the economy, immigration will be useful in offsetting its demographic deficit. The plan is to try out the mechanism with a quota of 10 000 people a year and gradually increase it according to need.

In a lecture at the Institute for Public Policy Research (IPPR) in September 2000 on the subject of “UK migration in a global economy”, the Minister for Immigration, Barbara Roche, stressed that the United Kingdom was seeing the beginnings of labour shortages in key economic sectors and that it was in competition for the brightest and best talents – the entrepreneurs, the scientists, the high-technology specialists who made the global economy tick.

Noting that international migration was a fundamental aspect of the global system, which was becoming more and more closely integrated, she emphasised what she saw as the three major requirements in this connection: effective controls, a firm, just, credible asylum policy which fulfilled the country's international duties and could not be exploited by racketeers, and an immigration policy that responded to real expectations and emerging needs.

A programme has been decided upon to assess the sectors where shortages have been recorded. A sort of system to monitor sectors with shortages has been set up and is periodically updated by the official authorities concerned. In September 2000, it indicated shortages in the health professions (doctors, nurses, surgeons, pharmacists and veterinarians), and in information and communications technology and electronics. Groups are to be set up to work in specific segments of the labour market to help identify shortages of skilled staff, see that the provisions governing the issuing of work permits respond to employers' needs and enable decisions to be taken on firmer foundations. The first was formed for the information and communications technology and electronics sector. A plan to attract foreigners with “exceptional skills” to work in the United Kingdom was under study.

At the same time, in October 2000 steps were taken to ease procedures for issuing work permits and facilitate the admission of skilled workers from countries outside the European Economic Area (EEA) who do not already have the right to work in the United Kingdom. The criteria imposed on employers for obtaining a work permit have been made less stringent: they specify the level of skill required to satisfy needs and remove the previous requirement of having worked for at least two years since completing education. A pilot programme known as the Innovators Immigration Scheme enables company heads to open new businesses in the UK. The government has also suggested holding a public debate on the positive and negative impact of increasing the number of immigrants. The debate, in which all organisations concerned with immigration are invited to take part, will be preceded and structured by a research programme on the subject. The government intends to devise its policy according to the results of this debate.

### The same scenario in the countries of southern Europe

Portugal provides a good illustration of this. It is probably the country where the lack of skills in the population is most serious and the training system finds it most difficult to respond,<sup>1</sup> despite the government's efforts. Two-thirds of the working population aged 25 to 64 have no skills. “The Portuguese lack basic education,” complains Francisco Van Zeller, President of the CIP (Confederation of Portuguese Industry), “Only 40% of pupils who begin secondary education complete it. The government therefore needs to undertake long-term structural reform”. Furthermore, the very low level of unemployment in recent years (4%) has encouraged young people to enter the labour market, especially the building industry, very early. The shortage of skilled manpower is unquestionably hampering economic growth and puts companies at a disadvantage in relation to their European competitors.<sup>2</sup> As is the case elsewhere, some employers are demanding a new labour policy from the government, one that is both more active and more selective. Bilateral contracts are proliferating at the instigation of the countries of southern Europe in agriculture, services and the building industry.

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1. “The quality of technical training is particularly poor.”

2. According to the CIP, competitive sectors, such as textiles, plastic tools and shoes, are only too keen to expand and are demanding new skills. The shortage of skills is putting a brake on the gains in productivity needed to increase their market share.

In Italy, the heads of small and medium-sized enterprises are the ones most concerned about the effects of the new Immigration Act recently passed by parliament. It seems to some "to run counter to the flexibility that is more important than ever, and effectively bars entrepreneurs from the decision-making process".<sup>1</sup> They see it as making an already difficult labour market still more rigid. As for deportation only six months after redundancy, many see it as a heresy since "we will lose all the skills the worker has acquired. My problem is being able to recruit the labour I need. I prefer to recruit someone who is already here, if he is available, rather than have to take on someone who has to learn the job and the language from scratch every time I recruit".<sup>2</sup>

### **An avowed desire to develop an active labour policy: the examples of Slovenia and Portugal**

Alerted by demographic forecasts, Portuguese politicians believe a more active immigration policy is needed. Because of the great sensitivity of the issue, they even want renewed debate on the subject, preceded by a detailed study. They believe it desirable that the management of temporary labour migration should eventually be based on specific international co-operation. For the moment, they are trying to resolve the dilemma facing them: on the one hand, the obligation to comply with the restrictive regulations common to all EU member states and, on the other, the perceived need to relax rules on access to their labour market in order to respond to the shortages already observed (in the building industry, catering and agriculture). The system for issuing visas has been reformed and made less bureaucratic and short deadlines have been set for issuing them. The system for extending residence has been made more flexible<sup>3</sup> and a legalisation system enables foreigners without work visas to legalise their situation.<sup>4</sup> However, in all these cases, the issuing of visas is conditional upon the real needs of the various sectors.

In Slovenia, two recent studies – the annual report of the National Employment Service and the Economic Research Institute survey on "free movement of persons in the context of the enlargement of the European Union" – confirm that there is a shortage of labour, including unskilled labour, in the building industry and agriculture, where most jobs are already occupied by foreigners.<sup>5</sup> Despite the efforts of the National Employment Service to give nationals priority in recruitment, the conclusion was that there is a long-term shortage connected with the structural rigidities of the labour market, in particular for seasonal work.<sup>6</sup> The greatest demand should be for building industry trades (all trades), in agriculture for seasonal work, and for high-tech specialities in computing and information technology. The employment of foreigners in these sectors would seem to be unavoidable. The new Foreign Labour and Employment Act none the less encourages a strict, selective, approach to recruitment. It favours short-term contracts (seasonal work and individual projects), but also requires foreigners to receive equal treatment. More broadly, a medium and long-term economic development plan for the Republic of Slovenia is being drawn up which should provide the basis for a new employment and immigration strategy.<sup>7</sup>

### **Global secondment: an example from the computer industry**

It is not only government officials who concern themselves with forward management: enterprises are far more imaginative in this respect and have no hesitation in arranging for supply at the lowest cost

1. Michele Faggioli, responsible for immigration issues in the Belluno Association of Industrialists and the National Movement of Young Entrepreneurs, *Le Monde*, 22 June 2002.
2. The managing director of the family business SEST, the European leader in the production of components for supermarket shelf refrigeration, which has recorded record growth for years.
3. To enable foreigners to remain in Portugal with a status other than the one which enabled them to enter the country.
4. Those with an employment contract or an offer of an employment contract approved by the general labour inspectorate may have their situation made legal. This does not apply to foreigners who have been sentenced to a prison term exceeding six months or deported, who are subject to an order prohibiting entry or who are on file in the Integrated Information System of the SEF (Foreigners and Border Policing Department).
5. Sub-contracting by foreign enterprises has also increased a great deal.
6. National Employment Service annual report, 1999.
7. Lessons drawn from the experience of the National Employment Service (for job seekers), the Statistics Office database on employed persons and surveys of employers' needs are being used.

and in their best strategic interests at local, regional and global level. The Global Resources Programme that IBM, one of the world's largest computer companies, has been implementing for two years is a good illustration of this. The objective is to respond both to the shortage of computer specialists and to competition from countries with low wage costs by providing itself at global level with a sort of pool of specialists who can be called upon according to need and for the duration of a particular task. They are employed by a computer engineering and maintenance company<sup>1</sup> and "seconded" to the "client" for a few months in order to fulfil an "exceptional short-term assignment". They leave once the job is done, often having obtained other sub-contracted work that they can do at home. Each country involved applies the programme according to the labour legislation in force.

IBM France regularly uses a large number (100 to 150) of such "seconded" foreign employees (Vietnamese, Indians, Algerians, Belorusians, Czechs and Hungarians). They are paid by their employer at the rate prevailing in their country, which is far less than the minimum under French agreements. The intermediary "employers" are computer engineering and maintenance companies that already exist or have been specially set up.<sup>2</sup> Michel Antoine, Social Affairs Manager of IBM at Corbeil-Essonnes,<sup>3</sup> explains straightforwardly: "If we did not do it officially and in a structured way, we would still do it, perhaps not altogether legally. The use of these foreign computer specialists enables us both to respond quickly to our customers' needs, and therefore increase our market share, and to get the better of any prospective competition". A study has shown that such "foreign sub-contracting" allows "costs to be rationalised and makes for flexibility" and represents a saving of 13% of the cost of operations. The unions denounce the practice as "trafficking in manpower". The funniest thing is that the IBM works council at Corbeil-Essonnes has accepted a contract of the same type for the development of its Internet site with an Algerian company, which has seconded computer specialists to the company, who then go back and do the work at home.

These shortages do not only affect the computer professions and industry but also – and seriously – health workers in both the public and the private sectors. The situation is serious in clinics and old people's homes in Germany, while the United Kingdom has negotiated the recruitment of nurses with Poland. France recruits in Spain but is threatened with still greater problems in the next few years if nothing is done to compensate for the consequences of the act on the 35-hour week and future retirements. Many hospitals are already functioning only thanks to foreign doctors (most of them from non-EU countries) who are generally on call in casualty and on the wards. There are already more than 4 000 such doctors, who are indispensable for the running of public hospitals. In April 2002, in order to attract public attention to their working conditions and highly uncertain future, they called a strike, refusing to provide non-urgent care and do administrative work. A new health professions demography observatory needs to be set up to assess the imbalances in certain specialities and regions and propose solutions.

The demand is the same in the transport sector, which has used employees from eastern Europe for many years. In September 2001, the Promotrans group opened a school of logistics in Budapest to respond to the needs of French companies in eastern Europe and it is planned to set up a similar school in Poland. A Bordeaux company renting out vehicles with drivers, GT, has set up in Ukraine and Belorusia. This was apparently done after attempts to recruit drivers in France failed, although they included an advertising campaign to attract young people through town halls, sports clubs and integration associations. The director of the company's own school clearly states the reasons for the project: "We want to find young people to drive our lorries, not to make savings. They will be employed under the terms of French legislation and we are prepared to train them".

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1. Which may be registered in their country or the country where the service is provided.

2. The very strict terms of the commercial sub-contracting contracts protect IBM from any plundering of its technology or customers.

3. The programme was presented to the central Joint Consultative Committee of IBM France over a year ago.

## The inadequacies of the security-based approach

So, despite an unemployment rate of 8.5%, shortages are making themselves felt throughout the EU, although the sectors concerned vary from one country to another (health, transport, information technology, the hotel industry, etc.).<sup>1</sup> Things seem to be all the more difficult because national training systems are not reacting quickly enough to the speed of technological change and seem unable to respond to demand, at least for the moment. Attracting skilled foreign workers who are immediately available to fill vacancies has therefore become a major issue. There is now fierce competition between Europe, North America and Australia to attract skilled people from the southern hemisphere. The classic outcome is to make countries of origin bear the burden of training and thus run the risk of ruining a significant part of their development efforts.

This shows the extent to which the security policy which has for twenty years been trying to curb immigration is unable to meet the challenges of the times,<sup>2</sup> particularly since demographic factors are now adding to this problem. In 1999, natural growth in the EU – 266 000 – was the lowest since the war. Some countries (Italy, Germany, Sweden and Spain) already had a net decrease.<sup>3</sup> Without immigration, these countries would already be facing a fall in population.<sup>4</sup> Others (France, the Netherlands and Finland) seem likely to be able to escape this for a few more years. With 7.3 births per 1 000, Ireland had the highest birth-rate in the EU in 2001, followed by France (4.2).

According to Eurostat, in 2001 the population of the EU increased by 0.4%, or 1.5 million people, three-quarters of whom were from third countries. The natural growth rate has been lower than the rate of migration since 1989. Switzerland is a good illustration of such demographic dependence on immigration: despite a falling birth-rate, the population of the Swiss Confederation continued to rise in 2001 (+0.8%) as a result of rising immigration and a fall in emigration.<sup>5</sup> The result was that net migration doubled as compared with 2000. At the end of 2001 the foreign population had reached 1.457 million, that is 33 432 more than the previous year (+2.3%), which more than compensated for the fall in the excess of births over deaths. Moreover, the population with Swiss nationality is growing only through naturalisations.<sup>6</sup>

Be that as it may, by 2015 profound demographic change will be making itself still more clearly felt throughout Europe. The proportion of the population over 65 will be around 22%, as against 16% today and the population of working age will have fallen sharply. In Italy, for example, where parliament has just passed a very restrictive act, experts agree that all the foreigners now living in the country (legally or illegally) will not be enough to compensate for the fall in the country's birth-rate: 9.4 births per 1 000 per year, the lowest in Europe. Without immigration, the population of Italy may fall from 58 million to 52 million by 2050. The situation seems to be identical in Germany. Measures are now being studied there to anticipate the effects of the ageing of and expected decline in the population. The steady fall in the birth-rate and the steady rise in life expectancy are causing significant changes in the age structure of the population. According to the estimates available, the number of people of working age will continue to rise until 2012 and decrease steadily thereafter.

Here again, however, things are not so simple since, while foreigners contribute significantly to birth-rates in European countries, experience has shown that this is true only for a short time, so quickly do

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1. In 2000-01 the United States admitted 195 000 workers. By March 2000 American computer companies had already reached the annual quota of 115 000 H1B work permits.
  2. For the first time in many years, an INSEE study in France in 1991 dealt with the contribution of immigration to the national economy. In Germany in 1997 the Westphalia Institute for Economic Research (RWI) published a report showing that the 7 million foreigners in the country brought in between 20 and 35 billion marks, in particular through their contributions to retirement funds, which exceeded spending on them in the form of unemployment benefit and social assistance. In October 1998, a parliamentary commission of enquiry emphasised that Germany benefited from being a "country of immigration".
  3. Births minus deaths.
  4. Spain has the lowest fertility rate in the world.
  5. Federal Statistics Office (OFS) figures published on 8 August 2002.
  6. Deaths still exceed births and recently the difference has even increased.

they model their reproductive behaviour on that of the host country. Furthermore, while it is hoped that a mass influx of foreigners in the short term will compensate for demographic shortfalls at least to some extent, more attention should be paid than in the past to their reception and integration, otherwise discrimination and social exclusion will increase. In Switzerland it is believed that migration policy should not be the only instrument for compensating for the slow increase in the working population. The authorities also want to increase the proportion of people (especially women) working and improve company productivity.

In any case, all, or almost all, European governments – supported by a large proportion of employers – are reviving their manpower policies. Officially, they are trying to be very selective with respect to new arrivals, giving priority to the most highly skilled. Some also operate a policy of “quotas”, reviewed according to the economic situation, for unskilled jobs (building, agriculture, cleaning, the food industry, hotels and catering) since demand is at the two extremes of the labour market. Indeed, this is what radically distinguishes present times from the period of the great waves of economic immigration in the 1960s.



# The challenges of a new form of north-south co-operation: how are we to avoid depriving the countries of the south of their vital forces?

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The annual report of the OECD<sup>1</sup> confirms the sharp rise in the migration of skilled and highly skilled workers in 1999 and 2000, sustained both by the favourable employment prospects and by the relaxation of conditions of entry. We cannot, however, ignore the fact that this accelerated “brain drain” which is emptying countries of origin of the forces essential for their development represents a real danger for the future.<sup>2</sup> The example of India is highly significant. It can certainly pride itself on being the world’s foremost exporter of skilled manpower. Once they have finished their training, great waves of computer scientists emigrate to take up jobs abroad every year. More than 50% choose the United States and about 20% the EU, mainly the United Kingdom.

India is thus a veritable pool of technicians and engineers who have been trained in English and offer high productivity for a cost that undercuts all competition. In the United States, American engineers are paid two to three times more than their Indian equivalents. By employing these immigrants, companies save at least one-third of the cost of their project. This explains why Microsoft USA employs some 3 000. The contracts offered are usually fairly short-term (two to three years). This tapping of the brightest and best does not only take place in India. The International Organisation for Migration estimates the number of teachers, engineers and doctors leaving Africa every year at 20 000, although the continent needs 1 million more engineers and scientists for its development. Even Nigeria, the richest country, has not been able to prevent the exodus of about 40 000 graduates.

As we have seen, western countries are openly organising the departure of the most highly skilled<sup>3</sup> at the risk of aggravating the difficulties of the countries of origin. In turn, this will only increase the wish to leave among intermediate categories who have no prospects of promotion at home. We therefore have to find new forms of co-operation so that the expansion of international labour migration can be used as a spur to development, and make sure there is a fair distribution of the resulting profits. There will be no true co-operation and no regulation of migration if, as always, the host countries reap all the benefits (arrival of the most highly skilled and savings on training costs), leaving the countries of origin most of the disadvantages (departure of the most highly skilled, investment in education with no return, impeded development, policing and social manipulation of the least skilled). If we want to go at least some way towards correcting this unequal distribution, it is the very philosophy of co-operation which has to be rethought in such a way as to foster what the OECD calls the double horizon principle<sup>4</sup> applicable to migrants trained abroad and then helped to take part in the development of their countries of origin.<sup>5</sup>

This means, firstly, favouring the return of the most highly skilled people, who can take back with them their new skills, the network of contacts they have made in international scientific circles and, possibly, private capital for investment, and the OECD report gives examples of the important role returning emigrants have played in the accelerated expansion of high technology sectors in Chinese Taipei, South Korea and Ireland. It also means assisting the development in countries of origin of public or private innovation and research bodies, and high-level university centres to interest and attract back highly skilled nationals living abroad.<sup>6</sup> In order to do this, financial aid might be given to students to put the

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1. Annual report on *Trends in International Migration*, OECD, Paris.

2. The OECD is planning to study the impact of the “brain drain” on the Russian Federation.

3. Almost 7 million immigrants with temporary permits have been recruited in the United States.

4. In *Migration and Development – New Partnerships for Co-operation*, OECD, 1994.

5. *International Mobility of the Highly Skilled*, OECD, Paris, 2002.

6. There is a programme in China to transform 100 universities into world class research centres.

finishing touches to their education abroad. This could be accompanied by a clause committing them to return for a set period, as in the case of the study grants offered in return for a commitment to work in the public services for the first few years of working life. There are some programmes based on this overall rationale:<sup>1</sup> they should be reviewed and repeated elsewhere when their results are positive, abolished if they are not and, above all, allocated the means appropriate to the stated aim.

### Assisted return to start a company: the German example

A programme has been set up in Germany to use the experience of skilled immigrants to aid the development of their countries of origin by setting up small and medium-sized enterprises encouraged by the Federal Government. Funds have been allocated to a permanent credit fund for people who wish to set up (or buy) a business, on condition that an equal contribution is made by the partner country of origin. Skilled workers who are interested may obtain a low-interest personal loan from a German investment and development company (Deutsche Investitions und Entwicklungsgesellschaft) and the partner national bank. Applications for loans are assessed on the basis of the investment project, the moral guarantees provided by the borrower, and his or her solvency. The maximum amount of the loan varies from country to country. For example, for Slovenia, it may be up to DM300 000 and for Vietnam DM100 000. Some 8 292 loans have already been granted and more than 67 345 jobs created; this represents a total of DM705.6 million, 364.3 million of which have been loaned by Germany. Bilateral agreements have been made for the programme's implementation with the following countries: Turkey, Chile, Eritrea, Albania, Croatia, Yugoslavia, Slovenia, "the former Yugoslav Republic of Macedonia", Vietnam and the Palestinian Authority (an agreement with Bosnia and Herzegovina is in preparation).

### Decentralised co-operation

However, the new co-operation arrangements need to go further than commitments by nation-states, necessary though such commitments are. The low level of government aid for the development of the poor countries means that international co-operation initiatives by local and regional authorities are all the more valuable. Here again, they are taking advantage of the gradual extension of their powers even if it means encroaching on what used to be regarded as the preserve of central government. The *troisièmes assises de la co-opération décentralisée*<sup>2</sup>, which were held in Paris in December 2001, provided an opportunity to review the situation, draw a few lessons and elicit some hope for the future.

The first lesson of the meeting was to emphasise the unknown scale of such initiatives. A great number of regions have included them in their public policies and, more important still, they do not suffer from changes in the party in power. The principal merit of such initiatives is that one partner learns about the rule of law and the other about democratic scrutiny. In order to be authorised, every project must be long term and executed at every stage in co-operation with the partners concerned. The ongoing exchange of international information between the partners, the development of co-operation networks and monitoring by local civil society of the projects they have helped to draw up are the essential criteria for equitable exchange and true partnership and are even more important than the cost of the project. As Paul Allies, Professor of Politics at Montpellier University, points out, "A new type of governance might be invented in this way. (...) a form of democratic governance promoting the idea of local government mobilising the human and social resources scattered over nameless territories. This would be the manifestation of good globalisation practice". Three areas are favoured: local development, training and health, along with improving public management.

The twofold advantage of this type of co-operation is, firstly, that it is more flexible and easier to adapt to the situation on the ground than governmental or international aid and, secondly, its greater

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1. The association agreements between Europe and the countries of North Africa, for example.

2. The concept of "decentralised co-operation" includes any civil society player or organisation. Local authorities are increasingly asking to be included in this definition. It is broader than the one officially accepted in France, where the term simply covers partnership between authorities of an equivalent level. All the regions, half the *départements* and the great majority of large and medium-sized cities were supporting almost 6 000 international programmes in 114 countries.

reliability than some voluntary sector and humanitarian commitments. For example, funding by French local authorities has been supplemented by funds from the European Union and the French Government.<sup>1</sup> But this co-operation is intended to be more than a mere (technical or material) contribution by the north to the south. It is distinguished from traditional aid by the ambition to initiate a relationship of exchange based on a true partnership profitable to both parties. Its promoters call this reciprocity. Some of the operations undertaken with young second-generation immigrants have proved particularly fruitful in this respect and municipalities derive two benefits from them. The first has been greater mobilisation of the whole population around the theme of the integration of migrants. The second, a corollary of the first, has been increased respect for and self-esteem among the young second-generation immigrants, who have acquired a "feeling of social usefulness". Co-operation with the south can thus help to inculcate citizenship in the north.

Similarly, but on a different level, it is worth citing the twofold outcome of the action that has been taken for over twenty years by a group of some fifteen villages in Normandy on the Boos Plateau (east of Rouen) for the benefit of the *département* of Guibaré in Bam province, Senegal, with financial support from local firms and the council of the *département* of Seine-Maritime. The first result, remarkable in itself, is the transfer of about €46 000 every year that doubles Guibaré's budget. The second, less foreseeable, is that, in return, this has fostered co-operation among the Normandy municipalities on water distribution and the management of lower secondary schools, for example. It has been a genuine success in the eyes of the instigator of the twofold co-operation, Mr Max Martinez, mayor of one of the municipalities involved: "The climate has changed. Now when a village organises a day to support Africa, three-quarters of the population attend".<sup>2</sup>

### The private sector is not to be outdone

The private sector also provides thought-provoking examples of schemes to develop co-operation based on mutual respect. Here again, the initiatives fill in the gaps in, and sometimes even make up for the failures of, international aid. The industrial "worker and mate" system linking enterprises in the north and the south is one of the most interesting in this respect. The objective is to help wealth-generating small enterprises in the south to overcome their lack of commercial competitiveness (lack of trained managers and executives and lack of appropriate financing), and understand market mechanisms better and the rules of competition they impose.

The experiment was started by the Centre for the Development of Enterprise (CDE), a joint institution of the European Union and the ACP (Africa-Caribbean-Pacific) countries set up twenty-five years ago to encourage the development of small and medium-sized industrial enterprises in the seventy-seven ACP countries. The CDE has worked in France, Spain and Austria and is concerned only with the private sector. In France, there has been collaboration with the association *Enterprises et développement*<sup>3</sup> and, since 1996, 130 "worker and mate" schemes have been established between French and African SMEs, generating a turnover of about €6 million with public funds amounting to €600 000. The President of the *Enterprises et Développement* network, Jean-Claude Sitbon, comments on the initiative in the following terms: "We want to replace the usual customer-supplier or southern project-northern investor relationship by bringing together firms in the same line of business. (...) The quality of the links forged between the people concerned has enabled us to combine the search for profit and the transfer of knowledge". A new programme in the commercial, technical and financial fields concerning the countries of north-west and French-speaking Africa was announced on 19 May 2002.

1. In 2000 the French Government budget for this area was 62% higher than in 1994, that is 69.7 million francs for 319 projects. The total funds allocated by local and regional authorities to international aid that year were almost 1.5 billion francs. At that time, all the regions, half the *départements* and the great majority of large and medium-sized cities were supporting almost 6 000 international programmes in 114 countries.
2. *Bilan pratique*, Cités-Unies France, December 1996.
3. The project is also supported by the French Foreign Ministry's Priority Solidarity Fund and the United Nations Industrial Development Organisation (UNIDO).



# The challenges of development: growth, equal treatment and the rule of law

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## The very negative results of development policy

The dream of favouring the return to their countries of some emigrants and, better still, avoiding the “forced emigration” of those who are still there has no chance of being realised if both the former and the latter are not given the possibility of seeing their individual initiative and choice embodied in a collective strategy that gives them back hope by ensuring that there is a meaningful objective – that of a future for their countries. In other words, the reverse of the outcome of fifty years of development policy. The conclusion reached in recent years, namely that it has failed utterly, is beyond question.

This was, for example the conclusion of the second European Annual Bank Conference on Development Economics (ABCDE) held in Paris in June 2000<sup>1</sup> on the theme “Development thinking in the millennium”. The figures are damning: more than 1 billion people on the planet live on less than US\$1 a day; the GDP of sub-Saharan Africa (with a population of 750 million) is barely more than that of Belgium (population 10 million) and its road network inferior to that of Poland, while only slightly more than half the population (58%) has access to drinking water. These figures illustrate the utter failure of the international community.

The World Bank clearly expresses this failure in its latest annual report, *World Development Report 2000-2001: Attacking Poverty*.<sup>2</sup> The average income of the twenty richest countries is now thirty-seven times that of the twenty poorest. This gap has doubled since 1960. A total of 2.8 billion people live on less than US\$2 a day and 1.2 billion on less than US\$1.

A quarter of the world’s children suffer from malnutrition. In Africa, the average per capita income has fallen since the 1960s. In 1960, 20% of the world’s richest people had incomes thirty times that of the 20% poorest – in 1995, they were eighty-two times higher. According to the UNDP,<sup>3</sup> in 1980 the 1.3 billion people living in the poorest countries were on average twenty-two times poorer than Americans. Some twenty years later, they are eighty-six times poorer!

Thus, contrary to the prevailing argument among ultra-liberal Americans, “macroeconomic growth” is not automatically accompanied by a general improvement in the standard of living. While globalisation in its present form has undeniably increased trade, it is equally clear that it has made inequalities still greater.<sup>4</sup>

## Relocation: unemployment, impoverishment and migration

The action of the international financial institutions which have given themselves the mission of liberalising the markets of the whole planet is now being compounded by the more direct actions of the large multinational companies with their repeated relocation operations. Right from the start, when companies are moved to a new location they upset local balances completely. They destabilise economies, wreak havoc with existing productive co-operation, change the status of workers, and accentuate the dependence of the countries concerned and their populations on the outside world.

1. The conference was held under the auspices of the World Bank and the Economic Analysis Council (CAE), a body attached to the French Prime Minister’s office. In the same week, the United Nations Social Summit was held in Geneva (preceded by demonstrations by anti-globalisation organisations), the UNDP (United Nations Development Programme) annual report on human development, focusing on human rights, was presented, and the EU development ministers’ Seminar on European Identity and Development was held in Paris.
2. Report published on 12 September 2002. The Bank expresses serious doubts about the results of the action taken to combat poverty and seems to distance itself from the accepted wisdom as to the benefits of globalisation.
3. United Nations Development Programme.
4. In 1997 the world’s 225 largest fortunes were equal to the annual income of 47% of the world’s poorest individuals, that is 2.5 billion people.

When the second phase comes along – abandonment for lack of sufficient profitability – the consequences are still more brutal. The economic organisation is destroyed even more quickly than it was set up and this exposes, if indeed there was any doubt about it, its essential instability.

The *maquiladoras* of northern Mexico are a perfect example of this. The objective was to take maximum advantage of extremely low wage costs, customs exemptions and the proximity of the United States for the export of their products. Millions of immigrants from the interior were “attracted” there to serve as cheap labour. This led to massive migration within the country and through Mexico from neighbouring countries. Now that the system considers them less “profitable”, the *maquiladoras* are closing in their hundreds or even thousands, without any particular concern for the people employed. Since profitability is greater elsewhere, a new relocation process is under way with no regard for the social consequences either in the country that is being left or the country to which they are going – temporarily.

This is also a factor in international migration, which is not entirely caused by overpopulation. The unemployment and impoverishment which result from these strictly financial relocations are the ideal stimulus for further internal, transnational and international migration. But here again there is rigorous selection: not everyone leaves, far from it; and not everyone goes where they want to go. Contrary to appearances, there is always more logic than incoherence and anarchy in international migration, even if the logic is not the same today as it was in the middle of the last century.

Added to this are the effects of military and civil conflicts arising from the geopolitical reorganisation accompanying “globalisation”. From the fall of the Soviet empire to the Great Lakes conflicts, such geopolitical reorganisation also contributes to the acceleration, sometimes in more violent forms, of population movements, with more coherence than might appear in the exactions perpetrated. Selection is still more rigorous here. Not everyone is able to go everywhere with impunity. And, globally, poverty remains poverty.

### From Cancun to Monterrey: the symbol of regression

On the eve of the Monterrey Summit, the 260 NGOs at the Global Forum on Financing the Right to Sustainable and Equitable Development called for thoroughgoing reform of aid. “The rules have to be changed to stop the haemorrhage from the poor countries,” said Alejandro Villamar, one of the Mexican organisers.

One cannot avoid underlining the irony of history that has made Mexico the theatre of a dream, followed twenty years later by disillusionment. From Cancun (1981) to Monterrey (2002), the Utopia of a “new world economic order” has been replaced by the imperative of “attacking poverty”, with as background the unavoidable observation that inequalities have steadily worsened over the intervening twenty years and the fear that they are the most fertile breeding ground for blind terrorism against the “wealth” of the west.

It is no less remarkable that we had to wait until the beginning of the third millennium for the World Bank, whose mission it is, to try at last, as its President, James D. Wolfensohn, put it, “to expand the understanding of poverty and its causes” and study what needs to be done to meet the challenges of reducing poverty. One figure is sufficient to illustrate this challenge: in twenty years the number of poor people – those living on less than US\$2 a day – has increased by 50%. There are now more than 2.4 billion, that is almost 40% of the world’s population.<sup>1</sup>

It should also be stressed that the preparation of the report,<sup>1</sup> which took more than two years, was based on a study entitled “Voices of the Poor”, which took evidence from more than 60 000 deprived men and

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1. This impoverishment is not only affecting Africa. In the countries in transition of eastern Europe and central Asia the number of people living in poverty has increased by a factor of over twenty. The similarities in the procedures is, moreover, edifying: J. Stiglitz stresses that the International Monetary Fund is partly responsible for this appalling situation: it was the fund that imposed the famous “shock therapy” on the former eastern bloc which has led to the enrichment of the few and the deprivation of the great majority. Interview in *Le Nouvel Observateur*, July 2002.

women in sixty countries. While we must welcome this initiative, it may seem surprising that we have had to wait so long to understand at last that those most concerned have something to say about their situation and needs. We “discover” from the document that the following must be included in the definition of poverty: powerlessness, inability to make one’s voice heard, vulnerability and fear – in a word, human rights.

### Poverty is an outcome of more than economic processes

This remark is taken from the World Bank report and represents a turning-point in what was previously a very dogmatic approach to development. The Senior Vice-President of the World Bank, Nicholas Stern, was particularly clear on this point when he said it was clear that economic growth was crucial to sustained poverty reduction, but that institutional and social change was of fundamental importance in strengthening development processes and integrating poor people.

Like the UNDP (United Nations Development Programme), the World Bank agrees that development should no longer be subordinated to the primacy of economics and believes, on the contrary, that it is useful to improve public and social institutions and health and education infrastructure. The aim is to attack inequalities in this way and, above all, involve the poorest people in the benefits of growth,<sup>2</sup> a requisite if they are to be able to contribute to it in return. The more inegalitarian a society is, the more urgent the need to make it fairer if poverty is to be reduced quickly.

Accelerating globalisation and the financial crises of 1997-98 have highlighted the perverse effects of previous policies. “They led to a reduction in public spending on health and education in the name of reducing budget deficits, and consequently to an increase in poverty and inequality. Globalisation is not simply about the opening of borders: it also means the growing influence of the market, the retreat of the nation-state, the difficulty of setting up forms of supranational power able to direct it and a growth of the grey areas that it produces and on which it feeds,” points out Jacques Valier, a lecturer at the University of Paris-X-Nanterre and a member of the CAE. “Globalisation is increasingly exclusive,” he adds.

### Rethinking the concept of development and giving the rule of law its rightful place

It was the recession in Asia in 1997-98 which first revealed the serious weakness in the prevailing wisdom and led to severe internal criticism of the infallibility of liberal policies.<sup>3</sup> The criticism was all the more pertinent for having been voiced by Joseph Stiglitz, at that time Chief Economist at the World Bank, who took issue with the “Washington consensus”<sup>4</sup> on which economic policies based on the triptych of liberalisation, privatisation and deregulation had been founded since the 1980s, with almost complete power over the conduct of budgetary policies in the indebted countries.<sup>5</sup>

In fact, the challenge is to rethink the very concept of development, first of all accepting that it cannot be reduced to per capita GDP but includes as preconditions democracy, respect for human rights and

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1. The most detailed the World Bank has ever produced on world poverty.

2. According to one World Bank expert, ten years ago there was a belief in miracle solutions; the approach was “All you need do is (...)”. Today, it is acknowledged that there is no longer any magic formula. If poverty cannot be reduced without economic growth, inequalities have to be reduced so there can be growth; a strong social policy and more democracy are needed. Nicholas Stern adds that promoting growth that is directly beneficial for the poor is fundamental.

3. In Asia in 1997 and 1998 the restrictions the IMF imposed on Thailand, Indonesia and Korea resulted in millions of people losing their jobs and being thrown into poverty. The exception was Malaysia, which was the only country to refuse the demands imposed on the others.

4. The rule valid for all is as follows: liberalising markets, reducing budget deficits, reducing the number of civil servants, selling off public enterprises, stabilising the banking sector, etc., without bothering particularly about the social effects (unemployment and impoverishment) of such measures.

5. Economic and financial crisis, serial bankruptcies, a doubling of the unemployed in ten years, an explosion of poverty (44% of the population of Latin America today): the situation of the three countries of south-eastern Latin America (Argentina, Brazil and Uruguay) can only strengthen the criticisms levelled against the macroeconomic models the IMF systematically imposes on developing countries.

access to knowledge, and then accepting that previous policies have failed; that the traditional financial aid policy,<sup>1</sup> like the so-called “structural adjustment”<sup>2</sup> policies, the social cost of which proved counterproductive, has failed. And, lastly, accepting that public financial aid alone is incapable of combating poverty.<sup>3</sup>

Rethinking development also means denouncing the attitude of the rich countries that call for the development of trade but close their doors to exports from poor countries either by imposing prohibitive customs duties or by engaging in unfair competition through their “subsidy” policies.<sup>4</sup> The debate on the CAP in the EU is a good illustration of this. It is estimated that the subsidies in the OECD countries are costing the poor countries \$20 billion, the equivalent of 40% of foreign aid in 1998. As Nicholas Stern, Chief Economist at the World Bank, says, there is a need for new policies.

The simplistic strategies of economism should be replaced by a new approach that gives redistribution, social protection, education and health their rightful place, an approach that admits that there can be no true development without the rule of law, as a guarantor of equality of opportunity and equitable treatment for the whole population.<sup>5</sup> This means that public action and democratic guarantees have to be strengthened by enhancing the role of the state but, because the state is not free of the risk of “corruption” and experience shows that it often attaches little importance to the rule of law, civil society must be fully involved in implementing development projects in order to force the state to be more “transparent”. The programme is huge: fostering access to information, promoting equality between the sexes, and working towards real progress in education and health.

This is what the President of the World Bank seemed to be saying at the opening of the ABCDE conference: “development is multi-faceted (...) the experience and determinants of poverty are multi-dimensional. A better quality of life for the poor calls for not only higher incomes; it also requires individual security and empowerment; improved and more equitable opportunities for education and jobs; better health and nutrition; a cleaner and more sustainable natural environment; a well-functioning judicial and legal system; and greater civil and political liberties and freedom”.

This statement is echoed in the letter addressed to their “Excellencies, the members and officials of Europe” by Yaguine Koita and Fodé Tounkara, the two Guinean boys found dead on 2 August 1999 at Brussels airport in the undercarriage of a Sabena aircraft. They were 14 and 15 years old; they were also “illegals”.

“We ask you to come to the aid of Africa. Help us, we are suffering enormously in Africa. Help us, we have problems and the rights of the child are not always respected. The sorts of problems we have are war, disease, malnutrition, etc.

As for the rights of the child, in Africa, especially in Guinea, we have schools, but a great lack of education, except in the private schools, where you can get a good education and good tuition, but you need a lot of money and our parents are poor (...).

So, if you see that we are sacrificing ourselves and putting our lives at risk, it is because there is too much suffering in Africa and we need you to fight against poverty and put an end to war in Africa.”

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1. The policies that have been used in Africa to fund white elephants (grandiose, useless projects) and to enrich a few unscrupulous leaders.
  2. The policy of macroeconomic balances advocated by the IMF, often synonymous with economic austerity. It was of liberal inspiration and was introduced in the 1980s under the name of the “Washington consensus”.
  3. Even if the imperative that the countries of the north should allocate 0.7% of GDP to it – which they never have – is reaffirmed.
  4. Under pressure from the developed countries, the south is opening its borders and abolishing subsidies, while the north, which should be able to adapt far more quickly, continues to prohibit the entry of products from the south and is maintaining subsidies in order to defend its own products. J. Stiglitz, *La Grande désillusion*, Fayard, Paris, 2002.
  5. “We are arguing for the role of the state upstream in social policies and downstream to ensure the necessary redistribution, and this is new,” says one of the institution’s economists.

## By way of conclusion

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Immigration is unquestionably one of the major future challenges for Europe, which must manage the contradiction between its (economic and social) needs and the state of public opinion, ever more inclined to link “foreigners” and “insecurity”. Faced with these challenges, the history of the last two decades teaches us that a policing response alone is inadequate, not to say ineffective.

This is all the more true now that Europe is receiving twice the number of asylum seekers it did ten years ago<sup>1</sup> and is looking at how it can recruit new immigrant workers to make up for the shortage of labour in certain sectors as well as how to deal with a demographic deficit in the not too far distant future.

Furthermore, the risk of relying exclusively on a clamp-down has not escaped the interior ministers themselves. After the Rome meeting preparing for the Seville Summit, the French minister advised against “going from being too soft to becoming a fortress Europe, which, in any case, would not work” and rejected the idea of “zero immigration”. His Italian counterpart, Claudio Scajola, added, “We do not want Europe to become a fortress, but to promote a model of integration that will guarantee the security of our citizens in our common area”.

In addition, experience shows that a policy and rhetoric that give priority to “security” have the twofold disadvantage of exacerbating the atmosphere of mistrust towards foreigners and people who are presumed to be foreigners<sup>2</sup> and lending credence to the unrealistic, if not fallacious, idea that “zero immigration” is possible. The serious consequence of this idea is that it lends substance to the idea of “total closure” whereas, in reality, Europe has constantly admitted thousands of foreigners to its territory legally, whether for work, for the purposes of family reunification or by granting them asylum. In recent years, there has been an average of some 700 000 such entries per year, to which of course must be added those who are non-documented and wrongly referred to as “clandestine”.

While the right of countries to control access to their territory cannot be questioned, the European Union can no longer delay the development of a proper common policy clearly setting out the conditions of entry, reception, residence and employment of the people it attracts and whom its labour market is demanding. The OECD report of March 2001 confirms this by showing the concomitance between the return to economic growth since 1997 and the acceleration in the influx of foreign workers.

### The need for transparency

In a communication of 22 November 2000 on a Community immigration policy, the European Commission emphasised the importance of the issue and the urgent need for decisions. It pleaded for a harmonisation plan that would respond to the Union’s economic, demographic and social imperatives, which are all the more pressing in view of the impending enlargement of the EU and in particular its ageing population.

Transparency on this point is absolutely essential. This means, firstly, removing the confusion and stopping people from lumping different situations together. Public opinion should be clearly informed about the diversity of immigration-related situations and the subject should no longer be dealt with as though asylum applications, family reunification, labour immigration (legal or illegal), the movement of persons, the social problems of young people with foreign antecedents, etc., were one and the same thing. Each of these issues corresponds to a particular rationale and needs to be dealt with by means of specific measures.

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1. Last year there were 384 000, accounting for only 0.1% of the population.

2. The British Prime Minister has criticised the laxness of the EU which, he said, worries people in Spain, Britain, France and indeed all the countries of Europe. He went on to say that people want to be sure of coherence, order and appropriate regulations. AFP, 20 May 2002, London.

Transparency therefore involves explaining that high unemployment in Europe does not prevent there being sectoral and regional recruitment problems. It means demonstrating that the refusal to introduce positive regulation of labour immigration reinforces shortages, fosters trafficking, impedes growth and the generation of wealth and at the end of the day penalises job creation and increases the risks of unemployment for nationals.

Transparency means confronting and informing public opinion, opening up a broad debate on the subject and confronting taboos. It also means not allowing people to believe that the illegal landing of would-be immigrants on the southern coasts of Europe has any connection with offences committed by young people on housing estates. Combating illegal immigration will not magically solve so-called "integration" problems. Both require determined government action, but it is illusory and a political error to establish a causal link between them.

Transparency is put forward here as a major political initiative, and probably the only one that might, by regarding people as responsible, sustainably curb the rise of extremism, the potential scale and influence of which has been demonstrated in France, the Netherlands, Denmark, Austria, Italy and elsewhere.

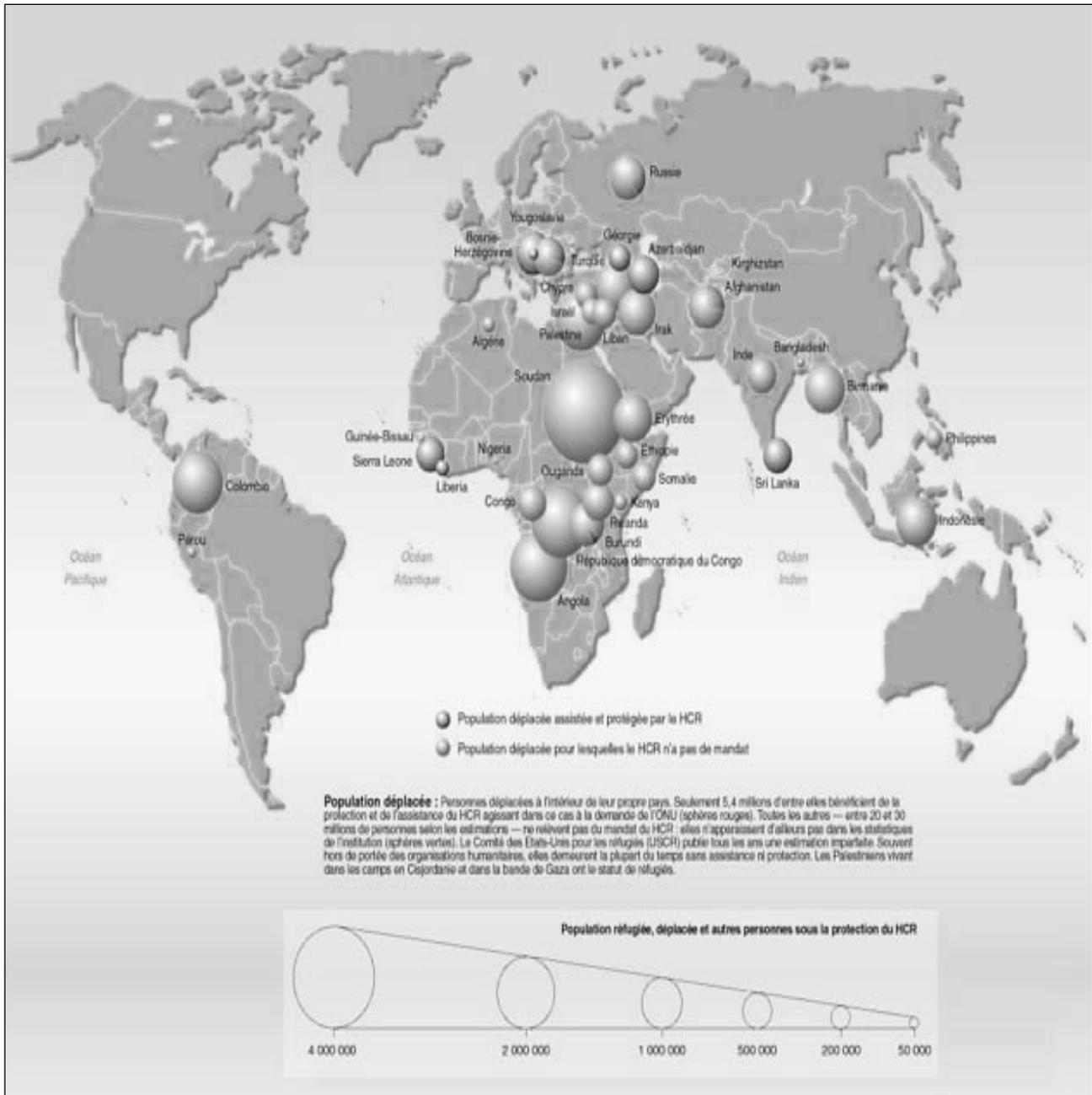
### **Attending to "poverty in the world" is also a major political requirement**

All too often, the effectiveness of measures announced seems to be less important than announcing them and the media coverage they receive. The primary concern is that public opinion should be convinced that governments are intransigent when it comes to making national borders "secure" and protecting them from every "threat". The risk itself is dramatised in an effort to justify the fact that fundamental rights and individual freedoms are sometimes infringed. The ideological construct of immigration as "both an internal and an external threat" may be considered one of the major phenomena of recent decades. While "9/11" has buttressed this perception, the logic behind it was already very much at work before the attack on the World Trade Centre.

There is an unquestionable need to combat illegal immigration and, above all, the people who profit from it by their trafficking activities. But allowing it to be believed, as too often happens, that Europe is being invaded is equally unquestionably to take the risk of playing into the hands of the populists and xenophobes.

No, Europe is not "taking in all the poverty of the world". The poorest are not knocking at its door: they have neither the means nor the strength to do so: they are confined in the south. But if it does nothing about them, it may one day have cause to regret it. Is this not a good reason to increase, rather than reduce, the aid allocated for the establishment of new political and social institutions in the bankrupt or near-bankrupt states?

## Millions of refugees, a burden for the south



Sources: Office of the United Nations High Commissioner for Refugees (UNHCR); World Refugee Survey 2000, US Committee for Refugees (USCR); World Development Report 2000-2001, Washington DC. quoted by Philippe Rekacewicz, January 2000, *Courrier International*.



# Recommendations

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One of the main lessons of the analysis of the policies implemented in recent years is that the wish to appear firm has been counterproductive. One of the most unfortunate effects has been to push would-be emigrants into the hands of illegal networks, playing into the hands of the traffickers who take advantage of the lack of transparency in regulations and control practices.

A new immigration policy should have the objective of breaking with the dominant security model in favour of a comprehensive approach to the question, clearly reflecting the choice of positive regulation of labour migration, a harmonised asylum policy and greater transparency in their management.

## Greater transparency in the legal framework

In addition to a clear definition of the rights of each category of migrant, a precise description of the prohibitions it is intended to impose, coherent measures and a more clear-cut division of powers among the institutions responsible, it is necessary to take steps to ensure that the letter and the spirit of the legislation and regulations introduced are strictly complied with. In this area more than in many others, arbitrary administrative decisions are without doubt the last thing that is needed.

## Positive regulation of labour migration

The objective here should be to attend both to the needs of the host society and to the interests of migrants. This should make it possible to renew "migratory rotation" and boost investment in countries of origin.<sup>1</sup> It is not simply a matter of returning to the movements current in the middle of the last century (1960-70) but much more of assisting the new movements at work in recent years, opening up a legal path for the strategies of the workers concerned and giving them security by removing their fear of being refused admission if they periodically return to their countries.

## Avoiding "global apartheid"

The injunction by Nigel Harris<sup>2</sup> expresses the real challenge. Europe, North America and Australia are in fierce competition to attract skilled workers from the south, at the same time as unskilled workers are being exposed to increasing hostility. They have little freedom of settlement, while skilled élites can go where they like.

## Harmonising asylum and immigration policies

This is obviously one of the major requirements of the duty to ensure a transparent legal framework. There has to be an end to the differences, and indeed contradictions, in the regulations, procedures and mechanisms in force in the various member states. Legislation and practices differ from one country to another, the bilateral co-operation put in place is hampered by mutual ignorance, and the departments concerned are scarcely, if at all, familiar with their counterparts, responsible for the same tasks and with the same powers of prevention, punishment or investigation. As we have seen, not only is all this to the great advantage of the traffickers, but in the eyes of the migrants it undermines the authority of the rule of law. Remedying this situation means adopting a common framework setting out rules on reception, processing procedures and definitions of the status of migrants, as called for at the Tampere Summit.

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1. The UN has evaluated the possible amount of this type of transfer at US\$200 billion, that is four times total official aid.

2. Professor at University College, London, and author of *Thinking the Unthinkable*, I.D. Tauris, 2002, New York..

### More guarantees for people needing asylum and protection

Giving these men and women greater assurance that their rights will be safeguarded should be the corollary of improved control of EU borders. This recommendation, made by the United Nations High Commissioner for Refugees, is essential. As he says, it means constantly monitoring the professionalism, competence and fairness of the officials responsible for control. They should be trained to perform this role in order to guarantee that people are not turned away when they should be admitted or, worse, sent back to countries where they risk persecution, imprisonment, torture or death.

Firm commitment to the battle to win round public opinion. Public opinion is as yet far from sharing the idea, accepted by experts and even politicians, of the need for immigration and the corollary of Europe's dependence on it. It even tends to be open to the opposite message and is strengthened in its view by the rhetoric of populist and extremist parties, but often also by the ambiguity of the statements made by certain other politicians and the fact that they lump different situations together. Bringing round public opinion in order to gain its support is therefore a major challenge, and one that it is by no means easy to meet.

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