



EUROPEAN POLICY AND LEGISLATION ON IMMIGRATION¹

Summary

1. Common EU policies on immigration stem from the decision to remove internal borders (the Schengen Agreement of 1985). The main legislation stems from the Treaty of Amsterdam (1997) and is described below.
2. The UK (and Ireland) have opted out of all Directives except some of those concerned with illegal immigration (paragraph 47). The UK is also engaged re-admission agreements (paragraphs 49 and 57) and in joint flights to return illegal immigrants (paragraph 53). An assessment of the implications for UK policy is at paragraphs 59-63.
3. This note summarises the policies and the main pieces of legislation agreed by the European Union on immigration since the adoption of the Treaty of Amsterdam in October 1997.

The Treaty of Amsterdam

4. The early history of and the reasons for the involvement of the European Union (EU) in asylum and immigration policy are described in more detail in paragraphs 2 to 9 of my Briefing Paper No.4.11 on the EU's policies and legislation on asylum, which can also be found on the Migration Watch web-site, and are not repeated here.
5. As regards immigration the Treaty of Amsterdam required that the Council of Ministers should, within five years of its entry into force, adopt measures in the following areas: -

- Conditions of entry and residence and standards on procedures for the issue by Member States of long term visa and residence permits, including those for the purpose of family reunion;
 - Illegal immigration and illegal residence, including repatriation of illegal residents;
 - Measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.
6. Initially, any measures taken by the EU on these subjects had to be agreed by unanimity, with the exception of lists of third countries whose nationals would be required to obtain visas in order to cross the EU's external borders and of those third countries whose nationals would be exempt from this requirement and agreement on a uniform format for visa. However, in anticipation of the Constitutional Treaty the EU agreed in 2004 to adopt Qualified Majority Voting (QMV) on all matters relating to immigration as well as asylum.
7. The UK and Ireland, neither of which had signed up to the 1985 Schengen Agreement between continental Member States to implement the removal of checks on all those crossing internal frontiers, negotiated the right, recognized in the Treaty, to exercise whatever frontier controls they considered necessary on persons seeking to enter their countries, while still retaining the historic Common Travel Area between their two countries. They also negotiated a Protocol giving them the right to opt out of or into any legislative or other proposals put forward on either asylum or immigration issues. In practice, the UK has opted out of all the EU legislation on immigration described in the rest of this paper, while Ireland has opted into one Directive (see further below). Both the UK (in 2000) and Ireland (in 2002) have partially opted into the Schengen Agreement in order to participate in the Schengen Information System (SIS), though they have remained outside the the parts of the Schengen Agreement dealing with the abolition of internal frontiers and setting up a common management system for external frontiers. Briefing Paper No. 4.11 describes in detail the measures on asylum to which the UK and/or Ireland have accepted.

The Objectives of EU Immigration Policy: The Tampere European Council and the Hague Programme

8. The main policy guidelines governing the EU's immigration policy were set out originally in the conclusions reached at a meeting of the European Council held at Tampere in Finland in 1999. These were subsequently reviewed by the European Council meeting in Brussels in December 2004, which adopted a new set of guidelines referred to as the Hague Programme.

9. The Tampere Conclusions stated that the EU's aim should be "an open and secure European Union". The concept of "openness" mainly referred to the EU's commitment "to the obligations of the Geneva Refugee Convention and other relevant human rights instruments" and therefore its readiness to grant "freedom to those whose circumstances lead them justifiably to seek access to our territory", but it also pointed to the fact that many of the EU's Member States depended on a certain level of immigration to sustain or improve their economic growth for demographic reasons. "Secure" referred to "the need for consistent control of external borders to stop illegal immigration and to combat those who organize it and commit related international crimes".

10. Apart from asylum, both the Tampere conclusions and the Hague Programme deal with four elements of immigration policy: -

- The conditions for admission and residence of third country nationals;
- The fair treatment of third country nationals legally resident in Member States;
- The integration of third country nationals within the broader society of the Member States which have accepted them as residents;
- Dealing with illegal immigration.

The legislative and other measures agreed by the EU are described under these four headings below

11. A striking feature of both the Tampere Conclusions and the Hague Programme is the emphasis given to partnership with the "countries and Regions of origin and transit" particularly in dealing with illegal immigration. The Tampere conclusions state that the EU "needs a approach to migration addressing political, human rights and development issues". The Hague Programme says that EU policy should aim at assisting third countries " in full partnership, using existing Community Funds where appropriate, in their efforts to improve their capacity for migration managementprevent and combat illegal immigration, build border control capacity... and tackle the problem of return."

12. There is, however, a striking change of priorities between the Tampere Conclusions and the Hague Programme. The former (particularly in the light of events in Kosovo) clearly regards progress on asylum issues, in particular agreement on the Dublin System for assigning responsibility for dealing with asylum applications and the adoption of the Directive on dealing with temporary mass influxes of displaced persons as the top priorities. The Hague Programme devotes five out of its eight pages on

asylum and immigration to the problem of illegal immigration and a variety of initiatives to combat it. This switch of priorities is attributable to two factors – the movement of the EU's borders several hundred miles to the east as a result of the arrival of twelve new Member States and the resultant increase in immigration from further east and the increasing pressures of would-be immigrants from Africa on Italy and other southern Member States.

Legal Immigration: The conditions for the admission and residence of third country nationals

13. The EU's progress in harmonizing conditions for the admission and residence of third country residents has been relatively modest. To date only three Directives have been adopted under this heading, which relate to the admission of workers: -
 - a. Council Directive 2004/114/EC of 13th December 2004, on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service;
 - b. Council Directive 2005/71/EC of 12th October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research;
 - c. A Council Directive adopted on 25th May 2009 facilitating conditions of entry and residence of third-country nationals for the purpose of highly qualified employment.

14. These Directives are all intended to facilitate the admission and residence of groups of third-country nationals whose presence is welcome for economic reasons. In the case of Directive 2004/114/EC the preamble states that one of its aims is "to promote Europe as a world centre of excellence for studies and vocational training." The conditions for entry of students and pupils are that they have a valid travel document and, if minors, come with parental authorization; have sickness insurance and sufficient resources to cover their stay; have been accepted by a higher educational establishment or school; and are not a threat to public policy or public security. Residence permits for university students are for 1 year renewable and for pupil exchanges for 1 year only. Students admitted to one Member State are given access for limited periods to other Member States to pursue their studies or take a complementary course, where there is a genuine link with their original studies. Any rejections of applications or a refusal of a request to renew the permit must be given in writing with reasons and must be open review or appeal.

15. Directive 2005/71/EC claims a link with the economic objective set by the Lisbon European Council of Europe "becoming the most competitive and dynamic knowledge-based economy in the world by 2010. The Directive

introduces a novel procedure under which Member States can approve research organizations for a minimum of five years by each Member State as “hosting” research centres, which can then conclude hosting agreements with particular researchers in third countries to come to the Member State to work on a specified project. The project must itself have been approved and the funding for it must be in place. The research organizations can then make applications on behalf of the researchers and liaise with the immigration authorities to facilitate the grant of residence permits, subject to the researchers having valid travel documents and not being considered a threat to public policy, public safety or public health. The residence permits may be for one year or more. While present in the Member State the researchers are guaranteed equal working terms and conditions to those enjoyed by national citizens. The researchers can also spend up to three months carrying out their research in another Member State on the basis of the original hosting agreement. As in the case of the Directive on admission of students the rejection of an application or refusal to renew it must be given in writing with reasons and be open to challenge.

16. The most recent Directive dealing with the entry conditions applying to highly qualified workers creates a “fast-track” system, referred to as a “Blue Card” for these workers. The background to this measure being proposed is further explained in paragraph 18 below.
17. The justification given for this Directive is to enable Member States to meet with shortages of highly qualified workers in the context of the Lisbon objective of improving the dynamism of the EU economy. The Directive enables Member States to grant the Blue Card to applicants who have a valid work contract/binding offer of work, evidence of possessing the necessary professional qualifications and a valid travel document and are not considered a threat to public policy, safety or health and provided that their salary will equal or exceed a benchmark of 150% of the average gross salary in the Member State concerned; (this can be reduced to 125% when there is a particular need for third-country nationals in the profession in question).
18. Member States are not required to grant applications from the employer or potential employee for a Blue Card. They may decide to apply their normal labour market policy of requiring the post to be advertised to see if it can be filled by someone in the national or EU workforce or by a long-term third-country resident from their own or another Member State. They can also reject an application if they have set a ceiling on the volume of third-country nationals entering their territory for highly qualified employment or because of concern about damage to the economy of the worker’s country of origin or because the employer has been sanctioned under national law for illegal employment practices.

19. The Blue Card is, however, a highly flexible tool of labour market policy. The duration of the permit will normally be between 1 and 4 years, but, if the length of the worker's contract is less than 1 year, the duration of the Blue Card can be limited to that of the contract plus 3 months. The Blue Card can be withdrawn, if the worker is unemployed for 3 months or becomes unemployed more than once in the period of the Card's validity or if the Blue Card holder applies for social assistance. (The Blue Card can also be withdrawn for the more familiar reasons of risks to public policy, public safety or health).
20. Blue Card holders are only required to work within their designated profession for the first two years after which they can look for work elsewhere. They enjoy equality with national citizens as regards working terms and conditions, freedom of association, education and training, access to public goods and services and freedom of movement within the Member State. They can obtain residence permits for their family more easily than under the Family Reunification Directive (see paragraphs 29-35 below) and can apply for long-term residency status more easily than under the Long-Term Residents Directive (see paragraphs 29-38 below). They can also apply to reside and work in another Member State after working for eighteen months in the Member State, which granted them the Blue Card, though the second Member State may reject their application applying the economic need test described in paragraph 16 above, in which case the applicant can move back to the first Member State. If the second Member State approves the application, the Blue Card Holder can then be joined by his family in the second Member State.
21. The UK opted out of all these Directives; Ireland opted into the researchers' Directive, but not into the other two.
22. Before any of these three Directives were proposed, the Commission had launched a much more ambitious proposal for a horizontal Directive, which proposed harmonizing the conditions for the admission and residence for all categories of third country nationals seeking entry either for paid employment or self-employment. This proposal was not agreed by the Council and has in effect been abandoned. The main features of the proposal were as follows: -
- a. Applicants for paid employment had to have either a valid work contract or binding offer of work and a valid travel document and able to demonstrate that had sufficient resources to support themselves and their family without recourse to social assistance;
 - b. The application, which could be made either by the would-be worker or the would-be employer had to meet an economic need test by demonstrating that the job could not be filled by either a citizen of the Union or an existing legally resident third-country

worker, e.g. by showing that the job had been unsuccessfully advertised for 4 weeks;

- c. Accepted applicants would be granted a joint “residence-work” permit valid for up to three years and subsequently renewable (6 months for seasonal workers). The economic test would not have to be met again when the worker applied for the permit to be renewed;
- d. Accepted applicants would enjoy the same working terms and conditions as national citizens and access to social security, including healthcare and public housing;
- e. Applications for “residence-work permits” or requests for their renewal could only be refused solely on the grounds of public policy, public safety or public health.
- f. Refusals of an application for a residence-work permit or of a request for a renewal had to be the subject of a written decision with reasons based on objective and verifiable criteria given. The applicant had to be allowed to apply to the courts for a remedy.

The draft Directive specified that Member States could adopt national legislation to limit the numbers of residence permits offered for specific jobs in a specific time period either in the country as a whole or a particular region.

23. It is unclear from the documents available on the Commission’s web-site exactly why the Member States could not agree to this proposal. In its Hague Programme the European Council emphasized that “the determination of volumes of admission of labour migrants is a competence of the Member States.” They invited the Commission “to present a policy plan on legal migration including admission procedures capable of responding promptly to fluctuating demands for migrant labour in the labour market before the end of 2005. This may suggest that at least some of the Member States wanted to make it easier to hire and fire immigrant labour than the proposed Directive allowed.

24. The Commission’s responded to this request in a Communication published in December 2005 (COM (2005)669), in which it recognized that its 2001 proposal had not been sufficiently flexible to meet the needs of different national labour markets. It proposed instead to produce a more limited general framework Directive. This would avoid dealing with the specific conditions and procedures for admissions, except to repeat its proposal for a single “residence-work” permit. The rest of the Directive would focus on the rights of third countries in employment in Member States, but not yet accepted as long term residents, such as mutual recognition of qualifications. This would be supplemented by four more detailed Directives, dealing respectively with the admission conditions for highly skilled workers, seasonal workers, intra-company transferees and remunerated trainees. These proposals were promised for 2008/2009. The “Blue Card” Directive described in paragraph 14 above is clearly the

proposal covering highly skilled workers and is significantly more flexible than the 2001 proposal. A Commission proposal for establishing a single permit and a common set of rights for all foreign workers in the EU (presumably the general framework Directive) is currently under discussion in the Council of Ministers.

Conditions of Admission and Residence: Family Reunification

25. As explicitly provided for in the Amsterdam Treaty, the Commission proposed and the Council and Parliament agreed Council Directive 2003/86 of 22nd September 2003 on the right of legal immigrants to family reunification. This was justified both by the obligations to protect the family and respect family life in e.g. the European Convention on Human Rights and the EU's Charter of Fundamental Rights and more pragmatically on the grounds that it would promote the integration of third country nationals in Member States.
26. This Directive is somewhat less than generous in granting family reunification than the asylum Directives in that the obligation on Member States is limited to allowing reunification of the "nuclear family", i.e. to the spouse of the sponsor immigrant and minor children. Minor children are defined as those below the age of minority set in the Member State concerned, but by a special derogation some Member States, which had set a maximum age of 12 years for minor children in their national legislation prior to the Directive were allowed to keep it. (This and a number of other similar derogations were unsuccessfully challenged by the European Parliament in the European Court of Justice).
27. Member States were left the discretion to extend family reunification to dependent parents of the sponsor and spouse, to adult unmarried children unable to provide for their own needs for health reasons and to unmarried partners in an attested stable relationship. Additional sponsors for a sponsor in a polygamous marriage would not be admitted.
28. The Directive lays down straightforward rules for the processing of the applications for family reunification. Member States were also allowed to require sponsors to provide evidence that they have adequate accommodation, sickness insurance and resources to maintain themselves and their families without recourse to social assistance and also to require the sponsor to have stayed lawfully in their territory for two years before family members are allowed to join him/her.
29. The initial duration of residence for family members is at least one year and permits must be renewable, but should not go beyond the expiry date of their sponsor. The sponsor's family members are granted the same

rights as the sponsor to access to education, employment and vocational training etc.

30. Member States are allowed to reject applications, withdraw permits already given and to refuse renewals on grounds of public policy, public security or public health, if false information, documents or fraud were used to obtain a permit or if a marriage or adoption were contracted solely to enable the person to enter the Member State. When considering the renewal of permits the Member States may also refuse if the sponsor no longer has the resources to maintain the family or if the marital or family relationship has already broken up. In any case where an application is rejected or a residence permit withdrawn or not renewed the Member States must ensure that the sponsor or family members can bring a legal challenge against the decision.

Fair Treatment of Legally Resident Third Country Nationals

31. The sole measure adopted under this heading is Council Directive 2003/109/EC of 23rd November 2003 concerning the status of third-country nationals who are long-term residents. The Directive sets the conditions for conferring and withdrawing long-term resident status on third-country nationals legally resident on their territory and defines the rights attaching to that status. It also defines the terms on which those granted long-term resident status can reside in other Member States. The Directive derives from a commitment in the Tampere Conclusions to grant long- third-country residents “a set of uniform rights, which are as near as possible to those of EU citizens”.
32. The Directive requires Member States to grant permanent resident status to third-country nationals, who apply for it, subject only to the requirements that they have “resided legally and continuously within their territory for five years immediately prior to the submission of their application”, have stable and regular resources sufficient to maintain himself/herself and their families and adequate sickness insurance. Applications can only be refused on public policy or security grounds, but not on economic or employment grounds. The award of long-term resident status is accompanied by the issue of a residence permit of at least 5 years duration and automatically renewable.
33. Long-term residents can be expelled, if they “constitute an actual and sufficiently serious threat to public policy or public security.” They must also be deprived of their long-term resident status for serious offences falling short of the expulsion penalty (including fraudulent acquisition of their long-term resident status) or, at the Member State’s discretion, if they spend 12 consecutive months or more outside EU territory. They must

- lose their status if they are absent for 6 years from the Member State, which granted it.
34. In all cases of withdrawal of the status or expulsion the person concerned must have a right to mount a legal challenge against the decision and, in cases of expulsion, access to legal aid on the same terms as nationals of the Member State.
35. The Directive requires Member States to grant those given long-term resident status equal treatment with their own nationals, including in relation to: -
- a) Access to employment and self-employment;
 - b) Social security and assistance, though these may be restricted to “core benefits”, and tax benefits;
 - c) Freedom of association, including trades union membership;
 - d) Freedom of Movement within the Member State.
36. Long-term residents acquire a right to reside, along with their authorized family members, in the territory of other Member States to exercise an economic activity, for studies or vocational training or for other purposes. The second Member State may apply their national labour market policies to give preference in employment to Union citizens or to third country nationals who already legally reside and receive unemployment benefit on their territory. They may also limit the total of persons entitled to be granted the right of residence, if this limit was in force at the time of adoption of the Directive.
37. To reside in another Member State the long-term resident has to apply for a new residence permit within 3 months of entering its territory. The second Member State can refuse or subsequently withdraw a residence permit on public policy, public safety or public health grounds, subject to the usual right of appeal. To work in the second Member State the applicant can be required to produce evidence of an employment contract or of adequate resources to run their own business. Once accepted as a resident, the applicant then enjoys the same rights to equal treatment as in the first Member State and can in due course apply for long-term residence there. Until he/she has obtained long-term residence, the second Member State retains the right to remove him/her from EU territory on serious grounds of public policy or public safety.
38. The UK and Ireland opted out of this Directive.

Promoting Integration

39. Both the Tampere Conclusions and the Hague Programme call for fair treatment of third-country nationals who reside in the Member States and

greater efforts to encourage integration. The EU, however, currently has no specific powers to legislate to harmonize Member States' policies to promote integration, though it does have the powers to legislate against discrimination on race, nationality, religion, political beliefs etc in, eg., the operation of labour markets or the provision of services.. In the Hague Programme the European Council invited the Member States, the Council of Ministers and the Commission to encourage greater co-ordination of national integration policies through "the structural exchange of experience and information on integration, supported by the development of a widely accessible website on the Internet".

40. The Commission has taken four main initiatives in response to these invitations: -

- To set up a network of National Contact Points on Integration. This group meets regularly to discuss best practices;
- The publication of a Handbook on Integration in 2004 and from 2005 onwards of annual reports on migration and integration;
- The establishment in 2007 of the European Fund for the Integration of Third-Country Nationals as part of a wider General Programme of Solidarity and Management of Migration Flows. This initiative, which followed three years of ad hoc budgetary allocations for pilot projects and preparatory actions, provides Euro 825 millions for the period from 1st January 2007 to 31st December 2013 (i.e. approximately Euro 63 million per year) to provide an EU contribution to Member State initiatives to help third-country nationals to integrate. Each Member State receives a minimum of Euro 0.5 million per year with the remainder of the annual budget being distributed to Member States pro-rata with the number of third-country residents resident on their territories. The UK and Ireland opted into this programme; Denmark did not.
- The European website on Integration requested by the European Council was set up in April 2009 and the English version can be accessed at <http://ec.europa.eu/ewsi/en/index.cfm> .

41. In addition to these Commission initiatives the Council of Justice and Home Affairs Ministers adopted a set of "Common Basic Principles" on integration policies at a meeting in November 2004.

42. This paper does not examine these initiatives in further detail. Readers, who wish to know more can access the Commission's annual reports on migration and integration, the Decision setting up the Fund and other documents referred to in this paper through the following link: - http://ec.europa.eu/justice_home/doc_centre/immigration/doc_immigration_intro_en.htm.

Measures to Combat Illegal Immigration

43. Although the problem of illegal immigration has been a central part of the EU's common integration policy since 1999, the Hague Programme gave a considerable push to policy initiatives in three main areas:-
- a) Border Security;
 - b) Combatting illegal immigration;
 - c) Cooperation with third countries, including return policy and readmission agreements.

The following paragraphs summarise the main initiatives taken in these three areas.

Border Security

44. The EU has agreed a Border Code and in 2007 set up Frontex an Agency for the management of operational cooperation at the External Borders. There are plans to introduce biometric technology, such as fingerprints and digital photographs to enhance the effectiveness of border controls and the Commission has suggested the eventual creation of an automated entry-exit system for the registration of third-country nationals entering or leaving EU territory. The EU has also taken steps to assist the maritime operations of the Member States involved in policing the EU's Mediterranean borders.
45. In addition as part of the framework programme on Solidarity and Management of Migration Flows the Council has agreed to establish an External Borders Fund, totalling Euro 2,152 million to help Member States finance strengthened border controls in a variety of ways, including, for example, surveillance systems between border posts. This fund is only available to Member States, which implement the provisions of the Schengen Agreement relating to external frontier controls. The UK and Ireland are therefore unable to benefit from it.

Illegal Immigration

46. The EU has taken two main initiatives to combat illegal immigration within the Member States.
47. First, in 2002 it adopted two measures aimed at making it easier for Member States to tackle trafficking in illegal immigrants. These are a Directive 2002/90/EC defining the Facilitation and unauthorized Entry, Transit and Residence and a Framework Decision 2002/946/JHA to strengthen the penal framework to prevent these offences as defined in the Directive. The Decision requires Member States to impose criminal

sanctions on these offences and sets minimum sentences for particularly serious offences. The UK and Ireland both opted into these two measures.

48. Second, in response to a suggestion in the Hague Programme the EU has agreed to target the domestic employers of illegal immigrants by making such employment a criminal offence. The Council and European Parliament adopted a Directive on 25th May 2009, which imposes severe civil and criminal sanctions on such employers. The main provisions of the Directive are as follows: -

- All employment of “illegal stayers” is prohibited.
- Employers are required to check that third-country employees have a valid residence permit; to keep a copy of the permit during the duration of the holder’s employment; and to notify the competent authorities of the Member State at the start of any third-country national’s employment;
- Member States are required to impose “effective, proportionate and dissuasive” financial sanctions against employers, which must include increasing financial sanctions pro-rata with the numbers of “illegal stayers” employed and payment of the costs of their return to their country of origin. In addition, the employers must also pay any outstanding remuneration due to the illegal employees at a rate at least equal to the national minimum wage. They must also repay any taxes and social security contributions due to the tax authorities. Other penalties include barring the employers from all forms of public aid and from competing for public contracts for up to five years. In particularly grave cases the establishments where the offences have been committed can be closed temporarily or permanently.
- If the employer is a sub-contractor, the penalties can be extended to the main contractor and to intermediate sub-contractors;
- Member States must also impose criminal sanctions against natural or legal persons in relation to persistent or particularly serious offences;
- Member States must ensure there are effective “whistle-blowing” arrangements in place for use by the illegal employees or by interested third parties.
- Member States must also ensure an effective system of inspections and report annually to the Commission on their inspections in sectors of activity particularly at risk.

Partnership with Countries of Origin and Transit: Policy on Returns and Readmission Agreements

49. As noted in paragraph 9 above, the Hague Programme placed a strong emphasis on partnership with third countries and encouraging and aiding them to discourage illegal immigration at source. This aspect of policy has now been incorporated into the EU's more general dialogue with the main countries of origin and transit, in particular in Eastern Europe, North and Sub-Saharan Africa. In the long-run the EU aim is to help these countries make emigration a less attractive option by job-creation through aid for economic development. In the short-term the EU has sought to develop initiatives on joint patrols, better surveillance etc in the Mediterranean area. The Commission reports regularly to the Council on these discussions. The UK government is fully involved in these efforts and is one of four Member States designated as regional coordinators for conducting discussions about the main migration routes. In support of its diplomatic efforts the EU also established the so-called "AENEAS" Fund to assist the partner third countries both in the development of their own policies for managing both inward and outward migration and in resettling citizens returned to them from the EU. This fund provided Euro 250million between 2004-2008. A successor Fund has been established for the years 2007-2013.
50. The other main elements involving third countries are the EU's policy on returning illegal immigrants to their countries of origin or transit or origin and the negotiation of Readmission Agreement.

The EU's Return Policy

51. The main plank of the EU's policy on returning illegal immigrants is Council Directive 2008/115 of 16th December 2008. This is a response to an invitation in the Hague Programme for "the establishment of an effective removal and repatriation policy, based on common standards for persons to be returned home in a humane manner and with full respect for their human rights. The Directive requires Member States to issue a return decision to any third-country staying illegally on their territory unless they have a link with another Member State to which they can be sent or unless the Member State in question itself decides for compassionate, humanitarian or other reasons to allow the person to stay. Member States must also respect the Geneva Convention of "non-refoulement" and not return illegal immigrants to countries of origin in which they are at threat of persecution or serious harm.

52. The main procedural requirements of the Directive are:
- There must be a 7 to 30 day window for voluntary return, unless there is a serious risk of the person absconding or , if an application

for a legal stay has been dismissed as manifestly unfounded or fraudulent;

- Where compulsory removal is necessary, all necessary measures may be used, but force must be proportionate and reasonable;
- In the case of unaccompanied minors Member States must seek the assistance of appropriate bodies other than the removal authorities, must consider the best interests of the child and, in any case, only remove the child if satisfied that he/she will be returned to a family member, a nominated guardian or to adequate reception facilities;
- Member States may accompany a return order by an entry ban and must do so, if no window for voluntary return has been granted or if a return order has not been complied with;
- Return decisions must be issued in writing and reasons given. There must be a right of appeal to a competent judicial or other impartial and independent body;
- Persons who are subject to removal orders can be held in detention in appropriate accommodation, unless other less coercive measures can be effectively applied. But any detention order must either be subject to speedy judicial review or the person concerned must have the right to take proceedings by which such judicial review can be brought about.

The UK and Ireland opted out of this Directive. The provisions relating to detention are similar to those subsequently put forward in the Commission's recent proposals to amend the Reception Conditions for asylum seekers discussed in Briefing Paper 4.11. It is possible that the wording in the last two and a half lines of the last bullet point above would allow the UK's arrangement of permitting detained asylum seekers to apply for bail as an acceptable remedy.

53. Prior to the adoption of this Directive, the EU had previously agreed four measures requiring or enabling Member States to provide mutual assistance to each other in connection with the expulsion or return of third-country nationals. The UK and Ireland both opted into Council Directive 2001/40/EC, which provides for the mutual recognition of decisions taken by any Member State to expel third-country immigrants for reasons of public order or national security or serious criminal activities and to provide help to each other where one Member State was expelling an individual who had been given a residence permit by another Member State. The UK also participated, though Ireland did not, in a follow-up Council Decision for settling any financial imbalances between Member States arising out of the mutual recognition Directive. The UK and Ireland both also opted into a Council Decision of April 2004 on the organization of joint flights to return illegal immigrants.

54. In support of Member States efforts to develop programmes for the return of illegal immigrants the EU established a European Return Fund, which will provide Euro 686million between 2007 and 2013 to develop integrated return management schemes and to promote voluntary return schemes in particular. All Member States will get a minimum of Euro 300,000 a year, with the newly joined Member States getting Euro 500,000. The rest of the money will be distributed pro rata with the numbers of illegal immigrants detected in each Member State and the numbers returned in the last three years. The UK and Ireland benefit from this Fund.

Readmission Agreements

55. Since 2001 the EU has been committed to negotiating Readmission Agreements with the main countries of origin and transit. The policy of seeking such Agreements was strongly urged by the European Council in the Hague Programme. The main feature of these agreements is that both the third country in question and the EU agree to readmit their own nationals at the request of the other party. In some cases the parties also commit to accept stateless persons to whom they have issued a visa or residence permit or who may have transited through their territory or stayed on it before entering the territory of the other party. In addition the Agreements set out a range of technical rules on the readmission procedure and transit operations such as the contents and form of readmission applications, means of evidence for establishing nationality and time limits for responding to readmission applications.

56. All the Readmission Agreements must comply with the 1951 Geneva Convention and with the EU's other human rights commitments. Accordingly no illegal immigrant can be removed, expelled or extradited to a country where there is a serious risk that he/she could be subjected to the death penalty, torture or other inhumane or degrading treatment.

57. Between 2001 and June 2008 the Council of Justice and Home Affairs Ministers have authorized the Commission to negotiate such Agreements with sixteen countries. In alphabetical order these are Albania, Algeria, Bosnia and Herzegovina, China, the former Yugoslav Republic of Macedonia, Hong Kong, Macao, Moldova, Montenegro, Morocco, Pakistan, Russia, Serbia, Sri Lanka, Turkey and Ukraine. As at June 2008 Agreements had entered into force with Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Hong Kong, Macao, Montenegro, Moldova, Russia, Serbia, Sri Lanka and Ukraine.

58. The UK and Ireland, but not Denmark, are parties to all these Agreements.

Overall Assessment and Implications for UK Policy

59. The EU's policies and legislation, as described above, appear to have three main aims in relation to illegal immigration – to discourage it at source; to make it harder for illegal immigrants to cross the borders into EU territory and to return them to their countries of origin or countries of transit. Faced with large increases in illegal immigration on its southern border 2004 and 2005 (both in the Atlantic and Mediterranean areas) and on its Eastern border the EU has adopted a broad range of policies to combat it. Since the UK government's aims in relation to illegal immigration are much the same as those of other EU Member States and many of the illegal immigrants arriving in the UK will have come through continental Europe, the measures taken by the EU to strengthen surveillance and checks at the EU's external frontiers are potentially helpful to UK policy-makers. The same is true of the EU's partnership programme with neighbouring countries of origin and transit. The Readmission Agreements concluded with these countries are also potentially beneficial to the UK government's aims. This paper does not attempt any assessment of how successful these policies are meeting their objectives, which in any case would probably be premature.
60. In relation to legal immigration the Treaty enabled the EU to set conditions of entry and residence for the issue by Member States of long-term visa and residence permits. (The Schengen Agreement already contained a list of countries whose nationals would be required to have a short-term visa for visits of up to three months and laid down rules for the checking of entry at the external borders of the Schengen Member States).
61. The main aim of the legislation adopted so far seems to be to facilitate the admission of selected groups of highly-qualified economic immigrants, (the researchers and the "Blue Card" holders) by setting relatively simple and flexible rules for their admission and residence and by allowing them a degree of freedom of movement between Member States. The stated motives for this approach are to enable Member States to meet shortages of skilled labour in certain sectors and to encourage the development of a more dynamic knowledge-based economy. (The problem of skilled labour shortages was already referred to in the proposed 2001 Directive on common standards of admission and residence for all economic migrants, which the Member States apparently rejected as too inflexible). This need for the EU's to import skilled labour is attributed by the Commission to the worsening demographic outlook in many EU Member States, with large falls in the ratio of the working population to the total population forecast. This problem is more acute in a number of Member States than it is in the UK; for example the total population is said to be already in absolute decline in Germany, Hungary and Italy.

62. Nevertheless, it is somewhat paradoxical that legislation at EU level was used to deal with this problem, since Member States were free to make their own arrangements for encouraging skilled labour immigrants to come to them. Possible explanations for Member States' willingness to encourage the Commission to legislate along these lines are, first, that in some cases it may be easier to overcome domestic opposition to liberalizing entry for immigrant workers if it is done through EU legislation than by national laws; second, some Member States may have wanted to ensure that their own efforts to attract foreign skilled workers were not undercut by easier terms and conditions offered by other Member States. There may also have been a more general acceptance among the Schengen countries that the Schengen Area countries should follow common standards on these matters.
63. In addition, as described above, the EU has also fulfilled the commitments made in the Treaty of Amsterdam to legislate on the family unification and on the rights of long-term third-country residents. The latter, of course, also provides for a degree of freedom of movement between Member States, though on significantly less favourable terms than applies for EU citizens. None of these four pieces of legislation dealing with legal immigration and legal immigrants appears to have any negative side-effects for UK government policy. Since the UK opted out of these Directives, none of the provisions relating to freedom of movement between Member States for third-country legal residents apply to the UK, which can therefore continue to apply its existing rules to their entry into UK territory.

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31st May 2009.

¹ This report was prepared for Migrationwatch by a consultant, Mr Geoffrey Fitchew, who was formerly a senior Treasury official, working on European and international financial questions and later Director General for Financial Institutions and Company Law in the European Commission (1986 to 1993). Subsequently, he was Head of the European Secretariat in the Cabinet Office, dealing with all aspects of European policy. He is strongly in favour of Britain's continued membership of the EU, but was a supporter of the campaign against Britain adopting the Euro. He also supported the campaign for a referendum on the Lisbon Treaty.