



■ EU and US  
approaches to the  
management of  
immigration

Comparative  
perspectives

Jan Niessen and Yongmi Schibel

Electronic version





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**ELECTRONIC VERSION**

**With the support of the German Marshall Fund of the United States**

The Migration Policy Group (MPG) is an independent organisation committed to policy development on mobility, migration, diversity, equality and anti-discrimination by facilitating the exchange between stakeholders from all sectors of society, with the aim of contributing to innovative and effective responses to the challenges posed by migration and diversity.

This publication was prepared in the framework of the project EU and US approaches to the management of immigration, which was carried out by MPG with the support of the German Marshall Fund of the United States and in co-operation with partners in the European Migration Dialogue. The publication was presented and discussed at a transatlantic dialogue meeting preceding the official launch of the European Migration Dialogue attended by Commissioner António Vitorino (Brussels May 2003).

Reports on Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, Portugal, Spain, Switzerland, and the UK are available from MPG's website.

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## Preface

The European Union and the United States are areas of immigration, and both are entities of multi-level governance facing the task of managing international migration. However, unlike the United States most European states do not consider immigration as a matter of national interest. In the US a regulated immigration system aims to enhance the benefits and minimise the drawbacks of immigration. The country's bipartisan immigration policy receives strong support from a wide variety of stakeholders. In Europe the emphasis is on immigration restriction and prevention, reflecting the position of most stakeholders that the costs of immigration outweigh its benefits. Immigration is a sensitive and sometimes controversial issue, as was demonstrated in recent elections in a number of European countries. On both sides of the Atlantic migration ranked high on the agenda throughout the nineties. Changes in the size and direction of migratory movements as a result of global developments, EU enlargement and NAFTA received a great deal of attention. The ways in which migration policies are designed and implemented were reviewed and underwent some important changes. In 1997, the US Commission on Immigration Reform presented its final report to Congress, proposing important changes in US immigration policies and management. In Europe the 1997 Amsterdam Treaty empowered the European Union's institutions to act on migration, changing intergovernmental co-operation among Member States into the development of joint policies on immigration and immigrant integration. A new debate emerged on the role of immigration in addressing economic and demographic imbalances. The events of 11 September did not in themselves have an impact on the foundations of immigration policies' governance structures, or lead to changes in them, other than those already proposed. The events added, however, a range of other issues to the overall policy agenda (issues related to the fight against terrorism became a top priority) and the immigration agenda (where security issues became a priority). This resulted in a stagnation of the further development of immigration policies (the best example probably being the US- Mexico migration agreement) and in a refocusing of attention on countering the victimisation of immigrants and the straining of community relations. It was against this backdrop that MPG launched the project *EU and US approaches to the management of immigration* in an attempt to identify the main drivers of immigration management in EU and US systems of multi-level governance. Building on an understanding of how migration needs are assessed and translated into policy on the national or state level, the project focused on the way in which national or state governments promote their immigration related interests within the federation (in the case of the United States) and the Union (in the case of the European Union). How successful are the different entities in shaping common policies according to their needs? Do they consider centralisation (which the extension of EU powers suggests), or decentralisation (as the campaigns of some states for a greater say in immigration matters suggest) more useful for realising their immigration-related goals?

In part I we look at 18 European states and how immigration policies are designed and in part II we look at the EU and the US.

## **PART I EUROPEAN COMPARATIVE PERSPECTIVES**

### **Introduction**

Migration is a vehicle for generating and sharing resources, altering the size and composition of the population and profoundly affecting the make up of societies. Therefore, migration is an issue of great concern to governmental and non-governmental actors and calls for their systemic interventions.

This part contains eighteen country reports, snapshots of a rapidly changing situation in these countries. It includes reports on all EU member states bar Sweden<sup>1</sup>, three accession states among which the biggest namely Poland, and Switzerland as a recently associated state. The reports review the terms of the migration debates, and provide an inventory of the stakeholders in the debates and an analysis of their activities. They give an account of who is responsible for which area of migration management in the different government departments. They also cover the activities of the various non-governmental organisations active in this field. The central question is which actors within government, employers, trade unions, NGOs, academics and other experts, assess national migration needs, which instruments and mechanisms these actors use to make these assessments, and how they assert influence in the political decision-making process to translate these assessments into policies. The reports also compare the national legal framework with the proposed European measures on admission for employment, family reunification and long-term residents, and assess the degree of convergence between the national and European level. Finally, the reports pay attention to the proposed Open Method of Co-ordination on immigration and the European Employment Strategy.

The reports show diversity in the terms of and participants in the migration debates. At the same time they reveal striking similarities in policy approaches.

In Europe, the way in which migration was perceived and policies were designed to address this hard to capture phenomenon changed many times during the 20th century. A continent from and within which people migrate, Europe is also an area that is progressively attracting people from all corners of the world. For a long time Europe could afford an approach of accommodating intra-continental relocation and settlement, favouring extra-continental out-migration and disregarding immigration. Policies dealing with the movement of people and at times whole populations – migration policies is probably too big or too small a word for it - were shaped first in a post World War I context of building old and new nation-states and the protection of national minorities and then in a Post World War II context of containment of blocs of states, often deliberately restricting intra-European migration, and of decolonisation by which reversed colonial migration between motherlands and (former) colonies set in motion continuing extra-European immigration. 'Migration policies' remained firmly linked to the building of nation states and welfare states. Subordinated to social and employment, internal and foreign policy objectives, migration policies can be qualified as predominantly re-active.

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<sup>1</sup> For technical reasons Sweden could not be included in the research project that started in August 2002 and ended in May 2003). This country as well as other EEA member states may be included in a second research cycle that will update the current reports. The reports and updates will be published on the policy monitor on MPG's website.

Europe seems only to be willing or able to deal with migration once people have started to move. Since it is unlikely that people will ever give up moving around the globe in search of opportunities that match their aspirations, pro-active policies must be put in place to create conditions for maximising the advantages of migration for all persons concerned and societies affected by it. Therefore, another approach is required in the 21<sup>st</sup> century, one that values intensified global human exchanges and increasing mobility, one that redefines Europe's identity and its relationship with its neighbours.

The mosaic of policies of the more than forty sovereign European states may easily conceal the commonalities which in part result from states living up to commitments they make in two continuously expanding forums, namely the Council of Europe and the European Union. The Council of Europe sets human rights standards and supervises their implementation<sup>2</sup>. There are well over 40 instruments, conventions and agreements, dealing directly or indirectly with the status of migrants, including the European Convention on Human Rights and the European Social Charter, whose supervisory mechanisms are among the strongest in the world<sup>3</sup>, namely the European Court of Human Rights and a committee of independent experts respectively. All Member States must ratify the Human Rights Convention and are bound by the rulings of the European Court of Human Rights.<sup>4</sup> The Council of Europe also promotes co-operation between relevant actors from its Member States on a range of issues among which migration, immigrant integration and anti-racism figure prominently. The Council of Europe published authoritative reports on migration management and immigrant integration and a series of regular updated country reports on anti-racist policies and practices. By designing and evaluating innovative approaches, and assisting Member States apply them, the Council seems often to act as a governmentally lead and non-governmentally inspired think-tank. Although it is hard to measure to what extent, it is safe to assume that the activities of the Council of Europe have co-authored the policies of its Member States<sup>5</sup>.

The European Union is a unique forum of co-operation between a growing number of states that share their sovereignty with one another in a growing number of areas such

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<sup>2</sup> Other international human rights instruments that influenced national migration and integration policies are those adopted in such forums as the United Nations, the International Labour organisation and the Organisation for Security and Cooperation in Europe. See Jan Niessen, Migrant workers. In: Eide, Krause and Rosas, *Economic, social and cultural rights. A Textbook* (second revised edition, 2001). Europe's record of signing international conventions is much better than that of the USA.

<sup>3</sup> Other conventions with much weaker supervisory mechanisms are the Convention on Establishment, on the Legal status of migrant workers and on Nationality. For the state of ratification see, <http://conventions.coe.int/>.

<sup>4</sup> See for the importance of the various conventions and the rulings of the European Court of Human Rights for the shaping of national policies, the contributions of Groenendijk, Guild, Van Dijk, Niessen and others In: Guild and Minderhout, *Security of residence and expulsion. Protection of aliens in Europe* (2001). The Convention helped to phrase Constitutions and inspired secondary legislation of countries coming out of a dictatorship as was the case with Spain, Greece and Portugal and more recently with countries in Central and Eastern Europe.

<sup>5</sup> This applies not only to the Council's older member states, but also to the more recent member states. For example, a series of national round tables and international consultations were organised on community relations and immigrant integration which in these countries helped to design migration and integration policies. The outcome of these consultations and of the round tables (organised at the request of the Council of Europe by MPG) were discussed at two ministerial conferences and also lead to the adoption of the report *Diversity and cohesion: new challenges for the integration of immigrants and minorities* (2000).

as socio-economic integration, monetary union, justice and home affairs and external relations. Freedom of movement of persons has been on the Community's agenda since its inception, and migration and anti-discrimination since the entry into force of the Amsterdam Treaty<sup>6</sup>. Consequently, legislation and policies of Member States, accession and associated states are harmonised and approximated.

### ***European migration debates***

Post World War II Europe had to deal with sizable movements of people partly as a result of the re-drawing of the European map (leading to return and settlement migration) and shifting borders (leading to 'migration sur place', i.e. people finding themselves in another country without moving). This was notably the case in Central and Eastern Europe. The Iron Curtain curtailed intra-European migration with the exception of migration between Eastern-bloc countries, and it also limited migration into Eastern Europe, with notable exceptions of immigration from some developing countries. In the police states of Eastern Europe, migration was very much a security issue. In North-west Europe migrant workers were actively recruited from European countries and neighbouring states to fill gaps in the labour market. The term 'guest worker' was coined indicating that most European countries did not consider themselves to be countries of immigration. Consequently, policies to promote the integration and full participation of foreigners – as these people were usually called – were deemed to be unnecessary, but they were granted equal treatment and protected against discrimination, as this was an absolute condition for trade unions before they would go along with the recruitment of foreign workers. Recruitment came to an end in the mid-1970s and since then employment-based migration has been gradually replaced by family-based migration. People continued to migrate from Southern European countries (and from Ireland and Finland) to European and other destinations. The further development of the European Communities facilitated the free movement of nationals of Member States. Since the introduction of European citizenship these persons have not been considered as immigrants, but as citizens exercising their free movement rights. Persons from outside the Union are usually referred to as third-country nationals and their legal and social status is different (i.e. weaker) from that of migrating EU citizens (EC Association Agreements regulated to a certain extent their legal and social status). Gradually, policies were introduced that strengthened the legal position of aliens, elements of which sometimes were withdrawn in a later stage. Nationality policies and practices changed, making acquisition of citizenship easier in many countries. Where temporary migration turned into permanent settlement general or specific policies were designed to guarantee access to employment and public services such as education, health and housing. A second and third generation grew up and the word foreigner began to disappear and was replaced by immigrant or by ethnic or racial minority. Some countries began to call themselves multi-cultural societies and strengthened their anti-discrimination legislation.

The situation in Europe underwent profound changes in the last two decades of the 20<sup>th</sup> century. First, so-called traditional sending countries became receiving countries themselves, in southern Europe mainly through irregular migration and asylum. Legalisation programmes were introduced which served as a kind of ex-post facto-immigration policy. Irregular migration became also more of an issue in other European regions and varying forms of regularisation and tighter control measures were taken hand-in-hand. Second, in North-West Europe, family reunion (and also family formation) remained the biggest immigration source and measures were introduced to

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<sup>6</sup> See further part II of this publication.

limit family-based migration. Third, with the removal of the Iron Curtain the map of Europe was re-drawn again leading to various migratory movements, although smaller in size than prophesised or feared. Probably the biggest movements were from and within the Southern European region of the Balkans, mainly as a result of the wars in that region. Much smaller in scale were movements of people returning to their country of (distant) origin, from ethnic Germans and ethnic Greeks, Finns and Irish. The legal and social status of these people is usually stronger than that of other immigrants. In some countries the position of national minorities changed. Central and Eastern European countries became countries of transit for migrants on their way to Western Europe and North America. This partly explains why there is barely a discussion on immigration in these countries. They were assisted in designing a migration management strategy that very much focussed on effective border control, a topic for European co-operation also with regard to Southern Europe where frontiers were considered to be porous. Fourth, the numbers of asylum-seekers and refugees continued to rise and almost became the biggest immigration source. These movements were actually given most attention in a great number of European states and in European policy forums.

It is probably fair to say that in the nineties, Europe saw itself confronted with unsolicited and undesired immigration. This is reflected in the terms used in the debates. Asylum-seekers and refugees were indeed admitted in great numbers, but seen as a burden that had to be shared among countries. Policies became based on suspicion: asylum was granted when not proven manifestly unfounded. Spouses were reunited after the primary purpose of their marriage was established. Bogus asylum-seekers, economic refugees - terms frequently used in official parlance - and clandestine migrants were out to enter Europe's backdoor in order to benefit from the welfare state. Migration management and prevention came to mean migration restriction, border control and combating clandestine migration, trafficking in and smuggling of human beings. Migration became associated with organised crime and terrorism (especially after the 11<sup>th</sup> of September). Immigrants were associated with criminals and terrorists. Security issues began to dominate the policy agendas at national and European level, just as re-admission began to dominate the relationship with countries of origin.

In a significant number of countries unemployment rates soared, affecting first and second generations of immigrants disproportionately. Tensions between people with and without an immigrant background were growing, especially in areas of high concentration of socio-economically vulnerable groups and where people had to compete for the diminishing (quality of) public services. Questions were raised as to the receiving society's capacity to bridge cultural and religious differences between groups. In some countries immigrant integration was declared to be a total failure. National identity became an issue (sometimes leading to a publicly confessed preference for immigrants from like-minded (i.e. Christian and non-Muslim) countries).

In most countries, there is no central agency in charge of migration management; the competences are spread between several ministries, each of them dealing with a particular aspect of immigration (employment, housing, etc). State institutions have a leading role in policy-making and implementation. The involvement and influence of non-governmental actors vary from country to country, from state sponsored to voluntary organisations, from advocacy to service delivery, from established institutions such as churches, employers' organisations and trade unions to NGOs. In federal states, state/provincial authorities play an important role regarding immigration policy/practices. Justice and Home Affairs are often leading ministries as they are

considered to be best placed to control migration. Foreign Affairs and sometimes defence were called in to support with returning unwanted migrants and controlling borders respectively. Labour and Social Affairs, and Trade and Industry ministries were hardly involved since immigrants were not needed in times of high unemployment. Migration was primarily a matter for national governments and increasingly for inter-governmental co-operation (there was even a proliferation of international forums and consultations on migration and asylum issues).

A one-dimensional approach reduces immigration to a limited set of issues to be addressed, such as security, border control, regulating irregular migration, etc, or its mirror: humanitarian concerns, economic needs, unrestricted mobility, equality and anti-discrimination, etc. A multi-dimensional approach addresses security concerns, formulates clear admission criteria, puts implementation and enforcement mechanisms in place, recognises that there are sometimes conflicting interests at stake and attempts to reconcile them, and is rights based. In short, it links immigration with the wider agenda of sustainable development.

The legislative and other measures proposed by the European Commission after the entry into force of the Amsterdam Treaty have fallen victim to the anti-immigrant climate where migration issues could make or break governments. The proposal for a Directive on family reunion was presented more as an integration instrument than an immigration instrument. Member States considered it to be the latter and too liberal at that. The proposal for a Directive on residence rights and free movement of third-country nationals stumbled on the old fear that such legislation would set in motion intra-Community migration of third-country nationals (i.e. diminishing the grip of national governments on immigration). The proposals for Directives on immigration for economic, study and other purposes were quite removed from the situation in the Member States and certainly did not square with the predominant views on immigration. There are, of course, more reasons why the legislative proposals and the proposals for Guidelines to be used in an open-method of co-ordination on immigration did not get very far. Another contributing factor is the very modest debates on European initiatives to develop a common approach to immigration. The debates remained to a great extent national. Governments but also non-governmental actors seem to prefer a national approach above a common European approach.

### ***Making the case***

In most European countries the case for immigration still has to be made. This means that the arguments against it must be taken seriously and challenged.

First, *the labour market arguments* (summarised as 'we do not need them given the high unemployment among nationals'). Much more research and consultation is needed on how immigration affects labour market dynamics (specifying particular sectors). In some sectors immigration may have, in a certain time, a negative impact (for example, in sectors with unskilled labour), in others a positive impact (for example, in service industries). It is not only labour shortages that matter, but also labour market mismatches. In this context, economic and demographic issues are to be considered jointly. Europe embraced the Lisbon goals of becoming 'the most competitive and dynamic knowledge based economy in the world capable of sustained economic growth with more and better jobs and greater social cohesion'. It is people that generate resources for now and for later. But who are these people and how many will there be within 20 years. Who is going to contribute to the pension system based on generational solidarity? It is interesting to note that governments, and also the

European Commission. were sitting on relevant information as far as that is concerned but were not willing to use this information in the policy debates<sup>7</sup>.

*Second, the failed integration arguments* (summarised as we do not want them because we cannot integrate them). Integration is a key issue in any immigration debate. The case for immigration can be best made when integration is successful. There are numerous examples of the positive and enriching contribution of immigrants to the receiving societies. They must be highlighted more forcefully. The integration debates seem to be moving away from equality and diversity to security. This too has to be taken seriously and challenged. It is interesting to take note of a recent report that advocates a broader concept of security. The report states that 'human security in its broadest sense embraces far more than the absence of violent conflict. It encompasses human rights, good governance, access to education and health care and ensuring that each individual has human security and state security. Human security complements "state security" in four respects: its concern is the individual and the community rather than the state; menaces to people's security include threats and conditions that have not always been classified as threats to state security; the range of actors is expanded beyond the state alone and achieving human security includes not just protecting people but also empowering people to fend for themselves'<sup>8</sup>.

*Third, the brain-drain arguments* (summarised as immigrants are badly needed in their country of origin). The assumption is that once workers emigrate, they are lost to their country and its development. However, migrant diasporas need to be given more attention as they are engaged in a variety of trans-national practices (such as relief, investments, cultural and scientific exchange, political advocacy). The issue of migrants' remittances needs further reflection and action. In short, migrants could be a development resource (migration for development)<sup>9</sup>.

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<sup>7</sup> See Jan Niessen and Yongmi Schibel, *Demographic changes and the consequences for Europe's future. Is immigration an option?* (MPG, 2003).

<sup>8</sup> See the report of the Commission on Human Security, *Security now* (with among others Sadako Ogata and Amartya Sen), downloadable from [www.humansecurity-chs.org](http://www.humansecurity-chs.org).

<sup>9</sup> See further Jan Niessen, *Migration and mobility on the EU foreign policy agenda. Is there a case to be made?* Paper presented at the PES Group Conference 'Migration & Development – the missing link', European Parliament, Brussels, 20 February 2003. Available for download at [www.migpolgroup.com](http://www.migpolgroup.com).

## **PART II EU-US COMPARATIVE PERSPECTIVES**

### **Introduction**

This part introduces the U.S. federal system of regulating immigration, as well as considering different reform proposals and the positions of key stakeholders. Special attention is given to the U.S.-Mexico relationship, and to the changes in implementation that have come about with the creation of the Homeland Security department. Finally, the levels-of-government question is taken up in a section on state efforts to influence federal immigration policy, with California and Iowa as examples. Then European Union's policies are introduced that pertain to immigration, such as free movement and the establishment of the common market with an internal labour market. It also explains the open method of co-ordination as a method of European co-operation.

At the end this part includes some final observations on the contents of immigration policies and the best levels of governance.

### **The United States**

The doors to the United States were wide open for over the first hundred years of its existence. Immigration populated the North American continent and provided, in successive waves of mass influxes, the much needed agricultural and non-agricultural workforce. The situation can be qualified as 'immigration management by the absence of it'. No intervention was needed to attract immigrants. They came eagerly and voluntarily, except for those who came as slaves, or lived in purchased or annexed land. Enforcement would hardly have been possible in this vast country, which was without firmly rooted governmental structures for a long time. Arguably only when limits to numbers are set and immigrant selection criteria adopted, can one speak of a proper immigration policy. Both were introduced at the beginning of the 20<sup>th</sup> century and another indispensable policy component, namely an implementing and enforcement mechanism was put in place, first in the Department of Labour and then in the Department of Justice. Since then immigration has been a recurring issue on the U.S. policy agenda.

Immigrants normally enter the US on the basis of family reunion and employment schemes, or humanitarian programmes and are entitled to live and work permanently in the U.S. After five years they can become U.S. citizens. During the 1990s, the United States admitted about 800 thousand legal immigrants each year. The number of immigrants increased considerably during the last 30 years and the major countries of origin changed from Europe to Latin America and Asia<sup>1</sup>.

#### ***Forming and reforming immigration policies***

Immigration is a federal responsibility in the United States. By statute, Congress places a limit on the number of foreign-born individuals who are admitted to the United States annually as immigrants or refugees. Permanent immigration status is granted primarily

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<sup>1</sup> See Phil Martin and Susan Martin, U.S. immigration policy, in *policy recommendations for EU immigration policies*, King Baudouin Foundation and German Marshall Fund, October 2001

on the grounds of family reunion (68.8% of the total in 2000), followed by employment (12.6%) and humanitarian grounds (7.8%).<sup>2</sup> There are also temporary immigrants, which include students and temporary workers. Many temporary immigrants adjust their status to that of permanent immigrant, and in 2000 more than half of new immigrants had already been living in the United States.

The practice of Congress legislating on admission numbers has been criticised for the resulting backlogs, as well as for its inflexibility and politicised nature. One report asserts that 'currently, legal immigration is regulated with inflexible laws that Congress typically amends every 10 to 15 years. Laws should be authorized for shorted periods, or the executive branch should be allowed more flexibility to responsively manage immigration policy within broad policy parameters as to how many and which immigrants should be admitted annually.'<sup>3</sup> Another opinion holds that 'it makes no sense to continue the process of legislating numbers that are the result of dubious political compromises at one time but which subsequently remain in effect for a generation or more.'<sup>4</sup> In fact, immigration legislation is typically passed in election years, with the off years used to prepare the issues and align supporters.

One of the most developed proposals for reform came from the bipartisan U.S. Commission on Immigration Reform, which was established by the Immigration Act of 1990. The mandate of the Commission was to review and evaluate the implementation and impact of U.S. immigration policy and to transmit to the Congress reports of its findings and recommendations. Specifically, the Commission was charged with reporting on the impact of immigration on: the need for labour and skills; employment and other economic conditions; social, demographic, and environmental impact of immigration; and impact of immigrants on the foreign policy and national security interests of the United States. Commission members visited immigrant and refugee communities throughout the U.S. as well as major source countries. The Commission also held public hearings, consultations with government and private sector officials, and expert roundtable discussions. It submitted two interim and two final reports, focusing on illegal immigration, legal immigration, and refugee policy.<sup>5</sup>

The Commission recommended that Congress should continue to authorise legal admission numbers for a specified time (e.g., three to five years), with the possibility for review. Its central recommendation was to shift the priorities for admissions away from extended family and toward nuclear family and away from unskilled and toward higher skilled immigrants. The large backlog of spouses and minor children should be cleared, and admission for non-nuclear family should be reduced. Rather, immigrants should be chosen on the basis of their skills, according to simplified procedures. The admission of highly educated immigrants would have a positive fiscal impact, and the entry of immediate family would also benefit the U.S. as the educational level of spouses and children could be expected to be in the same range. Such a shift in priorities would

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<sup>2</sup> U.S. Department of Labor, Bureau of International Labour Affairs, *Developments in International Migration to the United States: 2002. A Midyear report*, Immigration Policy and Research Working Paper 36, 2002, p. 4

<sup>3</sup> Kevin F. McCarthy and George Vernez, *Immigration in a changing economy: California's experience – Questions and Answers*, RAND publications, 1998, p. 47.

<sup>4</sup> Vernon M. Briggs, 'A Legal Immigration Policy for the 21<sup>st</sup> century', in Richard D. Lamm and Alan Simpson (eds.), *Blueprints for an ideal legal immigration policy*, Center for Immigration Studies, March 2001, p. 23.

<sup>5</sup> All references to Commission on Immigration Reform proposals are to the Final Report to Congress, *Becoming Americans: Immigration and Immigrant Policy*, 1997.

eventually lead to lower overall numbers. The Commission was opposed to a large-scale program for temporary admission of lesser-skilled and unskilled workers.

In fact, a breakdown of legal permanent admissions shows that persons admitted as workers were less than 6% of all immigration in 2000 because their spouses and unmarried minor children accounted for more than half of the visas which were utilised in the employment-based preferences. Non-nuclear family members accounted for nearly 28% of regular immigration in 2000, with another 41% falling on immediate family members.<sup>6</sup> The Commission's suggestions to shift priorities away from family-based immigration to skill-based admissions have failed to gain widespread support. Although there seems to be an acceptance among some immigration advocates that some family categories ought to be 'let go', most immigrant rights groups have an ambiguous position towards the renewed discussion on the economy's need for foreign workers because a focus on skills could hurt family-based immigration. Moreover, some employers' associations in sectors dominated by low-skill work see family immigration as a potential source of labour.

On the other hand, the Commission's call for simplified procedures for employment-based immigration echoes a common concern of most stakeholders. Currently, employment-based immigration is limited by statute to 140.000 persons per year. A U.S. employer can sponsor a foreign-born employee for permanent residence, but first has to obtain a 'labour certification' from the Department of Labour, demonstrating that there is no qualified U.S. worker available for the job for which an immigrant visa is being sought. This is a lengthy, costly and bureaucratic process, and employers and immigrants frustrated by these delays tend to use temporary visa categories to bridge the gap between the decision to hire the worker and the government's grant of permanent resident status. As a result, the recruitment process is often a farce, the employer having already hired the foreign worker.<sup>7</sup>

One of the frequently used temporary visa categories is that of the H1B non-immigrant foreign professionals hired for qualified jobs in 'specialty occupations', for instance doctors, engineers, researchers, and computer professionals. There is no Department of Labour certification as with permanent status, as long as employers pay at least the prevailing wage and demonstrate that the foreign professional will not adversely affect the working conditions of U.S. colleagues. Businesses used the H1B category extensively and lobbied Congress to pass the American Competitiveness in the 21<sup>st</sup> Century Act, which increased the numerical cap (until October 2003) and also revised the rules for counting individuals against the cap. In financial year 2002, almost half of the total number approved for H1B employment were not subject to the cap, because they received extensions of their permit or because the sponsor was an exempt employer. Moreover, the duration of a H1B professional's stay has been prolonged to a virtually indefinite stay until the worker's application for permanent residence is processed.<sup>8</sup>

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<sup>6</sup> OECD, *Trends in International Migration - SOPEMI report*, 2002 edition, p.279. The limit for family-sponsored visas is 480.000.

<sup>7</sup> Susan Martin and B. Lindsay Lowell, *U.S. Immigration Policy: Admission of High Skilled Workers*, working paper, November 2001, p. 5. See also the Transatlantic Roundtable on High Skilled Migration organised by MPG and ISIM, Brussels, March 4-6, 2001, report available for download at [www.migpolgroup.com](http://www.migpolgroup.com).

<sup>8</sup> OECD, 'United States', in *Trends in International Migration - SOPEMI report*, 2002 edition, p. 280.

Regarding unskilled and semi-skilled workers, some employers' organisations, together with other pro-immigrant stakeholders, are calling for a new temporary worker programme for 'essential workers' (including restaurant workers, retail clerks, construction workers, manufacturing line workers, food production workers, and health care aids). In particular, the 'Essential Worker Immigration Coalition' (EWIC) proposes short-term and long-term legal immigration for semi-skilled and unskilled workers, and the regularisation of certain undocumented workers currently in the U.S. Advocates of such a programme argue that a focus on high skills does not adequately reflect the needs of the economy: 'although the projections show that the fastest growing occupations will be those requiring higher education, in fact, the most job growth (i.e., in absolute terms) will be in occupations requiring less formal education or training.'<sup>9</sup>

Beyond temporary programmes, employers are calling for a reform of the labour certification process. Some suggest supplementing the examination of individual employers and positions with a more 'macro' look at trends. Although employers' organisations have been prominent in asking for extensions of both high-and low-skilled temporary worker programmes, they also recognise that the system for permanent admissions needs to be reformed through increasing resources for the government agencies responsible for implementation. Employers acknowledge that the constant process of applying 'legislative fixes' or 'little band-aid pieces of legislation' to the system makes it increasingly complex, thereby impeding overall reform. Moreover, some employers' organisations recognise that employers and (potential) immigrants often conspire in 'creative' uses of the immigration system, thereby discrediting its legitimate uses and contributing to the perception that government has little control over immigration.

Debates on admission decisions ('immigration policies') are inseparable from debates about integration ('immigrant policies'). The Commission on Immigration Reform referred to integration as Americanization and defined it as 'the process of integration by which immigrants become part of our communities and by which our communities and the nation learn from and adapt to their presence. It includes the cultivation of a shared commitment to the American values of liberty, democracy and equal opportunity'.<sup>10</sup> The Commission called on Congress to further the goals of Americanization by setting out policies to help orient immigrants and their new communities, to improve educational programs helping immigrants and their children learn English and civics, and to reinforce the integrity of the naturalisation process.

While the federal government's hold over admissions is comprehensive, there has been more state involvement on integration. The Commission on Immigration Reform recommended that the federal government provide modest incentive grants to states to encourage them to establish and maintain local resources that would provide information to immigrants and local communities. The government has indeed granted some targeted impact aid for integration measures, although in contrast to other immigration countries such as Australia and Canada there is still little federal expenditure and comprehensive involvement in integration.<sup>11</sup>

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<sup>9</sup> U.S. Chamber of Commerce, *Statement on worker shortages in the American economy and guest worker immigration proposals*, June 19, 2001, p. 3.

<sup>10</sup> U.S. Commission on Immigration Reform, *Final Report to Congress, Becoming Americans: Immigration and Immigrant Policy*, 1997, p. 26

<sup>11</sup> Little Hoover Commission, *We The People – Helping Newcomers become Californians*, June 2002, p.23

## ***The US and its neighbours***

The relationship with its neighbours is crucial for the United States. Migration plays an important part, especially in U.S.-Mexico relations. Mexico is the United States' second largest trading partner after Canada, and Mexicans constitute 27% of all foreign-born Americans, by far the largest group. Since NAFTA came into force in 1994, trade between the United States and Mexico nearly tripled, and in 2001 U.S. companies had direct investments worth 35 billion dollars in Mexico.<sup>12</sup> NAFTA has a migration dimension, since it facilitates the temporary entry of business visitors, investors, intra-corporate transferees, and professionals. However, numbers are low and a cap of 5.500 entries from Mexico is in place until 1 January 2004.<sup>13</sup>

More important is the intensive political dialogue that has taken place between the U.S. and Mexican leadership on migration. Just prior to 11 September, President Fox and President Bush had discussed comprehensive immigration reforms between the U.S. and Mexico, and an agreement was widely expected. Proposals concerning legal permanent migration, expansion of temporary worker programmes, safety at the border, and regularisation of the illegal population in the United States were discussed. On 6 September 2001, the two presidents issued a joint statement affirming their 'commitment to forging new and realistic approaches to migration to ensure it is safe, orderly, legal and dignified'. The statement emphasised the following elements: 'matching willing workers with willing employers; serving the social and economic needs of both countries; respecting the human dignity of all migrants, regardless of their status; recognizing the contribution migrants make to enriching both societies; shared responsibility for ensuring migration takes place through safe and legal channels.'<sup>14</sup>

However, the terrorist attacks put security at the top of the agenda and the U.S. economy declined, lowering the demand for new workers. Negotiations were stalled and have not regained their earlier pace. Even in March 2002, when the U.S. and Mexico signed a 'smart borders and border security agreement' in Monterrey, the shift in emphasis and reduced prospects for agreeing on comprehensive policies were apparent. In comparatively cautious terms, the Presidents agreed that technical-level bilateral negotiations should continue, as well as the 'Partnership for Prosperity', the public-private alliance initiated in 2001 to spur private sector growth throughout Mexico, thereby addressing root causes of migration.<sup>15</sup> The January 2003 resignation of Mexican Foreign Minister Jorge Castaneda over the failure to reach a migration accord with the United States highlights the political implications of undocumented immigration for both countries. Castaneda was criticised for catering to the U.S. on other issues while receiving nothing in return. The 2003 elections in Mexico are expected to be difficult for President Fox for similar reasons.

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<sup>12</sup> U.S. Chamber of Commerce, *Statement on Strengthening U.S.-Mexico Relations: The Unfinished Agenda*, April 16, 2002.

<sup>13</sup> OECD, 'United States', in *Trends in International Migration - SOPEMI report*, 2002 edition, p. 281. However, the business community is becoming increasingly aware of the potential for temporary immigration offered through trade agreements (beside NAFTA also GATS and bilateral agreements with Chile and Singapore). In particular, trade agreements are seen as advantageous because they are less susceptible to change by a subsequent administration.

<sup>14</sup> Joint Statement between the United States of America and the Mexican States, 6 September 2001.

<sup>15</sup> 'The Monterrey Commitments', Joint statement by the Presidents of the United States and Mexico, 22 March 2002.

A central element of U.S.-Mexico talks has been the legalisation of currently undocumented Mexican migrants in the United States. Earlier, the 1986 Immigration and Control Act had enabled about 1.6 million illegal aliens to obtain lawful permanent residence by demonstrating that they had been continuously resident in the US since before January 1, 1982. A separate set of provisions also extended the status to about 1.1 million Special Agricultural Workers. 70% of the pre-1982 group and 81% of the Special Agricultural Workers were Mexicans. However, the U.S.-Mexico dialogue prior to September 11 recast the question as one of 'earned legalisation', or the 'earned adjustment for hard-working people'.

Advocates for legalisation connected the proposal for status adjustment with the post-11 September security concerns about undocumented immigrants and argued that legalisation would 'bring undocumented immigrants out of the shadows and into the light of greater accountability and assistance in the war on terrorism'. Immigrant advocates, some employers' organisations and unions welcomed the introduction in October 2002 of the 'Earned Legalization and Family Reunification Act' by House Democratic Leader Dick Gephardt. The 'Gephardt bill' would have allowed undocumented immigrants to legalise their status if they had been in the US for at least 5 years, had worked for 2 years and were able pass a background check. It would also have allowed US citizens to unify with their spouses, minor children and parents by removing immediate relatives from existing visa caps. Mexican groups would have particularly welcomed such a provision, as the per-country limit on visas for family members of legal permanent residents has resulted in 'unacceptable waiting times' for the legal reunification of a husband and wife, or of a parent and child.<sup>16</sup> However, the Gephardt bill was unsuccessful, partly because it was a Democrat-only bill in what has traditionally been a bipartisan field. Moreover, the midterm elections in November 2002 strengthened the Republican Party and led to the resignation of Gephardt as Minority leader. Important wings of the Republican Party remain opposed to earned legalisation, arguing that it would 'reward lawbreakers'.<sup>17</sup>

Measures against undocumented immigrants continue alongside the debates about legalisation. Interior enforcement has increased in importance since September 11, breaking the earlier, almost exclusive focus on border enforcement. As part of the Department of Homeland Security's Immigration Interior Enforcement Strategy, 'Operation Tarmac' was launched 'in recognition of the fact that illegal workers at airports pose a serious security risk'. The operation's aim is to 'ensure that people working in secure areas at airports were properly documented and to remove those without proper documentation'. More than 900 unauthorised aliens had been arrested by April 2003.<sup>18</sup>

The controversy over driver's licences is a related issue. Congress and state legislatures are considering measures to make access to driver's licences conditional on proof of immigration status. As driver's licences are the main form of identification used in the U.S., the denial would also make it impossible for undocumented immigrants to open a bank account and to access a host of other services. Moreover, immigrant advocates argue that such measures would also affect legal immigrants.

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<sup>16</sup> A Pastoral Letter Concerning Migration from the Catholic Bishops of Mexico and the United States, 22 January 2003.

<sup>17</sup> Demetrios Papademetriou, *Converging Realities of the U.S.-Mexico relationship*, Migration Information Source, [www.migrationinformation.org](http://www.migrationinformation.org), July 2002.

<sup>18</sup> Department of Homeland Security, [www.whitehouse.gov/deptofhomeland/](http://www.whitehouse.gov/deptofhomeland/)

State agencies would be charged with deciding whether to grant a licence or not, and would have to interpret immigration laws and documents. Immigrant advocates have criticised this as a shift in responsibility and as a disguised attempt to regulate undesired immigration.<sup>19</sup>

### **Implementation**

The legislative framework of the admissions system has not fundamentally changed since September 11. However, the agencies implementing federal policy have seen far-reaching transformations. Until 1 March 2003, the most important federal implementation agency was the Immigration and Naturalisation Service (INS), a part of the Justice Department, which regulated admissions and enforced laws aimed at deterring and removing unauthorised foreigners. The performance of the INS was subject to much criticism, and the agency recognised that large application backlogs and inconsistent application of laws and regulations were partly caused by a complicated and multi-layered management structure.

The INS submitted a restructuring plan in November 2001.<sup>20</sup> The core of the proposed reform was the creation of two separate mission-centred bureaus, one for immigration services and one for law enforcement, each with a distinct chain of command but operating within the same agency. Immigration experts had long called for this splitting of functions in order to de-link the agency's different responsibilities. In April 2002, Congress voted in favour of breaking the INS into two separate bureaus, and a 'restructuring timeline' set 2003 as the target for complete organisational transformation. However, the dominance of security concerns led the Administration to push for the creation of a Department of Homeland Security, which was signed into law with the Homeland Security Act of 25 November 2002. The Department took over functions from 22 agencies, among them the INS. While the INS's functions were entirely transferred to the Department of Homeland Security, and the INS was dissolved, the planned operational separation between service and enforcement functions was nevertheless carried out. Within the Department of Homeland Security, the Directorate of Border and Transport Security is responsible for enforcement, and the Bureau of Citizenship and Immigration Services (BCIS) is responsible for the adjudication of all petitions previously adjudicated by the INS, including naturalisation, family and employment related immigration, and asylum and refugee applications. The State Department remains chiefly responsible for determining eligibility and for issuing visas, although it cooperates with Department for Homeland Security.

Immigration advocates have voiced the concern that the BICS may become 'subject to unfunded, underfunded, complicated and conflicting mandates' as priorities continue to centre on enforcement, and that service and enforcement functions may not be adequately coordinated.<sup>21</sup> Moreover, the creation of the Homeland Security department has generated institutional changes elsewhere. For instance, Congress has created a Select Committee on Homeland Security. The body's relationship with the House Judiciary Committee, formerly charged with immigration matters, is unclear.

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<sup>19</sup> Michele L. Waslin, *Driver's Licences and Immigrant Documentation in the States*, NCLR Research Paper Series, November 2002.

<sup>20</sup> Immigration and Naturalization Service (INS), *Restructuring Proposal*, 14 November 2001, available at [www.visalaw.com/insre.pdf](http://www.visalaw.com/insre.pdf)

<sup>21</sup> American Immigration Law Association (AILA), *Immigration and the Department of Homeland Security*, Issue Paper March 2003.

## **State – federal dynamics: California and Iowa**

According to the U.S. Supreme Court, the ‘power to regulate immigration is unquestionably exclusively a federal power.’ Sub-national units only have an indirect, peripheral role in immigration decision-making. A main reason for this is geographical mobility within the U.S.: residents are free to move from one state to the other, and many of them make use of this possibility: 19.4% of all those who moved in 1999-2000 moved to a different state.<sup>22</sup> The right to geographical mobility, and the exercise of this right by a significant proportion of residents, means that there can be no autonomous state-level immigration policies: the effect of admission decisions cannot be localised, as those admitted into one state can move to another state which may have different immigration preferences. Nevertheless, the competencies of the federal government versus those of state and local governments have become a contested area. This is true both for immigrant policy and for admission decisions. This section will examine the debates around immigrant policy by looking at the example of California, and the debates around admission decisions by considering the example of Iowa.

### **California and immigrant policy**

Proponents of devolution argue that state and local governments are in a better position to know and to serve the needs of their constituents and are able to target benefits and services more efficiently. Furthermore, given the vast differences in immigrant populations across the states, each state should create immigrant policy that falls in line with its own immigrant population and the needs of its constituents.<sup>23</sup> Under the current system, federal jurisdiction over immigration policy limits the flexibility of states and localities to respond to immigration. At the same time, states and localities complain of a steady decline in federal assistance. They also note that the federal government receives about two-thirds of immigrants’ taxes, while states and localities receive only one-third but provide most services to immigrants, particularly for education and health care.<sup>24</sup>

The Commission for Immigration Reform upheld this point by acknowledging that ‘immigration presents special challenges to certain states and local communities that disproportionately bear the fiscal and other costs of incorporating newcomers’, and that while on the national level immigrants are net contributors, ‘there are significant net fiscal costs to the taxpayers of states with large number of immigrants. These high fiscal impacts are due, particularly, to the presence of sizeable numbers of lesser skilled immigrants whose tax payments, even over a lifetime, are insufficient to cover their use of services’.<sup>25</sup> Such arguments have resonated particularly in California, where a 1998 study called on the U.S. government to ‘provide federal payments for the

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<sup>22</sup> The total number of movers between March 1999 and March 2000 was 43.4 million. US Census Bureau, *Current Population Report on Geographical Mobility*, March 2000.

<sup>23</sup> Michele L. Waslin, *Driver’s Licences and Immigrant Documentation in the States*, NCLR Research Paper Series, November 2002, p. 2.

<sup>24</sup> Ann Morse and Jonathan C. Dunlap, *America’s Newcomers: Community Relations and Ethnic Diversity*, Issue Paper Nr. 4, Immigrant Policy Project, State and Local Coalition on Immigration, National Conference of State Legislatures, April 1994.

<sup>25</sup> U.S. Commission on Immigration Reform, Final Report to Congress, *Becoming Americans: Immigration and Immigrant Policy*, 1997, p. 18.

heavy education and social services costs borne by California and other states affected by large-scale immigration'.<sup>26</sup>

California is one of the 'big six' immigration states in the U.S., which also include New York, Florida, Texas, New Jersey, and Illinois. Moreover, California is the state with the largest estimated number of undocumented immigrants (2.0 million).<sup>27</sup> The leading countries of origin in California are Mexico (3.8 million), the Philippines, Vietnam, and El Salvador. Particularly in the 1990s, the concentration of immigrants in California strongly influenced the politics and policymaking surrounding immigration in the United States. Immigration-related debates in California were forerunners of issues that arose at the national level<sup>28</sup>, although not always in a direct way. For instance, Proposition 187, California's 1994 effort to bar illegal immigrants from a wide range of public benefits including education, was in large part found unconstitutional by the U.S. District Court because its provisions would regulate immigration, which is governed by federal law.<sup>29</sup> However, the Proposition clearly prefigured the federal welfare and illegal immigration reforms of 1996, which imposed broad restrictions on illegal *and* legal immigrants' rights and access to benefits, thereby nullifying the need for state restrictions.<sup>30</sup>

In actual fact, after the federal laws were passed only a few states significantly cut benefits to *legal* immigrants, and some states 'filled the gaps' with state-substitute programs to assist newly ineligible legal immigrants. California itself provided substantial state-funded assistance to replace lost federal benefits. These decisions may partly be due to the population trends shown by California's foreign-born population. In 1995 California's share of the country's foreign-born population was 35%. This share dropped to 30.2% in 1999. In other words, California's foreign-born population, which had grown steadily and very rapidly for several decades, virtually stopped growing after 1995. This development coincided with the emergence of 'New Growth States', who saw their foreign-born population grow at a rate of 95% in 1990-99, compared to 43% in 1980-1990. Conversely, in California the growth rate of the foreign-born population fell from 80% in 1980-1990 to 24% in 1990-99.<sup>31</sup> This reduction in share is due to both fewer immigrants coming to live in California and increased internal migration of the foreign-born – especially Mexicans – out of California to the

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<sup>26</sup> Kevin F. McCarthy and George Vernez, *Immigration in a changing economy: California's experience – Questions and Answers*, RAND publications, 1998, p. 50.

<sup>27</sup> OECD, 'United States', in *Trends in International Migration - SOPEMI report*, 2002 edition, p. 279.

<sup>28</sup> Jeffrey S. Passel and Wendy Zimmerman, *Are Immigrants Leaving California? Settlement Patterns of Immigrants in the Late 1990's*, Urban Institute 2001, p.2.

<sup>29</sup> Little Hoover Commission, *We The People – Helping Newcomers become Californians*, June 2002, p. 17

<sup>30</sup> For an overview see Michael E. Fix and Karen Tumlin. 1997, *Welfare Reform and the Devolution of Immigrant Policy*, Washington, DC: The Urban Institute. The Balanced Budget Act of 1997 restored some benefits to elderly and disabled legal immigrants and restored additional benefits to refugees. Food stamp benefits were restored to certain legal immigrants in 2002.

<sup>31</sup> The 19 'New Growth' States, in order of 1999 foreign-born population, are: Arizona, Maryland, Virginia, North Carolina, Georgia, Nevada, Oregon, Colorado, Kansas, Oklahoma, Utah, South Carolina, Iowa, Kentucky, Idaho, Alabama, Arkansas, Nebraska, and Mississippi. All figures in this section from: Jeffrey S. Passel and Wendy Zimmerman, *Are Immigrants Leaving California? Settlement Patterns of Immigrants in the Late 1990's*, Urban Institute 2001, p. 30. This study also points out that welfare is not a significant reason for this shift in the foreign-born population, as the 'new growth' states are the ones that have made services less available to immigrants.

New Growth States. Immigrants may initially be attracted by 'job magnets' such as the construction industry in South Carolina, service opportunities in Atlanta, or meatpacking in Nebraska. Over time, family and chain migration brings more and more migrants to these 'non-traditional' states.

In the wake of changing demographics, Californian preferences with regard to immigration may also be shifting. In 2002, the California-based Wilken Institute predicted a shortage of scientists, engineers and technicians. It also predicted a nursing shortage of 10% by 2005.<sup>32</sup> Some of California's representatives in Washington have already started lobbying for an expansion of the H1B programme for qualified workers. Reflecting California's important position in federal politics in general, and immigration policy in particular, three out of twelve members of the House (Congress) Subcommittee on Immigration, Border Security and Claims were Californian at the time of the interviews (October 2002).

The debates in California itself have been captured – and influenced – by the June 2002 report submitted by the Little Hoover Commission to the governor and members of the legislature. The report 'We The People – Helping Newcomers become Californians' builds on public hearings and discussions with experts, meetings with immigrants and community leaders, and a review of existing research. It argues that 'properly managed, immigration and immigrant integration policies can further national, state and local goals for prosperity, security and freedom. But these policies are not strategically crafted or implemented. (...)There is no clear nexus between policies towards immigrants and state and local goals for economic prosperity, civic participation and community quality of life.'<sup>33</sup> In other words, immigration can benefit the U.S. and California, but these benefits are often not realised because current policy fails to give coherent support to immigrants and communities.

The report criticises in particular the exclusion of undocumented migrants from integration programmes, arguing that the large number of undocumented persons is the result of flawed federal immigration policies and is 'out of whack' with the needs of the economy. Consequently, the report recommends that where it is not in violation of federal law, California should reform its eligibility rules to offer public services to immigrants, including undocumented immigrants, who have 'demonstrated a commitment to be responsible community members'. Such a focus on lasting contributions places a premium on permanent stay as well as citizenship, opposing temporary or guest worker programmes. The report also calls for a comprehensive, well-founded policy towards immigrants in California, rather than the current system under which there is no agency that monitors and coordinates immigration issues within the state.

### ***Iowa and admission decisions***

While the allocation of competences between the federal and state levels is openly contested and negotiated in the area of immigrant policy, it is still close to unchallenged when it comes to admission decisions.<sup>34</sup> Here, states and localities do not have an

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<sup>32</sup> See Migration News, October 2002, <http://migration.ucdavis.edu/mn/index.html>

<sup>33</sup> Little Hoover Commission, *We The People – Helping Newcomers become Californians*, June 2002, p.55.

<sup>34</sup> State agencies play a role in exceptional cases, such as the granting of national interest waivers to alien physicians who agree to work full-time in a clinical practice in an underserved area for five years. The needed attestation must come from a State department of public health

explicit role under federal law, and state officials have few possibilities for influencing admission decisions. As with issues of immigrant policy and welfare provision to immigrants, actors from different states can use formal and informal channels to influence the legislative process.<sup>35</sup> For instance, it is considered that California's preference for fewer immigrants in the 1990s contributed to lower admissions ceilings being set by Congress, as expressed by an Iowa official: 'When New York and California are full, then the INS says that the whole country is full'. However, states with a preference for more immigration have found it much more difficult to influence the federal admission system, partly because they tend to be smaller and less powerful on the Washington scene.

Midwestern and Plains states such as Nebraska, Iowa, Kansas, Minnesota, the Dakotas, and others, increasingly see immigration as a possible solution to their demographic and labour market problems. Stakeholders in these states argue, for example, that 'federal immigration policies are at odds with the labour markets governing the Midwestern economy. Certain industries such as meatpacking have a high need for immigrant workers, yet federal policy unduly restricts legal immigration and may have the unintended consequence of fostering undocumented immigration.'<sup>36</sup> States identify labour market shortages across the skills spectrum and also call for more possibilities to recruit high-skilled immigrants. The re-emergence of the H1B debate in 2002, for instance, was initiated from the Dakotas.

The state of Iowa is maybe the most well known exponent of this trend. In 2000 17.8% of Iowans were age 60 or older. In addition, nearly half of Iowa's public university graduates left the state, despite low unemployment and labour market shortages in several sectors. In the 1990s, Iowa already had an increasing foreign-born population – the growth rate of immigration from abroad was 104.6% in 1995-99 – but numbers remained small. In 1995-99, Iowa had only 0.3% of all foreign-born in the U.S.<sup>37</sup>

In 1999, Governor Thomas Vilsack convened the bipartisan Strategic Planning Council, which consisted of 37 persons. The Council consulted extensively, holding 15 town meetings and using work groups and committees to examine specific topics. Its final report 'Iowa 2010 – The new face of Iowa' determined that one of the greatest challenges facing the state was population loss, and that a primary goal should be 'by 2010, to increase Iowa's population by 310 000 working people by retaining Iowans of all ages and welcoming diverse new residents, including immigrants, who perceive Iowa as providing economic, political, cultural and social opportunities'.<sup>38</sup>

The Council recommended encouraging former Iowans to return, as well as retaining young graduates. In order to increase Iowa's attractiveness to immigrants, it recommended the establishment of regional 'Diversity Welcome Centers' to assist new residents, as well as a strengthening of Iowa's anti-discrimination law. Subsequently, the government launched the New Iowans Pilot Project as 'a strategic community plan

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(or the equivalent). Physicians benefiting from the national interest waiver are not prohibited from relocating to other underserved areas.

<sup>35</sup> 55-60% of Congress members are former members of State legislatures.

<sup>36</sup> Illinois Coalition for Immigrant and Refugee Rights, *Immigrants of the Heartland: How Immigration is Revitalizing America's Midwest*, June 2001.

<sup>37</sup> Mark A. Grey, *Welcoming New Iowans – A Guide for Managers and Supervisors*, University of Northern Iowa, 2002, p.44

<sup>38</sup> Strategic Planning Council, final report, *Iowa 2010 – The New Face of Iowa*, November 2000, p. 9.

to encourage a smooth transition for bringing in skilled workers and their families from other countries' using 'model communities'.<sup>39</sup> 'New Iowan Centers' were set up to advise individuals on the job search, the immigration process, and community participation, as well as working with employers and other agencies. State agencies committed to providing technical – and some financial - support to the designated communities. The University of Northern Iowa also established a New Iowans Programme advising local stakeholders on accommodating newcomers. The Programme published best practice guides for communities, churches and businesses, and conducts study-tours to Mexico for Iowa community leaders.

The model communities were partly successful, but did not experience the resounding success that its initiators had hoped for. Difficulties were partly due to a failure to convince a broad range of local stakeholders, including the unions, who remained opposed to the idea of attracting immigrants.<sup>40</sup> Moreover, there was a lack of knowledge and experience that extended even to groups in favour of immigration. The main reason, however, is likely to have been the increasingly controversial nature of the programme and the subsequent drop in funding, high-level political support and business commitment. This reversal in support was largely due to negative publicity, which, although it was targeted mainly at high-profile issues such as the 'immigration enterprise zone', hurt all elements of the programme.

The 'immigration enterprise zone' was conceived as an area in which immigration targets would not be constrained by federal quotas. The Strategic Planning Council recommended that the designation of Iowa as such a zone should be requested from Congress. This initiative was intended to be a combined effort of midwestern states, 'using the effectiveness of the combined Congressional delegations to create separate federal immigration quotas for the Upper Midwest region, which faces a skilled workforce shortage, and to reform INS immigration procedures'.<sup>41</sup> However, the initiative failed in its early stages, as the majority of Congressional members considered it unfeasible given the freedom of movement within the U.S. Moreover, it attracted the attention of anti-immigrant groups such as Project USA, FAIR (Federation for American Immigration Reform) and NumbersUSA (an anti-immigrant group related to the population control movement), who mounted a powerful campaign against the proposals and induced a widespread backlash among Iowa's population.<sup>42</sup> Governor Vilsack, who was personally identified with the plan to attract more immigrants, feared the political consequences of this backlash and withdrew his support.

Observers of the Iowan initiative and subsequent setback have commented that the proposals of the Strategic Planning Council were too premature and far-reaching. The population was insufficiently prepared for the initiative, which affected the success of the 'model communities'; and the push for an 'immigration enterprise zone' naively disregarded power relations in Congress as well as the potential threat posed by the national anti-immigrant lobby. The Iowan initiative also failed to tackle the difficulty posed by freedom of movement within the U.S. Commentators both inside and outside

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<sup>39</sup> Office of Governor Vilsack, *Recruiting New Iowans into Model Communities*, February 2001.

<sup>40</sup> Local unions maintained this stance despite the contrary position of national unions such as the AFL-CIO, who have been supportive of immigration.

<sup>41</sup> Iowans for a Better Future, *Review of the Iowa 2010 Strategic Plan goals and progress at the end of Year One*, June 2001. 'Iowans for a Better Future' is a grouping of some members of the Strategic Planning Council as well as other Iowan stakeholders. [www.betteriowa.com](http://www.betteriowa.com)

<sup>42</sup> National anti-immigrant organisations had previously succeeded in influencing debates on English-only legislation in Iowa.

the state now agree that a focus on incentives and on secondary migration within the U.S. would have been more promising than an attempt to break the federal monopoly over admission decisions.

State initiatives for more influence over immigration policy have had mixed results. States have been most successful where they have used informal channels of influence based on their access to Congress and Senate, and where they have developed policies which were later emulated at the federal level. They have been less successful where they have attempted to challenge federal dominance over immigration head-on. The analysis has also shown that powerful states such as California have significantly more capacity to affect immigration policy in the U.S. than smaller states. Despite attempts by some midwestern states to combine forces, such coalitions have so far been weak and limited to certain regions.<sup>43</sup> States increasingly make convincing arguments for greater involvement in immigration policy, and in some cases succeed in advancing their preferences, but on the whole they have not been able to achieve a structural transformation of the current system.

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<sup>43</sup> Co-operation across regions seems difficult, as priorities vary according to geographical position. For instance, southern states may be interested in facilitating border crossing for Mexicans, whereas midwestern states may be concerned about trafficking and the drug trade.

## The European Union

In 2000, 5.1% of the EU population were non-nationals, of which 3.5% or 13 million were non-EU nationals and 1.6% or 6 million were EU nationals.<sup>1</sup> In the same year, positive net migration was at around 700.000 net migrants, a net migration rate of 0.2% of the total EU population. Of these 700.000, almost three quarters were third country nationals.

Turkish nationals are by far the most common foreign nationality in the EU, with 2.7 million people. There are also 1.9 million nationals from the former Yugoslavia. Other regions of origin are North Africa with 2.3 million people in the EU, the rest of Africa with just over 1 million, and Asia with 2.2 million.

Since the halt in recruitment in the 1970s, the great majority of immigrants have entered the EU through family reunion or as refugees. In 1989 family reunification accounted for 90% of total foreign inflows (excluding asylum seekers) in Belgium and Germany, more than 65% in France and 40% in the UK. Asylum requests were high throughout the nineties, with a peak in 1992, a low point in 1996, and an upward trend from then on. In 1999, an estimated 352 000 requests for asylum were made in the EU.

Migration is an integral part of the European Union's formation and development. Consequently, migration has always been an issue on the agenda of the European institutions. The 1957 Treaty establishing the European Community and the 1987 Single European Act affirmed the free movement for services, capital, goods and persons as a concept central to the European Community and to the creation of the internal market. In 1999, the Treaty of Amsterdam called for the establishment of an area of freedom, security and justice. It determined that within a period of five years measures should be adopted aimed at ensuring free movement in conjunction with directly related flanking measures concerning external border controls, asylum and immigration.

Since the entry into force of the Amsterdam Treaty, the European Commissions' Directorate-General for Justice and Home Affairs has presented several proposals for Directives setting out the parameters of a common immigration policy. The draft *Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed activities* (COM (2001) 368) aims to provide a single national application procedure leading to one combined title for both residence and work permits. The draft *Directive on the conditions of entry and residence of third-country nationals for the purposes of studies, vocational training or voluntary service* (COM (2002) 548) was presented on 7 October 2002 and covers non-employment related purposes of stay. These two texts aim to introduce a measure of harmonisation into the admission decisions of Member States. Two further instruments have strong implications for the equal treatment and integration of third-country nationals. The *Directive on the right to family reunification* was initially presented in 1999, with amended versions proposed in 2000 and 2002 (COM (2002) 225). Political agreement on this directive was reached at the Justice and Home Affairs Council of 27-28 February 2003. The *Directive on the status of third-country nationals who are long-term residents* (COM (2001) 127) proposes that after five years of legal

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<sup>1</sup> Figures in this section are taken from: European Commission, *The social situation in the European Union 2002*, pp. 21-53 and 65-67. The 2002 edition of this annual report was devoted to the 'social dimension of geographical mobility'.

residence in a Member State long-stay third-country nationals will be entitled to a permanent residence permit that is valid for ten years and automatically renewable. The text also includes provisions for free movement, i.e. residence in another Member State. The proposals seem to be inspired by the so-called ILPA/MPG Amsterdam Proposals, a set of proposals for Directives prepared by the Immigration Law Practitioners' Association and the Migration Policy Group.<sup>2</sup> The Commission consulted with these and other non-governmental actors before officially submitting its own proposals to the Council of Ministers.

This section will first consider the free movement agenda, the internal mobility of EU nationals within the Union and the various efforts to encourage such mobility. It will then look at two extensions of free movement rights: first, to the nationals of accession countries, and second, to third country nationals who are long-term residents in a Member State. The continuing integration of European labour markets has led to the emergence of mechanisms for consultation and policy co-ordination at the European level. The main mechanism in this field, the European Employment Strategy, increasingly includes references to migration and mobility, but so far has stopped short of granting migration a significant place in its structure. Immigration could also form the subject of a separate co-ordination mechanism, as set out in a proposal made by the European Commission whose future is as yet unclear.<sup>3</sup> Lastly, this section will consider demography as one of the major factors influencing the development of European migration needs and policies in the long term.

### ***Freedom of Movement and migration***

Free movement of persons entitles nationals of the growing number of EU Member States to move to another Member State to take up a gainful activity (as an employed or self-employed person), or as student or pensioner. With the completion of the internal market (i.e. the removal of internal border control between most of the Member States) and the introduction of EU citizenship in the early nineties, the movement of Member States nationals from one Member State to another ceased to be regarded as migration. These persons were merely exercising their free movement rights. Intra-Union migration became simply 'internal mobility'. From then on and throughout the 1990s migration from outside the Union received most attention, but the development of migration policies at the European level was disconnected from the EU socio-economic agenda<sup>4</sup> and left to the justice and home affairs ministries and Commissioner who were considered to be best placed to control migration.

### ***Internal mobility***

Internal mobility can be related to education or retirement as well as work. In addition to persons who settle permanently in another Member State, there are those who prefer to move temporarily and those who commute ('cross-border mobility'). However, a common characteristic of these categories is that numbers remain relatively low. Luxembourg shows the largest share of other EU citizens (almost one third of the total

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<sup>2</sup> The Amsterdam Proposals can be downloaded from [www.migpolgroup.com](http://www.migpolgroup.com).

<sup>3</sup> European Commission, Communication to the Council and the European Parliament on an open method of co-ordination for the community immigration policy, COM(2001)387 final, Bulletin/2001/7/-8 1.4.4., 11 July 2001

<sup>4</sup> see further Jan Niessen, Overlapping interests and conflicting agendas: the knocking into shape of EU immigration policies. In: *European Journal of Migration and Law* (Vol. III no.3 2001, 419-434).

population). Belgium has the second largest share, followed by Ireland and Germany with 2.3%. Of those Union citizens living in other Member States, Italians and Portuguese are the largest group. In general, citizens from other Member States tend to concentrate in their main neighbouring Member State. However, the overall share of EU citizens living in other Member States has changed very little over the last two decades, remaining close to 1.5%. In fact, the geographical mobility of EU citizens is lower than that of the 1950s and 1960s.<sup>5</sup>

A 2001 study commissioned by the Directorate General for Employment and Social Affairs argued that the aim of European governments and institutions could not be to *force* European workers to become more geographically mobile. The desired level of mobility based on economic considerations should be of secondary importance compared to guaranteeing and promoting the rights of EU citizens. The authors stressed that worker mobility is one of the four founding 'freedoms' of the Single European Market, and that in a democratic political system like the EU, an individual's freedom of movement is a basic right.<sup>6</sup> However, they also acknowledged that a more complete extension of national labour markets to a European level would lead to a better allocation of the work force and would help to balance out shortages and surpluses of labour. The Commission itself stated this even more forcefully: 'The[...] low levels of EU mobility imply inadequate utilisation of the European jobs pool, at a time when some studies estimate an IT skills gap of close to one million in the EU.'<sup>7</sup> And further: 'Most of the available evidence suggests [...] that the relatively low degree of labour mobility in the EU is one of the main reasons why Europe lags behind the US in terms of long term employment performance.'<sup>8</sup> The desire to alleviate skills gaps and labour market mismatches through the realisation of a genuinely pan-European labour market is evident in all European efforts to promote mobility.

These efforts are long-standing and cover a wide range of areas and mechanisms. They have intensified significantly since the European Council meeting in Nice stressed the need to break down barriers to mobility. Its resolution of 4 December 2000 presented an Action Plan for mobility including a 'toolbox' of 42 measures, which range from financial support to linguistic and cultural preparation for mobility.<sup>9</sup> The Stockholm European Council of 23-24 March 2001 endorsed this plan. The Commission on 23 May 2001 proposed a Directive on the freedom of movement of Union citizens.<sup>10</sup> The proposal intends to create a single instrument and to streamline the arrangements for

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<sup>5</sup> European Commission, *The social situation in the European Union 2002*, p. 29.

<sup>6</sup> MKW Wirtschaftsforschung GmbH and Wimmex AG, Munich, *Obstacles to mobility for workers in the digital culture in the European Union*, paper commissioned by the European Commission, Directorate-General for Employment and Social Affairs, June 2001, p.233

<sup>7</sup> European Commission, Directorate-General for Employment and Social Affairs, *Commission adopts new strategy on building new European labour markets by 2005*, press release, 28 February 2001

<sup>8</sup> European Commission, Directorate-General for Employment and Social Affairs, *Employment in Europe 2001 – Recent Trends and Prospects*, 20 July 2001, p. 50.

<sup>9</sup> Council and Representatives of the Governments of the Member States meeting within the Council, Resolution 13649/00 concerning an Action Plan for Mobility, Official Journal C 371, 23/12/2000 P. 0004 – 0010, 4 December 2000

<sup>10</sup> European Commission, Proposal for a European Parliament and Council Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2001)257 final, 23 May 2001. Co-decision procedure COD/2001/0111. The EP adopted a resolution on 11 February 2003 (rapporteur: Giacomo Santini), making several amendments. A Council common position is expected for 19 May 2003.

exercising freedom of movement. The right of residence without formalities is extended to six months. The proposal sets out to remove any conditions or differential treatment, and to put non-nationals on an equal footing with nationals after four years of residence in the host Member State. Where restrictions on the right of residence remain, it aims to tighten up their definitions in the interest of reader-friendliness and clarity.

The link between skills and mobility is most apparent in the Strategy on Building New European Labour Markets by 2005, which the Commission launched in February 2001. This strategy has two main stages. The first stage consists of the implementation and completion of a first set of key policy actions under the headings of skills, mobility and information. The mutual recognition of diplomas, the harmonisation of rules governing pensions, and raising the participation in programmes for the mobility of students and researchers are important goals, as are information campaigns for workers and employers. A further objective is to counteract selectivity by making mobility an option for all individuals, not just the highly skilled. Thus, policies that make social security schemes compatible with mobility, or establish an internal market in retirement provision, aim to 'democratise mobility' by making it financially and socially accessible to all. This also applies to building the relevant skills for mobility, taking into account that linguistic obstacles seem to have diminished only for people with a higher level of education. 47% of Europeans still claim to know only their mother tongue.<sup>11</sup> Stage Two of the Strategy was initiated in June 2001, when the Commission established a High Level Task Force on Skills and Mobility. This task force had ten members, experts with experience in government, education, business and trade unions. The group presented its final report on 14 December 2001. Its policy initiatives and recommendations for implementation were the foundation for a new Action Plan developed by the Commission in 2002.<sup>12</sup>

This Action Plan makes proposals for adapting education and training systems and for facilitating access to mobility, but also notes that 'a declining EU workforce due to demographic changes suggests that immigration of third country nationals would also help satisfy some of the skill needs'. On the same point, the European Parliament's resolution concerning the Action Plan argues that 'in view of the fact that third country migrants are being recruited in the Member States, the Commission [should] lay down migration management criteria, targets and measures to help immigrants integrate through work, and their families integrate into the local communities through the provision of high-standard public services.'<sup>13</sup>

Concrete areas for improving conditions for the free movement of workers are examined in a recent Commission communication.<sup>14</sup> They include access to employment, language requirements, equal treatment and social advantages, as well as administrative and legal problems in connection with residence rights. The Communication also considers questions concerning taxation, non-statutory occupational pension schemes, and social security matters. Here, the revision of Regulation 1408/71, which provides for Community co-ordination of Member States'

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<sup>11</sup> European Commission, *The social situation in the European Union 2002*, p. 43.

<sup>12</sup> European Commission, *Action Plan for skills and mobility in the European Union*, COM (2002) 72. In response, the "Employment and Social Policy" Council on 3 June 2002 adopted a resolution on skills and mobility (CSL 9614/2002).

<sup>13</sup> Resolution of 10 October 2002, PE T5-0466/2002 based on the report by Regina Bastos; the report was tabled in the Committee on Employment and Social Affairs on 11 September 2002.

<sup>14</sup> European Commission, Communication on Free movement of workers – achieving the full benefits and potential, COM(2002) 694 final, Brussels, 11.12.2002.

social security schemes, has been an important area of discussion.<sup>15</sup> Again, the coverage of third country nationals has entered into the debate through a proposal to extend the provisions of Regulation 1408/71 to nationals of third countries who are not already covered by those provisions solely on ground of their nationality.<sup>16</sup> Reaching agreement on a Directive on the mutual recognition of qualifications and the introduction of a European Health Insurance Card are further priority areas for action at the European level.<sup>17</sup>

As exemplified in these policy instruments, the European institutions often identify specific linguistic, economic, informational, or administrative barriers to mobility.<sup>18</sup> Barriers are inherent in the lack of compatibility among pensions, tax and benefit systems, aggravated by difficulties with professional recognition and lack of information on mobility opportunities. What all these barriers have in common is that they can, in principle, be lowered or eliminated by suitable actions and policies. Although the resources and effort needed to remove these obstacles may be considerable, a significant increase in mobility is a possible and even likely result of the relevant policies.

However, there are also other elements, which may be less susceptible to policy action – disincentives or, more accurately, a lack of incentives to move. Income differentials have steadily decreased between EU Member States, which has weakened an important impulse for movement. The labour markets of most Member States exert no significant pull-effect on nationals of Member States. On the individual level, the most important disincentive to movement is risk adversity. Where people enjoy high living standards and build up rights, they are not prepared to take the risk of moving. This phenomenon is explained in more detail by the ‘insider advantage theory of immobility’.<sup>19</sup> At their place of residence, people accumulate insider advantages that can be work-oriented (non-transferable knowledge, advancement opportunities through social relations) or leisure-oriented (cultural roots and social integration). The concept of ‘social capital’ is crucial in describing these location-specific assets. A move would mean that location-specific advantages would be ‘sunk’. It would require new investments in obtaining a ‘ticket to entry’ at a new place of residence. The reluctance of EU citizens to make these investments is one important reason for low internal mobility, and is unlikely to respond to improvements in the policy framework.<sup>20</sup>

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<sup>15</sup> In December 1998, the Commission presented a proposal to simplify and modernise Regulation 1408/71 of 14 June 1971 (COM (1998) 779 final), but the proposal is still being discussed by co-legislators in Council and Parliament. Successive Councils have urged that the regulation be adopted by the end of 2003.

<sup>16</sup> European Commission, Proposal for a Council Regulation extending the provisions of Regulation (EEC) 1408/71 to nationals of third countries who are not already covered by those provisions solely on ground of their nationality, COM (2002) 59 final, OJ C 126E, 28.5.2002, P. 285-389. This proposal was favourably reviewed by Parliament and is awaiting final signature.

<sup>17</sup> Presidency Conclusions, Brussels European Council, 20-21 March 2003, p. 21

<sup>18</sup> European Commission, Communication from the Commission to the Council, New European Labour Markets, Open to All, with Access for All, 28 February 2001, COM (2001)116 final, p. 8.

<sup>19</sup> Peter A. Fischer et al., *Why do people stay? Insider advantages and immobility*, HWWA Discussion Paper 112, Hamburg: HWWA-Institut für Wirtschaftsforschung, 2000, p. 8.

<sup>20</sup> Figures on residential mobility reinforce this reading: 62% of European citizens have not moved house in the last ten years, with a majority naming satisfaction with their place of residence as the main reason for their sedentary lifestyle. European Commission, *The social situation in the EU 2002*, p. 32. Demographic changes reinforce the trend towards low mobility. As the rate of growth of the working-age population is decreasing, there are fewer young people in the labour force, who tend to be more mobile, and a compensating higher share of older

In contrast to the citizens of Member States, third-country nationals are more prepared to take risks – they have already taken a migration decision and are likely to be less settled in their current place of residence. It is also possible that discrimination has prevented them from building up insider advantages to the same extent as citizens. They are, therefore, more motivated to move, and can contribute to alleviating labour shortages and skills mismatches on the European labour markets.

Free movement for third-country nationals is, indeed, on the Council's agenda. The proposed long-term residents Directive<sup>21</sup> advocates a permanent residence permit for third-country nationals who have resided legally in a Member State for five years. Holders of this permit may enjoy the right of residence in a Member State other than the one that gives them the permanent residence status, provided that they exercise an economic activity or, as students, have adequate resources to avoid becoming a burden on the second Member State. The adoption of this Directive would be a step towards equal treatment for third-country nationals. By extending free movement rights to third-country nationals, it would also subsume their movement under internal mobility and eliminate another item from the immigration agenda.

Meanwhile, the enlargement of the European Union implies another extension of free movement rights, but one that is met with hesitation by many current Member States. The enlargement round foreseen for 2004 will add 10 countries with 75 million people to the existing 15 countries with 375 million. Due to fears that accession will set in motion large migratory flows, freedom of movement, although 'perhaps the most important right under Community law for individuals'<sup>22</sup>, will be curtailed during a transitional period lasting up to seven years.

Currently, there are around 850 000 citizens from twelve candidate countries in the EU. Around 450 000 are Polish, of which two thirds are in Germany, and almost 160 000 are Romanians. Of the 850 000, around 300 000 are permanently employed CEC workers. They correspond to 0.2% of the EU labour force, of which 80% are currently working in Germany and Austria.<sup>23</sup> Expert calculations of future migration flows are modest, with a typical estimate envisaging around 335 000 movers (0.1% of the current EU population).<sup>24</sup>

Previous enlargements suggest that large migratory movements need not take place. In fact, in many cases enlargement was accompanied or preceded by a decrease of migration from new to old Member States or by return migration from old to new Member States. For instance, net migration flows from Spain and Portugal were close to zero during the second half of the 1980s. For this reason the transitional period was shortened and, in other cases of enlargement, not introduced at all. Despite these experiences,

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workers who tend to be less mobile. See: High Level Task Force on Skills and Mobility, *Final Report*, 14. December 2001, p. 13.

<sup>21</sup> European Commission, Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, COM(2001)386 final, 13 March 2001, Official Journal C 332 E, 27/11/2001, p. 0248-0256.

<sup>22</sup> European Commission, Communication on Free movement of workers – achieving the full benefits and potential, COM(2002) 694 final, Brussels, 11.12.2002, p.3.

<sup>23</sup> European Commission, *The social situation in the EU 2002*, p. 38.

<sup>24</sup> Source: *Enlarging the European Union – achievements and challenges*, Report of Wim Kok to the European Commission. European University Institute, Robert Schuman Centre for Advanced Studies, 26 March 2003. Demographic trends in the accession states also suggest that the potential for migratory flows will be limited in the long term.

advocates of transitional periods point out that the economic differences between the 'old' Union and its new members are much larger now than they were. For instance, future members have an average GDP per capita of approximately 40% of the existing members (purchasing power parity), whereas Spain and Portugal in 1986 had 70%.<sup>25</sup>

Even if the impact on the EU labour market of the freedom of movement of workers after accession will be limited, countries such as Germany and Austria argue that labour migration is likely to be concentrated in certain Member States, resulting in disturbances of the labour markets there. Moreover, current Member States worry that this issue could alienate public opinion and affect overall public support for enlargement. This is reinforced by the link made between immigration from Central and Eastern Europe with crime and trafficking.

As negotiated under Chapter 2 of the accession negotiations, present Member States will have the right to restrict inflow of labour from Central and Eastern Europe for a period of up to seven years. For the first two years after the enlargement, each existing Member State may choose to apply individual national measures in relation to workers from the new Member States. The transitional period may be extended for another three years subject to prior notification of the European Commission. In case of risk of serious disturbances on the labour market, the transitional period may be extended for yet another two years after notification to the European Commission. No Member State has requested a transition period in relation to Malta and Cyprus, but Germany and Austria, for instance, have announced that with regard to the Central and Eastern European states they will use the transition period for the full seven years. Germany and Austria also have the right to apply national flanking measures to address disturbances which could arise in certain regions from cross-border provision of services.

On the other hand, Ireland, the Netherlands, Denmark, Sweden, the UK and the EEA countries Norway and Iceland have already announced their intention to waive their right to use the transitional arrangements. The immediate extension of free movement rights by additional Member States would be a consistent advancement of the Union's mobility programme and may help to attain some of the goals associated with an integrated European labour market.

### ***The internal labour market and immigration***

In the course of European integration, the reality of the Community-wide labour market has increasingly been matched by attempts to manage it at the European level. The drive for a joint labour market strategy gained momentum after the inclusion of an Employment Title in the Amsterdam Treaty, which declared employment a matter of common concern. This formed the basis for the European Employment Strategy, which was initiated at the Luxembourg jobs summit in November 1997. After a five-year review, the Employment Strategy was modified and changed in some of its features. This section will briefly describe the old system before taking note of the recent developments, since later comments will refer to the functioning of the Strategy in its first years of operation as well as now.

The strategy was conceived to strengthen co-ordination of national employment policies, and to commit Member States to an integrated set of common objectives and targets grouped under four headings or 'pillars'. *Employability* referred to a preventive

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<sup>25</sup> Ibid, p. 34.

approach towards unemployment: the development of skills and incentives for unemployed to get back into work. Policies to promote the integration of disabled, ethnic minorities and other disadvantaged groups and individuals fell under the 'employability' pillar.<sup>26</sup> Bottlenecks and labour shortages were also treated under this heading. The other pillars were *Entrepreneurship*, *Adaptability* and *Equal opportunities*. The mechanism through which these objectives were to be realised was the so-called 'Luxembourg Process' or open method of co-ordination, consisting of an annual cycle of programming, reporting, peer review, assessment and adjustment of the objectives.

First, Commission and Council issued specific Guidelines following the four-pillar structure and indicating actions that Member States should take to modify their national employment policies. Each Member State drew up National Action Plans (NAPs) describing how the guidelines were being put into national practice. The Commission examined the implementation of the guidelines throughout the year. It used the National Action Plans, implementation reports, and its own inquiries to assess compliance. Based on its assessment, the Commission proposed to the Council certain recommendations directed at Member States. These were passed with qualified majority voting. At the end of the annual cycle, the Commission and the Council presented a Joint Employment Report to the European Council. While the Joint Employment Report was being written, guidelines for the following year were developed and the cycle began again.

A 2002 Communication<sup>27</sup> reviewed the experience of five years of the European Employment Strategy under the 'Luxembourg' process. It suggested that guidelines should become simplified and more result-oriented, based on quantitative targets, and co-ordinated more closely with economic policy instruments. In a new 'streamlined' process, the Commission now presents an 'implementation package' each January, which includes the Broad Economic Policy Guidelines Implementation Report, the draft Joint Employment Report and the implementation report on the Internal Market Strategy. Following the general political orientations given by the Spring European Council, the Commission issues a 'Guidelines Package' each April, composed of the Broad Economic Policy Guidelines, the Employment Guidelines and the Employment Recommendations. Subsequent to further consideration by the European Parliament and the competent Council formations, the June European Council is to draw up conclusions streamlining the annual economic and employment policy co-ordination cycles.<sup>28</sup>

As regards content, there are now three overarching objectives (full employment, quality and productivity at work, cohesion and an inclusive labour market) supported by eleven priorities.<sup>29</sup> The targets set by the Lisbon Summit remain valid, such as raising the EU employment rate from 61% to 70% by 2010, and increasing the number of employed women from 51% to 60%. A European Commission report prepared for the Spring 2002 Council in Barcelona pointed out that this would imply an increase in employment of about 20 million in total, of 11-12 million women and of 5 million older

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<sup>26</sup> see, for example, Council Decision of 13 March 2000 on guidelines for Member States' employment policies for the year 2000 (2000/228/EC), annex, point 1.9

<sup>27</sup> European Commission, Communication on Taking stock of five years of the European Employment Strategy, COM (2002) 416, Brussels, 17 July 2002

<sup>28</sup> European Commission, Communication on Streamlining the annual economic and employment policy co-ordination cycles, COM (2002) 487 final, Brussels, 3.9.2002.

<sup>29</sup> European Commission, Communication on the Future of the European Employment Strategy - A strategy for full employment and better jobs for all, COM (2003) 6 final, Brussels, 14.1.2003.

workers.<sup>30</sup> In fact, the Barcelona Council set the objective that by 2010, the age at which Europeans actually leave the labour market should be increased by five years.<sup>31</sup> Reaching the Lisbon targets increasingly appears to be a challenge, particularly as the European Union is facing a slowdown in economic growth and job creation.<sup>32</sup> However, the Commission's drive to intensify efforts within the European Employment Strategy continues; for instance, a new 'European Employment Task Force' was convened in March 2003.

To what extent has this machinery been instrumental in looking at migration? The early Joint Employment Reports did not mention the admission of third country nationals in the context of potential or emerging skills gaps.<sup>33</sup> As there were no serious shortages on the labour market, there was no pressure from the private sector to recruit foreign labour and labour mobility was considered to be sufficiently facilitated by promoting free movement of nationals of Member States. After 2000, however, questions regarding labour shortages and skills deficiencies gained momentum. Employers became more vocal in demanding a proactive immigration policy that would facilitate the recruitment and mobility of temporary or permanent workers. Governments, too, increasingly became aware of the role migration could play in meeting the challenge of labour market imbalances.

The *2000 Joint Employment Report* only mentions the tightening of the labour market supply of high tech professionals, leading to adaptations of immigration policies in a few Member States.<sup>34</sup> Specifically, the report identifies a tightening of the labour market supply in Sweden, Denmark, Ireland, the Netherlands, Northern Italy and Flanders. Adjustment in immigration provisions for high tech professionals is recorded for Germany, Denmark, Sweden, Ireland, the UK, and Finland. The *2001 Joint Employment Report* comments on the NAPs of Italy, Finland, Sweden, the United Kingdom and France, in which they state that their labour shortages are mainly limited to a few occupations/sectors and regions. At the other end of the spectrum, it notes that Finland, Ireland and the Netherlands find themselves in very tight labour markets, with shortages in both high and low skill occupations. The report notes that Luxembourg and Ireland 'resort to bringing in a significant number of foreign workers compared to other Member States', with Ireland conducting active recruitment campaigns inside and outside the European Union. The United Kingdom, Finland, Austria, Germany and Portugal are listed as reforming their system of work permits to allow for more flexible recruitment of foreign workers for bottleneck occupations. Policies to legalise ethnic minorities and migrant workers are recorded for Portugal and Greece.<sup>35</sup>

The worsening economic climate is apparent in the 2002 NAPS, in which references to immigration are made only by Finland, Germany, the Netherlands, Ireland, and Austria. The Finnish NAP stresses the necessity to improve the procedures for work related immigration, clarifying the situation of immigrants, promoting good ethnic relations and

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<sup>30</sup> Report of the European Commission, COM (2002) 9 final, Brussels, 24.01.2002.

<sup>31</sup> Presidency Conclusions, Barcelona European Council, 15-16 March 2002. The average age is now 58.

<sup>32</sup> Presidency Conclusions, Brussels European Council, 20-21 March 2003

<sup>33</sup> European Commission, *1999 Joint Employment Report*, 2 December 1999, and *1998 Joint Employment Report*, December 1998

<sup>34</sup> European Commission, *Joint Employment Report 2000*, COM(2000)551 final, p 56.

<sup>35</sup> European Commission, *Assessment of the Implementation of the 2001 Employment Guidelines*, Supporting Document to the Joint Employment report 2001, p.71.

preventing racism and discrimination.<sup>36</sup> The German NAP makes note of the draft act on Immigration, and the Austrian NAP notes that legislation is currently in the making creating clear rules for the new admission of key workers. Job-related new admission of foreign key workers would take place according to a catalogue of criteria within the framework of the key-worker immigration quota to be adopted by the federal government on an annual basis. The Dutch and Irish NAPs are somewhat more cautious on the subject of work permits, with the Irish report emphasising that Irish or other EEA workers have priority in all recruitment situations. Nevertheless, the Draft Joint Employment Report sums up that 'several Member States present labour immigration as part of the solution to labour shortages, thus recognising the importance of a better-integrated European labour market'.<sup>37</sup>

Immigration is a phenomenon that affects many spheres of social and economic life. In all of these sectors, key stakeholders such as ministries, employers, trade unions and NGOs promote their interests and concerns. While there is often considerable overlap, there are also areas where priorities diverge. Some governmental departments, trade unions and certain interest groups have reservations towards the immigration of third-country nationals. They do recognise the existence of labour shortages, but argue that there are alternative ways of overcoming them. For instance, these stakeholders place great emphasis on the participation of women in the labour market. They point to the need to re-adjust the retirement age and call for the inclusion of marginal groups (such as young people with an immigrant and refugee background) in the economy. They also point to frictions between the demand for certain types of (foreign) labour and the growing number of members of ethnic minority groups (including refugees) whose skills remain largely untapped. Finally, they argue that before allowing for the recruitment of foreign staff, more effort must be made to combat racial and ethnic discrimination.<sup>38</sup>

These concerns have been echoed in the mechanisms and output of the European Employment Strategy. Guidelines under the Equal Opportunities pillar have consistently encouraged Member States to strive for a higher female employment rate based on improved possibilities for combining family and working life. Similarly, labour shortages are seen as a chance for the inclusion of previously marginalised groups, such as the long-term unemployed. For instance, the 2001 French NAP considered that tighter labour markets represent an opportunity to facilitate the reintegration of certain categories of workers into the labour market.<sup>39</sup> Ways of increasing the labour supply range from raising the participation rates of older people, women, immigrants and young people; encouraging active ageing, by discouraging early retirement incentives; and reducing barriers and disincentives for female labour force participation, including through better child care facilities.<sup>40</sup>

However, immigration and equal opportunities policies are not mutually exclusive. Migration is a complementary labour market strategy, and it has already been in

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<sup>36</sup> All National Action Plans on Employment can be found on the website of the European Commission, Directorate General for Employment and Social Affairs.  
[http://europa.eu.int/comm/employment\\_social/news/2002/may/naps2002\\_en.html](http://europa.eu.int/comm/employment_social/news/2002/may/naps2002_en.html).

<sup>37</sup> European Commission, Draft Joint Employment Report 2002, COM (2002) 621 final, Brussels, 13.11.2002, p. 38.

<sup>38</sup> For a non-governmental perspective, see *Choosing to Include – briefing to the 2003 Spring Council*, SOLIDAR, Brussels March 2003.

<sup>39</sup> reference in European Commission, *Assessment of the Implementation of the 2001 Employment Guidelines*, Supporting Document to the Joint Employment report 2001, SEC(2001) 1398, 16 November 2001, p. 74.

<sup>40</sup> Presidency Conclusions, Brussels European Council, 20-21 March 2003, p.20.

operation for some time. Notwithstanding publicly declared closed-door or zero immigration policies, economic factors led governments to leave the backdoor open throughout the 1990s for almost all categories of (documented or undocumented) immigrants, including the self-employed and service providers. However, this non-declared and inconsistent immigration policy has led to complicated and non-transparent immigration rules and procedures. In an effort to manage the growing number of undocumented migrants, some governments have launched successive legalisation programmes that, in essence, have become a form of *de facto* 'post-immigration' policy. Many Member State governments are now reconsidering their position more comprehensively, aware that migration management is needed to harness the benefits of migration and integration.

As Member States are looking for the right balance between national policies and Community policies, they may consider that in order to be effective, particularly in a highly competitive economic climate, immigration policies must be designed and implemented at the national level as they are responses to national labour market and demographic developments. On the other hand, European integration has reached such a stage that policies in many areas of one Member State affect those of the others. Immigration, inextricably linked with the development of the internal market, is such an area. In addition, the Member States and the social partners agree to a great extent that socio-economic co-operation at the level of the European Union would make the Union more competitive in the global economy.

The 'open method of co-ordination' on employment, through exchange of information and deliberation over time, has helped to bring new ideas to the fore in a common learning process. The Strategy has also contributed to co-ordination among levels of government, helped to integrate separate policy domains, and enhanced participation of the social partners. It has created ongoing policy dialogues that engage diverse groups and cross many traditional boundaries within government, between government and social partners, among actors from different countries, and between localities, national governments, and Union level actors and institutions.<sup>41</sup>

The successes of the Employment Strategy have encouraged the EU to extend the concept of joint action into new policy areas. Social inclusion and environment are examples for the establishment of other 'open methods of co-ordination'. The Directorate-General for Justice and Home Affairs has followed suit and proposed an open method of co-ordination for the community immigration policy.<sup>42</sup> In an adaptation of the Employment Strategy mechanism, Member States would prepare national action plans on immigration, while the Commission would prepare a synthesis report drawing attention to common problems and identifying areas where European solutions might be appropriate. In addition, Directives adopted in the area of immigration would contain

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<sup>41</sup> see David Trubek and James Mosher, *New Governance, EU Employment Policy, and the European Social Model*, Jean Monnet Working Paper No. 6/01, Symposium: The Commission White Paper on Governance, pp. 18, 31. Difficulties remain, as pointed out by the European Commission itself: 'progress was made concerning the development of a true territorial dimension, but civil society is still absent from the process. Furthermore, the NAPs are too often perceived as "owned" by ministerial departments and are not fully or coherently integrated in the overarching national policy framework, partly as a result of lack of parliamentary involvement'. Communication on the Future of the European Employment Strategy (EES) - A strategy for full employment and better jobs for all, COM (2003) 6 final, Brussels, 14.1.2003, p. 18.

<sup>42</sup> European Commission, Communication to the Council and the European Parliament on an open method of co-ordination for the community immigration policy, COM (2001) 387 final, Bulletin/2001/7/-8 1.4.4., 11 July 2001.

transparency provisions linking them to the open method. For instance, the proposed Directive on 'primary migration' requires Member States to base any horizontal national provisions (e.g. national 'green card programmes' or ceilings) on the criteria listed in the Directive and to include a detailed statement of reasons. There would also be an obligation to review measures regularly, to make them public before their entry into force, and to submit annual reports to the European Commission.

The proposed open method on immigration has not been received warmly by Member States. Part of the controversy centres on the integration of this new mechanism with the existing European Employment Strategy. The European Commission Directorate for Employment and Social Affairs has, in parallel with the evolution of Member State policies as expressed in the National Action Plans, developed a more positive and proactive approach towards immigration. The draft guidelines for 2002 (under guideline 6 on bottlenecks) still refer to mobility rather than immigration and include the emerging immigration policies of Member States under the heading of 'geographic mobility', rather than referring explicitly to the admission of third-country nationals.<sup>43</sup> However, a recent Communication unambiguously says that 'given ageing and related skills gaps, fulfilling the Lisbon objectives by 2010 and beyond will notably depend on the shape and dynamics of immigration in the EU'.<sup>44</sup>

While the Communication reiterates that the EU must primarily mobilise its current human resources, including migrant workers currently residing legally in the EU, it states clearly that immigration policies can also play a role in tackling labour market imbalances. The text affirms that 'the further development of EU immigration policy including the establishment of a transparent, common framework for the admission and conditions of residence of migrant workers and their mobility in the EU is a priority'.<sup>45</sup> However, the promise of a strong immigration component in the Employment Strategy itself is not realised in the draft guidelines of April 2003. Under the heading 'increasing labour supply and promoting active ageing', the Commission encourages Member States to 'make use of the additional labour supply resulting from immigration, in line with Community immigration policy and in a manner supporting the long-term development objectives of the countries of origin'. However, recommendations regarding the inclusion of already resident migrants dominate over references to new labour immigration. The Commission proposes a related target to be achieved by 2010, namely 'to reduce by half in each Member State the unemployment gaps between EU nationals and non-EU nationals'. In the Recommendations, Denmark and Sweden in particular are encouraged to strengthen the labour market integration of immigrants in view of ageing populations and shrinking labour supply.<sup>46</sup>

Integration has become increasingly central in the policies of both Member States and European institutions, and has been particularly prominent since the Danish Presidency in the second half of 2002. The wish to avoid religious and ethnic tensions in the wake of 11 September plays a role in this development, as does the argument

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<sup>43</sup> European Commission, Proposal for a Council Decision on Guidelines for Member States' employment policies for the year 2002, COM (2001) 511 final, 12.9.2001, p.13 [endorsed by the European Council in Laeken on 14 and 15 December 2001, see Presidency Conclusions, SN 300/01, par.24].

<sup>44</sup> Communication on the Future of the European Employment Strategy (EES) - A strategy for full employment and better jobs for all, 14 January 2003, p.13

<sup>45</sup> *ibid*, p.13

<sup>46</sup> European Commission, Recommendation for a Council Recommendation of Member States' Employment Policies, Brussels, 8 April 2003, pp. 7 and 21

that 'the contribution of immigrants to employment and economic growth will depend on their integration in the labour market and their successful inclusion into society'.<sup>47</sup> In this context, the 2003 Spring Council referred favourably to the soon-expected Commission Communication on the interaction between immigration, integration of legal migrants in the EU societies, and employment. Echoing the Commission's January Communication, the Presidency Conclusions stated that 'a fresh approach is needed on immigration in the context of skills shortages and demographic change and projection in the EU. The smooth integration of existing and new legal immigrants could play a key role in this approach'.<sup>48</sup>

A further dimension of the Lisbon strategy, the Social Inclusion Process, has developed into a focal point in this respect. The Social Inclusion Process also follows an 'open method' approach and commits Member States to submit national action plans against poverty and social exclusion every two years. In the Common Outline for the next round of national action plans – due in Summer 2003 – immigration and ethnic diversity are listed as a 'key issue cutting across the common objectives'.<sup>49</sup> Similarly, policies to integrate immigrants and ethnic minorities are declared a priority area of the Community Action programme to combat social exclusion. In fact, in the granting of awards this priority area has been the one with the most selected projects.<sup>50</sup>

These developments in the Employment and Social Affairs field further call into question the possible relationship between the proposed Open Method of Coordination on immigration and the Employment Strategy or other relevant processes. A close integration or even merging with the Employment Strategy would have the advantage of conserving national and European administrative resources, which would be strained considerably by the preparation of additional reports. It would guarantee a strong voice for the social partners because of their institutionalised role in the employment domain. In addition, a unified mechanism would strengthen immigration's place in the mainstream of the European political agenda. It would clarify that migration is a complementary labour market strategy, rather than a control and security issue. The inclusion of immigration might equally benefit the Employment Strategy. Interior ministries and the relevant civil society organisations would be heavily involved in the preparation of the annual report. This participation would extend the Employment Strategy's impact on other policy sectors.

On the other hand, there are strong arguments for limiting the place of immigration in the Employment Strategy. Including the contentious issue of immigration in the Strategy might endanger its relatively smooth functioning and undermine the co-operative attitude fostered since its inception. A separate mechanism might also offer a chance to build up strong consultative relationships between civil society, Commission and governments in the area of immigration and immigrant integration. Moreover, the higher visibility of a separate mechanism might constitute a greater push towards convergence and the adoption of best practices. It is also important to note that the proposed Open Method on Immigration would cover the whole domain of

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<sup>47</sup> Communication on the Future of the European Employment Strategy (EES) - A strategy for full employment and better jobs for all, 14 January 2003, p. 13

<sup>48</sup> Presidency Conclusions, Brussels European Council, 20-21 March 2003, p.21

<sup>49</sup> Social Protection Committee, Common Outline for the 2003/2005 NAPs/inclusion, p. 2

<sup>50</sup> European Commission, Directorate-General for Employment and Social Affairs, Call for proposals VP/2002/010 for transnational exchange projects under the Community Action Programme to Combat Social Exclusion 2002-2006 (under 2002 Budget Line B3-4105). 29 of 64 selected projects were in the area of immigration and ethnic diversity.

immigration policy, not just immigration related to employment. Immigration for the purposes of study or unpaid activities, as well as family reunion, might fit less easily into the existing Employment Strategy than those areas directly related to the labour market and the status of immigrant workers. On the whole, it is important not to bring migration outside the mainstream, whether the Open Method on Immigration is integrated into the Employment Strategy or works alongside it.

### ***Demographic factors and the long term***

No analysis of immigration management in Europe would be complete without referring to immigration as a strategy to address demographic decline or imbalances. Long-term studies in particular place great emphasis on the connections between demographic development and labour market requirements. They identify ageing societies in which the proportion of the population of working age will decline, particularly in the years after 2010, when the baby boom generation begins to retire. As fertility rates drop and people are living longer, advanced countries are for the first time facing the problem of falling labour supply. These problems are aggravated as new technologies create a demand for skilled labour and as ageing and affluent lifestyles require servicing by unskilled or low-skilled workers.<sup>51</sup>

Immigration already plays a significant role in Europe's demographic development. Since 1989, net migration has been the main component of annual population change in the Union. In 2000, the annual net migration rate was 2.0 per 1000 population, representing around 65% of total population growth. Without positive net migration the populations of Germany, Greece, Italy and Sweden would be in decline. In addition, unrecorded immigration is significant in a number of Member States, especially in southern Europe. A disproportionate number of immigrants into the EU have been men and women in their 20s. On average, people in this age group represented some 40% of all immigrants in the second half of the 1990s, while those in their 30s accounted for another 20%. Accordingly, immigrants of non-EU nationality added an average of 0.8% a year to the resident population of 20 to 29 year olds in the Union over this period. However, this influx was partly offset by emigration. The specific age and sex structure of most immigrant groups means that apart from the direct demographic effect through the influx of persons, migration also has secondary effects, namely a higher number of births and a lower number of deaths compared with the host population. Many recent immigrant groups also have a higher fertility rate.<sup>52</sup>

Debates about the potential role of immigration in meeting demographic challenges focus on its contribution to keeping the 'economic dependency ratio' - the relation of the economically active to the economically inactive - as low as possible. In the European Union, it is projected that the ratio of workers to pensioners will decline from 4 to 1 to less than 2 to 1 by 2040. Such forecasts are accompanied by growing concerns about the sustainability of pension and health care systems. In European welfare states, pensions already account for, on average, 40-50% of the total expenditure on social

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<sup>51</sup> See, for example, Peter McDonald and Rebecca Kippen, *The implications of below replacement fertility for labour supply and international migration, 2000-2050*, paper presented to the 2000 Annual Meeting of the Population Association of America, Los Angeles, California, March 23-25, 2000.

<sup>52</sup> Werner Haug, *The Demography of Immigrant Populations in Europe*, European Population Papers Series No.8, Council of Europe, April 2002, p. 2.

security.<sup>53</sup> It is projected that public spending on pensions, health care and care for the elderly will increase between 4% and 8% of GDP by 2040 in most Member States.<sup>54</sup>

At the European level, activity on pensions intensified with the Stockholm European Council in March 2001, which laid the ground for a new open method of co-ordination on pensions. This process was launched by the Laeken European Council in December 2001 on the basis of eleven common objectives under the three headings: safeguarding the capacity of systems to meet their social objectives, maintaining their financial sustainability and meeting changing societal needs. The first draft joint report reiterates the demographic challenge and reviews Member States' policies for improving the economic dependency ratio. Spain and Greece are cited as expecting that immigrants will generate an important extra supply of labour; this may include immigrants already in the country whose situation is regularised. The Spanish report in particular stresses the important contribution of foreign workers to the current favourable financial situation of the social insurance system, as the number of foreigners covered by the social security system more than doubled from 332,000 in 1999 to 792,000 in 2002.<sup>55</sup>

Just as immigration is only one of the issues influencing European labour markets and pension systems, so demography is only one of several aspects shaping immigration into Europe. Emerging immigration policies will reflect demographic and labour market factors as well as political preferences and institutional constraints. Here, a central question concerns the sharing of authority between localities, national governments, and Union level actors and institutions. In each domain, choices have to be made between Union competence, Member State competence and shared competence of Union and Member States. How inclined are Member States to centralise and to strengthen common elements in immigration policies? In the Laeken Presidency Conclusions, European leaders committed themselves to 'clarify, simplify and adjust the division of competence between the Union and the Member States in the light of the new challenges facing the Union'.<sup>56</sup> The emerging Community Immigration Policy is such a challenge.

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<sup>53</sup> Council of Europe, *Implications of labour migration for social security systems in European countries – activities of the Council of Europe*, summary of a conference held in Bratislava on 22 and 23 May 2002.

<sup>54</sup> European Commission, Report on the Implementation of the 2001 Broad Economic Policy Guidelines, ECFIN/16/02, Brussels, 21 February 2002.

<sup>55</sup> European Commission and Council, *Draft joint report on adequate and sustainable pensions*, 3 March 2003, p. 46. Like the Employment Strategy reports, this text stresses that 'higher employment levels will need to be achieved mainly by mobilising presently inactive among women and older workers'.

<sup>56</sup> Presidency Conclusions, Laeken European Council, 14-15 December 2001

## Some final observations

Policy-making is the art of making choices and acting upon the desired as well as the un-desired consequences. What choices are to be made in the making of immigration policies?

A first set of choices relates to whether or not to adopt an immigration policy. If the choice is made in favour of adopting an immigration policy then the next set of choices relates to the fundamental issues to be addressed by such a policy and to the actors that will be engaged in its design and implementation.

The open-door policy that prevailed in the US for such a long time has been abandoned and a *laissez-faire* policy is neither in the US nor in Europe considered to be a feasible policy option, although there are advocates of such an approach on both sides of the Atlantic. Immigration policies in the EU and in the US will be a mix of accommodating and facilitating the movements of people. One of the consequences is that limits or ceilings are set in terms of numbers of immigrants and that admission criteria are defined. There are hard choices to be made since it is about including and excluding people as potential immigrants. An exclusion/inclusion criterion that has been applied in a number of traditional immigration countries is national origin (immigration quotas were set per country of origin). This system has racist overtones and the US abolished this system in the 1960s, which was an indirect effect of the civil rights movement. When opportunities and entitlements are granted irrespective of race, ethnicity, national origin then it is difficult to defend a position that this only applies to those who are already in and not to those who want to come in.<sup>1</sup> There are many variations on this theme, also in Europe with its history of reversed colonial migration and with the different status of immigrants coming from different types of associated states.<sup>2</sup>

Immigration policies could be based on economic, social and humanitarian considerations. Ideally, there are no conflicting interests involved, or if there are, the outcome is a well-balanced mix of economic interests, social goals and humanitarian commitments. The policy debates in the US have mostly been and still are about this balance. For Europe it is no different. An immigration policy based on clear admission criteria must be enforced for the sake of its credibility and integrity. Since immigration is a matter of national interest, it is almost a given that the debates will be intense and at times tense. Since immigration is about people, the debates will often be emotional and passionate.

The advantages of employment-based immigration are many. Where people are needed they are welcomed. Where people can contribute to society, the fulfillment of their aspirations and full participation in society will be enhanced. Therefore, one pillar of immigration policy must be economic. For a long time this was the main component of US policies and only in the second part of the 20th century other components were added and sometimes in such a degree, that some claimed that national interests were

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<sup>1</sup> This may not be construed as an argument to abolish all selection criteria but is an argument against race, ethnicity and nationality being a criterion, to be used whenever national, cultural, or religious preferences or suggested as basis for an immigration system.

<sup>2</sup> See Ann Dummett and Andrew Nicol. *Subjects, citizens, aliens and others. Nationality and immigration law* (1990) Ryszard Cholewinski, *Borders and discrimination in the European Union* (Immigration Law Practitioners' Association and Migration Policy Group - 2002).

neglected and sub-ordinated to the interests of the individual immigrants, or where the interests of newcomers seemed to prevail over those of vulnerable groups or minorities. This is a recurring issue in the immigration policy debates in the US.<sup>3</sup> For Europe this is again no different and it pleads in favour of linking immigration also with the further development of the European internal labour market.

Designing an economic needs based immigration policy entails another set of choices. How are needs assessed and who makes the assessments? Different stakeholders may come to different conclusions on what the needs really are. Both in the US and in Europe the assessments of employers and trade unions groups tend to differ markedly. This is partly a matter of timing (when are immigrants needed?) and of specifying economic sectors (in some sectors there are more immigrants needed than in others). Governments often broker a compromise and also raise the issue of societal consequences of the import of labour. Economic needs tests as applied in many countries demonstrate varying degrees of refinement.

Knowing the needs is not yet knowing how to recruit the right persons to meet those needs. In other words what are the selection criteria? In the US language has, at times, been used as a criterion and in Europe language became a big issue in the integration debate and in some countries, the issuance of permanent residence permits or the granting of social benefits was made dependent on the immigrants' capacity to express themselves in the national language. Canada introduced a point system, a practice considered for some time in the US and in some European countries, but not adopted. Finally, there are choices to be made on the implementation of the selection system. Governments have definitely a role to play in the application of the selection rules, but what is the level of involvement of the private sector (the degree of privatisation of migration management)?

Another pillar of immigration policy is social and is composed of family reunion and family formation which taken together make up the largest source of immigration in the US and Europe. This type of immigration is based on a widely acknowledged right to family life that touches upon some of the core values of European and North American societies. Family reunion makes immigrant communities more stable and helps immigrants to integrate socially. This is not to say that family reunion as one of the building blocs of immigration is uncontested. Once incorporated in an immigration policy, governments loose control since people decide themselves who belong to a family and where they want to live as family. Nevertheless, both in the US and the European Union attempts are being made to restrict this form of immigration. Usually, this is done by introducing a more narrow definition of a family, excluding members in the ascending line and lowering the age of dependent children eligible for family reunion. The restriction on family reunion and formation introduced in some European countries affect the rights of both immigrants and nationals. However, the question is whether the rights argument is the strongest possible foundation of family-based immigration, since it is a double-edged sword. From an equality point of view, family ties and marital status could be qualified as unjustifiable preferential treatment of people with these ties and status over those who do not possess them. Just as racial and national origin is challenged as a valid criterion for immigration, so too could family ties and marital status be challenged. In this context it is interesting to note that in Europe the scope of anti-discrimination legislation and policies is expanding and

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<sup>3</sup> See for the relationship between immigration and the effects on the position of socio-economically vulnerable groups in the US, including black Americans, Vernon Briggs, *immigration policy and the American labour force* (1984).

includes in some cases marital status. Be that as it may, it could be more effective to emphasise the short sightedness of restrictive family-based immigration given the demographic decline and imbalances in Europe. Europe is ageing fast, faster than the United States and other industrialised countries. The European fertility rate is now less than 1.4, whereas the American fertility rate is almost 2.1 (the rate required to keep the population steady). In both the US and Europe, immigration has become increasingly responsible for population growth. Again, American immigration rates are higher than Europe's, and many of its immigrants are Hispanics, whose fertility rate is nearly 3.0 compared to 1.8 among non-Hispanic whites. These figures led a recent survey to conclude that 'higher fertility rates and immigration produce not only a larger population but a society that is younger, more mixed ethnically and, on balance, more dynamic'.<sup>4</sup>

A third pillar of immigration policy is humanitarian. Both Europe and the US offer protection to millions of refugees and asylum seekers. SIPRI counts that there were 24 major armed conflicts in 22 locations throughout the world in 2001. The vast majority of the conflicts occurred in Africa and in Asia. Amnesty International states in the introduction of its 2000 Annual report that for the majority of the world's population the year 1999 brought repression, poverty or war. In country after country, imprisonment, torture and political killings were used by governments to silence opposition and maintain their hold on power. In some countries the widening gap between rich and poor fuelled protests by the desperate and dispossessed which were met with brutality and violence. In other countries, political instability degenerated into open armed conflict in which countless men, women and children were killed. The millions of people fleeing in search of safety bore witness to the extent of persecution and violence around the world. Neither Europe nor the United States can escape their responsibility to offer protection to those in need of it and to address the root causes of forced migration. This will broaden the refugee and forced migration debates to include human rights and development issues. These policies will contribute to global peace and stability.<sup>5</sup>

The next set of questions relates to the societal integration of immigrants and refugees. Successful integration crucially shows that immigration can work. Integration *is* and *is more* than social inclusion. It pertains to securing residence rights, equal treatment, anti-discrimination, naturalisation and citizenship. Choices are to be made in all these policy areas.

A final set of questions relates to the right levels of governance. This is not a matter that can be settled once and for all, nor for all migration related issues in the same way.

Immigration is a national responsibility in the United States, whereas immigrant policies (except granting citizenship) are also a matter for state governments. The situation in Europe is principally not different. Immigration is the responsibility of the national governments of sovereign EU Member States, whereas immigrant integration policies are a shared responsibility with other levels of governments (from regions to cities). On

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<sup>4</sup> 'Half a billion Americans? Demography and the West', *The Economist*, 22 August 2002

<sup>5</sup> William Pfaff signals, in a comment on the latest US Congress Annual Report on terrorism, that virtually all the incidents identified as acts of global terrorism occurred in four places (Colombia, Chechnya, Afghanistan and Israel). Before September 11, virtually none of the incidents referred to would have been called terrorism, but civil insurrection, nationalist or separatist violence. In: *International Herald Tribune* (8 May 2003). Calling civil strife and other forms of conflict terrorism is a simplification of reality. Moreover, a 'terrorism' approach to conflicts is quite different from a human rights and development approach.

both sides of the Atlantic, lower governments seek to increase their powers in order to be better able to influence the numbers of immigrants to be admitted. A reason that is usually given is the fact that the consequences of immigration decisions are played out in states, regions and cities and that therefore these levels of governments should be given a bigger say in immigration matters. In addition, it is claimed that assessments of migration needs, as well as the decisions as to how to meet those needs, are best made at lower levels of government. It is also claimed that lower levels of government are better capable of adopting tailor-made measures without long delays and too many compromises. At this level there would be less risk of immigration issues becoming only one issue among many in a broad package of measures that reconciles different interests in various policy fields, result in immigration issues not getting the attention it deserves. Finally, it is claimed that policy-making at national level allows bigger entities (such as bigger states, regions) and powerful interest groups can push their agenda more successfully than smaller entities and less powerful interest groups. The right level of government is a recurring issue in both the US (state vs. federal competence) and the EU (subsidiarity).

As far as immigration is concerned, the situation is usually that once national governments have let immigrants in these persons are entitled to move around and settle anywhere in the territory. This means that when immigration decisions are taken by an entity at a lower level of government, states in the US, regions and cities in Europe, they directly affect another entity at the same level, as well as the country as a whole. It requires a central authority to design a policy that looks after the whole and balances the interests of the various entities. Theoretically there is the option to abolish the right of free movement and settlement, which at times is indeed contemplated (in Europe rather than in the US), because this could also help avoid concentrations of immigrants in some states, regions and cities. In practice, while this may, at the expense of civil liberties, help solve this problem, it, would, however, create, a great many others, which could have disastrous effects for dynamic and integrated economies such as the US and the EU. In other words, centralised admission powers and complete freedom of movement are inextricably linked.

The difference between US and EU immigration policy-making emanates from the difference of being a well-established federation and a federation in the making. In the US, admission decisions are taken at national level in a federal system of complete freedom of movement. As long as this freedom is maintained, it is highly unlikely that the federal government will share its full admission powers with governments of states. In the EU, national governments of Member States decide on admission in a Union system of severely restricted freedom of movement and settlement of immigrants. As long as EU Member States jealously guard their sovereignty on immigration matters, it is unlikely that there will be complete freedom of movement in the European Union.

What the US federal government has and does not want to share with states, the EU 'government' has not or has only partially. What US states do not have and at times unsuccessfully try to get, is what EU Member States either have and do not want to give up, or reluctantly and partially share.

US states and EU Member States will try to increase their influence, or maintain their grip on the policy-making process at the federal or Union level. In the EU one vehicle for this is the so-called open method of co-ordination. Through a process of consultations a series of guidelines are adopted (guidelines do not have the same status as EU legislation). This soft law approach may be typical for a federation in the making; it may also have merits for a fully- fledged federal system. The rounds of

consultations provide an opportunity for a wide variety of stakeholders from across the Member States to assess immigration needs. Such a method is less politicised than the US current system of deciding on who and how many are to be admitted seems to be.

Alongside this institutional approach, policies could be adopted at national/federal and (Member) State level that facilitate internal mobility. Such an approach is crucial for addressing the disadvantages inherent to the US system (complete freedom of movement and the uneven distribution of immigrants over the country) and the EU system (restricted freedom of movement and the negative economic and social consequences).

In the US, there are no legal barriers to the free movement of US citizens and immigrants. Only social and cultural differences may hinder internal mobility. States that want to attract more immigrants could therefore use their powers to adopt policies that make their state more attractive to citizens and immigrants already admitted to the country. In addition they could lobby on the national level for an immigration system that facilitates chain-migration, for example by supporting policy proposals that expand or keep intact family-based immigration. Family reunion increases the number of immigrants already present in a state.

The situation in the EU is much more complicated. In addition to social and cultural (and linguistic) barriers there are legal barriers for the free movement of EU citizens and immigrants. The legal barriers for EU citizens are being progressively removed as an integral part and one of the declared goals of the establishment of the internal market and the creation of an area of freedom, security and justice. The removal of the legal barriers for immigrants will take more time, because this is linked with the more time-consuming process of sharing sovereignty on immigration issues. There are two sets of arguments in favour of removing all obstacles to the immigrants' freedom of movement. The first is based on principles of equality and anti-discrimination and the second on economic considerations. The European Union is in the process of creating an internal labour market which includes the removal of all kinds of obstacles for internal mobility. At the same time the Union is expanding its equality and anti-discrimination legislation which sooner or later this will also affect its free movement policies. These are two powerful and mutually reinforcing sets of arguments, because they are manifestly linked to Europe's ambition to become an economically powerful and socially cohesive area and to remain an area where democracy reigns and human rights are respected.

## **Annex: The European Migration Dialogue**

The European Migration Dialogue was established in May 2002 with the objective to engage (more) stakeholders in a well-informed and constructive policy debate on EU migration policies. In particular, it seeks to increase the level of information and participation among non-governmental actors working on the national level in EU Member States as well as accession states.

Over a period of eight months prior to the establishment of the European Migration Dialogue, MPG held – with the support of the EU Commission's Odysseus Programme - a series of roundtables to explore non-governmental awareness of EU policy-making in the area of immigration and to determine organisations' current and desired involvement in the policy debate. During these roundtables, twenty-one partners were identified - typically organisations that others working in the field rely on for information and support, and that have a recognised voice in public debates. The partners include human rights NGOs, think tanks, foundations, and service delivering organisations providing advice and support to migrants while being active in policy development as well (see attached list).

As partners, these organisations link national debates with European debates, exchange information on the positions taken by their national governments and by non-governmental actors, and share their own assessments with each other. Starting with the formal launch of the Dialogue on 23 May 2003, they will meet twice a year in Brussels to review the migration agenda, to identify priorities and to develop and maintain working relationships with the European institutions. In each country, the partners will co-ordinate a national network to disseminate information on EU policies, to link the European and national agendas and to strengthen the involvement of other non-governmental actors in the debates. This will entail the convening of one or two national meetings per year. The partners will be assisted by MPG as the European secretariat, which will monitor the EU decision-making process, prepare concise summaries of policy initiatives, and provide partners with updates on the state of negotiations in the Council. The secretariat will promote interaction between the partners, as well as the dialogue between the partners and the European institutions. While the partnership builds on an initial five-year commitment, it is open to annual review.

The partners in the European Migration Dialogue believe that migration should be incorporated into Europe's evolving economic and social policy agenda. They aim to strengthen the emerging awareness that migration should be considered as an option to address labour market and demographic imbalances, and to support pension and health care systems. Immigrants should be valued for their contribution to achieve Europe's goals in this area and such recognition will enhance their integration into society. With their 'mapping exercise' on immigration management in Europe - a series of reports to be presented in May 2003 - the partners supply the research and analysis necessary to shape the migration debate in this way.

## European Migration Dialogue Partner Organisations

Austria	Viennese Fund for Integration (Wiener Integrationsfonds)
Belgium	King Baudouin Foundation with Centre d'Etudes de l'Ethnicité et des Migrations (CEDEM-ULG) and Hoger Instituut voor de Arbeid (HIVA-KUL)
Denmark	In 2002 MS (Mellempfolkeligt Samvirke); current partner tbc
Finland	Finnish League for Human Rights (Ihmisoikeusliitto)
France	CERI (Centre d'Etudes et de Recherches Internationales) Institut Panos
Germany	DGB Bildungswerk with Interkultureller Rat (Intercultural Council)
Greece	Hellenic League for Human Rights
Hungary	Research Group on International Migration and Refugees, Research Institute on Minority Issues, Hungarian Academy of Sciences
Ireland	NCCRI (National Consultative Committee on Racism and Interculturalism)
Italy	C.I.E. (Centro di Iniziativa per l'Europa) CENSIS (Centro Studi Investimenti Sociali)
Luxembourg	ASTI (Association de Soutien aux Travailleurs Immigrés)
Netherlands	FORUM (Instituut voor Multikulturele Ontwikkeling)
Poland	CSM (Center for International Relations) ISP (Institute for Public Affairs)
Portugal	Luso-American Foundation (Fundação Luso-Americana)
Spain	CIDOB Foundation (Fundació CIDOB) Ortega y Gasset Foundation (Fundación José Ortega y Gasset)
Switzerland	UNINE (Swiss Forum for Migration and Population Studies)
UK	UKREN (UK Race and Europe Network) IAS (Immigration Advisory Service)
International partner	MPG (Migration Policy Group)

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