

European Union Law Approaches to Illegal Immigration – An Overview of Legislative and Policy Provisions

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Introduction

This paper reports on the first part of the work carried out in relation to the project “Illegal Immigration: Comparing National Legal Frameworks in Italy and the UK” and will identify, summarize and explain the most significant EU legal provisions and policy documents adopted by the European Union to regulate the phenomenon of immigration.

Documents examined are related to the specific area of the fight against illegal immigration but the analysis also extends to documents relating to other aspects of immigration phenomena in order to gain a fuller understanding of the EU’s approach to immigration related matters. Documents have been grouped by topic (although it is acknowledged that some overlap necessarily exists between topics and others may therefore have chosen to consider certain documents in other categories) and are analysed, for each of the topics, in chronological order from oldest to the most recent, in order to better understand what has been the evolution of policy and legislation of the European Union in this field, and therefore the current position.

The policy of the European Union has over the years been aimed at developing a comprehensive and flexible migration policy, focused on solidarity and responsibility, addressing the needs of both EU countries and migrants. Indeed international migration can contribute to the economic growth of the EU as a whole, as well as provide resources for migrants and their home countries, and thus contribute to their development. It can be an opportunity, because it is a factor of human and economic exchange and enables people to achieve what they aspire to. However, there is a need to manage migration in a manner that takes account of Europe’s reception capacity in terms of its labour market, housing and health, education and social services, while protecting migrants against possible exploitation by criminal networks.

For the Member States immigration is an important resource for their respective labour markets which may lack highly skilled and unskilled workers in particular. For that reason the EU has enacted legislation in this regard, trying to create a pathway for legal immigration and continuing to improve the prevention and control of illegal immigration. The EU, to make this possible, is aware of having to develop an EU policy that can help treat the root causes of illegal migration such as unemployment, poverty, lack of institutional capacity and good governance and a lack of economic prospects in the countries of origin. Moreover it has tried to develop a policy and legislation focused on integration that guarantees the rights of migrants and furthermore a policy which includes an effective and sustainable return policy. To achieve these objectives there is also a need to strengthen dialogue and partnerships with non-EU countries, both transit and origin, as will emerge from this paper, for example through bilateral agreements and exchange of information on bilateral and multilateral activities.

The guidelines of European Union policy in this field, seem to be periodically re-proposed and one concern emerging from the consideration of documents presented here, is be the lack of specificity and the vagueness of the same documents. This often seems to lead to a non-uniform interpretation of documents from Member States and may hinder the development of coherent and effective policies.

1. Illegal migration

The European Union has launched in the last ten years a series of legal provisions and policy documents containing the guidelines, objectives and legal instruments with which to operate in the fight against illegal immigration from third countries. The aim is to combat the aiding and abetting and exploitation of illegal immigration by criminal gangs through a policy designed to improve the flow of legal immigration and reduce the drivers and opportunities for illegal immigration.

For this purpose in 2001 the Council of the European Union issued a Directive¹ which harmonised the financial penalties imposed on carriers transporting into the territories of European Union countries non-EU nationals lacking the necessary admission documents. This Directive intended to combat illegal immigration through the harmonisation of financial penalties imposed by European Union countries on carriers who are breaching their obligations. In particular, it supplements Article 26 of the Convention implementing the Schengen Agreement² concerning carrier's liability and defines its application as a tool for combating illegal immigration. Carriers must ensure that non-EU nationals who intend to enter the territories of EU countries possess the necessary travel documents and, where appropriate, visas. They have the obligation to return a non-EU national in transit who has been refused entry to the territories of EU countries when the non-EU national is also refused boarding onto the carrier that was to transport them to the country of destination, or entry by the country of destination, which has sent them back to the EU country of transit. EU countries must impose dissuasive, effective and proportionate financial penalties against carriers in breach of their obligations but these financial penalties do not apply to cases where the non-EU national is seeking international protection.

The following year, the European Union decided that a common action between European Union countries in the fields of police and judicial cooperation in criminal matters is necessary for the creation of an area of freedom, security and justice. In this context EU countries took also measures to prevent the aiding of illegal immigration, and to this end, the Council of European Union issued a framework decision³ which establishes minimum rules for penalties, liability of legal persons and jurisdiction. A 2002 Directive⁴ defines exactly the facilitation of illegal immigration and states the infringements for which EU countries must adopt effective, proportionate and dissuasive criminal penalties that may include extradition.⁵ The Directive defines as infringements: assisting intentionally a non-EU country national to enter or transit through the territory of an EU country, in breach of laws; assisting intentionally, and for financial gain, a non-EU country national to reside in the territory of an EU country, in breach laws; instigating, assisting in or attempting to commit the

¹ Directive 2001/51/EC of 28 June 2001, *O.J.L* 187, 10 July 2001, p. 45-46.

² Schengen Agreement of 14 June 1985, *O.J.L* 239, 22 September 2000, p. 13-18.

³ Framework decision 2002/946/JHA of 28 November 2002, *O.J.L* 328, 5 December 2002, p. 1-3.

⁴ Directive 2002/90/EC of 28 November 2002, *O.J.L* 328, 5 December 2002, p. 17-18.

⁵ These penalties may be supplemented by other measures, such as confiscation of the means of transport, prohibition to practice the occupational activity in which the offence was committed, and deportation. Moreover certain infringements committed for financial gain must be punishable by custodial sentences.

above acts. EU countries, as already said, must adopt effective, proportionate and dissuasive sanctions for these infringements unless it relates to a first infringement, where the aim is to provide humanitarian assistance. The framework decision, established that it is the legal persons that must be held liable for infringements relating to the aiding of illegal immigration committed for their benefit by any person who has power of representation or authority to take decisions on behalf or to exercise control within the legal person. Sanctions must include criminal or non-criminal fines and may include other sanctions, such as exclusion from public benefits, temporary or definitive ban on commercial activities or even a judicial supervision or dissolution measure. EU countries must further ensure that their jurisdiction applies to infringements committed in their territory and where they do not extradite their own nationals, to infringements committed by its nationals outside of its territory. When an EU country becomes aware of infringements breaching another EU country's law on the entry and residence of aliens, it must communicate this information to the country concerned.

Another provision aimed at implementing a strategy of irregular immigration control and cooperation with Third Countries is represented by a Council Regulation⁶ issued in 2004 which established an immigration liaison officers (ILO) network. These officers are representatives of the Member States who are posted in a non Member State in order to facilitate the measures taken by the EU to combat illegal immigration. The aim of the text adopted is to pool the actions taken by the ILO and enable officers in a particular region or non-Member State to liaise with one another. The ILO maintains direct contacts with the authorities in the host country in order to improve exchanges of information concerning, for example, flows of illegal immigrants originating from or transiting through the host country, the route followed by those flows of immigrants, their *modus operandi*, and the existence of criminal organizations involved in the smuggling of immigrants. Member States inform one another, the Council and the Commission of their detachments of immigration liaison officers. ILO posted to the same country form a local network in which they exchange information and practical experience, coordinate positions to be adopted in contacts with commercial carriers, adopt common approaches as to methods of gathering information, etc. At the end of each term the Member State holding the Presidency of the Council of the European Union draws up a report for the Council and the Commission on the activities of immigration liaison officer's networks. This report constitutes the basis of an evaluation report drafted for the Council by the Commission. This evaluation report reviews the situation in each non-Member State in which ILO are posted to allow for the development of effective strategies in the future.

Through a Communication⁷ of the European Communities of 2004, the institutions and the Member States reviewed their immigration policies in response to demographic decline and ageing of the population in the European Union. One of the solutions proposed at EU level to meet the needs of the labour market is to expand economic migration. In this study, the Commission took stock of existing measures on legal immigration. The Commission study analyses the effect of a legal migration policy on illegal migration flows and on cooperation with third countries in the fight against illegal immigration. The study first describes the existing measures for managing legal immigration, and then analyses the relationship between legal and illegal migration flows.

⁶ Regulation EC No 377/2004 of 19 February 2004, *O.J.L* 64, 2 March 2004, p. 1-4.

⁷ COM/2004/412 of 4 June 2004 of the Commission of the European Communities, website EUR-Lex.europa.eu.

The admission of third country nationals for the purposes of employment varies from one Member State to another, as it is governed by their domestic legislation designed to respond to different migratory trends. Third-country nationals wishing to work in the EU must satisfy certain criteria. The study carried out by the Commission shows that it is difficult to assess legal migration flows on the one hand, and to estimate labour market needs on the other. The report nevertheless estimates that migration for the purpose of employment currently accounts for less than 15% of persons admitted to Member States. Most third country nationals legally admitted to the EU enter by way of family reunification or humanitarian protection. So the Member State introduced several methods of regulating and increasing legal immigration through work. Several Member States have concluded bilateral employment agreements. Their purpose was to meet labour shortages. They may also be concluded, however, in order to improve relations with third countries, reinforce historical and cultural links, improve the management of migration flows or combat illegal immigration. Another method involves a system of quotas, in this case the governments that determine annual quotas after consulting business, employers' organizations, trade unions and employment agencies.⁸ Some Member States also apply regularization measures: there are temporary regularizations and definitive regularizations. The study found that some Member States consider that it is necessary to regularize certain migrants who do not have the normal criteria for a residence permit. There are also countries that carry out regularizations on "humanitarian" or "protection" grounds.⁹

Regarding the relationship between legal and illegal immigration the study examines the impact of bilateral agreements, visa policy and cooperation with third countries on illegal immigration flows. As regards agreements, the study concludes that in most Member States there is no direct link between the introduction of bilateral schemes and a reduction in illegal migration flows. Another way in which migrant flows have traditionally been regulated is through changes in visa policy, the Commission states that it seems that the introduction of visa in neighboring third countries limits entry into the EU via those countries. The Commission considers that cooperation with third countries is vital in reducing illegal immigration flows although the study revealed a clear lack of reliable and comparable data at EU level. It considered the possibility of setting up a permanent structure with an appropriate legal basis in order to monitor and analyze the phenomenon of migration and asylum in its different dimensions. As regards the measures to be taken to manage legal immigration, the Commission considers that the study on the relationship between legal and illegal immigration shows that regularization should not be regarded as a way of managing migration flows. Therefore it would recommend that wide-scale regularization measures be avoided or confined to very exceptional situations. It also considers that strengthening the integration of third country nationals legally residing in the Member States is an essential objective for the EU. The study shows that some level of illegal migration is likely to persist in the EU. The Commission

⁸ The Commission study shows that many Member States criticize the lack of flexibility of this system and fear that they are limiting their ability to respond to labor market needs. In the Commission's opinion, preferential quotas can facilitate cooperation with some third countries in the short term but also liable to hamper cooperation with other third countries in the long term as they have a discriminatory effect.

⁹ The Commission study looked at the effectiveness of regularization programs not only for the migrants concerned but also for the States; whilst such programs allow better population management, tackle the problem of illegal working and thus increase public revenue, the Commission concludes that such regularizations nonetheless offer a form of encouragement to illegal immigration.

therefore stresses that the fight against illegal immigration must remain an essential part of migration management and proposes also to develop a Community return policy aimed at the durable reintegration of illegal immigrants in their country of origin or of residence. It intends, lastly, to strengthen cooperation with countries of origin and transit countries in order to reduce the flows of illegal immigration. It proposes establishing partnerships that take account of the interests and expectations of the two parties and to pool all the information available on legal migration channels available to third country nationals and it proposes developing training programs in the countries of origin to enable third country nationals to acquire skills which are needed in the EU.

Subsequently, in 2006, the Commission submitted a Communication¹⁰ which presented possible solutions and measures for the priority areas of EU policy on combating illegal immigration. Regarding cooperation with third countries, the goal was to improve dialogue and cooperation on immigration with non-EU countries, particularly those of Saharan Africa and the Mediterranean countries falling within the scope of the EU's neighborhood policy. The Commission has stated that the EU has to continue to address the push-factors for illegal immigration, such as poverty, conflict and environmental degradation. Migration aspects have to continue to be integrated into the EU's strategies for assisting developing countries, in close partnership with the countries concerned. Where appropriate and by mutual agreement, the EU has to help partners in the developing world to enhance their capacity to better manage migration flows and fight against human trafficking. Further, a common understanding of integrated border management has to be developed to cover the full spectrum of border management activities at EU level. This approach would include the identification of best practices for an integrated border management model. As it has done in the 2004 Communication introduced above, the Commission proposed establishing partnerships that take account of the interests and expectations of all parties and to pool all information available on legal migration channels available to third country nationals and it proposed developing training programs in the countries of origin to enable third country nationals to acquire skills which are needed in the EU.

Another important area to consider in relation to illegal immigration is the fight against human trafficking. The Council action plan on trafficking in human beings¹¹ and the Commission Policy Plan on legal immigration¹² are examples of developing coordination and cooperation mechanisms and developing guidelines for data collection in order to better understand this area. Through its development policy the Commission stated that they have to continue funding measures addressing the factors that make some people vulnerable to trafficking, such as poverty, discrimination and lack of access to basic and higher education.

¹⁰ COM/2006/402 of the 19 July 2006 of the Commission of the European Communities, website EUR-Lex.europa.eu

¹¹ Proposal for a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union of the 14 June 2002 of the European Council, *O.J.C. 142*, 14 June 2002, p. 23-36.

¹² COM/2005/669 of the 21 December 2005 of the Commission of the European Communities, web-site EUR-Lex.europa.eu

To combat illegal employment, which often follows trafficking, the Commission recommended that Member States adopt and implement measures requiring employers to verify the immigration status of third country nationals before offering employment. Member States have to also apply effective sanctions for breaches of legislation in particular on health and safety at the workplace. In this regard, a 2009 Directive was enacted which requires Member States to prohibit the employment of illegally staying non-EU nationals¹³, it will be analyzed subsequently. Once fully adopted it will lay down common minimum standards on sanctions against employers who infringe the prohibition.¹⁴ The carrier's liability Directive 2001/51/EC, discussed above, and Council Directive 2004/82/EC¹⁵ on the obligation of carriers to communicate passenger data are also relevant instruments in the fight against human trafficking.

In 2004 another Directive¹⁶ which supplements a range of European level measures designed to combat trafficking in human beings, including Council Framework Decision 2002/629/JHA¹⁷ on combating trafficking in human beings and Council Directive 2002/90/EC¹⁸ defining of unauthorized entry, transit and residence was adopted. The Directive defines the conditions for granting residence permits of limited duration to non-European Union nationals who are victims of human trafficking or the subject of an action relating to the smuggling of people and who cooperate in the fight against these crimes. The permit may be granted to non-EU nationals even if they have illegally entered the territory of an EU country. The Directive applies to non-EU nationals who have reached the age of majority set out by the law of the EU country concerned. However, EU countries may decide to apply this Directive to minors under the conditions laid down in their national law.¹⁹

To be able to take an informed decision on their cooperation with the investigating authorities, non-EU nationals are granted a reflection period that allows them to recover and to escape the influence of the perpetrators of the offences. During the reflection period, the non-EU national concerned may not be made subject to any expulsion order, will have access to accommodation and to medical and, if appropriate, psychological treatment, will have access to translation and interpreting services, if necessary, will have access to free legal aid, if provided for in national law. The competent authorities are responsible for assessing whether the presence of the victim serves a useful purpose for the investigation, victim has shown a clear intention to cooperate, victim has severed all relations with those suspected of the given offences. The non-EU national concerned must also be given access to integration programs designed to help him/her integrate in the host country or to prepare for his/her return to the country of origin.

¹³ Directive 2009/52/EC of 18 June 2009, *O.J.L.* 168, 30 June 2009, p. 24-32.

¹⁴ Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 20 July 2011.

¹⁵ Directive 2004/82/EC, of 29 April 2004, *O.J.L.* 261, 6 August 2004, p.24-27.

¹⁶ Directive 2004/81/EC, 29 April 2004, *O.J.L.* 261, 6 August 2004, p. 3-3.

¹⁷ 2002/629/JHA, 19 July 2002, *O.J.L.* 203, 1 August 2002, p.1-4.

¹⁸ Directive 2002/90/EC, 28 November 2002, *O.J.L.* 328, 5 December 2002, p. 17-18.

¹⁹ Specific measures are laid down for unaccompanied minors, such as regarding access to education and legal representation.

EU countries may make the issuing of the permit conditional upon participation in these programs.²⁰ The residence permit may be withdrawn for reasons relating to public policy and national security, abuse and fraud. It may also be withdrawn if the victim renews contacts with those suspected of committing the offences or ceases to cooperate or when the proceedings are discontinued. A communication²¹ of 2010 complains of some deficiencies in the correct application of the Directive. The number of victims of trafficking in human beings is much higher than the number of temporary residence permits issued on the basis of this Directive per year. Consequently, the impact of the Directive in protecting victims and dismantling traffickers' networks seems to be limited. EU countries should provide victims a better access to information on the opportunities provided by the Directive. Furthermore, they should fully comply with the provisions concerning treatment of victims during the reflection period.

Still in the year 2006, to put an end to the increasing smuggling of migrants by land, air and sea, the Council decided to promote cooperation and information-sharing among the Member States that are parties to the Protocol against the smuggling of Migrants by land, air and sea,²² through appropriate measures at the regional, national and international level. This Decision²³ supplements the United Nations Convention against Transnational Organized Crime²⁴ and is to be interpreted together with that convention. The purpose of this decision is to prevent and combat the smuggling of migrants. The Council recalled that the smuggling of migrants can endanger the lives or security of the migrants concerned, and invites the States that are party to the Protocol to cooperate with each other and with international organization to prevent and suppress these activities. Moreover it states that the Parties have to work towards strengthening their borders and are entitled to deny entry to persons implicated in the smuggling of migrants. States with common borders or lying on routes used by criminal groups are required to exchange information. The States have to provide specialized training for immigration officials in preventing the smuggling of migrants, in the humane treatment of such persons and in protecting their rights. Those with relevant expertise and appropriate technical resources should help States that are frequently countries of transit for migrants. They agree to cooperate with each other and with competent international organization and other elements of civil society to assure adequate personnel. The States have to provide public awareness-raising campaigns and promote development programs and cooperation on a regional, national and international level to combat the root causes of this traffic, notably poverty and underdevelopment; they have to take measures to protect migrant's right to life and their right not to be subjected to inhuman or degrading treatment, taking into account special needs of women and children. The States agree to facilitate the return of individuals who have been the object of

²⁰ EU countries must give due consideration to the conditions faced by persons with special needs, such as pregnant women, the disabled and victims of rape or other forms of violence.

²¹ COM/2010/493 of 15 October 2010 of the European Commission, website EUR-Lex.europa.eu.

²² Decision 2006/617/EC of 24 July 2006, *O.J.L.* 262, 22 September 2006, p. 34-43.

²³ Decision 2006/616/EC of 24 July 2006, *O.J.L.* 264, 8 October 2005, p. 8-15.

²⁴ Decision 2004/579/EC of 6 August 2004, *O.J.L.* 261, 6 August 2004, p. 70-115.

smuggling and who are its nationals, including by providing the necessary documents, and with due regard for their dignity and safety.²⁵

As mentioned before, more recently, the Council, with Directive 2009/52/CE²⁶ targets the employment of non-EU nationals who are illegally staying in the European Union, in order to counteract illegal immigration. It provides for minimum common standards on sanctions and other measures (for example disqualification from public benefits) and, in serious cases, criminal penalties against employers of said nationals. The employers are obliged to require non-EU nationals to produce a residence permit or another authorization to stay before taking up employment, keep copies of the permit or authorization for the duration of the employment, in case of inspection by the national authorities and notify the authorities within the period established by the Member State when they employ a non-EU national. Member States must ensure that infringements are subject to effective, proportionate and dissuasive sanctions. The financial sanctions may be reduced for individuals employing illegally staying non-EU nationals for private purposes, provided that the working conditions were not exploitative.²⁷

The EU in combating illegal immigration seems to be focused on a policy of cooperation with third countries so as to strengthen the fight against illegal migration from those countries. Also, it seems to consider as an effective strategy the development of legal immigration, especially by increasing and facilitating the regularization of those who enter a Member State for work purposes and, also sanctioning the employers who take on illegal immigrants in the EU.

2. Schengen, Border Control and Regulating Entry

Closely related to the phenomenon of immigration is the prediction of freedom of movement of persons. The Europe of rights must be an area in which citizens and their family members may exercise in full the right to free movement.²⁸ Indeed during the 1980 a debate began among Member States over the meaning of free movement of persons: some Member States felt the

²⁵ In this Protocol affects the other rights, obligations and responsibilities of the States, dispute concerning the interpretation or application of the Protocol should be settled through negotiation and, failing that, through arbitration. If no agreement is reached, the dispute is referred to the International court of Justice.

²⁶ Directive 2009/52/EC of 18 June 2009, *O.J.L. 168*, 30 June 2009, p. 24-32.

²⁷ Member States must put in place the necessary mechanisms where by illegally employed non-EU national may claim any outstanding remuneration from their employers. The non-EU nationals must be informed of their rights before their return is enforced. Member States must ensure that employers are also, if appropriate, subject to other measures. Moreover, in the cases indicated in the document, an intentional infringement constitutes a criminal offence. Those working in particularly exploitative conditions may be issued residence permits for the duration of their proceedings on a case-by-case basis, under arrangements comparable to those provided for by directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings and who cooperate with the competent authorities.

²⁸ Stockholm Program of 4 May 2010 of the European Council, *O.J.C. 115*, 4 May 2010, p. 1-38. See further below.

concept should apply to European Union citizens only, which would involve keeping internal border checks in order to distinguish between citizens of the EU and non-EU nationals; others argued in favor of free movement for everyone, which would mean an end to internal border checks altogether. In 1985 France, Germany, Belgium, Luxembourg and Netherlands decide to create the “Schengen area”²⁹, a territory without internal borders. This area represents a territory where the free movement of persons is guaranteed. The signatory states to the agreement have abolished all internal borders in lieu of a single external border.

As is apparent from the discussion which follows, the Schengen area imposes common rules and procedures with regard to visas for short stays, asylum requests and border controls. At the same time, to guarantee security within the Schengen area, cooperation and coordination has been incorporated into the European Union legal framework by the Treaty of Amsterdam of 1997, but not all countries cooperating in Schengen are parties to the Schengen area. This is either because they do not wish to eliminate border controls or because they do not yet fulfill the required conditions for the application of the Schengen *acquis*.³⁰

Regarding this aspect of freedom of movement in 2004, the Council of European Union, stated through a Directive³¹, that air carriers are required to communicate information concerning their passengers travelling to a European Union border crossing. This information is supplied, at the request of the authorities responsible for carrying out checks on persons at the external borders of the EU, to improve border control and to combat illegal immigration more effectively. Carriers are required to transmit the following information: number and type of travel document used, nationality, name and date of birth of the passenger, border crossing point of entry into the EU, departure and arrival time of the transportation and total number of passengers carried. Member States must adopt dissuasive, effective and proportionate sanctions, should carriers fail to comply

²⁹ From the name of the town in Luxembourg where the first agreements were signed. Moreover regarding Schengen System, the second generation Schengen information System (SIS II) former 3rd pillar decision (decision 2007/533/JHA of 12 June 2007, *O.J.L. 205*, 7 August 2007, p. 63-84) have replaced the current system until 2007, providing enhanced functionalities. It is currently undergoing extensive testing in close cooperation with European Union countries and associated countries participating in the Schengen area. The SIS II decision constitutes the necessary legislative basis for governing SIS II for matters falling under Title VI of the Treaty on European Union (former third pillar). It includes provisions on the technical aspects and operation of SIS II, responsibilities of the management authority and of participating countries, processing of data relating to alerts that will be contained in the system and conditions for data access and protection. More specifically, it defines the alerts on persons and object that will be entered in SIS II for facilitating police and judicial cooperation in criminal matters. It also includes provisions on the conditions and procedures for issuing these alerts and on the authorities that will have a right to access this data.

³⁰ The Schengen Agreement was signed in Schengen on 14 June 1985 between Belgium, France, Germany, Luxembourg and Netherlands. The Schengen Agreements have been extended over time to the other Member States: Italy has signed agreements in 1990, Spain and Portugal in 1991, Greece in 1992, Austria in 1995 and Finland, Sweden and Denmark (via an adaption of the special status) in 1996. Ireland and United Kingdom participate, on the other hand, only partially in the Schengen *acquis*, as controls were maintained at their borders. Iceland and Norway are part of the Schengen area since 1996. Their participation in decision making is limited. Switzerland joined the land borders on 12 December 2008.

³¹ Directive 2004/82/EC of 29 April 2004, *O.J.L. 261*, 6 August 2004, p. 24-27.

with this obligation. Such sanctions are applicable to carriers which, as a result of fault, have not transmitted data or have transmitted incomplete or false data.

2004 saw the adoption of the Citizens' Rights Directive³² on the right of citizens of the Union to move and reside freely within the Member States, which brings together the piecemeal measures found in the complex body of legislation and case law that had governed this matter. The new measures are designed, among other things, to encourage Union citizens to exercise their right to move and reside freely within Member States, to cut back administrative formalities to the bare essentials, to provide a better definition of the status of family members, to limit the scope for refusing entry or terminating the right of residence and to introduce a new right of permanent residence. This Directive is designed to regulate the conditions in which Union citizens³³ and their family exercise their right to move and reside freely within the Member States, the right of permanent residence, restrictions on the aforementioned rights on grounds of public policy, public security or public health. Regarding the right to move and the right of residence for up to three months, all Union citizens have the right to enter another Member State by virtue of having an identity card or valid passport. Under no circumstances can an entry or exit visa be required. Where the citizens concerned do not have travel documents, the host Member State must afford them every reasonable means in obtaining the requisite documents or having them sent. Family members who do not have the nationality of a Member State enjoy the same rights as the citizen who they have accompanied. They may be subject to a short-stay visa requirement under Regulation EC No 539/2001. Residence permits will be deemed equivalent to short-stay visas.³⁴

The right of residence for more than three months remains subject to certain conditions, for example either the requirement to be engaged in economic activity (on an employed or self-employed basis), or have sufficient resources and sickness insurance, or be following vocational training as a student and have sufficient resources and sickness insurance, or be a family member of a Union citizen who falls into one of the above categories.

Residence permits are abolished for Union citizens.³⁵ Family members of Union citizens who are not nationals of a Member State must apply for a residence permit for family members of Union citizens.

³² Directive 2004/38/EC of 29 April 2004, *O.J.L. 158*, 30 April 2004, p. 77-123. This directive is on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending regulation EEC No 1612/68 and repealing directives 64/221/EEC, 68/360/ECC, 72/194/EEC, 73/148/EEC/ 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC.

³³ Union citizen are any person having nationality of a Member State.

³⁴ For stays of less than three months, the only requirement on Union citizens is that they possess a valid identity document or passport. The host Member States may require the persons concerned to register their presence in the country within a reasonable and non-discriminatory period of time.

³⁵ However, Member States may require them to register with the competent authorities within a period of not less than three months as from the date of arrival. Proof of registration will be issued immediately on presentation of: an identity card or valid passport, proof that the above conditions are complied with, see Article 9 of the directive on the proof required for each category of citizen. Union citizens engaged in training must show, by means of a statement or any other means, that they have sufficient resources for themselves

These permits are valid for five years from their date of issue. Union citizens acquire the right of permanent residence in the host Member State after a five year period of uninterrupted legal residence, provided that an expulsion decision has not been enforced against them. This right of permanent residence is no longer subject to any conditions³⁶. Union citizens who so request receive a document certifying their right to permanent residence. The Member States issue to third country family members permanent residence permits which are valid indefinitely and renewable automatically every ten years no later than six months after the application is made.

In order to give full effect to the provisions on the right of residence and right of permanent residence, the Union citizens qualifying for the right of residence or the right of permanent residence and the members of their family also benefit from equal treatment with host-country nationals in the areas covered by the Treaty. However, the host Member State is not obliged to grant entitlement to social security during the first three months of residence to persons other than employed or self-employed workers and the members of their family.

Union citizens or members of their family may be expelled from the host Member State on grounds of public policy, public security or public health. Under no circumstances may an expulsion decision be taken on economic grounds. Measures affecting freedom of movement and residence must comply with the proportionality principle and be based exclusively on the personal conduct of the individual concerned. Such conduct must represent a sufficiently serious and present threat which affects the fundamental interests of the State. The mere fact that the entry documents used by the individual concerned have expired does not constitute grounds for such a measure³⁷. Member State may adopt the necessary measures to refuse, terminate or withdraw any right conferred by this Directive in the case of abuse of rights or fraud, such as marriages of convenience.

In May 2002 with a communication entitled "Towards integrated management of the external borders of the Member States of the European Union"³⁸, the Commission advocated the setting-up of an "external borders practitioners common unit" tasked with managing operational cooperation at Member states external borders. Regulation 2007/2004 established³⁹ the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union "FRONTEX" to improve the integrated management of the Union's external

and for the members of their families to ensure that they do not become a burden on the social services of the host Member State. This will be sufficient to prove that they comply with the resources condition.

³⁶ The same rule applies to family members who are not nationals of a Member State and who have lived with a Union citizen for five years. The right of permanent residence is lost only in the event of more than two successive year's absence from the host Member State.

³⁷ In any event, before taking an expulsion decision, the Member State must assess a number of factors such as the period for which the individual concerned has been resident, his or her age, degree of integration and family situation in the host Member State and links with the country of origin. Only in exceptional circumstances, for overriding considerations of public security, can expulsion orders be served on a Union citizen if he has resided in the host country for ten years or if he is a minor.

³⁸ COM/2002/233 of 7 May 2002 of the European Communities, website EUR-Lex.europa.eu.

³⁹ Regulation EC No 2007/2004 of 26 October 2004, *O.J.L.* 349, 25 November 2004, p.1-11.

borders.⁴⁰ Although responsibility for the control and surveillance of external borders lies with Member States, the agency will facilitate the application of existing and future EU measures relating to the management of these borders. In this context “external borders” means Member States’ land and sea borders, airports and seaports to which the provisions of EU law on the crossing of external borders by persons apply.

The main tasks of the agency are for example to coordinate operational cooperation between Member State as regards the management of external borders, develop a common integrated risk assessment model and prepare general and specific risk assessments, monitor research relevant to the control and surveillance of external borders, assist Member States in circumstances requiring increased technical and operational assistance at external borders, provide Member States with the necessary support to organize joint return operations, and to deploy Rapid Border Intervention Teams to Member States under urgent and exceptional pressure due to, for example, a massive influx of illegal immigration. Without prejudice to the competencies of the agency, Member States may continue cooperation at an operational level with other Member States and /or third countries where such cooperation complements the action of the agency. Member States must report to the agency on such activities where they are conducted outside the framework of the agency.

The agency is an EU body with legal personality and it is independent in relation to technical matters and is managed and represented by its executive director who is independent in the performance of his duties and is assisted by a deputy executive director. The management board also adopts the agency’s general report, work program and staffing policy and establishes the agency’s organizational structure. It is composed of one representative from each Member State and two Commission representatives; each Member State also appoints an alternative, while the Commission appoints two alternatives. Countries associated with the implementation, application and development of the Schengen *acquis* participate in the agency and appoint a representative and an alternate to the management board.

With a communication⁴¹ in 2010 the Commission of the European Communities proposed changes to the Regulation of FRONTEX: the proposal aimed to adapt the rules according to evaluations carried out and practical experience in order to clarify the mandate of the Agency and to correct the deficiencies detected. The main changes proposed to Regulation EC No 2007/2004 correspond to the changes needed to implement the preferred option of the impact assessment. It then introduced a smaller number of changes essentially administrative to take into account the recommendations of the Board of Directors, and new provisions of the standard used in other proposals of the Commission establishing new agencies.

⁴⁰ This regulation is exactly in response to the request made by the Thessaloniki European Council in its conclusions of 16 and 17 October 2003; it builds on the experience gained from cooperation between Member States within the common unit over which the agency takes responsibility for coordinating operational cooperation.

⁴¹ COM/2010/61 of the 24 February 2010 of the European Parliament and the Council, website EUR-Lex.europa.eu.

In 2006 with a Regulation⁴², the European Parliament and the Council established a Community Code on the rules governing the movement of persons across borders “Schengen Borders Code”. This regulation modified existing legislation on border checks carried out on people; it intended to improve the legislative part of the integrated border management policy by setting out the rules on crossing external borders and on reintroducing checks at internal borders. This regulation applies to any person crossing the internal or external borders of a European Union country.

External borders may be crossed only at border crossing-point and during the fixed opening hours: when crossing an external border, European Union citizens and other persons enjoying the right of free movement within the EU (for example as the family members of an EU citizen) undergo a minimum check. This check is carried out to establish their identity on the basis of their travel documents and consists of a rapid and straight forward verification of the validity of the documents and check for signs of falsification or counterfeiting. Non-EU country nationals are subject to thorough checks. These comprise a verification of the conditions governing entry, including verification in the Visa Information System and, if applicable, of documents authorizing residence and the pursuit of a professional activity.⁴³

The travel documents of non-EU country nationals are systematically stamped upon entry and exit. Border checks are carried out by border guards and when performing their duties, border guards must fully respect human dignity and may not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. Indeed EU country must deploy appropriate staff and resource in sufficient numbers to ensure a high and uniform level of control at their external borders. They must ensure that border guards are specialized and properly trained professionals. EU countries assist each other with the effective application of border controls. Operational cooperation is coordinated by FRONTEX.

Regarding internal borders, irrespective of nationality, any person may cross the internal borders at any crossing-point without checks being carried out. The police may exercise their powers in border zones in the same fashion as elsewhere in their territory, provided that this is not equivalent to the exercise of border checks. EU countries must move all obstacles to fluid traffic flow at road crossing-points at international borders. Where there is a serious threat to public policy or internal security, an EU country may exceptionally reintroduce border controls at its internal borders for, in principle, a limited period of no more than thirty days. If such controls are to be reintroduced, the other EU countries and the Commission should be informed as soon as possible. The European Parliament should also be informed. Consultation takes place between EU countries and the Commission at least fifteen days before the planned date for the reintroduction of border controls, in order to organize mutual cooperation and to examine the proportionality of the measure to the events giving

⁴² Regulation EC No 562/2006 of 15 March 2006, *O.J.L. 105*, 13 April 2006, p. 1-32.

⁴³ For stay not exceeding three months for a six-month period, a non-EU country national must: possess a valid travel document, possess a valid visa, if required, justify the purpose of it intended stay and sufficient means of subsistence, not have an alert issued for it in the Schengen Information System for the purpose of refusing entry, not be considered a threat to public policy, internal security, public health or the international relations of EU countries. If these conditions are not met, entry to the territory is refused, unless special provisions apply.

rise to the reintroduction. The decision to reintroduce border controls at internal borders must be taken in a transparent manner and the public must be informed in full, unless there are overriding security reasons for not doing so. Under exceptional circumstances, the EU country concerned may reintroduce checks at its internal border immediately, if required by considerations of public order or national security. The other EU countries and the Commission are then notified accordingly.

In 2006 the Council of the European Union highlighted the will to defend the EU's external maritime borders.⁴⁴ Indeed this communication sets out operational measures designed to combat illegal immigration, protect refugees and set up controls at, and surveillance of, the EU's external maritime borders. It proposes maximizing the capacity of FRONTEX, establishing a Coastal Patrol Network, developing a European surveillance system, setting up expert team to carry out an initial assessment of each person intercepted and maximizing the use of Community financial resources. The Communication sets out the Commission's main recommendations to improve the management of the southern maritime external borders, for example the Commission recommends that Regulation 377/2004, previously discussed, on the creation of the Immigration Liaison Officer Network be amended to give FRONTEX access to the information gathered by liaison officers on a systematic basis and to allow for the participation of FRONTEX in their meetings, the Member States be encouraged to pool technical equipment, FRONTEX should report on a regular basis to the Council and the Commission on achievements in this area, draw up a working arrangement with relevant international organization, such as the UN High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM).

Regarding a Coastal Patrol Network the Commission recommends, for example, that a permanent coastal patrol network be set up at the external southern maritime frontiers. It is suggested that a European Surveillance System for borders "EUROSUR" be created; it could, as a first step, link up the existing national surveillance system currently in use at the southern maritime external borders. It would then gradually replace the national surveillance system at land and maritime borders.

The Commission intended to improve the capacity to deal with mixed flows and thus proposed that a pool of experts from Member State administrations be made available for deployment at short notice to carry out an initial assessment of individual cases at points of arrival, in particular regarding the state of health of immigrants and the identification of persons who may need international protection or who may be returned to their countries of origin or transit. The asylum expert teams that would be established from this pool would assist the requesting Member State on a temporary basis in performing this initial profiling through the provision, in particular, of interpretation services and advice on case handling. They might, if necessary, include officials of relevant international organization such as the UNHCR. It proposes that continued thought be given to the role which a possible European support office for all forms of cooperation between Member States relating to the Common European Asylum System might play in the setting up of such teams. In this

⁴⁴ COM/2006/733 of 30 November 2006 of the Council of the European Union, website [EUR-Lex.europa.eu](http://eur-lex.europa.eu)

communication the Commission proposes the operational implementation of the international law of the sea.⁴⁵ Moreover it proposes maximizing the use of European Community financial means.⁴⁶

Subsequently, in 2007, the European Parliament and the Council adopted a Regulation⁴⁷ that established a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation EC No 2007/2004, discussed above. This regulation sets up a system providing enhanced technical and operational assistance for a limited period, in the form of rapid-reaction intervention teams including guards from other Member States. The teams will intervene at the request of any Member State faced with urgent and exceptional situations resulting from a mass influx of illegal immigrants. Team members responsible for carrying out monitoring and surveillance activities at the external borders must comply with Community law and the national law of the host Member State; during the mission they are placed under the responsibility of the host Member State, they follow its instructions and take action in the presence of national border guards.

The Commission, more recently, continued to propose solutions to affront the problem of border surveillance. For this reason, in 2008, the Commission through a Communication⁴⁸, more specifically repeats what has already been suggested in the COM/2006/733 noted above. The Communication outlines a three-phase common technical framework for setting up a European border surveillance system "EUROSUR", designed to support the Member States in their efforts to reduce the number of illegal immigrants entering the European Union by improving their situational awareness at their external borders and increasing the reaction capability of their information and border control authorities. The communication examines the parameters within which a European border surveillance system (EUROSUR), focusing initially on the Union's southern and eastern maritime borders, could be developed, and proposes a roadmap for setting up such a "system of systems" over the next few years. It focuses on enhancing border surveillance in order to: reduce the number of illegal immigrants who enter the European Union undetected, reduce the number of deaths of illegal immigrants by saving more lives at sea, and increasing the internal security of the EU as a whole by contributing to the prevention of cross-border crime.

⁴⁵ For example regional agreements could define the right of surveillance and interception of vessels in the territorial waters of relevant countries of origin and transit, smoothing the way for the implementation of joint operations by FRONTEX, the scope of protection of the Member States obligations flowing from the respect of the principle of non-refoulement in the many different situations where their vessels implement interception or search and rescue measures be examined. It proposes that practical instructions be drawn up to determine the circumstances under which a Member State may be obliged to assume responsibility for the examination of an asylum claim when engaged in joint operations or in operations taking place within the territorial waters of another Member States or on the high seas.

⁴⁶ The budget of the FRONTEX Agency will be used to finance joint operations and pilot project with Member States at the external frontiers, including the establishment of a Coastal Patrol Network, regional command centres and a specialised branch for maritime borders in the region

⁴⁷ Regulation EC No 863/2007 of 11 July 2007, *O.J.L.* 1999, 31 July 2007, p. 30-39.

⁴⁸ COM/2008/68 of 13 February 2008 of the Commission of the European Communities, website EUR-Lex.europa.eu.

A European border surveillance system should help the Member States achieve full awareness of the situation at their external borders and enhance the reaction capability of their law enforcement services. One essential operational objective must be to create an information-sharing (excluding personal data) environment among national and European system. EUROSUR could be implemented in three phases: the first to interconnect and rationalize border surveillance systems at national level⁴⁹, the second to improve the performance of surveillance tools at EU level,⁵⁰ the third to create a common monitoring and information-sharing environment for the EU maritime domain.⁵¹ Phase 1 and 2 should be limited to external land and sea borders, while Phase 3 should focus exclusively on the maritime domain. The aspects of this communication dealing with surveillance of external maritime borders form part of the overall framework set by the Integrated Maritime Policy⁵² for the European Union.

Moreover in February 2008, the Commission prepared the next steps in border management in the European Union with COM/2008/69.⁵³ In the framework of the European strategy for integrated border management, the Commission floats the idea of new tools: measures benefiting bona fide travelers from non-EU Member Countries, EU entry/exit registration system, automated gates for checking travelers based on biometric identifiers, and an electronic system of travel authorization for non-EU Member Country nationals not requiring visas before travelling to a Member State.

In 2010 the Council of the European Union, published a Decision⁵⁴ which established a Standing Committee to promote and strengthen operational cooperation on internal security within the European Union and details the committee's responsibilities. This decision creates a standing Committee with the objective of facilitating, promoting and strengthening the operational cooperation of the relevant national authorities of the European Union countries in the field of internal security. The Standing Committee will ensure an effective cooperation and coordination in areas covered by police and customs cooperation, and by external border control authorities. Where appropriate, it will also cover judicial cooperation in criminal matters when relevant to operational cooperation in the area of internal security. The Standing Committee will assess the efficiency of the

⁴⁹ External Borders Fund credits could be used to modernize and expand national border surveillance system and create national external border control coordination centres in the Member States forming the eastern and southern maritime borders of the EU; a secured computerized communication network should be set up to exchange data and facilitate the coordination of activities between national centres and with FRONTEX.

⁵⁰ European research and development program could be targeted towards improving the performance of surveillance tools and sensors, moreover, the shared application of surveillance tools could provide Member States authorities with more frequent and more reliable surveillance information on their external borders and pre-frontier area.

⁵¹ The objective here would be to integrate into a broader network all existing sectorial systems reporting and monitoring traffic and activities in sea areas under the jurisdiction of the Member States and in adjacent high seas, thus allowing border control authorities to take advantage of the integrated use of these various systems.

⁵² COM/2006/733 of 30 November 2006 of the Commission of the European Communities, web-site EUR-Lex.europa.eu

⁵³ COM/2008/69 of 13 February 2008 of the Commission of the European Communities, website EUR-Lex.europa.eu.

⁵⁴ Decision 2010/131/EU of 25 February 2010, *O.J.L. 52*, 3 March 2010, p.50-50.

operational cooperation, identify any failing and then recommend appropriate action to address the shortcomings. The standing Committee will not be involved in the conducting of operations or in the preparation of legislative acts. It will help ensure consistency in action taken by FRONTEX and other relevant bodies.

In 2010, the Council of the European Union decides to integrate the Schengen Borders Code as regards the surveillance of maritime external borders in the context of cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.⁵⁵ Also in 2010 the Stockholm Program is determined⁵⁶ which sets out the European Union's priorities for the area of justice, freedom and security for the period 2010-2014. Building on the achievements of its predecessors the Tampere⁵⁷ and Hague⁵⁸ programs, it aims to meet future challenges and further strengthen the area of justice, freedom and security with actions focusing on the interests and needs of citizens. In order to provide a secure Europe where the fundamental rights and freedoms of citizens are respected, the Stockholm Program focuses on several priorities: Europe of rights, Europe of justice, Europe that protects access to Europe, Europe of solidarity and Europe in a globalised world.

The EU must further develop its integrated border management and visa policies to make legal access to Europe efficient for non-EU nationals, while ensuring the security of its own citizens. Strong border controls are necessary to counter illegal immigration and cross-border crime. At the same time, access must be guaranteed to those in need of international protection and to vulnerable groups of people, such as unaccompanied minors. Consequently, the role of FRONTEX must be reinforced so that it can respond more effectively to existing and future challenges. The Schengen System and the Visa information System are also essential for reinforcing the system of external border controls and must therefore be made fully operational. Work must also continue on the development of the common visa policy and on intensifying regional consular cooperation.

The Stockholm Program is implemented through an action plan that was to be adopted by June 2010. The action plan⁵⁹ provides a roadmap for the implementation of political priorities set out in the Program for the area of justice, freedom and security between 2010-2014. It aims to deliver those priorities as well as to prepare for future challenges both at European and global level. In particular this action plan provides for measures to ensure the protection of fundamental rights; these consist of reinforcing data protection law through a new comprehensive legal framework, as well as of incorporating data protection into all EU policies, law enforcement, crime prevention and

⁵⁵ Decision 2010/252/EU of 26 April 2010, *O.J.L. 111*, 5 May 2010, p. 31-37.

⁵⁶ Stockholm Program of 4 May 2010, *O.J.L. 115*, 4 May 2010, p. 1-38.

⁵⁷ *Area of freedom, security and justice: assessment on the Tampere Program and new guidelines*, communication from the Commission of the European Communities to the Council and the European Parliament, COM/2004/401 of 2 June 2004, website EUR-Lex.europa.eu.

⁵⁸ *The Hague Programme: ten priorities for the next five years, the Partnership for European renewal in the field of freedom, security and justice*. It is a communication from the Commission to the Council and the European Parliament of 10 May 2005, COM/2005/184 of 10 April 2005, website EUR-Lex.europa.eu.

⁵⁹ COM/2010/171 of 20 April 2010 of the European Commission, website EUR-Lex.europa.eu

international relations, and provides for measures to empower European citizens, in particular as regards the right to free movement and protection in non-EU countries and civic participation.

In relation to access to Europe, the Commission will take actions to further develop the integrated approach to managing the EU's external borders. These include legislative proposal to modify FRONTEX,⁶⁰ the Schengen Borders Code and EUROSUR. The Commission will also propose the setting up of an Entry Exit System "EES" and Registered Traveler Program "RTP". Furthermore, the Commission will continue with visa liberalization by negotiating Visa Facilitation Agreements with non-EU countries, as well as with the launch of the Visa Information System "VIS". Moreover the Commission intends to pursue a dynamic and comprehensive immigration policy, which will consist of actions that: further develop the EU Global Approach to Migration to increase cooperation with non-EU countries, support migration to fulfill the needs of the EU countries labour markets, promote the integration and the rights of migrants, tackle illegal migration through readmission agreements and returns policies, and take into account the situation of unaccompanied minors⁶¹.

Another recent document of 2010 it is a Communication⁶² which aims to put the European Union internal Security Strategy into action. Focusing on organized crime, terrorism, cybercrime and also border security and disasters, it proposes specific actions for the period 2011-2014. The communication sets out five strategic objectives, just cited, with specific actions for each objective, for overcoming the most urgent challenges in order to make the EU more secure. Regarding the objective of concern to this research, the communication proposes that in relation to the movement of persons, the EU can treat migration management and the fight against crime as twin objectives of the integrated border management strategy. The proposed actions are aimed at: exploiting the full potential of EUROSUR, a proposal for the establishment of EUROSUR will be adopted, and pilot projects concerning threats related to drugs and smuggling will be carried out at the southern or south-western border of the EU; enhancing the contribution of FRONTEX at external borders, annual reports on specific cross-border crimes will be drafted to form the basis of joint operations; developing common risk management for movement of goods across external borders, EU level capabilities for risk analysis and targeting will be improved; improving interagency cooperation at national level, national common risk analyses will be developed, the coordination of border checks by national authorities will be improved, and best practices for interagency cooperation will be developed.

To regulate the phenomenon of movement of third country citizens in Member States, the European Union expressed the need to establish some procedures and conditions for issuing visas for short

⁶⁰ As proposed by COM/2010/61, before examined, which proposed a regulation amending the FRONTEX.

⁶¹ The commission also aims to pursue a common asylum policy to establish a common area of protection for asylum seekers through the sharing of responsibility by EU countries. In order to transform the political priorities established by the Stockholm Program into concrete actions and results, the action plan provides measures to evaluate justice, freedom and security policies and mechanisms, training legal and security professionals as well as judicial and law enforcement authorities, public awareness-raising activities, dialogue with civil society, new financial program.

⁶² COM/2010/673 of 22 November 2010 of the European Commission, website EUR-Lex.europa.eu.

stays in and transit through the territories of Member States. The EU identifies the third countries whose nationals are required to hold an airport transit visa when passing through the international transit areas of Member States airports and establishes the procedures and conditions for issuing such visas.

The document which outlines these procedures is a recent Regulation⁶³ of the European Parliament and of the Council of the European Union with which was created the Visa Code.⁶⁴ The aim of the Regulation is to establish the conditions and procedures for issuing visas for short stays, maximum of three months during any six-month period, and transit through the Member States of the European Union and the associated states applying the Schengen *acquis* in full. It applies to nationals of third countries that must be in possession of a visa when crossing the external border of the Union, as listed in regulation EC No 539/2001.⁶⁵ Moreover, the regulation lists the third countries whose nationals must hold an airport transit visa for passing through the international transit areas of Member State airports (Annex IV). In urgent cases of mass influx of illegal immigrants, any Member States may extend this requirement to nationals of other third countries.

Regarding the specific procedures and conditions for issuing visa, the Member State that is the sole or the main destination of the visit is responsible for examining the visa application. If the main destination cannot be determined, the Member State of entry into the Union is competent. In the case of transit, the Member State through which the transit takes place or, in case of multiple transits, the Member State of first transit is responsible. Generally, the visa application must be submitted to the consulate of the Member State concerned.⁶⁶ A visa application may be lodge by the applicant or an accredited commercial intermediary at the earliest three months before the intended visit. When lodging an application, the applicant must appear in person, unless this requirement has been waived. Upon lodging an application, the following must be presented an application form, as set out in Annex I, a valid travel document, a photograph, supporting documents as set out in Annex II, as well as proof of sponsorship and/or accommodation if requested by the Member State, proof of possession of travel medical insurance, if applicable.⁶⁷ After verifying the admissibility of the application, the competent authority must create an

⁶³ Regulation EC No 810/2009 of 13 July 2009, *O.J.L.* 243, 15 September 2009, p.1-58.

⁶⁴ With a regulation (EC No 1683/95 of 29 May 1995, *O.J.L.* 164, 17 July 1995, p. 1-4) of 1995 is stated a uniform format for visas has been laid down to further the harmonisation of national visa policies and to promote the free movement of persons in the European Union.

⁶⁵ Regulation EC no 539/2001 of 15 March 2001, *O.J.L.* 81, 21 March 2001, p. 1-7. This regulation makes a list the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

⁶⁶ Member States may establish bilateral arrangements for representing each other for the purpose of collecting visa applications or issuing visas. They may also cooperate through co-location or a common application centre.

⁶⁷ A part from certain exceptions, the applicants must allow the collection of their fingerprints and pay a visa fee. The visa fee may be waived or reduced in individual cases, for example for cultural, foreign and development policy reasons. An external service provider may charge an additional service fee.

application file in the Visa Information System (VIS)⁶⁸, following the procedures set out in the VIS regulation.

A further examination of the application must be carried out to verify that the applicant fulfils the entry conditions as set out in the Schengen Border Code, discussed above, does not pose a risk of illegal immigration or a threat to the security of the Member States and intends to leave the Member State before the visa expires. A decision on an admissible application must be taken within 5 calendar days from the date on which it was lodged. In exceptional cases, this time limit may be extended.⁶⁹ A uniform visa may be issued for one, two or multiple entries with a maximum validity of five years. For a transit visa, including airport transit visa, the period of validity must correspond to the time needed for the transit. A 15-day “period of grace” is usually added. In certain cases, the period of validity of a visa may be extended. Under certain circumstances, the visa may also be annulled or revoked. A uniform visa or visa with territorial validity does not automatically provide a right of entry to the visa holder.

There are specific cases in which a visa is refused if the applicant presents a false travel documents, gives no justification for the purpose and conditions of the intended stay, provides no proof of sufficient means of subsistence for the duration of the stay or for the return to their country of origin/residence, has already exhausted the three months of the current six-month period, is subject to an issued alert in the Schengen Information System (SIS) for the purpose of refusing entry, or is considered to be a threat to the public policy, internal security or public health of one of the Member States, provides no proof of travel medical insurance, if applicable, presents supporting documents or statements whose authenticity or reliability is doubtful.⁷⁰

⁶⁸ The Council of the European Union, states a decision (decision 2004/512/EC of 8 June 2004, *O.J.L. 213*, 15 June 2004, p. 5-7) which constitutes the required legal basis allowing for the inclusion in the general budget of the European Union of the necessary appropriations for the development of the Visa Information System (VIS). The VIS is based on a centralised architecture and consists of a central information system on visas and an interface in each Member State. It is the Commission’s responsibility, through the committee procedures, to develop the central information system and the national interfaces.

Another decision (decision 2008/633/JHA of 23 June 2008, *O.J.L. 218*, 13 August 2008, p. 129-136) in 2008 complements the VIS regulation by establishing a legal base that enables the designated Member State authorities and Europol to access the Visa Information System (VIS). The purpose of granting access is to allow them to prevent and detect criminal offences, particularly terrorist offences, more effectively.

Always in 2008 is stated the VIS Regulation (regulation 2008/767/EC of 9 July 2008, *O.J.L. 218*, 13 August 2008, p. 60-81) that defines the purpose and functionalities and as well as the responsibilities for the Visa Information System. It provides the conditions and procedures for the exchange of visa data between the European Union countries and associated countries applying the common visa policy. Thus, the examination of applications for short stay visas and decisions on extending, revoking and annulling visas, as well as the checks on visa and the verifications and identifications of visa applicants and holders are facilitated.

⁶⁹ A decision is taken on whether to issue or refuse a uniform visa or a visa with limited territorial validity or, in case of representation of another Member State, to discontinue the examination in order to transfer the application to the latter’s relevant authorities.

⁷⁰ The applicant must be notified of a decision to refuse, annul or revoke a visa with the standard form set out in Annex VI. Such a decision may be appealed in the Member States that took it, in accordance to its national law.

Exceptionally, a visa application may be submitted to the authority responsible for checks on persons at the external border of the Member State of destination. A visa issued at a border crossing point may allow for a stay of maximum 15 days or cover the time needed for a transit.

European policy in this area since 2004 shows a desire to create a single European territory but acknowledges concerns about an influx of immigrants from outside that territory. Furthermore, the creation of FRONTEX, the agency to coordinate the management of external border through cooperation among Member States and EUROSURS that focuses on border control and the Visa Code, which establish the procedures and conditions for issuing visas for short stays, represent an attempt to create greater cohesion among the States in the fight to illegal immigration.

3. Asylum/refugee status

Another important aspect in EU migration policy is the question of asylum. This section therefore considers the EU's legislative and policy documents in this area. At the Tampere European Council in October 1999, European Union countries undertook to set up a Common European Asylum System (CEAS) based on the full and inclusive application of the 1951 Geneva Convention relating to the status of Refugees⁷¹, as supplemented by the 1967 New York Protocol⁷², to affirm the principle of non-refoulement and to ensure that nobody is sent back to persecution. Establishing such a system entails, in the short term, closer alignment of the rules on the recognition and content of refugee status. First of all, in 1995 with a Council resolution⁷³ minimum guarantees for asylum procedures in Member States in compliance with the principles of the 1951 Geneva Convention and the 1967 New York Protocol are established. Following the entry into force of the 1990 Dublin Convention⁷⁴, the Member States wished to establish equivalent procedures for examining applications for asylum. To that end, minimum guarantees for procedures, to be complied with by all Member States, have been drawn up. Member States may enact more favorable national provisions.

To regulate and improve the management of this issue, the Council of the European Union, in 2000 adopted a Regulation⁷⁵ which had the objective to establish a system for comparing fingerprints of asylum seekers and some categories of illegal immigrants. It will facilitate the application of the Dublin II Regulation⁷⁶, which will be discussed below, which makes it possible to determine the European Union country responsible for examining an asylum application. By comparing fingerprints, EU countries can determine whether an asylum applicant or a foreign national found illegally present within an EU country has previously claimed asylum in another EU country or whether an asylum applicant entered the Union territory unlawfully. EURODAC consists of a Central Unit within the Commission, equipped with a computerized central database for comparing fingerprints, and a

⁷¹ Geneva Convention on the status of Refugees of 28 July 1951, website www.unhcr.it.

⁷² New York Protocol of 31 January on the status of Refugees of 1967, website www.cir-onlus.org.

⁷³ Council Resolution of 20 June 1995, *O.J.L. C 274*, 19 September 1996.

⁷⁴ Dublin Convention, 15 June 1990, *GUCE C 254*, 19 August 1997, p.1-12.

⁷⁵ Regulation EC No 2725/2000, 11 December 2000, *O.J.L. 316*, 15 December 2000, p. 1-10.

⁷⁶ Regulation EC No 343/2003, 18 February 2003, *O.J.L. 50*, 25 February 2003, p. 1-10.

system for electronic data transmission between EU countries and the database.⁷⁷ In the case of asylum applicants, data are kept for ten years unless the individual obtains the citizenship of one of the EU countries, in which case their data must be immediately erased. Data relating to foreign nationals apprehended in connection with an irregular crossing of an external border are kept for two years from the date on which the fingerprints were taken. Data are immediately erased before the end of the two years if the foreign national receives a resident permit, has left the territory of the Union, or has obtained citizenship of an EU country. In the case of foreign nationals found illegally present in an EU country, it is possible to check their fingerprints against those in the central database to determine whether the individual has previously lodged an asylum application in another EU country. After the fingerprints have been transmitted for comparison purpose, they are no longer stored in EURODAC.⁷⁸

As mentioned earlier, a document relating to EURODAC is the Dublin II Regulation⁷⁹ of 2003. This regulation replaces the provisions of the 1990 Dublin Convention with Community legislation, the objective is to identify as quickly as possible the Member State responsible for examining an asylum application, to establish reasonable time limits for each of the phases of determining the Member State responsible, and to prevent abuse of asylum procedures in the form of multiple applications. In accordance with the Dublin Regulation, Member States have to assess which Member State is responsible for examining an asylum application lodged on their territory on the basis of objective and hierarchical criteria. The system is designed to prevent “asylum shopping” and, at the same time, to ensure that each asylum applicant’s case is processed by only one Member State. Where another Member State is designated responsible under the criteria in the regulation, that State is approached to take charge of the asylum seeker and consequently to examine his/her application. If the Member State thus approached accepts its responsibility, the first Member State must transfer the asylum seeker to that Member State. In the case where a Member State has already examined or begun to examine an asylum application, it may be requested to take back the asylum seeker who is in another Member State without permission. The Member State responsible where the applicant is transferred must then complete the examination of the application.

Another important document in this subject is the Directive⁸⁰ of 2004, which set out minimum standards for granting refugee or subsidiary protection status to non-EU country nationals or stateless persons and the content of the protection to be granted to them. The Directive applies to all applications made at border or on the territory of an EU country. In addition, EU countries are free to introduce or retain more favorable standards. Any non-EU country national or stateless person who is located outside of his/her country of origin and who is unwilling or unable to return to it owing to a fear of being persecuted can apply for refugee status. Applicants who do not qualify for refugee status can apply for subsidiary protection. To make an accurate assessment of applications, EU countries must take the following matters into account: all relevant facts as they relate to the

⁷⁷ Data are collected for persons who are at least 14 years of age and are sent to the Central Unit via national access points.

⁷⁸ In addition to all EU countries, this regulation is applied by countries that (on the basis of international agreements) apply the Dublin Regulation, namely Iceland, Norway and Switzerland.

⁷⁹ Regulation EC No 343/2003, 18 February 2003, *O.J.L.* 50, 25 February 2003, p. 1-10.

⁸⁰ Directive 2004/83/EC, 29 April 2004, *O.J.L.* 304, 30 September 2004, p. 12-23.

country of origin at the time a decision is taken on the application, the relevant documentation or statements of the applicant on whether he/she has been or may be subject to persecution or serious harm, whether there is serious indication of a well-founded fear of persecution or real risk of suffering serious harm in cases where the applicant has already been subjected to persecution or other serious and unjustified harm, the applicant's individual circumstances⁸¹, and any activity carried out by the applicant since leaving the country of origin. The threat must come from the state, parties or organizations controlling the state, or non-state actors, where the state is unwilling or unable to provide effective protection.⁸²

This Directive identifies that situations that amount to severe violations of basic human rights; to constitute "persecution" when they are based on considerations of race, religion, nationality, membership of a particular social group or political opinion. The refugee *status* there is when in presence of physical or mental violence, including acts of sexual violence; legal, administrative, police or judicial measures that are discriminatory or that are implemented in a discriminatory manner; prosecution or punishment applied in a disproportionate or discriminatory manner or for refusal to perform military service that would include extremely serious crimes, such as war crimes and crimes against humanity; denial of judicial redress resulting in disproportionate or discriminatory punishment; acts of gender-specific or child specific nature.

It is immaterial whether the applicant actually possesses the characteristics on which the discrimination is based: it is sufficient that such characteristics are attributed to them by the persecuting parties. Equally, it is immaterial whether the applicant comes from a country in which many or all face the risk of generalized oppression. Refugees may lose their refugee status in certain cases (acquisition of a new nationality, voluntary return to their country of origin, if the circumstances in the country of origin have ceased to exist or have changed to such a degree that protection is no longer required, etc.)⁸³

Persons who have committed the following may be refused refugee or subsidiary protection status: a war crime, a crime against humanity or a crime against peace, a serious non-political crime, or acts contrary to the principles of the United Nations (UN). The Directive provides for EU countries to grant subsidiary protection status to applicants for international protection who are located outside of their country of origin and cannot return there due to a real risk of suffering serious harm⁸⁴. EU

⁸¹ Background, age, gender, acts to which the applicant has been or could be exposed that would amount to persecution or serious harm, etc.

⁸² State protection may also be provided by parties or organizations, including international organizations that control a region or large area of the territory of the state.

⁸³ In any case, the burden of proof that a refugee has ceased to qualify for international protection lies with the EU country.

⁸⁴ Such as torture or inhuman or degrading treatment or punishment, death penalty or execution, serious and individual threat to the life or person of a civilian, as a result of indiscriminate violence arising in situations of international or internal armed conflict.

Subsidiary protection may be withdrawn if the circumstances in the country of origin have ceased to exist or have changed to such a degree that protection is no longer required.

countries undertake to take special account of the needs of certain categories of people⁸⁵. Subject to conditions that can be defined by EU countries, the family members of a beneficiary of refugee or subsidiary protection status are entitled to same benefits as the beneficiary.

A Communication of 2010⁸⁶ states that the Directive has been transposed incorrectly or only partially, including the use of lower standards than set out in the Directive. Consequently, the manner in which EU countries grant protection and the content of that protection vary greatly. The differences in EU countries' implementation is, to some extent, the result of the vagueness and ambiguity of certain concepts in the Directive, which can only be remedied by amending the relevant provisions. In short, the aim of harmonising the qualification and status of beneficiaries of international protection and the content of that protection has not yet been fully achieved.

In 2004 a Communication⁸⁷ confirmed that the Member States have been planning for some time to process asylum applications outside the European Union in order to regulate the flow of refugees into Europe and to speed up the process of granting international protection to those who need it. The Commission proposes introducing a programme for resettling asylum-seekers in the EU, while at the same time enhancing the reception capacity of the countries of first asylum. In an effort to find lasting solutions to the influx of refugees into the EU, the Commission focuses on three elements of asylum policy: the managed entry of asylum-seekers into the EU, enhanced protection in the regions of origin and the creation of EU regional protection programs. The Commission believes that the resettlement of refugees, which is often given a lower priority than voluntary repatriation, could play an important part in EU asylum policy. It therefore advocates the introduction of an EU-wide resettlement program. All Member States would participate, but the scheme would be flexible and non-binding.

The main objective of the resettlement program would be to provide international protection by facilitating the organized arrival of refugees in the EU. Resettlement would primarily affect individuals qualifying for international protection and groups of refugees regarded by the EU as particularly vulnerable. Candidates would be selected and the selection criteria could be agreed collectively or be specific to the Member States. There could be a role for NGOs in helping candidates to prepare their dossiers.⁸⁸ The Commission agreed with the UNHCR that the international community should equip the countries of first asylum with the necessary means to be able to guarantee refugees protection that meets international standards. The Commission

⁸⁵ Minors in general, unaccompanied minors, disabled people, elderly people, pregnant women, single parents accompanied by minors and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.

⁸⁶ COM/2010/314 of 16 June 2010 of the European Commission, website EUR-Lex.europa.eu.

⁸⁷ COM/2004/410 of 4 June 2004 of the Commission of the European Communities, website EUR-Lex.europa.eu.

⁸⁸ The logistical arrangements could be modeled on the resettlement programs operating in the 2004, in certain European countries under the auspices of the Office of the UN High Commissioner for Refugees. Transport could be organized by the International Organization for Migration (IOM). The EU would also provide technical assistance to the Member States for the preparation, referral, and selection of resettlement cases.

therefore emphasized the need to help these countries, located in the regions from which refugees originate, to enhance their legal and administrative capacity and to ensure greater respect for human rights and the rule of law. In practical terms, the Commission advocates more efficient processing of asylum applications and better integration of applicants from third countries in the region of origin. Refugees will then be able to integrate in one of these countries of first asylum if there is no possibility of them returning to their country of origin or being resettled.⁸⁹ In order to enhance the protection capacity of third countries and to manage the entry of refugees into European territory more effectively, the Commission was asked to propose EU regional protection programs, to be devised in partnership with the third countries of the region in question.⁹⁰

Regarding minimum standards for procedures for granting and withdrawing refugee status, in 2005, the European Union adopted a Directive⁹¹ which lays down minimum standards for the procedures for granting and withdrawing refugee status in order to reduce the disparities between national examining procedures and to safeguard the quality of decision-making in European Union countries. The Directive is applicable to all applications for asylum made on the territory of European Union countries, including borders, or in a transit zone.⁹² EU countries are obliged to apply this Directive to the procedures for handling applications for asylum based on the Geneva Convention. If, within the framework of their asylum procedures, EU countries also examine the applicant's qualification for any other type of international protection, they must apply this Directive to the entire procedure. In order to ensure basic guarantees of rights, an application for asylum may not be refused solely on the grounds that it was not made as soon as possible. Moreover, EU countries must ensure that applications are examined individually, objective and impartially. Applicants shall be entitled to remain in the country while their application is pending. Furthermore, EU countries must ensure that applicants are informed of the procedure to be followed, their rights and obligations and the result of the decision taken by the responsible authority, receive the services of an interpreter for submitting their case to the competent authorities whenever necessary, are given an opportunity to communicate with the United Nations High Commissioner for Refugees (UNHCR), have a genuine opportunity to consult a legal adviser. In the first instance, applicants may have to do so at their own expense. Additional guarantees apply, subject to some condition, in the case of unaccompanied minors⁹³ and EU countries may impose obligations⁹³ on applicants for asylum to cooperate with the national authorities.⁹⁴

⁸⁹ The Commission proposes using as a reference point the new AENEAS program for financial and technical assistance to third countries in the area of migration and asylum. This financial instrument would enable Member States, third countries, international organizations and NGOs to set up projects to enhance refugee protection capacity in the countries of their region of origin.

⁹⁰ In October 2003, at a seminar organized by the Italian EU Presidency in Rome, the Member States defended the idea of an EU-wide resettlement program. This would be a useful tool that would allow policy-makers to find comprehensive solutions to refugee situations and to combat illegal immigration and human trafficking. The managed arrival of asylum-seekers would also be a way of counteracting racism and xenophobia, because public opinion would probably be more receptive.

⁹¹ Directive 2005/85/EC, 1 December 2005, *O.J.L.* 326, 13 December 2005, p. 13-34.

⁹² However, it does not apply to Denmark, which has opted out of EU justice and home affairs policy altogether.

⁹³ For example: a person shall represent the minor and/or help him/her with the application, if the procedure involves a personal interview, the representative shall have an opportunity to explain the purpose of the

The basic principles and fundamental guarantees provided for by the Directive apply fully to the procedures for examining “normal” applications for asylum. EU countries may also make provision for special procedures that are exempt from these principles and guarantees in order to examine applications for asylum in the following two cases: subsequent applications, by persons who have already made such an application in the EU country concerned; under certain condition, to decide at the border whether to grant authorisation to enter the country to persons who have submitted an application there. EU countries may also decide, whilst complying with the basic principles and fundamental guarantees provided for by the Directive, to accelerate an examination procedure.⁹⁵

Under specific conditions, EU countries may declare an application to be inadmissible and not examine its substance, especially when, for example, the applicant can benefit from protection in a non-EU country that is the first country of asylum or a safe third country for them, or the applicant has lodged an identical application after a final decision. EU countries may apply the concept of a safe third country only when the competent authorities are certain that in the non-EU country concerned, for example, the life and liberty of the applicant are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion, the principle of non-refoulement, in accordance with the Geneva Convention, is respected, the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected.

In 2010 the Commission provided an overview of EU countries transposition of Directive 2005/85/EC into their national law and of problems encountered in its application.⁹⁶ The report details a number of cases of incomplete or incorrect transposition and flaws in the application of the Directive by EU countries. Furthermore, due to some of the optional provisions and derogations in the Directive, differences persist between EU countries’ arrangements and procedural guarantees.⁹⁷ To rectify

interview to the minor, a person with knowledge of the special needs of minors shall prepare the decision of the determining authority and, if applicable, conduct the personal interview.

⁹⁴ In particular: contact the competent authorities or appear in person, submit their applications in person and/or at a designated location, hand over documents in their possession relevant to the examination of the application, such as their passports

⁹⁵ Especially under the following conditions: the applicant has only raised issues that are not or only minimally relevant to the examination of his/her refugee status or his/her statements are incoherent, contradictory or implausible, which clearly make the claim unconvincing, the applicant comes from a country that EU country in question has designated as a “safe country of origin” or a “safe third country”, and when the applicant has not produced information establishing with a reasonable degree of certainty his/her identity or nationality, or it is likely that, in bad faith, he/she has destroyed or disposed of an identity or travel document that would have established his/her identity or nationality. Moreover a non-EU country designated as a safe country of origin may be considered as such for a given applicant for asylum only if he/she has not put forward serious reasons suggesting that it is not safe because of his/her personal situation, in view of the conditions required for claiming refugee status in accordance with directive 2004/83/EC, analyzed before.

⁹⁶ COM/2010/465 of 8 September 2010 of the European Commission, website EUR-Lex.europa.eu.

⁹⁷ This is particularly the case with regard to personal interviews, legal assistance and representation, accelerated examination procedures, the concept of safe third country, the concept of safe country of origin, the right to an effective remedy.

procedural divergences between EU countries caused by certain vague and ambiguous standards in the Directive, the Commission adopted a proposal⁹⁸ to amend it.

A 2007 Decision⁹⁹ created a European Refugee Fund of Euro 614 million for the period 2008-2013 as a part of the general program “Solidarity and Management of Migration Flows” and this is discussed in more detail below. In the same year, the Commission of the European Communities, published a Green Paper¹⁰⁰ with the aim to identify the various options that may be considered in the second phase of the creation of the European asylum system. This Green Paper is intended to launch a broad process of consultation leading to the publication of an action program which would bring together all the measures necessary for the setting up of a common European asylum system.

In 2008, the Commission of the European Communities, with a Communication¹⁰¹ presented the policy plan for the completion of the second phase in the creation of a Common European Asylum System (CEAS). The plan is based on a strategy for attaining the objectives of CEAS, which is: guaranteeing access to asylum for those who need it, providing a common asylum procedure, creating a uniform status for asylum and for subsidiary protection, tacking into consideration gender issues and the situation of vulnerable groups, enhancing cooperation between European Union countries on practical issues, providing for rules to determine EU countries responsibilities and for mechanism to support solidarity, and guaranteeing coherence between asylum and other policies relating to international protection. While the first phase in creating CEAS made significant progress with regard to legislative instruments, the desired level playing field has not been achieved and great disparities in the implementation of asylum policies in EU countries persist. Hence, the Commission aims to amend existing legislation, namely the Reception Condition Directive “RCD”¹⁰², by addressing the great level of discretion EU countries enjoy. An amended RCD should provide for the further harmonization and improvement of reception standards, including procedural guaranteed on detention, Asylum Procedures Directive “ADP”¹⁰³, in order to eliminate disparate procedural arrangements in EU countries, Qualification Directive “QD”¹⁰⁴, to tackle the different interpretations of the Directive by EU countries due to the wording of certain provisions.¹⁰⁵

As a result of a low level of uniformity in standards and differing national practices, asylum decisions within the EU are taken in an inconsistent manner and the chances of being granted protection vary

⁹⁸ COM/2009/554 of 21 October 2009 of the Commission of the European Communities, website EUR-Lex.europa.eu.

⁹⁹ Decision 2007/573/EC of 23 May 2007, *O.J.L.* 144, 6 June 2007, p. 1-21.

¹⁰⁰ COM/2007/301 of 6 June 2007 of the Commission of the European Communities, website EUR-Lex.europa.eu.

¹⁰¹ COM/2008/360 of 17 June 2008 of the Commission of the European Community, website EUR-Lex.europa.eu.

¹⁰² Directive 2003/9/EC of 27 January 2003, *O.J.L.* 31, 6 February 2003, p. 18-25.

¹⁰³ Directive 2005/85/EC of 1 December 2005, *O.J.L.* 326, 13 December 2005, p. 13-34.

¹⁰⁴ Directive 2004/83/EC of 29 April 2004, *O.J.L.* 304, 30 August 2004, p. 12-23.

¹⁰⁵ In addition to amending existing legislation, the Commission will also consider the creation of new instruments, this will include mechanism for the transfer of protection. Furthermore, the alignment of national statuses of protection that are not covered by the current EU framework will be examined.

enormously from one EU country to another. Consequently, practical cooperation between EU countries needs to be stepped up at the same time as legislation is harmonized. The establishment of a European Asylum Support Office (EASO), as proposed in the Hague Program and in the Green Paper of 6 June 2007 on the future common European asylum system, mentioned above is meant to help facilitate this. In addition, the Commission intends to amend the Dublin and EUODAC Regulations, with modifications that include allowing access by EU countries authorities and the European Police Office "EUROPOL" to EUODAC for purposes of law enforcement. Furthermore, instead of adopting a new overarching instrument to promote solidarity among EU countries, the Commission aims at establishing a series of solidarity mechanisms.¹⁰⁶ In the name of shared responsibility, since non-EU countries and countries of first asylum receive a far larger number of refugees, the EU will provide these countries with more financial support to strengthen their capacity to provide protection. The integration of capacity building for asylum into development cooperation will also be continued. To truly commit to the cause of solidarity in its external relations, the Commission proposed that the EU focuses on the following to enhance the protection of refugees: regional Protection Programs¹⁰⁷, which on the basis of an evaluation which was to be carried out in 2008, it was to be transformed into regional multi-annual action plans; resettlement on which the Commission has proposed in 2009 a scheme to develop it into an EU-wide effective tool of protection¹⁰⁸; better managing the arrival of asylum seekers, for which the Commission will study the use of protected entry procedures to allow for distinctions to be made between persons in need of protection and other types of migrants before they arrive at a potential host country's border. Moreover, in 2009, the Commission has also launched a study in collaboration with the UNHCR on the possibility of processing asylum applications jointly outside of the EU territory.

Regarding the aspect of resettlement mentioned earlier, in 2009 the Commission of the European Community adopted another Communication¹⁰⁹ which concerns the resettlement of refugees from outside the European Union to one of the Member States. Resettlement is one of the durable solutions offered to refugees, whose needs for protection have already been established. The UNHCR usually acts as an intermediary in the resettlement process. The communication also addresses solidarity in migration management and EU protection to refugees worldwide. Several Member States participate in resettlement on an annual or on an *ad hoc* basis.

¹⁰⁶ To achieve this, the following is proposed: launching a study that assesses the possibilities for processing asylum applications jointly within EU territory, defining the means for temporarily the Dublin rules for transferring asylum-seekers, creating asylum expert teams under the EASO to support EU countries in processing applications, providing funding to re-allocate within the EU, when necessary, those under international protection.

¹⁰⁷ COM/2005/388 of 1 September 2005 of the Commission of the European Communities, EUR-Lex.europa.eu

¹⁰⁸ COM/2009/447 of 2 September 2009 of the Commission of the European Communities, website EUR-Lex.europa.eu; one example of intervention to improve the resettlement is the European Asylum Support Office (regulation 439/2010/EC of 19 May 2010, *O.J.L.* 132, 29 May 2010, p. 11-28), which was established in 2010 to strengthen Member State practical cooperation on asylum, plying an active role in coordinating resettlement activities.

¹⁰⁹ COM/2009/447 of 2 September 2009 of the Commission of the European Communities, website EUR-Lex.europa.eu.

The European Refugee Fund provides significant financial support to resettlement-related activities. Nevertheless, the number of refugees resettled in the EU remains rather low and most Member States lack resettlement programs. Furthermore, the Member States that are resettlement countries mostly set their priorities at the national level, instead of coordinating resettlement and the related external policy instruments at the EU level. In addition, the current ERF is not adaptable enough to respond to new and changing needs concerning resettlements. Consequently, joint EU action should aim at: involving more Member States and enhancing their cooperation, providing refugees a secure access to protection, expressing solidarity towards to protection, expressing solidarity towards third countries, making better use of resettlement at the EU level, integrating resettlement into external policies, and on providing a financial incentive for Member States to resettle based on jointly defined key priorities. A joint EU resettlement program should be established to fully integrate resettlement in the external dimension of the EU's asylum policy and improve its strategic use. The communication provides as guiding principles that participation in resettlement should be voluntary for Member States, EU resettlement activities should be extended, the program should be incremental and adaptable to changing circumstances, and all stakeholders should be able to participate.¹¹⁰

The aim is that the resettlement expert group that meets on an *ad hoc* basis will be transformed into a permanent body in which all Member States and stakeholders will participate. It will carry out preparatory work for identifying the common annual priorities for the EU, exchange information on Member States quantitative targets and assess the specific resettlement needs. The UNHCR will be closely involved in the preparatory work by providing an assessment of worldwide resettlement needs¹¹¹. The program will provide for enhanced practical cooperation and improve the effectiveness of EU external asylum policies. The European Asylum Support Office "EASO", which was to be established in 2010 to strengthen Member State practical cooperation on asylum, will play an active role in coordinating resettlement activities. The Commission will also continue to support practical cooperation project relating to resettlement through the ERF. As part of the program, cooperation with the UNHCR will also be intensified to identify common priorities, maximize the strategic use of resettlement, and develop and carry out practical cooperation activities. Resettlement should form an integral part of EU external asylum policies and be well coordinated with external policies as a whole. In particular, it should be consistent with the EU Global Approach to Migration. The aim is also to integrate resettlement into the future Regional Protection Programs. With the support of the EASO, the Commission will report on resettlement progress in the EU. Moreover, a mid-term evaluation will be carried out in 2012 with all relevant stakeholders. In 2014, the joint program will be evaluated with a view to developing it further.

Finally, another recent paper on subject of asylum is a Regulation¹¹² of 2010. This document establishes the European Asylum Support Office, which has the function to strengthen European

¹¹⁰ For example international and local NGOs, local authorities.

¹¹¹ The common annual priorities will subsequently be established by a Commission decision using the comitology procedure. They will focus on specific geographic regions, nationalities or categories of refugees, and provide for more flexibility to respond to new or urgent needs. Consequently, financial assistance under the ERF will be available to Member States resettling refugees on the basis of the common priorities.

¹¹² Regulation EU No 2010/439, 19 May 2010, *O.J.L.* 132, 29 May 2010, p. 11-28.

Union countries practical cooperation on asylum, to support EU countries whose asylum and reception system are under particular pressure and to enhance the implementation of the Common European Asylum System “CEAS”. The office is responsible for activities relating to the gathering of information concerning countries of origin of asylum seekers. This includes the development of a portal, as well as analyzing and reporting on country of origin information. Moreover, the office is to provide support for the transfer within the Union of person under international protection, for the training of relevant parties and for the external dimension of CEAS. The European Asylum Support Office is to assist EU countries that find their asylum and reception system under specific and disproportionate pressure due, in particular, to their geographical or demographic situations or due to the sudden arrival of large numbers of non-EU country nationals that need international protection.¹¹³

The European Asylum Support Office is to contribute to the implementation of CEAS, in particular by coordinating the exchange of information between relevant stakeholders on the implementation of the instruments of the Union’s asylum *acquis*. For this purpose, the office may establish databases covering asylum instruments at national, European and international levels. In addition, it is to gather information on the processing of asylum applications and on legislation and legislative developments concerning asylum in EU countries. Upon request for assistance by one or more EU countries under particular pressure, the European Asylum Support Office may coordinate the deployment of one or more asylum support teams to their territories for an appropriate period of time.¹¹⁴

The European Asylum Support Office is established in the form of a regulatory agency. It was to be fully operational by 19 June 2011.¹¹⁵ The planning and monitoring authority of the office is its management board. It consists of one member from each EU country, of two members from the Commission and of a non-voting member from the UNHCR. The term of office of management board member is three years, renewable. A consultative forum is to be established for cooperation between the office and relevant civil society organizations and other competent bodies working on asylum policy at local, regional, national, European or international level. The forum functions as a platform for information exchanges, for pooling knowledge, as well as for providing expertise and advice on issue related to asylum. It is coordinated by the executive director.

Based on the documents examined here, the efforts of the EU in the field of asylum appear to be concerned with creating a policy that is common to all European States to create the most effective solutions possible.

¹¹³ In order to assess the needs of such EU countries, the office should: gather information relating to emergency measures that help dealing with situations of particular pressure, identify and analyze information on the structures and staff, assistance in managing asylum cases, and asylum capacities of EU countries, analyze data on arrivals of large numbers of non-EU country nationals that might put a country under particular pressure.

¹¹⁴ These teams are not to provide technical assistance, such as interpreting services, information on countries of origin and know-how on managing asylum cases. The office will not only establish an asylum intervention pool made up of experts, from which the teams are drawn up, but will also draw up a list of interpreters.

¹¹⁵ It is fully operational now (website ec.europa.eu/home-affairs/policies).

However, both the action plan for the European common asylum (CEAS) and resettlement program, because of their vagueness and ambiguity and the lack of resettlement programs provided by individual Member States, lead to a disparate implementation of asylum policy among European countries, causing inefficient action and disappointing results.

4. Labour and student migration

One of the objectives of Community action in the field of education is to promote Europe as a world centre of excellence for studies and vocational training. Promoting the mobility of third-country national to the Community for the purpose of studies is a key factor in that strategy. The approximation of the Member States national legislation on conditions of entry and residence is part of this.

A Directive¹¹⁶ in 2004 determines the rules concerning the procedures for admitting third country nationals to the territory of the Member States, for a period exceeding three months for the purposes of studies, pupil exchange, unremunerated training or voluntary service. The Directive distinguishes four categories of third-country nationals, as students, school-pupils, unremunerated trainees, voluntary workers. The Directive defines the principal criteria for the admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, in particular the availability of adequate financial resources and admission to an educational establishes, participation in a voluntary service scheme, as the case may be.

The Directive determines the basic conditions for admitting third-country nationals for the purpose of study.¹¹⁷ As regards the admission of a third-country national already admitted as a student in another Member State, the Directive establishes a right to be admitted to another Member State where he wishes to pursue his studies. To ensure that third-country nationals do not abuse their student status by excessively prolonging their stay in the European Union, the additional course of study must be adequately related to the studies already completed. For third country nationals who are secondary school pupils, the Directive covers only organized mobility through exchange schemes managed by specialized organisations. Third-country nationals in the category of unremunerated trainees or volunteers who are considered, by virtue of their activities or the kind of compensation or remuneration received, as workers under national legislation are not covered by this Directive. The Directive provides some conditions where a third-country national applies to be admitted to a voluntary service scheme, for example age limits are set by the Member State concerned, an agreement giving a description of tasks, the conditions in which the volunteer is supervised in the performance of those tasks, the working hours, and the resources available to cover travel, subsistence and accommodation costs throughout the stay. The Directive provides that students shall be entitled to be employed and may be entitled to exercise self-employed economic activity.

¹¹⁶ Directive 2004/81/EC, 29 April 2004, *O.J.L.* 261, 6 August 2004, p. 3-3.

¹¹⁷ For example the applicant must have been accepted by an establishment of higher education, they must have sufficient resources to cover his/her subsistence, study and return travel costs, they must have sufficient knowledge of the language of the course to be followed.

But access to economic activities for the first year of residence may be restricted by the host Member State.

In the light of the Regulations examined, it is possible to confirm the assumption made at the beginning of this section: these regulations were taken to facilitate the promotion of Europe as a world centre of excellence for studies and professional training. Indeed, as described above, the EU has provided specific and streamlined procedures for admission to the territory for particular categories of people: students, school-pupils or trainees unpaid or volunteers, even allocating financial resources for the implementation of activities related to these categories. Moreover to help those who are students in the EU and come from third countries, the right to be admitted into another Member State in which they intend to exercise their studies was established; they also have a right to be employed workers and are entitled to exercise an independent economic work.

5. Cooperation with/strengthening of Third Countries

Over the years, the EU tried to adopt a policy to increase solidarity among Member States and to work towards making EU and national immigration policies coherent and complementary, as stated in some communications.¹¹⁸ Moreover the EU tried to develop a policy to improve the legal immigration, through bilateral relations, agreements and more in general through the strengthening of policies with third countries. This policy, behind which there is the concept of immigration as a resource for Europe, would reduce the flow of illegal immigration from the countries concerned. This part of this report is devoted to examining the documents with which the EU tried to implement the objectives just mentioned.

In 2001 in order to put in place an area of freedom, security and justice, the Council of the European Union set out, with a Directive¹¹⁹, to improve a common European policy relating to asylum and immigration. While meeting the requirements flowing from the Convention implementing the Schengen Agreement, the purpose of this Directive was to make possible the recognition of an expulsion decision issued in one Member State against a third country national present within in the territory of another Member State. This Directive applies to expulsion decisions based on serious and present threat to public order or to national security¹²⁰, and failure to comply with national rules on the entry or residence of aliens.

¹¹⁸ For example: regulation 1030/2002/EC of 13 June 2002, *O.J.L. 157*, 15 June 2002, p.1-7, to lay down a uniform format for residence permits for third-country nationals; COM/2005/669 of 21 December 2005 of the Commission of the European Communities, web-site EUR-Lex.europa.eu, on policy plan on legal migration; COM/2006/26 of 25 January 2006 from the commission of the European Communities, on thematic program for the cooperation with third countries in the areas of migration and asylum; COM/2008/359 of 17 June 2008 from the Commission of the European Communities, web-site °EUR-Lex.europa.eu, on a common immigration policy for Europe; Directive 2008/115/EC, 16 December 2008, *O.J.L. 348*, 24 December 2008, p. 98-107, on standards and procedures for the repatriation of illegal immigrants.

¹¹⁹ Directive 2001/40/EC, 28 May 2001, *O.J.L. 149*, 2 June 2001, p. 34-36.

¹²⁰ Such as a conviction for an offence punishable by a penalty involving deprivation of liberty of at least one year.

The Member States undertook to adopt all measures guaranteeing the exchange of information and effective cooperation. Where the enforcing state has implemented the expulsion decision, it will inform the issuing Member State. In 2004 the Council issued a Decision¹²¹ setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of the Directive just examined, where expulsion cannot be affected at the expense of the nationals of the third country concerned.

In 2002, the Council of the European Union, to strengthen a common policy among Member States in order to prevent illegal entry and residence, adopted a Regulation¹²² to create a uniform format for residence permits for third-country nationals. This regulation replaces Joint Action 97/11/JHA¹²³ concerning a uniform format for residence permits and the measures adopted by the Council with a view to its application. Under the Schengen Agreement, a residence permit accompanied by travel documents may replace a visa. Third-country nationals who present their passport and residence permit can enter in a Schengen country and stay there for a limited period. The regulation sets out the general characteristics of the uniform format.¹²⁴ The identifier consists of a facial image and two fingerprints, which will be processed according to national practices and respecting the Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Conventions on the Rights of the Child. This regulation does not apply to the following third-country nationals: the family members of EU citizens who exercise their right to free movement; the nationals, and their family members, of the European Free Trade Association countries that participate in the Agreement on the European Economic Area, and who are exercising their right to free movement; the nationals of countries that are exempt from visa requirements and have the right to a maximum three months stay in a Member State. The regulation requires the Member States to issue the uniform format for residence permits no later than one year after adopting the additional security measures.

In December of the same year, bearing in mind the problem of illegal immigration, the Commission of the European Community requested that immigration policy be incorporated into the Union's relations with third countries.¹²⁵ This Communication is divided into the following two sections: Part I about migration and development and Part II a report on the effectiveness of financial resources available at Community level. In integrating migration into the external policy of the Community, action must be based on four key principle: the integration of migration aspects in the external action of the Community must respect the overall coherence of its external policies and actions, and must encourage those countries that cooperate rather than penalize those who are not willing to do so; the long-term priority should be to address the root causes of migration flows, by poverty

¹²¹ Decision 2004/191/EC, 23 February 2004, *O.J.L.* 60, 27 February 2004, p. 55-57.

¹²² Regulation EC No 1030/2002, 13 June 2002, *O.J.L.* 157, 15 June 2002, p. 1-7.

¹²³ Joint Action 97/11/JHA, 16 December 1996, *O.J.L.* 007, 10 January 1997, p. 1-4.

¹²⁴ As provided by directive 95/46/EC (4 October 1995, *O.J.L.* 281, 23 November 1995) on the protection of individuals with regard to the processing of personal data and on the free movement of such data, a person to whom a residence permit has been issued has the right to request corrections be made regarding his/her personal details on that permit.

¹²⁵ COM/2002/703 of 3 December 2002 of the Commission of the European Communities, website EUR-Lex.europa.eu.

eradication, institution and capacity building and conflict prevention; migration aspects should be taken care of in the “Country and regional strategic document” which forms the basis of the EU programs of assistance to third countries; extra funding will be needed. These resources should be used to finance specific targeted actions in the field of immigration and these actions should be complementary to those financed under the more generic budget development lines.

The Council of the European Union in 2003 adopted a Directive¹²⁶ dealing with family reunification of legal immigrants from a third country. The purpose of this document is to determine the conditions under which third-country nationals residing lawfully on the territory of the Member State may exercise the right to family reunification. The Directive also aims to highlight the importance of developing an integration policy that will grant third-country nationals rights and obligations comparable to those of citizens of the European Union. Measures concerning family reunification should be adopted in conformity with the obligations to protect the family and respect family life, as enshrined in many instruments of international law. This Directive respects the fundamental rights and observes the principles recognized in particular in Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union. The aim of the Directive is to establish common rules of Community law relating to the right to family reunification of third-country nationals residing lawfully on the territory of the Member States.¹²⁷ At national level the situation is very patchy: family reunification protects the family and makes it easier to integrate nationals of non-member countries in the Member States. It should be a recognized right throughout the Union.

Third-country nationals who hold a residence permit valid for at least one year in one of the Member States and who have the genuine option of long-term residence can apply for family reunification. However, this Directive does not apply to a third-country national applying for recognition of refugee status whose application has not yet given rise to a final decision or who is under a temporary form of protection, nor does it apply to the family members of a Union citizen. This Directive applies without prejudice to any more favorable conditions that may be recognized by national law. It will be possible to refuse a family member entry and residence on grounds of public order, internal security and public health. The same reasons may be given to justify the withdrawal or non-renewal of a permit already granted.¹²⁸ Particular condition will be applied to the family reunification of refugees. In addition to a residence permit of the same duration as that of the sponsor, members of his/her family will obtain access to education, employment and vocational training under the same terms. After five years of residence at the latest, the spouse or unmarried

¹²⁶ Directive 2003/86/EC, 22 September 2003, *O.J.L. 251*, 3 October 2003, p. 12-18.

¹²⁷ Until this moment, this right is recognized only by international legal instruments, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

¹²⁸ The sponsor may be required to have accommodation that meets general safety and health standards, sickness insurance and stable resources sufficient to maintain himself/herself and the members of his/her family without recourse to the social assistance system of the Member concerned. Furthermore, the sponsor may be required to abide by integration measures under national law, as well as to have resided in the Member State in question for certain period of time (two years maximum) before being joined by the family members.

partner, as well as the children who have reached the age of majority, may be granted an autonomous residence permit.

The European Union in 2003, with Directive 2003/109/EC¹²⁹ granted European resident status to non-EU nationals who have legally and continuously resided for a period of five years within the territory of an EU country. By creating a single status for long-term resident non-European Union nationals, the Directive approximates the laws of EU countries and ensures equal treatment throughout the Union, whatever the EU country of residence. The Directive applies to all non-EU nationals residing legally in the territory of an EU country. Some categories of individuals are excluded from its scope because their situation is precarious or because they are resident on a short-term basis.¹³⁰ EU countries must therefore recognize long-term resident status after five years of continuous legal residence.

In order to obtain long-term resident status, non-EU nationals must prove that they have, for themselves and their family, if dependent, stable resources sufficient to live without recourse to the social assistance system of the EU country concerned, and hold comprehensive sickness insurance. EU countries may require non-EU nationals to comply with further integration conditions (such as sufficient knowledge of a national language of the EU country concerned). EU countries may refuse to grant long-term resident status on grounds of public policy or public security.¹³¹ Long-term residents will receive a permanent residence permit that is standard for all EU countries, valid for at least five years and automatically renewable.

People who have acquired long-term resident status will enjoy equal treatment with nationals as regards access to paid and unpaid employment, conditions of employment and working conditions, education and vocation training, recognition of qualifications and study grants, welfare benefits and sickness insurance, social assistance, social benefits, tax relief and access to goods and services, freedom of association and union membership and freedom to represent a union or association, free access to the entire territory of the EU country concerned. Long-term residents enjoy enhanced protection against expulsion. The conduct on which expulsion decisions are based must constitute an actual and sufficiently serious threat to public policy or public security. Such decisions may not be founded on economic considerations.

Such residence permits do not confer the right to residence in the other EU countries. A long-term resident may exercise the right of residence, for a period exceeding three months, in an EU country other than the one which granted him/her the status, subject to compliance with certain conditions, including exercise of an economic activity in an employed or self-employed capacity, pursuit of

¹²⁹ Directive 2003/109/EC, 25 November 2003, *O.J.L.* 16, 23 January 2004, p. 44-53.

¹³⁰ Refugees, asylum seekers awaiting a decision on their status, seasonal workers or workers posted for the purpose of providing cross-border service, persons who have been granted temporary protection or a subsidiary form of protection and persons residing in order to pursue studies or vocational training.

¹³¹ The competent authority must take a decision on whether to grant long-term resident status no more than six months after the application is lodged. Decisions to reject an application must be notified in writing to the person concerned, in accordance with the procedures under national legislation, stating the reasons and indicating the redress procedures available and the deadline for action on the part of the applicant.

studies or vocational training, or other purpose. However an EU country may limit the number of residence permits if, at the time of the adoption of this Directive, limitations for the admission of non-EU nationals are already set out in existing national law and at the same time, for reasons of labour market policy, EU countries may give preference to Union citizens.¹³²

The family members of the long-term resident may accompany him/her to the second EU country or join him/her there on condition that they already formed a family in the first EU country. Otherwise, Directive 2003/86/EC on the right to family reunification applies. The second EU country may refuse applications for residence only where there is an actual threat to public policy, public security or public health. As soon as they enter the second EU country, long-term residents enjoy all the benefits that they enjoyed in the first EU country under the same conditions as nationals. Long-term residents living in the second EU country will retain status in the first EU country until they have acquired the same status in the second EU country. If they so wish, they may apply to be considered as long-term residents in the second EU country after having legally resided there for a period of five years. As a general rule, the first EU country is obliged to readmit, together with their family members, long-term residents whose residence permits have been withdrawn by the second EU country.

With the COM/2007/298¹³³ it was proposed that the Directive be changed to extend the legal regime available to nationals of third countries benefiting from the status of long-term residents to beneficiaries of international protection. After a study in this regard, the committee decided that these people, initially excluded from the scope of Directive, could benefit from the rights arising from long-term resident status after a period of five years of regular residence¹³⁴.

In 2005, Commission of the European Communities, with a communication¹³⁵ put forward some new initiatives to improve the impact of migration on development. It has developed a package of practical measures based on various themes, namely: remittance, enhancing the role of diasporas in the Member States, encouraging circular migration and facilitating return to the country of origin, mitigating the adverse effects of brain drain. The Commission plans to make remittances easier, they are to be treated as private transfers; however remittance cannot be regarded as a substitute for Official Development Assistance. With a view to facilitating remittance, the Commission advocate encouraging partnerships between micro-finance institutions and mainstream financial institutions, providing funding to joint projects by diasporas organizations and local organizations so as to support local development. With a view to promoting cheap, fast and secure ways of sending remittances, the Commission envisage improving data collection to better understand the size of

¹³² These conditions do not concern employees posted for the purpose of cross-border provision of services or providers of cross-border services.

¹³³ COM/2007/298 of 6 June 2007 of the Commission of the European Communities, website EUR-Lex.europa.eu.

¹³⁴ The Committee states that the potential beneficiaries are refugees under the provisions of the Geneva Convention and beneficiaries of subsidiary protection pursuant to directive 2004/83/EC (of 9 February 2004, EUR-Lex.europa.eu).

¹³⁵ COM/2005/390 of 1 September 2005 of the Commission of the European Communities, website EUR-Lex.europa.eu.

migrant remittance flows, improving transparency of remittances, creating a harmonized legal framework, facilitating the introduction of new technology, improving access to financial markets. The Commission wishes to promote participation of diasporas in the development of their home countries by, for example, helping countries to map their diasporas, encouraging youth exchange schemes focused in particular on migrant communities, promoting integration and citizenship. The Commission wishes to foster the transfer of skills to the developing world. To achieve this end, it plans to encourage circular migration by giving priority for further temporary employment to workers who have already worked under such schemes and have returned at the end of their contract, facilitate return migration with a view to ensuring the successful reintegration of migrants, build upon temporary or virtual return programs.

Another Communication¹³⁶ in 2005, establishes a strategy for reinforcing the justice, freedom and security aspects of the EU's external relations policy, also to fight the illegal immigration. Promoting the rule of law outside the EU through cooperation is essential and contributes to sustainable development, moreover societies founded on such values as good governance and democracy more effectively resist external threats which can also affect international security. The area of freedom, security and justice must face up to a whole range of challenges which originate outside the EU as well as within it, for example terrorist attacks such as those of 11 September 2001, 11 March 2004 and 7 July 2005, as well as illegal immigration. The Communication stresses the need to enhance international cooperation and free movement within the EU. More open borders and increased global integration have added a new dimension to international cooperation. Efficient border management is necessary to fight threats such as terrorism and organized crime, and it also contributes to good relations with neighbouring States.¹³⁷

The Communication also recommends fostering the rule of law through cooperation in order to guarantee security both inside and outside the EU. The Commission wishes to make the area of security, freedom and justice in the EU a source of inspiration for other countries. The EU's experience and success in issue such as border management and fighting organized crime are a useful point of reference for other countries facing similar challenges.

Regional cooperation must be encouraged because cross-border problems such as migration and border management are often most effectively solved through concerted regional action. The EU has a broad range of instruments at its disposal for tailoring its external cooperation to the situation of each country, these include, inter alia, bilateral agreements, the enlargement process, which includes justice, freedom and security priorities, EU neighbourhood policy and the action plan, the external aid programs, regional cooperation such as the Asia-Europe meetings, individual arrangements such as those with the United States, with justice, freedom and security issues covered by the New Transatlantic Agenda.¹³⁸

¹³⁶ COM/2005/491 of 12 October 2005 of the Commission of the European Communities, website EUR-Lex.europa.eu.

¹³⁷ For instance, cooperation with the Turkish authorities has led to major seizures of drugs within the EU.

¹³⁸ The effectiveness and coherence of the strategy must be improved through, for example, coherence of the EU's external actions, rapid reaction to sudden needs or emerging threats, an enhanced role for the EU in international organization.

In the same year, another Communication¹³⁹ proposed initiatives to develop common EU rules in the field of legal migration. The Commission proposed the creation of a general framework Directive, this Directive is intended to guarantee a number of rights to all third-country nationals in legal employment. The rights would be extended to all workers admitted to a Member State but not yet entitled to long-term residence status. The framework Directive will also address the question of recognition of qualifications and introduce a single application for a joint work/residence permit, which would involve biometric identifiers. The validity of such a document would be strictly tied to the existence of a legal work contract. The Commission also proposed four specific Directives, these would concern only salaried workers and would cover entry and residence conditions for highly skilled workers, seasonal workers, intra-corporate transferees, remunerated trainees. The Directives will establish a rule that admission should be conditional on the existence of a work contract and on the “economic needs test”, although exceptions may be granted for certain sectors or regions. The commission suggests a common special procedure to speed the admission of immigrants covered by the proposed highly skilled workers Directive.

The proposed Directive on the conditions of entry and residence of seasonal workers puts forward a scheme for a joint permit that allows the holder to work for several months each year over four to five years, provided that the entry and residence requirements are respected. The proposed Directive on the admission of remunerated trainees is intended to allow them to acquire qualifications and knowledge through a period of training in Europe, the aim is to provide safeguards so that abuses can be avoided. By 2007, the Commission intended to create an EU portal to present EU policies and the *acquis*, news in this area, research results. Other Commission activities included specific information campaigns about the EU immigration policies and studies. It has also begun a reform of the European Migration Network, discussed below, to improve the availability of information about migration and asylum.

Given the cross-cutting nature of integration, the Commission intends to ensure that the specific priorities of integration policy are coherently reflected across a range of policies. It suggests, in particular, providing integration programs for newly arrived legal immigrants, and education, training and cultural initiatives. To fund such projects, and others, the Commission proposed the creation of a European fund for the integration of third-country nationals under the financial perspectives 2007-2013. The Commission proposed to monitor the migration of skilled workers from developing countries to the EU, to identify sectors and countries of origin subject to significant brain drains, and to proposed solutions meet the needs of Member States and the countries concerned. It suggested improving information in countries of origin about the possibilities for legal immigration to the EU. The Commission will also explore the advisability and the technical feasibility of funding training structures under the responsibility of the local authorities and/or of NGOs in countries of origin, to help immigrants develop their skills and better adapt to the needs of the EU job market.

In December 2005, the European Council adopted a global approach to migration. This global approach, which focuses on action priorities in Africa and the Mediterranean, formulates coherent migration policies and action, addressing a wide range of migration issue and bringing together the

¹³⁹ COM/2005/669 of 21 December 2005 of the Commission of the European Communities, EUR-Lex.europa.eu.

various relevant policy areas: external relations, development, employment, and justice, freedom and security. The following year, in 2006, the Commission of the European Communities issued a communication¹⁴⁰ calling for a comprehensive European migration policy. At the end of 2006, FRONTEX launched and coordinated several joint maritime operations in the Atlantic and Mediterranean regions, completed risk analyses on Africa and presented feasibility studies on establishing a Mediterranean coastal patrols network and a surveillance system covering the whole southern maritime border of the EU and the Mediterranean Sea. Regional networks of immigration liaison officers are being set up along key migration routes through Africa. The Commission has issued a proposal for the establishment of rapid border intervention teams and has carried out an analysis of international maritime law.

With regard to intensifying dialogue and cooperation with the African countries of origin and transit, the Commission states that on the basis of the work carried out on migratory routes, the EU will foster more specific cooperation with various regions in Africa. Cooperation platforms will bring together African countries, EU Member States and international organisations in an effort to manage migration more effectively in the interests of all. This common framework could then lead to the formulation of regional agreements with interested African countries. The EU must continue to help the African States to reinforce their capacity to manage migration and asylum. Important initiatives are being taken in European Neighbourhood Policy “ENP” countries, in particular with regard to border management and institutional support in order to improve the reception of migrants as well as the protection of their rights. Furthermore, the Commission has proposed creating migration profiles for each interested country. These profiles should be established for all relevant partner countries in the medium term. The Commission has also suggested establishing migration support teams composed of experts from EU Member States which could provide the necessary assistance to African States who so request.

The Commission intends to support initiatives stimulating the establishment of a pan-African network of migration observatories and/or migration research institutes, proposes the implementation of twinning measures using EC funding to assist African countries in developing their migration and asylum policies, and suggest designating a contact person for migration issues in each of its delegations in African countries. As regards legal immigration, the Commission suggests for example setting up migration centres in partner countries, supported by EC funding, in order to facilitate management of seasonal workers, exchanges of students and researchers and other forms of legal movement of people, supporting activities such as reinforcing the third-country administrative services responsible for managing labour migration, reinforcing the capacity of the national employment services in third countries and developing intermediation establishments as well as the implementation of pre-immigration plans in countries of origin, once certain conditions have been met, such as cooperation on illegal migration and the establishments for agreements for readmissions, and setting up mobility packages which would enable their citizens to have better access to the EU. With regard to integration and intercultural dialogue, the Commission will establish

¹⁴⁰ COM/2006/735 of 30 November 2006 of the Commission of the European Communities, website EUR-Lex.europe.eu.

instruments enabling more involvement by the interested parties, including the migrants themselves, thereby encouraging an effective integration strategy.¹⁴¹

With regard to the fight against illegal immigration and trafficking in human beings, the communication proposed that EUROPOL will help to fight illegal immigration and people trafficking, FRONTEX within the framework of European external relations policy, should establish technical working arrangements for joint operations with relevant third countries, ILO networks will be reinforced, with the aim of having at least one liaison officer in each key African country of origin and transit¹⁴². With regard to asylum and the protection of refugees, the Commission suggests implementing regional protection programs, as well as activities in other areas giving support to asylum-seekers and persons in need of international protection, such as Mauritania and South Africa. Funds will also be made available to finance a UNHCR-run project for protection activities in all the southern and eastern Mediterranean countries-Morocco, Algeria, Tunisia, Libya, Syria and Lebanon.

Another Communication¹⁴³ in 2006 of the Commission of the European Communities had as aim to provide support for non-EU Member Countries so that they can better manage migratory flows. The programme is designed to cover the main areas corresponding to the key dimensions of the migratory phenomenon, in particular the links between migration and development, economic migration, preventing and fighting illegal immigration, voluntary return and reintegration of migrants, international protection. All the non-EU Member Countries covered by the European Neighbourhood Policy Instrument and the Development Cooperation and Economic Cooperation Instrument are eligible for the thematic program. However, the Commission is proposing that the regions of emigration and transit towards the European Union should be considered as a priority. The program is designed to back up the measures taken under the geographical instruments; accordingly it proposes new initiatives on the basis of pilot projects, finances global or multiregional initiatives. The future thematic program has five strands: fostering the links between migration and development¹⁴⁴, promoting well-managed economic migration¹⁴⁵, fighting illegal migration and facilitating the readmission of illegal immigrants, protecting migrants against exploitation and

¹⁴¹ This will require in particular: establishing an integration platform where relevant partners can exchange views on a regular basis, creating an integration website and new editions of the integration handbook and the annual report on migration and integration.

¹⁴² Member States must be supported in designing and implementing voluntary return programs and enforced return plans, including joint flights for removal, in this context, the Commission consider that it is equally important that the proposed directive establishing common standards for Member States return procedures is adopted as soon as possible.

¹⁴³ COM/2006/26 of 25 January 2006 of the Commission of the European Communities, website EUR-Lex.europa.eu.

¹⁴⁴ The thematic program involves the implementation of measures, for example to mitigate brain drain, to facilitate remittances by migrant workers, to support voluntary return and professional reintegration, to built capacities for better managing migration.

¹⁴⁵ The Commission would like to see the thematic program helping in non-EU Member Countries: to disseminate information about the conditions of entry into and stay on the territory of the Union and legal recruitment there, to encourage the definition of legislative frameworks for migrants workers in non-EU Member Countries.

exclusion¹⁴⁶, and promoting asylum and international protection of refugees.¹⁴⁷ In order to fight illegal migration and facilitate the readmission of illegal immigrants it is planned to step up the fight against smuggling of and trafficking in human beings, to facilitate the communication of information aimed at discouraging illegal immigration, to improve the prevention and fight against illegal immigration, to facilitate the implementation of readmissions agreements concluded with the Community, to step up assistance for non-EU Member Countries in the management of illegal immigration.¹⁴⁸

Subsequently, in 2007, another Communication¹⁴⁹ was published. It focuses on two aspects: mobility partnership and circular migration. The Commission proposes that the European Community negotiates mobility partnerships with third countries with a view to enabling their citizens to have better access to the European Union. These partnerships would involve third countries determined to cooperate with the EU in the management of migration flows, including by fighting illegal immigration. Concerning the content of the partnership, the Commission lists a whole series of possible commitments by the third country.¹⁵⁰ For its part, the EU could allow nationals from the countries concerned greater possibilities for mobility to the EU, with due regard for the competences of the Member States.¹⁵¹ The Commission indicates that the two main forms of circular migration which could be most relevant in the context are that of third-country nationals residing in the EU, such as business people from third countries working in the EU and wishing to start an activity in their country of origin or in another third country, that of third-country nationals established outside the EU, such as nationals wishing to engage in seasonal or temporary work within the EU or to study there before returning to their country. The Commission points out that harmonization of national legislation could improve circular migration. It states that components of

¹⁴⁶ Steps will be taken in non-EU Member Countries in the following areas: development of legislation in the field of legal immigration, integration and non-discrimination policies as well as measures to protect migrants from racism and xenophobia, prevention of and fight against trafficking in human beings and support for victims of such practices.

¹⁴⁷ By strengthening non-EU Member Countries legal framework for providing asylum and international protection, supporting the registration of asylum applicants and refugees, promoting respect for international standards.

¹⁴⁸ The thematic program will be subject to multiannual programming by the Commission in the form of a thematic strategy paper and a multiannual indicative program. Two papers and two indicative programs will be drawn up, in each case one for the period 2007-2010 and one for the period 2011-2013.

¹⁴⁹ COM/2007/248 of 16 May 2007 of the Commission of the European Community, website EUR-Lex.europa.eu.

¹⁵⁰ Such as readmission of its own nationals and third-country nationals who crossed its territory before arrival in the EU, organization of targeted information campaigns to discourage illegal immigrants, strengthening of border controls and stepping up of the fight against fraudulent documents.

¹⁵¹ These possibilities could include consolidated offers by several Member States to facilitate access to their labour markets, financial or technical assistance for the third country, for example in the form of scholarships for nationals wishing to study in the EU, pre-departure linguistic or technical training for economic migrants, programs for the reintegration of migrants wishing to return to their country, and twinning arrangements between employment services of the Member States and their counterparts in third countries, measures to reduce brain drain and to encourage circular or return migration, easing of the procedures for issuing short-stay visa to nationals of the third country party to the agreement.

a European legislative framework have already been considered in the Policy Plan on legal migration such as the proposal for a Directive on the admission of highly skilled migrants. New measures could be considered to supplement the Policy Plan on legal migration, such as the adaptation of Directive 2003/109/EC, concerning the status of third-country nationals who are long-term residents. A number of incentives could be built into EU policy instruments to promote circularity.¹⁵²

In 2007, the Commission of the European Communities published a Communication¹⁵³ on a single procedure for a residence and work permit and a common set of rights for non-EU Member Country workers, with which it defines the legal basis for the action plan on legal immigration. This proposal applies to non-EU Member Country nationals seeking to be admitted to an EU Member State in order to stay and work there and who are already resident and working there. It provides for a single residence and work permit, a single application procedure for this permit, the rights attached to this permit, a set of rights for all non-EU Member Country workers already admitted but who have not yet been granted long-term resident status. The duration of this permit and the conditions under which it is granted, renewed and cancelled are decided by the Member States.

The format of the single permit is prescribed in regulation which establishing a single residence permit for non-EU Member Country nationals, before analyzed. This permit allows non-EU Member Country nationals to enter, re-enter and stay in the issuing Member State, move freely within that Member State, pass through other Member States, exercise the activities authorized under the single permit. Non-EU Member Country workers enjoy equal treatment with nationals as regards working conditions, membership of a labour union or employers or professional organization, education and vocational training, recognition of diplomas, social security, including health care, access to goods and services, including procedures for obtaining housing and the assistance afforded by employment offices, tax benefits.

In December 2007, with a Communication¹⁵⁴ the Commission of the European Communities notes the progress that has been made towards a common immigration policy but also notes weaknesses. In order to the progress the Commission indicates the achievements in the Schengen area, the action of the FRONTEX, establishing an immigration policy with an external dimension, the development of financial funds, for example the External Border Fund and the Integration Fund. However, as just said, the Commission notes also weaknesses such as the failure to enforce expulsion orders and contradictory approaches or to the recruitment of third-country workers in different Member States. That is why, in its view, it is necessary to go further with a truly common outlook on questions of immigration. In this respect it notes, for example, that the European policy on legal immigration described in the Tampere conclusions remains largely incomplete.

¹⁵² For example a written commitment by migrants to return voluntary to their countries of origin once their contract expires, the conclusion and implementation of readmission arrangements to ensure the effective return of the national in the case of an illegal stay within EU territory.

¹⁵³ COM/2007/638 of 23 October 2007 of the Commission of the European Communities, website EUR-Lex.europa.eu.

¹⁵⁴ COM/2007/780 of 5 December 2007 of the Commission of the European Communities, website EUR-Lex.europa.eu.

The Commission recommends building a new commitment that will lead to a common policy in which national and Community actions will complement each other. In practical terms, the European policy will take into account specific national needs, while national policies will act in a truly European framework in pursuit of objectives established in common. This new commitment must respect existing Treaty competences, such a commitment would be taken on the basis of an assessment of the immigration situation in each Member State. It would define a plan leading to a common understanding of the kind of immigration that European needs, including adequate immigration measures. It would contain a set of measures devised to tackle illegal immigration, addressing both new arrivals and illegal immigrants already living in the EU. This commitment would encourage the Member States and European institutions to work in partnership and transparency, define common principles and rules regarding coherence and solidarity, implement existing EU strategies and policies, provide quantifiable indicators for evaluating the impact of measures adopted, improve cooperation between national administrations.

In 2008 a Decision¹⁵⁵ of European Council established a European Migration Network. In order to address the need to exchange information on all aspects of migration and to contribute to a common asylum and immigration policy, the Commission set up the EMN in 2003, at the invitation of the European council, initially as a pilot project. From 2004 until the end of 2006, the EMN was a preparatory action. The Hague Program reinforced the need for a common analysis of migratory phenomena and the EMN is one means towards this goal. Following the successful conclusion of the EMN's preparatory phase, a public consultation on the future role and structure of the EMN was held, which was launched with the publication of the Green Paper¹⁵⁶ of 28 November 2005 on the future of the European Migratory Network.

In August 2007, a proposal was published for a council decision establishing a legal basis for the EMN, which was then adopted as Council decision 2008/381/EC. This decision establishes a European Migration Network "EMN", whose objective is to meet the information needs of community institutions and of Member State authorities and institutions through the provision of up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policy-making in the European Union. It will also provide this information to the general public. To attain this objective, the EMN, for example, will collect and exchange up-to-date and reliable data and information from a wide range of source, undertake analysis of this data and information and provide it in a readily accessible format, produce and publish periodic reports on the migration and asylum situation in the Community and the Member States, create and maintain an internet-based information exchange system, which provides access to relevant documents and publications in the area of migration and asylum, coordinate information and cooperate with other relevant European and international bodies.

¹⁵⁵ Decision 2008/381/EC, 14 May 2008, *O.J.L. 131*, 21 May 2008, p. 7-12.

¹⁵⁶ COM/2005/606 of 29 November 2005 of the Commission of the European Communities, website EUR-Lex.europa.eu.

The next Communication¹⁵⁷ of 2008 provides 10 principles on which a common policy in this area will be built and the necessary actions for implementing these principles. They aim at ensuring that legal immigration contributes to EU's socio-economic development, EU countries acts are coordinated, cooperation with non-EU countries is developed further and illegal immigration and trafficking in human beings are tackled effectively. From these 10 common principles concrete actions for their implementation need to be formulate. In order to attain a coordinated and integrated approach to immigration, these principles are mainstreamed under the three main strands of European Union policy, prosperity, solidarity and security. The common immigration policy should be characterized by clarity, transparency and fairness and be targeted towards promoting legal immigration.

In light of the Lisbon Strategy, the promotion of economic immigration should be founded on a needs-based assessment of EU labour markets. Progress within all skill levels and sectors should be considered in relation to the knowledge-based economy and economic growth. At the same time, the EU countries' right to determine the volumes of admission and the immigrants' rights should be kept in mind. Integration as a "two-way process" should be promoted, conforming to the Common Basic Principles on Integration. The participation of immigrants should be enhanced, while social cohesion and approaches to diversity in the host societies should be developed. To this end, the EU and its countries should, for example consolidate the EU framework for integration, promote integration programs targeted at new immigrant arrivals, ensure equal advancement opportunities in the labour market for legal non-EU workers.

At the basis of the common immigration policy should be the principles of solidarity, mutual trust, transparency, responsibility and shared effort between the EU and its countries. Therefore, they should strive to improve the sharing of information in order to establish coordinated approaches where relevant, develop mechanisms for monitoring the impact of national measures so as to achieve consistency within the EU, establish interoperable system to manage immigration more effectively, provide for consistent communication of EU immigration policies both internally and externally. The EU and its countries, for example, should complement national resources with the use of the framework program on Solidarity and Management of Migration Flows (2007-2013), develop further the management of activities that are funded from both EU and national resources in order to prevent concurrent actions.

Immigration should be an integral part of the EU's external policies, to this end the EU and its countries should support the development of non-EU countries immigration and asylum system, as well as legislative frameworks, enhance collaboration and capacity-building in partner countries and develop mobility partnership on labour migration, enhance collaboration with European Neighborhood countries, Latin America and Caribbean and Asia, in order to develop a shared understanding of immigration challenges, develop the legal and operational means to provide circular migration opportunities and collaborate with countries of origin on illegal immigration, incorporate provisions on social security into association agreements with non-EU countries.

¹⁵⁷ COM/2008/359 of 17 June 2008 of the Commission of the European Communities, website EUR-Lex.europa.eu.

With a common visa policy, the entry of legal visitors into EU territory should be facilitated and internal security strengthened. This visa policy should be based on the use of new technologies and widespread information sharing between EU countries. To enable this, the EU and its countries should take up the uniform European Schengen visas, use common consular centers for issuing visas, examine in more detail the visa procedures, in particular with regard to long-term visas. The protection of the Schengen area's integrity is essential. Hence, the management of external borders should be improved and the development of border control-related policies should be aligned with that of customs controls and threat prevention.

A consistent policy for fighting illegal immigration and trafficking in human beings should be developed. Measures against undeclared work and illegal employment and for protecting victims of trafficking should be established. To work toward these goals, the EU and its countries should supply resources for investigating cases of smuggling and trafficking, collaborate with representatives of workers and employers to tackle illegal employment, support collaboration between administrations, in particular with regard to cross-checks, and assist in establishing exchanges of good practices.

Return policies are integral to policies on immigration. Giving legal status to illegal immigrants *en masse* should not be used. Hence, the EU and its countries should ensure that return decisions are mutually recognized in the EU and promote collaboration between EU countries in carrying out these decisions to assure that the Directive on common standards for returning non-EU nationals staying illegally is implemented and applied once it has entered into force, develop means to identify undocumented returnees and examine whether a European *laisser-passer* may be implemented for returning undocumented immigrants, promote the implementation of readmission agreements by non-EU countries, and establish a common European approach to giving legal status to illegal immigrants.

In September 2008 the European Pact on Immigration and Asylum was made.¹⁵⁸ This pact forms the basis for immigration and asylum policies common to the European Union and its countries. In a spirit of mutual responsibility and solidarity between EU countries and of partnership with other countries of the world, it gives a new impetus to the continued development of a common immigration and asylum policy that will take account of both the collective interest of the EU and the specific needs of its countries.

In 2008, the Commission of the European Communities issued a Communication¹⁵⁹ which follows up the Communication on "A Common Immigration Policy for Europe", presented by the Commission on 17 June 2008, and it forms one of the first building blocks of the European Pact on Immigration and Asylum, adopted in October 2008. It calls for increased coordination and synergies between the European Union and third countries, in order to achieve greater effectiveness and coherence in the practical application of the Global Approach to Migration. Collaboration with third countries should

¹⁵⁸ European Pact on Immigration and Asylum of 24 September 2008 of the Council of the European Union, website EUR-Lex.europa.eu.

¹⁵⁹ Com/2008/611 of 8 October 2008 of the Commission of the European Communities, website EUR-Lex.europa.eu.

be extended to address the European Union's labour needs. Consequently, potential migrants should be informed about the rules and procedures for gaining legal access to the EU and of the risks associated with illegal migration. To this end, a migration portal will eventually be established and targeted information campaigns carried out. It is also essential that labour migrants access to the EU is flexible and that mobility for research or business purposes is facilitated.¹⁶⁰

In order to curb irregular immigration, the EU provides support to third countries on border management-related aspects. The Council has requested that the Commission considers broadening the role of FRONTEX in this context. Continuing dialogue and cooperation on these issues with partner countries has also been emphasized. In this regard, the Commission intends to support, for example, the collection of information relating to changes in migratory routes to the EU, development of migration management in key third countries, adoption and implementation of National Integrated Border Management Strategies in third countries, setting-up a border surveillance infrastructure under the EUROSUR through strengthened cooperation with third countries, implementation of the Ouagadougou Action Plan, as well as the development of anti-trafficking strategies by regional organizations.

It is also essential that migration policies be mainstreamed into other relevant policy areas, hence, the Commission intends to improve, for example, the system for remittance transfers, migrant groups and diaspora associations participation in EU policy-making, quality of and access to education and vocational training, as well as opportunities for and conditions of employment in high emigration areas, application of the European Consensus on Development to issues related to employment, governance and demographic developments.

With regard to the southern migratory routes, more coherence needs to be achieved at the policy development and implementation levels. To this end, the Commission aims to promote intra-Africa cooperation and the development of African migration policy frameworks. At the EU-level, the Commission intends to manage EU-Africa cooperation through the EU Implementation Team on the Migration, Mobility and Employment Partnership. The migration and development dimension should also be extended to the cooperation between the EU and its neighboring eastern and south-eastern regions. Issues such as labour migration, remittances, return and reintegration, as well as diaspora networks should be taken into account.¹⁶¹ The global approach must provide a practical framework for better migration management. The EU and the Member States should make their policy profile more visible and promote the global approach in the different cooperation frameworks.

¹⁶⁰ To this end, the Commission will aim to develop first generation mobility partnership use in strategic cooperation activities, centres offering information and management services related to migration. Tools to better match jobseekers to vacancies, exchanges of best practice among relevant stakeholders, legal and operational measures that encourage circular migration, common centres to handle visa applications.

¹⁶¹ Other regions, such as the Southern Caucasus, Central Asia, Middle East, Asia, and Latin America and the Caribbean also have an impact on the EU's migration policy in terms of irregular as well as legal economic migration. Therefore, a differentiated approach should be taken to these regions, both bi-and multilaterally, to strengthen dialogue and cooperation.

Finally, the overall efficiency of the global approach is also linked to its financing. Consequently, the Community funding instruments, as well as those of the Member States and other outside sources must be reviewed and their use improved.

In the end of 2008, The European Parliament and the Council adopted an important Directive¹⁶² which provides Member States with common standards and procedures for returning third-country nationals staying illegally on their territories, with certain exceptions¹⁶³. A return decision must be issued by a Member State to the third-country national staying illegally on its territory. If the third-country national has a valid residence permit or equivalent from another Member State, they must immediately return to the Member State. If another Member State takes back an illegally staying third-country national under a bilateral agreement, that Member State will be responsible for issuing the return decision. Due to compassionate, humanitarian or other reasons, a Member State may provide an illegally staying third-country national with an autonomous residence permit or an equivalent right to stay. Member States should not issue return decisions before the pending procedures for renewing such permits have come to an end.

The return decision must allow for a period is applied for by the person in question. In particular circumstances, the period for voluntary departure may be prolonged. Member States may also impose certain obligations on the third-country national for the duration of this period in order to prevent them from fleeing. When the illegally staying third-country national risks fleeing, has submitted a fraudulent application or poses a risk to public/national security, the Member State may grant a shorter period of voluntary departure or no period at all.

If no period is granted, or if the third-country national has not complied with the return decision within the period granted, the Member State must enforce their removal. Coercive measures that are proportionate and do not exceed reasonable force may be used only as a final solution to remove third-country nationals. The removal of a third-country national must be postponed if it breaches the principle of non-refoulement or if the return decision has been temporarily suspended. Member States may also postpone removals in particular circumstances.¹⁶⁴ In specific cases, and when less coercive measures are not sufficient, Member States may detain a third-country national

¹⁶² Directive 2008/115/EC, 16 December 2008, *O.J.L.* 348, 24 December 2008, p. 98-107.

¹⁶³ Member States must however ensure that the treatment and level of protection of third-country nationals excluded from the scope of the directive corresponds at least to certain of its provisions on coercive measures, removal, health care and detention. In all cases, Member States must respect the principle of non-refoulement and take into consideration the best interest of children, family life and the health of the person concerned.

¹⁶⁴ Decision on returns, entry bans and removal must be provided in writing and accompanied by information on available remedies. On request, the Member State must provide a translation of these to the third-country national, unless it issues decisions by means of a standard form.

Third-country nationals must be given the possibility to appeal against or seek review of return decisions, as well as to obtain legal assistance/representation free of charge. The decisions are to be reviewed by a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence. The review body will have the power to temporarily suspend the enforcement of the decisions.

during the return procedure if they risk fleeing or avoids/obstructs the preparation of return or the removal process. Detentions are ordered in writing by administrative or judicial authorities and must be reviewed regularly. The detention period must be as short as possible and not more than six months.¹⁶⁵

The following year, 2009, the Council of the European Union adopted a Directive¹⁶⁶ concerned with entry and residence of highly qualified workers, this Directive represents the first of the proposal in order to policy plan on legal migration, before analyzed. The object of this Directive is to improve the European Union's ability to attract highly qualified workers from third countries. The aim is not only to enhance competitiveness within the context of the Lisbon strategy, but also to limit brain drain. It is designed to facilitate the admission of these persons by harmonizing entry and residence conditions throughout the EU, simplify admission procedures, improve the legal status of those already in the EU. The Directive applies to highly qualified third-country nationals seeking to be admitted to the territory of a Member State for more than three months for the purpose of employment, as well as to their family members.

To be allowed into the EU, the applicant must produce a work or binding job offer with a salary of at least 1.5 times the average gross annual salary paid in the Member State concerned, a valid travel document and a valid residence permit or a national long-term visa, proof of sickness insurance, for regulated professions, documents establishing that they meets the legal requirements, and for unregulated professions, the documents establishing the relevant higher professional qualifications. Member States are free to decide whether the application for an EU Blue Card to be made by the third-country national and/or they employer. If the candidate fulfils the above conditions and the national authorities decide to admit them, they are issued an EU Blue Card, which is valid for a standard period of one to four years. The application for an EU Blue Card can be rejected if it was drawn up on the basis of false or fraudulently acquired documents or if, given the state of the labour market, the Member State decides to give priority to EU citizens, third-country nationals with a preferred status under Community law who are legal residents or who are EC long-term residents and wish to move to that Member State.¹⁶⁷ With this card, third-country nationals and their families can enter, re-enter and stay in the issuing Member State and pass through other Member States, work in the sector concerned, enjoy equal treatment with nationals as regards.¹⁶⁸

¹⁶⁵ Only in particular circumstances, when the removal of third-country national might exceed the time limit set, Member States may prolong detention by a maximum of 12 months. Specialized detention facilities are to be used for the purpose; however, if this is not feasible, Member States may use prison accommodation with separate quarters for the third-country nationals.

¹⁶⁶ Directive 2009/50, 25 May 2009, *O.J.L. 155*, 18 June 2009, p. 17-29.

¹⁶⁷ The application may also be rejected on the ground of volumes of admission established by the Member State, ethical recruitment or if the employers have been sanctioned due to undeclared work or illegal employment. The EU Blue Card may be withdrawn if the holder does not have sufficient resources to maintain himself and family members without social assistance or if they have been unemployed for more than three consecutive months or more than once during the period of validity of the card.

¹⁶⁸ For example working conditions, social security, pensions, recognition of diplomas, education and vocational training

After two years of legal employment, they may receive equal treatment with nationals as regards access to any highly qualified employment. After 18 months of legal residence, they may move to another Member State to take up highly qualified employment. A recent communication¹⁶⁹ of 2010 presents an overview of European Union level instruments that regulate the collection, storage or cross-border exchange of personal data for law enforcement or migration management purposes. It describes the main purpose and structure of these instruments, as well as the types of personal data they cover, the authorities that have access to these data and the rules for data protection and retention. It also sets out the main principles to take into consideration when designing and evaluating such instruments in future.

The current EU level instruments consist of those that aim to improve the functioning of the Schengen area and the customs union. Moreover, EU agencies and bodies have been established to assist EU countries in preventing and combating serious cross-border crime, such as EUROPOL and the EU's Judicial Cooperation Unit "Eurojust". In this action on the Stockholm Program, just analyzed, the Commission has committed to presenting in the course of 2011 three legislative proposals: a PNR package, an Entry/Exit System for non-EU country nationals entering the Union for stays of a maximum of three months, a Registered Travelers Program for simplifying border checks for certain groups of frequent travelers from non-EU countries. There is a need to establish a set of core principles for future policy developments as well as for evaluation of the current instruments. These should consist of substantive principles, such as the safeguarding of fundamental rights, especially of the right to privacy and personal data protection via "privacy by design", an assessment of the necessity of the new instrument in terms of its impact on an individual's right to privacy and personal data protection, compliance with the principles of subsidiarity and proportionality, management of risk on risk profiles.

The set of core principles should also consist of process-oriented principles, such as cost-effectiveness, taking into consideration existing instruments, bottom-up policy design, taking into consideration the interests of end-users, clear allocation of responsibilities, paying particular attention to governance structures, reporting and review obligations to ensure the instruments serve the purposes they were designed for.

In conclusion it is clearly the will of the EU to develop a policy of cooperation between the EU and Third Country States, through, for example, the creation of a pan-African network of migration observatories and the proposed measures to implement twinning, with EU funding to help African countries to develop their policies on immigration and asylum. Member countries consider that this policy of cooperation would help to combat illegal immigration and to develop the legal migration channels instead.

¹⁶⁹ COM/2010/385 of 20 July 2010 of the European Commission, website EUR-Lex.europa.eu.

6. Financial support

Financial programs that will be outlined in this section are all included in the General Program Solidarity and Management of Migrations Flows.¹⁷⁰ The framework program is designed to improve management of migratory flows at the level of the European Union and to strengthen solidarity between Member States, also with the aim to fight illegal immigration. These funds are needed to finance the achievement of these objectives.

In 2007 the European Council and the European Parliament established, with a decision¹⁷¹, a European Refugee Fund of 614 million euros for the period 2008-2013. This decision furthers the actions implemented by the earlier decisions establishing the ERF. It repeals decision 2004/904/EC¹⁷² so that the ERF financial planning period coincides with the current multiannual programming period, as part of the general program “Solidarity and Management of Migration Flows”. This decision sets out the objectives of the European Refugee Fund and the rules for its management. It also sets out the available financial resources and the criteria for their allocation. The fund is targeted at persons having refugee status as defined by the Geneva Convention of 28 July 1951 or enjoying a form of temporary or subsidiary protection, or who are being resettled in a European Union country. Persons who have applied for refugee status or for one of these forms of protection are also included. The ERF finances national and transnational actions, as well as actions that are of interest to the EU as a whole. National actions are implemented by EU countries within the framework of multiannual programming consistent with the EU’s strategic guidelines for the intervention of the fund (shared management). The budget allocated for EU level actions is implemented by the Commission (direct management).

The ERF supports national actions relating to reception conditions and asylum procedures, especially infrastructure and the provision of material, medical and legal aid, the integration in the host country of persons in the target groups, especially measures relating to education, participation in civil and cultural life, access to the labour market, language training and assistance with housing, the enhancement of EU countries capacity to develop, monitor and evaluate their asylum policies, and the collection, compilation, analysis, use and dissemination of country-of-origin information and statistics on asylum, reception and integration procedures, resettlement, particularly the development of resettlement programs and the provision of pre-departure information and material support, and the transfer between EU countries of applicants in the target groups.

The ERF supports transnational and EU level actions relating to the creation of cooperation networks between bodies located in two or more EU countries, setting up of awareness-raising campaigns, dissemination of good practice, launching of pilot projects on EU level cooperation, development of networks linking non-governmental organization (NGOs) present in at least 10 EU countries and

¹⁷⁰ COM/205/123 of the European Council, website EUR-Lex.europa.eu.

¹⁷¹ Decision 573/2007/CE, 23 May 2007, *O.J.L.* 144, 6 June 2007, p. 1-21.

¹⁷² Decision 2004/904/EC, 2 December 2004, *O.J.L.* 381, 28 December 2004, p. 52-62.

whose objective is to facilitate such exchanges.¹⁷³ In line with the priorities and objectives laid down by the EU, the ERF will provide grants to support actions of a non-profit nature already co-financed by public or private sources. Support from the ERF may not exceed 50% of total cost of national actions. Exceptionally, this may be increased to 75% for projects addressing specific priorities identified in the strategic guidelines. The EU contribution is increased to 75% in the EU countries covered by the Cohesion Fund. The Commission will adopt strategic guidelines for the period 2008-2013, defining EU level priorities for each of the objectives of the fund.¹⁷⁴

Still in 2007 another Decision¹⁷⁵ established, as part of the general program “Solidarity and Management of Migration Flows”, a Return Fund for the period 2008-2013 with resources totaling 676 million euros; this decision carries forward the preparatory financial actions implemented under the Hague Program. This decision defines the objectives of the Return Fund and the rules for its management. It also establishes the available financial resources for the fund and the criteria for their allocation. The fund is aimed at persons enjoying or applying for international or temporary protection and those illegally resident in a European Union country. The fund can be used to finance national and transnational actions or actions at EU level.

National actions are directed towards designing integrated return management in EU countries and enhancing cooperation between EU countries in this area. In addition, these actions are designed to promote uniform application of the European legislation on integrated return management. Transnational actions and actions of interest to the EU include actions that further cooperation at EU level in implementing EU law and good practices, support the development of statistical tools, support transnational awareness-raising campaigns, support the creation of a handbook on best practices in this area, provide for assistance to EU countries in emergency situations, and support the setting up of pilot projects and transnational networks of bodies responsible for facilitating the exchange of information and good practices.

In line with the priorities and objectives laid down by the EU, the fund will provide grants to support actions of a non-profit nature already co-financed by public or private sources. Support from the fund may not exceed 50% of the total cost of national actions. The EU contribution is increased to 75% in countries covered by the Cohesion Fund and for projects addressing specific priorities identified in the strategic guidelines. The Commission will adopt strategic guidelines for the period 2008-2013, defining EU level priorities for each of the objectives of the fund. On the basis of these

¹⁷³ The ERF also provides for a financial reserve for implementing emergency measures to provide temporary protection in the event of a mass influx of displaced persons within the meaning, of Council Directive 2001/55/EC (of 2001/55/EC, 20 July 2001, *O.J.L.* 212, 7 August 2001, p. 12-23). This reserve can also be used to support EU countries efforts to address situations of particular pressure that result from the sudden arrival of large numbers of persons who may be in need of international protection and that place significant and urgent demands on their reception facilities or asylum systems.

¹⁷⁴ The Commission will approve EU countries multiannual programs setting out, on the basis of the Commission’s strategic guidelines, a strategy for and a description of the actions designed to achieve their objectives and additional indications regarding project financing. It will also adopt annual financing decisions approving each annual program implementing the multiannual program.

¹⁷⁵ Decision 2007/575/EC, 23 May 2007, *O.J.L.* 144, 6 June 2007, p. 45-65.

strategic guidelines, each EU country will prepare a multiannual program setting out a strategy for and a description of the actions designed to achieve their objectives, as well as additional indications regarding project financing. It will also define the annual programs implementing the multiannual program. This decision must be reviewed by the European Parliament and Council by 30 June 2013.

Another decision which has a link with the document just presented is the decision 2007/873/EC;¹⁷⁶ this decision sets out the strategic guidelines for the period 2008-2013, defining the EU level priorities and specific priorities for EU countries to address in order to receive an increased financial contribution from the Return Fund. This decision provides four priorities with one or more specific priorities for each.¹⁷⁷

In June of 2007, the European Council established a European Integration Fund “EIF” of 825 million euros for the period 2007-2013¹⁷⁸ as part of the general program “Solidarity and Management of Migration Flows”, mentioned earlier. This decision sets out the objectives of the European Fund for the Integration of non-European Union country nationals and the rules for its management. It also establishes the available financial resources for the fund and the criteria for their allocation. The EIF finances national, transnational and EU level actions that are intended to facilitate the integration of non-EU country nationals in the host countries, targeting recent arrivals in particular. National actions are implemented by the EU countries within the framework of multiannual programming consistent with the EU’s strategic guidelines for the intervention of the fund (shared management). The budget allocated for EU level actions is implemented by the Commission (direct management).

The EIF supports national action that facilitate development and implementation of appropriate admission procedures designed to support the integration process; support the development and implementation of the integration process, particularly in relation to non-EU country nationals recently arrived in the host country; enhance the capacity of EU countries to develop, implement, follow up and evaluate policies for the integration of non-EU country nationals; support the exchanges of information and good practices in and between EU countries by developing,

¹⁷⁶ Decision 2007/837/EC, 30 November 2007, *O.J.L.* 330, 15 December 2007, p. 48-50.

¹⁷⁷ Support EU countries in developing a strategic approach to return management. The integrated return plans should focus on assisted voluntary return programs, cash incentives and measures to deal with the specific situation of vulnerable returnees, and the return of non-EU country nationals or stateless persons who are not covered by EU or national bilateral readmission agreements to countries with which cooperation is difficult; support EU countries cooperation on return management. Projects should in particular address integrated returns plans that have been designed and that will be applied in collaboration with EU countries and possibly with the European External Borders Agency, non-governmental and /or international organizations; support specific innovative national or international tools for return management. Projects should propose innovative measures for informing and counseling potential returnees on the situation in the countries of return or other innovative incentives for increasing voluntary returns and test new working methods that will quicken the process of documenting returnees in collaboration with non-EU countries consular authorities and immigration services; support EU level standards and best practices on return management. Projects in this area should address evaluations for measuring progress in all aspects of return programs and national level measures that ensure the fair and effective application of the common standards on return

¹⁷⁸ Decision 2007/435/EC, 25 June 2007, *O.J.L.* 168, 28 June 2007, p.18-36.

implementing and assessing policies and measures for the integration of non-EU country nationals. The EIF supports transnational and EU level action that set up pilot project and cooperation networks founded on transnational partnerships with a view to promoting exchanges of information and good practices; concern the publication of comparative studies and joint pilot projects, assist the development of statistical tools, methods and indicators designed to measure the level of development of integration policies. Furthermore, in line with the priorities and objectives laid down by the EU, the EIF provides grants to support actions of a non-profit nature already co-financed by public or private sources. Support from the fund may not exceed 50% of the cost of national actions. Exceptionally, this may be increased to 75% for projects addressing specific priorities identified in the strategic guidelines. The EU contribution is increased to 75% in EU countries covered by the Cohesion Fund.¹⁷⁹ This decision must be reviewed by the European Parliament and the Council by 30 June 2013.

This Decision carries forward the recommendations of the Hague Program and furthers the Commission communication of 1 September 2005 on a common integration program and pilot projects and preparatory actions in the field of integration “INTI Program”. A decision which has a link with this document is the decision 2008/457/EC¹⁸⁰, it establishes rules for EU countries’ application of actions under the EIF. It contains provisions on designated authorities and the delegation of tasks to these authorities. The decision also provides for the drawing up of a manual by EU countries that sets out the procedures and practical arrangements for the designated authorities’ application of the fund.¹⁸¹

The documents examined above show that there is an awareness of the financial implications of the need for the national, transnational and European actions to be effectively implemented. The funds just examined above, all included in the General Program Solidarity and Management of Migrations Flows, are proof that the EU has recognized the importance of providing financial aid in order to ensure the policies are effective.

7. Re-entry and admission

In this section examples of agreements concluded between the EU and third countries, aimed to regulate immigration, specifically concerning the issue of re-entry and admission are examined.

¹⁷⁹ The Commission approves EU countries multiannual programs that set out on the basis of the Commission’s strategic guidelines a strategy for and a description on the actions designed to achieve their objectives, as well as additional indications regarding project financing. It also adopts annual financing decisions approving each annual program implementing the multiannual program.

¹⁸⁰ Decision 2008/457/EC, 5 March 2008, *O.J.L. 167*, 27 June 2008, p. 69-134.

¹⁸¹ Moreover, the decision lists the information EU countries must submit to the Commission on the use of the fund, in particular as regards the description of their management and control system, and when reporting irregularities. For the first, information must also be submitted by electronic means if possible. To this end, the Commission will develop a computer system. Finally, the decision also lays down rules on the information to be provided to beneficiaries as well as on the publicity for the general public regarding the fund.

In 2005 the European Council published a Decision¹⁸² concerning the conclusion of the Agreement between the European Community and Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorization. The Agreement meets the need to establish, on the basis of reciprocity, rapid and effective procedures for identification and safe and orderly return of persons who do not, or no longer, fulfill the conditions for entry to, presence in, or residence on the territories of Sri Lanka or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of cooperation. Sri Lanka must readmit, upon application by a Member State all persons who do not, or who no longer, fulfill the conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State provided that it is proved that they are nationals of Sri Lanka; all third-country nationals or stateless persons who do not, or who no longer, fulfill the conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State. The latter case applies where it is proved that the person at the time of entry held a valid visa or residence authorization issued by Sri Lanka; or entered the territory of the Member States unlawfully coming directly from the territory of Sri Lanka by air or ship without having entered another country in-between. The readmission obligation does not apply if the third country national or stateless person has only been in airside transit via Colombo international airport; or the requesting Member State has issued to the third country national or stateless person a visa or residence authorization before or after entering its territory; unless that person is in possession of a visa or residence permit, issued by Sri Lanka, which has period of validity. At the request of a Member State, Sri Lanka must issue the person to be readmitted with the travel document required for his or her return that is a period of validity of at least six months. A Member State shall readmit, upon application by Sri Lanka, all persons who do not, or who no longer, fulfill the conditions in force for entry to, presence in, or residence on, the territory of Sri Lanka provided that it is proved that they are nationals of that Member State. It must also readmit all third-country nationals or stateless persons who do not, or who no longer, fulfill the conditions in force for entry to, presence in, or residence on, the territory of Sri Lanka proved that such persons at the time of entry held a valid visa or residence authorization issued by the requested Member State; or entered the territory of Sri Lanka unlawfully coming directly from the territory of the requested Member State.

Any transfer of a person requires the submission of a readmission application to the competent authority of the requested State. The readmission application is to contain the particulars of the person to be readmitted, and an indication of the means with which proof or *prima face* evidence of nationality, transit and unlawful entry and residence will be provided. The application for readmission must be submitted to the competent authority of the requested State within a maximum of one year after the requesting State's competent authority has gained knowledge that a third-country national or a stateless person does not, or does no longer, fulfill the conditions in force for entry, presence or residence. Where there are legal or factual obstacles to the application being submitted in time, the time limit may be extended. A readmission application must be replied to within no more than 15 calendar days. Reasons must be given for refusal of a readmission request.

¹⁸² Decision 2005/372/EC, 3 March 2005, *O.J.L.* 124, 17 March 2005, p. 41-42.

The transit of third-country nationals or stateless persons is confined to cases where such persons cannot be returned direct to the State of destination. Transit can be refused by Sri Lanka or a Member State if the third-country national or the stateless person runs the risk of persecution, or could be subject to criminal prosecution or sanctions in another State of transit or in the State of destination; or on grounds of public health, domestic security, public order or other national interests of the requested State. The Agreement is without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Sri Lanka arising from international law and, in particular, from any applicable International Convention or agreement to which they are parties. The Agreement provides for the establishment of a joint readmission committee to assist with its application and interpretation.¹⁸³

In 2005 and 2007, the European Union issued some decisions concerning the agreements with the Republic of Albania¹⁸⁴ and with the Former Yugoslav Republic of Macedonia, the Republic of Montenegro, the Republic of Serbia and Bosnia and Herzegovina¹⁸⁵, all on the readmission of persons residing without authorization.¹⁸⁶ These decisions, which refer to different years, are examined together because regarding agreements on the neighboring areas. Any western Balkan country which is not a member of the European Union and has signed a readmission agreement shall readmit, at the request of a Member State, its nationals who do not comply with, or no longer comply with, the entry or residence conditions of that State. It agrees to readmit the person concerned if it is proven, or can be validity assumed, that they are national of that country. The partner country shall also readmit any third-country national who does not comply with, or no longer complies with, the entry or residence conditions of the requesting Member State if it is proven, or can be validly assumed, that the person in question entered directly and illegally into the Member State after staying in, or transiting through, the partner country. The European Community has the same commitment to the partner country. A Member State shall also readmit any third-country national who holds a visa or residence permit issued by that Member State or who has entered illegally and directly into the partner country after staying in, or transiting through, that Member State. Any transfer of an individual to be readmitted must follow an application known as a “readmission application” submitted by the requesting State to the requested State. However, no application is required when the person is in possession of a valid travel document or an identity card and, where necessary, a visa or a residence permit issued by the requested State. For the readmission of nationals of the partner country or Member States, readmission agreements list the documents which make it possible to establish proof of nationality without any further investigation being required; *prima facie* evidence of nationality.¹⁸⁷ For the readmission of third-country nationals,

¹⁸³ Sri Lanka and a Member State may draw up implementing protocols to cover rules on the designation of the competent authorities, the border crossing points and the exchange of contact points; the conditions for escorted returns, including the transit of third-country nationals and stateless persons under escort.

¹⁸⁴ Decision 2005/809/EC, 7 November 2005, *O.J.L.* 304, 23 November 2005, p. 14-15.

¹⁸⁵ Decision 2007/817/EC, 8 November 2007, *O.J.L.* 334, 19 December 2007, p. 1-6.

¹⁸⁶ Following the outcome of the EU-Western Balkans summit in Thessaloniki on 21 June 2003, the EU institutions began negotiations with a view to concluding readmission agreements with all the countries in the region.

¹⁸⁷ In such cases, the Member States and the partner country shall consider that nationality has been established unless there is proof to the contrary.

the readmission agreements list the documents which constitute evidence making it possible to establish proof that the readmission conditions have been fulfilled; *prima facie* evidence that the readmission conditions have been fulfilled.¹⁸⁸

Another relevant Decision¹⁸⁹ is that of April 2007 concerning the conclusion of the Agreement between the European Community and the Russian federation on readmission.¹⁹⁰ Russia will readmit, upon application by European Union country, any person not, or no longer, fulfilling the conditions in force for entry or residence, provided that it is established that the person concerned is a Russian national. Nationality can be established by means of at least one of the documents listed in the annex to the agreement, even if its period of validity has expired. If none of the documents listed in the annex can be presented, the competent diplomatic representation or consular post of Russia or the EU country concerned will interview the person to be readmitted without undue delay in order to establish his or her nationality. Russia will also readmit any non-EU country national or stateless person not, or no longer, fulfilling the conditions in force for entry or residence, provide that evidence can be furnished that this person holds a valid visa issued by Russia, holds a valid residence authorization issued by Russia; unlawfully entered the territory of the EU country directly from Russian territory. The readmission obligation does not apply if the non-EU country national or stateless person has only been in airside transit via a Russian international airport; an EU country has issued a visa or residence authorization to the person concerned; the person concerned enjoyed visa-free access to the territory of the requesting EU country. If a person has been apprehended in the border region of the requesting country after illegally crossing the border coming directly from the territory of the requested country, the former may submit a readmission application within two working days following this person's apprehension. Reasons must be given for refusal of a readmission application. After the requested country has given a positive reply to the readmission application in respect of its own nationals, the competent diplomatic mission or consular office will issue, without delay, a travel document required for the return of the person concerned with a period of validity of 30 days. This agreement is the fifth Community agreement on readmission concluded with non-EU countries. The other agreements were concluded with Hong Kong, Macao, Sri Lanka and Albania. This decision was adopted at the same time as that on the conclusion of an agreement to facilitate the issuing of visas with Russia.¹⁹¹

In 2007, there were two further decisions in relation to the readmission agreements with Eastern European countries, with the exception of Russia: one on the conclusion of the agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorization¹⁹², another concerning the conclusion of the agreement between the

¹⁸⁸ In such cases, the Member States and the partner country shall consider that the readmission conditions have been fulfilled unless there is proof to the contrary.

¹⁸⁹ Decision 2007/341/EC, 19 April 2007, *O.J.L. 129*, 17 May 2007, p. 38-39.

¹⁹⁰ It does not apply to Denmark.

¹⁹¹ These two agreements are part of the introduction of the "four common spaces" between the EU and Russia, one of which is the Common Space of Freedom, Security and Justice. These agreements follow the Joint Statement of 31 May 2003 agreed on the occasion of the Saint-Petersburg summit, stating that the EU and Russia agree to timely conclude the negotiations on a readmission agreement.

¹⁹² Decision 2007/826/EC, 22 November 2007, *O.J.L. 334*, 19 December 2007, p. 148-148.

European Community and Ukraine on readmission of persons.¹⁹³ The purpose of the European Community's Agreements with Moldova and Ukraine, the partner countries, is to establish rapid and effective reciprocal procedures for the identification and return of persons residing without authorization on the territories of the partner country or of one of the Member States and to facilitate the transit of such persons.¹⁹⁴ At the request of a Member State, the requested State must readmit all persons who do not, or who no longer, fulfil the conditions in force for entry into or residence on the territory of the requesting Member State, such persons are nationals of the requested State; all third-country nationals or stateless persons who do not, or who no longer, fulfil the conditions in force for entry into, presence in, or residence on the territory of the requesting State. The readmission application must indicate the particulars of the person to be readmitted and the means by which proof or *prima facie* evidence of nationality or transit will be provided. The application for readmission must be submitted to the competent authority of the requested State within at most six months, in the case of Moldova, or a year, for the Ukraine, after the requesting State's competent authority has become aware that a third-country national or a stateless person does not fulfil, or no longer fulfils, the conditions in force for entry, presence or residence.¹⁹⁵

More recently, at the beginning of 2011, the European Council issued a Decision¹⁹⁶ in relation to the conclusion of an agreement between the European Community and Georgia on visa facilitation. This decision constitutes a development of the Schengen *acquis*.¹⁹⁷ At the same time the European Council published a decision¹⁹⁸ on the conclusion of the readmission of persons residing between the EU and Georgia.¹⁹⁹ This agreement entered into with a view to intensifying cooperation to combat illegal immigration more effectively, states that Georgia readmit, at the request of a Member State and without further formalities other than those covered by this agreement, all persons who do not or no longer meet and exceed the conditions for entry, presence or residence in the territory of the requesting Member State, provided it is established or there is reason to suspect that it is the citizens of Georgia. Moreover it will readmit unmarried minor children of such persons²⁰⁰ and the

¹⁹³ Decision 2007/839/EC, 29 November 2007, *O.J.L.* 332, 18 December 2007, p. 46-47.

¹⁹⁴ Pursuant to the EU-Moldova Action Plan, drawn up within the framework of the European Neighbourhood Policy, the council began work in 2006 on producing a readmission agreement with Moldova. This resulted in the adoption of a decision on the conclusion of the agreement. This agreement is based on Article 63 of the Treaty establishing the European Community in conjunction with Article 300 thereof.

With respect to Ukraine, on 13 June 2002 the Council authorized the Commission to begin negotiations on a readmission agreement within the framework of the EU Common Strategy of 11 December 1999 on Ukraine. These negotiations resulted, on 29 November 2007, in the adoption by the Council of a decision on the conclusion of the agreement.

¹⁹⁵ A response to an application for readmission must be received within at most eleven days, under the agreement with Moldova, or fourteen days, under the agreement with Ukraine. If the application is made as part of an expedited procedure, the maximum deadline is two days. Reasons must be given for a refusal.

¹⁹⁶ Decision 2011/117/EU, 18 January 2011, *O.J.L.* 52, 25 February 2011, p. 33-33.

¹⁹⁷ UK and Ireland do not take part of this agreement.

¹⁹⁸ Decision 2011/118/EU, 18 January 2011, *O.J.L.* 52, 25 February 2011, p. 45-46.

¹⁹⁹ The United Kingdom has notified its wish to participate in the adoption and application of the decision, while Ireland and Denmark did not participate in adoption will thus not be bound by it.

²⁰⁰ Unless they have an independent right of residence in the requesting Member State or are in possession of a valid residence permit issued by another Member State.

spouses the persons, as long as they have or have get the right to enter or remain in the territory of Georgia, unless they have an independent right of residence in the requesting Member State or is in possession of a valid residence permit issued by another Member State. Georgia, in addition must readmit those who have been deprived of citizenship of Georgia, who have lost or who have given up entering the territory of a Member State, unless they have at least been a member of this state, the promise of be naturalized. Georgia also admits, at the request of a Member State, all third-country nationals or stateless persons who no longer meet the current conditions of entry, presence or residence in the territory of the requesting Member State, provided it is proved, or may be validly assumed that such persons possess determinate requirements.²⁰¹ The provisions of this agreement shall take precedence over those of any agreement or bilateral agreement on readmission of persons residing in force between the individual Member State and Georgia, or may be concluded to the extent that is incompatible with the provisions of the agreement.

The following month of the same year, the Council of the European Union issued a decision²⁰² on the conclusion of the agreement between the European Union and the Federative Republic of Brazil on visa exemption for short-stay visas for holders of diplomatic and service/official.²⁰³ The European Union citizens of Brazil holding a valid diplomatic or service/official permit may proceed, transit and residence in the territory of the other party without holding a visa for a maximum period of three months in accordance with the six provisions of this agreement; the same applies for Brazilian citizens who enjoy these benefits and are on the territory of a Member State. The citizens of the Union to have such benefits may reside in the territory of Brazil for a maximum period of three months from the date on six of their first entry into the territory of the country; the same applies to Brazilian nationals who can stay in the Schengen area for a maximum period of three months from the date on six of their first entry into the territory of a Member State fully implementing the Schengen *acquis*.²⁰⁴

March 2011, saw a further Decision²⁰⁵ from the Council of the European Union. This time on the agreement of supplementary rules in relation to the fund for the external border for the period 2007-2013 between the EU and the Republic of Iceland, the Kingdom of Norway and the Swiss Confederation.

²⁰¹ Possess at the time of submission of the readmission application, a visa or residence permit issued by Georgia or have entered illegally and directly in the territory of a Member state after having resided in the territory of Georgia or transited.

²⁰² Decision 2011/157/EU, 24 February 2011, *O.J.L.* 66, 12 March 2011, p.1-1.

²⁰³ Ireland and UK do not participate in adoption.

²⁰⁴ This agreement shall not affect the possibility for Brazil and for member States to extend beyond three months the duration of stay in accordance with national law and of the union. The agreement in the analysis may be amended by written agreement of the parties.

Each contracting party may suspend in whole or in part this agreement, terminated the reasons for suspension, the contracting party that has suspended the agreement shall immediately inform the other party.

²⁰⁵ Decision 2011/305/EU, 21 March 2011, *O.J.L.* 137, 25 May 2011, p.1-2.

Conclusion

In order to effectively fight the phenomenon of illegal immigration, the European Union seems to be moving in two directions: on the one hand acting directly on the causes which generate this phenomenon in the countries of origin of migrants and on the other hand to promote the opposite phenomenon, that of regular migration.

In relation to the first, Europe has to work hard in order to find the correct co-operation with Third Countries, to support them in increasing life chances and decreasing poverty, unemployment and other factors which are likely to act as drivers for illegal migration to the EU.

Regarding the second objective, the EU has introduced a series of simplified procedures to facilitate the entry of some particular migrants; in particular there are facilities for categories of students, school pupils, unremunerated trainees, volunteers and workers. The legislative provisions which facilitate the procedures for admission satisfy also the need, mentioned in the introduction to this phase of the research, of the EU, to increase the workforce in the Member State and promote Europe as a center of excellence for study and training professionals.

These purposes is accompanied by a strong focus by the EU to integration of migrants in the Member States and to the protection of their rights, as evidenced for example by sanctions imposed on employers who employ illegal immigrants in the EU, or the right for students from Third Countries to be engaged as workers.

European Union policy suggest that in order that the proposed solutions can occur effectively, it is necessary create a European policy which is common to all Member Countries and a climate of cooperation with Third Countries by strengthening the dialogue with them. This can be done through bilateral agreements with individual states, or more general programmes. However, there is a problem in implementing a common policy, because of the different application of the same provision by the Member State Countries. The cause of the different approaches appears to be in the vagueness and ambiguity of the rules adopted by European bodies.

One might conclude that the EU has taken the right direction in respect of an effective policy on illegal immigration, indeed much has been done as evidenced by the documents examined in this part of the project, but it needs more clarity for a uniformity in the application of policies in order to ensure effective implementation across the EU and in relevant third Countries. This would also ensure greater protection of the rights of immigrants and their integration in Europe.