



Policy Brief

October 2008

The King Baudouin Foundation and Compagnia di San Paolo
are strategic partners of the European Policy Centre

The EU Immigration Pact – from Hague to Stockholm, via Paris

By Elizabeth Collett

Background

“The European Council considers that the time has come...to impart a new impetus to the definition of a common immigration and asylum policy that will take account of both the collective interest of the European Union and the specific needs of each Member State,” declares the preamble to the planned EU Immigration Pact.

If the French government is to be believed, immigration policy in Europe is in need of some ‘house-keeping’. This is the rationale behind the pact proposed in January and due to be signed at the October EU Summit by all 27 Member States.

But is this the new political impetus that paralysed European immigration policies need, or simply a branding device for a domestic audience? Does it offer anything new for the concept of common immigration policies, currently mired in a bog of diverse national approaches? And where does it leave the forthcoming Czech and Swedish EU Presidencies, tasked with developing the next multi-annual

Justice and Home Affairs programme as a successor to the 2004-2009 Hague Programme?

The Pact is intended to provide a roadmap for future European immigration policies and sets out five priorities for action: legal immigration and integration; control of illegal immigration; effective border controls; a European asylum system; and migration and development.

None are new areas of EU action: both the Tampere and Hague Programmes were conceived and articulated with the aim of addressing all aspects of migration to Europe. The Pact’s preamble gives the impression that immigration policy-making at European level has stalled. But while ambitions to create a single EU immigration policy have been scaled down in recent years, the dynamics of policy development in each area differ greatly.

Drivers and dynamics

Immediate and visible events have tended to act as a catalyst for EU

action, with terrorist attacks and renewed concerns about Europe’s ‘leaky’ Eastern and Southern borders transforming external border control policies from mere ‘compensatory measures’ into an independently-driven mission.

The EU’s border management agency FRONTEX was conceived as a purely administrative body, but growing numbers of migrants arriving without papers in Spain, Italy and Malta have boosted its role in coordinating much of the frontline work.

While differing over details, all Member States have a common interest in a strong external border. But this consistency has been lacking in almost all other areas, including building cooperation on migrant integration. While political rhetoric about demographic change and the role of migration in Europe’s future competitiveness has increased exponentially, only the bare minimum has been achieved in concrete terms.

The current ‘Blue Card’ proposal is an example of this – and of the

difficulty of finding unanimous agreement amongst 27 Member States. The *objectives* set out in Tampere and Hague have not exactly been left unfulfilled, but the final *content* of the legislation that has been agreed is largely unfulfilling.

Equally, integration concerns – heightened by violence and social rifts – have prompted significant policy changes at national level, not least greater focus on language testing and limits on cultural and religious practice. This has not translated into EU legislation, and work in this area remains restricted to articulating general principles and exchanging information.

The external dimension of migration – now re-branded as the ‘Global Approach’ – has been given new impetus, going

far beyond the parameters of the multi-annual programmes. In June, the EU agreed ‘mobility partnerships’ between several Member States and Cape Verde and Moldova, partly in reaction to the difficulties encountered in harmonising diverse immigration needs and policies. Member States do not need common policies to cooperate with third countries, merely common objectives.

The panic caused by high numbers of asylum applications in the 1990s, which drove much of the initial work on a Common European Asylum System, has given way to a focus on illegal residence and working. This is driving a number of EU initiatives, such as the current proposal on sanctioning employers of third-country nationals working illegally and the recent agreement on the Returns Directive.

This year, the economic downturn, combined with a continued public perception that immigration numbers are too high, has prompted governments to shift their policies further in the direction of control.

Italy’s new centre-right coalition has, for example, made a number of high-profile legislative changes (from army personnel on the streets to prison sentences for illegal entry and residence) effectively ‘criminalising’ irregular migration. Even immigrant-friendly countries such as Spain have moved to facilitate the return of migrants who lose their jobs.

Other apparent points of growing convergence (again reflected in the Pact) are an increased focus on attracting high-skilled workers, and continued ambivalence towards medium- and low-skilled migrants.

State of play

The Pact comes at a time when EU institutions are working on a wide variety of migration-related initiatives. Next year, proposals on seasonal workers and intra-corporate transferees will be unveiled, and an integration forum and portal launched. So on paper at least, the EU is very busy.

Furthermore, as Member States keep emphasising, the Pact is not a legally-binding document, but rather a political statement intended to pave the way for the next five-year programme. It is, however, unclear how it fits with other European pronouncements on migration. So why has it been drafted at all, and why now?

That said, the Pact has undoubtedly spurred other actors to think more deeply about future priorities. Fearing it would be sidelined completely, the European Commission set out its own principles for future immigration policies in June, centred on the concepts of solidarity, prosperity

and security. Meanwhile, other Member States have reacted to the initial French draft, agreeing and disagreeing in equal measure. Its most useful purpose may therefore be as a catalyst for debate.

Work in progress

Regardless of its ultimate role, the Pact clearly heralds a more conservative approach to immigration, in line with changing public and political attitudes. It looks at immigration policies through the prism of ‘control first’, making this more explicit than in the past. Of the five areas identified for action, just one concerns promoting access to the EU, and even this refers to preventing illegal and undesirable migration.

That the Pact reflects a French rather than a European perspective on immigration is hardly surprising. The first draft made no mention of the various EU concepts which have emerged in recent years, notably the Global

Approach to Migration, or of recent Commission proposals.

This, coupled with the use of phrases more frequently uttered in the domestic debate – such as ‘*immigration choisie*’ (selected) and ‘*co-développement*’ (linking migration and development) – highlight the Pact’s origin as a statement primarily aimed at a French audience. This language, however, was watered down after consultation with other Member States.

When the first draft was circulated, the media immediately picked up two elements: the proposed ban on mass regularisations, such as the amnesties for illegal migrants introduced by Spain, Italy and France itself in recent years; and a commitment to make new immigrants sign an ‘integration contract’ detailing their responsibilities to their ‘host’ country.

The proposal to ban mass regularisations at EU level was

politically unrealistic: Member States are reluctant to commit themselves to common policies which inhibit their freedom to legislate on immigration and remove policy tools from their armoury, even if most are publicly opposed to regularisations. The proposal was quashed by Spain, but statements such as “illegal migrants on Member States’ territory must leave that territory” remain, implying a common ‘zero tolerance’ approach.

And how would such a ban work in practice? How many illegal migrants would have to be legalised at once, and across what geographical area, to qualify as ‘mass’? And who would decide? In some countries, the regions have autonomy to decide on such amnesties, and there are growing calls from Europe’s cities for mayors to be given similar powers.

The idea that each Member State should introduce ‘integration contracts’ was equally unrealistic. Each country’s approach varies widely and several are deeply opposed to ‘contracts’ in principle. Many question whether integration goals can be achieved through contracts. How meaningful are they to those who sign them? They also send a negative message to migrants, implying that they lack basic values.

While this idea has been removed from the Pact, much of the text focuses on defining a balance between migrants’ rights and responsibilities. This draws on the EU’s 2004 Common Basic Principles on Integration, but omits to mention the first, fundamental

principle: that integration is a two-way process. The emphasis is on migrants’ ability to fit in with European societies, rather than recognising that migration also changes those societies’ dynamics.

The lack of realism also showed in the initial proposal to create a number of new border control institutions, without evaluating existing policies and institutions.

The Pact also initially proposed a mutual information system for *all* changes of national policy. Member States are currently only required to inform each other of policy changes that might affect other EU countries. The system relies on a loose interpretation of this rule, and does not function effectively. But the idea that immigration policies – a closely guarded national competence – should become the business of all other Member States is unpalatable for many: both Denmark and Italy have had their national policies questioned by the EU in recent months, and both reacted furiously.

Finally, the Pact suggests that Member States consider their own “reception capacity” for migrants’ families, and the capacity of family members to integrate into European society. The idea that Member States have a “capacity” to receive migrants is new. In fact, limiting family reunification may impede the integration of migrants already in-country, making them feel unwelcome and forcing them to return home regularly or permanently. It is also questionable whether this conforms with existing EU family reunification law – not to mention human rights’ obligations.

What’s *not* in it

While different categories of migrants are highlighted – legal vs. illegal, high- vs. low-skilled, asylum seekers vs. economic migrants, temporary vs. permanent – non-nationals are treated as an amorphous mass to be dealt with as such, rather than as individuals, members of society and potential citizens. Indeed, citizenship is not mentioned at all. Given the vast diversity in migrants’ origins, destinations, life choices and cultures, treating them as a single homogeneous group is unrealistic, not to say naïve.

While past political declarations have highlighted the need to harmonise immigration policies, the Pact downplays this. It commits Member States to ‘organise’ legal immigration rather than construct common policies. This reflects the difficulties to date in shaping common policies for legal entry and residence, as well as many Member States’ reluctance to relinquish their competence.

Finally, as the EU considers how to deal with yet another blow to the institutional reform process, the Pact makes no reference to how immigration policies might be pursued. In 2006, the Finnish Presidency made a concerted effort to invoke the ‘*passerelle*’ clause, a mechanism for moving to qualified majority voting and co-decision on immigration policies. The Pact contains a number of policy ideas that would only be feasible with changes in voting practice, but makes no mention of either the Lisbon Treaty or existing *passerelle* clause.

Prospects

Not only does the Pact contain very few specific initiatives, and nothing on a grand scale; it also contains more ‘don’ts’ than ‘do’s’. It is certainly more direct than

most political statements emanating from the European Council: it uses well-worn phrases such as ‘solidarity’ and ‘shared responsibility’, but notes bluntly

that the key driver for cooperation is that “one Member State’s actions may affect the interests of the others”. This conceptualisation of solidarity as self-interest narrows its

remit for policy-making, but is probably more honest about EU governments' political motivations.

This bluntness caused problems for other Member States. Many were uncomfortable with the phrase '*immigration choisie*', and it was finally replaced with 'managed'. However, the focus of economic migration policies in most EU countries has clearly shifted towards 'selecting' the brightest and best. It is the explicit nature of the statement, rather than its policy portent, which sparked objections.

The Pact's impact

So is the Pact merely a descriptive political exercise? It certainly responds to changing dynamics. The Hague Programme committed Member States to creating a common asylum system by 2010. Now the European Council is more modest about what can be achieved. (For example, the joint processing of asylum applications envisaged by Hague is no longer discussed; merely the possibility of a proposal for a single procedure by 2012.)

In terms of economic migration, the focus is not on harmonisation but on common objectives, acknowledging that Member States not only wish to retain control over policy but also have vastly different needs and perspectives. The Blue Card proposal's evolution confirms this, with Member States overwhelmingly favouring a complementary system which does not replace their own policies for attracting (selecting?) the brightest and best.

Foreign policy is given more prominence in the Pact than in the Hague Programme. But the proposals in this area reflect the limitations on the Commission's ability to act, and perhaps

uncertainty amongst Member States about where such discussions lead in policy terms. The focus here is on information-gathering and mainstreaming rather than on committing resources and changing rules.

Generally, the Pact moves the EU away from specific and ambitious harmonisation projects and towards committing Member States to political objectives. This raises real questions about how much impact it will have on European policies.

One of its stated goals is to shape the next five-year programme variously described as Hague II, post-Hague and Stockholm. For the Swedish Presidency, tasked with finding agreement on this, it poses both a challenge and opportunity. The Pact is a hybrid document, intended to drive the next multi-annual programme in a particular direction without dictating terms. Its vagueness may thus be exploited by those who want to readjust its overall direction.

However, the Pact's *indirect* impact should not be underestimated. As a political statement of European intentions, it will reverberate in 'sending' countries across the globe (suffice it to recall here the outrage expressed by Latin American governments when the Returns Directive was agreed). Brazil has already expressed concerns about the text.

The Pact has already prompted accusations that Europe is even more two-faced about immigration cooperation than previously thought. The fact that non-EU countries follow the Union's declarations so closely should be taken seriously, especially given the high priority the Pact puts on cooperation with third countries.

Also, in responding to current political sentiment in Europe, the key message sent to EU residents – nationals and migrants alike – is that migration is tolerated in some forms, but not really welcomed.

Countries which spend a great deal of time discussing how to fill labour shortages and promote harmonious societies should pay more attention to the ripple-effect this may generate in those societies and among potential migrants (those seen as welcoming tend to be more successful at attracting the migrants they want). While the Pact begins by noting that "international migration is a reality that will persist", the rest of the text infers that this will be despite the best efforts of European policy.

But it could have one potentially positive impact: separating immigration issues from the rest of the Justice and Home Affairs portfolio, paving the way for decoupling immigration and asylum. Administratively, this may provide a more manageable way to carve up the workload in a policy area now producing up to a third of new EU legislation. Substantively, immigration and integration issues would be separated from counter-terrorism, security and judicial cooperation – issues which are too often mixed up.

The Commission laments that intergovernmentalism too often triumphs over the central goal of meaningful harmonisation. The Pact is a clear example of this, but it also shows how intergovernmentalism can reduce the more extreme excesses of any one country's vision of European immigration.

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Co-financed by the European Union within the programme "Europe for Citizens" 2007 - 2013.