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MIGRATION AND POLICY IN THE EUROPEAN UNION

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Migration and Policy in the European Union

1 Introduction

The fully ratified Maastricht Treaty[1] finally came into force on November 1st 1993, and with it a range of agreed provisions which will affect migration and migration policy in the European area for some time to come. The treaty states categorically that,

> "*every person holding the nationality of a member state shall be a citizen of the Union*",

and that amongst the rights and privileges which this incurs is the right that every such citizen is free to move and reside freely within the territory of the member states, with the Council of the European Union empowered to take the necessary steps to allow this to happen (European Commission 1992a). In many ways, the Maastricht arrangements build upon the provisions allowing for free movement of labour which formed part of the original Treaty of Rome in 1957. This apparently clear situation is however rendered rather more complex by the existence of the somewhat parallel *Schengen* open frontier agreements entered into at various stages since 1985 by all member states other than Denmark, Ireland and the United Kingdom[2] (Le Monde 1993); by the fact that some of the mechanisms by which "free movement" will operate remain to be worked out in detail; and also of course by the fact that a large proportion of migrants within the European area are not formal citizens of the European Union, and are therefore

normally subject to different rules.

In accordance with the Treaty's concept of *subsidiarity*, the field of Immigration from non-member states, together with the associated fields of Justice and Home Affairs, remains an *inter-governmental pillar* of the Treaty, although the European Commission is to be associated with decision making and has some limited powers of initiative. It has recently exercised these powers of intiative in producing a major Communication on the question of immigration and asylum (Commission of the European Communities, 1994). In the area of Immigration, joint positions and joint action may be taken by the Council of Ministers, which can decide that certain measures may be adopted by qualified majority, though only member states themselves will have powers of initiative in criminal matters. Immigration has effectively been singled out for a "twin-track" approach, with on the one hand the Council of Ministers having to decide by a unanimous vote on any proposal coming from the Commission concerning which third countries' citizens will require a visa for entry to the European Union area, though qualified majority voting might apply after 1 January 1996. On the other hand, those areas identified as being of "common interest" include the rules about crossing the Union's external borders, and the conditions of movement and residence for immigrants. The Single European Act states that,

> "*governments agree to co-operate, without prejudice to the powers of the Community, in particular as regards the entry, movement and residence of nationals of third countries*", and that, "*nothing in the provisions (of the Single European Act) shall affect the right of member states to take such measures as they consider necessary for the purpose of controlling*

immigration from third countries, and to combat crime, traffic in drugs and illicit trading in works of art and antiques" (European Communities 1989).

The question is raised, of course, concerning how much of this proposed co-operation between member states should actually take place. It may be argued that there should be a growth in the willingness of states to co-operate, given the trans-frontier nature of the act of migrating. On the other hand, the concept of subsidiarity in this field implies that it must be proved in what way and to what degree a given migration situation will have an effect on the European Union as a whole, thereby allowing for joint action. It will not be difficult for a member state, which is so inclined, to argue that a given migration problem is something which affects itself primarily, and therefore seek to take, or to actually take direct action. Examples of this kind of action are to be seen in the British refusal to join in the Schengen Accord, citing the maximisation of a "unique island situation" as a reason; the French delay in ratifying Schengen, quoting difficulties in relation to the French constitution[3]; and Spanish immigration rules clearly distinguishing between entry from other member states of the European Union, and entry from elsewhere, especially North Africa (BOE 1992 and Davison 1992). On the other hand, a combined effort, such as the development of the Union-wide system of police information exchange (the so-called *Europol)*, is a case where member states clearly feel it is worth working together as a whole. (European Commission, 1992a).

There may seem to be some degree of anomaly over an apparent overlap between the rules for movement agreed under the Maastricht Treaty and those under the Schengen

Accord, as both are seeking to increase the freedom of movement between member states (Carvel 1992a). Schengen probably has its origins in the Fontainebleau Council of the European Communities in June 1984, which adopted the principle of abolishing police and customs formalities at the interior frontiers of the Community area. The signing of Schengen itself followed in June 1985, with the original five signatories being joined by Italy in 1990, and with Spain, Portugal and Greece working towards joining, if possible before Schengen was formally due to come into force on 1st February 1994, (but see endnote 2). At the same time, the Single European Act of 1986, in Article 8A, also establishes,

> "*an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured*"

There are therefore two fairly parallel policy initiatives aimed at increasing the freedom of movement between member states, which might seem unnecessary? However, it is probably true to say that the advent of Schengen lay in the need felt by the original five signatories to press on with all possible speed towards the freeing of frontiers, a mood which was then reflected in the decisions agreed for the Single European Act. On the other hand, if both routes towards the same goal are implemented to the letter, a formally illegal internal European Union boundary will arise, one which separates Denmark, Ireland and the United Kingdom from the rest. While the Schengen countries clearly have no intention of stopping inward movements from the other three members of the Union, they are committed to border controls which emulate those being retained by the other three. There also remain many anomalies and variations in the ways in which individual states are putting these rules into practice[4]. This may all therefore become a matter for the European Court to

disentangle!

So far as policy towards the question of migration is concerned therefore, it is possible to see two main trends lying side by side. Policy towards internal European Union migration becomes increasing liberal in line with the provisions of the Maastricht and Schengen arrangements, though it important to point out that the question of non-European Union citizens moving between member states has not yet been fully resolved, and it has been estimated that these movers number at least 8 million (Brochmann 1992). At the same time, policy towards non-European Union citizens crossing the external boundaries of the Union becomes increasingly controlled, fuelled perhaps by the increasing severity of certain national policies towards immigrants, which in turn may be being pushed by the recent rising levels of xenophobia, if not by out and out nationalism.

2 Categories of international migrants and migration policies

2.1 Categories of international migrants

It is possible to devise various categories of international travellers. The term 'traveller' is used here in order to stress that not all those who cross international boundaries are automatically migrants. It is however impossible to exclude short term travellers from our considerations, as they are also subject to any migration policies of

the country of destination, even if these only request transit visas. After admission, they can try to extend their residence legally or alternatively to overstay and join the group of clandestine migrants. This issue will become even more important as the pressure on national boundaries builds up. Consequently, in this paper we will classify travellers according to their intended length of stay in the country concerned.

From the temporary point of view, it is possible to distinguish short-term visitors, and mid- and long-term migrants. There are no internationally agreed time thresholds for each of the above categories, but it would seem to make sense to divide them according to the type of visas and permits required. The first category, the short-term visitors, are usually admitted to the receiving country based on either a tourist visa, or on a business or scientific visa. These visas are normally valid over a period of several months. A current validity of between three and six months is typical, but the convention implementing the Schengen Agreement (19th July 1990) states that short term visits should not exceed three months (Schutte 1991). In many cases, based on reciprocal agreements, visas (but usually not restrictions on the length of stay) may be abolished for this category of travellers. Typically transit passengers, holiday makers, short time business travellers, researchers, representatives of cultural life and so on fall into this category. They are usually not allowed either to take employment or to open a business in the receiving country.

Mid term migrants usually intend to stay in the receiving country for more than a few months. Typically they intend to work or study and will require not only visas but also the relevant permits (ie. residence and work permits). They are subject to additional

restrictions, such as registration with the police or administrative authorities and the subsequent reporting of any change of circumstances such as a change of address, passport, marital status, etc. It is not unusual for a migrant belonging to this category to seek to regularise his or her status in the receiving country, and to apply for a permanent residence permit and eventually for citizenship, thereby becoming a life migrant.

Finally, there is the category of migrants requesting permission to stay for an indefinite period of time - frequently for life. Basically, it is impossible to claim the right of life stay unless a person seeks asylum or is a citizen of a receiving country or can claim the right to obtain citizenship.

2.2 Migration policies

Shifting from one category of migrants to another, or simply joining directly one of the above categories requires an authorization from the receiving countries. In fact, the right to admit or not to admit migrants on to the territory of a given state is considered to be one of the main features of state sovereignty and therefore is a very sensitive issue. From the point of view of international migration policy, each state controls a number of 'gates' which regulate the process of inflow and of settlement of foreigners and which protect against the inflow of unauthorized aliens. These "gates" are as follows:

1. The entry visa requirements.

2. Border control (external control).

3. Long term work and residence permits.

4. Internal control.

5. Permanent residence permits and regularization systems.

6. Naturalization (granting citizenship).

States can to large extend control the circulation of foreigners by opening or closing some of these gates.

Migration policies differ according to the origin of the migrants. Within the European Union, three categories of aliens are recognized: 1. Citizens of other European Union countries, 2. Citizens of EFTA countries (these two categories form together a category of citizens of European Economic Area), and 3. citizens of third countries. Each category has a different and unequal legal position while passing the "gates".

2.2.1 The entry visa requirements

Citizens of other European Union member states need no visas to enter another European Union country. Citizens of EFTA and most OECD countries enjoy the same privileged position. However, there is a number of countries' citizens who need to apply for visas even for transit. They need to be able to justify their reason of travel and they are normally supposed to present appropriate documents, such as a bank statement

which proves that they are in possession of a required amount of money per day of the intended stay, references obtained from the country of destination, insurance policies, return tickets and the like[5]. It is quite common that, apart from the official restrictions, consular services are able to call upon a whole range of unofficial deterring methods, ranging from abrupt or even rude staff, or a limited number of applications accepted daily[6], up to the use of very long, protracted procedures. In some cases a high visa fee is collected before the application is even considered, and the fee is then not refundable in the case of refusal. This was, for example, the practice of the UK Embassy in Warsaw before the need for visas between the two countries was finally abolished. In many cases visa fees are set at a level which is reasonable in the country of destination, but is excessive in comparison to the average income of the country of origin. However the fee level is in many cases based on reciprocal arrangements and may not be a part of migration policy. Citizens of certain countries are subject to detailed scrutiny; for example, the Italian Embassy in London declares that it issues tourist visas on the same day, but citizens of Afghanistan, Albania, Bulgaria, Cambodia, China, Chad, Cuba, Iran, Iraq, Jordan, Libya, Mongolia, Nigeria, Romania, Syria, Sri Lanka, USSR (that wording in the information), Vietnam, and Yemen are advised that they should apply well in advance! (Italian Embassy 1992). Another element of the policy of closed doors for selected nationals is to impose fines on the carrier which brings in a passenger without valid travel documents. The UK, for example, charges £2000, and France up to FF10000 (SOPEMI 1992). This practice is intended to make it difficult for asylum seekers to arrive to the country of destination. In fact, it actually abuses the Convention on Asylum of 1951, as it transfers the decision of whether a person will have the chance to apply for asylum into the hands of the clerks of a

commercial carrier company. The convention which will implement the Schengen Accord specifies that commercial carriers are obliged to check the validity of travel documents of aliens, and in the case of a subsequent refusal to admit an alien to a "Schengen" country, it is the commercial carrier's responsibility to take him/her back (Schutte 1991).

Within the European Union, admission policies differ from one member country to another. There is however a recognition of the need to elaborate a common visa policy. At the moment, one of the most important results of these deliberations is a list of countries whose citizens will need visas in order to enter any of the European Union member states (SOPEMI 1992). It is an important measure as it is intended to prevent 'shopping' for visas from the most "liberal" country of the twelve. Simultaneously, to some extent it may of course protect the most liberal countries against excessive inflow of aliens. Recent Conclusions from the Meeting of the Ministers Responsible for Immigration (Council of the European Communities 1992b) mention that negotiations on common visa policy are now well under way.

1990 and 1991 witnessed a rapid reduction in the number of countries whose citizens were required to apply for visas in order to be admitted to European Union countries, mainly because of the abolition of visa requirements for East Europeans, in particular for Czecho-Slovaks and Hungarians. From 1992 however, more restriction have been introduced, partly because some of the arrangements with East European countries were cancelled, and partly because new restrictions have been placed upon citizens of selected Third World countries.

A much more consistent policy has been elaborated by the Schengen "group" of countries. They agree that all European Union citizens will not be considered to be aliens. They will therefore enjoy a freedom of movement restricted solely by European Union legislation. The members of the group have not yet managed to establish a full list of third (non-European Union) countries whose citizens do not need to apply for visas. However in the case of persons from countries whose citizens require a visa in order to be admitted on to the territory of one Schengen state, agreement has been reached to issue a visa which will then be valid in all Schengen member countries. This is a very realistic solution, and is similar to the one adopted by the Benelux countries a long time ago. Such a visa will be valid for a period of up to three months, and will allow the alien concerned to circulate freely within each of the Schengen states, once the Convention implementing Schengen has been signed (Schutte 1991).

The problem of aliens residing in one of signatory countries based on a residence permit has been resolved in a similar way. These are allowed to circulate freely within other Schengen countries, provided that the total length of their residence does not exceed three months. They also have to report their presence to relevant authorities within three days of arrival (Schutte 1991).

There is little doubt that the Schengen "group" is setting standards for European migration policy. It is likely it will be followed by the other European Union member countries, despite the fact that diverse economic and historical links, in particular former colonial ties, make the establishment of common policy quite difficult for some of these countries to accept.

2.2.2 Border control (external control)

Benelux countries were the first in Europe to abolish border controls at their internal boundaries, which happened in 1960. It then took more than 30 years to extend this practice into other countries. Preparations began some decades ago and the first formal documents were signed in 1985. The countries concerned then proceeded further in two streams - within the so- called Schengen Group, and within the European Union.

The former was created by countries who signed Schengen Agreement in 1985 (Belgium, France, Germany, Luxembourg and the Netherlands). Later on they were joined by Italy (1990), and by Spain and Portugal (1991), with Greece enjoying the status of observer from 1991, though it has since assented to the Accord, (see endnote 2). The negotiation of the Schengen Accord has been conducted without the participation of non-governmental or international organizations, and this has been widely criticised (Wierzbicki 1991). The original agreement did not entirely abolish the border check, but relaxed it. It also had set the long-term target of abolishing the check altogether by 1990. This deadline has of course not been met. However, the negotiations continued and in 1990 a Convention Implementing the Schengen Agreement was signed. The actual abolition of internal checks should have started in January 1992, but there remained numerous unresolved legal and practical problems, some of which remain up to the present, (see endnote 2).

The abolishment of border checks clearly reduces the control of states over their territory and puts many kinds of criminals in a more favourable situation. In order to

counter various types criminal activity, the Convention adopted a number of measures to avoid uncontrolled illegal migration, the international trade in arms or drugs trafficking, and at the same time to improve communication, the flow of information, judicial cooperation and to introduce more efficient trans-border policing.

One of these measures is the creation of the Schengen Information System (SIS), an on-line database holding information on persons and goods wanted for one reason or another by the police of member countries. This database also holds a blacklist of all those who are not welcome on to the territory of the Schengen countries. This development is particularly worrying, as it will put all aliens in an unfavourable situation: as foreigners, they will not be protected by local laws on privacy of data; they will be unable to check the contents of information stored in the computers and will therefore be unable to request correction of this information if it is incorrect. The European Union is going to create a similar system, the so-called European Information System, which will hold some 8000000-1000000 entries on unwanted foreigners (Carvel 1992b).

The Schengen "group" consists at the moment of nine European Union member countries, five of which were reported to be ready to implement the Accord in full on Ist February 1994, (but see endnote 2). The three remaining countries are the United Kingdom and Ireland, which do not have a common land boundary with any other member state and Denmark, which as a member of Nordic Union, causes a number of legal problems. The legal framework created within the group is to some extend a signpost for the whole of the European Union.

In July 1991, the then European Community prepared a Convention on the Crossing of EC External Borders which sought to regulate a number of technical and organizational matters, but which also stipulated the creation of EC visas. The signing of the Convention was suspended due to a British refusal to to away with intra-EC immigration controls. The British argued that the geographical situation of the country made it possible to control the inflow of foreigners in a very efficient way. They also argued that there is no identity card system in the United Kingdom and that therefore internal policing is more difficult than in countries where such systems exist. This *impasse* was removed eventually by allowing the UK to maintain its immigration controls (Hopkinson 1991). It is probably more important to note that the European Union has now reached agreement on a list of 61 countries, nationals of which will be required to possess visas in order to travel to any of the member countries (Hopkinson 1991).

Recent practice in the countries of European Union has tended towards a tightening of border checks. SOPEMI (1992) reports that 66000 foreigners had been refused admission visas to France and that another 11500 had been turned back at the frontiers. The large number of migrants who cross the border illegally now face arrest and deportation. The most spectacular example of this type of policy has been provided by Italy, which turned back some 17000 Albanians who had arrived in southern Italy in August 1991. Only some 200 who needed immediate hospitalization were actually admitted (SOPEMI 1992). It is worth noting however, that immediately after the deportation of the Albanians, the Italian authorities launched an aid programme worth £27.4 million (Hopkinson 1991), in order to support the crumbling Albanian economy. This combination of a tough approach towards immigrants while providing economic assistance has proved to be

successful, at least from an Italian point of view.

The European Union and Western Europe in general faces a growing number of illegal immigrants who are trying to cross its border, usually with the *mirage* of lucrative employment in mind. It seems at the moment that there are two main borders under siege: the Spanish Mediterranean coast with new generation of boat people coming from Africa, and the eastern border of Western Europe with Rumanians, Bulgarians and citizens of the former CIS trying to get into Germany and Austria especially (Markiewicz 1992a). In order to give an idea of the size of these phenomena, it is perhaps enough to say that it is estimated that at present, some 300000 illegal African immigrants are working in Spain (Davidson 1993). Real estimates of the inflow into western Europe from the East are not available. Extensive policing, a typical response of the receiving countries involved, is to some extent effective at present, but solves nothing in the long term perspective.

2.2.3 Long residence permits

Citizens of the European Union do not need work permits to get a job in another member state. The freedom to move within European Union means that they may settle and take paid employment everywhere within the member states. However there are some limitations. Initially, this freedom has been given only in relation to those who were taking employment, but no other category other than employees has so far been mentioned (EEC Treaty, Art. 48). EEC legislation extended this right to the

employees' families (Callovi 1992), and to those who reached retirement age in a country different than their own. They are allowed to stay in the country in which they have been recently employed. The next step was to allow students and retired persons and other persons who were not taking up any gainful activity to move freely within European Community (Niessen 1991). The right to refuse admission was restricted only to cases where public policy, security or health is threatened in the receiving country. The introduction of common European Union citizenship, when and if it comes into effect, will presumably remove these limitations and will even open up the last "gate", the granting of citizenship, thereby removing from European Union member countries an important part of their sovereignty.

Citizens of EFTA countries enjoy also preferential treatment, and some of these these countries have already started, or are close to concluding, negotiations aimed at joining the European Union.

Meanwhile, citizens of third countries are left behind more or less closed (or in some cases slammed) "gates". These citizens are usually required to apply for entry visas; they have relatively slimmer chances of getting employment and have many more difficulties in regularising their stay and eventually of naturalization. As a result, a third country national residing in one of European Union member countries has neither the right to re-settle in another member country, nor even the right to travel freely within the Union (Niessen 1991). The abolition of internal boundaries will make the implementation of the limitations to freedom of travelling rather more difficult to impose, and during the Maastricht Summit a proposal was put forward to change this

legislation and to allow third party nationals residing temporarily within one of the country of the Community to travel freely (but not settle or take employment) within the whole of the Union (Niessen 1991). This would be in line with Schengen agreement (see 2.2.2).

Association agreements made between the European Community and other countries usually varied in the way they made any concessions regarding the freedom of movement of people. In this respect, agreements signed in the past with Turkey, Yugoslavia (suspended since 1991), Algeria, Morocco and Tunisia mentioned that there would be no discrimination with regard to employment, social security and social benefits for workers from the countries mentioned above (Niessen 1991, Callovi 1991). These agreements were more liberal than those signed more recently with the Czech republic, Slovakia, Hungary and Poland, where no provision for protection of non-discrimination of workers has been agreed at all (Niessen 1991). A similar solution has been adopted in recently signed agreements with Romania and Bulgaria. None of these agreements allow for the freedom of movement of people, and all the more specific regulations have been left for bilateral negotiations to resolve.

Temporary work and residence permits are normally issued for specific period of time, in the first instance usually for one year, with the possibility of renewal, (France, Germany, the Netherlands, Italy). The main condition for obtaining a residence permit is stable employment (in Italy at least 24 hours/week). As the length of residence increases, the assurances given to a migrant tend to grow. For example, France offers privileged residence permits for 10 years for those who have legally spent three years

in France, or for spouses and families of French citizens. Special arrangements have been made for Algerian citizens. In Germany, after 5 years of uninterrupted residence, an alien may apply for unlimited residence permit. After another three years (8 altogether), one may acquire the assured residence permit, on the condition that he/she has satisfactory command of German, has adequate housing, sends children to school and adheres to German laws. In the Netherlands, unlimited residence permits may be issued to those who have been there for at least 5 years, who have had regular employment over this period and who have the prospect of employment for at least one year with a salary at least equal to minimum salary for 23 years old, and who have adequate housing conditions. In all cases, the protection of national labour markets is the focus of the implementation of such policies, and with the growing number of migrants, the protracted recession and mounting political pressure, these policies may easily become much more restrictive.

2.2.4 Internal control

Probably the most important role of internal control is to protect the internal labour market against the illegal employment of a foreign labour force. Various countries operate their own policies and little or no international co-operation may be expected in this field.

Germany, being in a certain amount of political turmoil because of growing extremism, the increasing influence of the extreme right going as far as, in one case, to request the

reintroduction of concentration camps (The Cook Report, 1993), has introduced the most stringent system, which requests all workers to possess a social security identification card, which should be produced on request by the appropriate authorities, as well as in Social Security Offices. Employers hiring foreign labour have to report the fact to Social Security. These measures are supported by extensive policing, sometimes accompanied by violation of international agreements and basic civil rights (Markiewicz 1992b).

It is usual that employers hiring illegal foreign labour are subject to forms of liability. In the Netherlands they have to cover the cost of any expulsions; in France they will have to return all taxes and fees as well as paying fines. If such employers are unable to cover their liabilities, they may even face forfeiture of their assets (Hopkinson 1991). It is quite characteristic that legislation tightening control in these fields has mainly been passed in these countries very recently, in 1991 and 1992.

Obviously these forms of legislation hit not only illegal workers and clandestine migrants, but also small companies predominantly in services (tourist industry, catering, restaurants) and in the construction industry, which try too keep their costs low by saving on wages and social security payments.

In many countries, the police arrest and deport illegal migrants[7], though the problem of what to do with them frequently remains unresolved. Large scale deportations are expensive and are often criticised, as has happened with the forced deportation of illegal Romanian migrants from Germany.

2.2.5 Permanent residence permits and regularization systems

There is a number of ways in which one may acquire a permanent residence permit. The first is that a migrant applies on the grounds of prolonged residence and employment. For example, the UK requires from permanent residence permit applicants four years uninterrupted, legal residence and employment in the country. After the permit is granted, it may still be withdrawn if a migrant stays for more than two years outside the UK.

One of the most important streams of permanent migrants is that constituted of those who reunite with member(s) of their families already lawfully residing in the receiving country. In all European Union member countries spouses and juvenile[8] children are admitted. France, exceptionally, also accepts precedessors and other members of the family.

Despite all these efforts, European Union countries still house large numbers of illegal migrants. The actual numbers are not known, but it is enough to say that the recent legalisation programme in Spain gave 133000 requests for regularization (SOPEMI, 1992). The policies aimed at the legalization of clandestine migrants are extremely differentiated. Some countries, such as Germany or the Netherlands, stand firmly on the position that abusers of the law do not deserve any mercy, and they do not allow for regularization of aliens unless they are on the territory legally. Other countries, in particular those in the South of Europe, have chosen to allow undocumented migrants to regularize their situation. Programmes of this type were introduced in 1981 in

France, in 1985 and 1991 in Spain, in 1987 in Italy and in 1992 in Portugal (OECD 1990, Salt 1991, SOPEMI 1992). In four former programmes, almost 400000 people have been granted residence permits and work permits (OECD 1990, SOPEMI 1992). Typical of the requirements is that which regularises the position of an alien who arrived in a country before a specified date, and who is able to earn his living either as an employed or self-employed person. Beneficiaries of these programmes have frequently been in a receiving country for a long time and are to some degree integrated with the "native" population. There is little doubt that these programmes help them a great deal in the integration process and with the stabilization of their professional and family life.

2.2.6 Naturalization (granting citizenship)

There are three basic ways of acquiring the citizenship of a country. Citizenship by '*jus soli*' means that the place of birth determines the citizenship. This criterion is in use in Spain, the Netherlands, Luxembourg and Greece. Some countries (Germany, Denmark, Ireland, Portugal) grant citizenship by '*jus sanguinis*', which means that the citizenship of parents determines the citizenship of a child. In other cases (UK, France, Italy, Belgium), a mixture of both approaches is often used to determine the nationality of a newly born child.

From the point of view of migration policy the most important factor is the acquisition of citizenship by naturalization. Taking a citizenship of a host country is a final stage, at least from a legal point of view, of the migration process. In fact, the person who

gets new citizenship is no longer a migrant. Obviously there remains a large difference between integration '*de jure*' and '*de facto*'. Thus all countries prefer to have their new citizens as integrated as possible into local communities. This is why, among common requirements, is a long enough period of residence in the receiving country. The required period of residence differs among the countries of the European Union, from 5 years (France, Ireland, Italy, the Netherlands, the UK) up to 10 years (Belgium, Germany, Luxembourg, Spain). This period is usually reduced when an applicant is the spouse of a citizen of a country where the application is lodged, and in also in certain other cases (Costa-Lascoux, 1990).

Other conditions are, in many cases recommendations or a certificate of decency (France, UK) and a blank criminal record. In some countries it is necessary to prove assimilation. The most important factor from this point of view is good command of language - this requirement is put forward in virtually all countries.

Germany has a two tier policy of granting citizenship. On the one hand it issues everybody who is able to prove even the most distant German ancestry with German citizenship. This is coupled with a policy of "open doors" for this category of migrants, which then generates a large inflow of migrants claiming German roots, even if they do not speak any German at all, and have no idea of the history and culture of Germany. The recent and massive inflow of migrants from Eastern Europe and the former Soviet Union who declared themselves to be Germans, has forced Bonn to introduce a quota system for this category of migrants. On the other hand Germany is very reluctant to grant citizenship to even second generation migrants if they are unable to prove a

German origin. In many cases, in particular when the applicants have been brought up in Germany, their first language is German and their culture is to large extent germanized. There are some signs of change to this restrictive policy, as the new Aliens Law passed in 1990 makes naturalization easier for established and second generation migrants.

3 Some further aspects of policies towards migrants within European Union countries

Once a migrant has passed across a European Union frontier into his/her intended member country, whether from another member country or from outside the Union, he/she will then come into

contact with other, "secondary" elements of national or joint policy which will affect what he/she wishes to do. Until recently the question of work permits for European Union nationals of another member state (described in detail above in section 2.2.3) remained a recurrent problem. Work permits actually remained necessary for other European Union nationals in Spain and Portugal until the advent of the Single European Market in January 1993, and they continue to exist everywhere for non-European Union migrants. Of the other "secondary" elements of policy or regulations which apply to migrants, this section focuses on four which are great concern to migrants: the equivalence of qualifications; social security provision; health care, and policy towards minorities.

3.1 Equivalence of Qualifications between member states

The comparative validity of educational and training qualifications gained in the different member states of the European Union has been a question which has been allied with movement policy for some years. The original Treaty of Rome, which in principle provided for free movement of labour, had set in motion discussions which were eventually to lead to a large measure of agreement in this field. Clearly, it was no use trying to obtain employment at a certain level in another member country if your qualifications were not acceptable there, or if through ignorance or otherwise, they could be used as a pretext for not offering employment. By 1989, agreement had been reached to issue a Directive in the Higher Education area that all nationally-based diplomas successfully obtained after at least three years of full time advanced study would be recognised throughout the European Union member states. Though some difficulties still remain, major professions such as the Law, Accountancy and Medecine have moved a considerable way towards common agreement about their professional qualifications, which is already leading to increased levels of mobility of personnel, especially amongst accountants. In Teaching, though agreement has been reached concerning the common acceptance of qualifications, other policy barriers inhibiting large-scale movement remain, especially the fact that in some member states teachers are civil servants (eg. in France), and in others (eg. in the United Kingdom), they are not. The differences in renumeration of teachers between the most generous states (eg. Luxembourg) and the least generous (eg. the United Kingdom and Ireland) creates a situation which in principle might stimulate migration of teachers, were it not for the other barrier effects. This kind of situation raises questions of national policy which

is conflicting somewhat with European policy, a problem which remains to be resolved at some future date (Convey 1994). Where other vocational qualifications are concerned, agreement exists for a wide range of over 100 occupations ranging from those in hotels and catering to metalworking:

> "*such information is considered valuable since it provides very useful details in all Community languages with respect to diplomas, certificates and qualifications issued in each member state for a given occupation*", and....."*promotes the freedom of movement of workers by helping to create conditions under which they have equal access to employment*". (European Commission 1990, 1992a)

3.2 Social Security policy and freedom of movement

Social security provision at varying levels has been a longstanding characteristic of employment legislation in all member states of the European Union individually. It has also been an important plank of policy at the European level since the early days of the European Economic Community. A European Community "Social Charter" on the Fundamental Social Rights for Workers was adopted at the Strasbourg Council in December 1989. The provisions of this "charter" have now been enshrined in the "Social Chapter" of the Maastricht Treaty[9], which highlights a number of areas for Union-wide initiatives to be taken in order to increase the efficiency of the labour force. On the

question of movement of workers, the Social Chapter of the Treaty highlights four main measures relating to freedom of movement which were started in 1992:

> - *to ensure that at least minimum levels of social security protection were afforded to migrating workers,*
> - *a debate about supplementary retirement schemes in an attempt to ensure wider transfrontier worker mobility,*
> - *a proposed amendment to existing legislation (EEC 1408/71), in order to ease the co-ordination of existing schemes, both national and European,*
> - *a communication on the living and working conditions of citizens in frontier regions, especially trans-frontier workers.*
>
> (European Commission 1993d).

Meanwhile, the existing varying internal levels of social security provision throughout the member states, with some appearing to be more "generous" than others - either in fact or in the popular imagination - is widely held to be a factor in the stimulation of migration from one country to another, and for migration from outside the Union to selected Union member countries. All member states have social security regulations which, to one degree or another, make a full range of social security benefits available to all inward migrants who have residence and work permits (European Commission 1991). None of these benefits are formally available to illegal migrants. The degree to which these situations have been factors in increasing mobility is difficult to demonstrate, but they can also as easily lead to attempts by certain national politicians

to reduce inward migration, on the pretext that incomers would be unfairly drawing upon the national social security system. Perhaps because of this kind of argument, social security and the social protection of workers remain areas where unanimous voting is required under the Maastricht Treaty.

3.3 Health care as a factor in movement

Health care provision, especially regulations covering public health and health and safety at work, now forms part of the social chapter of the Maastricht Treaty. Normal medical services have been made available to all European Community nationals (and to many others) for some years through the well-known "E111" system, though this does not normally cater for persons who are staying in another country for more than a year, and it depends upon the persons concerned being social security contributors in their country of residence (European Commission 1993b). Consequently this system, together with the various private health insurance schemes available, while valuable to tourists and occasional travellers, is not especially helpful to migrants. They are normally totally dependent on medical care available through the national social security systems, as described in section 3.3 above.

In the fields of public health, and of health and safety at work, the Maastricht Treaty is more specific. An enlargement of competence in the area of Public Health is actually one of the policy innovations in the Treaty. The Council of Ministers will in future be able to adopt Recommendations in this field by qualified majority voting, with the aim

of ensuring a high level of human health protection (European Commission 1992b). The Social Chapter of the Treaty includes an action programme including a series of detailed health and safety measures which supplement existing provisions. Other initiatives have included the updating of a Schedule originating in 1962 on occupational diseases and setting out principles for compensation; and agreement in principle was reached in June 1993 on a 1991 Commission proposal that a European Health and Safety Agency should be created (European Commission 1993d). As the main motivating factor for most migrants remains the search for employment, such developments will be to the benefit of legal migrants who are in formal employment, though the same regulations are less likely to be followed by employers who are employing illegal migrant labour.

A further area of increasing importance where health care is concerned rests with the increasing number of retired and older persons who are migrating from one European country to another, frequently in search of the sun, but also by the process of *retour au pays* (return migration). While such movements have remained within one country, problems with the provision of public health care and other social security benefits have not arisen. However, this becomes a problem at the European level when nationals of one member country retire permanently to another; eg. British and Dutch in the south of Spain, or Germans in the *midi* in France. At present, though it is relatively easy for such persons to obtain any appropriate residence permit in the country of their choice within the European Union, the authorities of the host country have the right to demand that the migrant concerned has sufficient means to show that he/she will not need to become a charge upon the health and other social services of the host country, other than via private health insurance (Eurinfo 1993a, 1993b). As 1993 was designated as

"Year of the Elderly", and the number of retired persons, including migrants, continues to increase across Europe, further developments might reasonably be expected in these fields in due course.

3.4. Policies towards migrant minorities.

Many policies which affect migrant minorities have already been discussed in the previous sections of this paper. There do remain, however, a number of matters which concern the relationships between the population of the host country and inward migrant groups, many of which have received considerable publicity in recent times. Xenophobic attitudes and actions seem to be on the increase. The immigration policies of most European Union countries, individually, are evolving from the relatively liberal position which developed during the 1950s to 1970s period, when the need for extra labour was at its maximum, to a much less inviting character at the present, when the European economy as a whole is undergoing great difficulties, and unemployment is high. The Council of Ministers of the European Union, reflecting the opinions of member governments, is also spending a great deal of time on the refinement and co-ordination of immigration policy throughout its area of competence (Council of the European Communities 1992b), and most of these results lead towards more restrictive immigration policies for migrants from outside the European Union than hitherto. Individual governments in member states have the responsibility for combatting the racial and other forms of violence towards foreigners which has erupted in recent

months, though any policy responses so far have tended towards restriction of entry rather than the amelioration of conditions within the country (The Economist 1992a). Additional strains have been produced by the extreme political situation in ex-Yugoslavia, producing very large numbers of refugees and asylum seekers in the European Union area. It is estimated that over the period 1991-92, 60,000 persons a month were entering Germany, which has had no official barriers to asylum seekers, and which has no law by which the authorities can refuse entry, though after entry it is correspondingly difficult to obtain German citizenship (The Economist 1992b). This unmanageable situation in Germany has led to demands for greater restriction of entry, in line with most of Germany's partners.

Where migration between European Union countries is concerned, the situation is very different. As already explained, most if not all recent policy and legislation has moved towards the free movement of persons, goods and services, these being the principles underlying the Single Market and the Maastricht Treaty. It is too early to say whether the gradual enlargement of concentrations of retired "northern" migrants and others in the "sun belt" of southern France, Spain and Portugal will lead to any forms of tension. At present, the regional economies are in general benefiting from this type of influx, though whether this will continue if migration reduces and these populations get gradually older is open to question. Periodic locally-based problems about internal movement are raised in Belgium, where some attempts have been made by Flemish-speaking communes to restrict or to stop the inward migration of Walloons (Le Soir 1993), and migration returns in the census in Belgium certainly demonstrate the small amount of movement between the two linguistic zones, the Brussels region apart. The

Northern Ireland problem has led to widespread re-location of certain sections of the community, especially in the city of Belfast, into concentrations of persons on at least nominal religious grounds. Of course, neither of these two cases can be described as policy, though they do call for policy responses from national governments. All European-level policy on internal migration and movement within the Union remains based upon the presumption that local difficulties such as these will not continue to exist, or at least will not get further out of hand.

4 Conclusion

It is clear that migration policy within the area and competence of the European Union and its members states remains very complex, and is also still in a state of considerable flux. The pushes towards greater controls on movements from the outside, which have been described in this paper, are in direct competition in policy terms not only with the equally important push towards greater ease of movement within the Union, but also with the drive towards greater economic success. If the European Union were to develop a "fortress Europe" mentality as far as population migration is concerned, this could well have political ramifications with outside states which go far beyond the question of who gets entry visas and who does not. Perhaps the only approach which may work to lessen the pressure of inward migration is for the European Union to seek to reduce the "push" factors existing in third countries. This will require the development of policies which show considerable foresight. While there is not much sign

of this as yet, it is to be hoped that European politicians will show themeselves to be capable of going in this direction and not relying solely on restrictive moves.

Notes

1. The *Maastricht Treaty* being the common name given to the Treaty on European Union, on Economic & Monetary Union, with associated protocols.

2. The recent situation seemed to be that Germany, the Benelux countries and Spain were ready to implement Schengen in full on Ist February 1994; that France intended to do so, subject to final internal agreement on the effect of Schengen on the French constitution, and that Italy, Portugal and Greece, having previously assented to the Schengen Accord, would fully implement Schengen as soon as possible after certain technical difficulties had been resolved. However, problems connected with the final commissioning of the Schengen Information System (SIS) are leading to considerable delays to this target date. Belgium and the Netherlands have their SIS links in place, and France is close to linking up. Germany and the other Schengen countries are not ready, however and therefore it is not clear at present when Schengen will be implemented in full (see *Le Monde* of 20.10.93 and Cane 1994).

3. Although the National Assembly in France had enthusiastically endorsed French adherence to the Schengen Accord in 1989, the question of the relationship which it should have with the basic French Constitution has still not been fully resolved, mainly over the question of rights of asylum.

4. for example, the Belgian "Eurinfo" (no.173, March 1993) was reporting under, "Libre circulation: oui, mais...!", that for the air journey from Brussels to London and return, it was in Brussels Airport that the strict controls were to be found, while in London they were described as non-existent! Perhaps the opposite of what might be expected under Schengen?

5. Costa-Lascoux (1990) presents comparative tables of the conditions one needs to meet in order to enter the country, obtain asylum, reunite family, get temporary stay permit, regularize illegal stay/work and obtain citizenship in France, Italy, the Netherlands and Germany. She notes that, except in Italy, conditions of issuing visas varies very much, depending on the country of origin of the applicant.

6. For example the Italian embassy in London accepts a maximum of 100 application per day and does not accept applications by post (Italian..., 1993).

7. For example SOPEMI 1992 reports that 4300 have been expelled from the UK in 1991, of whom more than a half entered the country illegally.

8. This is usually defined as less than 18 years old, but in the case of Germany less than 16 years old. Italy requires that a child is not married.

9. The United Kingdom did not sign the 1989 "Social Charter" and has, of course, succeeded in obtaining a protocol absolving it from the legal enforcement of the provisions of the "Social Chapter" of the Treaty, the only member state to follow this course of action. It has, however, independently implemented most of the contents of the "Charter", and reports to Brussels regularly on the provision of social rights in the UK, as required by the "Charter".

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