A Superabundance of Contradictions: The European
Union's Post-Amsterdam Policies on Migrant 'Integration',
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Abstract

The agreements reached within the frameworks of the Amsterdam Treaty and the Tampere European Council in 1999 would set off a flurry of activity in the areas of EU immigration, asylum and migrant/minority 'integration' policy. In conjunction with these policy areas moving up the EU agenda, moreover, this rapidly growing activity would expand well beyond the confines of the Amsterdam and Tampere programmes. The European Commission's bold move to declare an end to the era of 'zero' extra-Community labour immigration, as well as the expanding 'externalization' of the EU's immigration and asylum policies to third countries, are just two of several examples highlighting this dynamic development. This paper focuses on the unfolding EU policies in the fields of 'integration', anti-discrimination, immigration, and asylum. In terms of demarcations, it covers the development up until the conclusion of the Tampere Programme (1999–2004), leaving off at the beginning of its multi-annual successor agenda, the Hague Programme (2005–10). The examination proceeds through a double movement, surveying and analysing both internally and externally directed policies, as well as their intimate and often contradictory interplay. The paper sets out by scrutinizing supranational initiatives in the field of migrant/minority integration and anti-discrimination, focusing specifically on the strong interaction of this enterprise with labour-market policy and the issues of citizenship, social exclusion, and 'European values'. It then goes on to explore the European Commission's objectives and assumptions concerning its calls for a sizeable increase in labour migration from third countries. Besides relating this to the internal requirements of the EU's transforming labour market, it also discusses the external ramifications of the EU's developing labour migration policy. The remaining sections scrutinize the EU's emerging asylum policy. It attends, *inter alia*, to the EU's ever-widening smorgasbord of restrictive asylum instruments and security-oriented immigration policies, which, as the paper goes on to argue, together serve to transform the right of asylum into a problem of 'illegal immigration'. Above all, this predicament is discussed in relation to the growing importance of immigration and asylum matters in the EU's external relations.

A Superabundance of Contradictions: The European Union's Post-Amsterdam Policies on Migrant 'Integration', Labour Immigration, Asylum, and Illegal Immigration[1]

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The signing of the Amsterdam Treaty in October 1997 resulted from years of preliminary work and arduous negotiations, which had often centred on the issues of immigration and asylum. The political climate in which Amsterdam took shape was characterized by a growing dissatisfaction with Maastricht's intergovernmental management of matters pertaining to immigration and asylum (Lavenex 2001: 864). Hence, the Commission had begun to depart from its earlier, rather pragmatic disposition (see Hansen 2005a) and had thrown in its lot with the European Parliament's more consistent criticism of the Maastricht era's allegedly opaque and democratically unaccountable conduct in Justice and Home Affairs (JHA) (see Hix 1999: 328). In order to come to terms with these problems, the Parliament and the Commission called for a supranationalization of immigration and asylum policy. Unlike the political climate in which its predecessors—the Single European Act (SEA) and Maastricht—were moulded, however, the Parliament and the Commission were far from alone in championing a supranational solution. By the mid-1990s the case for some form of supranationalization had also gained support in all but a few of the national cabinets (Geddes 2000: 115-8; Melis 2001: 14).

Another novel feature of Amsterdam's preparatory stages was the attendance of numerous NGOs, all advocating the cause of expanded protection and rights for refugees and immigrants. Forming part of the larger attempt to boost the EU's threadbare democratic credentials and popular legitimacy, these NGOs were invited to present their cases regarding the shaping of the Union's future immigration and asylum policies (Geddes 2000: 113-4). Being favourably disposed to transferring immigration and asylum policy to the Community level (Hix 1999: 329), these NGOs' involvement provided an additional impetus to the supranational cause.

As it turned out, however, backers of further supranationalization were to be yet again frustrated (Geddes 2000: 117). Even so, the Amsterdam Treaty did not, as had been the case with Maastricht, reject the supranational solution wholesale. What resulted was rather a type of half measure: while important parts of immigration and asylum policy were transferred from the EU's third, intergovernmental pillar to the first, supranational pillar, decision-making in the area still had to abide by the unanimity principle. Thus, even though it assumed recognition as a 'communitarized' area, immigration and asylum policy was not supranationalized and subjected to the traditional Community method of qualified majority voting (QMV) and the Commission's sole right of initiative. Instead, the operation of the Commission's exclusive right of initiative was postponed until 2004 (Lavenex 2001: 865). A change-over to QMV was also anticipated for 2004; but such a decision was made dependent on a consensus among the member state governments (den Boer 1999: 312; Geddes 2000: 123). However, a Council Decision (Council of the EU 2004f) in December 2004 appears to have finally settled the matter, thus making QMV applicable to the Amsterdam Treaty's new articles on immigration and asylum.

Despite the rather awkward 'supragovernmental' set-up, which drew criticism from many quarters (see Melis 2001: 51), the Amsterdam Treaty marked a historical shift towards a significantly augmented role for the EU and the supranational level. With the overarching aim of developing the European Union as an 'area of freedom, security and justice', Amsterdam laid down the broad outlines for a future EU policy on immigration and asylum. Upon ratification, the groundwork for such a policy was to be built incrementally over a period of five years (1999–2004). Some of these changes were spelled out in Article 61 under the new Title IV:

> In order to establish progressively an area of freedom, security and justice, the Council shall adopt: (a) within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons . . . in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration . . . (b) other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries. (Council of the EU 1997a: Article 61)

Further, Article 62 specified that measures should be adopted granting certain limited intra-EU mobility rights to 'nationals of third countries'. In addition, Article 63 outlined a series of measures on asylum and immigration, stressing the creation of a set 'minimum standards' in the area of asylum. As part of this reshuffling, Amsterdam also incorporated the Schengen *acquis* into the Treaty framework.

Unlike its predecessor, however, Amsterdam did not confine itself to immigration and asylum proper, but also introduced into the Treaty explicit wordings concerning the Union's resident third-country nationals (TCNs) and ethnic minorities (see passage quoted above). Moreover, the Treaty enacted an article to better equip the

Union in its fight against discrimination. From here on, the Treaty provided for the development of Community-wide policies against racism.

Due to British, Irish, and Danish opposition, and in order not to derail the negotiations, it became necessary to allow these countries to opt out of these new provisions. Such opt-out, but also opt-in, agreements had to be codified in a series of complex protocols (see Hailbronner 1998; Hedemann-Robinson 1999; Melis 2001). In allowing for this intricate mix of opt-out and opt-in schemes, Amsterdam authorized a differentiated, multi-speed integration of greater flexibility (Hedemann-Robinson 1999). Since the literature sometimes, and the EU-documents routinely, convey a bewildering impression to the contrary, it must also be stressed that by no means the entire policy area of immigration and asylum was relocated to the first pillar (Hailbronner 1998). Thus, a number of significant areas were not subjected to the arrangements laid down in the new Title IV (Lavenex 2001: 866-7).

Following the signing of Amsterdam in 1997, some scepticism surfaced about whether member states actually would be willing to shoulder the ambitious goals set forth in the new Treaty. At the Tampere European Council in 1999, however, much of this uncertainty was put to rest, at least for the time being. Here, at 'the first ever European Council focusing on JHA matters' (Monar 2000: 125), the Council decided that 'a common European asylum system' gradually should be put into operation, 'which would, in time, lead to a common asylum procedure and a uniform status, valid throughout the Union, for those granted asylum' (CEC[2] 2001e: 3). A first set of common policies was set to be adopted no later than May of 2004 (see CEC 2003a). As far as immigration was concerned, Tampere 'decided that a major focus of the EU's efforts should be on the more efficient management of migration flows, on

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[2] CEC is the abbreviation for Commission of the European Communities and will be used henceforth.

more effective external border controls, and on combating illegal immigration' (CEC 2000a: 9). Tampere also 'declared that a more vigorous integration policy should aim at granting' third-country nationals 'rights and obligations comparable to those of EU citizens'. Moreover, the Council undertook to 'enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia' (CEC 2001a: 2).

The Amsterdam and Tampere agreements would set off a flurry of activity in the area of immigration and asylum policy (see Monar 2004: 127). In conjunction with immigration and asylum policy moving up the EU agenda, moreover, this rapidly growing activity would expand well beyond the confines of the Amsterdam and Tampere programmes. The Commission's bold move to declare an end to the era of 'zero' extra-Community labour immigration, as well as the expanding outsourcing, or 'externalization', of the EU's immigration and asylum policies to third countries, are just two of several examples highlighting this dynamic development.

This paper focuses on the unfolding EU policies in the fields of migrant/minority 'integration', anti-discrimination, immigration, and asylum. In terms of demarcations, it covers the development up until the conclusion of the Tampere Programme (1999–2004), leaving off at the beginning of its multi-annual successor agenda, the Hague Programme (2005–10). In much the same fashion as I have approached this policy field when examining the development during the pre-Amsterdam period (Hansen 2005a), the examination here proceeds through a double movement, surveying and analysing both internally and externally directed policies, as well as their intimate and often contradictory interplay. It needs repeating though, that I am aiming at a moving target. Moreover, given that I am up against such a formidable abundance of new policies and pending policy proposals, I cannot aim to

provide an exhaustive account. The focus is, rather, on the general trend of developments in the post-Amsterdam period (1999–2004). I set out by examining supranational initiatives in the field of migrant/ethnic minority integration and anti-discrimination, focusing specifically on the strong interaction of this enterprise with labour-market policy and the issues of citizenship, social exclusion, and 'European values'. I then go on to explore the Commission's objectives and assumptions concerning its calls for a sizeable increase in labour migration from third countries. Besides relating this to the internal requirements of the EU's transforming labour market, I also discuss the external ramifications of the EU's developing labour migration framework. The final section scrutinizes the EU's emerging asylum policy. It attends, *inter alia*, to the EU's ever-widening smorgasbord of restrictive asylum instruments and security-oriented immigration policies, which, as I go on to argue, together serve to transform the right of asylum into a problem of 'illegal immigration'. Above all, this predicament is discussed in relation to the growing importance of immigration and asylum matters in the EU's external relations.

A New Deal for the Union's ('Legal') Third Country Nationals?

The pledge to improve the lot of the EU's 'legal' and permanently settled third country nationals was clearly one of the boldest declarations made in Tampere. Put differently, by stating that 'a more vigorous integration policy should aim at granting them [TCNs] rights and obligations comparable to those of EU citizens', the Council opened up for a revision of the legal restraints built into the EU citizenship that was instituted by the Maastricht Treaty. As was agreed upon in Maastricht (Part Two, Article 8(1)), 'Every person holding the nationality of a Member State shall be a citizen of the Union' (Council of the European Communities 1992). To the extent, therefore, that the rights granted by the 'European citizenship' altered the status of

national citizenship, these alterations affected positively only the citizens of member states, and so created new hierarchies and cleavage structures between inhabitants in the EU area (see Kofman 2002). In this sense EU citizenship did not replace national citizenship but underlined its importance, since people residing in the Union could not acquire EU citizenship without first having acquired its counterpart in a member state.

As few could have failed to notice, the reluctance to incorporate the millions upon millions of resident TCNs into the new EU citizenship regime—and hence make residence rather than nationality the basis of membership—would be subjected to much criticism throughout the 1990s (see d'Oliveira 1995; Hansen 1998; Kofman 1995; Martiniello 1995; O'Keeffe 1994). Besides the criticism being voiced from within academic circles and by various NGOs, the granting of extended rights to TCNs has also been the subject of recurrent efforts on the part of the European Parliament and the Commission, particularly in order to redress the disparities between EU citizens and TCNs in the area of free movement (see Hansen 2005a).

It must be emphasized here that neither Amsterdam nor the declarations in Tampere should be taken to indicate that permanently settled TCNs are about to become naturalized EU citizens any time soon, or, for that matter, that long-term residence is about to replace nationality as the determining principle of EU citizenship. A conversion of this magnitude would require a political firmness of purpose that at present seems lacking (Kostakopoulou 2002: 452). This provided, the strategy adopted by the Commission should rather be seen as one geared towards making the most of Tampere's pledge to grant rights to TCNs that are 'comparable to those of EU citizens'.

According to Kostakopoulou (2002), the Commission's endeavour to address and expand the rights of permanently settled and 'legal' TCNs should indeed be seen as an 'important step towards equal membership and full political inclusion'. Above all, Kostakopoulou (2002: 452, 454) contends, it makes clear that '[l]ong-term resident TCNs in the European Union are no longer invisible', and that a 'rights-based approach centred on the principle of equal treatment . . . and the granting of free movement rights has begun to emerge'. On the word of the Commission, this rights-based approach forms an integral part of the larger objective of fostering a sense of 'civic citizenship' amongst the Union's 'legally' settled TCNs. According to the Commission (2000b: 19), 'civic citizenship' is deemed a long-term goal, emerging out of the progressive 'granting of civic and political rights to longer-term migrant residents'. Comprising 'a set of rights and duties offered to third country nationals' (CEC 2000b: 22), civic citizenship is said to epitomize the principles and values laid down in the 'Charter of Fundamental Rights of the European Union' (European Union 2000), which was adopted at the Nice summit in December 2000 (CEC 2001a: 3). The Charter was subsequently incorporated into the as yet unratified Treaty establishing a Constitution for Europe (Conference of the Representatives of the Governments of the Member States 2004: Part II, Titles I-VII), which means that it might become legally binding in the future. In terms of content, the Charter 'sets out the civil, political, economic and social rights of European citizens' (CEC 2001b: 21). Despite the Charter's explicit reference to 'European citizens', the Commission has been eager to point out that this by no means precludes its (partial) application to TCNs.

Evidently, it is 'free movement' that constitutes one of the core issue around which the Commission organizes and articulates its civic citizenship endeavour to expand

the rights of 'legally' resident TCNs.[3] 'A genuine area of freedom, security and justice', the Commission (CEC 2001a: 8) asserts, 'is unthinkable without a degree of mobility for third-country nationals residing there legally, and particularly for those residing on a long-term basis'. Consequently, whenever the Charter of Fundamental Rights is being brought to bear on the issue of civic citizenship, it is always its Article 45 (2) on 'Freedom of movement and of residence' that appears in the foreground.

The Political Economy of Free Movement

Granted that any upgrading of mobility rights for TCNs must be welcomed as such, the issue cannot rest simply as a structurally detached expression of the Commission's benevolent intention to use every means available to make 'legal' TCNs more visible through their gradual 'integration' as 'civic citizens'. This is not to suggest that civic citizenship is unworthy of our consideration. Rather, it is to stress the importance of linking it to the larger question of *the political economy of free movement*. The Commission's current attempt to expand the scope of free movement to incorporate TCNs must be understood in the context of its perpetual mission to stimulate the economically vital yet so far dormant labour mobility within the EU area. On this point, moreover, the Commission is crystal clear. Hence, it contends that to continue barring 'legally' resident TCNs from the free movement provisions runs counter to 'the demands of an employment market that is in a process of far-reaching change, where greater flexibility is needed' (CEC 2001a: 8). It goes on:

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[3] With the adoption of a Council Directive in 2003, certain limited rights of intra-EU mobility and residence have now been granted to third-country nationals 'who are long-term residents' (Council of the EU 2004c).

The evolution of the employment market in the Union is highlighting employment

shortages in certain sectors of the economy. Third-country nationals who are

long-term residents may be ready and willing to relocate either in order to put

their vocational skills to work in another Member State or to escape

unemployment in the Member State where they reside. The mobility of long-term

residents can thus make for better utilisation of employment reserves available in

different Member States. (CEC 2001a: 8)

Explicitly tailored to the demands of a 'flexibile' labour market, 'civic citizenship' is

thus roughly tantamount to the 'market citizenship' that is promoted under the

banner of EU citizenship (see Hansen 2000). In other words, the underlying rationale

of devising of civic citizenship for TCNs needs to be seen as modelled upon the very

same market-making objectives of the institution of EU citizenship for member state

nationals. As d'Oliveira (1995: 63) notes, one must keep in mind that 'the core and

origin of Union citizenship is the right to free movement' (see also O'Keeffe 1994;

Lehning 1997).

   It is in this larger context that we need to situate the objectives of 'civic

citizenship' and the Commission's attempt to extend selected free movement rights

to TCNs. Permanently settled third-country nationals thus constitute an untapped

labour reserve that, once unhampered by the EU's internal borders, could help

remedy recurrent labour shortages in growth industries and other labour market

distortions across the Union (CEC 2004c: 18; 2003b: 1). In this equation, moreover,

unemployment appears to be a key variable. Since TCNs suffer disproportionately

from unemployment, the Commission presumes they should be more open to intra-

EU labour mobility than are member state nationals: hence the Commission's

promotion of extended free movement rights as a means by which TCNs could 'escape unemployment in the Member State where they reside' (CEC 2001a: 8).

Arguably, the articulation of civic citizenship is contingent upon the Commission's more general approach towards 'social exclusion' as manifested in the current Lisbon Strategy and reform agenda (see Hansen 2005b). The institution of civic citizenship thus rests on the Commission's basic premise that accelerated labour market deregulation and a more flexible and adaptable labour force hold the keys to the EU's allegedly *analogous* problems of unemployment and social exclusion. Promoted as a possible ticket out of unemployment for third country nationals, in particular, and as a means to attain more flexibility within the EU's labour market as a whole, civic citizenship could then be seen as yet another attempt at reconciling social cohesion with market expediency.

But if the extension of mobility rights to TCNs constitutes a core component in the Union's post-Amsterdam policy on civic citizenship in particular, and on integration policy vis-à-vis ethnic minority TCNs, in general, it is by no means the only one. As will be discussed below, since Amsterdam and Tampere numerous other policy initiatives promote the integration not only of TCNs but of the EU's ethnic minorities as a whole.

Integration With Obligations

Recent policy documents reveal that EU integration policy has experienced some notable shifts and changes in the post-Amsterdam period. While still not altogether reducible to economic objectives, the policy discourse on ethnic minority integration nevertheless finds less and less application outside of the realm of market expediency and, in particular, of labour market policy. The Commission's comprehensive Communication *On a Community Immigration Policy* (2000b) markedly tones down

the type of broader discussions which were commonplace in the pre-Amsterdam period and which often linked integration with the larger questions concerning the multicultural and multi-ethnic society (see Hansen 2005a). In the current policy discourse, by contrast, the more elaborate discussion most often equates the integration of immigrants and ethnic minorities with 'their integration into the labour market' (CEC 2000b: 19; see also CEC 2003c: 1).

Another discernible modification of the Commission's post-Amsterdam integration discourse is to be found in the Commission's growing emphasis on immigrants' and minorities' own responsibilities in the area of integration. While underscoring the necessity of not only facilitating 'their integration into the labour market', but also to create 'a welcoming society', the Commission argues that it is essential

> to recognize that integration is a two-way process involving adaptation on the part of both the immigrant and of the host society. The European Union is by its very nature a pluralistic society enriched by a variety of cultural and social traditions, which will in the future become even more diverse. There must, therefore be respect for cultural and social differences but also of our fundamental shared principles and values: respect for human rights and human dignity, appreciation of the value of pluralism and the recognition that membership of society is based on a series of rights but brings with it a number of responsibilities for all of its members be they nationals or migrants. (CEC 2000b: 19)

Although the Commission's division of the Union into two clear-cut societies—one being the 'host', the other being the 'immigrant' society—begs a number of questions as to what makes such a division a sensible starting point, it is, nonetheless, the assertion that these two societies must be made equally liable for the integration

process that stands out as the most unsettling ingredient, since it implies that the two societies have an equal amount of social, economic, political, and cultural resources to bring to bear on the integration process in question.

Upon closer scrutiny, however, and once the question of 'principles and values' enters into the picture, the already mistaken 'two-way process' quickly yields to an even more disquieting one-way process where integration, in essence, becomes synonymous with an exclusive duty to adapt on part of the migrant society. This proceeds from the Commission's appropriation of the 'respect for human rights and human dignity' as being constitutive of 'our' particular values (see also CEC 2000d: 2). Albeit the Commission refrains from making any explicit statements about the possible content of 'their' (or the 'immigrants') particular values and principles, its position nevertheless intimates that 'immigrants' very well might champion values that contravene 'our' 'respect for human rights and human dignity'.

It goes without saying that such a 'neo-assimilationist' articulation of integration policy risks further fomenting the increasingly prevalent sentiment that those 'immigrants' who are said to beget the Union's ever more culturally and ethnically diverse make-up are somehow more unfavourably disposed towards the specific values at issue. We find this reflected in the positions on 'immigrant integration' adopted by most of the member states' governments and traditional parties (see CEC 2003e: 39); or, as the then British Home Secretary, David Blunkett, put it when seeking a formula to circumvent the outbreak of any future 'race riots' similar to those that rocked Britain in the summer of 2001: 'We have norms of acceptability and those who come into our home—for that is what it is—should accept those norms' (cited in Alibhai-Brown 2001).

It needs noting too that those values and principles that the Commission defines as 'ours' in recent years also have been grouped under the generic term 'European values' as well as being incorporated in to the Charter of Fundamental Rights of the European Union. The Commission (CEC 2001c: paragraph 3.4) speaks of the importance of providing migrants with 'appropriate language training and information on the cultural, political and social characteristics of the country concerned including the nature of citizenship and of the fundamental European values'. On this precise issue, moreover, the European Parliament's position has actually been even more emphatic. While agreeing that 'immigrants are expected to respect the community of values—as set out in the EU Charter of Fundamental Rights—and to show a willingness to integrate into society in the Member States', the European Parliament (2001a: 10) has also reprimanded the Commission for being too generous, even lax, in its integration-related demands on migrants. Thus, the Parliament has endeavoured to impose a set of stiffer 'integration-related requirements' than those put forth by the Commission. In 2001, for instance, it contended that '[t]he award of long-term resident status' to migrants cannot be a 'substitute for successful integration; instead, an advanced degree of integration into the life of the Member State concerned is a precondition for the award of that status' (European Parliament 2001b: 6). As suggested by the Parliament (2001b: 12), 'Member States may make the award of long-term resident status contingent on other evidence of integration, in particular adequate knowledge of a national language of the Member State concerned'. As seen here—and, again, much in tune with the debates on integration in many of the member states—migrants' obligation to learn the language of the 'host society' has, indeed, become one of the centrepieces in the Parliament's blueprint on integration (see European Parliament 2001b: 8; CEC

2003e: 8, 45). It should also be mentioned that the Council has favourably received these proposals and sentiments (Council of the EU 2002a: 17).

In sum, this signals that EU measures geared towards the specific problem of a trailing immigrant integration have increasingly resorted to a moralizing, Third Way-type policy discourse, full of allusions to obligations, responsibilities, duties, and sanctions. While the host society is said to be obliged to provide opportunities and hold out inducements, the ultimate success or failure of the integration policy that comes into view here still seems to hinge upon the moral stature of the migrants themselves, on their 'willingness to integrate', as well as on their ability to adapt to certain prescribed cultural and civic values.

I should mention, finally, that the EU's new outlook on integration also places a heavy emphasis on the prominent part to be played by 'civil society' and on the benefits of 'diversity management', whereby integration is held up as a potentially 'profitable strategy' for corporations, 'helping them to achieve their business goals through its focus on the commercial possibilities arising from increased diversity' (CEC 2003e: 20).

The New Anti-discrimination Agenda

Beyond these more general currents, recent years have witnessed some quite remarkable advances in EU policy-making on anti-discrimination and anti-racism. As such, the approach at the supranational level to the problem of racism is no longer confined to the merely symbolic responses that mostly characterized the pre-Amsterdam period. This change was first and foremost made possible by—to use the Commission's (CEC 2003d: 1) expression—the 'groundbreaking' decision to incorporate a new anti-discrimination article (Article 13) in the Amsterdam Treaty.

According to the Commission (CEC 2001d: 4), Article 13 'gave the Community for the first time the power to take legislative action to combat discrimination'.

Article 13 was hardly a bolt from the blue, but was prefaced by an intensified supranational engagement with the problem of racism and xenophobia from the mid-1990s and onwards. The European Year against Racism in 1997 and the decision to establish a European Monitoring Centre for Racism and Xenophobia in Vienna were just two of several developments that prepared the ground for and gave an impetus to the treaty amendment (see CEC 1995; Council of the EU 1997b; CEC 2001d: 4).

After the Amsterdam Treaty came into force in 1999, the momentum continued, and it would not take long before this explicit anti-discrimination orientation began to take the form of mandatory directives and development programmes requiring member states to combat racism and discrimination. Already in November 2000 the emerging policy agenda had been adapted to an ambitious six-year (2001–6) implementation scheme, spelled out in the 'Community Action Programme to combat discrimination' (Council of the EU 2000b). Just before that, moreover, Article 13 had facilitated the adoption of a landmark Racial Equality Directive (Council of the EU 2000c). This Directive aims to put into practice Article 13 and thus to give effect to 'the principle of equal treatment between persons irrespective of racial or ethnic origin'. Integral to this is the objective of creating 'a socially inclusive labour market' and 'a high level of employment and of social protection'. Besides employment, the Directive also focuses on discrimination in the areas of education, housing, social welfare, and health. This was soon complemented by the Employment Framework Directive (Council of the EU 2000e) which, among other things, added discrimination in the labour market on grounds of religion to the general framework for combating racism and discrimination. It needs mention that

the Charter of Fundamental Rights of the European Union also incorporates an anti-discrimination article (21), prohibiting, *inter alia*, discrimination based on race, ethnicity, colour, religion, and language (European Union 2000).

Largely confined to symbolic gesturing just a decade ago, EU anti-discrimination policy today musters an impressive array of measures and instruments. This includes binding directives as well as a plethora of 'soft law' schemes corresponding to the EU's new policy-making style of the Open Method Coordination. As Soininen (2003: 45) has it, it is largely the Commission's astute utilization of soft law policy-making, starting in the mid-1990s, that has paved the way for the Council Directives and thus for the introduction of binding EU legislation on anti-discrimination. 'Soft law has contributed to establishing support for further action, and to "softening up" the policy area in preparation for later action by the Commission' (Soininen 2003: 45). Particularly instrumental in this development has been the Commission's effort 'to pursue a coherent strategy of integrating anti-racism into EU policies, known as mainstreaming' (CEC 2003d: 5). Mainstreaming has been part and parcel of the EU's anti-discrimination policy ever since the redoubling of activity in the field in the late 1990s. The strategy of mainstreaming has thus facilitated the incorporation of anti-discrimination measures into a variety of EU programmes and policies, most prominently in employment and social policy (Soininen 2003).

Belonging under the Directorate-General for Employment and Social Affairs, the Equal Programme (2000–6) constitutes one of many policy schemes that operate in accordance with this strategy (see e.g. CEC 2001e: 9). Managed by the European Social Fund (ESF), the Equal Programme conspicuously ties together the new anti-discrimination and migrant integration agenda with the current social policy and employment agenda within the overall framework of an integrated trans-national

development strategy. In keeping with the objectives guiding the integration policy examined above, the Equal Programme echoes a neoliberal *cum* Third Way-type policy discourse; hence it puts a great deal of emphasis on *social inclusion* of disadvantaged groups through *employment*. This is supposed to take place through the collaboration of public administration, NGOs, social partners, and the business sector within the framework of mostly local development partnerships. The programme aims to try out new ways of dealing with problems of discrimination targeted on a range of disadvantaged groups in the name of 'diversity', but with a strong accent on the inclusion of refugees, immigrants, and ethnic minorities and on combating racism in the labour market (see CEC 2000c: 13; 2001e: 9).

Arguably, the new anti-discrimination policy framework constitutes a promising development. For one thing, it is forcing member states to adjust and upgrade their anti-discrimination policies and legislations. For those (many) member states with underdeveloped policy regimes in the area this proffers real and ramifying vistas for positive change. This also implies prospects for changes of a systemic nature whereby EU policy may alter the distribution of influence between various social actors over national policy-making in the field (Soininen 2003: 46). As already alluded to, however, significant parts of EU anti-discrimination policy conform very well with neo-liberal objectives, particularly as these have come to influence the EU's employment policy. Market expediency and anti-discrimination policy are thus framed as being mutually reinforcing. As Soininen (2003: 44) notes, for instance, when anti-discrimination policy enters the areas of the EU's Employment Strategy and social inclusion policy, 'the rights perspective shifts over to perspectives such as the employability of the individual'. When seen from this perspective, one needs to ask to what extent EU anti-discrimination policy merely constitutes yet another

market-expedient employability instrument substituting for, rather than forming part of, an EU commitment to the establishment of a structurally embedded social dimension whereby anti-discrimination and social rights would constitute two sides of the same coin.

Ending the Policy of 'Zero' Labour Immigration

After this inquiry into the EU's post-Amsterdam policy approaches to the 'integration' of TCNs and ethnic minorities, we now turn our attention to the related development in the area of immigration and asylum, where the transformations induced by Amsterdam and Tampere have been even more momentous.

   To start with, it did not take long for the Commission to decide to reverse its official stance on the question of extra-Community labour immigration. In the Communication *On a Community Immigration Policy* (2000), the Commission elaborates on this new outlook:

   [I]it is clear from an analysis of the economic and demographic context of the Union and of the countries of origin, that there is a growing recognition that the 'zero' immigration policies of the past 30 years are no longer appropriate. On the one hand large numbers of third country nationals have entered the Union in recent years and these migratory pressures are continuing with an accompanying increase in illegal immigration, smuggling and trafficking. On the other hand, as a result of growing shortages of labour at both skilled and unskilled levels, a number of Member States have already begun to actively recruit third country nationals from outside the Union. In this situation a choice must be made between maintaining the view that the Union can continue to resist migratory pressures and accepting that immigration will continue and should be properly regulated, and

working together to try to maximise its positive effects on the Union, for the migrants themselves and for the countries of origin. (CEC 2000b: 3)

Given this 'new situation', the Commission takes the view 'that channels for legal immigration to the Union should now be made available for labour migrants' (CEC 2000b: 3); or as put in a more blunt formulation: 'the Commission believes zero immigration to be, quite simply, unrealistic' (CEC 2000d: 4). 'The main challenge', the Commission (2003e: 10) goes on, 'will be to attract and recruit migrants suitable for the EU labour force to sustain productivity and economic growth'.

The new stance towards labour migration grows out of the decisions taken in Tampere that called for a 'more efficient management of migration flows' (CEC 2000a: 9). In order to better 'manage', 'regulate', and 'control' the 'increasingly mixed flows of migrants', the Commission strongly advocates a further development of a 'partnership approach' with third countries. As part of this scheme the Union has agreed to greatly augment the scope for the issues of immigration and asylum in the EU's relations and agreements with third countries (CEC 2000b: 8). The partnership approach is set to 'provide a framework for dealing flexibly with new trends in migration', where migration, rather than being perceived as 'simply a one-way flow', now must be construed as a '*pattern of mobility*' (CEC 2000b: 8, 13). Hence, if the EU needs to open the door to new labour migrants, it must also ensure that these migrants remain perpetually prone to mobility, that they are encouraged to contribute to the 'economic development of their country of origin', and that laws refrain from hampering their opportunities 'of moving on or going back as the situation develops in the country of origin and elsewhere in the world'. Designed so as to aid sender countries' economic development, partnerships and the flexible and 'efficient management of migration flows' are also promoted as means which 'in the long

term' could help put a curb on the very 'incentive to emigrate', and thence facilitate the Union's fight against 'illegal immigration' (CEC 2000b: 8, 11, 14; see also CEC 2001c; 2003e: 15).

These objectives were further elaborated at the Seville European Council in 2002. Seville thus went on to reconfirm that '*any future cooperation, association or equivalent agreement which the European Union or the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration*' (cited in CEC 2002a: 23). In the ensuing Commission Communication (2002a) it was established that the issue of immigration and asylum, by necessity, must constitute the centrepiece in all of the EU's development programmes, also expressed as 'the migration-development nexus' (CEC 2002a: 23). Development assistance to poorer countries is to target more forcefully 'the root causes of migration flows'—the so-called push factors—so as to better 'manage', 'control', and 'reduce' global migration flows (CEC 2002a). That is to say, helping developing countries come to terms with what the Commission describes as the mostly self-inflicted problems of 'negative growth', 'overpopulation', 'unemployment', '[a]rmed conflict', 'ethnic cleansing', [h]uman rights abuses', and [p]oor governance' will in the long term also help 'to reduce the migratory pressure', hence facilitating a future development where migration 'can be a positive factor for growth and success of both the Union and the countries concerned' (CEC 2002a: 10, 7, 4).

Another potentially fruitful course of action said to need further exploration concerns the connection between labour migration and international protection. Set to be coordinated 'in partnership with third countries', the Commission recommends that '[b]etter access to protection in Europe must go hand in hand with a regulated

and more transparent framework for a policy on admissions, including for

employment purposes.' (CEC 2003f: 7). Furthermore,

> [w]hile many people admitted to the EU for humanitarian reasons do return to
>
> their countries of origin when the situation there changes, the discussion on the
>
> number of economic migrants needed in different sectors should take into account
>
> the number of persons under international protection, since better use of their
>
> skills could also be made, and of family members admitted to the EU who will
>
> also be entering the labour market. (CEC 2000b: 15)

In this context it needs to be noted that the partnership approach in the area of

immigration and asylum is consistent with the EU's larger scheme concerning the

organization's 'contribution to global governance', which is currently taking shape

(CEC 2001f: 26-7). In addition, the future roles to be played by international

organizations are to be further explored. With regard to labour immigration, for

instance, the Commission (2003e: 15) calls for better utilization of 'the possibilities

provided under the WTO General Agreement on Trade in Services (GATS) to

negotiate commitments allowing for the temporary entry of people who are coming

to provide a service'. Similarly, the Commission envisages that the pending Directive

on services will abet the deployment of third country nationals in the EU's cross-

border service industry (CEC 2004c: 18).

Tapping the Extra-EUropean Labour Reserve

As is indicated above, however, the many alleged benefits inherent in partnerships

and a flexible management of immigration are not only projected onto the future. On

the contrary, such a flexible management must, above all, be construed as a response

to a set of acute predicaments facing the Union's labour market. Prefaced with

references to already established and developing recruitment schemes at the member state level (CEC 2003h: Ch. 6; see also CEC 2004c), the Commission calls for a coordination of national responses within 'an overall framework at EU level' (CEC 2000b: 14). Hence, and since the admission of third country labour migrants will remain a national sphere of authority, the Open Method of Coordination (OMC) is set to complement and support the EU's so far limited legislative instruments (see Caviedes 2004). This is done so as to bring forth common objectives, guidelines, and standards as well as best practices and targets that are sensitive to different national needs (CEC 2001c). In due course, the Commission envisages, such an OMC-driven process will help establish a common framework for third country labour migration in the EU. As part of the OMC in this particular area, all measures are to be aligned with the objectives laid down in the European Employment Strategy and developed in close collaboration with the social partners, actors at regional and local levels, various NGOs, 'associations of migrants as stakeholders', and other representatives of 'civil society' (CEC 2001c: 14). While the coordination of recruitment policies for 'economic migrants' must 'address the needs of the market place particularly for the very highly skilled, or for lesser or unskilled workers and seasonal labour', it should also 'enable the EU to respond quickly and efficiently to labour market requirements at national, regional and local level, recognising the complex and rapidly changing nature of these requirements' (CEC 2000b: 15). Here, for instance, the Commission takes a positive view of the bilateral agreements on seasonal and temporary work that southern European members have signed with various third countries (CEC 2004c). These are commended not only for helping to alleviate labour shortages but even more so for strengthening cooperation with third countries (so vital for the EU) on the fight against illegal immigration. It is also important to note that the Commission

does not take issue with the fact that some of these bilateral agreements do not award seasonal third country labourers the same working conditions and salary levels as nationals (CEC 2004c: 7).

As already intimated, the Commission advocates an EU policy vis-à-vis the new third country labour migrants that is guided by a flexible approach. For a start, 'temporary workers who intend to return to their countries of origin' are said to be best admitted on the basis of 'temporary' work permits. Within this category, moreover, 'special arrangements' could be worked out for 'certain types of workers e.g. seasonal workers, transfrontier workers, [and] intra-corporate transferees'. Subsequently, temporary permits might be extended and, 'after a number of years to be determined', workers who 'meet certain criteria' may be awarded permanent work permits (CEC 2000b: 17-8). As suggested by the Commission (CEC 2004c: 19), moreover, 'the idea of recruiting workers and developing training programmes in countries of origin in skills which are needed by the EU could be explored'. Since such programmes have already been established by some member states, the Commission is open to the possibility of Community-financed pilot projects in this area.

Having arrived here, and seeing once more that all roads, so to speak, lead to the flexible labour market, we can now appreciate more fully the intimate and complementary relationship between policies on extra-EU immigration and policies on intra-EU integration. If the intra-EU labour reserve of long-term resident TCNs needs to be induced to relocate in step with the labour market's 'flexibility' requirements, the same can be said to apply to select groups from within the extra-EU labour reserve. The fact that the Commission (2000b: 15, emphasis added) requests that recruitment schemes for extra-EU labour migrants address 'the need for

greater mobility *between* Member States for incoming migrants' is just another case in point underscoring the complementary character of the two policy schemes in question.

A Flexible Integration

But the management of new labour migration is not only promoted under the banner of 'flexibility' and mutually beneficial 'partnerships' between senders and receivers. It also intimates that newcomers should be greeted with measures of 'integration' and with the associated boons of civic citizenship, anti-discrimination policies, and social inclusion. In this context, integration is also construed as a competitive device, as when the Commission urges the member states to 'greatly contribute to the integration process', since this 'will be particularly important in attracting migrants to highly skilled jobs for which there is world-wide competition' (CEC 2000b: 19).

But if integration, as in this particular instance, can be held up as enhancing the Union's competitive edge, its perceptibly discordant relationship with many of the objectives inherent in the 'flexible management' of new labour migration also elicits some hesitation on the part of the Commission as to how extensive integration measures really ought to be. Put differently, if the new labour migrants derive their utility precisely through their flexible status—always open to return and to continual mobility—this is clearly at variance with the Commission's (CEC 2000b: 20) conception of integration as inevitably amounting to 'a long-term process' comprising a series measures that, apart from focusing on the needs of new arrivals, are to pay 'special attention' to 'second generation migrants, including those born in the EU'. Given this policy conflict, it is little wonder that the Commission, on other occasions, proves equally eager to temper, even retract, its affirmative stance on the integration of new labour migrants. As part of a wavering attempt to paper over the

contradiction between integration and flexibility, the Commission thus suggests that it might be advisable to adopt an 'incremental' approach to integration—an approach '[d]ifferentiating rights according to length of stay' (CEC 2000b: 15, 17). However, since the Commission has already established that 'length of stay' is to be managed through the issuing of various temporary and renewable work permits and determined solely by the rapidly changing and hence indeterminable market needs, this proposal cannot but amount to little more than a tautology. Arguably, it essentially seeks to square the integration-flexibility circle by subordinating the issue of integration to the requirements of flexibility. This contradictory endeavour is reflected too in the Commission's subsequent recasting of integration as 'reintegration' in the EU's proposal to design a 'reintegration framework' 'to assist returning migrants to re-settle in their countries of origin' (CEC 2000b: 8; 2001c: 10).

Public Relations Post-'Zero Immigration'

Another, and perhaps even greater, predicament facing the Commission revolves around its undertaking to secure widespread public acceptance of the (official) revocation of the EU's long-established tradition of '"zero" immigration policies' (CEC 2000b: 3). To be sure, 'zero immigration' never constituted an actual line of policy in the literal sense of the word; today it is rather used as a generic term, denoting thirty years of restrictive immigration policies aimed at limiting the (legal) entry of labour migrants, or 'economic migrants', from poorer parts of the world. But if the Commission's call to end zero immigration must not be allowed to conjure up a picture of the past thirty years as characterized by a true intention to hermetically seal off the borders for certain categories of labour migrants—and where the passivity, even tacit consent, of many governments to industry's exploitation of

undocumented labour amounts to just one case refuting such an intention (see e.g. Castles 2004)—neither should it be taken to signify the first step towards a future policy of porous borders and 'open door' labour immigration. Listening to the Commission, it is, nonetheless, a public reaction partly built on just such an interpretation, which it has now set out to forestall. The Commission appears to be apprehensive that the 'host populations' will respond negatively to the abrogation of 'zero immigration', possibly interpreting it as portending less restriction and an uncontrolled inflow of immigrants. In its detailed Opinion on the Commission's new approach to immigration, the Economic and Social Committee (2001: 111) voices similar concerns: 'It will not be easy to persuade public opinion to take a favourable view of the more open immigration policy now being proposed, but far-reaching work to this end is now urgently required.'

In light of the Commission's exceedingly restrictive stance on immigration in the 1980s and 1990s, however, such uneasiness is far from surprising. Indeed, for more than two decades the Commission rarely missed an opportunity to emphasize that a restrictive immigration policy, or 'zero immigration', was the only 'realistic' way forward (Hansen 2005a). For one thing, this was the foundation on which the Commission formulated its approach to ethnic minority integration; that is, without tight controls (read 'zero immigration') on new entries, the reasoning went, integration of minorities with migrant background already residing in the Union was considered unfeasible (Hansen 1997). Similarly, the restrictive approach to immigration also functioned as a crucial public relations tool, often put to use when the Commission sought to ensure the EU citizenry that further European integration by no means implied an increase in extra-European immigration. As such, the pledge to uphold (the illusion of) 'zero immigration' also served as one of the core

ingredients in the Commission's articulation and promotion of a 'European citizenship' during the 1990s. Here, the underlying assumption was that the EU citizenry, in order to consolidate, needed to be assured that immigration and asylum, together with other matters brought forth as assertively related to public safety, were effectively checked at the external borders (see Hansen 2000).

In order to obviate a possible public disapproval of the EU's rather abrupt shift from its promise to perpetuate the policy of 'zero immigration' to its current call for an increase of third country labour immigration, the Commission has come up with a series of public relations measures to be adopted by a range of elite actors. 'A shift to a proactive immigration policy', the Commission (2000b: 22, 15) asserts, will 'require strong political leadership to help shape public opinion', as well as 'a clear commitment to the promotion of pluralistic societies and a condemnation of racism and xenophobia'. More specifically, politicians are being urged to highlight the positive effects of immigration and to 'avoid language which could incite racism or aggravate tensions between communities'. In addition, the media is held up by the Commission as having 'considerable responsibility in this respect', that is, 'in its role as an educator of public opinion' (CEC 2000b: 22).

Still in Control

Apart from these new guidelines, the Commission is also very eager to ensure an imagined 'host population' that the admission of new labour migrants by no means implies a laxer *control* of immigration flows as such. On the contrary—and as it is being repeated ad infinitum—the new immigration policy is to be 'accompanied by a strengthening of efforts to combat illegal immigration and especially smuggling and trafficking' (CEC 2000b: 22). In its *Study on the links between legal and illegal immigration* (2004), the Commission elaborates on a series of measures that are

deemed necessary in order to realize this objective. Here, the main concern revolves around the establishment of more effectual cooperation schemes with third countries on policing, border control, and return of illegal immigrants (CEC 2004d). To enable third and neighbouring countries to improve their management of migration flows in general, and to reinforce their fight against illegal migration in particular, the Commission is calling for an increase in the EU's technical and financial support within the framework of its various external policies and cooperation programmes (CEC 2004d). With the twin purposes of managing the new labour migration to the EU more efficiently on the one hand, and of combating what the Commission enumerates as the 'serious threats' of 'illegal immigration, organised crime, trafficking of various kinds, terrorism and communicable diseases' on the other, the EU has also launched the 'New Neighbourhood Policy', designed to enhance cooperation with countries along the EU's eastern borders and in the Mediterranean basin (CEC 2004a: 23; see also CEC 2003i).

But while the public is to be on the one hand reassured about the EU's commitment to an ever more intense fight against illegal immigration and on the other hand educated about the benefits of immigration and diversity, the Commission also puts forward a third set of conditions to be considered. Here, and in sharp contrast with the critical importance attributed to the task of teaching the public to be appreciative of immigration and diversity, the Commission (2000b: 16) sees it necessary also to pay heed to such 'factors' as 'public acceptance of additional migrant workers in the country concerned, resources available for reception and integration', as well as 'the possibilities for social and cultural adaptation etc'. Although the Commission refrains from any further elaboration on these 'factors', their very incorporation into the Union's overall immigration scheme is nonetheless

quite indicative of the startling contradictions that continue to pervade immigration policy at the EU level. As such, it tallies with the situation at national levels, and could arguably be interpreted as a tactical move on part of the Commission reflecting an attempt to appease the discrepant positions on immigration between, as well as within, the member states. In this sense, the Commission's reference to 'public acceptance of additional migrant workers in the country concerned' is a misnomer and should rather read, 'governmental acceptance of additional migrant workers'. True, most governments share the Commission's view that an increase in extra-EU labour migrants is necessary, but to assume that they are able, let alone prepared, to shoulder the responsibility to 'shape public opinion' in an anti-racist and pro-immigration direction is a completely different matter. As has been made painfully clear in recent years, the relationship between the traditional parties of government and the (overtly) racist and anti-immigrant right is no longer limited to one where the former assimilates many of the proposals and sentiments of the latter; rather, in many member states it has entered a phase of open cooperation and coalition-building.

But, instead of addressing this deeply distressing development, the Commission perseveres in displacing and projecting the problem of racism and anti-immigrant sentiments onto the 'public' and the so-called 'host populations'. Nor, one needs to add, does it point to those sections of this precise 'public'—the plethora of organizations and popular movements—which for years on end have worked against racism and the criminalization of immigration and asylum. In light of these circumstances, the Commission's focus on the 'European citizens'' assumed resentment against immigration could also be interpreted as a convenient way to avoid any discussion or self-examination of its own role and complicity in

legitimizing and kindling the past decades' growing hostility towards immigrations and refugees (see Morris 2002: 23-4).

Towards a 'Common European Asylum System'

In the post-Amsterdam period asylum policy has been subjected to even more intensive supranational activity than the issues of migrant and/or minority integration and extra-EU labour migration. As a result of Amsterdam's new Treaty provisions and the Tampere agenda, a package of EU directives and regulations have been adopted in the area. During this first phase (1999–2004) of the creation of a 'Common European Asylum System', a primary objective has been to establish a set of common 'minimum standards' in a number of areas; for example, minimum standards on 'temporary protection' (Council of the EU 2001a);[4] 'reception of asylum seekers' (Council of the EU 2003a);[5] 'the qualification and status of third country nationals or stateless persons as refugees' (Council of the EU 2004a); and 'minimum standards on procedures for granting or withdrawing refugee status' (Council of the EU 2004b).[6]

Prior to these measures, a Council Decision had established the European Refugee Fund (ERF) (Council of the EU 2000a). In terms of its budget, the ERF makes up the largest programme within the EU's asylum and immigration policy. Set to operate in accordance with the 'principle of solidarity', the Fund is to take particular pains to facilitate the so-called burden-sharing between EU countries of the costs of refugee reception (Council of the EU 2000a). Since its inception in 2000, however, the trend

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[4] While Britain decided to opt in to this Directive, it does not apply to Ireland and Denmark (Council of the EU 2001a: 13).

[5] Britain has opted in to this Directive; Ireland and Denmark do not participate (Council of the EU 2003a: 19).

[6] At the time of writing, the adoption of this Directive is still pending.

has been towards a 'substantially increased' allotment of funds ministering to the return and repatriation of refugees (CEC 2003f: 19; see also CEC 2002a: 38).

On account of Amsterdam's new provisions, moreover, all facets of visa policy have been incorporated into the EU's legal framework (Council of the EU 2001c).[7] As part of this, the number of countries whose citizens are required to have a visa in order to enter the Union has been further expanded, covering practically all those countries that the EU recurrently reprimands for human rights abuses. Since prospective asylum seekers, as a rule, are denied visas to EU countries, this conversion means that a key legal retrenchment on the right of asylum, which was subjected to loud criticism when it was developed through intergovernmental cooperation in the 1990s, now has been endowed with supranational sanction. As for the Commission's rationale, it is 'illegal immigration' that 'represents one of the basic criteria for the determination of those third countries whose nationals are subject to the visa requirement' (CEC 2003j: 4).

In line with the EU's visa policy, an EU Directive on Carrier Sanctions was adopted in 2001 (Council of the EU 2001b). With the objective of 'curbing migratory flows and combating illegal immigration', this directive imposes financial penalties on carriers that transport TCNs who are refused entry into the Union, as well as obliging carriers to send back TCNs. As scores of scholars and organizations have pointed out, this Directive not only fails to comply with the Geneva Convention's principle of non-refoulement; it also transmits the responsibility to decide whether or not a person is in need of protection to an unaccountable travel industry (ECRE 2004: 16).

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[7] Britain and Ireland maintain their own visa policies.

The Eurodac information system, which became fully operational across the EU in 2003, makes up another component of the building 'Common European Asylum System' (see Council of the EU 2002a)[8]. Eurodac was established in order to ensure the effective implementation of the Dublin Convention, now replaced by a Council Regulation establishing Dublin II (Council of the EU 2003b).[9] The Dublin Convention stipulates that asylum seekers are allowed to file for asylum in only one member state, whose decision then has legal force in the Union as whole, thus preventing a rejected applicant from taking her case to another member state. Eurodac's main official function is to collect and store fingerprints of all people over the age of 14 who have applied for asylum or been detained while illegally entering or residing in a member state. As Busch (2001: 33) and several others have noted, by subjecting a certain category of people to 'a type of supervision that previously had been reserved for serious criminals', Eurodac violates individuals' integrity and becomes yet another means which legitimizes the branding of asylum-seekers as a 'suspicious-looking collective'.[10] I should mention that Eurodac so far has been deemed a success by many migration authorities in the Union. For instance, Eurodac soon helped reveal that, due to a significant proportion of asylum seekers having filed for asylum in more than one country, the already declining number of asylum seekers who managed to arrive in the EU in 2002 was much lower than previously detailed by the official statistics (Magnusson 2003a). As a result, the number of asylum seekers who are subjected to immediate removal is growing each day (Magnusson 2003b).

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[8] The Eurodac Regulation does not apply to Denmark (Council of the EU 2002b: 2).

[9] The Regulation applies to Britain and Ireland but not to Denmark (Council of the EU 2003b: 2).

[10] Author's translation from Swedish.

In order to assist in the implementation of further harmonization, in recent years EU measures have proliferated promoting administrative collaboration and exchange of information and 'best practices' on asylum and immigration policy. A number of formal, informal, and ad hoc programmes, committees, and networks have been established, incorporating supranational bodies as well as international and non-governmental bodies, institutions, and experts (see CEC 2003f).

Despite the vigorous activity and the number of new supranational provisions and measures, the Commission is nonetheless far from satisfied with the trend of events in the area of asylum policy. In its assessment of the Tampere programme, which was presented in the summer of 2004 (at the expiration of Tampere's 'five-year timetable'), the Commission states that, although 'it is clear that the successes that have been achieved are considerable', it is equally clear that 'the original ambition' has been 'limited by institutional constraints, and sometimes also by a lack of sufficient political consensus' (CEC 2004b: 5; see also CEC 2003f: 3; Monar 2003: 119). In order to realize the Tampere objectives, and thus to facilitate 'the next multiannual programme in the areas of Justice, Freedom and Security', the Commission considers it imperative that qualified majority voting is introduced in the field of justice and home affairs (Vitorino 2004: 4-5). In this context, the Commission pins great hopes on the new Constitutional Treaty since, upon ratification, the Constitution would institute the Community method 'to the full range' in the area of justice of home affairs (CEC 2004b: 7; see also Monar 2004).

From the Commission's point of view, however, the lingering uncertainties and delays regarding supranational competencies and the member states' failure to fully comply with the Tampere programme are not the only worrying factors. Equally troublesome, the Commission contends, is the fact that the process embarked upon

since Amsterdam has done very little to overcome the crisis that has plagued asylum policy in the EU since at least the early 1990s. On the contrary, it maintains, the new millennium has just seen a further worsening of this crisis. There is thus a 'growing malaise in public opinion' towards the present state of asylum policy. Moreover, '[a]buse of asylum procedures is on the rise, as are hybrid migratory flows, often maintained by trafficking practices involving both people with a legitimate need for international protection and migrants using asylum procedures to gain access to the Member States to improve their economic situation' (CEC 2003f: 3). Brussels views the asylum crisis as 'a real threat to the institution of asylum and more generally for Europe's humanitarian tradition', and as such it 'demands a structural response' (CEC 2003f: 3). Such a response, moreover, does not stop short of measures targeted at the *internal* operation of the EU's developing asylum system. On the contrary, and in line with the measures embarked upon in the EU's new labour migration policy, the core of this structural response has been transposed to the so-called 'external dimension' of the EU's asylum and immigration policy.

Externalizing the Asylum Crisis

In reality, the nucleus of an externalized asylum policy was introduced already in the early 1990s; indeed, the first Schengen Agreement from 1985 could be seen as an even earlier precursor (Boswell 2003). Moreover, externalization through 'the exportation of migration control' and restrictive asylum policies was a salient component in the accession agreements that formed the basis of the Eastern enlargement (Boswell 2003: 621-2; Lavenex 1999; Grabbe 2002; Jileva 2002). It was not until the Tampere European Council in 1999, however, that a firmer official sanction was bestowed on the increasingly external orientation (Boswell 2003; van der Klauuw 2002). Later, at the European Council in Laeken in 2001, the Council

called for the incorporation of the issue of migration and asylum in the EU's 'foreign policy'. The momentum found further sustenance at the Seville European Council in 2002, where the external dimension was afforded a set of concrete objectives. The issue of migration, it was declared, should from then on make up an obligatory and salient feature in all of the EU's external relations (CEC 2002a: 4). Emphasis was placed more firmly on the establishment of 'asylum and immigration projects in third countries', a course of action which needed to 'be fundamentally incitative by encouraging those countries that accept new disciplines' (CEC 2002a: 4). Part and parcel of this were also measures to reinforce border controls and, in particular, to render more effective the repatriation of rejected asylum seekers; measures which also were to be developed in cooperation with third countries, as well as in continued anticipation of the eastern enlargement (CEC 2002a).

In conjunction with the unfolding adjustments at the EU level, asylum policy was being transformed equally profoundly at the global level. Aiming to meet 'the numerous challenges confronting refugee protection', the UN's High Commissioner for Refugees (UNHCR) had launched the Global Consultations on International Protection (United Nations 2002: 1). Within two years of their commencement at the end of 2000, these consultations were to result in the adoption of a multilateral package of policy guidelines, entitled 'Agenda for Protection' (and subsequently elaborated further in the High Commissioner's initiative 'Convention Plus'). Having all taken an active part in the consultations, both member states and the Commission commended the Agenda's plan of action, hence perceiving the EU's harmonization of asylum policy and the Agenda for Protection as 'mutually boosting' (CEC 2003f: 5; see also UNHCR 2003).

The concordance between the EU and the High Commissioner was further underscored by the Agenda's strenuous call for action and durable solutions in the areas of repatriation and readmission (see CEC 2003g: 7-9). As intimated above, it is impossible to overstate the importance that the Commission has come to confer upon the issues of repatriation, expulsion, return, and readmission. As reflected the swelling policy activity on the matter in recent years, the Commission seems unable to emphasize enough that '[a] policy on returns or effective removal from the territory is an absolute necessity for the credibility of the common asylum system and the common procedure' (CEC 2000c: 10). Indeed, '[t]he signal effect of a failed return policy on illegal residents cannot be underestimated' (CEC 2003j: 8). The Commission is also very keen to use readmission as a public relations tool; that is, as a promise to an imagined populace hankering for reassurance about the authorities' resolve and relentless crack down on bogus asylum seekers:

> An effective EU Return Policy will increase public faith in the need to uphold the EU humanitarian tradition of offering asylum to those in need of international protection. A quick return, in safety and dignity, immediately following rejection of the application for asylum and the appeal . . . will furthermore greatly deter migrants from abusing the asylum channels for non-protection-related reasons. (CEC 2003g: 20)

In its *Green Paper on a Community Return Policy on Illegal Residents*, the Commission also points to the merits of 'the forced return of illegal residents', arguing that this can 'help to ensure public acceptance for more openness towards new legal immigrants against the background of more open admission policies particularly for labour migrants' (CEC 2002b: 8).

As part of the amplification of the external dimension and the EU's 'global policy' (CEC 2002a: 26) on asylum and immigration, recent years have seen a series of measures seeking to establish a firm link between development assistance policy and the striking of readmission agreements with third countries. Under the motto 'migration issues ought to be part and parcel of Community development policy', the Regional and Country Strategic Papers (CPS) are drawing up one such set of measures. The CPS make up a 'strategic framework' which, 'by presenting a global development package to developing countries, will encourage them to enter into readmission agreements' (CEC 2002a: 21, 5, 47; see also CEC 2003j: 14). Since the Cotonou Agreement,[11] or the EU's 'Partnership Agreement' with seventy-seven African, Caribbean, and Pacific (ACP) countries (Council of the EU 2000d), already contains a readmission clause, the Commission mentions this agreement as a potential blueprint for forthcoming ones (CEC 2002a: 24; see Lavenex 2002). Countries such as Egypt, Georgia, Lebanon, Armenia, Azerbaijan, and Uzbekistan already have a readmission clause incorporated into their respective agreements with the EU. Similarly, the EU has an operational 'Return plan for Afghanistan', which was approved in November 2002 (CEC 2003g: 21). On a country-by-country basis, moreover, the Commission has been authorized to negotiate 'readmission agreements' and other migration- and asylum-related cooperation agreements between the EU and a growing number of countries, the great majority of them (like those already enumerated) with deplorable human rights records (for example, China, Turkey, Pakistan, Algeria, Russia, Morocco, Libya, Tunisia) (see CEC 2002a: 25; 2003j: 12-4). In addition, and with the principal objective to further develop the readmission instrument, the EU launched the AENEAS Programme in the spring of

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[11] The Cotonou Agreement, which was signed in June 2000, replaces the Lomé Convention.

2004. This cooperation and development policy programme also aims to address the root causes of migration, promote legal labour migration channels, improve third countries' asylum systems, and combat illegal immigration and organized crime (European Parliament, Council of the EU 2004).

Between Control and Prevention?

Besides those already elucidated, the external dimension of EU asylum and immigration policy includes several other measures and cooperation programmes (see CEC 2002a). Of utmost significance here is the ever-increasing emphasis on provisions to amplify the 'consolidation of protection capacities in the region of origin' (CEC 2003f). Closely related to this is the endeavour to render more effective the utilization of refugee-absorbing 'safe third countries', as well as the externalization of a plethora of control and security apparatuses to developing countries. Another category is made up of those policies which have been in use in certain member states for some time, but which now figure as potential ingredients in a supranational framework. The option of allowing for 'protected entry procedures', whereby a member state's embassy evaluates an asylum application outside of the EU, constitutes one such measure that the Commission has envisaged as a possible future EU policy (CEC 2003f: 6, 9). A well-crafted and harmonized system of protected entry has been greeted by several parties, among them the UNHCR and the European Council on Refugees and Exiles (ECRE) (ECRE and U.S. Committee for Refugees 2003), as a potential means of enhancing refugee protection while at the same time offering refugees a viable alternative to human smuggling, which today makes up virtually the only escape route available to refugees seeking protection in the EU (see Danish Centre for Human Rights (on behalf of the European Commission) 2002). As a consequence of the over-abundance of immigration

controls in and around the EU, the European Council of Refugees and Exiles

estimates that roughly 90 per cent of asylum seekers are now forced to utilize illegal

channels in order to gain entrance to the EU (ECRE 2004: 17). In a statement from

2004, however, and citing insufficient promptness on the part of the member states,

the Commission appeared to be back-pedalling on the issue of protected entry,

announcing that it did not intend 'to suggest the setting up at EU level of an EU

Protected Entry Procedure mechanism as a self standing policy proposal' (CEC

2004c: 12).

Another and perhaps more illuminating classification is that of Christina Boswell

(2003), who divides the external dimension into two approaches, the first geared

towards the 'exportation' of 'control instruments' to third countries (2003: 622), the

second towards more novel methods aiming at the 'prevention' of refugee

movements towards the EU. To be more precise, the former approach aims to expand

restriction and control capacities in third countries through their governments

assuming more responsibilities in the areas of border control, illegal immigration,

and terrorism, on the one hand, and through enhanced 'capacity building of asylum

systems' in refugee-producing regions, greater deployment of 'safe third countries',

and readmission agreements, on the other. The energies of the latter, 'preventive'

approach are directed towards so-called root causes, addressing issues of forced

migration, poverty, unemployment, and human rights—issues which, accordingly,

are to be dealt with through an improved utilization of foreign aid and trade and

investment policies (Boswell 2003).

Although accounting for the continuing vigour of the control-oriented policy

programme, Boswell nonetheless argues that there is reason to be moderately

confident about the prospects for the preventive approach. In pinning her qualified

hopes on the European Commission, she tries to demonstrate that this institution has come to espouse the preventive approach with increasing energy in recent years. On the Commission's stance, she even argues that '[c]ooperation on migration management, including readmission agreements, border control and combating illegal migration, is treated as largely subordinate to the central strategy of reducing migratory pressures through development aid' (Boswell 2003: 636).

In view of our preceding discussion on the Commission's position(s), Boswell seems clearly to overstate her case. True, the Commission does emphasize 'root causes' and the value of development assistance (van der Klauuw 2002: 43). But the claim that these take precedence over the issues of border control, readmission, and illegal immigration—to mention a few arising from the control-oriented approach outlined by Boswell—does not sit well with the Commission's stated objectives (see Monar 2003). The plethora of control-oriented priorities spelt out in a string of Commission initiatives over recent years testify to this. In the Commission's *Communication On a Common Policy on Illegal Immigration* (2001g), for instance, and where the questions of asylum and cooperation with third countries figure prominently, there was no mention whatsoever of 'root causes', development assistance, or forced migration. Permeated by an even stronger accent on securitized measures, this pattern was to recur in the Commission's subsequent Communication on an EU policy on illegal immigration (CEC 2003j). This point was also driven home in ECRE's comprehensive assessment of the implementation of the Tampere programme:

> The EU's prioritisation of measures to fight illegal immigration over fighting the root causes of refugee flight and improving refugee protection in third countries has led to a considerable lack of coherence between the EU's measures to

integrate migration issues into external policies and its human rights and

development co-operation policies and objectives. (ECRE 2004: 5)

However, as Boswell also stresses, 'the persistence of the Commission's interest in

prevention should not be taken for granted' (2003: 638). She argues convincingly

that this interest on part of the Commission 'appears to be contingent on two central

factors', that is, on adequate funding (for example, for development assistance) and

on support from the Council and the member state governments (2003: 638; see

Monar 2004: 121-2).

To enquire a little further into the relative strengths of the two approaches outlined

by Boswell, we can turn to Loescher and Milner's (2003) apt scrutiny of the concept

and empirical reality of 'refugee protection in regions of origin'. Protection in the

region of origin sits at the heart of both the EU's external dimension and the

UNHCR's Agenda for Protection, and it is being promoted by several member states

as a more expedient way of managing the world's refugee crisis. As the Commission

(CEC 2003f: 3) frames the issue, regional protection provides a policy instrument

whereby

Member States could better deploy the major human and financial resources

which, partly supported by the European Refugee Fund, they devote to receiving

displaced persons in the context of often lengthy procedures that regularly

culminate in negative decisions requiring repatriation after a long wait.

But, as was explicated above, there are different ways of approaching the issue;

that is, regional protection may be developed into a tool of mere refugee

containment, thus perpetuating the ongoing transfer of the refugee burden from

richer to poorer countries; or it could be based on a commitment to real protection

and human rights, and vested with adequate resources. Now, whereas Boswell

expressed a tempered optimism about the feasibility of the latter approach, Loescher and Milner are quick to put all such optimism to rest. The current reality of protection in the region of origin, they assert, is a distressing one indeed, and there is little prospect of improvement in the near future. Actually, the trend has been towards a worsening of conditions in the regions of refugee origin. The ever more under-funded and undermanned UNHCR, for instance, has become 'increasingly unable to carry out protection, assistance and activities in pursuit of durable solutions for refugees in regions of origin' (Loescher and Milner 2003: 605). Partially building their case on field research among refugees and in refugee camps in several such regions, Loescher and Milner also contend that the EU's governments simply lack 'effective policies to address the often deplorable situations for refugees and asylum seekers in regional host countries' (2003: 615). Under these circumstances, therefore, it would be not only ineffectual but also unscrupulous for the EU to insist that poorer countries, many of which are already unstable and depleted of resources, should host and offer 'protection' to an even larger proportion of the world's refugees (Loescher and Milner 2003: 604; see also ECRE and U.S. Committee for Refugees 2003).

It seems safe to say, finally, that even if the Commission should come to stand firm on a programme of regional protection worth its name, it would face an uphill task. At least for now, the two components identified by Boswell as conditions for such a programme to become viable—namely, adequate funding and member state backing—are not within the Commission's reach (see also CEC 2004c: 12, 16; Amnesty International 2004).

Enter New Labour's 'New Vision'

Despite being fraught with so many obvious drawbacks, the notion of regional protection is still confidently espoused. Right before the Spring European Council in 2003, regional protection was bumped up to the top of the EU agenda by way of a British proposal, which became the subject of a vast debate. Clearly, this was also what the British government had in mind when it presented its 'New Vision for Refugees', declaring that '[t]here may now be a rare opportunity for the UK to truly set the global agenda on this issue' (UK Government 2003: 2).

   The British proposal, which partly sprang from previous Danish interventions and was inspired by Australia's 'Pacific solution' (Noll 2003), called for sweeping reform of 'the global system' for asylum. In line with other major players, such as the European Commission and the UNHCR, the Blair government grounded its intervention in a depiction of a 'failing' current asylum system. The system was deemed to be overly costly and to distribute the costs in very 'inequitable' ways; it 'usually requires those fleeing persecution to enter the West illegally'; and it was said to be incapable of confronting the fact that the great majority of asylum seekers did 'not meet the criteria of full refugees'. Due to this situation, the 'Vision Paper'[12] went on to contend, the present asylum system 'undermines public confidence' because it is held to be tremendously demanding to expel rejected asylum seekers, something which, in turn, is gratifying for illegal immigrants (UK Government 2003: 1-2). In this context the Vision Paper also claimed that the asylum system was being abused by terrorists, and that, consequently, a deterrent had to be found to prevent this problem, which recently had 'topped the headlines' (2003: 6, 16).

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[12] I borrow this term from Noll (2003).

In order to come to terms with the propounded deficiencies, and to follow through on prime minister Blair's pledge to radically reduce the number of asylum seekers entering Britain (Noll 2003: 304), the UK government proposed a package of far-reaching measures, organized around four basic elements. First, refugee protection in regions of origin was to be enhanced through the establishment of Regional Protection Areas (RPAs), located outside the EU, and operated by the UNHCR (UK Government 2003: 2). The RPAs should provide for basic needs so that refugees did not decide to abscond (and turn 'illegal') in search of better living conditions. Most of all, however, the RPAs should guard against offering too generous provisions, since this 'will act as a magnet to those in need in the surrounding area and cause resentment', 'envy or mistrust' (2003: 13, 2). Second, once the RPAs had been set up, all asylum seekers (with a few exceptions) arriving into Britain and, preferably, the whole of the EU and possibly 'other Western States' should be deported to them. 'For example, Iraqis who claimed asylum in the UK could be moved to a Protection Area in, say Turkey, Iran, or the Kurdish autonomous Protection Area' (2003: 2). An agreement would thus be made initially establishing 'the list of nationalities and ethnic origins' that any given RPA would house (2003: 13). As for the processing of asylum claims, the Vision Paper approached this as something that '[i]deally . . . would not be necessary because the asylum seekers will be able to go home quickly and it is more efficient to provide for all rather than determine claims' (2003: 13). In those cases where processing was deemed necessary, the UNHCR would be in charge, 'but there would not need to be a right to a legal challenge to the decision' (2003: 13-4). The third element in the British proposal was premised on an 'international recognition of the need to intervene to reduce flows of genuine refugees and enable refugees to return home'. Measures here would range from 'non-

coercive' to 'coercive' action, including military intervention in sovereign states (2003: 3, 11). The fourth and final element of the UK vision presented the RPAs as the chief hubs through which refugee resettlement was to take place in the future. Taking American and Australian resettlement schemes as a model, family and '[c]ommunity sponsorship should be a major component of these resettlement schemes'. However, since not all refugees would have access to resettlement in a third country, support should be provided for the integration of these refugees 'in their region of origin' (2003: 3).

As few could have failed to notice, the changes proposed in the British Vision Paper 'signal the most radical break with the international refugee regime as we know it' (Noll 2003: 309). In a painstaking analysis of the UK proposal, Gregor Noll (2003: 309-10) argues that '[i]t is no exaggeration to state that it could very well mean the end of the 1951 Refugee Convention'. It 'reflects an ongoing paradigm shift' in asylum policy, one that purports to ameliorate the refugee crisis 'by locating the refugee beyond the domain of justice' (Noll 2003: 338; see also Loescher and Milner 2003). This point was also emphatically made by scores of human rights organizations in their sharp condemnations of the British 'camp proposal' (see e.g. Amnesty International 2003; Human Rights Watch 2003). The reactions of other EU governments to the British proposal ranged from enthusiastic espousal to outspoken (but abating) disapproval. Whereas Sweden and Finland, for instance, took up the latter stance, Denmark, Holland, and Italy stood out as the keenest backers; but Spain, Belgium, Austria, and (soon) Germany too were among the supporters (Noll 2003; Kreikenbaum 2003).

At the invitation of the European Council, the Commission responded to the UK proposal in the summer of 2003 (CEC 2003g). With reference to both the UK

proposal and EU initiatives being prepared at the time, the Commission began its response by opening up to a 'new approach' to asylum policy. While the work to harmonize the 'in-country [asylum] process in the EU' was to continue, the new approach was to 'move beyond the realm of such processes' and focus even more forcefully on 'the phenomenon of mixed flows and the external dimension of these flows'. As if required by the situation, the Commission went on to repeat that this was not going to render in-country harmonization 'obsolete', since 'spontaneous arrivals' of asylum seekers in the EU would continue to occur. However, 'the new approach would reinforce the credibility, integrity and efficiency of the standards underpinning the systems for spontaneous arrivals, by offering a number of well defined alternatives' (CEC 2003g: 3).

Despite being in basic agreement with the Vision Paper's depiction of the present asylum system as 'failing', the Commission was not moved to promote the UK proposal as a blueprint for such 'alternatives'. Instead, the Commission concluded that 'before taking any further position' on the matter, key legal questions, involving the proposal's possible conflicts with refugee and human rights conventions, first had to be sorted out (2003g: 6-7).

Finally, it should be mentioned too that the UNHCR's response—to the dismay of many human rights organizations—included a 'counter-proposal' to set up refugee camps *inside* the EU, preferably located close to the EU's external borders. To such camps (or 'closed reception facilities'), the proposal envisaged, asylum seekers whose applications had been deemed 'manifestly unfounded' were to be deported and 'required to reside for the duration of the procedure' (Amnesty International 2003; CEC 2003g: 9; see also Statewatch 2004). To this proposal the Commission's response was more welcoming. Subsequently, however, the UNHCR revised its

'counter proposal' in a direction more in tune with the British proposal (Amnesty International 2003: 14).

The Fewer Who Come . . .

Since the presentation of the UK proposal and the subsequent Commission and UNHCR responses, the efforts to target protection, processing, and integration of refugees in regions of origin have come to overshadow all other activities within EU asylum policy. Included here are, of course, measures to augment the readmission and expulsion instruments, as well as the fight against illegal immigration. In conjunction with this, as I discuss below, several other member state governments have paraded proposals for external camps, thereby contributing to a normalization of the issue in EU policy discourse.

So far (spring 2005), however, the European Commission has not come to embrace the idea of deportations of asylum seekers from the EU to camps in third countries. Instead, the Commission has begun to call for 'more orderly and managed entry in the EU of persons in need of international protection'. If developed, however, such an approach might very well end up adopting the gist of the original UK proposal by way of circumventing some of its most repugnant and symbolically loaded elements. That is to say, 'managed entry' could be construed as an instrument that would render deportations superfluous since, by this means, future access to EU territory would primarily be open to those refugees selected for various 'situation-specific' and 'flexible' 'resettlement schemes'. At all events, this is one plausible way of interpreting the Commission's rather ambiguous Communication on the matter (CEC 2004c). What the Commission is out to resolve is the current predicament in which the majority of the asylum seekers who enter the EU—most often 'illegally'—fail to meet the criteria for international protection. Predictably, this way of framing the

problem fails to acknowledge that the approval rate of asylum applications is declining and asylum seekers are forced to make use of illegal channels largely because of the EU's ever more restrictive and securitized asylum and immigration policies. But instead of confronting this serious problem, the Commission goes on to present managed arrivals through selective resettlement schemes not only as a way to reduce the costs involved in the processing of unfounded applications and the subsequent returns, but also as a means to fight racism:

> [T]he managed arrival of persons in need of international protection would also constitute an efficient tool in *combating sentiments of racism and xenophobia*, as the public support for those positively screened outside the EU and then resettled in the EU is likely to be increased. This is significantly different to the current situation where a majority of the persons applying for asylum are not found to require any form of international protection. The lack of clarity in terms of public perception of this group threatens the credibility of the institution of asylum. (CEC 2004c: 6, emphasis in original)

It should be noted here that the Commission does not say how and to what extent the processing of asylum claims outside the EU is to be carried out. The Commission has, however, announced that a proposal for an EU resettlement scheme will be presented before the Council in the latter part of 2005.

Another accentuated advantage ascribed to 'legal, orderly and managed entry' concerns planning and security:

> The setting up of tailor made integration programmes for specific categories of refugees would also be much more easily devised, if a country knew in advance who was arriving on its territory to stay. Resettling and allowing physical access

to the territory of the EU of persons whose identity and history has been screened
in advance would also be preferable from a security perspective. (CEC 2004c: 7)

In this connection the pivotal question is also raised concerning the standards to be
employed when determining 'whether or not a person is suitable for resettlement
under a possible EU scheme'. From the Commission's perspective, two questions are
said to merit special deliberation here: 'Do they qualify for international protection?
Are they part of the target group deemed suitable for selection?' (CEC 2004c: 10).
By explicitly referring selection criteria to questions regarding security screening and
suitability, and to wordings such as 'specific categories of refugees', the Commission
has raised apprehensions within the human rights community. Statewatch believes
the Commission Communication forebodes an EU practice of 'cherry picking'
refugees. In other words, 'what, exactly, does the Commission mean by "specific
categories of refugees"? Ethnic groups, specific nationalities, men, women, children;
or perhaps workers with certain skill-sets?' (Statewatch 2004: 5). Some may well
dismiss such words as mere speculative hyperbole. However, in a political climate
where proposals for camps are being tabled in rapid succession, and where many
governments (and also the European Commission) appear to be trying to outdo each
other in coming up with the most expedient way of managing the 'asylum problem',
thus progressively pushing the boundaries of what are conceived as 'feasible'
measures, Statewatch's warning should be taken seriously. As was mentioned in a
previous section, moreover, the Commission has, albeit in vague terms so far, begun
to introduce the issue of asylum into the discussion of the EU's growing demand for
third country labour immigrants. For now, however, the Commission takes the
question of 'selection criteria' to be 'a matter for negotiation in any future proposal':

The question of how to deal fairly with the dissatisfaction of those not selected for resettlement and the rationale for proposing one durable solution to one particular group of people but not to another when both groups are in a similar situation will also have to be carefully managed. (CEC 2004c: 10)

But whereas 'managed entry' through 'flexible' resettlement is held up as a means to reduce costs, to retain public confidence in the institution of asylum, to give expression to Europe's humanitarian tradition, and to combat racism in the EU, a future EU resettlement scheme would *not* be designed to have any significant impact on the global refugee crisis as a whole. This, simply because of the small number of refugees projected to be selected for future resettlement in the EU (CEC 2004c: 9). On the issue of the numbers, moreover, the Commission has announced that its future proposal for an EU resettlement scheme will opt for flexible and non-binding targets rather than quotas, thus leaving the decision in the hands of the member states (CEC 2004c: 10). So, while the internal impact of 'managed entry' through resettlement is said to be considerable, the external impact on access to protection is limited to a 'strategic' or, perhaps better, symbolic type of 'add[ed] value', whereby the EU 'express[es] solidarity with and share[s] the burden of countries in the regions of origin faced with protracted refugee situations' (2004c: 9).

The limited external role (and impact on the current refugee calamity) assigned to managed entry via resettlement is, of course, bound up with the fact that it is protection in the region of origin that is said to constitute the real and long-term solution to the global refugee crisis. We have already dealt with why the EU's cherished goal of ensuring 'effective protection' in the region of origin remains unattainable in the foreseeable future. In many respects, interestingly enough, this assessment is in full agreement with the Commission's own: 'There is a long way to

go before most of the current refugee hosting countries in the regions of origin could be considered to meet such a standard where they are able and willing to offer effective protection . . . None of the durable solutions can be arrived at overnight—they are all products of long term planning' (CEC 2004c: 16). Nevertheless, the Commission has decided to go ahead and promote what it has termed 'EU Regional Protection Programmes'. I interpret this as a contradiction because of the Commission's discernible readiness to make refugee protection in certain regions of origin operational *before* the decidedly distant and difficult goal of meeting protection and human rights standards has been fully realized. In its first Communication on the matter, the Commission (2004c) points out that, before countries in regions of origin can be considered 'robust providers of effective protection' and 'proper countries of first asylum', certain 'measurable and achievable' 'benchmarks' and 'indicators' of effective protection first have to be in place. As outlined by the Commission, there should, for instance, be a 'possibility . . . to request refugee status' and 'to live a safe and dignified life taking into consideration the relevant socio-economic conditions prevailing in the host country'. The rather vague and pragmatic formulations in which these benchmarks are couched, however, leave much to be desired. Moreover, given the experience of EU return policy and the designation of 'safe third countries', there is good reason to wonder how strictly these 'benchmarks' for effective protection will be applied. As Statewatch (2004: 4-5) notes, the fact that the EU considered Afghanistan safe enough for the return of refugees in 2002 lends further support to such scepticism.

A Requiem for Refugee Protection in Europe?

Since the publication of the Commission's Communication (2004c) on EU resettlement schemes and EU Regional Protection Programmes, EU asylum policy has been the subject of ever more intense debate and policy activity. Following an agreement with Libya in August of 2004, the Italian government went ahead and announced that it plans to establish refugee camps in Libya for the purpose of preventing 'illegal immigrants' from reaching Italian shores. According to the Italian Minister of the Interior, 'plans to set up asylum camps in Libya would go ahead no matter what' (*Deutsche Welle* 2004a). Since Libya's fight against 'illegal immigration' was said to require Italian military equipment, Italy took it upon itself to press the EU to lift the EU's arms embargo on Libya. Although expressing worries about the human rights situation in the country, the Council answered the call and lifted the arms embargo on Libya in October 2004. In its statement, the Council also urged '[t]hat a technical mission to Libya be conducted as soon as possible to examine arrangements for combating illegal immigration' (Council of the EU 2004e). Around the same time Germany also presented a proposal to set up EU asylum centres outside the Union.[13] With the stated aim of preventing people from jeopardizing their lives on their way to Europe, the German Minister of the Interior cited Libya, Tunisia, and other countries in north Africa as possible sites for such camps.

Less than two years after the original UK proposal, external EU or EU-sponsored camps for refugees thus emerged as a highly viable option. That this indeed was the case was further underscored at the informal JHA Council meeting in the Netherlands in October 2004. Here, as part of the EU Regional Protection

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[13] Austria, Estonia, Latvia, and Lithuania, for their part, have pointed to Ukraine as a possible site for EU refugee camps.

Programmes initiative, the Commission proposed five pilot projects to help establish

asylum centres in Libya, Tunisia, Algeria, Morocco, and Mauritania. Besides

housing refugees in Africa en route to Europe, refugees apprehended in the

international waters of the Mediterranean would be deported to and also housed in

these centres. Yet many questions were left unanswered, including the extent to

which the centres would process claims and who would be responsible for such

processing. According to one report, the Commissioner in charge of JHA 'stressed

that the centres would not treat asylum demands for EU countries but that the refugee

could ask asylum only in the country where such a centre is' (*Deutsche Welle*

2004b). In this sense the Commission's proposal differs from the German

government's, which proposed setting up an external EU organ to handle asylum

processing. There were also some question marks concerning the reception of the

Commission's intervention. One report stated that no minister had vetoed the

proposal and apparently the JHA Commissioner had said that the EU was in basic

agreement on the main objectives behind the pilot scheme. However, France's

Minister of the Interior was quoted saying that '[w]e are not taking part in this plan',

and that the plan would be 'very destabilizing' for the countries concerned

(*International Herald Tribune* 2004). Sweden and Spain were also said to have

doubts. However, those favouring the Commission's project seem to have clearly

been in the majority, and it should be noted that the UNHCR was favourably

disposed towards it too. It goes without saying that many prominent human rights

and refugee organizations have been up in arms against the Commission's initiative.

Finally, it is of the utmost importance to note that the EU's new multi-annual

Hague Programme (2005–10), which succeeds the Tampere Programme, has

confirmed that EU Regional Protection Programmes will be vigorously pursued in

future years. Initiated at the Brussels European Council in November 2004, the Hague Programme declares, *inter alia*, that 'pilot protection programmes' indeed are to be set up during 2005 (Council of the EU 2004d: 21). Subsequently, the Commission is to submit a complete EU Regional Protection Programme by the end of the year. The Hague Programme sets out to deal 'with all aspects of policies relating to the area of freedom, security and justice, including their external dimension, notably fundamental rights and citizenship, asylum and migration, border management, integration, the fight against terrorism and organised crime, justice and police cooperation, and civil law, while a drugs strategy will be added' (Council of the EU 2004d: 4). Among its main goals is the institution of a common EU asylum policy by 2010. At the time of writing, the Hague Programme is still in its infancy. The Commission is to present in 2005 a comprehensive action plan, spelling out more detailed objectives and priorities as well as a timetable.

Conclusion

The task of analysing the EU's post-Amsterdam policies on migrant and ethnic minority integration together with policies on immigration and asylum is largely a matter of grappling with an awesome accumulation of contradictions. I began by examining the EU's integration policies' pronounced commitments to equality and extended free movement rights for TCNs on the one hand, and their marked adjustment to the needs of the EU's flexible labour market on the other. As also elucidated, a similar approach permeates the Commission's policy line on labour immigration from third countries. Here, however, the heavy emphasis on flexible and temporary work permits for new labour migrants contradicts the premise of integration policy that migrants' integration is always a long-term process. On the whole, the primacy of market requirements that permeates EU policy discussion on

new labour immigration leaves very little room for the type of civic citizenship and rights dimension that, despite its flaws, is still endorsed in policies addressing the situation of the EU's 'legal' and permanently settled TCNs.

But we also saw that EU integration policy is not only adapted to market requirements and labour market flexibility. The aspiration that migrants and minorities should embrace 'European values' is also accentuated, as are these groups' responsibilities and obligations in the integration process. The conceptions that underpin this approach to integration of resident migrants and minorities are also manifest in the Commission's contradictory endeavour to prepare host populations for the rescission of the 'zero' labour immigration policy. Here, I showed, calls for increased tolerance and a greater understanding of the benefits of additional labour migrants are made to coexist with the Commission's respect for popular scepticism about the prospects for migrants' 'social and cultural adaptation', as well as for host populations' possible rejection of new labour migration from third countries. Arguably, such contradictory approaches largely draw upon the political currents in vogue in most member states. It partly represents the Commission's adaptation to governments which are intent on inviting in more migrant labour in order to sustain competitive economies, but which have simultaneously fomented anti-immigrant sentiment and played ethno-cultural identity politics in order to stay competitive with the extreme right at the polls.

Adding to the contradictory picture, I also pointed to EU policy initiatives that are heavily at odds with such sentiments, above all anti-discrimination and anti-racism policies. Arguably, we may conceive of these as signifying budding elements of a more inclusive EU citizenship policy that addresses the conditions of disadvantaged groups in their institutional and structural embeddedness. However, from a wider

perspective, we also need to enquire where anti-discrimination policy will end up when, as now, it lacks a foundation in a firm commitment to social citizenship rights. Without such a foundation, the more far-reaching aspects of EU anti-discrimination policy might run the risk of becoming bogged down in fragmented and parochial projects and partnerships, however supportive of 'diversity' or 'empowering from below' they may appear to be.

However, the EU's increasingly externalized policies on asylum, illegal immigration, expulsion, and border control raise another and perhaps even more pressing question. We have to wonder what the real prospects for anti-discrimination are in a Europe that (once again) is haunted by the 'spectre of the camp'.[14] It is here, then, at the intersection of benign anti-discrimination objectives and the deplorable treatment of asylum seekers and 'illegals' that we are brought face to face with some of the most painful contradictions inherent in today's European integration. We have seen how the already diluted right of asylum in the EU appears to be on the verge of being debased to the level of a merely formal commitment, set to be outsourced, through the politics of stick and carrot, to poorly resourced countries in the regions of refugee origin. This development forms an integral part of the gradual downgrading of the EU's commitment to resolving the global refugee crisis to the mere globalization of its border controls, of its 'fight' against illegal immigration, international crime, and terrorism. The fabrication of a menacing 'problem' of illegal immigration and the actions that supposedly have to be taken to address it thus constitute key enabling factors in the gradual undermining of the right of asylum. In this way, moreover, the EU is exploiting, as a pariah and scapegoat, the very same

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[14] I borrow this expression from Noll (2003: 339).

group—the 'illegals'—that simultaneously serve as indispensable cogs in the Union's much desired flexible economy and labour market.

This undertaking, as we also saw, is carried out in the name of the European humanitarian tradition, even in the name of anti-racism.

The area of asylum and illegal immigration has been at the top of the EU agenda for some years now. It is bustling with activity, and at present there are practically no signs that the current development will be reversed in the short term. The new Hague Programme is ample testimony to this. To be sure, member states *do* disagree on a number of issues, and the Commission's vision for protection in the regions of origin *does* contain many laudable elements. The problem is that member state disagreements are mostly about form rather than substance. And, as the Commission readily admits, its visions will remain visions for the foreseeable future—which, however, has not stopped it from planning asylum camps in north Africa.

Although the policy development in the wake of Amsterdam and Tampere has been deeply disquieting, to say the least, it must also be kept in mind that it has occurred in conjunction with an increasing supranationalization of the policy areas in question. Contrary to what many analysts and NGOs had predicted or hoped, then, supranationalization has, so far, not proven to be conducive to a reversal of the pattern of a 'race to the bottom' harmonization that was set in train through intergovernmental cooperation in the 1980s. True, as indicated above, in some areas of anti-discrimination policy supranationalization has effected an upgrading of many of the national anti-discrimination regimes. But, as demonstrated in this paper, this seems to be the exception that proves the rule. Rather than corroborating the thesis that a supranational solution and the curtailment of national sovereignty in the area of asylum and immigration would tame the big bad wolf of national self-interest and its

hereditary xenophobic impulses, recent developments suggest that a supranational solution has been agreed on precisely because governments believe it offers a more efficient way of advancing their national interests. In short, supranationalism becomes 'supernationalism'—or, perhaps better, 'hypernationalism'—a continuation of national interest management by other and more refined means. It flows from a disturbing consensus amongst member state governments that now seems to have reached a point where common solutions to their common immigration 'problems' are seen as more effectively procured by means of supranational policy. This conduct risks making the current consensus the lodestar also for future policy. That is to say, it risks sustaining and cementing an asylum and immigration policy in the EU that not too long ago was the exclusive property of the extreme right.

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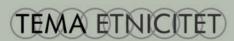Kreikenbaum, Martin (2003) 'European Union plans drastic restraints on right to asylum', *World Socialist Web Site,* 17 June, http://www.wsws.org/articles/2003/jun2003/asyl-j17.shtml (19 December, 2004)

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