



OCGG Law Section

Advice Program
EU Justice Policy

Governance Area
EU Immigration and Asylum Policy

From 'Fortress Europe' to 'Welcome to Europe'

Advice to the Governments
of the Member States of the
European Union

by Simon Dalferth

MAIN POINTS

The EU should abandon the current security approach to immigration and instead focus on opening its borders to more immigrants, protecting those who have to be returned, and integrating those who are admitted. This will create economic, social, political, and security benefits and opportunities.

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ABOUT THE OCGG

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EXECUTIVE SUMMARY

The Oxford Council on Good Governance presents the following priorities (P) and recommendations (R) to the Governments of the Member States of the European Union on the development of the EU Immigration and Asylum Policy:

P1 More Immigration

R1 Recognize Immigration as Opportunity, Not Threat

The Member States should boost immigration in particular of people with skills and education to stimulate the economy in a time of demographic change.

R2 But Keep It Sustainable

The Member States should reduce migratory pressures through development policies that improve the conditions in countries of origin.

P2 Higher Protection

R3 Consider Quality of Governance In Countries of Origin

The Member States should take into account the full constitutional, political, social, economic, and environmental situation and a broad range of good governance indicators in the country of origin in deciding whether to let someone stay or not.

R4 Safeguard Fundamental Rights

The Member States should grant full judicial protection with comprehensive procedural rights and extensive substantive rights of appeal and review once a decision to deport someone has been made.

P3 Better Integration

R5 Strengthen Integration Programs

The Member States should jointly develop comprehensive integration programs covering education, vocational training, employment, welfare (healthcare, social security, and pensions), and public administration that include anti-discrimination measures and affirmative action.

R6 Enhance Absorptive Capacity

The Member States should increase financial and administrative resources available to local communities for the implementation of integration programs.

R7 Improve Public Discourse

The Member States should use proactive communication strategies to desecuritize and decriminalize immigration by emphasizing the economic and social benefits and opportunities it creates.

INTRODUCTION

Following recent attempts by Northern Africans to break into the Spanish exclaves of Melilla, Spain has increased military security around the exclaves. In a further response to the daily waves of desperate refugees, often fleeing from economic deprivation, Italy and Malta have agreed to develop joint security measures against illegal immigration.

The EU should not however let security dominate its approach to immigration. The EU should instead focus on opening its borders to more immigrants, protecting those who have to be returned, and integrating those who are admitted. Immigration is a challenge to Europe as a whole, so the Member States need to act together. The EU's pledge to develop a comprehensive common approach is therefore most welcome.

BACKGROUND

The Hague program of November 2004 identifies the development of a Common Asylum and Immigration Policy as a major element in an area of freedom, security and justice (AFSJ). This includes a common European asylum system, legal migration and integration, but also the fight against illegal immigration and a better management of international migratory flows.

Until now, policy-making has focused on measures to minimise illegal migration. There is no coherent policy to deal with occurrences such as those in Melilla or the boat people off the Northern African coast. The responses so far have focussed on immigration in the context of security. This stems from the securitization of immigration in the Maastricht treaty, which led the EU to adopt mostly 'negative' measures restricting immigration to the EU. Recent developments in the so-called war-on-terror have reinforced this trend.

At the EU informal summit in Hampton Court in October 2005 and the European Council in December 2005 the Member States unanimously supported a proposal for an EU immigration policy, calling for strengthened operational cooperation of the Member States to protect the Union's external borders, increasing development aid for countries of origin, the establishment of a global partnership relationship with the countries of origin, and transit of illegal immigration, as well as improved conditions for readmission of illegal immigrants.

It is good that the Member States move forward in this important policy. But when debating the French-Spanish proposal, the Member States must consider the whole immigration policy in their conclusions. Merely continuing the current approach to illegal immigration as a security issue is insufficient.

PRIORITY 1 MORE IMMIGRATION

RECOMMENDATION 1 RECOGNIZE IMMIGRATION AS OPPORTUNITY, NOT THREAT

The Member States should boost immigration in particular of people with skills and education to stimulate the economy in a time of demographic change.

It is in the economic, social, and political interest of the EU to be an open area. As a consequence of demographic change the population in Europe is aging leading to a deteriorating worker / pensioner ratio which could slow economic growth and overburden the welfare system. Europe therefore needs to import workers. This is also politically preferable to exporting jobs through outsourcing. However, since the enlargement of the EU soon will have reached its natural limits the EU workforce can only be boosted through immigration.

It is also in the security interest of the EU to be a welcoming area. In line with its tradition of tolerance, cooperation and peace, the EU should open its doors to people from all countries and faiths. Increasing immigration from all areas of the world will advance the standing of the EU and enhance its credibility and ability to contribute to the peaceful resolution of international conflicts.

Borders do not and should not constitute insurmountable barriers. There will always be migration and it is its management, not the fight against it, that must be the focus of policy.

RECOMMENDATION 2 BUT KEEP IT SUSTAINABLE

The Member States should reduce migratory pressures through development policies that improve the conditions in countries of origin.

Since there are limits to how many immigrants the EU practically can admit, the Member States should seek to reduce migratory pressures. This can only be achieved through development policies that lead to real and lasting improvements in the conditions in the countries of origin. In its conclusions the European Council mentions this objective, but fails to give a priority order.

The first priority should be to actively support the countries of origin in advancing the quality of governance through constitutional, government, public administration, and justice reforms that enhance human rights, the rule of law, checks and balances, compliance with international law, and participation in multilateral governance through the UN. This are preconditions without which people cannot be expected to stay in their home countries.

The second priority should be to actively support the countries of origin in advancing the quality of governance through social, education, science, technology, economic, and environmental reforms that enhance welfare, opportunity, progress, competitiveness, and sustainable development. Since economic deprivation is a key driver of emigration improved living conditions and life prospects will reduce migratory pressures. The EU should also actively cooperate with the countries of origin through regional initiatives like EUROMED as well as in the context of the WTO.

PRIORITY 2 HIGHER PROTECTION

RECOMMENDATION 3 CONSIDER QUALITY OF GOVERNANCE IN COUNTRIES OF ORIGIN

The Member States should take into account the full constitutional, political, social, economic, and environmental situation and a broad range of good governance indicators in the country of origin in deciding whether to let someone stay or not.

The EU should rethink the principles of safe and super safe third countries. Readmission agreements must not be agreed with countries where the people concerned face potential human right abuses. The humanitarian responsibility of the EU for those turned down does not end at its borders. The EU must ensure through agreements with third countries, such as Morocco, that refugees are treated according to the standards of international conventions.

Recent readmission agreements with Libya in exchange for the lifting of economic bans shows a worrying tendency to weigh the protection of human rights against economic considerations. The lifting of bans, while mainly in the interest of Libya also profits EU producers, which can now sell their products in Libya.

RECOMMENDATION 4

SAFEGUARD FUNDAMENTAL RIGHTS

The Member States should grant full judicial protection with comprehensive procedural rights and extensive substantive rights of appeal and review once a decision to deport someone has been made.

The principles and procedures for the treatment of immigrants should be defined in EU law according to the highest possible standards of fundamental rights, the rule of law, and international law.

First, immigrants should be guaranteed full judicial protection against being deported to countries where they might be subject to any form of degrading treatment.

Second, the processing of applications should be speedy and transparent. This is in the interest of both immigrants and host countries. Longlasting and obscure procedures impose high economic and social costs on both sides.

PRIORITY 3 BETTER INTEGRATION

RECOMMENDATION 5 STRENGTHEN INTEGRATION PROGRAMS

The Member States should jointly develop comprehensive integration programs covering education, vocational training, employment, welfare (healthcare, social security, and pensions), and public administration that include anti-discrimination measures and affirmative action.

Effective integration is vital in order to realize the benefits and opportunities of immigration. Poor integration can ultimately lead to the kind of crisis seen in France last autumn.

The common immigration policy in the EU so far lacks measures for integration. This is left to the Member States to achieve. The integration measures currently in place at the national level are however insufficient. There is therefore a clear need for action at the European level.

The EU immigration policy should not stop with the arrival of the immigrants. Accomplishing its policy objectives depends on its success in facilitating integration. If integration fails it destroys the prospects of benefits and opportunities both for the immigrants and the host countries.

Specific instruments that should be considered include language training (not compulsory but incentivized), anti-discrimination measures (for example the French proposal for blind CVs), and affirmative action (through special minimum quotas in education, vocational training, and employment).

Since integration not only is a task for the host countries but demands similar efforts from the immigrants their representative bodies should be closely involved in the development and implementation of these instruments.

Integration measures should begin already upon arrival and be gradually scaled up throughout the application period. There is no need to wait until a residence permit has been granted.

The EU should also take the immigration handbook into account when developing a common immigration policy. The initiatives in the handbook should be transposed into actionable policy as soon as possible.

The stakes are high since failing integration not only jeopardizes the economic and social potential of immigration but can lead to the emergence of 'parallel societies' which are breeding grounds for fundamentalism. The segregation of immigrants in communities with little contact to the surrounding society must be avoided.

RECOMMENDATION 6 ENHANCE ABSORPTIVE CAPACITY

The Member States should increase financial and administrative resources available to local communities for the implementation of integration programs.

Effective integration does not only require stronger integration programs for the immigrants but also greater absorption capacity in the local communities they will live in.

While a common approach in the EU is desirable, measures to improve the absorptive capacity can only be taken on the local level. This is in line with the principle of subsidiarity. Funds and programs should be made available to improve the administrative capacity and communicate the ideas underpinning EU immigration policy.

At the same time measures must allow for the inclusion of local modifications in the application of the common approach as requirements differ across the EU. This is particularly important in the new Member States where fiscal resources are constrained.

RECOMMENDATION 7

IMPROVE PUBLIC DISCOURSE

The Member States should use proactive communication strategies to desecuritize and decriminalize immigration by emphasizing the economic and social benefits and opportunities it creates.

There is a steady increase in the number of people who are hostile towards immigration. Due to ignorance and xenophobia people fear that immigrants cause terrorism, crime, unemployment, and undesirable sociocultural change. As a result they call for tighter border controls and stricter residence criteria.

A public discourse that criminalises the challenge of illegal immigration and securitizes its management however undermines the aims of more immigration, higher protection, and better integration. The criminalisation of illegal immigration leads to the exclusion of illegal immigrants from social life and the securitization of immigration in general leads to the marginalization of even legal immigrants. This hampers efforts at integration and risks paving the way for 'parallel societies'.

Governments therefore need to reframe immigration as an opportunity and not a threat. They need proactive communication strategies that inject knowledge, combat prejudice, and focus on the economic and social potential of immigration - for example that there is no link between immigration and crime and that immigrants create more jobs than they take.

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