

The impact of the Immigration Pact: what future for amnesties in Europe?

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Summary

The EU's new Immigration Pact is designed to reflect and respond to Europe's "new realities", but there are concerns about its impact on the key question of how to deal with 'irregular' migrants, speakers agreed at a Policy Dialogue held in cooperation with the King Baudouin Foundation and the International Centre for Migration Policy Development. There are also concerns that Member States may view it as a way to regain "ownership" of their immigration policies.

Full Report

Jean-Christophe Peaucelle, Head of the European Affairs Office, French Ministry of Immigration, Integration, Nationality and Co-development, said the European Pact on Immigration and Asylum launched by the French Presidency developed out of previous work - the Schengen Agreement, the Maastricht Treaty, the Schengen *acquis*, and the Tampere and Hague Programmes, and includes elements and even texts from these documents.

The French Presidency proposed the Pact as it believed now was the time for a new initiative after all the changes of the last few years: enlargement and the Lisbon Treaty have introduced new challenges.

While there are some common EU and international rules on asylum, each Member State interprets these in its own way. Immigration affects countries differently - the population of some countries has exploded, while in others - such as Bulgaria - it has declined.

However, despite the differences, each Member State faces the same challenges - the tensions stemming from illegal immigration and the need to encourage more migrant workers in future to fill skill shortages in the light of Europe's ageing population.

Over the last five years, EU Member States have come to realise that migration is an international, not a national, phenomenon on which they need to work together, as well as with transit and third countries. In December 2005, EU Member States endorsed the "Global Approach to Migration", presented during the UK Presidency, and the new Pact builds on this momentum to create a more harmonised policy.

It represents a political statement and a commitment from the European Council to build solidarity between EU Member States and third countries on immigration, and draws together all the key elements for the first time. It is also designed to pressurise Member States to implement a coherent migrant policy, although at this stage it is unclear how far all will agree to do so, said the high-level official.

Albert Kraler, Researcher at the International Centre for Migration Policy Development, said regularisation (amnesties during which irregular migrants are given legal status) in Europe began in the 1970s, because of changing political circumstances, such as post-colonial migration. By the late 1980s, it was being used as a policy tool.



The 1990s saw a diversification of regularisation practices in EU Member States, with mechanisms used to complement existing programmes, and directed at new target groups such as long-term asylum seekers, war refugees, non-deportable aliens or family members.

Regularisation should be seen in the context of broader policies governing migration, said Mr Kraler, as each Member State applies it differently - some do not exclusively target illegally-staying non-nationals, and others will only give illegal non-nationals a status that falls short of fully-fledged legality.

Regularisation can be either formal, informal or by entitlement, and can be directed at one particular group, or used to award a particular status.

Looking at how regularisation has evolved in Europe since 1973, Mr Kraler said numbers increased after 1993, with particularly high figures between 1998 and 2002. After 2004, of the six million people in EU-27 who applied for regularisation, four million were successful. Overall, most regularisations occur in Southern Mediterranean countries: Greece, Italy and Spain.

Turning to the logic of regularisation, Mr Kraler said it is used as a corrective instrument, or as a tool to address the nexus of irregular migrant employment/the informal economy/irregular migration, so at times is used as a labour market policy.

Regularisation is useful in addressing implementation and policy failures, provided it is seen as complementary to 'return' policies, and is used in conjunction with other migration policies.

Migration policies 'on the ground'

Jan Braat, Senior Policy Maker on asylum seekers, undocumented migrants and homeless people, Utrecht, the Netherlands, described the situation for illegal migrants "on the ground".

In 1999, following hunger strikes by undocumented migrants, the mayors of four Dutch cities - Amsterdam, Rotterdam, The Hague and Utrecht - asked for an amnesty for this group. In 2001, when the introduction of stringent measures against asylum seekers forced many of them to become undocumented migrants, and created severe social and humanitarian problems such as drug dealing or trafficking, these cities asked for a second amnesty, which was granted in 2003.

When the new government came to power in 2006, it took up the initiatives developed by cities and non-governmental organisations which had been working with long-term undocumented migrants. It agreed to regularise their status, with the limitation that the mayors of these four cities could identify those who had been seeking asylum since 1996.

Mr Braat described this as a pragmatic, transparent regularisation programme, with rules displayed on the Internet, and which could be successful if supported by good integration policies.

Some unanswered questions

Kris Pollet, Immigration Officer, Amnesty International's European Office, believed that one should not over estimate the content of the Immigration Pact, as the five commitments it contains are actually the same as the Council Conclusions in December 2007 on 'Towards a Comprehensive Migration Policy'.

The title "European" is misleading, he said, as the Pact is not targeted at the EU as a whole, but deals with individual Member States' responsibility. As such, it could be seen as an attempt by national governments to reclaim "ownership" of their immigration policies. While it sets out a framework for



Member States to work together, it also signals to EU institutions that there are limits to the extent to which they can interfere in national migration policies.

Mr Pollet wondered whether the Pact represented the shared vision of Europe's leaders, particularly as both Belgium and the UK have already expressed concern about certain aspects. He was also unclear as to why the Pact had been introduced now.

Finally he was concerned about the Pact's effect on two aspects of human rights:

- whether it might restrict family unification and the right of people to family life;
- whether obliging irregular migrants to return to their country of origin would mean they would be returned to a country where they were in physical danger.

He felt the Pact created the impression that Member States will now be able to deal with irregular migration for once and for all. In fact, there will always be irregular migrants who are prevented by political or social constraints from returning to their home countries.

Discussion

Asked whether the Pact was a way to open up the parameters of the debate, Mr Peaucelle described it as a "roadmap" that gives the EU a political mandate to adopt a new Programme to succeed the 2004-2009 Hague Programme. At the same time, it is intended to signal that people cannot arrive in Europe illegally and expect to gain citizenship after a few years.

Responding to the suggestion that the Pact could in fact be the means for Member States to regain ownership of immigration policies, Mr Peaucelle said that according to the EU Treaties, the EU has never had competence over border control, legal migration and asylum - this remains with Member States. However, allowing people to enter a country at an airport, now also means allowing them to enter "Europe", so there is a need for solidarity between Member States.

Asked about the contradictions of refusing regularisation for some migrants while inviting others in to fill skills shortages, Mr Braat said that future regularisation would have to be based on specific criteria. For example, the Netherlands recruits health workers from the Philippines, but there could already be suitably-qualified undocumented migrants in the country.

Mr Peaucelle said what is proposed is "managed immigration" in line with each country's needs. In addition, immigration should be based on agreements with both the host country and the migrants themselves - unlike illegal migration, which does not guarantee that undocumented migrants' skills fit Europe's labour market needs.

Mr Kraler said while some Member States opposed regularisation, others such as Spain and Portugal had used it very successfully to help those at risk or socially excluded.

Mr Pollet felt there should be checks on whether undocumented migrants' skills could fulfil a country's needs. Sadly, there will always be some irregular migrants, as asylum systems have failed them; these must to be improved.

Lukas Gehrke, Head of Mission, ICMPD Brussels, said the Pact would be useful in focusing policy-makers' attention on elements that are not clear - such as regularisation. However, there was still a lack of tangible data on the importance of mass regularisations. At the same time, regularisation would only work if it was accompanied by flanking measures, such as integration.