IMMIGRATION POLICY

A forward-looking and comprehensive European immigration policy, based on solidarity, is a key objective for the European Union. Immigration policy is intended to establish a balanced approach to dealing with both regular and irregular immigration.

LEGAL BASIS

Articles 79 and 80 of the Treaty on the Functioning of the European Union (TFEU).

COMPETENCES

Regular immigration: the EU is competent to lay down the conditions governing entry into and legal residence in a Member State, including for the purposes of family reunification, for third-country nationals. Member States retain the right to determine volumes of admission for people coming from third countries to seek work.

Integration: the EU may provide incentives and support for measures taken by Member States to promote the integration of legally resident third-country nationals; EU law makes no provision for the harmonisation of national laws and regulations, however.

Combating irregular immigration: the European Union is required to prevent and reduce irregular immigration, in particular by means of an effective return policy, in a manner consistent with fundamental rights.

Readmission agreements: the European Union is competent to conclude agreements with third countries for the readmission to their country of origin or provenance of third-country nationals who do not or no longer fulfil the conditions for entry into, or presence or residence in, a Member State.

OBJECTIVES

Defining a balanced approach to immigration: the EU aims to set up a balanced approach to dealing with regular immigration and combating irregular immigration. Proper management of migration flows entails ensuring fair treatment of third-country nationals residing legally in Member States, enhancing measures to combat irregular immigration and promoting closer cooperation with non-member countries in all fields. It is the EU’s aim to establish a uniform level of rights and obligations for regular immigrants, comparable with that for EU citizens.

Principle of solidarity: under the Lisbon Treaty, immigration policies are to be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States (Article 80 TFEU).
ACHIEVEMENTS

A. Institutional developments brought about by the Lisbon Treaty

The Lisbon Treaty, which entered into force in December 2009 (1.1.5), introduced codecision and qualified majority voting on regular immigration and a new legal basis for integration measures. The ordinary legislative procedure now applies to policies on both irregular and regular immigration, making Parliament a co-legislator on an equal footing with the Council. The provisional measures to be taken in the event of a sudden inflow of third-country nationals are adopted by the Council alone, however, after consulting Parliament (Article 78(3) TFEU).

The Lisbon Treaty also made it clear that the EU shares competence in this field with the Member States, in particular as regards the number of migrants allowed to enter a Member State to seek work (Article 79(5) TFEU). Finally, the Court of Justice now has full jurisdiction in the field of immigration and asylum.

B. Recent policy developments

1. The ‘Global Approach to Migration and Mobility’

The ‘Global Approach to Migration and Mobility’ adopted by the Commission in 2011 establishes a general framework for the EU’s relations with third countries in the field of migration. It is based on four pillars: regular immigration and mobility, irregular immigration and trafficking in human beings, international protection and asylum policy, and maximising the impact of migration and mobility on development. The human rights of migrants are a cross-cutting issue in the context of this approach.

2. The June 2014 strategic guidelines

The Stockholm Programme, adopted in December 2009 as a successor to the multiannual programmes adopted at Tampere (1999) and The Hague (2004), expired in December 2014. In March 2014, the Commission published a new communication setting out its vision on the future agenda for home affairs, entitled ‘An open and secure Europe: making it happen’. In accordance with Article 68 TFEU, in its conclusions of 26 and 27 June 2014 the European Council then defined the ‘strategic guidelines for legislative and operational planning within the area of freedom, security and justice’ for the 2014-2020 period. These no longer constitute a programme, but rather guidelines focusing on the objective of transposing, implementing and consolidating the existing legal instruments and measures. The guidelines stress the need to adopt a holistic approach to migration, making the best possible use of regular migration, affording protection to those who need it, combating irregular migration and managing borders effectively.

3. European Agenda on Migration

On the basis of a Commission proposal (10-point action plan), on 23 April 2015 the Member States undertook (see European Council statement) to take swift action to save lives and step up the EU’s action in the field of migration. A European Parliament resolution was adopted a few days later, on 29 April 2015.

On 13 May 2015, the Commission published the European Agenda on Migration. The Agenda proposes immediate measures to cope with the crisis in the Mediterranean and measures to be taken over the next few years to manage all aspects of immigration more effectively.

As regards the medium and long term, the Commission proposes guidelines in four policy areas: reducing incentives for irregular immigration; border management – saving lives and securing external borders; developing a stronger common asylum policy; and establishing a new policy on
regular immigration, modernising and revising the ‘blue card’ system, setting fresh priorities for integration policies and optimising the benefits of migration policy for the individuals concerned and for countries of origin. The Agenda also launched the idea of setting up EU-wide relocation and resettlement schemes (see fact sheet on asylum policy 5.12.2), announced the ‘Hotspot’ approach (where relevant EU agencies work on the ground with frontline Member States to swiftly identify, register and fingerprint incoming migrants), and proposed a possible CSDP operation in the Mediterranean to dismantle smuggling networks and combat trafficking in persons.

On the basis of this agenda, on 6 April 2016 the Commission published its guidelines on regular immigration in a communication entitled: ‘Towards a reform of the common European asylum system and enhancing legal avenues to Europe’. There are four main strands to the guidelines as regards regular migration policies: revising the Blue Card Directive, attracting innovative entrepreneurs to the EU, developing a more coherent and effective model for regular immigration in the EU by assessing the existing framework, and strengthening cooperation with the key countries of origin.

C. Recent legislative developments

Since 2008, a number of significant directives on immigration have been adopted and some other relevant directives are due to be revised in the near future. Moreover, the Commission is currently carrying out a Fitness Check to evaluate and assess the existing EU legislation on legal migration.

1. Regular immigration

Following the difficulties encountered in adopting a general provision covering all labour immigration into the EU, the current approach consists of adopting sectoral legislation, by category of migrants, in order to establish a regular immigration policy at EU level.

Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment created the ‘EU blue card’, a fast-track procedure for issuing a special residence and work permit, on more attractive terms, to enable third-country workers to take up highly qualified employment in the Member States. The first report on the implementation of this directive was published in May 2014. In June 2016, the Commission proposed a revision of the system currently in place, which is functioning properly in only a very small number of Member States; work on this revision is ongoing in Parliament and the Council.

The Single Permit Directive (2011/98/EU) sets out a common, simplified procedure for third-country nationals applying for a residence and work permit in a Member State, as well as a common set of rights to be granted to regular immigrants. The first report on its implementation was due by December 2016.

Directive 2014/36/EU, adopted in February 2014, regulates the conditions of entry and residence of third-country nationals for the purpose of employment as seasonal workers. Migrant seasonal workers are allowed to stay legally and temporarily in the EU for a maximum period of between five and nine months (depending on the Member State) to carry out an activity dependent on the passing of seasons, while retaining their principal place of residence in a third country. The directive also clarifies the set of rights to which such migrant workers are entitled.

Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer was adopted on 15 May 2014. The deadline for transposition of this directive was 29 November 2016, and it will make it easier for businesses and multinational corporations to temporarily relocate their managers, specialists and trainee employees to their branches or subsidiaries located in the European Union.
Directive (EU) 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing was adopted on 11 May 2016, and is to be transposed by 23 May 2018. It replaces the previous instruments covering students and researchers, broadening their scope and simplifying their application.


2. Integration

Directive 2003/86/EC sets out provisions on the right to family reunification. Since the 2008 implementation report concluded that it was not being fully and correctly applied in the Member States, the Commission published a communication, in April 2014, providing guidance to the Member States on how to apply it.

The EU’s competence in the field of integration is limited. Existing instruments include the European Migration Forum (formerly the European Integration Forum); the Website on Integration; and the network of National Contact Points on Integration. In July 2011, the Commission adopted the European Agenda for the Integration of Third-Country Nationals. More recently, in June 2016 the Commission put forward an action plan, setting out a policy framework and practical steps to help Member States integrate the 20 million non-EU nationals legally resident in the EU.

3. Irregular immigration

The EU has adopted some major pieces of legislation to combat irregular immigration:


— The ‘Return Directive’ (2008/115/EC) sets out common EU standards and procedures for returning irregularly resident third-country nationals. The first report on its implementation was adopted in March 2014. On 9 September 2015, the Commission published a European Union action plan on return (COM(2015) 0453), which was followed by the adoption, in October 2015, of the Council conclusions on the future of the return policy.

— Directive 2009/52/EC specifies sanctions and measures to be applied in Member States against employers of illegally resident third-country nationals. The first report on the implementation of the directive was submitted on 22 May 2014.

At the same time, the EU is negotiating and concluding readmission agreements with countries of origin and transit with a view to returning irregular migrants and cooperating in the fight against trafficking in human beings. These agreements include reciprocal cooperation commitments between the EU and its third-country partners.
ROLE OF THE EUROPEAN PARLIAMENT

Since the entry into force of the Lisbon Treaty, Parliament has been actively involved, as a full co-legislator, in the adoption of new legislation dealing with both irregular and regular immigration.

On 17 December 2014, Parliament adopted a resolution on the situation in the Mediterranean and the need for a holistic EU approach to migration, which instructed its Committee on Civil Liberties, Justice and Home Affairs (LIBE) to draft an own-initiative report. The report, which was accompanied by eight Working Documents focusing on different aspects of migration and asylum policy, and by the Opinions of several other parliamentary committees, was adopted by the plenary on 12 April 2016.

Read more on this topic:
— Migration in Europe
— Migrant crisis in Europe
— EU Asylum policy

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