

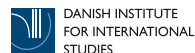


Think Global – Act European

# The Contribution of 14 European Think Tanks to the Spanish, Belgian and Hungarian Trio Presidency of the European Union

Directed by:

**Elvire Fabry** and **Gaëtane Ricard-Nihoul**, Notre Europe



---

## MIGRATIONS

# Achievements and Challenges towards a European Asylum and Immigration Policy: the Stockholm Programme and Beyond

**Maria Bergström** Research Fellow at Uppsala University; for SIEPS

**Katrine Borg Albertsen** Researcher, DIIS

**Thomas Gammeltoft-Hansen** Project Researcher, DIIS

**A**sylum and immigration have become a key policy area both at member states and European level. For the 2009 Stockholm Programme, migration remains a top priority with the aim of establishing “a Europe of responsibility, solidarity and partnership in migration and asylum matters”.

Following on from the 1999 Tampere and the 2005 The Hague Programmes, the Stockholm Programme is set to bring about substantial changes and policy developments. In the area of asylum the Stockholm Programme will entail the leap from minimum standards of harmonisation to the realisation of a Common European Asylum System (CEAS). As regards irregular migration, cooperation with third countries will be further developed to ensure return of those rejected, and increased pre-frontier border control. Lastly, new and more substantive policy developments on legal immigration may lie ahead, as qualified majority voting will finally be introduced in this area.

At the same time, policy-making in this area remains wrought by two inter-linked tensions. In substantive terms, it remains a challenge to strike a balance between ‘security’ and ‘freedom’ in the immigration area. On the one hand, guaranteeing and expanding the rights and freedoms of asylum-seekers and immigrants remains a vested ambition. This is important not only to ensure adherence to fundamental EU principles and international human rights, but also to be able to attract the needed labour migrants that Western countries increasingly compete over. On the other hand, many policy-makers continue to see all aspects of immigration as something primarily connected with threats. Whether it be the challenge to control our borders, the economic risks of uncontrolled immigration or concerns over national or

even European identity, asylum and immigration continue to prompt calls for more restrictive policies.

Closely linked to these concerns is the institutional dilemma of handing over national sovereignty in a policy area such as asylum and immigration. While member states realise that hardly any of the challenges brought about by immigration can be effectively addressed by each country in isolation, the willingness to let go of national prerogatives and independence has been much less visible when actual negotiations begin. Exactly because of the politicised nature of this policy area, EU policies on asylum and immigration have consistently fallen short of declared ambitions. From 1999 until today, negotiations in this area have remained tough, marked by the original third pillar procedures, and advances often delayed and marked by substantial national fingerprints, derogation possibilities and legal ambiguities.

In this light, the current EU framework on asylum and immigration should be considered important achievements. The Stockholm Programme is set to take the existing policies substantially further and attempt to fully ‘normalise’ and mature this policy area as a matter of EU policy. Yet, the two tensions set out above remain and will continue to structure policy-making in the years to come.

## Asylum

With the Stockholm Programme, the EU moves from the current ‘minimum standards’ towards the establishment of a CEAS by 2012 at the latest. Following its consultation round in 2007, the Commission has thus already tabled proposals to revise all the major legal instruments.

With the new proposals the hope is to end what the critics have named the ‘asylum lottery’. Wide discrepancies continue to exist among the member states as regards who is granted protection and how they are treated. To counter this, the Stockholm Programme aims to introduce both better procedural guarantees based on ‘higher standards’ and compulsory training modules and regular evaluations for all national asylum authorities.

At the same time, the second phase legislation will have to do away with the substantial number of discretionary rules allowing member states to depart from the current procedural safeguards in the asylum procedures and rights afforded to those granted protection. Arguably, the European Court of Justice and the European Court of Human Rights have already gone some way to set limits for restrictive national interpretations.

The European Asylum Support Office is another important innovation. Its mandate is set to include monitoring functions, training activities and coordination of practical cooperation

among member state asylum officers. As such, the hope is that the new EU agency will help address the current gap between the legislative framework and its practical implementation in each member state. But the proposal has already met resistance and attempts to limit its mandate by several countries, concerned that an institutional watchdog in this area might prove a bother rather than a boon.

From a more critical perspective the Stockholm Programme still has a number of shortcomings. An important gap concerns the growing number of persons that have been denied refugee and subsidiary protection, yet due to the situation in their country of origin cannot be removed. Perhaps most problematic, the Stockholm Programme does not provide any solid solution to the fundamental problem of solidarity among the member states. The revision of the Dublin Regulation contains only minor adjustments, and the Mediterranean and Eastern member states are thus obliged to continue to process the majority of asylum cases arriving at their borders.

Some of these countries are also those most behind in the implementation of the asylum *acquis*; the Commission has already brought several infringement proceedings and more may be under way. Ensuring compliance under new and strengthened directives is likely to become even more difficult as long as these countries can rightly claim that the same EU rules place a disproportionate and unrealistic burden upon them. The financial burden-sharing under the European Refugee Fund has so far had limited success. A more important step will be taken if an intra-EU resettlement scheme is eventually realised. Yet, the Stockholm Programme remains cautious in this respect, and such a scheme will be crucially dependent on the ongoing willingness of member states to relieve those countries facing the largest caseloads.

## Irregular migration and border control

In the area of irregular migration and management of the external borders, the Stockholm programme is clearly influenced by the Immigration Pact introduced in 2008 by the French Presidency. Emphasis is placed on tougher penalties for those facilitating irregular immigration, be it human smugglers and traffickers or employers of illegal migrants in the EU. Secondly, ensuring the return of illegal migrants is set to become the challenge *par excellence*. Following the adoption of the much debated Return Directive last year, the legal framework is now largely in place, which means that practical cooperation and readmission agreements with third countries will be the main priority for the coming years.

The entire approach to ensuring readmission agreements seems likely to change. So far common EU readmission agreements have mainly been signed with prospective member states, a number of Eastern and South Eastern European countries in exchange for visa facilitation agreements and a few less important countries from an EU immigration perspective.

The critical transit and origin countries to the south have so far resisted signing EU readmission agreements, probably because they would thereby play their most important negotiation card once and for all. The Stockholm Programme asks for an evaluation of the current approach to readmission agreements by 2010 and puts new emphasis on pursuing more flexible and temporary readmission agreements, either through bilateral arrangements or as part of the new Mobility Partnerships.

As regards management of the external borders, the Stockholm Programme focuses on increasing surveillance, expanding the role of Frontex and cooperation with third countries. EUROSUR, a European system for sharing surveillance data relating to border crossings, is under development and should be in place by 2013. In addition, the next few years will see the roll-out of the Visa Information System and the revised Schengen Information System. On top of this, the Stockholm Programme calls for new proposals to set up an entry-exit system to record data from all travellers to and from the Schengen area, which is to become operational by 2015. If successful, such a system may play an important role in curbing the largest group of irregular immigrants in the EU, namely those who enter legally but subsequently overstay their visas. On the other hand, the proposal has already been widely criticised for both clashing with EU data protection laws and providing disproportionate obstacles to travellers. In addition, one might fear that the use of such a system with regard to overstaying migrants might see national authorities engage in large-scale biometric checks of migrant populations.

The EU's border agency, Frontex, is set to become even more important. The Stockholm Programme calls for an enhancement of Frontex's role in providing common analysis and coordinating operational activities, such as joint border patrols and return flights. It also calls for a clarification of Frontex's mandate. At present Frontex is limited in its possibilities for engaging in cooperation with third countries. It thus seems likely that Frontex will eventually have its mandate extended to allow it to carry out technical assistance projects and migration control operations in third countries.

This links to a more general emphasis on cooperation with third countries. The external dimension of EU's immigration policy has already expanded rapidly since its introduction in the Tampere Programme. Agreements to combat irregular migration and ensure readmission are now an integrated part of EU's external relations framework. Several transit countries thus aid the prosecution of human smugglers and carry out border control of irregular migrants heading towards Europe. At the same time bilateral and EU cooperation have facilitated Frontex-coordinated operations to intercept migrants within foreign territorial waters. The Lisbon Treaty offers new possibilities for concluding international agreements and negotiating with third countries, and the Stockholm Programme thus calls for the High Representative of the Union for Foreign Affairs and Security Policy and the European External Actions Service to ensure that policy priorities in the field of migration and border security are fully integrated in the EU's foreign policy.

A particular problem of this ‘externalisation’ of EU border control concerns its relationship with asylum. In a policy paper that elsewhere places great emphasis on ensuring ‘the right to asylum’ and a European asylum system in full accordance with international law, the lack of attention to access to asylum as part of the EU’s integrated border management is striking. As the borders of the Union have effectively moved outwards, the possibility of launching an asylum claim with an EU member state has so far stayed at home. The result not only highlights the European hypocrisy in this area. It has also prompted many traditional transit countries, now increasingly destination countries, to replicate similar mechanisms to shift asylum responsibilities further away despite calls and EU funding to improve refugee protection capacity in these countries.

## Legal economic migration

One of the Stockholm Programme’s main objectives is to develop a common policy on legal migration. The ambition includes the development of a more flexible immigration policy that standardises visa policy and admission procedures and is easily adaptable to fluctuations in labour demands.

The first challenge in this regard will be to expand the focus to increasing the access of semi and low skilled workers to the EU. Up until now, achievements have focused on highly skilled labour immigration. Nonetheless, the EU still lacks far behind in the competition among other Western countries. At present only 5% of highly skilled emigrants from Africa move towards the EU, while almost 90% go to North America. A better regulatory framework for semi and low-skilled labour migrants would, however, bring important benefits to EU productive industries like agriculture, construction, and the service economy. At the same time, more ambitious and concrete policies in this area may help combat the informal economy in these sectors (which in many member states thrive on irregular migration), and thereby reduce illegality and its attendant problems for migrants.

A second challenge concerns the need to establish increased dialogue and partnership with countries of origin and transit outside the Union. The Stockholm Programme points to the necessity of integrating social, economic and trade policies into a comprehensive approach, but it arguably fails to properly incorporate the relevant elements of external relations, and to address the functioning of Europe’s employment market for migrants and social affairs.

The third challenge will be to narrow the wide gap between rules and policies approved at European level and their implementation at national level. The integration of Union and national policies on immigration has hitherto proved slow and laborious. The individual member states still decide how and to what extent they wish to set up labour importing schemes and engage in partnerships with developing countries. Methods and progress vary greatly between countries, and much recruitment is employer based and left to private

national actors. In this respect the Lisbon Treaty continues to defer the crucial question of deciding how many third country nationals may gain access to individual member states' territory to seek employment or set up businesses. Given the large differences in labour deficiencies between the member states, it will be crucial to find a way to further the process, which is both coherent with the extended Schengen Agreement and respectful of the differences in national labour requirements.

Finally, migration not only introduces new workers into a labour force but also new people into societies. The Stockholm Programme incorporates a common approach to integration that may benefit all parties and the introduction of an immigration code that grants legal immigrants a clear and uniform status in all member states. This is laudable and much needed. Yet, given the economic, social and cultural divergences between the member states, implementing common policies in the domestic arena is likely to remain a challenge.

## Conclusions

Asylum and immigration is and should be one of the top priorities for the Stockholm Programme. Besides the political difficulties of developing a European migration policy, emphasis needs to be put on the efficiency of current and future policies and striking a balance between concerns over immigration challenges and ensuring freedom and the protection of human rights.

In particular, we recommend that the Trio Presidency from January 2010 to June 2011 consisting of Spain, Belgium and Hungary should strive to:

- Adopt both an intra-EU and external refugee resettlement programme that is binding and effective. This will be crucial both to alleviate the unfair distribution of protection burdens brought about by the Dublin system and to show solidarity with third countries.
- Ensure that cooperation with third countries on irregular migration and implementation of pre-frontier border controls does not undermine access to asylum and other human rights obligations.
- Expand policies in the field of legal migration to include semi and unskilled workers and de-link cooperation with third countries from efforts to combat irregular migration.
- Engage more thoroughly in the broader debate about how migrants' social integration, or the lack thereof, influences the development of European societies.