

# The ‘external dimension’ of EU immigration and asylum policy

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Since the early 1970s, west European governments have introduced a range of measures to try to limit or manage immigration and refugee flows into their territory. Most commentators now agree that these policies have had only qualified success. Attempts to restrict access to asylum systems, or curtail the rights of asylum seekers, have generated an increase in levels of illegal migration. They have also undermined states’ commitment to protect genuine refugees. Measures to restrict illegal entry and stay have driven migrants and refugees to use more dangerous routes to enter Europe, forcing many to employ the services of smuggling or trafficking networks. Restrictive migration policies have also created a number of unwelcome effects in other policy areas. They have reduced the supply of workers to many sectors in need of labour; have placed a strain on race relations; and have in some cases created tensions with migrant-sending countries.

Given the shortcomings of traditional migration control policies, it is little wonder that west European states have looked for alternatives. EU states have increasingly sought to address migration management dilemmas through cooperation with migrant-sending countries and the ‘transit’ countries through which migrants and refugees travel. At the EU level, this goal has been most clearly stated in a series of European Council conclusions, calling for the integration of migration and asylum goals into the EU’s external policy.<sup>1</sup> This area of cooperation with third countries has become known as the ‘external dimension’ of EU cooperation in justice and home affairs (JHA).

Under this rubric of cooperation with sending and transit countries, however, one can discern two rather distinct approaches. The first involves forms of cooperation that essentially externalize traditional tools of domestic or EU migration control. The logic here is to engage sending and transit countries in strengthening border controls, combating illegal entry, migrant smuggling and trafficking, or readmitting migrants who have crossed into the EU illegally. The second type of policy can be loosely defined as ‘preventive’: measures designed to change

<sup>1</sup> European Council, *Presidency conclusions*, Tampere, SN 200/99, 15–16 Oct. 1999; European Council, *Presidency conclusions*, Laeken, 14–15 Dec. 2001, SN 300/1/01 REV 1; European Council, *Presidency conclusions*, Seville, 21–22 June 2002, SN 200/1/02 REV 1.

the factors which influence people's decisions to move, or their chosen destinations. Measures under this category include attempts to address the causes of migration and refugee flows, or to provide refugees with access to protection nearer their countries of origin. Preventive approaches involve deploying a rather different range of tools to increase the choices of potential refugees or migrants: development assistance, trade and foreign direct investment, or foreign policy tools.

EU policies on the 'external dimension' of JHA are still in their infancy, and no settled pattern of cooperation has yet emerged. The EU is still struggling to define which forms of cooperation and which policy instruments can best realize the multiple goals of migration policy. Thus, to date, cooperation has comprised a combination of both types of approach: the externalization of control tools, and prevention. But it matters a great deal which is likely to emerge as the predominant pattern of cooperation; for the two approaches differ profoundly in their assumptions about how to influence levels and patterns of migration and refugee flows, and they will have different impacts not just on questions of migration management, but also on refugee protection, development and stability in sending and transit countries, and on EU relations with third countries. For these reasons, it is important to examine which pattern of cooperation is likely to predominate in the future.

This article looks at the political and institutional factors which have influenced the emergence of the external dimension of EU immigration and asylum policies. It explains how and why externalization and preventive approaches emerged, focusing on three central determinants: the potential of such approaches to meet migration policy goals; the institutional context of decision-making; and domestic political and electoral pressures. It will argue that the second and third factors—institutional structures and electoral pressures—have militated in favour of the prevalence of 'externalization' approaches over preventive ones. This has been to the detriment of longer-term strategies of migration management, refugee protection concerns, and more constructive and mutually beneficial patterns of cooperation with third countries. Finally, the article will consider prospects for the further development of the two approaches, and look at some of the implications for migration policy goals and relations with third countries.

## Two concepts of the 'external dimension'

The so-called 'external dimension' of EU immigration and asylum policy was not formally embraced by the European Council until October 1999. The groundbreaking conclusions of this Special European Council on Justice and Home Affairs stated that justice and home affairs concerns (which include immigration and asylum issues) should be 'integrated in the definition and implementation of other Union policies and activities', including external relations.<sup>2</sup> However, components of such a strategy in EU immigration and asylum policy had been

<sup>2</sup> European Council, *Presidency conclusions*, Tampere.

emerging since the early 1990s. As early as 1991, the European Commission was calling for the integration of migration issues into the EU's external policy.<sup>3</sup> In December 1992, the Edinburgh European Council had agreed that 'coordination in the fields of foreign policy, economic cooperation and immigration and asylum policy' should 'contribute substantially to addressing the question of migratory movements'.<sup>4</sup>

The perceived need for such external approaches was above all a consequence of the inadequacy of domestic border controls in managing migration. One reason for this was the rise in levels of migration and refugee flows over this period. The lifting of restrictions on movement from the former communist bloc generated (often exaggerated) fears about a mass influx of immigrants from central and eastern Europe. While such worst-case scenarios never materialized, Germany in particular did receive a substantial number of *Aussiedler*, immigrants of ethnic German descent who had been living in central and eastern Europe, and were entitled to German citizenship. The early to mid-1990s also saw a sharp rise in the numbers of refugees displaced by civil conflict, especially from the former Yugoslavia. The increase in levels of migration and refugee flows generated a sense in many countries that traditional domestic control instruments were insufficient to manage unwanted migration.

The sense of frustration at the limits of migration control was rendered especially acute by a 'capability–expectations gap' in respect of migration policy in EU states.<sup>5</sup> Migration issues had become highly politicized in most west European states from the 1980s onwards, and political parties were competing for electoral support with promises to restrict unwanted migration. Yet these expectations were difficult to fulfil. Liberal democratic states found themselves constrained by a range of domestic constitutional and international legal norms. Constitutions and the courts were curtailing attempts to restrict family reunion, limit access to welfare benefits, expel long-term residents or restrict asylum systems.<sup>6</sup>

National justice and home affairs ministries also found themselves constrained by developments at the European Community (EC) level in the area of free movement of EC nationals. The Single European Act of 1988, which came into force in 1992, abolished restrictions on free movement of EC workers within the single market. Meanwhile, a core group of EC member states—initially France, Germany and the Benelux countries—had signed the Schengen Agreement in 1985, abolishing border controls between their countries. The agreement came into force in 1995, and was expanded to include a number of

<sup>3</sup> Commission of the European Communities, Communication from the Commission to the Council and the European Parliament on Immigration, SEC(91) 1855 final, Brussels, 23 Oct. 1991.

<sup>4</sup> European Council, *Presidency conclusions*, Edinburgh, 11–12 Dec. 1992, SN 456/92.

<sup>5</sup> The concept was initially coined by Christopher Hill to refer to CFSP, but has been subsequently applied to migration policy by Andrew Geddes, in 'Controlling immigration in an integrating Europe: policy-making, implementation and the dual character of European integration', paper presented to workshop 'Beyond Fortress Europe? New responses to migration in Europe: dual nationality, co-development and the effects of EU enlargement', European Consortium for Political Research, Workshop No. 14, Copenhagen, 14–19 April 2000.

<sup>6</sup> Christina Boswell, *European migration policies in flux: changing patterns of inclusion and exclusion* (Oxford: Blackwell/Royal Institute of International Affairs, forthcoming July 2003).

other EC countries with borders to non-EU countries.<sup>7</sup> The resulting loss of national control over borders created the perceived need for ‘flanking’ measures between EU countries to compensate for their increased vulnerability to irregular entry. From the outset, these flanking measures covered not just cooperation between EU or Schengen countries to reduce irregular movement *between* member states; they also included forms of cooperation aimed at limiting movement *into* the EU or ‘Schengenland’. It was quickly recognized that EU (and especially Schengen) countries would have to coordinate efforts to limit or prevent movement into the EU as a whole. This would require more intensive cooperation with countries of origin and/or transit countries.

### Externalization of migration control

In this search for new forms of cooperation to limit flows, two quite distinct strategies emerged. The first was what has been dubbed the ‘externalization’ of migration control, which in turn involved two main components. First was the exportation of classical migration control instruments to sending or transit countries outside the EU. The main instruments here were border control, measures to combat illegal migration, smuggling and trafficking, and capacity-building of asylum systems and migration management in transit countries. The exportation of migration control was especially pronounced in the EU accession process. Future member states were obliged to incorporate the Schengen *acquis* into their national legislation, implying the introduction of stricter border controls, immigration and asylum policies.<sup>8</sup>

The second element of externalization comprised a series of provisions for facilitating the return of asylum seekers and illegal migrants to third countries. The main instrument here was readmission agreements with third countries committing them to readmit irregular immigrants who had passed through their territory into EU countries, or were their nationals. Other provisions on safe third countries allowed EU states to return asylum seekers to countries from which they came or through which they had passed which were considered ‘safe’.<sup>9</sup>

What accounts for the emergence of this form of restrictive, control-oriented approach? In many ways, it was a natural continuation of a Europeanization of migration control that was already under way. Since the mid-1980s, EU and especially Schengen officials had been intensifying police and judicial cooperation to combat irregular migration. In part this was a response to the very real challenges created by the Single European Act and the abolition of internal borders between Schengen countries. EU and Schengen cooperation was premised on a belief that national instruments of control should be extended to fill

<sup>7</sup> Schengen now includes all EU countries except the UK, Ireland and Denmark, as well as the non-EU country Norway.

<sup>8</sup> See e.g. Heather Grabbe, ‘The sharp edges of Europe: extending Schengen eastwards’, *International Affairs* 76: 3, July 2000, pp. 519–36.

<sup>9</sup> ‘Safe’ third countries were defined as those in which applicants’ ‘life or freedom’ would not be threatened, in line with Article 33 of the Geneva Convention on the Status of Refugees.

new loopholes created by the elimination of borders. The interior ministry and police officials negotiating EC/EU cooperation in the late 1980s and 1990s were convinced that the externalization of border control, restrictive asylum systems, and cooperation to combat migrant smuggling and trafficking were the most effective instruments for realizing this goal.

As many have argued, the process of Europeanizing control instruments also had much to do with institutional dynamics within national bureaucracies.<sup>10</sup> Since the 1980s, home and justice ministries had found their capacity for migration restriction at the domestic level curtailed in a number of ways. They were able to bypass such constraints through forms of transnational cooperation which were free of judicial checks or public scrutiny. Indeed, the institutional framework for cooperation in the 1980s and 1990s (before the Treaty of Amsterdam came into force) was highly intergovernmental, with little scope for intervention by the European Commission, European Parliament or European Court of Justice. It was also lacking in transparency: meetings and documents were highly confidential and access for human rights or refugee groups was limited. This continued after the Maastricht Treaty came into force, with the notorious K4 Committee—named after the relevant article in the treaty—meeting behind closed doors, without public access to its proceedings. This provided an attractive venue for police and judicial officials to cooperate on questions of border control and police cooperation, away from scrutiny by the press or NGOs. As Guiraudon argues, it encouraged them to ‘go transnational’ with their control-oriented approach to migration management.<sup>11</sup>

The export of such control instruments to countries outside the EU can be seen as a logical extension of this approach. It took no great leap of the imagination to extend already established forms of EU or Schengen transnational cooperation to third countries, whether in the form of so-called ‘pre-frontier control’, or capacity-building of migration management and asylum systems in transit countries, or the deployment of EU police to combat migrant trafficking in the western Balkans.

Finally, there was an important populist element facilitating this process of externalization. Since the early 1990s, migration had been progressively reconceptualized as posing a security threat to receiving countries—as being linked to organized crime, terrorism or Islamic fundamentalism. As many commentators have observed, this redefinition of migration as a threat was not simply a product of real changes in the scale or costs of migration; rather, it reflected a growing tendency to channel diffuse socioeconomic and cultural concerns into the migration ‘problem’.<sup>12</sup> Migration issues provided an easy target on which to

<sup>10</sup> Virginie Guiraudon, ‘The constitution of a European immigration policy domain: a political sociology approach’, *Journal of European Policy* 10: 2, March 2003; Dider Bigo, ‘Security and immigration: toward a critique of the governmentality of unease’, *Alternatives* 27, 2002, pp. 63–92.

<sup>11</sup> Guiraudon, ‘The constitution of a European immigration policy domain’.

<sup>12</sup> Ulrich Beck, *Risk society: towards a new modernity* (London, Newbury Park and Delhi: Sage, 1992), p. 49; Etienne Balibar, ‘Racism and crisis’, in Etienne Balibar and Immanuel Wallerstein, eds, *Race, nation and class* (London and New York: Verso, 1991), p. 219.

focus a range of concerns about crime and internal security, welfare state reform and job security, and the declining relevance of traditional collective identities in postindustrial societies. Whether or not these problems were actually caused by migrants—and many of them clearly were *not*—political parties found migration a useful way of channelling these often nebulous fears, and defining concrete measures through which they could be addressed. This tendency generated an increasingly virulent anti-immigrant discourse in most west European states, and this in turn lent increased political saliency to the question of migration control, legitimizing more robust police measures to control the problem.

The logic, then, was one of the extension of police and control methods to an enlarged area encompassing countries of origin and transit outside the EU. These third countries were encouraged or, in the case of candidate countries, obliged, to apply EU standards of migration management, or to enter into agreements for readmitting irregular migrants. The protagonists in this externalization of migration management were justice and home affairs officials, keen to transfer national control mechanisms not just to the EU level, but further afield. And these approaches had potential popular appeal with electorates. They could be portrayed as having an immediate and tangible impact on migration management—whatever their effects for refugees, migrants and transit or sending countries. Given the securitization of these migration management issues in public discourse in most EU countries, the focus on police and control instruments seemed entirely appropriate.

### Preventive approaches

Around the same time, however, a second approach to the external dimension emerged based on quite a different logic of how best to respond to migration and refugee flows. This was a logic of prevention, which sought to influence the factors forcing or encouraging migrants and refugees to travel to the EU. It generated proposals for addressing the ‘root causes’ of migration and refugee flows in countries of origin, through more targeted use of development assistance, trade, foreign direct investment or foreign policy instruments; and proposals to promote so-called ‘reception in the region’, namely, support for refugee protection in countries or regions of origin, so that they would not be obliged to seek asylum in Europe.

These notions of prevention—and especially the ‘root causes’ approach—had been debated sporadically since the early 1980s.<sup>13</sup> Many experts, officials

<sup>13</sup> See e.g. Sadruddin Aga Khan, ‘Study on human rights and massive exoduses’, UN Commission on Human Rights, 38th Session, E/CN.4/1503, 1981; Aristide Zolberg, Astri Suhrke and Sergio Aguayo, *Escape from violence: conflict and the refugee crisis in the developing world* (Oxford: Oxford University Press, 1989); Cornelis D. de Jong, ‘Elements of a more effective EU response to situations of mass influx’, *International Journal of Refugee Law* 8: 1/2, 1996, pp. 156–68. A number of projects on ‘root cause’ approaches were also carried out by the Netherlands Interdisciplinary Demographic Institute and Eurostat in the mid-1990s.

and lobbyists with a liberal or human rights perspective saw preventive approaches as a more benign alternative to migration control measures. As with externalization, prevention was seen as a form of international cooperation that could at least partly compensate for the deficiencies of domestic migration control. But since it aimed to remove the pressures generating flight or migration, it was also an approach which could marshal support from more progressive actors. It aspired to address the problem of migration control in a way that would not jeopardize the rights or freedoms of immigrants and refugees. Instead, the idea was to offer potential migrants or refugees a real possibility of staying in their place of origin.

However, it was not until the 1990s that proposals on migration prevention really began to take concrete form. One reason why this happened was frustration at the limits of migration control instruments. As we have seen, there was a growing awareness that these were not having the desired impact of limiting irregular movement or deterring trafficking networks. Moreover, they were having a negative impact on refugee protection. As refugee lobby groups were constantly pointing out, migration control was preventing many refugees from seeking or gaining protection in EU states, and forcing others to use dangerous and exploitative smuggling or trafficking networks to reach western Europe.<sup>14</sup> A number of officials in both foreign and interior ministries started to view prevention as a serious alternative to existing control-based approaches. The Scandinavian countries and the Netherlands were vocal advocates of preventive strategies, promoting ‘comprehensive’ or ‘integrated’ approaches to addressing refugee and migration problems.

But the apparent feasibility of such approaches was influenced more than anything by the changing international context after 1989. Since the early 1990s there had been a huge expansion of multilateral activities in the areas of prevention and peace-building, ranging from early warning, human rights monitoring, institutional capacity-building and post-conflict reconstruction, through various forms of political mediation, to more robust peacekeeping and military interventions. Changing perceptions of the feasibility of multilateral involvement in conflict prevention and peacekeeping had a strong impact on international responses to refugee problems. During the Cold War, refugee policy was essentially palliative and reactive: policies were focused on the protection of victims of persecution once they had fled, creating what has been coined an ‘exile bias’. Efforts to address the causes of flight or promote reintegration in countries of origin were more or less precluded by the political risks of intervention during the Cold War era.<sup>15</sup> By contrast, from the early 1990s international

<sup>14</sup> John Morrison and Beth Crosland, *The trafficking and smuggling of refugees: the end game in European asylum policy?* (Geneva: UNHCR, 2000).

<sup>15</sup> Leon Gordenker, *Refugees in international politics* (London: Croom Helm, 1987); Kim Salomon, *Refugees in the Cold War: towards a new international refugee regime in the early post-war era* (Lund: Lund University Press, 1991).

humanitarian and refugee organizations became increasingly active in countries of origin, protecting internally displaced persons, monitoring or assisting returnees, or engaging in efforts to prevent displacement through institutional and legal capacity-building. The changed international political context and increased interest in preventing conflict and humanitarian crises placed humanitarian intervention and preventive activities on the spectrum of feasible strategies for migration management.

The linkage between new possibilities for prevention and migration management was clearly reflected in the Edinburgh Council conclusions of December 1992. As noted above, at this European Council summit member states agreed to address the causes of migration and refugee flows through the EC's external policy. The Council appeared to have events in the former Yugoslavia very much in mind, with the Edinburgh Declaration from the same meeting referring to 'the danger that uncontrolled immigration could be destabilizing' to member states. The conclusions rather optimistically hoped that the Maastricht Treaty's new pillar structure would provide a good institutional framework for coordinating migration and refugee policy with external policy. However, no specific objectives or time-frames were set for developing preventive policies, and the theme was not taken up by subsequent European Councils until the special Tampere Council seven years later.

The European Commission Task Force on JHA was also keen to promote such approaches from the early 1990s onwards, again as noted above. The 1991 communication was followed in 1994 by a more elaborate statement of a 'root cause' approach, which defined measures to alleviate migratory pressures as one of three elements of a future EU migration strategy. The Commission argued that such a root cause approach should be integrated into all external policies of the EU, including the areas of human rights policies, humanitarian assistance, security policy, demographic policies, and trade, development and cooperation.

There was therefore certainly a readiness at Council and Commission level to recognize the need for preventive approaches. But the institutional context of policy-making provided a far from favourable environment. First, JHA officials meeting in the Council of Ministers were still largely absorbed with the 'externalization of control' agenda outlined above. Caught up in the logic of expanding control instruments, they had little incentive to hand over the task of migration management to development and foreign affairs officials. These latter, meanwhile, were keen to avoid what many saw as an attempt to subvert development goals through targeting development to prevent migration flows. Development and external relations officials in the Commission therefore resisted attempts to integrate migration prevention goals into EU external policy. In the absence of more robust political support from the European Council (at least until 1999), Commission JHA officials were unable to push through a migration prevention agenda. As Sarah Spencer observed in 1996, 'policy *proposals* on root causes are being developed within the third pillar but the policy *instruments* for tackling root causes are within the first and second



pillars, with no mechanism to ensure that the migration consequences of policy options are taken into account.<sup>16</sup>

For its part, the European Council lacked the political incentive to press for the adoption of preventive approaches. While foreign ministries and heads of state could commit themselves to general statements on the need for ‘integrated approaches’ to prevent refugee and migration flows, such long-term perspectives offered limited electoral dividends. The combination of a control-oriented Council of Ministers, an institutionally weak Commission JHA Task Force and a lack of political will from the European Council meant that preventive approaches were effectively marginalized until the late 1990s. Cooperation with third countries on JHA issues largely took the form of providing support to future EU members to reinforce border control, develop asylum systems and combat illegal migration.

### **Externalization and prevention since 1998**

The predominance of the ‘externalization of control’ approach appeared to be challenged in the late 1990s, when a number of developments suggested a revived interest in preventive approaches. First, while the 1997 Treaty of Amsterdam did not explicitly cover the question of cooperation with third countries on JHA, the Commission and Council’s subsequent action plan for implementing Amsterdam nonetheless derived a number of implications from the treaty on the ‘external aspect’ of JHA. The first implication was the potential for a stronger international role for the EU, by virtue of its expanded competence in the field of JHA. The Amsterdam Treaty moved cooperation on immigration and asylum from the so-called third pillar, which was essentially intergovernmental, to the more supranational first pillar. This implied a more robust role for the European Commission, not just in proposing policy, but also in negotiating agreements with third countries on immigration and asylum issues. Second, under a list of ‘measures to be taken within two years’, the action plan included ‘assessment of countries of origin in order to formulate a country specific integrated approach’. It also suggested ‘information campaigns in transit countries and in the countries of origin’ as a means of discouraging illegal migration.<sup>17</sup> Neither provision had been included in the Amsterdam Treaty itself, but once the action plan was adopted at the Vienna European Council in December 1998, both were accepted as part of the programme for implementing the treaty.

Meanwhile, the second half of 1998 had seen a debate within the Council of Ministers on possible new strategies on migration. The Austrian presidency had tabled a controversial strategy paper on immigration and asylum policy in July

<sup>16</sup> Sarah Spencer, ‘Tackling the root causes of forced migration: the role of the European Union’, paper presented to the European Community Studies Association World Conference, ‘The European Union in a changing world’, Brussels, 19–20 Sept. 1996, p. 6.

<sup>17</sup> Council of the European Communities and European Commission (1998), *Action plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice*, text adopted by the Justice and Home Affairs Council of 3 Dec. 1998, 1999/C 10/01.

1998, which emphasized that the EU had a crucial role in the ‘reduction of migratory pressure in the main countries of origin of immigrants’, through means including intervention in conflict regions, extended development aid and economic cooperation, and the promotion of human rights. The approach explicitly built on the 1992 Edinburgh conclusions and the 1994 Commission communication, which, according to the strategy paper, had not been effectively implemented because of the failure to define a comprehensive concept or work programme. It therefore reflected a clear interest in putting these preventive approaches back on the agenda.

The paper was not limited to proposals on prevention. It also called for increased efforts to combat illegal flows through cooperation with transit countries—both future EU member states (the so-called ‘first circle’), and transit countries neighbouring actual and prospective EU members (the ‘second circle’, including some of the former Soviet states and countries in the Mediterranean region). Forms of cooperation included the usual list of tools falling under the rubric of externalizing control. It was only for the ‘third circle’—the major sending countries—that preventive approaches were deemed appropriate. For these countries, progress on addressing the causes of migration ‘should serve as an important criterion when development aid decisions are taken’. Thus, while prevention did feature in the paper, it was to be combined with now established control instruments.

Building on these suggestions, a Dutch government paper later that year proposed setting up a high-level working group (HLWG) in the Council of Ministers, to ‘prepare cross-pillar Action Plans for selected countries of origin and transit of asylum seekers and migrants’.<sup>18</sup> The proposal was adopted by the General Affairs Council in December 1998, which agreed to prepare action plans on six countries: Afghanistan, Albania, Morocco, Somalia, Sri Lanka and Iraq. As in the case of the Austrian paper, the Dutch proposal and the subsequent mandate of the HLWG included both concepts of cooperation with third countries: externalization and prevention. The interest in externalization was not surprising given the consistent focus of the JHA Council on readmission agreements, border control and measures to combat illegal migration. What was more unexpected was that this JHA Council-based group had been asked to propose measures to address the causes of flows. What explains the interest of justice and home affairs ministers in pursuing this sort of approach?

One important factor was that the proposal came from the Dutch government, which had itself been seeking to develop preventive approaches at the national level for a number of years. Unlike most EU states, the Netherlands has developed close coordination of policies on refugees, immigration and foreign affairs, with the ministry of foreign affairs, rather than the justice ministry, largely responsible for shaping international migration and refugee strategies.<sup>19</sup>

<sup>18</sup> High-Level Working Group on Asylum and Migration, *Final report of the High-Level Working Group on Asylum and Migration*, 11281/99 (Presse 288-G), 4 Dec. 1999.

<sup>19</sup> See e.g. Ministerie van Buitenlandse Zaken, *Policy Agenda 2003*, available at [www.minbuza.nl](http://www.minbuza.nl).

Thus, while the Netherlands has—like all west European states—pursued tight control policies, it has also been keen to promote ‘integrated approaches’ to refugee and migration issues. It is not surprising that it would therefore seek to replicate such approaches at the EU level.

A second factor is the timing of the initiative, which coincided with a significant rise in the numbers of Iraqi asylum seekers in west European countries. These had risen steadily from under 10,000 applicants in 1994 to 22,600 in 1996 and almost 36,000 in 1997. This made Iraq the second most important country of origin, after the Federal Republic of Yugoslavia.<sup>20</sup> The fact that such a large number of asylum seekers or irregular migrants were coming from Iraq almost certainly encouraged member states to think about what could be done through policy towards Iraq or neighbouring countries to limit these flows. Third, the emphasis on preventive approaches may also have had something to do with the imminent entry into force of the Amsterdam Treaty. As noted above, the Vienna action plan suggested a more extensive role for the European Commission in the external dimension, and it is likely that justice and interior ministers meeting in the Council were concerned at the prospect of losing the initiative on migration policy.<sup>21</sup> Hence the impetus to create a stronger role for the Council in the external dimension, including in the development of preventive approaches.

The Tampere conclusions of 1999 in many ways overtook the HLWG initiative. They included the most far-reaching acknowledgement to date of the need for an external policy geared towards meeting JHA concerns. Under the heading on ‘A common EU asylum and migration policy’, the question of relations with countries of origin is one of four priorities to be discussed. It is worth citing the full text:

The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children. To that end, the Union as well as Member States are invited to contribute, within their respective competence under the Treaties, to a greater coherence of internal and external policies of the Union. Partnership with third countries concerned will also be a key element for the success of such a policy, with a view to promoting co-development.<sup>22</sup>

In an even stronger statement later in the document, the European Council stated that ‘all competences and instruments at the disposal of the Union, and in particular, in external relations must be used in an integrated and consistent way

<sup>20</sup> UNHCR, *Refugees and others of concern to UNHCR: 1998 statistical overview* (Geneva: UNHCR, June 1999).

<sup>21</sup> Joanne Van Selm, ‘The high level working group: can foreign policy, development policy and asylum and immigration policy really be mixed?’, paper presented at the UNU–WIDER conference on ‘Poverty and international migration’, Helsinki, 27–28 Sept. 2002.

<sup>22</sup> European Council, *Presidency conclusions*, Tampere.

to build the area of freedom, security and justice. Justice and Home Affairs concerns must be integrated in the definition and implementation of other Union policies and activities.<sup>23</sup> The Council and Commission were requested to draw up ‘specific recommendations’ on policy objectives and measures for the Union’s external action in Justice and Home Affairs, including questions of working structure, prior to the European Council in Feira in June 2000. This report was welcomed at the Feira Council, which specified that the mid-term review of Tampere planned for December 2001 should contain a chapter on progress in implementing the external dimension.<sup>24</sup>

By late 1999, then, there appeared to be a real impetus to make progress in developing the external dimension, including through preventive approaches. How far have the expectations created by the HLWG and the Tampere conclusions been met in practice?

### The high-level working group

As noted, the HLWG was mandated to pursue both types of cooperation with third countries: measures to externalize control tools, as well as preventive approaches. However, hopes that the HLWG would develop a ‘root cause’ preventive approach were to a large extent frustrated. While the action plans it produced did include analysis of the causes of forced displacement and migration pressures, and in some cases stressed the need for diplomacy and for humanitarian and development assistance to address these causes, most of the concrete proposals focused on measures to keep asylum seekers or immigrants in their regions of origin. Thus the bulk of recommendations focus on readmission agreements with countries of origin and transit, and securing protection in regions of origin.

This focus on control was criticized by the European Parliament as well as a number of NGOs and the Office of the UN High Commissioner for Refugees (UNHCR). The European Parliament in particular pointed out the inconsistency between the HLWG’s goal of addressing the root causes of refugee flows and measures to curb immigration which could have a detrimental effect on countries of origin.<sup>25</sup> Human rights and refugee groups, meanwhile, were concerned about the implications of the HLWG’s proposals for refugee protection.<sup>26</sup>

In many ways this focus on control and containment of flows is not surprising, given that the HLWG was composed predominantly of JHA officials, with limited experience of dealing with third countries and little expertise on questions of development and conflict prevention. These limitations were reflected in the action plans, which on the whole suggest a superficial understanding

<sup>23</sup> Ibid.

<sup>24</sup> European Council, *Presidency conclusions*, Santa Maria da Feira, 19–20 June 2000.

<sup>25</sup> See Bettina Scholdan, ‘Addressing the root causes: relief and development assistance between peacebuilding and preventing refugee flows’, *The Journal of Humanitarian Assistance*, July 2000 ([www.jha.ac/articles/ao58.htm](http://www.jha.ac/articles/ao58.htm)).

<sup>26</sup> Amnesty International, Brussels, and the European Council on Refugees and Exiles, London, were among the critics of the HLWG action plans.

of the root causes of migration and refugee flows, and of possible external relations tools appropriate for addressing them. The action plans also took several months to draft, so that several of them—notably those on Albania and Afghanistan—were out of date by the time they were produced. This rendered the HLWG, in the words of one Commission official, essentially a ‘blunt instrument’, lacking know-how, experience and the capacity to react rapidly to changing conditions in the countries under review.<sup>27</sup>

Moreover, the HLWG was dependent on the external relations community for implementing proposals on prevention. At least initially, it had no separate budget for implementing its proposals, and clearly would rely on cooperation from those working on development assistance or the common foreign and security policy (CFSP) to carry through any proposals on prevention. Yet Commission officials working on external policy and development were reticent about cooperating with the HLWG. Officials in the Directorates General (DGs) for External Relations and Development complained about being largely excluded from the drafting of the plans, and that the HLWG was ‘reinventing the wheel’ in its proposals covering aspects of development cooperation. They were also concerned that the HLWG was insufficiently sensitive to relations with third countries. These concerns were partially vindicated in the case of the Morocco action plan. The Moroccan government initially refused to discuss the action plan with the EU, expressing consternation that it had not been consulted on the proposals. External relations staff in the Commission were also concerned about the budgetary implications of the action plans. In the Morocco Action Plan, for example, it was proposed that measures to combat trafficking, collect statistics and analyse the causes of migration should be funded by existing EU development funds under the so-called ‘MEDA II’ programme.<sup>28</sup> In short, tensions between the HLWG and Commission officials in development and external relations impeded proper coordination. Lacking financial resources and assistance in implementing provisions on prevention, the HLWG not surprisingly focused its energies on the externalization of control measures.

Some of these problems have since been addressed. The HLWG now has its own modest budget, set at €10 million in 2001 and rising to €15 million in 2003. It is using these funds to implement a number of its recommendations. For example, the budget is funding two projects designed to encourage Moroccan migrant groups to establish businesses at home, and one to establish a savings bank for migrant remittances in Morocco.<sup>29</sup> Coordination with the European Commission has also been improved, especially through the DG JHA (the successor to the JHA Task Force), which has been assisting the HLWG in drawing up projects within the new budget. Moreover, the HLWG has very sensibly outsourced much of its analysis to better-qualified experts. In 2002 the

<sup>27</sup> Interview with Commission staff, March 2002.

<sup>28</sup> MEDA II is the programme for funding development to Mediterranean countries, under the ‘Euro-Med’ partnership.

<sup>29</sup> Interview with JHA staff, March 2002.

EU commissioned external research on cooperation with third countries to reduce migration pressures and manage migration, extending the list of regions to cover China, sub-Saharan Africa, Central Asia and North Africa.<sup>30</sup>

Thus the HLWG got off to a very shaky start, creating a number of institutional frictions and quickly demonstrating that a JHA-dominated group based in the Council of Ministers may not provide the best institutional structure for developing the external dimension. Yet for all its shortcomings, its attempts to develop plans for implementing preventive approaches—problematic as they were—undoubtedly forced the pace of action in this area. Importantly, it influenced Commission officials working on external relations and development to come up with their own structures and approaches to migration prevention, in an attempt to regain the initiative.

### **The European Commission**

The European Commission was relatively inactive on the issue of migration prevention in the second half of the 1990s. The initiatives of 1991 and 1994 were not developed by the JHA Task Force), partly because of changes in personnel, partly because of the apparent dearth of interest in other Commission DGs, the European Council and the Council of Ministers. This changed with the Tampere conclusions of 1999, which contained clear instructions for the European Commission to produce recommendations for developing the external dimension of JHA.

The entry into force of the Amsterdam Treaty in 1999 also addressed some of the institutional impediments to implementing preventive approaches. As we saw, Amsterdam shifted the legal basis of immigration and asylum policy from the third to the first pillar, giving the Commission a greater role in initiating policies, and facilitating coordination with development policy, which also came within the first pillar.

However, it soon became clear that these institutional factors had not been the only barriers to integrating immigration and asylum concerns into external relations. There were also important substantive differences between the DGs in their interpretation of the external dimension. On the expansive interpretation favoured by some of those in the DG JHA, Tampere should imply nothing less than the reorientation of (at least certain aspects of) external and development policy to address the causes of migration and refugee flows. This was in line with earlier Commission statements on the need to target development and external relations tools to relieving migratory pressures. Many in the DGs for development and external relations, however, were reluctant to adopt such an expansive definition, which would imply significantly reorienting existing objectives and priorities in external relations; concerns were raised about the subversion or distortion of development and external relations goals.

<sup>30</sup> European Commission Directorate General on JHA, 'Call for proposals', 2002, JHA/A2/2002/HLWG.

The alternative interpretation favoured by many in these DGs was, paradoxically, a more conservative concept of the external dimension, focused on readmission agreements, or cooperation to combat illegal migration. Thus, in their attempts to avoid integrating migration prevention goals into development and external relations, the DGs for development and external relations were effectively aligning themselves with the externalization of control agenda favoured by the JHA Council.

How well founded were these concerns about the possible distortion of development and external relations goals? The concerns of the development and external relations DGs revolved around three main issues. First, there was apprehension that preventive policies might imply focusing on regions other than those prioritized by existing development strategies. Middle-income countries often produce greater numbers of emigrants than the least developed countries, because of the pressures generated by economic restructuring and social change, or simply because of greater exposure to Western media and greater resources to make the journey to Europe. Those with proximity to the EU also tend to produce more emigrants travelling to the EU, as do countries with strong historical, colonial, cultural or trade ties with EU countries, or with already established patterns of migration to the EU. Selecting countries on these criteria may well imply a divergence from existing development priorities.

Second, there were concerns that preventive policies might imply reorienting the substance of development policies. Attempts to prevent migration could involve targeting those groups most able and willing to move (usually young males), rather than the most vulnerable. Moreover, there was a potential tension between short- and longer-term impacts. A number of experts have argued that development processes can generate an increase in migration for the first ten to twenty years—a ‘migration hump’—as restructuring creates unemployment, disrupts social structures and reduces public spending.<sup>31</sup> Adopting a pure migration prevention approach might imply abandoning or at least slowing down the pace of economic transition to minimize any disruptive social effects that could generate migration.

Finally, there were concerns that introducing migration prevention as an important goal of development policy could have a negative impact on relations with third countries. Commission staff were anxious that an explicit emphasis on the need to keep nationals of third countries out of the EU could be a source of tension and sensitivity for a number of governments—as indeed the example of the HLWG action plan for Morocco had seemed to demonstrate.

Given the reluctance of the external relations and especially the development community to accept the expansive interpretation of Tampere, the development of preventive approaches got off to a slow start. By the time of the mid-term

<sup>31</sup> Philip Martin, *Trade and migration: NAFTA and agriculture* (Washington DC: Institute for International Economics, 1993); Philip Martin and J. Edward Taylor, ‘Managing migration: the role of economic policies’, in Aristide R. Zolberg and Peter M. Benda, eds, *Global migrants, global refugees: problems and solutions* (New York and Oxford: Berghahn Books, 2001), pp. 95–120.

review at the Laeken European Council in December 2001, the Commission had failed to formulate any proposals for developing preventive approaches. Within the Commission's description of actions taken on the external dimension, the emphasis was almost entirely on the externalization of control. The question of developing preventive approaches was dealt with only in a section on 'partnership with countries of origin', with progress in this area, in the Commission's view, effectively covered by the HLWG.<sup>32</sup> This implied a retreat from the Commission's earlier conception of developing a 'root causes' approach.

However, the Commission began to re-assume the initiative on prevention from early 2002. One reason was the increasing recognition on the part of the external relations and development communities that they would have to take the migration prevention agenda seriously. Before Laeken, these DGs—especially that for development—appear to have underestimated the political will to integrate immigration and asylum concerns into external relations. When the Laeken European Council reiterated the need for integrating the two, DG Development finally appointed an official to coordinate migration issues within the directorate (DG External Relations had appointed such a coordinator at the beginning of 2001). Arguably, these DGs also realized that their failure to acknowledge migration prevention goals implied that they were missing an opportunity to shape the agenda in this area. If there was real political will to develop preventive approaches, then it would be far better for these DGs to take the initiative in defining how such goals would be integrated into existing priorities than to leave this task to the JHA community. The development and external relations stance on the issue of prevention may also have been influenced through more intensive contacts with their Commission colleagues in JHA after 1999, both more formal 'inter-service consultations' between DGs and intensified informal contacts between officials in JHA, External Relations and Development.<sup>33</sup>

This closer collaboration resulted in a number of initiatives on prevention in 2002. A communication on 'Integrating migration issues in the European Union's relations with third countries' represented the first real attempt to develop a Commission strategy for targeting external relations tools to address migratory pressures.<sup>34</sup> In this document, the Commission clearly prioritized preventive over control-oriented approaches. Such approaches, it argued, should not imply 'overturning' existing development approaches, but should be complementary to them. Thus a strategy to address the root causes of migration would not, in the Commission's view, involve readjusting priorities *vis-à-vis* recipient countries, nor would it conflict with current 'generic development lines'. It would, however, imply additional targeted measures aimed at 'reducing the timespan of

<sup>32</sup> Commission of the European Communities, 'Bi-annual update of the scoreboard to review progress on the creation on an area of "freedom, security and justice" in the European Union' (2nd half 2001), Brussels, 26 Oct. 2001.

<sup>33</sup> Interviews with Commission, March 2002.

<sup>34</sup> Communication from the Commission to the Council and the European Parliament, 'Integrating migration issues in the EU's relations with third countries', Brussels, COM (2002) final.



the migration hump'.<sup>35</sup> These special targeted measures, it said, 'should ensure stronger impact and a higher profile', thereby implying that such an approach might be more politically 'sellable' to European publics. However, the Commission stressed that such measures would require additional resources, a clear bid to avoid the diversion of existing development funds.

The Commission document was carefully balanced, accepting the external dimension agenda, but also keen to safeguard existing development priorities. It attempted to pre-empt the possible reorientation of existing development funds to sending countries, partly through emphasizing that migration prevention would dovetail with existing development strategies, and partly through its request for additional funds for any complementary migration-oriented projects. It also contained a strong plea for the EU to be more sensitive in its relations with third countries on issues of immigration. One very pragmatic reason for this was the need to exercise 'leverage' with sending and transit countries in negotiations on readmission agreements. If the EU were to provide incentives for third countries to cooperate in migration management, it would need to take into account the problems encountered by partner countries.<sup>36</sup> The Commission also suggested a more ethical argument in favour of the EU acknowledging the concerns of sending countries, insisting that the EU 'face up to our collective responsibilities and ... meet our shared interests with third countries'.<sup>37</sup> This can be interpreted as a rejection of an exclusively control-oriented approach, with the onus instead on an approach that factors in the costs and problems for sending countries in managing migration, dealing with matters such as the 'brain drain' and remittances, or promoting the welfare of their nationals resident in EU states.

There have already been instances of the Commission implementing such an approach in its development strategy for specific third countries. Thus the Commission's country strategy paper for Morocco for 2002–4 included measures specifically targeted at reducing migration pressures in Morocco's northern provinces, which are the source of 40 per cent of all Moroccan emigration to the EU. The programme set aside €70 million for projects designed to 'fixer les populations en créant de l'emploi dans les régions source principale de cette émigration'<sup>38</sup> ('keep the population in its place of residence through creating employment in the main emigration sending regions').

Despite initial concerns about migration issues subverting the development agenda, Commission officials now appear to be ready to embrace a root causes approach. DG Development and External Relations officials have recognized that they must be active in shaping the root causes agenda if they are to avoid losing the initiative to the JHA community.

<sup>35</sup> Ibid., p. 20.

<sup>36</sup> Ibid., p. 24.

<sup>37</sup> Ibid., p. 3.

<sup>38</sup> Partenariat Euro-Med, *Maroc: Document de stratégie 2002–2006 et programme indicatif national 2002–2004*, 6 Dec. 2001; available at [europa.eu.int/comm/external\\_relations](http://europa.eu.int/comm/external_relations), p. 25.

## Outlook

The new European Commission approach to the external dimension appears to be very astute from the point of view of EU migration and external relations policy goals. It attempts to enlist the cooperation of sending countries through binding them into mutually beneficial areas of partnership. Cooperation 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. And partnership with countries of origin is intended to take account of a range of concerns on their part. It therefore offers an approach that could avoid many of the unwelcome effects of control-based policies. By paying more attention to the concerns of sending countries, it both provides incentives for third countries to cooperate on migration issues and could go some way towards addressing the negative impact of emigration and migration control policies on development. The focus on targeting development to reduce the causes of migration and counteract the ‘migration hump’, meanwhile, offers a long-term strategy for migration management that avoids the dilemmas of traditional migration control. It aims to limit flows through expanding opportunities for potential migrants to stay put, rather than limiting possibilities for movement.

Clearly, the root cause approach carries its own problems and risks. The impact of development on migration choices remains under-researched, and—as we saw—may reduce migration pressures only in the longer run, because of the ‘migration hump’. Moreover, a policy targeting development to reduce migration pressures assumes that recipient countries will be ‘good performers’, using development aid effectively—which cannot always be assumed to be the case.<sup>39</sup> Having said this, the preventive approach has many advantages over a control-based approach. It takes a longer-term perspective which attempts to grapple with underlying causes; and it avoids the damaging effects of control-based approaches. Importantly, it offers a more constructive basis for relations with third countries, building on mutually beneficial forms of cooperation. This is in contrast to externalization approaches, which imply an attempt to shift the burden of control on to sending or transit countries ill-equipped to deal with these problems.

However, we should recall that the effectiveness of these policies in meeting external relations or migration management goals is by no means the sole determinant of policy-making. Domestic electoral political dynamics play a key role in shaping the policy agenda, as do institutional structures. The former can be to a large extent gauged by the political direction emanating from European Councils dealing with JHA issues. European Council summits in Laeken (December 2001) and Seville (June 2002) suggested a shift back to a migration control dominated agenda. Laeken emphasized the importance of concluding

<sup>39</sup> Ninna Nyberg-Sorensen, Nicholas van Hear and Poul Engberg-Pedersen, *The migration–development nexus: policy study* (Copenhagen: Centre for Development Research, April 2002).

readmission agreements with third countries, and called for an action plan on integrating migration policy into EU foreign policy, which would draw on existing proposals on combating illegal immigration and migrant smuggling.<sup>40</sup> The Seville conclusions did express a general commitment to ‘closer economic cooperation, trade expansion, development assistance and conflict prevention’ to ‘reduce the underlying causes of migration flows’; but in its detailed recommendations, the European Council laid almost exclusive emphasis on ensuring the cooperation of countries of origin and transit in combating illegal immigration, improving border controls and undertaking readmission.<sup>41</sup> In the run-up to the Seville summit, there was even discussion of a Spanish–British initiative to make development aid conditional on third countries cooperating on migration control. The proposal was rejected, but the conclusions nonetheless contain a veiled threat that if the Council unanimously finds ‘that a third country has shown an unjustified lack of cooperation in the joint management of migration flows’, this could ‘hamper the establishment of closer relations between that country and the Union’.<sup>42</sup> This was a far cry from the European Commission’s approach of providing positive incentives for cooperation on migration management—as one Commission official put it, this tough approach ‘goes against the grain’ of partnership with third countries. It also suggested just how fragile political commitment to a root causes approach really was. European leaders appear to have been eager to mobilize domestic public support through demonstrating a firm resolve to ‘get tough’ on sending countries, and to reap electoral dividends from emphasizing EU measures to externalize control.

There are, of course, important exceptions to this trend. A number of member states, especially those promoting similar strategies at the national level, remain committed to genuine preventive approaches. Even the UK’s emphasis on measures to combat illegal migration and migrant trafficking have not precluded efforts to explore more benign ‘alternatives’ to traditional migration control tools. The government has been examining options for an expanded refugee resettlement scheme, which would involve the UNHCR screening refugees in their regions of origin so that a number could come to the UK within a specially established quota. The UK has also been looking at options for reinforcing protection of refugees in their regions of origin.<sup>43</sup> But such proposals are usually presented as a means of reducing the numbers of illegal migrants and asylum seekers entering the UK. They strongly imply an agenda aimed at containing refugees in regions of origin, rather than increasing options for their protection.<sup>44</sup> Also, as many have pointed out, such mechanisms for

<sup>40</sup> European Council, *Presidency conclusions*, Laeken, p. 12.

<sup>41</sup> European Council, *Presidency conclusions*, Seville, pp. 10–11.

<sup>42</sup> *Ibid.*, p. 11.

<sup>43</sup> Home Office, ‘Home Secretary’s statement on zones of protection’, press release, 29 March 2003, STAT 011/2003.

<sup>44</sup> See e.g. the critique of the proposals from the British Refugee Council, ‘Government plans “safe havens” to cut asylum numbers, according to reports’, Immigration and Nationality Directorate press release, 5 Feb. 2003.

reception in the region would involve shifting responsibility for refugee protection to countries with far from adequate facilities for refugee reception, and often with major social tensions of their own. Admitting greater numbers of refugees could well be destabilizing. Such a policy would be far more akin to the type of externalization of control approach described than to a genuinely preventive approach.

If political will to pursue preventive approaches appears to be flagging, what of the third determinant of EU policy in this area—institutional structures? Here the picture is more complex. Until recently, the main impediments to preventive approaches lay in the JHA Council's focus on externalization, as well as the European Commission's reluctance to integrate prevention into its external relations policy. While there is little to suggest that the JHA Council is becoming less control-oriented, the European Commission has certainly seized the initiative on preventive policies. Now that officials responsible for development and external relations seem willing to integrate migration prevention approaches into their programmes, prevention is likely to gain momentum.

However, the persistence of the Commission's interest in prevention should not be taken for granted. It appears to be contingent on two central factors. The first is the availability of additional resources. We saw that the Commission insisted that complementary preventive measures require extra funds. If these are not forthcoming, efforts could remain largely symbolic. Second, the Commission took up the preventive agenda only under political pressure from the European Council. If future European Council summits fail to show a commitment to developing this preventive agenda, Commission engagement may well wane. In the absence of extra resources or European Council pressure, the Commission would be left with little incentive to reorient development priorities. The result would be a shift back to an emphasis on migration control tools—a focus that may well suit most European governments, but one that would contribute little to grappling with the complex policy dilemmas raised by migration management.