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## The European Union's Stockholm Program: Less Ambition on Immigration and Asylum, But More Detailed Plans

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Like every other country, the 27 nations making up the European Union have their own laws regulating immigration and asylum, long considered a fundamental right of sovereign states.

However, in recognition of the common challenges faced across Europe with respect to immigration, EU Member States have cooperated on migration and asylum issues since signing the Maastricht Treaty in 1992.

These policies, adopted over the last 18 years, have been incremental (as in other areas of EU law, immigration "directives" set a minimum level of common standards) with the ultimate goal of developing EU immigration and asylum policies that, in theory at least, would mean all EU Member States adopt a common set of rules.

Since 1999, the European Union has laid out its agenda for developing migration and asylum-related policies in the form of five-year programs that focus more broadly on justice, security, and freedom.

The area of Justice, Liberty and Security — more commonly known within governments as Justice and Home Affairs policy — is a broad grouping of policies including fundamental rights, citizenship, security and counterterrorism policies, criminal and civil law and police cooperation, as well as immigration, asylum, border management, and visa policy. In recent years, it has become one of the most prolific policy areas in terms of both cooperation and legislative output.

Each five-year program contains political priorities, proposals, and deadlines, making it a roadmap rather than a strict policy document. The European Council, which includes the heads of every Member State, must decide on and agree to the program before it can go forward.

The European Commission — the European Union's executive branch and driver of policy — is then responsible for producing an action plan that outlines how each point of the program will be transformed into EU policy, and publishing detailed proposals that will implement the program over the subsequent five years.

The action plan, and each individual proposal, is then submitted to the Justice and Home Affairs Council (regular meetings of the ministers responsible for the policy area) and goes through a legislative process that includes the European Parliament, the directly elected body of the European Union.

The first of these programs was signed in Tampere, Finland, and named after the city. The Tampere program (1999 to 2004) laid the groundwork for common immigration and asylum policies and established common rules for family migrants, access to long-term residence, and the first phase of the Common European Asylum System. This system is composed of four main legal instruments that cover reception conditions, asylum procedures qualifications, and which Member State is responsible for examining an asylum application (the Dublin Regulation).

The Hague Program (2004 to 2009) covered the second five-year period. In addition to developing a policy plan for economic migration, and a range of mechanisms for exchanging information on integration policy, the program highlighted the importance of cooperation with third countries (branded the Global Approach to Migration in 2005) and

moved onto the second phase of the Common European Asylum System although the 2010 completion deadline has not been met.

The Hague Program also continued to develop the integrated border management system with the creation of the border agency, FRONTEX, in 2006 (see **The Hague Program Reflects New European Realities**). Despite these achievements, only about half of scheduled measures for the whole program were achieved in most years.

In December 2009, Member States of the European Union agreed to the Stockholm Program (2009 to 2014), the third in the series.

The economic crisis and a series of both political and institutional distractions made 2009 a less than auspicious year for designing a new, forward-looking agenda for immigration and asylum within the European Union.

Yet the Stockholm Program's introduction highlights migration as a priority area. The program's long list of action points include migration and development, labor migration, rights of third-country nationals (meaning those from outside the European Union), integration, illegal migration, and a range of asylum issues. But while the program has lots of detail, it offers few specifics as to the final goal.

This article explores the context in which the Stockholm Program developed, how it differs from its predecessors, and what these action points on migration mean for policy development over the next five years. It also looks at the challenges the European Commission may face in putting the Stockholm Program into practice.

### Context for the Stockholm Program

Numerous predictions have been made about the global recession's likely short- and long-term impacts on the number of migrants within (and flows to) Europe. Initial data suggest that labor market contractions have disproportionately affected nonnationals; examples include Polish workers in the United Kingdom and Ecuadorians in Spain. At the European level, the recession created a climate of caution with respect to future EU immigration policy development.

Overall, the European Union wants to show that EU citizens have priority for the jobs available in Europe. Ambitious common EU labor immigration policies, which — at least in the eyes of policymakers and the public — would increase the flow of migrants to Europe, is thus difficult for Member States to contemplate, regardless of the longer-term demographic reality that Europe's population and workforce are aging.

The European Union also has a number of competing priorities, namely the apparent immediacy of illegal migration flows in the Mediterranean. The Quadro Group (Cyprus, Greece, Italy, and Malta) formally called for solidarity in managing the mixed flow of unauthorized migrants and asylum seekers crossing their borders. The group's actions became a major political issue and dominated discussions in the Justice and Home Affairs Council over 2009.

As a result, while a sustainable and manageable system for dealing with irregular border crossings and asylum claims remains the European Union's long-term goal, the current focus is on quick fixes and interim measures. These include a voluntary relocation program within Europe being piloted in Malta, through which Member States make offers to take in asylum seekers and refugees from the Mediterranean island.

#### The Lisbon Treaty: What It Means for Immigration and Asylum Policy

The Lisbon Treaty introduces several changes to the way the European Union makes immigration policy. The major change is that legal immigration policies will be pursued under the "ordinary legislative procedure" (formerly known as co-decision). This means that measures to determine the entry, residence, and rights of legal migrants will no longer be agreed unanimously but instead according to a qualified majority.

This is an advantage over the previous arrangement, but it does not make seeking consensus any less critical. The European Parliament now has a right of veto over new legislation regarding legal migration, making it a key actor in the policy-making process.

At the same time, Member States retain critical control over determining the "volumes of admission of third-country nationals coming from third countries to their territory in order to seek work." This control limits the scope of proposals the Commission can make.

Finally, the Lisbon Treaty sets out the legal basis for developing EU policies, specifically "measures to provide incentives and support" for the integration of third-country nationals. Although EU-wide integration policies have gained momentum over the past five years, they have done so within an uncertain legal framework. This should make integration policies easier to push forward.

And while security and control have arguably always dominated the immigration and asylum agenda, the trend toward reactive policies aimed at "fixing problems" suggests that the European Union is being distracted from longer-term perspectives.

At the institutional level, EU institutions are grappling with significant and long-awaited changes; the Stockholm Program itself was drafted in the midst of this uncertainty.

A roadmap for EU institutional reform and a new EU Commission did not become clear until fall 2009, when Ireland and the Czech Republic formally approved it. Briefly, the Lisbon Treaty changes the structure of EU institutions and how they function, with the aim of making the EU more democratic and efficient (see sidebar).

The Lisbon Treaty went into effect December 1, 2009. New commissioners are expected to take office in February 2010, much later than anticipated.

The contents of the Stockholm Program were adjusted to reflect the institutional changes that have taken place in the area of Justice and Home Affairs (see sidebar). However, it is difficult to know how the new decision-making framework will affect either the quality or quantity of immigration legislation.

The Hague and Tampere programs relied on strong political support from each and every Member State for European policies on migration. It remains to be seen whether the Stockholm Program will need the same level of uniform commitment to develop its policies.

While many are optimistic that involving the European Parliament in legal migration policy will lead to a more balanced approach, the legislative process will certainly become longer and more complicated.

One certainty, however, is that two commissioners, not just one, now oversee the implementation of the Justice, Liberty and Security program. These are the Commissioner of Justice, Fundamental Rights and Citizenship and the Commissioner of Home Affairs (including migration). This change not only carves up one of the biggest policy areas in the Commission, it also deliberately improves the profile of rights and citizenship within the European Union.

Under this new structure, policies for immigration and asylum remain tied to Home Affairs, while related ideas, such as antidiscrimination and citizenship, fall under the aegis of the new Fundamental Rights Commissioner. Integration policy remains alongside immigration policy, and thus security issues, and it remains to be seen whether this is the right location for policies that are essentially more about rights and socioeconomic status. Regardless, the dual mandates will be reviewed after two-and-a-half years.

## **Stockholm Program Themes and Priorities**

### *General points*

The Stockholm Program overall highlights the relevance of its policies for the people of Europe, hence the title "An open and secure Europe serving and protecting the citizen." As such, it is wide-ranging and encompasses the following areas:

- Citizens' rights
- Law and justice issues
- Internal security (including counterterrorism, law enforcement, and disaster management)
- External border management and visa policy
- Migration and asylum (including integration)
- The external dimensions of freedom, security, and justice

The final chapter, concerning the external dimension, is a new addition. It promotes the idea that all the above issues need to be dealt with as elements of foreign policy.

The Lisbon Treaty calls for a new High Representative for Foreign Affairs and Security Policy and the creation of an External Action Service, a foreign and diplomatic corps for the European Union. Both strengthen the European Union's role in relations with third countries. These changes are also relevant for immigration and asylum policy, though it is still unclear how extensive the High Representative's responsibility will be.

Another new element is the emphasis on lessons learned over the last decade. The Stockholm Program highlights the importance of policy coherence, and in the case of immigration policy, this means links with foreign and development policy, trade, employment, health, and education.

In addition, the program calls for effective evaluation of current and new policy proposals, consistent training for officials, greater interaction with civil society actors, and improved communication with the European public. The commissioner responsible for migration has already stated that assessing existing policy and legislation will be a priority for 2010.

### **How the Stockholm Program Differs from Earlier Programs**

The Stockholm Program carves out the immigration and asylum portfolio differently from its predecessors in several ways.

First, external border management and visa policy are dealt with separately, though the sections on illegal migration and asylum overlap with the priorities for border management and visa policy. In the Hague Program, these issues were folded into immigration and asylum as "management of migration flows."

Second, the Global Approach to Migration — meaning cooperation with third countries on immigration — has top billing. Previously it was third or fourth on the list.

Third, the program includes some new, specific priorities, such as unaccompanied children (those under age 18 who are separated from their guardians and are seeking asylum or are apprehended trying to enter a country illegally). These highlight the fact that the "easy" parts of the immigration portfolio have been achieved, leaving the trickier elements.

While the Hague Program emphasized harmonizing migration and asylum policies across Member States, the Stockholm Program makes "practical solutions" a priority. In reality, this means initiatives that promote cooperation between the Member States. Also, the program seeks to use soft law in the form of guidelines and stand-alone EU agencies, rather than the hard law envisioned in the Maastricht Treaty.

Alongside the shift to practical cooperation, the European Union has made more inter-governmental, rather than Community, agreements with Member States. For example, the Immigration Pact, which sets out a political vision for future cooperation on European migration, is an agreement between Member States that both national governments and the European Union implement.

In the last few years, Member State governments have instigated many of the new ideas in migration, with secondary support from the Commission. Examples include the Eastern Partnership, a new policy approach for mobility and security among six of the Eastern European neighborhood countries, and the goals set out at the regular G6 meetings of the largest Member States.

### **Immigration**

Harmonizing immigration policy has always been difficult to discuss at the European level, and the Stockholm Program reflects a shift in focus away from harmonization and toward finding alternative means of cooperation, such as the Global Approach to Migration. The following is a short analysis of the key points in each subchapter.

#### *Global Approach to Migration*

This policy area has seen the most growth over the past four years. The program builds on existing concepts, notably mobility partnerships with immigrant-origin countries in Africa and Eastern Europe (see **EU Mobility Partnerships: Expression of a New Compromise**), and follows three established priorities: promoting mobility, establishing links between migration and development, and working to prevent illegal migration.

The program explicitly highlights the need to identify common interests with third countries, arguably one of the major challenges for the European Union.

The main innovation in this section is the development of migration profiles for third countries. These profiles would gather together relevant data and, in theory, support both

EU Member States and profiled countries in their efforts to develop cooperative immigration policies.

This simple idea took hold at the 2009 Global Forum on Migration and Development, which brought together over 100 developed and developing countries to talk about ways in which migration may contribute to development. Partner countries outside the European Union welcomed the idea of improving their knowledge base as long as the ownership of the data remains with the profiled country itself.

The Global Approach also seeks to cooperate with third countries on combating illegal migration, whether by financially supporting the development of border management policies, or through completing readmission and visa facilitation agreements.

The commitment to continue with readmission agreements (in which non-EU countries accept those who have entered the European Union illegally) is critical for Member States, and visa facilitation is one of the central, though relatively weak, "carrots" for encouraging such cooperation. Despite the fact that border management is a key element of the Global Approach, and one of the most concrete, the Stockholm Program attempts to downplay this aspect by transferring most of the detail to the section on illegal migration.

### *Migration and Development*

The EU migration and development debate has progressed greatly since the formulation of the Hague Program, particularly at the international level through the Global Forum.

The European Union has chosen three clear priorities: facilitating remittances, working with diaspora groups, and promoting circular migration. In the EU context, circular migration is defined as "a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries." While central to current debates, it remains unclear what the European Commission may be able to actually do with respect to the first two, aside from provide and exchange information.

Circular migration seems to have been downgraded in importance since the European Commission first articulated its interest in the subject in 2007. While mobility partnerships, a type of circular migration, have become the central tool of the Global Approach to Migration, circular migration is now merely the subject of further study and exploration. This reflects the difficulties the European Commission has encountered in translating circular migration into an EU-wide concept beyond small-scale, mostly bilateral, pilot projects.

The new element here is that the Commission has been explicitly mandated to investigate the potential impact of climate change on migration flows. Member States are both concerned about the issue, yet lack detailed knowledge.

### *Labor Migration*

In comparing the Hague and Stockholm programs, the curtailed ambition regarding an EU-wide labor migration policy is striking. This is all the more true given that the Lisbon Treaty has ended the rule requiring that all Member States agree on a law before moving forward, which hampered much EU legislation in the past, including legislation on labor migration. In other words, it should be "easier" to pass new laws through the Justice and Home Affairs Council.

Indeed, the Stockholm Program makes no reference to further developing a common labor migration strategy, despite the Swedish Presidency's efforts to convince Member States that a more open and coordinated immigration policy is in Europe's interests.

Although the economic crisis lowered expectations for an ambitious labor market policy, the policy plan for legal economic migration — mandated by the Hague Program and proposed at the end of 2005 — highlighted the difficulties of finding a common approach in the midst of diverse labor markets, labor needs, and immigration systems.

The only element Member States have greenlighted to date is the Blue Card system for highly qualified non-EU nationals. The Council adopted the legislation in May 2009, and it will come into force in mid-2011.

Member States have not yet agreed on a single EU work and residence permit or common rights for third-country migrant workers (see next section). The remaining legislation,

which would cover intracompany transferees, paid trainees, and seasonal workers, has yet to be tabled.

Instead, the title of the subchapter indicates a new focus: "a concerted policy in keeping with national labor-market requirements." Beyond completing the policy plan detailed above, all action points relate to the need for improved information and data on skills needs, skills recognition and development, and skills matching with third countries. While undeniably important, arguably these are core policies of Employment and Social Affairs, which has the mandate to develop Europe's thinking on the future of European labor markets.

#### *Rights for Third-Country Nationals*

Possibly the most significant element of the immigration program is the commitment to grant third-country nationals "rights and obligations comparable to those of EU citizens" by 2014. This proposal harks back to the original vision of the Tampere Program, a vision that EU policy to date has lacked.

In addition, the Stockholm Program asks the Commission to begin evaluating, amending, and generally rationalizing existing legislation in the area of immigration. This language confirms even more the shift away from further harmonizing legislation, but it also offers the institutions an important opportunity to ensure that legislation works as well in practice as in theory.

More controversially, the Commission needs to evaluate family reunion legislation to take into account the importance of integration measures. In essence, this paves the way for Member States to introduce conditions for spouses and other immediate family members to ensure language learning and "capacity" to integrate.

#### *Integration*

Integration policy received a boost from the Lisbon Treaty, which gives EU policymakers a solid legal basis for developing measures to "support" Member States in their national strategies on immigrant integration. The Stockholm Program includes a number of ideas, such as developing common European modules (essentially how-to guides for key elements of integration policy), and EU-wide indicators to monitor the results of integration policies. These follow on from priorities that Member States agreed to at ministerial meetings in Potsdam (2007) and Vichy (2008) on integration.

The program also builds on the work set out and completed under the Hague Program: mechanisms for exchanging information and experience, such as the Integration Portal, a website for stakeholders to contribute projects and information, and the European Integration Forum, a biannual meeting of civil society representatives to discuss integration priorities.

#### *Illegal Migration*

Return remains the central policy response for "illegally residing third-country nationals." The program emphasizes the need for a sustainable return policy, supplemented by encouragement of voluntary return, and renewed efforts to sign readmission agreements with more countries of origin and transit.

Member States could not agree on an action point that would address how to deal with unauthorized migrants who cannot be returned for whatever reason.

Earlier drafts of the program had proposed that the Commission draft common standards, presumably including rules on legalization, to ensure that such migrants are treated similarly across the European Union. However, this remains a deeply sensitive political issue for Member States (mass legalizations are to be "avoided" according to the 2008 immigration pact) despite the fact that several amnesties — in Belgium and Italy — were held during 2009.

#### *Unaccompanied Minors*

As noted above, unaccompanied minors were not addressed in the Tampere or Hague programs. Their inclusion in the Stockholm Program highlights their vulnerability and the need for a tailored response.

The Commission will develop an action plan to highlight possible measures to address the issue. The plan will include practical measures to facilitate return where appropriate.

## **Asylum**

Establishing a common approach to humanitarian protection has been a priority stemming from Tampere. However, with the basic elements of a harmonized policy in place, the final pieces needed to complete the system are increasingly difficult to table within the European Union.

### *Common Area for Asylum*

The Hague Program aimed to complete the Common European Asylum System by 2010. The goal was to create a common system and procedures for recognizing refugees. Already in 2008, Member States had backed away from this objective and pushed the deadline to 2012, given the political difficulties in reconciling the great disparities across the European Union between the number of asylum applications and recognition rates of those who apply. While the Stockholm Program reiterates the goal of a "common area of protection and solidarity," the program's contents are far less specific than its predecessors.

The program notes the differences that remain between Member States' protection systems, and it invites the Council and Parliament to intensify efforts to establish common asylum procedures and a uniform status by 2012. Beyond this, the program asks the Commission to "consider" further action, such as new legislative instruments or joint processing of asylum applications.

Rather than push for a common asylum area, the Stockholm Program highlights new tools. These include the forthcoming European Asylum Support Office (EASO), which will facilitate information exchange between Member States and support their decision-making on asylum, and the development of the European Asylum Curriculum, which would ensure that all officials involved in asylum determination have the same core training.

The sensitive issue of Member States recognizing one another's asylum decisions, detailed in earlier drafts, is not mentioned.

### *Sharing of Responsibilities and Solidarity between Member States*

This has been a contentious area for Member States with external borders. In particular, Italy, Greece, Malta, and Cyprus — which receive disproportionate numbers of unauthorized migrants and asylum seekers on their shores — have said other Member States need to share responsibility for such flows.

In discussions for the Stockholm Program, a key matter was whether relocation of asylum seekers and additional support for certain Member States should be compulsory or voluntary. The program states that ultimately it is up to individual Member States to contribute, and it emphasizes that all Member States need to build capacity within their national systems.

### *External Dimension*

In the EU context, the external dimension of asylum means promoting refugee protection beyond the European Union and making migration management part of foreign policy.

External dimension was already a key element of the Hague Program, not least through the piloting of Regional Protection Programs in Eastern Europe and the Great Lakes region of eastern Africa. Despite little evaluation, or evidence of success, the Stockholm Program suggests developing these protection programs further.

In addition, the voluntary resettlement scheme, which Commissioner Jacques Barrot proposed in October 2009, is included. The scheme is intended ensure that especially vulnerable cases — who do not have independent means of traveling to Europe — still have access to protection in Europe.

Member States lag behind North American countries in offering resettlement to recognized refugees, and it is hoped that this scheme will redress the balance. It is also meant to enhance the impact of the above-mentioned Regional Protection Programs.

## Looking Forward

The Stockholm Program, though rich in rhetoric, is frequently ambivalent. Although immigration and asylum policy is a key priority, the vision set out in Tampere and to a lesser extent, Hague, has disappeared. Few deadlines are included, and much of the work is tentative and subject to later decision-making.

Perhaps this is an inevitable result of 10 years of development, as well as some institutional fatigue and cynicism. But it may also be due to the fact that immigration policy has somewhat outgrown its parent portfolio. The emphasis on external relations and the shift in focus toward the needs of European labor markets suggests that migration is no longer just simply a Justice, Liberty, and Security policy, but an integral part of foreign policy, employment and social affairs, and a host of other policy areas, such as trade, education, and finance.

The next few months will be important. As institutional arrangements take shape, the new High Representative for Foreign and Security Policy settles in, and the European Parliament begins to flex its muscles on immigration issues, one may see a changing environment for policy development.

The actions of the Spanish Presidency, which began January 1, 2010, will help determine the level of policy coherence that can be achieved and the success of the Stockholm Program in the long term.

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