

Central European Forum
For Migration Research



Środkowoeuropejskie Forum
Badań Migracyjnych

**CEFMR Working Paper
1/2004**

***MIGRATION POLICY IN THE EUROPEAN
PERSPECTIVE - DEVELOPMENT AND
FUTURE TRENDS***

Anna Kicingier, Katarzyna Saczuk

ul. Twarda 51/55, 00-818 Warsaw, Poland
tel. +48 22 697 88 34, fax +48 22 697 88 43
e-mail: cefmr@cefmr.pan.pl
Internet: www.cefmr.pan.pl

Central European Forum for Migration Research (CEFMR) is a research partnership of the Foundation for Population, Migration and Environment, Institute of Geography and Spatial Organization of the Polish Academy of Sciences and the International Organization for Migration



International Organization
For Migration



Foundation for Population,
Migration and Environment



Institute of Geography and Spatial Organisation,
Polish Academy of Sciences

MIGRATION POLICY IN THE EUROPEAN PERSPECTIVE – DEVELOPMENT AND FUTURE TRENDS

*Anna Kicingier, Katarzyna Saczuk**

* Central European Forum for Migration Research in Warsaw

Abstract: This paper presents a general outline of the development of the migration policies in Europe countries, focusing on a historic sketch of the policies, their current development stage, as well as some predictions of their evolution in the foreseeable future. components. The main emphasis is put on the immigration control policy i.e. rules and procedures governing the selection and admission of the foreign citizens, especially with regard to the long-term migration, as it influences the demographic structures of both sending and receiving countries. Subsequent sections of this paper are devoted to the most important international conventions and treaties dealing with migration issues (a legal framework of migration policy development), followed by an overview of the policy measures in both the 'old' EU-15 and the Central and Eastern Europe. The migration policies in selected European countries is presented in details.

Keywords: migration policy, immigration control, Europe

Acknowledgements

The research published in this paper has been funded by the Foundation for Population, Migration and Environment (BMU-PME) from Zurich, within a grant for a project "Impact of international migration on population dynamics and labour force resources in Central Eastern Europe" awarded to the CEFMR.

Editor

ul. Twarda 51/55, 00-818 Warsaw, Poland
tel. +48 22 697 88 34, fax +48 22 697 88 43
e-mail: cefmr@cefmr.pan.pl
Internet: www.cefmr.pan.pl

© Copyright by Central European Forum for Migration Research
Warsaw, October 2004

ISSN 1732-0631
ISBN 83-920313-5-0

Contents

1. Introduction	3
2. Legal and institutional framework	4
3. Common European migration policy – an outline	9
3.1. <i>Historic evolution</i>	9
3.2. <i>Current situation</i>	13
3.3. <i>Predictions for the future evolution of common migration policy</i>	17
4. Central and Eastern European Countries' (CEECs) migration policies	20
4.1. <i>Historic evolution</i>	20
4.2. <i>New challenges of the 1990s</i>	20
4.3. <i>The process of adjusting the national law in the CEECs to the EU acquis</i>	22
4.4. <i>Future trends after the accession</i>	23
5. National perspective of selected countries	25
5.1. <i>Germany</i>	26
5.2. <i>Belgium</i>	27
5.3. <i>The Netherlands</i>	28
5.4. <i>The United Kingdom</i>	29
5.5. <i>Spain</i>	31
5.6. <i>Sweden</i>	32
5.7. <i>The Czech Republic</i>	33
5.8. <i>Slovenia</i>	34
5.9. <i>Bulgaria and Romania</i>	35
6. Expected directions of migration policy developments	37
References	41

1. Introduction

In this paper a general outline of the development of the migration policies in the European countries is presented. It contains a historic sketch of the policies and their current stage supplemented with some predictions of their evolution in the foreseeable future.

The term “migration policy” refers to the policy led by a state which is aimed at regulating migration in its all possible dimensions. Given the fact that the terms “immigration policy” and “migration policy” are used as synonyms in the literature on the subject, the analysis presented in this paper follows that practice and those terms are used interchangeably. According to Hammar (1985) immigration policy has two components. The first one is the immigration control policy i.e. rules and procedures governing the selection and admission of the foreign citizens. The second component is the immigrant policy, comprising the provisions concerning the already resident immigrants. The main emphasis in this work will be laid on the first component of the state’s immigration policy.

The particular interest of the study lies in migration which can have an impact on demographic structures of the sending and receiving countries. Hence, in this work the aspects of migration policy influencing the long-term (over one-year long) migration will be highlighted.

Apart from the current introductory notes, this chapter comprises five sections 2 – 6. Section 2 outlines in brief the most important international conventions and treaties in force in the European countries dealing with migration issues. They are presented as the legal framework within which the states’ policies may be developed. Sections 3 and 4 cover the migration policy of the two main groups of countries under study – the so-called ‘old’ EU15 and the Central and Eastern European Countries respectively. Starting from historic evolution through current situation, predictions of the future trends are formulated.

There are more and less significant countries from the migration standpoint, in terms of scale, among the countries under study. As the most important countries accounting for the most of the phenomenon in Europe are the old EU members, their policy will be subject to more detailed scrutiny (section 5), additionally taking into account the fact that other countries’ inevitable connections with the EU will probably lead to policies similar to those of the EU states in the foreseeable future. The study will be finished with the predictions about the future directions in the development of the migration policies (section 6).

2. Legal and institutional framework

The state's right to regulate international population movement has its origins in the principle of the state sovereignty, one of the fundamental principles of the international law. According to this principle every state has an exclusive competence to regulate all kinds of relations developed on its territory and to execute legal norms passed by proper authorities (Sawicki 1986: 52-56). However, after the World War II some new tendencies based on the liberal conception of the individual's freedom underlying the human right's doctrine led to significant changes in the perception of the position of the state and that of the individual in international population movement (Plender 1988: 1-2). An obligation to accept state's citizens expressed in many international documents¹ was the first landmark in limiting state's exclusive competence to regulate migrations. Another step in this direction was the ever louder voiced question that maybe exists, at least *in statu nascendi*, an international norm obliging a state to admit on its territory foreigners on humanitarian grounds? The Universal Human Rights Declaration (art.14) and the UN resolution on asylum (1967) expressed such tendency as well, both of these acts being legally non-binding however.

Additional limitation to state's independence in regulating migration, besides the human rights doctrine, was a significant amount of bi- and multilateral agreements concerning migration issues. This factor, however, did not influence in any way state's sovereignty, was rather a form of exercising state's exclusive competence in this field through concluding international treaties.

In conclusion, a state remains a dominant actor in regulating international migration which right to do this is still unquestioned by international law, although not by law doctrine. The only limits to state's full independence in this field are the obligations undertaken by states in an independent act of concluding or joining an international treaty. All kinds of liberalization in this field take place only to the extent considered safe and consistent with the state's interest. In other words, a state as a sovereign subject of international relations has an exclusive competence to regulate international population movement and it exercises this competence by means of formulating and implementing migration policy. Still, growing internationalisation of different spheres of life coupled with increasing institutionalisation of international relations reduces traditionally understood state's sovereignty. Legal framework comprising widespread network of bi- and multilateral treaties influences state's migration policy and creates a structure within which the state formulates its policy.

The most important international treaties concerning migration are listed below. The refugee issues, usually separately treated, are also included. The rationale behind this is the conviction

¹ See article 13 of the Universal Declaration of Human Rights (Adopted and proclaimed by UN General Assembly resolution 217 A (III) of 10 Dec 1948) and article 12 point 4 of the International Covenant on Civil and Political Rights (adopted by the UN General Assembly on 16 Dec 1966, in force in all countries under study).

that refugee protection system in force in European countries represents an important part of their migration policy.

- 1951 Convention relating to the Status of Refugees (the Geneva Convention), ratified by 141 countries and 1967 Protocol relating to the Status of Refugees (New York Protocol), ratified by 139 countries. Both documents are in force in all countries under study. The Convention established the legal protection and a clear definition of the refugee status. According to the Convention every person who claims that has been persecuted in their country of origin on the grounds of race, religion, nationality, political opinion or membership in a particular social group, has the right to seek asylum in a third country. If the demand is well-founded, this asylum seeker shall be granted refugee status pursuant to Article 1 of the Geneva Convention. It is worth noting, however, that the Convention related only to the people who became refugees before 1 January 1951 and originated from Europe. Only the Protocol did extend the scope and the application of 1951 Convention to persons who became refugees after 1 January 1951.

The international system of refugee protection based on the Geneva Convention and New York Protocol is a foundation for the protection of refugees in Europe, where no regional subsystem was created. The basic norm securing refugee rights formulated in the Convention is *non-refoulement* rule which prohibits the expulsion or forcible return of refugees to the countries in which they could be persecuted or in danger of death². The Convention additionally formulates provisions for political and social rights of the persons granted refugee status. Considerable shortcomings of the refugee protection system based on Geneva Convention (first and foremost the very narrow definition of refugee with the sometimes hard to meet condition of individually based persecution) resulted in the creation of some legal definitions functioning in the Western European countries as a response to the growing pressure of asylum seekers. The status B, humanitarian status or *de facto* refugee are all the related terms coming from different countries applying to people who cannot meet Geneva Convention criteria for obtaining refugee status, but at the same time cannot be sent to the country of origin due to humanitarian reasons (Wierzbicki 1993: 47-48).

- European Social Charter signed in 1961, revised in 1996 under the auspices of the Council of Europe, in force in all countries under study with the exception of Switzerland. Seventeen social and economic rights guaranteed by the Charter apply to foreigners if they are citizens of the other member state to the Charter and if they are legal residents. Additionally article 19 provides for equal treatment of foreigners and

² Significant differences occur, however, among the European countries leading to more or less strict interpretation of this rule. Some of them (Germany, Sweden or Italy) relate this rule only to persons already granted a refugee status, which opens the possibility of rejecting some applications on the border without examining. On the contrary, France, Belgium or Norway apply *non-refoulement* rule to every person seeking asylum and do not reject them on the border.

citizens in such fields as payments, employment and working conditions, taxes or membership in trade unions.

- European Convention on the Legal Status of Migrant Workers signed in 1977 under the auspices of the Council of Europe, ratified only by 8 countries including Sweden, Spain, Portugal, Norway, Netherlands, Italy and France. The Convention extends the foreign workers rights on such fields as equal with citizens' access to vocational training, higher education or medical and social services. Together with European Social Charter the Convention provides for assuring social and economic legal migrant workers' rights making their position maximally consistent with the position of the citizens³.
- Convention concerning Migration for Employment (revised) No 97 adopted in 1949 by International Labour Organisation (ILO).
- Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers No 143 adopted in 1975 by the ILO. The migrant workers protection is an important activity of the ILO. The two above listed conventions supplement many others adopted within this organisation to protect foreign workers' rights. The ILO contributes to the application of adopted laws by monitoring their implementation, providing advisory services and technical support to governments using the procedures worked out by the organisation (UN 2002: 43).
- 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families, ratified by 21 countries, but none of them being the country under study. It establishes international definitions of the different categories of migrant workers and formalizes the responsibility of receiving States in regard to upholding the rights of migrants and assuring their protection. The convention is not in force yet (UN 2002: 40)
- 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which was ratified by 18 countries. It aims to prevent and combat trafficking in persons, particularly women and children, protect and assist the victims of such trafficking and promote cooperation among States parties to meet these objectives. The Protocol is not in force yet (UN 2002: 49)
- 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized

³ There are many more recommendations and resolutions adopted under the auspices of the Council of Europe concerning migration and asylum, yet they are legally non-binding.

Crime, which was ratified by 17 countries. It aims to combat and prevent the smuggling in people, reaffirming that migration in itself is not a crime, and that migrants may be victims in need of protection. The Protocol is not in force yet (UN 2002: 49).

Apart from those acts referring particularly to migrants, there are some other UN conventions on protection of human rights in general which apply not only to the state's citizens, but also to the foreigners staying legally on its territory. Among them the most important are:

- International Covenant on Civil and Political Rights (adopted by the UN General Assembly on 16 December 1966);
- International Covenant on Economic, Social and Cultural Rights (adopted by the UN General Assembly on 16 December 1966);
- International Convention on the Elimination of All Forms of Racial Discrimination (adopted in 1966);
- International Convention on the Elimination of All Forms of Discrimination against Women (adopted in 1979);
- Convention on the Rights of the Child (adopted in 1989).

All of the above listed conventions are in force in all countries under study.

Concurrently with legal provisions, an even wider-ranging institutional framework for cooperation in migration field was created. Different international organisations and agencies addressing specifically migration issues or comprising wider scope of affairs became governmental forums for discussion and exchange of experiences. A growing international network of institutions handling migration may support the thesis that states have become aware of the fact that managing migration requires cooperation. At the same time this network played a crucial role in the process of making migration policies carried out by states more similar to each other, the process especially manifest in Europe. The main organisations and forums dealing with migration and refugee issues for European countries in the 1990s were (UN 2002: 37-47):

- International Organisation for Migration (IOM) - world-wide international intergovernmental organisation committed to the principle that humane and orderly migration benefits both migrants and receiving societies;
- Office of the United Nations High Commissioner for Refugees (UNHCR);
- Council of Europe within which European Committee for Migration (CDMG) and Ad Hoc Committee of Experts on the Legal Aspects of Refugees (CAHAR) operate. Additionally CoE organizes Conferences of European Ministers responsible for Migration Affairs;
- Organisation for Economic Cooperation and Development (OECD);

- International Centre for Migration Policy Development (ICMPD) working as a secretariat for the intergovernmental consultations in so-called Budapest process which was a forum of intergovernmental consultations at the ministerial level focused on preventing and combating illegal migration;
- Vienna Group – continuation of the cooperation on the governmental level originating from the Conference on population movements from CEEC held in 1991 under the auspices of the Council of Europe.

Other groups relating to migration issues were created within such subregional organisations as the Nordic Council of Ministers or Central European Initiative.

3. Common European migration policy – an outline

The term ‘common European migration policy’ refers to migration policy formulated and implemented at the level of the European Union which is currently under construction among the EU states. The historic evolution of such policy will be outlined in this section, starting from the total lack of cooperation in the field of migration of third country citizens through informal and then formal intergovernmental cooperation to the decision of creating common asylum and migration policy at the Community level which was introduced by the Treaty of Amsterdam.

In general one may point out two major factors which had been contributing to the continuous process of ever closer cooperation among the EEC/EU states in the field of migration policy, including its special dimension i.e. asylum. In the first place the outside challenges like the increase in illegal immigration, human trafficking, asylum crisis and growing economic migration pressure have to be mentioned. They forced the EEC/EU countries to seek common solutions for commonly shared (although not to the same extent) problems. Efforts to make the legislation in European countries more cohesive, joint actions and finally the transfer of states’ competences in the area of migration to the community level were the EEC/EU countries’ answer to the growing challenges.

Another factor, concurrently influencing the mechanism described above, was the process of ever wider-ranging integration which had been taking place within European Communities and then European Union. The realization of one of the foundations of common market idea i.e. free flow of workers and subsequent improvements in the movement of persons on the internal boundaries of EEC/EU had to result in growing cooperation concerning regulations on external border crossing or third country nationals status.

3.1. Historic evolution

The Treaty Establishing European Economic Community (The Treaty of Rome) signed in 1957 by six Western European countries (Belgium, France, Germany, Italy, Luxembourg, Netherlands) did not provide any competences for the EEC in the field of migration policy. However, the abolition “of obstacles to the free movement of goods, persons, services and capital” between the Member States (article 3c of the Treaty) was provided as one of the means in realizing the major aim of the Community i.e. establishing the common market. The principles of freedom of movement for workers (article 48 and 49) and the freedom of establishment (article 52) in the territory of any Member State for the EEC nationals were the

implication of “free movement of persons” principle⁴. It is worth noting, however, that these rights originated from economic standpoint and were aimed at enabling the flow of workers necessary for building the common market, significantly the right for free movement of families of the workers was not secured. The Treaty of Rome started the dualism in regulating migration in the EEC countries. Whereas the migration of the EEC nationals within the EEC was regulated by Community law, the migration of third country nationals remained within states’ exclusive competences⁵.

The former, was gradually further developed in the course of the European integration. The rights of the EEC nationals to move and work within the Community were assured with a growing number of specific regulations enabling them to enjoy their rights to the greatest possible extent (among many others the legislation on mutual recognition of diplomas or fighting discrimination was introduced). Finally, progressing integration led to the establishment of the “citizenship of the Union” in the Treaty of Maastricht (article 18) with the inherent right to move and reside freely within the Union for all its citizens.

At the same time, cooperation in migration field remained for years beyond interest for the EEC institutions and its member states. The crucial reason for this might have been their migration situation characterised by strong demand for foreign labour resulting from fast economic growth (Rymarczyk, 1986). The specific migration policies of the governments in the 1950s and 1960s were very liberal, especially considering the fact that some EEC countries actively recruited foreign workers (e.g. the Netherlands, Belgium, West Germany and others). Sweden, Denmark, Finland and Norway established in 1954 a common labour market and then, in 1957, a common passport union, allowing the citizens of one of these countries to work freely on labour markets of the others. The agreement included also controlled systems of recruitment from abroad.

The liberal situation changed rapidly in the early seventies after the oil shocks and resulting economic slowdown, which radically reduced the demand for foreign workers and made governments protect their labour markets in the face of growing unemployment. These attempts, although other economic, political and social aspects of migration were also important, manifested themselves in tightening of immigration rules for all categories of migrants, and in some cases in the introduction of incentives for return migration (Rymarczyk 1986: 27-33). It resulted in “significant decline in the number of migrant workers admitted in countries with developed market economies. In most of the labour importing countries of Western and Northern Europe the recruitment of regular migrant labour practically ceased” (UN 2002: 20).

⁴ The Treaty of Rome extended to all occupations the rights of workers of the coal and steel sectors previously assured within European Coal and Steel Community (created in 1951 by Germany, France, Italy and Benelux countries) which enabled them to work on the labour markets of the other states.

⁵ To avoid misunderstandings, a reference to “migration” or “migration policy” in the text below refers to migration of third country nationals, unless otherwise stated.

The radical change in migration situation that started in 1973, when the EEC countries were faced with increasing migration pressure, coupled with drastic limitations to any further immigration, became an incentive to foster cooperation in this field. Common problems appeared to be a stimulus in developing closer cooperation. In its initial stage the cooperation took form of strictly intergovernmental consultations and agreements without delegating any competence in this field to Community level (Menkes 1997). In 1986 the Ministers of Interior of EEC states created an Ad Hoc Working Group on Immigration which carried out further activities and initiatives on migration issues. As one of the most urgent problems for the Western European countries had become a massive influx of asylum seekers, criteria determining state responsible for asylum application were agreed within the Ad Hoc Working Group (Loescher 1989: 630). Subsequently they were used as the basis for the Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of European Communities signed in 1990 in Dublin by the EEC Member States.

The Dublin Convention, initially signed as an international intergovernmental agreement, laid foundations for further legislation concerning asylum within the EEC. The Convention introduced the principle that every asylum claim has to be examined in the EEC, but shall be examined only once in the State determined by the Convention. Owing to this rule the abuses of asylum system resulting from asylum claims repeated in many states were to be suppressed. Additionally the so-called refugees in orbit (i.e. persons directed from one country to another in order to find the state responsible for examining their asylum claim) were to be eliminated.

Another international treaty signed by the EEC countries which subsequently was introduced into the Community law was Schengen agreement concluded initially among 5 states (Belgium, France, Germany, the Netherlands and Luxembourg) in 1985. It was supposed to abolish internal borders between the signatory states and create a zone of free-movement without controls, the so-called "Schengen Area". The agreement was followed by the Schengen Implementing Convention (1990) containing specific provisions, which were necessary for the successful implementation of the Schengen ideas. The convention came into force on 26th March 1995, and successive states joined the agreement. At the moment, Schengen Area is composed of Iceland, Norway and the EU member states, excluding the United Kingdom and Ireland and the new member states. Abolition of control on the internal borders highlighted the safety issues, which resulted in compensatory measures taken in the areas of visa issuing, asylum, police, custom and judicial co-operation and the exchange of information (Schengen Information System). A by-product of the liberalisation of movement rights for the parties to the agreement was tightening and complicating the same rules for citizens of non-member states ("fortress Europe"), seemingly due to security reasons. Schengen agreement referred solely to the issue of short-term border crossings. It standardised rules concerning issuing short term stay permits among signatory states, but the

long term residence permits or matters of granting citizenship were left to responsibility of national authorities (Kupiszewski 2003).

The real impulse for cooperation in migration issues within the EEC provided the Single European Act signed in 1986 by the EEC member states; in force since 1987. It set as the primary objective for the European Economic Community to establish the internal market that shall comprise “an area without internal borders in which the free movement of goods, persons, services and capital is ensured”. This regulation implied that checks on internal borders were to be abolished for persons as well as for goods but due to different interpretation of this rule among the states the deadline set by the Treaty (1 January 1993) in relation to free movement of persons was not met. However, ever closer cooperation among the EEC countries in this area was developed and led to its formalisation in the Treaty on European Union (the Treaty of Maastricht).

The Treaty of Maastricht (signed in 1992, came in force in 1993) established the European Union and formalised intergovernmental cooperation in the field of justice and home affairs, including immigration and asylum, by creating the so-called third pillar of the EU. The cooperation within this pillar remained its intergovernmental character. The main form of cooperation were the consultations and the exchange of information. The roles foreseen for the Commission, the Parliament or the Court of Justice were modest in comparison to their roles in the European Community activities. One of the Union’s objectives set in the Treaty was the achievement of “balanced and sustainable development, in particular through the creation of an area without internal frontiers” (article B of the Treaty). As the EU countries were not ready for transferring their competences in these delicate matters to the Community level, the intergovernmental cooperation become prevailing in the third pillar and consequently unanimity in decision-making was required for practically all important issues. This resulted in the situation when vast majority of instruments agreed on in this field took form of Council’s resolutions and recommendations which were legally non-binding. However, important changes were introduced in the field of visa policy, which was partially submitted to the Community legislation⁶. Nevertheless, visa policy was an exception to the general lack of legally binding regulations. The overall effect of cooperation in the field of asylum and immigration policy within the framework of the third pillar was the diversity of subjects on which the cooperation was concentrated combined with efforts to harmonize them across the EU. However, decision on the pace and scale of this harmonisation was left to the specific country. In result, the diversity of legislation and practice in the area of migration in European countries was maintained and it became clear that creation of the real and effective European

⁶ Article 100c of the changed Treaty establishing the European Community provided that the Council acting unanimously on Commission’s initiative and after consulting the Parliament shall specify the countries citizens of which will be required visa when crossing external borders of any the EU member state. Additionally, there were specified three occasions when the Council could act by qualified majority. In fact, only in 1999 was such decision reached and the binding list of countries with visa obligation was created – see Council Regulation of 12.03.1999 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States, OJ L 072 of 18/03/1999.

migration policy was impossible without the introduction of Community competence in this area (O’Keeffe 1995: 35).

3.2. Current situation

Foundations for the current state in migration policy regulations at the EU level were laid down in the Treaty of Amsterdam signed in 1997, in force since 1999⁷.

According to the Treaty of Amsterdam additional aim of the European Union was formulated which was the maintenance and development of “the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime”⁸. The aim specified in this way underlined the interdependence between the creation of the area without internal borders and the need to set common rules on external border crossing as well as asylum and immigration. Bearing that in mind, one may make a hypothesis that the natural evolution of integration processes in Western Europe was as significant a factor facilitating the creation of common migration policy as were the outside pressures and commonly shared experiences.

According to the Treaty of Amsterdam, immigration and asylum policies as well as other measures relating to free flow of persons were transferred from the third pillar of EU based on intergovernmental cooperation to the first pillar, where policies were carried out by European Community (title IV, article 61 of the Treaty). In other words, foundations for common migration policy implemented at the Community level were created. European Community’s competence in migration field, meant taking decisions by qualified majority rather than unanimously, which might have facilitated the development of the common approach significantly. Nonetheless, taking into account the fact that EU countries were not fully prepared for such transformation, the transitional five-year long period was established (article 62 and 63 of the Treaty). As the Treaty of Amsterdam came in force on 1st May 1999, only 1st May 2004 did mean the end of transitional period and full competence of the European Community in migration matters⁹.

⁷ The Treaty of Nice (signed in 2001, in force since 2003) did not bring any significant changes in the field of migration policy. The Treaty concentrated only on the extension of the matters which shall be submitted to the majority voting procedure in the Council during the five-year long transitional period.

⁸ Article 2 of the Treaty on European Union (consolidated version).

⁹ From the legal standpoint, this change will entail exclusive right of initiative for the Commission, introduction of the jurisdiction of the Court of Justice on the migration policy area and co-decision procedure involving majority voting on visa policy with the possibility of extending this type of voting for other fields by the Council.

United Kingdom, Ireland and Denmark were excluded from the above described cooperation due to their strong opposition to the planned changes¹⁰. Additionally, a considerable number of protocols and declarations concerning both migration matters as well as the integration of Schengen acquis into the legal framework of European Union were adjoined to the Amsterdam Treaty¹¹. The result was in a way a “labyrinth” of legal norms and provisions in the field of migration (Langrish 1998: 7) which will undoubtedly contribute to the possible difficulties in future cooperation.

A special meeting of the European Council in Tampere in 1999 was an important step in migration policy development. The Tampere Council agreed on a number of policy directions and priorities, which were to bring the European Union closer to the area of freedom, security and justice both for EU citizens and third country nationals who had been granted access to member states – the aim of the EU declared in the Amsterdam Treaty. An aspiration to ever closer political cooperation, also within the common EU asylum and migration policy, was expressed. According to the Council, such a policy should encompass,

- i) partnership with countries of origin,
- ii) the development of a common European asylum system,
- iii) fair treatment of the third country nationals, and
- iv) the management of migratory flows.

In general, considering the subsequent regulations passed and actions undertaken in the EU as well as Commission proposals still waiting to be adopted in the area of migration one may notice that the four directions listed above indeed became the four main areas in which the cooperation during the transitional period set in the Treaty of Amsterdam was developed (OECD 2004: 80-85).

Looking at the Tampere Presidency conclusions in more detailed way, the closer partnership with the countries of origin was supposed to help in managing migration and its causes, as well as enhance the benefits from migration to both sending and receiving countries. The Cotonou Agreement, signed in 2000 may serve as an example of practical implementation of this recommendation¹². It aims at building a partnership between the EU and 77 countries situated in Africa, the Caribbean and the Pacific (ACP countries), “in order to reduce and eventually eradicate poverty by promoting sustainable development, capacity building, and

¹⁰ However, an opt-in option was provided in protocols added to the Treaty of Amsterdam for these countries. This option enables them to join the actions or regulations decided as consistent with their national interest. Hence, their future participation in common migration policy may not be excluded.

¹¹ It does not mean, however, that from then on every Member of the EU becomes automatically the member of the Schengen Agreement. To join the Schengen Area a state must fulfill certain standards. It is also worth noting that incorporating Schengen acquis into the Community law imposes requirement of fulfilling these standards also by the EU candidate countries (Kupiszewski 2003).

¹² 2000/483/EC: Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, (OJ L 31of,15.12.2000).

integration into the world economy” (article 1). Migration was admitted to be an important element of the political dialogue and its management - one of the priorities on the level of technical cooperation between the states. A framework for migration management was created, which should include respect of the rights of the migrants. Promotion of the exchange between the EU and the ACP professionals was provided (article 79) coupled with the efforts to reverse the brain drain effects by facilitating the return of qualified ACP nationals residing in developed countries (article 80). Similar provisions including migration issues were added into trade and development programmes between the EU and other partners (Russia, Ukraine, countries of Mediterranean basin). Furthermore, a special Community programme, with a budget of EUR 250 million, was established for the years 2004-2008, to provide financial and technical help to the third countries in the areas of migration and asylum and thereby to assist them in all their efforts towards more efficient management of migratory flows. The programme was intended particularly for those countries engaged in preparing or implementing readmission agreements with the European Community¹³.

The partnership with the countries of origin is a sign of a new attitude towards migration, on the contrary to hitherto common practices of regulating migration mainly by hampering admissions on the receiving side.

According to Tampere Council’s Conclusions, the Common European Asylum System was supposed to be a second component of the future EU migration policy. The emphasis was laid on a fully inclusive interpretation of the Geneva Convention combined with:

- adoption of common minimum standards concerning criteria and mechanisms for examining and granting refugee status¹⁴;
- establishment of EURODAC (a European system for exchanging fingerprints, which is supposed to improve the implementation of Dublin Convention)¹⁵;
- minimum standards for reception conditions for asylum seekers¹⁶;
- minimum standards for giving temporary protection in the event of mass influx based on solidarity between the member states¹⁷.

¹³ Regulation (EC) No 491/2004 of the European Parliament and of the Council of 10 March 2004 establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS) (OJ L 80 of 18.03.2004)

¹⁴ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing criteria for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national (OJ L 50 of 25.02.2003)

¹⁵ Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of Dublin Convention (OJ L 316 of 15.12.2000).

¹⁶ Council Directive (EC) No 9/2003 of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L 31 of 06.02.2003).

¹⁷ Council Directive (EC) No 55/2001 of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (OJ L 212 of 07.08.2001).

It was noted that in the future the common legislation should lead to the common asylum procedure in the whole EU. To support the EU countries financially in admitting and integrating asylum-seekers, the European Refugee Fund was created for the years 2000-2004¹⁸.

The fair treatment of third country nationals was the third direction pointed in Tampere Presidency conclusions. It should lead to the granting them rights and obligations comparable to maximum extent to those of the member states' nationals¹⁹. The twofold activities were to be developed in this area - legal measures diminishing the inequalities and actions aimed at combating discrimination, racism and xenophobia. The national efforts introduced in many of the EU countries to enhance the integration of immigrants remained in line with this goal (OECD 2004: 77- 80).

The management of migratory flows was the fourth component of the EU asylum and migration policy, according to the Tampere guidelines. The primary goal set in this area was the achievement of orderly migration by means of clarifying the legal channels for immigration and coordinating and reinforcing efforts to combat illegal immigration, smuggling and trafficking in human beings. These aspects of migration regulation have attracted particularly high attention, especially after the 11 September terrorists' attacks. Considerable number of legislation was passed in area of combating illegal immigration on the EU level²⁰. These measures were additionally supplemented by some practical EU member states' initiatives such as joint maritime patrols in the Mediterranean Sea by France, Spain and Italy or multilateral charter flights to return the irregular migrants to their countries of origin (OECD 2004: 68).

The same trends as in Tampere were expressed by the European Council during its meeting in Seville (21- 22 June 2002); yet the stress was laid on different aspects of cooperation than in Tampere. As Widgren (2002) pointed, the meeting in Seville was preceded by a wave of "anti-immigrant voting in European countries in 2002 and in the end of 2001, so one of the political aims was to calm down the public opinion and regain the far-right voters by means of putting a stop to further illegal immigration" (Widgren 2002: 6-7). Therefore, the main issues

¹⁸ Council Decision of 28 September 2000 establishing a European Refugee Fund (OJ L 252 of 06.10.2000).

¹⁹ The most important regulation in this field encompass: Council Directive (EC) 109/2003 of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 016 of 23.01.2004); Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ L 157 of 15.06.2002).

²⁰ Council Directive (EC) No 90/2002 of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328 of 05.12.2002); Council Directive (EC) No 40/2001 of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ L 149 of 02.06.2001); Council Directive (EC) No 51/2001 of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 187 of 10.07.2001) introducing criminal responsibility of carriers transporting foreign nationals; Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328 of 05.12.2002); Council Framework Decision of 19 July 2002 on combating trafficking in human beings (OJ L 203 of 01.08.2002).

discussed during the meeting concerned measures to combat illegal immigration and possibility of gradual introduction of the coordinated, integrated management of external borders. The fight against illegal migration dominated especially in the evaluation of the idea of integration of immigration policy into the Union's relations with third countries. The Ministers pointed out that "closer economic cooperation, trade expansion, development assistance and conflict prevention are all means of promoting economic prosperity in the countries concerned and thereby reducing the underlying causes of migration flows". What's more, the Council urged that "any future cooperation, association or equivalent agreement which the European Union or the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration" (*Seville Presidency Conclusions, point 33*). Eventually, a form of threat against countries which would not cooperate in combating illegal immigration was formulated. As the Ministers expressed it, such an "insufficient cooperation by a country could hamper the establishment of closer relations between that country and the Union" (*Seville Presidency Conclusions, point 35*).

3.3. Predictions for the future evolution of common migration policy

Any predictions for the future evolution of the EU migration policy may be formulated only on the grounds of analysis of the already existing trends and propositions for further regulations coming from the European Commission (after 1 May 2004 the Commission shall be given the exclusive right of initiative in the areas covered by articles 61 – 63 of the Treaty establishing the European Communities i.e. visas, asylum, immigration and other policies related to free movement of persons).

Some salient indicators for the Community standpoint in these areas may be derived from the European Commission communication on a Community immigration policy presented already in November 2000. The document confirmed the will and the need for development of a common EU policy concerning "separate but closely related issues of asylum and migration" (COM 2000 757: 3). It is also acknowledged that in the view of the new economic and demographic context of the Union and of the countries of origin, "there is a growing recognition that the 'zero' immigration policies of the past 30 years are no longer appropriate" (COM 2000 757: 6). It is also stated that "the channels for legal immigration to the Union should now be made available for labour migrants" (COM 2000 757: 3) and that "the development of a common policy for the controlled admission of economic migrants to the EU should be a part of an overall immigration and asylum policy for the Union" (COM 2000 757: 21). Nevertheless, it was clearly stressed that the strategies did not constitute the adoption of a policy of replacement migration as proposed in the UN report (United Nations 2000). They rather "make up a controlled approach, which is based on a common assessment of the economic and demographic development of the Union, and of the situation in the countries of origin, and take account of its capacity of reception" (COM 2000 757: 14).

Moreover, “Commission believes that, while immigration will never be a solution in itself to the problems of the labour market, migrants can make a positive contribution to the labour market, to economic growth and to the sustainability of social protection systems” (COM 2000 757: 21).

Further evaluation of the goals and methods of Community migration policy may be found in subsequent communications from the European Commission both on immigration and asylum affairs²¹. They introduce an “open method of coordination” as an additional form of cooperation to the legislative initiatives both in the fields of immigration and asylum. Due to the differences between Member States (e.g. their links to the countries of origin, the capacity of reception, labour market needs) the Commission proposed the establishment of an overall framework for cooperation at the EU level co-ordinated by the Commission. This system would be based on exchange of information and periodic reports of the Member States, reviewing the impact of their immigration policies during the past period and making projections on the number of economic migrants they would need in future. The projections would be made with reference to the labour market needs of each Member State, to the agreements with the countries of origin of the migrants, to the public acceptance of additional migrants workers in the country concerned, the resources available for reception and integration, the possibilities of cultural and social adaptation. An “open method of coordination” is proposed to be implemented in the areas of state’s competence such as integration policy or admission of workers.

Additional Communication was dedicated to the problems of illegal migration. The document offered an in-depth analysis of the problem coupled with already existing and proposed measures to combat this negative phenomenon (COM 2001 672). According to the Communication, the fight against all forms of irregular migration shall be one of the main trend in the future migration policy developed within the EU.

However, one must bear in mind the fact that despite the continuous co-operation on immigration issues, often declared good will and the need for development of the common European migration policy, the practice does not fully confirm expressed intentions. Doubts may be raised by both the pace of implementation of the settings and the process of decision-making itself. Muus (2001) notices that “even if non-EU nationals have permanent establishment rights in another EU Member State, they are not entitled to move freely within the EU. All international migration of non-EU citizens is regulated by national law, unless it concerns specific categories of migrants for whom international treaties are valid” (Muus 2001: 41). According to Stalker (2002) “as far immigration from outside the EU is concerned, governments still prefer national policies to supranational ones and have proved reluctant to transfer authority to European bodies (...). This determination to retain sovereign control over immigration was confirmed at a meeting of the European Council meeting at Leaken in

²¹ See: COM (2000) 755; COM (2001) 387; COM (2001) 710.

December 2001 which, while calling for closer cooperation to protect external frontiers, rejected a proposal to create a common European border patrolled by EU border guards” (Stalker 2002: 168). Another confirmation of this standpoint can be found in the Draft Constitution for Europe which provides that all matters related to the area of freedom, security and justice (e.g. asylum and immigration policy, external border control) belong to “the area of shared competence” i.e. area where Union shares competence with the member states (article 13 of the Draft Treaty establishing the Constitution for Europe).

All in all, it is possible to point out some crucial trends which are supposed to be present in the migration policy of the EU in the future. The first one is the tendency to regulate the growing numbers of issues on the Community level combined with some ambiguity in states’ attitude to this phenomena (on the one hand they admit the need to closely cooperate at the EU level, although, on the other, they often express their unwillingness to delegate certain competences to the supranational organs).

Secondly, while opening cautiously for labour migration (due to the labour market and demographic needs) the states will multiply their efforts to combat all forms of irregular migration (human trafficking, illegal migration and illegal residence) in order to maintain maximum control of migration flows. The latter is necessary due primarily to political reasons (public opinion). The governments are certain to make every possible effort to ensure the real temporary character of the immigration in order to avoid the repetition of the *Gastarbeiter* period, when temporary immigration proved to be permanent one.

Thirdly, although the deadline for the establishment of the area without internal frontiers specified in the Amsterdam Treaty (1 May 2004) has not been met, the efforts to achieve it will undoubtedly not cease. This shall be combined with ever stricter border control on the external borders of the Union.

Further, the human rights doctrine’s influence on the migration policy is going to continue to influence the development of EU migration policy in the three basic dimensions – the asylum policy, the right to family reunion and the rights of third country nationals. The analysis of current legislation and the legislation under preparation submitted by the Commission²² may confirm that prediction.

Finally, the coordination with sending countries is probable to be further developed in order to maximise the benefits from migration both to countries of origin and the countries of destination as well as to alleviate the migratory pressure. Such are the politicians’ declarations, yet the scientific research indicating that aid programmes directed at sending countries do not have such impact on reducing emigration as it might have been considered by politicians, may have hampering impact on this trend (Stalker 2002: 171).

²² See for example Council Directive (EC) No 86/2003 of 22 September 2003 on the right to family reunification (OJ L 251 of 03.10.2003).

4. Central and Eastern European Countries' (CEECs) migration policies

4.1. Historic evolution

In contradiction to the western part of the European continent the countries belonging to the Soviet bloc imposed restrictions both on entry and exit rules. Such policy disrupted the natural patterns of migration between the West and the East of the continent which had lasted at least since the mid-nineteenth century. Due to this separation, the CEEC's nationals (with the exception of Yugoslavia) did not take part in the mass migration of the workers to the expanding Western economies. Instead, migration policy in the East became one of the tools exploited by authorities to control citizens. From communist doctrine standpoint, migration regulations were considered a form of "cooperation in eliminating economic disparities" among the socialist countries (Salt, Clout 1976: 24; Widgren 1990: 749). A desire to limit the citizens' contacts with their Western counterparts also played a significant role in such policy. The ethnically driven migration, mainly of Jews and Germans, was an exception to the general line of migration policy in the Soviet bloc. Such regulations resulted in completely different experience in migration field in these countries in comparison to their Western neighbours.

4.2. New challenges of the 1990s

The breakdown of the communism in the Central and Eastern European countries constituted radically new situation for them in every possible political or economic dimension, including new migration challenges which needed the urgent solutions. As Okólski (2000) expressed it "a conspicuous shift from non-mobility to a high-intensity migration regime followed the collapse of communist rule" in the region. New migration laws guarantying the respective state's citizens the right to move abroad and return freely were enacted in Poland in 1988, in Hungary, Czechoslovakia and Bulgaria in 1989, in Romania in 1990 and in the Soviet Union in 1991 (Salt 1993: 45). The general liberalization of the emigration and immigration rules which followed the overall process of liberalizing of the economy and politics created a completely new setting not only for the CEEC, but also for their Western neighbours already involved in creating a new European asylum and immigration regime. Getting the CEEC involved in this ever closer cooperation on migration matters became the EEC countries' vital interest as this could have been a crucial point in handling the asylum crisis successfully. Therefore the migration policies of the CEEC in the 90-s were heavily influenced by the activities undertaken by EEC/EU countries and in many cases followed similar patterns.

Geographical location of the CEEC was responsible for their role as "buffer states" and transit routes for immigrants towards an increasingly closed Western Europe. CEEC were unprepared for such new role both institutionally and financially. This factor combined with

sharp increases in migration flows resulted in measures undertaken especially by Poland, Czechoslovakia and Hungary aimed at tightening their eastern border control in order to curb the inflow of immigrants in these countries (Salt 1993: 46).

Concurrently, in the wave of the overwhelming liberalisation of exit rules, CEEC adopted Geneva Convention with New York Protocol. That enabled them to join the world wide system of refugee protection from which they had been artificially excluded due to political reasons during the previous communism period. Creation of the legal and institutional provisions for assuring the human and refugee rights in CEEC immediately resulted in recognising them as safe countries by their western neighbours. Such measure was in line with EEC/EU countries' efforts in combating the asylum crisis as it opened the new possibility of rejecting the asylum applications from persons coming from CEEC immediately on the border without examining these applications (Lavenex 1998: 280). To take full advantage of such possibilities the conclusion of readmission agreements was inevitable. The first one concluded between the Schengen states and Poland (29 March 1991) applied not only to the citizens of the contracting parties but also to the citizens of the third countries detained and send back on the border. This agreement subsequently served as a model for many similar bilateral agreements concluded between single member states of the EEC/EU and CEE countries. Usually such agreements were accompanied by forms of financial compensation directed at diminishing the costs arising from the agreement's provisions in the CEEC²³. A "chain reaction" of concluding subsequent similar agreements among the CEEC and with their eastern and southern neighbours was an additional effect of concluding these agreements. The European network of countries with ever stricter border control aimed at combating illegal migration arose as a result of this process.

A hypothesis might be formulated that there were two basic tendencies that exerted an overwhelming influence on the CEEC migration policy in the 90-s, both of them coming from their Western counterparts. The first one was the philosophy of human rights and humanitarian tradition of receiving the refugees and asylum seekers. Not only was such a trend displayed in joining the system of refugee protection based on the Geneva Convention, but also in participating in different multilateral governmental forums aimed at spreading these ideas e.g. CAHAR²⁴, OSCE or UNHCR. The second tendency was in many ways opposite to the first one. It represented an increasing tendency towards strengthening the border control and limiting the access to the state's territory for migration purposes. The series of readmission agreements combined with participation in so-called Budapest Process²⁵

²³ For example the readmission agreements signed between Germany and Poland (7 May 1993) or between Germany and Czech Republic (9 November 1994) were coupled with the transfer of DEM 120 million and DEM 60 million respectively aimed mainly at the improvements of border control and building an institutional infrastructure for refugee protection (Lavenex 1998: 281).

²⁴ Ad Hoc Committee of Experts on the Legal Aspects of Refugees within Council of Europe.

²⁵ Budapest Process was a forum of intergovernmental consultations at the ministerial level focused on preventing and combating illegal migration.

created to certain extent the channels for disseminating the EEC/EU “zero immigration” philosophy among the CEEC (Lavenex 1998: 283).

It must be added, however, that although the process of adjustments of the migration regulation to the EU standards has been prevailing in the CEEC since 1989, some characteristic regional features also have to be noted to outline the general picture of the current state of CEEC migration policy. Creation of policies resembling in many ways German *Aussiedler* concept seems to be the most important among them. As, for historical reasons, almost every country in the Central Europe has considerable groups of nationals living abroad, such ethnic co-nationals have been given a privileged migration status in each of CEEC (Wallace 2000: 25).

4.3. The process of adjusting the national law in the CEECs to the EU *acquis*

The first steps of CEEC on their way to European Union were the Europe Association Agreements signed between a singular CEE state and the EEC countries initially limited to economic affairs and trade²⁶. The Association Councils, created by the Agreements, soon become the forum for a bilateral dialog on many issues, including migration. Additionally, the Europe Agreements provided also for movement of workers and right to establish of the CEEC nationals on the EEC states’ territory. According to them CEEC nationals remained subject to the specific EEC countries’ regulations in the area of entrance and residence. Some general rights were assured, however, including equal treatment in working conditions or the right to access the labour market for legally residing workers’ family members (OECD 2001: 121-122). Europe Agreements coupled with bilateral agreements concluded between the EEC/EU members and CEEC have created a legal framework of migration policy in the EU – the EU candidates’ relations.

The processes reflecting the influence of the EU on the CEEC in the field of migration policy described in the previous subsection were to be intensified due to the application of the CEEC for the membership in the EU in the years 1994-1996 and the following process of negotiations and preparation for the full membership in the European Union. The general criteria which must have been met by the candidate countries in order to become members of the Union were set by European Council in Copenhagen (1993) and included among the others the ability to undertake the *acquis communautaire*. The coherent part of the latter represented the legal provisions in the field of Justice and Home Affairs. Additionally, the scope of the *acquis* was extended by the Treaty of Amsterdam, which included the Schengen *acquis* into the legal framework of the Community. This imposed an obligation on the

²⁶ The Europe Association Agreements were signed with the EEC and its member countries by Poland (1991), Hungary (1991), Czech Republic (1993), Romania (1993), Bulgaria (1993) Slovakia (1995), Baltic states (1995) and Slovenia (1996) (Lavenex 1998: 287).

candidate countries to comply with the Schengen standards and obligation in order to become the EU members.

The negotiations on accession were successfully completed in December 2002 and the following Treaty concerning the Accession along with the Act on Accession and related acts were signed in Athens on 16 April 2003. According to the articles 1 and 2 of the Treaty, the accessing countries shall become members of the Union on the 1st of May 2004. Since then, their relations with the old EU members will be submitted to the European Communities law with respect to the provisions made in the Treaty on Accession. In the area of migration, the most important provisions related to the free flow of workers. According to the annexes adjoined to the Treaty, the transitional period of maximum seven years shall precede the full implementation of the rules providing for the free flow of persons for the new EU members. According to provisions laid down in Annexes V-VI, VIII-X and XII-XIV, the old EU states will be allowed to apply national measures and those resulting from bilateral agreements in regulating the access of the new EU nationals to their labour markets during the first 2 years after accession. Subsequently the Council will review the measures undertaken in this area, and countries willing to remain the transitional measures in force for another 3 years will announce their decisions. Five-year long transitional period may be once more extended for additional 2 years if country suffers from serious disturbances or the threat thereof on its labour market.

Therefore, the coming into force of the Accession Treaty will not result in immediate opening of the old EU members' labour markets for the nationals of the new member states. Only Sweden, Ireland and the United Kingdom, according to states' decisions in this area, shall not apply transitional measures in the free flow of workers with some restrictions, however, relating to social protection in case of the UK.

4.4. Future trends after the accession

When analyzing the probable future trends in migration policy of the CEECs one must bear in mind the fact that since 1989 the evolution of such policies has been closely interlinked with the changes in migration policy of their Western neighbours and has been heavily influenced by the latter. This trend of the growing similarity of the migration policies in the countries in the West and in the East of the European continent is very likely to continue in the future. No obstacles may be anticipated from current development of policies that could stop or reverse the process. Additionally, the creation of the new migration regime at the EU level and the consequent need to adjust the migration policy to the European regulations will undoubtedly strengthen this tendency. Especially, the necessity to meet very rigorous criteria in order to join the Schengen group will constitute the factor facilitating the far-reaching unification in the fields covered by the Schengen provisions.

There are, however, some factors which may influence to some extent such straightforward conclusions. First is the question about the pace of changes, which will depend on many political and economic conditions, including the time of abolishing the restrictions on CEECs workers' access to the old EU labour market. Then, one must ask whether the new EU members will maintain their regional differences. Maybe, taking into account the commonly shared experience among these countries, they will head for creating a new eastern dimension of the EU migration policy? And finally, the possible influence of the new members on the enlarged Union's migration policy cannot be omitted in such analysis, as the share they bring with them differs significantly from the experiences of the old member states (van Selm, Tsolakis 2004: 11-12).

All in all, although some aspects highlighted above remain uncertain, future trends in CEECs migration policy will probably be the same as those predicted for Western European countries. A more detailed analysis of such trends can be found in the last section of this paper.

5. National perspective of selected countries

As supplement to the regulations passed at the EU level and attempts to create common European migration policy, some significant national practices of the old and new EU countries will be presented in this section. Main emphasis will be laid on the selective immigration practices present in the national legislation of the growing number of countries and being an answer to the problems on the labour market i.e. shortages of labour supply in some sectors. Affected sectors are mainly those requiring high skills and experience. The EU countries try to attract specialists offering various packages, which include simplified visa and work permit procedures. In most cases, the legal condition to employ a foreigner is that the position to fill cannot be satisfied with the national or other EEA countries citizen. Migration policies seem to recognise labour supply shortages in some sectors, although on the other hand, their selectivity prevents countries from substantial inflow of low skilled workers. The latter seem to be unwanted, even though the shortages of unskilled workers turn out to be repeatedly frequent situation. Only small part of this flow's potential is utilised in mutual agreements regarding temporary or seasonal workers.

There is a common awareness that the scale of the benefits from migration depends to the great extent on the successful integration of the newcomers. Both in the countries presented below as well as in the various documents of the EU organs, a great emphasis is laid on the integration processes. Actions in this field focus in the first place on teaching the host country language and on the fight against discrimination, but they are combined with efforts to facilitate the family reunification and provide the widest possible range of rights of foreign nationals.

To present the widest possible scope of national practises across the enlarged EU certain countries representing different groups in terms of migration policy were chosen. Firstly, Germany, as a representative of countries with high level of immigration and *gastarbeiter* period experience. In the same way Belgium, the Netherlands and the UK can be characterised; however all of them additionally have the colonial past. Then, Swedish migration policy will be delineated as a representative of the Nordic countries with their peculiarities and Spanish migration policy will be presented to highlight the characteristics of the South of the European continent. Finally, the Czech Republic and Slovenia will be the examples of migration policy characterising the EU accessing countries. As a supplement, some light will be shed on the migration policy of Bulgaria and Romania, the EU candidate countries that face radically different challenges in migration management from their Western neighbours.

5.1. Germany

The beginning of a new century was marked by a swing of the pendulum in political discourse on immigration in Germany. Economic conditions (lower unemployment and labour shortages in some branches, especially IT sector) coupled with scientific forecasts highlighting dramatic declining and ageing of the German population (*UN Replacement Migration* report combined with long-term projections by the Federal Office of Statistics) contributed to new positive tone in public debate on immigration since 2000, that highlighted positive aspects of immigration.

The introduction of so-called Green Cards legislation in August 2000 was the first step displaying the departure from the traditional zero-immigration policy in Germany. The aim of these regulations was to alleviate the labour shortages in IT sector. According to them, companies could employ up to 20,000 IT experts from non-EU states (Apap 2003: 10). It is worth noting, however, that although the name Green Card was borrowed from the USA legislation, it did not reflect the character of German initiative, as foreign experts who had been promised or granted authorisation to work were given a residence permit for a maximum of five years (together with their spouses and minor children). The regulation applied to persons with a degree in the field of information and communications technology, from university or higher technical colleges or those who received a job offer with a gross salary of at least € 51,200 per annum. Since late 2001 Green Cards were also granted for nurses and other medical professionals. The person eligible for the programme must have resided outside the EU or EEA and have had good knowledge of German or English. Till January 2003, 13,566 “Green Cards” have been issued; at the time the Green Cards were launched Germany had some 75,000 vacant computer positions. German government has decided to stop issuing green cards from 31 July 2003. The main shortcomings of the Green Card system was the time limit of 5 years, as well as the lack of the work permit for the spouse of the applicant. These limitations have proved to be definitely discouraging factors for potential Green Card applicants.

Only in August 2001, were German immigration regulations for skilled staff further relaxed, mainly with respect to the specialists in the IT and Telecom industries. New rules allowed immediate permanent residency for IT professionals and other highly skilled staff with valid job offers (instead of 5-year Green Card), immediate granting of work permit for the dependents of skilled immigrants and automatic one-year residence permit for the graduates of German universities (to be extended, if the applicant finds work during this period, Apap 2003: 11).

The change in German immigration policy was marked by the new immigration law passed by Parliament in 2002 that replaced the previous regulations (Heckman 2003, p. 53-54). Main principles in this act were drawn from the report of the so-called Süßmuth Commission

that openly called for an admitting that Germany need immigration. However, in December 2002 the German constitutional court invalidated the law due to the way it was passed by the German Upper House of Parliament. The partisan dispute proceeded, and the compromise was reached only in June 2004. The law, adopted by the Upper House of Parliament on 9 July, reflecting wide political consensus on migration, is due to take effect from the 1 January 2005.

A part of German migration policy which underwent recently substantial changes was also citizenship and integration policy. The citizenship law amended in 1999, in force since 1 January 2000, has its origins in the new concept of nation pervading among German establishment marked by a shift from the concept of ethnic nation towards the concept of nation consisting of people living on the same territory. The implications of this radical change for migration policy cannot be underestimated. The new law eased naturalisation, tolerated to some degree double-citizenship and last but not least introduced *ius soli* in gaining a citizenship, the last factor being able to have an immeasurable impact on the processes of integration of migrants. The new immigration law, coming in force on 1 January 2005, was another attempt to improve integration policy as it provided that the state takes a direct and active role in the integration of immigrants. Consequently, the language training and courses on history and civics would be obligatory for new immigrants and open to those already in the country. Generally, with the beginning of new century, integration of immigrants was in many ways eased in Germany, yet the widely spread conviction that successful integration is dependent on limitation of further inflow of immigrants is worth noting (Heckmann 2003: 68-69).

5.2. Belgium

There have been five main channels of legal immigration to Belgium in recent decades. Apart from the intra EU migration, which constituted more than 60% of immigration in Belgium, the family reunion became the second considerable source of immigrants. According to the Belgian law, foreigners legally settled in Belgium have the right to bring in spouses and children under the age of 18 and in certain conditions other family members. The foreign students and asylum seekers represented the third and fourth category respectively. Finally, the labour migration has been the fifth channel of immigration to Belgium. Labour migration was based on work permits of two types: A and B. The B work permit is issued for a one year with authorisation of a work for only one employer. However, the criterion must be met that that the post cannot be taken by a Belgian or the EU worker. During the 1990s about 40 000 persons per annum were given this permit. Additionally, certain categories of immigrants (au pairs, artists or sportsmen) are legally admitted each year. The work permit A is given for an indefinite time without any limitations to the job or profession. To obtain this type of permit a candidate must prove their legal uninterrupted residence in Belgium for five years or legal uninterrupted work based on the work permit B for four years (Martiniello 2003: 227).

Since 1974 the Belgium government has launched the two regularisation campaigns, the first in 1974 and the second in 2000, the latter based on the 1999 law. The criteria laid down in the law were quite broad. In order to be regularised one must have met one of the following conditions:

- engagement in asylum procedure for period of 4 years, or in the case of families with minor children of 3 years, without having been informed of a decision;
- impossibility of returning to the country of origin due to certain conditions (e.g. war);
- suffering a serious illness;
- at least 6 year long stay in Belgium without having received any expelling decision for the last 5 years.

About 50 000 applications for regularisation were submitted. The process of issuing the decision has not been finished yet (Martiniello 2003: 229-231).

As for the Belgian integration policy, most issues are left to the communities and regions. Therefore a wide variety of integration models exist. The naturalisation is, however, regulated at the federal level. The nationality law, recently amended in 2000, is one of the most liberal in the Europe. According to it, legal residents may apply for the Belgian citizenship after three years of residence, two years in case of refugees. Additionally, the acquisition of the Belgian citizenship is possible by simple declaration to foreigners who have legally resided in Belgium for seven years with an unrestricted permit. (Martiniello 2003: 231).

To sum up, although no specific policy encouraging immigration has been introduced in Belgium, the legal immigration has been continued ever since 1974 when the restrictions on the labour migration were imposed. The restrictions on labour migration introduced in 1973 resulted in change of channels and patterns of immigration (family reunification and asylum seekers instead of labour migrants of the pre-1973 period) (Martiniello 2003: 227).

5.3. The Netherlands

The immigration and integration issues have recently been of high profile in the political debate in the Netherlands, especially since 2002 when, unexpectedly, late Pim Fortuyn party won 17.9% of votes in parliamentary elections by calling for the ban on further immigration. Two major groups of persons arriving in the Netherlands are the asylum seekers (about 30 % of all immigrants, 43,900 asylum requests in 2000) and Dutch nationals, counted as immigrants, coming from the overseas parts of the Kingdom of Netherlands i.e. Dutch Antilles and Aruba (van Selm 2003). The law regulating legal residence and work in the Netherlands, the *Vreemdelingenwet* (Aliens Law) of 2000 came into force in April 2001.

The economic immigration into the Netherlands is possible through a work permit system. In order to get such permit it has to be proved that the vacancy was unsuccessfully advertised on the Dutch labour market and that no Dutch or the EU citizen could have been found for the post. Dutch work permit is employer-specific, which means that to work for another Dutch company another work permit would have to be obtained. Additionally, the employer needs to guarantee a salary above the minimum wage for a foreigner. There is possibility to obtain permanent residence after 3 years in the Netherlands on a work permit. If one is working with a valid work permit and holds a temporary residence visa for 5 years, then one can automatically gain permanent residency in the Netherlands (Apap 2003: 14). Citizens of all countries not exempt from requiring a residence visa in the Netherlands must apply for the residence permit before they start work permit application process.

Special attention has recently been paid to the integration issues. Mandatory language and integration courses have been introduced for both economic migrants and asylum seekers. The courses are paid by the participants, yet after the successful completion 50% of the cost may be reimbursed by the state budget.

In general, the Netherlands, being the most densely populated country in the EU and experiencing the net immigration inflow for many years is currently making efforts to curb the further immigration (from all sources) and integrate the foreigners already present in the country.

5.4. The United Kingdom

The Immigration and Asylum Act 1999 and the Nationality, Immigration and Asylum Act 2002 are the most important legal acts underlying British migration policy. Both documents were enacted under the ruling of the Labour Government (elected in 1997) whose governance have been characterised by the remarkable shift in the UK's migration policy towards more openness for labour migration. This new approach stemmed from the recognition of labour shortages in some specific sectors as well as demographic trends and was combined with efforts to curb illegal migration through creating channels for legal immigration (Spencer 2002). The Nationality, Immigration and Asylum Act 2002 introduces new measures to deal with abuses of the asylum system. It establishes an effective asylum process with a system of induction, accommodation and removal centres, updates nationality and citizenship law bringing them in line with the 1997 European Convention on Nationality as well as tackles illegal migration e.g. through introducing a new offence of trafficking in prostitution, and strengthening the offences for traffickers and smugglers in human beings.

The United Kingdom admits about 200,000 labour migrants annually, only 30,000 of whom arriving from the EU countries. Labour migration is organised first and foremost through employer-led work permits system. The permit is given to the specific employer for a named

employee after fulfilling certain criteria (e.g. the employer must previously unsuccessfully advertise for the post, pay and working conditions for the foreign employee must not be lower than those offered to a local worker). Annually, about 100,000 work permits is issued in the UK, most of them directed at health care sector (22.5%) (Spencer 2002).

In addition to work permits system, some other channels for labour migration are opened in the UK. Among them, Highly Skilled Migrants Programme (HSMP), launched on 28 January 2002, which enables persons with high level qualifications and specialist skills to enter the UK in search of the job without a specific earlier job offer. Persons for this scheme are selected basing on the point system, in which points are given for education, experience and previous earnings (Spencer 2002). The professions of special interest for the UK (due to labour supply shortages) are IT, health (doctors and nurses) and higher education academic staff. To qualify for the Highly Skilled Migrants Programme, three of four criteria below must be met:

- individual should hold a PhD or equivalent qualification;
- individual has to have five years of recent graduate experience (or three years, if a PhD is held), two years of which should have been at senior level;
- individual has been earning at least £ 40,000 (€ 64,000) in the previous year or an adjusted salary which was equal to the top 5% of the wage earners in the country in which the last employment took place;
- individual should be able to demonstrate significant achievements in the field.

Applicants could be granted a work permit for one year. Dependents of work permit holders are entitled to remain in the UK during the period for which the permit is valid, providing they can be supported without recourse to the public funds.

The mentioned scheme was a pilot one, lasting for twelve months in the first instance. The new enhanced permanent program was introduced on 28th January 2003 after the success of its predecessor. Applicants leave will be initially for one year. Then, towards the end of the twelve months period, applicants can apply to remain in the same capacity for a further period of up to three years. After four years within the Highly Skilled Migrant Programme, applicants can apply for a permanent residence permit. A special priority is given to doctors.

Beside the HSMP, some other channels for labour migration are present in the British law. In 2000 the programme Innovators allowed “the entrepreneurs with a viable business plan to enter to establish a company despite having relatively little to invest” (Spencer 2002: 4). Furthermore, such categories as Investors (for persons with more than £ 1 million to invest in the UK), Business Visitors (permits to come for maximum 6 months to perform a special task) and Training and Work Experience permits (for persons arriving for training) create specific channels of labour immigration of the skilled workers into the UK.

The trend to attract highly skilled migrants may also be noticed in the relaxation of the rules concerning admission, possibility to work and to stay for foreign students. First programme aimed at attracting more students to the UK was launched in 1999 (Spencer 2002)

Different channels are provided for unskilled workers. The rationale to make the migration easier for unskilled labour force is twofold in Britain. The government want to meet the employers needs (labour shortages) and curb the demand for illegal workers at the same time. The main programmes for unskilled migration are:

- Working Holiday Makers – around 46,000 young people from Commonwealth countries (17-27 years old) are allowed to come to Britain and take up non-professional job for up to 2 years;
- seasonal agricultural workers – for students, mainly form Central and Eastern Europe, who arrive within a set quota;
- Au pairs – around 15,000 per annum;
- Domestic workers – around 15,000 per annum (Spencer 2002).

5.5. Spain

Spain is a representative of the southern European countries which for the centuries have been the traditional emigration countries and only during the recent decades have they become the transit and receiving countries for the growing numbers of immigrants originating mostly from the South.

The law regulating the immigration in Spain is Law 4/2000 (Law on the Rights and Freedoms of Foreigners in Spain and Their Integration), amended by the Law 8/2000 after the Parliamentary elections in 2000. The regulations are generally in line with the European trends, they address *inter alias* the issues of border control and entry rules, integration of immigrants, limiting the irregular migration and call for cooperation agreements with major sending countries.

Basing on the 2000 Law, the Global Programme to Regulate and Coordinate Foreign Residents' Affairs and Immigration in Spain (so-called Plan Greco) was launched in 2001 and is expected to last till 2004. The Plan Greco focuses on four main objectives:

- the creation of the global and coordinated vision of immigration as a desirable phenomenon for Spain as an EU member;
- integration of foreign residents and their families as active contributors to the economic growth of Spain;
- admission regulation to ensure peaceful coexistence within Spanish society;
- management of the shelter scheme for refugees and displaced persons.

Characteristic feature of the Spanish immigration policy are the regularisation programmes, launched in 1985, 1991, 1994, 1996, 2000 and 2001. To some extent they compensate for ineffective and restrictive admission policy, which leaves many thousands of migrants in an irregular position in Spain. Due to the programmes, one-year valid residence permits were granted to the applicants, but “difficulties in renewing it forced many immigrants back into an irregular status” (Ortega Pérez 2003).

The quota system is the basic mechanism used in managing the labour immigration in Spain. It was used in the years 1993-1995, 1997-1999 and since 2002. The aim of the quotas was to direct the immigrants to the labour market sectors which suffered from shortages. Till 2002, it was used primarily by the irregular migrants already present in the country to legalise their status. In 2002 the rules were changed and workers may be recruited only from their countries of origin and through bilateral inter-governmental agreements. Additionally, before the government establishes the annual quota for immigration, the National Employment Institute must issue a report on the national employment situation. The quotas established in the years 2002 and 2003 were found by both the employers and labour unions as unsatisfactory in comparison to the market’s needs (21,195 temporary workers and 10,884 permanent workers in 2002; 13,762 temporary workers and 10,575 permanent workers in 2003). The tendency to lower the quotas displays the government’s efforts to limit the immigration despite the labour market’s needs (Ortega Pérez 2003).

5.6. Sweden

The Swedish regulations on labour immigration were traditionally restrictive. The main principles for labour immigration were formulated in the government’s bill of 1968. It established “a general rule that it should not be possible in the Swedish labour market to use foreign workers to regulate the demand for labour. This should be done, instead, mainly through labour market policy measures such as training of the unemployed, relocation within the country etc.” (Apap 2000: 15). Therefore the residence permits for labour market reasons are granted for foreigners only if the vacancy cannot be fulfilled by the Swedish or the EU/EEA citizen. It is believed in Sweden that labour market shortages could be alleviated by the free flow of workers in an enlarged EU, and only in a longer perspective additional import of the labour force could be required.

Only 433 permanent residence permits were granted for labour market reasons in Sweden in 2000. Additionally, about 19,400 temporary work permits were granted in the same year, in comparison to 15,000 in the previous year (Apap 2003: 15).

Work permits can be granted mainly to experts and key people in the industry, research, culture and sports, but also to self-employed business people. They may be granted within international exchange programmes (trainees), or seasonal employment in case of temporary

labour shortage. The permit must be issued before entry into Sweden. “Permits are granted for the duration of between 1 day (e.g. artists and athletes) and up to 18 months regarding labour shortage and up to 48 months regarding international exchange” (Apap 2000: 15).

To apply for work permit, a candidate must:

- possess a written offer of work and employment in Sweden
- employer must guarantee a minimum salary of 1,300 EUR per month before tax or a salary in accordance with a Swedish collective wage agreement),
- have accommodation arranged before entry,
- be ready to leave Sweden if the contract expires.
- In addition, the National Labour Market Board always should give their approval (Apap 2003: 15).

In Sweden, like in other countries, the tendency to limit and control labour immigration has been combined with growing efforts to promote and enhance the integration of the already admitted foreigners.

5.7. The Czech Republic

During the 1990s the discussion about the migration policy in the Czech Republic was focused on two main aspects - the preparation for the membership in the EU and combating all forms of irregular migration. Therefore the legislation and practise have been amended in order to meet the EU standards. Currently, the Act on the Stay of Aliens on the Territory of the Czech Republic and the Act on Asylum, both of 1999 are the main legal acts creating the legal basis for the regulating the status of foreigners in the Czech Republic.

Similarly to many other countries, the main channel of immigration into the Czech Republic remains the family reunion, guaranteed by both of the Acts of 1999. As for the labour migration, the work permit system is the basic form of regulating this process. Work permits are issued by the job centres only provided that the vacancy cannot be filled by a Czech or the EU national. The system is strongly employer-led, as the employer has to submit a number of necessary documents in order to take up a foreign employee, and the work permit is issued only for a specific job offer (Drbohlav 2004: 78 – 79).

Contrary to these regulations, the conditions for establishing a business in the Czech Republic remain fairly liberal. The requirements to be a self-employed person in this country are only formal and easy to meet. In contradiction to other countries there is no need to provide a detailed business plan or to prove that the planned undertaking would benefit local economy or local labour market. Due to relative easiness to establish a business, this legal way is often

abused by the foreigners, as the division between the bona fide self-employed person and the actual employee may be blurred (Drbohlav 2004: 79).

According to the Czech legislation, a foreigner may apply for the residence permit only following a continuous 10 year long stay on the Czech territory with a visa for over 90 days or with visa for the purpose of temporary protection. The time period requirement seems to be rather long in comparison to the other European countries. Similar remarks may be formulated in relation to the acquisition of the citizenship as a person may apply for the Czech citizenship only after holding a permanent residence permit for 5 years. Coupled with 10 years time necessary to get such permit, it makes 15 years of waiting. Additionally, the applicant must meet very strict economic and social criteria. Due to such regulations the number of naturalised persons in the Czech Republic is relatively low, amounting to around one thousand persons per annum in recent years. Consequently, some proposals are being formulated in reference to the citizenship law to bring it to the line with the practise of the majority of European countries and to the regulations laid down in the European Convention on nationality (Drbohlav 2004: 83 – 84).

An important new initiative was taken by the Czech Ministry of Labour and Social Affairs, expressed in the “Proposal for Active Selection of Skilled Foreign Workers”. Basing on this proposal, the Czech government launched in 2002 a pilot programme for the active selection of the qualified foreign workers. The quotas were established for the first two years – 600 and 1200 persons for 2003 and 2004 respectively. The persons arriving within this new scheme and their families will be allowed to apply for a permanent residence permit after the two-and-half year stay in the Czech Republic. Such initiative indicates the trend towards selective immigration policy already present in migration policies of some Western European countries (Drbohlav 2004: 98-99).

5.8. Slovenia

The year 1991 marks the beginning of the Slovenia’s independence and thus the beginning of creation of the migration policy at the national level. Likewise in other Central and Eastern European countries, the preparation for the membership in the EU was the primary political goal. Therefore, the newly created Slovene legislation followed in many ways the patterns and directions present in the legislation and practice of the European Union countries. Four legal acts - Aliens Act, Asylum Act, Law on Temporary Refuge, Employment and Work of Aliens Act - form the legislative background for the formulation and implementation of the Slovene migration policy.

The Employment and Work of Aliens Act is the main act regulating the economic migration in Slovenia. It sets the policy priorities as well as the maximum quotas of admitted workers

and defines the conditions under which the work permits are issued. Three types of work permits exist in Slovenia according to this act:

- personal work permit – allows for the free access to the labour market for a fixed time (one to three years) or permanently;
- work permit for the purpose of employment – allows for the work for the specific employer;
- work permit – allows for temporary employment in Slovenia in a fixed category of work (Zavratnik Zimic 2004: 50-52).

Annually, the government determines the quota of the work permits that can be issued in the current year. The assessment of the labour market needs is the main factor contributing to such decision, with the condition that “the number of the annually issued work permits cannot exceed the 5% of the economically active population in Slovenia”. The quota does not comprise the citizens of the European Union, foreigners in possession of the personal work permit or managers (Zavratnik Zimic 2004: 52, 57).

The permanent residence permits are issued for person who have resided legally on the Slovenia’s territory on the basis of the temporary residence permit for eight years. However, this time period could be shorter for aliens of Slovene origin, members of family of the Slovene citizen, or persons granted the refugee status. Additionally, according to the Aliens Act, every two years the Parliament is obliged to hold a discussion on migration issues and subsequently to issue a resolution on immigration policy. Basing on such resolution, the government sets the quota for the number of residence permits that can be issued in the current year (Zavratnik Zimic 2004: 61).

5.9. Bulgaria and Romania

Both of these two EU candidates share so many similar features in the study field that this fact justifies treating them as a group. After the collapse of the communist regimes, Bulgaria and Romania could not keep up with the rest of the CEEC and the process of the economic and social transformation was substantially delayed in comparison to the other post-communist countries. Due to the low economic growth and high unemployment rates both of them become primarily the countries of origin and transit for migrants rather than potential destination places in the 1990s. Therefore the main challenges for the Bulgarian and Romanian migration policy were drastically different from the challenges for such policy faced by other European states.

Owing to the restrictions imposed by the EU countries (visa regime until 2001, restrictive labour immigration policy) the primarily way of access of Romanian and Bulgarian citizens to the Western labour markets were the irregular forms of migration. The main instruments used

by the Bulgarian and the Romanian government to cope with this negative phenomenon were the bilateral agreements signed with Western European countries that created legal channels for seasonal labour migration of Romanian and Bulgarian workers (Lazaroiu 2004: 49; Guentcheva et al. 2004: 72-73).

Nevertheless, all the most important amendments in the legislation and practice of Bulgarian and Romanian migration policy were subject to the primary goal of their foreign policy which is the joining of the EU. It led to a kind of paradox, when the reality in both of them lagged far behind the legislation measures implemented in order to standardise their law with the EU *acquis*. Being the unattractive countries for the potential immigrants, both of them introduced EU measures to counteract the abuses of asylum procedures and to prevent illegal immigration. At the same time, the real challenge for their migration policy remains to alleviate the negative consequences of the large outflow of emigrants (brain drain effect, negative demographic trends, and the negative image of the countries in the Western Europe) and making the incentives for the return of the highly-qualified nationals (Lazaroiu 2004: 62; Guentcheva et al. 2004: 58-66, 76).

As a result of the migratory movements in the 1990s, Bulgaria and Romania are seen in Western Europe as the potential migration-sending countries with well-established migration networks in the EU. Moreover, despite their efforts and the significant amendments in legislation in 2003, they remain also the important countries of origin and transit in the procedure of trafficking in human beings. Additionally, their situation is complicated to certain extent by some ethnic relations problems. In Romania, the situation of the Roma minority gives rise to uncertainty as well as the close ties to the Republic of Moldova, the poorest nation in Europe. The Moldavians, constituting the largest part of the scarce immigration to Romania, speak in fact the same language and are not treated as foreigners rather as 'poor relatives', working predominately illegally in rural areas in Romania (Lazaroiu 2004: 5). Bulgaria has close relations with Turkey, mostly due to the Turkish minority present on its territory (Guentcheva et al. 2004: 15). Both countries, Moldova and Turkey are on the EU visa list.

All of these factors have influenced the already finished negotiations on Bulgarian EU membership and the currently conducted negotiations on Romanian EU accession. The next EU enlargement is supposed to take place in 2007; yet, some concerns are expressed by EU officials that Romania lags behind Bulgaria in the process of preparation to the accession. Both countries have provisionally closed the chapters on the free movement of workers (Bulgaria in June 2002, Romania in December 2003). The transition periods for the free flow of workers agreed with Bulgaria and Romania are identical to those foreseen for the eight Central and Eastern European countries in the 2004 enlargement. As a result, Bulgaria and Romania are supposed to fully participate in the European free flow of workers no sooner than in 2014.

6. Expected directions of migration policy developments

In an attempt to predict future migration policy, one must bear in mind the fact that considerable uncertainty will always surround such forecasts due to the changing and unpredictable economic and political milieu in which the migration policy imperatives are formulated.

Demographic and economic concerns expressed by the researchers in the recent years, especially in the United Nations report *Replacement Migration* (UN 2000) and in the reactions to it, were given a wide media coverage and attracted great publicity to the migration issues. Once again the profile of migration policy was raised in the public debate. This fact renders all the forecasts of future migration policy evolution even more uncertain, as migration policy formulated in such conditions will probably be easily influenced by fluctuations in the public opinion.

However, as migration policy plays a crucial role in determining the scale and patterns of international migration, some predictions are necessary to be made in order to forecast future migratory flows. Although scientists debate over the causes of migration, the role of state in this process and the extent to which the migratory movements may be controlled in today's world (Massey 1999, 2003, Freeman 1995) nobody questions the fact that states try to control international migration through migration policy to maximum possible extent, usually laying much more emphasis on the immigration rules than on the emigration ones. Assuming that the present liberalism of the exit rules will not change in the foreseeable future in European countries, the factor which is sure to wield power over the legal migration flows are the entry rules of the major in-taking states. As Meyers (2000: 1245) points out "given the large number of people who would like to emigrate to the industrialized countries for economic or political reasons, and the strictly limited opportunities to do so, it is immigration policy that mainly determines the scope of global migration".

The growing restrictiveness of the immigration rules is the world-wide present trend in the migration policy of the developed countries. According to Massey (2003) there are three factors that contribute to such phenomenon – the rising volume of immigration, increasing social disparities and persistent unemployment. Both migration theory and empirical research in the field associate these factors with tighter immigration restrictions. Additionally, the end of the Cold War eliminated the most important foreign policy motivation to accept unwanted immigration. The restrictiveness of immigration policy may be seen in the enhancement of border control, ever stricter measures regarding all forms of irregular migration, limitations on the admission of the foreign nationals to social services or general avoidance of admitting foreigners for employment purposes.

The restrictiveness of immigration policy is often combined with “evolution towards greater selectiveness and favouring the admission of individuals and groups of people who meet specific labour market needs” (United Nations 2002: 20-21). In line with this trend comes the study carried out in 12 OECD-countries that revealed a significant correlation between the state’s migration policy and such variables as the ability of migrants to assimilate in the host society, migrants’ labour market success measured by the wage differences between the migrants and native born population and the attitudes of the natives towards immigrants (Bauer et al. 2000). Interesting conclusions may be drawn by the migration policy-makers based on the results of their studies which showed that successful assimilation of the immigrants coupled with positive sentiments of the natives towards them takes place to the greatest extent in the countries leading selective immigration policy dependent on the market needs. This empirical evidence provides scientific background for the above described measures already implemented by some European countries concerning the access to their labour markets limited by demand-supply rule. Additionally it confirms the prediction of the further development of migration policies in the European countries in this direction. Ever more popular becomes the vision of adopting by some European countries the points systems based on the experiences of the traditional countries of immigration such as the USA, Canada or the New Zealand (Papademetriou 2003).

Contrary to the growing number of initiatives aimed at attracting the highly skilled workers, an attitude of the European countries towards unskilled immigration may be characterised as a very cautious openness. The vast majority of international agreements concluded in this field provide for temporary (usually very short term or seasonal) migration. The rationale for such initiatives is twofold. First, such agreements meet the needs of employers who articulate their concern about labour shortages in some sectors, demanding unskilled and socially low regarded work. Secondly, temporality of the employment soothes the public opinion, which is generally reluctant to the increase in the volume of the immigration. Temporary immigration seems to be the instant remedy for the shortages of the workforce, especially that it do not require taking politically risky decisions about openness for the permanent labour immigration. Therefore, unless any serious perturbations on the labour markets take place, this trend is very likely to continue in the future.

The implementation of measures directed at combating the root causes of migration (i.e. combating the economic disparities between the sending and the receiving states) seems to be another important dimension of migration policies in European countries which is supposed to be further developed. Despite some obvious weaknesses of such attitude (Stalker 2002: 171), the aforementioned trend received strong support among some researchers (Salt 1993) and European politicians (Tampere *Presidency Conclusions*; COM 2000, 757 final). A part of this strategy foresees including migration matters into the framework of external relation with third countries (see Seville *Presidency Conclusions*).

Further, the intensification of the efforts towards the integration of migrants already present on their territories is going to be another salient feature of the migration policy of the European states in the future. The regularisation programmes aimed at legalising the status of undocumented migrants in European countries, popular especially in the South of the continent constitute one of the dimensions of this phenomenon. The efforts to enhance integration through legal obligations such as obligatory language courses make another one.

To give a comprehensive picture of the future of the migration policy such factors like growing institutionalisation of international cooperation in this field and the emergence of international human rights regimes must also be mentioned. The considerable increase in the number of forums on which the migration issues are discussed and coordinated cannot be underestimated. First, such forums are likely to continue to facilitate the existence and the development of the commonly accepted legal norms (such as the obligations resulting from the expansion of the human rights doctrine). Secondly, they will probably still facilitate the cohesion of the national practises. To the maximum extent such cohesion took place among the EU member states, but the candidate countries (Bulgaria, Romania) are also under its influence.

Last but not least, the relations between the EU and its member states have to be highlighted as factors determining the future migration policy of the European countries. As it was stated above, the increasing numbers of issues were shifted from the national regulations to the EU level. The process is still not completed. The fluctuations in the willingness of the states to hand over an increasing part of their sovereignty to the European institutions are the crucial factors hampering the progress in the development of the common migration policy. Although the main directions in which such policy is likely to evolve can be predicted drawing from the communications from the Commission and conclusions of the European Council (see section 1.2.3), the fundamental question about the speed of the implementation of the declared goals is left unanswered. The future seems to be even more uncertain considering the fact of the EU enlargement. The agreement on such delicate matters as immigration quotas or common border control will be more difficult to reach among the 25 members of the Union. The question, how else will the enlargement change the EU migration policy, remains also unanswered. In other words it is uncertain, whether the experience of the new members will affect in any ways the Union's vision and philosophy adopted by the old 15 Member States (van Selm, Tsolakis 2004: 11-12).

As Massey (2003) points out, immigration policy is often presented as a choice between closed and opened borders. In this case, all predictions about the future of the migration policy would have to be focused on one question – which forces will prevail, those facilitating openness or those tending to closure? Such vision would be justified when analysing the post-war immigration policy of the Western European countries, where the period of openness was replaced by the ever stricter closure since 1973. However, these patterns are not applicable any more. When analysing the present and the future migration policy of the European

countries the key phrase are the words “to manage migration”. They express the general philosophy underlying the thinking about migration and policy making process in this field. When realising that the migratory movements are unavoidable, the desire to manage them effectively becomes predominant in the way of thinking of both politicians and researchers. Therefore, all the probable features of the future migration policy of European countries described above may be classified as parts of the general strategy to orderly manage migratory flows.

References

- Apap J. (2003), *Shaping Europe's Migration Policy. A Comparative Analysis of Member States' "Green Card" Legislation: A Comparison of Strategies in Germany, Sweden, The Netherlands and the UK*, paper presented on the conference „National and European immigration policy after the EU enlargement”, Fourth European Seminar of CASE and Leopold Kronenberg Bank Foundation, Warsaw, 16.05.2003.
- Bauer T., M. Lofstrom, K. F. Zimmermann (2000), *Immigration Policy, Assimilation of Immigrants and Natives' Sentiments towards Immigrants: Evidence from 12 OECD-Countries*, IZA Discussion Paper 187.
- Drbohlav D. (2004), Czech Republic: The Times They Are A-Changin', [in:] *Migration Trends in Selected EU Applicant Countries*, Vol. II, IOM, Vienna.
- European Commission (2000a), *Communication from the Commission to the Council and the European Parliament; Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum*, COM (2000), 755 final, 22.11.2000.
- European Commission (2000b), *Communication from the Commission to the Council and the European Parliament; On a Community immigration policy*, COM (2000), 757 final, 22.11.2000.
- European Commission (2001a), *Communication from the Commission to the Council and the European Parliament; On an open method of coordination of the Community immigration policy*, COM (2001), 387 final, 11.7.2001.
- European Commission (2001b), *Communication from the Commission to the Council and the European Parliament; On a common policy on illegal immigration*, COM (2001) 672 final, 15.11.2001.
- European Commission (2001c), *Communication from the Commission to the Council and the European Parliament on the common asylum policy, introducing an open coordination method; First report by the Commission on the application of Communication COM (2000) 755 final of 22 November 2000*, COM (2001) 710 final, 28.11.2001.
- European Commission (2002), *Up-date on the development of a common policy on migration*, Bruxelles, 7 October 2002.
- European Communities (1997a), *Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of European Communities*, Official Journal No C 254 of 19 August 1997.
- European Communities (1997b), *Treaty of Amsterdam amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts*, Official Journal C 340 of 10 November 1997.
- European Communities (2000a), *The Agreement between the governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders*, Official Journal L 239 of 22 September 2000.
- European Communities (2000b), *Convention signed in Schengen on 19 June 1990 between the governments of the States of the Benelux Economic Union, the Federal Republic of*

- Germany and the French Republic implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders*, Official Journal L 239 of 22 September 2000.
- European Communities (2000c), *Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000*, Official Journal L 317 of 15 December 2000.
- European Communities (2001), *Treaty of Nice amending the Treaty on European Union, the treaties establishing the European Communities and certain related acts*, Official Journal C 80 of 10 March 2001.
- European Communities (2002a), *Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free flow of persons*, Official Journal L 114 of 30 April 2002.
- European Communities (2002b), *Treaty on European Union (consolidated version)*, Official Journal C 325 of 24 December 2002.
- European Communities (2003a), *Draft Treaty establishing a Constitution for Europe*, Official Journal C 169 of 18 July 2003.
- European Communities (2003b), *Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded*, Official Journal C 227E of 23 September 2003.
- European Communities (2003c), *Treaty concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union*, Official Journal C 227E of 23 September 2003.
- European Council (1999), *Presidency Conclusions, Tampere 15-16 October 1999*, http://europa.eu.int/council/off/coclu/oct99/oct99_en.htm.
- European Council (2002), *Presidency Conclusions, Seville 21-22 June 2002*, http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/eu/72638.pdf.
- Freeman G. P. (1995), *Modes of Immigration Politics in Liberal Democratic States*, *International Migration Review* 29 (4): 881-902.
- Guentcheva R., P. Kabakchieva, P. Kolarski (2004), *Bulgaria: The social impact of seasonal migration*, [in:] *Migration Trends in Selected EU Applicant Countries*, Vol. I, IOM, Vienna.
- Hammar T. (1985) (ed.), *European Immigration Policy*, Cambridge University Press, Cambridge
- Heckmann F. (2003), *From Ethnic Nation to Universalistic Immigrant Integration: Germany*, [in:] F. Heckmann, D. Schnapper (eds.) *The Integration of Immigrants in European Societies*, Lucius & Lucius, Stuttgart.

- Integration Office DFA/DEA (2004), *The EU extension and the extension of the Agreement on the Free Movement of Persons*, www.imes.admin.ch.
- IOM (2003), *World Migration 2003. Managing Migration; Challenges and Responses for People on the Move*, IOM, Geneva.
- Kupiszewski M. (2003), *Consequences of EU enlargement for freedom of movement between Council of Europe member states*, Report to the Committee on Legal Affairs and Human Rights of the Council of Europe.
- Langrish S. (1998), The Treaty of Amsterdam: Selected Highlights, *European Law Review* 23 (1): 3-19.
- Lavenex S. (1998), Asylum, Immigration, and Central-Eastern Europe: Challenges to EU Enlargement, *European Foreign Affairs Review* 3 (2): 275-294.
- Lazaroiu S. (2004), Romania: More 'Out' than 'In' at the Crossroads between Europe and the Balkans, [in:] *Migration Trends in Selected EU Applicant Countries*, Vol. IV, IOM, Vienna.
- Loescher G. (1989), European Community and Refugees, *International Affairs* 65 (4): 617-636.
- Martiniello M. (2003), Belgium's immigration policy, *International Migration Review* 37 (141): 225-232.
- Massey D. S. (2003), *Patterns and Processes of International Migration in the 21st Century*, paper prepared for Conference on African Migration in Comparative Perspective, Johannesburg, South Africa, 4-7 June.
- Massey D. S. (1999), International Migration at the Dawn of the Twenty-First Century – the Role of the State, *Population and Development Review* 25 (2): 303-322.
- Menkes J. (1997), From police cooperation to an "area of freedom, security and justice", *The Polish Quarterly of International Affairs* 6 (3): 59-78.
- Meyers E. (2000), Theories of International Immigration Policy – A Comparative Analysis, *International Migration Review* 34 (4): 1245-1282.
- Muus P. (2001), International Migration and the European Union, Trends and Consequences, *European Journal on Criminal Policy and Research* 9 (1): 31-49.
- O'Keeffe D. (1995), The Emergence of a European Migration Policy, *European Law Review* 20 (1): 20-36.
- OECD (1999), *Trends in International Migration, SOPEMI Annual Report 1998*, Paris.
- OECD (2001), *Migration Policies and EU Enlargement. The case of Central and Eastern Europe. International Migration*.
- OECD (2003), *Trends in International Migration, SOPEMI Annual Report 2002*, Paris.
- OECD (2004), *Trends in International Migration, SOPEMI Annual Report 2003*, Paris.
- Okólski M. (2000), *Recent trends and major issues in international migration: Central and East European Perspectives*, UNESCO 2000.
- Ortega Pérez N. (2003), *Spain: Forging an Immigration Policy*, Migration Information Source, www.migrationinformation.org.
- Papademetriou D. (2003), *Innovation in the Selection of Highly Skilled Immigrants*, Policy Brief 15, Migration Policy Institute, www.migrationpolicy.org.

- Plender R. (ed.) (1988), *Basic Documents on International Migration Law*, Martinus Nijhoff Publishers, Dordrecht-Boston-London.
- Rymarczyk J. (1986), *Migracja siły roboczej do krajów EWG i jej konsekwencje społeczno-gospodarcze (The Migration of the Labour Force to EEC Countries and its social and economic consequences)*, Instytut Zachodni, Poznań.
- Salt J., H. Clout (1976), *Migration in Post-War Europe. Geographical Essays*, Oxford University Press.
- Salt J. (1993), *Migration and Population Change in Europe*, UNIDIR Research Paper No 19.
- Salt J. (2000), *Europe's Migration Field*, Workshop on Demographic and Cultural Specificity and Integration of Migrants, 10-11 November 2000, Bingen, Germany.
- Salt J. (2001), *Current Trends in International Migration in Europe*, Council of Europe, November 2001.
- Sawicki S. (1986), *Prawo państwa do regulowania międzynarodowego ruchu osobowego, (State's competence to regulate international population movement)*, Warsaw.
- Selm J. van, E. Tsolakis (2004) *The Enlargement of an "Area of Freedom Security and Justice". Managing migration in European Union of 25 Members*, Policy Brief 4 / 2004, Migration Policy Institute, www.migrationpolicy.org.
- Selm J. van (2003), *The Netherlands: Tolerance Under Pressure*, Migration Information Source, www.migrationinformation.org.
- Spencer S. (2002), *Recent Changes and Future Prospects in UK Migration Policy*, paper presented at the Ladenburger Discourse on Migration, 14-15 February 2002.
- Stalker P. (2002), Migration trends and migration policy in Europe, *International Migration* 40 (5): 151-179.
- Straubhaar T. (2002), *New Migration Needs a NEMP (A New European Migration Policy)*, HWWA Discussion Paper 95.
- United Nations (2000), *Replacement Migration: Is it A Solution to Declining and Ageing Populations?*, United Nations, New York.
- United Nations (2002), *International Migration Report 2002*, United Nations Population Division, Department of Economic and Social Affairs.
- Wallace C. (2000), *Patterns of Migration in Central Europe*, paper on the Conference on Economic and Social Dimensions of EU Enlargement, Brussels, November 2000.
- Widgren J. (2002), *New trends in European Migration Policy Cooperation*, lecture at the Migration Seminar Series at MIT, Harvard University, 19 November 2002.
- Widgren J. (1990), International migration and regional stability, *International Affairs* 66 (4): 749-766.
- Wierzbicki B. (1993), *Uchodźcy w prawie międzynarodowym (Refugees In International Law)*, PWN, Warsaw.
- Zavratnik Zimic S. (2004), Slovenia: The perspective of a country on the 'Schengen periphery', [in:] *Migration Trends in Selected EU Applicant Countries*, Vol. VI, IOM, Vienna.

■

ISSN 1732-0631
ISBN 83-920313-5-0

Printed in Poland