

The EU and Immigration: An Island View - Can Britain pull up the drawbridge?

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Conference Report

The conference was opened by Brendan Donnelly, Director of the Federal Trust, who thanked the European Commission Representation in London for making this conference possible through their generous support.

As the first speaker, **Agnieszka Weinar**, from the European Commission DG for Justice, Freedom and Security, addressed the question of whether the EU can pull up the drawbridge on immigration. She began by explaining that we can no longer – considering our demographic and economic problems – give a negative answer to this question. This is why she interprets the challenge in a different way, asking whether the EU can work out a common policy. This is precisely what the European Commission is working on at the moment. She briefly outlined the history of treaties in this area, stressing that today the EU migration policy is very much the product of negotiations between the Commission and the Member States. Because of the complex mixture of competences in this area and the increased need for consultation, the Commission cannot bring forward proposals as easily as it does in other policy areas. The EU's competences only lie in the admission of non-EU nationals, whereas everything else, concerning labour markets, social rights etc, still lies within the competence of the Member States. However, the institutions are working on bringing through a package of directives on issues such as family reunification, the status of long-term residents, the admission of students, and the admission of researchers. Yet, Ms Weinar stressed that in all these areas the Member States retain their right to decide who and how many people may be admitted to their territory. She went on to outline the political consensus evolving on rules relating to legal migration. Negotiations are ongoing on proposals on the Blue Card Directive, Framework

Directive on Single Parent and Migrant Workers Rights, on Seasonal Workers, on Remunerated Trainees, and on Intra-corporate Transferees. With respect to the Blue Card, Ms Weinar underlined that this is not to be confused with the American Green Card, a very different concept from the Blue Card which aims at a fast-track procedure for the admission of highly qualified third-country workers based on common criteria. Workers admitted under the scheme will receive a special residence and work permit called the 'EU Blue Card' entitling them to a series of socio-economic rights and to favourable conditions for family reunification. In addition, access to the labour market in the Member State is subject to a restriction for an initial period of two years.

Next Ms Weinar described a range of tools, adopted by the EU, aimed at enhancing integration (such as the National Contact Points Network, a Handbook on Integration, The European Integration Forum, an Integration Fund and a forthcoming Integration Website). The question of asylum has become a separate policy area, detached from immigration policy, and where harmonisation on a European level has gone relatively far. This is also the field in which the UK makes its most important contribution to European immigration policy. In particular, the United Kingdom focuses on the global approach to migration, fostering partnerships with countries of origin and promoting labour movement.

The next speaker, **Dr Eiko Thielemann** from the London School of Economics, presented the British view of immigration, discussing its exceptional status in Europe. His focus was on asylum since, as he explained, this is the area with the highest degree of harmonisation in the EU. He outlined the structure of his presentation, which would focus first on the extent to which the British experience



differs from the wider European context. Then he would look at the impact of the EU on the UK's national asylum and immigration policy. Finally, he would analyse more closely the more recent British attitudes and the extent to which Britain has made use of its opt-outs.

Dr Thielemann briefly described the evolution of asylum applications, from relatively low numbers in the 1980s, increasing dramatically after 1989, fluctuating in the 1990s, rising in the early 2000s, but experiencing a fairly significant decline since about 2003. Dr Thielemann's conclusion was that these numbers are crisis-driven. With regard to accepted refugees, the UK's numbers have been declining more rapidly than elsewhere, but in absolute numbers the UK is still at the more generous end of the spectrum.

In respect of the impact of the EU on national policy responses to immigration, Dr Thielemann observed two phenomena. First, Europe's asylum policies have consistently become more restrictive, and secondly, this restrictiveness has been enhanced/facilitated through European co-operation. It is clear, he explained, that it has become more difficult for individuals to reach European territories, and European co-operation has contributed to making this more difficult. However, Dr Thielemann does not think that there is evidence suggesting a uniformly negative impact on refugee policy in Europe.

There are those for instance who claim that European co-operation can strengthen refugee protection since minimum standards at EU level halt a "race to the lowest standards" and EU policies can lead to upgrading of domestic laws.

Finally, with respect to the UK opt-outs, Dr Thielemann reiterated that the UK has broadly opted into everything except the Return Directive, the reason for this being the wish to keep the possibility of unlimited detention of asylum seekers as a deterrent for asylum applicants. Current debates in Brussels over a reformed Reception Directive question whether the UK will continue to be part of this regime. In conclusion, Dr Thielemann warned that the UK's increasing willingness to opt-out means that British views on asylum might become increasingly exceptional in Europe.

The final speaker, **Professor Steve Peers** from the University of Essex, took a closer look at British opt-ins and opt-outs, and at the degree to which rhetoric differs from the reality. He first addressed the question of how far refugees can move freely within Europe, identifying two answers: if individuals are recognised as refugees and have been given a residency permit, they then have the freedom to travel, subject to the Schengen agreement. Yet, if individuals want to move permanently to live in another Member State, the EU Long Term Residents Directive

usually applies, according to which individuals can move after five years, subject to certain conditions. However, this Directive specifically excludes refugees, something that the Commission intends to change, but which requires a unanimous vote in the Council.

After this brief introduction, Professor Peers explained that he would first present the overall EU framework of decision making, next he would explain how the opt-outs are applied in practice, finally he would take a look more broadly at the influence of the EU immigration and asylum laws on the UK.

In terms of the overall framework, Professor Peers explained that for a period of about five years, from 1999 to 2004, decision-making in this area was basically unanimous. In 2005 the process changed, decisions becoming subject to qualified majority voting in the Council and applying co-decision with the European Parliament. The Lisbon Treaty would change things again: QMV and co-decision would apply in all areas with the goal of full harmonisation of European migration policy as well as the asylum system.

In terms of opt-outs, Professor Peers pointed out two different types. First those that apply to immigration and asylum laws in general, giving the UK the general freedom to decide whether to opt in, but where the increasing use of QMV and co-decision could be a deterrent to opting in more frequently. The second is that of the Schengen rules, including rules about common borders, as well as policing, criminal law and irregular migration. The UK has largely opted into all of these latter arrangements, except the abolition of border controls between Member States. In some cases where the United Kingdom now wished to opt-in to further arrangements with its partners, it was unclear whether the first more liberal regime, or the second more restrictive Schengen regime for British admission applied. Professor Peers pointed to two ECJ cases which supported the Council in rejecting the UK's wish to opt only into limited policy areas. A further case on limited participation in the EU Visa information system is pending. It will be a fundamental decision on whether the UK is allowed access without participating in the whole regime.

In addition, new Commission proposals for amending the rules of asylum procedures and the qualification of refugees are pending. The British government will have to decide whether it is fully committed to this new regime. If not, Professor Peers warns, it might no longer be participating in any significant way in the European asylum system.

In conclusion, Professor Peers noted that there is a very clear influence of the EU on national British regulations in terms of asylum policies. In other areas such as visas and border protection, the UK has been able to exercise a

great deal of autonomy. However, Professor Peers believed that the Lisbon treaty would change the whole dynamic of British opt-outs.

Finally, on the question of whether national policy has been indirectly influenced by EU actions, one can find examples of the UK aligning its policies with the EU. On the other hand there are cases where the EU has taken UK policies as examples. In the longer term, Professor Peers predicts that the other Member States might not continue accepting as willingly the exercise of British opt-ins/opt-outs as they have so far. There is a real risk of increased British detachment in matters relating to the former Justice and Home Affairs pillar.