

## EDITORIAL COMMENTS

### **The identity of the European Union from the perspective of third countries**

The summer holiday season allows us to take a somewhat more detached look at our daily work, and for that matter at the European Union. In addition, holidays spent in countries outside the Union may confront us with views and opinions of third country citizens and their expectations about the Union, and thus incite us to reflect on its role in the world. More concretely they may confront us with the identity of the European Union as it is perceived by third countries and their citizens. The impression that emerges is that the foreign policy of the Union needs to gain coherence. And, not surprisingly, similar views are expressed about EU immigration policy. This perceived lack of coherence may cause harm to the standing of the Union in the international political arena. The image of the Union could be improved by a deliberate effort to find fresh inspiration internally for the shaping of our relations towards third countries.

From the 1960s a combination of newly introduced statutory holidays with a high income level and efficient and, relatively, cheap air transport created massive tourism, starting in the countries surrounding the Mediterranean Sea. The tourist industry there has to a considerable extent been financed by capital flows from EU countries. It has also been stimulated by the abolition of balance of payments restrictions which in the 1960s and 1970s still existed in some of the present EU Member States. At the same time, the countries bordering the EU were sending considerable numbers of workers to the EU at a time when our economies were unable to provide the necessary manpower to do manual jobs shunned by our citizens. These workers were in turn followed by their dependants. Such developments have had a “demonstration” effect. Citizens of third countries became aware, and to some extent envious, of the prosperity of the Member States of the Union. Consequently, these citizens of third countries have come to look at the Member States of the Union for the fulfilment of their aspirations. There has also been an increasing integration of the economies of these third countries with the EU economy. These developments have also been shaped and promoted by a wide range of agreements between the EC and the respective countries. The most far-reaching agreement was the agreement between the EC and Turkey, which holds out a clear promise of future Membership of the EC (and thus now the EU) for

Turkey. The scope of the agreements has been deepened through the case law of the Court of Justice giving direct effect to important provisions thereof.<sup>1</sup>

In many respects Turkey is a very special case for the EU – this is also borne out by the recent reactions of citizens and governments of the EU Member States following the August earthquake. Questions about the future nature of mutual relations can also be raised about other Mediterranean countries, such as the Maghreb countries, countries devolving from the former Republic of Yugoslavia and Albania. For them accession is not on the agenda, at least at present; nevertheless, as neighbouring and labour supplying countries they are important for the EU and the EU is even more important for them.

The importance of the relations with the Mediterranean and Middle East countries for the European Union was formally acknowledged at the Barcelona Conference on the 27 and 28 of November 1995, which adopted the Barcelona declaration.<sup>2</sup> The Declaration focused on three main facets of the Euro-Mediterranean partnership: political and security; economic and financial; and social, cultural and human affairs. The process thus initiated was followed up by a second Euro-Mediterranean (foreign ministers) Conference in Malta<sup>3</sup> and a Parliamentary Forum as well as other activities.

Yet notwithstanding all these developments, the question may be asked whether the relations between the EU and its Mediterranean partners are presently characterized by a sufficient sense of direction. This question seems particularly pertinent when a comparison is made with the rapid and unprecedented development of the relations with the countries of Central and Eastern Europe. The comparison suggests that in the case of the accession of the countries of Central and Eastern Europe the EU was able to formulate a clear policy. This is illustrated by the chain of events and decisions that paved the way for the integration of the countries of Central and Eastern Europe.<sup>4</sup> The initial stage of this development started with the reunification of Germany. Even though some political leaders objected to the pace of the reunification, the overall political sentiment was that of the “home-coming” of an essential part of the old Europe. This sentiment was subsequently also strongly prevalent after the implosion of the other Communist countries in Central and Eastern Europe. Almost immediately the EU offered to conclude the Europe Agreements. And within a couple of years, at the Copenhagen summit in 1993, the EU leaders expressed their unequivocal support for accession.<sup>5</sup>

1. See Peers, “Towards equality: Actual and potential rights of third country nationals in the European Union”, 33 *CML Rev.*, 7.

2. Bulletin EU 11-1995, point 1.4.56.

3. “Europe” Documents, No 2035, 16 May 1997

4. See Maresceau and Montaguti, “The relations between the European Union and Central and Eastern Europe: A legal appraisal”, 32 *CML Rev.*, 1327.

5. Bulletin EC 6-1993, pt. I.13

On the other hand, when the relations with the Mediterranean countries are at issue, a clear policy vision seems to be absent. Only for Turkey, Malta and Cyprus is accession on the agenda, and in the case of Turkey, the Member States have not been able to agree on the urgency of the matter. For the other countries the Union does not, at present, have any plans to proceed beyond the stage of a customs union. There is no consensus about political and economic expediency of the extension of the internal market.<sup>6</sup>

One of the key areas in the relations between the EU and other third countries could also be said to be suffering from the lack of a clear policy vision. For many citizens of third countries, the conditions of entry into and movement within the European Union are crucially important. Since the entry into force of the Amsterdam Treaty, this question is the subject of what at first sight seems to be an internal policy. In this context, the most pressing issues relate to subjects contained in the new title IV of the EC Treaty: visas, asylum, immigration and other policies related to the free movement of persons. Undoubtedly, the incorporation of the Schengen acquis represents a major step forward in the development of EU policies in this field. It should lead to co-ordination and harmonization of national policies. It will also bring measures in this area under the general principles of the legal order of the EU. It means respect of human rights and adequate legal protection, principles which in themselves have, of course, the capacity of shaping the future law to a considerable extent. Moreover, the provisions of Articles 61, 62 and 63 EC provide an impressive legislative programme in this area. This legislative programme is subjected to a timetable of five years, which involves questions about its legal effect. We only have to recall the discussion on the timetable of the old Article 8a, the deadline for the adoption of the measures implementing the internal market.<sup>7</sup> Also, the discussions in the early 1980s about the Council's failure to act and establish a common transport policy.<sup>8</sup> It is to be hoped that the Parliament will display vigilance in ensuring that the timetable of the provisions of Title IV is observed.

6. The communication of the Commission on the Euro-Mediterranean partnership and the Internal Market, Com (1998) 538 final, Brussels, 23 Sept. 1998 outlines the path towards the completion of the customs Union by 2010.

7. Cf. Ehlermann, "The internal market following the Single European Act", 24 CML Rev. (1987), 361 at p. 371. Ehlermann pointed out that even though the Declaration on Art. 8a states that this article did not create direct effect, this does not mean that the first paragraph of Art. 8a does not create any legal obligation. Failure to act can be challenged on the basis of Art. 232 (ex 175).

8. Case 13/83, *Parliament v. Council*, [1985] ECR 1513. The Court held that the Council had indeed failed to act, but gave the Council a *terme de grace* to make good its failure. In subsequent judgments the Court did not pronounce itself on the question what the effect would be of a further failure to act, see Case 4/88, *Lambregts*, [1989] ECR 2583; Case C-17/90, *Pinaud Wieger*, [1991] ECR I-5253; and Joined cases C-184 and 221/91, *Oorburg*, [1993] ECR I-1633.

The “communitarization” of visas, asylum and immigration policy will lead to a much-needed transparency in this field; the agreements, protocols and related decisions of the Schengen acquis are published in the Official Journal as part of the first Council decision, with Article 2(1) second subparagraph, first sentence, of the Schengen Protocol as legal basis.<sup>9</sup> Together they constitute the basic tenets of a future policy. But the EU needs to go beyond these basic principles and design ways and means to develop additional policy elements which are required to achieve the necessary coherence and to serve as guidance for the adoption of the legislative programme of Title IV.

Both the above-mentioned areas – the further development of policies on visas, asylum and immigration, and the policy towards the Mediterranean countries – involve fundamental issues which go to the heart of the political philosophy of our Society. According to Ralf Dahrendorf: “the key issue with which all countries are confronted today is the answer to the question: how can we create sustainable conditions of economic improvement in global markets while not sacrificing the basic cohesion of our societies or the institutions of the constitution of liberty?”<sup>10</sup> This can also be put in terms which are directly relevant for the relations with third countries and their nationals: can the EU accommodate the desires of the Mediterranean countries and citizens from other parts of the world to share in the economic wealth of the EU? Is the EU capable of clearly facing this issue politically, and if the answer is positive can it agree to what extent it is able to do so? Dahrendorf points out that answers to these questions must take the need to create market economies with competitive strengths as their starting point. This may involve a reorientation and a fundamental reform of the welfare State, creating a new balance between risk and security.

In the period since the Second World War, Member States in the EU have generally stressed the need for solidarity. Now a continuous process of accommodating the effects of globalization and adjustment of policies in the EU seems to be needed.<sup>11</sup> To illustrate this point it may be noted that the impact of globalization, embodying an increasing integration of world capital and trade flows seems, contrary to the expectations, to have helped the recovery of East Asia from their 1997–1998 slump rather than hurting it.<sup>12</sup> This seems to suggest the development of proactive policies in the area of international trade and finance instead of clinging to reactive, protectionist, policies. In such a climate, the political debate about the relations with the

9. O.J. 1999, L 176/1.

10. Speech delivered at a conference in Vienna marking the 10th anniversary of the fall of the Berlin Wall, organized by the Institut für die Wissenschaften von Menschen and Project Syndicat. July 1999.

11. Cf. *The Economist* 1998: A survey of international manufacturing.

12. *The Economist*, 21 Aug. 1999, p. 9.

outside world assumes new dimensions. In a world where the electorate is aware of the fact that the important production factors capital and technology are no longer controlled at the national level, immigration is not the only threat to domestic jobs. Moreover, increasing trade flows will force the EU to adapt its policies.

It will be for the politicians in power and the political parties to take up these issues and to forge them into actual policies. The Prodi Commission should develop a much clearer and stronger policy towards third countries. Above all it should prepare the ground for the development of a new inspiring EU policy vision very much in the same way as the Delors Commission managed to give the former EC the political impetus towards the completion of the internal market and the establishment of the EMU. It is now time to make up for past omission.

The articulation of a clear policy vision *vis-à-vis* third countries is also a matter of principle. If the EU prides itself on being a Community based on the rule of law, it creates a strong expectation that it will also observe these principles in its relations with third countries. "Noblesse oblige". The general principles of Community law relating to respect of legitimate expectations would gain more respect if they are also seen to apply in its relations with third countries.

At the same time the European Parliament should try to establish a role for itself. With regard to Title IV, this will not be easy in view of its limited powers under Article 67 EC, which only provides for consultation. Nevertheless, it will be important that the European Parliament shows that it has the ambition to give the EU a distinct face *vis-à-vis* third countries. Parliament may also want to take advantage of the powers it has under Article 310 in the broader field of foreign policy and use these stronger powers as leverage even in the area of visas, asylum and immigration. To act as an opinion leader of the EU in this field would be a new responsibility for the European Parliament following the integration of the Schengen acquis in Title IV of the EC Treaty. Under the Schengen arrangements its role in this area has, of course, so far been negligible.<sup>13</sup>

Clearly articulated policies on visas, asylum and immigration as well as their unequivocal and harmonized enforcement will also help to send warning messages to all those who attempt to enter the EU in contravention of such rules and policies. This will contribute towards stemming the flow of illegal immigrants. In this respect the design of the Treaty of Amsterdam is not very helpful. The enormous complexity caused by the Protocols for the United

13. Peers, "Building Fortress Europe: The development of EU migration law", 35 CML Rev., 1235; see also Hailbronner, "European immigration and asylum law under the Amsterdam Treaty", 35 CML Rev., 1047.

Kingdom and Ireland, Denmark as well as the Protocol integrating the Schengen acquis into the framework of the European Union leaves even Community lawyers perplex. This complexity makes any effort towards designing clear rules for the entry of third country nationals into the EU and subsequent travel and stay therein a labour of Sisyphus.

Meanwhile there are also some practical steps that can be taken to enhance the development of the relations with the Mediterranean countries. At the time of writing this editorial, the relations with Turkey are already been reconsidered, not least as the direct result of need for and willingness to provide humanitarian help with the catastrophic earthquake in August, and the resulting increase in political contacts. Some of the elements mentioned in a recent opinion on the relations between Turkey and the EU by the Dutch Advisory Council on International Affairs<sup>14</sup> could be cited, such as:

- The EU should seek to provide Turkey with finances to which it is entitled under the agreement and the related arrangements.<sup>15</sup>
- Turkey should engage itself clearly to implement the criteria for accession formulated at the Copenhagen summit.
- The EU should provide Turkey with adequate technical assistance with the completion and the functioning of the customs union.
- The EU should explore possibilities to engage Turkey in furthering the liberalization of the capital markets, public procurement, services and other sectors.
- The EU should pronounce clearly that Turkey cannot be refused accession to the EU because of historical or political and cultural arguments.
- Turkey should make it clear that it will respect human rights and it will have to show an unambiguous commitment to this end.

The position of the EU as a major global power carries with it the responsibility to formulate and implement a clear policy towards the outside world. The institutions of the EU should take up this task with imagination and determination. They should also mobilize the political forces which have to play their part in defining such a policy. The perception of the EU by the rest of the world is too important for the Union to be left unattended. This requires a concerted effort to develop a common political philosophy in the EU and the Member States.

14. The Council is the main advisory body to the Dutch Government and is chaired by former Prime Minister Lubbers. The opinion on the relations between Turkey and the EU was published in July 1999.

15. This has now been agreed upon by the EU Foreign Ministers, *Agence Europe*, No 7545, 6 and 7 Sept. 1999.