ADVISORY LETTER

FROM INTERNAL TO EXTERNAL BORDERS

RECOMMENDATIONS FOR DEVELOPING A COMMON EU ASYLUM AND MIGRATION POLICY BY 2009

March 2004

Members of the Advisory Council on International Affairs

Chair	F. Korthals Altes
Vice-chair	Professor F.H.J.J. Andriessen
Members	A.L. ter Beek Professor G. van Benthem van den Bergh Dr O.B.R.C. van Cranenburgh A.C. van Es Professor W.J.M. van Genugten Dr B. Knapen Professor dr. A. de Ruijter E.M.A. Schmitz Mr. H.M. Verrijn Stuart
Secretary	P.J.A.M. Peters

P.O. Box 20061
2500 EB The Hague
The Netherlands

Telephone + 31 70 348 5108/6060
Fax + 31 70 348 6256
E-mail AIV@minbuza.nl
Internet www.AIV-Advice.nl

ADVIESRAAD INTERNATIONALE VRAAGSTUKKEN
ADVISORY COUNCIL ON INTERNATIONAL AFFAIRS

AIV

To His Excellency the Minister of Foreign Affairs
Mr. Ben Bot
P.O. Box 20061
2500 EB The Hague

Date 12 March 2004 *Reference* AIV-021/04

Subject *Advisory report*

Dear Mr. Bot,

Please find enclosed the advisory letter 'From internal to external borders - Recommendations for developing a common EU asylum and migration policy by 2009'. This report was prepared by the Advisory Council on International Affairs. I also send this advisory letter to the Minister for Development Cooperation and to the State Secretary for European Affairs and to the Minister for Immigration and Integration.

Yours sincerely,

Frits Korthals Altes
Chairman of the Advisory
Council on International Affairs

Introduction

On 15 May 2003, the Advisory Council on International Affairs (AIV) and the Advisory Committee on Aliens Affairs (ACVZ) published an advisory letter on the asylum and migration agenda for the forthcoming Dutch presidency of the European Union (Annexe I). They recommended that the aim should be to design an ambitious programme for the next phase in the development of a common European asylum and migration policy. The programme for the first phase was established at the 1999 Tampere European Council and is due for completion in the first half of 2004. The European Commission's evaluation of this first phase (due to end on 30 April 2004) can provide the basis for the design of a work programme for the second phase (2004-2009). The government has now indeed decided to make designing an ambitious programme of action in the asylum and migration field part of the agenda for the Dutch presidency.[1]

During the preparation of more detailed advice about the content of the proposed common asylum and migration policy, it proved impossible for the AIV and ACVZ to agree a final joint document. In order nevertheless to furnish the government with recommendations before the start of the presidency, the two organisations have therefore decided to issue two separate documents. It has been agreed that the ACVZ will focus mainly on issues relating to immigration law, while the AIV will concentrate on issues relating to European cooperation. Since these two approaches are in many ways complementary, the two documents should together help to clarify the complex issue of migration and the possible choices to be made in this area.

In this letter, the AIV looks at how the development of this area of policy should be taken forward in the second phase and examines the extent to which Community legislation is necessary or desirable, in view of the principles of subsidiarity and proportionality.[2] Although the AIV is aware of the resistance to more extensive European cooperation that exists in some quarters, it nevertheless recommends an ambitious approach. This is inevitable in view of the long time frame it has selected and the AIV would point out that, contrary to what is sometimes believed, a great deal has already been achieved during the first phase of 'Tampere': far-reaching European decisions have been agreed in this area.

Basic assumptions

In considering these issues, the AIV makes a number of basic assumptions. The first is that international migration will remain a permanent feature of life in Europe, as elsewhere in the world. Many factors (including war, the increasing ease of travel over large distances given modern means of transport and improved access to them, continuing disparities in standards of living, and the wider dissemination of information as a result of improved means of communication) make it reasonable to expect that the pressure

1 See letters sent to the House of Representatives by the Minister of Foreign Affairs and the Minister for European Affairs on 2 and 24 December 2003.

2 The principle of subsidiarity means that the European Union is competent to take action only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Union. The principle of proportionality means that any action by the European Union should not go beyond what is necessary to achieve the objectives of the EC and EU Treaties.

of international migration on the European Union will only increase as time goes on.[3]

The second and (in terms of this document) most important assumption is that work on a programme of action for the second phase of a common European asylum and migration policy should take account of the presence and effects of the internal market. The general principle of the internal market is that goods and services originating outside the Union and legally permitted to be traded in one Member State under current national criteria should be able to circulate freely within the Community. This is accompanied by the principle of the free movement of persons within the Union, under which nationals of Member States have the right to travel or reside in the territory of other Member States. As explained below, the AIV feels that the development of a long-term common asylum and migration policy should be based on the assumption that the principle of free movement of persons within the Union should also apply to third-country nationals (i.e. people from non-EU countries), subject to the same restrictions that apply to citizens of the Union in this respect, provided that such third-country nationals have already gained legal admission to a Member State under its current national asylum and migration legislation and have obtained a permanent residence permit in that country. This would be consistent with the principles of the internal market. However, it would mean that the admissions policies of one Member State could then influence other Member States via the mechanism of the free movement of persons.

Thirdly, the AIV assumes that asylum and migration policy is a legitimate field of action for the European Union: the principle of subsidiarity should be used here to foster greater European cooperation. Member States will be able to exert a greater influence on migration by acting in concert than by acting in isolation. This is true, for example, with regard to asylum policy. Figures for asylum applications submitted in the European Union in 2001-2002 (Annexe II) suggest that a decline in the number of people seeking asylum in one Member State produces a rise in the numbers doing so in other Member States. However, there are many other reasons why a common asylum and migration policy is an obvious choice: through concerted action, Member States will be able to deal more effectively with the causes of asylum-seeking, share part of the burden of assessing asylum applications and caring for asylum seekers, reach more effective agreements with countries of origin on the return of failed asylum seekers, organise the deportation and return of illegal immigrants in a more effective way, and achieve greater success in curbing illegal activities like people smuggling and trafficking in human beings.

Despite the benefits of a common policy, Member States are likely – at least for the time being – to retain considerable national competences in this area. The extent to which national discretion continues to exist might vary from one aspect of policy to another. For example, in view of national (and sometimes even subnational) differences in labour markets and working cultures, the AIV feels that it is unnecessary for Member States to surrender their powers in the field of labour migration (the admission of third-country nationals to the labour market). With regard to the long-term status of labour migrants, however, account must be taken of the principles of the internal market outlined above. On the asylum issue, by contrast, there is little scope for national variation, since the admission of refugees is based on standards of international law established

3 On 3 November 2003, the Minister for Development Cooperation wrote to the AIV requesting its advice on ‘asylum and migration in relation to development cooperation’. The AIV intends to examine the causes of migration in its response to this request.

in documents such as the Geneva Convention and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). On this issue, therefore, the AIV advocates sweeping harmonisation, although it is conceivable that variation might remain in the standard of reception and rights accorded to refugees, provided always that the latter are at least consistent with internationally agreed standards of human rights. Between these two extremes, there are issues relating to admission in the context of family reunification or formation and to illegal immigration. All these forms of migration will be discussed in this report.

Political and institutional framework

On the basis of the assumptions outlined above, the AIV considers it both necessary and desirable to develop an ambitious programme for a second phase in which more effort will be made than ever before to tackle asylum and migration policy at European level. There is evidence of a broad political consensus in favour of an ambitious approach of this kind.[4] This was demonstrated during the preparation of the Draft Treaty establishing a Constitution for Europe.[5] The institutional framework proposed in the Draft Constitution represents an improvement on the present institutional approach. For example, it includes a clear and coherent framework for the 'area of freedom, security and justice', and hence for action on asylum and migration policy. Accepting this new institutional framework would end the current fragmentation of the policy area, which has produced a tangled mass of procedures and regulations. The proposed uniform framework would also clear the way for more coherent European policies in various related policy areas, such as Justice and Home Affairs (JHA) and the Common Foreign and Security Policy (CFSP). This would enhance the credibility and effectiveness of the European Union.

The Draft Constitution includes provision for a modification of the Union's institutional instruments. If the relevant provisions were to acquire the force of law, the co-decision procedure (decision-making by qualified majority in the Council and co-legislation powers for the European Parliament) would become the norm and the European Court of Justice would be confirmed in its traditional role in the Community. The use of these classic supranational procedures offers the strongest guarantees of effective democratic decision-making – something all the more necessary in view of the forthcoming enlargement of the Union.[6] However, it should be added that, even without the Draft Constitution, institutional opportunities already exist for the further development of this policy area. For example, Title IV, Article 67, para. 2 of the EC Treaty contains transitional provisions enabling the Council, as of 1 May 2004, to decide that the co-decision procedure is to apply to all or parts of the areas covered by this Title, provided that it acts unanimously after consulting the European Parliament. The same paragraph also provides that the

4 In this respect, the political consensus expressed at the Convention that prepared the Draft Constitution reflects public opinion: the majority of EU citizens want Brussels to take a greater hand in regulating asylum and migration. This was demonstrated by the Eurobarometer presented on 8 March 2004 (a public opinion poll conducted in December 2003).

5 Although this Draft Constitution was not adopted, there was and is a broad consensus in favour of its provisions on asylum and migration.

6 See AIV advisory report no. 27, 'Bridging the gap between citizens and Brussels: towards greater legitimacy and effectiveness for the European Union', May 2002 and AIV advisory report no. 32, 'Bridging the gap between citizens and Brussels - Follow-up Report', which advance the same arguments.

present anomalous provisions relating to the powers of the European Court of Justice can be adapted by a unanimous Council decision to this effect, also as of 1 May 2004.[7] Finally, under the Treaty of Nice, majority decision-making already applies to a number of measures.[8]

The AIV recommends that the Council should seize these opportunities if no progress is made on a more ambitious approach. However, the present Treaties provide only for the development of an initial policy phase, generally based merely on minimum standards. *For this reason, the AIV feels that it is essential to seek the acceptance of new Treaty provisions as proposed in the Draft Constitution.*

Moreover, the growth in European legislation in this policy area, combined with the possible amendment of the anomalous rules concerning preliminary rulings, may lead to a considerable increase in the Court's case-load, and therefore to time taken.[9] In this particular area, the latter effect is certainly not acceptable. *Although this cannot be predicted with any degree of certainty, it would be advisable to provide for arrangements that can be brought into operation without any amendment to the Treaty if delays in responding to references become unacceptable*. The aim must be a streamlined procedure before the Court which nevertheless continues to guarantee adequate legal protection. The shape given to such a passerelle provision can be tailored to circumstances.

The next step

How can the next phase be fleshed out? The aim must be to achieve water-tight EU arrangements for admission, residence and return. In recent years, the main emphasis has been placed on discouraging immigration and combating illegal immigration. However, the AIV feels that a tenable immigration policy must be not only defensive and repressive; it must also permit a certain amount of immigration under well-defined conditions. The remainder of this report will outline possible second-phase action in the following areas: asylum and protection in the region; labour migration; family reunification and family formation; the rights, obligations and integration of third-country nationals; and illegal immigration.

Asylum

The Tampere European Council of October 1999 envisaged two phases in the harmonisation of asylum policies. The Tampere conclusions state that, in the second phase, Community rules should lead to a common asylum procedure and a uniform status for

7 Art. 68 of the EC Treaty provides that only the highest judicial body in each Member State may request a ruling from the Court of Justice.

8 See the Treaty of Nice, which provides that the Council should take the following measures in accordance with the Art. 251 procedure (co-decision), by derogation from Art. 67, para. 1 of the EC Treaty: "the measures provided for in Art. 63, (1) and (2)(a) provided that the Council has previously adopted, in accordance with paragraph 1 of this Article, Community legislation defining the common rules and basic principles governing these issues". This means measures on asylum and the temporary protection of refugees and displaced persons. The co-decision procedure also applies to measures as referred to in Art. 65, with the exception of aspects relating to family law. This means measures concerning cooperation in civil matters with cross-border implications.

9 Since the Draft Treaty also assumes the traditional Community rules on the jurisdiction of the Court with regard to preliminary rulings, the issue will also arise if the Treaty is accepted.

those who are granted asylum valid throughout the Union. In the first phase of the development of such a common asylum system, common rules must be agreed on minimum standards for asylum procedures, the determination of the State responsible for the examination of an asylum application and minimum standards for the reception of asylum seekers, the recognition and content of refugee status and the status of persons in need of subsidiary forms of protection.

With regard to both phases, the basic principles of EU policy are clear: firstly, full respect for the right to seek asylum, and secondly full respect for the principle of non-refoulement, in both cases based on Member States' treaty obligations under the Geneva Convention on Refugees, the ECHR, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Convention on the Rights of the Child, the Universal Declaration of Human Rights, etc. The aim is to ensure a high level of protection for the rights of vulnerable asylum seekers. Another aim is, in line with the Tampere conclusions, to develop a policy that achieves a fairer sharing of the financial burden associated with the reception of asylum seekers.[10] As already mentioned, figures on asylum applications suggest that a reduction in the flow of asylum seekers into one Member State can increase the numbers entering other Member States, the flow apparently being diverted to Member States with less restrictive policies. Given this mechanism, there is a need for greater uniformity in the conditions set for admission and residence, as well as effective rules on burden-sharing.

The Tampere conclusions were ambitious, but have proved difficult to put into practice. Some of the measures that were to be agreed in the first phase have not yet been adopted. For this reason, this section will start by identifying the measures still to be agreed under the first phase and only then go on to identify the objectives for the second phase. Of the measures to be agreed in the first phase, a directive establishing minimum standards for the reception of asylum seekers has been put in place, as has a regulation concerning the criteria and mechanisms for determining which Member State is responsible for the examination of an asylum application. Negotiations on the other measures are still continuing.[11] However, agreement has yet to be reached on the proposals for directives on minimum standards for granting refugee status or subsidiary forms of protection and one on the procedures for granting or withdrawing that status.[12]

10 There was broad agreement on this in the Convention, see Art. III-169 of the Draft Constitution, which states that "The policies of the Union set out in this Section and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the acts of the Union adopted pursuant to this Section shall contain appropriate measures to give effect to this principle".

11 Directive 2003/9/EC of 27 January 2003, Official Journal L 31/18 of 6 February 2003, Regulation 343/2003 of 18 February 2003, Official Journal L 50/1 of 25 February 2003 and Regulation 1560/2003 of 2 September 2003, Official Journal L 222 of 5 September 2003. The regulations are based on the principle that the responsibility for dealing with an asylum application normally lies with the Member State most closely involved in the entry of the asylum seeker into the Community.

12 Proposal COM (2001) 510 def, of 12 September 2001 for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and Proposal COM (2000) 578 def. of 20 September 2000, as amended by COM (2002) 326 def/2 of 18 June 2002, for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status.

The negotiations on the latter show how difficult it can be to reach agreement and the consequences this can have. The High Commissioner for Refugees has expressed serious criticism of the draft directive, not only because the extent of harmonisation has been substantially reduced in the course of the negotiations, but also because, in his view, the directive no longer offers sufficient guarantees for the protection of refugees.[13] Among other things, the High Commissioner says that the criteria for 'safe third countries' in no way offer effective protection, that the draft directive provides no minimum principles and guarantees during border procedures and that it will provide in many cases no right to remain in the country while an appeal is heard. *The AIV endorses these criticisms and recommends that the Member States should improve the level of protection offered by the proposed directive accordingly*. The AIV also advocates the latter action because of the aim of achieving greater uniformity in rules relating to admission and residence with a view to a more reasonable and equitable distribution of the financial burden.

For the same reason, and in order to optimise the protection of human rights, the AIV also advocates the establishment of a uniform refugee status and a uniform status of person requiring subsidiary protection. Subsidiary protection means protection which can be offered to people who do not fall within the traditional definition of a refugee under the Geneva Convention but nevertheless qualify for protection on the basis of the humanitarian tradition common to most Member States, based for example on the ECHR, the UN Convention against Torture, the UN Convention on the Rights of the Child and the case law of the European Court of Human Rights. The European Commission itself advocates the establishment of a uniform status of person requiring subsidiary protection and the AIV also feels that this is desirable, since the grounds on which subsidiary protection can be accorded are generally quite as compelling as those leading to the grant of refugee status under the Geneva Convention. Member States should not compete to restrict these grounds in order to make themselves less attractive as a destination for people seeking protection. *For this reason, the AIV advocates the speediest possible adoption of the current draft directive on conditions for granting refugee status or status of person otherwise in need of international protection.*

This latest draft directive includes provisions on the rights of refugees and persons in need of subsidiary protection with regard to access to employment and education. Indeed, it puts them on an equal footing with EU citizens in these respects. The AIV supports the principle that people with refugee status or recognised as being in need of international protection should be accorded equal treatment in these areas. *For this reason too, the AIV is in favour of the speediest possible adoption of the draft directive currently proposed by the European Commission. In addition, it is in favour of according the right to freedom of movement to all those who have been granted permanent residence permits on the basis of their refugee status or status as a person in need of international protection. If, following adoption of the directive, major disparities are found to continue in the interpretation of the rules for according refugee status and status as a person in need of international protection, the AIV recommends that proposals should be made with a view to achieving a genuinely uniform common status in these two areas.*

13 See letter of 20 November 2003 from High Commissioner Lubbers to Prime Minister Berlusconi, in his capacity of President of the Council of the European Union, expressing the fear that this directive could lead to refugees being expelled to countries which in practice offer insufficient guarantees for their protection. See also the UNHCR 'Aide Mémoire' of 18 November 2003.

Even if all the aforementioned arrangements are adopted, this will not in itself be sufficient to establish an effective common European asylum policy and, more specifically, to achieve the aim of a fairer distribution of the financial burden associated with the reception of asylum seekers. Some Member States will be able and willing to offer better reception facilities than others. Moreover, some Member States will receive more asylum seekers than others by reason, for example, of their geographical location. It is quite possible, for instance, that the new Member States will start to experience far more asylum applications than in the past. This will make it essential to find a way to spread the financial burden in order to ensure a tenable, efficient and effective European asylum system.

For this reason, the AIV recommends the establishment of a Community system of cost-sharing. In concrete terms, the Member States should make larger, more regular and more means-related contributions to the existing European Refugee Fund. Member States should be able to receive grants from this fund to help them meet the cost of the reception of asylum seekers on the basis of an agreed standard tariff. The fund could also be used to support resettlement programmes. If the common asylum policy were to work in this way, it would also help to prevent attempts by Member States to avoid the cost of receiving asylum seekers by making their national policies more restrictive than those of other Member States. *The AIV also recommends the establishment of a 'one-stop procedure'*. This would mean that each of the Member States would have a single national agency responsible for processing applications for protection. This agency could establish whether the applicant was eligible for asylum under the Geneva Convention or for subsidiary protection. This system would be clearer for applicants and would eliminate the need to pursue multiple procedures with different agencies. Moreover, it might help to ensure that people seeking protection receive a definitive response to their applications within a reasonable period of time. Even as regards the final piece of the jigsaw (the return of those shown to have no right to remain), the AIV feels that a more common approach is required. Otherwise, asylum seekers may prefer to apply to those Member States with the least stringent policies on return. *Accordingly, the AIV recommends that the ultimate goal of the second phase should be a communitised policy on return, with cooperation taking place by means that include common transport arrangements and common liaison with the countries of origin, and through the option for Member States to undertake common action with regard to negotiating and concluding return agreements with countries of origin. Finally, the AIV advocates full implementation of the common system of external border controls and the expansion of this system to include a common system of controls with regard to asylum seekers.*

In this respect, the AIV was interested and pleased to see the working paper presented by the UN High Commissioner for Refugees to the JHA Council on 23 January 2004.[14] This proposes the creation of a genuinely European asylum system through measures such as the establishment of an EU Asylum Agency with offices in the various Member States as well as a head office in one Member State. Registration and pre-screening of asylum seekers would initially be carried out by staff of national agencies, supported by representatives of the EU Asylum Agency, but would eventually be done by staff of the EU Asylum Agency itself. In addition, the screening of asylum seekers would take place at EU Reception Centres and decisions on their asylum applications and appeals would be taken at those centres. If an EU Asylum Agency were to be given a role in

14 UNHCR, 'A Revised EU Prong Proposal'.

relation to appeal procedures, as the working paper advocates, this would reduce the discretion of the courts and increase uniformity. Such arrangements would considerably reduce the work-load of the European Court of Justice.

Finally, the working paper suggests that there should be burden-sharing arrangements for the settlement of applicants found to be in need of international protection and collective action on the return of those not found to be in need of such protection. Although the AIV recognises that some aspects of these proposals may not (yet) be politically acceptable, even as part of the final goal for the second phase, it nevertheless supports this UNHCR initiative and feels that it provides the outline for a more effective common asylum system in the longer term. *The AIV therefore recommends that action should be taken to examine the possibility of establishing an EU Asylum Agency, setting up 'EU Reception Centres' and developing a common appeals procedure, to be conducted by an EU body, perhaps operating on a decentralised basis.*

Protection and selection in the region ('external processing')
Since this subject will be addressed in the AIV's report on development cooperation and migration, only a few general remarks will be made on it here. The proposal on protection and selection in the region is born of the experience that the majority of those who apply for asylum in the European Union do not in fact qualify for such protection. Many Member States are now spending considerable sums on the assessment and reception of asylum seekers whose applications will eventually be rejected following lengthy procedures. Protection and selection in the region could reduce the numbers of asylum seekers entering the Member States, freeing up considerable amounts of money for potential deployment in the regions of origin.

The AIV has reasons to be critical of this proposal. Two objections are that:
- it may lead to people in need of protection being returned to countries which cannot guarantee their safety and treatment in accordance with internationally accepted standards of human rights;
- it shifts the burden of the asylum issue to countries which are already caring for many people in need of protection.

Necessary preconditions for the implementation of the proposal are that:
- all the Member States take part; otherwise, there is a good chance that asylum seekers will apply to non-participating Member States and the burden will not be shared equally. In view of the strong resistance to the idea in a number of Member States, this is a real possibility;
- Member States are willing to use any funds released by the change for protection in the region.

The AIV is not necessarily opposed to the proposal, since a larger contribution from Member States to the improvement of protection in the region may be beneficial. But this is on condition that protection in the region is part of a broader and more structural approach to the asylum issue. *The AIV feels that the proposal should only be implemented if there are absolute guarantees that persons in need of protection will actually receive it, if the legal and socioeconomic conditions of the reception offered them are humane and if a serious attempt is actually made to contribute financially and otherwise to an improvement in the legal and socioeconomic infrastructure for protection in the region. In addition, the Union should contribute financially and otherwise to the development, in cooperation with UNHCR, of a policy on return to countries of origin, or the provision of future prospects in some other form. Finally, the AIV recommends that*

the possibility should be examined of taking action within the context of European Development Assistance to divert more resources to the support of refugees in the region. It should be noted that the idea can only work if all the Member States of the European Union implement it simultaneously. For this reason, the AIV advocates a common approach not only to the development of such policies, but also to their financial design and implications. A common approach of this kind may be attractive to Member States if it actually helps to reduce national expenditure on the reception of asylum seekers. The AIV doubts whether these conditions can be met. The AIV is even more critical and even more doubtful about the feasibility of extensions to the proposals whereby it may even be intended to send asylum seekers to countries through which they have not travelled to reach the Union.

Protection in the region is in fact a variation on the theme of the so-called 'safe third countries'. The AIV recognises the need to combat the abuse of the asylum system. One way of doing this is to keep lists of safe third countries and return asylum seekers to their countries of origin if they are listed as safe. This is at present a contentious issue in the European Union. *The AIV takes a positive view of the use of such lists, provided that*:

- *the criteria under which countries are listed as safe are stringent, transparent, public and verifiable;*[15]
- *there is a Community policy on return, as recommended above.*

The relationship between the external dimensions of JHA and the CFSP is at its clearest in this aspect of the policy area. *Accordingly, the AIV recommends that lists of safe third countries should be compiled in close consultation with JHA and CFSP forums. Cooperation between the High Representative and the Commissioner with responsibility for JHA is therefore advisable.*

Labour migration

Member States have differing views concerning the necessity and likely benefits of labour migration, although there is an emerging trend towards Member States' using labour migration to boost their economies and alleviate the effects of the rising average age of their indigenous populations.[16] The AIV lacks the necessary expertise to adopt a position on this subject and will therefore confine itself to advising on the extent to which the regulation of this area of policy should take place at EU or national level.[17]

15 For further details of the criteria, see the extensive discussion in AIV advisory report no. 8 'Asylum information and the European Union'.

16 See for example OECD report 'Trends in International Migration - Annual Report 2003 Edition', Paris, January 2004, pp. 27-31. The necessity or likely benefits of labour migration is also discussed in many other reports. Examples include: the Communication from the Commission on a Community immigration policy, COM (2000) 757 of 22 November 2000; the report from the Dutch Advisory Council on Government Policy 'Nederland als immigratiesamenleving', The Hague, 2001; the Netherlands Bureau for Economic Policy Analysis (CPB) study on 'Immigration and the Dutch Economy' of 20 June 2003, the ACVZ report on 'Regulering en facilitering van arbeidsmigratie' of 4 February 2004, and the 'Replacement Migration' report issued by the Population Division of the UN's Department of Economic and Social Affairs on 17 March 2000.

17 The AIV advisory reports on the liberalisation of services and on migration and development cooperation will both address the subject of labour migration in greater detail.

Here too, the principle of the free movement of persons means that the admissions policy of one Member State can have an impact on other Member States. As already indicated, the AIV favours the idea that labour migrants should, after a period, like third-country nationals admitted to the European Union on a different basis, enjoy the right to freedom of movement within the Union. In the current situation, labour migrants admitted by a Member State operating a flexible policy on labour migration can acquire the right to freedom of movement and so move on to other Member States which have far more restrictive policies in this respect.

The AIV recommends that there should at least be greater coordination in this policy area. In concrete terms, this could take the form of a new obligation for Member States to notify each other of the numbers of labour migrants per sector that they have admitted. This obligation is a means to coordinate national policies. It is all the more necessary because it may be in Member States' interests to prevent disproportionately large numbers of third-country nationals from legally entering their territory for purposes of work or residence via other Member States. *In view of the latter scenario, the AIV also recommends the establishment of a safeguard clause which can be invoked if the number of migrants moving from one Member State to another exceeds a specified maximum. If the clause were invoked in such a case, the European Commission could examine the situation and make recommendations on the basis of its findings*. However, the threshold for invoking the clause must be high enough to ensure that no impediment is created to the right to freedom of movement for third-country nationals who are long-term residents, a right which the AIV firmly believes they should have.

Migration in the context of family reunification and family formation

Norms of international law, in particular Article 8 of the ECHR, are relevant to this area of policy. This article aims on the one hand to guarantee the right to respect for family life, while on the other hand it leaves the way open for limitations to be imposed on that right in the national interest. The Council Directive on the right to family reunification seems in the first instance to relate only to that subject, but can also be deemed to apply to family formation.[18] *The AIV feels that the first step should be to clarify the scope of the Directive's application.*

One part of the Directive on the right to family reunification relates specifically to the subject of family reunification, and not to family formation: it concerns the age at which minors may join their parents. The generally restrictive attitude of the Member States is reflected in the amount of discretion that Member States retain under this directive to set age limits in this respect. For example, the age limit may be set at twelve years, since Member States can impose integration conditions for the admission of persons over this age.[19] *The AIV recommends that Member States should set the age limit for*

18 For example, clause 6 in the preamble to the relevant Council Directive, 2003/86/EC of 22 September 2003 on the right to family reunification, Official Journal L 251 of 3 October 2003, reads "To protect the family and *establish* or preserve family life ...". The term "establish" seems to indicate that the Directive is intended to apply also to family formation. The same deduction can be drawn from Article 2 d of the Directive, in which 'family reunification' is defined as "entry into and residence in a Member State by family members of a third country national residing lawfully in that Member State in order to preserve the family unit, *whether the family relationship arose before or after the resident's entry"*.

19 See also Article 4, para. 1, clause 3, and Article 4, para. 6 of the Directive, which state that Member States are free to demand that applications concerning family reunification are submitted before the child concerned has reached the age of fifteen.

the admission of children wishing to join their parents no lower than the age of majority in their own national legislation. Except on this point, the AIV feels that the directive offers a good measure of European harmonisation as regards family reunification.

Migration in the context of family reunification and family formation is a subject high on the political agenda of many Member States. This is firstly because migrants entering them in this way often form a large – if not the largest – category, and secondly because of the way the subject relates to integration. Many Member States are trying to limit migration of this kind because of the heavy financial and social burden it imposes in terms of the consequent need for integration.

The directive gives Member States discretion to impose conditions with a view to integration, but only in relation to applications for admission from outside the European Union. Member States are free to decide whether or not to impose integration-related conditions in such cases, and if so what they should be. As a result, there can be considerable differences between Member States in this respect. The possible need for greater harmonisation in this area is discussed below, under the heading of residence and integration, since the issue is relevant to all third-country nationals, irrespective of the basis on which they have been allowed in. The AIV feels that Member States should continue to enjoy sufficient national discretion to enable them to specify conditions of this kind. The directive limits that national discretion, but not to such an extent that it is impossible for Member States to continue to impose national conditions.

Residence and integration

In principle the AIV believes that third-country nationals should eventually (once in possession of a permanent residence permit) have the same rights and obligations as EU citizens, including the right to freedom of movement, unless there are objective and rational grounds for making an exception to this general rule.[20] The AIV advocates this principle not only in order to ensure equal treatment, but also with an eye to optimising the internal market and promoting integration.

The directive concerning the status of third-country nationals who are long-term residents obliges Member States to grant long-term resident status to third-country nationals who have resided legally and continuously within their territory for five years immediately prior to the submission of the relevant application.[21] The directive contains provisions prohibiting discrimination with regard to matters such as access to employment and self-employed activity, education and vocational training, and social and tax benefits in the Member State concerned. It also confers a right to reside in other Member States coupled with similar provisions. In the opinion of the AIV, it would have been preferable for the directive to confer these rights generically rather than via specification, but overall the effect of the directive comes close to that envisaged by the AIV. It does however mean that first Member States (those which for the first time confer

20 See AIV advisory report no.15, 'A European Charter of Fundamental Rights?', May 2000, pp. 14 and 15. This position is supported by a reference to the ECtHR, 16 September 1996, Gaygusz-Austria (Reports 1996, p. 1129), subsection 42. The conferment of the right to freedom of movement is also in line with the European Charter of Fundamental Rights, as enshrined in the Draft Constitution, Art. II-45, para. 2. This states that "Freedom of movement and residence may be granted, in accordance with the Constitution, to nationals of third countries legally resident in the territory of a Member State".

21 See Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents, Official Journal L 16/44 of 23 January 2004.

long-term resident status on third-country nationals) have a particular responsibility to ensure their integration. Two points need to be made in this respect. Firstly, the AIV feels that Member States should not impose additional integration requirements on third-country nationals who move to them after acquiring permanent resident permits in another Member State; to do so would be detrimental to the internal market and the principle that such third-country nationals should enjoy rights as nearly as possible identical to those enjoyed by citizens of the European Union. *The provision in the directive that third-country nationals who hold permanent residence permits and migrate to a second Member State may then be required to attend language courses is incompatible with these basic principles and should be scrapped.*[22] Secondly, the directive does not apply to refugees and persons enjoying subsidiary protection. The European Commission is to prepare alternative proposals for these categories of migrants. *The AIV recommends that they should be given the same rights as apply to third-country nationals who have been allowed in on a different basis and have since acquired permanent residence permits.*

Political rights (in particular the right to vote) are an especially important factor in the integration of third-country nationals into the life of the various Member States of the Union. In practice, third-country nationals holding permanent residence permits do not enjoy full voting rights. *The AIV recommends that the period within which third-country nationals obtain the right to vote and to stand for election in local elections should be harmonised across the EU: it should coincide with the grant of the permanent residence permit*. European harmonisation of the period for the grant of suffrage at national level and of the nationality of a Member State would be defensible with a view to integration and the internal market, but the AIV feels that the time is not yet ripe for this kind of recommendation. *The AIV does, however, recommend that, based on the principle of equal rights for EU citizens and third-country nationals who hold permanent residence permits, consideration should be given to whether it is desirable and feasible to confer EU citizenship on the latter*. If this were to be done, the concept of EU citizenship would need to be divorced from that of nationality.

Another aspect is cultural and social integration. Many Member States have experienced problems with the integration of large groups of immigrants into their societies. The AIV feels that it is natural for Member States to impose their own national integration-related conditions on third-country nationals who seek permanent residence. After all, such conditions need to take account of features of national life and culture which vary from one country to another and are often determined by national history. In this case, therefore, the AIV does not see harmonisation – obligatory or otherwise – as a natural step. Here too, however, the admissions policy of one Member State can have consequences for other Member States. Moreover, the problems experienced by Member States with regard to integration are often identical. *For this reason, the AIV supports the European Commission's proposal to seek to achieve cooperation and the*

22 See Article 15, paragraph 3 van Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, Official Journal L 16/44 of 23 January 2004. Consideration could be given to the possibility of requiring everyone migrating from one Member State to another to attend language courses, irrespective of whether they are EU citizens or third-country nationals.

exchange of information and best practices in this area.[23]

Illegal immigration

As already pointed out, the main emphasis in European Union policy is on discouraging immigration and combating illegal immigration. The Council of Europe estimates the number of illegal immigrants entering Europe each year at between 400,000 and 500,000.[24] It is often thought that establishing a quota for labour migrants would reduce illegal migration into the Union. The AIV questions whether this is so, particularly in view of experience in the United States, where illegal migration continues despite rigorous measures to combat it and substantial quotas for labour migration. The need felt by illegal migrants to try and enter the United States or the European Union is unaffected by such measures, in part because there is plenty of work available for them when they arrive. The AIV believes that greater flexibility in the field of labour migration would both legitimise and necessitate more stringent measures to combat illegal immigration. *To ensure greater effectiveness, the AIV recommends that more measures to combat illegal immigration should be taken at EU level. In this respect, the AIV points out that effective external border controls depend on the principle of solidarity being put into practical effect. External border controls should be fully coordinated and supported by the Union. Where visa policy is concerned, the AIV recommends the establishment of a new EU system to check that visa holders do indeed leave the territory of the European Union when their visas expire; this is normal practice in the United States.*

In relation to this topic, it is relevant that some Member States periodically or occasionally regularise groups of illegal immigrants. Once again, the right to freedom of movement means that policies of this kind can have major consequences for numbers of immigrants in other Member States. *In view of this fact, the AIV recommends that an obligation should be introduced for Member States proposing to take such action to notify each other of intended legalisations and of the numbers of illegal immigrants concerned. Consideration could also be given to introducing certain conditions, to be determined at EU level, limiting Member States' right to legalise, for example with respect to the intervals between regularisations. Finally, the AIV recommends that the obligation to notify other Member States should be reinforced by giving the European Commission the power to inquire into the situation and to make recommendations on the basis of its findings.*

These measures should be reinforced by measures on internal controls and action to reduce the profitability of employing illegal immigrants. *The AIV recommends that measures should be established at EU level to make it unprofitable to employ illegal immigrants. One possibility might be to institute fines large enough to have a deterrent effect. Finally, the AIV recommends that policy on the expulsion of illegal immigrants should be communitised.*

23 See pp. 28-30 of the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on immigration, integration and employment, COM (2003) 336 of 3 June 2003.

24 Report by the Council of Europe, 'Recent Demographic Developments in Europe, 2002'. Given the nature of the subject, no exact figures are available.

The European Union is already making great efforts to combat organised people smuggling and trafficking in human beings. *The AIV supports this and recommends that the European Union should continue to take firm action to tackle these degrading practices, for example through cooperation with countries of origin and transit and through the exchange of information. This should be done in cooperation with international organisations which are already active in this area, such as the Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe and the UN.*

Conclusions and recommendations

The following issues can be identified as possible elements in a second phase in the development of this area of policy, or as subjects for discussion in this respect during the Dutch presidency.

The AIV recommends that:

Regarding the institutional framework

- The Council should seize the institutional opportunities already contained in Title IV of the EC Treaty for the further development of this policy area if no progress is made on a more ambitious approach. However, the present Treaties provide only for the development of an initial phase in the policy, generally based merely on minimum standards. For this reason, the AIV feels that it is essential to seek the acceptance of new Treaty provisions as proposed in the Draft Constitution;

- provision should be made for arrangements that can be brought into operation without any amendment to the Treaty if unacceptable delays occur in the handling of cases by the European Court of Justice as a result of increased legislation and the possible amendment of the anomalous rules concerning the preliminary ruling mechanism.

Regarding asylum

- Member States should take to heart the criticisms voiced by the High Commissioner for Refugees concerning the Draft Directive on the procedures for granting or withdrawing the status of refugee or of person in need of international protection and should modify the draft directive accordingly;

- a uniform refugee status and a uniform status of person in need of international protection should be established. The AIV advocates the speediest possible adoption of the current draft directive on the procedures for granting such status. In addition, the AIV is in favour of according the right to freedom of movement to all those who have been granted permanent residence permits on the basis of their refugee status or status as a person in need of international protection;

- proposals should be made with a view to achieving a genuinely uniform common status in these two areas if, following adoption of the directive, major disparities are found to continue in the interpretation of the rules for according refugee status and status as a person in need of international protection;

- a ‘one-stop procedure’ should be established;

- a Community system of burden-sharing should be instituted. In concrete terms, the Member States should make larger, more regular and more means-related contributions to the existing European Refugee Fund. Member States should be able to

receive grants from this fund to help them meet the cost of the reception of asylum seekers on the basis of an agreed standard tariff. The fund could also be used to support resettlement programmes;

- the ultimate goal of the second phase should be a communitised policy on return, with cooperation taking place by means that include common transport arrangements and common liaison with the countries of origin, and through the option for Member States to undertake common action with regard to negotiating and concluding return agreements with countries of origin;

- there should be full implementation of the common system of external border controls and the expansion of this system to include a common system of controls with regard to asylum seekers;

- action should be taken to examine the scope for an EU Asylum Agency with offices in the different Member States as well as a head office in one Member State. The EU Asylum Agency could initially concentrate on supporting and cooperating with national agencies. It should gradually take on more tasks in relation to the assessment of asylum applications on the basis of common EU standards, appeal procedures and the spreading of people granted refugee status or recognised as being in need of international protection;

- action should be taken to examine the possibility of developing an EU appeals procedure, to be conducted by an EU body, such as the EU Asylum Agency, perhaps operating on a decentralised basis.

Regarding protection in the region

- The idea of 'protection in the region' should only be implemented if there are absolute guarantees that persons in need of protection will actually receive it, if the legal and socioeconomic conditions of the reception offered them are humane, if a serious attempt is actually made to contribute financially and otherwise to an improvement in the legal and socioeconomic infrastructure for protection in the region, and if broad action is taken to seek structural solutions to the refugee problem in the countries of origin and to cooperate with countries of origin, transit, initial reception and ultimate destination. In addition, the Union should contribute financially and otherwise to the development, in cooperation with UNHCR, of a policy on return to countries of origin, or the provision of future prospects in some other form. The AIV is in favour of a Community approach not only to the development of such policies, but also to their financial design and implications. Finally, the AIV recommends that the possibility should be examined of taking action within the context of European Development Assistance to divert more resources to the support of refugees in the region;

- action should be taken to investigate the possibility of establishing 'EU Reception Centres' in states on the external borders of the European Union where asylum seekers can be initially received and registered;

- lists of safe third countries should be used, provided that the criteria for listing countries as safe are stringent, transparent, public and verifiable and provided a Community policy on return is in place;

- these lists of safe third countries should be compiled in close consultation with JHA and CFSP forums, preferably with cooperation taking place between the High Representative and the Commissioner with responsibility for JHA.

Regarding labour migration

- There should at least be greater coordination in this policy area. In concrete terms, this could take the form of a new obligation for Member States to notify each other of the number of labour migrants per sector that they have admitted;

- a safeguard clause should be introduced, which can be invoked if the number of migrants moving from one Member State to another exceeds a specified maximum. If the clause were invoked in such a case, the European Commission could examine the situation and make recommendations on the basis of its findings.

Regarding migration in the context of family reunification or formation

- The first step should be to clarify the scope of the Directive's application;

- Member States should not be able to set the age limit for the admission of children to join their parents any lower than the age of majority in their own national legislation.

Regarding residence and integration

- The provision in the Directive on the status of third-country nationals who are long-term residents which states that third-country nationals holding permanent residence permits in one Member State may be required to attend language courses if they move to another should be scrapped;

- refugees and persons enjoying subsidiary protection who hold permanent residence permits should be accorded the same rights as apply to third-country nationals who have been allowed in on a different basis and have since been granted permanent residence permits;

- the period within which third-country nationals obtain the right to vote and to stand for election in local elections should be harmonised across the EU: it should coincide with the grant of permanent residence permits;

- action should be taken to investigate whether it is feasible to confer EU citizenship on third-country nationals who hold permanent residence permits;

- support should be given for the European Commission's proposal to seek to achieve cooperation and the exchange of information and best practices as regards the imposition of integration conditions.

Regarding illegal immigration

- The principle of solidarity should be put into practical effect;

- external border controls should be fully coordinated and should be supported by the Union;

- an EU system should be established to check whether visa holders do indeed leave the territory of the Union when their visas expire, as is normal practice in the United States;

- an obligation should be introduced for Member States proposing to regularise groups of illegal immigrants to inform each other of their intentions and of the numbers of illegal immigrants concerned. Consideration could also be given to limiting Member States' right to legalise by introducing conditions determined at EU level concerning, for example, the frequency of legalisations. The obligation to notify should be reinforced by giving the European Commission the power to inquire into the situation and make recommendations on the basis of its findings;

- measures should be established at EU level to make it unprofitable to employ illegal immigrants. One possibility might be to institute fines large enough to have a deterrent effect;

- a communitised policy should be adopted on the expulsion of illegal immigrants;

- the European Union should continue to take firm action to tackle the degrading practices of people smuggling and trafficking in human beings, for example through cooperation with countries of origin and transit and through the exchange of information. This should be done in cooperation with international organisations already active in this area, such as the Organisation for Security and Cooperation in Europe (OSCE), the Council of Europe and the UN.

Advisory letter of 15 May 2003 to the Minister of Foreign Affairs and the Minister for Immigration and Integration on the Dutch presidency of the EU in 2004

Dear Sir and Madam,

As you will be aware, the Advisory Council on International Affairs (AIV) and the Advisory Committee on Aliens Affairs (ACVZ) have decided on their own initiative to issue a joint AIV/ACVZ advisory letter on European asylum and migration policy. The full recommendations are due to appear early in the autumn of 2003.

Via contacts with officials, we have learned that the government needs to decide as early as May 2003 on the matters it wishes to place on the agenda for the Dutch presidency of the EU in the second half of 2004. The AIV/ACVZ recommendations would therefore come too late to be of use in this respect. For this reason, we have decided to write to you outlining our advice on the general approach to be adopted in placing 'asylum and migration' on the agenda for the Dutch presidency. The recommendations in this letter are therefore of a procedural and organisational nature. Our final joint recommendations will offer a more in-depth discussion of a number of substantive issues relating to the future of this policy area.

In this connection, we would point out that the number of migrants arriving in Europe is unlikely to decline over the next few years. Figures on demographic trends indicate continued rapid population growth in the traditional countries of emigration to Europe. The flow of asylum seekers entering the Member States of the European Union has also been fairly constant of recent years. As a result, EU citizens are finding themselves more directly confronted with issues relating to integration and comparative affluence, and asylum and migration are attracting greater public and political attention. For these reasons, and because of the scope and cross-border nature of the theme, asylum and migration policy continues to occupy an important place on the agenda of the European Union and on those of individual Member States. The continuing difficulty of controlling inward migration has produced agreements within the Union on further communisation of asylum and migration policy. However, due in part to differences in national interest, it has proved more difficult to agree concrete arrangements for implementing the policies laid down in Title IV of the EC Treaty and supplemented by the conclusions of the Tampere European Council. The directives so far adopted or proposed show that initially lofty ambitions have been greatly toned down.

We write on the eve of major events within the European Union. On 1 May 2004, the Union will gain ten new Member States: in numerical terms, the most substantial enlargement in its history. In mid-2004, elections will be held for the enlarged European Parliament. And in the course of 2004, new European Commissioners will be appointed.

Moreover, 1 May 2004 is the deadline set in the Treaty for enshrining a large number of issues in EC legislation. This will be the obvious time to take stock of advances in European asylum and migration policy and to think about how any future policy developments are to be achieved. In the absence of new treaty provisions before 1 May 2004,

Title IV of the EC Treaty, with its minimum standards-based approach, will remain in force and new or amended treaty provisions will be required to provide the basis for the development of any more far-reaching policy.

In this context, it is clear that there is (so far) a consensus in the Convention on the future of Europe in favour of an ambitious approach to European asylum and migration policy. For example, there is general agreement in the Convention on the desirability of giving the policy a broader and more general basis in EU law. If the Union were to acquire such legislative powers in relation to asylum and migration policy, this would clear the way for more sweeping harmonisation on matters which are now regulated only in terms of minimum standards. Something closer to a common European asylum and migration policy could then be achieved. In the opinion of the AIV and ACVZ, the fact that agreement exists on this basic point of principle, which is capable of such far-reaching consequences, demonstrates the presence of growing support for a broader European approach to this policy area. This view is supported by the fact that the Convention is also in favour of the introduction of majority voting and co-decision in this area.

We believe that these factors can act as a catalyst and generate the momentum for a new push forward in this area. This offers the Dutch presidency new opportunities to initiate further developments in the asylum and migration policy of the Union within this changing political and legal environment. The fact that the Netherlands is to work together with the Irish presidency in the first half of 2004 and with the European Commission to devise a strategic multi-annual policy programme for the Union over the period from 2004 to 2007 represents a particularly promising opportunity. In the light of the above, we feel that the Dutch presidency should direct its efforts at restoring the ambition reflected in the Tampere conclusions, and should do so even if the conclusions of the Convention are not endorsed by the governments of the Member States.

The AIV and ACVZ feel that the Dutch presidency should at least aim to achieve a significant step forward. First of all, an evaluation should be conducted that can be used to involve the new Member States in the further development of the policy area. The results of the evaluation should be used as the basis for preparing a programme of action. To this end, we recommend the government to organize a conference in cooperation with Ireland. The formula for the conference should make it possible to invite not only official-level delegations from the 25 EU Member States, but also other stake-holders such as MPs, representatives of the European Commission, academics and representatives of NGOs. This will help to increase support for the programme. The programme of action would then need to be approved at an informal Council meeting.

At the same time, the Netherlands can maintain progress by working together with other parties, such as the Commission, on the further development of substantive policy themes (to be determined, in part, by the results of the evaluation). The possible results of the evaluation and the selection of themes will be discussed in detail in our forthcoming final joint recommendations on this subject.

To sum up, the specific recommendations of the AIV and ACVZ are that the Dutch presidency should direct its efforts towards:

1. Completing negotiations on any remaining draft directives subject to the Treaty deadline of 1 May 2004, and any other draft directives not subject to this deadline but still needing to be agreed. The latter will tend to contain the proposals on which it will be most difficult to reach agreement. The difficulty of achieving concrete results in this area should not be underestimated.
2. Conducting an evaluation of the legislation enacted on the basis of Title IV of the EC Treaty, including at any rate consideration of the following two questions:
   a) Is the system of directives that has been accepted coherent or are there inconsistencies and discrepancies?
   b) Does the system meet the relevant international standards?
   This issue will be discussed in detail in our final joint report.
3. Organising a conference on the evaluation in cooperation with Ireland. The conference should bring together a wide range of people including government representatives, MPs (from national assemblies and from the European Parliament), European Commission representatives, academics and representatives of NGOs.
4. Drafting a programme of action for future Union policy on the basis of the evaluation mentioned under point 3.
5. Gaining political approval for the programme of action by means of an informal Council meeting immediately following the conference.

We should be delighted to provide any further information you may require regarding the advice given in this letter.

Yours faithfully,

(signed)

F. Korthals Altes
Chair,
Advisory Council on International Affairs

(signed)

T.J.P. Os van den Abeelen
Chair,
Advisory Committee on Aliens Affairs

Statistics

Table 1 ASYLUM APPLICATIONS IN THE EU, 2001-2002[25]

COUNTRIES	2002	2001	ABSOLUTE DIFFERENCE	PROPORTION OF EU TOTAL FOR 2002	PROPORTION OF EU TOTAL FOR 2001	CHANGE IN SHARE
1. United Kingdom	109.548	90.244	19.304	26.7%	22.2%	4%
2. Germany	71.127	88.287	-17.160	17.4%	21.8%	-4%
3. France	51.004	47.260	3.744	12.4%	11.7%	1%
4. Austria	36.983	30.135	6.848	9%	7.4%	2%
5. Sweden	32.995	23.499	9.496	8%	5.8%	2%
6. Switzerland	26.125	20.633	5.492	6.4%	5.1%	1%
7. Belgium	18.768	24.527	-5.759	4.6%	6%	-1%
8. Netherlands	18.667	32.579	-13.912	4.6%	8%	-3%
9. Norway	17.480	14.782	2.698	4.3%	3.6%	1%
10. Ireland	11.634	10.325	1.309	2.8%	2.5%	0%
11. Spain	6.179	9.219	-3.040	1.5%	2.3%	-1%
12. Denmark	5.947	12.512	-6.565	1.5%	3.1%	-2%
13 Finland	3.443	1.650	1.793	0.8%	0.4%	0%
Total	**409.900**	**405.652**	**4.248**	**100%**	**100%**	

Numbers of asylum applications in the countries of Eastern Europe are considerably lower. Comparative figures for 2001 and 2002 are available for seven of them. The total number of asylum applications made in these countries was 33,610. This represents 8% of the total for the whole of Europe. The number of applications declined in 2002 by 24%. The decline was most substantial in the Czech Republic (53%) and Hungary (33%). The main destination countries are Slovakia, the Czech Republic and Hungary.

These figures show that the flow of asylum seekers fluctuates between Member States. Figures for the period between 1992 and 2000 confirm this impression and suggest the presence of a 'waterbed effect' (that is, the greatest flow of asylum seekers tends to be towards those Member States which, at any given time, have the least restrictive policies).[26]

25 Source: Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC).

26 In absolute figures, the picture for the top three over the 1992-2000 period is as follows: in Germany, there was a steady decline in the number of asylum applications. In 1991 there were still 256,100 but by 2000 the number had dropped to 78,600. In France, there was a rapid decline in the number of asylum applications between 1991 and 1996, from 47,400 to 17,400, followed by a rise between 1996 and 2000 from 17,400 to 38,600. Similarly, in the United Kingdom, numbers declined substantially until around 1993, after which they rose steadily from 28,000 in 1993 to 97,900 in 2000. In the Netherlands, there was initially the same kind of trend as in the United Kingdom, but after some years of sharp increase (from 20,300 in 1992 to 43,900 in 2000) numbers have now fallen again, to 18,667 in 2002 and around 7,500 in the first half of 2003.

Membership of preparatory committee and experts consulted

The AIV set up a committee to prepare this advisory report. The members were recruited from three of the AIV's four standing committees. They were: Prof. F.H.J.J. Andriessen, Ms Wezenbeek-Geuke and Prof. J.W. de Zwaan of the European Integration Committee, Prof. P.R. Baehr of the Human Rights Committee and Prof. E.J. de Kadt of the Development Cooperation Committee. The committee secretary was Ms M.M.J. Louwerens of the AIV and she was helped to draft the report by Ms S. Bonjour, Ms C. van der Sanden, Ms J.L.E. Bakels, Ms S. Malik and Ms M. Shabaan (all trainees). The report was finalised by the AIV on 5 March 2004.

In an initial reconnaissance of the policy area, undertaken jointly with several members of the Advisory Committee on Aliens Affairs (ACVZ), interviews were held with a number of members of staff at the Directorate-General for Justice and Home Affairs (JHA) of the European Commission (Messrs De Brouwer, Ackers, Verheij, Roscam Abbing, Klos and Bosch and Ms Pratt, Ms Mochel and Ms Guin). Interviews were also held with a member of staff at the Council's Legal Department (Mr Schutte) and with the UNHCR's representative in Brussels (Mr Van der Klaauw). There were also meetings with officials at the VNO/NCW Confederation of Netherlands Industry and Employers (Mr Nieuwsma, secretary of social affairs, and Mr Driessen, secretary of international economic affairs), with policy officials at the FNV Trade Union Confederation (Mr Bluiminck and Mr Van de Pol), and with Ms Gonsalves and Ms Pronk of the European Integration Department of the Netherlands Ministry of Foreign Affairs and Mr Sorel and Mr Taselaar of the Immigration Policy Department of the Netherlands Ministry of Justice. Finally, there were consultations with Mr Van Geel and Mr Kok of the Dutch Refugee Council (VWN) and Mr Van Troost and Mr Bruin of Amnesty International.

In addition, the AIV and ACVZ held a meeting of experts on 2 April 2003. It was attended by: Mr Battjes, lecturer and researcher in constitutional and administrative law at the Free University of Amsterdam; Prof. Boeles, professor of immigration law at the University of Leiden; Prof. Groenendijk, professor of sociology of law at the University of Nijmegen; Prof. Hailbronner, professor of international and European law at the University of Koblenz; Dr Noll, professor of asylum and migration law at the University of Lund; Mr Rudge, an independent consultant on refugee and human rights issues; and Mr Vicenzi, a former official at the European Commission's DG JHA. At the meeting of experts, two researchers at the Netherlands Interdisciplinary Demographic Institute (NIDI) – Mr Cruijsen and Mr Van der Erf – gave a presentation on the subject of demographic trends. The AIV and ACVZ would like to take this opportunity of thanking all of these people for their willingness to discuss and share their views and their expertise with the preparatory committee.

Previous reports published by the Advisory Council on International Affairs

1 AN INCLUSIVE EUROPE, *October 1997*

2 CONVENTIONAL ARMS CONTROL: urgent need, limited opportunities, *April 1998*

3 CAPITAL PUNISHMENT AND HUMAN RIGHTS: recent developments, *April 1998*

4 UNIVERSALITY OF HUMAN RIGHTS AND CULTURAL DIVERSITY, *June 1998*

5 AN INCLUSIVE EUROPE II, *November 1998*

6 HUMANITARIAN AID: redefining the limits, *November 1998*

7 COMMENTS ON THE CRITERIA FOR STRUCTURAL BILATERAL AID, *November 1998*

8 ASYLUM INFORMATION AND THE EUROPEAN UNION*, July 1999*

9 TOWARDS CALMER WATERS: a report on relations between Turkey and the European Union*, July 1999*

10 DEVELOPMENTS IN THE INTERNATIONAL SECURITY SITUATION IN THE 1990s: from unsafe security to unsecured safety, *September 1999*

11 THE FUNCTIONING OF THE UNITED NATIONS COMMISSION ON HUMAN RIGHTS, *September 1999*

12 THE IGC AND BEYOND: TOWARDS A EUROPEAN UNION OF THIRTY MEMBER STATES, *January 2000*

13 HUMANITARIAN INTERVENTION, *April 2000**

14 KEY LESSONS FROM THE FINANCIAL CRISES OF 1997 AND 1998, *April 2000*

15 A EUROPEAN CHARTER OF FUNDAMENTAL RIGHTS?, *May 2000*

16 DEFENCE RESEARCH AND PARLIAMENTARY SCRUTINY, *December 2000*

17 AFRICA'S STRUGGLE: security, stability and development, *January 2001*

18 VIOLENCE AGAINST WOMEN: LEGAL DEVELOPMENTS, *February 2001***

* Issued jointly by the Advisory Council on International Affairs (AIV) and the Advisory Committee on Issues of Public International Law (CAVV)

** Also available in French and Russian.

19 A MULTI-TIERED EUROPE: the relationship between the European Union and subnational authorities, *May 2001*

20 EUROPEAN MILITARY-INDUSTRIAL COOPERATION, *May 2001*

21 REGISTRATION OF COMMUNITIES BASED ON RELIGION OR BELIEF, *June 2001*

22 THE WORLD CONFERENCE AGAINST RACISM AND THE RIGHT TO REPARATION, *June 2001*

23 COMMENTARY ON THE 2001 MEMORANDUM ON HUMAN RIGHTS POLICY, *September 2001*

24 A CONVENTION, OR CONVENTIONAL PREPARATIONS? The European Union and the ICG 2004, *November 2001*

25 INTEGRATION OF GENDER EQUALITY: a matter of responsibility, commitment and quality, *January 2002*

26 THE NETHERLANDS AND THE ORGANISATION FOR SECURITY AND COOPERATION IN EUROPE IN 2003: role and direction, *May 2002*

27 BRIDGING THE GAP BETWEEN CITIZENS AND BRUSSELS: towards greater legitimacy and effectiveness for the European Union, *May 2002*

28 AN ANALYSIS OF THE US MISSILE DEFENCE PLANS: pros and cons of striving for invulnerability, *August 2002*

29 PRO-POOR GROWTH IN THE BILATERAL PARTNER COUNTRIES IN SUB- SAHARAN AFRICA: an analysis of poverty reduction strategies, *January 2003*

30 A HUMAN RIGHTS BASED APPROACH TO DEVELOPMENT COOPERATION, *April 2003*

31 MILITARY COOPERATION IN EUROPE: possibilities and limitations, *April 2003*

32 BRIDGING THE GAP BETWEEN CITIZENS AND BRUSSELS: towards greater legitimacy and effectiveness for the European Union, *April 2003*

33 THE COUNCIL OF EUROPE: less can be more, *October 2003*