

IMMIGRATION AND ASYLUM LAW AND POLICY IN EUROPE

Immigration Law in the European Community

Elsbeth Guild

Kluwer Law International

Immigration Law in the European Community

by

ELSPETH GUILD



KLUWER LAW INTERNATIONAL

THE HAGUE / LONDON / BOSTON

A C.I.P. Catalogue record for this book is available from the Library of Congress.

ISBN 90-411-1593-5

Published by Kluwer Law International,
P.O. Box 85889, 2508 CN The Hague, The Netherlands.

Sold and distributed in North, Central and South America
by Kluwer Law International,
101 Philip Drive, Norwell, MA 02061, U.S.A.
kluwerlaw@wkap.com

In all other countries, sold and distributed
by Kluwer Law International, Distribution Centre,
P.O. Box 322, 3300 AH Dordrecht, The Netherlands.

Printed on acid-free paper

All Rights Reserved
© 2001 Kluwer Law International
Kluwer Law International incorporates the publishing programmes of
Graham & Trotman Ltd, Kluwer Law and Taxation Publishers,
and Martinus Nijhoff Publishers.

No part of the material protected by this copyright notice may be reproduced or
utilized in any form or by any means, electronic or mechanical,
including photocopying, recording or by any information storage and
retrieval system, without written permission from the copyright owner.

Printed in the Netherlands.

IMMIGRATION LAW IN THE EUROPEAN COMMUNITY

IMMIGRATION AND ASYLUM LAW AND POLICY IN EUROPE

Volume 2

Editors

Elsbeth Guild

*Kingsley Napley Solicitors, London,
Centre for Migration Law, Katholieke Universiteit, Nijmegen*

Jan Niessen

Migration Policy Group, Brussels

The series is a venue for books on European immigration and asylum law and policies where academics, policy makers, law practitioners and others look to find detailed analysis of this dynamic field. Works in the series will start from a European perspective. The increased co-operation within the European Union and the Council of Europe on matters related to immigration and asylum requires the publication of theoretical and empirical research. The series will contribute to well-informed policy debates by analysing and interpreting the evolving European legislation and its effects on national law and policies. The series brings together the various stakeholders in these policy debates: the legal profession, researchers, employers, trade unions, human rights and other civil society organisations.

The titles published in this series are listed at the end of this volume.

PREFACE

"The aim is an open and secure European Union fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and must be able to respond to humanitarian needs on the basis of solidarity. A common approach must also be developed to ensure the integration into our societies of these third country nationals who are lawfully resident in the Union."

With these fine words the European Council set out its strategy towards the development of an European immigration and asylum law at its Summit in Tampere, Finland, October 1999. The Tampere Summit is not the subject of this book, rather the story which begins in 1957 with the signature of the Treaty of Rome and finds a new impetus in the declarations of the European Council at Tampere.

The new powers which the Amsterdam Treaty's entry into force on 1 May 1999 had transferred to the Community in the field of immigration and asylum now need to be exercised. The powers themselves are very wide and permit many different and conflicting approaches. The purpose of this study is to look at the history of immigration law in the European Community, from the Community's conception in 1957. Can we discern the framework and principles from this history which will be needed for the next step of the Community's development in this field? With this underlying concern I began work on this dissertation in June 1997 as the Member States finalised and signed the Amsterdam Treaty. My greatest thanks in this endeavour for their help, insight, generosity and patience must be to Professors Kees Groenendijk and Roel Fernhout who guided me throughout. Without their great kindness this work would never have been completed.

To others too, however, I am indebted for their assistance and encouragement: first to my jury, Professor Deirdre Curtin and Professor Pieter Boeles; secondly to all the participants of the Centre for Migration Law at the University of Nijmegen (including Hannie van de Put); to those experts who were so generous with their expertise, Denis Martin, Steve Peers and Aleidus Woltjer, and to Helen Staples without whose practical assistance I could not have finished. For his constant support and affection it is a special pleasure to thank Didier Bigo. Finally, I owe gratitude to everyone in the immigration department at my office at Kingsley Napley in London for their help and patience.

Elsbeth Guild

CONTENTS

Preface	ix
Table of Cases	xi
Introduction	1
Part I: THE COMMUNITY LAW FOUNDATION	
CHAPTER 1	
The Foundations of the Community's Immigration Laws	7
1.1. Member State Discretion and Movement of Persons	7
1.2. Community Criteria: Conditions Excluding Discretion	21
1.3. Securing Member State Obedience	32
1.4. Conclusions	36
CHAPTER 2	
Non-discrimination and Obstacles	37
2.1. Introduction	37
2.2. The Contours of Non-discrimination	40
2.3. Direct and Indirect Discrimination on the Ground of Nationality	45
2.4. Obstacles and their Classification	55
2.5. Conclusions	59
Part II: THIRD COUNTRY NATIONALS PRIVILEGED UNDER AGREEMENTS WITH THE EC	
CHAPTER 3	
An Overview of Third Country Agreements	65
3.1. Introduction	65
3.2. The Agreements and Community Law	71
3.3. The Court of Justice and its Competence	78
3.4. The Principles of Interpretation: Direct Effect	82

3.5. The Principles of Implementation: Where Direct Effect is Lacking	92
3.6. Conclusions	94
CHAPTER 4	
The Early Agreements, their Developments and Beneficiaries	95
4.1. Introduction	95
4.2. The Agreements and Provisions on Labour	98
4.3. The Agreements, their Councils and Subsidiary Legislation	100
4.4. Yaounde to Lomé IV	105
4.5. The Maghreb Agreements	110
4.6. Conclusions	117
CHAPTER 5	
Interpretation of the Turkey Agreement: National Discretion and Community Law Coherence	121
5.1. Introduction	121
5.2. The Approach of the Legislator	124
5.3. The Concept of a Worker	145
5.4. The Treatment of Family Members	154
5.5. The Meaning of Public Policy and the Loss of Status	161
5.6. Conclusions	169
CHAPTER 6	
Immigration Lessons: The Central and Eastern Europe Agreements	173
6.1. Introduction	173
6.2. Format of the Agreements	177
6.3. People and Pressure to Emigrate	178
6.4. Movement and Rights of Workers	182
6.5. The Right of Establishment	190
6.6. Discrimination, Obstacles and Coherence	201
6.7. Conclusions	209

Part III: THE TREATY AND THIRD COUNTRY NATIONALS:
THE IMPETUS TOWARDS COMPETENCE AND COHERENCE

✓ CHAPTER 7

The Drive Towards Completing the Internal Market: Divided Loyalties	213
7.1. Introduction	213
7.2. The Economic Incentive: Creating the Internal Market	219
7.3. Pulling in Different Directions: The Competence Challenge	233
7.4. Persons, Borders and Discretion	240
7.5. Conclusions	249

CHAPTER 8

Pillar Talk: The Maastricht Treaty Compromise	255
8.1. Introduction	255
8.2. The New Immigration Regime in the EC Treaty	268
8.3. Visas and Community Law	273
8.4. Individual Rights in the Light of White, Grey and Black Lists	279
8.5. Physical Presence and Legal Presence	290
8.6. Conclusions	292

CHAPTER 9

The Search for Objectives: The Amsterdam Treaty	295
9.1. Introduction	295
9.2. The EC Treaty and Third Country Nationals: After Amsterdam	296
9.3. The Internal Market and an Area of Freedom, Security and Justice	305
9.4. Temporary Protection: The Commission's Proposal During the Negotiations	311
9.5. Immigration Policy: The Commission's Proposal at the Time of the Negotiations	324
9.6. Legally Resident Third Country Nationals: A Testing Ground of Rights	326
9.7. Conclusions	334
Annex	336

CHAPTER 10	
Conclusions	341
BIBLIOGRAPHY	355
INDEX	367

TABLE OF CASES

INTERNATIONAL COURT OF JUSTICE

<i>Nottebohm Case (Liechtenstein v Guatemala)</i> ICJ Reports 1955	22
<i>Mavrommatis Palestine Concessions Case</i> PCIJ Series A No 2 (1924)	204
<i>Panevezys-Saldutiskis Railway Company Case</i> PCIJ Series A No 76 (1939)	204

EUROPEAN COURT OF HUMAN RIGHTS

<i>Abdulaziz, Cabales and Balkandali</i> [1985] Ser. A No. 95	75
<i>Berrehab</i> [1988] Ser A 138	26
<i>Moustaquim</i> [1991] Ser A 193	26
<i>Vikarajah</i> [1991] Ser A 215	1
<i>Beldjoudi</i> [1992] Ser A 234A	26
<i>Gül</i> European Court of Human Rights Reports 1996 – I	1, 75
<i>Chahal</i> European Court of Human Rights Reports 1996 – V	1
<i>Amuur v France</i> , 25 June 1996, 17/1995/523/609	291
<i>D v UK</i> , 2 May 1997, 146/1996/767/964	291
<i>Matthews v UK</i> , 18 February 1999, 24833/94	318

EUROPEAN COURT OF JUSTICE

26/62 <i>Van Gend en Loos</i> [1963] ECR 1	15
75/63 <i>Hoekstra (née Unger)</i> [1964] ECR 177	29
90 & 91/63 <i>Commission v Luxembourg & Belgium</i> [1964] ECR 625	33
6/64 <i>Costa v ENEL</i> [1964] ECR 585	16, 71
15/69 <i>Ugliola</i> [1969] ECR 363	131, 185
1/72 <i>Frilli</i> [1972] ECR 457	42
44/72 <i>Marsman</i> [1972] ECR 1243	185
152/73 <i>Sotgiu</i> [1974] ECR 153	37, 50, 52, 185
167/73 <i>Commission v France</i> [1974] ECR 359	56
181/73 <i>Haegeman</i> [1974] ECR 449	81, 84
2/74 <i>Reyners</i> [1974] ECR 631	61, 90, 102, 191, 197, 223

8/74 <i>Dassonville</i> [1974] ECR 837	206
36/74 <i>Walrave</i> [1974] ECR 1405	27
41/74 <i>Van Duyn</i> [1974] ECR 1337	28, 46, 47, 60, 162
67/74 <i>Bonsignore</i> [1975] ECR 297	28
32/75 <i>Cristini</i> [1975] ECR 1085	52
36/75 <i>Rutili</i> [1975] ECR 1219	28, 48
43/75 <i>Defrenne</i> [1976] ECR 455	33
48/75 <i>Royer</i> [1976] ECR 497	16, 28, 167, 184, 204
87/75 <i>Bresciani</i> [1976] ECR 129	81, 83, 84
118/75 <i>Watson & Belmann</i> [1976] ECR 1185	14, 48, 204
33/76 <i>Rewe</i> [1976] ECR 1989	35
40/76 <i>Kernadek</i> [1976] ECR 1669	55
8/77 <i>Sagulo</i> [1977] ECR 1495	60
30/77 <i>Bouchereau</i> [1977] ECR 1999	60, 162
65/77 <i>Razanatsimba</i> [1977] ECR 2229	109
175/78 <i>Saunders</i> [1979] ECR 1129	58
207/78 <i>Even</i> [1979] ECR 2019	131
149/79 <i>Commission v Belgium SNCB I</i> [1980] ECR 3881	50
157/79 <i>Pieck</i> [1980] ECR 2171	13, 262
270/80 <i>Polydor</i> [1982] ECR 329	83, 198
53/81 <i>Levin</i> [1982] ECR 1035	29, 60, 145, 189, 193, 291
104/81 <i>Kupferberg</i> [1982] ECR 3641	79, 82
115-116/81 <i>Adoui & Cornaille</i> [1982] ECR 1665	48, 161
36/82 <i>Morson</i> [1982] ECR 3723	154
286/82 <i>Luisi & Carbone</i> [1984] ECR 377	22, 27
237/83 <i>Prodest</i> [1984] ECR 3135	33
238/83 <i>Meade</i> [1984] ECR 2631	22
267/83 <i>Diatta</i> [1985] ECR 567	58, 131, 155, 156
293/83 <i>Gravier</i> [1985] ECR 593	42
41/84 <i>Pirna</i> [1986] ECR 1	52, 53, 140, 185
137/84 <i>Mutch</i> [1985] ECR 2681	52
205/84 <i>Commission v Germany</i> [1986] ECR 3793	194
59/85 <i>Reed</i> [1986] ECR 1283	16, 52
66/85 <i>Lawrie-Blum</i> [1986] ECR 2121	30, 31, 60, 61, 145, 146, 151
139/85 <i>Kempf</i> [1986] ECR 1741	60, 145
225/85 <i>Commission v Italy</i> [1987] ECR 2625	185
281/85, 283-85/85, 287/85 <i>Germany and Ors v Commission</i> [1987] ECR 3203	131, 234, 235, 236, 237

39/86 <i>Lair</i> [1988] ECR 3161	31, 151
12/86 <i>Demirel</i> [1987] ECR 3719	73, 79, 80, 84, 89, 90, 91, 119, 195, 199, 200
249/86 <i>Commission v Germany</i> [1989] ECR 1263	75, 154
20/87 <i>Gauchard</i> [1987] ECR 4879	58
143/87 <i>Stanton</i> [1988] ECR 3877	54, 57
181/87 <i>Daily Mail</i> [1998] ECR 5483	193
186/87 <i>Cowan</i> [1989] ECR 195	42
196/87 <i>Steymann</i> [1988] ECR 6159	30, 149, 192, 193
235/87 <i>Matteucci</i> [1998] ECR 5589	109
344/87 <i>Bettray</i> [1989] ECR 1621	145, 149
389 & 390/87 <i>Echternach</i> [1989] ECR 723	54, 68, 142, 146
9/88 <i>Lopes da Veiga</i> [1989] ECR 2989	169
171/88 <i>Rimmer-Kühn</i> [1989] ECR 2743	14, 146
C-228/88 <i>Bronzing</i> [1990] ECR 531	53
C-297/88 <i>Dzodzi</i> [1990] ECR I-3763	154
C-68/89 <i>Commission v Netherlands</i> [1991] ECR I-2637	224, 274
C-113/89 <i>Rush Portuguesa</i> [1990] ECR I-1417	68
C-192/89 <i>Sevince</i> [1990] ECR I-3461	79, 83, 84, 85, 87, 88, 92, 100, 125, 167, 168, 174, 188, 199
C-221/89 <i>Factortame</i> [1991] ECR I-3905	192
C-292/89 <i>Antonissen</i> [1991] ECR I-745	22, 27, 55, 151
C-357/89 <i>Raulin</i> [1992] ECR I-1059	31
C-363/89 <i>Roux</i> [1991] ECR I-273	27
C-3/90 <i>Bernini</i> [1992] ECR I-1071	31
C-6, 9/90 <i>Francovich</i> [1991] ECR I-5357	93
C-10/90 <i>Masgio</i> [1991] ECR I-1119	56
C-18/90 <i>Kziber</i> [1991] ECR I-199	7, 55, 79, 85, 89, 93, 101, 104, 108, 112, 114, 119, 153, 174, 184, 186, 200, 202
C-295/90 <i>Parliament v Council re Students</i> [1992] ECR I-4193	42
C-369/90 <i>Micheletti</i> [1992] ECR I-4239	24
C-370/90 <i>Singh</i> [1992] ECR I-4265	46, 58, 68, 164, 345
<i>Opinion</i> 1/91 [1991] ECR 6079	32
C-27/91 <i>Le Manoir</i> [1991] ECR-5531	146

C-237/91 <i>Kus</i> [1992] ECR I-6781	79, 144, 148, 157, 161, 167, 323
C-312/91 <i>Metalsa</i> [1993] ECR I-3751	83
C-20/92 <i>Hubbard</i> [1993] ECR I-377	44
C-118/92 <i>Commission v Luxembourg</i> [1994] ECR I-1891	41
C-272/92 <i>Spotti</i> [1993] ECR I-5185	185
C-398/92 <i>Mund & Fester</i> [1994] ECR I-467	44
C-419/92 <i>Scholz</i> [1994] ECR I-505	25
C-12/93 <i>Drake</i> [1994] ECR I-4337	108
C-43/93 <i>Van der Elst</i> [1994] ECR I-3803	68, 343
C-58/93 <i>Yousfi</i> [1994] ECR I-1353	114
C-280/93 <i>Germany v Commission</i> [1994] ECR I-4973	107
C-279/93 <i>Schumacker</i> [1995] ECR 225	54
C-308/93 <i>Issarte-Cabanis</i> [1996] ECR I-2097	55
C-355/93 <i>Eroglu</i> [1994] ECR I-5113	88, 138, 142, 161, 171, 195
C-415/93 <i>Bosman</i> [1995] ECR I-4921	14, 16, 59, 202, 344
C-434/93 <i>Bozkurt</i> [1996] ECR I-1475	87, 151, 169
C-469/93 <i>Chiquita Italia SpA</i> [1995] ECR I-4533	107
<i>Opinion 1/94 (WTO)</i> [1996] ECR I-5267	72, 77
<i>Opinion 2/94</i> [1996] ECR I-1759	75
C-7/94 <i>Gaal</i> [1995] ECR I-1031	160
C-55/94 <i>Gebhard</i> [1995] ECR I-4165	32, 61, 192, 194, 203
C-103/94 <i>Krid</i> [1994] ECR I-719	114
C-116/94 <i>Meyers</i> [1995] ECR, I-2131	186
C-206/94 <i>Paletta</i> [1996] ECR I-2357	164
C-214/94 <i>Boukalfa</i> [1996] ECR I-2253	33
C-227/94 <i>Olivieri-Coenen</i> [1995] ECR I-301	108
C-237/94 <i>O'Flynn</i> [1996] ECR I-2639	52, 53, 202
C-277/94 <i>Taflan-Met</i> [1996] ECR I-4085	92, 93, 105
C-302/94 <i>R v HM Treasury ex p British Telecommunications PLC</i> [1996] ECR I-1631	17
C-336/94 <i>Dafeki</i> [1997] ECR I-6761	165
C-4 & 5/95 <i>Stöber</i> [1997] ECR I-511	53, 59, 202, 203
C-13/95 <i>Süzen</i> [1997] ECR I-1257	69
C-43/95 <i>Data Delecta</i> [1996] ECR I-4671	42, 43, 344
C-53/95 <i>Kernmler</i> [1996] ECR I-703	194
C-65/95 & C-111/95 <i>Radiom and Shingara</i> [1997] ECR I-3343	28, 47, 49
C-107/95 <i>Asscher</i> [1996] I-3089	32, 193
C-126/95 <i>Hallouzi-Chobo</i> [1996] ECR I-4807	114

C-171/95 <i>Tetik</i> [1997] ECR I-329	55, 140, 151, 170
C-266/95 <i>Merino Garcia</i> [1997] ECR I-3279	53, 203
C-285/95 <i>Kol</i> [1997] ECR I-3069	165
C-351/95 <i>Kadiman</i> [1997] ECR I-2133	88, 155, 157
C-392/95 <i>Parliament v Council</i> [1997] ECR I-3213	169, 273, 282
C-36/96 <i>Günaydin</i> [1997] ECR I-5143	147, 149, 150, 151, 166
C-57/96 <i>Meints</i> [1997] ECR I-6689	54
C-64/96 & C-65/96 <i>Uecker & Jacquet</i> [1997] ECR I-3171	49, 69, 131
C-85/96 <i>Martinez Sala</i> [1998] ECR I-2691	49, 146, 151
C-98/96 <i>Ertanir</i> [1997] ECR I-5179	151, 168
C-170/96 <i>Commission v Council</i> [1998] ECR I-2763	286, 288, 289, 290, 291
C-262/96 <i>Sürül</i> [1999] ECR I-2685	88, 93
C-348/96 <i>Calfa</i> [1999] ECR I-11	50
C-350/96 <i>Clean Car</i> [1998] ECR I-2521	344
C-416/96 <i>El Yassini</i> [1999] ECR I-1209	85, 86, 89, 100, 112, 113, 184, 187, 198, 254
C-1/97 <i>Birden</i> [1998] ECR I-7747	147, 148, 150, 151, 348
C-113/97 <i>Babehenini</i> [1998] ECR I-183	114
C-210/97 <i>Akman</i> [1998] ECR I-7519	68, 85, 138, 139, 142, 143, 161
C-234/97 <i>Bobadilla</i> [1999] ECR I-7555	15
C-230/97 <i>Awoyemi</i> [1998] ECR I-6781	22, 68, 69, 70, 343
C-340/97 <i>Nazli</i> [2000] ECR I-4903	88
C-378/97 <i>Florus Ariël Wijsenbeek</i> [1999] ECR I-6207	231, 232
C-37/98 <i>Sævas</i> judgment: 11.5.2000	90
C-65/98 <i>Eyyup</i> judgment: 22.6.2000	141, 159
C-179/98 <i>Mesbah</i> [1999] ECR I-7955	22, 23, 112, 159
C-63/99 <i>Głoszczuk</i> pending	198
C-239/99 <i>Kondoux</i> pending	198
C-257/99 <i>Barkoci and Malik</i> pending	198
C-268/99 <i>Jary and Ors</i> pending	198
T-115-94 <i>Opel Austria v Council</i> [1997] ECR II-39	81

INTRODUCTION

“As the Court has observed in the past, Contracting States have the right, as a matter of well-established international law and subject to their treaty obligations including the European Convention on Human Rights, to control the entry, residence and expulsion of aliens.”¹

International law contains only limited obligations on states to respect the choices of individuals as to the country in which they live. The three major exceptions in international law to national sovereignty are primarily based on characteristics of the individual's personal status or relationship of the individual to his or her state over which the individual generally has limited control. First, the principle of admission to the state of which one is a national is well established and contained, *inter alia* in Protocol 4 European Convention on Human Rights (ECHR). Secondly, the enjoyment of family life can found a claim to remain, at least, on the territory of a state of which an individual is not a national contained, *inter alia*, in Article 8 ECHR.² Thirdly, persons are entitled to remain on the territory of a state of which they are not nationals if the only alternative is to return them to a place where they fear inhuman and degrading treatment or punishment³ or persecution on defined grounds.⁴ Within these parameters the crossing of external borders is generally considered, in international law, a reserve of national sovereignty.

Further in the application of the limiting principles, a wide margin of appreciation is permitted to the state to decide whether the claims of, for instance, family relationships⁵ or inhuman or degrading treatment⁶ are sufficiently strong to warrant entry into or residence on the territory of the state.⁷ In the concept

19-5-2024, 14:44:44

1 Chahal European Court of Human Rights Reports 1996-V.

2 Other sources include Article 26 International Covenant on Civil and Political Rights.

3 Article 3 ECHR and Article 3 UN Convention against Torture.

4 UN Convention on the status of refugees 1951 and Protocol 1967.

5 See for example Gül European Court of Human Rights Reports 1996 - I.

6 See for example Vilvarajah [1991] Ser A 215.

7 Within the system of the European Convention on Human Rights the judgments of the Court of Human Rights are of course final but those judgments generally leave a wide margin of appreciation to the state. This wide discretion which the Court has inferred has, in some cases been criticized by observers, for instance, P. van Dijk and G.J.H. van Hoof, *Theory and Practice of the European Convention on Human Rights*, 2nd Edition, Kluwer Law and Taxation Publishers, Deventer, 1990 pp. 585-606. The argument is that this concept permits a differentiation in the application of the Convention. The uniformity and clarity which the Convention promises to the individual (and the state as regards its

of state sovereignty is inherent the right to exercise discretion in immigration policies. In so far as the state reserves its discretion over entry, residence and expulsion of individuals, those individuals have little power in determining as a matter of choice what country they live in. They can choose the country they would like to live in but then it is the state which selects. This is the guiding principle of immigration policies primarily of developed countries.

The immigration law of the European Union is characterised by a different relationship between the state and the individual as regards movement across national borders. The contours of this relationship will be examined in this study through a consideration of the scope of discretion available to a Member State and degree of choice available to the individual.

Through amendment of EC Treaty, subsidiary legislation and agreements with third countries the Community has assumed an expanding competence in respect of all aspects of migration. The most dramatic change has occurred with the amendments of the Treaty which took effect on 1 May 1999 when the Amsterdam Treaty came into force. The premise to be examined here is whether in the exercise of that competence certain principles can be discerned which inform the division of power and choice between the state and the individual.

First, as regards Community nationals who are migrant workers in a host Member State, it is now an uncontroversial statement that the discretion and choice whether to move or not is given to the individual with only minor interference permitted by the State. However, it is important to see how this state of affairs came into being. Was it self evident when the EC Treaty came into force in 1958 or was there an incremental development to this state of affairs? How important in this context is the right to non-discrimination and the assimilation of a very wide concept of worker, benefits for workers and obstacles to movement? Secondly, when the Community began to incorporate into agreements with third countries provisions relating to workers and subsequently persons, can the principles applicable to Community national migration as regards the extent and limitations on state discretion be discerned? Thirdly, what principles applied when the Member States began to coordinate their national policies on admission of third country nationals in general? Finally, what lessons does the history of the Community and migration provide for the implementation of the Community's new powers over third country national immigration?

obligations) is diluted through the concept of a margin of appreciation if allowed to extend too far.