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## *Rowing against the Currents?* —*Migration and the EU Security Agenda*

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“Freedom, wherever it existed as a tangible reality, has always been spatially limited. This is especially clear for the greatest and most elementary of all negative liberties, the freedom of movement; the borders of national territory or the walls of the city state comprehended and protected a space in which man could move freely. Treaties of international guarantees provide an extension of this territorially bound freedom for citizens outside their own country, but even under these modern conditions the elementary coincidence of freedom and a limited space remains manifest. What is true for freedom of movement is to a large extent valid for freedom in general. *Freedom in a positive sense is possible only among equals, and equality itself is by no means a universally valid principle but, again, applicable only with limitations and even within spatial limits.*” (Emphasis added)

Hannah Arendt, *On Revolution*, 1963<sup>1</sup>

## INTRODUCTION

In the past two decades the EU has worked hard to make its presence and its weight felt on the international political stage. Along the way it has advocated the principles of democracy, freedom and respect of human rights as its founding values, and has identified their wider proliferation as its mission. Having done so, however, set a high moral standard that it now finds extremely difficult to maintain, as differences among member states have led to a widening gap between its principles and actions.

This contradiction can be no more evident than in the way European states define and operate their migration policy. Whereas, in theory, the processes of enlargement and deepening should make the EU more diverse and flexible, in practice the opposite is happening, as more and more the EU restricts its migration policy. Thus, instead of being seen as a force for positive change, as it declares itself to be, from outside the EU is increasingly being seen as an impenetrable “fortress” having a negative influence.

This paper analyzes the development of the EU common migration policy and assesses it in light of its effects on third countries. It argues that the EU migration policy is in effect writing off most of the political, economical and cultural benefits that it is trying to promote through the European Neighbourhood Policy framework. It warns that unless the EU rethinks the logic behind its migration policy, especially with regards to unskilled migrants, the problems that it is facing today will only intensify in the coming years. The EU must realize that from a third country perspective, its migration policy creates more problems than solu-

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tions to the current situation, and this means that in the future, the migration pressures on Europe will not decrease, but on the contrary, increase. First, this paper looks at the stages of migration in post WWII Europe and identifies differences in experience and attitude among the EU member states. Second, it analyzes the developments that have led towards a common European migration policy. Third, it describes the logic behind this policy and it analyzes it from a third country-perspective.

## **POST WWII EUROPEAN MIGRATION**

The current European migration policy has evolved significantly over the past half a century. Post war Europe has experienced several stages of migration development, which have inevitably shaped the migration policies of all the EU member states (MS). During the first phase, which began immediately after WWII, a great number of ethnic minorities and people displaced by the war started to return to their native countries. Thus, as the devastated Europe embarked on a path of reconstruction and development, which required a huge human effort, these returnees were extremely welcome, as were the many hundreds of thousands of third country nationals who were actively recruited by national governments to help cover the large labor shortage created. By the early 1960's many of the current MS were effectively emigration countries with Italy, Ireland and Spain as the most extreme cases.<sup>2</sup>

The second stage was triggered by the economic crisis of the mid 1970's caused by the first oil shock of 1973. In spite of difficulties, the Western European states continued to attract a growing number of foreigners who were lured by the promise of economic opportunity lacking in their origin countries. Faced with an increasing number of immigrants, who were more and more seen as a 'threat' due to various EU internal political and socio-economic factors, the West European states began to tighten their grip around their countries' borders and legal avenues for migration. However, the increase in migration continued well into the 1980's primarily due to the 'family reunion' policy, which allowed foreign residents and settled migrants to bring their families to Europe. In retrospect, neither the restrictive policies of the West nor the post 1973 economic downturn lessened the attractiveness to migrate there.

The third stage was kicked off by the end of the Cold War and the subsequent general situation of political, economic and social instability caused by the power vacuum in the former Communist bloc and the Balkans. Also, the increasing number of conflicts and crises in the Sub-Saharan region contributed to changing patterns of migration into Western Europe. Thus, after 1990, besides the increase in the number of economic migrants from the Central and East European States (CEES), there was a surge in the number of refugees and asylum seekers fleeing war/ethnic cleansing (Sub-Saharan Africa and the Balkans) and discrimination (ethnic minorities, especially the Roma in the former communist states). However, this sharp increase in the number of asylum applications also needs to be understood in the light of decreasing legal avenues for migration.

The fourth stage beginning at the end of the 1990's again saw a surge in economic migrants, and in particular, a "feminization" of migration. Also, due to developments in technology, transport and communication there has been a widening into the pool of sending countries.<sup>3</sup> Whereas previously the immigrants came mainly from former colonies and the neighboring countries, nowadays people from as far as China and the Philippines are targeting the EU. Another characteristic of this stage is the dangerous nature of the migration processes. Moreover, due to the restrictive migration policies of the West, (organized crime-related) human smuggling and trafficking networks have taken hold over almost every aspect of the illegal immigration phenomenon, which, in turn, is seen as a necessity for further restrictions.

Although the transition is not yet clear, it seems that the course is set for the 21<sup>st</sup> century Europe to witness yet another shift to a fifth stage of environmental migration, which in the medium to long term is said to dwarf in scale the political and economic migratory waves of the previous century. In a recent report by the EU High Representative and the EU Foreign Affairs High Commissioner submitted to the European Council, the EU is advised to prepare for the upcoming challenge of eco-migratory pressures, warning that in playing the role of a "threat multiplier", climate change is putting extra pressures on extremely fragile security areas which, in effect, will intensify conflicts and thus migration pressures to the EU.<sup>4</sup>

The direct effects that these migration developments have had on individual states vary greatly, but we identify three different approaches.<sup>5</sup> The first group, represented by the old MS (especially France, Belgium and Netherlands), witnessed important migration inflows throughout the 1950's, -60's to mid -70's. As these countries were experiencing significant growth, a great number of the newly created jobs were filled by migrants from Ireland and South European states like Portugal, Greece and Spain, all countries experiencing economic downturn and high unemployment. The massive infiltration of the EEC labour market by Italian workers during the late 1960's however, raised questions and caused fears about more possible inflows from neighbouring countries. During the same period, Britain too experienced a migrant influx, primarily from the Commonwealth countries. As a result, the EEC MS started to sign bilateral agreements with migrant origin countries in their vicinity. Beginning with the 1980's, previously emigrant countries like Greece, Italy and Spain have, due to an impressive economic performance, turned into destination countries and have been assaulted by heavy migrant influxes from Sub-Saharan Africa and Eastern Europe, thus sharing the older members' anxieties and fears with regards to migration.<sup>6</sup>

In the second group, the Northern European countries have had a history of prioritizing refugees and other asylum seekers accepted under humanitarian conditions, as specified in the Geneva Convention. The Scandinavian countries have lacked for the entire post-war period an active foreign worker recruitment system, refugees and asylum seekers having provided the extra labour needed. These countries are mainly Ireland, Sweden, the Netherlands, Denmark and Austria. Germany has accepted in a great number of German ethnics from Poland, Romania and the former USSR. Due to the big economic boost that migration has brought to

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these countries, migration is not considered as big of a threat as with the first group.

The third group is made up of the newest MS, the Central and East European countries, initially origin countries that are themselves fast turning into transit and destination countries for immigrants. Due to the high economic development achieved by countries like the Slovenia, Estonia, Hungary or the Czech Republic, many immigrants have begun to target them as destination countries. The picture here is complicated by two main factors: the requirements regarding the adoption of Schengen Agreement as part of the *Acquis Communautaire*, and the presence of ethnic minorities across different countries, some non-EU members. I will come back to these issues, but it suffices to say that these factors have complicated these countries' experience with migration from even before accessing the EU.

Generally speaking, the migration policy of any country is a very complex and controversial issue as it is shaped not only by its historical experience with migration, but also by a range of political and geo-strategic, as well as economic and socio-cultural variables. All these complexities and differences among EU MS regarding their experience with and approach to migration are not only making an EU-wide common migration policy extremely difficult to achieve, but they are leading to contradictions with some of the EU core principles. More importantly, as later discussed, it also means that common decisions reached at the EU level (at least, so far) have represented 'the least common denominator', i.e. short-term restrictive measures, rather than the longer term solution of liberal, humanitarian and economic measures of migration management.

## **TOWARDS A COMMON EU MIGRATION POLICY**

### **From Schengen to Amsterdam (1985-1997)**

The very beginnings of the EU MS' cooperation on internal security matters related to border security issues such as migration, refugees and asylum as well as organized criminality date back as early as the 1970's. However, it was not until the 1985 Schengen Agreement, which effectively dismantled national borders, and the 1986 European Single Act, which established a single internal market and introduced freedom of movement for EU citizens, that this cooperation began to take an institutional character. To compensate for the removal of internal borders, the Schengen states established a single common external border which is managed according to a set of common rules concerning visa and asylum application procedures. Further measures have been adopted concerning the administrative and financial management of the border, as well as concerning police cooperation on criminal pursuit within the free movement area.

The fall of the Soviet Union created an environment for further developments in the migration area. The 1993 Maastricht Treaty set the organizational framework for cooperation on justice and home affairs issues in the third pillar, including asylum and migration issues. The inter-governmental nature of this pillar meant that countries consulted and informed one

another on issues of common interest. This cooperation led to the formulation of a series of joint positions, actions and conventions.

In 1994 the European Commission forwarded recommendations concerning the management of migratory pressures by adopting a common ‘root-cause approach’ to migration among the MS.<sup>7</sup> But, they were not yet ready for such a bold step, and did not commit to following these recommendations. Subsequent attempts to bring the issue of a common ‘root-cause approach’ to the top of the EU agenda did not have the desired impact.<sup>8</sup> Nevertheless, what these efforts did create was a stronger linkage between migration and development policy.

In 1997 the Amsterdam Treaty sought to build on earlier achievements. From an immigration point of view, the most important achievement of this treaty is that through the redrawing of the organizational structure, it managed to place the Schengen agreements on free movement of people (asylum, refugees, immigration) under the additional Title IV “Visa, Asylum, Immigration and Other Policies Related to the Free Movement of Persons” of the EC Treaty (first pillar), while maintaining police (including Europol) and judicial cooperation in criminal matters in the intergovernmental third pillar.

#### **The Tampere Programme (1999-2004)**

The initial milestone in the development of a common migration policy was laid by the first multi-annual programme defining priorities in the area of freedom, security and justice. There was renewed hope after the 1999 Tampere Council Conclusions that the EU migration policy would begin to shift towards a more open, properly regulated migration policy that would seriously take into consideration the development component needed for a successful long-term solution to the situation. In the new framework of a unique area of freedom, security and justice, the Council identified illegal migration as a threat which could only be effectively tackled through a comprehensive approach that targets the root causes of this phenomenon.<sup>9</sup> The Tampere Council Conclusions also re-emphasized the importance of tackling illegal migration while maintaining open the legal avenues for migration.

However, following the 9/11, Madrid and London terror attacks the developmental aspect of migration management was removed from the equation, and the weight was decisively shifted back into the restrictive side of the balance. Although in the wake of the events the European Council generally called for the implementation of the whole package of measures adopted at Tampere, from the migration perspective, the Council’s recommendations emphasized the short-term restrictive solutions.<sup>10</sup>

The 2002 Seville Council took this even further by urging the Union to include in all its agreements with third countries a clause, which effectively obliges the latter to cooperate with the EU in managing migration by preventing their nationals who do not have the appropriate documents to travel to the EU and to readmit those who managed to enter illegally the EU territory.<sup>11</sup> It specified that the failure of third countries to do so would effectively jeopardize the development of close relations between the two parties. It also called on the MS to

introduce as soon as possible a common identification system for visa data and gradually introduce a coordinated, integrated management of external borders. Moreover, the Council and the Commission were called upon to review the ‘black list’ of those countries whose nationals were required to have visas when entering the EU space. The commonautairization of this method has meant that the added list of all the EU MS is longer than that of any individual MS, which enforces the ‘Fortress Europe’ image that the EU has been projecting.<sup>12</sup>

### **The Hague Programme (2004-2009)**

The next milestone was laid in 2004 when the European Council adopted a five-year programme entitled the Hague Programme, which addressed the role that legal migration would have for the future of the EU: “[l]egal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development and thus contributing to the implementation of the Lisbon strategy.”<sup>13</sup> Building on the Tampere and Seville conclusions, this programme warns that without a comprehensive common approach to admitting legal migrants to the EU, illegal immigration would only increase. Therefore, it underlines the importance of reaching an agreement on common admission procedures and criteria, and securing a legal status for third country nationals staying in the EU legally, while continuing the fight against illegal migration.<sup>14</sup> The Hague Programme also emphasizes the importance of the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) established in 2004, whose role is to coordinate and assist MS’ action in surveillance and controlling of external borders, and the Visa Information System (VIS) developed during 2004-6, whose role is to enhance exchange information on visa applications and the ID verification.

In spite of the restrictive measures still being implemented, the EC recognized that “[i]n a Europe with no internal borders, the changing demands of an aging society and a market labour in constant evolution have challenged the established assumptions about migration... a new global approach is needed so that migration strikes the right balance between the risk of labour market shortages, economic impacts, negative social consequences, integration policies and external policy objectives.”<sup>15</sup> In response to this realization, in 2005 the British European Presidency put forward the concept of *global approach to migration* and in December the same year the European Council adopted the ‘Global Approach to Migration’, which focused initially on Africa and the Mediterranean region, but later was also applied to the Eastern and South-Eastern neighbours of the EU.<sup>16</sup> This happened, however, at the same time as borders were reinforced through the setting up of FRONTEX.

More recently, in October 2008 the EU adopted the “European Pact on Immigration and Asylum” which effectively represents the framework for the second phase of the Common European Asylum System (CEAS). This pact is based on five principles: first, organizing legal immigration to take account of the priorities, needs and reception capacities determined by each MS; second, controlling illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a transit country; third, making border controls more

effective; fourth, constructing a Europe of asylum and fifth, creating a comprehensive partnership with the countries of origin and of transit to encourage the synergy between migration and development.

Third countries, especially African and South American, as well as human rights groups<sup>17</sup> have been voicing strong criticism with regard to this pact and in particular regarding the ‘Return Directive’, which sets clear rules allowing MS authorities to detain illegal immigrants and in some cases ship them back to the country where they came from. This directive limits to 6 months the period over which illegal immigrants can be detained by authorities, and in special cases to extend a further 12 months (detention periods vary across the EU from up to 30 days in France to indefinite in Britain). The directive also regulates the deportation of migrants. Once an illegal immigrant is deported he/she cannot re-enter EU for a period of 5 years as penalty (but it is said that this shall not affect asylum seekers).

By the end of the 1990’s it seemed that the MS’ immigration policies reached an evolutionary standstill, where national migration policies attained the desired level of ‘communization’ past which they would not desire to go. However, as latest developments show, there is still space for convergence in the restrictive zone, and the French European presidency is pointing it out in its plan for concerted crackdown on illegal immigration which calls for MS’s pledge to fight illegal migration, detain and expel more immigrants and agree on a common migration and asylum policy by 2012.<sup>18</sup>

## **ASSESSING THE EU MIGRATION POLICY :an Outside View**

### **The Securitization of Migration**

The blurring of the distinction between the external and internal aspects of security has meant that the EU foreign affairs policy is both a response to the geo-strategic environment outside its borders, and a reflection of the home affairs security concerns. On the positive side, this change has led to the development of a more comprehensive approach to security threats by bringing together traditionally separate fields like migration, development and trade. On the negative side though, it has allowed the short-term control aspect to dominate to the detriment of the longer-term liberal aspect.

The EU declares its migration policy to be balanced, in the sense that it is capable to balance restrictions through traditional control tools with schemes that promote legal migration and integration of foreign workers. It also characterizes it as comprehensive, in that it covers the whole spectrum of complexities that determine migration processes. The Commission sees it also as proactive in its nature because it not only reacts to events and developments on the ground, but is also able to foresee and harness the positive side of migration.<sup>19</sup> Lastly, this policy is supposed to be implemented based on country-tailored action plans, and thus, it presupposes consensus between the EU and the targeted country reached through extensive negotiations.<sup>20</sup> However, as this section will show, in practice this

policy is far from that.

The reason for this lies in the logic on which the MS and increasingly the European Commission base this policy: the securitization of migration. Securitization, as defined by Ole Weaver, is a process whereby a political actor turns an issue regarded as belonging to the realm of common politics into a “national security threat” in order to legitimize the adoption of measures considered otherwise to be “extraordinary”.<sup>21</sup> The securitization of migration is therefore the process through which migration is turned into a threat to national identity and/or security, in order to justify the restrictive policies being implemented.

The securitization of migration in the European context was not triggered by the 9/11 attacks as it is widely thought. In fact, the first step towards a migration-security nexus was taken immediately after the first oil shock of 1973, when some European states began to close the door to migrants, as a matter of economic and social security concern. The decisive factor in pushing migration into the security zone was represented by the signing of the Single European Act and the Schengen Agreements. Later, the collapse of the Iron Curtain and the fears of mass East-West migration as well as the influx of refugees from conflict-torn Balkan peninsula and Africa only reinforced the already created linkage between migration and security.

The institutional expression of this linkage at the European level came with the incorporation of the 1986 Schengen Agreement and its 1990 Convention implementing the Schengen Agreement into the 1997 Amsterdam Treaty. In effect this kick-started two parallel processes: one, the Europeanization of internal security policies, including migration and asylum, and the second, the externalization of European security threats onto third countries.

The Europeanization of internal security policies began when national politicians started to use the EU as a stage for both focusing their electorate’s frustrations and for negotiating and reaching decisions on hot issues that proved too controversial to deal with at home. To deal with the issue of migration for example, the MS created EU level tools like Europol and its European Drugs Unit, the Trevi Group or the Ad hoc Group on Asylum and Immigration. Other than the benefit of effectively engaging in testing and negotiating components of a common migration policy, these intergovernmental forums have had a long-term negative impact on migration. Being solely concerned with internal security, they have paved the way for the securitization of migration policy by focusing only on the threat aspect and the link with organized crime, terrorism, illegal migration.<sup>22</sup>

The externalization of security threats literally means exporting EU migration and border control standards and requirements to third countries. Here the EU encourages, or indeed forces (like in pre-accession negotiations with the CEES) origin or transit countries, to adopt traditional tools of migration control at EU standards: visa issuance, reinforced border control, fighting illegal immigration (including human trafficking and smuggling) or readmission agreements of illegal migrants who are illegally entering the EU. This externalization is also driven from within third countries as well, either by a pro-European elite, which sees itself as European and pushes for further integration in, and therefore, closer cooperation with

the EU, or by public servants trained and introduced by the EU to ‘state of the art’ technology and Western standards, who believe they have to keep up with the latest developments.<sup>23</sup>

The other recent trend is the synergy between migration and development. As spelled out in the October 2008 European Pact on Immigration and Asylum, the management of legal migration and the control of illegal migration cannot be separated from the development of countries of origin and transit. The EU is discussing with its eastern and southern neighbours common responses to migratory pressures to EU. Some recent examples of this synergy are: the Ministerial Conference in Rabat July 2006 which linked migration with fighting poverty and promoting development, the EU-Africa Conference on Migration and Development in Tripoli November 2006, the Expert Meeting on Migration and Development in Dakar July 2008.

The official EU approach emphasizes the importance of managing migration by complementing traditional migration control tools with preventive development mechanisms. However, analyzing the EU policy in practice, it is obvious that the financial and political efforts invested by the EU in the implementation of the first approach far outweigh the second one.<sup>24</sup>

The problem with the migration-development synergy is that the way in which the EU has been formulating its policies does not translate into a relationship of complementarity, but one of conditionality between the two. In effect, the EU conditions the provision of developmental aid on the willingness of third states to cooperate in the fight against illegal immigration. This creates a contradiction between the EU stated objective of promoting good neighbourly relations within the ENP framework, and the emphasis in practice on the need to implement the Schengen Acquis on border controls and visa regimes (thus, translating a lack of trust that is hardly conducive for good relations).

This is clear in the EU’s readmission agreements. These readmission agreements are mandatory, in that the EU includes this clause in all its agreements with third countries. They are based on a set of ‘reciprocal’ administrative and operational procedures which facilitate the return of illegal immigrants to their country of origin or transit. Thus, under this agreement, the non-EU MS party to the agreement is forced to admit on its territory not only its nationals who were caught on EU territory illegally, but third country nationals as well.

All these measures have earned the EU the nick-name of ‘Fortress Europe’. Nicu Popescu explains very clearly this analogy: *“A fortress has multiple lines of defence- a dungeon as the hard nucleus and defensive walls, but also external fortifications such as ditches or earthworks. The EU has been developing a similarly multilayered system of border management and protection with elements of outside fortifications. With the Schengen area as the dungeon and the new EU member states, not yet in the Schengen but already separated from the outside world by a strong visa wall, the EU has started to build outside fortifications.”*<sup>25</sup>

## EU Migration Concerns and the CEES' experience

Fears about mass migrant flows from the East following the liberalization of movement towards former communist countries immediately after the fall of the Iron Curtain were an addition to the already existing animosity towards migration created within the EU before 1990. The result was the inclusion of special provisions regarding the movement of workers, the right of establishment and the provision of services after accession in the Europe Agreements the EU signed with the CEES.

While complete freedom of movement is enjoyed by all EU-15 citizens, in the case of the CEES, the Europe Agreements made no reference to the Treaty of Rome's provisions with regard to automatic freedom of movement; on the contrary, they made specific reference to a transition period (up to 7 years) during which the CEES nationals are restricted access to the EU labour market, measure which is to be decided by each MS individually. After the first stage, based on the economic situation of the CEES and the EU labour market, the EU is to decide whether restrictions should be continued for the remaining period or not. These restrictions created within the new MS a feeling of treatment as "second class citizens".<sup>26</sup>

Safeguarding the EU provisions on labour market access for the CEES states is not only a duty of the EU 15 states, but has been taken up by the new members themselves prior and post accession. For example, under pressure from the EU, Romania has been trying to control the exit of Romanians to the Schengen area since 2001, in effect issuing exit refusals to thousands of its citizens. This culminated in August 2005, when the Border Policy confiscated the passports of some 3000 overstayers in the Schengen area, a measure heavily criticized. As a response, the Border Police created a database of 'offenders', so that they could prevent them from exiting in the first place, and thus avoiding the confiscation measure altogether.<sup>27</sup>

Moreover, the adoption of the EU Schengen Acquis by the CEES as a prerequisite of the adherence to the EU has also negatively affected these countries' relations with their non-EU member neighbours as they were required to impose visa and border restrictions to protect the EU's Eastern external border: Hungary-Romania, Poland-Ukraine, Romania-Moldova.<sup>28</sup> In the Romanian case, the imposition of visa restrictions for Moldovan citizens has been identified as a cause of tensions between the two countries. It is also alleged to encourage illegal immigration and organized crime involvement through human smuggling and the falsification of Romanian passports. Moreover, the Romanian government's attempts to circumvent the EU imposed restrictions by issuing Romanian passports to Romanian ethnics caused a deterioration of Moldovan-Romanian relations, with the Moldovan President Voronin accusing Romania of undermining Moldovan national security by allowing its citizens to migrate *en masse* to the EU.<sup>29</sup> The Schengen visa restrictions have had a similar effect on the Hungarian minorities from Slovakia, Romania, Ukraine and Serbia. As Keukeleire and MacNaughtan put it, "[t]his gives rise to an interesting paradox: under the Copenhagen Criteria, the protection of minorities is a prerequisite for accession. Yet, by forcing the accession states to adopt the Schengen Acquis, and imposing its borders further East, the EU effectively endangered this".<sup>30</sup>

Besides the impact on bilateral relations, the Schengen conditionality permanently damaged the “unique area of liberalised movement of persons” created in the CEES as a result of the open-border policy. This policy, which emerged following the collapse of the Soviet Union, had as main objective fostering economic cooperation, and “overcoming the historical legacy of mutual prejudice, stereotypes and resentment” accentuated by the Communist experience.<sup>31</sup> The bilateral relationships between the CEES have had a deep socio-political meaning as they have represented channels for outside support of the domestic democratic actors working to counterbalance the Russian influence in society and politics. Its impact is thus felt throughout the region.

With regards to labour mobility and visa restrictions the current EU policy is also having a negative impact on the management of migration within the new MS themselves. The requirement to comply with the EU standards and regulations of fighting off incoming foreign labour means not only taking away precious financial and human resources from other more important areas, but it also focuses migration-related institutions’ attention away from other less pressing in the short-term issues, like their own countries’ labour market management and the prevention of youth ‘brain drain’. The result is potentially disastrous in the long term and has already lead to short term acute labour shortage for certain skilled and highly skilled workers, for example in Poland and Romania.

### **EU Migration Concerns and the European Neighbourhood Policy (ENP)**

In order to avoid “*the emergence of new dividing lines between the enlarged EU and its neighbours*” and “*share the benefits of the EU’s 2004 enlargement with neighbouring countries*”<sup>32</sup>, in 2004 the EU launched its ENP, a coherent and coordinated framework to managing EU’s relations with its southern and eastern neighbours. This policy builds on previous bilateral agreements, and its primary aim is the promotion of the EU core values of democracy, rule of law and respect for human rights as well as economic development in the ENP targeted countries.<sup>33</sup> It was developed in response to some MS’ worries about neighbour-isolation and the wishes of the ENP countries themselves for a closer partnership. It has been also in the general EU’s interest to cultivate a closer relationship with these countries, as expressed in the 2003 European Security Strategy.<sup>34</sup>

Although the depth of these agreements is different than that of full members, the ENP Action Plans, as well as the Stabilisation and Association Agreements with the Balkan states, are based on EU documents (esp. the *Acquis Communautaire*). The identified areas of concern are: to promote sustainable development in regions on both sides of the common borders; to work together through joint actions to address common challenges in fields such as environment, public health, and the prevention of and fight against organized crime; to ensure efficient and common borders through joint actions; and to promote local cross-border “people-to-people” type actions.

In spite of this, there is an obvious emphasis on migration management, and in particular signing of readmission agreements, at the core of each bilateral agreement. Thus, the ENP

states that “[b]order management is likely to be a priority in most Action Plans as it is only by working together that the EU and its neighbours can manage common borders more efficiently in order to facilitate legitimate movement of people. (...) the goal should be to facilitate movement of persons, whilst maintaining or improving a high level of security.” Moreover, the funding European Neighbourhood Policy Instrument “will focus specifically on cross-border cooperation and related activities.”<sup>35</sup>

Where readmission agreements have been signed jointly with the agreement on the facilitation of short-term visa, like in the case of Moldova, this has had some positive outcomes, like benefiting certain categories of highly-skilled persons like students, businessmen, researchers, journalists, etc. On the negative side, this measure might fuel frustration for other less fortunate people within the respective country. Besides sending off a message that the EU is encouraging brain-drain, this kind of preferential selection can easily lead to corruption and reinforce the relationship between illegal migration and organized criminality through a possibly increased demand of counterfeit identification documents.<sup>36</sup>

These agreements are heavily criticized for their unilateral nature and the lack of negotiations prior to drafting. Also, the ambiguity they incorporate means that the EU has a free hand at using various ‘threats’ to coerce third countries into compliance. Moreover, from a third country’s perspective, this can be a very dangerous deal to strike. First, economically, these countries will have to assume the burden for returning these people. Second, this also entails political repercussions on their relations with other states. “Cases involving stateless persons and persons of other jurisdictions will require greater efforts, because the EU readmission agreements necessitate corresponding agreements with other states and thus triggers a ‘chain effect’”.<sup>37</sup> Third, if these countries fail to sign such agreements with other countries, it means they will have to allow the returned non-nationals to settle on their territory.

In 2007 the European Commission presented its Communication on Mobility Partnerships and Circular Migration.<sup>38</sup> The idea behind this document is to bring the targeted countries in a closer partnership with the EU in fighting illegal migration while allowing the citizens of these countries to have more freedom of movement within the EU. It is said that through this mechanism the EU can provide information about legal migration, offer necessary training, as well as financial support in areas linked to the management of legal migration, thus helping to satisfy the EU labour needs in critical sectors. Also, the circular migration scheme can be beneficial for the origin countries in that by returning migrants home they can foster development through the remittances and skills that migrants bring home, as well as increased cross-border trade and foreign investment. This can truly represent a long-term solution both for third countries and for the EU. However, the successful implementation of this method depends on national governments’ ability to supply a wide range of incentives, both legislative and financial. This scheme is still in the pilot phase, so it is too early to say, but time will tell if the EU is truly devoted to such a scheme, if it will stop at facilitating it only at the high-skilled level or indeed cover the low-skilled and unskilled labour too.<sup>39</sup>

### EU Migration Concerns and the Sub-Saharan Africa (SSA)

The increasing number of deaths among immigrants attempting to enter the EU from SSA has pointed to the need for a comprehensive approach to migration management and has placed the issue high on the EU agenda once again. In this context, the European Council of December 2005 issued the “Global Approach to Migration: Priority Actions Focusing on Africa and the Mediterranean”, which called for the creation of a Euro-African forum for migration and aimed at bridging two previously separate domains of EU foreign policy towards Africa: Euro-Mediterranean relations and EU relationship with SSA.

In the past years the EU has been gradually tightening its grip around legal avenues for migration of African citizens by increasing the requirements to visa eligibility, requiring visas even for short stays, reinforcing immigration controls in origin and transit countries through political and economic pressure and closing of readmission agreements with African countries. The impacts of prioritizing control in migration management are extremely serious with possibly destabilizing implications.

There are three main negative implications of the EU migration policy for the SSA.<sup>40</sup> First, EU migration policy has negatively influenced the human rights of SSA immigrants and refugees in particular. By asking North African states within the ENP framework to tackle illegal immigration and address the issue of transit migration of other African nationals, the EU denies refugees and asylum seekers crossing North Africa who are forcefully returned, their rights to seek protection in the EU.

Second, by placing an increased importance on transit migration management the EU has in effect helped increase the strategic influence of certain Sahelian states infamous for their low levels of human development and good governance. Furthermore, the EU has mainly focused its financial support towards state institutions charged with border control and internal security. *“This asymmetrical inflow of resources (...) risks reinforcing, centralizing autocratic and oligarchic tendencies (...), generates opportunities for corruption and extortion on a vast scale, which, if not combated, may contribute to a deterioration of administrative and governmental practice in the relevant African countries”.*<sup>41</sup>

Third, action to stop migration to EU on the African continent has both politically and economically affected intra-African people mobility in a negative way. Politically, it has created tensions between neighbouring countries and economically, it has affected regional trade which for isolated and underdeveloped border areas most often represents the only source of livelihood. While the EU policy indirectly damages the intra-African mobility it is also directly shutting the door to migrants from this continent. African specialists have noted that for the past decade there has been a growing tendency for the EU to differentiate between its Eastern and Southern neighbours, by gradually opening the doors to former communist states through enlargement and closer partnership programmes with Eastern non-member states, while shutting the doors to its African neighbours.

Should this trend continue it will most definitely have negative impacts on both parties, but the EU will be the bigger loser in the longer term. The racial and ethnic logic behind such

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schemes can fuel frustration and neo-colonialist sentiments in third countries, while reinforcing xenophobia on a much wider scale within the EU. The EU would also suffer in that, while the Eastern migration helps alleviate the current labour shortages, this is unsustainable as the fertility rates of the East-Europeans are similar to the West and therefore not comparable to the African population.<sup>42</sup>

By looking east the EU has not wiped out the imminence of EU labour market dependency on non-European labour force; it has merely postponed it. Furthermore, by continuing to deny the much needed development that Africa can gain from a more flexible migration policy (due to remittances, skills, technology), the EU is pushing it towards more insecurity and lawlessness that allows for the most extreme elements of the society to flourish: from small petty criminals to large scale transnational organized criminal networks involved in everything from drugs, guns and people trafficking to money laundering, racketeering, identity theft that in some form or another render state institutions meaningless.

## CONCLUSION

Whatever the differences regarding the southern and eastern dimension of the ENP, the common trait is that the EU's visa policies are in effect writing off most of the political, economical and cultural benefits that the ENP is trying to promote. Unless the EU Common Migration Policy finds common ground on facilitating legal access to its labour market for third country skilled, and especially *low skilled and unskilled workers*, the problems experienced by both the EU and the third countries themselves are only going to intensify. The EU needs to develop a system of short-term contracts for work in areas where there is an undeniable labour shortage like service, agriculture and manufacturing, thus allowing EU employers to meet their labour needs (lawfully), and at the same time preventing third country 'brain drain', encouraging circular mobility as well as depriving organized criminal networks their most important and profitable asset: labour supply. But more than that, the EU needs to rethink its concept of borders if it is to prove that the EU is not a fortress and that its principles apply only among MS. If the EU is to go beyond the current situation and avoid an impending crisis of political, economical, social and cultural nature, it needs to reinterpret the concept of borders not as "demarcation lines", but as flexible regions where people and cultures mix and have been mixing for centuries. As Nicu Popescu argues, "[b]order management need not be just about fences, but about management of openness and interaction".<sup>43</sup>

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## 風に逆らって走る？ 一移民問題とEUの安全保障アジェンダ

マグダレーナ・ヨネスク

過去20年に渡って、EUは国際的なアクターとして自らの存在を知らしめてきた。その過程において、政治的基盤である「民主主義」や「自由」及び「人権尊重」の信念を掲げ、これらの推進を自らのミッションとしてきた。しかしながら、多くの場合、そうした高い道徳的水準をEU自身が保てなくなり、発言や行動の食い違いによる不信感に繋がってしまった。

この矛盾が最もはっきり見えるのはEU加盟国の入国管理政策である。理論上では、拡大や統合によってEUがさらに多様性や順応性を持てるようになるはずだったが、実際には、少なくとも移民政策は以前よりも制限的になってきた。その結果、第三国からはEUが積極的な勢力(Positive force)としてではなく、閉鎖的(排他的)な「要塞」にしか見えなくなっている。

本論文では、EUの共通移民政策を第三国に与える影響といった観点から分析、評価し、EUが近隣政策(European Neighbourhood Policy)の枠組みで促進しようとする成果(民主制・法の支配・人権尊重)を十分に上げられていないのは、その移民政策に原因があると論じる。

中東欧諸国(CEES)の立場からみると、EU入国管理水準の導入はいくつもの悪影響を招いた。まず、とりわけ少数民族問題をめぐって、新加盟国とその近隣の非加盟国との関係を悪化させた。そしてCEES間の歴史的不信感をなくすために不可欠だった「CEES域内の自由移動地域」も解消させてしまった。続いて、EU15ヶ国によって制限的な扱いを受けたCEES国民が「二流市民」といった精神的・社会的な汚名を着せられてしまった。さらに、国内的にも悪影響がみられ、EUの圧力によって移民関係機関の関心や財的及び人的資源を不法移民問題に集中させ、長期的に非常に危険な状態であるCEES自身の労働管理や頭脳流出の問題から注意が逸らされてしまっている。

近隣における「パートナー」の立場からみて最も悪影響を及ぼしているのは、EUとの間にむすばれた協定に導入されたReadmission条項やその適用の仕方である。協定では近隣諸国が「パートナー」として規定されているにもかかわらず、実際にはEUがすべての国家関係(援助・開発投資・貿易)を条件づけていて、そこでは不法移民を送り出さないための協力が前提とされている。従って、この条項は、EUの一番強い「武器」であるに違いないが、この条項は少なくとも三つの悪影響を及ぼしている。一つ目は、EUに渡った不法移民を帰国させるのに莫大な費用が掛かり、かなりの経済的負担になっている。二つ目は、自国民のみならず、その国を通過した第三国の国民も受け入れなければならない、もし彼らを出身国に送還できなければ、定住を許可せざるを得ないため、さらなる長期的な負担を負うことになる。三つ目は、第三国の国民を出身国に送還させるためには新たに協定を結ばなければならないため、第三国との関係が緊迫する原因となりうる。

そして、サハラ以南のアフリカ諸国にも、EUの移民政策は悪影響を及ぼしている。

まず、通過移民を規制することによって、避難民の庇護を求める権利のみならず、一般の移民の権利まで侵害されてしまう可能性がある。そして、ヨーロッパに不法移民を近づけないために、人権侵害や汚職で腐敗した政権をEUは政治的・財政的に支援し続けている。最後に、こうした規制はアフリカ内の人々の移動（遊牧・地域内貿易・宗教的理由による移動）も分断してしまう。

本論文では、これらの悪影響のために、EUが移民政策を根本的に考え直さない限り、移民が引き起こす「問題」は解決しないだけでなく、さらに深刻な事態を招くと論じる。この問題を解決するためには、第三国の立場をよく把握した上で問題解決に取り組む必要がある。

本論文の構成は次の通りである。まず、移民にかかわる戦後のEU加盟国の経験やその政策を概観することで加盟国のアプローチの違いを確認する。続いて、今日に至るまでの共通移民政策の発展を検討する。最後に共通移民政策の論理を説明し、第三国への影響を明らかにする。