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BRINGING EU MIGRATION COOPERATION TO THE
EASTERN NEIGHBOURHOOD: CONVERGENCE BEYOND
THE ACQUIS COMMUNAUTAIRE?

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*Bringing EU migration cooperation to the Eastern neighbourhood:
convergence beyond the acquis communautaire?*

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Abstract

The European Union (EU) external cooperation in the migration field has been mostly developed in Eastern Europe. Indeed, the EU migration cooperation with Russia and Eastern Partnership countries has so far had outcomes in the issue areas of readmission, visas, border management and even labour migration. Policy Tools such as readmission agreements, visa facilitation agreements, FRONTEX working arrangements and Mobility Partnerships are being implemented gradually to the whole East European countries. Some of them have even been proposed to Belarus, a country with no contractual relations with the EU. Being this the state of affairs, this paper's objectives are twofold. Theoretically, it challenges the widespread assumption in the literature that the EU only seeks to Europeanise its neighbourhood, claiming that it also promotes international norms and the conclusion of agreements with third countries. Empirically, it analyses the evolution of the adoption of the policy tools mentioned above in the whole of the Eastern Partnership countries, in order to provide an account of the EU migration cooperation in the area. Special attention is paid to the role that other international actors – namely the International Organisation for Migration – play in the EU cooperation with Eastern Europe.

Keywords

EU Justice and Home Affairs; external dimension of EU migration policy; Europeanisation; Eastern Europe; International Organisation for Migration.

Introduction*

The external dimension of the European Union (EU) migration policy has been mostly targeted to the countries neighbouring the EU to the East: the Eastern Partnership countries and Russia.¹ Indeed, the outcomes of the EU migration cooperation with Eastern Europe are by far more fruitful than in the EU migration cooperation with the countries of the Southern shore of the Mediterranean. Not only have the EU and its East European neighbours launched tools aimed at the reduction of irregular migration flows, but also mechanisms to facilitate people-to-people contact have been put in place.

This cooperation between the EU and Eastern Europe in the migration field is by no means a concluded process. Rather on the contrary, recent developments in the field show the dynamism of the EU external dimension in the area. In this regard, it is essential to analyse the role of Russia in the agenda-setting of the EU migration cooperation with Eastern Europe, except for the external dimension of the EU labour migration policy. All of the main tools in the issue areas of readmission, border management and visas have been first negotiated and implemented between Brussels and Moscow. At a later stage, the EU-Russia migration agenda is being adopted by the countries of the Eastern Partnership. In addition, the current context in which the EU is negotiating new legally binding frameworks with Russia, Ukraine, Moldova and Georgia to replace the Partnership and Cooperation Agreements (PCA) should also enhance the Justice and Home Affairs (JHA) cooperation in the area.

From the intergovernmental migration cooperation in the Maastricht Treaty to ordinary legislative procedure in the Treaty of Lisbon, JHA has turned into one of the most dynamic areas of the EU integration process (Monar 2001).² Notwithstanding the evolution of JHA and migration policy in the treaties, the external dimension of the EU migration policy has been mainly driven by the multiannual programmes in the area of JHA. They are non-legally binding documents in which member states express their policy priorities for a five-year period. The external dimension focused at a first stage only on policies aimed at the reduction of irregular migration flows. Nevertheless, with the launch of the Global Approach to Migration³, the EU migration cooperation with third countries has enabled the launch of instruments such as Mobility Partnerships.

The EU migration cooperation with Eastern Europe has been articulated mainly through bilateral cooperation frameworks. In the case of the Eastern Partnership countries, the ENP has been the platform used to set the agenda in the field of migration. In this sense, Ukraine, Moldova and the Southern Caucasus countries have all agreed with the EU on ENP Action Plans⁴ setting the agenda in

* The authors are grateful to the experts and officials interviewed in Brussels (April-June 2010), Moscow (October 2010, April-May 2011), Kiev, Chisinau and Odessa (April-June 2011).

¹ The Eastern Partnership initiative was launched under the Czech Presidency at a summit in Prague in May 2009. It is the first attempt to provide a multilateral framework to the East European neighbours of the EU. Its target countries are Belarus, Moldova and Ukraine, as well as the three South Caucasian Republics (Armenia, Azerbaijan and Georgia). See the Declaration of the Eastern Partnership summit in Warsaw at Council of the European Union (2011a). As in the case of the European Neighbourhood Policy (ENP), Russia decided not to participate in the initiative, since it perceived it as a mechanism to extend the sphere of influence of Brussels in Eastern Europe.

² See Niemann, N. (2008) for an analysis of the evolution in the treaties of the EU migration policy. See Peers, S. (2008) for the implications of the Treaty of Lisbon in the field.

³ The Global Approach to Migration was launched at the Hampton Court Informal European Council in 2005. It foresees the adoption of a more comprehensive approach towards migration, not only focused on irregular migration, but also on regular migration issues such as labour migration.

⁴ ENP Action Plans are documents agreed between the EU and ENP countries that establish the main priorities for action in every sectoral area.

the field. Belarus, coined as an EU reluctant partner,⁵ has so far not signed a legally-binding agreement with the EU. Yet, it was included in the Eastern Partnership initiative and Brussels has plans to step up cooperation with Minsk in the migration area. It should be stressed that Ukraine and the EU agreed on an Action Plan on JHA back in 2001, before the launch of the ENP, evidence of the relevance of cooperation in the field. As for Russia, since the country had refused to be associated with the ENP, the migration agenda was detailed in an *ad hoc* Road Map for the Common Space on Freedom, Security and Justice. The Road Map, just as the Action Plans, is not a legally-binding document; its major provisions, however, reflect the goals defined in the EU-Russia PCA (1994).

Being this the state of affairs, this paper looks at the EU migration cooperation with Eastern Europe, challenging the predominant strands in the literature focused on Europeanization to explain the external dimension of the EU migration policy and providing an empirical analysis of the implementation of EU migration tools in Russia and the Eastern Partnership countries. The focus on implementation will help us to demonstrate that patterns of EU cooperation with its Eastern European partners are not limited to their bilateral interaction. Instead, they involve other important international actors, such as various international organisations (IO). In the current state of international migration governance, “*international*” norms and standards vary depending on those IO that introduce them to governments. The existing research on EU external migration policies often neglects these important actors involved in seemingly bilateral arrangements with third countries. Nevertheless, IO play an important role both in the framing of this cooperation and in the implementation of concrete deals, such as EU readmission agreements with third countries or border management⁶.

The paper proceeds as follows. The first section looks at the literature on the external dimension of the EU migration policy. The four following sections focus respectively on selected empirical cases of EU migration cooperation with Eastern Europe: readmission, border management, visas and labour migration cooperation. Since it is the International Organisation for Migration (IOM) that has been chosen by the EU as its major implementing partner for migration-related projects in Eastern Europe⁷, we will pay special attention to the IOM involvement in the implementation process. Finally, the paper draws conclusions summarising the main findings of the research.

Only Europeanising Eastern Europe? Alternative patterns of EU cooperation with third countries

Europeanisation has been the main approach which has framed the studies of EU migration cooperation in the current literature. It takes for granted the unilateral transfer of EU norms in any given field.⁸ In other words, the Europeanisation approach conceives that the Union exports the products of European integration to third countries. First, the Europeanisation literature was applied to analyse the domestic changes within EU Member States to implement EU policies. Second, Europeanisation studies focused on the adoption of the *acquis communautaire* by the Central and Eastern European candidate countries (Schimmelfennig and Sedelmeier 2005).

With the launch of the ENP, scholarly attention has been devoted to the approximation of neighbouring countries to the EU *acquis*, coined as Europeanisation ‘beyond Europe’.⁹ In this sense, the theoretical approach on EU *external governance* has innovated the Europeanisation literature looking not only at the transfer of EU norms in the neighbourhood, but also on the possibilities for participation of neighbouring countries in cooperation networks (Lavenex and Schimmelfennig 2009).

⁵ On the concept of EU willing and reluctant partners, see Emerson, M., Noutcheva, G. and Popescu, N. (2007).

⁶ See Betts, A. (2011) for examples from the African continent.

⁷ For the reasons explaining this choice, see Korneev, O. (2011).

⁸ For an account on the current state of Europeanisation studies, see Vink, M.P. and Graziano, P. (2007).

⁹ See the literature review of Europeanisation outside the EU elaborated by Schimmelfennig, F. (2009).

Scholars of the external governance approach contend that the relations between the EU and neighbouring countries must be nuanced with the means of participation of the latter in the adoption of the *acquis*. They contend that there are two kinds of norm expansion: those which go beyond the regulational boundaries and those which go beyond organisational boundaries. While in the first one third countries adopt the *acquis*, in the second one they have the opportunity to participate in the institutions of the EU policy-making.

Another Europeanisation theoretical approach has been the *Normative Power Europe* one, developed by Manners (2002). The author claims that the relations between the EU and third countries are based on the capacity of the Union to impose its ideas and norms. In other words, the capacity of the Union to convince third countries that its values are the most desired ones. As Manners points out, the belief more in what the EU *is* than in what the EU *does*. This theoretical approach is unidirectional since the perceptions of third countries are not taken into account.

Nevertheless, this working paper claims that the EU migration cooperation with Eastern Europe may not consist in the systematic adoption of EU migration rules. On the one hand, these theoretical approaches elude that cooperation is a bilateral process in which the interests and capacities of the East European neighbours also play a role. On the other hand, they do not take into consideration that the EU acts within the international system. As a result, the Union might promote norms emanating from international organisations.

In this regard, Barbé *et al* (2010) propose alternative patterns to Europeanisation in order to explain policy convergence between the EU and neighbouring countries. Policy convergence is defined in a broad way as 'any increase in the similarity between one or more characteristics of a certain policy (e.g. Policy objectives, policy instruments, policy settings) across a given set of political jurisdictions (supranational institutions, states, regions, local authorities) over a given period of time' (Knill 2005, 768). According to the kind of norm the Union seeks to promote, they claim that there is convergence towards EU norms, towards international norms and towards bilateral norms agreed between the EU and a third country. This threefold model of EU policy convergence with third countries takes into account the bidirectionality of the cooperation process and the international context in which it takes place.

The factors underlying the patterns of cooperation between the EU and third country depend, according to Barbé *et al* (2010), to the leverage and the mutual perceptions of legitimacy of the EU and a third country. The leverage is a variable from rational institutionalism whereby actors cooperate according to the structure of power between them, as well as the offer of incentives that might counterbalance this structure of power. If an actor is powerful enough to disregard EU demands, the offer of incentives becomes crucial for the cooperation to move forward. The mutual perceptions of legitimacy is a variable derived from sociological institutionalism, whereby actors cooperate according to their perception that a norm is legitimate enough to be adopted.

In light of the above, the EU only promotes its norms when is powerful enough or offers sufficiently tempting incentives and its norms are perceived as legitimate by neighbouring countries. Hence, it is the least likely pattern to take place. If the EU has no leverage, the promotion of international norms, which usually benefit from higher perceptions of legitimacy, might be the option. In absence of international norms in a given field, the EU and a third country have no other remedy than to agree on bilateral cooperation. The following four sections explore empirically the patterns of cooperation of four relevant migration issue areas (readmission, border management, visa cooperation and labour migration).

Readmission policy: the *conditio sine qua non* of EU migration cooperation with Eastern Europe

The conclusion of readmission agreements with third countries has been the only tool of the external dimension of the migration policy of the Union explicitly regulated by primary law (Treaty of Lisbon, art. 79.3). Moreover, readmission has been the cornerstone of the EU migration policy towards third countries (Coleman 2009), at least until the scope of migration tools to third countries was broadened to the fields of border management, visa cooperation and labour migration.

Actually, the readmission of nationals irregularly staying in another country constitutes an obligation under international law. Yet, EU Member States usually regulate more in-depth the terms and conditions under which the readmission procedure takes place by concluding bilateral agreements with third countries. However, the decision to communitarise the readmission policy at the Treaty of Amsterdam implies that EU member states should not negotiate their own agreements when an EU readmission agreement with a given country is in place.

Regarding the content of readmission agreements, they have a strong technical and procedural component. For instance, the agreements stipulate in detail the conditions under which the nationality of irregular migrants should be identified, which according to officials of the European Commission is the most difficult phase of the readmission process.¹⁰ Similar opinions have been expressed by members of the IOM staff in Moscow who took part in establishing the nationality identification procedure for the Russian Federal Migration Service.¹¹ The main innovation of the EU readmission agreements with third countries is the clause that foresees not only the readmission of third country nationals, but also that of the migrants who transited through the territory of the country with which the agreement has been signed. Stateless people are also subject to that clause.

Concerning the implementation of the readmission agreement tool in Eastern Europe, the EU has signed agreements with Russia (2006), with Ukraine and Moldova (2007) and Georgia (2011).¹² In any case, the conclusion of a readmission agreement is *conditio sine qua non* in the establishment of EU migration cooperation with a third country. In the rest of the countries of the Eastern Partnership, namely Armenia, Azerbaijan and Belarus, the agreement is an indispensable tool of the migration agenda. In addition, the conclusion of a readmission agreement is used as a conditionality tool in visa and labour migration cooperation. That notwithstanding, the number of people to whom the readmission procedure has been applied is very insignificant.¹³

This is actually a stable trend, confirmed, for instance, by the data on readmission applications covering the first three years of implementation of the Readmission Agreement with Russia. The Russian Federal Migration Service started implementing the Agreement in October 2007. By October 2010, Russia had received 4.715 readmission requests from 20 EU Member States. More than 3500 requests have been examined and 2214 out of them have been accepted eligible for readmission

¹⁰ Interviews with officials of the DG Justice, Liberty and Security, European Commission. Brussels, May 2010.

¹¹ Interviews with representatives of the IOM office in Moscow, April 2011.

¹² The agreement with Georgia needed the approval of the European Parliament. Indeed, as mentioned in the introduction, with the Treaty of Lisbon the European Parliament has to give its consent to any international agreement in which the EU takes part. The Parliament expressed concerns on the respect for human rights of the migrants subject to readmission, which has been interpreted in the Council and in the Commission as a daunting attitude that could have led member states to conclude readmission agreements bilaterally. Interviews with officials of the Council of the European Union, the European Commission and several Permanent Representations of EU member states, Brussels, May and June 2010.

¹³ According to an official from the State Border Service of Ukraine, from January to May 2011 only 2000 people had been subject to the readmission procedure at the Ukrainian borders with the EU. Interview with an official from the State Border Service of Ukraine, Kyiv, May 2011.

procedure. By the end of October 2010, only 793 persons had been readmitted¹⁴ for various, mostly technical, reasons. The very low figures of irregular migrants subject to readmission challenge the EU insistence of the relevance of the readmission agreements.

This has been almost overtly confirmed by the recent Evaluation of EU Readmission Agreements produced by the European Commission (2011). The structure of power between the EU and its neighbours played an influence in the negotiations on readmission. Moscow was not convinced to sign the readmission agreement unless Brussels offered a tempting incentive. The question of mobility and people-to-people contact had traditionally been an issue of interest for Russia. In this regard, the facilitated travel regime offered to Kaliningrad citizens moving to mainland Russia through Lithuanian territory was an *ad hoc* solution to the extension of the Schengen area eastwards.¹⁵ Russia has expressed continuously its will to establish a visa-free regime with the EU. Therefore, it was not a surprise that the EU incentive would be in that direction. At the St. Petersburg Summit EU-Russia in 2003, both actors agreed in principle on a visa facilitation regime, whereby diplomats would be exempt of visas and certain categories of citizens such as businessmen, students and researchers would have better conditions regarding the issuance of visas.

The EU had not envisaged a specific tool in its visa approach towards third countries. Hence, the visa facilitated regime, constitutes a pattern of bilateral cooperation since it is the result of a tailor-made agreement between the EU and Russia. Since then, visa facilitation has been negotiated in parallel with readmission in the countries of the Western Balkans and Eastern Europe.¹⁶ Lavenex and Schimmelfennig (2008) have coined it as a *package deal*.¹⁷

The pattern of migration cooperation between the EU and Eastern Europe when concluding a readmission agreement is difficult to explain by the Europeanisation literature. Indeed, it entails no transfer of any norms of the EU *acquis*. Yet, EU readmission agreements do not reflect solely the international obligation to readmit third country nationals irregularly staying in another country, but incorporate also the EU innovation to readmit transit migrants and stateless people who went through the territory of the signing third country. As this clause is by no means perceived as legitimate by East European countries, it was counterbalanced with the incentive of visa facilitation, a demand of Russia, the country with more leverage in Eastern Europe. However, the EU – through the mediation of IOM that drafted necessary legal acts¹⁸ and implemented EU-funded projects relating to readmission in Moldova, Russia and Ukraine¹⁹ – has actually introduced in the legislation of its Eastern European neighbours the notion of special centres for persons awaiting readmission that replicate the long-standing practices of the EU Member States criticised by many NGOs and researchers²⁰. Even though the existence of such centres is not formally defined in the *acquis*, it is clearly an EU practice that, employed in cooperation with third countries, represents an instance of Europeanisation.

¹⁴ Lilia Arestova, Deputy Head of the Citizenship Department, the Russian Federal Migration Service. Intervention at the training school “EU immigration and asylum policies, border security: state of play and prospects of Russia-EU cooperation on migration”, MGIMO, Moscow, 25-29 October 2010.

¹⁵ See Potemkina, O. (2005) for an account on the Kaliningrad facilitated travel regime.

¹⁶ See Korneev, O. (2008).

¹⁷ On the readmission and visa facilitation nexus, see Krauner, F. and Kruse, I. (2008) and Hernández i Sagrera, R. (2010).

¹⁸ Phone interview with a former IOM Moscow staff member (currently working at IOM Geneva), February 2011.

¹⁹ Technical cooperation on migration management and capacity building: Assistance to the Government of the Russian Federation in the Establishing Legal and Administrative Framework for the Implementation and Development of Readmission Agreements. IOM Moscow office: http://85.21.179.94/activities_techcoop_dira.html ; Capacity building in migration management: Ukraine. IOM Kyiv office: <http://www.iom.org.ua/index.php?page=catalog&id=12>; Migration management. IOM Chisinau office : <http://www.iom.md/index.php/en/programs/migration-management>.

²⁰ On such centres within the EU, see Belguendouz, A. et al. (2005).

Border Management cooperation: the promotion of IBM through FRONTEX (and EUBAM)

The external dimension of border management to Eastern Europe has mainly consisted in the promotion of Integrated Border Management (IBM) beyond the EU borders²¹. This has consisted mainly in projects aimed at the modernisation of the border through the provision of new equipment and in capacity-building for border officers. Border management cooperation has been channelled through the FRONTEX Working Arrangements and in the case of Ukraine and Moldova also in the framework of EUBAM.²² The analyses in this section come mainly from data provided by interviews to FRONTEX and EUBAM officials, as the FRONTEX Arrangements are not publicly available. Despite the lack of direct access to the documents, their study is relevant since they have been deployed to most of the countries in Eastern Europe (Russia, Ukraine, Moldova, Belarus, Georgia and Armenia).

FRONTEX is the EU agency in charge of coordinating operational cooperation at the external borders of the member states.²³ The agency has no executive powers as border guard services remain a competence of EU member states. Besides coordinating operational capacity of the external border of the Union, FRONTEX's functions include the elaboration of risk assessments, the training of border guards and the provision of support in joint return operations. It was created under Regulation 2004/2007, became operational in 2005 and has its headquarters in Warsaw. Bigo and Guild (2009, 268) stress as a shortcoming of the FRONTEX Agency that it was established before the legal basis on the external border, the Schengen Borders Code (Regulation 562/2006) was enacted. As a result, the Agency was created before the external border or the way individuals should cross it was legally defined.

Concerning the FRONTEX Working Arrangements, they are regulated in article 14 of the amended Regulation establishing the Agency. It stipulates that the Arrangements 'shall facilitate the operational cooperation between member states and third countries' (Regulation 1168/2011, art. 14). The content of the cooperation includes all the matters covered by the Regulation, without specifying them. However, according to Bigo and Guild (2009, 273), 'none of the Arrangements specifies the legal basis on which they were negotiated or agreed'. Indeed, unlike readmission or visa facilitation agreements, they are non-legally binding tools which do not emanate from a negotiating mandate. Instead, they are negotiated between the FRONTEX management board and the relevant competent authorities – border guards – of the third country concerned.

The Arrangement agreed with Russia, signed on 30 June 2006 is, according to the FRONTEX official consulted 'the most developed' of the all the Arrangements signed so far. It has led to a joint operation at the Russian border with Kaliningrad in 2009 and the elaboration of a risk analysis on irregular border crossings, to mention a few of its activities. Moreover, FRONTEX and Russia have agreed on a Joint Cooperation Plan for the period 2007-2013. A major component of the FRONTEX Working Arrangement with Russia, as Bigo and Guild underline (2009, 275) has been on technological equipments to meet the IBM standards. The Arrangement has not foreseen the training of Russian guards, presumably because Russia opposed the idea of receiving training from the EU. Once again, the IOM was used as an intermediary capable of working not only with the Russian Federal Migration Service, but also with the Russian Border Guards formally related to the Russian

²¹ See European Commission (2002) for the origin of the notion on EU Integrated Border Management.

²² The European Border Assistance Mission to Moldova and Ukraine (EUBAM) was launched in 2005 and has renovated twice its mandate since then. It has its headquarters in Odessa and works mainly on transborder crime and irregular migration along the Moldovan-Ukrainian border, as well as in assisting the Ukrainian and Moldovan Governments in demarcating their common border. According to a EUBAM official, the Mission is 'the most efficient international EU mission'. Interview with a EUBAM official, Odessa, April 2011.

²³ On the origins of FRONTEX, see Carrera, S. (2007) and Hernández i Sagrera, R (2008).

Federal Security Service. The project “Enhancement of management of the Russian Federation border checkpoints” implemented by IOM received 600 000 euro funding for the period from September 2009 until March 2011 from the EU. The overall assessment of the cooperation with FRONTEX made by Russian officials, namely by the Russian Federal Border Service, has been very positive.²⁴

Other worth mentioning FRONTEX Working Arrangements have been those signed with Georgia and Moldova in 2008. The official consulted considers that, due to the constant changes in the Minister of the Interior in Georgia, the implementation of the Arrangement is at a very slow pace. The Arrangement with Moldova has given more outcomes on the training of border guards and FRONTEX has already 14 projects implemented in Moldova.²⁵ As mentioned above, in the cases of Ukraine and Moldova, EUBAM has been also involved in border management. Although its activity was originally limited to the Moldovan-Ukrainian border, it has been *de facto* extended to all border management initiatives in Ukraine and Moldova.²⁶ Bearing in mind that there is no memorandum of understanding between FRONTEX and EUBAM stipulating the terms of cooperation between them, a risk of overlapping of their activities in both countries immediately arises.

While FRONTEX Working Arrangements have been agreed with most of the East European countries (the Arrangement with Armenia was signed in February 2012 and negotiations with Azerbaijan have concluded at the time of writing), the Agency has failed in the negotiations with countries on the Southern Mediterranean. FRONTEX lacks on leverage to sign agreements because it has no executive powers. The FRONTEX’s dependence on member states lowers its leverage vis-à-vis third countries. For instance, as it cannot offer funding, the Agency lacks a key incentive in the negotiation process with a third country²⁷. Moreover, the non-legally binding nature of the Arrangements also leads to high differentiation in the content according to the third country with which it is agreed. Consequently, the Arrangements consist in a myriad of initiatives on IBM which might lead to different results. Any assessment of its efficiency proves to be very difficult.

Concerning the cooperation pattern of the Arrangements, they neither promote the extension of the *acquis* nor of international norms. They result in an *ad hoc* cooperation depending on the structure of power between an EU and the third country concerned, the former representing the interests of member states. However, just as in the case of readmission centres, the EU – through FRONTEX – has actually been promoting one of the core concepts used in the EU border management. Once again an important role in introducing of this concept to the Eastern European partners was given to IOM that allowed for easier acceptance of recommendations since they were made by a “politically neutral” international organisation²⁸. IBM is not legally-binding and that is why we do not consider it as part of the *acquis*. Nevertheless, this concept is part and parcel of the EU best practices and its “export” deserves special attention.

²⁴ This has been emphasised by Mikhail Strekha, Head of Strategic Planning Department, Russian Federal Border Service during his intervention at the training school “EU immigration and asylum policies, border security: state of play and prospects of Russia-EU cooperation on migration”, MGIMO, Moscow, 25-29 October 2010.

²⁵ Interview with an official from the Moldovan State Border Service, Chişinău, April 2011.

²⁶ Interview with an official from the Ukrainian State Border Service, Kyiv, May 2011.

²⁷ While the FRONTEX reform is far from being accomplished, the agency often has the need to be backed by other EU institutions, namely by the European Commission. Thus, possibilities of broadening cooperation with FRONTEX have been discussed, among others, at the meetings of the EU-Russia Joint Readmission Committee chaired on the EU side by the Commission representatives.

²⁸ Phone interview with a former IOM Moscow staff member (currently working at the IOM Geneva), February 2011.

Visa cooperation: setting a framework for Visa Liberalisation?

The establishment of a visa-free regime with the Schengen area is, in the opinion of the representatives from Eastern Europe, the main feasible goal in the absence of a membership perspective.²⁹ As mentioned above, the EU has not foreseen any specific tools in the field of visas in the treaties. Nonetheless, the EU has exclusive competence in issuing short-stay visas since the incorporation of Schengen in the *acquis* with the Amsterdam Treaty in 1999. Since April 2010, the Visa Code (Regulation 810/2009), has come into operation, providing legal certainty for the issuance of multiple entry visas, the fixation of fifteen calendar days to decide on a visa application or the right to appeal to a visa refusal.

The decision to lift the visa obligations of third country nationals to access the EU entails an amendment of the Regulation 539/2001, which lists the countries whose nationals require a visa and those who are exempt from it to cross the external borders of the Union. The EU abolished the visa obligation for the citizens of Serbia, the Former Yugoslav Republic of Macedonia (FYROM) and Montenegro in 2009 and for Albania and Bosnia and Herzegovina in 2010. This decision was conditional to the fulfilment of the technical reforms stipulated in the form of a Road Map proposed by the EU. These visa liberalisation precedents are followed very closely from Eastern Europe, where visa liberalisation as a long term goal is part of the agenda set in all the ENP Action Plans and also the Road Map on the Common Space in the case of Russia. The declaration following the Eastern Partnership summit in Prague also makes reference to this goal (Joint Declaration 2009).

The main existing tool in visa cooperation is the visa facilitation regime, which, as mentioned above, was offered as an incentive to Russia to move forward the negotiations on a readmission agreement. Since then, it has been institutionalised in Eastern Europe as a first step towards a visa-free regime (Averre 2005). Visa facilitation agreements have been implemented in Russia (2007), in Ukraine and Moldova (2008) and Georgia (2011). The rest of the Eastern Partnership countries are waiting for negotiating mandates of both the readmission and visa facilitation agreements. The assessment of the implementation of the visa facilitation agreements in Russia, Ukraine and Moldova has so far been rather positive.³⁰ Any concerns should be amended by the new provisions of the Visa Code, resulting in amendments of the visa facilitation agreements.

However, following the precedent of the Western Balkans, East European countries are now focused on the visa liberalisation goal. To that end, the EU has launched a flexible framework, the 'visa dialogue', whose aim is to discuss on how to proceed towards the visa-free regime. The first one was again first launched with Russia in 2007, leading so far to intangible results. The EU and Ukraine launched a visa dialogue in 2008. Both visa dialogues are an immediate consequence of the entry into force of the visa facilitation agreement. As for Moldova, the visa dialogue was not launched until June 2010 due to the political unrest following parliamentary elections in May 2009.

In light of this, it seems that the road towards visa-free in Eastern Europe is far from being achieved. A repetition of the liberalisation process in the Western Balkans seems to be unlikely. For the EU, the Road Map is not a tool for visa liberalisation in Eastern Europe. Rather, in the case of Russia, there has been a proposal on a 'Common steps approach', following the pattern of symmetry on EU-Russia relations. In the case of Ukraine and Moldova, the EU has launched Action Plans on visa liberalisation. A comparative analysis with the Action Plans shows that the process is likely to take longer than in Western Balkan case. First, each set of technical reforms is subdivided into two phases: on legislation and planning and on implementation. This inevitably leads to a slow-down in the process. Second, the content of the demands is more far-reaching than in the Western Balkan case. Lastly, the Action Plans still make a reference to the *long-term* character of the process and make it

²⁹ Interviews with diplomats from the Permanent Missions to the EU of Ukraine and Moldova. Brussels, May and June 2010.

³⁰ Interviews with diplomats from the Permanent Missions of Russia, Ukraine and Moldova. Brussels, May and June 2010.

explicitly conditional to the effective implementation of the Readmission Agreements. This is also the case for Russia, since both EU and Russian officials have confirmed that the proper implementation of the Readmission Agreement is the key condition for the smooth talks on visa liberalisation.³¹ In other words, the implementation of the readmission agreements is clearly a conditionality instrument even in relations with Russia.

In light of this, the analysis of the patterns of cooperation in the EU visa cooperation with Eastern Europe still challenges the Europeanisation theoretical approach. If the EU extended its norms in the field of visas, this would imply the adoption of the Schengen *acquis* in Eastern Europe, i.e., the abolition of the visa regime. Rather, the EU and Eastern Europe have designed an *ad hoc* tool, the visa facilitation regime.

This pattern of concluding agreements with third countries has to be nuanced, however, by the role that international norms play in the technical reforms the EU proposes to grant visa liberalisation. Most of the conditions which could be offered constitute norms emanating from international organisations. One example could be the adoption by East European countries of the standards on document security regulated by the International Civil Aviation Organisation (ICAO), which include provisions on biometrical data passports. Another example might be the adoption of Council of Europe conventions in the field of data protection, such as the Additional Protocol for the Protection of Personal Data (Council of Europe 2001). The EU opts for these international norms because they are seen as more legitimate than EU norms and is interested in their adoption by East European countries.

A special role in “introducing” such norms to Moldova, Russia and Ukraine has been attributed to IOM. Through various national and regional programmes, IOM has been providing a platform for the expertise and knowledge exchange between the EU and these countries in the field of migration management, particularly through technical seminars with EU colleagues, international migration law training courses and study tours for senior and mid-level migration officials. Thus, IOM might be considered as a major agent of socialisation providing channels and instruments for the EU functional cooperation with Moldova, Russia and Ukraine.

IOM has also been involved in the drafting of various legal acts related to migration management and the fight against document fraud that often goes hand in hand with human trafficking and, therefore, it has played a key role in the transfer of international norms within the context of EU bilateral cooperation with its Eastern European partners. The use of international organisations is perceived by the EU as a necessary tactical step providing more legitimacy to its demands and actions in relations with its partners, especially the difficult ones such as Russia³². Policy transfer from a recognized international organization – IOM in this case – with indisputable expertise in the field is more acceptable for the authorities of partner countries than a norm imposition from the EU or its member-states.

Mobility Partnerships: ‘all except circular migration’?

The external dimension of the EU labour migration policy is the least developed of the four issue areas dealt with in this working paper. Actually, labour migration is a nascent policy area at the EU internal level. While EU Member States have traditionally been reluctant to transfer migration competencies at

³¹ Vitaly Yakovlev, Head of Department on Readmission, Russian Federal Migration Service «The road to visa-free agreements» [Виталий Яковлев, начальник управления по вопросам реадмиссии Федеральной Миграционной Службы России. «Путь к безвизовым соглашениям»], 27.02.2009. http://www.fms.gov.ru/press/publications/news_detail.php?ID=27272; Interview with Michael Webb, Deputy Head of the EU Delegation to Russia, July 2011.

³² Interview with an official of the Operations Section, the EU Delegation to Russia, Moscow, April 2011.

the EU level, this reticence has particularly been acute in the field of labour migration. Yet, with the Lisbon Treaty, the policy regulating the conditions of entry and residence for EU Third Country Nationals (TCNs) for employment related activities has become a competency under the co-decision procedure (Treaty of Lisbon, art. 79.3.5).

With this lack of development of the EU labour policy *ad intram*, it is not surprising that the external dimension has not been particularly dynamic. The only policy tool in the labour migration sphere has been the so-called Mobility Partnerships, a soft-law policy tool that fosters intergovernmental cooperation between EU Member States and a third country in the framework of the Global Approach to Migration. EU Member States participation is voluntary and the Commission acts as a coordinating agent in the negotiations and implementation of the agreed projects between the participating EU Member States and the third country concerned.³³

Mobility Partnerships were launched with the Commission Communication 248 (2007) on *Circular Migration and Mobility Partnerships between the EU and third countries*. Hence, they were conceived as an instrument to promote circular migration schemes, i.e. schemes that foresee the temporary recruitment of TCNs to work in a particular field in an EU Member State with the possibility of renewal.³⁴ Circular migration in itself is not an EU innovation but has been a term commonly used by international organisations and political fora such as the International Organisation for Migration (IOM) and the Global Commission on International Migration (GCIM) (IOM 2005; GCIM 2005).

So far Mobility Partnerships have been launched to Moldova, Georgia and Armenia in Eastern Europe and to Cape Verde in Africa. Moldova and Cape Verde were chosen as the pilot countries in which MPs should be implemented in the first place. They are both small countries and could be considered as EU willing partners. Negotiations mandates were approved in 2007 and the Partnerships were launched in the format of non-legally binding Joint Declarations in 2008 (Council of the European Union 2008a; 2008b). In November 2009, a Mobility Partnership was launched with Georgia (Council of the European Union 2009b) and in November 2011 with Armenia (Council of the European Union 2011b).

As for the rest of the Eastern European countries, Azerbaijan will most likely follow the same path. Ukraine constitutes a special case. So far, the Partnerships have been deployed only in countries of a small size. Despite the initial intention of the Hungarian Presidency of the Council of the EU to start negotiations with Ukraine,³⁵ the lack of will on the Ukrainian side and among EU Member States has probably prevented it from happening. The Ukraine migration policy is very much concerned about the demographic decrease it has been suffering and does not envisage regulating labour migration into the EU³⁶, even though many Ukrainians go to work in the EU. The main difference in the Russian case is that the Russian government regards the MPs rather as an instrument for developing countries³⁷ and this symbolic connotation blocks any possibility of considering this instrument as valuable for Russia that sees itself as a country that “exports” highly qualified professionals, not low-skilled workers.

The empirical analysis of the Mobility Partnerships with Moldova, Georgia and Armenia shows that, contrary to their original purpose, the Partnerships barely include circular migration schemes. In the Moldovan case, Luxembourg, Bulgaria, Portugal and the Veneto region in Italy have all set up circular migration schemes, very few if we take into consideration that 15 EU Member States participate in the Partnership. As for Georgia, circular migration has been vaguely included in a

³³ See Carrera, S. and Hernández i Sàgrera, R. (2011) for a comprehensive analysis of the origin and implementation EU Mobility Partnerships with third countries.

³⁴ On circular migration, see Angenendt, S. (2007) and Vertovec, S. (2007).

³⁵ Interview with an official of the Permanent Representation of Hungary to the EU, Brussels, June 2010.

³⁶ Interview with an official of the IOM office in Ukraine, Kyiv, April 2011.

³⁷ Interview with Michael Webb, Deputy Head of the EU Delegation to Russia, Tomsk, July 2011.

project involving 10 of the 16 participating EU Member States, oriented at strengthening Georgia's capacity to manage labour migration (Council of the EU 2009b, 8). Also Germany and the Netherlands have proposed to launch circular migration projects. In light of the analysis, it seems that Mobility Partnerships are much more focused on ensuring the implementation of the readmission agreements and border management activities. This is confirmed by the fact that a prominent role in designing and implementation of the Mobility Partnership with Moldova has been given to IOM (Carrera and Hernández i Sagrera 2011) that has in general been promoting a restrictive approach to migration management.

These authors (2011) highlight a series of shortcomings of Mobility Partnerships. On the one hand, the non-legally binding nature of MPs prevents them from being enforced. Although officials tend to highlight as positive outcomes of the Partnerships that they enable the exchange of best practices and experiences, as well as capacity-building,³⁸ they were conceived mainly as a mechanism to promote circular migration. The flexible nature of the instrument does not guarantee that the commitments are carried out. This is surprising when the EU has competence to sign legally-binding agreements with third countries in the field of migration (Treaty of Lisbon art 79.3). On the other hand, they stress the negative implications that circular migration has for the protection of the rights of migrant workers. Mobility Partnerships constitute a pattern of bilateral cooperation between EU Member States and Moldova, Georgia and Armenia. As stated above, Mobility Partnerships are a tool of intergovernmental cooperation where the Commission acts as a coordinating agent. Nonetheless, they are relevant as the first instrument in a nascent EU labour migration policy.

Conclusions:

This working paper has looked at the EU migration cooperation with third countries, in particular at the tools implemented in the fields of readmission, border management, visa and labour migration cooperation. It has challenged the predominant strands of the literature that focus on Europeanisation as the only pattern of cooperation between the EU and third countries, through the analysis of the main tools deployed in the fields mentioned above: Readmission agreements, FRONTEX Working Arrangements, Visa facilitation agreements and Mobility Partnerships.

First, the empirical analysis has shown that EU migration cooperation with third countries has not consisted in the systematic adoption of the rules of the *acquis communautaire*, as Europeanisation studies would claim. Rather on the contrary, the EU and its East European partners have cooperated mainly by means of the adoption of bilateral *ad hoc* tools of cooperation, which are the result of tailor-made agreements between the parties. The working paper also provides evidence that the EU promotes international norms which are conditional for the liberalisation of the visa regime in Eastern Europe. As international norms are generally regarded as highly legitimate, Brussels takes this opportunity to promote change in areas such as document security or data protection. The EU would in this case act as a norm-entrepreneur but it has to be borne in mind that it is also interested in that third countries adopt these measures. Hence, this internationalisation pattern could be interpreted from a strategic perspective.

Second, the analysis of the issue areas shows how the legally-binding character of the tool has an impact on its efficiency. The FRONTEX Working Arrangements and Mobility Partnerships are *soft law* policy tools which result in a much more differentiated and fragmented content than others which are legally binding like readmission and visa facilitation agreements. In addition, the level of integration of the policy at EU level also has an influence on its external dimension. In this sense, the absence of an EU border service hinders border management with third countries in the field. Similarly, the nascent EU labour migration policy has not translated into a dynamic policy field yet.

³⁸ Interview with an official of the Ministry of Labour, Social Protection and Family, Chişinău, April 2011.

Third, this working paper contends that EU migration cooperation with third countries is much more about security than mobility. Despite the adoption of the Global Approach in 2005, which paved the way for the development of Mobility Partnerships, both the visa and labour migration cooperation are conditional to progress in the areas of readmission and border management.

Fourth, the working paper shed light on the involvement of other international actors – namely international organisations such as IOM – in the EU cooperation with its Eastern European partners. This perspective adds a lot to our understanding of how the EU is using other actors that promote international norms to reach migration policy convergence in the Eastern neighbourhood. The role played by IOM at different stages – from designing through negotiation to the implementation of migration management tools between the EU and its neighbours in the East – confirms that the EU has prioritised the internationalisation as a strategic choice.

Finally, the working paper shows how the structure of power between the EU and East European countries has an impact on EU migration cooperation. In this regard, Russia has played a role of agenda-setter of the whole migration agenda with third countries,³⁹ as all the migration tools except Mobility Partnerships have first been negotiated and implemented between Brussels and Moscow. In the case of visas, Moscow was decisive in the creation of the visa facilitation regime as the EU had not foreseen any specific mechanisms in visa cooperation. As Potemkina puts it, ‘EU-Russia cooperation on the common space of freedom, security and justice has produced more results than activities in the framework of the other common spaces (economy, external relations, and science and education), in spite of the fact that the implementation of the respective road map proceeds not very rapidly, with many difficulties and obstacles. Even the cooling of relations at certain times has not affected very significantly the contacts in this field’ (2010: 552).

This EU migration agenda with Moscow has been institutionalised and has been extended or is planned to be extended to the whole of the countries of the Eastern Partnership. Although at different speeds, being Ukraine and Moldova the most advanced and Georgia the frontrunner of the Southern Caucasian Republics, all the countries in the area are following the same cooperation pattern set out first between the Union and Russia. It is significant that the Council has expressed its will to set up negotiations on readmission and visa facilitation agreements with a traditionally reluctant country like Belarus, which has no contractual relations with the EU (Council of the European Union 2009a).

The EU is negotiating new contractual frameworks with Russia, Ukraine, Moldova and Georgia, in which migration cooperation as part of the Justice, Liberty and Security chapter is of paramount importance. In addition, the external dimension of the EU migration policy moves forward with the integration of migration issues at the internal level. In this sense, the entry into force of the Treaty of Lisbon has provided an impetus and the migration approach towards third countries has broadened its scope from the original readmission policy to the measures facilitating people-to-people contacts, as exemplified in the visa and labour migration policies. These new initiatives should consolidate the already institutionalised path taken by the migration cooperation between the EU and Eastern Europe, however still keeping it mostly security-oriented.

³⁹ On this peculiarity of the EU JHA negotiations with its Eastern European partners, see Korneev, O. (2008) and Hernández i Sagrera, R. (2010).

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