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The External Aspect of Migration Policy

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The External Aspect of Migration Policy

ANA BECERRO

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Abstract

This paper seeks to give a thorough grasp of the migration policy of the EU, specifically the measures and policies connected directly with the countries of origin and transit of immigrants. The purpose is to identify what the most suitable external components of the migration policy should be in order that such a policy may become a more active and positive instrument to consolidate a prosperous and stable Euro-Mediterranean Area. The underlying question is about the pertinence of the EU policy since it is not so clear that all the measures adopted and envisaged to be implemented in the future are enough to stabilize the periphery and consolidate a prosperous frontier area.

In this article I show how the Community migration policy is limited so far to a set of measures and instruments thought to secure integrity of borders and to control as much as possible the entry into the EU territory. The analysis of the external components of the migration policy (frontier measures, border control instruments, visa policy, readmission standard clause, cooperation with third countries, readmission agreements and action plans) puts in evidence the priority given by the EU to the elimination of irregular immigration and the protection of community borders from a potential and, to a great extent unrealistic, prospect of massive movement of people. I argue that the Community's perception of immigration is much more that of a danger or a threat than a factor of social change and cultural interdependence. The restrictive criteria guiding the community measures reflect such a perception and encourage a rigid management of the external borders. That could easily lead to the development of an 'exclusion zone' in the periphery around the EU. I try to put in evidence that this way of acting is an 'error'—in the sense used by engineers—, i.e., it causes a difference between desired and actual performance. To put it in another words, while the EU is aiming the stability of its immediate periphery, the measures and actions implemented and envisaged to be adopted in the near future under the migration policy are in contradiction with this purpose. I defend in this article that the promotion of a permeable frontier could be a key variable in promoting stability in the Euro-Mediterranean area.

Keywords:

Migration policy, stability, security, cooperation third countries, readmission agreements, visa policy.

Introduction¹

Migration policies have traditionally been a states' affair. At international level, many issues have been dealt with in multilateral forum, pursuing either some kind of regulation, or association or simply intergovernmental cooperation. The first to come to my mind is trade but, of course, it is not the only one. Weapons proliferation and disarmament, nuclear power or even oceans affairs have been areas approached by states in international organizations or *ad hoc* structures with the result that, nowadays, international issues related regimes do exist. Migration has also been dealt with in international organizations, like the United Nations (UN), the Organization for Economic Cooperation and Development (OECD) or, more recently, the International Centre for Migration Policy Development (ICMPD) and the International Organization for Migration (IOM). But in contrast to the above-mentioned issues, migration has not yet crystallised in a set of formal or informal norms and rules systematic enough to be called a regime.² Putting it in another words, a comprehensive legal instrument governing international migration is absent. It is unlikely this situation goes on much longer, taking into account that, first, there are around 175 millions migrants in the world (3 per cent of the global population); second, 23 per cent of the governments viewed immigration as too high; and third, the tendency towards more restrictive policies are spread worldwide.³ Migration has become a pressing issue. And governments learn now to manage it within international cooperation rather than only by themselves. In this sense, the European Union (EU) migration policies constitute a good example of dealing with migration at a beyond-state (regional) level.

This article seeks to give a thorough grasp of the migration policy of the EU, specifically the measures and policies connected directly with the third countries, countries of origin and transit of immigrants. The purpose is to identify what the most suitable external components of the migration policy should be in order that such a policy may become a more active and positive instrument to consolidate a prosperous and stable Euro-Mediterranean area. The underlying question is about the pertinence of the EU policy since it is not so clear that all the measures adopted and envisaged to be implemented in the future were accurate to stabilize the periphery and consolidate a prosperous frontier area.⁴

The article is organized in 4 sections.

1 I am grateful to the two referees for their feedback and criticism, which have helped me to improve the initial text. Responsibility for the arguments presented here, however, lies entirely and exclusively with me. The analysis in this paper is based on the law as it stands by November 2003.

2 There are, of course, some measures adopted at the international level, being so far the special case of refugees and their status the most developed one. One example that shows how difficult is to go ahead in international management issues is the International Convention on the protection of rights of all migrant workers and members of their families. The convention is important since it aims to prevent and eliminate the exploitation of migrant workers by providing some minimal explicit norms to protect their human rights (Nations Unies, 1990). It was adopted and opened for signature and ratification in December 1990 but it does not enter into force until 1 July 2003, almost thirteen years later. And the effects of the implementation will not probably be spectacular as none of the countries ratifying is among the most developed ones. The fact that different concepts are used to define migration does not help to overcome this state of affairs. So, place of birth, legal nationality, residence, duration of the stay, reason to move, channel used to migrate, purpose of the stay, are some of the criteria used to qualify a person as an immigrant and to establish categories among them.

3 Lowering immigration is not any more an objective pursued only by developed countries (44% of the governments in developed countries had implemented, in 2001, some policies in order to lower their immigration levels) but also by developing ones (the percentage reached in this case was 39 %) (United Nations Population Division, 2002).

4 This article considers the EU migration policies—and only part of them—, not the migration policies in Europe. For studies on the historical evolution of migration to Western European countries and the subsequent policies applied by European governments, see, inter alia: Barou, 2001; Guiraudon, 2000; Martiniello, 2001; or Rees, Stillwell, Convey and Kupiszewski, 1996.

After this introduction, in the second section, I start by setting briefly the institutional architecture of the migration policy already built, its capacities and instruments. That will frame the research. I also explain briefly how the ten future member states have defined themselves with respect to this policy.

The third section is focused on the principal outcomes of the external dimension of the migration policy. The analysis seeks the identification of some variables and, based on that, the evaluation of the external dimension of the migration policy. I argue that the Community's perception of immigration is much more that of a danger or a threat than a factor of social change and cultural interdependence. The restrictive criteria guiding the community measures reflect such a perception and encourage a rigid management of the external borders. That could easily lead to the development of an 'exclusion zone' in the periphery around the EU. I try to put in evidence that this way of acting is an 'error'—in the sense used by engineers—, i.e., it causes a difference between desired and actual performance. To put it in another words, while the EU is aiming the stability of its immediate periphery, the measures and actions implemented and envisaged to be adopted in the near future under the migration policy are in contradiction with this purpose. I defend in this article that the promotion of a permeable frontier could be a key variable in promoting stability in the Euro-Mediterranean area.⁵

Finally, the last section is devoted to the conclusions as well as to some suggestions or recommendations to mitigate or avoid as much as possible the unwanted and unlooked-for effects of community migration policies.

The Institutional Frame of the Migration Policy

The perception of the EU as a zone of welfare, peace and stability together with several major challenges the EU will face in the near future have to do with the development of a community policy in this field. The EU faces its opening to the East and to the South through a double process of enlargement and close association with almost all the surrounding countries. Thus, some Central and Eastern European countries (Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia) together with Cyprus, Malta and Turkey, are candidates to the accession. Other Eastern countries (Moldavia, Russia, Ukraine and other Republics from the former USSR) are linked to the EU by Cooperation Agreements; while the Mediterranean non-member countries (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestinian Authority, Tunisia) have signed Association Agreements with the EU or are negotiating them (Syria). In the long term, the ambitious aim of consolidate a stable and prosperous Euro-Mediterranean Area collides with some transboundary troubled issues. Migration is one of them since the periphery of the EU functions both as a zone of origin and transit for immigrants.

Furthermore, with the next enlargement (May 2004), and especially with the enlargement towards Turkey (2014?), the EU will expand the frontier towards the geographical limits of the European continent. The EU will have then a direct boundary with the Caucasus region (Armenia, Azerbaijan and Georgia) and some of the countries in the Middle East (Iran, Iraq) that, until now, have not been part of the EU frontier.

5 Stability is identified here with the confined of basic or disruptive change in the political system to acceptable or specified limits. Thus, the system remains stable not when it is free from any change or variation—condition that belongs only to an ideal dimension— but when it is able to return to equilibrium after having experienced substantial disturbances.

Figure I: Borders of the European Union

EU 15	South and East	Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, FYROM, Hungary, Latvia, Lithuania, Malta, Poland, [Rumania], Russia, Serbia and Montenegro, Slovakia, Slovenia, Turkey
	Mediterranean	Algeria, Cyprus, Egypt, Israel, [Jordan], Lebanon, Libya, Malta, Morocco, Tunisia, West Bank and Gaza Strip
	Inside border	Iceland, Liechtenstein, Norway, Switzerland
EU 25+3	South and East	Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, FYROM, Georgia, Moldova, Russia, Serbia and Montenegro, Ukraine
	Mediterranean	Algeria, Egypt, Iran, Iraq, Israel, [Jordan], Lebanon, Libya, Morocco, Syria, Tunisia, West Bank and Gaza Strip
	Inside border	Iceland, Liechtenstein, Norway, Switzerland

Looking at Figure I, the perspectives are not reassuring. Many of the listed countries suffer from political instability, weak or non-existent democratic systems, corruption and increasing radicalisation of society due to fundamentalisms; their economic systems are far from being efficient and well developed and in most of the cases they are unable to reduce the increasing inequality in the distribution of incomes or to provide a dignified standard of living for their populations; they have still unresolved border conflicts, and they are or could be in possession of chemical or biological weapons...The least all these factors suggest is an uncomfortable frontier for the EU in the medium and long term. Whether that will mean or not a growing flow of migrants looking for the peace and welfare experienced in the member states is however far from being firmly established.⁶

It is not easy to find studies that estimate the migration potential from Caucasian, Eastern European and Mediterranean countries. Most of the studies concentrate on the future member states and try to predict the migration flows after the enlargement, which is far from being an easy thing either.⁷ In the long run it is 'guesstimated', as Straubhaar puts it (Straubhaar, 2001), an East-West migration potential of the 4-5 per cent of the total population in the countries of origin. The percentage could go down till the 3 per cent between 2001 and 2015 (Fassmann and Münz, 2002). Nevertheless, when Bulgaria and Romania are not considered, the migration potential does not reach even 1 per cent of the population in origin (Straubhaar, 2001: 168-169). An OECD study shows that East-West flows are currently lower than in 1989-1992 and that they broadly correspond to a process of regional integration confined to border regions (OECD, 2001). Furthermore, the demographic factor could also count. Most of the EU neighbours (excepting some in the Mediterranean coast and in the Middle East) have total fertility rates very similar to those prevailing in the EU countries, in many cases they are even below the community average (United Nations, 2002b). In the medium term (by 2015) that will mean a negative annual population growth rate in the whole area that, at least in theory, could lead to a slighter migration pressure over the EU territory. Finally, it should be kept in mind that more often than not people do not consider migration as the most tempting alternative:

People prefer the status quo to an unfamiliar or insecure change. The simple abolishment of legal impediments to migration is usually insufficient to overcome individual (microeconomic, social and cultural) obstacles to migration and to overshoot the value of immobility (Straubhaar, 2001: 170).

6 In any case, as one of the referees pointed out, the importance of the direct geographical borders should not be over-emphasized since many migrants enter into the EU territory by air, making then irrelevant the existence or not of a direct border between the country of origin and the EU.

7 The study of the International Organization for Migration (1999) gives some indicia of the migration potential in 11 Central and Eastern European countries. A helpful synopsis of the main empirical findings on the subject can be found in Fassman and Münz (2002).

All in all, these factors could be suggesting that the closest periphery of the EU, specially the Central European countries—where the previous studies are focused on—will loose importance as an area of origin of immigrants. Of course, it does not necessarily mean that the migration potential towards the EU will be negligible in the future. Far from that. The data suggest that inflows of migrants have been increasing since the mid-1980's (Council of Europe, 2001: 11-16; United Nations Population Division, 2002: 11-13; OECD, 2003: 17-21) and the trend is expected to continue in the future.⁸ Indeed, what is likely to happen is that the whole neighbourhood of the EU will gain relevance as an area of transit of migrants in their way to one or another member state. At the same time, as the OECD reveals, 'central and Eastern European countries are also attracting migrants from further East, reflecting significant economic imbalances both within the region and between it and the countries on its Eastern borders'(OECD, 2001). Unfortunately for the people involved, armed conflicts, political instability, lack of guarantees regarding respect of human rights and fundamental freedoms and falling living standards are spread enough around the more distant periphery of the EU (Sub-Saharan Africa, Asia and Central and South America) to push population movements towards Europe. Since these push factors will not disappear from one day to the next, it is reasonable to envisage a sustained flow of immigrants over the next decades.

But, in fact—as strange as it may seem—data could be not so decisive when dealing with migration policies than perceptions are. And the perception that immigration stocks are already too high and that the trend on the future will be on the upswing is widespread both among governments and populations (United Nations Population Division, 2002: 17-18).⁹ So, whatever the data and empirical findings could be, what is indisputable is that the fear of mass migration does exist in the EU. A management of the migration flow is then thought necessary and, because of the free movement of people and the elimination of internal border controls, this necessity should be satisfied at the communitarian level.¹⁰

The European Community (EC) has just recently assumed the competence in the field of migration and asylum. Only after the Treaty of Amsterdam entered into force (1st May 1999), these issues could be considered as a common policy instead of a matter of intergovernmental cooperation (arts. 61-63 TEC-Treaty establishing the European Community). The Treaty committed the EU to establish a common immigration and asylum policy by 2004.¹¹ Following the Amsterdam Treaty, the special

8 It should be taken into account, however, that the last decade was quite peculiar regarding migration flows into the EU: the break-up of the USSR added about 27 million persons to the 2000 world total international migrant stock and the two wars in the Balkans produced a significant movement of people: refugees and displaced persons (United Nations Population Division, 2002: 6). Consequently, a simple extrapolation of the last decade data should not give an accurate image of the future trends of inflows. Data problems are even bigger when regarding irregular migration as there is no fully reliable statistics information on this phenomenon. The International Centre for Migration Policy Development estimates that irregular immigration into the Schengen area might amount to 400 000 - 500 000 a year (Widgren, 2001: 9); the same source calculates the irregular transit in the Mediterranean sea to be at about 25.000 Sub-Saharan migrants and some 5.000 migrants of Middle Eastern and Asian origin, per year (06.03.2003. <http://www.icmpd.org>). As the Council of Europe recognises, 'although there is no way of confirming these numbers, the trend seems to be upward' (Council of Europe, 2001: 23).

9 The political and mass media discourse on immigration, very often focused exclusively on the irregular immigration—as a human drama but also as a problem of domestic security—, limits the nature of the phenomenon and contributes to the collective perception of migration as a massive movement of people threading host societies. This perception is also shared by some scholars (see, for instance, Widgren 1990) as well as by some political authorities: in the document settling the Spanish defence policy until 2015, 'the massive illegal immigration'—together with the terrorism—was cited as a risk for the security. This provoked the immediate reaction of some NGOs, political parties and trade unions that accused the government of having a racist and xenophobic discourse (El País, 19 November 2002, p. 27).

10 Of course, changes in the patterns of migration towards the EU can always be mentioned to explain the development of a supranational (regional) response to this phenomenon. However, it seems to me that what has really unleashed the EU response on the subject was not the new dynamism of migration flows but rather the increasing vulnerability derived from the elimination of internal border controls, in a territory where the free movement of people is guaranteed.

11 The five-year period does not apply for measures aiming to promote a balance effort between member states in receiving refugees and displaced persons, measures on conditions of entry and residence for long-term periods or measures related to the rights and conditions under which nationals of third countries already living in a member state may live in another.

meetings of the European Council in Tampere (October 1999) and Seville (June 2002) helped to set up the main elements of a common policy on migration and asylum.¹²

Since then, migration occupies an increasing prominent position in the political agenda of the EU.¹³ Apart from the—rather scarce—measures that try to improve the management of migration flows (Council of the EU, 1999; Commission, 2000a, 2002d), there are two different types of measures related to the external dimension of migration policy: these planned to reinforce the border controls, including visa policy (Council of the EU, 2002a; Commission, 2000b and 2003a), and those designed to assure the readmission of the immigrants in the country of origin or, more in general, against the irregular immigration (Council of the EU, 2002b; Commission, 2001 and 2002a). Under Treaty on European Union (TEU), these measures embrace:

- Standards and procedures concerning checks on persons at the borders.
- Visa policy (for periods not exceeding three months):
 - List of third countries whose nationals must be in possession of visas when crossing the external borders and list of those exempt.
 - Procedures and conditions for issuing visas.
 - Uniform format for visas.
 - Rules on a uniform visa.
- Return and readmission policy.

Although these issues—as I mentioned above—are part of the first pillar, they are not totally equivalent to other community policies. For instance, the fact that the Commission shares, till May

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See Title IV, Visas, asylum, migration and other policies related to free movement of persons, of the European Community Treaty (TEC). See, also, Protocols B2, B3, B4, B5, C6 and the list of Declarations annexed to the Treaty on European Union (TEU), related to, among other things, the integration of the Schengen acquis into the framework of the EU and the special provisions applied to Denmark, Ireland and the United Kingdom.

12 Presidency Conclusions, Tampere European Council, 15-16 October 1999 (SN 200/1/99) and Seville European Council, 21-22 June 2002 (SN 200/1/02 REV 1).

13 Although in this paper I will not take in consideration the internal dimension of the migration policy (the conditions of residence, work and travel of immigrants in the territory of the EU), it does of course exist. See, Council Resolution of 20 June 1994 on limitation on admission of third-country nationals to the territory of the member states for employment (O.J. C 274, 19.09.1996, pp. 3-6); Council Resolution of 30 November 1994 relating to the limitations on the admission of third-country nationals to the territory of the member states for the purpose of pursuing activities as self-employed persons (O.J. C 274, 19.09.1996, pp. 7-9); Council Resolution of 30 November 1994 on the admission of third-country nationals to the territory of the member states for study purposes (O.J. C 274, 19.09.1996, pp. 10-12); Council Resolution of 4 March 1996 on the status of third-country nationals residing on a long-term basis in the territory of the member states (O.J. C 080, 18.03.1996, pp. 2-4); Joint Action of 16 December 1996 adopted by the Council on the basis of Article K.3 of the TEU concerning a uniform format for residence permits (O.J. L 007, 10.01.1997, pp. 1-4; for more on the residence permits, see also: O.J. L 157, 15.06.2002, pp. 1-7); Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (O.J. C 221, 19.07.1997, pp. 23-27); Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (O.J. L 187, 10.07.2001, pp. 45-46). Among the proposals of the Commission not yet adopted, I would mention the following: Proposal for a Council Directive on the right to family reunification [COM (1999) 638; amended: COM (2002) 225 (01)]; Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents [COM (2001) 127]; Proposal for a Council Directive relating to the conditions in which third-country nationals shall have the freedom to travel in the territory of the member states for periods not exceeding three months, introducing a specific travel authorisation and determining the conditions of entry and movement for periods not exceeding six months [COM (2001) 388]; Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities [COM (2001) 386]; Amended proposal for a Council Directive on minimum standards on procedures in member states for granting and withdrawing refugee status [COM (2002) 326]; Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in member states [COM (2001) 181]; Proposal for a Council Directive on minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection [COM (2001) 510].

2004, the right of initiative with the member states, or the tight restriction of the jurisdiction of the Court of Justice on Title IV (Visas, asylum, immigration and other policies related to free movement of persons), put in evidence the peculiarity of the migration policy. This distinctive character derives from the very nature of the subject—placed in the core of national sovereignty, the right to control the territory—and reflects the mixture of the national and supranational dimension in the objectives and policy options of the migration policy. On the one hand, the member states are concerned with the economic and social consequences of immigration growth in a context of quasi-stagnation and, not surprisingly then, they seem to concentrate their efforts in making the borders as secure as possible, what usually results in a border as closed as possible. On the other hand, the integration of Europe cannot be accomplished against the Other. And that is not (only) an ethical statement. Setting up new walls not only could create latent hostility and serious tensions with the neighbouring countries, but also could be counterproductive regarding the internal market, not to mention the high cost—and futility (Bigo, 1998)—of keeping under tight control trans-border movements of people. At the same time, even if the member states agree on the fact that more could be done to increase the efficiency through managing the borders at the supranational level, in practice they are reluctant to give up, or even share, their monopolistic control of the territory. Two main reasons could be mentioned for that. First, migration confronts people with different cultures and ways of thinking what, for the most part, compels individuals ‘to rethink and reconsider their national and cultural identity’ (Romaniszyn, 2003: 107).¹⁴ Since that challenges directly the function of the state of maintaining the territorial integrity and people cohesion, it is not surprising that states prefer to keep the subject in their hands. Second, to give up the control of external borders to the EU still rises concerns about safeguarding internal security in most of the member states. Briefly, in this field the EU shows itself really as a multi-level polity, where different players interact across multiple levels and, at this stage, when the development of the policies is not yet completed, competencies could even overlap.

This being the state of affairs, the result is that the EU intervention in migration issues, especially with respect to the external aspects of it, range over a quite wide spectrum of not legally-binding methods and instruments. Moreover, this soft law, as it is called, does not have adequate monitoring arrangements that would allow to correct or adjust when necessary the undertaken actions or measures. According to this, most of the recommendations, regulations, decisions and resolutions—directives are much more scarce¹⁵—adopted by the Council plead for coordination procedures, harmonisation or concerted actions between the member states.¹⁶ A bit more wide-ranging, but equally

14 Romaniszyn’s article deals with the effects that international migrations have on the cultural diversity of host and sending societies. For the role of the Other, and immigrants as a particular type of Other, in the development and transformation of national identity, see Triandafyllidou (2001).

15 Among them, the Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (O.J. L 149, 2.6.2001, pp. 34-36); Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (O.J. L 187, 10.7.2001: 45-46).

16 Council Recommendation of 30 November 1994 concerning the adoption of a standard travel document for the expulsion of third-country nationals (O.J. C 274, 19.9.1996, pp. 18-19); Council Recommendation of 30 November 1994 concerning a specimen bilateral readmission agreement between a member state and a third country (O.J. C 274, 19.9.1996, pp. 20-24); Council Recommendation of 24 July 1995 on the guiding principles to be followed in drawing up protocols on the implementation of readmission agreements (O.J. C 274, 19.9.1996, pp. 25-33); Council Recommendation of 25 December 1995 on harmonizing means of combating illegal immigration and illegal employment and improving the relevant means of control (O.J. C 5, 10.1.1996, pp. 1-3); Council Recommendation of 22 December 1995 on concerted action and cooperation in carrying out expulsion measures (O.J. C 5, 10.1.1996, pp. 3-7); Council Decision of 16 December 1996 on monitoring the implementation of instruments adopted by the Council concerning illegal immigration, readmission, the unlawful employment of third country nationals and cooperation in the implementation of expulsion orders (O.J. L 342, 31.12.1996, p. 5); Council Decision of 26 May 1997 on the exchange of information concerning assistance for the voluntary repatriation of third country nationals (O.J. L 147, 5.6.1997: 3-4); Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (O.J. C 221, 19.7.1997: 23-27); 98/244/JHA: Joint Action of 19 March 1998 adopted by the Council on the basis of Article K.3 of the TEU, introducing a programme of training, exchanges and cooperation in the field of asylum, immigration and crossing

not-binding, are the green paper of the Commission on a community return policy (Commission, 2002) and the plans on management of the external borders and on irregular immigration (Council of the EU, 2002a and 2002b). The action plans prepared by some member states and adopted by the Council (Council of the EU, 1999a, 1999b, 1999c, 1999d, 1999e and 2000) and the readmission agreements complete the range of EU interventions in this field.

The distinctive legal and institutional status in which the migration policy is placed has both merits and limits. Among the former, the flexibility gained to integrate the internal and external aspects of the Community activities in this area, where operational cooperation can strengthen the capacity of the EU to influence the inflows from third countries without requiring a formal legal base. It seems also to be well adapted to the reciprocal capillary existing between the migration policy and the area of freedom of movement, especially as it regards police and judicial cooperation. Turning to the limits, the sometimes confusing distribution of the tasks is putting in doubt the capacity of the EU to respond to the needs of those who participate in the trans-border movements.¹⁷ Additionally, the risk is high that member states attempt to 'export' their own particular domestic interests and priorities disrupting the timetable and coherence of the legislative programme.¹⁸ It seems quite clear that this way of acting does not enhance the quality of legislation.

There is another paradox in the governance of the migration policy. While it does exist a 'variable geometry' in this policy for the current member states, (Figure II), none special considerations are contemplated for the new ones.¹⁹ Moreover, they were compelled from the beginning of the accession negotiations to accept the whole *acquis communautaire* (art. 8 of the Protocol incorporating the Schengen *acquis* in the EU). And that despite of the fact that the migration flows in Central and Eastern Europe differ considerably from the pattern followed in the EU.²⁰

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of external borders (Odysseus Programme) (O.J. L 99, 31.3.1998, pp. 2-7); Decision of the Executive Committee of 27 October 1998 on the adoption of measures to fight illegal immigration (SCH/Com-ex (98) 37 def. 2) (O.J. L 239, 22.9.2000, pp. 203-204); Decision of the Executive Committee of 16 December 1998 concerning the compilation of a manual of documents to which a visa may be affixed (SCH/Com-ex (98) 56) (O.J. L 239, 22.9.2000, pp. 207-297. See also p. 298); Decision of the Executive Committee of 16 December 1998 on the introduction of a harmonised form providing proof of invitation, sponsorship and accommodation (SCH/Com-ex (98) 57) (O.J. L 239, 22.9.2000, pp. 299-307); Decision of the Executive Committee of 28 April 1999 on the definitive versions of the Common manual and the Common Consular Instructions (SCH/Com-ex (99) 13) (O.J. L 239, 22.9.2000, pp. 317-404), Programme of measures to combat illegal immigration across the maritime borders of the European Union (Council of the EU, Doc. 13791/03, 21 October 2003); Council Regulation establishing a European Agency for the Management of Operational Co-operation at the External Borders [COM (2003) 687, Brussels, 20.11.2003].

- 17 I am referring here not only to the immigrants and asylum applicants but also to the staff, national or from the EU, dealing with external borders control matters.
- 18 Some such initiatives have already been proposed in justice and home affairs by Belgium (on restorative justice), Denmark (on war crimes and confiscation) and Spain (on drug trafficking on the high seas and private security).
- 19 Under Title IV TEC, the UK and Ireland participate in some measures against irregular immigration (carriers and facilitation of unauthorized entry, transit and residence), in readmission agreements and in measures to strengthen visa security. In Schengen, they have so far opted-in in respect of police and judicial cooperation, drugs and the Schengen Information System. It has not been yet evaluated what is the cost of the non-coordination with other member states on these issues but, whatever it could be, it will be increasingly difficult to ignore as the integration in these areas moves forward.
- 20 One of the main features of the migration inflows in the future member states is what Okolski calls 'incomplete migration', that is, people crossing borders to sell/buy things only for a few days or weeks but they do it so often that they spend most of the year out of their country of origin, in which they still have the legal residence (Okolski, 1997). This sort of migration is quite usual in Belarus, Romania, Russia and Ukraine with Czech Republic, Hungary and Poland borders. 'Incomplete migrants' are workers with a flexible and shifting social and labour status in the country of origin and an irregular or irregular one in the host country. The rapid rise in its number since 1990 has to do with the steady expansion of the informal economy in these countries. For more about migration in Eastern and Central Europe, see Morawska (1998 and 2000). For the situation inside the EU, see Barou (2001), Guiraudon (2000) and Rees, Stillwell, Convey and Kupiszewski (1996).

Figure II: Opt-ins and Opt-outs

	Title IV TEC	Schengen
Austria	In	In
Belgium	In	In
Denmark	Out. It can opt-in <i>in toto</i>	In
Finland	In	In
France	In	In
Germany	In	In
Greece	In	In
Ireland	Out. It can opt-in selectively to (non-Schengen) measures	Out. It can opt-in selectively, with the agreement of the 13 EU Schengen States
Italy	In	In
Luxembourg	In	In
Netherlands	In	In
Portugal	In	In
Spain	In	In
Sweden	In	In
UK	Out. It can opt-in selectively to (non-Schengen) measures	Out. It can opt-in selectively, with the agreement of the 13 EU Schengen States

Source: Own elaboration with information from TEU and TEU Protocols No. 4 and 5.

None of the candidate countries voiced neither objections nor reservations while negotiating ‘Justice and Home Affairs’, the chapter dealing with migration and asylum issues (Commission, 2002b: 95). They accepted the *acquis*, that of Schengen included, without asking for any derogation. Furthermore, most of them started to adopt part of the *acquis* and to implement some related measures well in advance the accession took place.²¹

- Adoption of the legislation on foreigners’ residence.
- Modernization of the checkpoints and the procedures for issuing visas; harmonization of the visa policy with that of the EU.
- Harmonization of legislation on asylum.
- Conclusion of bilateral agreements on trans-border cooperation with neighbouring countries. Candidate countries have already signed readmission agreements with each other and with other non-candidate neighbour countries.
- Improvement of the analysis of risk methods and computerization of the process.
- Enhancement of borders protection, physical and legal.
- Acceptance of the trans-border surveillance and hot-persecutions hold by neighbour member states.
- Gradual introduction of measures and instruments constraining the flux of immigrants workers from low-income countries.
- Adoption of identity documents according to the security standards of the EU.
- Adoption of registries on foreigners, identity cards and visas.

As the reading of this non-exhaustive list suggests, future member states fully assume themselves as the new guardians of the EU frontier. They do not question the political approach based on the double axiom of strengthening external borders and implementing an effective dissuasive policy of

21 Information obtained from the National Programmes for the Adoption of the Acquis. I would like to thank Kyriacos Charalambous, from the Office of the Chief Negotiator for Cyprus Accession to the EU, M. Kramperová, from the Ministry of Foreign Affairs of the Czech Republic, and Liga Sondore, from the EIB in Latvia, for providing data on this subject. The General Secretariat of the Council of the European Union has also provided me with the documents I requested.

expulsion. Neither are questioned the measures and instruments they have to adopt. It is true that they asked for transition periods but it has more to do with the incapability of adopting and implementing the community norms and rules in a short delay rather than with deep objections on the final aim of the migration policy.²²

On the other hand, the EU has also requested transition periods (except for Malta and Cyprus). That means that accession to the EU will not immediately lead to the lift of internal border controls. As with previous enlargements, this will be the subject of a separate Council unanimous decision, some time after accession, and after a careful examination of the legal and practical readiness of the new member states.²³ As I explain graphically in Figure III, in the two years after accession, national measures will be applied by current member states to new ones. An automatic review will be done before the end of the second year. In case of negative opinion, a further review will be done at the request of the new member state. Five years after accession, the transition period comes to an end though it may be prolonged for two years more.²⁴

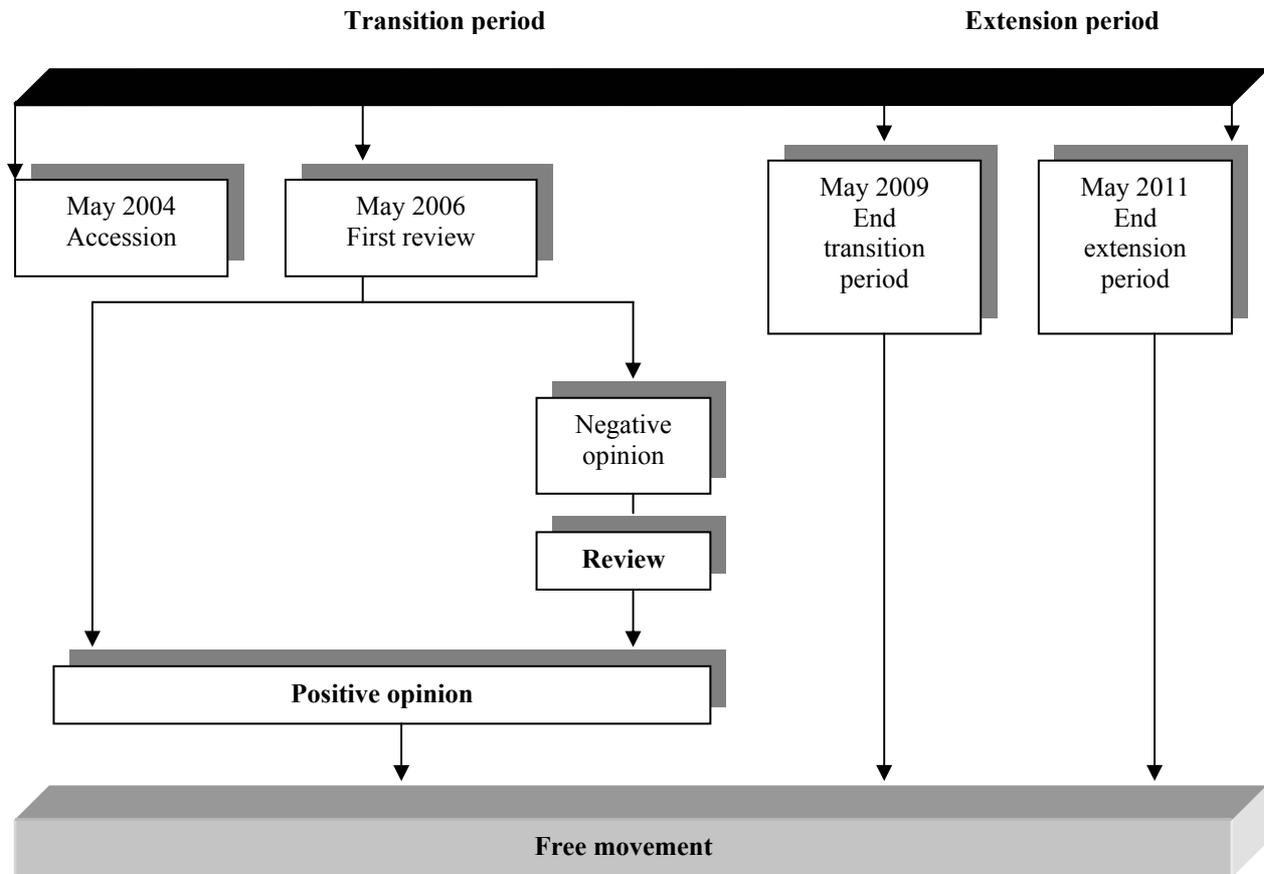
The two-, five- or seven-years periods could develop a ‘floodgate system’ before the fully implementation of the *acquis* is accomplished. Old frontiers will gradually lose their traditional relevance as the enlargement consolidates and transition periods come to an end. The opportunity for developing new communities will be then more real. However, it is not excluded the arising of new frontiers that could sharpen and complicate tensions at the borders, especially those related to minorities (Liebich, 2002: 122-123). As Hassner puts it,

The principle of the abolition of borders and controls inside the Schengen space and their reinforcement outside would, if applied rigorously, bring havoc to the relations of Hungary with its national minorities in Romania or Serbia, or of Romania with Moldova, or to the economic relations between Poland or the Czech Republic and Ukraine or Belarus. It would have disastrous consequences for the latter countries. If, on the other hand, a series of exceptions were made, the principle of ‘bringing one’s friend along’ would not only transform the whole process of accession but would also intensify the blurring of the distinction between inside and outside even further, just as the accession of Turkey would accelerate the creation of an internal periphery subject to restrictions of movement not unlike those of the external one (Hassner, 2002: 49).

22 For instance, the Czech Republic asked for a transition period (till 2005) to introduce and implement the Schengen system, that requires different and separate levels for traffic in and out Schengen, in airports. Furthermore, most of the candidate countries have asked, and obtained, technical and financial assistance to set up the necessary infrastructure required to reach the EU standards.

23 This is about the need of ensuring that candidate countries are equipped to meet adequate and acceptable standards of control implementation in the external borders, specially against the irregular immigration but also in other related issues: drugs trafficking, money laundering, organized crime, police and judicial cooperation, data protection and mutual recognition of court judgements. Commitments are closely monitored by the Commission while member states experts provide some help through monitoring tables, peer review missions, TAIEX seminars and technical meetings on the new *acquis*.

24 During the transition period: (1) nationals from the new member states are guaranteed preference over non-EU labour force; (2) the standstill clause cannot be more restricted than at the time of the signature of accession (16 April 2003); and (3) the safeguards are in force up to the end of the seventh year. Austria and Germany have reserved themselves the right to apply flanking national measures after the transition period. Also Malta has included a safeguard clause (run for seven years) to protect its labour market.

Figure III: Transition Period (2004 - 2009 / 2011)

In fact, the future evolution depends on how the external border will be managed, in an ‘unzipped’ or in a ‘sealed’ way. The argument in this article is that the promotion of a permeable frontier could be a key variable in promoting stability in the Euro-Mediterranean area.²⁵ Considering the restrictive criteria guiding the community measures so far, the trend seems to be more towards the ‘sealed’ type of frontier characterised by a rigid management of the external borders. That could easily lead to the development of an ‘exclusion zone’, to use Michael Smith’s expression (Smith, 1996: 7). I elaborate this argument in the next section.

Outcomes of the External Dimension of the Migration Policy

In this section, I start by analysing the underlying assumptions of the measures adopted by the EU. In doing so, I intend to evaluate the external dimension of the migration policy. My argument is that the EU position on migration so far can be defined as restrictive since the measures and instruments applied in this field transmit a political approach based on a double axiom:

- The strengthening of the external borders.
- The implementation of an effective dissuasive policy of expulsion.

²⁵ That seems also to be the position held by the EU when dealing with other different border issues than movements of people. In trade and cultural and political matters, for instance, the EU seeks to dilute boundaries—always without forgetting, of course, the defence of own interest. For the process of differentiation and transformation of frontiers, see Hassner (2002).

By contrast, I defend that the promotion of a permeable frontier could be an important variable in promoting stability in the Euro-Mediterranean area.

It will be appropriate to commence by considering the general objective of the common policy on migration. The TEU does not specify what it is.²⁶ However, it is clear that, whatever the specific measures were, the overarching objective of every migration policy is always to try to influence migratory movements. But, in which sense? The more open approach was stated by the Commission in the Communication on a Community Immigration Policy (2000a):

[...] It is possible to develop policies which use migration to the mutual benefit of the country of origin and the receiving country'; the next paragraph is a bit more concrete: 'The partnership approach should provide a framework for dealing flexibly with new trends in migration which are now developing in the world, with the concept of migration as a *pattern of mobility* which encourages migrants to maintain and develop their links with their countries of origin.

Moreover, it is acknowledged that

cooperation between countries of origin and residence of migrants must be based on dialogue with governments and with the migrants themselves and their associations to ensure that migratory movements are taken into account in developmental, economic and social strategies of the countries concerned (e.g. by promoting more efficient public and financial institutions, training and manpower skilling programmes as well as the inflow of foreign capital to projects (including those carried out by emigrants in their countries of origin)) (2000a: 8).

Thus, the community immigration actions would be based on a broad policy framework whose principles would include:

- The understanding of migration as a dynamic and complex phenomenon.
- The pursuit of the benefit of migrants and countries of migration.
- The comprehensive management of migration, which in short implies to deal with all issues related to cross-border movements: facilitated migration, protection of the rights of migrants and integration, border control, consequences of irregular migration and prevention of migrant trafficking, return, possible linkages between migration and development...

Having said that, it must be stated straight away that there are few tracks of these principles in the measures and policies adopted so far by the EU. Indeed, excluding the action plans—to which I return later—, they are surprisingly absent. Almost all the community documents consulted here²⁷ are focused on irregular immigration and expulsion and readmission measures (see note 16). It is true that the integration of third country nationals legally staying in the member states is also already a relevant element of the migration policy—but not being related to the external aspects of this policy, will not be dealt with here. Of course, these lines of actions are both part of a comprehensive approach to management migration. It is not possible to conceive an efficient migration policy that lacks of either provisions aiming to control irregular migration flows or measures providing adequate protection for those in need. However, this is clearly not enough to deal with stocks and flows of migrants. It must be borne in mind that the other dimensions are essential too and, in spite of that, EU policies are silent with regard to them. It can be mentioned here by way of example the absence of specific references to positive policies to encourage lawful routes for the admission of migrants, being this kind of policies

26 If the draft text of the Treaty establishing the Constitution of Europe is finally adopted, this gap regarding the general objective will be filled with a new article. Thus, the EU should develop 'a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in member states, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings' (Art. III-163. The European Convention, The Secretariat, CONV 725/03, vol. II, Brussels, 27.05.2003: 95).

27 Exception made of the communications from the Commission, whose scope is quite broader: migration policy, irregular immigration, return policy, management of the external borders, cooperation with third countries in the field of migration (financial and technical assistance included), smuggling and trafficking of human beings, asylum systems, relation between immigration, integration and employment, etc.

still in hands of the states. Shelter under article 63 TEC, that exempts the Council from legislating on this matter in the five-year period stipulated in article 62 TEC, the Council has not decided anything about the conditions of entry and residence of third nationals.²⁸ In fact, in that area states' concerns regain surface. As I have already mentioned above, member states are interested in preserving full control over the admission to their territory of people from third countries, and not the least because of its obvious political and public policy ramifications.

Figure IV: Management Migration in the EU: external aspects

Content		
Management of external borders	Frontier measures	Advice and support by liaison officers. Financial and technical support for actions in third countries. Awareness-raising campaigns.
	Border control	In a common area. Controls at sea borders. Common curriculum and training. Border management cooperation and performance by joint teams.
	Information exchange and analysis	Statistics. Gathering information, intelligence and analysis. Early warning system.
	Visa policy	Uniform visa and security standards. Creation of common administrative structures. Visa Information System (central and national).
Readmission and return policy	Clause	Joint management of migration flows. Compulsory readmission in the event of irregular immigration. Where relevant, provision of adequate assistance to implement it.
	Cooperation	Comprehensive dialogue. Areas of cooperation based on a country specific needs. Direct and indirect assistance.
	Readmission agreements	Technical provisions governing the readmission procedure and the transit operations (readmission applications, means of evidence, time limits, means of transit, etc.). Rules on costs, data protection, protection of other international rights and obligations.
	Action plans	Cooperation with the third countries concerned in: foreign policy, development and economic assistance, migration and asylum. Instruments: dialogue, cooperation and co-development. Components: protection of human rights, support for democratisation and the rule of law, social and economic development, alleviation of poverty, support for conflict prevention and reconciliation, cooperation with the UNHCR and human rights organisations, observance of refugees' and asylum seekers' right to protection, integration of migrants and the fight against irregular immigration.

Source: Own elaboration with information from EU documents.

It seems to me that that is a major failure of the migration policy. It reduces this policy to a set of specific measures, unhealthily focused on entry controls and return efforts, a patchwork of policies that puts in evidence the lack of cohesion between the actors involved. Figure IV—and later, Figure VII—will help me to justify my previous statements; the figure presents in a schematic way the main

28 For instance, harmonisation of national legislation on family reunification, one of the few doors of legal entrance into the EU territory, is far from being achieved. The same can be hold for the conditions for granting and withdrawing the refugee status, where not even has been reached the consensus on the minimum standards on the procedures that member states should apply. With respect to visas, it should be not forgotten that the Council has a word only for rules on short stays (no more than three months).

policies concerning external aspects of the migration policy of the EU. To elaborate it, both measures and policies already implemented and those still underway have been taken into account. What follows is then the analysis of what the EU has achieved so far. In short, it is not too much.

In line with my argumentation, the policies of the EU can be classified in two:

- Measures planned to reinforce the border: checks on persons, visa policy, immigration liaison officer network, national contact points for border management issues, other programmes or projects.
- Measures designed to assure the return of the immigrants in the countries of origin: action plans, readmission agreements, cooperation with third countries and the clause on joint management of migration flows.

Management of External Borders

As shown in Figure IV, the management of the external borders is mainly focused on securing borders and controlling irregular entrance into the territory. That is the reason why the visa policy has been included here. Issuing visas is the first and most evident instrument the EU member states can use to try to influence migration inflows and the control of the correct use of this instrument is done at the borders.

Issuing visas is not a community competence. As I mentioned above, the EU or, better, the Council, is conferred the power to adopt some ‘rules on visas for intended stays of no more than three months’ (art. 62, 2(b) TCE) and that does not include the power of issuing visas. Moreover, even this restricted content of the visa policy is, like the rest of the common migration policy, under development. Its most relevant output, one of the priorities set up in the Seville European Council, is perhaps the list of countries whose nationals must be in possession of visas when crossing the EU borders (Figure V) and those who are exempt of this requirement (Figure VI).²⁹ The determination of the countries is still being achieved since the two lists are gradually and constantly updated. The countries are selected upon a case-by-case assessment of a variety of criteria: the irregular immigration, public policy and security, European Union’s external relations, implications of regional coherence and reciprocity. The tendency till now has been towards the enlarging of the first list and the restriction of the second one.

29 For both lists there are some exceptions though. Visa may be unnecessary in some cases (civilian air and sea crew, flight crew, attendants on emergency or rescue flights, other helpers in the event of disaster or accident, holders of diplomatic, official duty or other official passports, etc.), while it may be required to those persons carrying out a paid activity during their stay.

Figure V: Third Countries whose Nationals must be in Possession of Visas when crossing External Borders

States		
Afghanistan	Georgia	Papua New Guinea
Albania	Ghana	Peru
Algeria	Grenada	Philippines
Angola	Guinea	Qatar
Antigua and Barbuda	Guinea-Bissau	Russia
Armenia	Guyana	Rwanda
Azerbaijan	Haiti	Saint Kitts and Nevis
Bahamas	India	Saint Lucia
Bahrain	Indonesia	Saint Vincent and Grenadines
Bangladesh	Iran	Sao Tomé and Príncipe
Barbados	Iraq	Saudi Arabia
Belarus	Jamaica	Senegal
Belize	Jordan	Serbia and Montenegro
Benin	Kazakhstan	Seychelles
Bhutan	Kenya	Sierra Leone
Bosnia and Herzegovina	Kiribati	Solomon Islands
Botswana	Kuwait	Somalia
Burkina Faso	Kyrgyzstan	South Africa
Burma/Myanmar	Laos	Sri Lanka
Burundi	Lebanon	Sudan
Cambodia	Lesotho	Surinam
Cameroon	Liberia	Taiwan
Cape Verde	Libya	Swaziland
Central African Republic	Madagascar	Syria
Chad	Malawi	Tajikistan
China	Maldives	Tanzania
Colombia	Mali	Thailand
Comoros	Marshall Islands	Togo
Congo	Mauritania	Tonga
Côte d'Ivoire	Mauritius	Trinidad and Tobago
Cuba	Micronesia	Tunisia
Democratic Republic of the Congo	Moldova	Turkey
Djibouti	Mongolia	Turkmenistan
Dominica	Morocco	Tuvalu
Dominican Republic	Mozambique	Uganda
East Timor	Namibia	Ukraine
Ecuador	Nauru	United Arab Emirates
Egypt	Nepal	Uzbekistan
Equatorial Guinea	Niger	Vanuatu
Eritrea	Nigeria	Vietnam
Ethiopia	North Korea	Western Samoa
Fiji	North Marianas	Yemen
Former Yugoslav Republic of Macedonia	Oman	Zambia
Gabon	Pakistan	Zimbabwe
Gambia	Palau	
Entities and territorial authorities that are not recognized as States by at least one member state		
Palestinian Authority	Taiwan	

Figure VI: Third Countries whose Nationals are exempt from the Requirement of Visas when crossing External Borders

States	
Andorra	Latvia
Argentina	Lithuania
Australia	Malaysia
Bolivia	Malta
Brazil	Mexico
Brunei	Monaco
Bulgaria	New Zealand
Canada	Nicaragua
Chile	Panama
Costa Rica	Paraguay
Croatia	Poland
Cyprus	Romania
Czech Republic	Salvador
Ecuador	San Marino
Estonia	Singapore
Guatemala	Slovakia
Holy See	South Korea
Honduras	Switzerland
Hungary	United States of America
Israel	Uruguay
Japan	Venezuela
Special administrative regions of the People's Republic of China	
Hong Kong SAR	Macao SAR

Source: Council Regulation (EC) No. 574/1999 of 12 March 1999 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the member states (O.J. L 72, 18.3.1999: 2-5); Council Regulation (EC) No. 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (O.J. L 81, 21.3.2001:1-7); Council Regulation (EC) No. 453/2003 of 6 March 2003 amending Regulation (EC) No 539/2001 [...] (O.J. L 69, 13.3.2003: 10-11).

If the issue of visa is essential to control the access into the EU territory, it is evident that the security of the document itself and the identification of the holders will be important too. It is not surprising then that the EU has undertaken the task of uniformising and making more secure the format of the visa (and the residence permit). In addition, according to this political orientation of increasing security, the EU is in the process of establishing a common visa information system (indeed, it will be a double system: one central and the other at national level) that will, *inter alia*, facilitate identifications and the fight against fraud. However, in spite of being considered a high priority, the project is still in its first steps. The significant cost of the whole investment, estimated between 130 and 200 million Euro (Commission, 2003: 5) and the fact that the Schengen information system must also be updated (the new version must be operational in 2006) are perhaps the reasons of this slowness.

Some other measures related to the management of the borders, like the cooperation of the liaison officers and the awareness-raising campaigns (with financial and technical support from the EU) are planned to be implemented not only at the boundary but also in the whole frontier area, i.e. in the territory of the third country involved. In recent years, some of these measures have been adopted. It can be mentioned, for example, the network of immigration liaison officers aiming to help control irregular migration flows, in place since the end of 2002. This project started in December 2001 for the Western Balkan region and is expected to be operational by the end of December 2003. Other initiative in this region was the IMMPACT project implemented in Bosnia and Herzegovina. It provided training and on-the-spot assistance for one year (ended by August 2002) and its main result

was a strong decrease in the number of potential and undocumented migrants (in Sarajevo airport and on the Croatian and Slovenian side borders). A similar project is being implemented in Serbia and Montenegro during 2003. Among other projects and joint operations implemented by the member states and the Commission, could be mentioned the common project on sea border control (ORCA) and the Austrian project to establish a common core curriculum for national border guards training.³⁰

The rest of the measures related to border management has to do with the improvement of the existing standards and procedures in which border controls are carried out. All in all, these measures should allow the coordination of those in charge of checking and controlling external borders in order to boost security in the territory of the EU:

The control and surveillance of borders contribute to managing flows of persons entering and leaving that area and help protect our citizens from threats to their security.

The next paragraphs clarify what kind of threats the Council of the EU is thinking on: '[...] terrorism, illegal immigration and trafficking in human beings [...]' (Council of the EU, 2002a: 3).³¹ It is not surprising then that the main operations and activities to be undertaken in this field are police related.

The strong emphasis that all these instruments put on securing borders and controlling irregularity is not without significance for the purpose of this paper. Two consequences can be pointed out.

First, giving priority to the strengthening of the external borders and the fight against irregular migration ends most of the times in associating the image of the immigrants—all categories taken together—to human drama, irregularity, insecurity and crime. Through the implementation of the measures described above, migration is displayed, and dealt with, as an abnormal and negative phenomenon, something that under normal circumstances should not occur and that represents a threat. Therefore, it must be controlled, limited or stopped. In this way, migration is converted into a law-and-order question, a security threat.³² There is a real problem on the spread of a warped and reducing image of the immigrant because the risk is high to finish up blaming the victim. Immigrants appear to be then under permanent suspicion, which facilitates labour exploitation, social discrimination and racist attitudes. Moreover, concerns for national identity arise as well as the feeling of insecurity. Media coverage of the subject, usually negative and stereotypical, contributes to establish an anti-immigrant consensus, for example, focusing on the irregular position of immigrants, generalising associations between immigrants and conflicts or constructing 'threat scenarios, in which (e.g. through the use of metaphors) migration processes were represented as a danger, and the social changes produced by it as disastrous and unmanageable' (Wal, 2002: 37). Abstract fear toward the Other can then turn into a real social alarm about immigrants, creating a spiral of increasing moral panic with the immigrant playing the role of scapegoat; many European countries (Austria, France, Denmark, Germany, Greece, Spain, Sweden, United Kingdom) have already known this sort of episodes. I am not suggesting, of course, that the external instruments of the common migration policy encourage racism and xenophobia. As it is obvious, neither the EU nor the member states are looking

30 Council of the EU, Docs. 12681/02 (7 October 2002) and 13404/02 (23 October 2002).

31 At the end of the document, in a second annex, the list of threats also includes: 'crimes against children, arms trafficking, corruption and fraud, as understood in Article 29 of the Union Treaty, as well as traffic in narcotic drugs'.

32 And at this point, it is no relevant whether migration is a real security problem or not since, as Wæver puts it, security is in fact a self-referential practice: 'Security discourse is characterized by dramatizing an issue as having absolute priority. Something is presented as an existential threat: if we do not tackle this, everything else will be irrelevant (because we will not be here, or not be free to deal with future challenges in our own way). And by labelling this a security issue, the actor has claimed the right to deal with it by extraordinary means, to break the normal political rules of the game (for example, in the form of secrecy, levying taxes or conscripts, limitations on otherwise inviolable rights). 'Security' is thus a self-referential practice, not a question of measuring the seriousness of various threats and deciding when they 'really' are dangerous to some object (has anyone ever provided a measure for gauging such objective concepts of security?). It is 'self-referential' because it is in this practice that the issue becomes a security issue' (Wæver, 1996: 106-107).

for that.³³ However, the measures and instruments applied so far risk to have those unlooked-for effects. Governments should be constantly aware of that and remember that dealing with migration as a security threat is problematic and has a cost in terms of social cohesion and stability. The application of a broader perception of migrants and, more in general, of movements of people would be more accurate. Putting a stronger emphasis on the positive effect of migration in the EU could start it. And I am not just considering the role that migration could play regarding our pension systems (replacement migration) or the contribution of migrant workers to the economic growth.³⁴ It is time now that policies appreciate also the social and cultural effects of migration, the diversity (new ideas and approaches) it brings to host societies, and the real possibility of setting up new networks/links of cooperation with them and the countries of origin.³⁵

Second, the assumption underlying the measures and instruments analysed above, i.e. that the more restrictive the policies and the more severe the controls are, the more security is increased, this assumption could be false. There are not many studies investigating the relationship between control and security but some findings already suggest that, in fact, the contrary could be true: restrictive entry policies could boost irregular immigration (turning what otherwise would have been a regular immigration flow into an irregular one) and, in the process, promote the trafficking in human beings and other criminal activities (prostitution, corruption³⁶); the unintended final result is having a less secure environment than before. This seems to have been the case at the Mexico-USA border, where inflows of migrants crossing the Mexican

33 On the contrary, they finance many initiatives to fight against racism and discrimination and to integrate cultural diversity, especially at working places. But deeds are obstinate: a substantial increase in the level of racist violence, anti-Semitic attacks and racist threats and intimidations have been registered in France, Germany, Spain, Sweden and United Kingdom during the last three years; moreover, immigrants and members of ethnic and religious minorities are increasingly being discriminated in the labour market and in the working place (exclusion from the recruitment market, low salaries, lower participation in the working life, higher risk of unemployment, etc.). The September 11 attacks did not help to increase the arrangement between cultures or the understanding of diverse communities: just after the attacks, racist aggressions and threats towards the Muslims rose in some European countries [Bulletin Quotidien Europe, 8068, pp. 10-11 (12/10/2001), 8117, pp.20-21 (20/12/2001), 8204, p. 24 (3/5/2002), 8218, pp. 9-10 (25/5/2002)]. Concrete data and much more about racism and xenophobia in Europe can be found in the reports and studies published by the European Monitoring Centre on Racism and Xenophobia (<http://eumc.eu.int>).

34 This kind of discourse, listened often to public authorities, is nonetheless questionable. First of all, from a moral point of view. To justify immigration only upon these arguments shows that the EU and the member states give priority to their economic interest and the defence of their welfare privileges, dismissing the very often dramatic situations lived by the immigrants or other negative consequences of migration in the countries of origin (brain drain, for example). This approach is also reductionist since migration is not only an economic phenomenon but also a social one: capable of generating an unbalanced dynamic (integration and/or conflict) in the societies involved and origin of cultural renovation. Second, using replacement migration (i.e. the international migration that would be needed to offset declines in the size of population, declines in the population of working age as well as to offset the overall ageing of a population; United Nations, 2000: 93) is far from being the panacea to the ageing of EU population and the problems related to it. As the Commission puts it, '[...] using immigration to fully compensate the impact of demographic ageing on the labour market is not a realistic option. [...] Maintaining the working population, and even more so maintaining old-age dependency ratio, would require massive increases in immigration until 2030.' (Commission, 2003b: 17). The United Nations studies estimates that around 18-29 per cent of the 2050 European population should be post-1995 immigrants or their descendants to offset population decline. The migration needed to prevent a decline in the working-age population is even larger: between 26 and 39 per cent of the 2050 population (United Nations, 2000: 93-94; 2001: 6). At the same time, it cannot be forgotten that (a) the higher fertility attributed to foreign women declines very rapidly with the length of stay (OECD, 2003: 57) and (b) immigrants are not ageless, they are getting older too. Therefore, more and more replacement immigration would be needed in the future. The challenge of integration will be then larger...

35 For the discussion on cultural diversification brought about by migratory inflows, see Romaniszyn (2003).

36 As Widgren (1999) puts it, it is much more profitable to move people across the border and then exploit them than to limit the business only to the smuggling of people: 'this is the way the Chinese triads are working with regard to Chinese labour export as well as the Russian Mafia organising the smuggling of women and children from Central and Eastern Europe for sexual exploitation. The profit edge of people-smuggling is increasing, and total incomes of people smuggling now annually may [...] be at the level of US 10 billion, representing already a nice percentage of total annual incomes from the drug business' (Widgren, 1999: 15).

border and trying to get in the United States did not drop when border enforcement was applied. Instead, migration flows were diverted through more dangerous places. As a consequence, organized smuggling increased and so did Mexican migrants' deaths (O'Neil, 2003: 2). Though it has not been yet empirically proved, it is reasonable to think that the situation in the South and Eastern EU border does not differ too much from that experienced in North America.³⁷

In fact, it is not realistic to hope that tighter border controls will completely eradicate irregular immigration (Hugo, 2003: 5), not less because much of that irregular immigration constitutes nowadays a stock in the EU and not only a flow:

In a majority of states stocks of irregular migrants have arisen as a result of legal entrants subsequently breaching the terms upon which their entry and stay was allowed, thus becoming irregular. This applies to asylum seekers whose applications have been turned down but who have not left, and to visitors who have entered the labour market without the necessary permit or permission (Council of Europe, 2000: 21).

But that is not all. Taking into account that it does exist a labour (and sexual) market demand for irregular workers (and prostitutes)³⁸ and that immigrants are people who really need to move, irregular immigration—and economic exploitation of migrants—will occur anyway and traffickers will go on operating as long as they continue to be, for many immigrants, the only way to enter. In this sense, irregularity is favoured by the absence (or deficient implementation) of two policies: labour legislation defending workers' rights and regular channels to enter into the EU. The Commission recognises the first of these facts but is silent with regard to the second:

The benefits of a more open and transparent policy on migration movements, together with the co-ordination of policies designed to reduce push factors in countries of origin and greater efforts to enforce labour legislation in the Member States, could also help to reduce illegal immigration, in particular the worst forms of smuggling and trafficking (Commission, 2000a: 13).

On the contrary, the debates as well as a significant part of the instruments set up by the EU are, as have been shown here, focused on border control. It seems to me, on the basis of what has been said so far, that to fill that lacuna is an urgent need for the EU.

Readmission and Return Policy

The readmission and return policy can be considered so far the corner stone of the migration policy, at least as its external dimension concerns. As the Commission itself argued:

The credibility and integrity of the legal immigration and asylum policies are at stake unless there is a Community return policy on illegal residents. Moreover, all efforts to fight illegal immigration are questionable, if those who manage to overcome these measures succeed finally to maintain their illegal residence (Commission, 2003: 8).

The Commission's reasoning seems correct. Although the immigrants having entered irregularly the EU territory live under the permanent threat of expulsion, the repatriation is most of the times troublesome. In fact, one of the main problems of the implementation of the control policy is the

37 According to the Institute of Race Relations, more than 742 people have died trying to cross (irregularly) EU borders since February 2002. Only deaths officially confirmed have been considered in the study carried on by the British institution; most probably, the real number of immigrants deaths are higher (Bulletin Quotidien Europe 8525, 22/8/2003: 3).

38 Though it is often admitted that immigrants working in the host nations are by definition 'needed', this statement could simply be justifying a lax implementation of the laws protecting (immigrants) workers. If laws were strictly enforced, the jobs could disappear replaced by imports or the use of machines (International Labour Organization in Migration News, vol. 10, N. 1, January 2003, p. 2). In this sense, immigrants' work is needed, yes, but needed to support the consumption behaviour and the high standard of living of Western societies. Political authorities are not the only ones responsible of this situation; as Papademetriou points out (quoting Phil Gramm): 'governments at all levels, communities, employers and all of us as consumers have had a hand in creating this status quo' (Papademetriou, 2001: 1).

failure to ensure the expulsion of irregular migrants or rejected asylum seekers (Council of Europe, 2000: 37).³⁹ This point is the very justification of the readmission and return policy of the EU. It may perhaps be objected that a readmission and return policy is to some extent pointless because immigrants' determination drives them to try to enter again and again, even if they have been expatriated once (or more). Though this argument is tenable, the relevance of the provisions regulating expulsion should not be underestimated. The real possibility of being expelled from the host country is what backs up credibility of EU legislation on migration. Therefore, the EU and the member states make every effort to do that threat as credible as possible.

Readmission agreements are a substantial part of this effort but they are not the only instruments used. Action plans together with the cooperation with third countries in the field of migration, though they were conceived in a broader perspective, can also be considered among the instruments of the readmission and return policy, as well as the clause on joint management of migration, included in the agreements signed with third countries. Figure VII shows the objectives specifically pursued by each of these instruments, the target countries envisaged by each of them and the criteria upon which these countries have been selected.

As the Figure VII shows, the EU has identified a number of origin and transit countries with which it would like to develop a closer cooperation in migration issues. All in all, 17 countries, most of them neighbouring the EU, and two regions have been selected according to a narrow group of criteria, of which the size of migration flows is recurrent. However, neither all the neighbours of the EU are included, nor all the countries included are target of the same instrument (for example, Moldavia is not mentioned and Libya is considered fit for the cooperation but not for negotiating a readmission agreement). An important obstacle to achieve more coherence in migration policies is that each member state is keen on targeting different countries of origin, namely those from which significant numbers of migrants are being received or are expected. In the following paragraphs, I explore each of the measures/instruments included in the Figure VII.

The first measure mentioned in the Figure VII, the clause on joint management of migration flows, appeared in 1996⁴⁰ and has been included in some association and cooperation agreements reached with several countries: Algeria,⁴¹ Armenia,⁴² Azerbaijan,⁴³ Croatia,⁴⁴ Egypt,⁴⁵ Georgia,⁴⁶ Lebanon,⁴⁷ FYROM⁴⁸ and Uzbekistan.⁴⁹ The clause appears also in the Cotonou Agreement reached between the EU and the ACP countries.⁵⁰ The Seville European Council decided in June 2002 to include it in any cooperation, association or equivalent agreement reached in the future and the clause is currently being negotiated with a number of countries.⁵¹ The clause establishes the compulsory readmission of

39 Though the number of enforced returns is increasingly rising, it seemed to be about 25% of those denied status, in 2002.

40 Council of the EU, Doc. 4272/96. In 1999, the clauses were adapted to the new legal situation after the entering into force of the Treaty of Amsterdam [Council of the EU, Doc. 13409/99 (3 December 1999)].

41 Initialled on 19 December 2001.

42 O.J. L 239, 9.9.1999, p. 22.

43 O.J. L 246, 17.9.1999, p. 23.

44 COM (2001) 371, 9.7.2001, p. 46.

45 O.J. C 340E, 30.10.2001, p. 16.

46 O.J. L 205, 4.8.1999, p. 22.

47 Initialled on 10 January 2002.

48 O.J. C 213E, 31.7.2001, p. 44.

49 O.J. L 229, 31.8.1999, p. 22.

50 O.J. L 317, 15.12.2000, pp. 10-11.

51 Presidency Conclusions, Seville European Council, 21-22 June 2002 (SN 200/1/02 REV 1), point 33, p. 10.

the irregular immigrant by the country concerned but does not give details over the practical procedures to follow.

Figure VII: Readmission and Return Policy

	Countries		Objectives	Criteria for selecting
Clause	Those signing cooperation/ association or equivalent agreements.		<ul style="list-style-type: none"> - In-depth dialogue. - Fair treatment, integration policy, non-discrimination, fight against racism and xenophobia. - Supporting the economic and social development. - To combat networks of traffickers. - To return irregularly residents. - Obligation to readmit any of their nationals irregularly present on the EU. 	- All agreements.
Cooperation	Albania China Libya Morocco Serbia and Montenegro Russia Tunisia Turkey Ukraine			<ul style="list-style-type: none"> - Nature and size of migration flows. - Geographical position. - Need for capacity building concerning migration management. - Existing framework for cooperation. - Attitude towards cooperation.
Readmission agreements	Signed	Hong-Kong Macao	To facilitate the readmission to their own country of persons residing without authorization in a member state*.	<ul style="list-style-type: none"> - Statistics on migration flows and applications for asylum. - Chances of successful implementation. - Consensus among the member states. - Geographical balance.
	Negotiations completed	Albania Sri Lanka		
	Negotiating	Algeria China Morocco Pakistan Russia Turkey Ukraine		
Action plans	Afghanistan + region Albania + region Iraq Morocco Somalia Sri Lanka		To mitigate involuntary migration.	<ul style="list-style-type: none"> - Flows of asylum seekers and migrants. - Causes of these flows.

*This applies not only to the nationals of the country with which the EU has signed the readmission agreement but also to the stateless persons or persons of another jurisdiction who entered the EU irregularly from the country in question.

Source: Own elaboration with information from EU documents.

At the same European Council, in Seville, it was stressed the importance of the cooperation with third countries in the area of migration.⁵² The cooperation can be regarded as a part of a broader community effort of integrating migration issues in the external relations of the EU. This effort follows so far the same pattern as the other instruments and measures analysed here and puts the emphasis also in the enhancement of borders protection and control and the combat against irregular immigration. Thus, not only these points will be included in the negotiations with third countries but also the relations with third countries will be assessed according to the cooperation of the country in question and its good/bad disposition to collaborate with the EU in migration issues, that is to say, in combating

52 Presidency Conclusions, Seville European Council, 21-22 June 2002 (SN 200/1/02 REV 1), points 34-36, p. 11.

trafficking, strengthening control at borders and accepting irregular immigrants expelled by the EU. Of course, those countries willing to cooperate with the EU (specially through the control and interception of vessels and the readmission of immigrants) will be recompensed with resources and technical support from the EU.⁵³

The cooperation, still quite limited, is carried on mainly through the implementation of the action plans and the funds allocated to a specific budget line established in 2001.⁵⁴ The general orientation of this budget line was modified in 2002, trying to reach a more balanced approach between the financing of measures limiting irregular immigration and measures aimed at root causes of migration.⁵⁵ Implicit in this idea is that speeding up domestic prospects in these countries will reduce emigration pressure to the EU. However, and like it happened with the assumption of the relationship between control and security, this assumption could reveal false, or at least not true in the short- and medium-term (O'Neil, 2003: 1-2; Council of Europe, 2000: 27). The expression 'migration hump' refers to this, only apparent, paradoxical phenomenon consisting in a stimulation of migration by the development in countries of origin of immigrants. The relationship between income and the propensity to emigrate, or more broadly, between development and migration, needs to be studied further but over last years a consensus seems to have arisen on two facts: (1) development can stimulate migration in the short term by raising people's expectations and by enhancing the resources needed to move (Nyberg-Sørensen *et al.*, 2002); (2) the migration hump often appears when there is economic integration between industrial and developing nations with a pre-existing migration relationship (Martin, 1993). Community policies should be thought then taking into account that the impact of development needs time (over 15 years, Council of Europe, 2000: 27) to take effect on reducing migration.⁵⁶

Turning to the readmission agreements, the EU has so far signed two (with the special administrative regions of Hong Kong and Macao⁵⁷) but is negotiating a number of them, which is in line with the world trend: the number of readmission agreements is on the rise according to the OECD (OECD, 2003: 95).⁵⁸ Unsurprisingly, the agreements aim to combat irregular immigration, in this case,

53 The assistance, though provided according to the willingness and needs of the authorities in the country concerned, will have to be necessarily used to apply preventive measures: imposition of criminal penalties for smuggling and trafficking in human beings and for falsification and fraudulent use of travel documents, cooperation with the EU border services, strengthening control measures at their (sea) borders, promotion of awareness-raising campaigns, willingness to accept the readmission of irregular immigrants, etc. [Council of the EU, Doc. 9958/02 (9 July 2002), 8-11].

54 B7-667 is the budget line. In 2001, the budget reached 10 million Euro [SEC (2001) 1338, 09/08/2001].

55 In 2002, the budget was determined at 12,5 million Euro (Communication from Commissioner Vitorino to the Commission on Framework for preparatory actions in 2002. Budget line 'cooperation with third countries in the area of migration'. Document provided by the Council of the EU).

56 Based on these conclusions, the study of Nyberg-Sørensen *et al.* suggests that community aid should not prevent migration by promoting local development: 'Instead, EU policies on international development cooperation should recognize migration of labour and human capital as a constructive force of economic integration on a par with international commodity trade and capital flows within the liberalisation and transnationalism policy regime' (Nyberg-Sørensen *et al.*, 2002: 21). According to what has been analysed in this paper, EU policies are not close to adopt this approach.

57 The agreement with Hong Kong was formally signed in November 2002 and the one with Macao in October 2003. Both are divided into eight sections (21 articles) and contain six annexes and several joint declarations. They are fully reciprocal and concern own nationals and permanent residents as well as persons subject to another jurisdiction (Agreement between the European Community and the government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation; Agreement between the European Community and the Government of the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation, documents provided by the Council of the EU).

58 Readmission agreements are not reached exclusively by the EU but also by present and future member states. Bulgaria signed several readmission agreements with countries in the former USSR and the former Yugoslavia; the agreement with Turkey is currently being drafted. Greece signed one readmission agreement with Turkey. Ireland signed them with Bulgaria, Nigeria, Poland and Romania. Italy signed them with Algeria, Georgia, Morocco, Nigeria and Tunisia, and others are being negotiated with China, Egypt, Malta, Pakistan, Philippines, Senegal and Ukraine. Spain signed this kind of agreements with Colombia, Dominican Republic, Ecuador, Morocco, Poland and Romania (OECD, 2003: 95-96).

through facilitating the expulsion of third-country nationals irregularly staying in the EU territory or having crossed the border without authorisation.⁵⁹ On signing a readmission agreement, the countries accept to readmit irregular immigrants to their territory, without any formality, following two procedures. The normal procedure involves a written application and reply in standard forms and documents; by contrast, the accelerated procedure, applied when the immigrants are arrested in the border area, requires nothing but a notification (by telephone, fax, telex, etc.) given by the local border authorities. Of course, forced returns are more difficult to carry on than voluntary returns but both pose a number of problems to host, transit and origin countries. First, given the very nature of return actions, especially forced ones, an accurate attention is required to be sure that expulsions take place in line with international standards on human rights, that the right to life is effectively protected, safety guaranteed and human dignity not violated,⁶⁰ appropriate safeguards should be taken for the treatment of vulnerable groups (children—unaccompanied or not—, victims of trafficking and ill, handicapped and elderly persons). Second, returns undoubtedly affect social relations in local communities and may unbalance social order in the countries of origin. Readmission agreements should take into account this fact and foresee the involvement of local communities in the returning process. That could be done, for instance, through the establishment of a regular consultation with the local authorities and the monitoring and public scrutiny of the process. Other measures post-arrival (financial aid, reintegration assistance, restraint legal consequences regarding applications for a subsequent re-entry in cases of forced returns) could also be foreseen. That would help to maximise the always scarce financial resources⁶¹ since the reintegration of returnees—the most efficient way to make return sustainable⁶²—would be done in the best possible conditions. Moreover, adopting these kinds of measures would send a strong signal encouraging other immigrants to voluntary return. Measures in this direction have been suggested by the return action programme adopted by the EU in November 2002 but, unfortunately, a common agreement on the issue has not yet been reached⁶³ and the programme is more focus on facilitating forced returns.

Concerning the action plans, they were the first measures adopted to carry out the cooperation with third countries in the field of migration and they still are the most comprehensive instruments of the common migration policy. At least in theory:

The action plans are based on the premise that there must be a common approach that pays attention to political and socio-economic factors conducive to, or resulting from, flight from the country of origin or negative consequences of migration in a country. In order to be effective, such an approach must be comprehensive, maintained over the long-term and responsive to changes of situation. All relevant measures available to the European Union, the European Community and the member states will have to be utilised in a coordinate fashion (Council of the EU, 2000a: 2).

In practice, they have contributed to achieve the same objective as the other instruments: to mitigate migration into EU countries and to reduce irregular migration flows. For that, the action plans set a list of proposals for actions that can be related to three areas: foreign policy, development and

59 It is possible the recognition of an expulsion decision issued by a competent authority in one member state against a third country national present within the territory of another member state; the expulsion will be implemented according to the applicable legislation of the enforcing member state. Besides, member states compensate each other for any financial imbalances which may result (Council Directive 2001/40/EC of 28 May 2001...).

60 In effect, the risk of ill-treatment of immigrants is still present in form of police brutality (beatings, insults, excessive use of force) and/or inappropriate conditions of transport (overcrowding, unsafety).

61 The budget line B7-667 is not the only source of financial resources for return related issues. Other budget lines (B7-6008 and B-5-803) as well as the European Refugee Fund have been used so far.

62 Enforcing apprehensions, detentions and forced expulsions is not only very expensive but, at some point, inefficient since many returnees try to emigrate again.

63 Council of the EU, Doc. 14817/02, (28-29 November 2002). Reservations have already been entered by Germany and France, on the point of the legal consequences of voluntary returns, and by Sweden, Spain and, again, France, on the financial assistance chapter.

economic assistance and migration and asylum. However, the implementation of the plans has mainly focused on security aspects, reinforcing the idea that the control of borders is well over the other aspects. The case of Sri Lanka can illustrate what I say. Since 1983, the ethnic and open armed conflict in Sri Lanka between the Sinhalese majority and Tamil minority causes the latter to seek asylum, claiming that they risk being either persecuted from the authorities or forcibly recruited by the LTTE (Liberation Tigers of Tamil Eelam), the leading armed Tamil group. The community response to this situation was based on the action plan on migration adopted for this country (Council of the EU, 1999e) and, even if it was recognised the need of applying a comprehensive approach ‘in which targeted socio-economic assistance, development policy can be combined with measures in the area of freedom, security and justice’,⁶⁴ one of the two projects financed and implemented in 2002 aimed to facilitate return and reintegration (13 million Euro) while the other was devoted to the establishment of field based country information systems (0,8 million Euro). In addition, the fight against irregular immigration was included among the priorities of the cooperation relationship (for sources, see note 64).

There are several reasons that could explain why a comprehensive instrument like the action plans has turned out a unilateral one. The member states’ reluctance to fully collaborate, for instance, putting their expertise at the disposal of this policy (Council of the EU, 2000a: 8-9) or the lack of the financial and human resources necessary for the implementation of the plans, are two of those reasons. The high level of insecurity in some of the target countries (Afghanistan, Somalia) or even the absence of an internationally recognized authority (Somalia) have also contributed to the mediocre implementation of the plans. In addition, the fact that the plans have not been negotiated with the countries concerned, to which the plans were presented only after their approval by the Council of the EU, has encouraged the reticence of the target countries.⁶⁵ But perhaps the most significant reason is the difficulty of integrating some of the objectives relating to migration into the development or other external policies. At this point, member states should increase the coordination, complementarity and coherence of their policies, objectives and priorities. Once again, the Commission is well aware of it: ‘[to success immigration policies should be] consistent with broader social, economic, foreign, development and trade policy objectives’ (Commission, 2003: 16; see also Commission, 2001a). However, it appears to be easier said than done. Some community policies are not only separate but even conflicting one another and, more generally, they do not take into consideration the implications and impact of one vis à vis other. Sometimes, the policies strengthening security and protection of community borders overall are difficult to match with the external dimensions of other policies, agricultural and trade policies in particular. For instance, to strengthen the links between the EU and the Mediterranean partners in order to establish long-lasting relationships, based on reciprocity, solidarity, partnership and co-development, is among the main objectives of the Association Agreements; in addition, the political dialogue foreseen with these countries should cover in particular the conditions to ensure peace, security, democracy and regional development (Commission, 2003d: 8). However, it is difficult that the partnership becomes real when preventing further immigration is the main goal of the European migration policies (Nyberg-Sørensen *et al.*, 2002: 49⁶⁶), especially because the emphasis is strongly put on securing/closing the borders and the repatriation of non-authorised immigrants. In effect, it could be more consistent with the objective of building this partnership—and,

64 The EC and Sri Lanka co-operation strategy, 2000-2006, p. 22. Document provided by the Council of the EU.

65 This lack of involvement of the countries target by the action plans is most surprising since several international governmental and non-governmental organisations have indeed been consulted during the preparation and implementation phases: the Office of the United Nations High Commissioner for Refugees, the International Organisation for Migration, the International Committee of the Red Cross, the International Labour Organisation, the International Center for Migration Policy Development, Amnesty International, the European Council on Refugees and Exiles, the Migration Policy Group and Médecins Sans Frontiers (Council of the EU, 2000a: 7).

66 For the authors, the question is even wider: ‘Can long-term goals of global poverty reduction be achieved if short-term migration policy interests are to be met?’ (Nyberg-Sørensen *et al.*, 2002: 49).

in fact, in the long-term, with the aim of reducing immigration⁶⁷—to really enforce labour laws in the member states, to increase, and make more efficient, the economic development aid, to encourage foreign direct investment or to reduce the barriers to (agricultural) trade. In this way, many goods could be produced in the countries neighbouring the EU and exported to an (more open) EU internal market, stimulating the development, welfare and stability in the EU periphery area and, in the long-term, reducing the incentives to emigrate. Of course, the difficulty of assuming the consequences of implementing this kind of measures on the internal market (in terms of unemployment rate, relocations of firms, etc.) does not make it easy to take decisions in this direction.⁶⁸

Difficult or not, clearly something should be done to improve coordination and coherence between migration and other community policies. If the EU really pursues the aim of stabilizing its periphery through influencing migrant flows, it needs to eliminate as much as possible the incongruities and inconsistencies between its policies. One starting point could be to add other instruments and measures in order to complete those already existing. That would increase coordination and synergies with other community policies and, above all, it would improve the coherence of the external policies. In particular, the measures and instruments already in force should be completed with others aiming to provide legal channels for immigrants to enter, either for a limited length of time or on a permanent basis.⁶⁹ Moreover, it should be certainly considered to raise the annual immigration intake to the UE, and that not only on demographic and economic grounds, as it is the case nowadays,⁷⁰ but also to ensure dynamism and intercultural progress. Doing that, the EU would be equipped with a planned immigration, which is lacking at present. It is true that this would imply a fundamental change, from what it has been so far the last goal of migration policies—i.e., to secure integrity of borders and to strictly control the entry into the EU—to a more permeable/flexible frontier. So far, managing external borders in an ‘unzipped’ way or even the definition of a new type of frontier, more flexible or intermittent (Dardenne and Weerts, 2000: 27), do not seem to be contemplated in the community agenda but indeed it could be more accurate than insisting in keeping a sealed frontier. Promotion of permeability by the EU and its members has already revealed as a key variable to encourage the development in Central Europe (Smith, 1996: 21). A way of promoting this permeability could be to develop policies and programmes, which facilitate and encourage immigrants to interact with their home country, instead of doing the opposite.⁷¹ This could lessen the pressure to bring their families with them and also will lessen the feeling of being ‘outcast’ or ‘uprooted’. On the other hand, the engagement of the community policies with the development of the countries of origin and transit, already initiated, should be more stressed. There is also a need to include more interests in the policy-

67 The protection of the internal market, together with negligence in protecting immigrant workers' rights, promote the affluence of immigrants admitted as unskilled and intensive labour force.

68 However, not everything would be loss since funds so far allocated to protect the internal market could be released and reassigned to other policies and activities where the EU would enjoy a relative competitive advantage.

69 In fact, there was a first attempt to give member states some common rules on the admission of third-country nationals but the proposal was finally refused in 1999. The text of the proposal, Convention on the admission of third-country nationals to the Member States of the European Union, COM (97) 387, can be founded in O.J. C 337, 07.11.1997. The Council is considering another proposal for a Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities. The proposal seeks to determine the conditions in which third country nationals may enter and reside in the EU in order to work. For instance, it should be demonstrated that (a) the job vacancy cannot be filled by citizens of the EU or third country nationals already enjoying full access to internal labour market; and (b) there is a shortage on the internal labour market [Council of the EU, Doc. 14995/03 (27-28 November 2003)].

70 The Council of the EU defends that member states should not allow the admission of third-country nationals as self-employed persons when it is of no economic benefit (i.e. that it does not add value in form of investment, innovation, transfer of technology or job creation) to the state or any of its regions (Council Resolution of 30 November 1994 relating to the limitations, 7-9).

71 For instance, the EU could reduce the difficulties, and so the cost, of sending remittances, of issuing re-entry visas and so on...to facilitate the circular migration (instead of a permanent one). More about circular migration can be founded in Hear, (2003) and Hugo (2003).

making process and at the implementation stage; organised civil society, local authorities or social organisations should be involved. That would move discussion towards the third countries and, why not, the immigrants themselves. They could be consulted, for instance through their participation in the NGOs, and their opinions taken into account too.

Migration policy would be then transparent, agreed, with strategic aims and priorities clearly set. In this sense, the effects of the community instruments would be more consequent with the values and principles of the EU and would gain accordance with the general objective of increasing the stability and social performance of its immediate periphery.

Summary and Conclusions

The fear of a massive and out-of-control immigration from the Mediterranean non-member countries introduced gradually the immigration matters into the European Community agenda. The next enlargement nearing, immigration has increasingly become a thorny question, first of all, in the relations with the candidate countries, in particular as the effective control of the external borders concerns, and second, in the relations with other countries of transit and origin of immigrants. It is clear that sudden and large-scale international movements of people would be a problem for any state. The EU is far from living such an extreme situation but, even at the actual level, migration has an impact in the relations between (member) states and in their foreign policies, not the less because the governments try to keep acceptable the changes induced by migration flows while they try, at the same time, to avoid that these changes go beyond the point of no return and have a destabilising effect on their societies. Thus, migration has become a pressing issue and achieving an effective management of migration flows a difficult question.

To date, the answer of the EU has been to implement a set of measures and instruments thought to secure integrity of borders and to control as much as possible the entry into the EU territory. Figure VIII summarises what has been mentioned in this article at this regard. The external components of the migration policy (frontier measures, border control instruments, visa policy, readmission standard clause, cooperation with third countries, readmission agreements and action plans) reflect the priority given by the EU to the elimination of irregular immigration and the protection of community borders from a potential and, to a great extent unrealistic, prospect of massive movement of people.

In this article, the effectiveness of the community migration policies is put in doubt. It is true that the EU is playing the role of pathfinder since it is one of the few times that migration is dealt beyond the state level.⁷² However, it seems that the path chosen is the wrong one.

72 A very interesting initiative to develop a cooperative approach among states in the field of migration is the Berne Initiative, an open dialogue platform launched by the Swiss Federal Office for Refugees in 2001. Looking for effective practices rather than for a new international law in this area, the initiative has started by the identification of common interests among countries of origin, transit and destination of migrants. The second International Symposium on Migration will be held in 2004. More information is available in The Berne Initiative. International Symposium on Migration, Concept paper (June 2001) and Information Note I (May 2002), Federal Office for Refugees, Bern-Wabern, Switzerland.

Figure VIII: External Components of the Migration Policy⁷³

	Now	Suitable
Practical measures and instruments	<ul style="list-style-type: none"> - Frontier measures. - Border control instruments. - Visa policy. - Readmission standard clause. - Cooperation with third countries. - Action plans. 	<ul style="list-style-type: none"> - Legal channels to enter. - New sorts of visas and more flexibility in issuing them. - More involvement in the development of third countries. - Facilities for sending remittances.
Objectives	<ul style="list-style-type: none"> - To control borders ('sealed way'). - To reduce immigration flows. - To fight irregular immigration. - Temporary migration. 	<ul style="list-style-type: none"> - To control borders ('unzipped way'). - To manage migration flows. - To increase the quotas of immigrants. - To fight trafficking and economic exploitation of immigrants. - Circular migration.
Principles and values	<ul style="list-style-type: none"> - Migration as a threat/security problem. - Restriction. - Limited approach, not all the dimensions of migration are taken account. - Lack of coherence and consistency with other community policies. - Lack of cooperation between the member states. - Unilateralism. 	<ul style="list-style-type: none"> - Migration as a challenge/opportunity. - Flexibility. - Comprehensive approach. - Increase coherence and synergies with other community policies. - Coordination and cooperation within member states. - Negotiation.

At this point, it could be useful to question of what all this is an instance. Is the Europe as a fortress being built, as more than one has suggested? On the basis of what has been said so far, it seems that we are going in that way. The effects of all the measures, instruments and rules described here are often neither consequent with the values and principles of the EU nor are they conforming to the general objective of creating a stable Euro-Mediterranean area. As I have showed, the external aspects of the common migration policy and the instruments related to it are thought overall to protect. That rule dominates the whole subject. Moreover, they do not form a comprehensive approach, but they deal instead only with border controls and return policy. There is a need for improvement if the EU really pursues the aim to influence migrant flows and is eager for a stable frontier.

Admittedly, statements in the sense of a broad conception of a migration policy appear in some EU documents, especially in the communications of the Commission, where references to a comprehensive approach on immigration can be read.⁷⁴ But the fact is that the Commission's references, though essential and necessary, seem to be of little consequence.⁷⁵ In effect, the previous analysis shows that the different instruments implemented so far have little to do with a true comprehensive approach on migration. What does seem really matter under community policy is the control of the border and the limitation of immigration to what the member states can afford, a very low quota of immigrants set on the basis of family reunion or economic needs. Immigration is thus regarded as an activity whose benefits would lay exclusively on the economic field and whose

73 I cannot determine whether some of them are more important than the others so, the sequence of their elaboration here should not be interpreted as implying a rank ordering. In addition, there is some overlap among the two columns.

74 Just by way of example: '[...] it is useful to recall that migration is not to be seen only as a problem, but also as an essentially positive phenomenon, which is of all times and all places, and which produces both opportunities and challenges [...] Regarding migration, the long-term priority of the Community should be to address the root causes of migration flows. One should duly recognise the effect of long-term development programmes on migratory flows, in particular in poverty eradication, institution and capacity building, conflict prevention.' (Commission, 2002d: 4, 7).

75 To a similar conclusion, but restricted to the protection of the irregular immigrants' rights, arrives Cholewinski (2000).

inconveniences would not disappear unless the flow of immigrants is severely restricted or, better, comes to a technically full stop. Therefore, it is not enough that Commission proposals include a broad discourse on migration and set ambitious goals. Governments should also commit themselves on that course of action and make an effort to move migration issues over the four or five year election cycles.

It can be argued that common migration policy is a relatively new policy and, more relevant to what is being discussed, it is still in process. The former would justify the dysfunction or overlapping of instruments and actions while the later would let some room to hope a shift in the political orientation and a more balanced approach. Without refuting completely these arguments—arguments that, on the other side, do not mitigate the result of allowing one aspect to predominate, that is, the detrimental to the credibility of the community migration policy and, by extension, of the community external actions—, I think it is more realistic to envisage a continuation of the present state of the affairs. On the one hand, to apply successful immigration policies requires much more compromising than what has been normal till now and this task will be increasingly complex with the arrival of new member states. On the other hand, there are some budget constraints that cannot be avoided. The financial perspective being what it is, the room for manoeuvre is not very wide and it does not seem that the forthcoming revision, that it will be undertaken after the enlargement, is going to improve the situation.⁷⁶

In any event, and if it is true that it is not longer possible to control trans-border flows (Zielonka, 2002: 5), why is the EU still pursuing that aim? One possible answer can be that policies restricting access and favouring return allow governments to present themselves as actors who control the situation (Council of Europe, 2000: 37) and react against the fear of a massive immigration since they guard the borders and decide whom to let in. Letting aside the fact that fear of huge movements of people seems highly exaggerated (Straubhaar, 2001: 169), the previous statement certainly leads to another question, that is, the level of acceptance of the host societies. Putting it in another words, how open are the European (or EU) societies? To which extent are they ready to welcome the Other, interchange culture and experiences and share the burdens and benefits of their economic and political systems? This is not the place to elaborate further on this but, looking at the stocks of foreign population as a percentage of the total population in the member states—and without forgetting that interpretation of statistics depends often on political wishes—, it seems that there would be still some room for immigrants in the EU.⁷⁷

In this context, governments and authorities (and mass media⁷⁸) have an important role to play leading public opinion to launch a process aiming to forge a general consensus on these issues. As John Salt observes:

It is the job of governments to create a more positive atmosphere in which migration policy matters may be discussed by leading rather than following public opinion. Essential prerequisites in developing policy are consistency, clarity and coherence, in order that public debate is informed by fact and not prejudice. It is also important to avoid creating false impressions and reassuring public opinion in the short term in a way that only leads to greater dissatisfaction at a later date (Council of Europe, 2000: 15).

76 The financial resources for policies on asylum, immigration and management of external frontiers were in 2002 over 61 million Euro, while the financial resources programmed for external aid linked to migration issues reached 806 million Euro, of which 47,34% was devoted to the management of migration flows: management of borders (34,5%), combating illegal immigration (7,25%) and management of migration flows (5,63%) (Commission, 2002d: 49-51).

77 In most of the current member states the foreign population is less than 5% of the total population. Some exceptions are Belgium (8.4 %), Germany (8.9 %) and Austria (9.3 %); only Luxembourg (with the 37.3% of the population being foreign population) reaches, and surpasses, the level of traditionally considered immigration countries: Australia (23.6%), New Zealand (19.5%), Canada (17.4%) and United States (10.4%) (OECD, 2003: 39).

78 Media discourse is influenced by the policy agenda and reflects in many cases the authorities' perspective; if this perspective is based on negative stereotypes and presents the immigrant as a threat to people security and country economy, the media discourse may have negative effects since it may legitimize restrictive policy proposals and/or acts of xenophobia, or create a favourable climate to the adoption of restrictive decisions (Wal, 2002: 37-39).

Thus, much more of consistency and courage is still required to explain that ‘the migration question’ is not about how to stop migration flows but about how to manage them in order to maximise the benefits and minimise the drawbacks (Council of Europe, 2000: 33) both, and that is essential, in host and sending societies.

Considering the arguments maintain here, a comprehensive approach on migration would have to be based then on partnership and solidarity. Because, at the end, talking about migration is always talking about sharing.

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