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Robert Schuman Centre
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*Web Site Guide on
Europe's Migration Policy
in the Mediterranean:
An Overview*

Analytic and Synthetic Notes 2005/10 - political and social module
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CARIM
Euro-Mediterranean Consortium
for Applied Research on International Migration

Analytic and Synthetic Notes – Political and Social Module

CARIM-AS 2005/10

(Second edition: December 2005)

Europe's Migration Policy in the Mediterranean: An Overview

Jean-Pierre Cassarino

Migration and asylum issues have been gradually put at the centre of all patterns of cooperation and partnerships between the European Union (EU) and Mediterranean non-member countries. This centrality results from the reinforced position that the EC institutions have acquired since the entry into force of the Amsterdam Treaty in 1999, as well as from the explicit objective of the EU to adopt a cross-pillar approach to migration linking financial aid and development assistance with the actual adoption, on the part of third countries' governments, of policies aimed at curbing illegal migration. The need to develop a comprehensive, integrated and balanced approach to migration management, which could address migration and asylum issues, in a credible and coherent way, at the level of the EU, has since then gained momentum.

Moreover, another corollary of the centrality of migration and asylum issues lies in a changing perception of the link between migration and development. This changing perception has in turn been conducive to new patterns of cooperation between the EU and MNCs, which slightly differ from the ones that existed in the 1995 Barcelona Declaration. These new patterns materialized in the 1999 Tampere Special Summit of the European Council and, more recently, in the European Neighbourhood Policy (ENP) which is expected to foster, among others, cooperative actions in the field of Justice and Home Affairs.

The purpose of this overview consists in accounting for the reasons of such changes in Europe's migration policy in the Mediterranean. As shown below, these changes do not result exclusively from the communitarisation of asylum and migration issues, but also from their full integration in the external relations of the EU, leading to the intensification of cooperation on migration management. In the prospect of a more

substantial analysis, this overview proposes to highlight the main developments and factors which have shaped EU's migration policy in the Mediterranean, since the mid 1990s to date.

1. Taking Stock of the Barcelona Process:

Five years after the 1995 [Barcelona Declaration](#), which is aimed at establishing a partnership between the EU and MNCs in the political, security, economic, financial and cultural areas, a [communication from the European Commission](#) to the Council and the European Parliament stressed the need to draw a number of lessons from the fact that, despite enhanced economic openness in MNCs, insufficient progress has been made in such fields as economic and social reforms, economic liberalization, privatisation, respects of human rights and democratisation. The explicit criticisms of the achievements of the Barcelona Process were not so much aimed at questioning the fundamentals of the [Euro-Mediterranean Partnership](#) (EMP), as an attempt to show that current instruments needed to be reviewed with a view to reinvigorating the spirit of the EMP.

Consequently, the Commission proposed to support the “reinvigoration process” by allocating financial assistance, through the [MEDA](#) programme, while taking “greater account of the readiness of [MENA] partners to demonstrate by their actions their commitment to enhance regional trade and economic cooperation [...] Future allocations should also reflect the willingness of partners to pursue the objectives of the Agreements [...]”

Moreover, in addition to the seminal objectives contained in the Barcelona Process (i.e., political dialogue, peace and security, financial and economic cooperation, environmental concerns, social and cultural matters), the Commission proposed to introduce, at the level of regional cooperation, new cooperative initiatives in Justice and Home Affairs matters that were neither considered in the Barcelona Declaration nor in the Euro-Mediterranean Agreements. Actually, the communication of the Commission, stressing the need for a reinvigorated Barcelona Process, drew extensively on the

[Common Strategy of the European Council on the Mediterranean](#), which was adopted at the [Santa Maria da Feira European Council](#) in June 2000 and whose period of application was extended until January 2006, following of the [November 2004 Brussels European Council](#).

In fact, the Common Strategy referred, in Part III, to Justice and Home Affairs issues and reasserted the mandate of the EU to develop cooperative mechanisms aimed at strengthening the control of external borders, fighting against illegal migration and human-trafficking, encouraging MNCs to comply with the 1951 Geneva Convention on Refugees, and at promoting training programmes for police and judicial officials in MNCs.

Importantly, there is no question that the June 2000 Common Strategy of the European Council on the Mediterranean was adopted not only with a view to stepping up the objectives of the Barcelona Process but also with a view to making them more congruent with the comprehensive approach to migration and asylum of the EU. Justice and Home Affairs concerns have constituted a cornerstone of this approach since the 1999 [Tampere European Council](#). How and when did this comprehensive approach consolidate?

1.1. Towards a Comprehensive Approach to Migration:

The EU comprehensive approach to migration issues was not specifically mentioned in the Barcelona Declaration, for it originates in the 1999 Tampere European Council aimed at building a common EU migration and asylum policy. The [Amsterdam Treaty](#) provided an appropriate instrument to implement this approach, insofar as it incorporated questions related to the free movements of persons in the first pillar and, consequently, gave more power to Community institutions in decision-making.

These questions were initially part of the third (intergovernmental) pillar of the 1993 Maastricht Treaty. Few years later, the structure and functioning of the third pillar turned out to be “over-complicated and not transparent enough”, hampering closer cooperation between Member States in the field of Justice and Home Affairs. The shift from the third to the first pillar was viewed as a necessary step to institutionalise an effective cooperation among Member States, in the field of Justice and Home Affairs, and to secure the establishment of an [area of freedom, security and justice](#). The Amsterdam Treaty, signed in 1997 and entered into force in 1999, translated the

communitarisation process of asylum and migration issues into practice. This process implied institutional change in decision-making. Since then, Member States remain responsible for international security, law and order. The major change occurred at the level of the Community institutions. In fact, the Council takes decisions unanimously, on proposals put forward by the Commission, and prior consultation of the European Parliament, in areas related to:

- asylum and migration issues;
- the free movements of persons;
- external border management;
- and cooperation in judicial and criminal matters.

This means that the Commission has been given more power in initiating and negotiating policies related the above-mentioned areas. However, this power is counter-balanced by the fact that, during a five-year transitional period (from May 1999 to May 2004) the Council will take decisions unanimously.

As regard the European Court of Justice, its right to rule on questions regarding the validity and interpretation of acts related to justice and home affairs has been guaranteed. However, the Court does not have the right to rule on measures and decisions taken to control borders as well as the internal mobility of persons, whether these are EU citizens or non-EU nationals.

The transfer of Justice and Home Affairs issues to the first pillar was viewed as a prerequisite to providing for the gradual harmonization of [migration and asylum laws](#), and to defining joint actions, at EU level, aimed at:

- securing the external borders of the Schengen area;
- tackling the root causes of migration;
- countering illegal migration;
- better implementing readmission agreements;
- enhancing cooperation with countries of origin and transit.

1.1.1. An all-encompassing Strategy

The institutional change that took place in the wake of the Treaty of Amsterdam were probably a response to the growing criticisms of the ineffectiveness of EC institutions in finding concrete solutions to reduce illegal migration in the

Mediterranean and to prevent the mass influxes of refugees that occurred in Italy and Greece, such as those of Iraqi Kurds, Bosnians, Kosovans, and Albanians. When Austria took over the presidency of the EU, in July 1998, it presented a [strategy paper on immigration and asylum policy](#) which reflected these stark criticisms.

The substantial strategy paper accounted for the lack of concrete solutions by arguing that “no comprehensive political approach was laid down, no operational work programme was derived therefrom and no action plans following a uniform concept were developed and implemented.” The paper pledged for a step-by-step “Europe-wide harmonization of national legislation on migration” which would be more responsive to new patterns of migratory movements and new types of asylum-seekers (not only threatened by their states but also by non-state actors).

In this respect, Point 127 of the strategy paper stated: “As far as these people [i.e., asylum-seekers] are concerned, not only are the elements in the Geneva Convention no longer adequate, but also the procedure currently used is unsuitable in terms of taking a demonstrable need for protection into consideration. [...] The approach of the Geneva Convention, which by recognising a person as a refugee severs the link with the country of origin indefinitely and encourages him to settle permanently in the host country, does not match the widely held idea that it should be possible and internationally acceptable for such people to return home within a foreseeable period of time.”

This harmonization process was all the more crucial as the paper stressed that the 1951 Geneva Convention “has in part become less applicable to the problem situations actually existing.” It therefore proposed the adoption of a “Convention supplementing, amending or replacing the Geneva Convention.”

In the context of this overview focusing on Europe’s migration policy in the Mediterranean region, it is important to dwell on the strategy paper put forward by the Austrian Presidency in July 1998. Firstly, because it reasserted the centrality of justice and home affairs in the EU agenda, as a result of the Treaty of Amsterdam. Secondly, because the model of concentric circles to which it referred, included Mediterranean non-member countries (MNCs) and stated that the latter should gradually become involved in the control of EU external borders, readmission policies and the fight against illegal migration. Thirdly, because, with hindsight, the “cross-pillar approach to migration management”, anticipated most of the developments that have taken place since then in the context of migration talks in the Euro-Mediterranean area, and in the context of the patterns of partnerships with MNCs.

In fact, this controversial document proposed an array of actions to be undertaken in the framework of a comprehensive or cross-pillar approach to migration calling for “a coordinated policy which extends far beyond the narrow field of policy on aliens, asylum, immigration and border controls, and also covers international relations and development aid.” These actions were aimed, among others, at:

- reducing migratory pressures, by placing the problem at the cross-roads of political dialogue and economic cooperation with countries of origin and transit;
- curbing illegal migration by cooperating with countries of origin and transit in the exchange of information and data related to migration and asylum, and in the implementation of legal sanctions against human-traffickers. This cooperation should lead to the development of an external border policy;
- cooperating with transit countries in a control system of illegal migrants;
- regulating the position of legal migrants;
- introducing a new refugee protection taking into account the concept of “temporary admission.”

It was on this background that the [High Level Working Group](#) (HLWG) on Asylum and Migration was established in early December 1998 and welcomed at the December 1998 [Vienna European Council](#). Its terms of reference hinge on the cross-pillar approach to migration issues and include the draft of “[cross-pillar action plans](#)” which were “considered the first attempt by the European Union to define a comprehensive and coherent approach targeted at the situation in a number of important countries of origin or transit for asylum-seekers and migrants.” The HLWG actions plans were drawn up for Afghanistan and its neighbouring region, Albania, Iraq, Morocco, Sri Lanka and Somalia.

The Action Plan related to [Morocco](#) accounted for the resilient and increasing migratory flows to Europe by referring to five “cumulative factors”, i.e., demography, unemployment, low economic growth rate, the absence of welfare or social rights, Moroccan immigrants helping their friends or family members to enter in Europe, even by “illegal means”. Moreover, the action plan denounced the weaknesses of the Moroccan public authorities in curbing illegal migration and migrant-trafficking: “Abetting illegal immigration and trafficking in human beings are criminal offences in Morocco. However, police interventions against traffickers are rarely effective and do

not often give rise to court proceedings [...] Morocco has been very tentative in implementing the bilateral readmission agreements it has signed with some Member States and has, not only for economic but also for internal political reasons, been shy to respond to Member States' offers of cooperation with a view to controlling migration flows and returns." Finally, the Action Plan put forward a series of measures and actions to be developed with a view to fighting against illegal migration, facilitating the conclusion of readmission agreements, strengthening EU-Moroccan cooperation, and implementing temporary labour migration schemes.

The substance of the action plans was illustrative of the comprehensive approach to migration and asylum. These became subsequently endorsed at the October 1999 Special Summit of the [European Council in Tampere](#), which was specifically devoted to the building and consolidation of a common EU asylum and migration policy. Given the comprehensive and global dimension of this policy, the framework of actions set at Tampere regarded:

- 1- *Partnerships with third countries*. The European Council called for a comprehensive approach to migration addressing the social, human rights, and economic problems of countries of origin and transit;
- 2- *A common European asylum system*, "based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement." At the same time, "the European Council urges the Council to step up its efforts to reach agreement on the issue of [temporary protection for displaced persons](#) on the basis of solidarity between Member States."
- 3- *The fair treatment of third-country nationals* legally residing in the EU. This calls for enhanced integration of migrants as well as the development of measures against discrimination and racism.
- 4- *The management of migration flows*, calling for further cooperation with third countries, the development of information campaigns, the adoption of severe sanctions against human-traffickers, the effective and proactive implementation of readmission agreements, and the inclusion of mandatory readmission clauses in any future agreements between the European Union and third countries.

Since October 1999, these four fields of actions have shaped Europe's migration policy in the Mediterranean. Furthermore, since the Amsterdam Treaty, they have allowed the European Community to reframe, as it were, its association and cooperation agreements with Mediterranean non-member countries (MNCs), with a view to better responding to the need for a comprehensive approach to migration and asylum. The above-mentioned [Common Strategy of the European Council on the Mediterranean](#), adopted in June 2000, constitutes one illustration of the reframing process.

2. New Areas of Partnerships

The new competence of the European Community to conclude [readmission agreements](#) with third countries is based on a case-by-case approach. The Council authorized the Commission to start negotiations with Mediterranean partner countries. Readmission agreements started to be negotiated with [Morocco](#) in September 2000, and with [Turkey, Albania, Algeria](#) in October 2002.

Criteria had of course to be taken into account in order to identify the additional third countries with which these agreements had to be negotiated and concluded. In April 2002, five basic criteria were approved by the [Justice and Home Affairs Council](#). Readmission agreements were based on the following criteria:

1. Third countries whose migration pressures, exerted by flows of persons from or via their territory, are significant, together with the number of persons awaiting return;
2. Third countries with which the European Union has concluded Association or Cooperation Agreements containing a readmission clause;
3. Geographical adjacent third countries to a Member State;
4. the readmission agreement with a third country should involve added value for Member States in bilateral negotiations;
5. A geographical balance to be maintained between the various regions of origin and transit of illegal migration flows.

The definition of these criteria illustrated the objective of the European Community to reinforce its own mandate in negotiating readmission agreements with third countries. At the same time, these were reflective of the desire to consider primarily the “interests of the European Union and of the Member States”, as stated in paragraph 75

of the 2002 [comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union](#). Furthermore, negotiating readmission agreements with third countries became part and parcel of the instruments aimed at furthering the integration of migration issues in the external relations of the EU, as mentioned in the conclusions of the December 2001 [Laeken European Council](#). In the same vein, the growing emphasis placed on readmission negotiations with third countries was viewed as a necessary step to guarantee the effective expulsion of the rejected asylum-seekers who did not meet the restrictive provisions contained in the February 2001 [Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status](#).

The prominence of readmission negotiations could also be viewed as a means to place migration issues at the centre of the Euro-Mediterranean Partnership and to show that the European Union was intent on using its financial arm (i.e., [MEDA II](#)) and its political weight to encourage MNCs to adhere to the new cooperative patterns stemming from the comprehensive approach to migration management.

In fact, in the wake of the above-mentioned criteria aimed at identifying third countries with which readmission agreements should be negotiated and concluded, the Council considered to intensify cooperation on the management of migration flows with some third countries. Additional identification criteria of third countries were mentioned in the [draft conclusions of the Council](#), dated November 2002. Account should be taken of:

- The nature and size of migratory flows towards the EU;
- The geographical position in relation to the EU;
- The need for capacity building concerning migration management;
- The existing framework for cooperation;
- The attitude of the third country towards cooperation on migration issues.

The high-level working group on asylum and migration, whose [terms of reference](#) were modified in May 2002 in order to better respond to the need for an intensified cooperation on migration management with third countries, submitted a [list](#) of third countries with which such a cooperation should start or be enhanced, following a consultative meeting with Member States. Six Mediterranean third countries were recurrently cited in the list: Albania, Algeria, Egypt, Morocco, Tunisia and Turkey.

The intensification of the cooperation in the field of migration management finds its roots in the [June 2002 Seville European Council](#) and in the [Euro-Mediterranean Conference of Foreign Ministers](#) which took place in Valencia in April 2002. Both events, which took place under the Spanish Presidency of the EU, marked a decisive step in externalising the questions of illegal migration, human-trafficking, migration management and refugees. They also contributed to placing these issues at the centre of Euro-Mediterranean relations. In Seville, the European Council advocated a proactive programme which proposed, among others, to:

- speed up negotiations on readmission agreements;
- reinforce border controls in the prospect of a European border police force;
- further integrate immigration policy into the Union's relations with third countries. In this respect, the European Council reasserted the key priorities set at Tampere while stressing that:
 - o “any future cooperation, association or equivalent agreement which the European Union or the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration.”
 - o “the cooperation of countries of origin and transit in joint management and in border control as well as on readmission” should be ensured;
 - o “relations with third countries which do not cooperate in combating illegal immigration” should be assessed;
 - o if “a third country has shown an unjustified lack of cooperation in the joint management of migration flows”, the Council may “adopt measures or positions under the Common Foreign and Security Policy and other European Union policies, while honouring the Union's contractual commitments but not jeopardising development cooperation objectives.”

The controversy that such proactive measures raised, illustrated the deep divisions that existed among EU Member States on making development assistance conditional to the adherence of third countries in the joint management of migration flows. At the same time, beyond these divisions, it is interesting to note that the conclusions of the June 2002 Seville European Council went beyond the objectives set at Tampere in 1999, insofar as they broadened the comprehensiveness of the approach to migration

and asylum issues. In fact, the refugee burden was no longer viewed as being shared only among Member States but also with third countries of origin and transit. Furthermore, it appeared that full use of EU external instruments should be made to help developing countries in managing migratory flows and in supporting their participation and involvement in the management of the EU external borders, through the setting-up of joint police inquiry teams in the Mediterranean. Few months after Seville, these initiatives were clearly mentioned in the December 2002 Commission Communication to the Council and the European Parliament, entitled “[Integrating Migration Issues in the European Union’s Relations with Third Countries.](#)”

As mentioned before, an important element of the European Union’s cooperation with third countries in the field of migration management lies in adopting an *ad hoc* approach to cooperation on migration management. In other words, cooperative (or willing) third countries are identified on the basis of selective criteria which, in turn, orient the initiatives and objectives to be achieved in such fields as political and economic reforms, justice and home affairs. Since 2003, this *ad hoc* approach has led to the “differentiation” principle on which the European Union intends to implement its Neighbourhood Policy.

The European Neighbourhood Policy (ENP), which was introduced in a [Commission communication](#) dated March 2003, is a direct consequence of the enlargement of the European Union which took place in May 2004. As far as Mediterranean non-member countries (MNCs) are concerned, it is not aimed at overriding the existing framework of cooperation enshrined in the Barcelona process *acquis*. Rather, it is aimed at supplementing it by adding new objectives and defining financial instruments aimed, among others, at intensifying cooperation in the field of migration management and border control, and at proposing incentives (i.e., preferential trading relations, enhanced technical assistance, enhanced cooperation in various fields). Importantly, together with the differentiation principle, the March 2003 communication from the Commission also mentioned that financial “benefits should only be offered to reflect the progress made by the partner countries in political and economic reform. In the absence of progress, partners will not be offered these opportunities.”

Taking into account the political and economic situations, as well as the institutional and legal context, prevailing in each individual third country, illustrates the desire of the EU to differentiate its cooperation policies and to reward progress

accordingly. Nonetheless, the differentiation principle should not conceal the fact that there exist key priorities with which each third country has to comply lest the effectiveness and credibility of the comprehensive approach to migration management might be weakened. These priorities were clearly enumerated at the June 2003 [Thessaloniki European Council](#). They pertained to:

- the participation on the part of third countries in the international conventions and resolutions related to the protection of refugees and the defence of human rights;
- the cooperation of third countries in readmission/return of their nationals and of third-country nationals;
- efforts on the part of third countries' governments in border control and interception of illegal immigrants;
- the fight against human-trafficking, including the adoption of legislative measures;
- the cooperation on visa policy and possible adaptation of their visa systems;
- the creation of asylum systems, with specific reference to access to effective protection;
- and efforts on the part of third countries' governments in redocumentation of their nationals.

Five years after the Tampere European Council, the Commission presented in June 2004 a [communication](#) which made an assessment of the objectives set in 1999. Beyond the institutional constraints which have limited the original ambition of the Tampere programme and the decision-making process, the document stressed that the European Union has succeeded in consolidating its comprehensive and integrated approach to migration management in the Mediterranean and in turning it into a strategic priority in the EU's external relations with third countries, in the context of the EMP. However, although most Mediterranean non-member countries have made substantial progress in the adoption of legal provisions aimed at combating illegal migration and at strengthening border controls, in collaboration with Member States, there is growing awareness, as another [June 2004 communication](#) from the Commission stated, that new incentives will have to be found in order to provide for the conclusion and full implementation of readmission agreements with Mediterranean third countries. So far,

these incentives have been based on law-enforcement cooperation, financial and technical assistance, such as MEDA and [AENEAS](#), and visa facilitation. Today, additional incentives are currently under consideration, including the possibility of developing an [EU-wide management of entrance quotas](#) for temporary labour migrants, after the fashion of the [readmission agreements already existing between some Member States and third countries](#).

It is important to stress that recent changes in MNCs' migration management policies do not stem exclusively from the proactive measures advocated, among others, at the European Councils in Tampere, Laeken, Seville and Thessaloniki, or even from the new offer contained in the European Neighbourhood Policy. Such policies need to be put in a wider context marked by the recurrence of inter-governmental consultative and informal meetings on migration management in which most MNCs have gradually taken an active part. The [Dialogue on Mediterranean Transit Migration](#), which draws on the [Budapest Process](#) addressed to Central Eastern European countries, as well as the [5+5 Dialogue](#) on migration in the Western Mediterranean, constitute just a few examples.

3. The Post-Tampere Context: The Hague Programme

Five years after its special meeting in Tampere, the Brussels European Council adopted in November 2004 [The Hague Programme](#). This multi-annual programme reasserts the need to achieve the objectives laid down in the Tampere programme (see above) and enumerates various migration-related specific orientations pertaining to asylum policy, migration and border policy, legal and illegal migration, the integration of third-country nationals, the external dimension of asylum and migration, the need for intensified cooperation with migrants' countries of origin and transit, and the reinforced management of migration flows.

Beyond the variety of these objectives, two main assumptions characterise the rationale of The Hague programme as well as its magnitude.

The first assumption stresses that “international migration will continue” and that consequently, a new type of comprehensive approach needs to be developed. In contrast with the comprehensive approach that was originally contained in the former Tampere programme, this notion does not explicitly refer to development human rights and

political issues in countries and regions of origin and transit. Rather, The Hague programme presents the comprehensive approach as a framework involving “all stages of migration, with respect to the root causes of migration, entry and admission policies and integration and return policies.”

The second assumption states that “asylum and migration are by their very nature international issues.” It stresses the external dimension of asylum and migration issues, and acknowledges that the EU common asylum and migration policy is dependent on the need for reinforced partnership with transit and origin countries, in the fields of border management, the fight against illegal migration and human-trafficking, police cooperation, readmission programmes and refugee protection. Again, this partnership vision contrasts with the one that was originally contained in the Tampere programme. In fact, it is interesting to note that while the partnership was initially aimed at “addressing political, human rights and development issues in countries and regions of origin and transit”, since the adoption in November 2004 of The Hague programme, this same notion pertains specifically to the need to enhance the capacity of these countries to deal more effectively with refugee protection, the fight against illegal migration, border controls, document security and readmission.

Clearly, these terminological readjustments stem from the gradual integration of migration issues in the external relations of the European Union that has taken place since the European Council conclusions of Seville and Thessaloniki. At the same time, they also find their roots in the growing awareness on the part of the EU and its Member States that “the successful management of migration flows must comprise a serious investment in relations with third countries”, as was clearly stated in the May 2005 communication from the Commission which set the [ten priorities to be considered for the next five years in the framework of The Hague programme](#).

As mentioned in section 2, the need to intensify cooperation on migration management with third countries is not a new idea, for it dates back to 2002. Nonetheless, the attempt to find incentives and to define mutual commitments, particularly in the context of the European Neighbourhood Policy (ENP) [action plans](#), is reflective of the awareness that the development of an EU migration and asylum policy will also be dependent on the participation of third countries in the joint management of migration flows as well as on their capacity to respond to it. This post-Tampere approach to migration management cooperation, based on mutual commitments and shared benefits,

contrasts with the proactive and radical measures that were put forward during the June 2002 Seville European Council.

Having identified ten priorities in the framework of The Hague programme, an all-encompassing [action plan](#), followed by a detailed timetable, was jointly drawn up in August 2005 by the Council and the Commission with a view to organising the gradual implementation of The Hague programme from 2005 to 2010. This action plan gives a rather clear idea of the major orientations that are to be prioritised over the next five years, above all concerning the exchange of information among law-enforcement agencies, customs and judicial authorities and their access to the [visa information system](#) (VIS) facilitating controls at the external borders of the EU as well as the identification and return of illegal immigrants, the planned interconnection between Europol's Information System and the [second-generation Schengen Information System](#) (or SIS II).

With specific concern to asylum and migration issues, the [action plan implementing The Hague programme](#) reasserts most of the provisions that were already put forward in the course of the [November 2004 Brussels European Council](#).

Moreover, the quest for mutually beneficial solutions which could serve the interests of both the EU and third countries is reflective of the common vision of development that the Commission has been trying to promote, with the support of the Council and the European Parliament, by proposing in July 2005 what it referred to as a [European consensus](#). This proposal was made by the Commission with a view not only to presenting the EU external action as a unified and common strategy but also with a view to developing “new approaches in areas such as migration and development, security and development” in cooperation with third countries. It is too early to argue whether the initiative of the Commission will favour the emergence of a tripartite consensus. Nonetheless, the above-mentioned action plan implementing The Hague programme, jointly drawn up by the Commission and the Council, is reflective of the awareness of the EU that a modicum of cohesion and compactness, based on shared principles and values, will be needed to further its cooperation with third countries on the management of migration flows and asylum and to fully address these issues for the interest of all the parties involved.

To do so, financial mechanisms aimed at better managing migration flows have been established in the context of a comprehensive [framework programme](#) put forward by the European Commission in April 2005. This framework programme covers four policy areas which were also mentioned in the Council and Commission action plan implementing The Hague programme. These policy areas pertain to:

1. *The reinforced control of the external borders of the EU* through the creation of the [External Borders Fund](#). This Fund is expected to improve the protection of the external borders of the EU and to reduce illegal entry while providing the necessary technical and technological assistance to Member States and third countries' law-enforcement agencies. In this respect, these provisions draw extensively on a communication of the Commission dated May 2002 on "[An integrated management of the external borders of the Member States of the European Union](#)" as well as on a Presidency note dated June 2002 and entitled "[Co-operation with third countries of origin and transit to jointly combat illegal immigration](#)." The objective of the Fund lies not only in preventing further unwanted migrants from crossing illegally the external borders of the EU, but also in financially supporting operations aimed at dissuading illegal migrants "to put their lives at risk". At the same time, the Commission acknowledges that "from a human rights point of view, [the reinforced border control capabilities] [...] could mean that more people would be intercepted, refused entry and/or removed to their countries of origin, where they probably face a situation of poverty and lack of freedoms." The External Borders Fund will provide financial assistance in complementary with the work of the Warsaw-based [European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union](#) (FRONTEX), which was created in October 2004 and active as of June 2005, with a view to improving the coordinated management of the enlarged EU external borders among Member States.
2. *The return of third-country nationals* through the creation of the [European Return Fund](#). This Fund is aimed at financially supporting actions aimed at fostering the logistical organisation and effective implementation of [integrated return programmes](#). These programmes are expected to support the so-called "sustainability" or durability of returns by providing pre- and post-return

assistance to returnees with a view to supporting their reintegration in their country of origin. These actions presuppose the effective cooperation of third countries' authorities in order to "monitor the situation of returnees and the sustainability of their situation after return." Moreover, in its communication, the Commission:

- i. recognises that the voluntary dimension of return should be constantly encouraged. Nonetheless, it also makes clear that "there is an obvious need to carry out forced returns in order to safeguard the integrity of the immigration and asylum policy of the European Union and the immigration and asylum systems of the Member States [...] The instrument [i.e., the European Return Fund] should therefore support actions of Member States to facilitate enforced return."
 - ii. underlines that closer diplomatic operational and institutional cooperation with third countries is a prerequisite to supporting the return operation. It is important to highlight that the Commission is careful not to use the term 'readmission' in its proposal. In fact, the return operations that are considered in the European Return Fund are presented in the Commission document as actions that "are not covered by Community readmission agreements or national bilateral readmission agreements." Nonetheless, they also include the "return of third country nationals who are not in the possession of passports or other identity documents [as well as] the return to a particular country of third country nationals and stateless persons who have come from or have resided in this country not as its own nationals";
3. *The integration of legally residing third-country nationals*, through the creation of the [European Fund for the integration of third-country nationals](#). The Fund is presented as an instrument contributing to the national efforts of Member States to develop and implement integration policies allowing third-country nationals to take an active part in all aspects of European societies. The Commission draws on the [common basic principles](#) (CBPs) regarding immigrant integration

policy that were presented in November 2004 by the Council following the adoption of The Hague programme, as well as on November 2004 [Handbook on Integration](#) that was published by DG Justice Freedom and Security. The CBPs imply, among others, access to employment and education, the respect of the basic values of the European Union, the acquisition of basic linguistic knowledge needed to support immigrants' participation in society, the promotion of inter-cultural exchanges and interaction between immigrants and Member states citizens, and monitoring mechanisms securing non-discriminatory and equal access to institutions. Furthermore, the Commission contemplates the organisation of admission procedures by preparing "third-country nationals admitted for their integration into host society in a better way by supporting pre-travel measures such as information packages and comprehensive civic orientation courses in the country of origin." This initiative presupposes the organisation of a pre-screening process of potential migrants in their countries of origin which would evaluate, among others, their ability to integrate in the society of a given Member State, and make the potential migrants' skills match labour markets requirements in the EU, as the January 2005 [Green Paper on an EU approach to managing economic migration](#) stressed. It also presupposes the full cooperation of the authorities of migrants' countries of origin as well as their assistance.

4. Asylum and refugee protection through the creation of the [European Refugee Fund](#) (ERF). The ERF is expected to draw on the experience of the existing [European Refugee Fund](#) that already operated from January 2000 to December 2004 following a decision of the Council in order to "encourage the efforts made by the Member States in receiving and bearing the consequences of receiving refugees and displaced persons." It supported actions related to the integration of persons whose in a Member State was of a lasting nature, to repatriation and reception. In November 2004, the Council adopted a decision in order to re-establish the ERF from 2005 till 2010, leading to the creation of [ERF II](#). Given the planned creation of the three above-mentioned funds, all being part and parcel of the framework programme proposed by the European Commission in April 2005, the range of actions contained in the ERF II will need to be

reconsidered in order to prevent any overlap with the European Return Fund and the European Integration Fund.

Concerning refugees situation, the Council invited the Commission to develop [regional protection programmes](#) (RPPs) in partnership with third countries and in close cooperation with UNHCR. These programmes stem from the desire of the EU to intensify cooperation on migration management and refugee protection with third countries in order to allow them to deal more effectively with asylum applications and refugee protection. The main objective of regional protection programmes is “to enhance the protection capacity of third countries” while considering the resettlement of refugees in another third country as a solution if their prospects for local integration in the country of first asylum is jeopardised or if they have no prospects for return to their home countries. It is important to underline that although “resettlement is not, and should not be, considered a potential substitute for [EU] states’ obligations under international law and European laws to consider applications for asylum on their territory”, as Peer Baneke, General Secretary of the European Council for Refugees and Exiles (ECRE), stressed during the [UK presidency resettlement seminar](#) that took place in London on July 2005, the regional protection programmes (RPPs) remain first and foremost “flexible” and “situation-specific.” In other words, they are “adaptable to the differing characteristics of global refugee needs, [...] [and] adaptable to the *ability* of Member States to resettle certain caseloads in given years” (see [COM\(2004\) 410 Final](#), p. 8).

The RPPs address a whole range of actions including the need to assist third countries to comply with international obligations under the 1951 Geneva Convention and the need to enhance protection capacity for refugees and asylum-seekers. For some Mediterranean third countries, the implementation of these actions requires however that they become signatory of the 1951 Geneva Convention and, for others, that they fully cooperate with the UNHCR. These issues are contained in The Hague programme and widely detailed in its action plan which foresees, among others, the conduction of a study “in close consultation with the UNHCR on joint processing of asylum applications outside the EU territory.”

The EU is intent on using the [European Neighbourhood and Partnership Instrument](#) (ENPI) to intensify its cooperation with Mediterranean third countries on migration management and to enable them to deal effectively with the protection for refugees. It is important to recall that this cooperation will be country-specific or “differentiated”, in the European-Neighbourhood-Policy parlance.

In a similar vein, the Council supported in June 2005 the opening of an [ad hoc dialogue on migration issues between the EU and Libya](#). This ad hoc dialogue comprises various suggestions for exploratory discussions with Libya including, among others, the “possibilities [on the medium term] for formalised cooperation in the field of return of illegal immigrants to Libya, fully respecting human rights and ensuring the sustainability of such returns.” The Council document also referred to the “possibilities for intensified cooperation and capacity-building concerning migration management and protection of refugees in cooperation with UNHCR”, but did not explicitly require the formal recognition on the part of the Libyan authorities of the UNHCR mandate, unlike the European Parliament who, in its [April 2005 Resolution](#), called on Libya “to recognise the mandate of the UNHCR” and expressed its concern regarding the collective expulsion of migrants from the island of Lampedusa to Libya that were carried out by the Italian government from October 2004 to March 2005.

The above-mentioned four policy areas (i.e., border management, return, integration, and asylum) as well as the policy options contained in the action plan implementing The Hague programme shed light on the “strategic approach to the management of migratory flows” that is referred to in the April 2005 [document related to the 10th anniversary of the Euro-Mediterranean Partnership](#) (EMP). As the Commission and the Council repeatedly stressed, the concrete implementation of this strategic approach, as well as its maintenance, will depend on the extent to which the EU and its Member States, on the one hand, and third countries, on the other, will share the priorities and policy objectives contained in it. In September 2005, the Commission identified [concrete orientations](#) aimed at improving the impact of migration (not asylum) on development while focussing on three key issues, i.e., remittances, the role of diasporas and the brain drain. This communication from the Commission is reflective of the attempt to turn migration into a shared resource for development in the North and the South of the Mediterranean, and of the awareness that “rather than focussing on

reducing migratory pressures, [EMP] partners should agree on a more strategic approach that aims to optimise the benefits of migration for all partners.”

Currently, the main issue at stake is to understand how and when this approach is translated into concrete terms and whether the optimisation of the benefits of migration will take place concomitantly with the need to address certain resilient challenges which the Commission intends to meet in a [five-year work programme](#) regarding the Euro-Mediterranean Partnership. These challenges pertain, among others, to human rights, democracy, economic growth, institutional reforms and education. They are also referred to in the European Neighbourhood Policy action plans for [Morocco](#) and [Tunisia](#) that were proposed in December 2004 by the Commission.