

Chapter 30

EU Migration Policy

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Introduction

Contrary to general perception which places the origins of EU migration policy in the post-Maastricht or even post-Amsterdam era, the first traces of an EU competence on migration issues, albeit strongly contested, date from the very beginning of the Communities' history as certain migration policy aspects were closely linked with the establishment of an internal market where *inter alia* persons would move freely (Toth 1986; Schermers 1993). Ironically enough, this key EC objective, that is the establishment of an area without internal frontiers, was first accomplished outside the EC framework, within the intergovernmental framework of the Schengen cooperation, first established in 1990 (O'Keeffe 1991). A year later, in 1991, following a rather unanticipated German proposal for communitarising migration and asylum policies, most likely due to the fear of a mass influx of migrants and refugees following the collapse of the Berlin Wall, EU leaders decided to create a 'third pillar', which primarily consisted of the institutionalisation of a series of pre-existing informal forums (Peers 2000).

The Schengen cooperation was heavily criticised for its lack of transparency, its duplicative role, and the absence of any democratic or judicial control; whereas the Maastricht Treaty's third pillar was criticised for its ineffectiveness. These shortcomings have led to the incorporation of the former within the framework of the EU and the communitarisation of the latter during the Amsterdam IGC. The Treaty of Amsterdam undoubtedly represents a major turning point in migration policy at the European level, even though its innovative character is strongly contested (Papagianni 2006).¹ In contrast to the absence of an overarching objective in the past, the Treaty of Amsterdam purported to offer an overall perspective in migration policy within the more general framework of an 'area of freedom, security and justice' (former Articles 61–69 TEC), which is seen as one of the new main objectives of the Union, just as the internal market had been in the 1980s.

Implementation was based on three multiannual programmes, the so-called Tampere milestones (1999–2004), the Hague programme (2005–2009) and the Stockholm programme (2010–2014), each accompanied by an Action Plan. According to the Tampere milestones, migration policy should fall under three major headings:

1. 'management of migration flows' concerning border controls and combating illegal migration issues;
2. 'fair treatment of third country nationals' regarding admission and integration issues; and
3. 'partnership with countries of origin' regarding the external dimension of migration policy.

¹ A comparative reading of the strategic documents that were presented and the legislative measures that have been adopted under the Maastricht and Amsterdam eras reveals certain close similarities in terms of policy-making and thinking.

This chapter discusses the process of formation of a common migration policy at the EU level. Following a brief presentation of the overall framework, the specificities, main challenges and major outcomes of this emerging common policy, the major developments in the above-mentioned three Tampere pillars will be reviewed. In the concluding section, the main current challenges and the future perspectives will be briefly examined.

Forging a European Migration Policy: Overall Framework, Specificities, Challenges and Major Outcomes

Forging a European migration policy has presented a series of hurdles both in institutional and in policy terms. While the Treaty of Amsterdam clearly resolved many of the institutional problems that were impeding progress in the past, it created two series of major institutional challenges. The first regards the *sui generis* institutional rules due to the inclusion of the relevant Treaty bases in a sort of 'institutional ghetto' within the Treaty framework. The second challenge concerns the disintegration of the territorial application of the new rules, due to the creation of a rather complex variable geometry regime (Papagianni 2006). More specifically, while three member states, the UK, Ireland and Denmark, opt-in on a pick-and-choose basis, a series of outsiders, that is Norway, Iceland, and more recently Switzerland and Liechtenstein, are associated on certain aspects, the so-called Schengen relevant aspects, of EU migration policy. Indeed, the introduction of special institutional rules, the division of EU law in two, often difficult to distinguish or even overlapping categories, that is Schengen relevant and non-Schengen relevant measures, and the opt-out of three member states was the price to pay for the incorporation of Schengen and the communitarisation of the Maastricht's 'third pillar' (Kuijper 2000). Consequently, decision-making under the Amsterdam era often proved a nightmare (Papagianni 2006).

The Treaty of Lisbon undoubtedly resolved many of the pending institutional issues proceeding to the complete communitarisation of migration policy as well as to a series of related positive additions (Peers 2012). Even though the amendments brought by the Treaty of Lisbon are primarily a codification of the pre-Lisbon *status quo*, the internal EU competence has beyond doubt been extended. In addition, the Lisbon Treaty has inserted a series of basic principles embedding the development of migration policy, such as solidarity between member states and the respect of human rights (Article 67 TFEU). Finally, the reinforcement of the position of human rights within the EU framework following the attribution of a legally binding character to the Charter of Fundamental Rights in 2009 is expected to have a positive impact on the quality of future legislation as well as on the implementation of current legislation.

In addition to the aforementioned *institutional* obstacles, the forging of a common migration policy was further hindered by a series of *policy* barriers, which explain and are the main root causes of the institutional obstacles. These are of a dual nature: first, they stem from the specificity of the EU as a common space without internal borders, and second, they are linked with a series of political and pragmatic constraints. These constraints involve the sensitive character of migration policy due to its close links to sovereignty and the deeply diverging needs and positions of the member states.

European migration policy differs in many ways from *national* migration policy. In contrast to how migration policy is traditionally perceived at the national level, entry and residence of foreigners both for shorter and longer stays and for various purposes, migration policy at the European level had traditionally a rather different scope and was consequently organised in quite a different way. The reason is two-fold. First, originally the EU's key objective was the achievement

of the free movement of persons. Second, the EU represents a different layer of policy-making. As a consequence, the EU has to regulate issues that do not appear to be a problem at national level, such as the abolition of internal border controls, and which further raise a series of security concerns that need to be mitigated. In addition, it proves difficult for the EU to regulate certain other aspects, such as admission policy in particular for labour purposes, since this requires a priori the formation of a common objective and the approximation of a series of related national legislation, which proves difficult both in terms of political will and in terms of efficiency.

In light of the above, migration policy at the EU level was shaped in two different policy sets: the so-called ‘migration *stricto sensu*’ and the ‘migration in the classic sense’ (Papagianni 2006). The former concerns the entry for short-term purposes and mere circulation within the common area following the abolition of internal border controls. It is mainly linked with border and visa policy issues as well as with certain aspects of return policy, which are considered as the necessary ‘flanking measures’ for the abolition of internal border controls. The ‘migration *stricto sensu*’ aspects have been to a large extent accomplished within the framework of the Schengen cooperation. Efforts in the post-Amsterdam era focused primarily on the codification and further development of the relevant Schengen *acquis*. Progress has been impressive, most probably also thanks to the fact that member states patently share and have a clear political will to address common security challenges.

In addition to this first policy framework, a second one was progressively developed, most likely following the acknowledgement of related demographic and economic needs. Within this second framework, migration policy is seen under a much more general and inclusive spectrum, and takes a form similar to how migration policy is usually perceived at a national level, a sort of ‘migration in the classic sense’. It includes issues such as entry, residence and fair treatment and brings forward linkages with a series of other related policies, such as external relations and development policy. However, the sensitivity of the area, its close links with sovereignty, the deep divergence of views between member states, in particular as to labour migration aspects, and the evident lack of appropriate integration in other related areas of EU law, such as social policy and foreign policy, explain the initial lack, and subsequently strongly contested character, of the Community competence in this field. These constitute the primary reasons impeding the formation of a coherent and comprehensive migration policy.

In contrast to the impressive developments on the ‘migration *stricto sensu*’ framework, the EU has been literally struggling to adopt even rather limited measures in the legal migration field during the last decade. By 2004, only three directives were adopted: the directive on family reunification,² the directive on the status of long-term residents,³ and the students’ and the researchers’ directives.⁴ Subsequently, efforts focused on the approximation of legislation with regard to labour migration, which proved by far the most controversial issue. In 2004, the Commission had to officially withdraw its initial 2001 far-reaching proposal for a comprehensive regulation of migration for dependent work and self-employment and proceeded to a less ambitious sectorial approach

2 Council Directive 2003/86/EC of 22 September 2003, on the right to family reunification, OJ L 251/12, 3 October 2003.

3 Council Directive 2003/109/EC of 25 November 2003, concerning the status of third-country nationals who are long-term residents, OJ L 16/44, 23 January 2004.

4 Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375/12, 23 December 2005 and Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting of third-country nationals for the purposes of scientific research, OJ L 289/15, 3 November 2005.

(Papagianni 2006). Two directives have already been adopted, the so-called ‘Blue Card’ directive⁵ and the single permit directive,⁶ whereas two additional proposals on intra-corporate transferees and seasonal workers are still under examination.⁷

Ironically, the comparison between the two above-mentioned policy frameworks is even further instructive in terms of quality. While the so-called ‘Schengen relevant’ measures represent a considerable corpus of completely harmonised hard law, the EU legislation on legal migration is strongly criticised for opting for the lowest common denominator or fostering a race to the bottom. Reaching consensus with regard to legal migration aspects proved and still remains extremely difficult, given the lack of agreement as to the very need to address migration issues at EU level as well as the deeply diverging approach, needs and positions of the member states. It should not go unnoticed that a specific provision reinstating expressly the competence of the member states to determine the volumes of admission of third-country nationals coming from third countries to their territory in order to seek work is inserted in the Treaty of Lisbon (Article 79 (5) TFEU).

In light of the above, the heavily unbalanced character of the EU migration policy in favour of security measures proves to be the main characteristic of the emerging policy. EU migration policy is seen primarily through a security lens not only in terms of quantity but in terms of quality as well. Not only are legal migration measures limited in number, but they are strongly affected by an extremely restrictive approach. Not only are security measures numerous, but they also fail to devote sufficient attention to the protection of the rights of third-country nationals in an irregular situation. Regrettably, the image of a ‘Fortress Europe’ is by now deeply imprinted in people’s conscience.

EU Action on Migration Pressures: Managing External Borders and Combating Irregular Migration

Managing effectively the EU’s external borders and combating irregular migration were traditionally seen as the main ‘flanking measures’ for the abolition of internal border controls. Taking into account that this objective was already achieved within the framework of the Schengen cooperation, the main EU legal instruments adopted in that respect following the entry into force of the Amsterdam Treaty are clearly building upon the Schengen *acquis* in this area. Those concern measures related to border controls, visa policy and return policy.

5 Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155/17, 18 June 2009.

6 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343/1, 23.12.2011.

7 Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, COM (2010) 378 final, 13 July 2010; Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment, COM (2010) 378 final, 13 July 2010.

Management of External Borders

While the key legal instrument on borders policy is the so-called ‘Schengen Borders Code’,⁸ emphasis needs to be placed on the creation of a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, the so-called FRONTEX, in 2004.⁹ Since its inception, FRONTEX launched several initiatives in the area of border management, whereas it has also coordinated numerous joint operations both at land and sea borders. In 2007, the so-called ‘RABITs’ (Rapid Intervention Teams) were established in order to support member states in circumstances requiring increased technical and operational assistance at the external borders,¹⁰ whereas in 2011 the role and operational capacity of FRONTEX was further considerably reinforced.

Given the increasing migration pressure faced by the EU, the improvement of certain aspects of border management has been heavily debated during recent years. Following a series of relevant Communications issued in 2008, the Commission tabled a proposal on the establishment of a European Border Surveillance System (EUROSUR) in 2011, expected to become operational in 2013.¹¹ In parallel, the establishment of so-called ‘smart borders’ is intensively debated.¹² Issues such as the facilitation of border crossing for *bona fide* travellers, the establishment of a Registered Traveller Status or the establishment of an Entry Exit System are examined in depth and the relevant legislative proposals are expected soon. More recently, the major breach as to the solidarity and mutual trust between the member states caused by the Arab Spring – despite the lack of actual large scale inflows to the EU – triggered discussions on how to better govern the Schengen Area, pushing the Commission to adopt a package of measures aiming at the improvement of Schengen governance (Carrera 2012).

Visa Policy

The key legislative developments are the adoption of Regulation 539/2001, which lists the third countries whose nationals are under a visa obligation and those whose nationals are exempt from that obligation – amended already eight times¹³ – as well as the adoption of the so-called ‘Visa

8 Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), L 105/1, 13 April 2006.

9 Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 304/1, 22 November 2011.

10 Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest Officers, OJ L 199/30, 31 July 2007.

11 Proposal for a regulation of the European Parliament and of the Council establishing the European Border Surveillance System (EUROSUR) COM (2011) 873, 12 December 2011.

12 Communication from the Commission to the European Parliament and the Council Smart borders – options and the way ahead, COM (2011) 680 final, 25 October 2011.

13 For the original Regulation see OJ L 81/1, 21 March 2001, whereas for the last amendment OJ L 339/9, 22 December 2010.

Code' codifying the Schengen process of issuing visas,¹⁴ which together establish a completely harmonised EU system on short-term visas. On a more operational level, in addition to the already existing Schengen Information System (SIS II), a Visa Information System (VIS), a database including various visa data, was created in 2008 and became fully operational initially in North Africa in late 2011. In parallel, an intense debate as to a series of other changes that are deemed necessary in order to ensure the proper functioning of the new system and to confront the high costs that the establishment of VIS inevitably entails was triggered. Issues such as the increase of visa fees, the establishment of 'Common Application Centers' (CAC), outsourcing and the inclusion of biometric identifiers have been highly debated.

Last but not least, given that visa policy is the main 'carrot' that the EU has to offer to third countries, visa facilitation agreements have been concluded with a series of third countries for all sorts of disparate reasons: as an incentive for the conclusion of readmission agreements, as a way of mitigating the negative impact of enlargement on the 'new' member states and their neighbours, or as a way to push for internal reforms in third countries. Meanwhile, visa liberalisation has been applied since 2009 in the countries of the Western Balkans with ambiguous results (Trauner and Kruse 2008).

Combating Irregular Migration and Return Policy

The two main recent legislative developments in the area of irregular migration are the so-called 'return directive'¹⁵ and the directive on sanctions against employers.¹⁶ Inasmuch as the former is concerned, the initially rather ambitious scope of the Commission proposal, the sensitivity of the issues involved as well as the discrepancies among the positions of the various institutional actors, have made negotiations extremely difficult. The main points of divergence concerned the scope of the proposal, the accelerated procedure, the concept of voluntary departure, the entry ban, the case of detention in conjunction with the definition of risk of absconding, as well as the scope of protection granted to third-country nationals.

In contrast to the extremely contentious negotiations on the 'return directive', the 'sanctions directive' proved much less controversial since it aims at facing the common problem of informal work, which is rightly considered as a major pull factor for irregular migration. The directive not only seeks to make employing irregular migrants more difficult by providing for a minimum harmonisation of administrative, financial and criminal sanctions against employers of illegally staying third country nationals, but also includes protection measures in favour of workers, especially those exploited by unscrupulous employers.

In parallel, building primarily on the Schengen *acquis*, member states adopted a series of legislative measures and launched numerous operational initiatives aiming at increasing their cooperation and combating effectively irregular migration. The Council adopted directives on the mutual recognition of expulsion decisions, on carriers' liability, on sanctions against persons facilitating the entry of legal migration, and on assistance in cases of transit for the purposes of removal by air. Emphasis was also placed on the issue of trafficking, where attention was paid not

14 Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), L 243/1, 15 September 2009.

15 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348/98, 24 December 2008.

16 Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ L 168/24, 30 June 2009.

only to combating trafficking but also to the protection of the victims of trafficking. In 2010, an EU Anti-Trafficking Coordinator was appointed, while a specific website was created and an 'EU Strategy towards the Eradication of Trafficking in Human Beings (2012–2016)' was adopted.¹⁷

In parallel, the Commission presented a series of Communications on irregular migration, on the basis of which the Council adopted numerous action plans. Emphasis was clearly placed on fighting irregular migration by sea. The latest is the 2012 EU Action Plan on 'The EU Action on Migratory Pressures – A Strategic Response'.¹⁸ This includes a non-exhaustive list of strategic priority areas where efforts need to be stepped up and monitored in order to prevent and control existing pressures that derive not only from irregular migration but also from the abuse of legal migration routes. It is a 'living document' which is updated on a regular basis in order to be capable of responding to migratory pressures, which can change rapidly.

Another important aspect of EU return policy concerns the conclusion of readmission agreements with several third countries. However, readmission policy has been severely criticised since readmission agreements are considered as a tool for the externalisation of the EU's external borders that does not take sufficient consideration of the interests of the partners or the proper protection of human rights (Billet 2010).

Integration of Third-Country Nationals in the European Union: Framework and Challenges

The need for a more rigorous integration policy aimed at granting third-country nationals rights and obligations comparable to those of EU citizens was one of the main policy objectives recognised at Tampere. Yet, the achievement of a European common approach on the matter proved extremely controversial. The reason is two-fold. First, there are different categories of migrants enjoying varying status and rights both at the national and European level. In fact, the gap between EU citizens and their family members moving to another EU member state and the newcomers, third-country nationals, is huge. Moreover, in between all sorts of intermediate categories can be found both at a national and at a European level, such as migrants having an ethnic background and links with the member state to which they move, or third-country nationals enjoying preferential status at the EU level thanks to the existence of an association agreement. Second, in light of the above, the political approach of the different member states and the integration models applied at the national level vary significantly as well. Therefore, reaching consensus at the European level proves almost impossible. In this vein, the express exclusion of any harmonisation of the laws and regulations of member states that was included within the specific integration provision of the Treaty of Lisbon (Article 79 (4) TFEU) is self-explained.

Notwithstanding the above-mentioned policy and institutional constraints, the EU has devoted considerable efforts to forging an integration policy, mostly in soft-law and operational terms. However, despite the migrant-friendly approach of Tampere – talking even about nationality acquisition – integration was initially seen primarily as an obligation of third-country nationals. The relevant provisions of the family reunification and the long-term residents' directives were clearly seen as a way to reduce family reunification and keep long-term residents from acquiring a permanent residence right or the nationality of the host country (Guild and Minderhoud 2012).

17 Available at: <http://ec.europa.eu/anti-trafficking/> (accessed: 1 March 2013).

18 Council doc. 8714/1/2011, 23 April 2012.

Subsequently, integration policy was examined independently and under a much broader framework. First of all, on the basis of a Council request, a list of national contact points was set up in December 2002, its main objective being the exchange of information and good practice between member states at EU level, with the purpose of finding successful solutions for integration of immigrants in all member states and to ensure policy coordination at national level with EU initiatives. Next, in early June 2003 the Commission issued a Communication on the interlinked issues of immigration, integration and employment.¹⁹ Therein, the Commission advocated a 'holistic' approach that would take into account various aspects, such as integration in the labour market, education, social and urban issues, cultural and political issues, closer dialogue with third countries, while further encouraging the involvement of all actors. Moreover, the Commission also promoted the idea of 'civic citizenship' and political rights for third-country nationals. The issue was brought to the attention of Heads of State during the Thessaloniki Summit in 2003. Whereas both Ministers and Heads of State supported the Commission's approach and proposals, they conspicuously failed to take up the suggestions of developing the concept of civic citizenship or giving third-country nationals rights of political participation even at the local level.

Integration policy remained a top priority within the framework of both the Hague and the Stockholm Programmes as well. Integration issues were examined by a series of dedicated Ministerial Conferences such as Groningen (2004), Potsdam (2007), Vichy (2008) and Zaragoza (2010), which were designed to facilitate continuous political debate on integration. The so-called 'Common Basic Principles for Immigrant Integration Policy in the EU', which were adopted following the Groningen Ministerial Conference, need to be highlighted as this was the first main political document at the EU level.²⁰ Integration was characterised as a dynamic two-way process, while emphasis was placed on issues such as employment, education, access to services and participation in the democratic process. Reference was made to the respect for the basic values of the EU as well as to the safeguard of the practice of diverse cultures and religions.

Integration remained high on the Commission's agenda as well. In 2005 the Commission presented a new Communication on the matter, the so-called 'Common Agenda for Integration',²¹ while in 2009 a dedicated website on integration was launched and a European Integration Forum, where EU institutions, stakeholders and civil society organisations exchange views on integration issues, was also established.²² The Commission also published three editions of a handbook on integration for policy-makers and practitioners in 2004, 2007 and 2010 respectively. Finally, in its 2011 Communication on a 'European Agenda for the Integration of Third-Country Nationals', the Commission highlighted current integration challenges in the EU and suggested areas for future action.²³ Emphasis is placed on actions, in particular at the local level, to increase economic, social, cultural and political participation by migrants, while the Commission is putting together a flexible 'tool box' from which national authorities will be able to pick the measures most likely to prove effective in their specific context.

Taking into account the challenges that integration poses sadly enough even in the case of EU nationals – the Roma evictions in France being instructive in that regard (O'Nions 2011) – as well as the impact of the current financial crisis, both in terms of reduction of available funds and in terms of the rise of nationalism, racism and xenophobia, given that migrants admittedly become

19 COM (2003) 336 final, 3 June 2003.

20 Council doc. 14776/04, 18 November 2004.

21 COM (2005) 389 final, 1 September 2005.

22 Available at: <http://ec.europa.eu/ewsi/> (accessed: 1 March 2013).

23 COM (2011) 455 final, 20 June 2011.

the easy scapegoats, it is estimated that integration will remain a big challenge for the EU for the years to come.

The External Dimension of EU Migration Policy: GAMM

Even though cooperation with countries of origin and developing an external dimension of EU migration policy had a prominent position in the Tampere agenda, developing a Justice and Home Affairs (JHA) external dimension was never seen as an objective in itself. In the Council's words: 'the aim is certainly not to develop a "foreign policy" specific to JHA. Quite the contrary'.²⁴ Thus, the primary characteristic of the EU's external migration policy is the irrefutable close interconnection between the internal and the external dimension, not only in terms of competence but also in terms of objectives. It was rightly argued that it is an internally-driven external policy (Cremona 2008).

This strong interdependence explains *inter alia* the prominent position of security aspects in the emerging external EU migration policy. The externalisation of border controls had been the unquestionable primary objective of the EU's external migration policy, at least originally. Emphasis was initially placed on the conclusion of readmission agreements, in an obvious attempt to create a 'buffer zone' around the EU, whereas measures promoting mobility, such as the visa facilitation agreements, were only used as leverage.

By 2005, the failure of the strictly securitarian approach was clear. The tragic events in Ceuta and Melilla symbolised the limits of the repressive approach and acted as 'external shocks' inciting EU actors to thoroughly rethink their policy prerogatives (Kunz et al. 2011). The claims for a more comprehensive approach as well as the idea of enhancing legal channels of migration were intensified, leading to the establishment of the so-called 'Global Approach'. The Global Approach to Migration, and in particular its revised version with the addition of 'Mobility' (2011), the so-called GAMM, provide the current overarching framework for the external dimension of the EU migration policy.²⁵

The GAMM constitutes beyond doubt a key turning point as to the way external EU migration policy is viewed, since it seeks to offer a comprehensive and balanced framework covering on an equal basis both legal and irregular migration aspects. The GAMM is based on four equally important pillars: legal migration and mobility; irregular migration and trafficking in human beings; international protection and asylum policy; maximising the development impact of migration and mobility. Moreover, it is for the first time clearly stated that the EU's policy should be migrant-centred, whereas the importance of the human rights of migrants is further underscored.

As to its geographical scope, the GAMM claims to be truly global with a strong focus on regional dialogue processes. The Migration and Mobility Dialogues are the main drivers to be used both at regional and bilateral level, while the principle of differentiation is also central. The implementation of GAMM is based on the entire spectrum of existing tools and instruments, such as migration profiles, migration missions and a cooperation platform. However, its primary implementing tools will be the mobility partnerships and the Common Agenda for Migration and Mobility, the so-called CAMMs. As to the former it is clearly stated that they have to be built in a

24 European Union priorities and policy objectives for external relations in the field of justice and home affairs, Council doc. 7653/00, 6 June 2000.

25 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the Global Approach to Migration and Mobility, COM (2011) 743 final, 18 November 2011; Council Conclusions on the Global Approach to Migration and Mobility, Council doc. 9417/12, 3 May 2012.

balanced way around all four pillars of GAMM, whereas the latter is considered as an alternative option in cases where one side or the other is not ready to enter into the full set of obligations and commitments.

Undoubtedly GAMM offers a fully fledged and *prima facie* balanced approach. Nonetheless, one should not neglect the fact that the vast majority of the strategic goals of GAMM are primarily an elaborate version, a sort of ‘repackaging’, of previous initiatives. Moreover, practice has shown that, despite the good will and intentions, implementation often proves problematic or might take unexpected turns due to unforeseen events. Indeed, the crisis following the Arab Spring triggered a series of defensive measures against irregular flows. The fact that the dialogues to be launched with North African countries should cover ‘migration, mobility and security’ is indicative.

Moreover, given that the effective implementation of GAMM undoubtedly lies upon the constructive cooperation of all the actors involved, an overview of their relations – both in vertical and in horizontal terms – seems to raise a series of additional concerns. First of all, the competence debate between the member states and the Commission in the internal field of migration appears to have a strong impact on the external dimension as well. It seems that the Commission focused on forging a European external migration policy only where there is a clear EU competence, such as in the case of visa policy, or a strong will of the member states, such as in the case of readmission agreements. As for the rest, primarily the legal migration field, it limited itself to a coordinating role of disparate national actions of willing member states, such as in the case of mobility partnerships. In general, member states’ attachment to the issue of competence over legal migration often proved and still remains problematic for the Commission in its negotiations with third countries.

Regrettably, the relations between the various EU actors seem to be tense as well. Practice has shown that the various Commission Directorates General that are involved, for instance, DG HOME, DG Development and DG RELEX (now EEAS), often have their own varying and sometimes competing agendas. DG HOME views external cooperation primarily as a means to achieve internal goals and through a security lens, while the two latter have a more open-ended agenda (Sterkx 2008). In fact, the attribution of competence over development policy to EEAS was one of the most contentious issues when EEAS was created, the Commission being extremely sensitive on the matter (Van Vooren 2011). Concerns are also raised with regard to the rather limited role of EEAS, compared to that of DG HOME, having as consequence the fortification of the security aspects of GAMM (Carrera 2012).

In addition, the further involvement of the EU delegations and member states’ diplomatic missions in third countries, in view of the successful implementation of GAMM, is expected to raise new challenges. First, the sufficient professionalism of the EU delegations in handling the role they have to play, in particular due to the lack of resources, remains an open question. Second, it remains to be seen how easy it will be in particular for the big member states to share information with the EU delegations, given that the negotiations of the relevant provisions of the EEAS decision (Articles 3 and 5 (9)) have been rather contentious (Von Vooren 2011).

Finally, even an overview of the instruments that have been already adopted shows that these are not as comprehensive and balanced as proclaimed by GAMM. In addition to the strong criticism with regard to the EU readmission agreements, even the famous mobility partnerships seem not to be able to live up to the expectations that they have created. Despite their proclamation for a comprehensive approach they seem to follow closely the legacy of primarily unilateral repressive measures (Triandafyllidou 2009). The vast majority of them and their related projects focus for the most part on security aspects, the sole substantial exception being the mobility partnership with Cape Verde. Even the few projects that are proposed under the legal migration title do not seek to create new opportunities to legal migration. Instead, they either relate to the dissemination of

information about living and working in the EU or reproduce existing opportunities from bilateral migration agreements, as is the case of Cape Verde, where most of the legal migration projects were already operating with Portugal, independently of the EU mobility partnership (Reslow 2012). Last but not least, serious concerns are also raised as to the protection of human rights – in particular due to the lack of any legal remedies for the individuals – as well as with regard to legal certainty and democratic accountability issues, given the exclusion of the European Parliament and of the Court of Justice from the whole process (Kunz 2011).

Concluding Remarks: Current Challenges and Future Perspectives

The progress achieved on the formation of an EU migration policy is unquestionably considerable. The abolition of internal border controls is a reality, whereas the first difficult steps in the direction of a migration policy in the classic sense have already been taken as well. Yet the remaining challenges are still numerous.

Taking into account that the vast majority of the relevant legislative measures are adopted by now, their proper and successful implementation is the primary challenge. The role of the Commission as well as that of the Court of Justice is focal in that regard. While the former can highlight discrepancies and problems in the implementation, eventually also taking legal measures against the member states violating EU law, the latter might render the relevant legislation much more balanced and migrant friendly *via* a broadminded interpretation of the relevant provisions.

Second, given that the limits of the security logic dominating until today are clear, it is of vital importance to achieve the proper balance between the legal migration aspects and the related security considerations of EU migration policy. On the one hand, developing a comprehensive migration policy that takes into account other EU objectives, such as growth, development policy and foreign relations as well as demographic developments and *vice versa*, is critical. On the other hand, the increased migration pressures that certain member states are experiencing should not encroach on solidarity and mutual trust among member states, principles which are indispensable for the survival and proper functioning of the Schengen Area.

Third, given the sensitive character of migration policy and the need to keep European citizens closely involved in this process, achieving transparency and democratic accountability proves also central. Taking further into account the increasing role of agencies, such as FRONTEX and EASO, the claims for more transparency and democratic accountability are even stronger and the responsibility of the European Parliament even heavier. Regrettably, despite the increase of the role of the European Parliament following the Lisbon Treaty the decision-making process at EU level remains opaque, whereas the Parliament's position does not seem to always live up to the related expectations. In this vein, the rise of anti-immigration feelings, nationalism and xenophobia in several member states should not be underestimated, since it might change drastically the dynamics at the EU level and subsequently influence accordingly the position taken by the European Parliament following the upcoming 2014 elections.

Last but certainly not least, the effective respect of human rights proves focal in as much as the quality of the emerging EU migration policy is concerned. Not only do human rights considerations need to be taken into account in policy-making, but the EU should also be extremely vigilant in order to ensure that related operational measures, in particular those aiming at combating irregular migration, do not take place at the expense of the human rights of the persons involved. It is only in light of all the above that the EU will have a chance of living up to expectations it has raised both internally with its own citizens and externally as a global actor.

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