



## The Political Economy of Governance in the Euro-Mediterranean Partnership

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## **The European Migration Policy: Its Approach Towards the Mediterranean Countries**

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### **1. Introduction**

In a world ever more subject to globalization and inequality, migration represents a factor of production with a high degree of mobility. For the citizens of many developing countries, reaching the borders of Europe has become a high-priority objective. In response, the European Union (EU) has had to adapt itself to a number of new circumstances and to develop European immigration guidelines, something that had traditionally been the exclusive preserve of the member states.

When talking about immigration, one is faced with a phenomenon that has multiple and numerous manifestations. In general, when referring to the politics of immigration, three main areas of policy are involved: illegal immigration, legal immigration and integration of the nationals of non-member countries (the latter will not be considered in this paper).

It is appropriate to note here also that the various types of foreigners within the migratory phenomenon should not be confused. This paper focuses its attention on economic immigrants (those that relocate in search of opportunities to engage in an economic activity that will provide them with a better standard of living).

In the first section of this paper, the key aspects of the migratory politics of the EU are indicated (focusing on the regulation and management of legal and illegal immigration), as well as the inclusion of migration in EU foreign policy and the management of migrations with Mediterranean countries. In the last part, we have included a section on policy recommendations.

## **2. EU immigration policies**

Since the Tampere European Council in 1999 the EU has put greater emphasis on devising a basic common legal framework for certain elements of migration policies. The Hague Programme,<sup>1</sup> currently being implemented, has served to re-launch the initiatives presented in Tampere as well as to establish a specific action plan for the obtaining of conclusive results.

The Nice Treaty contains provisions relating to conditions of entry and residence, rules on long-term visa issuing procedures and residence permits (including those allocated to family reunification), conditions under which nationals of non-member countries can travel freely in the territory of the member states during a period not exceeding three months, and immigration and illegal residence. The decisions in these matters are taken, mainly in the Council, unanimously or by a qualified majority<sup>2</sup>. Since 2004 an increasing effort has been

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<sup>1</sup> The European Council launched in November 2004 the so-called “Hague Programme”, which contains the ten priorities of the Union (fundamental rights, access to justice, asylum, migratory flows, control of external borders, fight against terrorism and organized delinquency, recognition of court judgments, judicial and police cooperation and approximation of legislations) to reinforce the area of freedom, security and justice for the next five years. In light of the present Programme, an action plan was established in 2005 that includes a timetable for the adoption and incorporation of all the planned measures.

<sup>2</sup> Apart from certain provisions that came into force on February 1, 2003 (on asylum and refuge) or May 1, 2004, section 2 of article 67 TCE establishes that from May 1, 2004 the Council should rule on the change of procedure of co-decision making in all or some of the areas of title IV. From this date it would be lawful to

put into applying the system of decision making by co-decision, which would satisfy wishes to advance towards a fuller communitarization in those matters that form part of the third pillar. However, the European Parliament has indicated the failure of the Council to define a common immigration policy, maintaining unanimity and the procedure for consultation for all matters relating to legal immigration (European Parliament, 2003).

Upon recognizing that the migratory problem should be considered from a global focus<sup>3</sup>, making the best possible use of the various institutional measures contained in the Treaties, an objective was established of gradual convergence of legislations, policies and practices among member states. However, these goals have not applied in the same way to immigration flows of a legal nature and to flows of an irregular character.

## **2.1. Illegal immigration**

The European Commission defines “illegal immigration” in very broad terms, including not only those people who are smuggled to the European coasts, but also the nationals of non-member countries who enter the territory of a member state by land and air, including the transit areas of airports. Furthermore, there are persons who enter legally, with or without a

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resort to this device without delay. Declaration no. 5 relating to article 67 TCE annexed to the Nice Treaty provides elements of interpretation of this article and contains a political commitment that the measures contemplated in section 3 of article 62 (free movement of nationals of non-member countries for a period of less than three months) and letter d of section 3 of article 63 (immigration and illegal residence, including repatriation) immediately pass to the co-decision making procedure after May 1, 2004. Both the European Commission and the European Parliament have supported the movement to voting by qualified majority and to co-decision making envisaged in section 2 of article 67 of the TCE.

<sup>3</sup> The Brussels European Council of December 15 and 16, 2005 again stressed that immigration is becoming more and more important for the EU and that a coherent, stable, and global focus is necessary, remembering that migrations form a central element of the relations of the EU with an extensive range of non-member countries.

visa (depending on the legislation in force), but who prolong, or change the grounds for, their stay without authorization (European Commission 2006b, p. 2).

What is currently especially problematic is the ease with which one can enter the EU. The arrival en masse of foreigners to islands such as the Canaries or Lampedusa has made Europeans more sensitive with regard to illegal immigration. The evident permeability of our borders is putting to the test the principle of solidarity within the member states and in the EU as a whole, which finds itself in a difficult position vis-à-vis responding to national demands due to a lack of competence and resources.

The removal of systematic controls in internal borders has required a certain sharing of responsibility in the safeguarding of the EU's external borders. With the Schengen Agreement a displacement of frontier controls from the interior to the exterior was produced. A link among the member states is thus created that implies that every state is responsible for the control of the EU's borders and that not only guarantees its own security but also that of the other states.

To combat illegal immigration and at the same time efficiently clamp down on the traffic of human beings, a multidisciplinary focus was developed from 2002 combining prevention and repression (European Commission, 2001b). A plan was adopted for coordinated and integrated management of external borders of the Union (European Commission, 2002a), that had among its objectives measures against assisting entry, traffic and persons residing illegally in the territory of the Union, and that contemplated measures such as the putting into practice of joint operations at external borders, the creation of a network of immigration officials in non-member countries (Council of the EU, 2002), making truckers responsible for the control of illegal entry of non-EU citizens and the creation of a

European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, called Frontex<sup>4</sup> (Council of the EU, 2004).

A European programme of measures to combat illegal immigration across the maritime borders of the EU was adopted in 2003, including port checks (regular shipping services, as well as cargo vessels, fishing boats and pleasure craft) in both the ports of departure of third countries and the ports of Member States. Operational measures for surveillance along coasts and on the high seas (interception) were also laid down (Rodier 2006, p. 12).

More recently a network of immigration liaison officers has been put in place. These officials from the EU Member States are sent to non-member countries in order to ‘establish and maintain contacts with the authorities of the host country with a view to contributing to the prevention and combating of illegal immigration, the return of illegal immigrants and the management of legal migration’. They work, in particular, in the airports in third countries, where they help local officials with their control responsibilities in order to prevent at source the departure to Europe of people presumed to be future illegal migrants (Rodier 2006, p. 11).

## **2.2. Legal immigration**

One of the big failures of the EU is the management of economic immigration and, particularly, legal admission procedures.

Although there is a certain consensus on the benefits of a selective policy of immigration, established as a function of the personal characteristics of foreign workers and of the

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<sup>4</sup> The actions of Frontex have been called into question at present due to inefficiency in the management of the crisis in the Canary Islands. This inefficiency is due, among others factors, to insufficient competences. The Frontex Agency is able to coordinate the measures established by member countries, but does not have the power to mobilize such measures.

economy in which they join, there is no common strategy in Europe that selects foreigners on the basis of economic needs. Nor do member states pursue selection strategies based on purely economic criteria. Thus, for example, France only admits the 10% of its permanent immigrants on economic grounds (Papademetriou and O'Neil, 2004). What is clear is that each member state, with absolute independence, has the power to establish mechanisms for management and selection of immigrants. That is to say, the access to the labour market of member countries of nationals of non-member countries is currently subject almost exclusively to national legislation.

Noteworthy among the multiple tools available for the recruitment of immigrants are bilateral cooperation agreements, intra-company transfers of workers, and admission of students, among others. In the Spanish case, the main method of management is the annual contingent method, which is effected through bilateral agreements. Practically all the member states resort to "labour market testing" as the method of establishment of vacancies to be covered by immigrants, although some countries apply "point tests" systems, which are typical of stricter legislations.

A common aim for national policies for management of the economic flows should be full integration of immigrants in the common labour market, providing them with the necessary support to avoid the dualities of the labour market and wasted qualifications. In this connection, closer and more realistic monitoring should be carried of labour needs at a community scale, as well as of the contribution of immigration towards supplying future and present needs. It is by no means certain that we are receiving the immigrants that we really need and, of course, we do not have a common strategy in Europe regarding the best system to apply for flow management. Therefore, the question is: is it in our interest to have that common strategy?

Given the limitations of the EU's competences, the maximum to which one can aspire is a certain approximation in relation to legal immigration, but this approach does not for the moment appear viable. This perspective in relation to the limited scope of common policies

in management of economic immigration is confirmed upon analyzing the communication from the Commission about a Policy Plan on Legal Migration (European Commission, 2005c), that indicates that in spite of the possible advantages of a horizontal framework to regulate conditions of admission of nationals of non-member countries who wish to enter the European labour market, the member countries themselves did not lend support to this idea. The Commission considers it to be more appropriate to make progress in other objectives such as transparency, the efficacy of common legislation and non-discrimination. As opposed to the draft directive on economic migration of 2001 that proposed regulating the conditions of entry and residence for the exercise of economic activities (European Commission, 2001a), a package of measures is now proposed that only refers to the conditions and procedures of admission of a reduced number of categories of economic immigrants (highly qualified workers, seasonal workers, workers transferred within the same business and paid apprentices).

What we cannot lose sight of is that every decision on the freeing up of provisions relating to immigration in a member state has repercussions for the situation faced by other member countries. And at the same time, all the states have their own national rules in relation to immigration, which leads to a certain inelasticity in negotiations between the representatives of their Governments.

Spain recently carried out a regularization process that generated a degree of disquiet in some of the other member states. Community Law at present does not include provisions on regularizations, such decisions being the responsibility of the member states. But these national measures can have implications for other members, as a result of the elimination of internal border controls in the Schengen area and the application of the long-term residents Directive of 2003, which establishes the possibility that the nationals of non-member countries moving to another member state after five years of legal residence in the first state of residence. In response to this extraordinary situation of the carrying out of a regularization process, the Commission has proposed the creation of a system for mutual information on national measures in matters of migration that could have consequences in other member states or in the Community in its entirety (European Commission 2006b).

These types of situations cause great confusion and reveal certain cracks in European migratory policies, a result of the different positions held by the member states. Thus, the countries of the European 'south bank' (Italy, Spain, Cyprus, Malta and Greece) have as a principal objective the fight against illegal immigration jointly in the EU), the Nordic countries' preoccupations are centred on asylum and foreigners originating in Russia, the countries of the east share with the southern countries of Europe the difficulties in management of external borders and the control of illegal immigration and a group comprising Germany, France and Netherlands consider progress in legal immigration to be a priority. This reflects the differences in the impact of the migratory phenomenon itself, as well as the geographical situation of each country in relation to migratory routes and the political profile of each government.

### **3. The inclusion of migration in the EU's external policies**

Continuing another of the mandates of Tampere (with a further impulse from the Seville European Council), the inclusion of immigration policies in the external policies of the Union was considered from 2002 (European Commission 2002b). The reasons for this approach need not be justified, given that the amount of immigration gives rise to common interests of origin and destination countries. Among the multiple agreements that the EU has with non-member countries three types of actions or initiatives can be distinguished: development policies, agreements relating to the joint management of legal flows, and readmission agreements.

Noteworthy in matters of **development** is the existence of specific programs that have as their objective the economic development of those countries from which the main migrations originate. An example of this type of program is the Program of financial and technical measures to accompany the reform of economic and social structures in the

framework of the Euro-Mediterranean partnership<sup>5</sup> (MEDA). From 2007, the MEDA programme will be fully absorbed into the European Neighbourhood and Partnership Instrument (ENPI).

Cooperation in Justice, Freedom and Security became increasingly significant in relations with the Mediterranean countries, especially on a bilateral level, but also on a regional level. Keeping in mind the level of the migratory flows originating in the Mediterranean region, the aspects relating to migration in the MEDA JHA regional programme should be taken advantage of or, in what amounts to the same thing, the Justice and Home Affairs (JHA) dimension of the ENP must be promoted from 2007.

The extinct cross-country action plans<sup>6</sup> were examples of specific development programs in the migration area. These plans were replaced by the Aeneas program, an instrument of cooperation with non-member countries in migration matters. In the framework of future financial perspectives from 2007-2013 the Aeneas programme will obtain continuity within the “migration and asylum”<sup>7</sup> thematic programme for reinforcing the integration of questions relating to immigration in foreign affairs, in relation to EU transversal priority.

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<sup>5</sup> In the Mediterranean region, within the regional Justice and Home Affairs programme approved in MEDA, the Commission deals with the general themes of the fight against organized crime, included criminal networks involved in the trafficking of immigrants and trade in human beings. Specifically it has examined the viability of creating joint police investigation teams between Mediterranean partners and, if possible, between the member states and the Mediterranean countries. This regional programme pays special attention to migration and there is a commitment to establish the ground rules for a global focus on migration with the countries of the Mediterranean. Within the MEDA programme specific cooperation is established through projects to develop the capacity of countries of origin to manage migration. This is the case, for example, of Morocco.

<sup>6</sup> Already by 1998 the cross-country Action Plans for the countries of origin and transit of asylum seekers and migrants of the High-Level Working Group on Asylum and Migration (HLWG) had been set in motion, which had as an objective to transfer the control of the European borders beyond the EU. For a more detailed study of this focus, see Rodier (2006). These cross-country Action Plans were designed for certain specific countries of origin and transit of asylum seekers and migrants: Afghanistan and adjacent region, Morocco, Somalia, Sri Lanka, Iraq and Albania and bordering area.

<sup>7</sup> The thematic programme will apply through the ENPI and the Instrument of financing of cooperation with development and of economic cooperation. The thematic programs will not replace the geographical programs, but they will complement them (European Commission 2005a).

With regard to the **agreements for cooperation with non-member countries for the management of migratory flows**, it should be indicated that no agreements of this type at a joint EU level exist, this being management of economic immigration of a legal nature, jurisdiction over which falls to member states. Some European countries, nevertheless, have bilateral agreements in force with transferring countries for the establishment of quotas that permit foreigners to work as temporary workers or seasonal employees. This is the case of France, which has signed bilateral agreements with Morocco, Poland, Senegal and Tunisia (Stalker 2002, p. 16), or of Spain, which has signed bilateral agreements with Colombia<sup>8</sup>, Ecuador<sup>9</sup>, Morocco<sup>10</sup>, the Dominican Republic<sup>11</sup>, Poland<sup>12</sup>, Rumania<sup>13</sup>, Bulgaria<sup>14</sup> and Nigeria<sup>15</sup>.

Finally, **readmission agreements** are the measures that have had greatest support on the part of the EU and where migratory policies are focussed, in its fight against illegal immigration. At present the EU has readmission agreements signed with Albania, Macao, Hong Kong and Sri Lanka and is in the process of negotiation with Turkey, China, Algeria, Ukraine, Pakistan, Russia, Morocco, Montenegro, the Ex Yugoslavian Republic of Macedonia, Serbia and Bosnia and Herzegovina (EU Council, 2006).

Besides the readmission agreements themselves, the EU is inserting clauses in agreements between the EU and non-member countries. A case of an agreement that includes this type

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<sup>8</sup> Agreement between Spain and Colombia relating to the regulation and ordering of labour migratory flows, entered into force in Madrid on May 21, 2001.

<sup>9</sup> Agreement between the Kingdom of Spain and the Republic of Ecuador relating to the regulation and ordering of migratory flows, entered into force in Madrid on May 29, 2001.

<sup>10</sup> Labour agreement between the Kingdom of Spain and the Kingdom of Morocco, entered into force in Madrid on July 25, 2001.

<sup>11</sup> Agreement between the Kingdom of Spain and the Dominican Republic relating to the regulation and ordering of labour migratory flows, entered into force in Madrid on December 17, 2001.

<sup>12</sup> Agreement between the Kingdom of Spain and the Republic of Poland on the regulation and ordering of the migratory flows among both States, entered into force in Warsaw on May 21, 2002.

<sup>13</sup> Agreement between the Kingdom of Spain and Rumania relating to the regulation of the labour migratory flows between both States, entered into force in Madrid on January 23, 2002.

<sup>14</sup> Agreement between the Kingdom of Spain and the Republic of Bulgaria relating to the regulation of the labour migratory flows between both States, entered into force in Madrid on October 28, 2003.

<sup>15</sup> Agreement between the Government of the Kingdom of Spain and the Government of the Federal Republic of Nigeria in matters of immigration, entered into force in Abuja on November 12, 2001.

of migratory flow control commitment clause is that of the Cotonou Agreement, signed between the EU and the ACP Countries in July of 2000. Another example is the Euro-Mediterranean Association Agreement signed between the EU and Algeria. In article 84, “the parties reaffirm the importance that they attribute to the development of beneficial and reciprocal cooperation on the exchange of information on the currents of illegal immigration and that they decide to cooperate to prevent it and to control it. To this end, Algeria, on the one hand, and each one of the member states of the European Community, on the other, accepts readmission of their nationals present illegally in the territory of the other Party, subject to carrying out the necessary identification procedures...” Although these clauses are not in themselves readmission agreements, they constitute the framework for the negotiation of readmission agreements in the future.

#### **4. The Euro-Mediterranean migratory policies**

It is essential to promote cooperation on questions of migration with the countries neighbouring the EU. This cooperation should bear in mind the double role that these perform as countries of origin and of transit. For the countries that have already negotiated an action plan, the European neighbourhood policy offers to both parties a structured framework for dialogue. For the countries that have not yet negotiated an action plan, association agreements and cooperation offer an adequate legal basis for pursuing action and dialogue (European Commission 2005b, p. 8).

Geographical reasons, along with a whole range of push and pull factors, are behind the growing importance of African emigration to the European continent. However, and in addition, in the case of African immigration, the status of former colonies of some countries has given rise to an especially-close relationship.

Within the framework of the Barcelona Process a rapprochement between the EU and the countries of the Mediterranean was initiated, including in immigration matters. Subsequently, immigration became one of the fundamental axes of the European Neighbourhood Policy.

In matters of **illegal immigration**, the conclusions of the presidency of the European Council of Brussels of 15 and 16 December 2005 focussed the attention on Africa and the Mediterranean, in an attempt to intensify dialogue with the ACP countries and to firm up collaboration with our Mediterranean partners, seeking methods of increasing cooperation between member states in the control of external borders. In particular, it was concluded that there is a need to participate jointly in studying the viability of the Mediterranean network of coastal patrols and the Mediterranean system of control and to employ all the existing frameworks of cooperation in order to prevent and combat illegal immigration, to increase the capacity for improved management of immigration and to study the best way of proceeding to the exchange of information on legal migration and labour possibilities, for example, by establishing migration profiles.

The European Neighbourhood Policy establishes the framework to create a system of joint management of borders. The creation of joint Hispanic-Moroccan border patrols is an example, but once again this is a bilateral action<sup>16</sup>. In May of 2006 a project financed jointly by Spain and the European Commission was launched for cooperation between Spain and Mauritania in the patrolling of the Mauritanian coast. This is the first case of the Commission financing an operation carried out entirely in the territory of a non-member country.

From the perspective of African countries it is hard to accept that in recent months its capitals are appearing among European diplomatic objectives, their main objective being

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<sup>16</sup> In 2004 the patrolling of Spanish coasts by joint Hispanic-Moroccan patrols was set in motion. This initiative is the result of bilateral agreements signed between both countries in matters of immigration. The patrols are composed of troops belonging to the Maritime Service of the Civil Guard and by members of the Royal Moroccan Police.

the signing of readmission agreements, which constitutes a very unpopular measure among its citizens (Sorroza, 2006, p. 4).

In the last months, two new impulses have made in this aspects. The Sea Horse Programme, presented in Madrid in March 2006, aims at combating illegal immigration. The main objective is to strengthen co-operation between the countries of origin, transit and destination of illegal immigrants to more effectively fight human trafficking at the grassroots level. Running from 2006-2008, Sea Horse, which forms part of the European Migratory Routes initiative, is being run jointly by Spain, Morocco, Mauritania, Cape Verde, Senegal, Italy, Germany, Portugal, France, and Belgium. In the countries affected by the illegal immigration problem, Sea Horse envisions effective policies to prevent human trafficking, the development of dialogue on migratory questions within the Maghreb and sub-Saharan Africa, and supporting and involving Morocco, Mauritania, Cape Verde and Senegal in fighting the problem.

In a context marked by the intensifying humanitarian crises caused by a constantly increasing flux of irregular sub-Saharan immigrants towards Europe, the Rabat Conference, which was held on July 10 and 11, 2006, aimed to urgently address the different aspects and various phases of the migratory process within a spirit of shared responsibility (Sorroza, 2006). Following the conclusions of the Informal European Summit in Hampton Court in October 2005 and of the Brussels European Council in December 2005, this meeting sought to promote an innovative partnership which would draw the lines of a future framework of co-operation between Europe and Africa.

With regard to **legal immigration**, the Commission will study the possibility of establishing with interested neighbouring countries an appropriate scheme for publicising methods of legal migration. This scheme will have as its main objective the collecting of information on employment offers and on available skills in Mediterranean partners in a structured manner. It should also contribute towards keeping partners informed of employment opportunities in Europe and on the steps that should be taken to request

employment in the member states of the EU. All of this must respect the principle of community preference, since, obviously, maximum advantage should be taken of labour resources available within the EU (European Commission, 2005b).

## **5. Moroccan case study**

Given that the European neighbourhood policy does not have a legal basis permitting the imposition of applicable legislation for both regions, all that has been considered up to now with the countries of the Mediterranean has been a bilateral approach in matters of joint management of immigration, particularly of an irregular nature. Through the Association Agreements, indicative programs, strategy papers<sup>17</sup> and action plans<sup>18</sup> the provisions on immigration that have been adopted bilaterally can be analysed. In particular, we will analyze the case of Morocco, being a Mediterranean country with which a readmission agreement is being negotiated, the most advanced step taken up to now in matters of immigration and coordination with non-member countries. This is a State to which the European Commission has given special attention, is very close to Spain and is one of the only two Mediterranean countries that figure in the statistics of the ten main countries of origin of foreign citizens apprehended due to being illegally present in the EU 25, in 2003-2005 (European Commission 2006c). The other country is Algeria, but it has not yet developed its action plan. It has only the 2005-2006 national indicative programme specifying methods of police action for the management and control of organized crime, the fight against terrorism and management of migratory flows. The focus of security and the police is not the only one to consider when we look at management of migrations between Mediterranean and European countries.

The Euro-Mediterranean Agreements set out the basis for the subsequent development of the action plans and the national indicative programs. The Euro-Mediterranean Association

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<sup>17</sup> These are the basis of the EU aid programs with non-member countries.

<sup>18</sup> This is a fundamental instrument for progress in the joint management of migrations.

Agreement signed with Morocco deals at Title IV, Chapters I and II with aspects relating to workers and social matters. In the first case, it is agreed to grant workers originating in said country equal treatment, without discrimination by reason of nationality and offering them the same benefits that community workers enjoy (vis-à-vis social security, subsidies for illness, accident, retirement, death, unemployment, maternity, etc.). In turn, the dialogue in cultural and social matters is an attempt to establish the basis for the promotion of social integration of this collective in the community territory, attending especially to the living conditions of the workers already in the EU and dealing with the problem of illegal immigration<sup>19</sup>.

These contents of a general nature have been further developed in the action plan and, more recently, in the Strategy Paper 2002-2006. Both documents make clear the importance of exchanges of information on legal migratory flows between the parties affected, as well as the need to carry out an information campaign in Morocco on the possibilities of emigrating to the member states and the risks that illegal migration implies.

In turn, the National Indicative Program 2002-04 indicates the need to create a legal immigrant entrance quota system based on the demand of the community countries, which would include the necessary technical assistance and would be supported by a work programme for the training of emigrants<sup>20</sup>, although there has not up to now been any progress in this respect.

There is also a plan to create a support service for emigrants that would guarantee the respect of their fundamental rights and that would be supported by permanent dialogue between countries of origin and destination.

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<sup>19</sup> It is important to highlight the intended role of the Agreement in the promotion of equality in Moroccan territory between man and women, the preparation of programs promoting mutual awareness of cultures and civilizations, or the protection of women and children as the best method for integration of this collective in community territory.

<sup>20</sup> This programme would be financed by the Commission. The aim is that the costs of said qualification be effectively reclaimed vis-à-vis the European labour market.

From the standpoint of illegal migration, it is worth highlighting the need to improve dialogue and the exchange of information as one of the strategies for on-going control of illegal immigration. But these measures should be accompanied by better management of borders, through the formation of the personnel responsible for patrolling them and with the necessary investment to more efficiently equip borders. In relation to this point, the advances in matters of agreement for readmission and harmonization of the aspects relating to visas accepted in each one of the states are especially significant.

In relation to readmission and return, the EU's current priority is to finalize the negotiation of a readmission agreement. The fundamental problem resides in the acceptance, on the part of the Moroccan authorities, of citizens of other non-member countries that have accessed community territory through Moroccan territory, and likewise the form of evidence that they should carry.

All such progress in the matters mentioned could serve as guidelines for behaviour for the remainder of the countries of the Mediterranean basin and may even serve for those that have not yet developed their action plan<sup>21</sup> to see the community actions that would arise from the measures described previously.

## **6. Policy recommendations**

Despite the progress that has been made in recent years in matters of Justice and Home Affairs, certain obstacles still remain to deepening the comunitarization of immigration

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<sup>21</sup> To date, Algeria, Egypt, Lebanon and Syria have not yet drawn up their respective Action Plans.

policy. Important obstacles include a lack of negotiating flexibility on the part of the representatives of the member states in the Council, who are restricted because each country has its own national rules in immigration matters, and the application of the subsidiarity principle.

In some matters, like immigration, Governments prefer national to supranational policies, and are evidently reluctant to transfer greater authority to community institutions (Stalker, 2002). In legal immigration, the degree of harmonization is reduced to the lowest common denominator, for which reason it even seems opportune to question the existence of any added value in joint action at a European level in this area. In any case, given the manifest resistance on the part of the member states, the “step by step” strategy should be continued (European Commission, 2003a, p. 4) and an exploration made of the viability of deepening the management of legal flows with non-member countries in a differentiated manner, particularly with the Mediterranean countries.

It is a function of the Commission to show that the external dimension of Justice and Home Affairs will help to create a European Area of Freedom, Security and Justice (AFSJ) and to attain the political objectives of EU foreign policy.

As a way of progressing towards its objective to create an AFSJ, the EU could facilitate the application of reinforced cooperation in specific areas. The Treaty of Prüm or the Schengen III Treaty serve as examples here, having as their purpose the deepening of trans-border cooperation in the fight against terrorism, criminality and illegal migration, and signed by Belgium, Germany, France, Luxembourg, Netherlands, Spain and Austria on May 27, 2006. This Treaty allows progress to be made in police cooperation and the fight against terrorism, in order to advance with greater speed in these areas, reinforcing fundamentally the exchange of information. Reinforced cooperation can be an important method for intensifying cooperation between the countries of the Mediterranean and the EU and they allow greater facilities to implement measures such as joint coastal patrols.

In particular, while the future of the European Constitution is unclear, initiatives from those country groups that wish to advance more quickly could be incorporated, given the difficulties that persist in relation to the deepening of migratory policies<sup>22</sup>.

From an institutional standpoint, there is a compartmentalisation in matters of immigration that complicates the adoption of a global approach in Europe. Competences are shared among the Directorate-Generals of Employment, Social Affairs and Equal Opportunities, Development and Humanitarian Aid, External Relations, European Neighbourhood Policy and Justice, Freedom and Security. Given the scope and size of migratory questions, it could be opportune to create a specific Directorate-General for migrations.

In the chapter on illegal immigration, the most efficient instruments have not been fully set in motion. The member states are paying most of the cost of the fight against illegal immigration. In addition to improving the functioning of the Frontex Agency and expanding its competences, it will be necessary to increase the efficacy of the Visa Information System (VIS) and of the Schengen Information System (SIS II). And from a budgetary standpoint, an improvement is needed in the resources to fight against illegal immigration, as well as expulsion. To a large extent, the appropriate steps are beginning to be taken to reach the priority objectives for the EU in respect to immigration. A Framework Program of solidarity and management of migratory flows has been established in the forthcoming Financial Perspectives, which groups together a coherent series of proposals whose purpose is to properly reinforce the Area of Freedom, Security and Justice. Each of

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<sup>22</sup> With the European Constitution, the old structure of pillars of the EU disappears, at least formally, and the community method is extended to the whole AFSJ: “*The Commission is pleased to see that the draft Constitution:*

– *introduces a large number of reforms which improve the way the Union works: especially, it extends the scope of the codecision procedure for the adoption of European laws (...); it replaces the complicated definition of what constitutes a qualified majority, as decided by the Treaty of Nice, with the simpler and more democratic formula of the double majority; it enshrines the Commission’s right of legislative initiative and the principle of the interinstitutional programming of the Union’s work; (...) it strengthens arrangements for monitoring compliance with the principles of subsidiarity and proportionality, and enhances the role of national parliaments in the European integration process;*

– *strengthens the Union’s means of action: in particular, it extends the Community method to the entire area of freedom, security and justice; (...)*”. European Commission, 2003b, pp. 2-3.

the specific objectives is supported by a Framework Program that replaces the large number of budgetary lines previously managed by the Commission, establishes the necessary coherence among the opportune interventions in each area of action and links political objectives to available resources.

Similarly, more financing should be given to those projects designed to endow resources to countries of origin. A share of the EU financial instrument for external relations will be devoted to migration-related issues, in particular through an allocation of up to 3% of the ENPI and comparable efforts in respect of other relevant financial instruments (European Commission, 2006c).

European policies in matters of immigration should be exemplary, not only in relation to readmission and expulsion. It would be advisable to continue with the information campaigns on the methods and possibilities for legal emigration, to improve administrative capacities in the countries of origin and to facilitate processes of legal migration on a bilateral basis. This has been possible, to a certain extent, through the promotion of the Aeneas program, which is giving good results (European Commission, 2006a)<sup>23</sup>. Also it will be important to adjust the dissuasive sanctions for the mafias that traffic with persons and to analyze the possible application of community legal measures that properly discourage the decision to emigrate, if it is not through the established legal channels.

The system of mutual information for the adoption of national measures on legal migration should be, after due analysis and if appropriate, at the heart of the EU (Council or Commission), allowing member states the option of applying a safeguard clause. Through this system, approval would be given for the adoption of such decisions provided that the

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<sup>23</sup> The evaluation of the policies of the EU in matters of freedom, security and justice (contained in European Commission 2006a) responds to the forecast contained in the action plan further developing the Hague Programme, and has as an aim to determine and to continue the efficacy of the actions included in the programme.

labour market and the economy of another member state could not be negatively affected by such decisions.

If there is an especially appropriate framework for the management of immigration, it is that contributed by the countries of the Mediterranean. We should take advantage of the potential for close cooperation and further develop the already existing instruments. Diplomatic action, indispensable for the conclusion of readmission agreements, is fundamental<sup>24</sup>, as is financing. The Mediterranean countries need resources to strengthen borders, which requires not only technical assistance (which is under way through various training programs) but also investments in equipment and human resources.

The role that the association agreements and the action plans of the ENP play, in part thanks to the dialogue established in the sub-committees and working parties that have been created, is fundamental and should be strengthened. Wherever possible, the part of the provisions relating to legal migration and integration should be further developed, beginning, if possible, with its implementation with Morocco.

Bilateral policies should continue to be developed. Strictly within the existing political and institutional framework (which permits flexible intra-regional initiatives) and avoiding possible duplication, advantage could be taken of the experience of the “5+5” informal ministerial dialogue already begun among the countries of the western Mediterranean<sup>25</sup>, in relation to the general framework of the Barcelona Process. On the same lines, advantage

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<sup>24</sup> Morocco’s wariness echoes the reservations expressed back in 2000 by the Euro-Mediterranean Human Rights Network (EMHRN), which was afraid that the principle of readmission forces third countries to strengthen border controls and tighten visa regimes and thus become buffer zones for Europe in relation to migrants and asylum seekers. The EMHRN also highlighted its concerns about the fate of those sent back under the agreements since very little is known about the South and East Mediterranean countries’ standards of protection of political refugees. Six years later these reservations and concerns have not gone away. When Spain decided to immediately draw up an ‘Africa Plan’ to tackle the influx of immigrants into the Canaries, it was with the primary objective of negotiating agreements on the readmission of illegal immigrants with six new countries (Senegal, Gambia, Cape Verde, Guinea Bissau, Guinea and Niger). See Rodier 2006, p. 17.

<sup>25</sup> The “5+5 Dialogue” is an instrument of informal dialogue of the Barcelona Process created in the meeting held in Algeria in 1991 grouping together Algeria, Spain, France, Italy, Libya, Malta, Moroccan, Mauritania, Portugal and Tunisia.

could be taken of the Mediterranean Forum (FOROMED), which constitutes an area of dialogue and coordination between Spain, Portugal, Italy, France, Malta, Greece, Turkey, Moroccan, Tunisia, Algeria and Egypt, and that serves as laboratory of ideas of the Barcelona Process<sup>26</sup>.

Transversally, it would be advisable to seek structural responses to immigration. In this focus, the Euro-Mediterranean partnership should be the priority from the standpoint of joint regional management. And at the same time, dialogue should be promoted between the Mediterranean countries and its southern neighbours in Africa, which are countries of origin of immigration, with the aim of devising strategies for managing migratory flows more efficiently.

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<sup>26</sup> Foromed was created in 1994 in Alexandria (Egypt).

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