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## From Lampedusa to the Post-Stockholm Programme: Difficult European solidarity in the field of migration

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Solidarity is a founding principle of the European migration policy. To hold true, Member States must be faithful to their common commitment to European migration rules and implement fair burden sharing of the costs attached to border controls. However, solidarity among Member States appears altogether fragile and under threat, a situation that could jeopardise the founding principle of the free movement of persons in the European Union's space. The recent solidarity crisis among Member States was solved by an increased externalisation of the European migration policy. Consequently, for the EU to live up to its values, it will have to prove itself generous towards third countries.

mostly been relegated to far-right parties that could be tempted to renationalise the European immigration policy. Moreover after the tragic events off the coast of Lampedusa, where 360 people drowned with their ship attempting to cross over to Italy, the European migration policy was accused of being non-existent, inefficient or at least of **showing insufficient solidarity** towards some European Member States.

The Task Force Mediterranean was set up following the Justice and Home Affairs Council of 7-8 October 2013. Chaired by the European Commission, it made concrete proposals on December 3<sup>rd</sup> intending to prevent such tragedies from happening ever again, that were well-received by the December European Council.<sup>1</sup> These proposals will also be discussed during the preparation of the post-Stockholm Programme, which should be adopted by June 2014 and should provide the European Union with a roadmap in terms of Justice, Freedom and Security for 2015-2020. Considering the Task Force's conclusions, what type of solidarity

As the European Union prepares for the next European parliamentary election of May 2014, any talk of migration issues appears to have

is likely to develop within the framework of the post-Stockholm Programme?

## 1. SOLIDARITY AS A FOUNDING PRINCIPLE OF THE EUROPEAN MIGRATION POLICY

### *1.1. Evolution of the European migration policy*

In spite of a large diversity of migration flows<sup>2</sup> and Member State policies, the European common asylum and immigration policy has experienced huge developments in the last thirty years. Absent from the Rome Treaty and from the Single European Act, it first developed in a totally intergovernmental process within the framework of the 1985 Schengen convention. Then, with the 1992 Maastricht treaty, it was introduced within the third intergovernmental pillar. After the Amsterdam treaty, it has progressively become a common policy and, since the Lisbon Treaty, the ordinary legislative procedure (art. 77 to 79 TFEU) applies to it. The European migration policy, which counts among the EU shared competencies (Art. 4 TFEU) now includes border controls, asylum, legal immigration (family and labour immigration), as well as integration of third-country nationals. Three main factors may help us to understand these evolutions: 1) improvements in the free movement of persons within the European space made control of its borders an issue of common interest, as all kinds of traffic could benefit from the removal of internal borders; 2) the strain felt by Member States tackling the complexity of transnational migration phenomena on their own; and 3) the fact that immigrants mostly focus on a couple of specific Member States made solidarity between Member States with borders doubling as EU external borders and the main EU end-destination countries necessary.

Solidarity among European Member States can be understood in two ways. It's because Member States are faithful to their common

commitment to reinforce European external borders that they can accept free movement of persons within the European space (Art. 67 TFEU). But for the Member States that experience the largest migration flows, solidarity also means a fair burden sharing of the costs attached to border controls (Art. 80 TFEU). In 2013, Italy and Malta received €92 and €23 million respectively from the External Borders, Return, and Refugee funds. For 2014-2020, two new funds – the “Asylum and Migration Fund” (€3.1 billion), and the “Internal Security Fund” (€3.7 billion) – are in charge of burden sharing among Member States.

### *1.2. Various instruments of migration solidarity have developed over the last thirty years.*

**Most of them were developed to be used in the field of border controls. The 2006 Schengen code** aims at defining common conditions and modalities of border checks at the external and internal borders of the EU. The **2009 Visa Code** sets out two lists of countries whose nationals shall – or not – buy a visa to be allowed to enter the Schengen Area. It aims at defining common conditions and procedures for issuing visas, which should contribute to harmonising the power of attraction of Member States to third-country nationals.

In order to enhance the efficiency of border controls, European Member States also developed **several common information systems**. The Schengen Information System (SIS) set up in 1985 and renewed in April 2013 (SIS-II) allows the sharing of information about people whose entry within the Schengen Area was refused, either because they are considered as a danger to the public order and national security, or because they were deported after an irregular stay in a member state of the Schengen Area. The Visa Information System (VIS) established in 2004 allows visa applications to be traced in order to fight “visa shopping”, and “to

contribute to the prevention of threats to the internal security of any of the Member States". Consequently, the amount of data collected by VIS is significant. The EU Border Surveillance Initiative (EUROSUR) which came into force in December 2013 allows Member States to exchange operational information and to cooperate between themselves and with the FRONTEX Agency to reduce the number of migrants entering the EU illegally and to prevent cross-border criminality. Ultimately, the project of a Smart Border Package, which has been under discussion since February 2013, aims at using new technology in order to improve border control efficiency. A reliable and quick system of registration could simplify border checks for people who frequently come into the EU, and an enter/exit system could, among other things, allow the identification of people who overstay their welcome in the EU after their visa has expired.

Moreover, several operational mechanisms support Member States in their management of border checks: the FRONTEX Agency, set up in 2005, supports Member States in their naval, air and land-based common external operations. Regarding visa applications, some agreements between Member States could allow those with small diplomatic networks to use the visa facilities of Member States that have larger diplomatic networks.

Thus, European solidarity in the field of border checks is well-developed.

**In the field of asylum,** the Dublin Regulation sets out rules to designate the Member State in charge of examining an asylum application. This Member State might not be the point of original entry into European space in cases of family reunification for instance. But the Dublin Regulation tends to put responsibility on the Member State which played the biggest role in the entry of a migrant. However, the renewed Dublin Regulation provides a rapid alert

mechanism which makes it easier to identify Member States (like Greece, potentially) whose national asylum system proves unsatisfying, and organises solidarity measures in favour of these Member States. Moreover, the 2001 "temporary protection directive" aims at ensuring the balanced distribution of asylum seekers among Member States when their flow increases dramatically, for example during conflicts.

Operational mechanisms of solidarity also developed in the field of asylum. The recording of migrants' fingerprints within the EURODAC system makes it possible to trace them within the EU and helps Member States in their fight against "Asylum shopping". Consequently, asylum seekers might be transferred back to the Member State that was first designated to examine their claim. The European Asylum Support Office (EASO), which started operating in Malta in June 2011 also aims at supporting concrete cooperation among Member States, such as sharing information on the situation of human rights in the countries of origin, sending technical support teams to Member States facing difficulties, or promoting the transfer of asylum seekers.

**Eventually, in the field of legal immigration,** various directives (on long-term residency, researchers or highly skilled workers (see the "blue card directive")) tend to harmonise the conditions of entry and residence of these migrants. These rules are less developed since Member States competing with each other to attract certain categories of third-country workers are reluctant to see their competitiveness fully harmonised.

Regarding all the existing solidarity measures, it would thus be unfair to say that a European migration policy does not exist.

## 2. SOLIDARITY AMONG MEMBER STATES APPEARS ALTOGETHER FRAGILE AND UNDER THREAT

Whatever the common European migration rules are, Member States always remain the authority of last resort when deciding whether or not to allow the entry or issuance of a residence permit to third-country nationals. However, their national policies vary a lot and this has an impact on their appeal for migrants. In 2012, while Greece provided international protection to only 0.9% of its asylum seekers in first instance, Malta provided international protection (subsidiary protection) to 90.1% of them.<sup>3</sup> Moreover, the European immigration policy has a variable geometry. UK, Ireland and Denmark benefit from derogatory clauses, allowing them to choose to take part – or not – in some elements of this policy. The lack of solidarity is also reflected in the fact that European rules do not provide for an automatic recognition of international protection allowed by one Member State in another one.<sup>4</sup> In 2012, a European pilot relocation programme helped with the relocation of 105 protected people in Malta to another Member State. However, another 307 individuals were resettled in the United States. Thus, in this particular instance, American solidarity vis-à-vis Malta proved greater than European internal solidarity.

Moreover, **several European provisions designed to enhance solidarity among Member States are not or rarely used and cannot be developed.** Very few common visa issuance centres have been created (in Chisinau, Moldavia and in Praia, Cape Verde) and their record appears disappointing because Member States are very reluctant to share their sovereign rights in this field. Regarding asylum, the 2001 directive on temporary protection has never been implemented although the migration flows linked to the Arab Spring and the Syrian crisis would fully justify resorting to this directive.<sup>5</sup> Moreover, although the Dublin/EURODAC

system and the EASO are supposed to organise transfers of asylum seekers between Member States, these transfers only account for 1.7% of asylum applications in France.<sup>6</sup> The cost and administrative complexity of this mechanism explain that Member States gave up on using it. Moreover, in 2011, the European Court of Human Rights and the European Court of Justice banned the transfer of asylum seekers to Greece, considering that the asylum procedures and reception conditions were inhuman and the treatment or punishments degrading.<sup>7</sup> Another example of rarely used provisions in the field of legal immigration is the blue card directive. Because Member States fight each other to attract highly skilled workers, they only agreed on facultative provisions aiming to harmonise the reception conditions of these types of migrants. The lack of European solidarity in the field of legal migration, which affects very sensitive issues such as employment, is also reflected in the fact that the European Commission had to withdraw the idea of a European immigration code aiming at organising any kind of legal migration. As a consequence, legal immigrants are still confronted with very fragmented statuses (researchers, seasonal workers...) and the rights they enjoy might change significantly according to their status.

Another telling sign of the lack of solidarity between Member States is the fact that **they are not always fair in the implementation of common rules.** In practice, the Dublin/EURODAC system doesn't work properly because some Member States (Greece, Italy, Malta) are slow to register or do not register the asylum seekers' fingerprints, allowing the latter to leave the territory and seek asylum in another Member State. During the Arab Spring, in early 2011, Italy, considering that the EU wasn't being supportive enough while it faced an influx of 28.000 migrants, unilaterally decided on April 5<sup>th</sup> to grant all of

them 6-month humanitarian permissions to stay and move freely within the European space, possibly infringing the loyal cooperation principle. Consequently, France, fearing an increased flow of migrants, reintroduced border checks vis-à-vis Italy.<sup>8</sup> However, the flow of migrants did not account for more than 400 people. Thereby, France probably infringed the proportionality principle.

**This Franco-Italian dispute, which shows a lack of solidarity among Member States, could jeopardise the principle of the free movement of persons within the European space**, even though it is a fundamental principle of European integration. In reaction to this, the Schengen Area governance reform which was adopted on October 8<sup>th</sup> 2013<sup>9</sup> added new criteria. Beyond threats to public order and internal security, Member States are allowed to reintroduce internal border checks within the Schengen Area in case a Member State encounters serious and persistent deficiencies in controlling the external borders of the Schengen Area. Hence, as the liberalisation of the movement of persons made the development of European solidarity necessary for the control of external borders, failing to control them might bring about the reinstatement of internal borders within the Schengen Area.

### 3. WAS THE RECENT SOLIDARITY CRISIS AMONG MEMBER STATES SOLVED BY THE EXTERNALISATION OF THE EUROPEAN MIGRATION POLICY?

After the tragic sinking of boats off the coasts of Lampedusa and Malta, in October 2013, calls were made to enhance European solidarity and alleviate the burden taken on by Italy and Malta.

#### *3.1. Internal solidarity is flawed*

The Commission decided to give €30 million to Italy and €20 million to other Member States experiencing the largest flows of migrants.

However, the Task Force stresses that solidarity among Member States – especially *via* FRONTEX joint operations, EASO support and relocation of protected people in Italy or Malta – should go hand in hand with the full acceptance of their responsibility in the control of the EU external borders.

Moreover, a new reform of the Dublin Regulation, including a system to distribute asylum seekers was discussed. However, considering that, in 2012, Italy and Malta received 15.700 and 2.000 asylum applications respectively, while Germany received 77.500 of them and France 60.500,<sup>10</sup> heads of states and governments refused to remove the responsibility of controlling the EU external borders from peripheral Member States. Consequently, they also refused to modify the Dublin Regulation and to implement a new method of distribution of asylum seekers among Member States.

During the European Council of 24<sup>th</sup> and 25<sup>th</sup> October 2013, Member States showed solidarity in two fields: “the priority of prevention and protection” and “the principle of solidarity and of a fair sharing of responsibilities”. These orientations were developed in the conclusions of the Task Force Mediterranean,<sup>11</sup> and were agreed on 19<sup>th</sup> and 20<sup>th</sup> December 2013 at the European Council.

#### *3.2. Preventing irregular immigration and protecting the EU from it?*

In order to improve the control of the migration flows, the European Council and the Task Force propose intensifying the fight against human smuggling and human trafficking and increasing the effectiveness of return policies.

To this end, Europol will enhance its cooperation with other European agencies fighting against human trafficking and organised crime (FRONTEX, EASO and Interpol), and

with Member States. To achieve this, the Task Force proposes that FRONTEX and Europol rapidly sign operational agreements allowing exchange of personal data. Moreover, the EU supports capacity building programs in third countries mostly concerned with human trafficking and organised crime, especially in Africa. Besides, there is talk of using certain instruments of foreign and defense policy in order to fight criminal organisations which operate in third countries. Eventually, the European Union aims at enhancing European texts that organise sanctions against people supporting entry transit and irregular stay (November 2002 directive). However, one should be careful that exchanges of personal data do not infringe on migrants' fundamental rights, and that sanctions, which are necessary to make the fight against criminal networks credible, do not lead to the incrimination of humanitarian assistance. Furthermore, one must be aware that, without smugglers, most of people in need of international protection could not reach Europe, since it is very difficult for them to get visas from European Member States. Therefore, intensifying the fight against migrant smuggling and trafficking could also reduce the access of migrants to European asylum procedures, unless more visas are issued.

The EU will also develop more **readmission agreements** according to which third countries commit themselves to readmitting their nationals, third-country citizens or stateless people who pass through their territory. Since 1999, the European Union negotiated 18 readmission agreements with third countries such as the Russian Federation, Ukraine, Pakistan, Sri Lanka, Balkan countries and Cape Verde. 13 of these agreements have been applied.

In order to help these countries fight irregular immigration, the EU can support the development of their border control systems.

However, the EU appears more interested in these agreements than third countries that would not benefit from migrants' remittances anymore and would have to pay for their readmission. Without counterparts such as visa facilitation or increase in development aid, some of these agreements, which are sometimes under discussion for years (with Morocco for instance) have not been approved so far. Above all, the asylum systems of third countries do not always provide asylum seekers with the same guarantees of their fundamental rights than those of the Member States.<sup>12</sup> For instance, Ukraine, having signed a readmission agreement with the EU in 2007, tried to send people who had been recognised as refugees by the UNHCR back to Russia.<sup>13</sup> Moreover, some readmission agreements were signed with countries – such as Sri Lanka in 2005, or Pakistan in 2010 – where persecutions on grounds of religion, political opinions or ethnic belonging are not a thing of the past.

Adopting the same approach, Member States within the European Council agreed to enhance the FRONTEX activities in the Mediterranean and off the South-Eastern borders of the EU, and on promoting cooperation with other agencies such as the European Maritime Safety Agency and the European Union Satellite Centre. The implementation since December 2013 of the European Border Surveillance System will allow an extension to Libya, then Morocco and Egypt of a Sea Horse Network program organising FRONTEX cooperation with third countries in order to enhance detection of irregular trans-border movements. The detection of small boats carrying irregular immigrants should be improved from their point of departure. Every ship will be reminded of its international duty to provide rescue at sea to migrants in distress, while guarantying that it won't be sanctioned and that it will be able to quickly unload people who have been saved.

The choice was made to intervene as far as possible off the European shores in order to reduce (as much as possible) the ability of migrants to reach EU territory. However, this could impede the implementation of the 2008 return directive, which applies only to third-country nationals staying irregularly “on the territory of a member state”. But this directive, although heavily criticized,<sup>14</sup> provides common norms and procedures that protect the fundamental rights of people from third countries staying irregularly in a Member State. Member States shall for instance take into account the child’s superior interest, the family unity and the returnee’s state of health, and they shall also respect the principle of non-deportation.

Stopping migrants as far as possible from the EU might contribute to solving the problem of sharing the burden of asylum seekers and the reception of immigrants among Member States, as Italy, Malta, and Greece but also France and Germany would receive a reduced number of these migrants.

As a matter of fact, externalisation of the European migration policy could prevent Member States from squabbling over the burden sharing of immigrants, and keep temptations of reintroducing **internal** borders within the Schengen Area at bay.

However, will this externalisation of the EU migration policy, which moves the burden on to third countries receiving immigrants compensate for the weakness of intra-European solidarity? Isn’t this externalisation at risk of being to the detriment of the migrants’ fundamental rights?

### *3.3. Solidarity and fair sharing of responsibilities with third countries?*

In order to maintain a high level of fundamental rights protection of migrants in general, and asylum seekers more specifically, the **European**

**Council and the Task Force Mediterranean** proposes enhancing EU cooperation with third countries in the field of development as well as in that of asylum. This requires a lot of work.

**An extensive cooperation programme with third countries:** in view of short and mid-term actions to limit migrant flows, the EU’s declared goal is to discourage illegal migrants from setting off on perilous journeys. Hence the EU is planning to support third countries’ **border control infrastructures**, particularly in the south and east of the Mediterranean. Information campaigns about the dangers linked to illegal immigration will be developed. Moreover, work to strengthen the capacities of these countries, notably via the provision of European Liaison Offices (ILO), is due to be supported, notably by Turkey and Morocco. A new generation of Euromed police programmes are due to be implemented this year and the West African Police Information System (WAPIS) programme led by Interpol is due to be strengthened. FRONTEX’s Atlantic Seahorse Cooperation Network programme with third countries which presently involves Spain, Portugal, Senegal, Mauritania, Cape Verde and Morocco in the fight against illegal immigration, is due to be extended to Libya and Egypt. Mobility partnerships between the EU and third countries like Tunisia, Jordan, Egypt, Libya, Algeria and Lebanon, which aim to set up legal migration in exchange for the latter countries’ commitment to countering illegal immigration, are also due to be finalised or negotiated. However, the Task Force Mediterranean highlights that for the effective implementation of this cooperation the goodwill of third countries and the necessary consideration of their expectations by the EU are required.

**In terms of asylum, regional protection programmes** financed by the EU aim to help third countries improving their local

infrastructures and their administrative and legal capabilities to host asylum seekers and the processing of their requests. Some programmes have already been established in North Africa (with Libya, Tunisia and Egypt) and in the Horn of Africa (Kenya and Djibouti). They are due to be enhanced by the inclusion of the countries of the Sahel. In September 2013, the EU, encompassing the Commission and the Member States, made €1.8 billion available in support of 7 million people affected by the Syrian conflict. This seemed to spearhead emergency reconstruction aid in support of this region. More specifically, the European Commission is elaborating a regional protection programme to include Lebanon, Jordan and Iraq to address the consequences of the conflict in Syria and to limit the risks associated with the destabilisation of the neighbouring countries which at present are hosting 2.3 million refugees. However, the experience of the regional protection programmes has shown that when launched in countries that are not exemplary in terms of Human Rights' protection (Ukraine, Belarus) they are not always implemented in the spirit of protecting the fundamental rights that they are supposed to disseminate.

The Task Force and the European Council of December 2013 also highlighted the importance of **resettlement programmes**. These programmes aim to offer people who have been recognised as refugees outside of Europe by the UN Refugee Agency the possibility of settling down legally in a Member State in the long term. The challenges seem enormous when we realise that in 2012, only 4.500 people<sup>15</sup> benefited from resettlement in a Member State and, in December 2013, the European Union had only taken in 12.340 people fleeing the Syrian conflict (i.e. 0.54% of the total number of people displaced by this conflict) mainly for humanitarian reasons, and not based on conventional protection.<sup>16</sup>

In the first half of 2014 the Commission is planning to organise a conference with the HCR on the resettlement of the most vulnerable populations. Undoubtedly, the European Union, which took 17% of all refugees in the world in 2012,<sup>17</sup> would then have to fully accept its global share of processing and taking in asylum seekers.

Moreover in view of the **European strategy that will replace the Stockholm Programme (2010-2014)**, the Commission will make proposals aiming to define a joint response to the granting of humanitarian visas to people seeking protection. This humanitarian protection might be less of a constraint for Member States than the existing conventional and subsidiary protection, since the rights offered to people benefiting from it would in all likelihood be more precarious.<sup>18</sup> The Task Force is also planning a feasibility study on the possibility of processing asylum claims according to the joint European procedures, but outside of the EU. The EU's selection of people who really need international protection would then be undertaken as close to the zones of conflict as possible. The externalised application of European procedures and criteria would guarantee the respect of the asylum seekers' fundamental rights during the processing of their request. But how would the funding of their resettlement in Europe be organised should they be granted the status of refugees? What about the risk of these claims being processed in a hurry in order to reduce these costs?

Beyond this, **in order to address the deep causes of these flows** like Human Rights infringements, conflicts, and lack of economic prospects, the European Council is asking for the appropriate support of the countries of transit and origin thanks to development aid secured as part of the European Neighbourhood

Policy in particular, and as part of a global approach to migration.

Hence since 2005 the European Union has been trying to develop a **global approach to migration based on** a triple win: European labour market requirements would be satisfied, migrants would benefit from a more stable status and development, and the country of origin would be given support. The organisation of legal immigration should therefore help reduce illegal migration pressure.

Since 2010, a European immigration portal provides information on Member States' labour market requirements. Various directives on researchers, students and highly qualified staff aim to secure certain rights linked to the residence of these people such as an improved recognition of their diplomas, and fostering circular migration.

A directive on seasonal workers that is under discussion at present should also help to develop circular migration.

During the period 2014-2020, European development aid for migration will notably pass via a new programme named Euromed Migration which will represent 7% of the thematic actions in the Development Cooperation Instrument (DCI), i.e. €1.37 billion. It will be directed in particular towards the development of professional and university training adapted to the requirements of the countries of origin. Moreover, measures will be taken to foster migrant remittances, which represent more than three times the official figures for development aid (\$406 billion in migrant remittances against \$126 billion in world ODA in 2012<sup>19</sup>). Mobility partnerships are also becoming a part of this global approach to migration.

### *3.4. How can the European Union guarantee the implementation of its cooperation programme with third countries?*

Achieving the stated goal of improving the control of migration flows in the respect of fundamental rights will require major support from third countries' asylum and border control systems.

**Should aid be conditioned according to third countries' results in the fight to counter illegal immigration?** European financial support, which is supposed to help reintegrating migrants in their countries of origin, is sometimes seen by the migrants as a pull factor and the conditions governing their allocation could be better regulated.

However as far as border control negotiations are concerned, the EU is not always in a position of strength vis-à-vis third countries, which do not see the urgency of controlling borders as much as the EU does, since they benefit from migrant remittances and have to bear the financial burden of their readmission.

The readmission agreements with Morocco, Algeria and China are struggling to become a reality because these countries deem the incentives offered by the EU inadequate. The agreements with Ukraine, Russia and Turkey were completed only once the EU had committed to negotiate a relaxation in their visa regimes on their request.<sup>20</sup> In an extremely weakened state like Libya, which has many other concerns than its borders, a suspension of European aid due to a lack of efficacy in its border controls could be counterproductive, since Libya will not invest alone in borders checks.

In view of the extension of the Seahorse Mediterranean Maritime Surveillance Programme, the Task Force notes that it will be

necessary to “convince” Tunisia, Algeria and Egypt to take part in this network. Conditioning aid may meet limited success, except in an extremely small number of cases.

**If it wants to involve third countries in the fight to counter illegal immigration the European Union will have to pay the price.**

The Task Force Mediterranean has suggested providing development aid in addition to the “Asylum and Migration Fund” and the “Internal Security Fund”. This aid will come in particular from the future neighbourhood instrument (€15.4 billion overall), the EDF (European Development Fund) (€30.2 billion overall) and even from the Stability Instrument (€2.3 billion overall) to help people living in refugee camps. As all of these funds will probably be insufficient, the Task Force is also calling for additional financing from Member States.

**In order for third States to really become involved in the European objectives for the control of migration flows, they must be convinced that their interests have truly been taken on board.** In this regard migration financing should not be mixed up with development aid. The latter should not be used to finance border control infrastructures that do not have any national economic impact.

Moreover, requests from third countries focus on extended legal immigration possibilities to the European Union, notably by the flexible award of visas. These requests will not diminish in the short term since development will not lead – at least at first – to a reduction in migration flows.<sup>21</sup> Furthermore the ageing EU population needs migrants, particularly highly qualified people, in order to maintain its growth prospects.<sup>22</sup> Therefore work to **regulate legal migration flows**, which is cheaper than development aid and border controls, is due to continue. This means strengthening the efficacy of the global approach to migration, which is often perceived as an instrument used

excessively for “selective” immigration in the EU, and improving the perks that migrants and third countries can benefit from.

Research should therefore continue in two specific areas:

- **Highly qualified migrants:** at present Europe’s appetite for highly qualified migrants does not guarantee strong commitment in the fight to counter brain-drains. This is notably reflected in the not extremely binding ethical code of conduct of the “Blue Card” directive. Moreover, Member States do not always implement the optional measures of this directive when they find themselves in competition with each other to attract highly qualified migrants. The same problem appears in the finishing negotiations for a directive on intragroup posting, which will allow international firms to post their employees in various Member States. Member States particularly concerned about controlling migrant entries and promoting competition between the various social systems have encountered great difficulties in harmonising their reception conditions for highly qualified migrants. They will therefore have to overcome their differences to make the rights of these migrants safe across the entire Union and make circular migration more attractive. This would allow the results produced by these migrations to be maximised for the countries of origin, notably via reintegration strategies.<sup>23</sup>
- **Migrant remittance terms, which** represent 9 to 24% of some developing countries’ GDP, should also be improved from the point of view of reducing costs and increasing their impact on development.<sup>24</sup> This would notably mean improving the regulatory framework in order to step up competition between money transfer operators and to limit informal transfers, which are sometimes opaque. It would also

require the development of banking activities in the countries of origin using the country of residence as a base.<sup>25</sup> Finally, it would require the support of financial innovation (e-banking), thereby developing systems to finance work that will help third countries develop.

## CONCLUSION

While preparing for the next European parliamentary elections and discussing migration issues, the European Union will only live up to its values if it does not satisfy itself with reinforcing its border controls and externalising its migration policy. It will be able to ask for solidarity from third countries only if it shows the example of being generous towards them.

This will require supporting them in a more effective and innovative manner with respect to their asylum system and their development process.

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*This Policy Brief is part of the publication series “The Citizen and the European Elections”. The project intends to bring the debate on the European elections closer to the citizens, by focusing on those EU issues that are of particular importance to them.*

## ENDNOTES

- <sup>1</sup> European Commission, Communication from the Commission to the European Parliament and the Council on the work of the task Force Mediterranean, COM(2013) 869 final.
- <sup>2</sup> 77% of the third-country citizens living in the EU stay in Germany, Spain, Italy, the United-Kingdom and France. Cf. Eurostat, European Social Statistics, Edition 2013.
- <sup>3</sup> Eurostat, EU Member States granted protection to more than 100.000 asylum seekers in 2012, Eurostat news release, 96/2013, 18<sup>th</sup> June 2013.
- <sup>4</sup> Cf. Ruling by the Cour nationale du droit d'asile, sections réunies, 31 janvier 2013, affaire Kariye Anshur.
- <sup>5</sup> France 24, « Le nombre des réfugiés syriens dépasse les 2 millions selon l'ONU », 3 septembre 2013, <http://www.france24.com/fr/20130903-syrie-nombre-refugies-syriens-depasse-deux-millions-selon-le-hcr-humanitaire>
- <sup>6</sup> La Cimade, « Le règlement Dublin II et son application en France », 2011, [www.cimade.org](http://www.cimade.org).
- <sup>7</sup> CEDH, 21 janvier 2011, *MSS c/ Belgique et Grèce*, req. no 30696/09 et CJUE, 21 décembre 2011, *N.S. / Secretary of State for the Home Department*, et *M.E. e. a. / Refugee Applications Commissioner Minister for Justice, Equality and Law Reform*, aff. jointes C-411/10 et C-493/10.
- <sup>8</sup> Carrera (Sergio), Guild (Elspeth), Merlin (Massimo), Parkin (Joanna), “Race against Solidarity. The Schengen Regime and the Franco-Italian Affair”, CEPS Paper in Liberty and Security in Europe, April 2011.
- <sup>9</sup> 3260<sup>th</sup> Council meeting, Justice and Home Affairs, 7<sup>th</sup> and 8<sup>th</sup> October 2013, press release.
- <sup>10</sup> Eurostats, The number of asylum applicants registered in the EU27 rose to more than 330.000 in 2012, Eurostatsnewsrelease, 48/2013 – 22<sup>nd</sup> March 2013.
- <sup>11</sup> European Commission, Communication from the Commission to the European Parliament and the Council on the work of the task Force Mediterranean, COM(2013) 869 final.
- <sup>12</sup> Association européenne des droits de l'homme (AEDH), « L'AEDH s'oppose aux accords de réadmission de l'UE », 7 octobre 2013, <http://www.ldh-france.org/L-AEDH-s-oppose-aux-accords-de.html>
- <sup>13</sup> Amnesty International, « Amnesty demande à l'Ukraine de ne pas extraditer un Tchétchène en Russie, 14 janvier 2010 », [www.amnesty.org/fr/news-and-updates/ukraine-must-not-forcibly-extradite-chechen-man-russia-20100114](http://www.amnesty.org/fr/news-and-updates/ukraine-must-not-forcibly-extradite-chechen-man-russia-20100114)
- <sup>14</sup> It was for instance criticised for allowing an extension up to 18 months of the returnee's retention, which may apply also to minors, and to organise the possibility of banning any new entry into the EU for a period of time lasting up to 5 years, which could prove an obstacle to family grouping.
- <sup>15</sup> Eurostat, EU Member States granted protection to more than 100 000 asylum seekers in 2012, Eurostat news release, 96/2013, 18<sup>th</sup> June 2013.
- <sup>16</sup> Amnesty International : « An International Failure : The Syrian Refugee Crisis », *Amnesty International Briefing*, 13 December 2013.
- <sup>17</sup> 34% of the refugees in the world live in Asia and the Pacific. Cf. UNHCR, «Displacement. The New 21st Century Challenge », *Global trends*, 2012.
- <sup>18</sup> According to the « qualification » directive, which was renewed in December 2011, the minimum duration of a residence permit shall be 3 years for a person benefitting from conventional protection, and 1 year for a person benefitting from a subsidiary protection. Cf. Directive 2011/95/EU of the European Parliament and of the

Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless people as beneficiaries of international protection, for a uniform status for refugees or for people eligible for subsidiary protection, and for the content of the protection granted (recast).

<sup>19</sup> « Les envois de fonds en direction des pays en développement se monteront à plus de 400 milliards de dollars en 2012 », <http://www.banquemondiale.org/fr/news/press-release/2012/11/20/developing-countries-to-receive-over-400-billion-remittances-2012-world-bank-report>.

« Dans le monde, l'aide publique au développement s'est élevée à 126 milliards de dollars en 2012 », [http://www.un.org/fr/millenniumgoals/pdf/mdg\\_report2013\\_goal8.pdf](http://www.un.org/fr/millenniumgoals/pdf/mdg_report2013_goal8.pdf)

<sup>20</sup> Commission européenne, « Cecilia Malström signe l'accord de réadmission avec la Turquie et entame, avec ce pays le dialogue sur la libéralisation du régime des visas », IP/13/1259, 16 décembre 2013. European Commission, Communication from the Commission to the European Parliament and the Council Evaluation of EU Readmission Agreements, COM (2011) 76 final, 23 February 2011.

<sup>21</sup> Wihtol de Wenden (Catherine), *Pour accompagner les migrations en Méditerranée*, Paris : L'Harmattan, 2013.

<sup>22</sup> European Migration Network, *Satisfying Labour Demand through Migration*, October 2011, [www.emnbelgium.be/fr/node/1128](http://www.emnbelgium.be/fr/node/1128). Commission européenne, *Vers une reprise génératrice d'emplois*, COM (2012) 173 final, 18 avril 2012.

<sup>23</sup> Traoré (Sadio), « La migration circulaire au Mali. Aspects démographiques et économiques », *CARIM, Note d'Analyse et de Synthèse*, 2010/55. Egalement : Flahaux (Marie-France), Mezger (Cora), Saljo (Papa), « Migration circulaire des Sénégalais », *CARIM, Note d'Analyse et de Synthèse*, 2011/72.

<sup>24</sup> Bourenane (Naceur), Bourjij (Saïd), Lhériaux (Laurent), *Réduire les coûts des transferts d'argent des migrants et optimiser leur impact sur le développement*, Outils et produits financiers pour le Maghreb et la zone franc, AFD, Epargne sans frontière, décembre 2011. Egalement : Banque africaine de développement, *Les transferts de fonds des migrants, un enjeu de développement*, octobre 2008

<sup>25</sup> Bi-bancarisation refers to an easier access to banking services for migrants in their residence country and in their country of origin, within the framework of North-South cooperation of banks, which link up bank-accounts in the North and in the South.