

Migration versus Mobility in EU External Action towards Asia

A closer look at EU relations with China, India, the Philippines and Thailand

Marco Stefan

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Abstract

How is cooperation on migration and mobility developed through the EU's relations with Asian countries such as China, India, the Philippines and Thailand? This paper provides a state-of-the-art analysis of the EU's internal and external migration policies towards central and east Asian countries. These countries do not constitute a major source of irregular migration to Europe, but they manifest distinctly different socio-economic development prospects and enjoy different international relations statuses vis-à-vis the EU.

Focusing on the different institutional actors, normative tools and policy instruments responsible for the development of EU external action, the author examines how the Union's migration policies are designed, framed and implemented towards largely populated and rapidly industrialising 'strategic partners', such as China and India, as well as with developing countries including the Philippines and Thailand.

Based on the evaluation of the impact that the existing framework of cooperation has on current migratory trajectories of Chinese, Indian, Filipino and Thai nationals, a set of policy recommendations are put forward. The aim is to facilitate the development of EU policies in a manner that at one and the same time maximises the positive impact of economic migration and ensures the fundamental rights of people on the move.



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1. Introduction

Emerging in parallel with the establishment of common policies on borders, migration and asylum, the objective of strengthening external cooperation on migration and mobility has become an increasingly important and sensitive issue for the European Union.

Along with the gradual ‘communitarisation’ of asylum and immigration issues, the ‘external dimension of the EU’s migration policies’ has expanded, deepened and evolved over time through the input of different institutional actors and through the adoption and implementation of several legal, policy and financial instruments. The legal basis and institutional framework for EU external action, also in the domain of mobility and migration, have been strengthened since the entry into force of the Lisbon Treaty in 2009.¹ EU policies related to such issues as human mobility, border control, international protection and the so-called migration and development nexus are currently discussed and promoted within a large number of bilateral, interregional and international cooperation fora. However, the ways in which such policies are designed, combined and implemented in the EU’s relations with different third countries depend on a series of complex geopolitical and socioeconomic factors, and fast-evolving EU relational and inter-institutional dynamics.

From the preliminary mapping of the instruments, actors and priorities underlying the multiple dimensions of the EU’s external migration policies, it emerges that the quality, nature and scope of relations conducted by the EU on the international scene vary significantly across different geographies.² The plethora of bilateral and interregional cooperation initiatives that the EU has launched with its eastern and southern neighbours, and a series of African partners, epitomises the Union’s efforts to cater external support for the main countries of origin and transit of refugees and irregular migrants flowing to Europe. A wealth of EU declarations and policy documents confirms that the Union’s external action on migration-related issues is currently prioritising those third countries most directly concerned with the causes and consequences of the so-called ‘migration and refugee

¹ Cremona, M., Monar, J. Poli, S. (eds.) (2011), *The External Dimensions of the European Union’s Area of Freedom Security and Justice*, College of Europe Studies no. 13, Peter Lang, Brussels.

² Carrera, S., et al (2015), *EU External Migration Policies: A Preliminary Mapping of the Instruments, the Actors and their priorities*. Available at www.uta.fi/edu/en/research/projects/aura-net/publications/TASK%203.1%20REPORT_UM_CEPS_final_v4.pdf.

crisis'. Most recently, the Partnership Framework³ expressly identified and listed a limited number of "priority countries" with which discussions will be launched to step up cooperation, in particular through the elaboration and adoption of new "migration compacts".⁴ As confirmed in the 'Bratislava roadmap' adopted in September 2016, the decision to target the EU's external action on migration policy towards a specific selection of third countries is justified in light of the objective to reduce the flows of illegal migrants, and increase return rates.⁵ At the same time, the empirical and policy research conducted in the framework of the EURA-NET project has highlighted the manifold challenges and opportunities related to the increasing numbers of individuals moving from and to Central and East Asia for a wide range of reasons, including tourism, work, study, family reunification and international protection.⁶

This final EURA-NET policy report comes amid the rapidly-changing backdrop of the EU's external migration policies. In particular, by taking into account the progressive incorporation of the concept of temporariness in EU migration law,⁷ it seeks to contribute to the understanding of how cooperation on migration and mobility is currently framed in EU relations with Asian countries. The analysis focuses on the different legal and policy instruments, institutional actors and strategic priorities in the external dimension of the EU migration policies adopted and applied towards densely populated and rapidly industrialising 'strategic partners', such as China and India, as well as towards developing countries like the Philippines and Thailand.

In the framework of the EURA-NET Project, Work Package 3 investigated how the external dimension of the EU's migration policies has been shaped through the successive elaboration of strategic frameworks for action. The EU's commitment towards the development of "consistent, systematic and strategic" external cooperation has been formally stressed by the European Commission in the Global Approach on Migration and Mobility (GAMM).⁸ Laid out by the Directorate-General for Migration and Home Affairs (DG HOME), the GAMM provides an overarching strategy that aims at ensuring complementarity among the different facets of the external migration policies of the EU and Member States. While formally linking the 'four pillars' of the EU's external migration policies, namely legal migration, irregular

³ Council (2015), Draft Council Conclusions on the Renewed European Union Internal Security Strategy 2015-2020, Brussels, 1 June 2015.

⁴ Commission (2016), First Progress Report on the Partnership Framework with third countries under the European Agenda on Migration. COM(2016) 700 final. Brussels, 18.10.2016. The initial list of countries comprehends southern Mediterranean neighbours such as Jordan, and Lebanon, and African countries including Mali, Niger, Nigeria, Senegal, and Ethiopia. External cooperation is also expected to be strengthened with Algeria, Libya, Egypt, Morocco and Tunisia. In Asia, Afghanistan, Bangladesh, Iran, Iraq, and Pakistan are indicated as major sources of irregular migrants and refugees, and consequently counted among the countries with which the EU will step up its engagement in the fields of readmission and reintegration.

⁵ See, www.consilium.europa.eu/en/press/press-releases/2016/09/16-bratislava-declaration-and-roadmap/.

⁶ Pitkänen P., and Carrera S. (eds.) 2014. Transnational Migration in Transition: State of the art Report on Temporary Migration. Collected Working Papers from the EURA-NET project. www.uta.fi/edu/en/research/projects/aura-net/publications.html

⁷ Carrera, S., Eisele, K. and Guild, E. (2014). European and International Perspectives and Standards on Temporary Migration. In Carrera S., Pitkänen P. (2014). Transnational Migration in Transition: State of the art Report on Temporary Migration. Collected Working Papers from the EURA-NET project.

⁸ Commission (2011), The Global Approach to Migration and Mobility. COM(2011) 734. Brussels: European Commission.

migration, international protection, and migration and development, the GAMM dissociates “migration”, from the concept of “mobility”.⁹ According to the Communication, mobility is related to visa facilitation for the short-stay entry and residence of third-country nationals of strategic importance for the Union (i.e. tourists, business communities or scientists). Migration, on the other hand, mainly refers to the externalisation of border controls, and to the expulsion and readmission of irregular migrants. Such a distinction highlights the existence of different external-migration policy understandings within the EU, and must be taken into account in order to identify the types of priorities and outputs characterising EU external migration policies towards the Asian countries considered in this study. Therefore, this report investigates how migration and mobility are respectively incorporated and combined in the EU’s relations with China, India, the Philippines and Thailand.

The study of the ‘synergies’ existing between the external dimension of EU migration policies and other fields of EU external action, is particularly important in the current strategic setting for the development of cooperation on migration and mobility issues. In fact, with the adoption of the Agenda on Migration,¹⁰ the external and internal dimensions of EU migration policies have not only been structurally intertwined, but also closely interlinked with the wider set of external and foreign relations established by the EU and its Member States with countries of origin and transit. While the Agenda aims at bringing “coherence” and “comprehensiveness” to the different EU sectoral policies addressing migration, it also requires the use of all external “policies and tools” at the EU’s disposal to respond to the EU’s commitment of tackling “the migration upstream” from Africa, Asia and Eastern Europe. Through the study of the EU’s legal and policy instruments framing cooperation with China, India, the Philippines and Thailand, and the analysis of the way in which such tools operationalise EU standards on cross-border mobility, this report intends to contribute to the understanding of how migration and mobility are strategically connected (or not) to other EU external policies, such as those on development, trade and foreign affairs with respect to these Asian countries.

The intention stressed in the Agenda on Migration to structurally and strategically interlace EU migration and foreign affairs policies reflects and entails the participation of a wide range of EU institutional players in an external field of action that, until recently, was mainly occupied by DG HOME. As affirmed by Commission President Jean-Claude Juncker in his political guidelines of 2014, and reiterated by Commission Vice-President Frans Timmermans on the occasion of the launch of the new Migration Partnership Framework, the incorporation of migration-related considerations in EU external relations constitutes a priority for the Commission as a whole. In her “Global Strategy for the European Union’s Foreign and Security Policy”, the High Representative/Vice-President Federica Mogherini expressly recognised that migration has become an EU foreign policy matter.¹¹ At the same time, under the post-Lisbon institutional framework, the European Parliament is also called upon to take part in EU (internal and external) decision-making processes dealing with migration and mobility. The variety of institutions and bodies currently entitled to contribute to the development of the external dimension

⁹ Ibid, p. 16.

¹⁰ Commission (2015), A European Agenda on Migration. COM(2015) 240 final. Brussels, 13.5.2015.

¹¹ Mogherini F. (2016), “Shared Vision, Common Action: A Stronger Europe, A Global Strategy for the European Union’s Foreign And Security Policy”, Brussels, June 2016, p. 27.

of EU migration policies confirms the prominent role that the European Union as a whole has acquired in this sensitive domain, but also reflects the existence of a wide range of (programmatic and operational) interests and priorities at stake. To assess how EU external migration policies are transforming through the involvement of new institutional players in a post-Lisbon Treaty landscape, this report takes into account the role that different EU actors currently play in the setup and implementation of rules and processes dealing with migration and mobility in relations with China, India, the Philippines and Thailand.

The different EU (internal and external) migration policies and tools operationalising the GAMM and the EU Agenda on Migration in the specific EU-Asian context, the main actors responsible for their adoption and implementation, and the links existing between migration, mobility and other EU external action domains constitute the main objects of investigation of this policy report. The complementary identification, analysis and assessment of these tools, actors and strategic links is essential to understanding what functions they have in practice, which approach predominates in the EU's regulation of the transnational movement of people (mobility vs migration), what the current priorities of EU external migration policies are and what actual outputs are achieved in the framework of EU relations with its different Asian counterparts.

Previous research efforts have investigated the possible implications that the emergence of new actors, such as the European External Action Service (EEAS), might have on the EU's actions abroad in the field of migration and mobility.¹² By looking at EU relations with countries such as China, India, the Philippines and Thailand, this policy report endeavours to understand why, and how, EU external migration policies are transforming through the involvement these new institutional players. In particular, the report serves as a test to verify whether the progressive incorporation of migration and mobility-related issues within the EU's wider external relations has contributed to counterbalancing the Eurocentric and security-oriented focus of the so-called 'home affairs diplomacy'.¹³

To summarise, when looking critically at the overall EU framework for external cooperation with China, India, the Philippines and Thailand respectively, this report has three objectives:

1. Develop an overview of the main trends and patterns of mobility and migration towards Europe of nationals originating from these countries amid the EU's current (internal and external) migration policies and legal framework.
2. Provide an in-depth appraisal of the functioning of the normative tools, policy instruments and institutional mechanisms underpinning EU cooperation with its Asian partners in the field of migration and mobility.

¹² Papagianni, G. (2014). EU Migration Policy. In Triandafyllidou, A. and Gropas, R (eds), European Immigration – A source book. Ashgate Publishing.

¹³ Carrera, S., Parkin, J., den Hertog, L. (2013). EU Migration Policy After the Arab Spring: the Pitfall of Home Affairs Democracy. Think Global – Act European (TGAE). Think strategically about the EU's External Action, Notre Europe – Jacques Delors Institute, Policy Paper no 74.

3. Analyse the implementation of the EU's internal and external migration policies towards these Asian partners in light of the latest relational and hierarchical developments observed in the Union's strategic and institutional setting for migration management and mobility governance.

The analytical process outlined above enables an assessment of the specific substantive features of the migration and mobility components and approaches developed by the EU in its relations with China, India, the Philippines and Thailand. On the basis of such analysis, a series of conclusions and recommendations are set out with the aim of highlighting and redressing the main legal and policy issues that currently affect EU external action in the field of mobility governance and migration management towards the Asian countries considered in the study.

This report is based on desk research, which focused on relevant academic literature, current EU legislation and publicly available policy documents. The research also involved conducting face-to-face semi-structured interviews, which were held in Brussels and Beijing with EU policy-makers, officials of international organisations and representatives of the Asian countries considered.

2. Overviewing main trends in EU/Asia (regular and irregular) migratory patterns

In the following discussion, official statistics¹⁴ are used to shed light on the trends and patterns of regular and irregular migratory flows towards Europe from South and East Asia.

Figures have been collected and compared to describe the mobility dynamics of Chinese, Indian, Filipino and Thai nationals across the EU's external borders, as well as the nature of and main reasons for their presence within the Member States' territories. By focusing on official statistics on visas and residence permits, this section aims at understanding how inward mobility stemming from major Asian countries is channelled through EU and national immigration policies. Available data concerning the presence and return of irregular migrants are then used to provide an updated and reliable statistical framework of reference that can be used in the analysis and assessment of the latest developments in EU policies and relations with Asian countries on migration and mobility-related matters.

To highlight what type of Asian mobility is favoured by the EU and its Member States, the statistical analysis is coupled with an assessment of the normative regimes currently regulating the conditions of entry and stay of third-country nationals travelling from China, India, the Philippines and Thailand.

2.1 Asian mobility under Schengen visas

Developed as part of the wider Schengen system, the common EU visa policy prompts (internal and external) cooperation directed at regulating access of third-country nationals into the Member States' territory, while tackling illegal immigration.

¹⁴ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers.

The main legal instruments of the EU's visa policy include the Visa Code,¹⁵ which sets forth harmonised procedures to issue visas for transit or short stays in the Member States, and the EU common visa lists,¹⁶ which distinguish different groups of third countries on the basis of the specific visa regimes applying to their nationals. Exemptions from Schengen visa requirements only apply to non-EU nationals whose country of citizenship is on the visa-free list. By contrast, the inclusion of a third country in the so-called Schengen visa 'black list' implies that its nationals must be in possession of a Member State visa, or a Schengen visa, in order to be admitted into the territory of the Union.

Under the existing policy and legal framework, the application of distinct visa regimes to different third countries is based on a case-by-case assessment, and depends on a variety of criteria responding to both EU public policy and security-related concerns.¹⁷ On the one hand, the activation of a visa liberalisation scheme between the EU and a third country is conditioned upon the fulfilment of a series of technical, legal, and political requirements, the content of which varies from third country to third country. In this sense, the determination of the visa schemes applicable to a specific third country, reflects the state of relations that the latter has and progressively develops vis-a-vis the EU and its Member States. For example, and with the important exception of the US, Canada and Australia, a prime condition for benefiting from visa exemptions in the EU is compliance with the principle of reciprocity, entailing that third countries on the visa-free list grant a visa waiver to citizens of all EU Member States.¹⁸ On the other hand, the imposition and maintenance of visa obligations upon third countries' nationals has traditionally been linked to the EU's security concerns, and is ultimately instrumental to the EU's objectives of external border surveillance. Visa requirements for third-country nationals essentially respond to the goal of securing the EU's external borders through travel document checks conducted remotely, and before the non-EU citizen enters into the Member States' territory.¹⁹

For nationals whose country of origin is included in the EU's visa black list, the issuance of Member State or Schengen visas represents the precondition for admission into the Union, but also determines the type of authorised stay within the EU. Member State visas are issued according to the conditions and under the circumstances set out in different national legislation, and authorise long stays of third-country nationals.²⁰ Schengen visas are issued through the common procedures described in the EU Visa Code, and include travel documents that differ in scope, duration and territorial validity. Uniform visas (type C) allow the holder to circulate in the entire territory of the Member States, and may be issued for the purpose of both a single entry and multiple entries (MEV). Visas with limited territorial validity (LTV) only allow the holder to circulate in the territory of one Member State, or in a limited number of them, and are issued by Member States when the applicant does not fulfil all the conditions required for obtaining a type C visa. Type C and LTVs are both 'short stay' visas, allowing applicants to

¹⁵ Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009.

¹⁶ Council Regulation (EC) No 539/2001 of 15 March 2001.

¹⁷ See recital 5, Council Regulation (EC) No 539/2001.

¹⁸ Regulation (EU) No 1289/2013 of the European Parliament and of the Council of 11 December 2013.

¹⁹ Bigo, D., and Guild, E., *Policing at a Distance: Schengen Visa Policies* (2005), in D. Bigo, and E. Guild (Eds.), *Controlling Frontiers: Free Movement into and within Europe* (pp. 233-260). Aldershot: Ashgate Publishing.

²⁰ Regulation (EC) No 265/2010 of 25 March 2010 amending the Convention Implementing the Schengen Agreement and Regulation (EC) No 562/2006.

stay in the territory of the Member States for periods not exceeding 90 days in any 180-day period. Airport transit visas (type A) are only valid for a single transit or multiple transits (multiple A) through the international transit areas of one or more airports of the Member States.

A relaxation of the Schengen visa rules can be accorded to non-EU nationals whose country of origin has concluded a visa facilitation agreement with the EU. Without altering the conditions for issuing visas, these agreements provide procedural facilitation, such as the exemption or reduction of visa fees for certain types of applicants and shorter issuance periods, as well as the possibility to lodge applications for multiple-entry visas (MEVs). In some cases, the relaxation of visa requirements represents a step towards visa liberalisation. However, the EU is reluctant to institutionalise its visa liberalisation commitments subsequent to visa-facilitation discussions.²¹ Instead, visa relaxation schemes are systematically linked to EU security concerns. Visa facilitation agreements are in fact negotiated and concluded by the EU in parallel with readmission agreements, which set out obligations and procedures defining when and how irregularly residing people have to be returned to their country of origin, or transit. In essence, visa facilitation agreements are used by the EU as a tool to incentivise external cooperation on migration management and border control with those third countries that do not benefit from a visa liberalisation scheme with the Union.²²

Currently, the only South and East Asian countries (and territories) benefiting from an EU visa liberalisation scheme are Hong Kong, Japan, Macao, Malaysia, Singapore, South Korea, Taiwan and Timor-Leste.²³ By contrast, China, India, the Philippines and Thailand are still included in the Schengen visa black list. This means that the nationals of these countries are subject to visa obligations, and must undergo a series of prior checks on the purpose of their travel and personal capacity before arriving at the borders of the Union. Furthermore, none of these South and Eastern Asian countries has so far concluded a visa facilitation agreement with the EU, although the possibility to introduce visa relaxations for specific categories of migrants constitutes one of the topics covered in the discussions conducted on migration and mobility matters between the EU and China and India respectively.²⁴ The way in which discussions on visa facilitation are framed within the EU external cooperation instruments currently in place with the above-mentioned Asian strategic partners are analysed in section 3.

Section 2.1.1 investigates the development of inward mobility patterns of Chinese, Indian, Filipino and Thai nationals under the current EU visa regime. By doing so, it outlines the practical consequences that the inclusion of these Asian countries in the Schengen visa black list presents in terms of procedures and requirements that need to be complied with, in order to regularly enter the Union. Finally, it

²¹ Council of the European Union, Common approach on visa facilitation, 16030/05, Annex, 21 December 2005.

²² Cassarino, J.P. (2010). *Readmission Policy in the EU*. PE 425.632. Brussels: European Parliament. Available at: [www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2010/425632/IPOL-LIBE_ET\(2010\)425632_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2010/425632/IPOL-LIBE_ET(2010)425632_EN.pdf).

²³ With the approval of Council Regulation no 539.2001, moved Hong Kong and Macao from the black list to the white list. The transfer has been described as a “trade-off” in that subsequently two EU readmission agreements were signed covering not only their own citizens, but also persons who had only traversed their territories. See, Peers, S., (2011), *EU Justice and Home Affairs Law* (3rd edn), Oxford University Press, Oxford, p. 251.

²⁴ http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm.

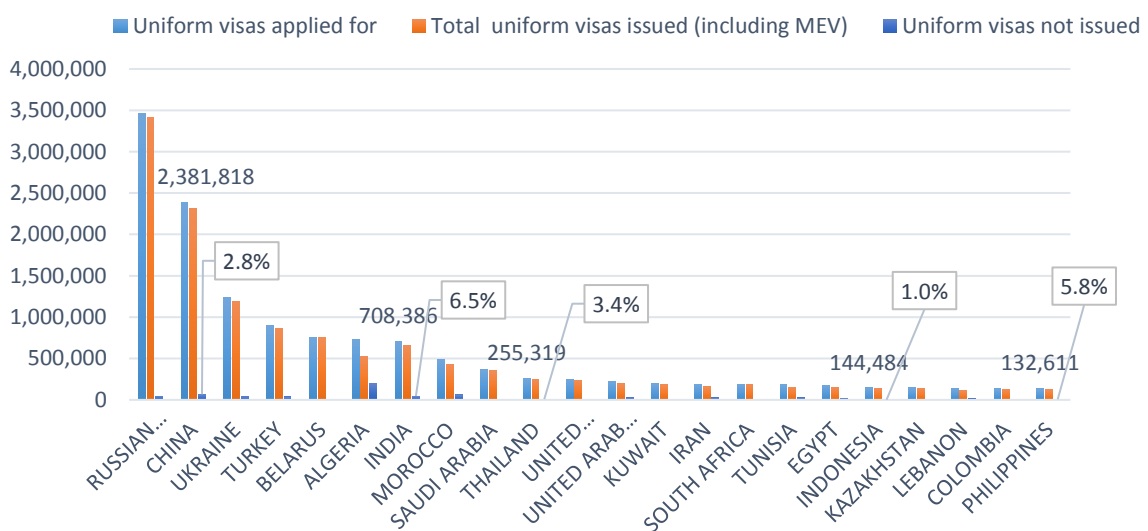
analyses how the application of a ‘negative’ visa regime contributes to shaping and selecting the types of Asian mobility admitted to the EU.

2.1.1 Schengen visa trends and policies in the current EU-Asia context

It has been observed how the visa requirements imposed upon Chinese, Indian, Filipino and Thai nationals reflects the persistence of EU security and irregular migration-related concerns towards these countries. Indeed, the inclusion of China, India, the Philippines and Thailand in the Schengen visa black list, suggests that these countries are still perceived as a source of irregular migration.²⁵

At the same time, the raising numbers of third-country nationals applying for Schengen visas in these Asian countries, indicate a consistent demand for mobility from Asia into Europe. In particular, Eurostat’s statistics show that China, India, the Philippines and Thailand are amongst the third countries with the highest rates of Schengen visas’ applications and issuance (see Figure 1).

Figure 1. Ranking of third countries with the highest rates of Schengen visa applications and issuance (2015)



Source: Author's elaboration based on Eurostat statistics.

Between 2013 and 2016, China ranked second for the number of Schengen visa applications and issuance. This country is by far the first Asian nation for number of type C visas (including MEVs) issued. Over the same period, each of the Asian countries considered saw a constant increase in the number of type C visa applications and approvals, as shown in Table 1.

²⁵ Guild, E., and Bigo, D. (2003), La mise à l'écart des étrangers- La logique di Visa Schengen, *Culture and Conflicts* no 49, p. 89-95.

Table 1. Number of Schengen visas applied for (A), issued (I) and rejected (R) in the Asian countries analysed

	Airport Transit Visa (A)			Short Stay Visa (C)			LTV
	A	I	R	A	I*	R	I
China							
2015	48	21	7	2.381.818	2.308.591	67.648	419
2014	20	16	4	1.801.467	1.742.013	53.557	1.550
2013	39	29	10	1.497.196	1.435.123	58.265	731
India							
2015	1.140	1.039	97	708.386	659.038	45.811	657
2014	654	606	48	568.216	529.367	36.519	819
2013	623	565	56	522.347	487.686	32.243	673
Philippines							
2015	6	6	--	132.611	124.071	7.673	39
2014	4	3	1	125.037	117.787	6.863	25
2013	6	5	1	112.664	104.775	7.327	32
Thailand							
2015	7	4	1	255.319	246.025	8.730	45
2014	14	9	6	219.015	209.737	8.263	36
2013	23	22	1	233.218	215.932	48.268	42

* The number of short stay visas issued only include type C visas (single entry and MEVs); the number of issued LTV visas is indicated separately.

Source: Author's elaboration based on Eurostat statistics.

Short-term visas, and in particular type C visas, constitute the large majority of Schengen visas applied for and issued in China, India, the Philippines and Thailand in the years 2013 to 2015. In 2015, the consulates in France, Italy, Germany, Spain and Greece granted the highest numbers of Schengen visas issued in China. In India, the main destinations of Schengen visa applicants were respectively France, Germany, Switzerland, Italy and the Netherlands. The Netherlands also constituted the first destination for applicants in the Philippines, followed by France, Italy, Spain and Germany. Schengen visa applications in Thailand were mainly submitted to and issued by German, French, Italian, Swiss and Austrian consulates.

Out of the 3,478,134 uniform visa applications submitted in China, India, the Philippines and Thailand throughout 2015, a total of 3,337,725 type C visas were approved. This figure represents approximately 23% of the total number of Schengen visa applications lodged and approved in the course of that year (Figures 1 and 2).

Figure 2. Schengen visa applications (2015)

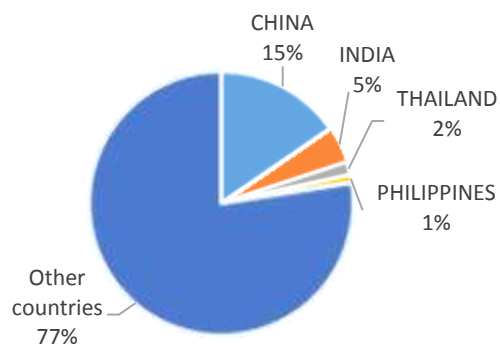
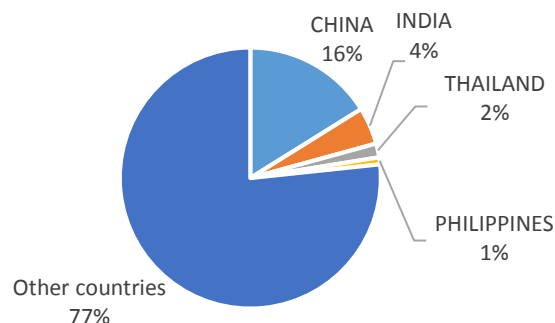


Figure 3. Schengen visas issued (2015)



Unfortunately, given the lack of disaggregated official data on both the nationality of the applicants and the purpose for which the visa is requested, it is impossible to distinguish the share of visa applications submitted, for instance, for the purpose of tourism, from those submitted for the purpose of business visits.

It is worth noting that during 2015, the rejection rates for Schengen visa applications submitted in the Asian countries considered varied from a minimum of 2.8% refused applications in China, to a maximum of 6.5% rejected in India (see Table 2). In comparative terms, these are sensibly lower than the ones recorded for applications made in countries from other regions, such as the southern Mediterranean and the Gulf, where higher rejection rates seems to be linked to the applicants' failure to address Member States' border security concerns.²⁶ Furthermore, no significant variations can be observed between rejection rates of visa applications lodged at different Member States' consulates located in the same Asian country.²⁷ This piece of data could be read as a positive indicator on the state of play of local Schengen consular cooperation (LSC) in the Asian countries considered. However, it must be noted that a harmonised list of supporting documents to be presented by applicants has not yet been adopted for Thailand, and different challenges have been identified in relation to specific aspects of Member States' consular cooperation on Schengen visa matters in China, the Philippines and India.²⁸

²⁶ For an analysis of the reasons behind high visa rejection rate for these regions, please refer to E. Guild (2010), "When even Machiavelli's prince needs a visa: Migration, Euro-Mediterranean relations and intercultural dialogue", *European Foreign Affairs Review*, Vol. 15, No. 3, 2010, pp. 367-384.

²⁷ For example, out of the 280.322 applications lodged at the Italian consulates in Beijing, only 2.2% were rejected. This rate is not dissimilar to the one observed, for instance, at the French consulate in Shanghai, where only 3.3% of the total 259.962 applications were rejected in 2015.¹

²⁸ Council of the European Union, *Local Schengen cooperation between Member States' consulates (Article 48(5), first subparagraph, of the Visa Code) - Compilation of summary reports covering the period 2013-2014*, Brussels, 10 September 2014.

Table 2. Comparative overview of main countries for the number of uniform visa applications and issuance, 2015

Country where consulate is located	Uniform visa applications	Total uniform visas issued (including MEV)	MEVs issued	Uniform visas not issued	Not issued uniform visas Rate	Share of MEVs
Russian Federation	3,467,317	3,415,432	2,326,454	45,367	1.3%	68.1%
China	2,381,818	2,308,591	422,042	67,648	2.8%	18.3%
Ukraine	1,233,530	1,188,357	674,682	41,855	3.4%	56.8%
Turkey	900,789	862,184	508,589	34,956	3.9%	59.0%
Belarus	752,782	753,937	499,999	2,359	0.3%	66.3%
Algeria	735,040	529,658	210,028	197,808	26.9%	39.7%
India	708,386	659,038	293,114	45,811	6.5%	44.5%
Morocco	493,642	426,530	190,672	59,822	12.1%	44.7%
Saudi Arabia	367,028	351,395	283,567	8,971	2.4%	80.7%
Thailand	255,319	246,025	60,483	8,730	3.4%	24.6%
United Kingdom	248,278	239,201	99,778	6,387	2.6%	41.7%
United Arab Emirates	224,202	192,812	89,059	26,972	12.0%	46.2%
Kuwait	193,540	184,996	148,768	6,756	3.5%	80.4%
Iran	189,861	158,889	36,617	26,435	13.9%	23.0%
South Africa	188,997	183,972	125,847	2,847	1.5%	68.4%
Tunisia	184,334	155,454	62,833	26,019	14.1%	40.4%
Egypt	177,545	153,336	51,602	20,326	11.4%	33.7%
Indonesia	144,484	142,447	71,319	1,472	1.0%	50.1%
Kazakhstan	143,605	140,964	26,665	2,780	1.9%	18.9%
Lebanon	135,414	116,986	56,814	14,236	10.5%	48.6%
Colombia	133,095	127,264	90,367	4,397	3.3%	71.0%
Philippines	132,611	124,071	64,364	7,673	5.8%	51.9%

Source: Author's elaboration based on Eurostat statistics.

Despite the overall positive trends recorded by the official statistics on Schengen visas, the inclusion of China, India, Thailand and the Philippines in the EU's negative visa list implies that applicants from these Asian countries must still comply with a series of cumbersome procedural and documental incumbencies in order to obtain a Schengen visa.²⁹ With the only exception of the visa waiver recently introduced for Chinese diplomats,³⁰ Chinese, Indians, Filipino and Thai nationals planning to travel to

²⁹ Commission, "More flexible visa rules to boost growth and job creation", Brussels, 1 April 2014.

³⁰ Agreement between the European Union and the People's Republic of China on the short-stay visa waiver for holders of diplomatic passports, OJ L 76, 23.3.2016, p. 19–25.

the EU remain subject to preliminary checks, activated automatically and before the crossing of any physical border. Access to Union territory is only granted when the applicants manage to successfully satisfy all the documental, procedural and individual requirements set forth in the Schengen Visa Code, as interpreted and implemented locally by the individual Schengen states.

In some cases, the practical difficulties for obtaining a visa are linked to the applicants' possibility to access the competent Member State consulate.³¹ In China or India, for example, all Member States have consulates in the capital and a robust presence in other major cities, but applicants from rural areas still have to travel long distances in order to lodge a visa request. Also, applicants who wish to travel to several Member States on one visa are not facilitated by the current legal framework, given the absence of clear criteria for the identification of the competent Member State's consulate.³² Submitting all the required and supporting documents might prove challenging as well. Moreover, it seems that requirements often differ from consulate to consulate in the same third country, even when the travel purpose is the same. If the visa application is lodged for specific purposes, such as study and scientific research, additional documental evidence also needs to be produced.³³

The presence of obstacles to human mobility between Asia and the EU is also reflected in the relatively low rates of multi-entry visas currently issued to applicants in China, India, the Philippines and Thailand. Under the current Visa Code rules, the issuance of a multi-entry visa is linked to the applicant's need or intention to regularly travel to the EU due to his or her occupational or family status. In fact, MEVs are specifically designed for individuals who are likely to make frequent trips to the Schengen area, such as business people, civil servants with regular contacts with Member States and the EU, civil society representatives, family members of either EU citizens or third-country nationals legally residing in the Member States, and seafarers. When issued, a MEV is in practice equivalent to a visa waiver throughout its validity period, which can range between six months and five years. However, statistics show that the number of MEVs issued in these countries is considerably lower compared with countries such as Russia, and Ukraine, but also Saudi Arabia and Kuwait (Table 2).

In particular, the facility with which frequent travellers from China, the Philippines, Thailand and India can enter the EU seems to be hampered by the lack of clearly defined MEV eligibility criteria, as well as by the absence of a 'coherent implementation' of the Visa Code provisions on the issuance of multiple-entry visas. According to EU law, the issuance of MEVs is mandatory when applicants give evidence of their "integrity" and "reliability", but these eligibility criteria are still not precisely defined in the Visa

³¹ Commission, Executive Summary of the Impact Assessment accompanying the document "Proposal for a Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code), SWD(2014) 67 final.

³² A positive exception is constituted by the indication that when the main Member State of destination of a group of Chinese tourists cannot be identified *ex ante*, it is the embassy or consular office of the first entry into the EU to be competent for assessing their visa application. See the Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China, on visa and related issues concerning tourist groups from the People's Republic of China (ADS).

³³ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375, 32.12.2004, and; Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purpose of scientific research, OJ L 289, 3.11.2005.

Code.³⁴ As a consequence, while applicants are required to provide additional documents to prove they fulfil such conditions, the Member State of application still retains a high level of discretion over the decision of issuing the visa.³⁵ Furthermore, the recent rise in the number of visa applications has corresponded to an increase of group applications made by accredited intermediaries (i.e. travel agencies), and processed by external service providers (i.e. visa application centres). Yet known visa applicants are seldom granted optional waivers from ‘lodging in person’, and external service providers are currently not allowed to make the qualitative assessment prescribed for the issuance of a MEV. The latest Commission proposal for the amendment of the Schengen Visa Code³⁶ envisages the introduction of mandatory criteria for granting a MEV to applicants whose data are already registered in the Visa Information System (VIS), and who have previously lawfully used at least two visas within the past 12-month period. Despite responding to the declared objective of facilitating movement for frequent travellers, the initiative of the Commission seems to mainly target applicants who already benefit from the possibility of travelling to the EU, and who can afford to submit individual visa applications at the relevant Member State consulates in their country of origin.

In the absence of EU visa facilitation agreements with China, India, the Philippines and Thailand, different Member States have adopted bilateral initiatives that are directed at making access easier for specific categories of travellers originating from these Asian countries, and in particular to Chinese, Indian and Filipino *intra-corporate transferees*. For example, the Belgian embassy in New Delhi exempted from having to provide certain supporting documents and from having to appear in person those employees of a pre-identified list of companies that operate between Belgium and India. Germany applies the same principle to members of the German Chamber of Commerce in China. The Netherlands put in place the so-called ‘Orange carpet’, a facilitation scheme in place for employees from pre-identified companies, as well a more specific scheme called the ‘Blue carpet’, granting facilitation for workers in the naval/ship/ferry industry from third countries, including China and the Philippines.³⁷ Some Member States have also put in place facilitation for *tourists* travelling from third countries (including China), which are generating increasing numbers of visitors. For example, the UK and Belgium created a pilot scheme that allows Chinese visitors to obtain a visa for both the UK and the Schengen area without having to visit two different application centres, and with a single set of accompanying documents.³⁸

Both the simplifications of the Visa Code’s procedural framework invoked by the Commission³⁹ and the initiatives adopted bilaterally by individual Member States indicate the attempts at introducing some form of visa relaxation for Chinese, Indian and Filipino nationals travelling to the EU. At the same time, such facilitation only benefits specific categories of third-country nationals, and in particular business

³⁴ Article 24(2) of the Visa Code.

³⁵ COM(2014) 165 final.

³⁶ Commission, Proposal for a Regulation of the European Parliament and of the Council on the Union Code on Visas (Visa Code), COM(2014) 164 final.

³⁷ For an overview of these different national initiatives, see Commission, “Impact assessment study supporting the review of the Union’s visa policy to facilitate legitimate travelling”, Final report, July 2013.

³⁸ See www.gov.uk/government/news/pilot-scheme-to-streamline-visa-process-for-chinese-visitors.

³⁹ Commission, “More flexible visa rules to boost growth and job creation”, Press Release, Brussels, 1 April 2014.

people and tourists with ‘high purchasing power’,⁴⁰ who currently represent the only types of ‘legitimate’ Asian travellers expressly identified by the EU and Member States. By contrast, national authorities do not seem to be systematic in the way they facilitate visa procedures for other categories of visa applicants, for which the Visa Code allows relaxation of Schengen visa requirements. In particular, Chinese, Indian, Filipino and Thai diplomats are subject to different national visa regimes, introduced by individual Member States mainly on the basis of reciprocity. Lack of harmonisation in visa facilitation also concerns the following groups: civilian members of sea and air crews, school pupils residing in a third country and travelling in the context of a school excursion as members of a group, as well as refugees and stateless persons who are legally resident in one of the Asian countries considered and who are in possession of a travel document issued by the competent authorities of that country. Visa facilitation provided for those third-country nationals who are close relatives of Union citizens on the basis of Directive 2004/328/EC also continues to be implemented differently in various Member States.

The selective approach adopted in the implementation of the EU visa policy towards the Asian countries considered responds to the goal of maximising the economic impact of temporary human mobility on the wider European economy.⁴¹ On the other hand, an example of how security considerations affect the way in which the practical application of the common policy on visas is provided in the 2013-2014 summary report on Local Schengen cooperation.⁴² With specific regard to China, Member States’ consular authorities expressed the “fear” that the roll-out of the VIS (and the consequent introduction of the requirement to collect visa applicants’ biometrics) could lead to a “great fall in valuable tourism to Europe”. While this concern on the part of Member States reflects the potential negative consequences that the VIS roll-out could have on the EU’s attractiveness as a destination for Chinese tourists, it also reflects the highly discretionary way in which the EU visa policy is implemented in practice. Fears are only expressed for the possible loss of ‘valuable tourists’ for the EU economy, and do not relate to the negative consequences deriving from increasingly demanding requirements for biometrics collection imposed upon travellers originating from third countries included in the Schengen visa black list.

2.2 Residence permits

The previous section revealed how, in the EU-Asian context, visas not only serve to regulate the length and conditions of third-country nationals’ short-term stays in the Union, but are also used as migration policy instruments channelling selected types of inward Asian mobility to Europe.

⁴⁰ Commission, Implementation and development of the common visa policy to spur growth in the EU, COM(2012) 0649 final.

⁴¹ Commission, Report from the Commission to the European Parliament and the Council a Smarter Visa Policy for Economic Growth. COM(2014) 165 final. Brussels: European Commission.

⁴² Council of the European Union, Local Schengen cooperation between Member States’ consulates (Article 48(5), first subparagraph, of the Visa Code) - Compilation of summary reports covering the period 2013-2014, Brussels, 10 September 2014.

In this section, official statistics are used to assess how the development of longer mobility trajectories of third-country nationals from China, India, the Philippines and Thailand is subjected to, and conditioned by, the issuance of national visas and/or residence permits.

For stays in the EU territory exceeding the validity limit of three months for Schengen visas, and related to work, study and/or training purposes, third-country nationals require authorisations that are granted under both Member State and EU legislation. On the one hand, the admission and legal status of third-country nationals seeking employment in the EU remains largely within the scope of Member States' national competences.⁴³ On the other hand, policy developments occurring at the EU level are increasingly contributing to frame cross-regional migratory flows, including in the EU-Asian context. Since 2011, the EU Single Permit Directive has enabled foreign workers to obtain work and residence permits through a single procedure.⁴⁴ Furthermore, the EU has adopted a series of legislative measures directed at attracting highly qualified workers,⁴⁵ seasonal workers,⁴⁶ and intra-corporate transferees,⁴⁷ and at regulating the admission of students and researchers⁴⁸ as well as of third-country nationals who are close relatives of EU citizens.⁴⁹

Eurostat's data on residence permits capture all authorisations issued on an annual basis by the competent Member State authorities for reasons including education, family, employment or other purposes such as stays without the right to work and international protection.⁵⁰ These authorisations are granted for different lengths of validity, depending on the specificities of the legal framework of the issuing Member State. The grants of statuses computed by Eurostat also cover national long-term visas and immigration statuses, where the possibility to issue such authorisations in lieu of residence permits is foreseen by the national laws and/or administrative practices of a Member State.⁵¹ As such, this statistical category (migratory flow) represents the whole spectrum of migrants coming to the EU from

⁴³ Groenendijk, K. (2014), *Which Way Forward With Migration And Employment In The EU?*. In E.Guild, S. Carrera, and K. Eisele, *Rethinking the Attractiveness of EU Labour Immigration Policies Comparative perspectives on the EU, the US, Canada and beyond*, CEPS Publications.

⁴⁴ Directive 2011/98/EU 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.

⁴⁵ 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.

⁴⁶ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers

⁴⁷ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

⁴⁸ 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, and Directive 005/71/EC on the conditions of admission of third country nationals for the purpose of scientific research.

⁴⁹ Directive 2004/58/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

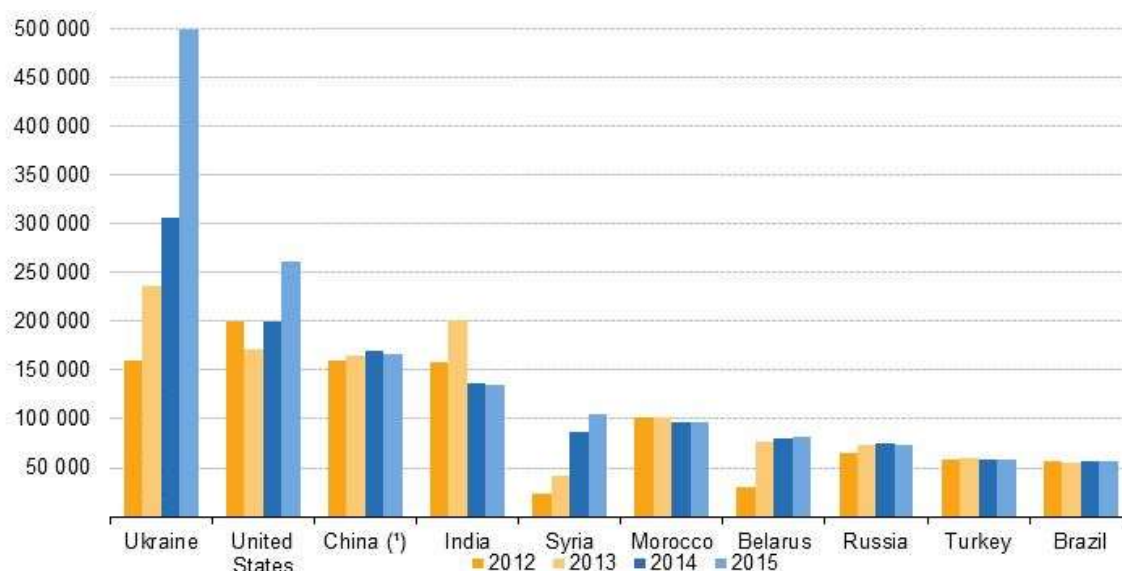
⁵⁰ Regulation (EC) No 862/2007 of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers, Article 6.2.

⁵¹ Regulation (EU) No 216/2010 of 15 March 2010 implementing Regulation (EC) No 862/2007 of the European Parliament and of the Council on Community statistics on migration and international protection, as regards the definitions of categories of the reasons for the residence permits.

the Asian countries considered during a given reference year. In fact, students, pupils, unremunerated trainees or volunteers, third-country nationals joining their partner, child or other family members, and also highly skilled professionals, seasonal workers, scientific researchers and third-country nationals coming to the EU for other types of remunerated activities, all require residence permits and/or national visas in order to migrate to the EU for a period exceeding the validity of a Schengen visa (i.e. three months over a six-month period).

The collation of official data on the number of long-term national visa and residence permits granted to third-country nationals show that Chinese and Indians are among the top five nationalities having received a first residence permit in the EU during 2014: 169,657 and 134,881 respectively (see Figure 4). In 2014, Chinese and Indians alone were granted 7% and 6% respectively of the total number of residence permits issued to third-country nationals (see Figure 6).⁵²

Figure 4. First residence permit by nationality (2015)



(*) China, including Hong Kong

⁵² The Eurostat data are collected and collated on a reference area including the EU28 Member States.

Figure 5. Main nationalities granted a residence permit in 2014

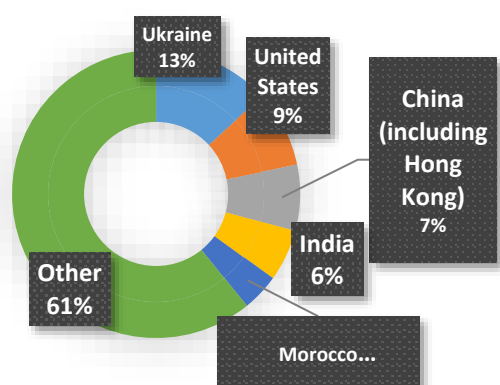
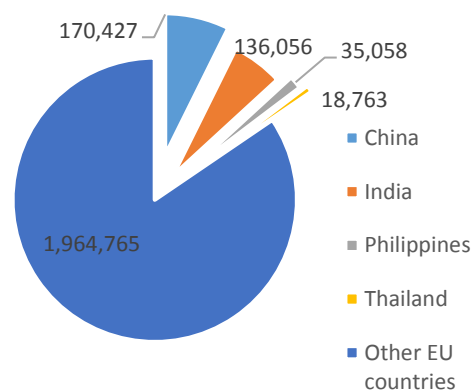


Figure 6. Total first residence permits issued in 2014



Source: Author's elaboration based on Eurostat statistics.

Patterns in the numbers of issued residence permits vary for the different South and East Asian countries, and depending on the specific reasons for issuing a permit. For example, education is the top reason for Chinese migration into the EU. Between 2008 and 2014, the number of Chinese students granted a residence permit in the EU almost doubled, passing from 64,881 to 100,809 (Table 3). Among the Asian countries analysed, India recorded the highest number of first residence permits granted for the purpose of remunerated activities (Table 4). Most residence permits granted to Thais and Filipinos are issued for family reunification reasons (Table 5).

Table 3. First residence permits for education reasons

Year	China	India	Philippines	Thailand
2014	100,809	22,028	990	5,205
2013	99,181	20,902	890	5,907
2012	92,382	23,436	1,160	5,696
2011	83,647	35,875	2,506	6,193
2010	78,524	51,448	5,019	6,378
2009	71,944	61,412	7,849	6,091
2008	64,881	34,562	8,403	5,842

Table 4. First residence permits for remunerated activities

Year	China	India	Philippines	Thailand
2014	22,648	54,866	12,845	4,891
2013	22,829	53,115	13,416	7,090
2012	24,370	46,516	15,091	7,154
2011	28,284	52,833	19,057	4,478
2010	51,210	72,161	25,567	5,588
2009	53,949	64,124	22,373	8,647
2008	44,975	62,032	25,782	6,813

Table 5. First residence permits for family reasons

Year	China	India	Philippines	Thailand
2014	35,568	46,443	10,695	7,115
2013	34,389	43,249	11,627	7,992
2012	33,220	39,074	11,206	8,234
2011	34,238	44,329	12,760	9,062
2010	35,579	47,060	13,064	10,134
2009	26,835	37,811	9,866	10,026
2008	27,748	33,075	9,022	10,522

Table 6. First residence permits for other reasons

Year	China	India	Philippines	Thailand
2014	11,402	12,719	10,528	1,552
2013	9,019	83,482	81,568	2,606
2012	9,898	48,529	34,852	2,414
2011	8,155	40,673	44,458	2,300
2010	7,467	29,953	21,581	2,005
2009	18,206	28,194	19,050	3,561
2008	21,948	24,389	7,405	3,792

Source: Author's elaboration based on Eurostat statistics.

Despite the specificities distinguishing the migratory inflows from the different Asian countries considered, a *common negative trend* emerges from the analysis of statistics on regular migration to Europe. In fact, the overall number of residence permits granted to Chinese, Indian, Filipino and Thai citizens decreased over the period from 2008 to 2015. Significant reductions concern, in particular, the total number of residence permits granted to the Philippines' nationals (which decreased from 50,612 in 2008 to 25,273 in 2015) and Thailand's citizens (which went from 26,969 in 2008 to 18,939 in 2015). The numbers of permits granted to Indian nationals also diminished over the same period, although in a considerably less consistent fashion (from 154,058 in 2008 to 135,514 in 2015). China is the only country that saw a slight increase in the total number of residence permits issued to its citizens (rising from 159,552 in 2008 to 167,118 in 2015). However, it must be noted that such an increase is mainly due to the positive trends recorded for the entries of Chinese nationals into the UK for education reasons. While the number of entries of Chinese students into the UK is taken into account by Eurostat for the calculation of the total number of residence permits issued at the EU level, the analysis of disaggregated data related to the permits issued to Chinese nationals by the remaining EU Member States reveals a reduction in the number of authorisations granted.

External factors, such as the evolving legal framework and economic outlook of the Asian countries involved in the immigration process, may also contribute to shaping the immigration trends of Chinese, Indian, Filipino and Thai nationals.⁵³ At the same time, the shrinking numbers of residence permits globally issued by the 28 Member States to the Asian countries considered seems to reflect the emergence of increasingly restrictive immigration policies in Europe, especially when it comes to labour migration. In fact, for all the Asian countries observed, the number of work permits decreased over the 2008-2014 period (Table 5). Figures on long-term visas and residence permits issued to Chinese, Indian, Filipino and Thai citizens acquire even more significance when compared with the data collected on Schengen visas granted in the Asian countries considered. The difference between the numbers of

⁵³ Niyomsilpa, S., Asis, M. and Sureeporn P., Asian Countries' Policies On Temporary Migration, In P. Pitkänen and S. Carrera (Eds.) Transnational Migration in Transition: State-of-the-art Report on Temporary Migration: Collected Working Papers from the EURA-NET Project, p. 35-61.

residence permits issued to the nationals of these Asian countries, and the Schengen visas accorded to applicants in China, India, the Philippines and Thailand over the same period is striking (Table 7).

Table 7. Comparative overview: Number of visas and residence permits issued (2013-2015)

	2013		2014		2015	
	Visa	Residence Permits	Visa	Residence Permits	Visa	Residence Permits
China	1.435.123	165.418	1.742.013	170.427	2.308.591	167,118
India	659.038	200.748	529.367	136.056	487.686	135.514
Philippines	124.071	107.501	117.787	35.058	104.775	27.057
Thailand	246.025	23.595	209.737	18.763	215.932	21.352

Source: Author's elaboration based on Eurostat and Commission (DG HOME) statistics.

The substantial disparity between the volume of visas and residence permits granted indicates that, under the current EU and national immigration policies, authorisations for short-term visits are easier to obtain for Asian nationals than grants of more stable stays for such reasons as work, education and family reunification. Research conducted in the framework of the EURA-NET Project has investigated and contributed to describing the implications that the progressive incorporation of the concept of "temporariness" in EU migration law and policies has on migrants' security of residence, family life, labour standards and inclusion in EU society.⁵⁴ Given the limited numbers of residence permits issued to Chinese, Indian, Filipino and Thai nationals, it seems that the same implications also concern individuals from these Asian countries who wish to work, study or reunite with their family members in the EU for stays exceeding the three-month validity of a Schengen visa.

A residence permit may be also granted once the third-country national has already entered the territory of the EU, on the occasion of an authorised change in immigration status, accorded when a legitimate reason to stay on a different legal ground emerges. Data collected by Eurostat on permissions granted at all levels of administrative/judicial instances and by all national authorities show that a change in the third-country national's family situation constitutes the most common reason for a change in immigration status leading to the issuance of a residence permit to Chinese, Indian, Filipino and Thai nationals already present in the EU. These data seem to suggest that, in the majority of cases, the changes in the immigration statuses of Asian migrants is linked to a mutation of the initially planned mobility trajectory, and confirms that individual decisions to move or stay do not take place in a socioeconomic vacuum, but are conditioned by complex individual dynamics.⁵⁵

⁵⁴ Carrera, S., Eisele, K., and Guild, E. (2014). European and International perspectives and Standards on Temporary Migration. In Pitkänen and S. Carrera (Eds.) Transnational Migration in Transition: State of the art Report on Temporary Migration: collected Working Papers from the EURA-NET Project, p. 13-33.

⁵⁵ Ibid.

With regard to the impact of EU immigration law on the temporary mobility of Asian nationals, Eurostat statistics on the implementation of the Blue Card Directive report that, out of the 96 third-country nationalities covered by the EU scheme for the mobility of highly skilled migrants in 2012, the top countries for the number of migrants attracted were India (699) and China (324), followed by the US (313), Russia (271) and Ukraine (149).⁵⁶ Despite increasing throughout 2013 and 2014, the number of Chinese and Indian nationals granted with a Blue Card remain altogether low compared with the total number of work permits issued by national authorities during the same year (see Table 3 above). These statistical data confirm that, under the current normative and policy framework, national immigration law and policies remains the main channel for the regular entry and residence of Asian country nationals in the EU. In fact, national authorities retain the power to set national quotas for the admission of third-country nationals coming to Europe for the purposes of employment, study or family reunification. National legislation also establishes the costs that different categories of migrants face for staying in Member States for a period of more than three months.

Member States have set in place a series of international mobility schemes that, directed at attracting foreign workers into their territory, can be applied alternatively to the EU law provisions on labour migration. The most relevant examples of Member States' preferential admission policies concern highly skilled migrants (e.g. the Dutch "knowledge migrant scheme", and the admission of highly qualified migrants under Section 19 of the German Residence Act). Indian citizens have been among the largest group of non-EU labour migrants making use of such highly skilled migrant schemes.⁵⁷

2.3 Entry, presence and return of irregular Chinese, Indians, Filipino and Thai migrants under EU migration law and policies

For the assessment of the Union's relations with the Asian countries considered in the fields of mobility and migration, the collection, collation and analysis of data concerning both, Asian regular and irregular migration towards the EU is important. In the previous section, official statistics on the number of visas and residence permits issued to Chinese, Indian, Filipino and Thai nationals are used to understand how and what type of inward mobility stemming from major Asian countries is channelled through EU regular immigration policies. In this section, data on the irregular migration of Chinese, Indians, Filipino, and Thai nationals are collated to set up the statistical framework of reference against which the latest developments in EU policies and relations with Asian countries on migration-related matters need to be analysed and addressed.

At the EU regional level, statistics on irregular migratory flows are based on data regarding the implementation of the Schengen *acquis* on external border control,⁵⁸ Member States' national laws

⁵⁶ Communication from the Commission to the European Parliament and the Council on the implementation of Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, COM(2014) 287 final, Brussels, 22.5.2014.

⁵⁷ Eisele, K., Wiesbrock (2013), A.. Reaching Out – The External Dimension of the EU's Migration Policy0 A Comparative Study on India and Australia, CARIM-India Research Report 2013/12.

⁵⁸ 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).

relating to irregular immigration, and EU and Member State legislation on the expulsion and return of third-country nationals. This means that official figures report the number of those third-country nationals who have been refused entry at the EU external border;⁵⁹ found to have crossed the EU external borders without complying with the necessary requirements for legal entry;⁶⁰ apprehended in a Member State's territory in violation of the conditions for entry, stay, or residence;⁶¹ and ordered to leave, and returned to a third country following an order to leave.⁶²

2.3.1 Main grounds for refusal of entry

Regarding the refusals of entry, official data show that the decisions to deny entry to Chinese, Indian, Thai and Filipino nationals at the EU external border are overall infrequent, especially considering the large numbers of non-EU nationals travelling to Europe from these Asian countries every year. In particular, a very limited number of Asian nationals were refused entry on the basis of their identification as persons for whom an alert was issued in the SIS or in a national register, or because they were found to be travelling with a false, counterfeited or forged visa or residence permit. Instead, the lack of a valid visa or residence permit at the EU external borders (C) constituted the main ground for refusal of entry into the EU to the nationals of the different Asian countries analysed (Table 8).

Table 8. Refusal of entry (2015)

	Nationality	Reason for refusal of entry								
		A	B	C	D	E	F	G	H	I
Air border										
	China	155	50	920	65	250	30	130	35	55
	India	20	10	885	40	200	10	65	10	20
	Philippines	0	5	305	25	20	0	15	5	5
	Thailand	5	0	80	0	10	0	15	5	0
Land Border	China	55	0	365	0	5	15	5	5	0
	India	45	0	150	5	10	0	0	0	0
	Philippines	5	0	70	0	0	0	0	0	0
	Thailand	10	0	30	0	10	0	0	0	0
Sea border	China	65	0	50	0	0	0	10	0	0
	India	15	0	115	0	0	0	0	0	0
	Philippines	0	0	35	0	0	0	0	0	0
	Thailand	0	0	10	0	0	0	0	0	0

⁵⁹ Article 14 of the Schengen Borders Code.

⁶⁰ Article 6 of the Schengen Borders Code.

⁶¹ Article 3 of the 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.

⁶² Ibid.

- A. Has no valid travel document(s)
- B. Has false/counterfeit/forged travel documents
- C. Has no valid visa or residence permit
- D. Has a false/counterfeit/forged visa or residence permit
- E. Has no appropriate documents justifying the purpose and conditions of stay
- F. Has already stayed for three months during a six-month period on the territory of the Member States of the European Union
- G. Does not have sufficient means of subsistence in relation to the period and form of stay, or the means to the country of origin or transit
- H. Is a person for whom an alert has been issued for the purpose of refusing entry in the SIS, or in a national register
- I. Is considered to be a threat to public policy, internal security, public health or the international relations of one or more of the Member States of the European Union.

Source: Author's compilation based on Eurostat data.

2.3.2 Apprehensions

Figures on the irregular entry and presence of citizens of Asian countries need to be analysed taking into account both the legal framework for regular migration analysed in the previous discussion and the rapidly shifting patterns of irregular migration into Europe.

In 2015, the total number of Chinese, Indian, Filipino and Thai nationals found to have irregularly entered or stayed in the EU was 27,110. This figure constitutes less than 1.3% of the total 2,136,055 irregular migrants apprehended in the 28 EU Member States throughout that year.

While the total number of irregular migrants apprehended in the EU saw a constant increase during 2012-2015,⁶³ the number of apprehended irregular migrants originating from China, India, the Philippines and Thailand remained mostly stable from 2012 onwards. Only the number of apprehensions of Indian irregular migrants slightly increased between 2012 and 2015, while the Chinese, Filipino and Thai nationals who were found to have irregularly entered or stayed in the EU decreased over the same period (Table 9).

⁶³ According to the latest available Eurostat statistics, there has been a significant increase in the irregular migration to the EU between 2013 and 2015, especially in the number of non-EU citizens found to be illegally present in the Member State's territories. See, http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_enforcement_of_immigration_legislation.

Figure 7. Main citizenship of third-country nationals found to be irregularly present in the EU-28, 2014-2015

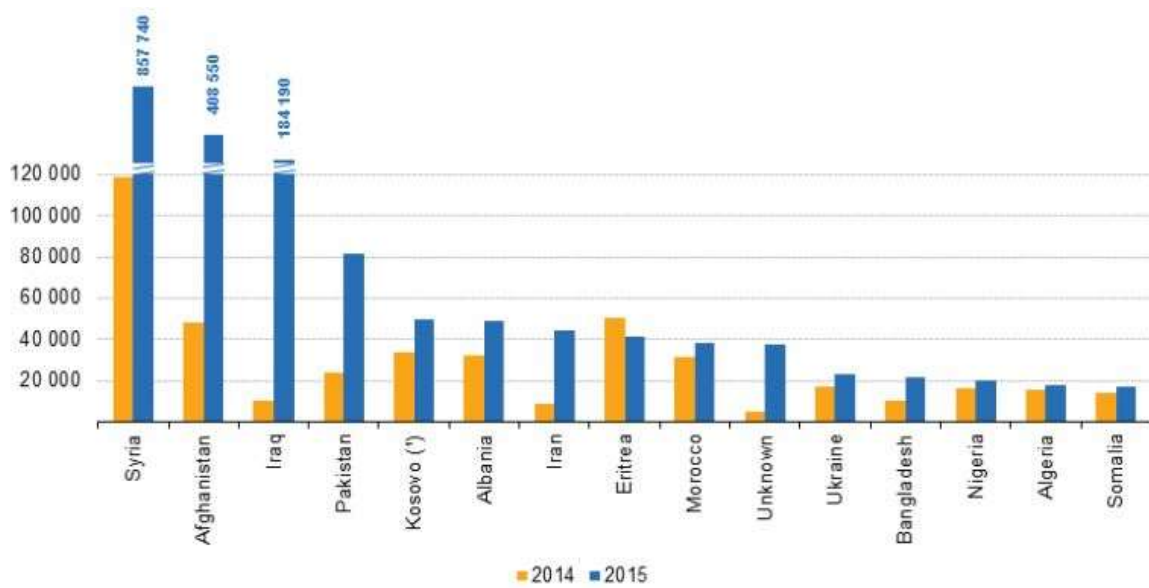
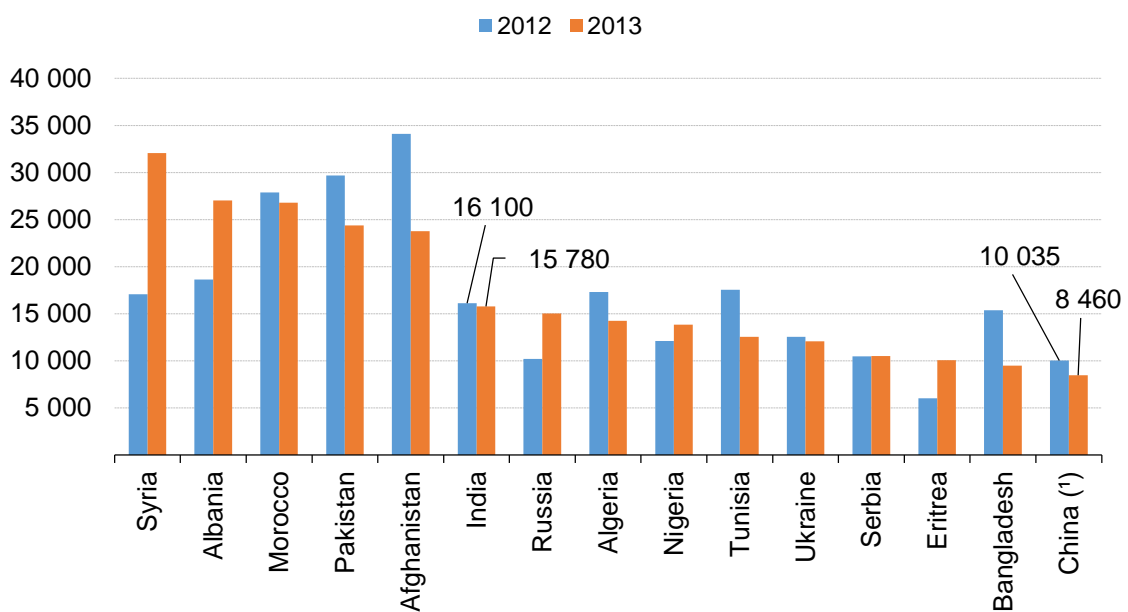


Figure 8. Main citizenship of third-country nationals found to be irregularly present in the EU-28, 2012-2013



Source: Eurostat.

Table 9. Indian and Chinese irregular migrants apprehended (2011-2015)

Year		2011	2012	2013	2014	2015
Chinese nationals	Total	11,745	10,020	8,460	8,315	7,920
	< 14 years	285	280	275	335	315
	>14 to 17 years	70	60	80	50	50
	>18 to 34 years	5,965	4,755	4,075	3,785	3,645
	> 35 years	5,415	4,920	4,050	4,135	3,900

Indian nationals	Total	15,125	16,100	15,810	17,225	17,290
	< 14 years	305	350	440	1,010	1,060
	>14 to 17 years	230	210	210	255	245
	>18 to 34 years	10,415	11,380	10,845	11,400	10,645
	> 35 years	4,175	4,160	4,310	4,560	4,835

Filipino nationals	Total	2,075	2,065	2,430	2,110	1,940
	< 14 years	40	50	50	70	75
	>14 to 17 years	10	10	5	15	20
	>18 to 34 years	885	835	910	675	640
	> 35 years	1,140	1,175	1,465	1,350	1,205

Thai nationals	Total	630	550	535	685	560
	< 14 years	5	5	5	5	10
	>14 to 17 years	10	5	10	10	5
	>18 to 34 years	295	255	205	260	240
	> 35 years	320	290	315	410	305

Source: Author's own compilation based on data provided by Eurostat.

The figures collected and reported by Eurostat show clearly that China, India, the Philippines and Thailand are not involved in the sharp increase in irregular migration that recently led to identification of the EU's neighbouring, African and Asian 'priority countries' of origin and transit, with which cooperation is deemed essential in order to address EU border control and migration-management issues.

Eurostat data do not provide disaggregated figures on the different categories of Indian, Chinese, Filipino and Thai irregular migrants apprehended in the EU. As such, it is not possible to distinguish the irregular migrants apprehended after having entered the EU by avoiding immigration controls or by employing a fraudulent document, from those who have been apprehended after having entered regularly but subsequently remained on an unauthorised basis (for example, by overstaying their permission to remain or by taking unauthorised employment). At the same time, while the exponential increases in the number of apprehensions observed in citizens from Syria, Afghanistan, Iran, Iraq,

Pakistan, and to a lesser extent Bangladesh, Palestine and Sudan seems to be related to the situation of instability affecting these countries, in the case of China, India, the Philippines and Thailand, figures on irregular migration might be explained in light of the restrictive EU and Member State visa and labour migration policies.

2.3.3 Expulsions

While Eurostat's statistics on apprehensions show that China, India, the Philippines and Thailand do not constitute a major source of irregular migration into Europe, the analysis of figures concerning expulsions and returns is important to correctly assess EU cooperation with these Asian countries on irregular migration management-related matters.

Under EU law, third-country nationals found to have irregularly entered or stayed in a Member State are subjected to an administrative or judicial return decision issued by national authorities.⁶⁴ These decisions state that the presence of the non-EU national is unauthorised, and impose a legal obligation to leave the country. In accordance with the procedures, standards and conditions set forth in the EU Return Directive, the removal of an irregular migrant can take place on the basis of an unassisted voluntary return,⁶⁵ or be enforced through a forced removal.⁶⁶ The return of irregular migrants, and of asylum seekers whose claims have been rejected, can also be implemented in the framework of specific, assisted, voluntary return schemes. As such, effective removals of third-country nationals include both the cases of irregular migrants who complied voluntarily with the obligation to leave the EU (when their departure is confirmed by national border authorities, or the consulate authorities in the country of origin, or other authorities implementing a programme to assist migrants to return to a third-country),⁶⁷ and the situations in which a removal procedure has been enforced by the Member States' national authorities.

Eurostat shows that there are significant variations in the return rates of nationals from the different Asian countries analysed in this report (see Table 10). In 2015, 80% of Filipino nationals issued with a return order have been effectively removed and left the territory of the issuing Member State. For the Thai and Indian nationals ordered to leave the EU in the same year, the 'successful' removal rates have respectively been of 69% and 61%, while 51% of return orders issued to Chinese nationals resulted in effective removals. The gap between the removal decisions and the effective returns represents the unknown cases, which include, for instance, voluntary returns without the authorities being informed, disappearances of persons after issuance of the leave order, or cases that have not been properly recorded or confirmed by the border authorities.

⁶⁴ The European Commission, defines returns as "[...] the process of going back to one's country of origin, transit or another third country, including preparation and implementation". See, "Communication from the Commission to the Council and the European Parliament on a Community return policy on illegal residents" COM(2002) 564 final, Brussels, 14.10.2002.

⁶⁵ Article 3(8) Directive 115/2008/EC.

⁶⁶ Article 3(5) and 8(3) Directive 115/2008/EC.

⁶⁷ Article 3(8) Directive 115/2008/EC.

Table 10. Expulsion of nationals of Asian countries

Year		2008	2009	2010	2011	2012	2013	2014	2015
Chinese	Ordered to leave*	18,495	18,795	16,515	13,540	13,810	11,970	11,770	9,475
	Returns**	4,995	7,820	7,235	6,625	7,105	6,520	5,375	4,820
	Effective return rate	27%	41%	43%	49%	51%	54%	46%	51%

Indian	Ordered to leave	19,060	16,955	15,380	14,990	15,465	15,300	15,930	15,225
	Returns	7,020	8,710	8,760	10,275	12,505	11,365	9,925	9,330
	Effective return rate	37%	51%	57%	69%	81%	74%	62%	61%

Filipinos	Ordered to leave	1,730	1,765	1,560	1,940	2,100	2,740	2,280	1,990
	Returns	1,020	1,140	1,270	1,735	1,960	2,155	1,855	1,585
	Effective return rate	59%	65%	81%	89%	93%	79%	81%	80%

Thai	Ordered to leave	1,040	1,015	950	825	740	815	770	700
	Returns	660	610	650	570	605	495	470	485
	Effective return rate	63%	60%	68%	69%	82%	61%	61%	69%

* This category refers to the total of all removal decisions imposing an obligation to leave the (national) territory of the Member States issuing the return order, also when such decisions do not specifically involve a removal to a third country. The third-country nationals who are transferred from one Member State to another Member State under the mechanism established by Regulations (EC) No. 343/2003 and No. 1560/2003 (Dublin) are not covered by this category.

** This category refers to the total of all the third-country nationals issued with a removal decision who have in fact left the national territory of the issuing Member State.

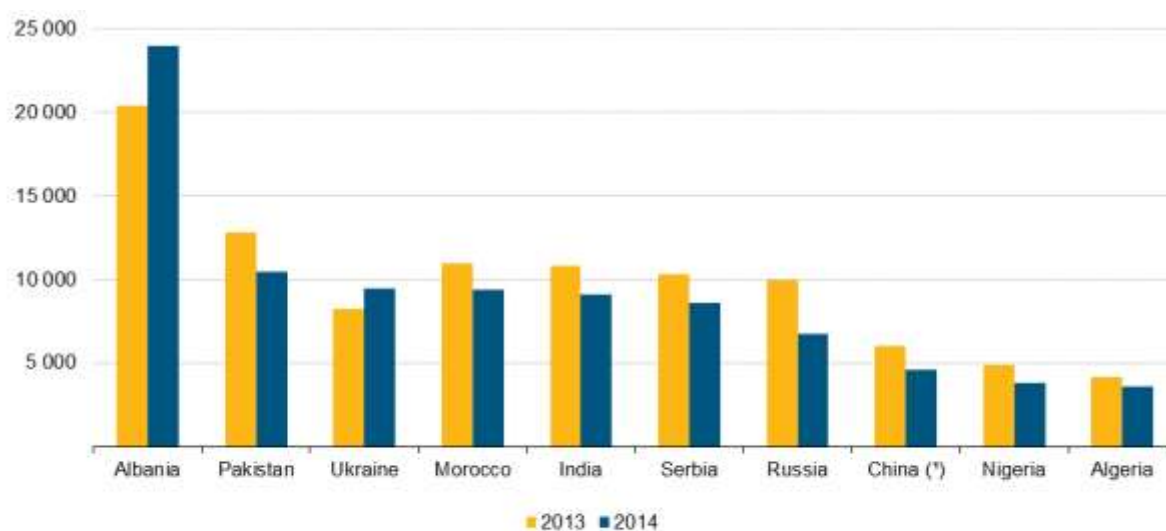
Source: Author's own compilation based on Eurostat data.

Despite the difference in effective removal rates, a common trend emerges from the analysis of data on returns of third-country nationals from China, India, the Philippines and Thailand. While the number of removal orders decreased for all the considered Asian nationalities between 2008 and 2015, over the same period the implementation rate of return orders issued increased for the nationals of all the different Asian countries considered. At the EU level, the rates of successful return of third-country nationals from China, India, the Philippines and Thailand are higher than those recorded, on average, for the overall population of irregular migrants apprehended in the Member States' territory and issued with an order to leave the EU.

Furthermore, official data show that the large majority of Chinese, Indian, Thai and Filipino nationals issued with an order to leave and recorded by the issuing Member States as having in fact left the

national territory, were returned to a third country, namely to their country of origin. In particular, China and India were among the top 10 countries with high number of returns of nationals removed from the EU after an order to leave was issued (Figure 9).

Figure 9. Main citizenships of persons returned to their country of origin, 2013-2014



(*) Including Hong Kong.

Source: Eurostat.

Currently, statistics related to the destination country (i.e. country of citizenship, country of transit or other third country) of the third-country nationals effectively returned from the EU are provided on a voluntary basis, and collected as the result of a pilot data-collection exercise conducted by Eurostat. At the same time, figures voluntarily reported for 2015 from some of the Member States (namely, the UK and France) that issued the highest number of removal orders to Chinese, Indian, Filipino and Thai nationals, show that the large majority of individuals removed to a third country were effectively returned to their country of origin. For example, out of the 7,880 Indians removed from the UK to a third country in 2015, 7,215 returned to India. In the same year, all of the 535 Chinese nationals removed from France to a third country were returned to China.

The quantitative picture provided by Eurostat tells us little about the nature (voluntary/forced), instruments (formal/informal agreement with the third country), scope or effects of the removal practices of Asian irregular and undocumented migrants from the Member States' territories. In particular, these statistics do take into account key challenges that cannot be disregarded when assessing the outcomes of EU return policies and readmission practices, namely, the degree of accountability and transparency of the exact ways in which these operations are implemented.⁶⁸

The next section analyses the latest initiatives already adopted or currently under discussion for strengthening bilateral cooperation between the EU and China, India, the Philippines and Thailand

⁶⁸ Carrera, S. (2016), Implementation of EU Readmission Agreements, Identity Determination Dilemmas and the Blurring of Rights, Springer Briefs in Law.

respectively on irregular migration issues. Bearing in mind the statistical findings emerging from this section, the next section assesses enhanced cooperation on readmission in the context of EU-Asia relations.

3. Addressing migration and mobility in EU external relations: Policies and legal instruments

Building upon the typology outlined for Deliverable 3.1 of the EURA-NET Project, this section pinpoints and analyses the main legal and policy instruments upholding the EU migration policies in the existing relations with different Asian countries including China, India, the Philippines and Thailand. Through the in-depth examination of the external cooperation tools dealing with migration and mobility-related issues, it illuminates how migration is framed in the EU's overall relations with the Asian partner countries considered. It also seeks to explain the function of specific legal and policy tools in the development of the EU's external migration policies vis-a-vis the four Asian countries. Finally, it assesses the extent to which different policy understandings (i.e. mobility and/or migration) are currently hindered or favoured between the EU and China, India, the Philippines and Thailand, respectively.

3.1 Legal instruments: International agreements

The legal instruments⁶⁹ through which the EU develops the external dimension of its migration policies are constituted by legally binding acts adopted through the inter-institutional decision-making framework enshrined in the EU Treaties. Mainly, these instruments are represented by international agreements that the EU and its Member States enter into with third countries or groups of third countries. Concluded following the procedure prescribed in Article 218 of the Treaty on the Functioning of the European Union (TFEU), these legal instruments are subject to both democratic and judicial scrutiny. The Lisbon Treaty specifically states that the European Parliament shall be immediately and fully informed at all stages of the procedure (Article 218(10) TFEU), and that it must give its consent prior to the conclusion of association and similar international agreements (Article 218(6)(v) TFEU). Once entered into force, the Union's international agreements are binding upon the Member State, and the national authorities' failure to implement such agreements constitutes failure to fulfil EU law obligations (Article 216(2) TFEU).

In the field of migration, the external normative power of the EU is exercised on the basis of both explicit and implicit competences.⁷⁰ Confirming the political importance that cooperation on irregular migration

⁶⁹ In Deliverable 3.1, "Legal Instruments" are defined as international agreements "which are recognized as legally binding in European legal provisions, in particular Part Five on 'International Agreements' (Art. 216-219) and Title V (Area of Freedom, Security and Justice), Articles 77 and 79 Treaty on the Functioning of the European Union (TFEU). They also encompass EU legal acts enshrined in Part Six on 'Institutional and Financial Provisions', Chapter 2 on Legal/acts of the Union (Art. 288-299) TFEU. Legal Instruments are subject to the inter-institutional decision-making framework enshrined in the Treaties and fall under the democratic and judicial scrutiny of the European Parliament and the Court of Justice of the European Union".

⁷⁰ De Baere, G. (2010), *The Framework of EU External Competences for Developing the External Dimensions of EU Asylum and Migration Policy*, Working Papers, Paper 50, Leuven Centre for Global Governance Studies.

issues assumed in the wider framework of EU external relations, Article 79(2) TFEU expressly confers upon the EU the competence to conclude readmission agreements.⁷¹ This primary law provision served as a legal basis for the negotiation and conclusion of EU international agreements setting out obligations for the return of irregular migrants to their country of origin or transit. Specific clauses on readmission have also been progressively incorporated into wider (global) EU international agreements.⁷² On the other hand, the migration-related provisions included in EU association and cooperation agreements are not just limited to readmission. International agreements concluded by the EU include migration clauses that, more broadly, deal with irregular migration and human trafficking, and foresee the development of comprehensive migration dialogues between the signatory parties, as well the promotion of social and economic development in the countries of origin of migratory flows.⁷³ While these clauses rarely have direct effect, they lie in the legal basis for further cooperation, to be discussed in the framework of joint committees. In addition, international agreements directed at facilitating the admission of migrants through the relaxation of short-term visa requirements, and ad hoc provisions promoting socio-economic integration of third-country nationals legally residing in the EU, constitute an integral part of the external normative *acquis* of the EU at present.

In the following subsections, EU international agreements touching upon migration and mobility issues and the relevant international legal provisions applying to EU relations with China, India, the Philippines and Thailand are identified and analysed in order to assess the role that these legal instruments play in the wider EU-Asia system for mobility governance and migration management.

3.1.1 *The use of EU legal (and other) instruments in prompting partners' cooperation on readmission and return*

Under EU law, third-country nationals who have been apprehended in a situation of irregularity, and subjected to a removal order, cannot be returned to an unspecified destination, but only to a specified country of return.⁷⁴ According to an established international law principle, every state has the obligation to readmit its own citizens, if they are found to be illegally present in the territory of another state, and if the receiving state requires so. The Court of Justice of the European Union (CJEU) expressly confirmed the existence of a duty to receive back its own nationals under customary international law, holding that a state is “precluded from refusing its own nationals”.⁷⁵ However, the domestic decisions of a state to expel a third-country national have no international legal value, and can only be effectively

⁷¹ Cassarino, J.P. (2010), Study on Readmission Policy in the European Union, European Parliament, DG for Internal Policies, Policy Department C, PE 425.623.

⁷² Coleman, N., (2009), European Readmission Policy. Third Country Interests and Refugee Rights, Martinus Nijhoff Publishers, Leiden, p. 214.

⁷³ Lavenex, S. and Stucky, R. (2011), “Partnering for migration in EU external relations”, in Kunz, R., Lavenex, S., Panizzon, M. (eds.), *Multilayered Migration Governance, The Promise of Partnership*, Routledge, London, p. 116-142.

⁷⁴ Article 3(3) of the Return Directive.

⁷⁵ Case *Van Duyn v. Home Office* 41/74, 4 December 1974, p. 1375.

enforced when another state agrees to take that person onto its territory.⁷⁶ Therefore, the practical implementation of ‘duty to readmit’, and in particular the specification of the conditions and rules for the readmission of third-country nationals, are often clarified on the basis of – legal and non-legal – international arrangements.

The European Union’s Readmission Agreements (EURAs) precisely respond to the objective of regulating the operational modalities and administrative procedures for the return and readmission of persons who do not or who longer fulfil the conditions for entry to, presence in, or residence on the EU Member States’ territory.⁷⁷ Notably, EURAs set forth a series of rules that establish the criteria for the determination of the returnee’s identity and nationality, and contain provisions indicating the principles, procedures and lists of documents intended to facilitate the swift return of irregular migrants. While such agreements necessarily involve reciprocal undertakings to cooperate over the return of irregular stayers to their country of origin or transit, it has been reported that in many cases, third countries of (presumed) origin or transit have little or no interest in readmitting irregular migrants.⁷⁸

In view of the difficulty encountered by the EU in concluding these types of agreements, the decision to proceed with the negotiations needs to be adopted on the basis of a case-by-case assessment, taking into account the real need for a EURA and the possible obstacles affecting its practical implementation.⁷⁹ While a series of specific criteria have been elaborated to identify the third countries with which negotiating a EURA is necessary and/or opportune, the development of cooperation on the specific issue of readmission currently constitutes one of the vital components framing EU external relations on migration control-related matters, including with Asian countries. The EU institutions have repeatedly affirmed the centrality of the EURAs from the perspective of improving the system for returning irregular migrants. Officially, EURAs are referred to as instruments playing a key role in fastening expulsion operations, and they are more generally considered crucial to ensure the success of EU return policies.⁸⁰ The Commission has stressed on many occasions that readmission agreements are essential to increasing the return rates of irregular migrants and for enhancing the overall credibility of EU policy on irregular migration.

Experts and policy-makers have largely debated the overall effectiveness of EURAs, as well as their current positioning within the wider domain of the EU’s external migration policies. The multi-faceted challenges linked to the adoption and implementation of the EURAs as migration management tools, as well as their implications for the rights of third-country nationals and stateless persons have also been the object of in-depth academic and policy scrutiny. The central role that these legal instruments play in the current developments of EU external migration policy and the controversial aspects related to

⁷⁶ Peers, S. et al (2012), *EU immigration and asylum law (text and commentary)*, 2nd ed. Volume 2: Immigration Law. Martinus Nijhoff Publishers, Leiden.

⁷⁷ Commission (2011), *Evaluation of EU Readmission Agreements*. COM(2011) 76. Brussels: European Commission.

⁷⁸ EMN (2010), *Ad Hoc Query on EU Laissez-Passer*, Brussels, October 2010.

⁷⁹ Council of the EU (2002), *Criteria for the identification of third countries with which new readmission agreements need to be negotiated*. 7990/02, Brussels, 16 April 2002.

⁸⁰ Commission (2015), *Recommendations establishing a common “Return Handbook” to be used by Member States competent authorities when carrying out return related tasks*. C (2015) 6250, 1 October 2015.

their design and practical implementation need to be taken into account when analysing how readmission fits within the broader EU-Asian framework of cooperation, and in assessing the legal and policy issues involved in the EU's current attempts at persuading countries like China, India, the Philippines and Thailand to cooperate on return of irregular migrants.

To date, EURAs have been concluded with a series of southern and central Asian countries including Hong Kong, Macao, Sri Lanka and Pakistan.⁸¹ Yet none of the countries analysed in this policy report, namely China, India, the Philippines and Thailand, has a readmission agreement in place with the EU. At the same time, the attempt to strengthen cooperation on readmission is reflected in several legal instruments that have been negotiated or concluded between the EU and the Asian countries considered in this study.

With particular regard to China, negotiating directives for a EURA were given to the Commission in 2002. Nevertheless, formal negotiations with China have not started yet. An article on readmission and visa cooperation was included in the draft of the EU-China Partnership and Cooperation Agreement (PCA).⁸² Commenced in 2007, negotiations for this agreement have been deadlocked for years, due to the reserves that the negotiating parties expressed on both the commercial and political components of the PCA.⁸³ In February 2004, China and the EU signed a legally binding Memorandum of Understanding (MoU), and adopted the Approved Destination Status (ADS) Agreement.⁸⁴ This agreement allows organised Chinese group visits to the EU, but also contains an obligation on the Chinese administration to readmit overstaying tourists. The readmission obligation of the Government of the People's Republic of China (PRC) is clearly spelled out in Article 5 of the Memorandum of Understanding. This article states that, in the case of an illegal overstay, the tourist "shall be readmitted by the Government of the People's Republic of China". Specific obligations are also set out for the travel agencies organising the group visits. The operators are required to report, without delay, to the Member State having issued the visa and to the Chinese National Tourism Administration, and must work with the competent departments of the Contracting Parties to help send back and readmit the illegal overstayer. Paragraph 2 establishes that documentary evidence must be provided to prove identity as a Chinese citizen. Paragraph 5 of the joint declaration on implementation arrangements specifies that the documentary evidence includes passports, visas applications, EU immigration control records, travel agency documents, or photocopies thereof. Included after "intense political pressure from the EU", the

⁸¹ The other third countries with which the EU concluded ERAs are: Albania; Macedonia; Ukraine; Moldova; Bosnia and Herzegovina; Montenegro; Serbia; Russia; Georgia; Armenia; Cape Verde; Azerbaijan; and Turkey.

⁸² Council of the European Union, "Joint statement of 9th EU-China Summit", 12642/06 (Press 249), Brussels, 11 September 2006.

⁸³ Van Der Borgh, K., and Zhang L. (2010), "The Current Legal Foundation and Prospective Legal Framework of the PCA", in Men, J. and Balducci G. (eds.), *Prospects and Challenges for EU-China Relations in the 21st Century: the Partnership and Cooperation agreement*, Brussels, Peter Lang.

⁸⁴ Council Decision of 8 March 2004 concerning the conclusion of the Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China on visa and related issues concerning tourist groups from the People's Republic of China (ADS); OJ L83 of 20/03/2004, p.12.

unprecedented acceptance by Beijing of a readmission clause within the ADS context was considered a major achievement.⁸⁵

Still, and contrary to the Commission's expectations, this result has not contributed to paving the way for negotiations with China on a readmission agreement.⁸⁶ Instead, cooperation in the field of irregular migration is expected to move ahead with the opening of the so-called 'second phase' of the EU-China Dialogue on Mobility and Migration (see *infra*, section 3.2). In particular, EU and Chinese sources contacted in the framework of this study reported that talks with Chinese authorities for the negotiations of an agreement dealing with the return of irregular migrants resumed, informally, as a follow-up of the process that recently led to the adoption of the visa waiver for diplomats.⁸⁷ To date the return of Chinese irregular migrants has represented a highly sensitive political issue, if not a matter of national pride for the Asian country, which prevented the EU from taking any concrete steps forward towards the opening of EURA negotiations. Yet the latest developments in EU-China high-level dialogues and wider political and economic relations suggest that readmission has been included as a topic where strengthened cooperation is foreseen between the two parties. Interviews suggest that the enlistment of a readmission agreement among the deliverables to be concluded in the second phase of the EU-China Dialogue on Mobility and Migration represents the output of the two parties' mutual concessions on different topics of respective interest. From the EU's perspective, the signature of an EURA with China constitutes a milestone in the framework of the dialogue established with the Asian counterpart on migration management-issues, and is in line with the Union's global effort to scale-up cooperation on expulsions and returns with third countries. With irregular migration and organised crime (especially 'migrant smuggling' from China to Europe) still described as a "challenge" for EU migration policies and EU countries,⁸⁸ the return of irregular migrants remains a priority for both the EU and its Member States. For China, openings made in the field of readmission are understood as a way forward to achieve results in the field of visa facilitation.

Commitments towards the expulsion of irregular migrants have been expressly undertaken in the framework of the Partnership and Cooperation Agreement that the EU concluded with the Philippines in 2011.⁸⁹ Whereas the nature of the PCA's provisions foreseeing cooperation on legal migration and the strengthening of the migration and development nexus are largely programmatic, a clear engagement between the signatory parties is stipulated in relation to readmission of nationals who do

⁸⁵ Commission (2003), Proposal for a Council Decision concerning the conclusion of the Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China on visa and related issues concerning tourist groups from the People's Republic of China (ADS) COM (2003) 0790 final.

⁸⁶ Snyder, F. (2010), *The European Union and China, 1949-2008: Basic Documents and Commentary*, China and International Economic Law Series, Bloomsbury.

⁸⁷ Agreement between the European Union and the People's Republic of China on the short-stay visa waiver for holders of diplomatic passports, OJ L 76, 23.3.2016, p. 19–25.

⁸⁸ International Organization for Migrations, EU-China Dialogue on Migration and Mobility Support Project Newsletter, Issue 2, January 2016, available at www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-beijing/documents/publication/wcms_456852.pdf.

⁸⁹ Framework Agreement on partnership and cooperation between the European Union and its member states, of the one part, and the Republic of the Philippines, of the other part.

not fulfil, or no longer fulfil, the conditions of entry, stay or residence in the territory of the other party concerned. The PCA establishes that readmissions shall be implemented upon request, and without undue delay, once the nationality of the irregular migrant has been established, and a due process in the party concerned has been carried out. Any request for admission or readmission shall be transmitted by the requesting state to the competent authority of the requested state.⁹⁰ Both the EU Member States and the Philippines agreed to provide their nationals with the required documents for the purposes of readmission. In particular, Article 26(3) of the Agreement states that

[w]here the person concerned does not possess any appropriate identity documents or other proof of his/her nationality, the competent diplomatic or consular representation concerned shall be immediately requested by the Philippines or Member State to ascertain his/her nationality, if needed by means of an interview; and once ascertained to be a national of the Philippines or Member State, appropriate documents shall be issued by the competent Philippine or Member State authorities. The Parties agree to conclude as soon as possible an agreement for the admission/readmission of their nationals, including a provision on the readmission of nationals of other countries and stateless persons.

With regard to Thailand, a similar type of cooperation in the field of readmission has been discussed (and agreed) in the framework of the PCA negotiations that, launched in 2003, were finalised in November 2013. Nonetheless, the signature of the agreement with this Asian country were put on a halt in June 2014, together with the suspension of official visits to and from Thailand. The decision was linked to EU concerns over the situation of growing political turmoil in the Asian country, and afterwards Thailand's army chief, General Prayuth Chan-ocha, seized power and suspended the constitution, vowing to restore order.⁹¹

As for EU cooperation with India, there currently is no legal instrument or formal provision in place that deals with 'readmission' of irregular migrants. At the same time, recent developments in external migration policies reflect the EU's ambitions to intensify collaboration on irregular migration issues with this country, especially through the deployment of informal and non-legally binding instruments of cooperation. Indeed, the strengthening of cooperation for the fight against irregular migration was included among the four main areas covered in the last EU-India High Level Dialogue on Migration and Mobility, which was held in July 2012.⁹² The prevention of irregular migration was also discussed in the framework of the National Consultation Workshop held September 2012 in New Delhi, which brought together government representatives of both India and the Member States, as well as EU officials, academics and other stakeholders.⁹³ Most importantly, an express reference to a commitment towards the strengthening of cooperation on the specific issue of readmission is included in the Common Agenda on Migration and Mobility (CAMM) signed in March 2016 between the EU and India.⁹⁴ The reference to

⁹⁰ Article 26.3 a), b) and c).

⁹¹ Council of the EU, Conclusions on Thailand, Foreign Affairs Council meeting, Luxembourg, 23 June 2014.

⁹² See below, para 4.3.1.

⁹³ National Consultation Workshop on Facilitating Safe and Legal Migration and Preventing Irregular Migration, 6-7 September 2012 at The Claridges, New Delhi.

⁹⁴ Joint Declaration on a Common Agenda on Migration and Mobility between India and the European Union and its Member States.

mutual commitments on readmission of visa overstayers in their home countries, and the mention of the possibility to explore, in the context of the CAMM, further cooperation in the field of return of irregular migrants, certainly represent a symbolic step forward in the EU's external migration policies towards India.⁹⁵ Once again, the inclusion of readmission among the EU-India cooperation objectives are the result of a concession that the Indians made in exchange for the EU's commitments in the field of visa facilitation.⁹⁶

While efforts are undertaken at the EU level to prompt cooperation on readmission with China, India, the Philippines and Thailand, the expulsion of irregular migrants to these countries largely takes place under bilateral agreements concluded by individual EU Member States with their Asian counterparts. According to the available public information, the only *formal* readmission agreement currently in force between the Asian countries considered and the EU Member States is represented by the agreement that the UK signed with China.⁹⁷ The limited use of formal readmission agreements concluded between Member States and China, India, the Philippines and Thailand respectively can be explained in light of the observed preference that Member States' authorities have for flexibility and operability in their expulsion and removal practices.⁹⁸ In general, this drive towards informality has progressively led to a proliferation of non-standard readmission instruments used for the return of third-country nationals to their country of origin or transit. The expansive use of informal paths of cooperation and policy instruments between some Member States and third countries has not only been acknowledged by the Commission,⁹⁹ but is also emerging as a new approach that the EU is exploring in order to facilitate cooperation on this sensitive legal and policy issue with third countries, such as China and India, which appear to be unwilling to conclude a formal and publicly visible EURA.

The above overview shows that the EU legal framework currently dealing with the expulsion of irregular and undocumented Chinese, Indian, Filipino and Thai migrants substantially consists of provisions that are either incorporated into wider international agreements negotiated or concluded by the Union and its Member States to regulate their economic and political relations with the Asian counterparts (i.e. PCAs with the Philippines and Thailand) or included as a component of international legal instruments implementing the EU's visa policy (i.e. the MoU on ADS with China). While these provisions mainly represent the expression of a mutual commitment to cooperate on readmission, the scope and effects of the return practices towards China, India, the Philippines and Thailand broadly depend on the implementation of a network of largely informal *bilateral agreements* concluded by the individual EU Member States. At the same time, the push for uploading readmission into the EU's relations with the Asian countries considered, and in particular China and India, is clearly reflected in recent developments in the EU's external migration policy. Against this complex empirical, legal and political background, and

⁹⁵ EU-India Agenda for Action-2020, EU-India Summit, Brussels, 30 March 2016.

⁹⁶ Carrera, S. (2016), Implementation of EU Readmission Agreements, Identity Determination Dilemmas and the Blurring of Rights, Springer Briefs in Law.

⁹⁷ European Migration Network (2014), Good practices in the return and reintegration of irregular migrants: Member States' entry bans policy and use of readmission agreements between Member States and third countries.

⁹⁸ Cassarino, J.P. (2010), Readmission Policy in the European Union. Study for the European Parliament, Brussels.

⁹⁹ Commission (2011), Evaluation of EU Readmission Agreements. COM(2011) 76. Brussels: European Commission.

bearing in mind the current numbers and return rates of Chinese, Indian, Thai and Filipino irregular migrants apprehended in Europe, it is worth questioning how the conclusion of EURAs could improve cooperation between the EU and these Asian countries on migration and mobility-related matters.

First, and specifically in relation to the objective of increasing the ‘effectiveness’ of returns of irregular migrants, it is far from certain that the signature of EURAs will increase the present rates of irregular migrant readmissions to China, India, the Philippines and Thailand. In fact, official data collected at the EU level show that for each of these Asian countries, the rates of third-country nationals effectively returned after being issued an order to leave are already higher than the average. On the other hand, statistics collected in the framework of previous EURA-NET research on Pakistan, Georgia and Armenia clearly show that the returns of irregular migrants to these countries have not increased in number after the conclusion of EURAs.¹⁰⁰

Second, a high degree of secrecy still surrounds the EURAs. Lack of publicity affects, in particular, the decisions adopted by the Joint Readmission Committees and the content of the EURAs’ implementing protocols, both of which play a key role in the practical implementation of the expulsion procedures.¹⁰¹ Therefore, it does not seem that the conclusion of readmission agreements will increase the transparency and accountability of the procedures through which expulsions of the irregular migrants to China, India, the Philippines and Thailand are implemented in practice.

Third, the inter-institutional and international relations issues linked to the operationalisation of the duty to readmit irregular migrants will also be left unresolved by the conclusion of multilateral readmission agreements. The high degree of legal uncertainty affecting the identity determination mechanisms foreseen under the EURAs would notably affect cooperation for the readmission of irregular migrants by China. Given the importance of the role that third-country authorities still have in the concrete implementation of readmission procedures,¹⁰² difficulties in cooperation with the returning Member States’ authorities would derive from both the complex governance structure of different Chinese central institutions and local bodies responsible for the identification and readmission of irregular Chinese migrants apprehended in the EU, and the fact that Chinese nationals can have up to 100 family names. Finally, it is yet not clear how compatibility and consistency will be ensured between the EURAs that the EU intends to negotiate, and the bilateral instruments currently governing readmission between the EU Member States and the above-mentioned Asian countries.¹⁰³

3.1.2 EU Visa Facilitation Agreements: What incentives for enhanced cooperation on irregular immigration control in EU relations with Asian countries?

The main purpose of the EU Visa Facilitation Agreements (VFAs) is to simplify, on the basis of reciprocity, the issuance of Schengen visas. These legal instruments do not remove the visa obligation for the non-

¹⁰⁰ Carrera, S. (2016), Implementation of EU Readmission Agreements, Identity Determination Dilemmas and the Blurring of Rights, Springer Briefs in Law.

¹⁰¹ Ibid, p. 41.

¹⁰² Cassarino J.P. (2010), Readmission Policy in the European Union. Study for the European Parliament, Brussels.

¹⁰³ Panizzon, M. (2012), Readmission agreements of EU Member States: a case for EU subsidiarity or dualism? *Refugee Survey Quarterly*, 31 (4), pp. 101-133.

EU citizens whose country of origin are included in the EU's visa black list. The most common visa relaxations granted by the EU VFAs include the introduction of caps in the visa fees, the establishment of precise and shorter terms within which a visa must be issued, and the relaxation of the conditions for the issuance of multiple-entry visas to certain categories of travellers.¹⁰⁴ Members of official delegations participating in meetings, negotiations and exchange programmes, business people and representatives, students, academics and researchers, employees in the transport sector, journalists, and athletes are among the main categories of third-country nationals who benefit from the visa relaxations granted by the VFAs already concluded by the EU.¹⁰⁵

To date, no VFA has yet been concluded between the EU and India, the Philippines or Thailand, respectively. For China, the Approved Destination Status Agreement concluded in February 2004 is considered an important first step towards visa facilitation. This MoU establishes specific visa-application procedures for groups of Chinese tourists travelling to the EU. However, it is not completely clear to what extent it constitutes a form of relaxation of the visa requirements set forth in the Schengen Visa Code, given that visa applications submitted for groups of Chinese tourists are processed according to "applicable legislation" (Article 4(3)(b)). In China, a pilot project aiming at simplifying the harmonised list of supporting documents has also been implemented.¹⁰⁶

In the absence of VFAs concluded at the EU level, several visa facilitation schemes have been activated between individual Member States and Asian countries, including India, China and the Philippines. These relaxed visa schemes target specific categories of 'legitimate' Asian travellers for which inward mobility to the EU is facilitated. These categories include Chinese tourists, highly skilled Indian workers, Filipinos and Chinese seafarers. Certain EU countries have also signed 'labour-mobility partnerships' to facilitate specialist workforce mobility from India. In particular, the Ministry of Overseas Indian Affairs (MOIA) has successfully entered into bilateral Social Security Agreements (SSAs) with Belgium, France, Germany (Social Insurance and Comprehensive SSA), Switzerland, Luxembourg, the Netherlands, Hungary, Denmark, the Czech Republic and Norway.¹⁰⁷ The UK,¹⁰⁸ Germany¹⁰⁹ and Spain¹¹⁰ entered bilateral agreements and signed non-binding Memoranda of Understanding with the Philippines. These legal

¹⁰⁴ Trauner, F., and Kruse, I. (2008), *EC Visa Facilitation and Readmission Agreements: A New Standard EU Foreign Policy Tool? European Journal of Migration and Law*, 10, pp. 411-438.

¹⁰⁵ For a list of the Visa Facilitation Agreements already concluded by the EU: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm.

¹⁰⁶ Council of the European Union (2015), Summary of discussions of the Visa Working Party/Mixed Committee (EU Iceland/Liechtenstein/Norway/Switzerland), Brussels, 22 and 23 January 2015.

¹⁰⁷ MOIA (2013), Annual Report, Ministry of Overseas Indian Affairs, New Delhi, www.mea.gov.in/images/pdf/annual-report-2012-13.pdf.

¹⁰⁸ Memorandum of Understanding between the Government of the Philippines and the Government of the Kingdom of Great Britain and Northern Ireland on Health-care Cooperation, 30 June 2003.

¹⁰⁹ Agreement concerning the placement of Filipino Health Care Professionals in Employment positions in the Federal Republic Germany, 19 March 2013.

¹¹⁰ Memorandum of Understanding on Cooperation for the Management of the Migration Flows Between the Ministry of Labour and Social Affairs of the Kingdom of Spain and the Ministry of Labour and Employment of the Republic of the Philippines, 29 June 2006.

instruments provide specific procedures for the recruitment and deployment of Filipino nurses and health professionals in the above-mentioned Member States.¹¹¹

Visa facilitation plays a central role in the external dimension of EU migration policies, and constitute one of the most important tools within the ‘first pillar’ of the GAMM, devoted to the development of regular migration. From the EU’s perspective, visa facilitation not only contributes well-managed mobility, but also constitutes a tool for leveraging third countries’ cooperation on irregular migration issues, and specifically on readmission of irregular migrants.¹¹² The choice of linking the prospect of visa facilitation with enhanced commitments in the field irregular migration is also reflected in the most recent developments in the EU’s relations with the Asian countries analysed in this report, especially India and China.

The possibility to conclude a VFA is envisaged in the CAMM recently signed between the EU and India. The reference to further cooperation on visa facilitation issues responds to the Asian country’s repeated requests for a relaxation of the rules governing the entry of Indian nationals in Europe, and development of people-to-people contacts with the EU. On the other hand, it also seems that the actual negotiation and conclusion of a VFA with India depend on the acceptance and willingness of Indian authorities to cooperate on the prevention and combat of irregular migration. The non-binding and flexible structure for cooperation provided by the CAMM has allowed the two parties to make reciprocal concessions on visa facilitation and readmission of irregular migrants, as reported by EU officials contacted in the framework of this study.

On the Chinese side, the recent signing of the Agreement introducing a visa waiver for Chinese and EU diplomats,¹¹³ and the opening of the second phase of the Dialogue on Mobility and Migration mark a “concrete step in visa facilitation”, and is expected to constitute a commitment to further negotiations so as “to provide facilitation for the greater public to travel between China and the EU”.¹¹⁴ The Union is hoping to capitalise on such progress to foster Chinese commitments towards readmission of its own nationals found to be irregularly present in EU territory, as it did when the ADS concluded with China allowed the inclusion of a readmission clause as a ‘quid pro quo’.¹¹⁵ Still, it is not clear what type of incentives the EU can currently offer to prompt the start of formal EURA negotiations with its Chinese interlocutors. With the introduction of a visa-free travel regime for diplomats, Chinese authorities have already obtained what was considered to be one of the main objectives underlying cooperation with the EU on migration and mobility-related matters. The EU still has the option to propose wider

¹¹¹ Makulec, A. (2014), Philippines’ Bilateral Labour Arrangements on Health-care Professional Migration: In Search of Meaning, ILO Asia-Pacific Working Paper Series.

¹¹² Commission (2015), EU Action Plan on Return, COM(2015) 453 final.

¹¹³ Agreement between the European Union and the People’s Republic of China on the short-stay visa waiver for holders of diplomatic passports OJ L 76, 23.3.2016, p. 19–25.

¹¹⁴ Remarks by H.E. Ambassador Yang Yanyi, Head of the Chinese Mission to the EU, at the Signing Ceremony of Agreement between China and the EU on the Short-Stay Visa Waiver for Holders of Diplomatic Passport, Brussels, 1 March 2016.

¹¹⁵ Trauner, F. and Kruse, I. (2008), EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood, CEPS Working Document No. 290/April 2008.

relaxations of visa requirements, although the Council has not yet issued the Commission with a formal mandate for negotiating a visa facilitation agreement with China.

The above overview confirms that, also in the relations with the Asian countries considered, VFAs are systematically linked to cooperation on irregular migration issues. All discussions conducted by the EU on visa facilitation for Chinese and Indians travellers are incorporated into the wider frameworks for migration management cooperation. At the same time, the manifold limits traditionally affecting the facilitation provided under the agreements already concluded by the EU significantly reduce the impact that VFAs can have on human mobility. Under these agreements, Member States still maintain a large degree of discretion with regard to interpreting the validity of the MEV and extending the personal scope of the visa facilitation. A second generation of VFAs has tried to address some of these deficiencies. However, overall documental requirements and procedures for lodging applications remain complex and cumbersome.¹¹⁶ Furthermore, visa facilitation agreements fall short in offering alternatives to existing short-term mobility schemes, as they can only provide incentives for mobility trajectories limited to 90-day periods.

In sum, the visa relaxations that the EU can presently provide under its migration policies do not seem to have the potential to unlock significant mobility prospect in the EU-Asian context. VFAs mainly benefit categories of travellers for which facilitation has already been introduced, either at the EU or bilateral level. Furthermore, the current VFAs do not address structural mobility limitations related to the short-term validity of Schengen visas.

3.1.3 Migration vs mobility in the Partnership and Cooperation Agreements

The EU's PCAs constitute the legal instruments used by the EU to develop its relations with Eastern European and Asian countries. As similar types of legal instruments deployed by the EU in other regions, PCAs aim at establishing privileged relations with the signatory Asian country through the setup of a legal framework for the development of comprehensive political and economic relations, and the promotion of European and/or international standards.¹¹⁷ Concluded in the form of mixed agreements, the PCAs cover a wide range of policy areas including political, security, economic and social affairs, as well as issues such as human rights, counter-terrorism and migration.

The mapping of the EU's instruments for external cooperation in the fields of migration and mobility developed in the framework of Deliverable 3.1 of the EURA-NET Project has already provided a comprehensive overview of the types of different cooperation agreements currently concluded or negotiated between the EU and Asian countries.¹¹⁸ This section aims at assessing the role that these

¹¹⁶ Mananashvili, S. (2012), The EU's (Un)Common Visa Policy: Lost in Aspirations, in Sousa (ed.), The EU Area of Freedom and Justice: recent developments, Edual, Lisbon, pp. 61-96.

¹¹⁷ Börzel, T. A. and Risse T., Diffusing (Inter-) Regionalism The EU as a Model of Regional Integration, KFG Working Paper No. 7, September 2009.

¹¹⁸ To date, PCAs have been concluded with a series of central and eastern Asian countries, including Armenia, Azerbaijan, Indonesia, Iraq, Kazakhstan, Kyrgyzstan, Mongolia, Philippines, Singapore, Uzbekistan, and Vietnam. PCAs negotiations were also launched with China, Malaysia, and Thailand, although an agreement with these countries have not yet been concluded. Other similar legal instruments for EU cooperation with Asian countries include the Framework Agreement with the Republic of Korea, and the Framework Agreement on Partnership and

instruments play in framing migration and mobility between the Union and China, India, the Philippines and Thailand respectively.

The PCA clauses related to migration cooperation vary in scope and content. Ultimately, such variations seem to reflect the state of the relations with the signatory third countries, and the objectives underlying EU cooperation on migration matters at the time of the conclusion of the different agreements. The cooperation agreements in place between the EU and, respectively, India and China, predate the introduction of the migration clauses that the EU has been systematically incorporating in its so-called 'global agreements' since the mid-1990s.¹¹⁹ Concluded 1985, the Agreement on Trade and Economic Cooperation (TECA) between the European Economic Community (EEC) and the People's Republic of China¹²⁰ aims at promoting and intensifying trade and at encouraging the steady expansion of economic cooperation between the signatory parties. The only provision touching upon human mobility is not directly applicable, and is represented by Article 7:

The two Contracting Parties undertake to promote visits by persons, groups and delegations from economic, trade and industrial circles, to facilitate industrial and technical exchanges and contracts connected with trade and to foster the organization of fairs and exhibitions by both sides and the relevant provision of services. As far as possible, they must grant each other the necessary facilities for the above activities.

Negotiations for a 'second generation' PCA with China started in 2007. The overall aim underlying this PCA was to update the legal framework provided in the TECA, and to expand and deepen the EU relations with China, in line with the objectives defined in the strategic partnership launched in 2003. The EU-China PCA would be divided into two parts: one envisaging the upgrading of the TECA and the other aimed at providing the legal basis for political, social and cultural cooperation.¹²¹ Provisions related to cooperation on migration and mobility issues fall within this latter facet of cooperation, directed at promoting people-to-people contacts. As already noted, numerous divergences, manifested on both the trade and political cooperation fronts, have so far held up the conclusion of negotiations on the new PCA. At the 16th EU-China Summit held on 21 November 2013, the EU and China announced the launch of negotiations on a comprehensive EU-China Investment Agreement.¹²² According to EU officials contacted in the framework of this study, the new agreement under negotiation also foresees the introduction of facilitation for intra-corporate mobility, although restricted to very specific circumstances, and solely applicable to short-term visits.

Cooperation with Mongolia, both of which have been concluded in 2013. Cooperation agreements exist with: the Gulf Countries (Bahrain, Saudi Arabia, Oman, United Arab Emirates, Qatar, and Kuwait); Cambodia; India; Laos; Pakistan; Yemen. Bangladesh and Sri Lanka. Concluded cooperation agreements on Partnership and Development, while negotiations are still ongoing with Afghanistan.

¹¹⁹ García Andrade, P., Martin, I., Manashvili, S. (2015), *EU Cooperation with Third Countries in the field of Migration*, Study for the European Parliament, October 2015, p. 35.

¹²⁰ Council Regulation (EEC) No2616/85 and Trade and Economic Cooperation Agreement between the European Economic Community and the People's Republic of China.

¹²¹ See the fourth provision of the Joint Statement of the Ninth EU-China Summit: Ministry of Foreign Affairs of the PRC, Joint Statement of the Ninth EU-China Summit, Beijing, 10 September 2006.

¹²² European Commission, *EU and China begin investment talks*, Press release, Brussels, 20 January 2014.

With regard to India, the only legal instrument for cooperation is the agreement concluded in 1994.¹²³ While focusing on trade and economic cooperation, the agreement also foresees the development of a broad political dialogue, due to evolve through annual summits, regular ministerial and expert-level meetings. Yet, the agreement does not directly cover cooperation on migration matters, and a reference to mobility is only made with regard to the possibility of developing “exchange and trading of scientists and researchers”. Currently, negotiations on a new Broad-based Trade and Investment Agreement (BTIA) are on hold, due to unresolved divergences on the respective defensive and offensive interests of the two parties.¹²⁴ While India requires the development of legal mobility channels for its highly skilled migrants travelling to Europe, it is not willing to lift its tariff barriers on EU exported goods. Disagreement on these crucial issues led negotiations to a deadlock, although at the 13th EU-India Summit held in Brussels on 30 March 2016, Commission President Juncker, President of the European Council Donald Tusk and Prime Minister Narendra Modi welcomed the fact that both sides had re-engaged in “discussions on how to further the EU-India BTIA negotiations”.¹²⁵

The PCA concluded with the Philippines in 2011 is the only legal instrument in force between the EU and one of the countries assessed in this study that dedicates a title to cooperation on migration. Title V of the Agreement deals with “Cooperation on Migration and Maritime Labour”. Among the wide range of issues its provisions cover are the following: the establishment of a mechanism for comprehensive dialogue and consultation on migration-related issues; the development of legislation and practices with regard to the protection and rights of migrants and international protection standards; the fight against the smuggling of persons and trafficking in human beings; and readmission of irregular migrants. As already noted, within this legal instrument, cooperation on legal mobility, and the strengthening of the migration and development nexus are seen as programmatic objectives, to be developed through the work of a joint cooperation committee. Clear engagements are undertaken in the field of readmission, and both parties agreed to conclude an agreement for the admission/readmission of their own nationals, nationals of other countries and stateless persons. The EU currently has no agreement in place with Thailand, and despite a PCA being initialled in 2013, the Union’s relations with this Asian country are still framed by the EC-ASEAN Agreement of 1980.

¹²³ Official Journal L 223, 27 August 1994.

¹²⁴ Sachdeva, G. (2015), Evaluation of the EU-India Strategic Partnership and the potential for its revitalisation, Study for the European Parliament, Brussels, June 2015, pp.18-19.

¹²⁵ European Commission, Press release EU-India Summit: A new momentum for the EU-India Strategic Partnership, Brussels, 30 March 2016.

3.2 The use of political instruments: Development of the Dialogues on Mobility and Migration in the framework of the EU's Strategic Partnerships with China and India

Providing a framework for discussion between the EU institutions and third countries, the EU Dialogues on Mobility and Migration offer multi-level and multi-actor fora of cooperation that are used to facilitate, conduct and follow up the negotiations on legal and policy instruments.¹²⁶

Typically, the EU's political dialogues on mobility and migration are embedded in wider multi-sectoral cooperation frameworks provided for by international agreements or partnerships set up at the interregional or bilateral level.¹²⁷ In the EU-Asian context, and with particular reference to the Asian countries analysed in this report, these dialogues are not directly incorporated into the relations to be developed under international agreements, nor developed in the framework of wider interregional relations. They are rather conducted as sectoral cooperation processes integrated into the overall portfolio of diplomatic and foreign relations comprising the strategic partnerships that the EU has established, respectively, with China¹²⁸ and India.¹²⁹

The EU-China Dialogue on Mobility and Migration integrates, together with the EU-China People-to-People Dialogue, the so-called third pillar of the EU-China 2020 Strategic Agenda for Cooperation.¹³⁰ This Agenda also encompasses the annual High Level Strategic Dialogue, and the annual High Level Economic and Trade Dialogue. Implemented through regular meetings of the counterparts, each of the different Dialogues contributes to the overall objectives of the strategic partnership. These objectives are reviewed annually and reported to the EU-China Summit, which may, when appropriate, consider the activation of further complementary initiatives. Similarly, the EU-India High Level Dialogue on Mobility and Migration is conducted on the basis of the objectives identified in the 2004 Joint Action Plan,¹³¹ and represents the output of a political and diplomatic process foreseeing the progressive strengthening of multiple sectorial cooperation, coordination and consultation mechanisms activated under the EU-India strategic partnership. Therefore, the Dialogues on Mobility and Migration conducted at the bilateral level with China and India are strategically and structurally interlinked to the progressive broadening and deepening of the EU's political and economic relations with these two Asian partners.

¹²⁶ In Deliverable 3.1, "Political Instruments and Dialogues" are defined as "bilateral or regional political instruments aimed at providing a framework of cooperation and discussion between EU institutions and third countries' authorities for negotiating the above mentioned legal instruments and policy tools".

¹²⁷ Commission (2011), 'A dialogue for migration, mobility and security with the southern Mediterranean countries'. COM (2011) 292.

¹²⁸ European Council (2003), 'A secure Europe in a better world', Brussels, 12 December 2003, www.consilium.europa.eu/uedocs/cmsupload/78367.pdf. In its first ever 'security strategy', the EU declared China to be one of its six strategic partners. Today the EU counts ten strategic partnerships around the world.

¹²⁹ Commission (2001), 'Europe and Asia: A Strategic Partnership for Enhanced Cooperation' Brussels, 4 September 2001, COM (2001) 469.

¹³⁰ European Union External Action Service, 'EU-China 2020 strategic agenda for cooperation', Brussels, 23 November 2013, http://eeas.europa.eu/china/docs/20131123_agenda_2020_en.pdf.

¹³¹ Council of the European Union (2005), 'The India-EU Strategic Partnership, Joint Action Plan', Brussels, 7 September 2005, 11984/05 (Press 223).

Both Dialogues have been activated to support the overarching partnerships' objective of mutually developing economic, political, social and cultural synergies by the means of exploring inter alia possibilities for enhanced cooperation in the field of human mobility and migration management.

At the same time, the Dialogues on Migration and Mobility embarked upon with China and India are built upon the four pillars of the GAMM, of which they likewise seem to constitute an integral component. In the Commission's update of the GAMM published on 13 June 2016,¹³² they are listed among the 'bilateral dialogues' with a series of partners, including Turkey, Russia, African countries (e.g. Cape Verde and Nigeria) and the neighbouring southern Mediterranean and Eastern Partnership countries. The articulation of the policy priorities underlying the Dialogues on Migration and Mobility established with the two Asian countries reflects the GAMM's overall attempts to bring different policy understandings, and in particular on human mobility and irregular migration, under the same framework of cooperation. It also responds to the objective of fostering synergies across national and supranational policies, most notably in the different areas of visa cooperation and readmission. Under both Dialogues, initiatives promoting mobility through visa facilitation, yet also migration and development, are seen as complementary to, for example, cooperation in the fight against irregular migration, trafficking in human beings, and return and readmission of irregular migrants. This combination clearly emerges when looking at the main activities and outputs achieved, for instance, during the 'first phase' of the EU-China Dialogue on Migration and Mobility. The introduction of a visa waiver for diplomats, and the decision envisaging a new agreement on the opening of application centres for Schengen visas in new cities in China,¹³³ advanced in parallel with a series of activities undertaken in the fight against irregular migration, including workshops and exchanges of experts on issues such as readmission, trafficking and identification of counterfeited documents.

The specificity of the Dialogues on Migration and Mobility is therefore represented by the fact that these EU policy tools on external migration are incorporated into the wider cooperation framework of the Strategic Partnerships. The type of thematic priorities underpinning the activities developed under the Dialogues Migration and Mobility confirm that these instruments differ from other sectoral dialogues and people-to-people initiatives developed under the wider Strategic Partnership framework. For example, the projects and activities fostering human mobility through cooperation in the field of scientific research and higher education rely on a different legal basis and financing sources, and are led by different institutional actors from those responsible for the development of the Dialogues on Migration and Mobility. China and India's inclusion in initiatives such as the new Erasmus+ programme and the International Research Staff Exchange Scheme, as well as the EU's support for the network of Chinese Jean Monnet Chairs and the activities of Chinese Jean Monnet Centres of Excellence, are the outcomes of EU agreements on scientific and technological cooperation concluded with China in 2000¹³⁴

¹³² Commission (2016), GAMM Update, Annex 10349/16, 13 June 2016.

¹³³ Council of the European Union (2016), Background EU-China Summit 12-13 July in Beijing, China, Brussels, 5 July 2016.

¹³⁴ Agreement between the European Community and the People's Republic of China on scientific and technological co-operation, OJ L/60, 11 January 2000.

and with India in 2001,¹³⁵ and are policy developments towards a strategic approach for science and technology cooperation.¹³⁶ Their specific goal is to “create better regulatory conditions to allow researchers and companies to innovate and to cooperate across borders”¹³⁷ – and not to provide the partner countries with policy incentives directed at enabling cooperation on irregular migration issues, namely on readmission of irregular migrants. Instead, under the Dialogues on Mobility and Migration, “increased mobility” prospects seem to ultimately depend on “the prior fulfilment of a certain number of conditions”, particularly the conclusion of readmission agreements, and the increase in the border-management capacity of the partner countries. In essence, the approach adopted in the framework of the Dialogues on Migration and Mobility established with China and India appears consistent with the EU’s home affairs-driven attempt at bolstering partners’ commitments on border control and the return of irregular migrants through the offer of enhanced cooperation in the fields of human mobility.¹³⁸ Through these specific policy instruments on external migration, the EU embeds a restrictive and security-oriented approach towards human mobility into the broader Partnerships’ framework for cooperation with the two Asian countries. At the same time, conditioning cooperation on visas and people-to-people contacts upon the third country’s commitment in the field of return and readmission implies the partner’s acceptance of structurally and strategically interlinked yet different policy fields of intervention, namely human mobility and migration control.

From an operational point of view, the goal of the EU-China and EU-India Dialogues on Mobility and Migration is to provide a flexible forum for the exchange of views on respective policies, and to discuss possibilities for cooperation on issues of mutual interest. The informal and non-binding nature of these frameworks for cooperation, and the project-based approach chosen for their implementation, aim at facilitating contacts between the different authorities concerned with migration and mobility issues, and to promote exchanges at different levels in order to achieve practical results.

In the case of China, the EU launched a dedicated ‘support project’ to pave the way for the development of cooperation under the Dialogue on Migration and Mobility. The “EU-China Dialogue on Migration and Mobility Support Project”, follows up the “Capacity Building for Migration Management in China Project”,¹³⁹ and funds activities directed at carrying EU priorities forward and at translating political commitments into concrete measures.¹⁴⁰ This project is funded by the EU through the Partnership Instrument, and jointly implemented by the International Organization for Migration (IOM) and the International Labour Organization (ILO). The overall working logic of the support project is to build

¹³⁵ Agreement for scientific and technological cooperation between the European Community and the Government of the Republic of India, OJ 213/2, 9 August 2002.

¹³⁶ Commission (2012), Enhancing and focusing EU international cooperation in research and innovation: A strategic approach, COM(2012) 497 final, Brussels, 14 September 2012.

¹³⁷ Moedas, C., (2015), Promoting excellence through enhanced EU-China researcher mobility and cooperation, Speech given at the Chinese Academy of Sciences, Beijing, 7 September 2015, available at https://ec.europa.eu/commission/2014-2019/moedas/announcements/promoting-excellence-through-enhanced-eu-china-researcher-mobility-and-cooperation_en.

¹³⁸ Carrera, S., den Hertog, L., and Parkin, J. (2012). EU Migration Policy in the Wake of the Arab Spring: What Prospects for EU-Mediterranean Relation? MEDPRO Technical Report.

¹³⁹ www.iom.int/capacity-building-and-training-border-and-migration-management.

¹⁴⁰ http://eeas.europa.eu/delegations/china/press_corner/all_news/news/2015/20150413_en.htm.

mutual confidence among the parties, chiefly through the development of practical cooperation through small, EU-funded pilot projects.

In the field of regular migration, the main activities developed concerned the identification of possible solutions to simplify entry and visa procedures within the existing immigration laws in the EU, Member States and China. Visa relaxations have been discussed with special regard to skilled migrants, for instance EU business people going to China or Chinese ‘talents’ going to the EU. The activities directed at building mutual confidence and understanding from the viewpoint of developing further cooperation in the field of regular migration are complemented by projects seeking to strengthen the migration management capacities of the competent Chinese authorities. These projects focused especially on such issues as detection of false or counterfeited travel documents and the development of anti-trafficking legislation. Cooperation on readmission is also promoted, in terms of technical assistance and information sharing, as well as through projects to improve the Asian country’s capacity to readmit irregular migrants apprehended in its territory. One of the assumptions underlying the support project is that cooperation under the Dialogue on Migration and Mobility “will be further consolidated and deepened, regardless of the result of short term issues that may arise”.¹⁴¹ In the meantime, the Dialogue on Mobility and Migration with China has reportedly entered the second phase of implementation. EU and Chinese officials contacted in the framework of this study indicated that under this new phase, the conclusion of two binding agreements is foreseen. The first legal instrument would consist of a EURA, to be negotiated in parallel with a visa facilitation agreement.

In the case of India, the EU-financed project “Developing a knowledge base for policymaking on India-EU migration” (CARIM), is aimed at developing a knowledge base among policy-makers and migration stakeholders of both parties of the Dialogue, and at consolidating a constructive discussion covering all migration-related aspects touched upon in EU-India relations. Launched in March 2011, the proposed action was intended to “prepare the ground for reinforced India-EU cooperation on migration-related issues”, also through “[i]nformal and informed discussions among migration experts, state officials and migration stakeholders in the framework of regular training sessions and outreach programmes”.¹⁴² The CARIM project was carried out by a consortium of European research institutions, in partnership with the Indian Council of Overseas Employment and the Indian Institute of Management Bangalore, and was terminated in 2013.

In March 2016, a Common Agenda on Migration and Mobility was signed in the form of a Joint Declaration between India, the EU and Member States. The text of the declaration was negotiated on the one hand by DG HOME officials, and on the other by the Indian minister of foreign affairs, in coordination with the EEAS and other competent Indian ministries. Through the signature of the CAMM, the parties expressed non-binding mutual agreements on visa facilitation and on the return and readmission of persons residing without authorisation in their territory. In particular, the parties agreed to ‘explore possibilities’ for a readmission agreement, the possible grant of visas with long-term validity for specific categories of migrants and the introduction of a visa waiver for diplomats. While the

¹⁴¹ Commission (2014), Implementing Decision on the 2014 Annual Action programme for the Partnership Instrument, ANNEX H, Action Fiche for Support to the EU-China dialogue on migration and mobility.

¹⁴² www.india-eu-migration.eu/.

inclusion of a reference to readmission certainly has a strong symbolic value for the EU, representing an important result obtained by its negotiators, the choice of a Common Agenda on Mobility and Migration as an alternative to a more far-reaching Mobility Partnership, reveals a lack of clear commitments on both sides. As for now, an implementation annex of the CAMM has not yet been adopted, and from interviews conducted in the framework of this study it appears that it is still not clear for the different parties how or when further action will be undertaken. Given that the specification of the CAMM's actual content will largely depend on its implementation process, the current lack of clarity regarding the process to be followed in both the determination of objectives to be achieved through this policy tool and the identification of the projects proposed to do so poses serious transparency issues that could undermine mutual trust, while also significantly affecting the possibility to activate appropriate *ex ante* and *ex post* monitoring mechanisms.

4. Main findings and key challenges

The EURA-NET Project has investigated how transnational migratory flows are unfolding and evolving in the fast-changing EU-Asian geopolitical and socioeconomic context. The project has also considered the role played by human mobility on the development and stability outlooks of interregional spaces between Europe and Asia.¹⁴³ Complementing the EURA-NET research, this policy report has focused on the movement of persons who, originating from rapidly industrialising countries such as China and India, as well as from developing nations like the Philippines and Thailand, are drawn to Europe for a wide array of reasons including tourism, work, study and family reunification.

For a start, through the collation of official figures on visas, residence permits and irregular migration, the study has provided an updated statistical picture of the different migratory inflows from China, India, the Philippines and Thailand. The increasing volume of Schengen visas flowing from these countries, and the progressive reduction in the number of apprehensions of their nationals in the EU, clearly reflect the consistent demand for mobility in the EU-Asian context, and highlight the limited extent of irregular migration stemming from these Asian partners.

From the statistical framework of reference outlined above, the study has illustrated how the internal and external migration policies of the EU and Member States and the regulatory frameworks contribute to shaping the migration of nationals from these countries across the EU's external borders, and condition their access to and presence within the Union.

In this section, challenges related to the following aspects are highlighted:

- the policy approach to internal and external migration adopted by the EU and its Member States in the regulation of EU-Asian cross-border movement of persons;

¹⁴³ Pitkänen P., and Carrera S. (eds.) 2014. Transnational Migration in Transition: State of the art Report on Temporary Migration. Collected Working Papers from the EURA-NET project. www.uta.fi/edu/en/research/projects/aura-net/publications.html

- the adoption of specific policy instruments for the implementation of the external dimension of the EU's policies towards the Asian countries considered, and in particular towards China and India; and
- the impact that the institutional and relational dynamics currently governing the development of EU external migration policies have on the Union's relations with China, India, the Philippines and Thailand.

4.1 Migration vs mobility in the EU-Asian context

At the EU level, it has been observed that the present inclusion of China, India, the Philippines and Thailand in the Schengen visa black list responds to the objective of securing Europe's borders through preliminary document checks, and ultimately reflects the EU's perception of these Asian countries as a (potential) source of irregular migration.

Security considerations are still central in the implementation of the EU's visa policy towards the Asian countries considered, but often translates into practical difficulties for Asian travellers to access the EU. It has been mentioned how the cumbersome procedural and document checks to which visa applicants in the four Asian countries are subjected before entering the Member States' territory respond to the objective of securing EU borders. Yet, the large number of Schengen visas issued to the citizens of these Asian countries also reflects the European interest in attracting visitors from them. In this respect, the restrictive visa policy – which in the absence of VFAs, is applied to Chinese, Indian, Filipino and Thai citizens – might translate into the loss of significant economic opportunities for the EU.¹⁴⁴ The tension existing between the application of an overall restrictive visa regime to these nationals, and the objective of maximising the economic benefit of their temporary migration for the wider European economy, is well reflected in the concerns that EU Member States expressed regarding the foreseen negative impact of the VIS roll-out on the flows of 'valuable' Chinese tourism to Europe.

In general, 'economic considerations' are at the basis of initiatives undertaken at both the EU and national level to facilitate the access of Chinese, Indians, Thai and Filipino nationals to Europe. Indeed, from the analysis of both the Commission's latest proposals for the simplification of the EU Visa Code and the bilateral visa-facilitation schemes between individual Member States and the four Asian countries considered, it becomes clear that the efforts currently undertaken to make Europe a more attractive destination for travellers from these Asian countries only target specific categories of third-country nationals, namely diplomats, business people, intra-corporate transferees and tourists with high purchasing power.

Also, the analysis of EU and Member States' policies and regulatory frameworks applying to the cross-border movement of Chinese, Indian and Thai nationals reveals that short-term mobility under Schengen visas is in general preferred to longer-term migratory trajectories authorised through the issuance of national visas and residence permits. This is confirmed by the striking difference between

¹⁴⁴ See the Opinion of the Committee on Transport and Tourism for the Committee on Civil Liberties, Justice and Home Affairs on the proposal for a regulation of the European Parliament and the Council on the Union Code on Visas (Visa Code). The European Parliament, 15 October 2015.

the limited number of residence permits issued to nationals of these Asian countries, and the large volume of Schengen visas accorded to applicants in China, India, the Philippines and Thailand. Eurostat statistics show that grants of stays for reasons such as work, education and family reunification are more difficult to obtain than authorisations for short-term visits. A restrictive approach to immigration especially emerges when it comes to labour migration, as confirmed by the progressive reduction recorded in the numbers of residence permits issued to Filipino, Thai, Indian and Chinese nationals for work-related reasons. While the EU has developed a legislative framework for regular migration, Member States still provide the main regulatory and policy frameworks applying to third-country nationals seeking employment in the EU, as well as for the development of transnational mobility trajectories for reasons related to study and family reunification.

A series of critical challenges have also been identified with regard to the policy functions and outcomes of the specific instruments framing external cooperation on migration and mobility with the Asian countries considered. By focusing on the EU's external relations with China, India, the Philippines and Thailand, the analysis has revealed that migration management and human mobility are only of interest in EU multilateral and bilateral cooperation with its Asian counterparts to a limited extent. In fact, no interregional framework is devoted to migration-related matters between the EU and Asia. While issues pertaining to migrants' rights have been discussed on occasion as part of the EU's policy dialogue with the Association of Southeast Asian Nations (ASEAN),¹⁴⁵ an overarching regional forum especially focusing on EU-Asian migration and bringing together all EU and Asian countries is still lacking. In the GAMM, the European Commission expressly acknowledged that "[w]ays to set up a Brussels-based forum should be explored with a view to making the migration dialogue between the EU and relevant Asian countries more effective and comprehensive", and that "the EU-Asia dialogue on migration is expected to become increasingly important". At the same time, interviews conducted with EU policy-makers indicated that the EU-ASEAN dialogue (mainly involving foreign ministers' representatives and diplomats) did not suit the purpose of developing discussions on issues related to migration control and readmission.

Furthermore, and except for the largely programmatic provisions incorporated in Title V of the PCAs concluded with the Philippines, migration is not among the policy areas covered by the bilateral cooperation agreements concluded with the Asian countries considered. In particular, the PCAs in place between the EU and respectively India and China, do not include any provision dealing with such issues as social protection for foreign workers, non-discrimination on the ground of nationality, the fight against irregular migration and human trafficking or the readmission of irregular migrants. The same remark applies to the new bilateral international agreements currently under discussion to update the EU's economic and trade relations with China and India. Informed EU sources indicated that the only human mobility-related proposition covered in the framework of the ongoing negotiations with China on a free trade and investment agreement consists of the possible introduction of provisions for a short-term visa facilitation scheme for intra-corporate transfers. As for the new free trade agreement discussed with India, it has been observed that EU disagreements over the concession of visa facilitation

¹⁴⁵ EU-ASEAN Policy Dialogue on Human Rights, Brussels, 23 October 2015, https://eeas.europa.eu/headquarters/headquarters-homepage/5980/eu-asean-policy-dialogue-on-human-rights_fr.

for Indian nationals and over the development of cooperation under mode 4 of the GATT¹⁴⁶ have led negotiations to a deadlock. Migration and mobility constitute sensitive political topics – given both the EU’s resistance and limited leeway to open up regular channels for human mobility, and India’s unwillingness to interlink cooperation on visa facilitation and people-to-people contacts with commitments on the readmission of irregular migrants. In neither case do the negotiations seem to converge on the objective of expanding or deepening cooperation on migration and mobility matters through trade policy instruments.

The analysis of the existing cooperation mechanisms, institutional actors and related policy priorities underlying EU relations with Southern and Eastern Asian countries contributes to the wider understanding of the working practices and ‘strategic’ priorities governing developments in EU external action on migration control and mobility management. In the first place, EU migration policies appear to be directed at securing borders and at channelling only selected categories of temporary travellers into Europe, rather than at developing and facilitating the movement of persons from Asia in general. Second, existing EU and national channels for regular migration favour short-term temporary migration over longer-term mobility trajectories of Chinese, Indian, Thai and Filipino nationals, especially when it comes to labour migration. Third, existing multilateral dialogues and legally binding bilateral instruments do not constitute the fora through which human mobility or migration control are regulated and/or managed in EU relations with these two Asian countries. For the reasons indicated above, it appears that these instruments are not considered the appropriate policy tools for pursuing the EU’s strategic priorities in the field of readmission and migration control.

4.2 The increasing use of soft-law instruments in the development of EU external migration policies towards China and India

Even if migration and mobility do not occupy a central role in the relations fostered through the (legally binding) international agreements currently in place between the EU and respectively China and India, the overall external dimension of the EU’s migration policies has been developing towards these Asian countries through a set of quasi-legal, political and diplomatic instruments.

In particular, external cooperation on migration management and human mobility have been framed within sectoral Dialogues on Migration and Mobility incorporated in the strategic partnerships established between the EU and the two Asian subcontinents. In the view of EU policy-makers, the political (non-legal), flexible (non-binding) and largely informal (non-public) type of cooperation fostered through EU policy dialogues presents significant practical and operational “advantages” for the development of international relations in the areas of migration and mobility, especially where controversial policy areas, such as irregular migration and border control, are concerned.¹⁴⁷

The use of political and/or diplomatic instruments as a way forward for the development of cooperation on migration-related issues enables the content of the parties’ respective commitments to be shaped

¹⁴⁶ www.wto.org/english/tratop_e/serv_e/8-anmvnt_e.htm.

¹⁴⁷ Commission (2014), Report on the Implementation of the Global Approach to Migration and Mobility 2012-2013, COM (2014) 96.

according to changing circumstances, and allows progress without going through lengthy negotiations and ratification procedures.¹⁴⁸ Furthermore, the choice to develop cooperation through the set of flexible, non-binding and informal instruments underlying the Dialogues on Mobility and Migration can be explained in light of the need for flexibility in a “field of policy contestation”,¹⁴⁹ as it allows the voluntary participation of different Member States in individual initiatives and/or projects. In the case of China, this strategic approach – prioritising operationalisation over formalisation – seems to have achieved the result of convincing the strategic partner to launch formal talks for a EURA, which is expected to be negotiated and concluded in the years ahead, in parallel with a visa facilitation agreement. In the case of India, it has facilitated the signature of the CAMM. More in general, it appears that discussions and initiatives developed through non-binding policy instruments have helped the EU to pave the way towards more stringent commitments among partners on migration policy issues, namely on the readmission of irregular migrants. On the other hand, academics and practitioners highlight how the preference for political declarations and informal agreements in this sensitive field often result in critical shortcomings, which increasingly affect the external action of the Union. Indeed, this approach poses a series of complex and far-reaching legal, institutional and policy challenges.

First, by substantially impeding the European Parliament from playing its role of co-legislator in this sensitive policy domain, the choice of informality favours the EEAS and the Commission as the institutions currently in the driving seat for the design and implementation of the Union’s external migration policies. This way of working significantly reduces the democratic accountability of the EU.¹⁵⁰ Second, it not only dramatically hinders the possibility to verify the legal conformity of the practical arrangements undertaken through the political and/or financial input of a “dialogue”,¹⁵¹ but also reduces the access to judicial remedies against decisions and actions adopted on the basis of such policy instruments.¹⁵² Third, as noted by the Commission itself, the non-binding nature of the cooperation instruments and the consequent large margin of discretion left to the parties risks a lack of concrete political and financial engagement in their implementation.¹⁵³

In sum, the lack of publicity and justiciability that usually applies to the projects and instruments developed and adopted under the Dialogues on Migration and Mobility significantly affects the level of transparency of the actual content of cooperation, as well as the possibility to activate appropriate *ex-ante* and *ex-post* monitoring mechanisms.

¹⁴⁸ Cassarino, J.-P. (2007), Informalizing Readmission Agreements in the EU Neighbourhood, *International Spectator*, vol. 24 (2), June 2007, p. 187 and 189.

¹⁴⁹ Papagianni, G. (2013). Forging an External EU Migration Policy: From Externalisation of Border Management to Comprehensive Policy?, *European Journal of Migration and Law*, 15 (3), pp. 283-299.

¹⁵⁰ Carrera, S., and Sagrera I Hernandez, R. (2009), The externalisation of the EU’s labour immigration. Towards mobility or insecurity partnerships?, CEPS Working Document, n. 321.

¹⁵¹ Fink, M. (2012). Frontex Working Arrangements: Legitimacy and Human Rights Concerns Regarding “Technical Relationships”, *Merkourios – Utrecht Journal of International and European Law*, 28 (75), pp. 22-35.

¹⁵² Cassarino, J.P. (2007). Informalising Readmission Agreement in the EU Neighbourhood, *International Spectator*, vol 42 (2), pp. 179-196.

¹⁵³ European Commission, Report on the implementation of the Global Approach to Migration and Mobility 2012-2013. COM(2014) 96 final. Brussels, 21.2.2014

4.3 Multi-actorness in EU external migration policies: The example of the EU's Dialogues on Mobility and Migration with China and India

The analysis of the legal and policy tools for the EU's migration and mobility policies towards China, India, the Philippines and Thailand has shown that the EU progressively develops and implements its actions on external migration policy (and related agenda) within multi-sectoral and multi-actor fora of cooperation.

The strategic and structural links established between the EU's external action in the field of migration, and other sectoral domains of external cooperation covered in the strategic partnerships with China and India, provides a clear example of the attempt by the European Agenda on Migration to make the external dimension of migration an intrinsic and interdependent part of the Union's overall foreign relations. The inter-institutional dynamics underlying the implementation of the Dialogues on Mobility and Migration established with China and India also confirm that the external dimensions of EU migration policy now concern a wide range of EU external actors.

Conducted in the framework of the broader strategic partnerships, the Dialogues on Migration and Mobility established with China and India constitute a paradigmatic example of how the development of the EU's external migration policies increasingly depends on the coordinated work of a wide array of EU institutions and bodies, which are responsible for the different economic, political, social and technical aspects of cooperation. In the following discussion, the role played by each of the EU actors is outlined and assessed against the inter-institutional framework set up after the establishment of both the new Commission and the EEAS in 2014.

To build momentum and ensure practical results in cooperation on sensitive issues, such as readmission and border control, the EU Dialogues on Migration and Mobility with China and India are carried out through a combination of high-level summits and technical meetings. Visits of apical European Commission, Council and EEAS representatives are often preceded, or followed, by missions and workshops of EU policy officers and national experts. As for the Asian partners, the Chinese actors involved include the Ministries of Public Security, Foreign Affairs and Commerce, as well as stakeholders such as the China International Contractors Association, the All-China Federation of Trade Unions, the State Administration of Foreign Affairs Experts and other relevant entities. Coordination among the Chinese actors is ensured by the head of the China-EU Bilateral Affairs and Political Section, which is part of the Mission of China to the European Union in Brussels. In India, the dialogues that recently led to the signature of the CAMM have been conducted by the foreign affairs minister, in close coordination with minister of interior. The high number of institutions and bodies concerned with these dialogues reflects the wide range and complexity of the interests at stake.

On the EU side, it seems that the EEAS is acquiring an increasingly prominent role within these processes. In fact, the EU diplomatic service is responsible for the overall strategic coordination of the EU's position, as well as for ensuring internal coherence between the dialogues and the strategic partnerships. Through the combined work of their Political Sections, and the technical support that in some cases (e.g. China), is provided by appointed "Home Affairs counsellors", the delegations are responsible for liaising between Brussels and the third countries concerned. The progressively more

active contributions provided by the EEAS and the delegations respond to the call by the EU Agenda on Migration for “enhanced coherence” between home affairs and other policy sectors, such as development cooperation, trade, employment and foreign policies.¹⁵⁴ On the other hand, the prominent role that DG HOME still plays within this highly coordinated framework for cooperation confirms the importance of the home affairs approach in the overall implementation of the GAMM’s instruments. This is also confirmed by the role entrusted with external actors and international agencies like the IOM, the ILO¹⁵⁵ and their local liaison offices, which not only assist the EU in implementation tasks, but also are entrusted with the duty to act as ‘deal brokers’ to further promote cooperation on sensitive issues, such as readmission.

Altogether, this articulated range of institutions and bodies contribute, to various degrees, to conveying the restrictive and ultimately ‘securitised’ understanding of cross-border human mobility that has been identified and described above. The ‘multi-actorness’ of such an approach suggests that the so-called ‘home affairs diplomacy’ is no longer exclusive to DG HOME. This Commission service has certainly preserved its ‘institutional stake’ in the framework of external migration policies, being largely involved in the process of ‘Europeanisation’ of migration policies, which is reflected, inter alia, in the continual push for the signature of EU readmission agreements. At the same time, a wider series of EU external actors appears to currently agree on prioritising migration control over human mobility, also in the relations with countries like China and India, which do not constitute a ‘threat’ in terms of irregular migration.

This constitutes a clear indication of how readmission and returns have become a policy prerogative for the EU as a whole external (multi)-actor. In the Asian context, relevant (and worrisome) examples in this respect are given by the role played by the EEAS in the development of cooperation with countries such as Afghanistan. Despite the persistent and extreme political instability of this country,¹⁵⁶ and the overwhelming number of refugees currently fleeing it,¹⁵⁷ the EU’s priority in the field of migration is clearly the signature of a readmission agreement, to be accompanied by initiatives promoting the “reintegration” of “irregular migrants”.¹⁵⁸ Moreover, EU sources interviewed in the course of this study

¹⁵⁴ In particular, DG International Cooperation and Development (DEVCO) is officially referred to as key partner for the programming, coordination, financing and implementation the projects and activities developed under these external migration policy tools. See the EU-China Dialogue on Migration and Mobility Support Project Newsletter, Issue 1, May 2015, available at, www.iom.int/sites/default/files/country/docs/china/EU-China-Dialogue-on-Migration-and-Mobility-Support-Project-Newsletter-No-2-Jan-2016.pdf.

¹⁵⁵ In the case of the dialogue with China, the IOM also provides technical assistance in the implementation of joint projects on readmission and return. See, IOM (2015), Workshop on Practical Cooperation on Return and Reintegration of Irregular Migrants-Summary Report, 3-4 November 2015, the Westin Beijing Hotel, Beijing. Available at: www.iom.int/sites/default/files/country/docs/china/IOM-China-Workshop-on-Return-and-Readmission-Nov-2015-Summary-Report.pdf.

¹⁵⁶ United Nation Security Council (2016), “Briefing Security Council, Special Representative Expresses Optimism Afghanistan Can Meet Challenges Despite Persistent Political, Stability Obstacles”, 24 June 2016, available at www.un.org/press/en/2016/sc12412.doc.htm.

¹⁵⁷ http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics (last accessed 07 October 2016).

¹⁵⁸ See the joint Commission and EEAS non-paper, Country Fiche proposing possible leverages across Commission-EEAS policy areas to enhance returns and effectively implement readmission commitments.

confirmed that even DG DEVCO, which as a “cooperation enabler” has traditionally refused to operate with a purely Eurocentric and migration control-based logic,¹⁵⁹ is now endorsing the ‘more for more’ approach as a tool to prompt cooperation on ‘sensitive’ issues like readmission and return.

The above overview of the inter-institutional dynamics governing the adoption of the new policy instruments constituted by the migration compacts confirms two trends already identified through the analysis of the most recent transformations undergone by the EU as an external-migration policy actor.¹⁶⁰ For a start, the identification of migration as a key political priority by the Juncker Commission has led to a functional reconfiguration of the way in which priorities are set in this sensitive policy field. The EU’s external migration policies are currently designed through a highly political process involving close inter-institutional (horizontal and vertical) coordination between the Commission, the EEAS, the EU Member States and the Council. This means that the main political guidelines are not presently decided at the DG HOME level, but rather at the level of the Commission’s President and Vice-Presidents, in close collaboration with the High Representative of the EEAS. To a large extent, this relatively new hierarchical approach also depends on the strong (and constant) political pressure by Member State governments on the EU to deliver in the field of irregular migration, as recently confirmed in the Bratislava Declaration. In particular, the EEAS is now closely involved in order to further increase coordination and synergies between migration and other external policy fields. Meanwhile, the European Parliament appears to be increasingly side-lined, if not completely excluded from the decision-making processes unfolding in this changing inter-institutional landscape. The second transformation element is closely interlinked with the progressive emergence of the external migration policies as an EU foreign affairs (priority) matter, and is reflected in the type of instruments and policies implemented in this sensitive domain. As already noted, the preference for non-legally binding legal instruments reveals an approach directed at facilitating third countries’ cooperation on critical issues, such as the readmission of irregular migrants and externalisation of border controls.

5. Conclusions and recommendations

The analysis conducted in the framework of this study with regard to the substantive features of the external dimension of the EU’s migration policies towards China, India, the Philippines and Thailand has identified a series of critical challenges and shortcomings related to the function and outcomes of the EU’s current efforts in the field of international mobility governance.

The research conducted in the framework of this study clearly shows how these four countries do not represent a significant source of irregular migration to the EU. On the contrary, there is a consistent demand for mobility originating from these Asian countries, as confirmed by the rising numbers of Schengen visa applications and authorisations issued to their nationals over the last years.

¹⁵⁹ Commission (2013), *Maximizing the Development Impact of Migration, The EU contribution for the UN High-Level Dialogue and next steps towards broadening the development-migration nexus*, COM (2013) 292.

¹⁶⁰ The analysis conducted in Deliverable 3.2 of the EURA-NET Project, accounted for the changes that the new 2014 Commission’s set up brought to the way in which the EU develops its external migration policies. Carrera, S., Radescu, R., Reslow, N. (2015). *EU External Migration Policies: A Preliminary Mapping of the Instruments, the Actors and their priorities*.

Despite these positive trends, the inclusion of these Asian countries in the so-called 'Schengen negative visa list' reflects the persistence of the EU's irregular migration concerns. This is confirmed by the fact that (with the sole exception of the visa waiver recently agreed for Chinese diplomats), Chinese, Indian, Filipino and Thai nationals planning to travel to the EU remain subject to preliminary checks at a distance, activated automatically and conducted before the crossing of any physical border.

Security considerations affect the visa regime applying to third-country nationals travelling from these four Asian countries. They also jeopardise the EU's goal of maximising the economic impact of human mobility on the wider European economy. Schengen visa facilitation only benefits very specific categories of third-country nationals, and in particular those who are deemed 'economically advantageous' for the EU: business people, intra-corporate transferees and tourists with 'high purchasing power'.

This 'selective and utilitarian approach' reflects the highly discretionary way in which the EU's visa policy is designed and implemented in practice, depending on 'who' is a 'good migrant' to the EU. Concerns are mainly expressed about the possible loss of profits from 'tourists' and other predefined 'legitimate travellers' who are valuable for the EU economy. Conversely, very little consideration is given to compliance with labour standards and avoiding exploitation of migrant workers and their families.

More in general, regarding the type of mobility promoted by the EU's external migration policy in the EU-Asian context, the striking difference recorded between the number of residence permits issued to applicants in China, India, the Philippines and Thailand and the large number of temporary Schengen visas issued to nationals of these countries reveal that short-term mobility trajectories are broadly preferred to longer-term migratory schemes.

This confirms that normative temporariness is a distinctive feature of the way in which cross-border mobility is framed as 'migration' between Asia and Europe. Under current normative and policy frameworks, national immigration law and policies remain the main (and yet rather limited) channel for the regular entry and residence of Asian-country nationals in the EU. Also, in the external cooperation instruments framing EU relations with the Asian countries analysed, very scant or no attention is given to the promotion of European mobility to China, India, the Philippines and Thailand.

To justify the limited scope of cooperation in the field of human mobility, the argument is often made that the EU has only limited legal competence to act externally in order to promote the cross-border movement of third-country nationals. However, this objection is only partially valid, as with other third countries with which the EU has concluded Association Agreements (e.g. Morocco, Tunisia, Georgia, Moldova, etc.), migration management and human mobility issues are dealt with by a set of provisions with direct or indirect legal effects. Cooperation on these issues is also foreseen through the work of joint association, or cooperation committees.

Through the development of cooperation on such issues as social protection for migrant workers and the promotion of non-discrimination on the ground of nationality for Chinese, Indian, Filipino and Thai workers, the EU could make use of its legal competences and contribute to facilitating the mobility and integration of Asian nationals in the Member States. Instead, from the analysis it appears that, also in its relations towards strategic partners like China and India, the EU's main external efforts in the field of

migration have been largely directed at finding the right interlocutors who could be persuaded to cooperate with the EU on the readmission agenda.

Regardless of the extremely limited number of irregular migrants apprehended in the EU and originating from China and India, EU visa facilitation prospects are systematically connected with commitments required of the strategic partners in the fight against irregular migration, and more precisely in the area of expulsion and return. Given the wide range of economic, social and political issues that are at stake in the relations with these two subcontinents, it would be worthwhile for the EU to reconsider the possibility of leveraging the Chinese and Indian demands for visa facilitation in order to strengthen relations (and obtain concessions) in other important areas of cooperation, for instance trade.

In light of the nature, trends and patterns of human mobility between the Asian countries analysed and Europe, the development of deeper and more comprehensive people-to-people contacts and the creation of new channels for regular migration could be envisaged. In other words, in relations with China, India, the Philippines and Thailand, the EU 'home affairs diplomacy' that has been fostered under both the GAMM and the EU Agenda on Migration could be replaced with a more balanced and accountable framework presenting a wider agenda, which is not primarily driven by migration-control priorities and which moves beyond Eurocentric understandings of international relations. The introduction of the new European Travel Information and Authorisation System (ETIAS) could also provide an opportunity for enhancing the EU's attractiveness to visitors from China and India, especially if coupled with a major reform (abolition) of the current visa regime.

Regional dialogue on cooperation with Asia should be established for the elaboration of a 'roadmap to mobility'. This interregional forum could play a key role in the creation of proper legal channels for economic migration (for all types of skills) and asylum, as would be envisaged and effectively implemented by the EU and Member States. This would also be in line with the September 2016 United Nations New York Declaration on Refugees and Migrants, which highlighted the need to develop regular and fair channels ('legal pathways') for access to international protection and economic migration (at all skill levels).¹⁶¹

The use of non-legally binding and political instruments by DG HOME and the EEAS should be limited to the largest extent necessary. The EU's rule of law and democratic checks and balances provided by the EU Treaties should be properly ensured in the negotiations, adoption and *ex post* evaluation of existing instruments. The use of international agreements should instead be favoured.

The EEAS should strive to become truly a foreign affairs and diplomatic authority, and refrain from behaving like a 'home affairs' or 'policing' actor. This would help to place wider issues, such as fundamental human rights and development cooperation, at the core of the EU's policy action on external migration.

¹⁶¹ United Nations (2016), New York Declaration for Refugees and Migrants, General Assembly, 13 September 2016, Available at www.un.org/ga/search/view_doc.asp?symbol=A/71/L.1 See in particular paragraphs 77 and 78, as well as 57.

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