



# The External Dimension of the EU's Migration Policy – Towards a Common EU and Rights-Based Approach to Migration?

IS Academy Policy Brief | No. 17



Ministry of Foreign Affairs



## Introduction

In recent years the EU has been actively trying to develop a common EU immigration policy for nationals from outside of the EU. There are compelling reasons for establishing such a policy: the increasing number of irregular migrants entering Europe calls for concerted political action at EU level – the deaths of numerous African migrants off the coast of Lampedusa being one of the many examples of failed policies. But Member States are simultaneously confronted with an ageing population that asks for policy responses to secure employment demands in the coming decades.

In October 1999, the European Council under the Finnish Presidency held a special meeting on creating an area of

freedom, security and justice.<sup>1</sup> Back then, the Council had already emphasized the need for a common EU immigration and asylum policy. In 2005, EU political leaders proclaimed the “Global Approach to Migration” as a response to the desperate attempts of immigrants to cross the EU’s southern frontiers. The Global Approach has been defined as the external dimension of the EU’s migration policy, transformed in 2011 into the “Global Approach to Migration and Mobility” (GAMM). Using a rights-based approach, the GAMM aims to enhance the mobility of third country (non-EU) nationals across the EU’s external borders.

This policy brief sheds light on the EU's approach to establish a common EU immigration policy. The brief outlines and discusses policy developments and the EU's legal framework in building a common EU policy in the field of migration, as well as associated challenges. It concludes with policy recommendations.

## Background

### EU Association Agreements

When people cross borders for the purpose of migrating from one country to another, this process has an international, external component. Notably in the last two decades the "external dimension" of the EU's migration policy has become a catchphrase among policy makers at both national and EU levels. It was at the beginning of the 1990s that migration gained centre stage in the EU by emphasizing a reduction in migratory pressure.<sup>2</sup> Already back then the EU sought to establish "partnerships" with third countries.

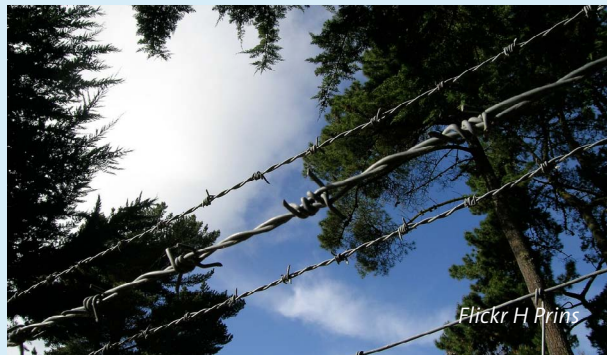
The policy areas of migration and external relations have, in fact, been connected to one another since the European Economic Community (EEC)'s origin. The competence to conclude association and trade agreements constituted one of the EEC's first external powers enabling it to enter contractual relations with other states. Such agreements were first concluded in the 1960s and 1970s with the aim of promoting economic and political relations between the Community and third countries.

Within the scope of these early agreements, migration has been – with few exceptions – marginally addressed and thus played a subordinate role in the EU's external relations. Despite this, even at an early stage, migration matters formed part of Community law. Some agreements offered more than simple trade agreements with regard to workers: such as association agreements which had the ultimate objective of integrating the associated state into the Community as a fully-fledged Member State. The preparation of incorporating

an associated state required the stipulation of more far-reaching commitments, principles and rights. For example, the EEC-Greece Association Agreement provided for the free movement of workers after the transitional period of 12 years for the establishment of the customs union.<sup>3</sup> The EU-Turkey Association Agreement constituted the legal basis to adopt subsequently more favourable rules for Turkish workers residing in a Member State.<sup>4</sup>

The provisions of association agreements relating to the status or movement of persons are only applicable to the nationals of the respective state parties. EEA and Swiss nationals have, on the basis of the applicable agreements, the most privileged legal status among third country nationals as they essentially benefit from the same free movement rights as EU nationals.<sup>5</sup> Nationals from Algeria, Morocco and Tunisia also benefit from specific rules on social security on the basis of the respective Euro-Mediterranean Agreements.<sup>6</sup>

The Court of Justice of the EU in Luxembourg has produced an enormous amount of case law – helping to create an "external dimension" of EU migration law – by interpreting provisions of the various association agreements, the most prominent example being the case law for Turkish nationals. In a lot of these judgments the Court of Justice has construed the provisions at stake extensively in favour of third country nationals.



<sup>1</sup> Tampere Presidency Conclusions of 15 and 16 October 1999.

<sup>2</sup> European Commission Communication, SEC(91) 1855, 23 October 1991.

<sup>3</sup> See Articles 44 and 6 of the Agreement establishing an Association between the European Economic Community and Greece, OJ 26, 18 February 1963, p. 294.

<sup>4</sup> Agreement establishing an Association between the European Economic Community and Turkey signed at Ankara on 12 September 1963, OJ C 113, 24 December 1973, p. 1; Additional Protocol and Financial Protocol signed at Brussels on 23 November 1970, annexed to the Agreement establishing the Association between the European Economic Community and Turkey and on measures to be taken for their entry into force, OJ L 293, 29 December 1972, p. 3.

<sup>5</sup> Agreement on the European Economic Area (EEA Agreement), OJ L 1, 3 January 1994, p. 3; Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, OJ L 114, 30 April 2002, p. 6.

### Tampere, Amsterdam and Lisbon

At the high-level summit at Tampere, EU Heads of State and Government called for more efficient management of migration flows via a new, common EU migration and asylum policy. For such a policy to be successful the Council considered partnerships with countries of origin a key element. Next, the fair treatment of third country nationals who reside legally in a Member State was emphasized. This could be best achieved through an integration policy granting third country nationals rights and obligations comparable to those of EU citizens. While the Tampere milestones have been formulated as policy objectives, the Treaty of Lisbon explicitly assigns the task of developing a common integration policy to the EU under Title V TFEU.<sup>7</sup>

The Treaty of Amsterdam that entered into force in 1999 first endowed the EU with powers to legislate in the field of immigration and asylum. On the basis of these competences in Title V TFEU, the EU adopted various EU migration directives. Arguably, such EU directives have rendered the legal status of third country nationals more secure and stable, yet they have also contributed to developing a highly fragmented EU framework for migration law and policy.

### Adopted EU Directives in the Field of Legal Migration

Scope of Application	Directive
Family reunification	Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification.
Long-term resident status	Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents.
Students	Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.
Researchers	Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third country nationals for the purposes of scientific research.
Highly qualified workers	Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment.
Single permit and common set of rights	Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third country nationals to reside and work in the territory of a Member State and on a common set of rights for third country workers legally residing in a Member State.

<sup>6</sup> See for example *Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part*, OJ L 70, 18 March 2000, p. 2.

<sup>7</sup> See Article 79(1) TFEU.



### The Global Approach to Migration and Mobility (GAMM)

The EU's "Global Approach to Migration and Mobility" (GAMM) aims to manage migration flows in an effective and balanced manner, and in genuine partnership with third countries. The Commission pointed out that the GAMM, contrary to previous externally-oriented migration policy, was no longer dominated by security concerns.<sup>8</sup>

**Today the GAMM consists of four thematic pillars reflecting the main priorities:**

GLOBAL APPROACH TO MIGRATION AND MOBILITY (GAMM)	
Legal economic migration	Irregular migration
Migration and development	International protection and asylum

The European Council endorsed the four pillars of the GAMM as an overarching framework of the EU external migration policy in April 2012.<sup>9</sup> The GAMM concentrates on the needs, aspirations and problems of individuals, placing the immigrant at the centre of attention. The European Council acknowledged that the GAMM should be applied globally but simultaneously stressed the need for geographical prioritization taking into account migratory routes and countries of origin and transit that are of strategic interest to the EU. The GAMM was initially directed towards Africa, then extended to the EU's Eastern and Southeastern regions and their external frontiers.<sup>10</sup> The GAMM aims to be truly global covering all interested and relevant

partners; the GAMM should moreover be firmly embedded in the EU's external foreign policy and integrate the human rights of migrants as a cross-cutting theme.<sup>11</sup>

Mobility partnerships play a crucial role in implementing the GAMM. The Commission identified mobility partnerships as the most innovative and sophisticated tool to date, substantially contributing to its roll out with regard to all three (now four) pillars.<sup>12</sup> Mobility partnerships are declarations; they are not legally binding. Mobility partnerships provide Member States with the flexibility to make commitments, which secure their foreign affairs interests bilaterally with specific countries. While the Commission both initiates and negotiates mobility partnerships, the European Parliament has no say in the drafting or designing of the instruments. As the Court of Justice has no jurisdiction in the matter, Member States cannot be held accountable if they do not fulfil their commitments. To date mobility partnerships have been concluded with Cape Verde, Moldova, Georgia, Armenia and Morocco. The eligibility criteria of potential candidates for mobility partnerships are rather vague and leave wide scope for discretion; they relate to geographical balance between Eastern Europe and Africa, the importance of migration flows from or through the country to the EU, the readiness to cooperate on readmission and the fight against irregular migration, the interest of EU Member States to cooperate with the country in question and its interest to enter into such a partnership.<sup>13</sup> Mobility partnerships are thus highly selective and flexible instruments, both in terms of the third country offered a partnership and with regard to the type of workers who will ultimately benefit from enhanced mobility.



<sup>8</sup> See also European Commission Communication, COM(2008) 611, 8 October 2008, p. 2.

<sup>9</sup> Council of the European Union, "Council Conclusions on the Global Approach to Migration and Mobility", document number: 9417/12 of 3 May 2012.

<sup>10</sup> European Commission Communication, COM(2007) 247, 16 May 2007.

<sup>11</sup> European Commission Communication, COM(2011) 743, 18 November 2011.

<sup>12</sup> European Commission Staff Working Document, SEC(2009) 1240, 18 September 2009, p. 4.

<sup>13</sup> Ibid., p. 3.



## Conclusion

The European Council accepted the need for a common EU immigration and asylum policy at the Tampere meeting in 1999. The six EU migration directives adopted have strengthened the legal status of third country nationals thus contributing to the development of a common EU policy. An “external dimension” of EU migration policy has existed since the integration of migration rules in association and cooperation agreements – at a time when the EEC did not dispose of the legislative powers in this field. The Court of Justice has played a pivotal role by interpreting the provisions of the various EU agreements in a proactive way.

However, considering the differential treatment that third country nationals are subject to under EU law, depending on nationality or other criteria such as profession, it is arguable that a common EU migration policy does not yet exist. It is difficult to speak of one single, unitary group of third country nationals forming the counterpart to EU citizens. While some third country nationals benefit from free movement rights similar to those enjoyed by EU citizens, including the right of entry to, and residence in, EU Member States for the purpose of employment, others are subject to visa requirements, labour

market restrictions and other limitations of an economic and social nature. The adoption of the legally binding EU Charter of Fundamental Rights was important in recognizing third country nationals as an integral part of the EU population, and it contributes to strengthening the legal status of all third country nationals. However, we are still far from achieving the objective of granting all third country nationals rights and obligations comparable to those of EU citizens.

The Commission has presented the GAMM as a new stimulus in migration policy. Yet it remains to be seen if its focus on mobility will translate into concrete action to promote the mobility of third country nationals. It is to be welcomed that the GAMM has incorporated the dimension on international protection and places the individual migrant at the centre of attention. The fact that the human rights of migrants are now recognized as a cross-cutting dimension demonstrates a willingness on the side of the EU to accept that the protection of fundamental rights concerns migrants in source, transit and destination countries alike. It remains to be seen how such endeavours are implemented in practice.



Lampedusa UN Photo UNHCR P Behan

## Policy Recommendations

When designing a common EU approach to migration, the following policy recommendations should be taken into account:

### 1) Build a Common EU Migration Policy that Promotes an Inclusive Union

A common EU migration policy, which applies to all third country nationals on equal terms, is not currently in place, as evidenced by different legal migration regimes for certain groups of third country nationals. The highly fragmented approach of the EU migration law *acquis* could be transformed into a common migration regime with improved equality of treatment for all third country nationals.

### 2) Increase Transparency and Raise Awareness

A first step to tackle the current, fragmented state of play in EU migration policy would be to improve the transparency of the complex structures that shape the EU legal framework for migration. The secondary EU legislation adopted under Title V of the Treaty of Lisbon is often presented as a foundation for a common immigration policy, neglecting the various association, cooperation and partnership agreements that also have legal implications for certain groups of third country nationals. Policy makers should raise awareness of the EU migration law *acquis* for civil society with a special focus on (potential) migrants, by for example further developing the EU Immigration Portal that provides the latest practical information for foreign nationals.<sup>14</sup>

### 3) Introduce a Comprehensive EU Immigration Code

Policy makers should consider introducing an amended and comprehensive EU immigration code based on the existing *acquis communautaire* (the cumulative body of EU law); the idea dates back to the 2009 Stockholm Programme.<sup>15</sup> Such an immigration code could serve as a legal basis to consolidate and improve immigration legislation, and enhance coherence. An immigration code would enhance protection of third country nationals but again would apply without prejudice to more favourable rules of bi- or multilateral agreements.<sup>16</sup> The development of an immigration code is also pragmatic in the sense that it combines all legislative instruments into one document which can be a useful communication tool

disseminating immigration rules in a comprehensible way to (potential) migrants. This, in turn, would increase transparency and legal certainty.

### 4) Strengthen a Rights-Based Approach

To achieve the Tampere objectives, and especially to attain the approximation of rights of third country nationals to those of citizens of EU Member States, the EU migration policy should be rights-based and place migrants and their family members at the centre of attention. The GAMM takes the aforementioned concerns into account, which can be seen as a positive sign.<sup>17</sup> An EU immigration code could enshrine the human rights dimension in a legally binding document further strengthening a rights-based approach.

### 5) Promote Migration as a Positive Phenomenon from which Societies can Benefit

It is of vital importance to promote immigration as a positive phenomenon from which societies can benefit. Ignorance provides breeding grounds for prejudices, mistrust and fear towards immigrant communities. National and European policy makers should take action, raise awareness and enlighten their populations on migration issues in a matter-of-fact and evidence-based fashion. Civil society, international and non-governmental organizations as well as the private sector play crucial roles in this undertaking. In this sense, the EU's GAMM is a step in the right direction. The Commission should be given credit for the public consultation it launched between April and June 2012 calling on citizens, organizations and public authorities to contribute to the Commission Communication on the Global Approach to Migration.<sup>18</sup>

### 6) Reinforce the Institutional Framework Dealing with Migration Issues

An enhanced cooperation on the institutional level would facilitate the organization of regular dialogues between key organizations and stakeholders. A strategic partnership for EU migration issues was launched in July 2012. The International Organization for Migration (IOM), the European Commission and the European External Action Service (EEAS) have agreed to strengthen collaboration with regard to migration, development, humanitarian and human rights issues. The primary aims of the partnership are to promote and consolidate cooperation between IOM, the Commission

<sup>14</sup> EU Immigration Portal, see website: <<http://ec.europa.eu/immigration/>>.

<sup>15</sup> The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens, OJ C 115, 4 May 2010, p. 1; see also Council of the European Union, “European Council 10/11 December 2009 Conclusions”, document number: EUCO 6/09 of 11 December 2009; while the code formed part of the draft Stockholm Programme of 16 October 2009, the final version does not contain a reference to an immigration code, see Council of the European Union, “Multiannual Programme for an Area of Freedom, Security and Justice serving the Citizen (The Stockholm Programme)”, document number: 14449/09 of 16 October 2009.



services (DG HOME, DG DEVCO/EuropeAid and DG ECHO) and the EEAS concerning respective policies, legislative and operational initiatives, research and data, lessons learned and best practices. It is much to be hoped that this partnership is effectively put into practice and used for fruitful policy discussions on how to better manage migration.

#### 7) Encourage the Ratification of the UN Migrant Worker Convention

The UN Migrant Worker Convention has created a comprehensive, international legal framework for the protection of migrant workers and their family members, although few states have ratified this convention. EU Member States should be encouraged to adhere to this legal framework to increase the number of ratifications of wealthier, industrialized countries, and thus promote a more secure legal position of migrant workers and their family members.

#### About the Author



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#### Acknowledgements

The author would like to thank Elaine McGregor and Melissa Siegel for useful comments on the initial draft of this policy brief.



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<sup>16</sup> See Article 4 of the draft EU immigration code on the relationship with national and international law.

<sup>17</sup> European Commission Communication, COM(2011) 743, 18 November 2011, p. 7.

<sup>18</sup> See website of DG HOME of the European Commission on the public consultation of the Global Approach to Migration: <[http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2011/consulting\\_0021\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2011/consulting_0021_en.htm)>.

<sup>19</sup> IOM Press Briefing Note, "IOM, European Commission and European External Action Service Strengthen Partnership" of 16 July 2012.

<sup>20</sup> UN General Assembly Resolution A/RES/45/158 on International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families of 18 December 2006, 69th Plenary Meeting.