

## Migrants at the gates: the external dimension of the EU's migration policy in the South Mediterranean

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The issue of irregular migration from the South Mediterranean has grown in importance since the Arab Spring. In addition, calls from a number of Member States to reconsider the Schengen agreement have triggered a serious institutional debate over one of the basic European rights: free movement. These debates partly coincided with the institutional and policy changes brought by the enforcement of the Lisbon Treaty, which has modified the EU's external action.

The management of migratory flows is a complex institutional undertaking within the EU, which is addressed by expanding the importance of the Area of Freedom, Security and Justice (AFSJ) and its international outreach through the Common Foreign and Security Policy (CFSP). However, will the institutions involved be able to coherently administer growing pressures in their policy responses?

### Managing migration from the South: JHA with External Action or External Action with JHA?

Over the last years, the EU has put more and more emphasis on migratory flows coming from third countries as a policy of strategic importance in its foreign policy efforts, which comprise its economic, political and social relations with third countries. A common migration policy was not a priority on the Member States' agenda, but the issue has risen to the fore through incremental institutionalization. A common immigration policy in the EU evolved

from a lack of collaboration in the 1970s to an intergovernmental cooperation in the 1980s, making immigration control a Community competence, while also giving it an external dimension in the late 1990s<sup>1</sup>. Today, the primary aim of the Lisbon Treaty is to enable the EU to act in a more coherent and coordinated manner concerning issues pertaining to all policy areas. To this end and in relation to the justice and home affairs sphere, in 2009 the European Council urged the new High Representative (HR), the European External Action Service (EEAS) and the Commission to "ensure better coherence between traditional external policy instruments and internal instruments with significant external dimensions, such as freedom, security and justice" (Council of the European Union 2009: 74).

The main trend which can be observed at the EU level is the so-called "externalization" of migration control—the "external dimension" in European policy discourse. This issue deserves particular attention because it entails a considerable amount of criticism against the Community's attempts to establish a comprehensive migration (and asylum) policy. Externalization is defined as the reproduction of the EU's migration acquis in third countries—burden sharing in policing European borders, prevention of illegal migration, readmission agreements and creating migration management policies and facilities in the origin countries (capacity building). This results in a shift of focus from development and collaboration on the issue of legal migration and the human rights aspect

<sup>1</sup> The EU's ability to act internationally within the JHA field became possible with the Treaty of Amsterdam (1997).

to securing external borders (Doukoure, Oger 2007: 2). A consequence of this “remote control” policy had been the implicit tolerance and collaboration with the undemocratic regimes in North Africa and the Middle East in order to promote the short-term goal of counteracting security threats towards the EU.

The 2005 “Global Approach to Migration” action plan showed a changing frame of mind, which focused on the long-term solution of addressing the root cause of migration, human poverty, by fostering social and economic development in third countries. However, assistance to the countries of origin was later tackled through the 2007 European Neighbourhood and Partnership Instrument (ENPI) which shifted the focus from engaging in these issues through the CFSP framework (Association Agreements for the Mediterranean countries) towards an externalization of migration<sup>2</sup>. Consequently, within the migration policy aspect, the ENP action plans put more emphasis on border control, counteracting illegal migration and terrorist threats, and building a solid national asylum system.

Problems have arisen because the EU has been using both approaches, with more insistence on remote control, however, without clearly settling on one in particular. Ripple effects of this lack of policy unity at the EU level are now affecting the EU. In addition, unlike in the case of the Eastern Partnership, the EU lacks solid “carrots” for the Mediterranean countries in return for sustainable reforms. Thus, home affairs elements are used to compensate for the lack of a solid foreign policy (Parkes 2011: 2) and foreign policy elements are inserted into the home affairs policy towards third states. The result today is a policy, which maintains the externalization of migration control but which gives more attention to root causes, thereby offering assistance including in democratic and institutional reforms, financial aid, employment, investments, visa facilitation and liberalisation, and mobility partnerships. This multifaceted approach will end up placing even more pressure and causing more confusion for third

states given the multitude of actors in the foreign policy and home affairs spheres.

## The Lisbon changes – a curse in disguise?

In the early days of 2010, when the new Barroso Commission was taking shape, there were concerns that the large number of portfolio overlaps would constitute a risk for the EU’s activity in several policy areas. In this sense, if we look strictly at external action, we can see a policy and responsibilities overlap between the CFSP (which remained intergovernmental) and the following DGs: Development, International cooperation, humanitarian aid, crisis response, Enlargement and neighbourhood Policy. In contrast to Ashton’s initial proposal, Barroso downgraded the HR’s authority by giving her indirect leverage over the Neighbourhood Policy portfolio, which has a very large share of the budget, but leaving it under the Commission’s responsibility. Nevertheless, he specifically pointed out the certain Commissioners would act as Ashton’s deputies even if there is no such stipulation in the Lisbon Treaty<sup>3</sup>. Given the complexity of the tasks, an accommodation procedure was surely needed to create an effective *modus operandi*. However, no such blueprint was officially sketched out, thus leaving room for friction.

The newly created European External Action Service (EEAS), tasked with everyday external policy implementation, rather increases the bureaucratic burden than streamlines the activities of all these entities. The 2010 struggle over the composition of the EEAS and its role in handling development aid was an illustration of such friction, this time between the Commission and the Member States, but also between various EU institutions. The deputy DGs have to work in “close cooperation” with the EEAS and the latter even has a percentage of their staff, but the Commissioners themselves retain room for manoeuvre vis-à-vis their policy area.

In case of a more specific policy, such as third country migration into the EU, the picture becomes even more complicated. In addition to the aforementioned entities, even more DGs are added, which also have duties

<sup>2</sup> In line with this argument, in the Council Presidency Conclusions, more specifically in the section dealing with the external dimension of asylum and migration and partnership with third countries, it is stated that: “the EU should aim at assisting third countries, in full partnership, using existing Community funds where appropriate, in their efforts to improve their capacity for migration management and refugee protection, prevent and combat illegal immigration, inform on legal channels for migration, resolve refugee situations by providing better access to durable solutions, build border-control capacity, enhance document security and tackle the problem of return”.

<sup>3</sup> The Foreign Affairs Committee in the European Parliament also stated in its recommendation on the EEAS’ organization and working methods that in Ashton’s absence, briefings to the EP would be done either by the three Commissioners (in areas under Community authority) or the foreign affairs minister of the country holding the EU presidency for CFSP issues.

relating to this type of issue<sup>4</sup>. The external dimension of migration control shed light on the so-called “cross-pillar issues”, which have blurred the internal-external security distinction, “[t]he implication [being] that the location of responsibility for migration within national and EU political systems also becomes more complex” (Geddes 2009: 23). The necessity to foster closer consultation and collaboration within the Commission between several policy areas and JHA poses administrative obstacles and runs the risk of resulting in policy incoherence and inefficient decision-making because of potential “turf wars” (Collett 2009: 15). A recent example is the release of the revised Neighbourhood Policy which was postponed also due to Ashton’s interventions over its unsatisfying content and her desire to become more involved in enlargement aspects (Jozwiak, 2011). Since both Commissioners aim at representing European interests overseas in relation to the same policy areas, it is to be expected that similar internal toe-stepping will continue.

The adoption of the Lisbon Treaty inflated hopes that migration policy will be more effectively formulated and implemented, but institutional and administrative challenges have arisen. There are concerns that the combination between the Stockholm Programme and Lisbon will only delay decision-making due to inter-institutional fault-lines, the increased role of the European Parliament and the national legislatures. A mandatory consent of the EP regarding migration policy can lead to incomplete examination of proposals and the emergence of new frontlines compared to the ones already existing within the Council<sup>5</sup>, between the EP and the Council,<sup>6</sup> and the Council and the Commission<sup>7</sup>. Consequently, the intergovernmental JHA Council is likely to set the agenda and design the migration policies instead of the Commission (Angenendt, Parkes 2009: 1).

## Tailor-made strategy for the Mediterranean

In the Mediterranean, the main cause of concern has been the migratory flows of undocumented people landing on EU shores. In 2010 millions of migrants were

4 DGs such as: Justice, Fundamental Rights and Citizenship and Home Affairs (resulted from the recent split of the JHA DG), Employment, Social Affairs and Inclusion, Education and Culture, Trade, Economic and Financial Affairs.

5 For instance, regarding burden sharing in receiving asylum seekers.

6 Regarding the EP’s new prerogative over criminal justice and police cooperation.

7 For example, concerning the existence of a single system for legal migration into the EU.

amassed in Libya, since its shores had not been subject to harsh controls, in order to cross over towards Italy and Malta (L’Helgoualc’h 2010). In March 2011, a large number of North African refugees (Tunisians, Egyptians and Libyans) landed on the Italian island of Lampedusa and later attempted to cross the French border, an event which prompted Italy and France to call for a reform of the Schengen rules.

The HR and the Commission proposed a differentiated approach in the region and a long-term partnership for migration, mobility and security. The approach detailed the immediate and long-term responses to the crises in its immediate vicinity and underlined that these two institutions “are ready to play a bigger role in the Union for the Mediterranean (UfM) in line with the Lisbon Treaty” (European Commission – High Representative of the Union for Foreign Affairs and Security Policy, 2011). However, it was made clear that the EU’s cooperation with third states remains performance-based, i.e. only those that register significant progress in their democratic and rule of law reforms and in their (externalized) migration control efforts (“more for more”). After recent revolutionary events, the EU has somewhat more leverage in the region: it dangles the development aid and visa liberalisation carrot in return for democratic, economic and social reforms, but it does not give up on the security aspects of irregular migration<sup>8</sup>.

The EU’s relations with the states in the Mediterranean were mainly administered by the ENP and the UfM, which supports regional dialogue and cooperation between the EU-27, the Commission and countries bordering the Mediterranean (except Libya who has observer status), including those located in the Western Balkans. The UfM’s strictly intergovernmental structure and perceived French, and not European, outlook diminished its role in the region. However, after the Arab Spring, the EU is looking towards it as a medium through which to address some of the root causes of migration: poverty, unemployment and the lack of prospects.

In this context, it is the daunting duties of the HR to manage the migration dossier by: 1) helping the Member States arrive at a common denominator within responsible institutions; 2) mediating the relationship between the institutions and third

8 To this end, the reviewed ENP paper states that it “aims to develop a mutually beneficial approach where economic development in partner countries and in the EU, well-managed legal migration, capacity-building on border management, asylum and effective law-enforcement co-operation go hand in hand”.

countries; 3) coordinating the work of several other DGs while trying to avoid turf wars and 4) overseeing the crisis management efforts of the Instrument for Stability, the deliverance of humanitarian aid and the changes envisaged by the neighbourhood policy and in response to the Arab Spring.

## Conclusion and recommendations

Numerous initiatives and institutions within the EU tasked to deal with the migratory issue concerning its external dimension present a number of deficiencies. Issues of trust, burden-sharing and the need to take responsibility within the EU hinder the coagulation of a coherent and consistent common migration policy.

In order to adequately deal with the migration flows, the competent EU institutions need to insist on building an integrated approach and a homogeneous policy of legal immigration and labour mobility based on entry and exit requirements, quotas, and required documents. In addition, market integration needs to be stepped up in order to support economic development in the region.

Tremendously important is that the EU reforms entirely the Dublin Regulation, which established the “first-come-first-responsibility” principle.<sup>9</sup> Despite its initial intentions, this system placed overwhelming pressure on receiving states, leading to intentions to reform the Schengen Agreement. Southern European states have been repeatedly asking for a reform to respect the solidarity principle and burden sharing promises made by Northern states. The response has been disappointing despite legal attempts to encourage

<sup>9</sup> The principle refers to the fact that asylum requests are to be dealt with by the first EU country in which a migrant enters.

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The entities dealing with external policy need to improve informal delineation of competencies in order to deliver uniform messages and display a united front to third parties. EU external action towards the South needs to be more consistent: Ashton and Füle either have to display a very united approach or they have to choose who is best suited to play the first fiddle. The alternative would be a struggle between competencies and resources which will only hamper the Union’s objectives.

The intention to revitalise the UfM to manage the situation could be a double-edged sword. On the one hand, UfM may allow for a more balanced interaction between the EU and non-EU members. On the other hand, it may sidetrack the EU’s foreign policy objectives if Member States insist on advancing their own interests. The HR or the Neighbourhood Commissioner has to take on a more visible role in the UfM to encourage regional dialogue and integration and not let it get captured by individual states. This also entails the above-mentioned competency delineation between Ashton and Füle.

Finally, efforts to stabilize Libya should be enhanced to foster a secure environment not only for the Libyans and migrants waiting on its shores, but also for the whole region. In addition, the EU should seek to integrate it into the UfM, renegotiate the halted Framework Agreement and commit to supporting its short and long-term development under the ENP. The Member States which have military presence in Libya must allow the HR the necessary room for diplomatic manoeuvre to grasp the opportunity for a truly European response to the crisis of closest proximity since the Balkan conflicts.

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