

## **POLICY PAPERS**

### **The Development of a Common European Immigration Policy**

*Stylianos KOSTAS*

**Abstract.** As the European idea about an integrated economic and political union grew, immigration to the European space experienced an unprecedented growth mainly in its irregular dimension following the international political, economic and social developments, especially from the 1980s onwards. That raised the necessity of framing a systematic common immigration policy that undoubtedly followed the same evolutionary course of the European Economic Community towards an integrated European Union, with all that this entails, taking into account the different policy approaches to immigration in Europe. This article focuses on the gradual evolution and consequences of forming the current common European immigration policy, until the new era that the Treaty of Lisbon brought. It shows that the historical development of the immigration policy follows the same evolution of the European integration and reflects the problems associated with the phenomenon of immigration and the difficulty in shaping the policies of the European Union.

**Keywords:** *common European policy, irregular, immigration, immigrants*

#### **Introduction**

The problem of irregular immigration and the necessity of an effective common European migration policy constitutes as one of the major challenges that the European Union is facing. Essentially this is not a new problem and the challenge is double as it is referred both to the administrative and legislative management of the irregular migration taking under consideration the immigrants human rights and to the security management of EU external borders, which to date under the current policies have not yet bring the desired results. The free movement within the intra European area without internal borders resulted at the same time the external borders of the Union to be converted as the single point of

arrival and inspection for irregular immigrants while however creating problems in control, protection and coordination of actions among the Member States and particularly in those Member States because of their proximity to third neighbor countries.

Furthermore in the recent years there has been a spate of this irregular migration as a result of tighter border controls undertaken in an attempt to control the external borders of the EU and therefore following stringent conditions imposed on the inflow of immigrants to the Member States of the Union under the Visa procedures. This increase should be calculated taking under consideration also the pressure of the immigration flows coming from neighboring to the Union countries, and especially from North Africa and the countries of Eastern Europe as well as the countries of the Middle East, mainly today from Syria with an ongoing increased flow because of the current conflict conditions. The issue of irregular immigration in particular becomes a problematic area for the Union as the political, economic and social challenges of immigration are possible only to be addressed by a carefully concerted action, which until to date has played a particular role in the development of the co-called common European immigration policy, with the latter to appear some times as not feasible and effective and the Union itself sometimes as disorganized and defenseless but also , in contrast, like a fortress that is willing to remove immigrants from its territory.

Migration as an issue for discussion was raised long after the establishment of the European Economic Community in 1957. Back then immigration was about the free movement of European citizens within a single market with the opportunity to live and work in another country (Community) than their country of birth. The waves of immigration from third countries to Europe were of small scale and controllable. However, as the European idea about an integrated economic and political union grew, immigration to the European space experienced an unprecedented growth and mainly the irregular immigration following the international political, economic and social developments, especially from the 1980s onwards. That raised the necessity of framing a systematic common immigration policy that undoubtedly followed the same evolutionary course of the European Economic Community towards an integrated European Union, with all that this entails, taking into account the different policy approaches to immigration in Europe.

## **The European Economic Community and the preludes to migration**

The European Economic Community is the cornerstone of the European Union and of what characterizes today the European idea and the policies which are developed in order to fulfill it. The Treaty for the establishment of the European Economic Community or the Treaty of Rome was signed in 1957 among six neighboring countries of Western Europe (France, Germany, Italy, Belgium, Luxembourg and the Netherlands). Essentially with this Treaty, following the Treaty establishing the European Coal and Steel Community, in Paris in 1951 and the Treaty establishing the European Atomic Energy Community, also in Rome in 1957, the Member States entered into a new phase of transnational cooperation with the main goal to promote commercial and financial transactions within a single market, and gradually building a politically functioning entity. In fact the focus was laid on strengthening economic cooperation terms, avoiding the persistent idea of some more Europhile and Federalist politicians who desired a dynamic European political entity.

Under these circumstances during the establishment and evolution of the early years of the European Economic Community, no reference was made and there was no perspective to form and develop an immigration policy and especially with regard to third country citizens. Thus in general, immigration policies have been case-driven, ad hoc temporal responses to specific political situations (Margheritis and Maldonado, 2007). Although the idea of creating a common market was based on the four principles of free movement of persons, services, goods and capital between the Member States with the obvious escalating effect this has on the free movement of persons, there was no mention of identification with the phenomenon of immigration of persons not originating from the Member States. The relevant rights derived from the implementation of these principles, i.e. of free movement - settlement and work within the single market, were associated only with economic conditions regarding the citizens of the Member States of the European Communities and their promotion was clearly aimed at facilitating the flow of human labor in order to achieve the objectives of the European Community. This can be easily justified by the fact that a clear priority was given to the economic dimension of the European Community without taking specific policy decisions about social phenomena, such as external migration.

This resulted in immigration issues following from the very start a specific

course of development for which each Member State was responsible for the tackling of migration from third countries into the Member State on the basis of national law; on the contrary, for issues of internal migration of citizens of the Member States within the common economic area, the Community itself was responsible and undertook to support the relevant principles laid down by the Treaty of Rome with the creation of a concrete Community legislation. This problem of bipolar and unequal distribution of responsibilities for the tackling of the same phenomenon from one side by the Member States separately and from the other side by the Community as a whole, constitutes later one of the main problems for the forming of a single immigration policy and the various consequences, as evidenced by its historical evolution. In other words, hauled convergence is the minimum policy harmonization needed in a very sensitive policy area, such as migration, for regional integration to advance deeper and further in other areas (Margheritis and Maldonado, 2007).

However, during the early years of the European Economic Community in the late 1950s and 1960s the conflict between these two decision-makers was not noticeable and the phenomenon of immigration did not constitute a problem for the common economic area. More concretely, the internal migration among European communities was specific and legal and followed the liberal policies of the Member States of Western Europe that called the labor force of other Member States or third countries to work under the domestic conditions. Moreover, the illegal immigration to Europe was not yet a problem calling for systematic and general overall addressing, with the Member States being responsible for the relevant problems within their national territory. That resulted in immigration being left out of the action plan of the Community and not being considered as a priority for the forming of a common policy and thus was not considered in the core policies for which a constant cooperation between the Member States and the Community as a whole was necessary.

The 1970s marked a series of significant changes for the European Economic Community and international developments that had an impact on the evaluation of immigration by the Member States and these changes caused concerns as to what tactics to follow. The accession to the Community of three new Member States (Denmark, Ireland and the United Kingdom), in January 1973 had as a result the expansion of the common economic area and the creation of new movement opportunities for work and settlement in these new Member States,

especially for the citizens of the Community. Migrant networks then developed, were consolidated and linked sending and receiving states, or to be even more precise particular areas within those sending and receiving states often linked to particular forms of economic activity (Geddes, 2005). However, although the internal migration within the Community was subject to Community Law, the Member States and the national labor laws in relation to their economic development, was what determined the migratory flows, demand and labor supply.

Considering the oil crisis and the economic slowdown that hit the European Economic Community, as a result of the Arab-Israeli war in October 1973 that led to an increase in oil prices and restriction of sales in some European countries, many of the economically liberal Member States of the Community drastically reduced the demand for foreign labor, even among the communities. This resulted in a halt of the regular and sustained labor migration flows between Member States and third countries in specific Member States, as these had already being shaped during the 1950s and 1960s. The European Community's role at this time was very limited with regard to immigration from outside the EC, although by 1968 the basic parameters of the common market had been established and a free movement dynamics initiated (Geddes, 2005). The economically developed countries of Western Europe that attracted workforce, reduced or halted this offer and caused two interrelated issues: the alternative exercise of the right of free movement of citizens of the Member States especially in order to work within the common work area, an issue that could be addressed by strengthening national economies and implementing development programs in the countries of origin for the creation of jobs as attempted with the establishment of the European Regional Development Fund on December 10, 1974; and the most important issue was the need to address migration flows from third countries outside the Community, the workforce of which continued its efforts to enter the Community despite the recession, presenting the first incremental symptoms of illegal immigration to the Member States and the first samples of the subsequent economic, political and social consequences of improper management of illegal immigration. The geopolitical widening of migration, closely linked to the emergence and development of new forms of international migration relations and has been a key driver of policy responses (Geddes, 2005).

In order to address these two problems that have arisen as a result of different perceptions on immigration and the need to deal with it effectively, the

Member States realized the need for greater cooperation and increased intergovernmental coordination at the central level of the Community. As migration and asylum policy entered the Community political agenda, the national fears were transferred to the European Communities that inherited the Member States' suspicion and fear of the 'aliens' (Karyotis, 2007). Thus immigration was now presented as a common problem that may have varied in size and intensity between the Member States, but presented the necessity for mutual cooperation. At the same time and although the energy problems had seriously affected many Member States of the Community, the additional procedures towards a gradual building of the European idea had started to strengthen mutual political decision-making and shape confidence for the further progress towards European integration, enhancing the prospects for a coordinated action with regard to the immigration issue. In April 1974, following a joint statement on the situation of the Community that was presented to the Council, the Presidents of the Council and the Commission acknowledged that the decision-making process within the Community should be improved in order to make progress in the future on the forming of a policy on important issues, given that the goal is to ensure long-term functionality of the Community. Moreover a series of facts shaped a demanding environment in which the forming of specific policies could be seen as a necessary solution and the only way to effectively combat problems such as immigration. The European Parliament elections in June 1979 and the accession of Greece to the Community in January 1981, while the accession process for Spain and Portugal as applicant countries already had started since 1977 (and they finally became members in January 1986) encouraged politically that period. After the 1985, there was indeed a trend towards institutionalization, a more frequent use of the European Community as the proper framework for international coordination and a more explicit connection between the abolition of internal borders within the European Community and the need for 'compensatory measures' in the field of immigration, asylum and external border control policies (Guiraudon, 2000).

### **Open borders in the aftermath of the Schengen Agreement**

These developments, following at the same time a drive towards a further integrated European idea, undoubtedly resulted in the mid 1980s to a closer cooperation between the Member States of the European Economic Community

and to important steps which were made with regard to immigration. Basically, for the first time reference is made to migration and asylum issues, without however forming specific policies to address them, but regulatory measures in the broader context of the planned changes. Moreover, the measures adopted in response to the functional imperative of market integration have not only implied the development of the European Union's immigration policy but the latter has also affected the regional structures of governance themselves, by generating incentives for further agreement on common norms (constitutionalization) and delegation of power on supranational institutions (institutionalization) (Margheritis and Maldonado, 2007). This led to the introduction of the Single European Act signed in 1986 and its aim was to pave the way for integration of the European Union, through the creation of a truly single European area, not only economically unbound for the development of a common market but also as an area of freedom for Europeans with a strong future cohesion policy.

The Single Act amended the operating rules of the European institutions and expanded significantly the Community's interest of involvement particularly in the fields of research and development, environment and common foreign policy. Among the most important rules, which the Single European Act envisaged, were measures for joint control of the external borders of the Community and for the process of entry and settlement of third country citizens within the common area, thus introducing measures of an immigration policy that was still not a separate object for consultation and was limited to future aspirations of more Europhile politicians. Therefore, no independent framework of legislation relating to immigration and asylum was created as a separate policy. The countries that pushed the Single Market agenda such as the UK in fact did not wish to be bound by EU migration discussions, thereby undermining the link between the two developments (Guiraudon, 2000). However given that the Single Act set as a primary goal the establishment of an internal market which would include an area without internal frontiers where the free movement of goods, persons, services and capital would be ensured, the measures related to immigration were taken as an obvious early common immigration policy, relating to a single European area and especially in relation to the conditions for free and legal movement of persons from third countries.

However, although with the Single European Act the first intensive steps were made towards the economic and political completion of the European

integration with direct implications for the initiation of development of a common immigration policy, the greatest progress with regard to the development of a common immigration policy was made by the signing of the Schengen Agreement (Schengen I) in 1985 originally between five Member States (Belgium, France, Germany, Netherlands and Luxembourg). Already one year before the signing of the Single Act, the Schengen Agreement that was launched much later in 1995, was about something very specific and innovative but compatible with the idea of European integration, providing for a definitive abolition of controls at the internal borders of the Member States that had signed it. This policy agreement was an interstate agreement between the contracting Member States but at the same time was independent from the central institutions of the Community. However was obviously compatible with the idea of creating a common European area in accordance with the Single Act, creating an interlocking relationship.

The common denominator was now the free movement of Community citizens within an area without borders. However, the idea of abolishing border control at internal borders of the Member States of the Community and at the same time making the national external borders future external borders of the Community, with the gradual accession to the Agreement of several Member States highlighted safety issues relating to the process of entry, movement and settlement of third country citizens within the common Schengen area. For the successful implementation of the Schengen Agreement and the handling of incidents of illegal immigration the Schengen Convention (Schengen II) was signed in 1990, which established the precise executive orders in an effort to address the security and protection issues. The regulatory measures to be adopted regarded the partial abolition of border checks at the internal borders of the Member States and the simplification of border controls on movement of persons and goods, in the spirit of a frontier-free Europe; the contracting Member States decided to address the risk of third countries taking advantage of the privilege of free movement of EU citizens by adopting a series of measures to protect the external borders and penalize non-beneficiaries, thus laying the foundations for a more enhanced protection of the freed from internal borders Europe. The image of a fortress Europe emerged to describe the development of policies aimed at keeping out asylum seekers, irregular migrants and 'unwanted' immigrants in general (Broeders, 2007).

More concretely it was decided to introduce a single control of the external

borders with transnational cooperation of the bodies of the Member States with distinction of travelers from third countries at land, sea and air crossings and enforce joint control rules. The issue of immigration control was central and the harmonization of visa and border controls took centre stage (Finotelli and Sciortino, 2013). For security reasons common conditions were set for the entry and settlement of third country citizens within the common Schengen area, while police and border authorities acquired the right to monitoring and cross-border prosecution, that was enforced by the creation of the Schengen Information System (SIS). Though the SIS was presented as an instrument intended to maintain “order and security”, its main preoccupation seems to be with irregular migrants, who make up the lion’s share of the information stored on persons (Broeders & Engbersen, 2007).

The Schengen Agreement aimed at giving real meaning to the long-standing European goal of free movement by abolishing the internal borders among the signatory states, however, it was the later Schengen Convention that was basically an inventory of ‘flanking measures’ that associated ‘Schengen’ with securitization and the image of Fortress Europe (Broeders, 2007). As a deterrent to illegal entry the Member States were obliged henceforth to impose administrative penalties, fines and denial of entry in cases of illegal entry by non-authorized and non-designated border crossing points, with corresponding criminal penalties that each Member State had set in accordance with the national criminal law. These provisions specifically dealing with illegal entry into the single European area and aiming to address illegal immigration, were adopted in the same spirit of cooperation with the further measures concerning a framework for consultation, allocation of responsibilities and decision-making to address requests for political asylum.

### **New challenges for the asylum system**

Since the process of examining and granting asylum status to citizens of third countries was at that time subject to the relevant immigration legislation of each Member State, with the implementation of the Schengen Agreement mutual cooperation was considered necessary in order to address a phenomenon interdependent with immigration and mainly with illegal immigration. In a borderless European area, and at the same time with new conditions and entry

restrictions, the abuse of the asylum procedure of illegal immigrants proved to be another problem. However, even for legal asylum applicants-citizens of third countries, the process of asylum granting to a new common European area had taken a different course. So especially for the asylum procedure for illegal immigrants, the Schengen Convention provided that in case of illegal entry through an unauthorized and delimited border crossing point of the external borders of the Community responsible for checking the application for asylum is the Member State whose external borders the asylum seeker passed first and not the Member State of final destination and submission of the asylum application.

The importance given to these provisions on asylum procedure led to the adoption of a separate political decision, proving that immigration should be treated as an important issue, especially with regard to the procedures dealing with it. Thus in the course of development of a specific immigration policy, asylum laid the groundwork for systemic solutions. The Dublin Convention signed in 1990 was aimed to address the current problems in the asylum granting process. As an intergovernmental agreement seeking harmonization of the different national policies for the granting of asylum it was not equal to a common asylum policy, but nevertheless was necessary to plan such a policy and it also laid the foundation for further development of EU legislation on asylum matters. The Dublin Convention effectively reproduced the external border provisions on asylum that were already stipulated in the Schengen Agreement and came to replace it (Thielemann and Armstrong, 2013).

With the signing of the Dublin Convention it was mainly attempted to put emphasis on the definition of the Member State responsible for the examination of the asylum application submitted to Member States of the Community. Essentially the purpose of the Convention was to clarify which Member State is responsible for examining an asylum application if the applicant has entered into a single area through a Member State other than the one in which he/she finally submitted his/her application. The regulation further provided that a person (the applicant) is entitled to submit an asylum application, and thus the abusive phenomenon of multiple asylum applications by the applicants could now be resolved. The results of the application of the Dublin Convention are still under investigation since from the beginning it was found that the application was not that a deterrent means to illegal immigration, but more a means of engaging the Member States in a vicious circle, namely the countries of first entry of illegal immigrants and asylum seekers.

A cursory look at the data on transfer requests, proves that the Dublin system advantages the wealthier core Member States over those with external borders ; thus it is revealing the highly inequitable distribution of responsibilities that we would expect the Dublin system to be able to address (Thielemann and Armstrong, 2013). However, it is the first effort of mutual cooperation on the issue of immigration and asylum granting, and since then the foundations were laid for more concern at Community level.

### **The establishment of the European Union and the origins of externalization**

Before the entry into force of the Dublin Convention in September 1997, the Treaty of Maastricht in 1992 as the founding Treaty of the European Union , provided an increased intergovernmental cooperation and adopted an harmonization policy of immigration and asylum. EU actions in the area of asylum and immigration have thus spanned multiple overlapping areas of competence from the start : post Maastricht policies are characterized by intergovernmental cooperation and non-binding instruments widening their democratic deficit (Lindstrøm, 2005). Essentially it formalized the intergovernmental cooperation in the field of justice and home affairs of the newly formed Union, including migration and asylum tasks, with the creation of the so-called third pillar of the European Union. It offered new opportunities for the development of new policies on immigration and asylum.

Although what became more than understandable was the method of intergovernmental cooperation. When it came to the decision making process showed a significant delay at the harmonization processes and led to incomplete and non-binding solutions, especially for cases involving illegal immigration issues and asylum problems. Eventually, the main form of cooperation among the Member States remained the consultation and the exchange of information, as they were not yet ready to accept the transfer of their national issues manipulation at a Community level on issues specially related to security and protection as immigration and asylum policies. That had an impact on the way of addressing issues of immigration and asylum requiring a stronger cooperation among the Member States regarding to the decision-making process and on the other side resulting delays in formulating the immigration policy because of the different national interests. That had an impact on the way of addressing issues of

immigration and asylum requiring a stronger cooperation among the Member States regarding to the decision-making process and on the other side resulting delays in formulating the immigration policy because of the different national interests. The formal inclusion of migration and asylum in the fields of interest of the Union, enshrined the possibility for new decisions in formulating a common immigration and asylum policy in the future. However, without any possibility at that time of producing a specific Community legislation in this field, the simple cooperation as a way to harmonize different national policies was difficult and ineffective.

Finally, the significant shortcomings of the relevant provisions of the Treaty of Maastricht recasted at the institutional reform, the Treaty of Amsterdam in 1997, and the issue of immigration and asylum was transferred from the third and intergovernmental pillar of the Union's responsible policies to the first and supranational pillar under the title of " Visas , Asylum , Immigration and other policies related to free movement of persons ". Moreover, the Schengen Agreement became part of the Union's "acquis communautaire" converting the Schengen open area of free movement without internal borders into the official European borderless area for the whole Union. Although the incorporation of the "Schengen acquis" seemed to confirm the EU's status as the proper frame for co-operation on immigration and asylum , not all the EU Members accepted the new arrangements (Guiraudon, 2000). However, reflected the importance of the political commitment of the Member States to make their best efforts in order to develop a common immigration and asylum policy within a period of five years leading to a closer cooperation. Specifically, and in order to develop a more systematic immigration policy, the Amsterdam Treaty promoted measures to redefine the conditions of entry and residence of third country nationals and specifications for issuing residence permits. It was also necessary to take measures for tackling illegal immigration and regarding the repatriation of illegal immigrants back to their countries of origin. Additionally, with the Treaty of Amsterdam, the Commission was granted a strong role in the legislative initiative, marking a new period in the policy making process on immigration and asylum issues.

Attaching importance to the immigration policy, the European leaders agreed during the European Council meeting in Tampere in 1999 to work towards the harmonization of the immigration policy stressing once again the need for

processing a common European policy in this area. It was noted that the desired common immigration policy should be compatible with the protection of human rights and the development cooperation with the immigrants' countries of origin and transit, embracing officially the external dimension of the migration and asylum policies. Significant impetus was given to the formation for the adoption of a Common European Asylum System, based solely on the Geneva Convention. Since then, asylum is an area where common EU response is evident and demonstrates how the conceptual widening is linked to the spatial reconstruction of migration (Geddes, 2005). As a first result, the adoption of two basic Directives and of one Regulation set up the foundation of a new common asylum system as to what was already agreed. These were, the Directive 2003/9/EC laying down the minimum standards for the reception conditions of asylum seekers, the Regulation 343/2003 concerning the criteria and the mechanisms for determining the Member State responsible for examining an asylum application submitted in one of the Member States by a third country's citizen, as the Dublin II Regulation and finally the Directive 2001/55/EC detailed on minimum standards for temporary protection in cases of mass influx of displaced persons. The approved proposal for the creation of the European Refugee Fund came into force with hopes to manage aid during dramatic massive refugee influxes to third countries under conflicts.

Since Tampere, the European Commission had pursued a two-phase approach that was to seek the creation of a basic legal framework centring on the development of minimum standards in those Treaty articles introduced by Amsterdam, combining this with the employment of the open method of coordination to promote gradual convergence of legislation, policy and practices (Geddes, 2000). Although the implementation of the Tampere program which was planned for the five years period (1999-2004) was considered positively, the ongoing process of the establishment of a common immigration policy was problematic. In fact the establishment of a common asylum system was presented as a second component of the future common immigration policy of the European Union. By that time the Dublin Convention as was implemented with the Dublin II Regulation had taken effect and considering that the EURODAC fingerprinting system was functioning, there was a promising ongoing development managing asylum applicants and illegal immigrants. However, even the common European asylum system had made little progress comparing what was already planned, keeping the common migration and asylum policy as a problematic issue for the

Union. Furthermore, agreement on central aspects of policy harmonization such as the Directive on family reunification or those on refugees status and status determination procedures, was only achieved after protracted negotiations in the Council forcing the Commission to re-issue proposal several times (Lavenex, 2006).

The European Council in Laeken in December 2001, discussed about the progress of the Tampere objectives. The issue of development of a systematic common immigration and asylum policy was necessary for the further development and integration of the Union at whole and that could be achieved only by strengthening the cooperation among the Member States. The Treaty of Nice earlier the same year settled the institutional and operational gaps of the Treaty of Amsterdam, which later would allow the adoption of concrete decisions in different policy areas, including immigration.

The major issue of tackling immigration, dominated the Council in Seville in June 2002. Accumulated operational and institutional problems in developing a common immigration policy resulted more problems in an effective dealing with the phenomenon. The decisions that the Council adopted concerning repatriation programs of illegal migrants, readmission agreements and more effective protections of the Union's external borders were optimistic. They were focusing at the internationalization of migration control which had reached yet another stage in the establishment of a 'buffer zone' around Europe's porous frontiers (Guiraudon, 2000). All decisions were based on the conclusion that formulating an immigration policy and tackling illegal immigration could only be achieved through a strong cooperation with third countries of origin and transit of immigrants and especially with the Union's neighboring countries. Thus the aim was to develop a strategic relationship with these countries through political, economic, trade and cultural agreements while providing the necessary assistance for development and democratization of their institutions. Cooperation with countries of origin was a sign of a new attitude towards immigration, whose problem now was externalizing and was trying to find solutions to address them outside the Union. The externalization of the immigration problem created a new set of data and focused on developing the Union's relations with neighboring countries and other third countries; however, the impossibility of cooperation with some of these associated third countries was proved during the implementation of the bilateral agreements, that resulted more problems in particular Member States due not just to illegal immigration and asylum abuse, but also for the Union as well regarding the hopes for an effective immigration and asylum policy.

The European Council in Seville during the Spanish Presidency in June 2002, continued the efforts made by the Member States for faster activation of the program which was approved at Tampere. In Seville the EU embodied a specific timing of common actions and stressed again that it is crucial issue for Member States to control effectively the flow of immigrants, respecting international law and in cooperation with their countries of origin and the countries which are used for their transit, promoting the conceptualization of migration as a foreign policy issue. Seville concluded that any future cooperation, association or equivalent agreement which the EU or the EC concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of irregular immigration (Geddes, 2005). The European Council also requested from the Member States holding the Presidency after the Spanish one, to address a priority in migration issues, particularly those related to irregular immigration and the security of the external borders of the Union. In particular, the southern Member States of the European Union facing an intense problem of irregular immigration, Greece and Italy, had to respond to this request in the context of their own presidencies in 2003. Effective border protection and effective monitoring of migratory waves were also the focus of immigration policy during the Italian presidency in the second half of 2003. Importance was given to the promotion of an open dialogue with the third neighbor countries, as countries of origin and transit of migratory waves, by introducing later the European Neighborhood Policy into this external dimension framework. The aim was to prevent the emergence of new dividing lines between the enlarged EU and its new neighbours, without to rise new problems into the migration and asylum policy. However, the early involvement of so-called 'safe third countries' and later the candidates for EU membership in this cooperation has established the contours of a pan-European migration regime, in which the burden of migration control is shared with countries which were or are not yet members of the EU (Lavenex, 2006). Furthermore, the European Council asked the Commission and the Member States to facilitate as far as possible a successful conclusion of a readmission agreement for irregular immigrants between the EU and third countries.

### **Cooperation in terms of security**

The terrorist attacks of September 11, 2001 in the U.S.A. (as well later in Madrid in March 2004 and in the United Kingdom in July 2005) had serious effects in the evaluation of migration reflecting and reinforcing its connection with security

matters. Settings for transgovernmental cooperation on security related issues existed, before the development of EU migration policy and the use of policy frames that linked migration and security as global threats demanding transnational responses (Guiraudon, 2000). Nevertheless, the new conditions led the Europeans to highlight once again the issues of immigration and international terrorism as a phenomenon that raises security issues and therefore requires immediate and effective response, which cannot be addressed by actions of individual Member States. Not only did the new emphasis on combating terrorism distract attention from other areas of the Justice and Home Affairs, but also the association of migrants with terrorism made many Member States retreat to more restrictive policies (Karyotis, 2007). Thus, with no internal border controls because of the principle of freedom of movement within the Union, the Member States shifted to even stricter controls at the Union's external borders , creating the feeling that the Union lays to the foundation of a future fortress and highly inaccessible Europe. That accelerated the adoption of a series of rules regarding the control and surveillance of the EU's external borders and following the Council of Thessaloniki in June 2003 proposal after the Council Regulation 2007/2004 the European Agency for the Management of Operational Co-operation at the External Borders (FRONTEX) was created , based in Warsaw, Poland. However, the main point of contention in the establishment of Frontex was not the legitimization of urgent security measures , but the question of which EU institution had jurisdiction over external action border control (Neal, 2009).

Frontex was to start its operation finally in October 2005, taking under its responsibility the integrated management of the external borders of the EU with specific tasks to coordinate the operational cooperation between Member States and the security and risk analysis of the external borders. Furthermore, it was planned to provide assistance on the training of national border guards, to monitor technological developments in border surveillance, to assist Member States in joint return operations, while providing the ability to react immediately to a crisis through the development of rapid border intervention teams. Essentially the establishment and operation of Frontex, attempted to ensure assistance and cooperation between the Member States, concerning the safety of the Union's external borders, while these Member States preserving their national sovereignty and initiative in securing and monitoring their borders. So each problem of irregular immigration turned into European, but keeping the national benefits of

each national border security system. Since the beginning of its operation, Frontex had undertaken a wide range of tasks involved in the sea, land and air borders of the Union. The operational target was to present Frontex as an effective mechanism for the protection of the Union's external borders. Frontex had in fact achieved more than just the return of would-be migrants and it had also overseen the beginning of a process of extra-territorial extension of European border management (Reid-Henry, 2013). Addressing in particular the phenomenon of irregular immigration and asylum abuse, was presented a challenge for the Union as a whole, as it was touching a number of sensitive areas, such as human rights, the issue of asylum for them who really are in need to be granted with , social cohesion, xenophobia, developing economy and consequently labor market. Moreover, the phenomenon of illegal immigration started being considered as a remarkable reason that could destabilize the security level of the Union and its Member States.

Indicative of the importance attached to tackling irregular immigration constitutes a series of policy decisions of the Union followed the first five years of common actions of the Tampere Council and the establishment of Frontex establishing a new second period of action plans. During the Brussels Summit on November 2004, the European Council confirmed among its other issues of importance the need to work forward to a common European asylum policy. The ongoing increased number of the irregular immigrants flows to Europe and the different situations regarding the immigration and asylum systems among the Member States, were causes pressing for more effective and developed policies. The Council adopted the Hague Programme as a multiannual one for strengthening the area of Freedom, Security and Justice within the European Union and including the issues of the immigration and asylum policy. The prioritization of the external dimension of migration and asylum policy was once again evident in the Hague program which outlined the Union's action for the period 2005-2010 (Geddes, 2005). The program had planned to take under consideration the aftermath impact of the two main enlargements in 2004 (with Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia) and in 2007 (with Bulgaria and Romania) extending and moving the external borders of the Union to new dimensions and with new geopolitical standards with serious consequences regarding immigration.

The draft Hague Programme, however, fails to repeat the Tampere

Conclusions' reference to a status 'valid throughout the Union' and the obligations of non-refoulement, though it institutionally contains a commitment to abolish the requirement of unanimous voting in the Council on all EU immigration and asylum law (Lindstrøm, 2005). This important step promoting the institution majority voting was representing a victory for supranationalism but was applying in all policy areas except the legal migration. Thus the Hague Programme really only extended majority voting and codecision to the admittedly very important areas of political asylum, refugees and illegal immigration (Luedtke, 2009). That resulted of course a misunderstanding of the necessary connection between legal and illegal immigration and the way that should be related in order to provide a common field for the immigration policy interpretation.

However, strengthening the agent of liberty within the European Union and in particular in asylum, immigration, borders and Visa procedures, among the major recommendations of the Hague Action Plan Timetable could be distinguished the following actions which set at least the foundation for the achievement of a comprehensive approach that would enhance the effectiveness actions in this area. As central pillars of the common European immigration policy became as well the strengthening of external borders control, the information exchange between Member States, the signing of readmission agreements and return of irregular immigrants to third countries and the development of a common European asylum system. Regarding the latest one, during the five years period of the Programme's duration, the creation of a common asylum procedure was promoted by the introduction of three main Directives and one Regulation. The Commission following the rest of the asylum implementations introduced a Green Paper on the future of the Common European Asylum System (COM/2007/0301 final) aiming to identify any kind of possible options for shaping the second phase of building the European asylum system.

In the same effort was occurred and the Pact on Immigration and Asylum adopted in October 2008 by the European Council (Document 13440 / 08 ), with which the European Union and its Member States committed to implement an effective policy well oriented to the principles of respect for individual rights and the protection of social cohesion. The above Pact strengthened the protection of the external borders of the European Union, particularly through the emergence of Frontex as a specialized European agency for border cooperation. However, making readmission and repatriation the priorities of the EU Action Plans on

asylum and migration, and of the Hague Programme, is hardly the way to build peace and prevent future conflicts (Lindstrøm, 2005).

### **The Lisbon Treaty and the promising common policy**

By applying into force the Lisbon Treaty in 2009 the European Union established a new period. It was a further and important step towards the European integration process. Among other measures that were adopted, the Union acquired the necessary legal framework and tools to exercise its policies. Thus was officially formalizing the need on behalf of the Union to develop effective policies on border checks and controls, asylum and to address regular and irregular immigration in general. Emphasis was given to the effective management of migration flows, the fair treatment of immigrants due to asylum conditions and the prevention of irregular immigration, addressing as well human trafficking. Essentially the Lisbon Treaty enshrined the path towards the institutionalization of a common European policy on immigration and asylum.

The optimistic visions of the Lisbon Treaty were transferred by the Brussels Council in June 2009 into the Stockholm Programme. It marked a new third era and set up the priorities in the field of Justice, Freedom and Security for the period 2010-2014, following however the achievements of its predecessors, the Tampere and Hague Programmes. The Stockholm Programme was planned to meet future challenges and address further illegal immigration establishing a common asylum policy in practice. In this phase the scope of the common European asylum system is continuously growing and may finally incorporate additional issues arising directly or indirectly from the existence of asylum seekers, such as legal access to the territory of the Union, resettlement and integration of refugees, the better processing of asylum applications and to strengthen mechanisms for sharing of responsibilities between Member States of the Union. An important step was the creation of a new agency at a central level of the Union, the so-called European Asylum Support Office based in Malta. The Office plays a key role in the development of the Common European Asylum System and was established to strengthen practical cooperation, in immigration among Member States and specialized on asylum issues, promoting the fulfillment of European and international obligations to asylum and humanitarian protection.

With the Treaty of Lisbon entered also into force the Charter of

Fundamental Rights of the European Union. That was a dynamic safeguarding for the human rights at European level and due to that the Union was seen to be more obliged to work stronger in the field. Additionally to the other political, social and economic rights, the right to asylum is guaranteed by the Article 18 in the Charter. Thus after a long way of institutional changes on the common asylum policy, the Union acquired a legal base and virtually guaranteeing legal protection of asylum. The Charter's provisions must be implemented by all EU institutions and Member States individually, in any case of interpretation of Community law in accordance with Article 51 (1), which means that the protection of asylum shall be legally admissible and inviolable in all jurisprudential practices. This is important to the overall implementation of a common asylum policy in the European territory and takes even more important approach by the fact that despite the Charter's lack of treaty nature in international law its provision have the same legal value as the Treaties as a matter of the Union Law (Gil-Bazo, 2008), even if the full implementation of it by the United Kingdom and Poland is subject to a specific protocol. So in addition to the relevant provisions of the 1948 Universal Declaration of Human Rights and the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms which are mainly object of reference to the European Court of Human Rights, the Charter became an opportunity for the legal recourse of asylum seekers and of any institutional authority within the Union, as a legal acquis for the Court of Justice of the European Union referring to the Charter and has the potential to affect any law adopted by the institutions of the Union and the Member States authorities, which is contrary to the provisions of the Charter and the concept of an asylum protection.

Following the fundamental principles of the Charter's provisions and regarding to a Common European Asylum Policy, the European Parliament voted in June 2013 after nearly five years of difficult negotiations, a comprehensive package of asylum legislation which included the recast Asylum Procedures Directive 2013/32/EU and Reception Conditions Directive 2013/33/EU, the Dublin III Regulation 604/2013 and the Eurodac Regulation 603/2013, along with the Qualification Directive 2011/95/EU adopted in 2011. The UN High Commissioner for Refugees welcomed this effort on behalf the European Union, expressing however doubts that until recently the Union common law on asylum procedures had not been implemented in full and jointly by the Member States, "at least in part to provisions that are optional, unclear, or affording extensive discretion to

Member States calling now through the recast legislation for an opportunity to improve this situation by restricting the scope of some optional provisions, clarifying certain rules and reinforcing monitoring mechanisms, including through a new Early Warning and Preparedness mechanism under the Dublin Regulation” (UNHCR - Bureau for Europe, 2013). This legal misconception has led many times the Member States to implement according to their own jurisdiction the Common Asylum Policy, adopting practices that resulted not only to deviate from the Union's asylum legislative Directives and Regulations but also from the general concept of protection of asylum seekers under the Charter's protection of fundamental rights. The policy instruments discussed so far lead to an externalization of the locus of immigration control, however, the conduct of asylum procedures and the grant of asylum remain tied to the territory of the Member States (Lavenex, 2006).

The shaping of the common asylum system could be considered as an early example of good prospects for the Unions immigration policy, which anyway has been steadily evolving. However, it should be noted that under the different conditions and political implementations each time, the migration and asylum policy followed so far, is mainly characterized by measures that aimed to restrict illegal entry into the European area but is not given emphasis on eliminating the root causes of the flows of irregular migrants from their countries of origin, even thought the external dimension that is given already to immigration actions. In contrast to a preventive comprehensive approach addressing the factors which lead people to leave their countries of origin, European policies focused on the repression of undesired inflows through externalization (Lavenex, 2006). Thus while at European level has been repeatedly recognized the need for a coherent strategy aimed both at combating and at preventing the phenomenon of irregular immigration and the asylum abuse, the progress that has been made in this direction so far is inadequate if not negligible. Moreover the underestimation of the mutual causation is also partly due to the difficulties in conceptualizing the hybrid character of the EU supranational institutional structure and the specificities of the politics of migration at the national and regional level, two issues that might limit the applicability of European lessons to other regions (Margheritis and Maldonado, 2007).

Creating deterrent mechanisms of irregular immigration, along with the creation of mechanisms to combat assisted migration and trafficking networks are a part of the policy followed but is however limited within the European area and

gradually is desired to be achieved in cooperation with third neighbor countries. Also even if the establishment of cooperation with the countries of origin and transit of migratory flows might follow a gradual evolution through the development of bilateral relations, lacks of a comprehensive approach to migration issues that a specific and more developed common migration policy could have. The return of irregular immigrants remains an essential part of the management of migration and the Member States should organize and implement voluntary or forced return financed by the European Return Fund and include as well joint flights. The return of a person at the place of origin is required to follow certain procedures which are internationally agreed. That is especially important following the rejection procedures due to abuse asylum applications and regarding the protection of the human rights of each immigrant.

### **Conclusion**

The European Union has faced many additional problems and bureaucratic delays, related to its own development, despite showing many different signs of good will to achieve a common policy on immigration. Migration issues have in the past prompted a significant bureaucratic expansion and accordingly an increase in the influence of EU officials with the capacity to control information, generate ideas, and initiate, coordinate and mediate in multilateral negotiations (Margheritis and Maldonado, 2007). Today it has reached the point to dispose some mechanisms and legislative results, especially regarding to the asylum system. Moreover with the European Neighborhood Policy and the development of the Global Approach to Migration and Mobility, is trying to promote dialogue and development cooperation with third countries while is framing the Union's external migration policy. This kind of cooperation approach could not be considered as the most appropriate way to achieve the Union's targets, as it is based on the political conditions of these associated third countries; finally, domestic conditions in most neighbouring countries stand in the way of effective political conditionality (Lavenex, 2011).

The aim is to address immigration and the problems that it creates within a corporate framework. Immigration policy is simultaneously too sensitive for most governments to include in democratic dialogue, yet too important for them to neglect (Baldwin-Edwards, 1997). Given the impossibility of full cooperation over

the years within the Union and even with some of the neighboring countries, the wider externalization of immigration policy through development programs is attempting to address immigration but also to support third countries as the most available way and effective dimension of the common immigration policy. Especially when the political domestic conditions in these countries are stabilized or at least are giving the possibility of an effective cooperation agreement, the more these countries themselves start to face an immigration problem, the more they develop a genuine interest in strict policies, thus contributing further to the externalization of immigration control (Lavenex, 2006).

It should be also noticed, that the European Union has shown its efforts for high protection on asylum and immigration policy through its new external agenda, as an important area for enhanced support in the field of Freedom, Security and Justice. In substantive terms it reflects Justice and Home affairs officials' emphasis on control and therewith, the security aspect of migration and in institutional terms, it was interpreted as the latter's effort to maximise their autonomy towards political, normative and institutional constraints (Lavenex, 2006). Considering at the same time the unpredictable geopolitical conditions leading to massive migration flows and expansion of the refugee problem, it could be demonstrated that there should be no attempt to prevent the further development of the common European immigration policy. The latest should be developed and implemented with no further delays in the decision making policy of the Union and should be not related to intense and lengthy negotiations procedures, resulting not just simply delayed decisions and initiatives but perhaps with some flaws in their interpretation. The last is perhaps the most common and important problem since when immigration and asylum policy is related directly and not indirectly with the protection of the fundamental human rights there is no exception to improper handling.

## References

- Baldwin – Edwards, M. (1997), "The emerging European immigration regime : some reflections on implication for southern Europe", *Journal for Common Market Studies*, 35/4 : 497-519
- [Broeders](#), D. (2007), "The New Digital Borders of Europe EU Databases and the Surveillance of Irregular Migrants", *International Sociology* , 22/1 :71-92
- Broeders, D. and Engbersen, G. (2007), "The Fight Against Illegal Migration: Identification Policies and Immigrants' Counterstrategies", *American Behavioral Scientist*, 50 : 1592-1609
- Finotelli, C. and Sciortino, G. (2013), "Through the Gates of the Fortress: European Visa Policies and the Limits of Immigration Control, Perspectives on European", *Politics and Society*, 14/1 :80-101

- Geddes, A. (2005), "Europe's Border Relationships and International Migration Relations", *Journal of Common Market Studies*, 43/4 : 787–806
- Gil-Bazo, M.T. (2008), "The Charter of Fundamental Rights of the European Union and the Right to be granted Asylum in the Union's Law", *Oxford Journals*, 27/3 : 33-52
- Guiraudon, V. (2000), "European Integration and Migration Policy: Vertical Policy-making as Venue Shopping", *Journal of Common Market Studies*, 38/2 : 251–271
- Karyotis, G. (2007), "European Migration Policy in the aftermath of September 11", *The European Journal of Social Science Research*, 20/1 : 1-17
- Lavenex, S. (2006), "Shifting Up and Out: The Foreign Policy of European Immigration Control", *West European Politics*, 29/ 2 : 329 – 350
- Lavenex, S. and Schimmelfennig, F. (2011), 'EU democracy promotion in the neighbourhood: from leverage to governance?' *Democratization*, 18/ 4 :885–90.
- Lindstrøm, C. (2005), "European Union Policy on Asylum and Immigration. Addressing the Root Causes of Forced Migration: A Justice and Home Affairs Policy of Freedom, Security and Justice?", *Social Policy & Administration*, 39/6 : 587–605
- Luedtke, A. (2009), "Uncovering European Union Immigration Legislation : Policy Dynamics and Outcomes", *International Migration*, 49/2: 1-27
- Margheritis, A. and Maldonado, M. (2007), "Regional integration and(hauled) migration policy: what does the European experience teach us?", *Journal of European Public Policy*, 14/1 :152-166
- Neal, A.W. (2009), "Securitization and Risk at the EU Border: The Origins of Frontex", *Journal of Common Market Studies*, 47/2 : 333-356
- Reid-Henry, S.M. (2013), "An Incorporating Geopolitics: Frontex and the Geopolitical Rationalities of the European Border", *Geopolitics*, 18/1 :198-224
- Thielemann, E. and Armstrong, C. (2013), "Understanding European asylum cooperation under the Schengen/Dublin system: a public goods framework", *European Security*, 22/2 : 148-164
- UNHCR - Bureau for Europe (2013), "UNHCR's statement on the EU asylum legislative package", available at <http://www.unhcr.org/51b7348c9.html>