

Working towards a European immigration policy (WP)

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Summary

The EU has laid the foundation for a comprehensive European integration policy that addresses such issues as positive management of immigration and measures to curb irregular flows of immigrants. However, it is still far from having a true, common European immigration policy, and this is one of the challenges that Spain will face during its EU Presidency starting in 2010.

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(1) Introduction

The European continent is currently the top destination for the world's migratory flows, followed by Asia and North America. Much of this movement is intra-European, either within the EU, the only region of the world that features unrestricted internal migration, from Eastern Europe into the EU, or from within the Commonwealth of Independent States towards Russia or Ukraine. By country, the US continues to receive the largest number of immigrants, followed by Russia. However, four countries of the EU –Germany, the UK, France and Spain– are among the 10 with the largest numbers of immigrants (defined as people born in another country). In the entire EU-27, there were 29 million foreigners in 2008 (in other words, they lived in a country other than that of their nationality) and of them, 11 million were EU citizens.

Table I. Countries with the largest numbers of immigrants (born in another country), 2005

Country	Immigrants (millions)
US	38.4
Russia	12.1
Germany	10.1
Ukraine	6.8
France	6.5
Saudi Arabia	6.4
Canada	6.1
India	5.7
UK	5.4
Spain	4.8
Australia	4.1

Source: United Nations, Population Division.

Over the past 12 years, the EU has taken in five times more non-EU immigrants than it did in the 1950s and 60s, when the first big wave of immigration to Europe took place. But the destination of the recent immigration is different from that of the earlier one: the countries that took in the most immigrants in the 1960s, such as France, Germany, Switzerland, the Netherlands and Belgium, now receive much smaller numbers. In the extreme case of the Netherlands, since 2004 it has experienced major net negative immigration (more emigrants than immigrants), while the bulk of immigrants head for southern Europe and the UK: Spain, Italy and the UK together accounted for net migration of 8,944,000 people from 2000 to 2007. That amounts to 73% of the total that the EU took in during that period (12,283,000 people). Spain has been the main net recipient of immigration so far in this new century, with 4,663,000 people (more than a third of the European total), followed at some distance by Italy (2,809,000) and the UK (1,472,000).

Table 2. Net annual immigration¹ in the EU-27

	Net annual immigration
1997	430,463
1998	528,845
1999	980,403
2000	715,725
2001	600,059
2002	1,851,753
2003	2,035,346
2004	1,874,951
2005	1,659,667
2006	1,639,202
2007	2,085,982

Source: Eurostat.

Table 3. Total net immigration, 1997-2008²

	Total net immigration
EU-27	14,011,406
EU-25	14,819,222
Germany	1,038,727
Austria	333,302
Belgium	392,457
Bulgaria	-215,594
Cyprus	74,658
Denmark	106,011
Slovakia	5,005
Slovenia	46,018
Spain	5,074,846
Estonia	1,413
Finland	75,361
France	1,370,253
Greece	336,948
Hungary	133,357
Ireland	379,888
Italy	3,249,440
Latvia	-20.621
Lithuania	-67.357
Luxembourg	44.356
Malta	16.295
Netherlands	119.596
Poland	-552.121
Portugal	386.087
UK	1.703.523
Czech Republic	246.867
Romania	-592.222
Sweden	324.913

Source: the authors with data from Eurostat.

¹ Net immigration results from the difference between vegetative growth (births minus deaths) and total growth.

² Irregular immigrants are not included in these figures, except in the case of Spain, which gives incentives for such people to register with town halls.

Table 4. Total foreign population, 2007

	Foreign population
EU-27	28,913,543
EU-25	28,861,974
EU-15	27,416,282
Germany	7,255,949
Austria	826,013
Belgium	932,161
Bulgaria	25,500
Cyprus	118,100
Denmark	278,096
Slovakia	32,130
Slovenia	53,555
Spain	4,606,474
Estonia	236,400
Finland	121,739
France	3,650,100
Greece	887,600
Hungary	167,873
Ireland	452,300
Italy	2,938,922
Latvia	432,951
Lithuania	39,687
Luxembourg	198,213
Malta	13,877
Netherlands	681,932
Poland	54,883
Portugal	434,887
UK	3,659,900
Czech Republic	296,236
Romania	26,069
Sweden	491,996

Source: Eurostat.

Extrapolating these data, if the EU-27 were to keep receiving immigrants at the rate it has for the past 12 years (1997-2008), it would take in another 19 million non-EU migrants from 2009 to 2030. But this extrapolation is actually of little use for predicting trends because the current economic crisis has spelled the end of one kind of growth and for now has led to a drop in immigration flows. At the same time, so-called push factors (forces that cause people to leave their countries of origin) and the policies adopted in recipient states are as important as the economic situation in Europe.

Public opinion polls show that, in the EU immigration has become one of people's main sources of concern, while anti-immigrant sentiment is spreading relentlessly. This fuels election victories for xenophobic parties and forces mainstream ones to change their stands on immigration to make them more restrictive. Immigration is one of the elements of social life in where there is the greatest gap between public opinion and policy results: the number of immigrants in many countries continues to grow even as their citizens oppose the process.

To date, the possibility of a Europe-wide policy on managing migratory flows has been held up by member states' broad diversity of interests with regard to this issue. The countries range from ones that are net senders of migrants (several in Eastern Europe), those which receive large numbers of low- or medium-skilled immigrant workers (southern countries), the UK, where skilled immigrants outnumber the unskilled ones, or those which have closed their doors to immigration except for that stemming from family unification (Denmark, for example), or nations that take in more asylum-seekers than immigrants (Sweden). The variety of interests and political preferences associated with these different contexts has so far made it hard for the EU to devise homogeneous policies.

Furthermore, migratory policy goes to the core of a state's sovereignty: its right to decide who can be part of the country and in what way. This essential feature of national sovereignty on the issue of population becomes a major motive for countries to resist giving up jurisdiction so as to establish pan-European immigration policies and has repeatedly hindered proposals from the European Commission. However, to a large extent, that sovereignty over population has already been lost in the context of the EU and the rights of its citizens to settle in any member country. At the same time, belonging to the border-free Schengen area creates a strong incentive for member states to coordinate their migratory policies, because any third-country national who enters one of them has open access to any of the others. So far, that incentive has produced more progress in coordination of border management and the means needed to avoid irregular immigration than in the formulation of positive policies.

The Treaty of Lisbon will go a long way towards facilitating the possibility of European immigration policies because it states that the EU 'shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings' (art. 79.1). The treaty also leaves rules for entry and residency up to a joint decision by the European Parliament and the European Council through ordinary legislative procedures. Obviously, this does not necessarily mean there will be a harmonisation of policies (the Commission's initiatives might keep failing). But the Lisbon Treaty certainly makes progress in this area.

Finally, the so-called European Pact on Immigration and Asylum, approved by the European Council in 2008 as a French initiative and negotiated beforehand with Spain and Germany, while offering little new compared to the accords, directives and measures that are already in place, does for the first time in EU history feature –in just one document– a declaration of intentions regarding immigration. Now that it has been stripped of the most controversial aspects of the first French proposal (banning mass regularisations and forcing immigrants to sign an 'integration contract'), this non-binding pact will probably end up having more of an effect in the area of asylum than in

immigration. For now, EU countries handle asylum in a very uneven fashion: some take in refugees, to the point where this is the main conduit for foreigners to reside in their territory, while others systematically reject asylum requests. Furthermore, pressure from demands for asylum is also uneven: most of the sub-Saharan Africans arriving on the coasts of southern Europe ask for asylum, and whatever the response is ultimately, that is a heavy financial burden for the front-line countries that initially receive these people. The European pact aims to have in place by 2012 a single asylum procedure for the entire EU and to establish intra-European measures of solidarity for crisis situations (such as massive arrivals of asylum-seekers to a given member state).

In any case, the difference between asylum (or refugee status) and immigration, which would appear to be clear-cut, is harder and harder to distinguish in actual practice: many of the States from which emigrants leave for economic reasons are also ones where serious human rights violations take place. Meanwhile, there is a trade-off between asylum and immigration: European countries to which it is easier to emigrate receive fewer asylum requests, and vice versa. Finally, court rulings on what kind of human rights violations deserve the granting of asylum might have more impact than European policies. For instance, in May 2009 the Spanish Supreme Court ruled that fleeing from the prospect of genital mutilation or arranged marriage is sufficient reason to be granted refugee status, and this could have a significant effect on the number of African asylum-seekers.³

Finally the Stockholm Programme in the area of freedom, security and justice, which will be approved by the European Council in December of this year and replace the Hague Programme of 2004, features many of the elements that are included in the European Pact on Immigration and Asylum. The new programme states that one of its priorities is the fight against irregular immigration. But it also endorses developing a common framework for admitting immigrants, although this is presented in a much more generic fashion and with only one concrete proposal, which is for Europe to improve its information on immigration and the labour market.

(2) Criteria for a European Immigration Policy

Immigration is sometimes billed as the solution to the problem of Europe's declining population and, in particular, the shrinking ratio between the labour force and the inactive population and the effect of this on pension systems. However, demographic studies have shown that the average birth rate of immigrant groups quickly becomes similar to that of the local population. In Europe, this is below the rate needed for a generation to replace itself. The studies thus show that, in order to maintain a population pyramid like that of the 1990s, which was the best in Europe's history in terms of the ratio between working-age people and those dependent on them –the change in which raised alarms over the sustainability of the pension system– continuous and massive entries of

³ 97% of Egyptian women, 90% of those from Sudan and 92% of those from Mali undergo genital mutilation.

new immigrants would be needed. For example, according to United Nations figures, Germany, with a current population of 82 million people, would have to take in 188 million immigrants between now and 2050 to keep up the dependency ratio it had in the mid-90s. It seems unthinkable that European societies would accept a social change of this magnitude and that their institutions would be able to handle it. As for the pension system, immigration by young, skilled people would help things. But it should be seen only as a complementary measure along with others not related to immigration, such as policies to encourage people to have more children, promoting employment among young people, incorporating more women into the labour force and, above all, postponing workers' retirement age.

Therefore, although luring young, skilled immigrants would be a relief for the population structure and help sustain the pension system, the demographic argument and the one related to that system should not be the main ones in designing European immigration policies. Still, we must stress that Europe's survival as an economic power depends in part on its ability to attract skilled immigrants.

(2.1) Immigration and Global Economic Competition

In a globalised world where barriers to trade and movement of capital are gradually coming down, all things being equal, labour-intensive production moves to countries where labour costs are lower. In the EU, the process of industrial off-shoring to lower-wage countries began in the 1980 and at the same time some labour-intensive sectors began to disappear. Some goods are no longer manufactured in Europe, or by European companies operating overseas. They are simply imported from China, India or some other country where wages are low.

In theory, other alternatives could have been considered: reducing the wages of European workers, or letting in workers from developing countries who were willing to work for less and thus lower the labour costs of EU countries so they could compete with the rest of the world in making labour-intensive products. In general, the countries of the EU have rejected these options and preferred to move offshore, or simply abandon some industrial activities, such as textiles, which have practically vanished from Europe. But this is not the spontaneous result of market forces at work. Rather, it stems from a political consensus in favour of maintaining a social model sealed with a strong welfare state.

Conscious of this decline in its competitiveness in the face of old and new sources of international economic activity, since the EU summit in Lisbon in 2000 the bloc has been banking on an economic transformation in which innovation and knowledge can make up for its disadvantage in being saddled with higher wage costs. In its own words, the EU wants to become the world's most competitive knowledge-based economy. The goal is to turn Europe into a hub for technical and scientific innovation and information exchange, and a model for efficient and flexible management, while at the same time sustaining or even improving its social cohesion. Defined as such, the goal is a mix between US-style innovation and the Scandinavian social model.

Among the many programmes launched in order to implement the Lisbon Agenda, which will be renewed during the Spanish EU Presidency, the EU is trying to attract skilled immigrants from outside the bloc with the so-called ‘blue card’ Directive. This factor is key to easing Europe’s current deficit in innovation, a gap that is huge compared to what the US and Japan are doing in this area. And gradually joining these two countries are the two great Asian powers, China and India, which have the human and economic capacity to become centres for scientific and technological innovation. Over the medium term, such a development would push Europe even further onto the sidelines of the world economy.

Faced with this challenge, Europe has no choice but to compete in the global market for attracting top talent, as the US has done for decades. But as it tries to move ahead, Europe runs into two major barriers: the different languages and protectionist policies of its member states’ labour markets. The European Commission’s attempts to make the EU an appealing labour market, for skilled immigrants are hindered by the existence of 23 official languages. This is one of the main reasons that skilled immigrants from Africa and Asia go to the US rather than Europe. Immigrants who are from non-OECD countries and have university degrees currently make up 52% of the total in Australia and 64% in Canada, while in Europe the highest proportion is 34% (in Denmark) and the lowest is 10% (in Italy).

Table 5. Percentage of immigrants (born in non-OECD countries) with university degrees

Country	%
Canada	64
Australia	52
United States	32
Denmark	34
Sweden	31
United Kingdom	30
France	30
Spain	23
Netherlands	19
Greece	12
Austria	12
Italy	10

Source: OCDE International Migration Outlook 2009.

Luring highly qualified immigrants to Europe requires the spread of a single language that would make it possible for there to be a truly European labour market. For the time being, only English could fulfil this role. It is the world’s second most spoken language (after Mandarin Chinese), if one includes those who speak it as a second language, and for decades now it has been the one commonly used in scientific research and the *lingua franca* of international relations and trade. Within the EU, 38% of the population speaks English as a second language, far ahead of German and French, with 14% each. Knowledge of foreign languages, particularly English, is increasing constantly in the EU, as seen in the Eurobarometer poll. This makes it reasonable to think that in a few years

most of Europe's population will be able to get by in English. Knowledge of English among younger generations is much higher than among adults: 40% of those under the age of 24 know at least two foreign languages, as opposed to 19% among people over 55.⁴ English is now the language used to teach at many universities outside the UK and Ireland, at headquarters of European multinational companies and at research facilities in Europe. But Europe has to go further and encourage the spread of English in countries where it is spoken the least (such as Spain), so that skilled immigrants can move around within the EU just as they can in the US and Canada.

As far as Europe's interests are concerned, attracting qualified immigrants should be the priority in strategic terms. Furthermore, it is a kind of immigration that is accepted by European public opinion, and does not have trouble integrating into the host country – neither the generation that actually immigrates, nor that of its children–.

(2.2) Intra-European Immigration and the Creation of a Common Labour Market

Much of the immigration that EU countries have received in recent years came from Eastern European countries that are now members of the EU. A quarter of the foreign-born people living in the EU-27 were born in another country of the EU; the proportion is about 11 million out of a total of 43 million. But these 11 million represent only 2% of all the EU's citizens, which means mobility within Europe is very low (in the US, 3% of the population moves every year from one state to another, while the equivalent figure in the EU was just 0.1% before the EU's successive enlargements to the east.) Europeans' limited mobility denotes the inexistence of a common labour market, a significant shortcoming that is one of the EU's economic weaknesses.

Until recently, EU countries' rules on practicing professions, tax policy, payment of joblessness benefits and retirement pensions made it quite difficult for citizens of one EU state to settle in another. The Services Directive approved recently marks an important step in this area, but its wording is deliberately vague. That leaves its ultimate scope in the hands of member states and judges.

The EU must promote internal migration, not just for economic reasons but also for political ones: creating a European identity will not be possible unless the experience of living in another member state becomes a generalised phenomenon. The EU must fight against the protectionist tendencies of national labour markets in order to achieve a European labour market. To this end, it would be very helpful if dealings with government agencies could be carried out in the same language. Right now the source of the protectionist leanings in the labour markets of the wealthiest EU countries stems from major wage disparities within the EU, mainly if one compares the west and the east. One must keep a close eye on wage and working conditions of EU immigrants in the richer countries so that the process of levelling off the wage difference between east and west via internal mobility of workers is done smoothly, without angering Euro-sceptics in the

⁴ Special Eurobarometer, 243, 2006 (fieldwork 2005).

west (recall the effect of the stereotype of the 'Polish plumber' in the French vote against the European Constitution, and strikes in the British energy sector against the hiring of Italian workers). Furthermore, fears that workplace competition from poorer EU citizens might threaten the pro-European sentiment of the richer ones should also be taken into account in evaluating whether to enlarge the EU to include Turkey and its 70 million people. There, per capita income is 28% of the EU average.

(3) Developing Active Policies in Managing Migration

In Europe's handling of legal migration, proposals have always come from the Commission, which was convinced of the need to use immigration as a way to achieve a younger population and contribute skilled workers. To this effect, in November 2000 the Commission presented a Communication to member states urging them to drop the closed-door immigration policies that had prevailed since the oil crisis of the mid 1970s. It argued that bright economic prospects, along with a declining population and a shortage of skilled professionals, made it necessary to engage in active policies to lure immigrants.⁵ In 2001 the Commission presented a proposed Directive to create a common work and residency permit for third-country nationals and for any kind of immigrant worker (skilled or not).⁶ The proposal was rejected because of opposition from countries that included Germany, which was concerned about unemployment and scant integration of its Turkish minority.

The next initiative in this area was presented by the Commission in December 2005,⁷ in a Communication that included a Policy Plan on Legal Migration that announced the future devising of four proposals for work-oriented immigration: for highly skilled workers, seasonal labourers, workers undergoing training, and for people transferred by their companies (*intra-corporate transferees*). It is with this multi-pronged approach that the Commission is trying to move ahead little by little, as it is impossible to reach agreement on a more general policy. The first result of this set of categories was the proposed directive presented in October 2007 ('Proposal for a Council directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment').⁸ It gave the name 'blue card' to the document that is offered to immigrants, an allusion to the US green card which allows foreigners to live and work in the US, although the scope of the former is much more limited. The main difference is that while the green card grants permanent residence, the blue card is good for five years, although after that the holder can request status as a long-term, permanent resident. The blue card Directive, which was finally approved in May 2009,⁹ sets common rules in all member states to facilitate the entry and residence of highly skilled immigrants and their

⁵ COM (2000) 757.

⁶ COM (2001) 386, DOCE C 332, 27/XI/2001.

⁷ COM (2005) 669.

⁸ COM (2007) 247.

⁹ Reference from the Directive on the 'blue card'.

families, and makes it possible for them to move to another country within the EU after they live for a while in the first country that took them in. The condition for an immigrant to be admitted is to have a job offer lasting at least one year for a highly-skilled position and that pays at least 1.5 times the gross average wage in the recipient country.

But the right to move later to another member state is far from automatic: there, the immigrant must go through a similar confirmation process, proving they have a job offer and will receive a wage that is at least 50% above the average one in the new country, demonstrating their qualifications to be admitted, etc. In other words, they have to start the process all over again. So far this is the only Commission initiative that has succeeded in the area of positive policies for regulating migratory flows. And, as we have shown, its range is limited.

(4) Integration Policies

There has been much more substantial progress in integration policies because, unlike the case of managing migratory flows, here the member states' interests are very similar. The European Council in Tampere, de 1999, agreed to grant long-term immigrants rights similar to those of EU citizens, and four years later this led to Directive 109 of 2003 on long-term immigrant residents. The Directive bestows this status on immigrants after they have lived non-stop and legally in any member state for five years; they must also show they have sufficient and stable income and access to health insurance. The status of "long-term resident" falls somewhere between a residence permit and full citizenship: holders of it have the same rights as EU nationals when it comes to employment, education, social protection, health care and freedom of movement and residence within the EU. The Directive specifies that long-term residents may be expelled only for posing a serious threat to public order or security, and never for economic reasons.

This Directive is Europe's most important tool for structural integration of immigration (that is to say, in terms of rights). Also in 2003, and also in compliance with the agreements reached at Tampere, the Directive on family unification was approved (2003, p. 86). It is aimed at promoting social stability among immigrants. The Directive is the result of an effort to homogenise the different member states' rules on family unification, and states that an immigrant can bring over his or her spouse and children (or those of the spouse) under the age of 18 when the immigrant has a residency permit that is valid for a year or more. The States use their own rules to decide on unification of ascendants (parents of the immigrant or the spouse).

Along with these measures designed specifically at integration, others have been approved which have an indirect effect on immigrants and their place in the labour market and social life as a whole: Directive 43 of 2000, on equality of treatment of persons of different racial or ethnic origin, and Directive 78, also passed in 2000, on equal treatment in the workplace.

(5) The Fight Against Irregular Immigration

Whatever the criteria defining European immigration policies may be, so long as the differences in development and living standards between Europe, Asia, Africa and Latin America continue to be so great, Europe will have to keep taking measures to avoid undesired immigration.

Of particularly great concern is migratory pressure from the African continent: with an average birth rate of 5.5 children per woman, its population will double in 25 years, according to World Bank forecasts, going from 900 million to 1.8 billion. But there are no projections forecasting economic growth that would be able to sustain such a population. Despite the progress made in Africa in recent decades, the birth rate is still so high that it negates the effect of economic improvements. African GDP has risen 72% over the past two decades, up from US\$905 billion in 1990 to US\$1,557 billion in 2006. But its effect on living standards has been weakened by the big jump in population. Thus, per capita income in the same period has gone up only US\$261 (from US\$1,449 to US\$1,710), an increase of 18%.

These days the Mediterranean marks the world's greatest border of inequality: per capita income in Spain is 13 times greater than that of Morocco, while at the other great migratory border between the wealthy and less wealthy, the frontier between the US and Mexico, the ratio is five to one. But it is not just per capita income which is greater. Europe offers many other things that are scarce in developing countries and which become magnets as powerful as money: peace, low crime rates, efficient public services, civil servants that can be trusted, individual rights in relation to the State, free health care and education, etc. Altogether, the difference in living standards between the EU and Africa is so great that only a determined and efficient policy against irregular immigration can halt such flows.

This gap prompted the Spanish government to seek a fundamentally European response to tragic events in 2005 at the borders between the Spanish territories of Ceuta and Melilla. Hundreds of immigrants, mostly from sub-Saharan Africa and living in the rough for months in Morocco near the Spanish border, scaled wire fences to reach Spanish soil and, thus, Europe. During this ordeal, several immigrants died under confusing circumstances. Spain's government sought a European response to the crisis, and as a result of this strategy, at an informal summit of EU heads of state and government, called by then British Prime Minister Tony Blair, whose country then held the rotating EU Presidency, and held in Hampton Court, the EU called for measures to deal with countries that were sources of or served as transit points for immigrants, especially those of northern and sub-Saharan Africa. In response to this major political thrust, which had a clear Spanish stamp on it, the European Council of December 2005 approved a document called 'Global Approach to Migration: Priority Actions Focusing on Africa and the Mediterranean' (known as the Global Approach). The goal of it was to provide the EU

with consistency on migration issues and related issues such as foreign relations, development aid and the area of freedom, security and justice. At the same time, this approach acknowledged the need for active solidarity and responsibility, not just on the part of recipient countries but also third countries, be they sources of or transit nations for migratory flows.¹⁰ As a whole, the global approach says it is based on three principles: solidarity among member states, partnership with third countries and protection of emigrants, especially the most vulnerable groups.

So far, this overall approach has been limited to Africa and the Mediterranean region, and it has been driven and supported by the southern EU states. But other geographical areas also require concerted action on migration (Eastern Europe and Asia). The approach is the recent response to the need to give an articulated exterior dimension to the EU's battle against irregular immigration, an issue that is increasingly important in its relations with other countries. As far back as the European Council in Seville in 2002 –during the Spanish Presidency– there were calls for including a clause on joint management of migratory flows and on mandatory re-admission of people entering the EU illegally in any agreement the EU signed with other countries. This incorporated a new condition to EU treaties with other states: cooperation in the area of migration.

(5.1) Migration and Development

Among the features of the Global Approach, one should note the links between migration and development. This relationship was mentioned at the European Council meeting in Seville, where the role that development policy could play in reducing migratory flows was stressed. The relationship that exists between under-development and emigration has led many people to see development aid as a long-term tool for curbing immigration.

The Commission, in its Communication on Migration and Development,¹¹ sets out three areas of action on this issue: remittances, diasporas and circular migration. However, there are doubts over the effectiveness of this strategy because many studies question the effects that remittances have on the development levels of the countries where the money is sent, and with regard to whether it encourages circular migration (repeated, back and forth immigration) its long-term effects and potential are still far from clear. Added to all of this is the fact that the countries that are the sources of the most emigrants are not the poorest ones but mid-level ones, such as Mexico and Turkey, in the same way that, within developing countries, the ones that leave are the not the poorest but rather the ones in the middle strata.

When a country progresses from being under-developed and moves to the intermediate level, this produces more –not less– people who are willing to emigrate and capable of doing it. In the unlikely case that European cooperation were to achieve a substantial increase in Africa's levels of wealth and living standards over the medium term, this

¹⁰ COM (2006)735 final.

¹¹ COM(2005) 390 final.

would lead to more migratory pressure, not less. Therefore, development aid cannot be seen as a measure to reduce immigration, although such assistance and trade deals should also be used as incentives for states that are sources of immigration or transit countries to contribute to the fight against irregular immigration.

Spain has successfully embarked on such a path in its relations with countries of West Africa and Morocco, and in the later case the EU was heavily involved. Meanwhile, the fact that economic aid is made conditional on the cooperation of the receiving country in migratory policy has been criticized by those who feel attaching such strings hinders the true goal of the aid: the fight against poverty.¹²

This does not mean that one should not work harder with tools linked to development aid. Certainly, over the long term, the best way to address the causes of migration is to focus on the push factors. So development and raising living standards in the societies that are sources of immigration are a more than legitimate goal and something that is necessary as Europe takes on this issue.

(5.2) Border Management and Control

In comparison with other major destinations for emigration, such as Canada, the US and Australia, Europe has two weaknesses as it tries to keep out undesired immigration: its geographical position bordering on both Asia and Africa, and the vast disparity of interests within Europe, which so far has made it impossible to come up with a unified immigration policy. But even so, the fight against irregular immigration has been the area in which European cooperation on immigration has made the most progress. The existence of the Schengen area has made such cooperation essential because a decision that one country makes as to who it admits affects the entire group. In this regard, the creation of FRONTEX (the European border agency) is a step forward, as are the Prüm accords, although there is still much room for improvement.

Managing external borders has been a key aspect of European cooperation since the Tampere Programme (1999) and is based on three elements: a set of common rules, operational cooperation among member states and solidarity between them and the Community.¹³ What is more, common management of borders is both one of the fundamental aspects of the Global Approach and a need that arises from the Schengen Agreement of 1985, since the elimination of internal border controls among European member states requires additional measures along their external frontiers. A total of 23 of the EU's 27 members are now part of the Schengen area, a circumstance that makes external border management a key item on the EU agenda.

¹² Gemma Garcialoro (2008), 'Los Ejes de la política migratoria en la Unión Europea', *Papeles del Este*, 17, p. 34.

¹³ R. Sandell, A. Sorroza & I. Olivie (2007), 'Immigration: a Challenge Offering Opportunities?', Working Paper nr 19/2007, Elcano Royal Institute.

Initiatives in this area have led to the Schengen Border Code, the creation of an agency for managing operational cooperation along external borders (FRONTEX) and the availability (since 2007) of an external border fund that seeks to make a reality out of the idea of shared financial responsibility of management and control of the EU's external frontiers. The fund, allotted €1.82 billion for the period 2007-13, will be used to upgrade infrastructure or border monitoring systems. The latest measures taken by the EU include: the holding of joint operations in the Mediterranean and Canary Islands regions, the creation of a Mediterranean Network of Coastal Patrols and a European System for Monitoring and Operational Assistance to enhance member states' ability to confront flows of illegal immigrants, the establishment of regional networks of immigration-tasked liaison officials and the formation of rapid response teams. The latter, known as RABITs, are at the disposal of FRONTEX and made up of 450 national experts that can be sent quickly to any border of a member state undergoing out-of-the-ordinary pressure from irregular immigration.

Another of the goals that is firmly encouraged by the Commission and backed by the member states is to utilise technology to the fullest in order to boost border controls, so that people can be identified in a reliable way. The idea is to create a generalised, automatic system to keep track of entries and exits, one that allows for the sharing of available information among all the forces assigned to control borders. The need to improve common management of borders has prompted an upgrading of the visa system and the Schengen Information System, as well as the incorporation of biometric technology.

The mandate for creating the Common Visa System goes back to June 2002, when the European Council held in Seville declared its establishment to be a priority. In 2004 the legal foundations were laid for technical implementation of the system, which will allow national authorities to incorporate and update information on visas and access it electronically. Four years later, in July 2008, the Council and the European Parliament adopted regulations on the Visa Information System (VIS) and the exchange of data on short-term visas among member states.¹⁴ The VIS will play a key role in information on illegal immigration, as it will help the authorities determine how many immigrants have overstayed their visas in territory of the member states. The system is supposed to come into action in December 2009, so it will be up to the Spanish Presidency to follow up on its implementation.

At the same time, the VIS, just like EURODAC (a central, computerised data base for comparing the fingerprints of asylum-seekers), will help avoid abuses of the asylum system, such as requests for such status in different member states.¹⁵

¹⁴ Link for regulations in their entirety: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:218:0060:0081:ES:PDE>.

¹⁵ M. Illies (2009), 'Irregular Immigration Policy in the European Community: Action at All Stages of the Irregular Immigration Flow', Working Paper nr 38/2009, Elcano Royal Institute.

(5.3) Irregular Immigration and the Underground Economy

There is a close link between the volume of irregular immigration that a country receives and the size of its underground economy. Said another way, employers willing to hire illegal immigrants are one of the main factors that lure irregular immigration. In order to combat this illicit employment, in 2009 the European Parliament approved a Directive to establish sanctions against employers who hire illegally-residing third country nationals.¹⁶ The aim of the rule is to standardise sanctions that already exist at the national level and guarantee protection of irregular workers' rights in terms of wages and the money they pay into the social security system. Such workers can report employers to the authorities. The regulations set fines for business owners for each illegal resident they employ, and force them to cover the wages and social security payments they have not made. Furthermore, companies that hire irregular workers will not be able to receive government aid, or bid for government contracts. In the most serious cases, the business can be shut down. The Directive even calls for considering it a crime if an employer hires irregular workers three times in the space of two years, has hired more than four irregular workers, such employers work in especially abusive conditions, are victims of human trafficking (and the employer knows it) or are minors.

Even though the Directive will allow for a strengthening of sanctions and controls in States in which these measures are weak, and seeks to put out a dissuasive message, there will continue to be sectors of the labour market that are not readily accessible for inspections, such as domestic help, which is also the main sector for irregular immigration in Europe. What is more, workplace inspection services are understaffed in several countries, which weaken their monitoring ability.

(5.4) Returning Irregular Immigrants to their Countries of Origin

The European Commission believes that the presence of irregular third-party nationals in the territory of member states damages the credibility of European immigration policy. It is in this context that one must view the 'Return Directive', the full title of which is 'Directive on common standards and procedures in Member states for returning illegally-staying third country nationals'. It was finally adopted on 16 December 2008.¹⁷

The initial proposal by the European Commission goes back to 2005, and it was ultimately passed after arduous negotiations among the member states, the Commission, the Council and the European Parliament. In the end, the legislature approved the Directive in a first reading and with no amendments by a vote of 369 in favour, 197 against and 106 abstentions. The measures stirred controversy in European public opinion and in the countries whose citizens it was aimed at, basically in Africa, Latin America and Asia.

In the European Parliament's report on the Directive, written by the Committee on Civil

¹⁶ Proposed Directive from the European Parliament and the Council establishing sanctions applicable to business-owners that employ third-country nationals illegally.

¹⁷ Directive 2008/115/EC.

Liberties, Justice and Home Affairs (LIBE),¹⁸ its author Manfred Weber (European People's Party-Germany) states that the EU must make a joint decision on immigrant groups residing illegally: either agree that they acquire the status of legal residents or articulate the way they are to return to their countries of origin. If one analyses the precedents of this directive, it is clear that the EU has chosen the section option: irregular residents must leave European territory. In general, regularisations of large numbers of illegal immigrants by several countries have not been well received by the rest of the EU members. Some of them, such as France, have tried to have such measures banned, although so far without success.

Over the course of three years, which is the time it took until the Directive was finally passed in 2008, the proposal underwent many modifications and amendments in complex negotiations. These were held among the 27 member states on one hand, and EU institutions on the other, mainly the European Parliament, which for the first time faced a joint decision on immigration. The fact that the Directive addressed the issue of expelling immigrants residing in the EU illegally was not well received in many sectors of European public opinion. The negotiations in both the Council and the European Parliament were difficult, and in general member states were very reluctant to define a common, minimum framework of procedures and conditions for expulsion. They revealed themselves to have different criteria on such issues as retention times, expulsion mechanisms, legal assistance to illegal immigrants, etc. Thus, while France has a retention period limited to 30 days, in Malta it stretches to 18 months and some countries have no limits at all. This issue was one of the main bones of contention. And in the end the Directive, which sets a maximum retention period of 18 months, provides for all practices, except those of states which do not set a maximum retention time or have one that surpasses 18 months. In this regard the Directive only obliges changes in Denmark, Estonia, Finland, Lithuania, the Netherlands, Sweden and the UK, all of which have retention periods of more than 18 months or no maximum at all.¹⁹ In the case of Spain, the maximum time an illegal immigrant can be held was 40 days until the recent increase to 60 (Reform of the Immigration Law).

Another important feature of the Directive is that it obliges member states to provide legal assistance free-of-charge to irregular immigrants who are without resources. This was approved despite the resistance of several member states. The Directive also states that an immigrant who is expelled cannot return to any EU country for five a maximum of five years. This measure gives the directive a truly European perspective since the ban on re-entry is effective in all 27 member states. The Directive incorporates the principle of 'non return' (*non refoulement*), which bars the repatriation of someone whose life or

¹⁸ 'Report on the proposal for a directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals', A6-0339/2007, 20/IX/2007.

¹⁹ The UK has said it will refuse to apply the Directive.

freedom might be in danger in the country to which they are returned.²⁰ But it allows the expulsion of unaccompanied minors if authorities have obtained guarantees that the minor will be turned over to a family member, legal guardian or social services that are 'adequate' in the state to which the minor is being returned. The margin for interpretation that is allowed in this rule is another of the issues that has been most heavily criticised from a human rights perspective.

Another controversial point has to do with emergency situations, in which an exceptionally high number of persons who must be repatriated pose a major burden for a member state. In such cases, the member state can impose longer periods of judicial control and give themselves more leeway for keeping people in holding facilities. In order to take this measure, the member state only needs to inform the Commission. These practices are supposed to be exceptional but in actual practice are not always, if one keeps in mind the fact that holding centres, especially in border countries of southern Europe, are packed.

One of the factors that have systematically blocked the possibility of returning irregular immigrants is the high cost of each return. And the further the country of origin, the more expensive the trip. To boost the EU's financial capacity in this area and answer calls for solidarity from the members most affected those of southern Europe, the EU created a European Return Fund, which for the period 2008-13 has a budget of €676 million. Another major impediment to returns has been the lack of agreement with countries that are sources or transit points for irregular immigrants. Such acquiescence is difficult to obtain. Source countries have no interest in facilitating returns, and the accords allowing for them are unpopular among their citizens. For this reason it comes as no surprise that re-admission agreements signed by the European Commission so far have not included the countries that are the main sources of irregular immigration for the EU.²¹

(5.5) National Measures

As for measures taken by the individual countries to confront irregular immigration, some stand out for their efficiency, such as those of Scandinavia. There is very little illegal immigration in those countries. It is true that their geographical location, and even the weather there, make arriving and living harder for irregular immigrants than in countries that are warmer and closer to Africa or Asia. But this same feature is shared by the UK and there, irregular immigration is a major problem due to insufficient internal controls. The Scandinavian model owes its effectiveness to two elements: a political culture with firm respect for legality (unlike southern or south-eastern Europe) and a very cohesive

²⁰ The principle of 'non-return' is enshrined in Article 33 of the Geneva Convention: 'No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'.

²¹ Europe has signed re-admission agreements with Ukraine, Macedonia, Serbia, Bosnia and Herzegovina, Montenegro, Moldova, Russia, Hong Kong, Sri Lanka and Macao. Morocco and Pakistan will be incorporated soon.

society with extensive social controls. Without a national identity card, which irregular immigrants cannot obtain, it is impossible to rent a flat, see a doctor, work, send your children to school or buy a reduced-fare public transport ticket. Indeed, this requirement is an important tool for discouraging irregular immigration. But it is effective only if citizens –be they employers, landlords, teachers or doctors– share the goal of avoiding irregular immigration and there are efficient mechanisms for imposing sanctions against those who do not comply with the rules.

Judging from the experience of States with less irregular immigration, we see the importance of fighting a political culture that accepts illegality –a phenomenon related to the continued existence of an informal, underground economy and to corruption–. To this effect it is important to tighten internal controls on work and residency.

(6) Ideas for the Spanish EU Presidency

Spain has been one of the driving forces in getting Europe to address immigration, especially with regard to border controls and cooperation with countries that are sources of transit points for irregular immigrants. Spain promoted the Global Approach and the creation of FRONTEX, and it must utilise its turn as President of the Council in order to encourage progress in this EU policy based on the principles agreed in the European Pact on Immigration and Asylum and with an eye to applying the Stockholm Programme and coming up with a Plan of Action. Proposals for this period include:

- Making progress toward a European immigration policy that includes common criteria on admission and access to the labour market for immigrants for third countries. Approving directives proposed for seasonal workers or those transferred by their companies.
- Establishing a points system applicable in all of Europe for evaluating potential immigrants (leaving aside the issue of seasonal immigration). In this system, professional skills should be the main factor in evaluating people.
- Clearing away administrative and legal barriers which still hinder the workplace mobility of European citizens within the EU, so as to create a truly European labour market and strengthen the common European identity.
- Analyzing the links between immigration and the European labour market in light of the negotiations for a new Lisbon Agenda, the preparation of which would be up to the Spanish Presidency.
- Making it easier for skilled immigrants to carry out basic administrative dealings by using just one language throughout the EU, so that terms for luring qualified immigrants to Europe are similar to those which exist in the US, Canada and Australia.

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- Articulating truly European border management and, after an overall evaluation of the work of FRONTEX and its needs and goals, equip it with the necessary staff and funding, making contributions from member states mandatory instead of voluntary as they are now. Making progress on the EUROSUR initiative.
 - Accelerating implementation of technological tools for managing borders while developing legislation for the correct use of information.
 - Combating a political culture that accepts illegality and allows the continued existence of the underground economy, which in part fuels social tolerance of irregular immigration.
 - Strengthening internal controls on work and residency in countries with the largest numbers of irregular immigrants. To this end, the Spanish Presidency should work to implement the directive on sanctioning employers.
 - Moving toward European harmonization of the rights of irregular immigrants, what their expectations for legalising their status might be, and access to social services.
 - Analysing the current visa exemption policy and the possibility of requiring visas for people from countries about which there is police or statistical evidence of high incidence of irregular immigrants.
 - Boosting mechanisms for cooperation with other countries in this area, and encouraging negotiations aimed at reaching re-admission accords with those which are sources of or transit points for illegal immigrants.
 - Developing tools to apply the Global Approach, such as cooperation platforms and mobility partnerships.
 - Placing the link between migration and development on the agenda of the EU-Latin America summit that will take place under the Spanish Presidency. In the same way, seeking progress in preparations for the Third Conference of the Rabat Process (driven by Spain and Morocco), which will be held in Dakar in 2011.
 - Proposing new legal, administrative and cooperation-related tools in order to handle adequately the challenge posed by growing immigration from 'unaccompanied minors', a source of particular concern for Spain and other countries of southern Europe.
 - Moving toward the unification of criteria for granting or denying asylum requests, so that the prospects for obtaining it are similar in all member states.

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