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Beyond Stockholm:
overcoming the inconsistencies
of immigration policy

Elizabeth Collett

December 2009

EU INTEGRATION & CITIZENSHIP
PROGRAMME

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Foreword

By Ferruccio Pastore

Ten years ago, in Tampere, the then 15 Heads of State and Government of a smaller and less interdependent European Union agreed on a new strategic priority. In their view (in their words, at least), the centrality of the value of freedom in the European project made it necessary not only to perfect the right to freedom of movement for EU citizens, but also to create a *common* EU policy on asylum and immigration from outside the EU. Ten years later, very little of that hugely ambitious goal has been achieved.

There is a broad consensus among officials and experts that Tampere went too far: a visionary Utopia according to some, a Eurocratic delirium for others.

For sure, the last ten years have been marked by a constant scaling back of the Tampere ambitions, with regard to both the scope and the depth of EU action in the migration field. This downwards revision of the strategy was motivated by realism: by the need to take into account the double constraint generated, on the one hand, by national political taboos and vulnerabilities, and, on the other, by the empirical complexity of migration trends in Europe, which – some argued – would leave no room for a real common policy.

There are obviously elements of truth in this. But pragmatism urges us to recognise just as plainly that the downwards strategy revision, carried out through the Hague Programme agreed in 2004 and the European Pact on Immigration and Asylum of a year ago (just to mention two of the biggest official steps) has not produced the expected results, either in policy terms, as Elizabeth Collett convincingly shows in this publication, or in broader political terms. EU action in the migration field – even as centred on the control dimension as it was – was not sufficient to cut the ground from under the populists' feet. Even less was it able to optimise the use of migrant labour across the EU's Single Market.

While EU institutions repeatedly watered down their ambitions, real changes were taking place anyway. The last decade has witnessed a major restructuring of the European migratory geography, both with regard to destinations (with Southern Europe, the UK and Ireland emerging as the main magnets for mass labour migration) and to sources (with a major increase of East-West intra-EU mobility, a strong growth in migration from

Asia and Latin America, and a relative decrease in the importance of flows from Africa).

This restructuring was matched by an important wave of policy experimentation. Here too, Southern Europe (Italy up to a certain point, then Spain) and the UK have been at the forefront of trying to innovate after decades of a rather dogmatic (and less and less effective) European tradition, marked by an extreme selectivity and rigidity in labour migration management.

Not all the results of this policy experimentation delivered worthwhile results. Italy abandoned half-hearted policy innovations to pursue increasingly ideological visions. The economic crisis revealed the intrinsic weakness of (overly) migrant-intensive socio-economic models, such as the Spanish one.

The lack of a real European dialogue certainly did not help to prevent such national shortcomings. *Ex-post* wisdom might lead us to think that using the Open Coordination Method in an a*d hoc* way could have helped. But the attempts to go down this road at the end of last century failed disastrously.

There is not much ground for optimism for the immediate future of EU migration policies. Where should the impulse come from?

The European Commission seems oriented towards continuity, even if the case for courageous institutional innovation (based on a more substantial decoupling of labour immigration from the Justice and Home Affairs knot) is now more cogent than ever. The crisis certainly does not facilitate long-term political investment in reinforcing supra-national infrastructures for a more integrated management of human resources' development and circulation at continental level.

Coalitions of Member States willing and able to play an agenda-setting role are not easy to identify, even in theory. A Mediterranean pro-migration alliance is no longer viable, with the crisis highlighting diversified impacts and diverging policy responses. A renewed Franco-German axis seems unlikely to produce real innovation in an area in which the two continental partners have been at the head of the conservative bloc for decades.

Political levers for real change are not easy to see. In the longer term, the Lisbon Treaty could indeed make a difference, by extending the scope of Qualified Majority Voting and co-decision to include crucial decisions on

labour immigration. Until then, however, temptations to re-sectorialise and re-nationalise the EU migration agenda seem to be as strong as ever.

Yet such temptations could once again lure us into a dead-end, where the lack of a clear common strategy to match mobility with competitiveness and social cohesion could leave an ageing Europe weaker in the tougher world which will emerge from the crisis.

This publication, which draws on the reflections and discussions in a series of workshops hosted by the European Policy Centre between January and July 2009, with the kind support of the Swedish Ministry of Justice, aims to contribute to the debate over how to avoid this risk and develop the stronger migration policies Europe needs.

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Executive summary

The Stockholm Programme – the new five-year programme for Justice and Home Affairs adopted by EU leaders at the December 2009 European Council – comes at a busy and uncertain time for the Union as it grapples with the most significant economic downturn since World War II, the inauguration of a new European Commission and Parliament, and a long-awaited institutional reform which will transform policy-making in this area.

Within this complicated context, it is clear that immigration and asylum policy has become the 'elephant in the room' and increasingly difficult to fit within the Justice, Liberty and Security (JLS) portfolio. Economic migration is a labour market issue, while the Global Approach to Migration is closely linked to foreign policy and diplomacy. It has also become a large and unwieldy policy area for the limited resources of JLS.

This publication offers an assessment of the progress achieved to date on EU immigration and asylum policy, and particularly in the last five years. It then considers the short- and medium-term potential for immigration policy development at the European level, and how such policies might be developed beyond the Stockholm Programme.

It argues that JLS policy-makers should focus on a few key and thorny issues within their core competence:

- completing ongoing external border control projects and reconciling these with an equitable and responsible common European asylum policy;
- tackling undocumented migration on a broader basis, through the development of common criteria for national regularisation processes; and
- developing a strong and transparent basis for the rights of all third-country nationals in Europe.

Beyond this, immigration policy should be 'outsourced' to the most appropriate actors. Two key dimensions can be highlighted. First, the Global Approach to Migration should be put in the hands of external relations actors, who can link it to the broader agendas of trade and development. Second, both legal immigration policies and the integration of migrants should be incorporated into the existing work of the Commission's Directorate-General for Employment and Social Affairs, to ensure that

migration becomes an element of labour market, competitiveness and social inclusion policies.

Immigration has been incubating within the JLS portfolio for a decade. As it emerges as a critical policy challenge for Europe, the time has come to develop a more multi-faceted approach, identifying those elements of immigration policy that can be developed more fruitfully elsewhere, to enable the EU to go 'beyond Stockholm' and overcome the current inconsistencies in this area.

Introduction

The Stockholm Programme, the new five-year programme for Justice and Home Affairs adopted by EU leaders at the December 2009 European Council, comes at a busy and uncertain time for the Union as it grapples with the most significant economic downturn since World War II, the inauguration of a new European Commission and Parliament, and a long-awaited institutional reform which will transform policy-making in this area.

The immigration dossier has always been an uncomfortable fit within what is now referred to as the Justice, Liberty and Security (JLS) portfolio, sitting alongside policies with substantively different goals such as counter-terrorism, judicial cooperation and civil law. In this company, broader immigration goals – setting standards for legal immigration, and developing a common policy which goes beyond mere border control – can end up being sidelined. Politicians are reluctant to commit to policies which conflict with the sensitivities relating to national sovereignty in this area: the right to determine who has the right to enter, live and work on their territory.

Perhaps because of this, migration policy is also outgrowing the JLS portfolio. It frequently dominates Heads of State and Government discussions at EU Summits, whether due to an apparent crisis in one or more of the Member States or in EU leaders' debates on labour market developments and competitiveness. On the international stage, migration is becoming a central theme of the many regional dialogues organised by the EU delegations, from the EU-Latin America and the Caribbean (LAC) process to the Union for the Mediterranean. EU policy developments are also being closely monitored from outside its borders, from India to Brazil.

This paper assesses the progress achieved to date on EU immigration and asylum policy, and particularly over the last five years. It then considers the short- and medium-term potential for immigration policy development at the European level, given the current political and institutional constraints within JLS.

It will argue that the Stockholm Programme is a necessary but insufficient framework for future immigration policy planning. Policy-makers should continue to focus on a number of core activities – projects which have been started but not finished – within the traditional immigration and asylum policy space. However, given the expansion of this policy area and its links

with other fields, they should also begin to realise the numerous opportunities to develop and operationalise European cooperation on immigration over the next few years, whether through development programming, labour market initiatives within the new Lisbon Strategy, the new configurations for neighbourhood policy, or the broader development of external relations.

The Lisbon Treaty provides an opportunity to improve policy coherence in the area of immigration and asylum – an opportunity which will not present itself again for a very long time. This paper highlights a few key essential areas for action under the Stockholm Programme, and outlines possible approaches and new directions to enable immigration policy to develop more coherently in future, in order to respond to the very critical challenges now facing every country in Europe.

Evaluating Hague 2005-2009

Before considering future developments, it is worth assessing and drawing lessons from the experiences of the 2005-2009 Hague Programme, which is now coming to an end. This is far from easy due to the complex nature of the areas it deals with: Justice and Home Affairs (JHA) policy-making has expanded continuously over the past five years, and the complicated decision-making process in this area is opaque and, for most observers, difficult to navigate.

EU competences to legislate in the area of Justice, Liberty an Security (JLS) have developed greatly since the Amsterdam Treaty came into force in 1999. Despite this, tensions between following the Community method (in whatever form) and the intergovernmental approach have persisted.

This latent duality in the decision-making process has greatly affected the development of JHA as a common policy. This mainly relates to the institutional arrangements which have left some JLS areas – such as legal migration policy – outside European Community competence (and thus decided by unanimity with mere consultation of the European Parliament instead of Qualified Majority Voting and co-decision with the Parliament).

Statistically speaking, the Hague Programme's achievements – in terms of translating the proposals laid down for the five-year period into action – have been unsatisfactory. The first year was the most successful, with 65.22% of scheduled measures achieved and only 12% of proposed actions postponed

in 2005.[1] In 2006, the respective figures were 53% and 27%; and in 2007 – the worst-ever result – 38% and 41%.[2]

Decision-making procedures (particularly in third pillar areas), changing priorities and uncertainty over legal bases have all contributed to this relative lack of success.

Three main obstacles have limited implementation of The Hague Programme, which also have implications for the potential success of Stockholm: institutional, administrative and 'securitisation' barriers.

Institutional barriers

An unhelpful institutional configuration and the absence of a substantial political commitment to open up the JHA arena to 'more EU' have undermined the central goals of the programme.

The imbalance between EU institutions has often led to a perceived battle between the Council (Member States) and the European Commission. In reality, the timidity of a number of its proposals suggests that the Commission yielded to the parameters set by the Council fairly early on. Areas remaining outside the Community method have been held particular hostage to this dynamic, which has often resulted in poor policy inputs. Non-governmental stakeholders, for example, have had few opportunities to join or influence the political debate, which has taken place behind closed doors.

Implementation of legislation has also been a key issue, with an increase in legislation introduced through intergovernmental procedures which – as a result - remain outside the European Court of Justice's jurisdiction. Examples of this include a significant increase in anti-terrorism and information-sharing measures. The Commission cannot launch infringement procedures related to such acts and, as a result, transposition of much of the legislation introduced under Title VI of the EU Treaties has been poor, as there are few ways of holding Member States to account.

The Finnish EU Presidency's attempts in 2006 to invoke the 'passerelle clause' in the Nice Treaty – to bring third-pillar actions within the Community framework – was firmly rejected by other Member States. Furthermore, there are few, if any, non-governmental actors represented in the various JLS working groups (committees of specialists convened to

review particular policy issues), in stark contrast to the groups which have formed within other policy areas. Despite the growth in policy initiatives within JLS, mechanisms for consultation and public debate remain nascent at best, and much of the work in the Council is kept firmly under wraps.

In recent years, however, looming institutional reform (in the shape of the Lisbon Treaty) has gradually led to a change in thinking and a new focus on the need to mainstream the decision-making process on immigration.

Lisbon Treaty

The Lisbon Treaty introduces several changes to the way immigration policy is formulated. The most significant of these is that legal immigration policies will be pursued under the 'ordinary legislative procedure' (formerly known as 'co-decision'). This means that proposed measures on the entry, residence and rights of legal migrants will no longer be agreed unanimously but instead by Qualified Majority Vote (Article 63a.2).

This is an advantage over the current arrangement, but does not make seeking consensus any less critical. The change in legislative procedure means that the support of the European Parliament will now be required, rather than mere consultation, which will make the decision-making procedure more complex.

At the same time, Member States retain critical control over determining the "volumes of admission of third-country nationals coming from third countries to their territory in order to seek work", which limits the scope of the proposals which can be made by the Commission (Article 63a.5).

Finally, the Lisbon Treaty contains provisions to set out the legal basis for developing EU policies – specifically "measures to provide incentives and support" for the integration of third-country nationals (Article 63a.4).

Despite the fact that integration policies have gained momentum over the past five years, they have done so within an uncertain legal framework. This should make integration policies easier to push forward.

In 2007, the then JLS Commissioner Franco Frattini announced that the European Parliament would in future be involved in all third pillar decisions, in anticipation of the legal changes included in the Lisbon Treaty,[3] and the Parliament is already finding that its voice carries more weight. Several

mechanisms have also been set up to consult civil society on future policy priorities, whether through public consultation or fora. However, compared to other policy areas – where stakeholder consultation is now routine and substantive – Justice and Home Affairs still has a long way to go.

At the same time, the European Pact on Immigration and Asylum – adopted under the French EU Presidency in October 2008 – appeared to reverse the trend towards harmonisation by favouring, promoting and advocating exclusive competences for the Member States, especially with regard to legal migration.[4]

This sent a clear political message which seems to question the commitment of European governments to pool some of their powers within common institutions and accept a Community approach in this area.

Administrative barriers

The positioning of immigration and asylum within the JLS portfolio has become increasingly awkward over time. First, 'Justice and Home Affairs' has become an unwieldy policy area which accounts for a disproportionate amount of the Commission's work. As a result, not only are human resources stretched, but those who work on the portfolio are responsible for an ever-increasing and ever-more technical set of policies.[5]

Immigration policy, in particular, has developed more and closer links with other portfolios within the Commission, not least Employment and Social Affairs (DG EMPL), but also External Relations (DG RELEX), Development (DG DEV), Education and Culture (DG EAC), and even Trade (DG TRADE) and Economic and Financial Affairs (DG ECFIN).

DG JLS must consult a number of other Directorates-General when preparing its proposals, while in the Council, Member States must decide which minister is most appropriate to attend each meeting. This raises questions about effective coordination and decision-making.

The cross-cutting nature of immigration policy has other implications. Funding mechanisms, particularly for social inclusion initiatives and external relations' cooperation, are disparate and spread across several DGs, while policy coherence risks falling victim to internal rivalries between DGs.

In recognition of the challenges posed by the multifaceted nature of immigration at the European level, the internal set-up within DG JLS has been revised several times. Commissioner Frattini also set up an ad-hoc task force of eight Commissioners in 2006 to bring together all policy areas involved in migration issues, but this has only met a handful of times.

Some Member States have developed independent ministries to address immigration issues (Denmark, France), while others have shifted their immigration portfolio away from Interior and/or Justice Ministries to Employment (Spain) or Foreign Affairs (Luxembourg). (See Annex I). It is notable that while it is the JHA Council which takes decisions in this area at EU level, only a handful of immigration ministers attend with any regularity (Belgium, Denmark, France, Luxembourg and Sweden).

Immigration will not be formally separated from the JHA portfolio in 2010, but Commission President José Manuel Barroso's commitment to create one Commissioner for Fundamental Rights and Civil Liberties and one Commissioner for Migration and Security (an uneven split within the JLS portfolio) leaves immigration policies sat even more awkwardly alongside security policy.

Beyond this, there are a number of administrative and institutional questions which need to be addressed, not least the need to find appropriate and effective coordination mechanisms in both the Commission and the Council.

Securitisation barriers

The security climate which influences the JLS portfolio is frequently noted.[6] The events of 11 September 2001 catalysed a security imperative which is particularly evident in JHA policies, and has sidetracked much of the planned work in the Hague Programme while fast-tracking other elements. This has had a knock-on effect on migration policy, adding to the perception that migration flows are a threat – a source of instability and radicalisation.

JHA policies go to the very heart of civil liberties and fundamental rights issues. Policy-making in this area may easily cross the fine line between freedom, fundamental rights and the rule of law, on the one hand, and security, on the other. The separation of fundamental rights from security within the Commission may go some way towards addressing this, but it will

require a strong Commissioner in charge of the former who is willing to play a tough watchdog role – not easy within a collegiate system.

Lessons for implementing Stockholm

How can Europe renew its commitment to building common European policies on migration, borders and asylum, in the light of these challenges?

One key risk is that Member States only seem willing to agree on common action when there are opportunistic, often short-term, political gains to be made, and this lack of commitment may mean a repeat of the disappointing, partial implementation of the Hague Programme.

The principles and policy guidelines set by the EU Immigration Pact have become the guiding foundations for the Stockholm Programme – as declared in the preamble – which suggests that immigration and asylum policy at European level will be limited in scope. Indeed, the pact itself focuses upon "inviting" and "encouraging" governments to pursue certain policy approaches, such as selected migration (choosing migrants according to skills levels).

In this context, the Commission's position as guardian of the EU's common interest is key. But it is difficult to avoid the sense that it has been neither active enough nor resilient enough in pushing forward the European agenda. Its Communication on the Stockholm Programme – *An Area of Freedom, Security and Justice Serving the Citizen* – certainly demonstrated a very timid approach to future immigration policy.[7]

As well as identifying areas of common ground between the Member States, the Commission can learn from the experiences of Hague with respect to how policy has been developed.

Implementation is central to this. As highlighted above, the EU has limited ability to ensure timely and correct implementation of commonly-agreed rules, which has led to discrepancies in treatment and differences in interpretation.

One example of this is the implementation of one of the first pieces of common legislation, the rules establishing a right to family reunification. Not only did the Commission begin infringement procedures against 19 Member States following the end of the transposition period (four cases were

subsequently pursued), but a review of implementation also reveals considerable variations in the rules put in place by different Member States, on everything from access to the labour market to introducing mandatory integration measures such as testing.[8] Mechanisms to monitor the progress of legislation once it comes into force need to become more systematic, and implementation needs to be more strongly enforced.

The Commission also needs to assess how each individual proposal fits into the overall architecture of immigration and asylum policy, and whether it achieves the EU's goals and can be implemented effectively. There are several aspects to this.

First, there has been a tendency in recent years to table, and subsequently agree, proposals which 'tick the box' in terms of fulfilling commitments under the Hague Programme, rather than substantive proposals which fulfil the intended goals of those commitments. This not only reflects the difficulties faced by the Commission in getting proposals through the JHA Council, but also suggests that they will not be very effective if and when they are agreed.

One example of this is the development of the Plan on Legal Migration published in 2005 and yet to be completed. This plan categorises migrants according to skill and type (e.g. high-skilled workers or seasonal workers), rather than outlining an overall mechanism to foster collaboration between Member States on immigration policy. Such a mechanism was proposed in 2000 but eventually withdrawn.[9] While political feasibility clearly played a major role in the drafting of the plan, the existing proposals do not provide an effective set of building blocks on which to develop immigration policies further.

At the same time, many proposals have been reactive initiatives responding to sudden external shocks or the unintended consequences of previous legislation. As such, they lie outside the initial blueprint for a particular policy area. This has led to a patchwork of initiatives and legislation, which has implications for future development.

Impact assessments focus predominantly on the effect of new legislation on national situations, and the capacity of a particular piece of legislation to achieve its stated goal. Such impact assessments also need to consider how well the legislation 'fits' with existing and planned developments, not just before the proposal is adopted by the Commission, but also in its final form – post-negotiation and pre-adoption in the Council. Several Member

States have already highlighted the need for a second round of impact assessments in their submissions on the Programme.

Certainly, the Stockholm Programme should begin with an extensive evaluation of the coherence and effectiveness of existing legislation. This has already begun, with an evaluation of existing asylum legislation and proposals for amendments. However, a systematic and holistic approach, capable of taking into account unexpected impacts in other areas such as foreign policy and fundamental rights, is long overdue.

Just as the EU needs to find the conviction to develop ambitious and long-term policies, it also needs to find the courage to acknowledge when policies have not worked and revise or reject them accordingly.

Context for the Stockholm Programme

2010 is not an auspicious moment for implementing a new, forward-looking agenda for immigration and asylum within the EU, not least because of the current focus on the economic climate. The Stockholm Programme itself is not as ambitious as its predecessors, particularly the 1999 Tampere Programme.

Numerous predictions have been made as to the likely short- and long-term impact of the global recession on the number of migrants within (and flows to) Europe.[10] While some flows – such as those of asylum claimants and family members – are unlikely to change significantly, there is speculation about how economic migrants (both legal and undocumented) are faring in the downturn.

Certainly, there is evidence that non-nationals are disproportionately affected by rising unemployment, as in Spain, Sweden and Portugal.[11] Within Europe, the meagre data suggest that large numbers of migrants are returning home from some EU countries, such as UK and Ireland, because of the economic crisis, the impact of changing currency values and a fall in the number of job opportunities. For those from further away, however, returning home is not all that simple. There has, for example, been a lower take-up than expected of initiatives in the Czech Republic and Spain to provide financial support to economic migrants returning to regions such as Latin America and Asia.[12]

However, more pertinent for this paper are not the expected shifts in migration patterns, but the political perceptions of how the recession might affect immigration and the consequent impact on policy.

A number of EU Member States have tightened their immigration policies within the past year: countries such as the UK have begun to limit numbers at all levels of the newly-installed points system, while governments to the South are putting greater emphasis on limiting irregular migration into Europe and illegal working. Interestingly, Sweden is moving in a different direction from other European governments in this area, having introduced reforms in November 2008 to open up its labour market to an entirely demand-led immigration system – which may or may not help it to advocate a more open immigration policy across the continent.

Overall, there is an atmosphere of caution and a desire to show that the jobs available in Europe are primarily open to EU citizens, if not nationals. The creation of ambitious common EU immigration policies which – at least in the eyes of policy-makers and the public – would increase the flow of migrants to Europe is thus difficult to contemplate, regardless of the longer-term demographic reality.

Alongside this sit a number of competing priorities, not least the apparent immediacy of the situation in the Mediterranean. The formal calls from the Quadro Group (Cyprus, Greece, Italy and Malta) for solidarity in managing the numbers of potential migrants and asylum-seekers crossing their borders has become a major political issue and dominated discussions in the JHA Council in 2009.[13]

While a sustainable and manageable system for dealing with irregular border crossings and asylum claims remains the long-term goal, the current focus is on quick fixes and interim measures, such as a voluntary re-location programme within Europe being piloted in Malta.[14] And while security and control have arguably always dominated the immigration and asylum agenda, the trend towards reactive policies aimed at 'fixing problems' suggests that the EU is being distracted from longer-term perspectives.

Turning to the institutional procedures, while the Lisbon Treaty will be the basis for implementing Stockholm, it is difficult to see immigration policy-making really shifting towards the Community under the new Treaty without strong political support for European policies in this area.

As several commentators have pointed out, the 'easy' part of the immigration portfolio has been achieved, while the trickier elements remain.[15] As a result, the development of EU immigration and asylum policy has reached a crossroads.

There has been a shift away from the harmonisation approach. Common standards for immigration and asylum have given way to initiatives which incorporate more practical cooperation between the Member States, and soft law in the form of guidelines and 'agency' (using stand-alone agencies to enhance cooperation) rather than the hard law envisioned in the Maastricht Treaty. This is particularly true of many of the recent proposals to improve 'burden-sharing' and solidarity amongst Member States with respect to border management and asylum decision-making.

Finally, alongside the shift to practical cooperation there has been a proliferation of inter-governmental approaches to European immigration management. The Immigration Pact agreed under the French EU Presidency was an agreement between states, to be implemented by both governments and the Union.[16] Increasingly, constellations of states are emerging, whether along geographical lines or based on common interest. The majority of new ideas of the last few years have been instigated and put into practice by governments, with secondary support from the Commission. Examples include the Eastern Partnership, introducing the twin goals of mobility and security;[17] the groupings formed by the pilot mobility partnerships with Moldova and Cape Verde;[18] and the goals set out at the regular G6 meetings of the largest Member States.[19]

It is clear that implementing the Stockholm Programme in a comprehensive, forward-looking and ambitious manner will be no small challenge. But a number of the issues highlighted above also raise the question of whether the Stockholm Programme is the right place to develop comprehensive policies for immigration management. Are justice ministers, charged with homeland security and border control, the most appropriate policy-makers? Within the Commission, are there other places with more expertise to deal with some of the policy developments of the past five years? Who, within the EU, has the leeway and the mandate to develop policies with a long-term perspective?

A coherent immigration policy: goals for Stockholm

The text of the EU Immigration Pact suggests that such a common vision does exist, and that the ideas encapsulated within it should be used as a template for the Stockholm Programme. Indeed, the Commission has produced a strategy for monitoring implementation of the Programme, and

a number of Member States have explicitly reiterated their desire to follow the priorities set out in the 2008 document.[20]

The Pact outlines the priorities and limits of European policy in this area, although the political wrangling which led to the final text suggests that not all Member States were equally convinced by its contents. Thus, the Stockholm Programme follows the major lines, but differs in the detail.

The Pact focused on border control, strategies to counter undocumented migration, and commitments to complete the common asylum project. It was far more vague about labour migration and migrant integration, beyond recommending limits to both. Member States were encouraged to focus on 'selecting' high-skilled migrants, and to take account of their 'capacity' to receive and integrate the families of migrants. And while the Global Approach to Migration is seen as important, the Pact is short on details regarding specific implementation.

This approach is mirrored to some extent in the final Stockholm Programme. Detailed ideas are largely lacking, while the EU's role in legal migration and integration policy is generally confined to providing platforms for dialogue, monitoring, data collection and forecasting, some of which is already undertaken elsewhere. Very little is proposed to build on the existing framework for common immigration policies and instead a period of consolidation is envisaged, gathering together and rationalising existing legislation.

Integration is highlighted as key to reaping the benefits of immigration, and the programme follows on from the last Ministerial Conference on this issue (in Vichy during the French EU Presidency). It emphasises the focus on knowledge exchange rather than on developing a European 'model', and reiterates the need to develop common European Modules (by identifying joint practices to support integration) and indicators to monitor the results of national policies.

Rights remain controversial. The Swedish proposal aimed at "granting third-country nationals... a level of rights comparable to those of EU citizens by 2014", which several Member States found difficult to accept. This paper will come back to this idea later on.

With respect to the external dimension, the Global Approach to Migration has become a central policy theme, alongside migration and development,

and is much more detailed. This reflects the fact that this area has developed in substantive terms over the past five years.

However, while the principles of the Global Approach are reiterated and affirmed, there is very little new of substance. Mobility partnerships are still flagged as a key tool (see Chapter II), and the ideas contained in previous Council Conclusions and Commission Communications – dialogue, cooperation and capacity-building – are more or less reproduced. One new element is the suggestion that climate change and its implications for migration be further explored. Academics and policy-makers alike are divided on what, if any, implications there are and what, if any, policies are required.

The programme is far more specific regarding the development of border and asylum policies. It contains far fewer legislative initiatives than in previous programmes, focusing more on improving evaluation and cooperation (including readmission agreements with third countries). In the area of asylum, particularly, there is a great deal of emphasis on the concepts of 'solidarity' and sharing responsibilities, which responds to the specific issues which have arisen over the past five years (see Chapter II for more details).

One innovative proposal was to develop common standards for dealing with "illegal immigrants who cannot be returned". Indeed, this is unacceptable to many in negotiations as it implies opening the door to discussing amnesty at EU level. This paper will also return to this point.

One new element which is highlighted is the issue of unaccompanied migrant children, and the need for the Commission to develop an action plan to coordinate an EU response. This will be a key issue for both the Spanish and Belgian EU Presidencies in 2010, and one which Member States will find it difficult to object to, for humanitarian reasons, in the same vein as cooperation on counter-trafficking.

Individual Member States' priorities vary considerably. The UK, Ireland and Denmark clearly have little interest in ambitious immigration policies, in contrast to the current EU Presidency holder, Sweden, which would like to see a roadmap looking beyond the next five years, particularly in relation to labour migration. Countries with significant external and permeable borders are preoccupied with ensuring that 'solidarity' between Member States is maintained and implemented, while some of the bigger Member States want

measures to ensure that their neighbours' policies do not have any unintended consequences.

Overall, the programme reflects the fact that the EU has now reached the outer edges of political cooperation on immigration and asylum, and has put in place most of the major legislative initiatives which are currently politically feasible. The focus is on strengthening cooperation (both within the EU and with third countries), and the need to consolidate the work done over the past decade.

Given the disparities in terms of focus, horizon and ambition, it may be difficult to enlarge on the ambitions of the Stockholm Programme through the drafting and implementation of proposals over the next five years, to the detriment of immigration policy development within the EU. However, this is only true if the Stockholm Programme is seen as the sole place for immigration policy-planning. Developments in recent years suggest that policy-makers in other areas have a deep interest in, and some competence for, addressing migration priorities.

The central premise of this publication is that, given the difficulties in achieving full implementation of the Hague Programme and the challenges facing the development of a substantive policy for the next five years, the Stockholm Programme should be seen as a 'gateway' to policy development elsewhere: namely, the revised Lisbon Agenda, the Thematic Programme on Migration and Development, and the emerging external relations agenda on migration.

This paper provides a detailed analysis of progress to date on the various aspects of immigration policy and the current 'state of play'. Based on this, a limited set of policy priorities are identified for the core work of JLS over the next few years. The remainder of the paper then focuses on what can be done 'Beyond Stockholm', highlighting the elements of immigration policy which can be developed fruitfully elsewhere within the EU sphere.

Nascent immigration policy has been incubated within the JLS portfolio, but has now become too big an issue to remain confined there. The new set-up foresees a Commissioner for Migration and Home Affairs. Setting aside the question of whether a stand-alone immigration policy will be developed over the next decade, this paper suggests that immigration competence and expertise should be built into other policy areas where such capability is needed.

I. Immigration and asylum policy – the work to date

In 2010, the EU will move into its second programmed decade of work on immigration and asylum policy. While the legislative process in the area of Justice and Home Affairs (JHA) has been frustrating for many of those involved, a detailed analysis of the work to date in fact reveals significant progress. The shift from legislative to practical cooperation has also gone some way towards ameliorating the slow pace of progress in areas where consensus has lagged behind.

The EU's external borders – the 'success' story

The Hague Programme has not only delivered the major objectives set out in its ambitious agenda; in some areas, it has also exceeded the expectations of the five-year plan. There has been a massive increase in output of both legislative proposals and non-legislative initiatives.

Diverse as they are, control remains a common feature, from the creation of the EU border management agency: Frontex in 2005, to the recent Border Package proposal (which includes the creation of an entry-exit system). Here, the focus has been technical and operational: promoting cooperation and exchanges of information, exploiting technological advances and using risk analysis. This cooperation was most clearly tested when the Schengen area expanded in late 2007 to include nine more Member States, without any major hitches.

The key element of effective border policy at the EU level has been the development of an integrated border management system. Frontex has been given a key role in overseeing the management of this system. Indeed, even though the agency has only been operational for just over three years, it has become a very visible element of EU immigration policy, especially with respect to its sea operations.

The developments of the past few years – from the increase in border crossings in the South to infrastructure demands stemming from the expansion of the Schengen area – have led to Frontex's mandate being extended considerably. It oversees joint patrols in the Mediterranean, such as Hera and Nautilus, and organises joint deportation flights from EU Member States.

Frontex

Frontex is the EU agency created to coordinate operational cooperation between Member States in the field of border security. Based in Warsaw, its role is to complement and provide added-value to Member States' national border management systems. To guarantee the agency's independence, it has been given an autonomous budget, which essentially comes from Community coffers (approximately €83 million in 2009 – a small amount compared to other EU agencies).

The agency is responsible for six principal areas as outlined in the 2004 Frontex Regulation:[21]

1. Carrying out risk analysis.
2. Coordinating operational cooperation between Member States in managing external borders.
3. Assisting Member States in the training of national border guards, including the establishment of common training standards.
4. Following up on the development of research relevant for the control and surveillance of external borders.
5. Assisting Member States in circumstances requiring increased technical and operational help at external borders.
6. Providing Member States with the necessary support in organising joint return operations.

Frontex is also developing links with third countries' border security authorities, in line with general EU external policy. However, it does not have any direct operational power and must therefore always rely on other parties for final implementation of its programmes.

However, its lack of operational experience, a comprehensive mandate and clear guidelines have led to problems concerning effective humanitarian protection. Frontex relies a great deal on the willingness of Member States to provide human and financial resources, as well as equipment. Some questions have also been raised about the agency's accountability and transparency as well as its effectiveness.

The head of Frontex, Ilkka Laitinen, himself suggested in Autumn 2008 that the agency's southern operations had failed to reduce the pressures on European borders.[22] Certainly, there is evidence that increased operations may displace, but not necessarily reduce, unauthorised border crossings, as

alternative routes are found. While border crossings to the Canary Islands decreased between 2007 and 2008, they increased substantially in Malta and Italy during the same period.[23]

Although responsibility for the control and surveillance of external borders lies with the Member States, Frontex is coming under severe pressure to do more. It thus finds itself in an increasingly paradoxical situation: it can only act with Member States' approval and yet it is being seen as a universal panacea for illegal migration.

Accordingly, its mandate, powers, budget and staff resources have been increasing ever since its inception. This trend was underlined in last year's Commission *Report on the evaluation and future developments of the Frontex*,[24] which envisages further development of its responsibilities and activities, and with the French government reiterating its call for Frontex to be strengthened in September 2009.[25]

As well as using Frontex to develop European responsibilities for border control, there is a parallel desire to develop an electronic infrastructure for monitoring border crossings, including proposals for a European Border Surveillance System (EUROSUR), an entry/exit system to record crossings by third-country nationals electronically, and an Electronic System for Travel Authorisation (ESTA).[26] All of these envisage a key role for Frontex as the hub for exchanging operational information and managing information systems. These proposals have been broadly welcomed by Member States, and were reaffirmed in the October 2008 EU Immigration Pact.

Finally, Frontex has become a front-line actor with respect to 'working arrangements' with third countries, which are an increasingly important component of external border control. Alongside a network of Immigration Liaison Officers are a range of bilateral and EU agreements which are managed by Frontex and include the exchange of operational information and intelligence and, in some cases, joint operations.

These arrangements are closely linked not only to the emerging Global Approach to Migration, but also to the EU's various neighbourhood policies. Management of bilateral agreements has further extended Frontex's role in acting on behalf of Member States – and assuming some of their responsibilities – in the more difficult areas of border control.

Asylum – delays and unintended consequences

While the Common European Asylum System has developed steadily over the past decade, the 2010 deadline (set by the Hague Programme) will not be met, as confirmed in the Immigration Pact. Furthermore, the level of harmonisation and application of common standards envisaged by the Hague Programme has not been reached, and a number of unintended consequences have begun to emerge. At the same time, the goal posts have shifted, mirroring the wider Justice, Liberty and Security (JLS) trend away from harmonisation and the development of a single asylum procedure and towards operational cooperation.

The level of harmonisation of Member States' asylum laws and the application of EU-wide minimum common standards as envisaged in the Hague Programme have been less collaborative than hoped, and have come up against some unexpected obstacles. One example of this has been the application of the Dublin II system, under which asylum-seekers must be assessed in the first EU country in which they set foot (and may be returned to this country from another EU Member State), even though Member States still treat claimants and assess claims very differently from each other (and with very different outcomes).

Critics have also pointed to the inefficiencies of pursuing an incomplete system, spending time and money on determining whether asylum-seekers passed through another EU Member State first and returning the asylum-seeker to that country, rather than simply offering protection.[27]

The second phase of the creation of a Common European Asylum System (CEAS) – a major goal of the Hague Programme in the asylum area – has been slow, with divergent visions of how to create a common system making it difficult to agree on concrete legislative proposals.

Despite this, some progress has been made in the past year: 2008 saw the adoption of the Returns Directive, establishing basic standards for the treatment and return of undocumented migrants, although many human rights organisations and third-country governments voiced concern about some of its content, with Brazil dubbing it the "Directive of Shame".[28]

Revisions to the legislation agreed in the first phase of the CEAS are now being discussed, including the directives covering reception conditions,

EURODAC and the Dublin system. The most recent development is a proposal to establish a European Asylum Support Office, outlined in the Immigration Pact, which is in part intended to compensate for the poor progress to date in this area and bring Member States closer together in practice, if not principle.

Current practice in implementing the right of asylum illustrates major differences in the way Member States deal with applications for international protection. In 2008, the United Nations High Commissioner for Refugees (UNHCR) suggested suspending the Dublin system for asylum-seekers who had passed through Greece, as its processing standards were so low, while a number of judicial decisions in Member States to suspend transfers demonstrate that the Dublin system is "based on the myth that protection standards are equivalent throughout the EU".[29]

Detention conditions in a number of EU Member States have also been a cause for concern among MEPs and non-governmental organisations alike (most recently in Greece),[30] while the recent decision by Italy to return 227 migrants and deny them the right to claim asylum in the EU further highlights the difficulties encountered when one Member State has a different perception of its obligations than others.[31] The move was condemned by the United Nations, but the European Commission has yet to follow suit.[32] Few sanctions exist for Member States which violate basic asylum obligations, or fail to meet commitments on basic standards.

The proposed creation of a European Asylum Support Office is one of the major recent initiatives confirmed by the Stockholm Programme (see box). A successful Support Office presupposes a smooth, or at least well-functioning and efficient system that facilitates its implementation and operation. The next five-year programme will have to give serious thought not just to the roadmap for completing the CEAS, but to its real implementation.

One key question is whether a fully functioning Common European Asylum System is still the core goal of the EU Member States. While it is emphasised as such in the recent Immigration Pact, the key to success will lie in the genuinely uniform application of asylum law across the EU, standardised practices and training rules, and the provision of uniform information on countries of origin. It is hoped that enhanced practical cooperation between Member States will pave the way for this, provided that they manage to overcome the mounting administrative problems.

European Asylum Support Office

The proposal for a *European Asylum Support Office* (EASO) was first outlined in the October 2008 EU Pact on Immigration and Asylum. In February 2009, the European Commission adopted a formal proposal to establish the EASO as an operational agency to coordinate and step up cooperation on asylum between Member States. Currently, there are major differences in the way Member States deal with applications for international protection.

The objective of this coordination and cooperation is ultimately to harmonise different national practices, aligning existing asylum rules in the EU. This objective should be seen in the context of the Commission's efforts since June 2008 to put in place a Common European Asylum System.

EASO will:

1. Support Member States' efforts to implement a more consistent and fairer asylum policy, for example by helping to identify good practices, organising training at European level and improving access to accurate information on countries of origin.
2. Coordinate support teams made up of national experts to be deployed at the request of Member States faced with a mass influx of asylum-seekers into their territory.
3. Provide scientific and technical assistance for the development of asylum policy and legislation.
4. Work closely with the authorities responsible for asylum in the Member States and with the Office of the United Nations High Commissioner for Refugees.
5. Set up a Consultative Forum for dialogue with civil society organisations.

The Office is expected to be up and running in 2010, although no decision has yet been taken on where it will be based.

Global Approach to Migration – the leading light

The external relations' element of EU immigration policy is the area which has developed most clearly beyond the ambitions of the Hague Programme. The Global Approach to Migration – a concept put forward by the UK Presidency of the EU in late 2005 – aims to marry migration and development, and offer incentives for third countries to cooperate on border control and managing their own migration flows.

The goal of deepening cooperation and dialogue with countries of origin and transit is also an extension of the EU's 'externalisation' objective, encouraging neighbouring states and sending countries to police their own borders. However, it is an extremely complex policy area, with a plethora of overlapping mechanisms ranging from the European Neighbourhood Policy to the Union for the Mediterranean and Euro-Africa meetings.

At the most concrete level, the EU has negotiated a number of readmission agreements, which go hand-in-hand with visa facilitation policies for those countries which sign them. Frequent meetings are held with the various sending regions on migration issues, while a new tool (mobility partnerships) has been piloted with a couple of countries: Moldova and Cape Verde.

The idea of cooperating with third countries on migration issues predates the establishment of Justice and Home Affairs' policies at the European level. In 1992, Heads of State and Government discussed the external dimension of migration at the Edinburgh European Council. They noted that other policies – such as liberal trade regimes and development aid – could contribute to reducing the need for emigration from source countries, and set out a series of principles which explicitly aimed at reducing migration flows into Europe.

The wording of the 1992 document is fairly blunt, and it is open about the fact that reducing migration is a key aim of the Member States. The wording of the 2005 Council Conclusions is more subtle, although many argue that the central theme remains unchanged.[33] The Global Approach is defined as "a balanced, global and coherent approach, covering policies to combat illegal immigration and, in cooperation with third countries, harnessing the benefits of legal migration".[34] The Council also stated that the EU's "commitment to support the development efforts of countries of origin and transit is part of a long-term process to respond to the opportunities and challenges of migration".

While the original 'externalisation' agenda remains strong, the Global Approach has been influenced by two other dynamics:

■ a growing international consensus that supporting a country's development not only reduces migration flows, but also that individuals' migration can be 'harnessed' for the sending country's benefit, primarily through the money they send home or invest;

■ a more widespread recognition that the EU will soon be in demographic decline, combined with an acceptance that attracting only qualified

nationals from scarcely-resourced developing countries has a negative impact on those countries, which has added a new policy layer to the Global Approach to Migration.

Unlike other areas of the EU immigration portfolio, the policies which relate to the Global Approach are not necessarily part and parcel of national policies. While all Member States have addressed border control, economic immigration and asylum issues, only a few have considered the external partnership dimension in any depth beyond bilateral agreements for temporary labour.

In addition, few of the policy tools which have been developed to implement the Global Approach are definable as immigration policies. Instead, foreign, development and neighbourhood policies are being adapted to incorporate immigration priorities. These tools vary in terms of scope and concreteness. Some are conceptual, designed to be mainstreamed into EU policy as a whole; others are very targeted and specific.

Specific initiatives in recent years have included the recent conference hosted by the Czech government on Building Migration Partnerships, involving a number of third countries to the East and South-east of the EU. Other, regular, dialogues take place with constellations of countries, such as the EU-Africa Strategic Partnership and recent dialogues with the Latin American region.

However, migration has only slowly been integrated into existing broader frameworks for cooperation. The Communication outlining a new Eastern Partnership process for the six Eastern Neighbourhood countries included a section on mobility and security, outlining expectations for the region and highlighting the goal of visa-free travel between the EU Member States and partner countries.[35] A similar process, though with far less ambitious goals, has been outlined for the new Union for the Mediterranean.

Finally, the EU is beginning to develop bilateral relationships with key countries, notably those with identifiable common interests, but also those which are significant source and transit countries. One vehicle for this is a mobility partnership, detailed below. However, the Global Approach is far more fragmented than its title suggests, and this may have an impact on the effectiveness of the various ideals pursued under its aegis.

The first ideas put on the table were circular migration and mobility partnerships.

Circular migration and mobility partnerships

Circular migration is not a new idea, but it has only developed into a policy tool relatively recently. It is defined as "a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries".[36]

For many, circular migration is merely a *description* of a new type of global mobility, distinct from the idea of permanent emigration and settlement, and not a policy *choice per se*. It has been prominent in the international migration and development debate, but has yet to emerge as a concrete policy tool.

Member States frequently have different ideas of what circular migration is: for some, it is a return to the set temporary migration programmes with third countries which dominated the 1960s and 1970s; for others, it is a more flexible notion of more frequent back-and-forth migration, or mobility which involves circulating around a number of countries.

The Commission has put forward a number of ideas to address this, ranging from multi-entry visas for some categories of migrant to improving the portability of social security contributions for those who wish to return home. A number of proposals concerning legal migration have also contained provisions which would allow extended home-country return without any loss of legal status or time counted towards qualifying for long-term residence status. Much emphasis is also being placed on sustainability of return; i.e. the ability of returning migrants to settle back in their home country and build a new life.

Mobility partnerships have become the flagship tool of the Global Approach, and its main innovation. In 2008, the EU signed two pilot agreements, – with Moldova and Cape Verde – which provide insights into how difficult it is for the EU to act independently of Member States with respect to third countries. Such partnerships are intended to highlight and reward good relations with third countries, based on pre-existing cooperation in areas such as combating illegal migration and border control.

In practice, these partnerships are quite complicated, mostly due to the Commission's restricted competence for negotiating terms relating to legal migration. As a result, the partnerships have a two-pillar structure: the main text of the agreement, and the annexes. The text of the agreement itself is drafted by the Commission and signed by all the participating states (EU Member States and partnership candidates), and outlines the broad commitment to further dialogue and cooperation on migration issues, without specifically binding commitments. Readmission and visa facilitation agreements are kept separate from the partnership agreement itself. The annex sets out the various projects which have been offered by the various Member States and accepted by the third country, alongside several projects proposed by the European Commission itself.

Two key questions relating to such mobility partnerships are how far they can be taken, and how effectively they will be implemented. The agreements themselves rely on a great deal of overlapping interest: for example, the fact that Moldova has a strong interest in its own nationals returning home rather than increasing opportunities for its nationals to migrate. The implementation of such partnerships also requires a heavy administrative machinery and the interaction of numerous EU, Member State and third country ministries and agencies.

There are other concrete elements to the Global Approach. Readmission agreements are a critical component of external cooperation and have been agreed with a number of countries (including Moldova), both locally, in the Balkans region, and further afield, with Hong Kong and Macau. They place significant obligations on the partner state, which not only agrees to take back illegal migrants who come from the country, but also those who have travelled through it to reach the EU.

In return, the EU has typically offered facilitated entry for certain categories of travellers, such as business people, students and researchers, from the partner state. Given the infrastructure required to implement a valid returns policy in the partner country – and the fact that they, in turn, have to strike agreements with other countries of emigration – visa facilitation seems a very small prize. Indeed, a number of countries to the South have resisted readmission agreements.[37] A number of organisations have also expressed concern at the potential abuse of human rights which may result from the enforcement of readmission agreements, particularly in partner countries with less developed asylum systems.[38]

Beyond visa facilitation, a staple of the incentive scheme for partner countries is funding. Such funding for third countries to improve their management of illegal migration and border control is long-standing, and forms a core element of the European Neighbourhood Policy as well as the Thematic Programme with non-EU Member Countries in the areas of Migration and Asylum (which follows on from the AENEAS programme). However, while the EU has prioritised the funding of border management support initiatives in third countries, funding migration and development-related initiatives is also critical for success.

In addition to these broader concepts, the EU launched a flagship initiative in late 2008 in Mali: the Centre for Information and Management of

Migration (CIGEM). Initially envisioned as a 'migration centre' and potential channel of entry to the EU for seasonal workers, students and researchers, among others, the final product was a much less grand affair.

Labour migration – rhetoric and reality

The demographics are stark. Over the next 40 years, the number of over-60s in the EU is expected to increase by 60 million, while the working age population will decrease by 60-80 million.[39] This is the result of a demographic imbalance in the current population (the ageing 'baby boomers') combined with lowered fertility and increased longevity. The critical question is to what extent this gap can be filled by increased migration.

European Council conclusions repeatedly note that the EU's demographic and economic future will require increased labour migration. Yet to date, legal migration has been the most difficult policy area to move forward, not least because of the current institutional set-up. Common standards already exist for some categories of legal migration, on issues such as family reunification and long-term residence, with economic migration remaining the last major category to be addressed.

Thus, the development of a common policy for economic migration has been a priority over the past five years. However, despite some ambitious initial objectives at the turn of the century, the current policy plan is not far-reaching: a Framework Directive to deal with application procedures and the rights of third-country migrant workers, and four 'sectoral' directives dealing with high-skilled workers, seasonal workers, intra-corporate transfers and remunerated trainees. The Blue Card scheme was adopted in late May 2009, while the Framework Directive is bogged down in negotiations in the JHA Council. The other three proposals are now expected from the Commission in 2010.

The Framework Directive itself offers very little which is new, merely codifying existing employment and social rights. Rather than creating harmonised standards, it requests that Member States treat third-country nationals equally in certain areas, in line with the approach taken in other employment legislation. This is because harmonising such rights could put migrant workers in a more advantageous position than their national counterparts if the harmonised EU standards for migrants were higher than those applied to national workers.

Similarly, the Blue Card scheme does not seek to replace national systems for attracting highly-skilled workers, but is instead an additional entry channel for potential migrant workers (see box).[40]

Blue Card

The Directive on the Entry and Residence for High Skilled Workers – proposed in late 2008 and a key element of the Policy Plan on Legal Migration – was finally agreed in the Council in May 2009, and will come into effect in June 2011.

To qualify for a *Blue Card*, applicants must have a job offer (for at least one year), professional/educational qualifications (a three-year course or five years' professional experience), and meet minimum salary thresholds in the Member State in which they want to work.

After two years, Blue Card holders will be allowed to work in another Member State, but will need to meet the job offer, salary and qualification requirements of – and any specific labour market tests introduced by – the second Member State.

Blue Card holders will have some advantages: members of their family will be able to join them within six months and have the right to work; they can accumulate the five years of residence required for Long-Term Resident Status in different Member States (a privilege not available to other migrants); and they will be allowed to leave the EU for up to 12 months without losing their Blue Card status, enabling them to return home temporarily without 'losing' rights in the EU.

The Blue Card's incentives have been criticised for offering insufficient 'carrots' to attract the skilled workers which Europe needs. Certainly, one of the key elements of the original proposal – the right to freedom of movement within the EU-27 – has been removed, as Member States feared that this would lead to a 'rush' for the best jobs with the best wages, with migrant workers flooding into some countries while deserting others.

This caution has hindered the growth of this policy area. The Framework Directive is stuck in Council negotiations, and the Commission will most likely table a new proposal under the new Lisbon Treaty rules. The remaining proposals on Seasonal Workers and Intra-Corporate Transferees have also been delayed, pending the entry into force of the Lisbon Treaty.

In addition to developing new common standards, the Commission has focused on the implementation and interpretation of existing directives. As noted earlier, its recent evaluation of the implementation of the Family Reunification Directive highlighted poor and uneven transposition by the Member States.

Several high-profile cases – such as Metock – also suggest that clashes between the free movement principle and national immigration policy will increase in the future. The Metock case involved the third-country spouses of EU citizens resident in a EU Member State other than their own. A number of Member States have put in place rules limiting the ability of non-EU spouses to join nationals, with the goal of addressing forced and fraudulent marriages, but the European Court of Justice ruled that this impeded EU citizens' right to free movement.[41]

The political fallout from this ruling prompted the Commission to look more closely at the issue. Although the case was brought against Ireland, other countries (such as Denmark) had a serious interest in its outcome. It also raised the deeper issue of sustainability of the two-track approach to immigration policy – free movement for EU citizens and limited policies for third-country nationals – if, as expected, these flows become increasingly mixed over time.

The sectoral approach to building common immigration policies is designed to ensure progress in a politically feasible (and easily digestible) manner. However, using the current approach as a base for further construction will be difficult, and may compound the complexities involved in identifying the legal basis and rules which apply to each individual migrant, particularly one who changes 'track' during his or her stay (i.e. arrives in order to work and then marries an EU citizen).

After a decade of moving towards harmonisation in a variety of immigration and asylum policies, there is a conscious and definite shift towards more practical forms of European cooperation. However, work continues on creating common policies, and it remains a core focus of the long-term plan for immigration and asylum policies.

Many commentators are optimistic about making progress in the area of legal migration under the Lisbon Treaty, which signals the end of the unanimity requirement in the Council for immigration policies and should, in theory at least, open up the path to greater agreement. In practice, however, this may take some time – having less individual control over the outcome may make Member States less willing to embark on ambitious

projects in this area. This is arguably borne out by the limited proposals of the Stockholm Programme in this respect.

Finally, and most importantly, regardless of any voting changes, the Treaty explicitly states that Member States retain the sole right to determine "volumes of admission" for work purposes.[42] This continuance of the *status quo* with regards to competence limits the ambitions of any common immigration system at the European level.[43]

Integration policy – a low-key agenda

The integration of migrants in Europe has been a hot topic over the past five years, with a number of high-profile developments in a variety of European countries. In 2004, the Hague Programme highlighted integration policy as a priority linked to the EU's emerging immigration policy and created 11 Common Basic Principles for Integration – a framework of guidelines for Member States to develop their national policies which has become the cornerstone of integration policy at EU level.

At the time when the Common Basic Principles on Integration were drafted in 2004, it was expected that the proposed Constitutional Treaty would provide a legal basis for some integration policies.[44] Five years later, the successor to the Constitution, the Lisbon Treaty, is only now coming into force. Thus, integration policies have been formulated and implemented in a quasi-legal limbo over the past five years. Even so, a great deal has been accomplished both in policy terms and in the political debate.

The EU is a 'distant' policy-maker even in areas where there is political consensus concerning goals and outcomes. Integration policy is a complex policy area with many diffuse concepts and one which manifests itself most concretely at the local level. Thus the gap between the EU as a policy-maker and integration policy-in-action is very wide. The first five years of EU integration policy have been focused on creating mechanisms to reduce this gap, with the mantra of offering 'added value', and the European debate has developed in several ways.

Political discussions at the European level have been a driver for national action. Annual ministerial meetings on integration – most recently in Vichy under the French Presidency – highlight priorities for common action.[45] These are not legally binding, and certainly not all-encompassing, but can

push Member States to think harder about certain aspects of integration, such as the education of migrant children.

The European Commission has also launched a number of projects over the past five years designed to provide direct links between technical experts on integration across Europe, circumventing the often difficult and overly politicised national debates. Policy-makers from the Member States – designated National Contact Points – meet frequently to discuss the implementation of policies and projects. At this level, the challenges and opportunities can be strikingly similar across Europe, and these links can help with policy formulation as well as exchanges of information. Finally, while progress on integration policy may seem glacially slow, the introduction of new concepts and ideas and the gradual creation of common ground and language have had an almost invisible but nevertheless real impact on the policy-making framework.

The EU's role to date can be boiled down to three main functions.

First, the Common Basic Principles created a broad framework highlighting both key aspects of integration policy and ways of ensuring that these policies are implemented properly, as well as anchoring European values more concretely. However, due to differences between the Member States and a more general lack of consensus on integration policies, this framework has yet to evolve into a more detailed roadmap for integration.

In addition to standard-setting, the Commission has put in place a number of mechanisms to make it easier to exchange information and highlight common issues. This has formed the bulk of the work of the last five years, with several editions of the Integration Handbook and the development of the European Integration Forum and the Integration Portal, both launched in April 2009. The latter initiatives are designed to involve civil society actors and other stakeholders in the EU's work. Information exchange can seem a hopelessly open-ended exercise, but it has had the multiplier benefits of building trust and strong relationships between practitioners.

Finally, the Commission has established an Integration Fund for the 2007-13 budgeting period which is designed to support Member States' own integration priorities as well as directly funding pan-European integration projects. In addition to providing money, the fund has the potential to ensure the coordination of funding priorities across the EU, and some very basic standardisation in the type of integration support offered.

II. Core priorities for the implementation of Stockholm

The above analysis demonstrates that work to develop common immigration and asylum policies has been uneven at best, and suggests that significant challenges remain in developing a comprehensive approach to migration appropriate to address the complexities of a modern, globalised world.

A number of political and administrative barriers inhibit progress in some policy areas, such as asylum and legal migration, while a combination of factors fuels progress in others, such as border control and the external dimension.

Given these constraints, this paper highlights three areas which are core to the existing remit of the Justice, Liberty and Security (JLS) portfolio, and which may be pursued with renewed vigour within the incoming Commission's term of office. These policy areas would benefit both from new leadership – both within the Directorate-General and the *Cabinet* – while splitting the JLS portfolio between two Commissioners may reduce the tension between policies which to some extent conflict in terms of both goals and instruments.

These areas are the central tenets of the Justice and Home Affairs (JHA) domain at the national level: border control, asylum, responding to undocumented migration, and securing fundamental rights and citizenship. These are not only critical areas which need to be addressed within the JLS portfolio, but also ones which fall most clearly within its competence and expertise. No other Directorate-General can tackle these issues, and the links between these issues and other JLS priorities are stronger than elsewhere in the EU machinery.

However, this is not to suggest that these priorities should be pursued in isolation from external relations' policy on immigration, economic migration or long-term integration strategies. Instead, it highlights the areas in which JLS can make meaningful progress, while leaving some other aspects of immigration policy to be pursued in other portfolios which are better suited to address the challenges involved.

Reconciling border and asylum policy

Many question whether policies to promote freedom and security are compatible with one another. Security of the person and the state, it is argued, often comes at the expense of civil liberties.

Cooperation to manage the EU's external borders juxtaposes freedom and security differently: namely, security at the external border is a prerequisite for freedom of movement within the Union. However, this security may inhibit the freedom of those who wish to claim protection within Europe from persecution, and the ambitions of the EU to build a Common European Asylum System capable of offering genuine protection. With many of the building blocks now in place for common border and asylum systems, the next phase of construction faces one fundamental challenge: ensuring compatibility between assessing asylum claims effectively and protecting borders effectively, without compromising the protection of fundamental human rights.

An imbalance in political action is evident in the development of these two policies. External shocks, such as terrorist attacks and a perceived rise in unauthorised border crossings, have galvanised border management cooperation. In the same period, the number of asylum-seekers has fallen, with an attendant reduction in concern among politicians and publics alike across most of Europe. Although they are separated in key policy documents, border and asylum policy have become inextricably linked, raising a central question: are they compatible, or on an inevitable collision course?

The EU's southern external borders bring these two policy areas together in stark terms. While, in absolute terms, border crossings to the East are higher in number, the nature and origins of border crossings to the South – by boat from North Africa and across the Mediterranean to several particularly favoured landing points – have raised a number of operational, legal and foreign policy issues for border control and asylum experts. These are high on the political agenda, but point to a much more fundamental problem with the current state of EU border and asylum policy.

The most pressing issue, from the perspective of the Member States themselves, is how Europe can share its humanitarian obligations more equitably. Several countries, particularly those at the Southern borders of the EU, feel that they are bearing a disproportionate share of the responsibility for those who arrive at their borders without documents and, in some cases, in need of asylum. While this issue has been brewing for some years, it came to a head in 2009, with the Quadro Group formally putting forward their objections[46] and JHA meetings filled with discussions on possible solutions.

Other Member States, while sympathetic, highlight the need for all countries to meet their EU responsibilities regarding both external border control and

the reception of asylum-seekers arriving on EU territory. Meanwhile, external observers are concerned that actions taken by a number of Member States, notably Italy, are in violation of international humanitarian obligations, particularly the *re-foulement* (return without assessment) of potential asylum-seekers to countries such as Libya, and disagreements over who has responsibility for particular groups of migrants picked up in the Mediterranean. Member States' interests may not converge, but it is the individual migrants and asylum-seekers who are held hostage to these political and legal disputes.

Less visible, but more intractable, is the issue of interception and responsibility for those picked up in the water *en route* to Europe. Draft guidelines to establish who would be legally responsible for those picked up and how they should be treated remain bogged down in negotiations. There is also a great deal of uncertainty about how Frontex-led operations can legitimately intercept vessels given that Frontex itself has no clear legal identity,[47] despite a number of international legal agreements which cover the interception of refugees and asylum-seekers at sea.[48]

These issues need to be addressed urgently as the number of border crossings shows little sign of falling, and reports of deaths and injury remain constant. UNHCR figures show that the number of irregular arrivals by sea increased by roughly one-third in Malta (from 1,800 to 2,700) and Italy (from 22,000 to 36,000) between 2006 and 2008, while they dropped by more than half (from 32,000 to 13,400) in Spain. These figures are mirrored in Frontex data. Meanwhile, reported deaths number in the hundreds, with many more unconfirmed.[49]

Proposed solutions have skirted round the central issue and have focused instead on:

1) Increasing the operational responsibilities of Frontex.
2) Offering greater financial and human resources to those countries most affected.
3) Developing a voluntary mechanism for relocating those who arrive in Europe and require humanitarian protection.

This misses the point, namely that difficult choices need to be made. It is clear that many of these problems stem from the fact that both border and asylum policies remain incomplete projects and there is little political will

to complete them. While the Directorate-General for Justice, Liberty and Security (DG JLS) puts forward long-term proposals to achieve this, the JHA Council remains focused on short-term fixes.

Taking responsibility

At the heart of this debate is the simple question: who is responsible?

This has several dimensions. First, Member States want to retain control over their own borders, yet are sometimes reluctant to take full responsibility for those who cross them. They retain responsibility for the effective functioning of their asylum systems, yet do not always seem capable of fulfilling the obligations this places on them. A number of Member States have been criticised for treating detainees poorly, particularly children, and for the length of procedures which asylum-seekers have to endure in a legal limbo.

Second, the concepts of 'solidarity' and 'burden-sharing' follow on from one another. Solidarity requires all Member States to uphold the European and international obligations they have committed themselves to, such as the Dublin Convention, which states that asylum-seekers should be processed in the first country they arrive in.

Burden-sharing, meanwhile, refers to the need to balance the effects of these commitments by deviating from the strict letter of the law through, for example, the re-location of asylum-seekers who arrive in one particular region of the EU. Countries which do not uphold their commitments cannot then call for their burden to be shared. This is particularly pertinent for Italy and its refusal to accept spontaneous arrivals over the summer.

A third dimension is 'agency' and the fact that some aspects of each process, but not all, are in the hands of a common actor or are dealt with by pooling operational resources.

Frontex is currently being asked to develop its role and competence as both a controller and service provider, yet remains dependant on Member States' will and devolved resources. While it coordinates operations, enforcement is the responsibility of the Member States. In 2008, this led to considerable delays in the joint Operation Nautilus, as Malta and Italy fought over responsibility, while in 2009 Frontex was implicated in the interception

(interdiction) and return of migrants to Libya.[50] This creates a great deal of uncertainty, and will reduce the credibility of Frontex's actions over time. It may also be further compounded if the European Asylum Support Office is set up with a similar dual function.

Responsibility thus needs to be dealt with in three ways.

First, the two common projects – Integrated Border Management and the Common European Asylum System – need to be completed, and steps taken to ensure that standards are not eroded in the Member States' own border and asylum systems. In the run-up to the enlargement of the Schengen area, the newer Member States were subjected to numerous tests and evaluations to ensure all external borders would be equally secure. This type of rigorous checking needs to be continuous, applicable to all Member States, and some form of sanction made available to the EU to deal with those who do not meet their obligations.

Second, Member States must prioritise the establishment of clear rules of legal and operational responsibility for all aspects of border management and asylum decisions. Developing a clear legal and operational basis for Frontex is an essential part of this to ensure that European cooperation does not absolve Member States from their individual obligations. It is also essential to clarify the law of the sea regarding migrants picked up in international waters – particularly through joint operations.

Alongside the legal framework, a number of guidelines for managing external borders through joint operations are still being negotiated. These soft laws are essential for effective implementation and critical to ensure that those apprehended at borders are treated uniformly and equitably, regardless of location. Efforts to agree these guidelines, with reference to the European Court of Justice if necessary, should be prioritised.

Thirdly, and finally, clarity includes ensuring a consistent approach towards third countries. While Italy has been rightly vilified for returning migrants to Libya – a country with a track record for treating migrants poorly[51] – several Member States (the Netherlands, Malta and, most recently, France) have called for a readmission agreement to be negotiated.[52] This is questionable: the EU should not compromise upon important fundamental principles in the pursuit of a single policy goal.

Creating balance

The above analysis suggests that the two policy areas – border and asylum – should be developed together. While this is true to some extent, policy-makers should also give stronger consideration to the indirect impact of one policy initiative on another.

However, the next Commission also has the opportunity to reinvigorate policy development in both areas by separating responsibility for them. Much of the tension between the two has stemmed from the fact that a single Commissioner and Directorate-General have been required to pursue two very different policy goals at the same time: securing borders while protecting individuals.

The creation of two Commissioners for JLS policies could resolve this tension: border issues would fit perfectly within a Migration and Home Affairs Commissioner's portfolio, while making a Commissioner for Fundamental Rights and Civil Liberties responsible for the development of the Common European Asylum System would ensure that the essential tenets of asylum policy are upheld.

This separation can be realised at all levels of European policy. It has been noted that Frontex's capacity in terms of asylum protection is far from exhausted, and it is to be hoped that the European Asylum Support Office will work closely with Frontex to ensure that operations are not solely about policing borders, but also about ensuring access to asylum where possible. Specific measures, such as international protection training for all officers involved in Frontex operations and the recommendations contained in the UNHCR Ten-Point Plan of Action on Refugee Protection and Mixed Migration, are examples of how this can be done.[53]

Establishing a Commissioner with responsibility for rights and liberties should also allow other actors to play a stronger role in policy implementation. The European Court of Justice (ECJ) has become a key player with respect to the implementation of harmonised law, and has highlighted a reluctance amongst some Member States to apply the Community method. The ECJ has condemned countries such as Greece and Denmark for failing to implement EU asylum directives, and has even intervened in individual cases, reversing the Dutch decision to refuse protection to an Iraqi asylum-seeker in February 2009.[54]

Policing rights

The Commissioner for Fundamental Rights should also see it as part of his or her role to act as a watchdog for less attention-grabbing policy developments, such as the gradual expansion and use of technology and data collection within the area of border control. In particular, there is an opportunity to give serious thought to the ultimate goals of, and parameters for, border control mechanisms, and the implications for privacy and data protection rules.

A number of databases – the Schengen Information System (SIS) and Visa Information System (VIS) as well as EURODAC (which collects and stores information related to asylum claims) – have been developed in recent years. Technology is being used ever more widely in modern border systems, leading one expert to note that the removal of internal borders within the EU has merely led to the creation of 'invisible' borders.[55]

But these developments are not without their problems. There have been increasing political concerns over the upgrade to the SIS II following delays and problems concerning data consistency and performance, and a number of interim solutions are being put in place.[56] Officials are placing a great deal of faith in expensive systems which may or may not genuinely contribute to enhanced security and which have widened access to such databases beyond their original intent. An example of this is the proposal to extend access to EURODAC to law enforcement agents for use in identifying possible criminals, which was requested by the JHA Council in 2007.[57]

While taking advantage of technological advances is clearly important for effective border management, a set of clearly-articulated goals and parameters within which these technological developments operate is also needed, as well as a sense of proportion in assessing what purpose such innovations can serve. This is the area which affects the individual liberties of both EU citizens and third-country nationals most directly and frequently, from the collection of passenger data to visa information. Much of the recent activity has been reactive – responding to new threats, political priorities (not least in the area of foreign policy) and technical problems – rather than part and parcel of a developing architecture.

The 'new' Commissioner could – and arguably should – review the principles under which this data is transferred, as a number of observers

have suggested that the existing safeguards are insufficient to protect individual rights and civil liberties, including those of EU citizens. A comprehensive and objective evaluation of all aspects of the integrated border management system should be undertaken as a priority before the technological and operational aspects of external border control are developed any further.

Dealing with undocumented migration

As the above analysis suggests, the EU finds it far easier to focus on illegality than on providing access to Europe's shores. Indeed, one of the 'success' stories of the past five years has been the development of common legislation on how to send back migrants found working or living illegally within Europe's borders.

Work to date has taken a narrow approach to undocumented migration, focused on preventing unauthorised entry and expelling those who do not follow the rules. The 2008 EU Immigration Pact reinforced this approach, with all Member States committing themselves to uphold the principle of return and to 'only' using regularisation (the process through which an undocumented migrant may gain legal status) on a case-by-case basis.

The Stockholm Programme also adheres to this approach, but while this may be politically convenient, it ignores the reality of undocumented migration across Europe.

Estimates of the number of undocumented migrants run up to as many as eight million across Europe. A recent project to estimate the number more precisely highlighted the difficulties in coming to a realistic figure, given undocumented migrants' clandestine way of life and the fact that many of them are in a grey area, perhaps with some form of visa but no work permit, or caught in limbo within an immigration process. Even so, the upper end of their estimate was six million people.[58]

EU legislation to sanction employers who hire these immigrants illegally has also been passed within the last couple of years, although experience with sanctions has varied widely across the industrialised world. It relies strongly on the level of resources – both human and financial – governments are willing to put towards employment and workplace inspections, and subsequent prosecution.

While return is trumpeted as the ultimate solution – whether voluntary or enforced - the real and potential financial cost of such an approach is kept much quieter. Beyond the costs of detention and flights, there is the cost of the incentives offered to those who choose to return voluntarily. More damaging in the long term – for a continent of countries built on the principles of liberal democracy – is the treatment of those migrants at the various stages of the process, particularly when this process is long and drawn out.

So what other options exist? Since the Spanish decision to hold an amnesty in 2005, which resulted in just under 600,000 migrants obtaining work permits, the EU has been called upon to find mechanisms to prevent individual Member States from introducing such policies. This puts the EU in a difficult and unusual position with regards to immigration policy, as its central *raison d'être* is to create common policies rather than ban individual ones. The 2008 political agreement enshrined in the Immigration Pact side-stepped the issue by essentially creating an inter-governmental agreement, which the Commission could then monitor.

It is interesting to note that, despite this commitment to avoid holding 'mass' regularisations, several countries have begun amnesty processes since 2008. The Belgian government has just completed a two-month procedure to offer legal papers to all those who meet terms set out by legislators, including how long they have been in the country (at least five years) and evidence of a commitment to integrate into the community, with around 25,000 estimated as eligible to apply.

Belgium is not alone. Italy is also offering a number of undocumented migrant workers the opportunity to live and work legally. Meanwhile, high-profile cities such as London are calling for the right to regularise what has become an unseen but critical workforce in their societies, and one which is also vulnerable to exploitation as long as it remains unrecognised.

To the untrained (and even trained) eye, these would seem to be precisely the sort of 'generalised' amnesties which European governments forbade themselves from launching. Indeed, other Member States have been angered by the Italian and Belgian moves, even though almost every Western European state (except Finland) has carried out some form of regularisation in recent years. According to the International Centre for Migration Policy Development, more than 40 regularisations have taken place across Europe over the last decade, giving legal status to over three million people.[59]

Why are amnesties so disliked by European governments, and yet so widely used? Regularisations are not a perfect policy choice: they appear to reward wrong-doing and may encourage others to follow the same path. Most importantly, they are not a long-term solution, but rather a stop-gap measure or valve. Most countries which have held one amnesty have launched several others. At root, amnesties are a very visible admission of failed policy. To offer legal status is to accept that: a) undocumented migration exists; and b) identifying, rounding up and deporting every undocumented migrant is unfeasible (and expensive).

Yet, quietly, most governments do accept this. Liberal democracies can only go so far in policing their borders if they are to continue to respect individual fundamental rights and civil liberties, whether of their own citizens or those from overseas. Despite draconian laws and controls, even dictatorial states such as North Korea are unable to prevent unauthorised border crossings (usually in an outward direction). In any case, the majority of those termed *"les sans papiers"* would be more accurately described as *"les papiers expirés"* or visa-overstayers, and finding them can be notoriously difficult for busy and under-resourced government officials.

Finally, there is the unpalatable and rarely articulated reality that undocumented migrants fuel the economy, working below the minimum wage, in poor conditions and for long hours. While politicians shout about the need to 'select' migrants according to their education and skills, this does not reflect the realities of migration in a globalised world. Governments must decide between blind-eyed acceptance of a shadow foreign workforce, or hope that a mass regularisation fills vacancies in the low-skill sectors of the economy in which nationals are so reluctant to work.

Regardless of political declarations, amnesties are not going to become a thing of the past. It seems that, for now, such efforts will be undertaken furtively by all but a few European countries. This undermines the credibility of both the EU Immigration Pact and the common public position of the EU's Member States.

Amnesties should not be considered a universal panacea for unauthorised working and residence. Spain, proud of its huge legalisative effort in 2005, now faces high levels of unemployment, particularly of non-nationals. Without work, many migrants may lose their legal status, but many of these may still not return home. However, ignoring the reality that border control

and return are necessary but insufficient responses to undocumented migration is equally dangerous in the longer term, and fuels the idea that a shadow economy and shadow community is tolerated in Europe.

Rather than pursue ineffectual 'mutual information' mechanisms, or meaningless commitments in the Council (in effect, all regularisations are made on a case-by-case basis, which negates the substance of the agreement), the EU could consider taking the initiative to draft some basic common rules for Member States on regularisation policy. This would recognise that amnesties will be a reality in Europe for the foreseeable future, while setting reasonable parameters for their use.

Potential elements include the possible parameters for regularisation – length of stay, employment history, length of administrative processes – and common rules and processes for determining eligibility. Such a law would also be able to eliminate the more capricious aspects of some regularisations. For example, the Italian amnesty only focuses on undocumented care workers – as a 'valuable' workforce in a rapidly ageing society – while well-documented exploitation in the agricultural sector is allowed to continue. Common rules would be able to prevent the prioritising of certain types of worker over others.

A proposal for a European regularisation policy would have to remain optional, as Member States would remain free to choose if, and when, to launch such processes. The Lisbon Treaty reaffirms that Member States retain the right to determine the entry and stay of third-country nationals. However, such a policy would help to bring more coherence to the very different policies pursued within the EU.

Such a proposal would be controversial and would be perceived as a U-turn by the EU, something which JLS policy-makers are not used to. But it is noteworthy that while the issue of amnesties strongly divides policy-makers in the United States, almost every proposal for comprehensive immigration reform has contained some form of amnesty and future US reforms are also likely to do so. While disliked as a policy option, it cannot be ignored.

Embedding rights and citizenship

The integration of third-country nationals has been a difficult area for JLS to tackle.

The very different integration 'models' and philosophies across Europe are a significant limitation to catalysing discussion on integration. While some Member States have yet to think seriously about migrant integration, others have developed ideas which are strongly rooted in national self-perception, and consequently subject to fierce public debate, such as the French emphasis on *laicité* (secularism) or the Dutch focus on multiculturalism. This has frequently proved to be a barrier to creating a more detailed European integration 'model' which moves beyond the Common Basic Principles.

Three issues are critical for future integration:

■ a more substantive assessment of how migrant rights can be enhanced within Europe, and the role of EU citizenship for third-country nationals;
■ the EU's role as a standard-setter for integration in Europe: can it be a watchdog for integration policies, or develop its role as a hub for exchanging experience and ideas?
■ the urgent need for policy-makers to address the impact of changing concepts of immigration on integration strategies for migrants – in particular the effect which increased mobility, whether 'circular' or otherwise, will have on integration policies geared towards permanent settlers.

This paper argues that integration policy in its broad sense should not be a priority for JLS policy-makers over the next few years. Instead, the first priority – maintaining a strong set of rights for migrants, and establishing clear rules on access to citizenship – should be their main area of focus.

Fulfilment of the EU's role as a monitor of socio-economic developments is, in fact, far better suited to the employment and social affairs portfolio (Chapter IV), while the changing nature of immigration and subsequent effect on integration policies is an issue for Member State governments seeking to implement the mobility ideals of the Global Approach.

Legislating on integration and rights

The central question is whether there is room for more harmonisation of the rights of migrants in Europe and the parameters of integration policy. Certainly, many of the moves towards harmonisation with respect to legal migration – not least family reunification – have had an impact on integration strategies within Europe.

The current focus is on the possible development of a European set of rights and responsibilities for migrants in the EU. Some Member States have already done this, and have in some cases translated these rights and responsibilities into 'contracts' for migrants.

The approach to date has been a predominantly negative one, focused on 'codes of conduct' and 'contracts' which migrants should adhere to, rather than offering rights and a clear legal basis for integration policies. The EU's track record in harmonising immigration rules has also led to a lowest common denominator approach so far which does little to bolster the rights of third-country nationals. Indeed, the code proposed by the Stockholm Programme would do no more than consolidate existing rights for migrants – and, as such, it may provide very little value-added.

For this reason, the idea of a code of rights should be revisited on the basis of a broader approach to fundamental rights. The Lisbon Treaty makes the European Charter on Fundamental Rights legally binding. The vast majority of its provisions are not limited by nationality, though non-nationals may find it harder to ensure respect for those rights. Exceptionalism – classifying migrants as similar, but not quite, EU citizens – does nothing to improve integration in Europe, so any code of rights should focus on enhancing similarities rather than entrenching differences.

Developing a Charter on Basic Rights for Migrants would ensure clarity for third-country nationals. Enshrining basic rights for undocumented migrants within such a charter – such as the right to health, education for children, and judicial rights during asylum or deportation processes – should also be considered.

Finally, as well as substantively solidifying the rights of migrants in Europe, regardless of how long they stay, the Commission should also focus on how to ensure the use of these rights in practice – i.e. how to ensure equal opportunities – and re-evaluate the emerging tendency to link rights to individual migrants' skills sets and usefulness.

Common access to citizenship

One potential drawback of a debate on rights is that it sidesteps any discussion of citizenship for migrants in Europe, a debate which has been largely lacking in recent years. While many countries have reviewed access

to nationality – in some cases introducing language and civics tests (knowledge of government institutions, history and, in some cases, culture), lengthening or shortening residence periods before application and reconsidering the merits of dual nationality[60] – there has been no move to create EU common standards or models.

On the one hand, basic rules on access to nationality would introduce some clarity for migrants across Europe. Currently, waiting times range from three to ten years and the conditions of access can differ even between regions.[61] On the other hand, there are concerns that legislating on citizenship at the European level in the current climate would result in strict limits being placed on access to nationality, which may not be in Europe's long-term interest.

Issues which could be tackled at the European level include whether migrants can retain dual nationality, the length of residence before they qualify for citizenship, and the parameters of citizenship testing, including limits on costs and the levels of knowledge required. While there has been some convergence in recent years, guidance on how far individual states can limit access should be seriously discussed.

Monitoring, comparing and exchanging

Beyond formal legal rights, the EU has set itself a role as a standard-setter for the integration of migrants, using non-binding political statements – such as Ministerial Declarations, the Common Basic Principles and various Commission Communications – rather than legal harmonisation. Having established a range of communication tools over the past eight years, from the National Contact Points to the Integration Handbook and the newly-established civil society Integration Forum – the EU is at a crossroads in terms of what type of player it wishes (and is allowed) to be in this policy area: legislator, watchdog, evaluator, standard-setter, bench-marker, teacher, manager, or a little of each?

There is scope for the EU to play a stronger role, monitoring the actions of Member States and intervening when policies stray from European values. Recent months have seen the Commission take a stand against Italian policies towards migrants deemed incompatible with existing EU rules, yet while it has funded systematic reviews of national integration policy,[62] it has not intervened in any systematic way. While setting standards and ensuring that Member States abide by them is appealing to many, a review of political

attitudes towards EU integration policy suggests that Member States would resent such supra-national intervention.

However, the creation of a Commissioner for Fundamental Rights also provides an opportunity to develop a watchdog for all Europe's residents – EU citizens and third-country nationals alike. A key element of this Commissioner's portfolio could be to develop a monitoring role, ensuring the correct implementation of integration policy and responding to policy developments in Member States which may conflict with EU laws.

There are already examples of the Commission playing this type of role, with the publication of evaluations of implementation of the Family Reunification Directive and the application of free movement of workers as it pertains to third-country spouses.[63] To date, Member States have not responded to such evaluations, as distinct from rulings from the European Court of Justice, but a more concerted role for the new Commissioner, with added 'teeth', would shift a debate on rights and integration from rhetoric to real policy.

III. Beyond Stockholm I:
developing a coherent external relations policy

The external dimension of migration – a concept known as the Global Approach to Migration – has increased exponentially over the past few years in both the range and depth of policy ideas and dialogues with third countries. Until now, this has been done under the aegis of the Directorate-General for Justice, Liberty and Security (DG JLS), which has forged partnerships and developed ideas on how to strengthen the links between migration and development.

The purpose of this chapter is to highlight some of the challenges which the Global Approach faces in the next, critical, stage of implementation, and consider the potential of other policy portfolios to take the lead in implementing and developing external relations strategies on migration, not least the External Relations (RELEX) and Development (DEV) portfolios, but also integrating migration ideas into the broader concerns of DG TRADE.

Challenges for the Global Approach to Migration

The Global Approach is ripe for development, not least because it has captured the imagination of policy-makers at both national and European level. But it is by no means simple to implement. This paper has outline the various tools and dialogues which have been developed to accomplish this, from mobility partnerships with particular third countries to information centres for migration such as CIGEM in Mali. Many of these are in their initial pilot phase, and are only now being evaluated by the partners involved.

Despite this nascent development, three challenges can be identified: common interest, complexity and competence.

Common interest

One of the most oft-levelled criticisms is that the Global Approach is merely re-branding the externalisation agenda of old; i.e. that the EU wishes to offload responsibility for border control and migration management onto countries which surround the EU area. It is certainly a difficult accusation to avoid when the vast majority of 'incentives' relate to support for third-country efforts to combat illegal migration.

The readmission/visa trade-off goes to the heart of the challenge facing policy-makers in ensuring that the Global Approach is more than rhetoric and dialogue. While Council Conclusions on external cooperation have emphasised the need for 'genuine and balanced partnerships', the EU has very little competence to offer third countries a 'genuine and balanced' partnership in terms of immigration alone. Visa facilitation has been criticised by some of the partner countries involved, notably Ukraine, as failing to substantively improve conditions for travellers, while funding is predominantly directed at border management programmes.

The success of the Global Approach relies heavily on the overlap between the EU's interests and those of third countries. Even if partners are willing to cooperate on illegal migration, they may have little interest in cooperating on legal migration. The European approach – confirmed in the EU Immigration Pact – of selecting migrants on the basis of skills and national needs has little in common with the developing countries' desire to maintain a greater hold on their own skilled workers. Any successful Global Approach has to find ways to ensure that 'brain drain' is reduced.

Finding enough willing partners may also be difficult, and the initial goodwill of partners in regional dialogues such as the Euro-Africa Ministerial Conference on Migration and Development is fading fast as few concrete proposals are put in place.

The lack of obvious common interest is not insurmountable. Potential partners in the EU's neighbourhood region may have a particular longer-term strategic interest in this, while others (such as India or China) may have economic interests which align, Finally, there are some countries which have a surplus of skilled workers, such as the Philippines. There is also a less quantifiable value in trying to reach out and generate a dialogue with both sending governments and migrants themselves. However, such a dialogue would benefit from being able to encompass a broader range of issues.

Complexity

The Global Approach has adopted a case-by-case approach to dialogue with third countries. While the word 'global' suggests a blanket application of policies across the world, in fact the number, type and depth of policies applied depend a great deal on the proximity and relative importance of

each country and region in migration terms. These policies are pursued through dialogues with various countries and regions (See Annex II).

Countries which comply with EU requests for cooperation become more important, just as those already involved in regional/neighbourhood dialogues are prioritised. Those seen as critical 'gateway' countries of origin or transit are also highlighted as priorities.

One of the big questions raised by this tailored strategy is how to best manage so many different priorities in such a large number of constellations. Even within some of the regional dialogues, there is significant competition between states. Within the Eastern Partnership, for example, Moldova has privileged status as one of the pilot mobility partners, while Ukraine is pushing for visa-free status and Member States remain deeply concerned about the suitability of Belarus for closer ties.

Beyond this, the large number of overlapping dialogues require a great deal of coordination by a huge number of actors. Some partner countries are involved in bilateral arrangements with the EU – specifically on migration, and more broadly on development and trade – as well as joining regional dialogue structures, both specific and general. The sheer complexity of all this is stretching the resources of the EU, to say nothing of those of third countries with far-more limited budgets and personnel.

This level of complexity also ignores the most important aspect: migrants themselves. The Global Approach talks about migrants at length but is currently an inter-governmental dialogue. Without sufficient communication with – and concern for the interests and views of – migrants, civil society and other social partners, the approach is not sustainable, yet there is scant capacity to improve this.

Coordination also has both a theoretical and policy dimension. While the migration and development debate has grown substantially over the past five years, the relative absence of development policy-makers, experts and professionals from that debate means the discussion can become one-sided, and occasionally poorly informed. Similarly, the desire to create common understanding on migration may impede and conflict with other policy priorities. The stated desire in one of the Commission's Communications on the Global Approach to create a dialogue with Iran on migration, for example, is both naive and potentially counter-productive.[64]

Increasingly, the Global Approach is touching on issues which do not fall within the JLS portfolio: dialogues with third countries focus on a wide range of issues, directed by DG RELEX, while mobility partnerships involve a number of employment and social issues. Not only do all the actors have to be cc-ed on the same e-mail, but they also have to be on the same page. There is still little evidence of this in practice.

Competence

The Malian CIGEM initiative, designed by DG JLS but implemented by DG DEV, highlights the central challenge to the credibility of the Global Approach. Initially envisioned as a 'European Job Centre' for potential migrants, the limited ability of the EU to offer work visas means that it relies on individual Member States using such a centre as a recruiting office themselves.

As a result, the pilot project has become a source of information rather than of visas for potential migrants. Indeed, around half of the enquiries during its first months of operation were from people with no formal education or only primary school education – at odds with the EU's stated preference for high-skilled migrants.[65]

In terms of competence, the EU is certainly limited in what it can offer third countries in exchange for their cooperation on illegal migration, and relies on Member States to offer rewards instead. Experience suggests that Member States have little political will to put substantive initiatives in place. Certainly, during the negotiations on the pilot mobility partnerships, they enthusiastically offered 'training and exchange programmes' for officials in partner countries, but little in the way of legal migration opportunities. Overcoming this may be difficult without using tools from other policy areas (such as employment and education) and encouraging Member States to commit to deeper partnerships with third countries.

Finally, the fragmentation of funding initiatives at the European level remains a problem. While there are numerous funds within the JLS structure (not least the External Borders Fund), the Global Approach relies on funding from the European Neighbourhood Policy Instrument, as well as the thematic programme on migration under EuropeAid, plus national funding for bilateral projects. The EU-UNDP Joint Migration and Development Initiative is an example of dedicated funding for EU-third country initiatives.

This fragmentation, along with the various application procedures and reporting requirements, can make a 'holistic' approach to external relations difficult for the EU institutions, and near impossible for an external actor to follow. It is clear, however, that DG JLS has the policies for a broad approach to external relations, but only has the money (and legal capacity) to implement initiatives related to borders and relies on cooperation with other DGs for the rest.

The key focus for the next five years should be on embedding the Global Approach. While the conceptual foundations of this approach have progressed significantly, implementation has yet to bear fruit and a number of the initiatives put forward over the past couple of years are little more than 'window dressing'.[66]

Integrating immigration priorities into foreign policy

The EU also needs to invest in broadening the Global Approach dialogue. This means investing in the emerging debate at the international level on the links between migration and development, currently manifested in the Global Forum on Migration and Development. The Stockholm Programme also needs to make explicit the links between the external relations dimension of migration and other policy areas, not least trade and development.

At root, the challenges and priorities for the Global Approach to Migration can be met by mainstreaming the concept into existing external relations policies outside the JLS portfolio. The challenges of coordination and competence, highlighted above, stem from the fact that while DG JLS is steering policy, it relies on other DGs to push its ideas forward. These are also DGs which have far more experience and expertise in managing complex negotiations and large numbers of partners.

This has an impact on the nature of the Global Approach. Depending on who is in the lead, it is either a foreign policy tool or an externalisation of existing JHA responsibilities, outsourcing EU actions to third countries. Different portfolios, at both national and EU level, have different interests, which can hamper the development of a coherent approach. While JLS develops and inserts its text into a broader framework in some dialogues with third countries, statements are made about migration with little JLS

input in others. An example is the Communication on the Eastern Partnership, for which there was very little consultation with JLS.

The central dilemma is to find a way of maintaining an approach which is flexible enough to incorporate various political and geographic interests while still producing concrete results. As noted above, partnership approaches are possible when there are strong existing ties and interests, but if these are not explored to the full, the gap between expectations and capabilities will widen.

Mainstreaming immigration into RELEX

The Lisbon Treaty opens up an opportunity for EU and national policy-makers to think through how to better integrate immigration into the broader external relations dialogue. There are many unknowns in this regard – the future structure of external relations, the future of different aspects of the policy, and the role of the High Representative of the Union for Foreign Affairs and Security Policy. However, some aspects can already be highlighted.

First, those responsible for external relations and neighbourhood policy already have an infrastructure in place for dealing with the numerous priorities and concerns of partner countries. As well as managing various dialogue structures, they can also manage competition between countries in a particular region, and have the communication channels in place to do so. Given that coordinating the Global Approach is resource-intensive – resources which DG JLS currently lacks – it would seem logical to integrate migration priorities into the existing dialogue mechanism rather than 'reinvent the wheel'.

Many potential partners have an even more limited ability to dedicate the personnel and finances needed to respond to requests and initiatives emanating from Europe. By establishing stronger coordination on the EU side, led by a single external relations actor, these limited resources can be deployed more effectively.

As noted above, shared interests between the EU and partner states are key to success, but may be limited in terms of migration policy priorities. JLS has prioritised cooperation on border management, but this is only one small facet of the EU-third country relationship. Merging migration interests more strongly with the panoply of EU external interests would increase the chances that partnerships on migration can be forged.

Considering other foreign policy priorities during migration dialogues is necessary, given the complex push and pull factors involved in managing migration in the 21st century. While the EU counts migrants, sending countries assess the effects of other EU policies such as trade and agriculture on the ability of their citizens to develop a livelihood at home. Those who cannot make a living at home may be more inclined to seek work abroad.

There are specific initiatives which, though not strictly about immigration, should be considered within a holistic external relations approach. For example, expanding programmes for student exchange and overseas investment in education, such as twinning European regions with third-country universities, would bolster education systems to ensure a surplus of required skills and avoid accusations of brain drain from partner countries. A number of projects have sprung up, such as the German University in Cairo, which not only seek to foster collaboration on academic issues, but also to ensure exchanges of students, information and ideas.[67] This type of work needs to be coordinated with the education and employment portfolios, but these initiatives impact on immigration flows and partnerships.

Equally, offering micro-credits and loans for start-up companies in third countries would support the development of a skilled workforce, some of whom may later migrate to the EU. This approach is more nuanced than the traditional temporary migration programmes of old, and looks at economic migration and partnership as a strategic partnership to improve the pool of skills and workers on both sides.

Incorporating a broader approach to migration dialogues with third countries is part of the ethos of the emerging migration and development debate. As noted above, development actors are insufficiently involved in the debates and dialogues on the nexus between the two issues at all levels, and particularly at the national level. Ensuring that migration becomes a core issue for development actors would hopefully lead to more balanced policy-making which facilitates – rather than conflicts with – long-term development planning.

The Stockholm Programme proposes the development of 'migration profiles' for all countries outside the EU, so that the Union can better assess its own priorities and potential concerns. This would not only involve collecting data, but also making a qualitative assessment of push-and-pull factors in the region.

However, DG DEV already produces Country Strategy Papers which guide its programmes for countries in the African, Caribbean and Pacific (ACP) group, which often (but not always) contain a migration profile. Similarly, reports are produced on all countries participating in European Neighbourhood Policy which frequently include some information on migration, although not as much as there could be. Enhancing and developing the existing, yet frequently sparse, reporting on migration within the Country Strategy Papers would be a more useful tool for development and external relations actors than creating an additional stand-alone set of papers.

Rethinking Council co-ordination

Just as the Commission faces challenges in coordinating such a sophisticated international approach, so a rethink is required in the way the Council works. A number of observers have argued that discussing the Global Approach in the JHA Council with interior ministers is unproductive, as very few of them have a foreign policy remit. Meanwhile, little or no attention has been paid to migration in the General Affairs and External Relations Council (GAERC), as foreign ministers have little remit for immigration policies. Indeed, GAERC Conclusions on migration are usually an exact reproduction of the relevant text taken from JHA Conclusions.

Yet this lack of interaction does not necessarily mean placid co-existence. There are, for example, occasional tensions between the two sets of ministers over the use of visa policies to achieve political foreign policy goals rather than to respond to more traditional security concerns.

Both portfolios would benefit from substantive input into the implementation of the Global Approach. As other elements of immigration policy have been stifled at the European level, the external dimension has given JLS a renewed vigour and profile on the issue. However, without a strong European migration policy, it has been argued that a JLS-led Global Approach would remain a 'conversation about a conversation', and continue to be dominated by the desire to stem unwanted migration flows.

In the Council, the work of the High Level Working Group on Asylum and Migration could be better integrated into the work of GAERC by requiring the Group to report to both the JLS Council and the GAERC, while select

'rump' Councils (special Council meetings made up of a select number of ministers from all the main Councils with an interest in immigration) could ensure high-level as well as technical policy coordination.

Migration could also be integrated into a number of existing external relations working groups focusing on issues as diverse as Free Trade Agreements, European Security and Defence Policy and crisis management missions, which would build on existing policy momentum.

While the Global Approach is likely to remain officially part of the Stockholm programme, the implementation of policies and initiatives should be managed and coordinated as an external relations policy, rather than a specialised aspect of immigration policy, to reap the full benefits of its innovative approach.

The Lisbon Treaty reforms could be a strong catalyst in this regard, and policy-makers should think about this sooner rather than later. While policy 'fiefdoms' are fiercely guarded across the Commission and the Council, the architects of future policy in this area are going to have to decide whether they wish to build a strong, effective policy or put their exclusive name to a weaker one.

IV. Beyond Stockholm II: embedding migration priorities in labour market policy

The limited progress made over the past five years suggests that developing common, harmonised legal immigration policies will be difficult, to say the least. Indeed, the Stockholm Programme has limited ambitions in this regard, despite the best efforts of the Swedish Presidency to inject some more liberal thinking on labour migration into it.

But this is not just due to the political sensitivities of the issue. The migration flows, labour markets and social security systems in what are now 27 very different configurations beg the question: can a common immigration system be designed which can manage the very different goals and structures in each Member State?

In light of these political and structural disparities, this chapter highlights a number of alternative strategies which may be more usefully employed in building a strategy for immigration policies in Europe. Central to this is the work currently being undertaken by the Directorate-General for Employment and Social Affairs (DG EMPL) in a number of areas, from the development of the single labour market to improving European competitiveness and reducing social exclusion.

Challenges to a comprehensive economic migration policy

Given the current approach within JLS to harmonising legislation, it is difficult to see where such legislation goes next. The path chosen involves creating minimum terms of entry and residence according to narrow criteria, whether based on a person's reasons for entering the EU (as worker, family member or asylum-seeker) or on particular attributes (high-skilled, low-skilled, or being an employee of a multinational).

While this is logical, and allows for manageable groupings of migrants, it also creates artificial divides between workers. For example, researchers and temporary workers who are already in the EU under the GATS Mode 4 agreement (covering the movement of 'natural persons' for less than one year) cannot switch to Blue Card status under the terms of the newly-agreed legislation.

In the longer term, if the Lisbon Treaty equips the European Commission with sufficient tools and there is political backing for the development of a fully-fledged common policy, the current scenario suggests that the new system would have to be designed according to these many categories and definitions. Not only would this create a complex and rigid supranational structure, but it may also ignore the realities of immigration in the 21st century, where concepts of skill and talent may not conform to formal education and salary levels. Ultimately these are weak building blocks for future development.

Complex labour markets

The development of a common immigration policy is limited by the way EU labour markets currently function. First, unemployment levels, immigration contexts and labour market needs differ greatly across Europe. While some countries have low unemployment and need migrants across the board, others already have a large potential workforce and are only struggling to fill gaps in particular sectors.

Second, there is currently no single market for employment within the EU. This means that elements such as social contributions, employment tax, wage levels (including minimum wages) and relations with trade unions may differ greatly across the continent. There is not, as yet, a common playing field for economic migrants, who may find themselves in substantially different economic circumstances depending on which country they work in.

Linked to this is the way European countries approach the recognition of skills. As the Blue Card agreement demonstrates, 'high skill' has been narrowly defined as having a tertiary education and a significantly above-average salary. However, it is arguable that many of the skills which are now most necessary in Europe – to maintain critical sectors and enhance competitiveness – do not fall within this narrow definition.[68] Soft skills – such as teamwork, multi-tasking, language and cultural adaptibility – are frequently cited by companies as key recruitment criteria, while scarce skills in trades such as carpentry and construction top employers' 'wish' lists.[69]

But even those skills which fall within the top categories – engineering, medical expertise, or law – may not be recognised by EU countries. Currently, the system for recognising qualifications within Europe covers 12 professions, and a mutual information system for a range of other qualifications has been created.[70]

However, these do not cover qualifications obtained in third countries, so economic migrants still have to jump a number of very different hurdles to have their skills recognised in the 27 Member States. Furthermore, within Germany, professions are recognised by the *Länder*, which means that a third-country national would have to re-apply for recognition in every German city he or she wants to work in.

Barriers to mobility

All of this contributes to a lack of intra-EU mobility for citizens and third country nationals alike. Issues such as the recognition of qualifications have been cited as key barriers to mobility within the Union for EU citizens, along with language and the portability of social security rights.[71] Such barriers are exacerbated for third-country workers within the EU, who do not currently enjoy free movement rights until they acquire long-term residence status or marry an EU citizen. Although the Swedish Presidency hoped to introduce this right via the Stockholm Programme, it is not in the final version.

Yet it is arguable that without genuine mobility rights within the EU for third-country workers, a common EU immigration policy will remain merely a framework without substance. In turn, without a single labour market, politicians are unlikely to accept the idea of free movement for non-EU migrant workers, for fear that they will flock to the best-paying or most socially advantageous Member States. It seems, therefore, that efforts to create a common European immigration system fall prey to a Catch 22 scenario.

Circular migration

The concept of circular migration, which has emerged in recent years as part of the Global Approach to Migration, reflects an evolving debate on migration and development, and ways of helping migrants fulfil their desire to contribute in their home country. But it also reflects the desire of some European governments to find a form of labour migration which can become a flexible element in the labour market, so that the economic potential of migrants can be realised with fewer long-term social impacts.

The proposals to date have been small-scale and scattered. The Blue Card scheme allows migrants to return home for extended periods, while the proposals being drafted for seasonal workers may offer multi-entry visas.

The problem here is that a formal circular migration regime would undermine the basic definition of increased mobility, and make any such programme more akin to the temporary work programmes of the 1960s and 1970s. Circular migration programmes (some funded through the EU), have been developed on a micro-scale in Portugal and Spain, while other countries such as the Netherlands are developing pilot projects. These projects are frequently tailored to particular circumstances, so how can the EU play a useful role in scaling them up without diminishing the added-value of such tailored approaches?

Given the demographic pressures facing Europe, it may be that migrants will be needed on a permanent rather than temporary basis. It has been argued that if, as many suggest, Europe will need 70 million additional workers in the future and hopes to source these overseas, it will require the pool of potential circular migrants to be double that size.[72]

Infusing immigration policies with policy tools to improve mobility outside the EU requires making them more flexible, something Member States are inherently uncomfortable with. It requires flexible visas to make departures and returns easier; portable social security, pension and health contributions to reduce the investment trap for older migrants wishing to return home; and improving access to skills and training to maximise the opportunities for returning migrants.[73]

In order to create a flexible system, Member States need the courage to develop policies which ultimately allow migrants to leave as easily as they arrive.

Similarly, the idea that circular migration will remove some of the persistent integration concerns in European countries and have less of an impact on the social welfare infrastructure in ageing societies needs to be re-evaluated. Circularity may well bring a whole new set of integration challenges – not least how to manage communities with constantly fluctuating populations – and require more flexible social welfare schemes. Any significant investment in circular migration strategies should be concurrent with a rethink of integration approaches, something this paper will return to in the next chapter.

Immigration policy as a labour market issue

When looking at the European economic and social space, it is notable that many of the building blocks for a successful immigration policy are

currently lacking at EU level. Comparing the original Blue Card proposal with the final legislation demonstrates why common immigration policies are unlikely to succeed without a degree of convergence in both the labour market and Member States' treatment of migrant workers.[74]

To address this, the EU needs to focus on creating some critical convergence within the European labour market as a basis for a common immigration policy. Elements include those discussed above, such as the portability of social rights, including health and pensions; recognition of qualifications gained in third countries; and the long-term goal of greater convergence of wage levels and employment rates.

All of these areas are outside the competence of the Directorate-General for Justice, Liberty and Security (DG JLS). DG EMPL and others are engaged in building an architecture for improving labour mobility within and beyond Europe, while DG Internal Market (MARKT) is developing a variety of mechanisms to improve recognition of qualifications within Europe, a project which involves numerous other portfolios including Education and Culture (EAC) and TRADE. DG EMPL is also at the centre of policies to address the portability of social security contributions.

Instead of focusing solely on immigration policies, the European Commission should integrate immigration priorities into these existing policy areas, and emphasise the importance of migration with respect to employment, social affairs, education, research and innovation. The work currently being undertaken within DG EMPL and DG MARKT on EU mobility should be used as groundwork for developing policies towards third-country nationals. DG TRADE has also already been looking at labour mobility in the context of its own agreements with third countries, such as Canada, and the possibility of developing common agreements.

Immigration as a factor for competitiveness

The EU is not making sufficient use of the skills and expertise which already exist within Europe's migrant population. Numerous studies highlight the under-utilisation of skills, often due to poor language skills or an inability to get existing overseas qualifications recognised. Increased efforts to improve access to language and skills training, and European mechanisms for the recognition of qualifications (not just tertiary education, but also vocational training) could make Europe a more attractive destination for migrant

workers, as well as making better use of resident third-country nationals' skills in the workforce.

DG EMPL has already invested a great deal in studying and forecasting labour needs across Europe, as well as the types of skills which will be needed.[75] The Stockholm Programme includes a commitment to develop forecasts of immigration needs and skills for the long term, which would seem to be at least a partial duplication of work being undertaken elsewhere by organisations such as CEDEFOP and EUROFOUND.[76] By giving the lead to DG EMPL, economic migration can be more effectively integrated into, and balanced against, the other solutions proposed for the demographic challenges facing Europe.

Migration should be considered a key, integrated component of the revised Lisbon Agenda and a driver for competitiveness. A number of policies can serve to make Europe more attractive to the most talented workers, such as investment in research, innovation and centres of excellence and improving the opportunities for making a life in Europe (several of which have been incorporated into the Blue Card legislation), such as family-friendly policies.

Conclusions

Economic immigration policy borders on a number of other areas, not least labour market policy. This begs the question of whether such policies would be better formulated within a revised Lisbon Strategy and not the Stockholm Programme at all.

Certainly, the interior ministers currently deciding on proposals relating to legal economic migration have very different motivations and priorities from their counterparts in the Employment Council.

In the coming years, the EU will need a sustainable immigration system which is flexible enough to adapt to changing labour needs. Mainstreaming immigration as one element of employment policy would help policy-makers consider migration as a dynamic, rather than static, input factor.

V. Beyond Stockholm III: translating integration into social inclusion

Over the past five years, a number of mechanisms through which a European policy can be pursued and developed have been established. But where should the process go from here?

The central challenge for policy-makers over the next five years will be to put 'meat' on the 'bones' so far established, and give the EU a credible role in integration.

Immigration and integration policy are inextricably linked, yet those links have not been developed and utilised in the way many policy-makers hoped when developing this area within the Directorate-General for Justice, Liberty and Security (DG JLS).[77] Instead, integration is often conceived of by national policy-makers in a very narrow sense, and with insufficient attention paid to the broader socio-economic debates.

After five years spent developing integration policy proper within JLS, has the time come to separate integration from immigration and move it out of the Justice and Home Affairs portfolio entirely to elsewhere in the European Commission? This would mirror actions at the national level to separate integration work from immigration: the UK has devolved responsibility for integration to the Ministry of the Regions, while Sweden has created a stand-alone Ministry for Integration and Gender Equality. (See Annex III).

Challenges to developing integration policy

Integration policy is at a crossroads. Over the past few years, a number of mechanisms for exchanging information on integration strategies have been developed, in addition to setting out basic principles and providing funding.

European policy-makers face a number of challenges in ensuring that the next steps are coherent and meaningful. Establishing a strong basis for migrants' rights and paths to citizenship are critical elements of this, as discussed in Chapter II but how should policy-makers address the socio-economic aspects of integration?

Fragmented policy-making

Even with the Lisbon Treaty, integration policy will remain deeply reliant on political momentum created through political meetings and the priorities of successive EU Presidencies. Policy priorities can also become inconsistent, shifting with each EU Presidency, or non-existent if the holder of the Presidency has no interest in the issue.

The political debate surrounding the French proposal that Member States introduce 'integration contracts' for migrants in 2008 is just one example of this. The existence of strong and varied national models of integration means that any 'European' model would have to be weak to accommodate national differences. Identifying common threads remains difficult.

The institutional arrangements for integration policy pose an equal – if not greater – challenge. First, policy-making is spread across a number of Directorates-General, primarily DG JLS and DG Employment and Social Affairs (EMPL), but increasingly DG Education and Culture (EAC) as well. Not only do these DGs deal with different target groups – from first-generation third-country nationals to third-generation children with a migrant background – but each DG also tackles integration on the basis of different concepts. While DG JLS takes a linear approach to linking integration strongly with immigration focused on language, orientation and fundamental rights, DG EMPL focuses on anti-discrimination and migrants as a target for social inclusion and anti-poverty policies. In 2008, DG EAC supported the European Year of Intercultural Dialogue, a much broader concept than integration and inclusion, but with a strong overlap.

While coordination has strengthened in recent years, some of the policy divisions remain artificial. These divisions make life particularly difficult for non-governmental integration actors, as NGOs working on integration tend to make little distinction between EU and non-EU nationals, or first- and second-generation migrants.

Developing standards

Beyond the standards set through the 11 Common Basic Principles and established anti-discrimination legislation, there are few guidelines for countries to assess how their integration policies are measuring up. This is not about solid legislation, but about soft law which can support Member

States. The Stockholm Programme sets out that the EU should develop 'core indicators' for monitoring the results of integration policies, although it is vague about the details.

How should this be done? While the development of common measures has been discussed for some time, the sole consensus to emerge is that benchmarking is extremely difficult[78] and can be a subjective process of assimilation, based on the assumption that integration is only complete once migrants mimic nationals along socio-economic, cultural and political lines.[79] One of the only clear benchmarks for integration to date is the employment rate of third-country nationals compared to EU citizens.

Second, who should do the evaluating? Self-assessment processes, such as those required by the Open Method of Coordination (OMC) used for social inclusion,[80] place a burden on Member States' administrations, and the results can be haphazard. A review of the OMC reports and the various national reports made by Member States on integration funding suggest some governments take this obligation more seriously than others.

Arguably, DG JLS does not have the requisite experience to develop socio-economic indicators and benchmarks alone, although the network of National Contact Points has made some inroads into identifying critical measures of integration. But before embarking upon a lengthy debate and the development of integration indicators, the EU should carry out an in-depth assessment of the added value and ultimate goal of both the indicators and integration itself. Certainly, for any benchmarking to be effective, the collection of data across Europe needs to be improved.

It has been argued that the proposed European Integration Modules (the new medium for setting best practices on integration strategies, set out during the 2008 French EU Presidency) can become both a model for benchmarking, but also a 'how to' guide for less experienced Member States on particular aspects of integration. But what does this offer to those Member States who already know 'how to'? And can sufficient consensus on its contents be found yet remain meaningful?

In the interim, some simple solutions can be put forward, such as introducing questions into Eurobarometer opinion polls, developing surveys of migrants, and ensuring that evaluations of effectiveness are built into integration policies from the outset.[81]

Reconciling immigration with integration

DG JLS remains the lead Directorate-General on integration policy, which has had a significant impact on the type of policy developed. The securitised approach to immigration within JLS has emerged in part due to the nature of the other issues included in the portfolio, and this has in turn affected integration policy.

Situating integration policy alongside immigration means that it can be used as a tool to achieve immigration policy goals: using the phrase 'integration capacity' in the recent EU Immigration Pact to determine whether family reunification should take place, for example, or the focus on integration policy in counter-radicalisation communications. In a context of deteriorating public attitudes towards migrants and tightening immigration policies, integration policy could find itself being diverted to achieve very different policy goals.

In addition to the 'Fortress Europe' dynamic, the past four years have seen emerging cooperation with third countries, and a strengthening external relations agenda. Some of the concepts emanating from the Global Approach to Migration may conflict with the long-term integration goals set out in many integration documents. A good example of this is the renewed emphasis on sustainable return and circular migration in the context of the migration and development debate.

How can increased mobility be reconciled with an increasing number of national requirements on migrants to actively integrate?

Indeed, the increasing use of the word 'mobility' to describe migration patterns suggests that policy-makers are going to have to rethink integration strategies, going beyond just circular migration. Frequent movement, the increased 'churn' in population[82] and short periods of residence in a particular European country pose a number of challenges for policy-makers.

The vast majority of integration models in Europe focus on long-term integration, culminating in the acquisition of citizenship. While this still makes sense for many migrants, it means that those on short-term residence and work permits, or those who envisage frequent moves to new countries or homes, fall through the gaps.

Most migrant introduction programmes are limited to those with longer-term plans: for example, while the EU Directive on long-term residence limits migrants' periods of absence to less than six months over a five-year period, the Blue Card Scheme creates special rules for the high-skilled to return home without losing such rights. Policy-makers should consider extending this to other categories of migrant, particularly other groups of workers.

As well as incorporating mobility into integration strategies, policy-makers need to consider the potential clash between migration and development strategies and integration models. Rhetoric on integration frequently highlights the acquisition of identity – 'feeling European' – as a critical factor. Limits on dual nationality reflect the idea that one should 'belong' to a single society and community. However, an emerging debate on the role of diaspora groups and individual migrants in home-country development runs directly counter to this idea, as it encourages migrants to retain strong links with their home countries.

While current models would see this as an impediment to successful integration, research suggests that transnationality (links to more than one country) is not a barrier *per se*.[83] It does, however, suggest that integration models need to be rethought in the light of shifting agendas in the immigration policy domain. This is a critical aspect of integration

Integrating migrants into social inclusion policies

Undoubtedly, integration is an extremely complex and fast-changing issue, involving a wide variety of actors. Managing this complexity at the European level is a significant challenge, and is not just about linking all levels of governance vertically (from local to European) and horizontally (from education and culture to external relations), but also about incorporating as many emerging stakeholders as possible. Some flexibility in the way European integration policy-makers respond to these changes will be necessary, but it also begs the question of whether integration policy is in the right place institutionally.

With the creation of a Commissioner for Fundamental Rights and Citizenship, it is clear that the formal aspects of migrant integration – rights, citizenship and status – should be kept within the JLS portfolio, and managed by this Commissioner. The goal here would be to ensure clarity and a strong rights' base for third-country nationals in Europe. Setting out paths to citizenship would be a priority (as outlined in Chapter II).

DG JLS has less experience with broad consultation processes and thinking holistically about a particular policy issue, and the socio-economic elements of integration have a much stronger link to employment and social affairs. While there is a commitment to develop mechanisms for doing this – such as the recently established Integration Forum – JLS policy-makers are required by the Lisbon Treaty to focus on legally-resident non-EU citizens. Thus, if civil society groups highlight the integration needs of undocumented migrants as a priority, policy-makers are unable to respond.

If the socio-economic aspects of integration –the so-called "social inclusion agenda" – were moved to DG EMPL, which already has the resources and experience to manage such policies, this would set the stage for mainstreaming aspects of the integration process into other policy areas such as health and education with less of a sea-change in approach.

It would also erode the artificial divide between EU citizens and third-country nationals, and ensure that the similar challenges faced by different groups of migrants are addressed in a similar fashion. Finally, the cultural aspects of migration – the 'intercultural dialogue' – can continue to be spearheaded by DG EAC, which is capable of linking them with youth, education and sports' policies.

Certainly, the development of indicators and benchmarks is work more suited to DG EMPL, which has experience in the field and strong existing relations with stakeholders, while broader 'inter-religious' dialogue may be more suited to DG EAC than to a security portfolio. DG EMPL has a variety of mechanisms at its disposal and would be able to fold integration into its broader mandate to follow the progress of a variety of socially-excluded groups and those who are discriminated against.

In addition to this, two rationalisations should take place. The first relates to funding. The different funds available for different types of migrants make life more difficult for organisations involved in integration. Second, the mechanisms for information exchange – the Forum, National Contact Points and other networks – are all constrained by the fact that only legally resident third-country nationals can be discussed. The mandate for both these types of EU policy needs to be broadened to include non-nationals and ensure that integration can be addressed through one single policy approach, regardless of citizenship, as it is at the local level.

Conclusions and recommendations

The final text of the Stockholm Programme on immigration and asylum has left many disappointed. There are few new developments, and a sense that the Justice, Liberty and Security (JLS) arena is approaching the end of its grand scheme for future common policies in this area.

This publication suggests that JLS should focus on three core priorities within the Stockholm Programme – achievable and worthwhile goals which are central to the ethos of JLS work – while 'outsourcing' the rest of the programme to other portfolios within the Commission.

The three priorities for the implementation of Stockholm focus on those issues which have dominated the Justice and Home Affairs agenda at the national level over the past few years.

First, reconciling the frequently conflicting goals of securing borders while ensuring equitable access for asylum-seekers should be the top priority for the Commission. While both the Integrated Border Management project and the completion of a Common European Asylum System are mapped out in detail, there is the sense that some of the key policy 'clashes' – not least the interception of migrants at sea – have been put to one side. Rather than clearly determining the parameters of their own responsibility, Member States have instead decided to focus on mechanisms to redistribute responsibility, including to third countries through readmission agreements.

Second, the EU must find a way to reduce the apparent gap between EU rhetoric and national action in the area of undocumented migration, not least by finding a common approach to the use of amnesties (regularisations). For several years now, successive political statements – including the Stockholm Programme itself – have emphasised the need to 'exchange information' about planned amnesties, while at the same time collectively objecting to their widespread use. This is an unsustainable policy-approach and one which becomes less credible with every new amnesty process.

Instead, finding some common ground for the use of regularisations and limiting the more extreme aspects (such as focusing on particular labour sectors) would ensure a greater match between rhetoric and reality. Returning undocumented migrants to their country of origin or transit

countries may be the most desirable option for policy-makers, but it is clearly not feasible in many cases. The resultant *de facto* acceptance of undocumented migration leaves many in uncertain and difficult circumstances, and does nothing to reassure the public that policy-makers are truly 'in control' of policies.

Finally, the EU should not only make good on the commitment to establish a solid legal basis for the rights of non-EU citizens, as close as possible to the rights of EU citizens, but also begin to consider how this fits together with access to citizenship across Europe. Now would be a good moment to do this, with the establishment of a Commissioner responsible for fundamental rights and the transformation of the Charter of Fundamental Rights into a legally binding document under the Lisbon Treaty.

Distilling a set of rights for non-EU citizens would not only reconfirm Europe's commitment to equal treatment and anti-discrimination at a time when extremist political groups are making headlines, but would also send a message to third countries that Europe is not a hostile environment for their people. The public image of the EU as a positive actor on the international stage has been damaged by the external reception of the Returns Directive and the 2008 Immigration Pact, and is in need of repair.

This is already a full agenda for DG JLS officials and ministers in the Justice and Home Affairs Council, even without the other policy areas set out in the Stockholm Programme, from migration and development to integration policy. This paper argues that, to be truly effective in these areas, the time has come for JLS to 'outsource' some of its work in this area and let other Directorates-General take the lead. The two main relevant fields of activity are external relations, and employment and social affairs.

Some of the difficulties encountered by the drafters of various Stockholm proposals were related not only to a lack of political will, but also to a lack of internal competence to effectively implement ideas.

The Blue Card experience holds clear lessons in this regard: in order for common immigration policies to succeed, greater commonality in employment policy is required. Similarly, the incentives for partner third countries to cooperate with the EU on immigration matters depends on the Union being able to put more substantial offers on the table beyond visa facilitation and some funding. Offering incentives in other policy areas may provide clearer rewards.

2010 is a perfect moment to consider this and the need for broad policy coherence in the area of immigration policy.

First, the Lisbon Treaty will require a reconfiguration of foreign policy expertise and reinvigorate the external relations portfolio. Incorporating immigration policy – as part of a balanced partnership agenda on development, trade, neighbourhood and regional dialogue – would allow for greater synergy with other priorities, while capitalising on the infrastructure which already exists for cooperating with third countries. It would also reduce the likelihood of conflicting policy goals emerging in sensitive, yet very different, relations with countries such as Libya and Turkey, where tensions have flared over immigration issues in recent months.

Second, the core goals of employment and social affairs policy are to improve labour market and social inclusion, and establish Europe as a competitive actor in the global economy. While the first Lisbon Strategy made little reference to immigration as a factor in this regard, there is now an opportunity to see both the contribution of migrant workers and the integration of existing migrant populations as key elements for future European competitiveness.

The EU currently deals with legal immigration and integration as one subset of a developing common immigration policy and, as such, it is the least ambitious element. Instead, policy makers should look at legal immigration and integration policy as a key element in the package of policies needed to revamp Europe's labour markets. Not only would this allow for the development of more ambitious policies, but they would also be constructed in a positive, rather than a negative, environment.

Finally, there is a more general need for policy coherence in the area of immigration in future. The purpose of this publication has been to look towards and beyond the implementation of Stockholm, but this is not just something for the Commission to consider in its future activities. With changes at the top of the Commission and a more integrated and coherent policy approach, the time has come for the Council to rethink its discussion of migration issues as well.

Within the European Parliament, several committees have declared their intention to focus more on immigration policies promulgated at the

European level. With the advent of the Lisbon Treaty, and a stronger role for the Parliament, ensuring coordination and consideration of migration policy from all the available perspectives should become a priority.

By realising the value-added of 'outsourcing' some aspects of immigration policy from JLS to other portfolios with the competences and resources to address them more effectively, the EU can develop the strong policies it needs to deal with the multi-faceted challenges it faces now and in the future.

Annex I. EU-27: Location of immigration in national governments

Austria	**Ministry for the Interior**[1] No Minister for Migration
Belgium	**Ministry for the Interior**[2] Minister for Policy on Migration and Asylum
Bulgaria	**Ministry for the Interior**[3] No Minister for Migration (Migration Directorate located within National Police Service)
Cyprus	**Ministry for the Interior**[4] No Minister for Migration
Czech Republic	**Ministry for the Interior**[5] No Minister for Migration
Denmark	**Minister for Refugees, Immigration and Integration Affairs**[6] (also Minister for Ecclesiastical Affairs)
Estonia	**Ministry for the Interior**[7] No Minister for Migration
Finland	**Ministry of the Interior**[8] Minister of Migration and European Affairs
France	**Ministry for Immigration, Integration, National Identity and Joint Development**[9]
Germany	**Federal Ministry for the Interior**[10] Parliamentary State Secretary responsible for matters related to repatriates and national minorities in Germany

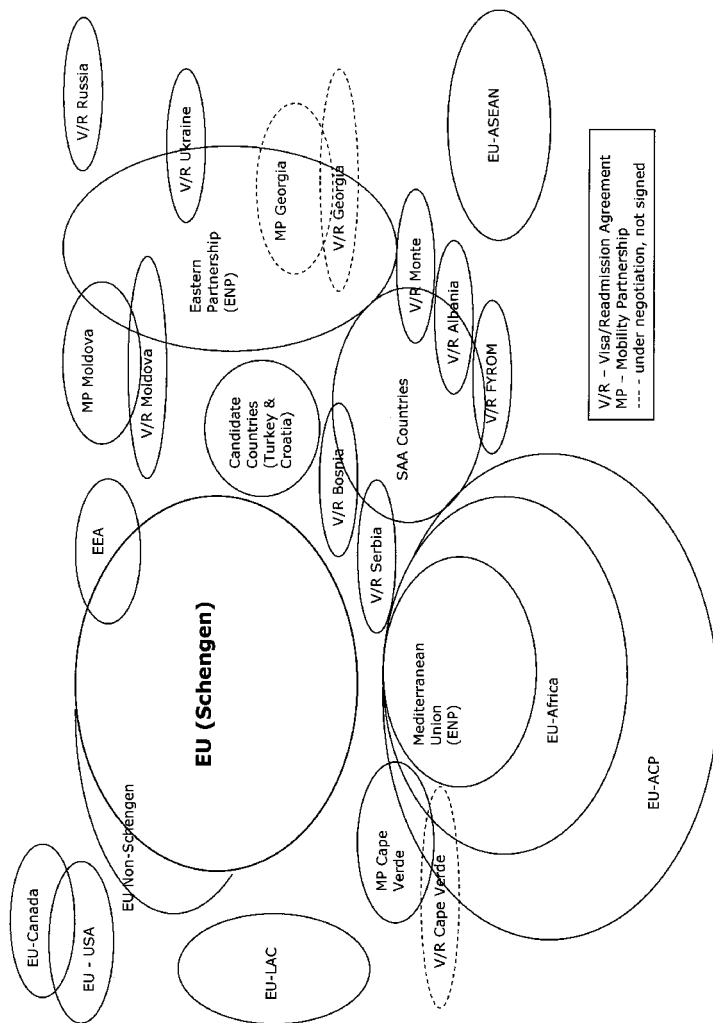|	
Greece	**Ministry of Interior, Public Administration and Decentralisation**[11] No Minister for Migration
Hungary	**Ministry for the Interior**[12] No Minister for Migration
Ireland	**Ministry of Justice, Equality and Law Reform** Minister of State with responsibility for Integration Policy[13]
Italy	**Ministry for the Interior**[14] No Minister for Migration
Latvia	**Ministry for the Interior**[15] No Minister for Migration
Lithuania	**Ministry of the Interior**[16] No Minister for Migration
Luxembourg	**Ministry of Foreign Affairs and Immigration**[17] The four Ministers in the ministry include: Minister of Employment and Immigration Minister for family and Integration
Malta	***Ministry for Justice and Home Affairs***[18] No Minister for Migration
The Netherlands	**Ministry of Justice**[19] No Minister for Migration
Poland	**Ministry of Interior and administration**[20] Under Secretary of State is *inter alia* responsible for Citizenship and Repatriation, and Migration Policy.
Portugal	**Ministry for the Interior**[21] No Minister for Migration

Romania	**Ministry for Administration and Interior**[22]
	No Minister for Migration
Slovakia	**Ministry of Interior**[23]
	No Minister for Migration
Slovenia	**Ministry of the Interior**[24]
	No Minister for Migration
Spain	**Ministry of Labour and immigration**[25]
	State Secretary for Immigration and Emigration
Sweden	**Ministry of Justice**[26]
	Minister for Migration and Asylum Policy
United Kingdom	*Home Office Ministry*[27]
	Minister of State (Borders and Immigration)
	(also in HM Treasury)

Endnotes

(1)   www.iom.int/jahia/Jahia/activities/europe/western-europe/austria
(2)   www.ibz.be/code/fr/loc/ibz.shtml
(3)   www.mvr.bg/en/AboutUs/StructuralUnits/National+MoI+Services/Police/
      dir_migracia.htm
(4)   http://moi.gov.cy/
(5)   www.mvcr.cz/mvcren/asylum-and-migration.aspx
(6)   www.denmark.dk/NR/rdonlyres/0B6DB445-A2C2-424C-936A-D2D88E09FFEB/
      0/TheLarsLoekkeRasmussen.pdf
(7)   www.siseministeerium.ee/?lang=en
(8)   www.intermin.fi/intermin/home.nsf/pages/505501AF64DDE8EB00256A860055E28
      E?opendocument
(9)   www.immigration.gouv.fr/
(10) www.en.bmi.bund.de/cln_012/nn_148176/Internet/Navigation/EN/AboutUs/
      Organization/organization__node.html__nnn=true
(11) www.iom.int/jahia/Jahia/pid/836
(12) www.europarl.europa.eu/workingpapers/libe/104/hungary_en.htm
(13) The Minister of State is in fact located between 3 ministries (1) Community, Rural
      and Gaeltacht Affairs (2) Education and Science (3) Justice, Equality and Law Reform)
      www.justice.ie/en/JELR/Pages/About_us
(14) www.interno.it/mininterno/export/sites/default/it/sezioni/ministero/dipartimenti/
      dip_immigrazione/English_version.html
(15) www.europarl.europa.eu/workingpapers/libe/104/latvia_en.htm

(16)   www.vrm.lt/index.php?id=550&lang=2
(17)   www.mae.lu/fr/Site-MAE/Bienvenue-au-Ministere-des-Affaires-etrangeres/Les-Ministres
(18)   www.gov.mt/frame.asp?l=2&url=http://www.doi.gov.mt/en/ministries_and_
       departments/portfolio08.asp
(19)   http://english.justitie.nl/organisation/organisational%2Dchart/
(20)   www.mswia.gov.pl/portal/en/3/63/Structure.html
(21)   www.mai.gov.pt/
(22)   www.mai.gov.ro/engleza/index08.htm
(23)   www.asdsource.com/source_detail_small/5549/Ministry_of_Interior_
       Slovak_Republic.htm
(24)   www.vlada.si/en/about_the_government/who_is_who/ministries/notranjezadeve/
(25)   www.mtas.es/
(26)   www.regeringen.se/sb/d/584
(27)   www.parliament.uk/mpslordsandoffices/government_and_opposition/hmg.cfm

Annex II. EU's relations with third countries on migration

V/R – Visa/Readmission Agreement
MP – Mobility Partnership
--- under negotiation, not signed

V/R Russia
V/R Ukraine
MP Georgia
V/R Georgia
EU-ASEAN
Eastern Partnership (ENP)
V/R Monte
V/R Albania
V/R FYROM
MP Moldova
V/R Moldova
Candidate Countries (Turkey & Croatia)
SAA Countries
V/R Bosnia
V/R Serbia
EEA
EU (Schengen)
Mediterranean Union (ENP)
EU-Africa
EU-ACP
EU Non-Schengen
EU-Canada
EU - USA
EU-LAC
MP Cape Verde
V/R Cape Verde

Annex III. EU-27: Location of integration in national governments

	Ministry with overall responsibility for immigrant integration[1]	Other national-level ministries involved
Austria	Ministry for the Interior* *At the national level, there is no political authority directly responsible for integration.*	Ministry of Economics and Labour
Belgium	Federal Ministry for Employment and Equal opportunities Federal Ministry for Social Integration of Belgium Centre for Equal Opportunities and Opposition to Racism *The French-speaking, German-speaking and the Dutch-speaking Communities are fully competent in integration matters, thus giving the regional level importance in this regard.*	Not Applicable
Bulgaria	Ministry of Labour and Social Policy	Ministry of the Interior State Agency for Refugees with the Council of Ministers
Cyprus	Ministry of Interior	Ministry of Labour and Social Insurance Ministry of Education and Civilisation Ministry of Health
Czech Republic	Ministry of the Interior	Ministry of Labour and Social Affairs Ministry of Education, Youth and Sport Ministry of Culture Ministry of Health Services Ministry for Regional Development Ministry of Finance Ministry of Industry and Trade

Denmark	Ministry of Refugee, Immigration and Integration Affairs	Ministry for Employment Ministry of the Interior and Social Affairs
Estonia	Office of the Minister for Population and Ethnic affairs	Ministry of Education and Research Ministry of Finances Ministry of Foreign Affairs Ministry of the Interior
Finland	Ministry of Interior* *from 1 January 2008 overall responsibility for integration has moved from the Ministry of Labour to the Ministry of Interior	Ministry of Employment and the Economy Ministry of Education Ministry of Social Affairs and Health Ministry of the Environment
France	Ministry for Immigration, Integration, National Identity and Mutually-supportive Development	Ministry of the Interior, Overseas and Territorial Communities Ministry of Defense Ministry of Foreign and European Affairs Ministry for Labour, Labour Relations, the Family and Solidarity Ministry for Education Ministry of Justice Ministry for Health, Youth and Sports Ministry for Agriculture and Fisheries Ministry for the Budget, Public Accounts and the Civil Service Ministry for Culture and Communication Ministry for the Economy, Industry and Employment
Germany	Federal Ministry of the Interior	Federal Ministry of Labour and Social Affairs Federal Ministry of Family Affairs, Senior Citizens,

		Women and Youth Federal Ministry of Education and Research Federal Ministry of Justice Federal Government Commissioner for Migration, Refugees and Integration Federal Government Commissioner for Matters Related to Repatriates and National Minorities in Germany
Greece	Ministry of Interior* *Due to a decentralised governmental organisation, regions are granted a great part in the implementation of migration and integration policy.*	The General Secretariat for Gender Equality (Ministry of Interior) The Ministry of National Education and Religious Affairs The Ministry of Labour and Social Protection The Ministry of Health and Social Solidarity *Secondary:* The Ministry of Culture The Ministry of Justice The Ministry of Development The Ministry of Agricultural Development The Ministry of Public Order
Hungary	Ministry of Justice and law enforcement	Ministry of Education and Culture Ministry of Local Government and Regional Development Ministry of Social Affairs and Labour Ministry for Foreign Affairs
Ireland	Office of the Minister for Integration* *based in the Department of Community, Rural and Gaeltacht Affairs and has links*	Department of Justice, Equality, and Law Reform Department of Social and Family Affairs

	to the Departments of Justice, Equality and Law Reform, and the Department of Education and Science, thus having a cross Departmental mandate. Service provision for immigrant communities in Ireland is based on a government mainstreaming policy e.g. while recognising the occasional need for targeted initiatives, this policy does not treat immigrants as a separate group to the general population.	Department of Health and Children Department of Environment and Local Government Department of the Taoiseach (Prime Minister) Department of Education and Science Department of Community, Rural & Gaeltacht Affairs Department of Enterprise, Trade & Employment
Italy	Ministry of Interior (Department for Civil Liberties and Immigration)	Ministry of Social Solidarity (*Direzione Generale per l'Immigrazione del ministero del Lavoro e delle Politiche Sociali*) Ministry of Justice
Latvia	Secretariat of Minister for Special Assignments for Society Integration Affairs	Ministry for Children and Family Affairs Ministry of the Interior Ministry of Culture Ministry of Health Ministry of Education and Science Ministry of Regional Development and Local Government Office of Citizenship and Migration Affairs Latvian Ombudsman's Office State Employment Agency
Lithuania	Ministry of Social Security and Labour	Ministry of the Interior Migration Department, Ministry of the Interior Ministry of Education and Science Ministry of Culture
Luxem-bourg	Ministry for Family and Integration	Ministry for Education and Vocational Training

		Ministry for Foreign Affairs and Migration Ministry for the Interior Ministry for Justice Ministry for Labour and Employment Ministry for Culture, Higher Education and Research Government Commission for Foreigners
Malta	Not applicable	Ministry for Justice and Home Affairs Ministry for Justice and Home Affairs, Department for Citizenship and Expatriate Affairs Ministry for Family and Social Solidarity
Nether-lands	Ministry of Housing, Spatial planning and the Environment* *the overall responsibility for integration moved from the Ministry of Justice in November 2006.	Ministry of Education, Culture and Science Ministry of Social Affairs and Employment Ministry of Foreign Affairs Ministry of Justice
Poland	Ministry of Interior and Administration	Ministry for Labour and Social Policy Parliamentary Commission for National and Ethnic Minorities
Portugal	High Commission for Immigration and Intercultural Dialogue	Advisory Council for Immigration affairs Ministry for Justice Ministry for Labour and Social Solidarity Ministry for Education Ministry for Health Ministry of Internal Affairs (SEF – Dpt for Foreigners and Border Controls)

Romania	Ministry of Interior and Administrative Reform	Ministry of Education Ministry of Labour, Family and Equal Opportunities Ministry of Health
Slovakia	Ministry of Interior* *the Ministry of Interior's Migration Office had overall responsibility for the integration of foreigners, asylum seekers and refugees for the last 10-15 years.* Ministry of Labour, Social Affairs and Family* *A "Migration and integration of foreigners' unit" within the Ministry is likely to be set up soon.*	Ministry of Education Ministry of Culture Ministry of Justice Ministry of Health Ministry for Foreign Affairs
Slovenia	Ministry of Interior	Ministry of Culture Ministry of Labour, Family and Social Affairs
Spain	Ministry of Labour and Immigration. Secretary of State for Immigration and Emigration. (Directorate General for Immigrant Integration)	Ministry of Foreign Affairs and Cooperation Ministry of Culture (including a National Commission for Intercultural Dialogue) Ministry of Education Ministry of Justice Ministry for Equality
Sweden	Ministry of Integration and Gender Equality* *This Ministry has a coordinating responsibility for governmental policies for integration, given that they are 'transsectorial' and their objectives are to be realised within several policy areas and by many different government ministries and agencies.*	Ministry of Education and Research Ministry of Employment Ministry of Health and Social Affairs
United Kingdom	Ministry of the Interior/Home Office (the UK Border Agency)*	Department for Communities and Local Government Department for Innovation,

an executive agency of the Home Office, integration comes under the remit of the UK Border Agency

Universities and Skills
Department for Children, Schools and Families
Scottish Executive
Welsh Assembly Government

Endnote

(1) All country information has been taken from the European Website on Integration, where there are also extensive links to Member State official documents and programmes on integration: http://ec.europa.eu/ewsi/en/info_sheet.cfm?ID_CSHEET=41

Endnotes

1. European Commission, Report on the implementation of the Hague Programme for 2005, COM(2006)333 Final, Brussels

2. European Commission, Report on the implementation of the Hague Programme for 2006, COM(2007)373 Final, Brussels; and European Commission, Report on the Implementation of the Hague Programme for 2007, COM(2008)373 Final, Brussels.

3. EU Observer, Frattini seeks to apply new Treaty rules before 2009, November 2007, http://euobserver.com/9/25117

4. Elizabeth Collett, The EU Immigration Pact – from Hague to Stockholm, via Paris, EPC Policy Brief, October 2008, www.epc.eu/TEWN/pdf/304970248_EU%20Immigration%20Pact.pdf

5. Ferruccio Pastore, Organisational and institutional options and challenges for the next Commission in the JLS/JHA area, Preliminary Remarks for EPC Project on the Commission, unpublished, January 2009.

6. See for example, J. Huysmans, 2000, The European Union and the Securitisation of Migration, Journal of Common Market Studies, vol. 38(5), pages 751-777, December.

7. European Commission, 2009, An Area of Freedom, Security and Justice Serving the Citizen, COM(2009)292, Brussels.

8. European Commission, 2008, On the Application of Directive 2003/86/EC on the right to family reunification COM(2008)610, Brussels.
http://ipsnews.net/news.asp?idnews=34509

9. European Commission, 2000, On a Community Immigration Policy, COM(2000)757, Brussels.

10. M. Fix, et al, 2009, Migration and the Global Recession, Migration Policy Institute, commissioned by the BBC, September.

11. *Ibid.*

12. J. Perry, 2009, The Czech Republic Pays for Immigrants to Go Home, Wall Street Journal, 28 April.

13. Cyprus, Greek, Maltese and Italian Delegations, Combatting Illegal Migration in the Mediterranean, 23 January 2009, Brussels, http://register.consilium.europa.eu/pdf/en/09/st05/st05689.en09.pdf, and Council of the European Union, 2946th Justice and Home Affairs Council Conclusions, 4-5 June 2009, Luxembourg.

14. EUObserver, Cool reception to compulsory EU sharing of asylum 'burden', 5 June 2009.

15. E. Collett and F. Pastore, 2009, Beyond pillars: how to disentangle the JHA knot, *Challenge Europe*, Issue 19, Brussels, June.

16. Council of the European Union, European Pact on Immigration and Asylum, October 2008.

17. European Commission, Communication on the Eastern Partnership, COM(2008)823 final, Brussels.

18. Council of the European Union, Joint Declaration on a Mobility Partnership between the European Union and the Republic of Cape Verde, 9460/08, 21 May 2008, Brussels; Council of the European Union, Joint Declaration on a Mobility Partnership between the European Union and the Republic of Moldova, 21 May 2008, Brussels.

19. G6 is an informal grouping of Justice and Home Affairs Ministers from the six largest EU States (Germany, France, Poland, Italy, Spain and the UK) who come together to discuss JHA issues on a bi-annual basis.

20. 'European Commission, 2009, Tracking Method for Monitoring the Implementation of the European Pact on Immigration and Asylum, COM (2009) 266, Brussels.

21. 'Council of the European Union, establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, Regulation EC 2007/2004.

22. J. Brunsdon, Frontex Chief Warns about Failure to Reduce Migration, European Voice, 11 September 2008, www.europeanvoice.com/article/imported/Frontex-chief-warns-about-failure-to-reduce-migration/62224.aspx, and J Crosbie, 2009, France: Frontex summer operation was a failure, European Voice, 1 October 2009, www.europeanvoice.com/article/imported/france-frontex-summer-operation-was-a-failure/65994.aspx

23. Javier Quesada, Situation at the Borders of the EU 2008, presentation given at the European Parliament, Head of Frontex Risk Analysis Unit, March 2009.

24. European Commission, COM(2008)67.

25. French delegation, Strengthening the operations of the FRONTEX Agency, particularly in the Mediterranean, 11 September 2009, 13226/09.

26. European Commission, COM(2008)68, 69.
27. European Council of Refugees and Exiles, Sharing responsibility for Refugee Protection in Europe: Reconsidering Dublin, March 2008, Brussels.
28. Critics of the final draft included Amnesty International, the Churches Commission on Migrants in Europe, the European Council on Refugees and Exiles, and the Jesuit Refugee Service.
29. ECRE, Time to show your cards: the need for a genuine commitment to establish a Common European Asylum System based on high standards of protection, September 2009, Brussels.
30. UNHCR, UNHCR Delegation visits detention centre on Greek Island, urges closure, press release, 23 October 2009, http://www.unhcr.org/4ae1af146.html
31. NY Times, Italy Returns 227 Migrants to Libya, 8 May 2009, www.nytimes.com/2009/05/08/world/europe/08iht-migrants.html
32. UNHCR, UNHCR Deeply Concerned over Returns from Italy to Libya, press release, 7 May 2009, www.unhcr.org/4a02d4546.html
33. Jean-Pierre Cassarino (2006).
34. European Council (2005).
35. European Commission (2008) Eastern Partnership, COM(2008)823.
36. COM(2007)247.
37. However, some commentators have noted the proliferation of informal readmission agreements. Jean-Pierre Cassarino (2007), Informalising Readmission Agreements in the EU Neighbourhood, The International Spectator 42 (2): 179-196.
38. Migeurop, (2009), Open letter about readmission agreements, sent to the Union Council and European Commission, www.migreurop.org/article1350.html
39. S. R.Munz, Demographic Future of Europe: Ageing, Migration and Regional Disparities, presentation given at European Policy Centre, January 2009.
40. For a more detailed analysis of the Blue Card legislation, please see EPC Commentary, Blue Cards and the Global Battle for Talent, May 2009.
41. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62008J0127:EN:HTML
42. Article 79(5) of the Lisbon Treaty.
43. European Commission, 2005, A Common Agenda for Integration, COM(2005)389, Brussels.
44. "European laws or framework laws may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States." Article III 267.4 of the draft Constitutional Treaty.
45. European Council, 2008, Declaration agreed by the Member States, European Ministerial Conference on Integration, 3-4 November, Vichy.
46. Governments of Cyprus, Greece, Italy and Malta, Formal Statement, 13 January 2009.
47. Ruth Weinzierl and Urszula Lisson, Human Rights and Border Management: A Study of EU Law and Law of the Sea, German Institute for Human Rights, 2007, Berlin, www.institut-fuer-menschenrechte.de/uploads/tx_commerce/study_Border_Management_and_Human_Rights.pdf
48. UNHCR, Selected Reference Materials: Rescue at Sea, Maritime Interception and Stowaways, November 2006, www.unhcr.org/refworld/docid/45b8d8b44.html&ei=ACLmSsreFKKOjAfElNChBA&sa=X&oi=nshc&resnum=1&ct=result&cd=1&ved=0CAsQzgQoAA&usg=AFQjCNHclT2Fcuqw3muyExMGFixZB7IwIQ
49. UNHCR, Asylum and Migration Key Facts and Figures, www.unhcr.org/pages/4a1d406060.html
50. 'Human Rights Watch, 2009, Pushed Back, Pushed Around: Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers, 21 September.
51. Amnesty International, Libya: Amnesty completes first fact-finding mission in over five-years, Public Statement, 29 May 2009, London.
52. French Delegation, Migration situation in the Mediterranean: establishing a partnership with migrants' countries of origin and of transit, enhancing Member States' joint maritime operations and finding innovative solutions for access to asylum procedures, 13205/09, 11 September 2009, Brussels. www.chamber.ca/cmslib/general/POLICY%20ENGLISH%20BOOK%202007.pdf, p.200.
53. UNHCR, Ten Point Plan on Action on Refugee Protection and Mixed Migration, www.unhcr.org/refworld/pdfid/45b0c09b2.pdf
54. European Court of Justice, Elgafaji v. Staatssecretaris van Justitie, C-465/07, European Union, 17 February 2009

55. Comments made at an EPC Workshop on Border Control and Asylum Policy, June 3 2009, Brussels.

56. European Voice, Schengen Database Project at 'Critical' Stage, 15 January 2009, www.europeanvoice.com/article/2009/01/schengen-database-project-at-critical-stage-/63657.aspx

57. European Commission, Proposal for a Council Decision on requesting comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes, COM(2009)344 final, 10 September 2009.

58. For details, see the CLANDESTINO Database on Irregular Migration at http://clandestino.eliamep.gr/category/clandestino-database-on-irregular-migration/

59. Martin Baldwin-Edwards and Albert Kraler, REGINE Regularisations in Europe. Study on practices in the area of regularisation of illegally staying third-country nationals in the Member States of the EU. 2009. Vienna, ICMPD, http://research.icmpd.org/1184.html

60. Transatlantic Council on Migration, Delivering Citizenship, Migration Policy Institute, Bertelsmann and European Policy Centre, 2008.

61. Jan Niessen, Thomas Huddleston and Laura Citron, Migrant Integration Policy Index, Migration Policy Group and British Council, 2007.

62. *ibid.*

63. European Commission, Report from the Commission to the European Parliament and the Council on the application of Directive 2003/86/EC on the right to family reunification, COM(2008)610, Brussels; European Commission, Report from the Commission to the European Parliament and the Council on the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of Member States, COM(2008)840, Brussels.

64. European Commission, Applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union, 16 May 2007, COM (2007) 247.

65. L. Michel (2009) Europe-Africa co-operation in Mali, Forced Migration Review 32, p.62, April.

66. Ferruccio Pastore, The Global Approach under Stress; Cooperative migration management in a time of crisis, Introductory remarks for the EPC Workshop on "EU External relations and migration. Sustainable implementation of the Global Approach, EPC, Brussels, 13 May 2009.

67. For further information see the website of the German federal Ministry of Education and Research at www.bmbf.de/en/5859.php

68. Elizabeth Collett and Fabian Zuleeg, Soft, Scarce and Super Skills: Sourcing the Next Generation of Migrant Workers in Europe, Talent Competitiveness and Migration, Transatlantic Council on Migration, Bertelsmann, 2009

69. Manpower, 2009 Talent Shortage Results Report, May 2009

70. Elizabeth Collett and Gregory Fuller, Mobility of the Skilled Workforce in Europe: The Role of Qualifications Recognition, Background Note for EU-Canada Roundtable, European Policy Centre, October 2009, Brussels.

71. Alain Lamassoure, *Rapport au Président du République sur le Citoyen et L'Application du Droit Communautaire*, June 2008, Paris. www.touteleurope.fr/fileadmin/CIEV2/entretiens/Rapport_definitif_8_juin_2008.pdf

72. Rainer Munz, Demographic Change, Labour Force Development and Migration in Europe - Current Situation, Future Outlook and Policy Recommendations, Labour Migration and its Development Potential in the Age of Mobility background paper, Swedish Presidency Conference, 15-16 October 2009, Malmo.

73. K. Newland, D. R. Agunias and A. Terrazas (2008) 'Learning by doing: experiences of circular migration.' Insight. Program on Migrants, Migration and Development, September 2008.

74. For a lengthier analysis of the proposal and the final version, please see Collett, Elizabeth, The Proposed European Blue Card System: Arming for the Global War for Talent?, Migration Information Source, January 2008 and Collett, Elizabeth, Blue Cards and the Global Battle for Talent, EPC Commentary, May 2009.

75. European Commission, New Skills for New Jobs, COM(2008)868, December 2008, Brussels.

76. CEDEFOP, Future Skill Supply in Europe: Medium Term Forecast up to 2020 (Synthesis Report), June 2009, Luxembourg.

77. This section stems from discussions during the initial brainstorming session, notably Sarah Spencer from COMPAS, and several experts on integration in Brussels.

78. Han Entzinger and Renske Biezeveld, Benchmarking in Immigrant Integration, European Research Centre on Migration and Ethnic Relations, Report for European Commission DG JLS, 2003.

79. Sergio Carrera, Benchmarking Integration in the EU, Bertelsmann, 2008, Gütersloh.

80. European Commission, A renewed commitment to social Europe: Reinforcing the Open Method of

Coordination for Social Protection and Social Inclusion, COM/2008/0418 final.

81. These recommendations were made by participants at an EPC workshop on potential integration policies for the Stockholm Programme, EU integration policy at a crossroads - adding value to national policies, 8 April 2009, Brussels.
82. Steven Vertovec, The Emergence of Superdiversity in Britain, Working Paper No.25. Oxford, Centre on Migration, Policy and Society 2006, Oxford.
83. Rainer Bauböck, Ties across borders: the growing salience of transnationalism and diaspora politics, Policy Brief 13, IMISCOE, Amsterdam, 2008.

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