

The Future of Immigration and Asylum in Europe: Prosperity, Solidarity, Security and External Responsibility?

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Abstract:

In June 2008 two communications were released by the European Commission outlining the directions that immigration and asylum policies were to take in the future. This article discusses these directions focusing on the balance between prosperity, solidarity, security and external responsibility in the areas of external border management, the commitment to solidarity with countries outside the EU and the increase in data sharing and use of biometrics.

Perhaps one of the most difficult problems faced by the European Union today is that of effective immigration management. After the controversial Return Directive which was approved by the European Parliament in June 2008 there have been questions about the EU's commitment to its humanitarian traditions in the realm of immigration¹. This article will discuss the two communications, 'A common immigration policy for Europe: principles, actions and tools' and the policy plan on asylum entitled 'An integrated approach to protection across the EU' which were released in June and are set to form the basis of future EU policy.

This article will discuss the immigration and asylum communications focusing on the problem of reconciling the three strands that underlie the policy on immigration: principles of prosperity, solidarity and security, with the ideal of external responsibility.

¹ MEP Giusto Catania suggests "Europe has written one of the darkest pages of its history and can no longer be considered the cradle of human rights" whilst Vice-Chair of the GUE/NGL factions Sylvia-Yvonne Kaufmann stated that "Europe has lost its credibility as a humane and caring union" after the legislation was passed. *Europe no longer the cradle of human rights*, GUE/NGL website: Newsroom, 2008, <<http://www.guengl.eu/showPage.jsp?ID=6253&AREA=27&HIGH=1>> [accessed 28 August 2008]

As the communications are quite broad, this article will address only a selection of the issues.

Prosperity

'The European Union [...] does not have the resources to decently receive all the migrants hoping to find a better life here.' Passage from the draft of the European Pact on Immigration and Asylum².

Immigration is presented as a '*richness for our societies and economies [...] if properly managed*' by EC Vice-President Jacques Barrot in the press release accompanying the two communications³. This sentiment encompasses the feeling of the first section of the communication on immigration, which deals with the issue of immigration and prosperity. The policy aims to streamline immigration to ensure the maximum economic yield. This requires clearer identification of the skills needed in Member States and closer matching of immigrants to skills shortages. To this end, labour market centred immigration profiles will be drawn up which chart the immigration flows in each Member State. These aims are complemented by integration policy which aims to ensure that migrants have the necessary linguistic, intercultural, educational and vocational skills to work in the host community.

The close coupling of immigration and its effect on prosperity appears to be a firm feature of future EU immigration policy⁴, stemming from the Lisbon Strategy, which aims to generate jobs and improve general quality of life. It also aims to yield money from taxes to finance pensions and health services for the aging population⁵. Therefore, every able migrant is expected to contribute economically. This commitment is neatly demonstrated in a clause encouraging investment in getting unemployed or economically inactive migrants in the EU into employment and is further reiterated in legislation on 'community preference' which privileges long term community members (including existing immigrants) over migrants wishing to enter the Union to work⁶.

² Draft European Pact on Immigration and Asylum: *European Pact on Immigration and Asylum*, Statewatch website, 2008, <<http://www.statewatch.org/news/2008/jul/eu-european-pact-on-immigration-verII.pdf>. > [accessed 28 September 2008]

³ As stated in the Rapid Press Release *Taking forward the common immigration and asylum policy for Europe: Taking forward the common immigration and asylum policy for Europe*, 2008, IP/08/948

⁴ Provisions are still made for other types of immigrants such as scholars, family members, tourists and those seeking protection but before they travel they are expected to provide information on their ability to support themselves (except those seeking protection of course)

⁵ EU guide to the Lisbon Strategy: 'Background', Europa website, <http://ec.europa.eu/growthandjobs/faqs/background/index_en.htm > [accessed August 30 2008]

⁶ As stated in article C(i) in *Council Resolution of 20 June 1994 on limitation on admission of third-country nationals to the territory of the Member States for employment*, 1996, Official Journal, C 274, P. 0003 – 0006

⁶ Jeanine Hennis-Plasschaert - ALDE spokesperson on immigration policy as cited in: 'FRONTEX cannot solve immigration on its own' ALDE website, 2008, <http://www.alde.eu/index.php?id=42&no_cache=1&tx_ttnews%5Btt_news%5D=9472 > [accessed 25 September 2008]

The measures presented in the communications aim to increase the prosperity of those in the Union, but how committed is the EU to using its prosperity for the greater good?

Solidarity

"In today's world though, marked by increasing regional conflicts, food shortages and a growing gap between rich and poor, mobility of people is likely to increase rather than diminish. Instead of putting all our efforts into keeping people out, we need a radical and responsible migration policy for Europe." Jeanine Hennis-Plasschaert - ALDE spokesperson on immigration policy ⁷.

The EU is committed to working with third countries to address the issues leading to immigration and seeking asylum. This takes the form of addressing push factors in the countries of origin and linking migration with development. The two communications state that the benefits of circular migration to development are to be studied, transaction costs of remittances are to be reduced and the value of remittances is to be charted. Also the highly detrimental effects of brain drain are to be reduced by the training of less skilled immigrants and a general commitment to actions in the areas of 'recruitment, return, decent work, [and] ethical recruitment standards' which are unfortunately not elaborated on in the communication.

The policy directions include measures offering support to migrants after their return to their countries of origin. Possibilities for helping failed asylum seekers return and re-integrate and pension rules for retired migrants wishing to return are also to be explored. Derived from these directions there would be a commitment to working with countries outside of the EU to aid development.

The EU donates the largest amount of money per citizen to development in the world. Its Official Development Assistance adds up to €93 per citizen per year.⁸ However, the solidarity that the EU shows to third countries in addressing push factors may be questioned on the issue of the trade deals the EU has initiated with some developing countries. Since 2002 the EU Commission has tried to negotiate highly controversial Economic Partnership Agreements with African, Caribbean and Pacific (ACP) countries encouraging free trade. These partnership agreements are intended to promote 'poverty reduction, sustainable development and the gradual integration of the ACP countries into the world economy'⁹; reducing some of the negative push factors that influence migration to the EU. However an Oxfam report states:

⁸As stated in *Aid Conference: Commission urges donors to make aid more effective to reach Millennium Development Goals*, 2008, IP/08/1284

⁹ as cited *Partnership or Power Play? How Europe should bring development into its trade deals with African, Caribbean, and Pacific countries*, Oxfam website, 2008, <http://www.oxfam.org/en/policy/bp110_EPAs_europe_trade_deals_with_acp_countries_0804> p.2

These deals may be well-intentioned but they are far from well designed [...]. Economic models showed Europe would be the real winner, with most ACP countries [...] left worse off.¹⁰

Demonstrating an objection to these deals, Guyana's President Bharrat Jagdeo appealed to the UN to renegotiate the Economic Partnership Agreements. Significant numbers of civil and political groups in ACP countries have also publicised their disapproval of the deals¹¹.

Does the European Union demonstrate sufficient solidarity with the global South? A lot of well intentioned work is being carried out, but it remains unclear how the pledge to address brain drain is affected by immigration policies that aim to recruit specifically skilled migrants. Similarly the effects of the planned training programs for migrants will need to be studied.

Security - FRONTEX

The communication on immigration suggests more robust border controls. These include more checks on potential migrants in transit, border control missions coordinated by EU agencies, harsher measures to combat people smuggling, increased data sharing, and the use of biometric identification data. In relation to tougher border controls, the communication on immigration has the potential of being at odds with one of the main aims of the communication on asylum: ensuring those seeking asylum and subsidiary protection are able to access the Union. Both the UNHCR and the Red Cross have warned, in response to June's communications, that tougher border controls need to incorporate safeguards for people seeking protection in the EU¹².

The importance of the issue is such that Bjarte Vandvik, Secretary General of the European Council on Refugees and Exiles (ECRE), says that a European Asylum System is meaningless unless 'asylum seekers and refugees have access to the EU and have a

¹⁰ The report suggests that the Economic Partnership Agreements fail to tackle food insecurity, that they will 'strip ACP countries of important policy tools they need in order to develop', they do not support economic diversification away from 'low-value agricultural production' and that they fragment existing trading blocs: *Partnership or Power Play? How Europe should bring development into its trade deals with African, Caribbean, and Pacific countries*, Oxfam website, 2008, <http://www.oxfam.org/en/policy/bp110_EPAs_europe_trade_deals_with_acp_countries_0804> p.1-6

¹¹ 'Jagdeo makes direct EPA appeal at UN', Bilaterals website, 2008, <http://www.bilaterals.org/article.php3?id_article=13296> [accessed 28 September 2008]; some of the other protests include an opposition walkout in the Jamaican parliament, strong opposition from the Antigua Labour Party and four African Labour organisations amongst many others for more details consult the bilaterals website: <http://www.bilaterals.org/rubrique.php3?id_rubrique=17>

¹² As stated in: *UNHCR calls on EU Member States to raise asylum standards*, UNHCR website, 2008, <<http://www.unhcr.org/cgi-bin/texts/vtx/print?tbl=NEWS&id=485793e82>> [accessed 10 July 2008]
Red Cross/ EU Office, *Position Paper Policy Plan on Asylum*, Statewatch website, <<http://www.statewatch.org/news/2008/sep/eu-red-cross-position-paper-asylum.pdf>>, [accessed 28 August 2008]

genuine chance of lodging a request for protection'¹³. Considering its importance, a surprisingly small amount of text is dedicated to this within the communications¹⁴.

This appears to be particularly pertinent in situations where European border controls are provided by third country law and order forces, as these external border control forces may not seek to fulfil the human rights obligations that the EU is committed to. An example of this is given in a recently published report by Amnesty International. The report describes how Mauritanian forces working to prevent irregular immigration into the EU arrested and expelled at least two UNHCR certified refugees from Sierra Leone to Mali and how one of those refugees died on the journey¹⁵.

External border control missions in third countries have also been known to breach the human rights of potential migrants. The Amnesty International report on external European border control outlines how migrants in Mauritania have been arrested, imprisoned and expelled from the country because they have been suspected of planning to enter the EU illegally. The report indicates that ordinary people are subject to arbitrary arrests. Migrants from outside Mauritania may be arrested and expelled to countries of transit without a chance to object legally¹⁶. The conditions in the prisons the migrants are held in are humiliating and instances of authorities robbing or beating potential migrants are also reported.

The EU agency FRONTEX is responsible for coordinating EU border management missions, however, questions have been asked about their methods. In its 2006 report FRONTEX states that close to 5000 immigrants were prevented from undertaking a dangerous journey to Europe by boats during its two HERA operations¹⁷. Although these operations save human life at sea, it is not known whether the migrants attempt other further, possibly dangerous, routes to Europe after being prevented from travelling by boat. This concern about the lack of information on the fate of would-be irregular immigrants, after they are diverted from the sea, is also shared by ECRE who state:

'As long as FRONTEX cannot report on how many asylum seekers are affected and identified during its operations and what happens to people diverted away from the EU external borders the general decrease in

¹³ As stated in: *ECRE welcomes the European Commission's Policy Plan on Asylum*, ECRE website, 2008, <http://www.ecre.org/resources/press_releases/1108>

¹⁴ In the communication released on asylum in June the discussion on policy directions in this area constitute four paragraphs under the subheading 'facilitating a managed and orderly arrival for those in need of protection' which is one of several sub-titles in a larger 'external solidarity' section.

¹⁵ Alpha Koroma died as a result of an illness he had, between Kayes and Bamako. It is not clear if his death could have been prevented if he had not been expelled. *Mauritania: <<nobody wants to have anything to do with us>> Arrests and collective expulsions of migrants denied entry into Europe*, Amnesty International website, 2008, AI Index: AFR 38/001/2008 <<http://www.amnesty.org/en/library/info/AFR38/001/2008/en>> [accessed 10 July 2008]

¹⁶ Other Mauritanian migrants who attempt to take a boat from Morocco face being expelled to a strip of no man's land in the desert between Mauritania and Morocco which is laced with anti-personnel mines.

¹⁷ *FRONTEX Annual Report 2006*, FRONTEX website <http://www.frontex.europa.eu/annual_report> p.12

the number of asylum applications over the past few years should not be applauded as a success for the EU'¹⁸.

The communication on immigration suggests that the EU's border control agency FRONTEX is to play a larger part in border control missions in the future, meaning the 'operational dimensions' of FRONTEX are to be reinforced to allow it to initiate and lead border control missions¹⁹. As FRONTEX is obliged to observe human rights, it is hoped that the basic rights of potential irregular immigrants may be safer under this agency. However, there have been concerns about the speed at which their powers are expanding, and whether the expansion is occurring at the expense of the agency's quality. The House of Lords European Union Committee commented that:

'A new agency cannot be expected to double its size, its work and its budget every year. The time has come for a period of consolidation: somewhat slower growth and concentration on improvement in the quality of operations rather than in their number'²⁰.

The British Refugee Council and ECRE feel that the human rights responsibilities of FRONTEX need to be elaborated on before expansion can be legitimised. In their response to the House of Lords report on FRONTEX, the British Refugee Council and ECRE express the view that FRONTEX is expanding fast 'without due attention to the establishment and/or clarification of the Agency's role and responsibilities in relation to human rights'²¹. A series of questions on FRONTEX's protocol in situations in which human rights could be sidelined were posed by British Refugee Council and ECRE to establish clarity on the extent of FRONTEX's human rights commitments. These included such questions as:

'How does a border guard functioning under FRONTEX coordination respond when encountering someone who wishes to seek asylum? How is this different when in EU territory, at the external border, in international waters or on third country waters for example?'²²

The questions posed were not answered in the Commission communication on the future of FRONTEX released in February. However, the commission pledged training led by

¹⁸ As stated in: *ECRE welcomes the European Commission's Policy Plan on Asylum*, ECRE website, 2008, <http://www.ecre.org/resources/press_releases/1108>

¹⁹ Future policy as laid out by the communication on immigration seeks to 'reinforce operational dimension...including by extending its capacity with regard to operational command, and its powers to initiate operations involving border controls in areas identified as high-risk areas and exposed to exceptional migratory pressure' and to 'strengthen the role of FRONTEX with regard to joint return operations by air'.

²⁰ *FRONTEX: The EU External Borders Agency*, House of Lords European Union Committee, 2008, <<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldecom/60/60.pdf>> [accessed 28 August 2008] paragraph 186 p53

²¹ *ECRE welcomes the European Commission's Policy Plan on Asylum*, ECRE website, 2008, <http://www.ecre.org/resources/press_releases/1108>

²² As asked by Refugee Council and ECRE in *FRONTEX: The EU External Borders Agency*, House of Lords European Union Committee, 2008, <<http://www.publications.parliament.uk/pa/ld200708/ldselect/ldecom/60/60.pdf>> [accessed 28 August 2008] p113

FRONTEX on ‘European and international rules on asylum, the law of the sea and fundamental rights’²³. The intended recipients of this specific training have not been identified and it is unclear if this training will be extended to the police forces of third countries providing external border control.

In June Working Arrangements between FRONTEX and the UNHCR were drawn up to ensure that EU border control meets international human rights standards. In particular the arrangement will focus on the sharing of information and the preparation of training materials on international human rights and refugee law²⁴. It is hoped that this collaboration will ensure that FRONTEX operations are run with due regard to human rights regulations.

The communication on immigration suggests that the EU should ‘develop coordinated, strategic approach to build up a sustainable, effective border management capacity in key partner countries... with a prominent role to be played by FRONTEX’. This is coupled with a commitment to help third countries ‘establish immigration and asylum systems, with full respect to relevant international conventions’.

Security - Data

Another rather different security issue which can be found in both communications is that of international data sharing. Data is to be shared both on immigrants and on those seeking international protection. The communication on immigration advocates that:

‘New technologies should be used, where appropriate, to enable differentiated, risk based checks on visa applicants with extensive sharing of information between member states, whilst fully respecting data protection and privacy laws.’

This is coupled with a commitment to unblocking national data on refugees which will potentially include biometric data²⁵.

A reason given for the increased sharing of data on refugees is to prevent secondary movements, where refugees who have been accepted into one member state seek asylum in another state.

²³ *The FRONTEX Agency: evaluation and future development*, Europa website: Rapid Press release, 2008, <<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/84&format=HTML&aged=0&language=EN&guiLanguage=en>> [accessed 28 August 2008]

²⁴ Passage from press release: ‘reinforced cooperation’, FRONTEX website newsroom, 2008, <http://www.frontex.europa.eu/newsroom/news_releases/art39.html> [accessed 10 July 2008]

²⁵ Biometric data is already in use under the EURODAC system

There are several concerns about the collection and dissemination of data which apply to immigration and asylum. One of the issues is that the biometric systems may not be flawless. The problems associated with large scale technical innovations may not be fully debated by the media, which play a major part in holding public organisations to account and highlighting possible problems, because the issues are so complex²⁶. Furthermore, biometric data 'is vulnerable to errors and can be 'spoofed'²⁷.

The Red Cross further opposes the commitment made to the sharing of data on asylum seekers because it feels that the sharing of data is unnecessary. It feels that those seeking international protection should be given the right to choose the country where they want to seek asylum. Currently, an asylum seeker can expect different reception conditions in different Member States. Although asylum systems are due to be made uniform by 2012 under the Common European Asylum System, the Red Cross feels this estimate is very optimistic and fears that a truly uniform system will not come into force within the next four years. The communication on asylum suggests provisions for the voluntary transfer of those receiving international protection from one member state to another when the original member state is under high pressure.

If the EU intends to proceed with this system of identification and data sharing, it must proceed carefully. Effort may be better spent on ensuring consistent high quality provision for those seeking international protection rather than on systems intended partly to contain them.

Conclusion

How does the EU fare in reconciling prosperity, solidarity, security and external responsibility within its communications on immigration and asylum? Firstly, the EU attempts to ensure long term prosperity and economic security for its citizens. Secondly, it attempts to realise these goals in the larger world through development aid and research. In this respect there appears to be a real commitment to external responsibility, however, some of the policies in the communications appear to conflict, such as that on brain-drain and targeted recruitment; these need to be monitored to ensure that development does not suffer for Europe to be prosperous. Also in some respects a sense of equality with partner countries appears to be lacking, and this needs to be addressed for true solidarity. Fortunately FRONTEX appears to be taking its human rights commitments seriously in the domain of border control, but the EU needs to ensure that the third countries it works with are equipped to do the same and provide a timescale for

²⁶ Martin. A.K. and Whitley.E.A., 'Public Expectations of Technological Systems: A Case Study of a Problematic Government Project' *Spontaneous Generations*, 1:1 (2007), 67-77 (p.69)

²⁷ This is quoted by Ceyhan from *Biometrics at the frontiers: Assessing the impact on society*. Report for the European Parliament Committee on citizen's freedoms and rights, Justice and home affairs (LIBE), European Communities, 2005, p.10.

this. Finally, in the case of biometric identification and data sharing, the EU needs to ensure that these measures are safe and absolutely necessary before proceeding.

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¹ *Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions Policy plan on Asylum: An Integrated Approach to Protection Across the EU* [2008] COM (2008) 360/3

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