



# **COMMON EU POLICIES ON AUTHORISED IMMIGRATION PAST, PRESENT AND FUTURE**

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# COMMON EU POLICIES ON AUTHORISED IMMIGRATION: PAST, PRESENT AND FUTURE

**Since the early 1990s, one metaphor has dominated the debates on the construction of a common EU immigration policy: 'Fortress Europe'. The gradual adoption of a set of common rules on the entry, residence and rights of non-EU nationals was depicted as the building of a wall along the external borders of the EU to keep non-EU nationals away coupled with internal, legal boundaries within the welfare systems of EU member states.**

Within the framework of the 'Fortress Europe' metaphor, new immigration was considered undesirable. At best, member states were supposed to be interested in a minimal harmonisation of their policies on immigrants who had already been present in their territories and considered most likely to remain. Such harmonisation entailed the protection of a basic set of rights and their approximation to those of EU citizens (or, in the case of family reunification, the nationals in each member state), the status of long-term resident immigrants and anti-discrimination policies. This approach would help tackle worrying social phenomena, in particular rising xenophobia throughout the EU, immigrant exclusion and the creation of 'parallel societies', and the strengthening of far-right political mobilisation. In other words, the reasons for protecting immigrants who already lived within the 'Fortress' were portrayed as internal and socio-political. In the economic field the EU was considered overly protectionist towards the rest of the world, keen to profit from the movement of goods, capital and services in the internal market, while endorsement of the movement of people was limited to EU citizens and their families only.

From the creation of the EU until the late 1990s, few would disagree with this framework of understanding of the developing common EU immigration policy. However, the 'Fortress Europe' metaphor, though it maintained its appeal in the public debate throughout the 2000s, became over-simplistic and gradually obscured the full picture of the developments in this EU policy area. In fact, since the late 2000s and on the basis of economic considerations, there has been a clear shift in the dominant approach of the common EU immigration policy towards recognising the need for and value of particular categories of international migrants in Europe. This change of course, though predating the onset of the international economic crisis, has also characterised recent policy developments in the field.

Consequently, the 'Fortress' has opened some of its gates to allow and even facilitate entry into the EU on the basis of the skills needed in the economies and labour markets of the member states. This 'invitation' is coupled with incentives – most importantly in the realm of awarding rights – to help attract desired human capital amidst the fierce international competition for high-skilled labour. At the same time, other 'gates', particularly for the low-skilled or those who seek international protection, still remain difficult to enter.

This paper seeks, first, to summarise the basic trends in the construction of EU policies on authorised immigration. Second, it assesses recent developments in EU policy-making activity in this field. And finally, it advances policy recommendations to be adopted in the immediate future in order to respond to existing issues in the management of immigration in the EU.

## **BASIC TRENDS IN EU POLICIES ON AUTHORISED IMMIGRATION, 1993-2015**

With the entry into force of the Maastricht Treaty in 1993, the institutional framework for EU integration in immigration policy issues made its first steps. The Maastricht Treaty left immigration and asylum policies outside the community framework but included them in intergovernmental modes of cooperation among member states as policy matters of common interest. Since then, three main - and qualitatively distinct - periods or 'blocks' with basic directions of EU immigration policies can be identified.

The first and rather brief period of very reluctant steps in the mid-1990s was characterised by a defensive stance, both in terms of guarding state sovereignty and managing immigration. It aimed at the coordination of immigration policies in the member states for achieving as few new immigrant arrivals for employment purposes as possible. To that purpose, two non-binding Council Resolutions on immigration for employment purposes were adopted: the first, on 20 June 1994, 'on the limitation on admission of third-country nationals to the territory of the Member States for employment'; and the second, on 30 November 1994, 'relating to the limitations on the admission of third-country nationals to the territory of the Member States for the purpose of pursuing activities as self-employed persons'.

The second period, beginning with the entry into force of the Treaty of Amsterdam and continuing into the early 2000s, saw the enrichment of the set of EU immigration policy norms with an emphasis on achieving the integration of already existing immigrant communities in the member states. This was realised through the establishment of a common basic policy framework applicable in most EU member states (except the United Kingdom, Ireland and Denmark) and the adoption of new common binding norms on guaranteeing certain rights to third-country nationals and their families.

This period saw the adoption of a series of Council Directives on the right to family reunification (Council Directive 2003/86/EC), on the status of third-country nationals who are long-term residents (Council Directive 2003/103/EC) and on the entry and residence of non-EU citizens for studying purposes (Council Directive 2004/114/EC). These instruments had been preceded by the adoption of common anti-discrimination norms (Council Directives 2000/43/EC and 2000/78/EC). The latter, although not directly belonging to the realm of immigration policy, included important provisions for the prohibition of discrimination on the basis of race and ethnic origin, as well as discrimination in employment and occupation on the basis of religion or belief, all issues of immediate concern to immigrant communities. Undoubtedly, the emphasis in this period was on existing immigrant communities in the member states and the non-EU nationals who were long-term residents or had reasonable prospects for long-term settlement.

The end of the transitional provisions of the Treaty of Amsterdam in 2004 marked the beginning of the third period, which continues today.<sup>1</sup> In this phase, a gradual turn has taken place towards adopting common EU norms on the entry and residence of new migrants in the EU for employment purposes. In this case, there has been a clear attempt to establish a common framework for attracting the highly skilled from outside the Union: researchers (Council Directive 2005/71/EC), highly skilled professionals (Council Directive 2009/50/EC, better known as the 'Blue Card' Directive), and specialised employees of multinational corporations (the recently adopted Directive 2014/66/EU on intra-corporate transferees or ICTs). This attempt went hand-in-hand with more favourable provisions, rights and guarantees for these people compared to the conditions and procedures for granting entry and residence to other categories of non-EU nationals. At the same time, there has been an implicit recognition of the dual character of labour markets in the EU member states that clearly display needs for low-skilled labour. Accordingly, a common set of rules and procedures for the recruitment, rights and return of seasonal workers has also been adopted.

In the case of both seasonal immigrant workers and intra-corporate transferees, common EU rules now clearly refer to 'temporary' and 'circular' migration. However, immigration of the low-skilled is not as desired as that of the highly-skilled, nor is recruitment promoted with the same intensity for both categories at the EU level. As a result, the preference for attracting highly skilled immigrants into the EU since the mid-2000s has produced a hierarchy of rights provided at the EU level for different immigrant categories. A brief and indicative (although certainly not exhaustive) presentation of such a hierarchy or 'scale' is provided in Table 1. A more detailed comparison and discussion of the differences associated with this hierarchy, focusing on the recently adopted Directives on seasonal workers and intra-corporate transferees, will be pursued in the next section of this paper.

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<sup>1</sup> The information in this strategic update was last updated in January 2015.

**Table 1: Basic provisions in EU Directives on authorised immigration**

| Category guarantee      | Right of residence | Family unity                        | Movement to another MS | Special remuneration |
|-------------------------|--------------------|-------------------------------------|------------------------|----------------------|
| <b>Seasonal workers</b> | < 9 months         | No                                  | No                     | No                   |
| <b>Students</b>         | at least 1 year    | No                                  | Yes<br>(for studies)   | -----                |
| <b>Researchers</b>      | at least 1 year    | Open<br>(member state discretion)   | Yes<br>(for research)  | -----                |
| <b>ICTs</b>             | 1-3 years          | Yes<br>with labour<br>market access | Yes                    | Yes                  |
| <b>Blue Card</b>        | 1-4 years          | Yes<br>with labour<br>market access | Yes                    | Yes                  |

These periods or 'blocks' in the gradual construction of common EU immigration policies evolved against a background of multiple legal, economic and social settings at the national level of the member states. For one thing, and despite the existence of the common market and the construction of a monetary union, there has not been a single EU economy. Instead, different national or regional economies co-exist, side by side, characterised by different gears of economic performance or, at times, even different economic circles. This is coupled by the absence, to date, of a completed single EU labour market<sup>2</sup> and the parallel functioning of national labour markets with different characteristics, institutional settings, unemployment rates, and labour needs<sup>3</sup> that lead to different 'gears' in immigrant labour recruitment and dominant types of migration.

2 Annabelle Krause, Ulf Rinne and Klaus F. Zimmermann, *How far away is a Single European Labor Market?*, Discussion Paper No. 8383 (Bonn: Forschungsinstitut zur Zukunft der Arbeit, 2014).

3 Claire Dheret et al., *Making Progress Towards the Completion of the Single European Labour Market*. EPC Issue Paper No. 75 (Brussels: European Policy Center, 2013). See also Vassilis Monastiriotis and Sotirios Zartaloudis, *Beyond the crisis: EMU and labour market reform pressures in good and bad times*. LEQS Paper No. 23/2010 (London, June 2010).

As a result of these differences, member states participate in different international migration systems, which go beyond the diversification of the ethnic composition of their immigrant populations and include the presence or absence of historical ties with countries of origin, established migration networks, types and patterns of migration, and established frameworks of national migration policies and institutions. These differences among member states were combined with the exclusion of immigration policies from the community method of decision-making for almost two decades, until the entry into force of the Lisbon Treaty in late 2009. While a series of EU Directives was adopted, containing basic common policy principles, procedures and measures applicable in all participating member states, the same Directives also contained optional clauses, as well as provisions that left the setting of standards for the implementation of common EU norms at the discretion of member states.

Thus, the differences in the ways member states have chosen to implement the adopted EU immigration policy norms have created a patchwork of national regulations, delaying the full establishment and application of truly common policies throughout the EU. The issuing of residence permits of various types and purposes in different member states is a case in point.<sup>4</sup> Moreover, different national standards are currently applied when authorising family reunification, including the existence of reasonable prospects of third-country nationals for permanent residence, the setting of the minimum age for the sponsor and the spouse and the compliance with integration measures prior or following admission of family members.<sup>5</sup> Further, it has been noted that various categories of residence permits are excluded from the scope of application of the long-term resident status in a number of member states.<sup>6</sup> Finally, there are different national standards for meeting income and integration requirements for obtaining the status of long-term resident as well as allowing for the exercise of the right of a long-term resident to move to and reside in another member state.<sup>7</sup>

The existing patchwork of national rules and standards within the wider framework of common EU policy norms creates challenges that EU institutions, and the Commission in particular, have sought to address by re-opening the debate on existing EU policies, proposing amendments to EU Directives in force, and sketching their priorities for the

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4 European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, COM(2014) 210 final (Brussels, 3 April 2014), 4.

5 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 final (Brussels, 8 October 2008), 4-7.

6 European Commission, *Report from the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents*, COM(2011) 585 final (Brussels, 28 September 2011), 2.

7 *Ibid.*, 3, 7-8.

years following the end of the current multi-annual programme on Justice and Home Affairs (namely the 'Stockholm Programme', 2009-2014). The current debates, proposals, negotiations and tensions linked to these developments will be discussed below.

## RECENT DEBATES AND POLICY DEVELOPMENTS

### *Proposals and processes for amending current EU legislation*

In 2011, the European Commission re-opened the debate on two policy areas on authorised immigration: family reunification for third-country nationals and the conditions of entry and residence of students and researchers. In the first case, there has been a Commission Green paper as well as an open consultation process (the Commission had already identified a number of issues preventing full harmonisation of the application of the Directive on family reunification in the member states in 2008).<sup>8</sup> It soon became evident, however, that there was not enough support, either by the member states or by stakeholders and civil society, to re-open the legislative process and amend the existing Directive. Instead, the Commission issued guidelines for the uniform application of the provisions in force.<sup>9</sup> By contrast, amending the Directives on the conditions of entry and residence for students (2004/114/EC) and researchers (2005/71/EC) is currently in full swing. The Commission presented its proposal for a *Directive on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au-pairing* in March 2013 and the process is integrated in the wider framework of the common EU policy on authorised immigration and attracting skilled and highly-skilled workers into the EU.<sup>10</sup>

Among the reasons for backing the proposal are: the existing differences among member states in the issuing of visas, granting of mobility rights and procedural safeguards; the incoherence of some rules in force with EU internal mobility programmes (such as the *Erasmus Mundus* and *Marie Curie*); and the need to adapt the common policy on the admission of students and researchers to the Europe 2020 Strategy.<sup>11</sup> Moreover, substantial differences exist among member states concerning the rights and conditions of employment of third-country national students during and after the course of their studies.

8 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 final (Brussels, 8 October 2008).

9 European Commission, *Communication from the Commission to the European Parliament and the Council on guidance for application of Directive 2003/86/EC on the right to family reunification*, COM(2014) 210 final (Brussels, 3 April 2014).

10 European Commission, *Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au-pairing*, COM(2013) 151 final (Brussels, 25 March 2013), 2-3.

11 *Ibid.*, 2.



At the same time, national strategies and priorities are the prevailing framework for attracting international students to the EU, revealing a patchwork of national policies on linking international student mobility with immigration potential.<sup>12</sup>

The Commission's proposal included:<sup>13</sup>

- **the expansion of the scope of EU immigration policy instruments.**  
It foresaw the introduction of binding provisions to regulate the conditions, procedures and rights for the entry and residence of non-EU nationals for unremunerated training, pupil exchange and voluntary service (member states may currently choose to implement non-binding provisions on these categories). Furthermore, and for the first time, the proposal introduced common conditions, procedures and rights for the entry and residence of non-EU citizens for remunerated training and au-pairing.
- **the improvement of the coherence of EU immigration policies in force.**  
It built on the existing Directives on the conditions for entry and residence of third-country nationals for studying purposes (adopted in 2004) and the Directive on the admission of third-country national researchers (adopted in 2005). Furthermore, the Proposal sought to harmonise the treatment of third-country national researchers with the provisions of the 'Blue Card' Directive for highly-skilled third-country nationals (2008), the Directive on a single residence permit (2010) and the draft Directive on intra-company transfers, which was still under negotiation at that time.
- **the extension of protection of rights of third-country nationals.**  
The proposed changes of the EU legal provisions included an increase in the weekly working hours permitted for third-country national students (and therefore the facilitation of their access to the labour market), the simplification of the procedures for the issuing of residence permits to foreign students and researchers, the setting of guarantees for the treatment and working conditions of au-pairs from third countries, the facilitation of mobility within the EU of foreign students and researchers for studying and research purposes and the setting of criteria for the mobility of remunerated trainees.

12 European Migration Network, *EMN Inform. Immigration of International Students to the EU* (2013), 1-2.

13 European Commission, *Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au-pairing.*

This proposal has gathered support from EU institutions<sup>14</sup> and passed a first reading in the European Parliament in February 2014. The latter has endorsed and supported the spirit and most of the provisions of the Commission's proposal. Further, it introduced a series of amendments aiming at more procedural guarantees for applicants, including the issuing of visas, and higher protection of the rights of third-country national students and researchers with respect to family reunification, access to the labour market and public goods, and equal treatment with nationals in accessing family benefits, education and vocational training. The European Parliament has suggested that existing draft provisions on the intra-EU mobility of researchers and students should also cover unremunerated and remunerated trainees and volunteers. It has also proposed that, following the end of their course of study or project of research in the EU, third-country nationals should be granted the right to stay for 18 additional months in order to look for employment or start their own business (the Commission's proposal had foreseen a period of only one year).<sup>15</sup>

By contrast, member states wish to maintain their national policies and practices for attracting international students and researchers and to prevent abuse of the schemes for remunerated trainees, volunteers and au-pairs for employment purposes. Accordingly, they wish to ensure that entries of low-skilled third-country nationals are avoided.<sup>16</sup> Moreover, the introduction of new, mandatory provisions for the regulation of the entry and residence of volunteers, remunerated trainees and au-pairs has been resisted by many member states and led to compromising proposals that introduced optional clauses during the negotiations.<sup>17</sup> Member states have also expressed numerous reservations on other important issues, such as the equal treatment clauses concerning social rights and family benefits and the ability of international students and researchers to remain in the EU in search of employment.<sup>18</sup>

14 European Economic and Social Committee, *Opinion of the European Economic and Social Committee on the Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au-pairing*, COM(2013) 151 final - 2013/0081 (COD), SOC/484 - 3516-2013\_00\_00\_TRA\_AC - 2013/0081 (COD) (Brussels, 18 September 2013). See also Committee of the Regions, *Opinion. Researchers, students, volunteers and other groups of third-country nationals*, CIVEX-V-043 (104th Plenary session, Brussels, 28-29 November 2013), 7-9.

15 Council of the European Union, *Information Note from General Secretariat to Permanent Representatives Committee/Council*, Document No. 6746/14 [2013/0081 (COD)] (Brussels, 26 February 2014).

16 Council of the European Union, *Outcome of Proceedings of Working Party on Integration, Migration and Expulsion on 26 April 2013*, Document No 9251/13 [2013/0081 (COD)] (Brussels, 15 May 2013), 1-19. See also Council of the European Union, *Outcome of Proceedings of Working Party on Integration, Migration and Expulsion on 29 November 2013*, Document No 17021/13 [2013/0081 (COD)] (Brussels, 11 December 2013), 61-66; and Council of the European Union, *Note from Presidency on 20 March 2014 to Working Party on Integration, Migration and Expulsion*, Document No 7617/14 [2013/0081 (COD)] (Brussels, 17 March 2014), 60, 89-90.

17 Council of the European Union, *Outcome of Proceedings of Working Party on Integration, Migration and Expulsion on 29 November 2013*, 2, 15, 42. Also Council of the European Union, *Note from Presidency on 20 March 2014 to Working Party on Integration, Migration and Expulsion*, 3.

18 Council of the European Union, *Note from Presidency on 20 March 2014 to Working Party on Integration, Migration and Expulsion*, 105-107, 121-124.

## The end of the Stockholm Programme

The year 2014 marked the end of the five-year Stockholm Programme, with the adoption of two legislative acts on authorised immigration of non-EU citizens: the Directive on the entry and residence of seasonal workers and the Directive on entry and residence of intra-corporate transferees. The former is recognised as the first set of EU rules with a focus on low-skilled immigration,<sup>19</sup> whereas the latter aims at promoting and facilitating circular and flexible mobility of highly-skilled personnel of multinational firms in the EU, in particular managers, specialists and trainee employees.<sup>20</sup>

Comparing the rights conferred upon third-country nationals within the scope of the two Directives, as well as the level of discretion of member states in applying certain provisions, reveals the clear emphasis of EU policy on attracting and facilitating highly-skilled international migration while keeping entry and residence of the low-skilled at a minimum and controlling the conditions of their admission as much as possible. Thus, in contrast to seasonal workers, intra-corporate transferees do not need a Schengen visa, they are exempted from labour market tests, their families can follow them and access the labour market, they are granted longer periods of stay, and they can also move to another member state.<sup>21</sup>

These differences in the treatment of seasonal workers compared to intra-corporate transferees reflect the different expectations and logics for understanding and managing immigration into the EU. Thus, a common set of rules for the admission and stay of intra-corporate transferees, firmly embedded within the preference for highly-skilled immigration, is expected to 'generate economic growth by, on the one hand, bringing an added value to the existing EU free trade agreements and, on the other hand, helping attracting new investments to the EU'.<sup>22</sup> In turn, the new Directive offers transferred trainee employees, specialists and managers of multinational companies a tailored system of intra-EU mobility as well as favourable treatment in terms of their rights compared to other categories of third-country nationals.

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19 Council of the European Union, *Council adopts directive on third-country seasonal workers*, Press Release No. 6429/14 (Brussels, 17 February 2014), 1.

20 Council of the European Union, *Council adopts intra-corporate transferees directive*, Press Release No. 6338/14 (Brussels, 13 May 2014), 1.

21 European Parliament, *European Parliament legislative resolution of 5 February 2014 on the proposal for a directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (COM(2010)0379 - C7 - 0180/2010 - 2010/1210(COD))*, Document P7\_TA-PROV(2014)0072 (Brussels, 5 February 2014). See also *Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals in the framework of an intra-company transfer*, Document PE-CONS 58/14 (Brussels, 29 April 2014).

22 European Commission, *Communication from the Commission to the European Parliament and the Council. 5th Annual Report on Migration and Asylum (2013)*, COM(2014) 288 final (Brussels, 22 May 2014), 13.

The differential treatment that the common EU immigration policy now foresees for the various categories of authorised immigrants incorporates the gradual but clear departure from the overly restrictive approach towards immigration, which had characterised the beginnings of EU integration in this field during the 1990s. Following the end of the Stockholm Programme, this same trend is expected to continue in the years to come. Indeed, in its most recent communication, the European Commission has defined the priorities for the ‘post-Stockholm’ era by noting the ‘crucial importance’ of maximising ‘the benefits Home Affairs policies can bring to fostering economic growth and attract people with the right skills, as well as legitimate travellers to Europe.’<sup>23</sup>

What is implied, once again, is a common policy model at the EU level that welcomes particular categories of skilled international migrants deemed useful or necessary for economic purposes while maintaining controls to limit the entry and/or residence of other immigrants or short-term travellers posing a real or perceived risk of unauthorised immigration. The tendencies and prospects of this new stage will be discussed below.

## THE WAY FORWARD: FUTURE DIRECTIONS

‘An open and secure Europe - making it happen’ is the title of the most recent communication by the European Commission concerning the future direction of Justice and Home Affairs policies following the end of the Stockholm Programme. In it, the Commission recognises that international mobility is expected to increase and affect the European Union, in terms of both short-term movement and long-term residence. ‘More people will want to come to Europe – some temporarily, such as tourists, students and service providers, others on a more permanent basis to work or to seek protection’<sup>24</sup> In fact, as every immigration decision entails not only the mere motivations and types of movement but also the choice of a particular destination, an increase in international mobility would also include an increase in the number of non-EU nationals wishing to settle in its member states. Thus, it appears that the logic, principles and policy aims of effective immigration management in the EU would need to correspond with the developing trends and characteristics of international immigration to Europe.

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23 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An open and secure Europe: making it happen*, COM(2014) 154 final (Brussels, 11 March 2014), 2.

24 *Ibid.*, 2.

EU immigration policy should be reformed in three key areas:

1. *International and intra-EU mobility of non-EU citizens*

At this stage, the logic supporting the opening of some EU gates to international mobility appears to rest on economic concerns. In defining the political priorities for the area of Justice and Home Affairs, the Commission noted that '[d]emographic changes, in particular the shrinking of the working population in Europe, coupled with significant skill shortages in certain sectors (notably engineering, IT and healthcare) hinder the EU's productivity and thus its economic recovery'. The same logic seems to underpin initiatives in the near future concerning the entire body of EU policies on authorised immigration: consolidating the already existing regulation of admissions of various categories of persons, the recognition of their rights and the sanctioning of violations needs to take place 'within a more coherent EU common migration policy that also takes into account the short- and long-term economic needs'<sup>25</sup>

The implicit argument contained here, namely that EU member states need new immigrants from outside the EU in order to fill vacant jobs in certain economic sectors and boost economic recovery, does not include a reference to the potential of intra-EU movement of either EU citizens or third-country nationals. This is even more paradoxical when one considers the emphasis put by the Commission on the importance of mobility, both international (highly-skilled, non-EU nationals entering the EU) and European (the exercise of free movement of EU citizens within the EU).

- **If mobility is indeed desired, freedom of movement within the EU for third-country nationals who are already present in EU member states should be encouraged and hurdles present today should be removed. This should be reflected in the adoption of new and binding common norms applicable across the EU.**

The issue of internal mobility of migrants for employment purposes has been put forward, not least during the rounds of consultation of the Commission with civil society organisations. 10 years after the adoption of the Common Basic Principles on Integration, it has been suggested that 'the integration agenda is mature enough to work further with Member State governments to enhance the participation of migrants in the receiving societies [and it] should be looked into to ensure a two-way integration process. High unemployment in one Member State did not mean that there were no

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<sup>25</sup> *Ibid.*, 3.

labour shortages elsewhere.<sup>26</sup> In addition, the European Trade Union Confederation has also called for EU legislation ‘to remove obstacles to the intra-EU mobility of third-country nationals regularly residing in a Member State, but without a long-term resident status’ and address the issues pertaining to the residence, employment and integration of the immigrants already present in the EU, thus going beyond a mere regulation of new arrivals.<sup>27</sup>

Although mentioned as a potential direction of future EU policy developments under the term ‘a single area of migration’,<sup>28</sup> however, these options still remain very vague and are not expected to bring new policy initiatives soon, especially given the Commission’s preference for adopting pending initiatives, and implementing and monitoring the existing EU *acquis*.<sup>29</sup>

## 2. *Categories of migrants: EU preferences vs. migratory realities*

In its communication on the future of Justice and Home Affairs policies following the end of the Stockholm Programme, it is clear that the Commission put major emphasis on the desirability of highly-skilled, non-permanent international migration. In this framework, proposals include the faster and easier issuing of visas for international students and researchers, and the facilitation of entry and short-term stay of international service providers.

As outlined in previous sections of this paper, this preference is not new. Rather, it continues from the priorities reflected in the adoption of common binding norms on authorised migration under the Stockholm Programme. At the same time, however, the reality of high pressures for entry of low-skilled immigrants, especially in the southern periphery of the EU, seems to be neglected and instead pushed under the category of unauthorised immigration and return. Such a view does not take into account major determinants of international migration, such as the much lower level of economic development and wages characterising the EU neighbourhood, the close proximity of the latter to EU member states, the significant demographic pressures the EU neighbourhood is facing, as well as the increased economic, political and social instability in these countries.

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26 Social Platform, *Report from DG Home and Social Platform Hearing on the Future of Migration and Asylum in Europe*, (3 December 2013), 2.

27 European Trade Union Confederation, *Action Plan on Migration (Abstract)* (Brussels, 5-6 March 2013), 2.

28 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An open and secure Europe: making it happen*, 4.

29 Social Platform. *Report from DG Home and Social Platform Hearing on the Future of Migration and Asylum in Europe*, 1, 9.

- **These factors, not allowing for entry and residence to the EU member states for reasons of international protection, nevertheless continue to motivate thousands of new immigrants to enter the EU each year in search of a better future for them and their families, regardless of their qualifications and skills. This is a reality and a potential source of authorised immigration that the EU and its member states need to address in a pragmatic way.**

It is no secret that EU member states differ in their economies, social realities and labour needs, with some economic sectors relying on low-paid, low-skilled occupations and characterised by vacant jobs for such categories of employment. Examples include agriculture and fisheries in Southern Europe. At the same time, domestic services is another sector where the needs to provide care to Europe's elderly population may be a common trend throughout the EU and a pull factor for international (mainly female) low-skilled migration.<sup>30</sup>

From this point of view, unauthorised low-skilled immigration into the EU cannot be viewed simply as a result of human smuggling and trafficking or 'demand from employers offering illegal labour opportunities'.<sup>31</sup> Instead, the numerous restrictions to entry and residence of low-skilled foreign immigrants, although unable in themselves to counterbalance the strong motivations and determinants for immigration into the EU, ultimately contribute to the abuse of the existing channels for authorised immigration and to the irregularity of immigration flows. In turn, these policy choices further feed into framing migratory pressures as an issue related to the fight against unauthorised immigration. Thus, they strengthen the voices and actions in favour of more cooperation in the area of unauthorised immigration, readmission and return, instead of addressing the root causes of continuous arrivals of low-skilled immigrants in the EU.

The 2012 'Action on Migratory Pressures - A Strategic Response'<sup>32</sup> is indicative in this regard, setting the strategic priorities for tackling continuous migratory pressures in the EU periphery solely within the framework of border management, readmission and return, and unauthorised immigration. However, as the International Organization for Migration (IOM) has noted, this approach has not significantly reduced the number of (undesired)

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30 *Ibid.*, 4.

31 European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An open and secure Europe: making it happen*, 5.

32 Council of the European Union, *EU Action on Migratory Pressures - A Strategic Response*, 8714/1/12 REV 1 (Brussels, 23 April 2012).

immigrant arrivals in the EU, instead helping to perpetuate human smuggling and trafficking activities and increasing the vulnerability of immigrants after their arrival in the EU member states.<sup>33</sup>

- **Therefore, it is essential that EU policy instruments are devised to allow for and regulate the legal entry and residence of third-country nationals of various skill categories, connected with opportunities to work or seek employment in member states for a set period of time while keeping the options for circular migration open.**

Agreement on such action among member states and the planning for its implementation appears difficult at the moment. As already noted during the Commission's open consultation processes, the period of economic crisis has not been conducive to ambitious steps in the area of authorised immigration, not least due to the sharp increase in unemployment rates in some member states.<sup>34</sup> Nevertheless, it is still important to formulate policy guidelines on authorised immigration for employment purposes at the EU level and propose new legislative instruments to be adopted in the coming years. This process could possibly entail, but not be limited to, the unfreezing of the relevant debates on older Commission proposals, such as the one *on a Council Directive on the conditions on entry and residence of third-country nationals for the purpose of paid employment or self-employed economic activity*.<sup>35</sup>

### 3. Avoiding stalemate in the EU policy-making process and supporting new initiatives

It should be noted that the current constellation of governmental preferences within the EU does not seem to support new proposals for EU legislation in the near future. A number of member states have clearly stated that activity should focus on adopting pending proposals, as well as implementing and evaluating existing policies and instruments.<sup>36</sup>

33 International Organisation of Migration, *IOM Contribution to the DG Home Consultations: The Future of Home Affairs Policies* (2014), 5.

34 Yves Pascouau, *The future of the area of freedom, security and justice. Addressing mobility, protection and effectiveness in the long run*, Discussion Paper (Brussels: European Policy Center, 23 January 2014), 18.

35 European Commission, *Proposal on a Council Directive on the conditions on entry and residence of third-country nationals for the purpose of paid employment or self-employed economic activity* (COM (2001) 386 final) (Brussels, 11 July 2001).

36 German Ministry of Interior, *Position Paper of the Federal Government on the Post-Stockholm Programme* (21 January 2014), 1, 4. See also Finnish Ministry of the Interior, *Non-Paper on the Future Development of the EU Home Affairs Area After 2014* (Helsinki, 29 November 2013), 1.



At the same time, however, the number of proposals from within the EU institutions to open up and reinforce channels of authorised immigration is increasing. A recent example in this regard is the call from the Task Force Mediterranean that more possibilities for authorised entry (both for employment and for studying purposes) be made available as alternatives to clandestine immigration and potential asylum-seeking.<sup>37</sup> In parallel, these internal calls are echoed by international actors in the field of migration management.

For the period following the Stockholm Programme, the IOM has already called for an EU immigration policy that would address authorised immigration channels and safeguard immigrant rights in the EU, together with closer cooperation with countries of origin and transit.<sup>38</sup>

- **A co-ordinated, broader synergy of policy proposals from institutional actors within and outside the EU to increase the available channels for authorised immigration in Europe would be a positive development. Wide support for a pragmatic approach in EU immigration policy, aiming at offering chances for entry and residence to people of various skill categories, is needed to prevent a stalemate in the further development of common EU norms on authorised immigration in the immediate future. ■**

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37 European Commission, *Communication from the Commission to the European Parliament and the Council on the work of the Task Force Mediterranean*, COM(2013) 869 final (Brussels, 4 December 2013), 12-13.

38 International Organisation of Migration. *IOM Contribution to the DG Home Consultations: The Future of Home Affairs Policies* (2014), 11.

# COMMON EU POLICIES ON AUTHORISED IMMIGRATION PAST, PRESENT AND FUTURE

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Since the early 1990s, the metaphor of ‘Fortress Europe’ has dominated the debates on the construction of a common EU immigration policy. While few would disagree with this framework during the initial years of the endeavour, by now it has become over-simplistic and it obscures the full picture of developments in this EU policy area. Since the late 2000s, chiefly on the basis of economic considerations, there has been a clear shift in the dominant approach of the common EU immigration policy towards recognising the need for and value of particular categories of international migrants in Europe. Consequently, the ‘Fortress’ has opened some of its gates to allow and even facilitate entry of non-EU nationals into the EU according to the skills needed in the economies and labour markets of the member states. By contrast, the low-skilled or those who seek international protection still face difficulties in entering. This paper summarises trends in the construction of a common EU policy on authorised immigration and assesses recent developments in EU policy-making activity in this field. Finally, it proposes policy recommendations to be adopted in the immediate future in order to respond to existing issues in the management of immigration in the EU.

