

Future EU policy development on immigration and asylum: Understanding the challenge

By Elizabeth Collett

May 2014

EXECUTIVE SUMMARY

In a context of economic crisis and slow recovery, broad euroscepticism, and a tense public debate about the scale of immigration flows to Europe, the European Union has embarked on a process of articulating the next stage of EU immigration and asylum policy development. EU policymakers are doing this at a time when very real crises, requiring urgent attention, are taking place at the southern borders of Europe. The Syrian conflict has left millions displaced, and the number of those embarking on dangerous journeys across the Mediterranean has held distressingly firm.

In June 2014, the European Council must articulate a set of long-term objectives and priorities for action, while contending with these short-term pressures. The Council must do this at a time when the recent experience of policy promulgation has been difficult, and the inspiration and enthusiasm for new policy is largely absent. This policy brief, the first of three on EU immigration and asylum policy, sets out the reasons for increasingly sclerotic policy development, and why policy will be harder to make in the future. It highlights that these challenges will not subside in the future, but EU institutions and Member State governments will have to find different ways of working together to identify common solutions based on the real future needs of Member States, and by focusing on adding value to existing immigration systems.

I. INTRODUCTION

The march toward a common, EU-level immigration and asylum policy has been significant. Since the 1999 Tampere European Council, the establishment and continuous expansion of the Schengen area and the Common European Asylum System (CEAS) have been signal achievements. But they are not the only important accomplishments. Equally central, if less well known, has been the corpus of shared goals and milestones agreed to and achieved during each of the five-year Justice and Home Affairs (JHA) programmes since Tampere. Among them are the development of a series of policy frameworks that have propelled the migration and asylum portfolios forward, the establishment of a common policy ‘language’ on immigration within EU institutions, and mutual understanding between the Member States themselves.

The current five-year programme, agreed to in late 2009, is widely considered to have been less effective than its predecessors. This is only partly the result of its content and design; a number of internal (within the European Union) and external factors have also interfered with achieving the Stockholm Programme’s policy ambitions. The global economic downturn (and the fiscal and labour market crises that it spawned), the Arab Spring, the complicating effect of the Lisbon Treaty on EU decision-making processes, and shifting national priorities

have all called into question whether the format and scope of the JHA five-year programme is still the most appropriate and effective tool to manage today's challenges.

This policy brief offers an analysis of the challenges facing EU immigration policy, and puts forward a set of broad considerations for post-Stockholm policy development, with specific reference to the areas of immigration, asylum, and border management, in view of the strategic guidelines that will be agreed to in the June 2014 European Council. This policy brief sets the stage for a second brief, which will outline a new method of developing EU policy in this regard, renewing focus on a key principle that should be at the heart of all JHA policy: added value. A third brief will set out a number of policy ideas that exemplify this concept, and point the way to a more co-operative, mainstreamed method of policy development than has been seen so far within (and between) the EU institutions.

II. LESSONS LEARNED SO FAR¹

A. *From Tampere to Stockholm*

In some ways the Stockholm Programme was doomed to disappoint. Nostalgia for the early days of JHA, particularly the Tampere Programme,² has coloured analysis of successive programmes, lamenting the lost ambition of the early architects.³ But among the most important things to understand about previous JHA programmes is the context in which each was developed and implemented. The origin of the Tampere Programme is the right starting point of this exercise and the source of several lessons.

Tampere occurred at a unique moment and for an exceptional purpose. First, it was intended to support the embedding of a brand new policy area, Justice and Home Affairs, in the EU context. As such, Tampere had to articulate a bold vision of what could be possible within the EU framework. Second, national policymakers found themselves building common policy from a vast range of perspectives and experiences. Some of the core goals in fact meant different things to those signing up to them: a single concept had to be adapted to 15 different contexts and, as a result, interpreted in 15 different ways. And as a third pillar policy area, the nature of collaboration was markedly different than it is today, not least the need

for unanimous agreement between Member States. As such, Tampere needed to set broad and ambitious goals that would spur the development of policy measures to achieve them, while steering clear of sensitive areas of sovereignty.

Fourteen years later, certain elements of the Tampere blueprint may appear dated, but the appeal of a grand vision remains as attractive as ever. It is far easier, however, to agree on broad goals—and then flesh out the processes for achieving them—than to hone in on the details.⁴ The idea of a Common European Asylum System, left undefined, is far clearer in theory than in practice, as policymakers have begun to realise. Later on, the credibility of concepts developed under the Hague Programme, such as 'circular migration', and the translation of EU ideas into European practice, such as 'integration is a two-way process', have begun to crumble in the face of serious scrutiny.

In fact, the messy realities of developing policy in immigration and asylum areas have taken their toll on the ambitions of protagonists and supporting actors alike. Finding the common ground and denominator that would allow for policy agreement, has proved very difficult. This may appear to be somewhat paradoxical given that immigration policies across Europe bear striking overall similarities. The devil is always in the details (which reflect the varying sensitivities and priorities of Member States) and particularly in implementation. Over the past couple of years, concerns about implementation of EU legislation—notably the body of asylum law (or *acquis*)—has led many policymakers and observers to question the value of the overall process.

The first decade of common policy development in the area of immigration and asylum focused on establishing baseline policy; because such policy tends to be more general, perhaps even abstract, there are often fewer political obstacles to overcome. Now, however, the EU institutions are looking toward more sophisticated, and thus more difficult, initiatives, which at times amend and/or build upon first-generation policies. For example, the usefulness of informational databases, such as the Schengen Information System (SIS) and Visa Information System (VIS), hinge not only on the consistent application of the Schengen Visa Code by each visa-issuing Member State, but also on the interoperability of national information systems. If it was hard to establish general principles in an era of near-collegial common ownership of the European project and very energetic leadership, today the European Commission is involved in pursuing more complex policy in an environment that is more hostile to certain types and forms of immigration, with a greater number of diverging opinions.

Box I. JHA Programmes and Key Migration and Asylum Policy Priorities

Tampere Programme (2000-05)

The special session of the European Council at Tampere, in October 1999, called on the European Union to develop common migration and asylum policies. The “fields of action” arising from the meeting included:

- Free movement for anyone legally in the European Union to travel, work, and settle anywhere they wish in the European Union
- Working towards a common European asylum system and a joint European immigration policy
- Recognition and protection of the fundamental rights of everyone living legally in the European Union
- Police and customs cooperation to fight organized crime, illegal immigration, and other illicit cross-border or trans-border activities.

The Hague Programme (2005-10)

The Hague Programme called for a new approach to deal with legal and illegal immigration, including the following priorities:

- Fighting illegal immigration and human trafficking, and cooperating with third countries in all fields, including the readmission and return of migrants, to better manage migration flows
- Developing integrated management of the European Union’s external borders, and creating more effective visa policies
- Setting up a common asylum procedure, including working towards a common procedure and status for refugees
- Promoting immigrant integration, including setting up a European framework for integration.

Stockholm Programme (2010-14)

The Stockholm Programme focused on further coordination of border management, visa, and migration and asylum policies. Policy priorities included:

- Enforcing borders to prevent illegal immigration and cross-border crime, and encouraging cross-border cooperation through measures such as the second-generation Schengen Information System (SIS II) and Visa Information System (VIS II)
- Developing a common migration policy that addresses labor market needs while minimizing “brain drain” effects on origin countries, and including effective integration and return policies
- Establishing the Common European Asylum System (CEAS) by 2012.

Source: European Commission, “Tampere: Kick-start to the EU’s policy for justice and home affairs” (fact sheet no. 3.1, European Commission, 2002), http://ec.europa.eu/councils/bx20040617/tampere_09_2002_en.pdf; Europa, “The Hague Programme: 10 priorities for the next five years,” http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/116002_en.htm; Europa, “The Stockholm Programme,” http://europa.eu/legislation_summaries/human_rights/fundamental_rights_within_european_union/110034_en.htm.

Third, the number of actors involved has proliferated. The enlargements of 2004 and 2007 have almost doubled the number of governments who must both agree and then effectively implement policy, and has broadened the overall range of experience at the negotiating table. For some of the newer Member States, implementing EU immigration policies in countries with relatively few actual immigrants is an abstract process, and the development of strong national positions on these policies has been slow. Indeed, EU policy has heavily influenced the development of national systems in these countries, even in non-legislative areas such as immigrant integration policy. Meanwhile, the new post-Lisbon role of the European Parliament has lengthened the policy process. Considering the intermittent friction between the European Council and the European Parliament, reinvigorating the sense of constructive

collaboration between EU institutions must be an implicit, yet critical, element of any new programme. Finally, the development of EU agencies focused on aspects of the immigration portfolio, from the Fundamental Rights Agency to Frontex and the European Asylum Support Office, means that new voices are joining an increasingly dissonant chorus.

Fourth, it should be noted that, outside the EU institutional framework, developing national governance of immigration has both helped and hindered the progress of EU policy in this area. At the time of Tampere, unlike today, only a few European governments (such as France, the Netherlands, and in some important ways the United Kingdom) had in place anything approaching a comprehensive immigration system. As each Member State has developed a

national policy framework post-Tampere, there has been an attendant effect on—even tension with—their approach toward the development of a European-level system. And perhaps more importantly, the experience of pursuing the expansion of EU immigration policy has revealed that, while policies may be ‘easy’ to transfer, developing the institutional infrastructure needed to apply and administer policy effectively, and as intended, is a much more complex matter.

B. *Disappointing Stockholm*

It is thus not surprising that much of the work of the Stockholm Programme has focused on reviewing and reforming existing legislation, rather than on developing new policy frameworks.

The effort to recast directives within the CEAS highlight both the modest ambitions of the Programme and the sense of fatigue that is becoming more commonplace, the implementation of first-generation policies by some Member States, and a more noticeable gap between the form of legislation and its function in practice.⁵ It has taken more than three years to agree upon legislation to harmonise rules for immigrant seasonal workers and intracorporate transferees, two worker categories that were considered to be ‘low-hanging fruit’, and it has been eight years since the policy plan on labour migration was originally set down.⁶ The ultimately marginal value of legislation that has taken so long to agree upon throws into question the validity of the current approach, especially when the interpretation by Member States is not always consistent with either the letter or, more importantly, the spirit of the text. As a result, many argue that rather than pursue further policy development, the European Commission should focus on working with Member States toward the successful transfer and execution of existing policies, essentially a period of consolidation.⁷

Against this point of view is the argument that, as EU common policies are in mid-construction, a prolonged hiatus might lead to policy atrophy, and even regression. Indeed, the European Commission and Council have spent much of the past several years preventing backsliding in policy areas as varied as visa facilitation, the Schengen system, and the full use of the Dublin Convention. External events such as the Arab Spring had unexpected spillover effects within the European Union, precipitating a crisis of confidence in the Schengen system, exposing the fragility of intra-EU cooperation (even in areas long considered settled), and revealing fundamental weaknesses in the ability of the European Union to respond effectively to a crisis in its own immediate neighbourhood.⁸

The impact of external factors on policy is not new for the European Union. The terrorist attacks in New York, Madrid, and London had a profound effect on direction of the Tampere and Hague agendas. More recent events affecting immigration and asylum policy development have been perhaps even more consequential.

1. Economic challenges

The global economic crisis that began in 2008 did not just affect the design of the Stockholm Programme, it also had a pronounced effect on the ability to realise much of the Programme’s content. Policymakers at both national and EU levels have been distracted by the serious disruption to the European economy and its societal effects, aggravated further by the fiscal and euro crises and the resulting relentless growth in unemployment and underemployment.

But while levels of unemployment have risen across the European Union, their effects have not been evenly felt, and two populations stand out: whilst the overall unemployment rate within the EU-27 in 2012 was 10.4 per cent, it was over twice as high for residents under 25 years old (22.8 per cent), and for third-country nationals (21.3 per cent).⁹ Mobile EU workers are also at a slight disadvantage (12.5 per cent) but to a far less degree than those born outside the European Union. In those countries hardest hit by the eurocrisis—notably Greece and Spain, but also Portugal and Ireland—unemployment rates are particularly acute. At the onset of the recession in 2008 in Spain, the unemployment rate of immigrants more than tripled from 8.8 per cent in 2007 to 26.6 per cent in 2012;¹⁰ those immigrants who had arrived more recently, employed in low- and mid-skilled jobs, found themselves particularly vulnerable.¹¹

For many politicians, the twin goals of reducing unemployment and attracting new economic migrants are fundamentally incompatible, or at very least difficult to explain to sceptical and beleaguered publics. Those governments that have managed to discuss economic migration in the public sphere—notably Sweden and Germany—are those that have maintained robust economic growth and low unemployment rates. Thus, it should be no surprise that EU legislation in this area has been difficult.

Moreover, governments no longer have the financial flexibility to implement broad-ranging initiatives at the national level. While this is seen most clearly in Ireland and along the southern part of the Union, virtually all Member States are under pressure to reduce spending while still living up to their EU commitments, a challenge most starkly visible in Greece. Even if the economic crisis lifts over the

next few years, its effects will linger. The effects of this on investments in immigrant integration have already been seen in a number of countries, notably Spain and the Netherlands, which have significantly reduced such expenditure over the past five years.¹²

But it has also had an effect on Member States' willingness to sign up to any new EU legislation that they believe will have cost implications with respect to implementation and adaptation of existing systems, or prolong existing immigration processes. Some large-scale projects over the past decade—most significantly the development of the second-generation Schengen Information System—have exceeded their expected cost at both EU and national levels. Current proposals on the table, such as the development of an entry-exit system and registered traveller programme, have attracted greater scrutiny than previous plans, with critics noting that the projected budgets are unrealistically small.¹³

2. Political challenges

A second, subtler shift has also gained momentum over the past few years, that of populist politics and publics more sceptical toward immigration in a number of Member States. Increasing shares of voters across Europe believe their governments have lost control of the immigration portfolio, and are no longer able to manage immigration flows effectively. Populist parties, from the Netherlands to Greece, have capitalised on this uncertainty and have influenced national policy primarily by forcing government to address some of their concerns in an effort to deny populists the political space on which they thrive. At the EU level, this has created a 'chilling effect' with ministers looking over their shoulder to the national debate when negotiating in the Justice and Home Affairs Council.

The European Union's position in this debate is complicated in many instances by the strengthening eurosceptic narrative. As a result, many national governments have retreated from pan-European collaborative positions at the negotiating table, which has, in turn, negatively affected the possibility of further policy development at the EU level. In some countries this has become a specific national agenda point: the UK government has embarked on a Balance of Competences review of all EU policy portfolios with a view to assessing the UK-EU relationship and future membership, while in the Netherlands, the government has published a 'subsidiarity review' highlighting a number of areas where the national government should be in the lead.¹⁴ However, unlike the United Kingdom, the Dutch government has accepted that EU policy development is still necessary in the area of migration and asylum.

Future policy planning in the JHA area will thus not only have to set out realistic goals that take into account European economic constraints, but will have to push harder to connect with citizens, acknowledge their concerns, and weave a shared immigration narrative. The very recent European Parliamentary elections, with the ascendance of a range of eurosceptic parties, including the UK Independence Party, and the success of far-right groups, notably Front National in France, highlight the toxic mix of public scepticism towards Brussels, frustration with mainstream parties, and undercurrent of anxiety towards immigration that will constrain the next cycle of European policymaking on immigration.

3. Geopolitical challenges

Finally, geopolitical pressures have preoccupied policymakers, and taken them away from the planned work of the Stockholm Programme. Mixed flows of irregular migrants and asylum seekers arriving at Europe's Southern sea and land borders are neither a new, nor static, challenge for the European Union. But over the past five years, several broad interlinked developments have thrown up new challenges for EU policy.

Collaboration between EU Member States depends on a critical level of mutual trust particularly with respect to the implementation of the Schengen Convention. In 2010, the Greek land border came under extreme and sustained pressure, with an estimated 90 per cent of all apprehensions for unauthorised entry into the European Union taking place in Greece.¹⁵ The Greek government quickly became overwhelmed by its responsibilities managing the most complex and porous section of the Union's external border, and specifically processing the increasing number of asylum claims. Initially, the European Union responded through support and capacity-building efforts—Frontex deployed RABIT teams to the land border between Turkey and Greece to bolster border management efforts—whilst castigating the Greek government for disregarding its acquis obligations.¹⁶ But in 2011, Greece's failure to offer humane reception conditions for asylum seekers led to a landmark judgment from the European Court of Human Rights (ECHR): EU Member States could no longer return individual asylum seekers under the Dublin Convention, effectively suspending the Convention with respect to Greece and any other Member State offering substandard reception facilities. The repercussions of Greece's weak asylum system thus became a pan-European issue.¹⁷

At the same time, spreading conflict in a number of countries across North Africa and the Middle East both excited and frightened policymakers with the potential for rapid,

unknown change in the European neighbourhood. The opportunity to engage with North African partners that the Arab Spring presented was partially realised through renewed, yet scattered, efforts to forge dialogues and mobility partnerships with key states (with partnerships signed with Morocco and, more recently, Tunisia).¹⁸ But, perhaps more significantly, the Arab Spring catalysed an internal dispute over the movement of Tunisian migrants given short-term residence permits by the Italian government, which the French government felt would lead to secondary movement north. This, in turn, set off a deep political discussion concerning the reintroduction of internal borders, overshadowing discussion of an external action agenda on migration, and effectively forcing DG Home to look inwards rather than outwards. As a result, much of the past three years has been spent in discussions concerning the governance mechanisms of Schengen, monitoring the decisions made by individual Member States, and refining the rules for suspension of the pioneering scheme, rather than consolidating Southern Mediterranean partnerships that will be, in the long term, critical to the European Union's ability to address irregular migration.¹⁹

Mutual trust between Member States has been tested over the past five years with policy initiatives ranging from citizenship sales to the secondary movements of asylum seekers: such trust depends on each national government behaving responsibly or, at least, within a set of implicitly understood parameters. Unfortunately, at a time of competing economic priorities and tough political debate, some Member States have chosen to turn a blind eye to the constraints of EU partnership. The dispute over Tunisian migrants played well within national media for both Italian Prime Minister Silvio Berlusconi and French President Nicolas Sarkozy, and the two happily, quietly reconciled once the political capital gained from the dispute had been spent. To some extent the serious Schengen reform discussion became hostage to a political power game between both Member States and EU institutions.²⁰

III. LOOMING CHALLENGES

It has become increasingly clear that the disruptions that have plagued the Stockholm Programme will not only continue but are likely to become more entrenched. These crises have also revealed major drawbacks with the policy frameworks that have been developed to date.

This is clearest with respect to the CEAS. Despite having negotiated a series of reforms to formally 'complete' the CEAS, it is clear that the ever more urgent Syria crisis will require policymakers to return to what have be-

come polarised and intractable issues. It is difficult to find a policymaker who does not, at least privately, admit the dysfunctional nature of elements of the CEAS and the perverse outcomes it engenders. For example, with the advent of Eurodac (the database for identifying asylum seekers and irregular border crossers), officials at Europe's external borders may have an incentive *not* to fingerprint upon arrival, for fear the identification may later be used to return individuals back to the first country of entry under the Dublin Convention; the same holds for asylum seekers who may have a specific destination in mind. But the very different perspectives (and motivations) of the various actors have led to a stand-off with respect to further cooperation on asylum, with 'solidarity' and 'burden-sharing' now more emblematic of a broken debate than substantive concepts in themselves.

This bodes poorly for the European Union's ability to respond effectively to the ever more urgent refugee crisis in the Syrian neighbourhood. While EU institutions have become adept at navel-gazing through external crisis, the vicious conflict in Syria cannot be ignored and is unlikely to be resolved quickly. Over the past two years, the Office of the UN High Commissioner for Refugees (UNHCR) has registered more than 2.5 million refugees from Syria, with more than twice that number displaced internally.²¹ The vast majority of refugees are situated in the neighbouring countries of Lebanon, Turkey, Jordan, and Iraq, countries that are working valiantly to meet the needs of this distressed population. So far the EU response has been remote and underwhelming: sending money to the region. Calls to resettle larger populations of Syrians within EU territory have relied on the generosity of individual states. Of the 28 EU Member States, just Sweden and Germany have offered to resettle more than 1,000 refugees. Future policy programming will be conceived under the shadow of this humanitarian crisis; rather than try to keep the situation—and refugees—at arm's length with the status quo response, the EU Member States would do well to take this opportunity to reflect on whether the current approaches to asylum are fit for purpose, and what more might be required to protect people effectively, both within and outside EU territory.

This is likely to be the largest issue for the next years of EU immigration and asylum policy, but far from the only one. In the absence of a complete and robust EU immigration and asylum policy—a longer-term objective that must also be put under the rigors of a full and perhaps independent review—EU policymakers would best serve the interests of the Union and be true to their specific portfolios by shoring up the implementation of *existing policy* while continuing to pursue more sustainable policy that is capable of reinforcing the interests and priorities of Member States. This will be no easy task. The recent tragedies

in the Mediterranean, including hundreds of deaths at sea, have revealed both the high stakes of EU policy and the deep entrenchment of the various national and EU institutional policy positions.

IV. LOOKING FORWARD

The Stockholm Programme offers few pointers for policymakers responsible for developing the next tranche of policy initiatives. In order to construct a programme that advances new ideas, it is necessary to not only understand and show greater appreciation for the challenges Member States face but think actively of the opportunities that may exist to resolve them. But before this, it is important to reflect upon whether the format and scope of the JHA five-year programme still represents the most appropriate and effective way forward. There are two aspects to this point.

First, programming in five-year increments sets its sights primarily on the near term and turns its back to the opportunity to frame a long-term vision for common EU policy. One of the key advantages of Tampere was the fact that it was able to articulate a long-term vision and then combine it with a set of shorter-term goals designed to make progress toward that vision. This aspect of JHA programming has been lost in the flurry of primarily instrumental goals and reflexive reactions to internal and external challenges. A case in point: the Stockholm Programme set out a series of action points without even articulating its ambitions.²² Such instrumentalism may be understandable in that finding common ground on an ambitious agenda would have been very difficult, hence the choice to focus on smaller, more incremental, steps. Yet, such choices merely postpone the more important conversations that must be had on such critical issues as burden-sharing and solidarity—concepts whose meaning has degraded to the point of near empty rhetoric—or establishing the ‘end game’ for common immigration policy and the CEAS.

Shifting instead to a planning cycle with a slightly longer time horizon may not resolve all problems. However, there is significant value in reflecting upon desirable policy outcomes for the next 10-15 years. What policy needs will Europe have in the future, what will success look like, and what architecture will need to be put in place to achieve it? This thought project would not only lay the groundwork for the next five-year programme—by forcing all protagonists to work backwards from 2025 or even 2030, and asking what the European Commission needs to put in place first, second, and third, and how to engage Member States in such a conversation. It would also clarify where the commonalities and differences in vision exist with-

out requiring immediate political commitment. With the Stockholm Programme approaching the end of its policy cycle, this may be the perfect moment to conduct a candid audit of successes and failures, alongside a deep exploration with the Member States as to desirable, and feasible, long-term goals.

A host of ideas and initiatives must be considered before they are narrowed down into a workable programme to guide the EU institutions starting in 2015. The proposed strategic guidelines, expected as part of the June 2014 European Council, will be concise and as such unable to incorporate much detail. Thus, the work to elaborate a plan of action is likely to fall to the European Commission at the beginning of the new term in 2015. But the guidelines will be critical to kick-start this process, and will be the core document through which Member States will articulate their goals and preferences. While content is key, little of it may be effectively realised without a strong political framework to which all Member States and institutions can commit. This requires intense collaboration between Member States to identify common ground and shared goals, and time is extremely short. The dynamic nature of immigration policy at the national level, and the enduring political sensitivities to which it gives rise, suggest that the process to develop the next programme and build a solid foundation for the next generation of EU immigration policy will need to be transparent, honest (in terms of both the assumptions on which the proposals rest and its implications for Europe’s future), respectful of Member State sensibilities, collaborative, and creative.

While it is important to understand where opportunities exist in the current policymaking climate, it is also critical to anticipate new and emerging challenges that will confront the European Union and its Member States in the decades ahead. Future programming will have to include measures to reasonably ‘insulate’ common policy development from internal and external geopolitical events—be they pressures at Europe’s southern external border or political upheavals in the Maghreb. As global political and economic shifts occur in the EU neighbourhood over the next 20 years, how might the European Union and its Member States begin to prepare the groundwork for proving equal to the new challenges while being able to benefit from new opportunities?

For example, while demographic change is oft cited as a core rationale for opening up to immigration at the national level, the nuance and complexity of changing population dynamics and their implications is typically ignored in most decision-making circles. This is not to argue for more or less immigration. Rather, it is intended as a statement in favour of the following:

- ▶ Deeper thinking—and better planning—about migration, population, and the social and economic infrastructure needs of subnational regions facing demographic decline, whether in terms of education workforce development and social protection.
- ▶ Harnessing the strategic analytical resources of JHA to use all the tools it, and other Directorates-General, possess to understand better how they can incorporate new developments into their thinking, such as the far greater intra-EU mobility the economic crisis has unleashed.
- ▶ Devising, together with Member States, incentives and disincentives that encourage certain types of migration toward underperforming, and less attractive, regions.²³

Europe, at all levels of governance, will have different needs and vastly different capacities to target immigration toward where it is most needed—making the “one-size-fits-all” approach to immigration increasingly less responsive to needs, and hence less effective. And as the European Union and Member States indeed move toward a more refined application of ‘selective’ migration, and its potential importance for regional development, the current understanding of ‘common’ immigration policy will also evolve, compelling the European Union to play a different, though still critical role. Effective *common* policy does not need to mean *identical* policy for all. This is all the more relevant at a time when economic and demographic forces playing out in other parts of the world will deeply affect Europe’s own experiences with in- and out-migration.

What is the policy lesson here? Understanding well, and *modelling accurately*, Europe’s evolving place in the mobility hierarchy at all times requires complex analyses and projections of changing demographics; internal, intra-European, and international migration trends; estimates of out-migration from the European Union (by immigrants, persons of immigrant origin, and EU citizens); the migration behaviour of emerging economies; the effects of policies adopted elsewhere; and not a little alchemy. This is very significant with respect to European policymaking. The assumption that the European Union is, and will remain, attractive to immigrants across the world affects the basis upon which policymakers at the European and Member State levels decide whether to promote or limit immigration to Europe.

V. A FRAMEWORK FOR NEW POLICY DEVELOPMENT

It is hard, in the context outlined above, to seriously consider new horizons for the next decade of policy development. Policymakers and observers alike recognize the need for breathing space and reflection, along with an urgent need to consolidate the progress made thus far to develop European policy. The arduous negotiation processes have led to enormous fatigue and disillusionment; though a number of issues are still awaiting resolution, few in Brussels and the European capitals know, or agree, on the solutions, either in the short or long term. The inexorable negotiation process to achieve relatively small wins has become ever more calcified since the advent of the Lisbon Treaty, especially as governments are loathe to bring home another EU policy—whether controversial or benign—at a time of deep scepticism.

There is an emerging, and sometimes irreconcilable, gap between process and reality. For the EU institutions, development of common policy on immigration and asylum, in pursuance of an ever-closer union, is the clear priority. This can, on occasion, obscure real policy needs in favour of the formalistic desire to expand the reach of EU immigration policy. For national policymakers and those working on the front line, the most effective immigration policy is one that achieves the objective at hand, whether it is promulgated at European, national, or regional levels. There are numerous examples where these two objectives elide, not least external border management and visa policy. However, as Member States develop more comprehensive immigration systems and are engaging in constant adjustment of these systems according to year-on-year data, local and national needs, and growing budgetary constraints, they are pushing against some of more formalistic approaches to EU policy development. This poor relationship has contributed not just to a breakdown in communication and collaboration, but also to a dearth of new policy ideas that satisfy both the overarching EU common policy objective and the needs of both publics and public systems.

EU policy has no effective ‘reverse gear’. As national ministries responsible for immigration are rapidly discovering, mature immigration policy requires constant monitoring,

review, and adaptation. Every single migration policy development of the past 15 years has been hard fought, and the efforts with respect to the bundle of asylum legislation suggest that reform is even more hard fought, and does not necessarily lead to substantive improvement. In addition, the dogmatic imperative driving the creation of common immigration and asylum policy, combined with strong nationalistic tendencies within some key Member States, inhibits the ability of the European Commission to objectively assess and reform policy, and even admit when policy is not functioning as expected and rescind. The postponement of any serious reform of the Family Reunification Directive, driven in part by the spectre of Dutch ambition to increase integration requirements, is one example of the difficulties facing a still-maturing policy area that is frequently overwhelmed by politics. Thus less effective policy remains on the books and undermines future development. A key example of this is the development of economic migration policies since 2005. A consensus has emerged that the effort to create common standards by category of migrant—high-skilled, seasonal, etc.—was wrong-headed. Yet there is no suggestion that an alternative approach might be considered.

Of course, this is perhaps not inspiring to students of EU common policy, many of whom look nostalgically back at the ambitious proposals set forward by Commissioner Antonio Vitorino in 2001 and who believe in harmonisation as the sole means of progress. However, in a context of deep euroscepticism and ‘immiscepticism’, any policies

put forward need to demonstrate *added value*. But more than this, new policy proposals must demonstrate this value in three distinct ways: the added value of having the European Union lead the policy; the added value for governments applying those rules, achieving goals they could not attain alone; and above all, the added value of the policy for affected populations (both native and foreign-born).

In a context of deep euroscepticism and ‘immiscepticism’, any policies put forward need to demonstrate added value.

Ideas are in short supply, despite extensive consultation of Member State governments, EU institutions, and with the public during 2013 and 2014. By cross-referencing the formal, political, and empirical reality in each area of immigration policy, it becomes clear why. Few areas of EU policy can fit the frameworks set out by EU treaties, the needs of Member States, and the social, economic, and geographical realities of global mobility. This leaves national and European leaders in a quandary: whether to work small within these parameters or think big to allow new ideas and initiatives to broaden these parameters. In the two forthcoming policy briefs, we will explore the possibilities of *lateral thinking*, and how structural reform of the institutional mechanisms for developing policy might help the institutions to escape their current straitjacket of formalistic policy development in a context of tense political debate.

ENDNOTES

- 1 This policy brief draws significantly upon a policy memo prepared at the request of Director General of Home Affairs Stefano Manservigi in February 2013, authored by Elizabeth Collett, Director of Migration Policy Institute Europe (MPI Europe), and Demetrios G. Papademetriou, President of MPI Europe and the Migration Policy Institute (MPI).
- 2 Tampere European Council, *Presidency Conclusions: Towards a Union of Freedom, Security and Justice: the Tampere Milestones* (Presidency Conclusions, Brussels: Council of the European Union, October 1999), www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/00200-r1.en9.htm.
- 3 See for example Yves Pascouau, 'The future of the area of freedom security and justice: addressing mobility protection and effectiveness in the long run' (EPC Discussion Paper, European Policy Centre, Brussels, January 2014), www.epc.eu/pub_details.php?cat_id=1&pub_id=4092.
- 4 For an in-depth review of policy development up to 2010, see Elizabeth Collett, 'Beyond Stockholm, overcoming the inconsistencies of immigration policy' (EPC Working Paper No. 32, European Policy Centre, Brussels, December 2009), www.epc.eu/documents/uploads/954588169_EPC%20Working%20Paper%2032%20Beyond%20Stockholm.pdf.
- 5 See for example, the European Council for Refugees and Exiles (ECRE), 'Common European Asylum System: The real job still needs to be done' (Weekly Bulletin, ECRE, Brussels, April 2013), www.ecre.org/component/downloads/downloads/731.html; Samantha Velluti, 'CEAS, Asylum-Seekers and EU Human Rights post-Lisbon: Closing the Gaps in the European Protection Regime', in *Reforming the Common European Asylum System – Legislative developments and judicial activism of the European Courts* (Berlin: Springer, 2014).
- 6 European Commission. 'A Policy Plan on Legal Migration' COM(2005) 669, Brussels: European Commission, December), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005DC0669&from=EN>.
- 7 Sergio Carrera and Elsbeth Guild, 'Does the Stockholm Programme really matter? The Struggles over Ownership of AFSJ Multiannual Programming' (CEPS Paper No. 51 in Liberty and Security in Europe, Centre for European Policy Studies, Brussels, December 2012), www.ceps.eu/ceps/dld/7543/pdf.
- 8 Elizabeth Collett, 'Faltering Schengen Cooperation? The Challenges to Maintaining a Stable System', in *Managing Borders in an Increasingly Borderless World* (Washington DC: Migration Policy Institute, 2013).
- 9 Eurostat, 'Unemployed persons long term youth unemployment, 2012', http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/File:Unemployed_persons_long_term_youth_unemployment_2012.png.
- 10 Organisation for Economic Cooperation and Development (OECD), *International Migration Outlook 2013* (Paris: OECD, 2013), www.oecd.org/els/mig/imo2013.htm.
- 11 Nuria Rodriguez-Planas and Natalia Nollenberger, *A Precarious Position: The Labor Market Integration of New Immigrants in Spain* (Washington DC: Migration Policy Institute, 2014), www.migrationpolicy.org/sites/default/files/publications/DG-Employment-Spain-FINALWEB.pdf.
- 12 Elizabeth Collett, *Immigrant Integration in Europe in a Time of Austerity* (Washington DC: Migration Policy Institute, 2011), www.migrationpolicy.org/sites/default/files/publications/TCM-integration.pdf.
- 13 Julian Jeandesboz, Didier Bigo, Ben Hayes, and Stephanie Simon, *The Commission's legislative proposals on Smart Borders: their feasibility and costs* (Brussels: European Parliament, 2013), www.europarl.europa.eu/RegData/etudes/etudes/JOIN/2013/493026/IPOL-LIBE_ET%282013%29493026_EN.pdf.
- 14 Government of the Kingdom of the Netherlands, 'Testing European legislation for subsidiarity and proportionality – Dutch list of points for action' (Policy Note, Government of the Kingdom of the Netherlands, The Hague, June 2013), www.government.nl/files/documents-and-publications/notes/2013/06/21/testing-european-legislation-for-subsidiarity-and-proportionality-dutch-list-of-points-for-action/eindrapportage-definitief.pdf.
- 15 Frontex, 'Frontex deploys Rapid Border Intervention Teams to Greece' (press release, 25 October 2010), <http://frontex.europa.eu/news/frontex-deploys-rapid-border-intervention-teams-to-greece-PWDQKZ>.
- 16 European Commission, 'Frontex and the RABIT operation at the Greek-Turkish border' (MEMO/11/130, European Commission, Brussels, March 2011), http://europa.eu/rapid/press-release_MEMO-11-130_en.htm.
- 17 *M.S.S. v. Belgium and Greece*, Application no. 30696/09, Council of Europe: European Court of Human Rights, 21 January 2011, www.refworld.org/docid/4d39bc7f2.html.
- 18 European Commission, 'Report on the implementation of the Global Approach to Migration and Mobility 2012-2013' COM(2014) 96, Brussels: European Commission, February 2014.
- 19 Regulation (EU) No 1051/2013, amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstance, 7 October 2013; and Regulation (EU) No 1053/2013, establishing an evaluation and monitoring mechanism to verify the application of the Schengen acquis, 7 October 2013.

- 20 Collett, 'Faltering Schengen Cooperation'.
- 21 UN High Commissioner for Refugees (UNHCR), 'Syria Regional Refugee Response', accessed 19 May 2014, <http://data.unhcr.org/syrianrefugees/regional.php>.
- 22 European Council, *The Stockholm Programme: An Open and Secure Europe Serving and Protecting Citizens* (Brussels: European Council, 2010), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XG0504%2801%29&from=EN>.
- 23 Elizabeth Collett, *Facing 2020: Developing a new European agenda for immigration and asylum policy* (Brussels: Migration Policy Institute Europe, 2013), www.migrationpolicy.org/pubs/MPIEurope-Facing2020.pdf.

ABOUT THE AUTHOR



Elizabeth Collett is Director of Migration Policy Institute Europe and Senior Advisor to the Migration Policy Institute's Transatlantic Council on Migration. She is based in Brussels, and her work focuses in particular on European migration and immigrant integration policy.

Her published works include *Emerging Transatlantic Security Dilemmas in Border Management*, *A New Architecture for Border Management* (co-author), *Immigrant Integration in a Time of Austerity*, and *Soft, Scarce, and Super Skills: Sourcing the Next Generation of Migrant Workers in Europe* (co-author).

Previously, Ms. Collett was a Senior Policy Analyst at the European Policy Centre, a Brussels-based think tank, and was responsible for its migration program, which covered all aspects of European migration and integration policy. During her time at EPC she produced numerous working papers and policy briefs focused on the future of European Union immigration policy. She has also worked in the Migration Research and Policy Department of the International Organization for Migration in Geneva and for the Institute for the Study of International Migration in Washington, DC.

Ms. Collett holds a master's degree in foreign service (with distinction) from Georgetown University, where she specialized in foreign policy and earned a certificate in refugee and humanitarian studies, and a bachelor's degree in law from Oxford University.



Migration Policy Institute Europe, established in Brussels in 2011, is a nonprofit, independent research institute that aims to provide a better understanding of migration in Europe and thus promote effective policymaking. Building upon the experience and resources of the Migration Policy Institute, which operates internationally, MPI Europe provides authoritative research and practical policy design to governmental and nongovernmental stakeholders who seek more effective management of immigration, immigrant integration, and asylum systems as well as successful outcomes for newcomers, families of immigrant background, and receiving communities throughout Europe. MPI Europe also provides a forum for the exchange of information on migration and immigrant integration practices within the European Union and Europe more generally.

www.MPIEurope.org

© 2014 Migration Policy Institute Europe. All Rights Reserved.

No part of this publication may be reproduced or transmitted in any form by any means, electronic or mechanical, including photocopy, or any information storage and retrieval system, without permission from MPI Europe. A full-text PDF of this document is available for free download from www.mpieurope.org.

Information for reproducing excerpts from this policy brief can be found at www.migrationpolicy.org/about/copyright-policy. Inquiries can also be directed to communications@migrationpolicy.org.

Suggested citation. Collett, Elizabeth. 2014. *Future EU policy development on immigration and asylum: Understanding the challenge*. Brussels: Migration Policy Institute Europe.

Residence Palace
155 Rue de la Loi 5th Floor
1040 Brussels
Belgium

Phone: +32 (2) 235 2113