



*With the support of the  
European Commission  
(ARGO)*

## **POLICY BRIEF 6**

### **Cooperation with Sending and Transit Countries: Beyond Sticks and Carrots?**

By Ferruccio Pastore and the Staff of the Migration Policy Institute

#### **Recoupling Migration and Foreign Policy**

Until 1973/1974, when Western Europe closed its borders to new economic migrants, migration policy was firmly embedded in most countries' foreign policy. It gradually became obvious, however, that restricting and generally "managing" immigration better required increasing levels of cooperation among the then European Community countries. In many ways, this realization was at the root of the Schengen system and the effort to harmonize asylum and, over time, immigration policies within the Justice and Home Affairs field.

Awareness that such cooperation had to be complemented by extensive dialogue and cooperation with sending and transit states has only recently developed. This gradual reactivation of the "external dimension of migration policy" was "rediscovered" first at national level. Following the Tampere Summit of October, 1999, however, that dimension's importance was re-established and has been pursued by European institutions with increasing vigour.

Initially, the more systematic exploration of the external dimension of migration policy was tentative. Cooperation was viewed as a necessary component of the overall strategy of managing migration more effectively but its aims and priorities were still defined in terms of immigration controls—some will say "exclusion"—and the agenda was set by the ministers of Justice and Home Affairs. The results can be observed in the effort's nearly exclusive focus on readmission agreements and in the institutional dynamics of the pillar-bridging High Level Working Group on Immigration and Asylum, which brings together representatives of Foreign Affairs and Justice Ministries.

Opening up a new and more productive phase in the external dimension of European migration policies would require that the effort be broadened beyond control-oriented, unilaterally inspired measures and the exclusive concerns of the JHA policy domain. Such refocusing would add a more realistic appreciation of the international dimension of the issue. That appreciation in turn would bring a richer understanding of the interests of source and transit countries and how these might become more consonant with those of the receiving EU societies and the Union's immigration control priorities. Only through expanding the conceptual and political framework for negotiations can a more comprehensive and sustainable response to the need for cooperative migration management be found. This shift has in many ways already begun, as evidenced in the December, 2002, Commission Communication on "integrating migration issues in the European Union's relations with third countries" (Com (2002) 703).

This policy brief concentrates on some of the key issues that must be tackled under the rubric of “cooperation with third countries in managing migration better” in the years ahead. The closely related question of how to enhance migrants’ roles in development processes is not dealt with directly here. The entire brief, however, is written in the vast shadow cast by the reality that substantive, sustained and equitable development is the true longer-term antidote to unwanted migration. In the meantime, there is a need to radically rethink and reinforce cognitive and institutional bridges among the various pieces of a comprehensive approach to the mutually beneficial management of migration.

### **Managing Migration in Concentric Circles: Enlargement, Neighbourhood and Beyond**

The external relations of the European Union in the migration field are based on different sets of principles, rules and procedures that depend on the group of third (that is, non-EU) countries one considers. In fact, the whole system of external relations of the EU is increasingly grounded on a “concentric circles model”, where the fundamental geopolitical categories are:

- a) The Enlargement Sphere;
- b) The Neighbourhood and “Wider Europe” belt; and
- c) Countries with which the Union has some sort of special relationship.

The rest of the world, the last concentric circle, is of little interest to the discussion at this time. This is a geostrategic pattern that applies to many issues. The centrality of borders for policymaking makes the concentric circles model particularly relevant in the migration arena.

#### *(a) The Enlargement Sphere*

In the sphere of Enlargement, relations on the migration issue are generally governed by two key principles: the full commitment of each Member State (except those that were allowed opt-outs in the past) to the Schengen/EU *acquis*, and the general principle of freedom of circulation as a key element of European Union citizenship for every Member State national. With regard to the circulation of persons, however, the latest enlargement provided a further reminder that turning “free movement” into a fundamental freedom in an era of economic anxiety and pre-occupation with security can hardly be a quick and smooth operation. In fact, the accession of the new Member States on May 1, 2004 has seen the establishment of *two distinct transition regimes*. The one delays (by various time frames) granting of freedom of movement to the nationals of eight of the ten Accession countries. (See also the accompanying MPI Policy Brief, “The Enlargement of an Area of Freedom, Security and Justice,” by Joanne van Selm, Senior Policy Analyst and Eleni Tsolakis, Research Intern.) The other delays full Schengen membership and the consequent elimination of police controls at internal borders.

#### *(b) The Neighbourhood Belt*

A different type of migration regime applies to prospective and aspiring candidates for membership (Bulgaria, Croatia and Romania, as well as Turkey, and the remaining Western Balkan countries). For this geopolitical layer, migration dialogue and cooperation with the EU is less structured and comprehensive—if variably so. As a result, the degree of leverage available to EU institutions and Member States, as well as the mechanisms to monitor compliance, vary in focus and strength. The efforts done in this area by the Stability Pact

through the MARRI (Migration, Asylum, Refugees Regional Initiative) still need to be reinforced and better focused.

In the “Wider Europe” framework, migration dialogue and cooperation is even less structured. This is true even for the many Mediterranean third countries that represent principal source and transit areas for unwanted migration to the EU. In spite of some recent progress, such as the adoption of a Framework document on cooperation on JHA affairs during the Fifth Euro-Med Conference held in Valencia in April 2002, concrete achievements are modest at best. Most cooperation on migration is still generated at the bilateral level and thus mostly conducted outside the EU framework. (See in particular the Ministerial Dialogues on migration in the Western Mediterranean within the so-called “5+5 Dialogue” in Tunis, October 2002, in Rabat, October 2003, and most recently, the Italian Initiative with Libya and ongoing bilateral initiatives by most Southern EU Member States with a number of countries along the Mediterranean littoral and the Western Balkans.) The Spring 2004 request by the Commission to the Council for a mandate to negotiate a *visa facilitation* agreement with Russia is one interesting item on the EU agenda in this regard.

#### **Migration, Asylum, Refugees Regional Initiative (MARRI) in the Western Balkans**

MARRI was formed in 2003 by the merger of two Stability Pact for South Eastern Europe programs. Its core geographic focus is the five Stabilisation and Association process (SAP) countries, but some MARRI programs have included neighbouring candidate countries Bulgaria and Romania, as well as Moldova. Regional fora have also included the new EU member states. MARRI is currently transitioning to a new governance structure outside of, but associated with the Stability Pact, in which the SAP countries will take primary control, with other countries, the European Commission and non-governmental organisations playing an advisory and supportive role. This regional forum structure was inspired, in part, by the cooperative framework among the Nordic states.

MARRI complements the broader Stability and Association process and coordinates its efforts with associated EU-sponsored activities. Country action plans under MARRI are carried out in partnership with individual supporting countries, most of them EU member states. MARRI's agenda takes in a very comprehensive set of issues—including sustainable return, the development of asylum procedures, irregular migration, visa policies, border control (primarily regarding reception of asylum seekers) and information systems interoperability. MARRI plays an advisory, information-sharing and coordination role, with the eventual goal that the associated states will develop European-level standards of legislation, training, and processes. The approach to individual issues is also comprehensive: in a region where some 1 million refugees and displaced people are still thought to be awaiting return or a settlement solution and that still is a top source of asylum-seekers and irregular migrants in other European states, MARRI has gone beyond traditional refugee issues to focus on access to rights and citizenship and on the social and economic conditions necessary for sustainable return or integration. Significant among those preconditions are access to affordable housing and property rights. Another agenda item currently before MARRI is the creation of a regional mechanism to discuss management of irregular migration with areas of origin, transit, and destination.

#### *(c) Countries and Areas of Special EU Interest*

The December 2002 Commission's Communication (COM(2002) 703) has highlighted the importance of the Union's relations with third countries on migration issues. However, actual cooperation has been limited and the dialogue focuses almost exclusively on control measures and readmission—although there are, again, signs that this is changing. A

geographical area worth watching for possible initiatives on the JHA issues are the ACP (Africa Caribbean and Pacific) countries, many of which already provide unwanted migrants to the EU. Finally, US/EU agreements on a variety of security-related aspects of international migration and other types of mobility have intensified since September 11, 2001. Of course, migration specific agreements have long been part of the transatlantic conversation, but these are almost exclusively bilateral and many of them date to the period immediately following the Second World War.

### **“Outsourcing” Migration Control and Law Enforcement**

Beyond the three spheres discussed above, EU and Member State relations with most third countries in the migration field have focused on migration controls and law enforcement concerns. Specifically, they deal with the following three areas:

- a) Readmission;
- b) Controls over irregular emigration and transit flows; and
- c) Police and judicial cooperation against smuggling and trafficking.

These priorities reflect the agenda on migration of most EU Member States during the last decade. One is hard-pressed, however, to point to substantial results from this strategy.

The focus of exit controls and readmission agreements is on controlling irregular migration by preventing a prospective irregular immigrant's departure from (or transit through) another country and swiftly removing/repatriating those who might still find their way into the EU. Yet, there is little empirical evidence to support the thesis that repatriation somehow ends the migration cycle. On the contrary, some evidence seems to suggest that those who are returned quickly re-enter the migration stream, thus enriching and fuelling further the power and reach of smuggling networks.

Studies also point to the serious reintegration difficulties of forced returnees and the additional burden they create on the socio-economic systems of sending countries. Both findings help explain the high “recidivism” among those returned and the low probability that sending countries will meet their obligations under such agreements.

Another unintended, if predictable, consequence of this approach is the strong probability of political backlash in countries of origin resulting from robust cooperation by their authorities. Urging the governments of such countries to police their own population on this issue can boost corruption and fuel political unrest and instability. Neither outcome is desirable from the perspective of overall migration management.

Transit flows raise their own distinct set of concerns. Transit populations have no political voice in the transit country and are therefore potentially exposed to systematic human rights violations. As the European Commission recognizes (see Communication on “Improving access to durable solutions”, COM (2004) 410), international protection is at risk when migration control is delegated to non-democratic governments without adequate technical training and supervision. This is the situation in most countries on the irregular migration routes to Europe and other destinations.

### **“Negative Migration Conditionality” or Positive Incentives?**

Experience to date in securing the the cooperation of sending and transit countries in tackling irregular migration is poor. But what are the alternatives?

At the June 2002 Seville European Council, certain Member States, including the Spanish Presidency, advocated the creation of a *negative migration conditionality*, whereby EU

institutions would cut aid to uncooperative migrant sending and transit states. Although the Seville conclusions on this issue reflected the majority's discomfort with the proposal, Seville established a review mechanism that could result in the decision to delay "the establishment of closer relations between that country [*i.e.*, a country which cooperates insufficiently in combating illegal immigration] and the Union" (Presidency Conclusions, item 35). (The original proposal was diluted further on item 36, which admonishes that "...honouring the Union's contractual commitments [should] not jeopardis[e] development cooperation objectives".)

Monitoring third country cooperation in the field of migration management is an important EU priority. Such monitoring is important not only to achieve greater regulation of immigration but also to ensure a high degree of consistency with the Union's democratisation and human rights objectives. In the broader context of EU external relations, even sanctions could be useful, if applied carefully and consistently. Cutting aid and reducing favourable trade terms as a migration management tool, however, might prove shortsighted. In addition to the potential for retaliation (in the forms of further reducing exit/transit controls and perhaps even actively encouraging outflows), such actions might encourage populist opposition to cooperation and even fuel political and economic instability. Such instability could become, of course, a likely emigration trigger.

The problems with negative sanctions have led to the search for positive leverage mechanisms and incentives aimed at strengthening third countries' interest in and capacity to cooperate. When considering incentives, a distinction must be made between *general incentives* (based on trade, aid or Common Foreign and Security Policy tools) and *specific* (migration-related) ones. The latter may be of greater interest than the former. Specific migration-related incentives are very attractive to sending countries' governments.

Put simply, "selling" readmission or exit controls to one's own citizens becomes more reasonable if one is simultaneously offered greater opportunities for legal movement. The Commission's recent study on the links between legal and illegal migration (COM(2004) 412) makes the connection clear. Further, the experiences of some Member States, such as that of Italy with Albania or of Greece with both Albania and Bulgaria, seem to suggest that opening up privileged legal migration channels does help to curb illegal migration. However, the Albanian case is idiosyncratic (Albanians have been emigrating for more than a decade; many have been given a legal status in an EU country; and, Albanian law enforcement cooperation with Italian authorities has been long, deep, and multi-faceted) so one should caution against quick generalization. Furthermore, most Member States are only interested in the immigration of skilled personnel, a goal which coincides neither with the profile of most irregular migrants to the EU nor the interests of most sending states.

Negotiating legal immigration openings is not the only migration-specific incentive that can increase the propensity of third countries to cooperate in joint migration management initiatives. *Visa policy* is also a potentially important policy tool. Short-term international mobility has become victim to generalized fears of "overstayers". It is a fact that overstaying is a main channel for irregular stay in Europe and elsewhere. However, in the context and spirit of Neighbourhood policy as well as of existing relations with partners of "special interest", such as Russia, visa facilitation agreements must find their proper place in the European migration management strategy. This will become more realistic once such control tools as the Visa Information System (VIS) are fully implemented and provide further security guarantees.

### **Inserting Migration into Broader Partnerships: A Governance Challenge**

Improved results in cooperation with third countries require the advancement of three key processes:

- *Broadening the policymaking process*, by involving actors from beyond the JHA policy community within and beyond the EU, engaging third countries as full partners and considering a larger range of issues than just migration;
- *Deepening engagement* on the migration issue, by creating the conditions for better mutual knowledge and dialogue. This must be accompanied by the application of a more complete set of policy tools and a commitment to strengthening truly cooperative migration management efforts;
- *Creating the structures* that institutionalise this deepened and broadened effort and guarantee that the appropriate dialogue, experimentation and commitment take place in an integrated fashion.

These objectives reflect the newness of the issue and the rather primitive state of discussion on the issue of international cooperation on migration. Better *cooperative* management begins with a solid *and shared* understanding of migration and human mobility dynamics, and of the impacts policies have on them. The above objectives are necessary steps in creating this understanding.

Unfortunately, the politics of migration today discourage experimentation. Furthermore, the institutional apparatuses for dealing with international mobility are neither refined enough nor sufficiently integrated for experimentation to occur in optimal conditions. Within receiving regions, the degree of understanding, dialogue and cooperation among the various research and policy communities dealing with migration is still immature, while channels and local resources for scientific exchange in sending and transit countries are almost nonexistent. The institutional and cognitive gaps between sending and receiving societies and polities are even greater. Building bridges at all these levels is therefore essential.

Insufficient institutional integration does not stop there, however. Within both Member States and EU institutions the migration decision-making architecture is deeply imbalanced. Migration cuts across many competencies. Yet, the principal mandate of the institutions most frequently entrusted with its management is much narrower than the issue itself. This holds true both in the policy development and implementation phases. Some tentative progress is being made to address this issue. For instance, a process has begun that is likely to transfer certain management competencies from the JHA Directorate General to the RELEX Directorate General and EuropeAid, in the transition from the B7-667 budget line to the AENEAS programme. The increasing interest of the RELEX DG and the robust (re)engagement of the Employment and Social Affairs DG on the issue are promising developments.

At the EU level, it is important to be careful that such “rebalancing” between the JHA and other policy communities does not generate undesirable side effects, such as operational glitches or loss of efficiency. This concern can be addressed, however, by investing in capacity building on migration issues for development officials, diplomats and other Commission services’ sectors—and especially within the Office of the Commission President.

There is little doubt that the short- and mid-term interests of sending and receiving countries with regard to most items on the global migration agenda diverge. There might be little change in this situation in the coming years. Hence the challenge to find effective, equitable and sustainable compromises. As the title of this policy brief suggests, however, a more broadly and long-term oriented policy perspective allows one to go beyond the “carrot and stick” logic. A major obstacle to such a path is that the *institutional incubators* for such an evolution are at an embryonic stage of development at best. Nonetheless, the seeds of

an opportunity for a robust dialogue and cooperation at the regional level have been sown in the framework of the EU's Neighbourhood strategy.

### **Challenges and Questions for the Future**

This analysis raises a number of challenges and questions for the future of EU Neighbourhood policy in the context of controlling irregular and otherwise unwanted migration. These include the following, grouped loosely by the three objectives identified above.

#### *Broadening the policymaking process*

- Discussion surrounding the broadening of both the decision-making and implementation circles in migration-related issues (in Member States and in Brussels) raises questions. What would be the proper balance between "compartmentalising" the migration issue and entwining it with other competencies and portfolios? What would be the risks and benefits found in linking migration to other Commission (or national government) structures and portfolios? How can these be most fully debated and explored?
- One of the many gaps identified above is the area of exchanges of ideas and research results between and across institutional, academic and geographic divides. In order to begin to close such gaps, regional and sub-regional policy dialogues could be systematically linked with independent, multinational, cross-disciplinary and policy-oriented research networks. Under what circumstances could this be achieved? How could knowledge on migration be systematically shared with those outside the existing JHA community?
- As the current debate on repatriation policy is narrowing the Union's focus to purely operational issues (joint flights) and financial arrangements (repatriation fund), the policy as a whole is losing its strategic perspective. (Might a Commission paper on assisted repatriation and other alternatives to simple expulsion reinvigorate thinking on this approach? Such a paper could draw on the small experimental programmes that are mushrooming in Member States and in third countries. No overall "learning" based on these programmes is evident as yet.) Furthermore, the policy conversation on repatriation might be simultaneously bilateralised and multilateralised to include both sending and transit countries. The objective—and the key policy challenge—is to make EU repatriation policy more cost-effective, smarter, fairer, and sustainable.

#### *Deepening Engagement*

- If migration control and law enforcement are to remain "outsourced", there must be clear criteria and solid safeguards to ensure respect for human rights and the protection of refugees and asylum seekers. Similarly, the protection capacity of third countries must be enhanced systematically and proactively—in many ways along the lines of the "EU Regional Protection Programmes" recently proposed by the Commission. How can this be achieved? How can cooperation with third countries on migration controls be re-aligned with safeguards for human rights and the international legal obligations of the EU Member States and their partners?
- The tools available in each of the "spheres" of European foreign policy might be inadequate in helping improve the Union's ability to manage migration more effectively. What tools and options from the inner spheres (in the extreme,

accession) can be “exported” to the outer spheres in order to make migration dialogues more effective policy tools?

- How can the EU visa policy be made more flexible and cooperation-oriented, and what specific mechanisms need to be developed along the way of getting there? Experimentation is important in this area so that the intrinsic rigidity of the Schengen system can be addressed by making visa regulations part of the Union’s negotiating arsenal with third countries, particularly with regard to short-term mobility. Of course, given current concerns about security, priority should be given to innovative solutions that are able to reconcile greater flexibility with increased security.

#### *Creating Structures*

- The model of the Migration Sub-Committees and Working Groups created in the framework of the Euro-Mediterranean Association Agreements and of the Stabilisation and Association Agreements for the Western Balkans have created workable models for bilateral EU-third country migration dialogue and decision making. This model can be strengthened, expanded and perfected. Effort must thus be invested in identifying and implementing some of the most important practical steps to improving these dialogues. Can the model also be extended to other regions?
- Under some circumstances, regional and sub-regional fora might provide a good springboard and setting for policy dialogue and decision-making on multilateral issues. The MARRI is a case in point—although the Initiative requires more attention. Further thought could be given to bringing the “5+5” migration dialogue inside the Euro-Mediterranean framework.