

EU MIGRATION POLICY AFTER THE ARAB SPRING: THE PITFALLS OF HOME AFFAIRS DIPLOMACY

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SUMMARY

Following the outbreak of the Arab Spring, the EU declared its intention to strengthen its external migration policy by setting up “mutually beneficial” partnerships with third countries in North Africa – the so-called ‘Dialogues for Migration, Mobility and Security’ – now placed at the centre of the EU’s renewed Global Approach to Migration and Mobility (GAMM). Yet, with negotiations on the establishment of Mobility Partnerships now well underway between the EU and certain Southern Mediterranean countries, the current contours of the EU’s external dimensions of migration policy continue to be primarily insecurity, (im)mobility and conditionality driven.

This Policy Paper seeks to explain the reasons behind the EU’s migration policy responses towards the Southern Mediterranean region from the perspective of the EU’s institutional setting: how do the key actors in this policy domain and their institutional relations drive and shape the EU’s external migration policies? It finds an institutional setting beset by struggles for autonomy and authority to control the policy agenda within the GAMM. Despite the application of the Lisbon Treaty and the creation of a European External Action Service (EEAS), an ever-expanding “Home Affairs diplomacy”, propounded by the Commission’s DG Home, certain EU agencies such as Frontex and the working structures of the Council, continue to dominate policy formulation on the external dimensions of EU migration policies.

This Policy Paper is part of a series entitled “[How can Europeans address their demographic challenge through a comprehensive migration strategy?](#)” which also includes contributions by Hans Martens (EPC, Brussels); Carmen González (Real Instituto Elcano, Madrid), Roderick Parkes (for SWP, Berlin), Alicia Sorroza (Real Instituto Elcano, Madrid) and Andreas Ette (for SWP, Berlin); Thanos Maroukis (Eliamep, Athens) and Anna Triandafyllidou (Eliamep, Athens); and Ruby Gropas (Eliamep, Athens).

It is a contribution to the project “[Think Global – Act European \(TGAE\). Thinking strategically about the EU’s external action](#)” directed by *Notre Europe – Jacques Delors Institute* and involving 16 European think tanks:

Carnegie Europe, CCEIA, CER, CEPS, demosEUROPA, ECFR, EGMONT, EPC, Real Instituto Elcano,
Eliamep, Europeum, FRIDE, IAI, Notre Europe – Jacques Delors Institute, SIEPS, SWP.

Four other series of Policy Papers deal with key challenges on defence, EU neighbourhood, strategic resources and economic policy. The final report presenting the key recommendations of the think tanks will be published in March 2013, under the direction of Elvire Fabry (*Notre Europe – Jacques Delors Institute, Paris*).

Introduction

Following the outbreak of the Arab Spring, the EU declared its intention to strengthen its external migration policy by setting up ‘mutually beneficial’ partnerships with third countries in North Africa – the so-called ‘Dialogues for Migration, Mobility and Security’ – now placed at the centre of the EU’s renewed Global Approach to Migration and Mobility (GAMM).

A growing body of academic attention is focusing on the GAMM, and whether this new policy framework covering the ‘external dimensions of migration policy’ in the EU (or the inclusion of migration into foreign affairs policies) can meet its stated goals of initiating a ‘more strategic phase for the Global Approach with more emphasis on establishing regular channels of immigration, development promotion and immigrant rights’. The early consensus has not been particularly positive. Commentators have noted the ‘business-as-usual’ approach in EU external relations policy on human mobility, with its continued emphasis on control and surveillance of EU external borders and capacity building in third countries geared towards ‘migration management’ and the so-called ‘fight against irregular immigration’.

This is particularly the case given the positioning of Mobility Partnerships as the principal tool for translating the GAMM into practice – an instrument which has been widely critiqued for its strong (Eurocentric) conditionality approach while allowing only restricted, temporary and highly selective forms of migration. Mobility Partnerships require third countries to adopt European security policy instruments: readmission agreements with the EU; working arrangements with Frontex; cooperation in joint surveillance operations in the Mediterranean sea; and capacity building in other aspects of integrated border management as the *sine qua non* to access highly provisional ‘benefits’ such as visa facilitation agreements and labour and circular migration schemes, flanked by capacity-building financial measures.

With negotiations on the establishment of Mobility Partnerships well underway between the EU and certain Southern Mediterranean countries (Tunisia, Morocco and potentially Jordan and Egypt), little attention has been given to ‘why’ the current contours of EU external migration policy continue to be primarily based on insecurity and (im)mobility and driven by conditionality. This Policy Paper draws on research conducted under the Seventh Framework Programme (FP7) research project MEDPRO (‘Mediterranean Prospects’) to understand and explain the EU migration policy approach in the Southern Mediterranean region in relation to the EU’s institutional framework: how do the key actors in this policy domain and their institutional relations drive and shape the EU’s external migration policies? Has the application of the Lisbon Treaty and the creation of a European External Action Service (EEAS) and “EU Foreign Minister” in High Representative Ashton remedied or re-invigorated the ideological and institutional struggles around the implementation of the Global Approach? ‘Who’ goes abroad to speak on the behalf of the EU in these Dialogues and what impact does this have on the GAMM?

1. Home Affairs diplomacy: A post-Lisbon AFSJ foreign policy

We contend that in order to better understand the main drivers behind the EU’s governance strategy envisaged in the GAMM it is necessary to examine the institutional actors and agents that have shaped their preparation, negotiation and practical implementation. Over the past decade or so, the two main actors responsible for setting up EU Mobility Partnerships, as well as steering the GAMM, have been the European Commission’s Directorate-General for Home Affairs (DG Home) and the Council’s High Level Working Group on Migration and Asylum (HLWG). Both have played the part of ‘political entrepreneur’ in steering the formidable expansion of the external dimension of migration at European level.²

1. AFSJ stands for “Area of Freedom, Security and Justice”.

2. Sarah Wolff, “La dimension méditerranéenne de la politique Justice et Affaires intérieures”, *Cultures et Conflits*, Vol. 66, 2007, pp. 77-99; P. Pawlak, “The External Dimension of the Area of Freedom, Security and Justice: Hijacker or Hostage of Cross-Pillarisation?”, *Journal of European Integration*, Vol. 31, No. 3, 2009, pp. 25-44.

“EU HOME AFFAIRS POLICY MAKERS REMAIN VERY MUCH IN THE DRIVER’S SEAT OF THE EU EXTERNAL MIGRATION POLICY AGENDA”

Interviews with relevant actors revealed that EU Home Affairs policy-makers remain very much in the driver’s seat of the EU external migration policy agenda. For instance, in 2011 DG Home took the lead (‘Chef de file’) in drafting the Dialogue Communication,³ while the EEAS was, to a large extent, sidelined in this decision-making process, despite having made substantive comments on the draft text aimed at steering the policy formulation of the dialogue into a less security-focused and conditionality-based engagement with North African states.

The predominance of a ‘home affairs approach’ and marginalisation of the EEAS runs through the institutional structures that frame the development and implementation of the EU Dialogues. The Council working configurations allow officials from Member State interior ministries to play a central role in the formulation of the Dialogues and Mobility Partnerships more specifically, as the primary platform for negotiations is found within the Council – the HLWG – the origins of which are primarily rooted in Justice and Home Affairs objectives.

DG Home Affairs has taken a leading role not only in the internal preparation of the Dialogues, but also in negotiations with third countries. It is DG Home and not the EEAS that has led the majority of diplomatic missions abroad to promote and discuss the content of Mobility Partnerships and the EU’s ‘insecurity approach’ to migration in North Africa. Interviews with policymakers confirm that DG Home, and even the EU Border Agency, Frontex, appear to have enjoyed a surprising degree of autonomy and discretion from the EEAS and Foreign Affairs Council when conveying their views and agendas to third country authorities.

One would expect that with the entry into force of the Treaty of Lisbon, the EEAS would take the leading role in setting overall strategies and priorities for EU foreign affairs policy. What are the reasons for the continuing dominance of a ‘Home Affairs’ (interior ministry-like) approach within the post-Lisbon institutional framework of EU external action on migration policy cooperation? Three factors are at play: questions of competence and competition, the internal dynamics of DG Home Affairs and the role of ‘venue shopping’ in shaping the external dimension of migration.

1.1. Competence and competition

Ultimate responsibility for the external dimension of migration remains with DG Home. This is a challenge to the functioning of EEAS more generally. From the outset it was clear that the creation of the EEAS, and the complexity of its tasks, would entail a number of portfolio overlaps between the EEAS and the Commission. Despite the need for an effective *modus operandi*, none has been developed, leaving room for tension. The provisions on the EEAS in the Lisbon Treaty are minimal. This has paved the way for a multitude of turf sensitivities between the Commission and EEAS.⁴

1.2. DG Home Affairs’ expansion via foreign policy

A second institutional factor relates to the internal dynamics of DG Home. The external dimensions have offered new policy venues for this DG to advance its migration agenda and policy interests, via a route that does not threaten to directly encroach on national immigration systems.⁵ As Member States have shown increasing resistance to European-level attempts to harmonise elements of migration-related policies, DG Home may well have viewed ‘going abroad’ as an alternative means of extending its powers, discretion and competences. As a measure of its success, this DG has seen its institutional stake in ‘the external dimension’ of migration increase dramatically. Today, for the DG to cede full or partial responsibility on the GAMM to

3. European Commission, *A dialogue for migration, mobility and security with the Southern Mediterranean countries*, Communication, COM(2011) 292, 24.05.2011.

4. See Sergio Carrera, Leonhard den Hertog and Joanna Parkin, “EU Migration Policy in the wake of the Arab Spring, What prospects for EU-Southern Mediterranean Relations?”, MEDPRO Technical Report No. 15, August 2012; also Edith Drieskens and Louise Van Schaik (eds), “The European External Action Service: Preparing for Success”, Clingendael Paper No.1, Netherlands Institute of International Relations, The Hague, December 2010.

5. Sandra Lavenex, “Shifting up and out: The foreign policy of European immigration control”, *West European Politics*, Vol. 29, No. 2, 2006, pp. 329-350.

another institutional actor like the EEAS would be to strip this Commission service of a core competence; protecting and consolidating this area of responsibility therefore becomes a key strategic objective.

1.3. The GAMM as ‘venue-shopping’

A third factor takes into account the interests driving national policymakers. Member State representatives are not only known to use the EU to project their domestic interests, but political actors may also take the ‘Brussels route’ where they are less encumbered than in national settings by other institutions, governmental ministries and the judiciary, which can act as veto points to policy initiatives.⁶ For example, in most Member States, national interior ministries cannot autonomously conduct and implement policy on ‘external dimensions’. Their actions in these domains would require checks and validation by foreign and international development ministries, seriously constraining their leeway. However, as the EU institutional framework does not yet have a strong ‘foreign ministry’ actor, these restraints are almost non-existent.

This search for autonomy and discretionary power is responsible for the highly fragmented character of the GAMM as different institutional actors and Member States have pursued separate policies and engaged in various disjointed initiatives on the external dimension of migration. Initiatives under the GAMM are highly piecemeal and presented in inconsistent policy frameworks in which current ‘dialogues’ with third countries are established. The challenges to accountability are therefore substantial.

2. EU Home vs. Foreign Affairs?

What is the likely impact of the institutional arrangements outlined in section three of the Dialogues for Migration, Mobility and Security with the Southern Mediterranean?

EU Home Affairs and national-level interior ministry officials tend to have different substantive interpretations, points of reference and priorities when formulating policy agendas than diplomats and foreign ministry officials. The latter tend to approach questions related to human mobility within a more integrated approach to broader social, economic and environmental policy challenges, one that is informed by the wider negotiation agenda they undertake with third states. Within the perspective of the EU neighbourhood, this policy approach may be labelled ‘inclusive’ – rooted in a strategy that envisages, at least formally, closer integration with the countries of the EU neighbourhood so as to share the benefits of the internal market and four freedoms (including free circulation).

A ‘foreign ministry’ EEAS outlook on the GAMM would be expected to better support a more ‘global’ understanding and balancing of issues and interests in relations with North African countries. Within the overall framework of the European Neighbourhood Policy (ENP) and its bilateral Action Plans drawn up between the EU and third countries, migration issues are situated within the context of a wide range of priorities and measures designed to promote economic growth, employment and social cohesion, reduce poverty, and protect the environment. Ideally, migration-related policies and initiatives pursued by DG Home should aim to exploit synergies within this wider range of objectives.

However, DG Home’s outlook on migration from the Southern Mediterranean during the Arab Spring was summarised by one EU official as “thinking from Lampedusa”, perceiving migration through the narrow lens of its expected short-term effect on the security of EU Member States. The result is a restrictive stance on human mobility policy, in which the overriding concern is to stem irregular immigration. This is the policy framing of migration that DG Home takes abroad, without necessarily taking into account the broader sectoral issues at stake in the EU’s wider negotiations with third countries.

6. Virginie Guiraudon, “European Integration and Migration Policy: Vertical Policy-making as Venue Shopping”, *Journal of Common Market Studies*, Vol. 38, No. 2, 2000, pp. 251-271.

**“HOME AFFAIRS-CENTRED
DIALOGUES DIVERT ATTENTION
FROM ECONOMIC AND POLITICAL
REFORM AND OBSTRUCT
CONSTRUCTIVE RELATIONS”**

Reports from EEAS officials indicate that migration management activities and capacity building measures in third countries can often clash with wider foreign policy goals. For instance, ‘return and reintegration’ actions have been found to conflict with development goals in certain African countries; another example is the insertion of readmission clauses in Partnership and Cooperation Agreements (PCAs) which have reportedly made negotiations with third countries a “nightmare”. There is concern that the Home Affairs-centred Dialogues for Migration, Mobility and Security divert attention from the process of wider economic and political reform and obstruct constructive relations between the EU and Southern Mediterranean states.

The two policy processes could even stand in contradiction if the Dialogues encourage third states to enact border control-oriented migration policies that endanger human rights. The EU’s ‘more for more’ approach under the renewed ENP focuses funding on democracy promotion and ‘common values’. The EU states in its Partnership for Democracy and Shared Prosperity that this framework should be “rooted unambiguously in a joint commitment to common values” including democracy, human rights, good governance and rule of law. Thus caution must be taken with any parallel policy agenda that seeks to engage undemocratic third states or ‘democracies in transition’ in readmission agreements or that funds capacity-building in border controls and asylum which ultimately creates *incapacity* in human rights protection. To ignore the potential contradictions between these external policies carries the risk of undermining not only the very principles that underpin the ENP, but also the basis for cooperation with third countries as laid down in the Lisbon Treaty (Art. 8 TEU), which requires cooperative relations with the neighbourhood to be “founded on the values of the Union”, including the respect of fundamental rights.

3. Conclusions and recommendations

The external dimensions of migration reveal the complex picture of an EU institutional setting riddled with struggles for autonomy and authority to control the policy agenda within the GAMM. The Lisbon Treaty has not halted the trend of an ever-expanding Home Affairs diplomacy, propounded by the Commission’s DG Home, certain EU agencies such as Frontex and the working structures of the Council, which continue to dominate policy formulation on the external dimensions of EU migration policies. On the contrary, it appears to have been reinforced and diversified.

The main risk is that the GAMM will remain trapped in the logic of insecurity, short-termism, insularity and bilateralism. This would only contribute to a business-as-usual scenario in the Southern Mediterranean, where political reform and human rights are sidelined while issues such as containing migration continue to dominate the policy agenda. Worse still, the EU’s failure to deliver substantive and credible commitments through the GAMM may undermine the EU’s wider foreign policy goals and neglect the opportunity to establish strong and mutually cooperative partnerships with the new regimes in North Africa.

The following recommendations are made to contribute to a re-framing of the Dialogues for Migration, Mobility and Security:

1. ‘Home Affairs Diplomacy’ should be replaced with a balanced, fully accountable framework that roots human mobility modalities into a broader agenda, one that complements wider foreign affairs objectives and in which non-Eurocentric understandings of international relations and mobility prevail. Were Member States to offer real and credible incentives for labour migration and visa facilitation under the GAMM’s Dialogues, the Mobility Partnership could evolve into a powerful tool for EU external relations.

2. The role of the EEAS in the external dimension of migration policies should be further strengthened by increasing the service's institutional capacities in this portfolio and revisiting the division of responsibilities between the EEAS and Commission departments such as DG Home and DG Development and Cooperation. The EEAS should act as prime interlocutor for the Dialogues vis-à-vis the North African states. Respective responsibilities, once reassigned, should be clarified and laid down in a detailed set of internal guidelines.
3. Modifications could be made to the Council working structures to reflect the expanded remit of the Mobility Partnership and its potentially stronger role in the ENP. The extent to which the Council's High Level Working Group on Immigration and Asylum provides the appropriate forum for decision-making on this tool could be examined, along with ways to assign to the EEAS a stronger role in discussions and ensure increased engagement on the part of the Foreign Affairs Council.
4. The Dialogues should be re-focused on the central aim of opening and supporting legal channels of mobility, including for employment and education. Consideration should be given to allocating the EU greater capacity in this domain. The potential window opened by the recognition of EU competence to legislate on 'the internal dimension' of labour immigration policy in Art. 79.4 TFEU could be explored as a means for the EU to engage more actively (on grounds of implied external competence) in the domain of labour immigration with third countries. The EU should make use of international agreements (similar to those used in the context of readmission) rather than Joint Declarations as the framework for cooperation with third countries. Mobility Partnerships should also be subject to regular, independent evaluations of their impacts and value-added.
5. To arrive at the conclusion of a Mobility Partnership, the EU and the North African states should agree on a 'Roadmap to Mobility' which would sequence the steps needed from both sides. To ensure an equal partner dialogue, this cannot be a rigid conditionality approach, but rather a way to build mutual trust by offering specific incentives on both sides. Mobility should not be 'exchanged' for measures to stem irregular migration flows, but should be used rather to encourage reforms needed to safeguard human rights, build independent courts and narrow socio-economic differences.

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