# Challenges and achievements of the EU migration policy over the years

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**Abstract.** This article analyses the EU measures deployed in migration by using a qualitative methodology for the selection of legislation and articles.

The document analysis methodology structures the article in three parts: evolution of the area (1950– 2015). Analysis of the last EU legislative measures. Its external dimension.

Although the article limits its scope to a legislative and institutional analysis, this work is very relevant, as immigration is an important topic in the political agenda.

The analysis shows that the measures have been effective although some legislation needs to be finished for a phenomenon, which is constantly evolving.

**Keywords:** European Union; Immigration; Justice and Home Affairs

## [es] Desafíos y logros de la política migratoria de la UE

**Resumen.** Este artículo analiza las medidas implementadas por la UE en el área de migraciones a través de una metodología cualitativa para seleccionar legislación y artículos.

Esta metodología estructura el artículo en tres partes: evolución (1950-2015) análisis de las últimas medidas legislativas y dimensión externa.

Aunque el articulo limita el análisis al marco legislativo e institucional, hablamos de un trabajo de gran interés, al ser esta área un tema muy importante en la agenda política.

El análisis muestra que las medidas han sido efectivas a pesar de que es necesaria más legislación en un fenómeno que está en constante evolución.

**Palabras clave:** Unión Europea; inmigración; justicia; interior

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## I. Introduction

According to the standard Eurobarometer of autumn 2018 (European Commission, 2019b), immigration remains the main concern of EU citizens.

Since 2015, the migration crisis has created a huge concern of this topic at the EU field and European Institutions have developed an important set of measures in order to tackle this important challenge. Throughout

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this article we will try to see what is the current situation of this topic at the EU level, what are the set of measures that have been deployed over the last years and what are the challenges in order to face it.

To do this, in the first part of this article we will carry out a legislative theoretical review of EU policies in this area since the beginning of the European Communities and, using the comparative analysis methodology, we will see in the Second place, the measures adopted during the migration crisis that arose in 2015, including a vision of its external dimension. In the end, the article will try to see what are the current challenges that the European Union will have to face in the coming years, taking into account the progress already achieved.

## I. Immigration and the Justice and Home Affairs area: evolution since the beginning of the European Union

Over the last years, migration has been one of the main topics of discussion at the EU level. Due to the geopolitical situation, between 2015 and 2016 the European Union has experienced a considerable increase of asylum seekers and a migration crisis that has moved the EU institutions to develop an intense action in this area to develop new policies in the field.

But the area of migration, which belongs to the Justice and Home Affairs area at the EU level, has been subject to an important cooperation before this crisis in 2015.

Before analysing the evolution, it should be convenient to analyse the main legal basis in which this policy is developed at the EU level.

### II.A. Main legal basis of immigration policy at the EU level

Arts 77, 78, 79 and 80 of the Treaty of Functioning of the European Union are the main legal EU basis in this area *(European Union, 2012, pp. 29–30)*.

In this regard, article 79 is the main article on immigration policy, where all possibilities to develop legislation at the EU level are foreseen. In concrete, its first paragraph develops the main basis of the EU immigration policy: "the Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings" *(Ibid. p. 77)*.

The second paragraph develops the legal procedure in this area: "for the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas: (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification; (b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States; (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation; (d) combating trafficking in persons, in particular women and children" *(Ibid.)*.

Paragraph 3 is used to develop the idea of the conclusion of agreements with third countries: "the Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States" *(Ibid.)*.

Paragraph 4 establishes the possibility of European institutions to develop support measures in this field: "the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States" *(Ibid. p. 78)*.

And paragraph 5 remarks the national competences of each member state concerning the volumes of admission: "this Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed" *(Ibid.)*.

The current legal basis is the result of an historical evolution of this area, which started already at the early beginning of the European communities.

In this regard, it is very important to see this evolution before analysing the last trends in this topic from 2015 onwards in order to understand the evolution and the important policy changes in the area.

### II.B. The evolution of cooperation in the area of Justice and Home Affairs

The cooperation in the area of Justice and Home Affairs comes from a long time ago, but it is not before the end of the 21st century when we really see a huge evolution in the area.

## II.B.i. First step: Benelux treaty

Indeed, the cooperation in the area of Justice and Home Affairs really started through the intergovernmental cooperation between Belgium, The Netherlands and Luxembourg after the Second World War. In 1943 the three governments in exile signed in London an agreement to reinforce the economic relations and in 1944 they developed the basic principle which ended in a Customs Convention (*Convention douanière néerlando-belgo-luxembourgeoise (Londres, 5 septembre 1944)*, 1944; Traité instituant l'Union économique Benelux, 1944) which entered into force on January 1st 1948 and in the Benelux Economic Union in 1958, after ten years of the entry into force of the Customs Convention, which had its own institution and own policies (Vermeulen & De Bondt, 2015, p. 19). The Benelux Treaty entered into force on October 1st 1960 and was in force for 50 years.

Since its beginning, it became obvious that this cooperation will go further than this, as all the milestones achieved through the Benelux body were helping to develop the Justice and Home Affairs Pillar at the EU level afterwards: in April 1960 an agreement abolished border checks of persons at the internal borders and moved the control on persons to the outer borders of the Benelux and in 1962 the Benelux countries adopted the Treaty on Extradition and Mutual Legal Assistance in criminal Matters; in 1968 it was adopted the Benelux Treaty on the Execution of Judicial Decisions in Criminal Matters and in 1969 the adoption of the Benelux Convention on Administrative and Criminal Cooperation in matters related to the Aims to the Benelux Economic Union (ibid. p. 19-20).

Those agreements lead to the 1986 agreement deals with trans-border cooperation between authorities on each side of the borders and, 10 years later, in 1996, in the Senningen Memorandum concerning cooperation in the fields of police, justice and immigration which ended in a wider cooperation treaty in this area in 2004 (Maguer, 2004; *Plan d'action Senningen 2013-2016*, 2013; Vermeulen & De Bondt, 2015, p. 20).

The Benelux Treaty ended in 2008 after its 50 years of life. However, in order to continue its shared vision, on June 17th 2008 another Benelux Treaty was signed, which entered into force on January 1st 2012, for an indefinite period of time (New Benelux-Treaty, 2008). The reason is to continue strengthening the cooperation between the countries in this area, being a very useful place to continue being a testing– ground initiative for initiatives at the EU level, as well as to continue widening cooperation in other areas, such as private international law, preservation of the environment or youth and territorial cooperation (Vermeulen & De Bondt, 2015, p. 21).

## II.B.ii. Second step: a wider cooperation with the rest of EU Member States

In addition to the cooperation between Belgium, France and Luxembourg, a cooperation between the three countries plus France and Germany was established and this cooperation has been increased until the signature of the Schengen Agreement on 14 of June 1985 (Den Boer, 2000; European Union, 1985, 2013; Fijnaut, Stuyck, & Wytinck, 1992; Vermeulen & De Bondt, 2015, p. 33).

But this cooperation was increasing already before: in the 70s, there was already cooperation on police cooperation and, in December 1975, the European Council Summit in Rome created the TREVI group, which was going to work on the Terrorism, Radicalism, Extremism and International Violence and which developed at the same time later on in 1976 five working groups: TREVI I (Combatting terrorism), TREVI II (training and equipment of police forces), TREVI III (combatting drugs and major criminal issues, such as drug trafficking), TREVI IV (securing nuclear transports and those of other dangerous materials, in order to prevent disasters and accidents) and TREVI 92 (preparing measures of police and judicial cooperation, required to realize the free movement of persons within the internal market). The accomplishment of TREVI 92 led to the founding of the Europol Drugs Unit, which is the beginning of the current Europol (Vermeulen & De Bondt, 2015, p. 56).

In the case of justice, it was the Convention of jurisdiction and the enforcement of judgement in civil and commercial matter, the so called EEX Convention, which took place in Brussels in 1968, the first approach to develop a wider communitarisation in this area (Ibid.).

In those terms, French president Giscard d' Estaing launched in 1977 the idea of a "European Judicial Space". But the real first step can be considered the adoption of the European Convention on the Suppression of Terrorism in 1977. In this convention, Member States agreed that terrorism would no longer be regarded as a kind of political offence that would render cooperation impossible.

This was developed by the working group on Judicial Cooperation, which set up five agreements between 1987 and 1991 to boost cooperation in the area. The subjects of those agreements were the "non bis in idem principle" (1987), the transfer of sentenced persons (1987), the simplification and modernization of methods of transmitting extradition requests (1989), the transfer of prosecution (1990) and the enforcement of foreign judgement (1991) (Ibid. p.57 Balzacq, 2008).

After the police and judicial cooperation, asylum, immigration ad external border issues were coming into action in order to develop a better protection of borders and a common asylum policy in the agenda of the EU (Joubert & Bevers, 1996).

The first real development was the creation, in October 1986 of the "Ad hoc immigration group", an initiative linked directly to the Single European Act which was forcing the renovation of the internal and external controls in order to develop the Single European Market (Ibid. p.58).

In order to monitor the process to advance towards a single zone and the strengthening of the external borders, the European Council founded in Rhodes in 1988 the Rhodes Group, which was able to present a draft proposal in 1990 in this area.

In the area of refugees and migration, the main success story was the so-called "Dublin Convention on Asylum Seekers". The convention stated the Member State responsible for examining an application for asylum, and was willing to ensure that Member States' decisions will not remain void the decision of another Member State. The Dublin convention stated that the Member State on the territory where the refugee enters is the one responsible for examining and deciding over an application, regardless of which Member State has filled the application ( Ibid. p. 58-59 Craig & De Búrca, n.d.).

Those achievements were just the beginning of the development of this area, which was in those days mainly developed through the intergovernmental cooperation and therefore, the evolution of the pillar structure was important in order to advance through the communitarisation of the area (Ibid. p. 59).

### II.B.iii The Maastricht treaty and the evolution in the 90s and the beginning of the 21st Century

It was the Maastricht Treaty the first one which was able to state the situation of the different policies in the so-called, three pillars, which were into force between 1993 and 2009. In this context, the Common Foreign and Security Policy was part of the second pillar, and the justice and home affairs were part of the third pillar (Ibid. p. 60). This new structure helped to develop Joint actions, joint positions, framework decisions, decisions and conventions which were able to advance in the area until the next important change of the structural framework in the 21st century.

Examples of this advance can be found in the Joint Action of February 24th 1997 concerning action to combat trafficking in human beings and sexual exploitation of children, the joint position of March 4th 1996 on the harmonized application of the definition of the term "refugee in article 1 of the Geneva Convention of July 28th relating to the status of refugees, the 2003 framework decision on terrorism, the Council decision on February 28th 2002 setting up Eurojust or the Convention on July 26th 1995 on the establishment of a European Police Office (Europol) (Ibid. p. 61-64).

At the beginning of the 21st century, a new change on the treaties started. A new Inter-Governmental Conference started in Rome in 2003 but, due to the negative outcome of referendum in France and the Netherlands the idea of one single, consolidated text was abandoned and the reform treaty finished in October 2nd 2009, after the second referendum in Ireland, which went through, after a first referendum which did not go through in June 2008 and the ratification of all the other Member States. The Lisbon Treaty entered into force on December 1st 2009 and removed the pillar structure, which has had a significant impact, particularly on the area of freedom, security and justice (ibid. p. 64-65).

This abolition of the pillar structure meant the introduction of a common decision-making procedure for the policy areas on the former first and third pillars and came into force on November 2014.

### II.B.iiii. Evolution of Schengen by Member States

And during this historical evolution, the Schengen area has also been experiencing an evolution over the last years. This area was primary created by 5 Member States but, during the 90s, Italy (1990), Portugal and Spain (1991), Greece (1992) and Austria (1995) became part of the club (Ibid. p.38). During 1996, Denmark, Finland and Sweden entered into the EU. As those Member States had a "Nordic Passport Union", together with Iceland and Norway, it took some time to negotiate both agreements with the new EU Member States from one side plus Iceland and Norway so they could all enter in the area on March 25th 2001 (Vermeulen & De Bondt, 2015, pp. 38–39; Zaiotti, 2011).

This scenario was completed with Switzerland after the referendum vote in June 2005 which allowed his accession as Norway and Iceland are.

Then the accession on 2004 of 10 EU Member States plus the accession of Liechtenstein in December 2011 increase the number up to 27. However, Rumania, Bulgaria and Croatia are still pending to implement the needed actions to enter into the Schengen area plus the United Kingdom and Ireland which have never signed the agreement even if they participate in certain provisions (Ibid. p. 48).

Denmark has an exceptional position, as a protocol establishes that the Country shall not participate in the further development of the Area of Freedom, Security and Justice and will decide in the period of six months whether it accepts to implement or not this decision with the rest of the Member States.

### II.B.iiiii. Evolution of the policy by sector before the current migration crisis

But before the current migration crisis and the abolition of the pillar structure, this area has experienced during those years an important evolution of legislation before having this recent migration crisis.

**Evolution of the visa policy:** during all this time, the European Union has developed a common policy in the area of visa which grants third country nationals short-term visas. The system claims for third country nationals to have a visa for short term and makes exceptions based on reciprocity. To that end, the EU has a list of countries whose nationals are exempt from this request (Ibid. p 97-98).

In order to ensure a smooth exchange of information between Member States, the Visa Information System (VIS) was set up in 2008, an analogous system of the Schengen Information System (SIS). Each person who applies for a visa has to give fingerprints and a photo. This helps to protect travellers from identity fraud, to detect the first Member State where an asylum seeker has entered and also the detection of possible criminals (European Union, 2008; Karanja, 2008; Vermeulen & De Bondt, 2015, p. 98).

**Evolution of the immigration policy:** In the case of immigration, there was the idea to advance in a cooperation in this area since the early beginning of the European Communities, as the settlement of the European Political cooperation was a clear signal for that, which continued through the third, intergovernmental pillar, was developed in the framework of the Amsterdam Treaty and has been considered part of the common immigration policy since the Treaty of Lisbon (Faria, 2002; Vermeulen & De Bondt, 2015, p. 99). The European Summit of Tampere, the Hague programme or the Lisbon programme have widely contributed to the communitarisation of this policy at the EU level.

**Evolution of the legal immigration policy:** Although since the start of cooperation in the 70s Member States were reluctant in advancing in this field, it is important to highlight that the EU has done important progress in this area. After the Hague programme of 2004, the European Commission was able to start the process of a Directive which was adopted in 2009 concerning the conditions of entry and residence of third-country nationals for the purpose of highly– qualified employment. Through this new directive, the EU harmonised the criteria of entry and residence to the EU of High-skilled workers and also developed the Blue card to allow those individuals to move and pass to other Member States, as well as work in other EU Member States in the same field in which is specialised, reducing also the admission procedures and the legal status of those who had already entered the EU (Ibid. p. 100).

Concerning the seasonal workers, the Commission dratted a directive in 2010 concerning seasonal labour in which a compromise was accepted in 2013 and entered into force in 2014. This directive allowed to reduce bureaucracy on the procedure of entry, to harmonise the reception of seasonal workers in the EU Member States as well as to improve the working conditions of seasonal workers regarding EU citizens (Ibid. p. 101).

And for admitting third-country nationals who wants to study, a directive was adopted in 2004. In 2005 a directive for the purpose of conducting scientific research was adopted and a new proposal to harmonise the conditions at the EU level was launched in march 2013 and was adopted in 2016, leaving Member States to implement the changes until May 2018 (Ibid.).

**Evolution of the illegal immigration policy:** In 2002 a directive combined with a framework decision was adopted to promote the criminalization of illegal immigration in each of the EU Member States (Ibid. p. 102).

In order to develop an effective prevention and control policy, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) was founded. Cooperation between Frontex with other Member States and other EU bodies such as Europol, the European Union Agency for Law Enforcement Training (CEPOL) and the European Anti-Fraud Agency (OLAF) has been carried on in order to ensure a custom cooperation and to promote an overall coherence in this area (Ibid. p. 102).

The creation of a border control system called EUROSUR was an important step forward to monitor the Mediterranean and prevent cross– border crimes, trafficking with human beings, drug trafficking and tracing and support smaller boats transferring immigrants, which are in need of rescue. The basis of EUROSUR is the cooperation of the national coordination centres and FRONTEX plays a very important role in this field (Cornelisse, 2014; Vermeulen & De Bondt, 2015, pp. 102–103).

Concerning the return policy, a directive was adopted in 2008 to allow common standards on the return and removal of illegal immigrants according to the international treaties and convention (Ibid. p. 103).

Another important area of this policy is related with asylum. The first development was carried within the framework of the European Political Cooperation and it was established only into the EU framework when the EU Member States ministers of internal affairs established an "Ad Hoc Group on Immigration" for the coordination of those policies in 1986 (Ibid. p. 103-104).

The Dublin Convention on Asylum seekers in 1990 was signed to prevent multiple visa and to gain certainty to the asylum seekers. The treaty entered into force in 1997 and, in the meantime, at the EU level, the Maastricht Treaty, in 1992 inscribed the competence on asylum policies in the third intergovernmental pillar. The Amsterdam Treaty helped to advance on this area by transferring the competences from the third pillar to the supranational first pillar, which entered into force in may 2004 (Ibid. p. 104).

In order to advance in the area after the Amsterdam Treaty, Member States worked hard in the first European Council devoted only to the future of Justice and Home Affairs in the European Council of Tampere in October 1999. Since then, the Commission drafted several policy documents and helped that the Lisbon Treaty referred explicitly to a "Common European Asylum System" which will need a co-decision procedure. And the

European Council of Stockholm in December 2009 helped to advance in the new policy objectives concerning asylum (Ibid. p. 104-105) which was based on the following main points:

- The identification of applicants: this is important to avoid asylum seekers applying for multiple times to different Member States. In this regard, the Establishment of Eurodac, a central databank of fingerprints to transfer data between Member States which started its work in 2003 and which identifies, with biometric certainty, asylum seekers and illegal residents in the territory of a Member State was an important step forward (Ibid. p. 105). This data was extended to the EU agencies but it took some time in order that Europol complied with the data protection measures to access to this data and a proposal passed then in June 2013 (Ibid. p. 106).
- Reception requirements: a directive has been adopted on the reception of asylum seekers which was substituted in 2008 and helped to advance in the harmonisation of minimum requirements for the standards of living of asylum seekers concerning housing, healthcare, education and employment Ibid. p. 106).
- Common procedures: in December 2005 a directive was adopted on the granting or refusing the status of refugee. Main points were concerning the right to information, to a personal interview, to have access to a lawyer, the procedural decision– making (it should be individual, in written form and giving reasons), the right to appeal against a negative decision or a common interpretation of a number of concepts, such as inadmissibility or security of the country of origin. In 2011 it started a procedure of modification of this directive and a new one with common procedures for the granting and revoking of international protection entered into force in 2015 (Ibid. p. 107).
- International protection: in this field a directive in 2011 on standards for the qualification of third-country nationals was adopted and pays attention to strengthen the criteria for an individual to qualify as entitled to international protection.

## II. Inmigration and the Justice and Home Affairs area: evolution since the beginning of the European Union

Although the evolution of migration policy in the Justice and Home Affairs area has experienced an important evolution since its beginning, this area has experienced a much higher evolution over the last years since the migration crisis that the EU has experienced since 2015 onwards. This chapter will examine this evolution over the last years.

### III.A. Current development of the migration policy

Migration policy has been subject to important developments over the last years due to the migration crisis that EU countries have suffered over the last years.

According to the statistics of the European Border and Coast Guard Agency, FRONTEX, there has been a huge rise of illegal border crossing by third country citizens via land and sea routes. In this case, in 2015, there was a six-fold increase in illegal border crossing in comparison with 2014 and a 17-fold increase compared to 2013 (European Parliament Research Service, n.d.). This was mainly due to a large increase in sea border crossings by citizens of Syria, Afghanistan and Eritrea.

According to the data of Frontex, 1.83 million irregular crossings were detected at the EU's external borders in 2015 (Frontex, 2015). Eurostat figures shows that roughly 1.25 million people applied for asylum in 2015 (European Parliament Research Service, n.d.).

Concerning asylum, we must be aware that the number of asylum applicants in the EU has more than doubled between 2014 and 2015 and that 8 Member States have received 90% of the total requests over the first 6 months in 2015 (Germany, UK, France, Austria, Hungary, Italy, Sweden and Belgium) (Ibid.).

All this pressure affected and produced the suspension of the Dublin system, the introduction of border checks by Member States and this has made the EU institutions to start developing a broader process of reform (Atanassov, Dumbrava, Mentzelopoulou, & Radjenovic, 2018a, p. 1).

That is why, in May and June 2016 the Commission presented two packages of proposals to strengthen and adapt the Common European Asylum System.

To that end, the Commission proposed to revise the mandate of Frontex and EU-Lisa to strengthen the external borders in December 2015. This lead to change Frontex and develop the new European Border and Coast Guard Agency was approved on a time record (9 months) by the European Parliament and the European Council (Atanassov et al., 2018a, p. 4; European Commission, 2016k).

At the same time and, as part of the package, the Council finally adopted the changes on the entry-exit system in November 2017 in order to reduce border check delays, improve the quality of border checks, and strengthen internal security and the fight against terrorism by allowing law enforcement authorities access to travel history records (Atanassov et al., 2018a, p. 4; Council, 2017a).

And in the meantime, in order to secure cooperation on migration issues, the EU has renewed its cooperation agreements with third countries to strengthen political and financial tools to tackle this issue.

In 2017, the number of illegal crossing decreased until the level of 2014 (European Parliament Research Service, n.d.). According to Frontex, there was 204.734 irregular border crossings at the EU's external border in 2017 (Frontex, 2018). According to Eurostat, around 712.200 people applied for asylum in the same year (Eurostat, 2017) and this number decreased to 638.200 applicants in 2018 (Eurostat, 2018).

This evolution of facts has also entailed a development of legislative actions which aimed to tackle the challenge of migration flows.

On April 6th 2016, the Commission published a Communication "Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe" *(European Commission, 2016m)*. This publication aimed at settling the main basis of a framework of the reform in this area.

And during the month of May, June and July 2016, the European Commission prepared a set of proposals aimed at completing the reform of the system:

- The proposal for a regulation of the European Parliament and the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person *(European Commission, 2016f)*.
- The proposal for a regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast) (Schumacher & European Commission. Joint Research Centre. Institute for the Protection and Security of the Citizen., 2013)
- The proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing regulation (EU) No 439/2010 *(European Commission, 2016l)*.
- The proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU *(European Commission, 2016d)*.
- The proposal for a directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection *(European Commission, 2016c)*.
- The proposal for a directive of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council *(European Commission, 2016e)*.

Based on those proposals, EU institutions have been working and making improvements on their migration policy over the last years.

Concerning the **Dublin Regulation,** the proposal of the Commission was welcomed by the European Parliament and its committee for Civil Liberties, Justice and Home Affairs (LIBE) amended the proposal in October 2017 and voted in plenary in November 2017. The proposal defines the relocation of applicants from those Member States who are receiving a disproportionate number of migrants, establishing a mechanism based on the size and population of the Member State for the allocation mechanism. It proposes to block those transfers if the asylum applicant represents a security risk, suggests join procession of application for families and strengthens the protection of minors (Atanassov et al., 2018a, p. 9; Bąkowski, Poptcheva, Ivanov Graphs, & Sabbati, 2015).

In January 2018, the Bulgarian presidency organised a meeting in order to continue working towards a consensus but, by June 2018, after the discussion, the presidency decided to take the question for refugee quotas for last, as some Member States, such as Hungary, wanted to propose stricter security expulsion policy rules (European Parliament, 2019b). That is why the European Council Conclusion in June 2018 claimed for the need of a consensus of this reform, which was the approach followed by the Austrian Presidency. As this topic has had major difficulties, the Council conclusions of February 2019 have highlighted the need to continue trying to reach a consensus over the following years (European Council, 2019b).

Concerning the **Eurodac regulation**, the proposal was amended by the LIBE committee in May 2017 and the plenary confirmed the inter institutional negotiations in June 2017. The proposal expands Eurodac, with the need to register third country nationals or stateless persons who are not applying for international protection and crossed the border irregularly and to sanction the ones who refuse to comply with the fingerprints under national law. The European Parliament expressed the need to enhance the interoperability between information systems and the access to Europol to Eurodac data and the need to fingerprint kids at the age of 6 for family

reunification but respecting the personal data legislation and the fundamental rights (Atanassov, Dumbrava, Mentzelopoulou, & Radjenovic, 2018b; Atanassov et al., 2018a, p. 9).

Since September 2017, trilogues have been ongoing but there have been wide divergences between Commission and Council on the length of the data storage period for asylum seekers. Although during the Estonian, Bulgarian and Austrian presidency, agreements have been reached on fingerprints, facial images and alphanumeric data a final agreement has not yet been reached (European Parliament, n.d.-e).

In October 2018, the European Council assessed this progress and called for efforts in order to conclude the reform as soon as possible and under the Romanian Presidency, an informal meeting in February 2019 took place but no agreement has been yet reached (European Council, 2019b).

Concerning the **European Union Agency for Asylum (EUAA)**, the proposal of the Commission expanded the mandate of the European Asylum Support Office (EASO) to develop an EU agency. The LIBE committee at the European Parliament approved in December 2016 a negotiating mandate on this issue and stressed the important role of EASO, which should comply with fundamental rights, help to the management of crisis situation and better monitor asylum and reception system procedures. Council took position in October and December 2016 and carried negotiations during the whole year of 2017 in order to conclude the agreement with Parliament in December 2017 (Atanassov et al., 2018a, pp. 9–10).

Concerning the **asylum procedure regulation,** the proposal wanted to establish a fully harmonised common EU procedure for international protection, simplify procedures and ensure more guarantees for asylum seekers. The LIBE committee of the European Parliament adopted the report in April 2018 (Ibid. p. 10) and in May 2018, plenary adopted the report, which is being examined since then by the Council, which assessed the progress achieved on this in October 2018 (European Parliament, 2019a).

Concerning the **qualifications regulation**, which aim was to ensure greater convergence between Member States in the area of recognition, the LIBE committee adopted in June 2017 the report where they claimed more common criteria for the identification of persons or a common set of rights for refugees (Atanassov et al., 2018a, pp. 11–12). Since July 2017 the mandate for negotiations started and the Bulgarian presidency did important efforts to advance towards an agreement. However, in certain elements, such as the use of internal protection alternative, the review of the status, the definition of family members and other important topics there was no agreement yet. In June 2018, the European Parliament and the Council announced that an informal agreement was reached but, as there was no final agreement, the Austrian presidency returned the file to negotiation which did not achieve an agreement in Coperer in June 2018. In November 2018, COREPER confirmed a position in amending the proposal but the European Parliament stands in the position of the informal agreement reached (Parliament, 2019).

The **reception conditions directive,** has as its main objective to ensure harmonised reception standards across the EU. This proposal was adopted in April 2017 at the LIBE committee and in May 2017 at the plenary session. The report stated the necessity that Member States should try to find a job in a two-month period and grant much more assistance to kids (Atanassov et al., 2018a, pp. 11–12)). In November 2017 Council agreed to enter negotiations, where they claimed that Member States should have an adequate standard of living, the period to find a job should be nine months and they should prepare contingency plans in case of a disproportionate number of arrivals (Ibid. p. 13) and in June 2018, the EP and the Council reached a partial agreement. However, as there was no final agreement in the Council, the Austrian presidency returned the files to negotiations at a technical level and the Romanian Presidency launched again the proceedings but the European Parliament stands on the informal agreement, without willing to change its position with regards to amendments from the Council (European Parliament, n.d.-f).

Concerning the **EU resettlement framework,** apart from the resettlement schemes agreed in 2015 and 2017, the proposal of the Commission wanted to establish a Union resettlement framework on July 2016. LIBE committee adopted the proposal in October 2017 and plenary October II endorsed it and the opening of negotiations. The report clams more efforts from the Member States concerning resettlement, which will be a humanitarian programme, which should also have a Union resettlement plan (Ibid. p. 16). The Council accepted to start negotiation in December 2017 and a partial provision agreement was reached in June 2018 but, as there was no final endorsement in the Council, the Austrian presidency returned the file at the technical level (European Parliament, n.d.-b).

Concerning the **reinforcement of external borders**, the Commission launched the communication to the European Parliament and to the Council for stronger and smarter information systems for borders and security *(European Commission, 2016b)* where proposed to extend the use of the Schengen Information System (SIS II) and to extend the Entry/Exit System (EES) and the European travel information and authorisation system (ETIAS) (Atanassov et al., 2018a, p. 14).

In this regard, the Commission launched in 2017 the communication on the seventh progress report towards an effective and genuine Security Union *(European Commission, 2017a)* in order to improve the interoperability between EU information systems for border management and security. This proposal was followed by the proposal for a regulation on the framework for interoperability between EU information systems (borders and visa) (https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-793_en) and on police and judicial

cooperation, asylum and migration *(European Commission, 2017d)* to try to achieve the interoperability of the systems by 2020 (Atanassov et al., 2018a, p. 14).

In the **area of Schengen**, the wave of terrorist attacks in Europe between 2015 and 2016, specially in France, Belgium and Germany, has helped to develop urgent measures aimed at strengthening border control and the Commission put forward a proposal to reinforce the databases at the external borders *(European Commission, 2015c)*. The LIBE Committee approved a report on the proposal in June 2016 (European Parliament & Macovei, 2016) and, following an agreement between legislator, the regulation was adopted in March 2017 (Atanassov et al., 2018a, pp. 14–15). The regulation enhances the systematic checks for people crossing the EU external borders, and provides the use of Interpol and SIS information for the checks.

Into the area, of Schengen, and concerning the **Schengen Information System** (SIS), the Commission launched three legislative proposals which were aimed at reinforcing the role of the SIS on police cooperation and judicial cooperation in criminal matters *(European Commission, 2016h)*, on border checks *(European Commission, 2016g)* and returns *(European Commission, 2016i)*. All three proposals are aimed at strengthening the rules on how to access and process SIS data in a secure way (Atanassov et al., 2018a, p. 18).

The European Parliament adopted a report (European Parliament & Coelho, 2017b) on the police cooperation and criminal matter on November 2017 as well as on cross-border checks *(European Parliament & Coelho, 2017a)* and on the return of illegally staying third-country nationals *(European Parliament & Lenaers, 2017)*. The Council, in several meetings, has expressed the need to advance in this field. On May 2017, the Council adopted an implementing decision to prologue temporary internal border controls in exceptional circumstances and in September 2017 the Commission published a communication with the measures already taken into account and the proposal to update the Schengen Borders Code for the reintroduction of internal border controls to the current needs *(European Commission, 2017b)*.

In October 2018 the Justice and Home Affairs Council held a first exchange of views willing to advance in this regard. The European Commission has also expressed his intention in its 2018 work programme to go back to the revision of the rules (European Parliament, n.d.-a).

Concerning the **European Border and Coast Guard Agency**, the Commission presented a legislative proposal in December 2015 *(European Commission, 2015b)*. The LIBE committee of the European Parliament adopted the report in May 2016 and an agreement came in September 2016 *(European Union, 2016)* which extended the scope of activities of the agency in migration management, fight against cross– border crime or search and rescue operation (Atanassov et al., 2018b, p. 15).

Concerning the **Entry/ Exit System**, the Commission presented a proposal in this area, which was subject to a report from the LIBE committee in February 2017 and approved by all legislators in November 2017 *(European Union, 2017)*. The regulation helped for the storage of the data for a period of 3 years and 5 under exceptional circumstances and will help to harmonise the traveller's data as well as to reduce duplication of data, due to its connection with VIS. This also allows national authorities and Europeans to obtain data and to coordinate better the identification of terrorists and suspects, contributing to the harmonisation of the travellers data and information at the EU level (Atanassov et al., 2018a, p. 16).

On the **European Travel Information and authorisation system** (ETIAS), the commission launched a proposal for a new centralised system to identify possible risks concerning visa exempt third-country nationals travelling to the Schengen area *(European Commission, 2016j)*. On the basis of this proposal, the LIBE Committee adopted a report in October 2017 giving the mandate to open negotiations. In June 2017 the Council adopted a general approach which constitutes its position to negotiate with the European Parliament *(European Council, 2017a)*. In practical terms the Council has split the proposal into two legal acts, although they were discussed into a package. After four trilogues there was a provisional agreement reached in December 2017 which included as main points a data retention period, the establishment of a fundamental rights guidance board, the collection of data regarding education, occupation an health substantially limited, exception of a fee of 7 euros under 18 and above 70 years, responsibility of eu-LISA to develop and host ETIAS and a limited transfer of data to third countries between other measures.

The provisional agreement ended on a conclusion of an agreement in April 2018. Parliament adopted the proposal in first reading on the plenary of July 2018 and Council in September 2018 *(European Parliament, n.d.-c)*

Regarding the **EU agency for the operational management of large scale IT systems in the area of freedom, security and justice** (eu-LISA), the Commission launched a proposal *(European Commission, 2017f)* in order to improve and expand the EU information system in the Area of Freedom, Security and Justice. In this regard, the LIBE committee of the European Parliament adopted a report in December 2017 (European Parliament & Macovei, 2017). The Council discussed the proposal in July and October 2017 and adopted a general approach in December 2017. Trilogues started in January and Council and European Parliament reached and agreement in May 2018. In June 2018 the text was adopted in Coreper and, in July 2018, the plenary of the European Parliament approved the text. Council adopted the text in November 2018 *(European Parliament, n.d.-g)*.

And regarding **interoperability**, the Commission, based on its communication on stronger and smarter information systems, put two proposals in December 2017, one concerning the development of a framework

for interoperability between EU information systems on borders and visas *(European Commission, 2017d)* and another one concerning a framework for interoperability between EU information systems on police and judicial cooperation, asylum and migration *(European Commission, 2017e)*. The proposals aimed at achieving a more intelligent and targeted use of the information in the three centralised EU information systems: SIS, VIS and Eurodac, as well as the ones which are under development (EES, ETIAS and ECRIS-TCN). This interoperability is basically focused on four solutions: the European Search Portal which will act as a "one-stop shop" for all document check results, the Shared Biometric Matching service (SBM) to compare biometric data from different systems, the Common Identity Repository (CIR) for basic biographical and biometric information and the Multiple-Identity Detector to establish if different names belong to the same identity and alert guards in case of fraud identity (Atanassov et al., 2018a, pp. 21–22).

The European Parliament presented a draft report on the proposal on June 2018 and on June 2018 Coreper also endorsed a mandate to establish negotiations with the Parliament.

As the Commission adopted and amendment proposal in June 2018, Council adopted a revised mandate in September 2018 and Parliament adapted the report. In October 2018 the report was approved at the LIBE committee and trilogue negotiations started, reaching an agreement in February 2019. Parliament adopted the provisional agreement on LIBE in February 2019 and the final agreement at its plenary in April. In May the Council adopted formally the text *(European Parliament, n.d.-d)*.


## III. The external dimension of the migration policy

But all those developments at the internal level of the European Union are not enough in order to fight against illegal migration and try to improve the management of the migration flows. Although the climate change is going to be a very important factor which will provoke migration flows in the following years, it is also important to ensure that the EU's neighbourhood policy acts as an important policy in order to shape our neighbourhood countries to develop economically and democratically, that their institutions are stronger and compliant with law, justice and human rights and that their political systems will improve and help the countries and their citizens to have better lives and to develop work and prosperity. And this has a very important impact in migration flows, as a developed country is more likely to receive than to send people to other countries.

And the main tool to develop this external dimension is the European Agenda on Migration, which was launched by a Communication from the Commission in 2015 *(European Commission, 2015a)* based on a multilateral strategy aimed at reinforcing cooperation with key countries of origin and transit in order to avoid the loss of lives at sea, to reduce illegal immigration, to fight against human trafficking and smuggling and to help to develop those countries economically and institutionally speaking (Atanassov et al., 2018a, pp. 22–23). This agenda on migration launched the partnership framework with third countries for cooperation *(European Commission, 2016a)*, which wants to address the root causes of migration and to develop the needed tools in countries of origin in order to develop jobs and growth in the countries, and was based on the global approach to migration and mobility, which was launched in 2011 and renewed those years *(European Commission, 2011)* and which has helped to the regional dialogue process to develop the Africa-Eu Partnership on Migration, Mobility and Employment and the Rabat Process in the south of the Mediterranean, the Prague Process and the Eastern Partnership panel on Migration and Asylum in the East, the migration dialogue with Latin America and the dialogue with the countries along the Silk-route, including in the framework of the Budapest process. From this cooperation frameworks nine mobility partnerships have been signed with Cape Verde (Council of the European Union, 2008), the Republic of Moldova (European Council, 2008), Georgia (European Union, 2009), Armenia (Council of the European Union, 2011), Morocco (Council of the European Union, 2013b), Azerbaijan (Council of the European Union, 2013a), Tunisia (European Commission, 2014), Jordan (Council of the European Union, n.d.) and Belarus (Council of the European Union, 2015a), as well as two Common Agendas on Migration and Mobility with Ethiopia (Council of the European Union, 2015b) and Nigeria (Council of the European Union, 2015c)

Together with this main policy, the European Parliament has clearly stated the need to express our solidarity with the refugees and migrants suffering with human rights violations *(European Parliament, Diaz de Mera García Consuegra, & Valenciano, 2017)*, also the European Council expressed its concerns about the important drama caused by the migration flows on the Leaders' Agenda (Council, 2017b).

All those tools have been very important in order to manage the migration flows coming from several countries and directions. Although the pressure on Europe's external borders remains high, in 2017 there was a significant fall in illegal border crossings in general, although the decrease was considerable in the Eastern Route and Western Balkans, as the western Mediterranean route experience an important rise in the second half, specially through Spain (Atanassov et al., 2018a, p. 24).

In the Aegean Sea and the Central Mediterranean, there are three EU operations willing to secure borders, fight against the illegal immigration and save lives of migrants, the Themis operation (European Commission, n.d.-b), which substitutes Triton, Sophia, Indalo and Poseidon.

At the current state (European Council, 2019a) 468.010 lives have been saved in the Mediterranean between 2015 and may 2019 and 11.089 are dead or missing. From this, 74.359 lives have been saved by the operation Indalo, 94.457 by the operation Poseidon, 44.916 by the operation Sophia and 254.278 by the operation Themis, which includes former operation Triton.

In this area, the efforts made have had a special focus in Libya, as the post-Gaddafi Libya is still evolving and it is one of the major countries which has had tremendous political changes over the last years, becoming a very important point for illegal migration routes, together with Niger, which constitutes one of the key transit countries to Lybia.

That is why the EU has set up the joint task force in cooperation with the African Union and the UN (European Commission, 2017c), and developed an intensive work with the International Organization for Migration, the United Nations Children's Fund and the United Nations Refugee Agency. In addition it has also set up a joint task force in cooperation with the African Union and the UN (European Council, 2017b) which also strengthens with the Mediterranean missions the fight against illegal immigration.

Last but not least, the EU Trust Fund for Africa, has helped the EU, together with the IOM and the Niger authorities, to contribute economically and to develop assisted voluntary return in the area in order to improve the work with Libyan authorities. In total, there has been 7 project from a total of 281.923.927 € (European Commission, 2018).

On the Eastern Mediterranean side, the main actor has been Turkey. In this regard, since the EU– Turkey statement on the 18th of march 2016, there has been a reduction of the migration flows, but the area still an important part of the migration flow (European Council, 2016). This statement has helped to reinforce and impede the uncontrolled flow of migrants across the Aegean Sea, ensure improved reception conditions for refugees in Turkey and open up organised and safe channels to Europe for Syrian refugees (Atanassov et al., 2018a, p. 26).

On the Western Balkan route (Frontex, n.d.), the illegal border crossings in the area was very high in 2015 and 2016 but went considerably down after those years. This mainly due to an effective cooperation between the Member States, Europol and Frontex.

On the Western Mediterrranean/ Atlantic route, cooperation has helped that migratory flows remained low. However, the situation changed in 2017, where the number of migrants reaching Spain from northern Africa jumped to 23.063 and in 2018 where the number of detections doubled for the second consecutive year to a record of 57.034, being Morocco the main departure point to Europe for irregular migrants.

In order to tackle this challenge, the EU funding for migration is expected to continue increasing. For the moment, the European Development Fund (EDF) has a budget of €30.5 billion for the 2014-2020 period, covering the African, Caribbean and Pacific (ACP) partner countries of the EU, the overseas Countries and Territories of Member States (Eprs & Alfonso, 2014; Welcomeurope, n.d.-a), the Development Cooperation Instrument (DCI) has a budget of €19.661 million for the 2014-2020 period, covering geographical programmes in Latin America, Middle East and South Asia, North and South-East Asia, Central Asia, the Pan African Programme and the thematic programme on migration and asylum (Welcomeurope, n.d.-b); the European Neighbourhood Instrument (ENI) has a budget of €15.432 million for the 2014-2020 period, covering South Mediterranean countries and eastern neighbourhood countries (European Commission, n.d.-d); the EU regional trust fund in response to the Syrian Crisis, the "Madad Fund" has a budget of € 1.23 billion (Commission, n.d.); The EU emergency trust fund for Africa has an allocated amount or €4.2 billion, which includes €3.7 billion from the European Development Fund (European Commission, n.d.-a); the Instrument for Pre-accession Assistance II (IPAII) has an allocated amount of € 11.69 billion for Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey (European Commission, n.d.-c); the EU Facility for Refugees in Turkey has had a €3 billion Budget for 2016 and 2017 and €3 billion on 2018 to Turkey (European Commission, 2017b).

Although this budget is not only aimed at the fight against illegal immigration, the crisis situation has caused that an important part of this budget has been used in order to tackle the crisis. Besides, the London and Brussels conferences to support Syria and the Region has helped to pledge additional support announce up to US$ 12 billion for humanitarian assistance and protection in Syria at the London conference, or an extra US$ 10 billion for support.

Taking into account the migration flows, special efforts were carried in Syria and Turkey, attending the important flow of people who was coming from those borders.

## IV. Conclusion

According to the International Organisation for Migration, deaths in the Mediterranean reached 1,283 in the year 2020 (IOM, 2020). The humanitarian disaster in the Mediterranean has not been indifferent to the European citizens and to the EU authorities, being a key topic in the EU agenda over the last years.

Though the analysis of this paper we have seen how, when migration has become an important topic in the agenda, there has been always some political movements at the European level going into the direction of more cooperation and more harmonisation of the policies in the JHA area. This logic follows the logic that, under a global challenge, an EU action can be more effective, always taking into account the principles of subsidiarity and proportionality enshrined in the EU treaties.

That is why the European authorities and Member States have been carrying efforts to try to tackle this challenge through more cooperation and with changes of the legislation aimed at giving a better solution to this challenge.

We can agree or not on the fact that measures the European Union has been taking over the last years have helped to fight against this phenomenon. In any case, it is obvious that, over the last 4 years we have seen a considerable progress of legislation in the EU area.

In addition to that, the work and cooperation with the African Union, the United Nations, Member States and neighbourhood countries have helped to reinforce cooperation between authorities and tackle the issue of human trafficking.

However, but migration and the human trafficking issue still a high political topic in the agenda without resolution. In this regard, the current situation in the Canary Islands is just the confirmation of how there still much to be done under the humanitarian tragedy in our borders (La Vanguardia, 2020).

That is why the European Union has to continue working on this area, where the cooperation and solidarity, as well as the coordination of Member States seems key in order to better address this phenomenon.

In this regard, the Commission has been very clear in which should be the key issues to continue working for over the next years (European Commission, 2019a):

- Continue the support on the Western Mediterranean route, specially to Morocco, where negotiation on readmission and visa facilitation are key.
- Improve the conditions in the Central Mediterranean route, specially with regards to Libya through the trilateral AU-EU-UN taskforce.
- Continue the support in the Eastern Mediterranean route, where the EU-Turkey statement has to continue ensuring the reduction of flows but where there should be also an enhance of the cooperation with Greece, where there still problems concerning returns, asylum processing and accommodation.
- Develop temporary arrangements for disembarkation.
- Continue to fight against the drivers of irregular migration, through the EU Emergency Trust Fund for Africa, the role of Europol to fight against smuggling, to continue with the return and readmission agreements with partner countries and ensure that the 23 agreements so far signed are being put into place.
- Continue working so that the Commission proposal on return, through the negotiations with the European Parliament and the Council, will be adopted.
- Continue strengthening the European Border and Coast Guard agency in order to support Member States protecting the external borders.
- Continue providing support to refugees and displaced people in third countries and to offer refuge for people in need of international protection.
- Develop a legal migration framework based on the experience already gained over those years and try to continue developing integration measures all across the European Union.

In conclusion, we can say that, after the migration crisis and the humanitarian catastrophe that the Mediterranean has been suffering over the last years, Member States and the European Institutions have been cooperating and increasing the communitarisation in the area in order to give a reply to this global phenomenon at a wider EU scale.

However, the issue of migration and illegal trafficking still unresolved and although efforts have been very important and the EU has developed a stronger Justice and Home Affairs area by working hard in the regulatory changes, a continuum of measures over the last years will be essential to tackle the best way such a challenge.

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