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A JOBSEEKER'S VISA
TOWARDS A NEW MOBILITY POLICY FOR THIRD-COUNTRY NATIONALS

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SUMMARY

The European Union (EU) is facing an unprecedented migration and refugee crisis against a very difficult political backdrop. The adoption of emergency measures and the adaptation of migration and integration policies in line with the number and profile of the new arrivals are set to occupy the political agenda for some time to come, and call for **alternative solutions to managing the migration phenomenon**.

Should the current methods of managing the crisis prevail, they should not indefinitely postpone considerations regarding the content of a European immigration policy and more specifically on the **issue of labour immigration**. In this regard, the ambitions of the Juncker Commission are modest and aim to improve existing measures rather than propose innovative solutions to meet future challenges.

Yves Pascouau proposes to further the debate on the basis of a **three-fold observation**. **Labour immigration is the "poor relation" of the EU's migration policy**. It **does not feature prominently in the EU's bilateral relations with its closest neighbours**. Lastly, **control-based policies (borders and visas) developed in recent years are actually contributing to the illegal immigration and trafficking networks** they claim to be fighting against.

He identifies a **course of action inspired firstly by the freedom of movement of European citizens**, which in half a century has not resulted in a "wave of migrations" between Member States, **and secondly by the legal and technological "arsenal" implemented for the EU's external border controls**.

Based on this contradiction in terms between freedom and control, he **proposes to create a jobseeker's visa**. While the idea is not new, the proposal is grounded in the synergies possible between existing experiences and systems that make it "conceivable" in a sensitive political landscape in which tackling the migration issue has become "toxic".

In practice, nationals from bordering third countries (such as Morocco, Tunisia or Ukraine) could, under specific conditions, **obtain a visa to look for employment in the EU**. A monitoring mechanism would be set up using databases developed in relation to the migration policy. **Securing a job would be a condition for residence in the EU**. If employment is not found, the third-country national would be **required to return to the country of origin** prior to the visa's expiry and this would not prevent an application for a new visa. In the event of non-compliance with the rules, and should nationals fail to return to their countries of origin before their visas expire, **a penalty system would be organised**, based on the rejection of any future visa application and an EU entry ban.

This jobseeker's visa would give greater consistence to the concept of mobility, which is currently limited to the short-stay Schengen visa, and **would only pose a minimum migration "risk"**, in view of the technological monitoring systems that currently allow a more effective oversight of migrant itineraries and of entries and exits in particular. Lastly, it **would contribute to untangling the knot that burdens legal immigration and fosters illegal immigration**, by creating a "new breathing space" between areas and people.

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INTRODUCTION

Migration is a human trait and the desire to organise it is a decision made by contemporary societies. This twofold reality is urging states, both individually and collectively, to define or attempt to define policies to manage migratory flows and to adopt rules accordingly. This phenomenon has not bypassed the European Union (EU), which, in return for the creation of an area for freedom of movement, has gradually been granted the remit to draft a common policy for asylum and immigration[1].

An unbalanced European policy

Developed from the start of the 2000s, following the entry into force of the Treaty of Amsterdam, this supposedly common[2] European policy has mainly focused on implementing the ideas inherited from national migration policies on a European level. However, **national policies have gradually become more inward-looking due to the events that have taken place**. From the oil crisis in the 1970s which put an end to labour immigration, to the terrorist attacks of the 2000s, which have focused action on securing borders, and the financial crisis of 2008 that has led to an unstable political context where any form of discussion on migration becomes difficult if not impossible, the management of migratory flows hinges upon the notion of control.

> "THE EU POLICY IS 'EUROPEAN-CENTRED' AND BASED MAINLY ON A HOME AFFAIRS APPROACH, I.E. MIGRATION CONTROL "

The policy conducted by the European institutions has followed along a similar path, one that is "European-centred" and based mainly on a home affairs approach, i.e. migration control. There has been no consideration of the relevance of, or opportunity to, develop an alternative migratory flow management model on a European level. Such a model could be based on a real mobility or circulation approach which would take into account common European requirements and the interests of countries from which the migrants originate.

In practice, this approach has resulted in the adoption of regulations mainly focused on the management of external borders, the visa policy and the fight against irregular immigration. Admission, i.e. the conditions governing the entry and residence of third-country nationals, has for the most part remained under the control of Member States and their competences. While many EU documents have defined the entry and residence conditions for certain categories of non-EU nationals (family members[3], students[4], researchers[5], highly qualified workers[6], seasonal workers[7], intra-corporate transfers[8]), Member States have still organised and retained much room for manoeuvre in the implementation of these rules. As a result, **the level of harmonisation of national policies and measures with regard to the admission of foreign nationals remains particularly low**.

1. Article 67, paragraph 2, of the Treaty on the Functioning of the European Union (TFEU) stresses that the Union "shall frame a common policy on asylum, immigration and external border control".
2. While the treaty provides for the implementation of a common policy on asylum and immigration, the action taken does not provide any actual evidence of this aim. In practice, some areas of the policy still come under the jurisdictions of the Member States. In political discourse, the strategic guidelines adopted by the European Council in June 2014 show that only return and visa policies are considered to be "common". See Extract of the conclusions of the European Council dated 26 and 27 June 2014 concerning the area of freedom, security and justice and some related horizontal issues, Official Journal of the European Union, C 240 dated 24.07.2014.
3. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ-EU L 251, 03.10.2003.
4. Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ-EU L 375, 23.12.2004.
5. Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ-EU L 289, 03.11.2005.
6. Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ-EU L 155, 18.06.2009.
7. Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ-EU L 94, 28.03.2014.
8. Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ-EU L 157, 27.05.2014.

In addition, the "home affairs" approach of the migration policy which has prevailed since 1999 is reflected in its external dimension. **For a long time, the EU's external policy with regard to migration acted as an extension of the internal approach – borders/expulsion – and mainly involved signing readmission agreements**[9] **with third countries**. Yet these readmission agreements convey a desire to make the management of irregular migration flows weigh more heavily on third countries than on EU Member States.

Aware of this imbalance, third countries have obliged EU Member States to provide counterparties for the signature of a readmission agreement. This has first of all concerned agreements on the facilitation of visa deliveries or exemptions. Then, Member States proposed legal immigration measures to third countries. Drawn up from the mid-2000s as part of the "Global Approach to Migration", these measures were not very far-reaching because they were proposed on a voluntary basis and only provided limited access to the labour market.

The impossible balance of the European policy and the setting of a "reaction" policy

> "MEMBER STATES STILL CONSIDER THE MIGRATION ISSUE AS PART OF THEIR SOVEREIGN REMIT"

While the imbalances of the migration policy have been demonstrated[10], the conditions to overcome this situation have not come together for several reasons. Firstly, **Member States still consider the migration issue as part of their sovereign remit**. As a result, and despite the adoption of European rules, any policy in this area is perceived as a predominantly national issue and is defined according to national agendas.

Secondly, **the migration issue is in its very essence a sensitive subject that has become "toxic" over the years**. The emergence in Member States of political groups that are openly hostile to any form of migration, focusing attention and even adding hysteria to the debate, has accentuated this phenomenon.

Lastly, the combination of this **nationalistic standpoint and the "toxicity" of the issue greatly impacts and sometimes even actually prevents the implementation of consistent common and long-term actions** on an EU scale.

The humanitarian and refugee crises currently hitting the EU are a stark example of this situation. Firstly, bogged down in their national approaches, Member States have refused to anticipate the clearly predictable[11] massive arrival of refugees in Europe, and to plan the implementation of an appropriate common response. Secondly and as a result, the action taken with regard to the drama occurring in the Mediterranean, the Balkans and right at the EU's borders is actually more of a reaction than action. In other words, **Member States do not allow the EU to organise a political response based on an assessment of the situation that puts the necessary actions and resources into perspective**[12].

The need to accept a reversal of the policy approach supported by mobility

This situation of "reaction" monopolises all political action and prevents the definition of common policies and solutions in the medium and long term. **Though it seems illusory in the short term to achieve a reversal in approach that would result in the establishment of a true common migration policy, it is nevertheless possible to propose some ways forward to move past current deadlocks**. This means more specifically moving beyond the old formulae based on flow control and proposing an organisation of the migratory phenomenon based on greater mobility. This policy paper attempts to answer this question, which is difficult for more than one reason.

9. The Glossary of the European Migration Network defines readmission agreements as follows: "An agreement between the EU and / or a Member State with a third country, on the basis of reciprocity, establishing rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence in the territories of the third country or one of the Member States of the European Union, and to facilitate the transit of such persons in a spirit of cooperation." This glossary can be consulted at the following address: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf
10. Y. Pascouau, *La Politique migratoire de l'Union européenne. De Schengen à Lisbonne*, LGDJ, 2010.
11. Y. Bertoncini, Y. Pascouau, "What migration strategy for the EU?", Synthesis of our 2015 European Steering Committee, Jacques Delors Institute, March 2016.
12. Regarding these points, see in particular Y. Pascouau, "Heads buried in the sand: member states block solutions to the refugee crisis", European Policy Centre, *Commentary*, 15 September 2015.

The response that this policy paper attempts to provide is based on a limited approach. Above all, it strives to avoid the pitfalls of simplification, i.e. by opposing blocks caricatured by slogans such as "fortress Europe" and "Europe as a colander". Addressing immigration involves raising issues that are often, if not always, carried away by passion, rather than reason. It is therefore along this narrow tightrope separating the theories either entirely based on security considerations or on a spirit of liberalism that we must move forward, to propose a new approach. This approach does not initiate a "Copernican revolution". More specifically, it aims to further the work already started, to add to it. Lastly, this policy paper strives to present a proposal that is mainly focused on work-related immigration. Labour immigration is the forgotten part of the common policy but it still offers significant scope of action and opens up a new perspective that is, however, based on the achievements already implemented on an EU level. Ultimately, this policy paper attempts to propose a dispassionate analysis, a reasoned approach and a realistic proposal.

> "CLAIMS TO REVOLUTIONISE THE ISSUE WOULD BE INTELLECTUALLY STIMULATING BUT POLITICALLY INEFFECTIVE"

This imposes first of all a geographic framework. The approach must be a European one, as it would be paradoxal to want to maintain a national management of immigration even when the states are constructing a space for the free movement of people and a common European labour market. It must also include the immediate neighbourhood of the EU, because the migratory phenomenon is playing out primarily in a regional context[13]. Finally, it must look for "openings" and "building blocks" that must bring about a new proposal that can be easily incorporated into the existing context while adding to it. Claims to revolutionise the issue would be intellectually stimulating but politically ineffective.

Rather than opposing approaches – security vs. freedom – the policy paper aims instead to connect them so that the existing situation and lessons learned from the past (§1.) may be used as a basis to develop future solutions (§2.). **This option enables us to present a politically acceptable and technically feasible proposal based on the principle of mobility and visas for jobseekers.**

1. Lessons of the past

The European Economic Community and then the European Union have acted in the area of immigration and asylum since the start of the 1960s. Relatively speaking, the approach of European players in this area is considerable (§1.1.). While this is true, the approach was mainly focused on control rather than mobility (§1.2.).

1.1. A long-standing issue

Migration issues have been on the European agenda since the end of the 1960s. Started by the freedom of movement (§1.1.), they have gained momentum from the Schengen cooperation (§1.2.) up to the Treaty of Amsterdam (§1.3.).

1.1.1. Freedom of movement

The 1960s brought about progress in the concept and implementation of the principle of freedom of movement for workers between Member States of the European Economic Community.

Member States drafted rules enabling workers and their family members to circulate and reside in other Member States with a view to gainful employment, regardless of their nationality. While the adopted rules

13. On this subject, see C. Wihtol de Wenden, *La question migratoire au XXI*ème *siècle. Migrants, réfugiés et relations internationales*, Les Presses de SciencesPo, 2010, sp. 33 onwards.

aimed to promote the movement of workers by reducing obstacles to it, some rules had a direct consequence on national migration policies.

As early as 1964, a directive defined the rules concerning the abolition of restrictions on the movement and residence of Member States' workers and their families within the Community[14]. These rules concerned the right to leave the country and the means of entering another Member State. For this purpose, the directive set the principle of lifting the obligation of a visa for workers from Member States. It also added that workers' family members who did not have the nationality of one of the Member States could still be subject to the visa obligation. It stated, however, that "Member States shall afford to such persons every facility for obtaining any necessary visas".

From 1968, a regulation acknowledged that family members, irrespective of their nationality, enjoy the right to install themselves with the worker[15]. This right was subject to a highly favourable interpretation in case law in the following years, thereby limiting the scope of Member States in controlling the entry and residence of family members who were nationals of third countries.

Over the years, **this principle of freedom of movement was extended to an ever increasing number of persons to the point of being applicable to all European citizens and their family members** under the conditions set by EU law[16]. At the same time, the rights granted and protections guaranteed, in particular against expulsion, were heightened through a very bold case law at the Court of Justice.

To sum up, EU citizens can enter and reside freely in the territory of other Member States with a view to seeking and occupying a job, they are subject to procedures that must facilitate movement and residence and enjoy a privileged status against expulsion. These guarantees are extended to family members, regardless of their nationality.

"THERE IS A FRAMEWORK FOR MEMBER STATES' SCOPE OF ASSESSMENT WITH REGARD TO THE CONDITIONS FOR ENTRY, RESIDENCE AND EXPULSION OF EUROPEAN CITIZENS"

Ultimately, **the entire legal system applicable to European workers exercising their right to freedom of movement, then applicable to European citizens, has intervened in an area that was previously under Member States' sovereignty**. Community law has gradually created a framework for Member States' margins of manoeuvre with regard to the conditions for entry, residence and expulsion of this specific category of non-nationals who are European citizens and family members.

1.1.2. The area without internal border controls: the Schengen cooperation

In the mid-1980s, a limited number of Member States – France, Germany and the three Benelux countries – decided to create an area of free movement on an intergovernmental basis: the Schengen area. While this area sets the principle of lifting controls at borders between the signatory states, its impact on national migration policies is twofold.

Firstly, the Schengen area shifted the control of people entering the common territory to its external borders. As a result, the Schengen states accept to adopt and apply common rules with regard to the crossing of external borders and to the conditions of entry to the Schengen area.

14. Directive 64/240/EEC of the Council of 25 March 1964 on the abolition of restrictions on the movement and residence of Member States' workers and their families within the Community, OJ 948/64 dated 17.4.1964.
15. Article 10.1. of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community: "The following shall, irrespective of their nationality, have the right to install themselves with a worker who is a national of one Member State and who is employed in the territory of another Member State: (a) his spouse and their descendants who are under the age of 21 years or are dependants; (b) dependent relatives in the ascending line of the worker and his spouse".
16. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC

"THE SCHENGEN SIGNATORY STATES ACCEPTED THAT PEOPLE WHO HAVE BEEN GRANTED AN AUTHORISATION OF ENTRY AND RESIDENCE BY ANOTHER STATE COULD ENTER THEIR TERRITORY"

Secondly, and for the first time, the freedom of movement brought about by **the Schengen cooperation meant that the signatory states accepted that people who have been granted an authorisation of entry and residence by another state could enter their territory**. Thus, Schengen resulted in a sharing and coexistence of Member States' migration policies.

Since the entry into force of the Treaty of Amsterdam in 1999, the Schengen cooperation has been entirely integrated into the European Union. Now, the development of what is known as the Schengen acquis is conducted as part of and in accordance with the procedures prescribed by the treaty. In other words, the Treaty of Amsterdam transferred the Schengen cooperation from the intergovernmental arena to the community arena.

1.1.3. The communitisation of migration policy: the Treaty of Amsterdam

The 1990s finalised this movement of slow "Europeanisation" or "communitisation" of migration policies. With the entry into force of the Treaty of Amsterdam, the EU became competent to adopt rules in the areas of "visas, asylum, immigration and other policies related to free movement of persons". This meant that migration policies departed from national or intergovernmental remits to become part of the community environment[17].

From this date, **the community institutions used their remit and set in motion colossal legislative work**. In fifteen years, European law gradually governed, to varying degrees, Member States' actions with regard to the management of external borders, short-stay visas, the fight against irregular immigration, the expulsion of people residing in the territory illegally, family reunification, admissions of students, researchers, highly qualified workers and seasonal workers and lastly, asylum[18].

The migration issue is therefore not in the least new to the EU. An analysis of the facts shows that Member States have together achieved much more than each one would believe or accept to conceive. It is therefore possible to assert that the EU has experience in certain areas such as the freedom of internal movement and border control. Yet it is also possible to state that this action has mainly been exercised only in a set political framework, that of "securing" the common area.

1.2. A policy favouring control rather than mobility

Going beyond the specific case of EU citizens and their family members, who enjoy extended rights in terms of entry and residence and increased protection against expulsion, the European rules governing the entry, residence and expulsion of third-country nationals have favoured a policy based on control. The areas of visa policy and the management of external borders underwent significant developments (§1.2.1.) when readmission became the foundation of foreign policy (§1.2.2.). These measures, however, have profound limitations (§1.2.3.).

1.2.1. Visas and external border control: deeper integration

The short-term visa policy (for stays of less than three months) and the policy governing external border control management have striking similarities that demonstrate Member States' desire to develop these aspects of the migration policy.

17. On this subject, see for example H. Labayle, *Un espace de liberté, de sécurité et de justice*, R.T.D.E. 1997.
18. For an overview of achievements, see C. Balleix, *La politique migratoire de l'Union européenne*, La Documentation française, 2013.

These similarities mainly concern their advanced degree of integration. First and foremost, these areas of the migration policy were subject to common measures under the Schengen cooperation in terms of the articles of the agreement and the Schengen convention and of the decisions taken by the Schengen Executive Committee[19].

As a result, their development as part of the EU following the entry into force of the Treaty of Amsterdam was based on a specific legal instrument, the regulation, and a common name, a "code". **The use of regulations is not neutral as it demonstrates a high level of integration**. A regulation "shall be binding in its entirety and directly applicable in all Member States"[20]. This means that its degree of precision is sufficiently important that it does not require national transposition measures as does the directive.

As regards codes, the European Parliament and Council adopted a community code governing the movement of persons across borders[21], otherwise known as the Schengen Borders Code, in 2006 and a Community Visa Code[22] in 2009. While these two documents aim to establish the rules applicable to border controls and to set the procedures and conditions of the issue of visas respectively, their classification as codes implies that the EU institutions intended to adopt rules that are binding for national authorities and that cover significantly a specific area of action.

The Visa Code and the Schengen Borders Code limit the scope of Member States as they are obliged to apply these rules and are not authorised to enforce other national rules on third country nationals. A similar approach is applicable in visa policy with regard to the regulation which states the list of third countries whose nationals are subject to or exempt from visa obligations[23]. Here, Member States cannot impose a visa obligation for a national of a third country on the so-called "white" list, i.e. the list of countries whose nationals are exempt from visa obligations.

"THE EU WHICH TRADITIONALLY ACTED AS A LEGISLATOR NOW BECAME A PLAYER IN THE OPERATIONAL EXECUTION"

After their legislative aspects, the areas of short-term visas and border control also reveal a **gradual interference of the EU in operational execution**. **The European Union which traditionally acted as a legislator,** leaving Member States the task of implementing European rules, **now became a player in the operational execution of European law**.

This action resulted in the development of technological tools to share data, in particular biometric data, and that ensure information exchanges between the authorities in charge of the operational implementation of the policy. The Schengen Information System is of course the "famous" pioneer of this movement which was added to with the creation of the Visa Information System, used to exchange data on the visas issued and rejected by Member States, and also the "Eurodac" system for asylum seekers. In addition to these measures, the "Smart Borders" project aims to accelerate and strengthen border checks through a Registered Traveller Programme[24] and an Entry/Exit System[25].

The operational dimension is also demonstrated by the creation of measures for the coordination of national actions. While local consular cooperation for issuing visas has not yet reached the desired degree of cooperation, operational action at the European Union's external borders has been significantly stepped up through

19. "The Schengen system depended on an Executive Committee made up of ministers, assisted where necessary by experts, tasked with ensuring the proper application of the Convention and entrusted with decision-making authority requiring unanimity. This simplified structure both provided a certain efficiency in the decision-making process while enabling Member States to retain total control over this issue", translated freely from Y. Pascouau, *La politique migratoire de l'Union européenne. De Schengen à Lisbonne*, *op. cit.*, sp. 69.
20. Article 288 of the Treaty on the Functioning of the European Union.
21. Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ-EU L 105, 13.04.2006.
22. Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ-EU L 243, 15.09.2009.
23. Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, OJ-EU L 81, 21.03.2001 (regulation amended several times after this date).
24. A Registered Traveller Programme (RTP) will allow frequent travellers from third countries to enter the EU using simplified border checks, subject to pre-screening and vetting. It is estimated that 5 million legitimate non EU-travellers per year will make use of this new program. The RTP will make use of automated border control systems (i.e. automated gates) at major border crossing points such as airports that make use of this modern technology. As a result, border checks of Registered Travellers would be much faster than nowadays. See the press release.
25. An Entry/Exit System (EES) will record the time and place of entry and exit of third country nationals travelling to the EU. The system will calculate the length of the authorised short stay in an electronic way, replacing the current manual system, and issue an alert to national authorities when there is no exit record by the expiry time. In this way, the system will also be of assistance in addressing the issue of people overstaying their short term visa.

the creation of the Frontex agency[26]. This EU agency is tasked, where necessary, with providing operational assistance to Member States to fulfil their obligation to control external borders in application of the Schengen Borders Code.

The legislative and operational measures with regard to visas and border control bear witness to a widespread intervention of the EU, or in other words a phenomenon of deep integration. While these operational measures have received criticism, whether due to the risks of errors in the use of the electronic data recorded in the information systems, the questions regarding the responsibility of agencies, Frontex in particular[27], or their predominantly security-focused purpose, they are resources serving the Member States and there is no evidence that the latter refuse to use them or have decided to cease their cooperation. On the contrary, the European Council announced on 15 October 2015 the extension of Frontex's operational dimension "as part of discussions on the creation of a European Border and Coast Guard"[28].

The visa and border control policies are two pillars on which the European Union's action has been particularly significant. The "return" dimension has also received considerable attention, in particular in its external dimension.

1.2.2. Readmission: an approach rarely called into question

The return of irregular migrants present in Member States to their country of origin or transit has, alongside visas and borders, received much attention in the policy implemented on an EU level. Two measures are characteristic of this movement.

The "return" directive[29], firstly, was subject to significant backlash following its adoption and went on to gradually become an instrument to contest national practices with regard to the detention of people in particular, though not exclusively.

The signature of readmission agreements, secondly, formed a priority action as early as the first years of the implementation of community competence. For these agreements allowing the return of third-country nationals in irregular situations present in the territories of Member States, their signature and implementation are, however, difficult.[30]

> "READMISSION AGREEMENTS PLACE THE BURDEN OF IRREGULAR IMMIGRATION FLOW MANAGEMENT ON THIRD COUNTRIES MORE THAN ON MEMBER STATES"

As concerns their signature, and as already stated, readmission agreements place the burden of irregular immigration flow management on third countries more than on Member States. It is therefore difficult to persuade third countries to commit to such measures, in particular when the compensatory measures are not commensurate with the commitment made[31]. As a result, while the European Union has signed 17 readmission agreements[32], it is still struggling to sign such agreements with key countries such as Morocco, Tunisia and Algeria.

The European Commission presented a "mixed picture" [33] in 2011 with regard to the implementation of the EU's readmission agreements. It highlighted that the agreements signed by the EU were not always applied

26. Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ-EU L 349, 25.11.2004.
27. See in particular Y. Pascouau and P. Schumacher, "Frontex and the respect of fundamental rights: from better protection to full responsibility", European Policy Centre, *Policy Brief*, June 2014.
28. Proposal for a Regulation of the European Parliament and the Council on the European Border and Coast Guard and repealing Regulation (EC) No 2007/2004, Regulation (EC) No 863/2007 and Council Decision 2005/267/EC, COM(2015) 671 final of 15.12.2015.
29. Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ-EU L 348, 24.12.2008.
30. Communication from the Commission to the European Parliament and the Council "Evaluation of EU Readmission Agreements", COM(2011) 76 final of 23.02.2011.
31. On this subject, see Communication from the Commission to the European Parliament and the Council "Evaluation of EU Readmission Agreements", COM(2011) 76 final of 23.02.2011.
32. The Union has signed readmission agreements with the following countries: Russia, Ukraine, Moldova, Georgia, Armenia, Azerbaijan, Turkey, Western Balkans, Hong Kong, Macao, Sri Lanka, Pakistan and Cape Verde, see Communication from the Commission to the European Parliament and the Council "EU Action Plan on return", COM(2015) 453 final of 09.09.2015.
33. Communication from the Commission to the European Parliament and the Council "Evaluation of EU Readmission Agreements", COM(2011) 76 final of 23.02.2011.

and that Member States preferred to use bilateral agreements. The Commission also insisted on the need for compliance with human rights in the implementation of the agreements.

Aside from the difficulties related to the signature of readmission agreements, in particular with regard to the burden they represent for third countries, and the questions related to compliance with human rights in their implementation, **Member States have constantly put forward the signature of these agreements as an integral part of the EU's return policy**. This option was reminded by the European Council in June 2015[34], the European Commission in September 2015[35], the Justice and Home Affairs Council on 8 October 2015[36] and during the EU-Africa summit in Valletta in November 2015.

Yet while it can clearly be agreed that readmission is part of the return policy's legal instruments, the focus of Member States and the European institutions on this aspect in their relations with third countries does not seem entirely relevant. Firstly, given the difficulty to sign such agreements due to the weak compensatory measures offered by the Member States through the European Union. The negotiation of a readmission agreement is a slow and complex diplomatic process that does not always end with the expected results. Secondly, their effectiveness depends on the full participation of all European and third-country players for their implementation, which is not always the case. Lastly, implementation is subject to stringent legal restrictions in terms of human rights[37] that may limit the practical scope.

1.2.3. A short-sighted and counterproductive political approach

Since the entry into force of the Treaty of Amsterdam in 1999, Member States have always maintained their tendency to develop common policies focusing on control and readmission. This trend even went further owing to political circumstances, such as the various attacks committed in the USA or in Europe from 2001 to 2016, and to political fluctuations granting groups hostile to immigration greater representation in political debate and in parliamentary or deliberative assemblies.

> "LIMITING THE ADMISSION OF FOREIGNERS CONTRIBUTES TO MAINTAINING A PHENOMENON THAT IT SPECIFICALLY INTENDS TO COMBAT: IRREGULAR MIGRATION"

Yet this stance must be called into question for two key reasons. Firstly, because **the implementation of policies whose primary aim is to limit the admission of foreigners contributes to maintaining a phenomenon that it specifically intends to combat: irregular migration.** The example of the visa policy is topical in this regard.

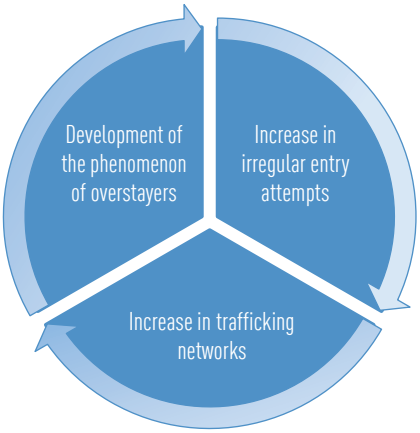
For many years, Moroccan, Algerian and Tunisian nationals have been exempt from visa obligations to travel to Spain or Italy. At the time, barely 25 years ago, these nationals travelled frequently between the two shores of the Mediterranean in a circular movement without any difficulty whatsoever. Each migrant could leave and return to the country of origin with the certainty of being able to leave once again[38].

Following the implementation of the Schengen visa, the system underwent far-reaching changes as entry into Spain and Italy for these nationals became contingent on the issue of a visa that was increasingly difficult to

34. "Effective return, readmission and reintegration policies for those not qualifying for protection are an essential part of combating illegal migration and will help discourage people from risking their lives. All tools shall be mobilised to promote readmission of irregular migrants to countries of origin and transit, building on the ideas presented by the Commission at the Council on 16 June."
35. "Boosting cooperation on return and readmission with the main countries of origin and transit of irregular migrants is essential for increasing rates of return and deterring further irregular migration", Communication from the Commission to the European Parliament and the Council "EU Action Plan on return", COM(2015) 453 final of 09.09.2015.
36. "All tools shall be mobilised to increase cooperation on return and readmission. Member States, the Commission and the European External Action Service will prioritise readmission in all relevant contacts at political level with countries of origin of irregular migrants to ensure that a consistent message is received by those countries, including on the need for full and effective implementation of existing readmission agreements towards all Member States. (...) In the area of Home Affairs, the Council will further consider the link between visa facilitation and readmission agreements in the framework of the recast Visa Code, notably by ensuring that visa facilitations, as envisaged in the Visa Code, are granted only after assessing the cooperation on readmission with all Member States."
37. As the Commission reminds, "The legally binding applicable international instruments ratified by all MS apply generally to all persons subject to a readmission procedure, independently of the abovementioned EU return/asylum acquis. Those instruments guarantee that no person may be removed from any MS if it would be against the principle of non-refoulement if in the recipient country, the person could be subject to torture or to inhuman or degrading treatment or punishment. In such cases no readmission procedure can be initiated and this is acknowledged by EURAs in what is called a 'non-affection clause' confirming the applicability of and respect for instruments on human rights. Consequently, any return/readmission can only be carried out as a result of a return decision which may only be issued if the guarantees mentioned above are observed. Furthermore, MS must respect the EU Charter of Fundamental Rights when they are implementing EURAs.", Communication from the Commission to the European Parliament and the Council "Evaluation of EU Readmission Agreements", COM(2011) 76 final of 23.02.2011.
38. See H. de Haas, "Don't blame the smugglers: the real migration is industry".

obtain. Three phenomena emerged as a result: attempts to cross the Mediterranean illegally on makeshift boats, the implementation and increase of people trafficking networks, concerning in particular migrants coming from the sub-Saharan area, and the development of the phenomenon of "overstayers", i.e. people who refuse to return to their country of origin upon expiry of the validity of their short-term visa and who end up in irregular and illegal situations.

FIGURE 1 ► Effects of a transition from a visa exemption system to a visa obligation system



Source: Yves Pascoau

While the visa policy demonstrates the emergence of these three phenomena, it is important to stress that it is not entirely responsible for them. Two other political options maintain and even heighten them. The external border management policy in its development and results makes access to the European territory more difficult and the need to resort to trafficking networks stronger. Secondly, the policy to close labour immigration which has served as a policy since the mid-1970s obliges those who wish to migrate to opt for irregular immigration, trafficking networks or the use of alternative means such as asylum or family reunification.

The phenomenon of illegal, illicit or irregular immigration is reinforced by rolling out a policy focused mainly on control and closure without offering any real legal immigration opportunities. The closure approach heightens the conditions of existence of a phenomenon that it claims to combat.

Secondly, the continuation of this policy which does not promote the adoption of admission measures for migrant workers is unsuitable in view of the current and future challenges that Member States of the European Union are facing and will face.

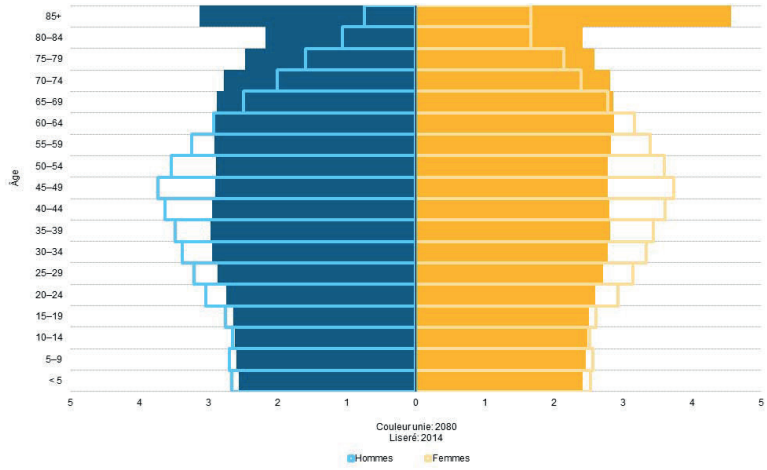
Despite an unemployment rate that can sometimes be very high in some Member States due to the devastating effects of the economic crisis, many business sectors are suffering from a labour shortage. The difficulty of recruiting staff, both qualified and unqualified, in Member States forces companies and public authorities to set up admission and reception measures for migrant workers coming from third countries[39].

This shortage is not set to stop in the future; the reverse is actually the case. Firstly, all Member States should experience the short-term effects of economic recovery. While this is already the case for some, the worst-affected states or those who are struggling to overcome the economic downturn will share this outcome and record a drop in unemployment. This development will coincide with labour demand from third countries.

39. See in particular *Matching economic migration with labour market needs in Europe*, OECD and European Commission, September 2014.

In addition, the projected inexorable drop in demographics in some Member States in the short and medium term, combined with an ageing population, further consolidate the assumption of labour shortages, in particular in the caring sector which is set to grow significantly owing to the ageing of populations[40].

FIGURE 2 ► Pyramide des âges pour 2014 et 2080 dans l'UE-28



(*) 2080: projections (EUROPOP2013).
Source: Eurostat (codes des données en ligne: demo_pjangroup et proj_13npms)

Note: The comparison of age pyramids for 2014 and 2080 shows that the EU-28's population is projected to continue to age. In the coming decades, the high number of baby-boomers will swell the number of elderly people. However, by 2080, the pyramid will take more the shape of a block, narrowing slightly in the middle of the pyramid (around the age 45–54 years) and considerably near the base.

Source: Eurostat.

This background highlights the twofold negative effects, past and future, of the decisions recommended and perpetuated. It must urge political decision-makers to question these options. The second section of this policy paper aims specifically to propose a well-substantiated and acceptable solution to break the current political deadlock.

2. Future solutions: the creation of a jobseeker's visa

"THE WAY FORWARD IS ULTIMATELY TECHNICALLY SIMPLE AND YET POLITICALLY DIFFICULT"

The way forward is ultimately technically simple and yet politically difficult. Technically, inspiration can be drawn from what the European Union knows and has experimented with for more than forty years, i.e. freedom of movement, and by using the achievements and scopes of action implemented in migration policy over the last fifteen years, namely the rules concerning secure access to the territory. The proposal is therefore part of this environment and aims to act as a complement by incorporating a new legal immigration system.

The difficulty is not technical but requires the political drive to take a qualitative step that would have a significant impact on the way that Member States could decide to work together to manage a key aspect of migration policy, namely legal immigration. The implementation of this new path is based on the three pillars that are a geographical framework (§2.1.), a concept-based approach (§2.2.) and substantive content (§2.3.).

40. See in particular R. Munz, "The Global Race for Talents: Europe's Migration Challenges", *Bruegel Policy Brief*, Issue 2014/02, March 2014.

2.1. The geographical framework

The geographical framework involves two aspects: the level of the response, which must be European as a rule (§2.1.1.), and the scope of the response, mainly focused on countries neighbouring the EU (§2.1.2.).

2.1.1. A necessarily European response

It is a tautology but it must be stressed again. **The migration issue and its resulting policy can only be legitimately conceived on an EU level.** While this statement may appear abrupt, it is based on three considerations.

Firstly, the establishment of an area of free movement without internal border controls requires the harmonisation of immigration and asylum policies between Member States. The possibility available to any person admitted to stay in the territory of one Member State of circulating in the territory of another Member State requires at the very least a coordination of national admission policies or indeed a harmonisation of these policies.

Yet this harmonisation process has only been partial. As from the Schengen cooperation, Member States launched a procedure to harmonise the rules governing short-term visas, external border controls and the setting of the state responsible for investigating asylum requests. While the successive treaties following Amsterdam have continued this process in the areas of asylum and irregular immigration, **legal immigration and in particular labour immigration is the only area to have been largely overlooked in the process to coordinate or harmonise national rules.**

Secondly, following on from the issue of labour immigration, it is not relevant to attempt to establish a Single European Labour Market focused on European workers if the admission and movement of migrant workers residing legally in Member States is not considered. **The completion of this labour market requires coordination or indeed harmonisation of national rules and policies on the admission of migrant workers**[41].

Lastly, is it logical in an area of free movement and against the backdrop of globalisation and increased migrations that European states of all sizes retain their jurisdictions with regard to the admission of migrant workers? Doesn't the principle of subsidiarity encourage us to think that the **EU is precisely the appropriate level on which to organise the entry, residence and movement of migrant workers**? It would appear that the answer is positive.

Consequently, there is much call for changes to the current situation which favours the coordination or beginning of harmonisation for the national rules governing the entry of specific categories of migrant workers and in which Member States retain the competence to regulate the entry and residence of all other categories of workers.

Like a proposal by the European Commission that was shelved at the start of the 2000s[42], Member States must consider the opportunity to adopt a framework of common rules on the admission of migrant workers in order to **simplify the current legal kaleidoscope** and present the European area as a single unit[43].

41. See in particular, C. Dhéret, A. Lazarowicz, F. Nicoli, Y. Pascouau & F. Zuleeg, "Making progress towards the completion of the Single European Labour Market", European Policy Centre, *Issue Paper*, May 2013.
42. Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, COM(2001) 386 final, 27.11.2001.
43. On this point, Y. Pascouau, "EU immigration policy: act now before it is too late", European Policy Centre, *Commentary*, June 2013.

2.1.2. Neighbouring countries as the priority scope of action

The second dimension of the geographical framework concerns the external aspect of the policy to be implemented. The question that is raised asks whether it is necessary for the policy to be global, i.e. to apply to all international migrations, or should it target a specific geographical area with which a deeper relationship should be developed? The regional nature[44] of migration phenomena observed globally point to the second option rather than the first.

It is therefore mainly through a relationship with countries neighbouring the European Union that this partnership policy on labour immigration must be promoted and implemented.

Given their geographical proximity and also their intense relations with the EU and Member States in many areas, Morocco, Tunisia, Turkey and even Ukraine must become key partners in the implementation of a labour immigration policy. One further reason is that these countries are already committed to structured relations through the partnership with the South Mediterranean and the Eastern Partnership for Ukraine.

Countries located in a broader circle may naturally be included in this system but the EU's immediate neighbours must be considered as a priority.

2.2. A concept-based approach

While the reversal of the political approach must mainly focus on labour immigration and the EU's relations with its immediate neighbours, this system must also be incorporated into a conceptual framework. Work conducted on an EU level points out two areas, namely freedom of movement (§2.2.1.) and mobility (§2.2.2.). Out of these two options, the latter, i.e. mobility, must be favoured.

2.2.1. Freedom of movement: an internal concept related to European workers

The concept of freedom of movement is not relevant here. Freedom of movement, as it has been developed on an EU level, covers two aspects, freedom of movement within the Schengen area for periods of less than three months and freedom enjoyed by European workers, in accordance with article 45 of the TFEU.

While article 79.2 of the TFEU concerning third-country nationals allows the European Parliament and Council to adopt measures concerning the "conditions governing freedom of movement and of residence in other Member States", secondary law prefers the notion of "right of residence" in another Member State.

Going beyond short-term movements within the Schengen area, **there is a distinction in terms of concept and status between European workers, who enjoy the right to freedom of movement, and third-country nationals, who may have the right of residence in another Member State.**

This distinction must be maintained as it secures legal status, in particular that of European workers. For several years now, some Member States, led by the United Kingdom, have called into question the status of European citizens, deeming it "privileged". There have been efforts to weaken the status by mixing terminology in order to align European workers' status with the less favourable status of migrant workers[45]. By limiting the concept of freedom of movement to European workers, we avoid the weakening of their status and as a result, of their rights.

44. On this subject, see, C. Wihtol de Wenden, *La question migratoire au XXI*ème *siècle. Migrants, réfugiés et relations internationales*, Les Presses de SciencesPo, 2010, sp. 33 onwards.
45. On this subject, see A. Ghimis, A. Lazarowicz and Y. Pascouau, "Stigmatisation of EU mobile citizens: a ticking time bomb for the European project", European Policy Centre, *Commentary*, January 2014.

The concept of freedom of movement gives rise to two other difficulties. Firstly, there are issues regarding its predominantly "internal" nature. Freedom of movement is conceived for the European area, once within it, and not as part of a movement towards it from outside of the area.

The second difficulty is political and concerns the portrayal conveyed by the notion of freedom of movement. Claims for freedom of movement of people as a method of organising human relations on a regional or global scale are often linked with projects that aim to tear down all borders between areas, countries and therefore people.

Without denying the philosophical scope of this approach, in particular its role as a key factor in the emancipation of people, it is difficult, or even impossible, for contemporary political decision-makers to accept it. Borders are always thought of as a fundamental embodiment of a state's sovereignty and as a means of protecting populations. In addition, a significant percentage of citizens, most likely a majority, expect states to ensure security in their territories, in particular by controlling borders, be they the external borders of the European Union.

In view of the conceptual "burden", both in legal terms and political perception, conveyed by freedom of movement, it is not possible to use this approach to support the political reversal proposed in this policy paper. The focus must therefore be shifted to the notion of "mobility".

2.2.2. Mobility: providing content to a "catch-all" concept

"ANCHORING THE PROPOSAL FOR A NEW APPROACH IN THE CONCEPT OF INTENTIONAL MOBILITY"

In recent years, mobility has become a "catch-all" concept, used to place different realities under a single and poorly defined name. This policy paper distances itself from this easy option, instead anchoring its **proposal for a new approach in the concept of intentional mobility. It also aims to provide a content that the concept has been hitherto lacking.**

This emptiness comes first of all from political considerations. The use of the term "mobility" is not as conceptually "loaded" as "freedom of movement", as explained above. On the contrary, mobility has close ties with movement, which in fact distances it from any idea or perception of settlement. **From the notion of "Gastarbeiter" to that of circular migration or virtual migration, it is in fact the prospect of foreigners settling for the long term in states and the consequences of this settlement, in particular in terms of integration, that is the focus of the often negative perceptions and discussions on the migration issue**. By using a term that is not as "loaded", a forum for politically acceptable discussion and decision-making may be created.

"BASING THE NEW APPROACH OF LABOUR IMMIGRATION ON THE NOTION OF MOBILITY IS NOT ORIGINAL; BUT RATHER IT IS AN EXTENSION"

Secondly, and above all, basing the new approach of labour immigration and more specifically its external dimension on **the notion of mobility is not original; but rather it is an extension**. In 2011, the European Commission published a communication on the renewal of the European Union's foreign policy with regard to immigration and asylum. From this date, the term "Mobility" is used in connection with the "Global Approach to Migration"[46]. The Global Approach must now be based on four pillars, including "organising and facilitating legal migration and mobility".

46. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the "Global Approach to Migration and Mobility", COM(2011) 743 final, 18.11.2011.

TABLE 1 ► The four pillars of the Global Approach to Migration and Mobility

Organising and facilitating legal migration and mobility	Preventing and reducing irregular migration and trafficking in human beings	Promoting international protection and enhancing the external dimension of asylum policy	Maximising the development impact of migration and mobility

Source: COM(2011) 743 final, 18.11.2011.

Mobility is part of the existing instruments used for visas, admission (limited to the categories already covered by directives: students, researchers, highly qualified workers), readmission and control. The Commission's communication does not propose any new avenues in the area of admission. It actually follows on from past actions in which security is the priority. The text of the Commission states that "Without well-functioning border controls, lower levels of irregular migration and an effective return policy, it will not be possible for the EU to offer more opportunities for legal migration and mobility"[47].

As regards the instrument made available to achieve these goals, Mobility Partnerships, their content also depends on the ability of partner countries to work in specific fields such as security. Therefore, as an example, "the renewed MP offers visa facilitation based on a simultaneously negotiated readmission agreement".

"THE CONTENT OF MOBILITY IN THE GLOBAL APPROACH IS LIMITED TO THE ISSUE OF VISAS"

In practice, the content of mobility in the global approach is limited to the issue of visas, which is itself contingent on the action of third countries with regard to readmission. Legal migration, one of the four pillars of the global approach, does not receive the same attention. This is highlighted by the Commission in an assessment report published in 2014 which states "more work needs to be done to make sure that the MPs are being implemented in a balanced manner, i.e. better reflecting all four thematic priorities of the GAMM, including more actions with regard to legal migration, human rights and refugee protection"[48].

In 2011, the external dimension of the migration policy was embellished by putting the accent on legal migration and mobility. Practice shows that this approach and the related partnership have indeed formed a new framework for discussion between the EU, Member States and partner countries but have not resulted in the creation of new systems paving the way for a new type of mobility, focused on labour migration.

Yet it is precisely by shifting the focus to mobility that a new form of labour migration partnership must be achieved with the EU's neighbours. This substantive approach is described below.

2.3. The substantive approach: the creation of a jobseeker's visa

The substantive approach would be in line with a political continuum. Alongside the operational instruments and rules governing external border crossings, visas and the return of irregular migrants, it would add to the system by proposing to extend the scope of legal migration options to the European Union. The proposal would provide content to the concept of mobility between third countries and the EU. Based on a simple principle (§3.1.), including some implementation guidelines that are yet to be defined (§3.2.), the advantages of this system are clearly positive (§3.3.).

47. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the "Global Approach to Migration and Mobility", COM(2011) 743 final, 18.11.2011, sp. 6.
48. Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Report on the implementation of the Global Approach to Migration and Mobility 2012/2013", COM(2014)96 final, 21.02.2014.

2.3.1. A simple principle extending the existing framework

> "THE MOBILITY OF THIRD-COUNTRY NATIONALS TOWARDS THE EU MUST BE CONSIDERED ON THE BASIS OF ITS EXPERIENCE ABOUT FREEDOM OF MOVEMENT"

As stated above, the option of establishing a system based on freedom of movement would not be viable. It should not, however, be ruled out but instead used as an analysis benchmark. The European Union boasts singular experience in this area. Since 1968, European workers have enjoyed the right to travel to other Member States to look for employment and to take up residence should they find it. In addition to forty years of experience, the European Union can demonstrate that the system works and has not resulted in the development of waves of immigration between states, with one exception[49]. On the contrary, the rate of EU citizens living in another Member State has been relatively low for many years[50].

The mobility of third-country nationals towards the European Union must be considered on the basis of this experience. In more concrete terms, this implies **offering third-country nationals the option of entering and staying in the EU with a view to finding employment and residing there in the event of securing a job. Unlike the principle of free movement, which gives this right with no other administrative formality than possessing an identity card, mobility would be contingent on the granting of a visa.**

From a legal viewpoint, this option could be covered by article 79, paragraph 2, a) and b), of the TFEU. Point a) of this provision states that the European Parliament and Council adopt measures concerning "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"[51]. The conditions of entry and residence to seek employment would therefore be defined on this legal basis. In addition, article 79 would act as a bridge between the status of jobseeker and that of worker. By means of comparison with regard to status changes, the new version of the researchers and students directive provides that, after completing their research work or studies in a Member State, third-country nationals have the right, under certain conditions, to remain in the said Member State for nine months in order to seek employment or create a company. It would, however, be the task of the European Commission to define the appropriate legal foundation.

The system would differ from the system of freedom of movement while retaining its philosophy. **While the system must be based on the application for and issue of a visa "with a view to seeking employment", the philosophy of freedom of movement should be predominant.** The issue, or more specifically the refusal to issue visas should not be organised on the basis of the "migration risk". Conversely, the visa should be a formal stage in which existing control instruments are put to use.

In practice, and unless there are any public order grounds or alerts in the European computerised systems, like the Schengen Information System (SIS), consular authorities should issue the visa to applicants in possession of a valid identity card or passport, a travel document authorising the border crossing, sufficient resources for the duration of the stay and the travel ticket including the return journey. If these conditions are met, the visa is issued.

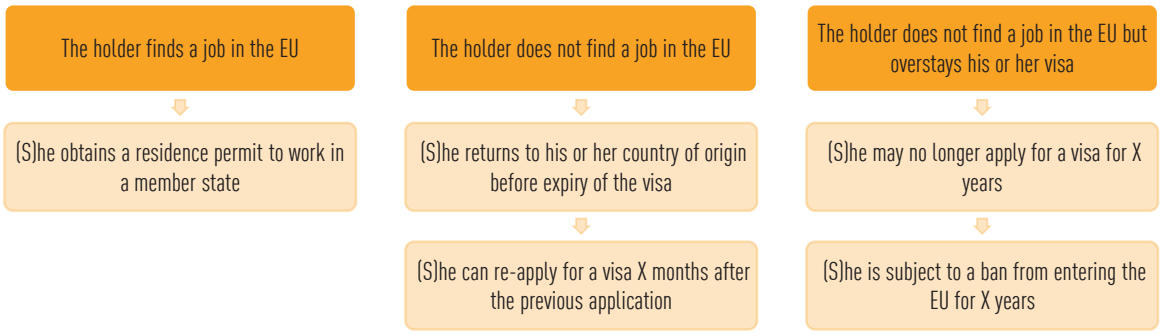
The issue of the visa also implies the entry of data in the Visa Information System (surname, first name, state of issue, duration of the visa, date of expiry, biometric data, etc). EU entry and exit checks would

49. In 2004, when ten new states joined the European Union, only three Member States (the United Kingdom, Ireland and Sweden) opened their labour markets to the new European workers. The twelve other Member States maintained limited access to their labour markets. Mechanically, this resulted in a significant number of citizens from the Central and Eastern European Member States using their right to free movement towards the three states that had lifted restrictions, thus creating higher levels of arrivals in these states.
50. On this subject, see, C. Jolly, "Profils migratoires européens dans la crise, France Stratégie", *Note d'Analyse* n° 21, January 2015; C. Dhéret, A. Lazarowicz, F. Nicoli, Y. Pascouau & F. Zuleeg, "Making progress towards the completion of the Single European Labour Market", European Policy Centre, *Issue Paper*, May 2013.
51. The Council Legal Service stated that this provision is not restricted to long-term stays. See doc. 14038/12 dated 20 September 2012.

be conducted using the future entry/exit system currently being negotiated[52] and adapted to the jobseeker's visa system.

If the person finds a job, (s)he is authorised to remain on the territory to practice it. Otherwise, (s)he must return to his or her country of origin before the visa expires. If, upon expiry of the visa, the person has not returned to the country of origin, a series of measures - return decision and entry ban - would be activated, thus preventing the person from applying for and receiving a new visa. Subject to the adaptation of the existing rules, national authorities would be authorised to enter return decisions and entry bans into the SIS and to identify the person who has failed to return to the country of origin within the allotted time for the purpose of refusing entry to EU Member States[53]. The entry ban decision for Member States could cover a period of up to five years. As a result, any future jobseeker's visa applications would be rejected as a rule for the entire period corresponding to notification in the SIS or to the entry ban.

FIGURE 3 ► Once the jobseeker's visa is issued:



Source: Yves Pascouau.

Any person breaching the principle of mobility, i.e. failing to comply with the visa validity period, would compromise any long-term possibility of enjoying legal entry and residence rights in Member States with a view to seeking and potentially securing employment. Conversely, third-country nationals who comply with the defined framework would be in a position to apply for a new visa as many times as they see fit.

2.3.2. Procedures to be specified

With the principle established, certain procedures are yet to be defined, in particular concerning the validity period of the visa and the conditions governing further applications. As regards the validity period of the jobseeker's visa, the proposed system would be less extensive than that applicable to European workers.

European workers enjoy significant scope due to the application of the case law of the Court of Justice, and under some conditions, they may reside in another Member State with a view to seeking employment for a period of six months[54]. Such a liberal system would not be implemented for third-party nationals who could receive a one-month visa to travel to EU Member States with a view to seeking employment.

52. An Entry/Exit System (EES) will record the time and place of entry and exit of third country nationals travelling to the EU. The system will calculate the length of the authorised short stay in an electronic way, replacing the current manual system, and issue an alert to national authorities when there is no exit record by the expiry time. In this way, the system will also be of assistance in addressing the issue of people overstaying their short term visa. See Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union, COM(2013) 95 final, 28.02.2013.
53. On this subject, see the conclusions adopted during the Justice and Home Affairs Council concerning the future of the return policy. Ministers of the Member States stated in particular that "The Council looks forward to the forthcoming proposals by the Commission, based on a feasibility study, to make it obligatory to enter in SIS all entry bans and return decisions, notably to enable their mutual recognition and enforcement, as soon as possible in 2016".
54. CJEC, 26 February 1991, Antonissen, C-292/89.

If the person is unsuccessful in finding employment in the EU within one month, (s)he would be requested to return to the country of origin. A new visa application could be submitted following a waiting period to be determined by the legislator. This period could be three, six, nine or twelve months.

This waiting period would not be applicable to a third-country national having received a firm job offer in the meantime from an employer located within the EU. In this case, and subject to fulfilment of the required conditions, the person must be issued with a work visa prior to admission in the European Union.

The proposal put forward in this policy paper is not exhaustive. Certain points of substance, such as the type of employment concerned (paid employment or self-employment) and procedures must be specified in future.

"THE SYSTEM COULD INCLUDE THE MUTUAL RECOGNITION OF SKILLS AND QUALIFICATIONS ACQUIRED IN CERTAIN NAMED ESTABLISHMENTS"

Moreover, the proposal could also be developed together with support measures to increase its relevance. The system could include the **mutual recognition of skills and qualifications acquired in certain named establishments**. The action plan adopted by European and African states in Valletta on 11 and 12 November 2015 refers to this several times. The action plan stresses that the states "support the implementation of harmonised qualifications in higher education through the Africa-EU Harmonisation Tuning, Quality and Accreditation initiatives". The plan adds that the participating states must "work towards mutual recognition of academic qualifications and professional certificates through the conclusion of bilateral agreements or by other means". The experiences implemented on an EU level or that are under development, such as the European Professional Card[55], could also provide inspiration.

In addition, the resources allocated to combating irregular employment, in application of the "employer sanctions" directive[56], should be stepped up in order to prevent certain employers from encouraging third-country nationals to stay in the EU in breach of the jobseeker's visa rules.

Lastly, based on the current situation of the treaty, this system would not remove all jurisdiction from Member States with regard to migration control. Article 79, paragraph 5, TFEU maintains this right as it enables 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".

2.3.3. A decisive step forward

If the proposal presented in this policy paper were adopted, it would provide many advantages.

"THIS SYSTEM WOULD DISPOSE OF THE SECURITY-BASED APPROACH AND OFFER A MOBILITY-BASED SCHEME BASED ON THE PHILOSOPHY OF MOVEMENT"

Firstly, **third countries could be offered genuine compensatory measures in terms of legal migration as part of a partnership with the European Union**. The efforts required for the management of migratory flows and readmission would be counterbalanced by real mobility prospects for workers. This system would dispose of the security-based approach and offer a mobility-based scheme based on the philosophy of movement.

Secondly, by developing this type of approach with countries immediately bordering the European Union - Morocco, Tunisia and Ukraine -, **EU Member States would be furthering partnerships and preparing for the future.**

55. The European Professional Card is instituted by Directive 2013/55 CE. The European Professional Card is an electronic procedure for the recognition of professional qualifications between countries of the European Union. It enables authorities in the states in which the cardholder wishes to work to check and recognize quickly and easily qualifications obtained in another state.
56. Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ-EU L 168, 30.06.2009.

In the first instance, fostering mobility would meet the growing need for labour resulting from demographic decline in Europe as it would be based on a young, qualified, unemployed population located in countries neighbouring the EU. In other words, **Member States would bring about an intersection of curves while restoring balance to demographic and economic challenges.**

In the second instance, **the implementation of these measures with close partner countries would be a full-scale test that would provide much short-term feedback**. In the assumption that the system does not function correctly, Member States would be able to adjust it and even stop it. However, if the system provides positive results, its long-term continuation, improvement and development to include other countries could be considered.

Lastly, once established, the system could herald a return to a past situation in which there was no visa obligation for certain Mediterranean nations, such as Spain and Italy, prior to 1991. This situation would ensure **movement – breathing space – between the two shores of the Mediterranean while curbing irregular migration and thwarting the development of the underground and inhumane trafficking economy**. In other words, it is intended as **an effective instrument to combat irregular migration and trafficking networks.**

CONCLUSIONS

For several decades, EU Member States have been implementing a system based on the liberalisation of movement within the common area and on the segregation of this area with regard to the exterior. This approach, however, and in particular its insular attitude regarding the outside world, must be reconsidered against the current backdrop of changing migratory flows, the transformation of the geopolitical landscape in neighbouring third countries and the modification of the EU's sociological and economical structure.

The proposal of creating a jobseeker's visa is part of this analysis. Not at all wishing to reverse established paradigms, it seeks instead **to anchor the proposal in an existing framework and approach**. The **control** approach is not ruled out as the system is based on the **issuing of visas** and on **computerised data** exchange systems between national authorities. It moreover takes its roots within a long experience in people's freedom of movement in the EU.

The proposal focuses on the **specific area of labour immigration**. It aims **to extend the common approach to people who are not already covered by EU law** (students, researchers, highly qualified workers, seasonal workers, etc.), **allowing them entry to the EU with a view to seeking employment under precise conditions.**

The proposal is in line with an existing political framework, the Global Approach to Migration and Mobility. Up to now, the discussions conducted with third countries within this political framework have focused on Schengen visas, i.e. temporary mobility without any connection to the labour market. The proposal aims to go one step further to **create an option combining mobility and labour immigration**. It could provide a significant advantage, in terms of compensatory measures, in relations between the EU and its Member States and third countries with regard to the migration issue.

This technically feasible proposal may be difficult to accept on a political level, precisely because it deals with legal immigration. Yet Member States must assess the opportunity of taking a political step in view of the advantages of a system that is currently lacking and which could change many factors. One such factor is dialogue and partnership with third countries, as it finally offers genuine compensatory measures in discussions on migration issues. In terms of individual prospects, it enables unemployed people with no real hope of employment in their country of origin to access a broader labour market. In terms of European policy, the proposal could bring about changes to two aspects. It would allow Member States to work together to regulate the labour market undergoing change owing to the demographics and ageing of the European population. It would also provide a real means of curbing irregular migration and illegal people trafficking by opening up legal migration channels.

The refugee crisis currently hitting many Member States must not result in the proposal presented in this paper being rejected ipso facto. Rather, it should confer some perspective. More specifically, discussions on a jobseeker's visa must take into account the current and future number of refugees, the Member States in which they arrive and reside, their qualifications, the state of the labour market and the prospects for intra-European mobility. The need to develop a partnership with third countries immediately bordering the EU must be part of the considerations.

In other words, the current situation requires a comprehensive, long-term reflection on migration flows and the solutions needed to ensure the protection of people in need of it and to manage labour immigration. Some responses have already been implemented, others must follow in the future. The proposal to create a jobseeker's visa could be among them.

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