

**#MIGRATIONS**

**#ASYLUM**

# **FOR A EUROPEAN POLICY ON ASYLUM, MIGRATION AND MOBILITY**

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Since 2011 he chairs the National Observatory of Poverty and Social Exclusion (ONPES). In 2015, Bernard Cazeneuve entrusted him, with the prefect Jean Aribaud, with a mission to find outlets for the situation of migrants in Calais.

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# EXECUTIVE SUMMARY

The migration challenge is shaping up to be a key theme of the European election campaign and the next legislature. With arrivals at the borders of the European Union (EU) nowhere near the peak of 2015, **the migration crisis appears to be contained rather than extensively resolved**. It exposes divisions and tensions between EU Member States, which are exacerbated by the approach of the European elections, disorienting public opinion.

This policy report by the Jacques Delors Institute, entrusted to Jérôme Vignon, aims to help both candidates for the European Parliament and voters **to comprehensively review the complex issue of migration**, the resolution of which cannot be reduced to the establishment of “controlled centres” or highly hypothetical “landing platforms”.

This report is based on existing data. First, the state of opinion in Europe, which cannot be reduced to an opposition between hostility to foreigners and boundless hospitality. Most European citizens reject these two extreme attitudes but reflect upon the right stance to be taken. **They are filled more with doubt than fear**. Together, the solutions presented in this report aim to resolve this internal tension among Europeans.

Another key element is the **unfinished but existing foundations of a common European immigration and asylum policy**. The report recalls the main legislation and institutions established over the past fifteen years in the fields of asylum (Dublin Regulation), the management of the external borders of the Schengen area of free movement, legal labour immigration and development aid. However, the migration crisis has undermined the strategic planning of this European policy, which is currently governed by short-term emergencies.

Nevertheless, the response to the migration challenge requires an assessment of the full extent of the phenomenon. Based on the latest available statistics, this report measures a general increase in mobility. It explains how **the development of African countries will not dry up a labour emigration that will grow and that the “old continent” will need**.

In the face of this shaken state of public opinion, shortcomings in current policies and the extent of the migratory phenomenon, this report makes

five realistic proposals for setting a European policy on asylum, migration, and mobility:

1. Standardise the conditions of access to asylum in the EU, operationally led by the European Asylum Support Office, which must be strengthened to distribute admissible applications, taking into account people’s plans. This **involves the assistance of States in the Schengen area, which voluntarily assume responsibility for processing asylum applications, jointly with the States at the front line** of arrivals. **Mutual recognition of decisions granting refugee status should prevail between these national administrations**, thus limiting flows between countries.
2. **Protect the EU’s external borders with a federal-type agency**, factoring in national surveillance capabilities. The model that led the European Central Bank to federate the national central banks could inspire its governance.
3. **Organise legal labour migration** at EU level. A five-year indicative target broken down by broad category of qualifications would be used to build pools of candidates eligible for a short-term work visas for job-seeking in the EU. This will make it possible to combat illegal immigration, which today undermines access to the right of asylum.
4. **Co-build development and migration with countries of origin** to thwart smuggling channels and refocus the EU-Africa relationship on work, training, and mobility.
5. **Strengthen integration through mutual learning of national approaches** and the adoption of European objectives.

These guidelines outline reasonable expectations for migration policy, which European citizens are entitled to expect from the future European Parliament and the next Commission.

# FOREWORD

“Europe is called on to lead efforts that will give Member States the courage to overcome the resistance they find within themselves and forge the capacity to manage present and future transformations.”  
Jacques Delors<sup>1</sup>

## Why publish a scoping report on migration policy?

Does turning the spotlight on migration crises vindicate the populists using the issue as the spearhead of their fight against Europe? Is it not the case that migrant inflows into the European Union (EU) fell by nearly 80% in the first half of 2018 and that the crisis is now behind us? But conversely, given the present climate of concern, should we give free rein to unrealistic or catastrophic rantings as purveyed by Matteo Salvini and Viktor Orbán? Whatever the case, European migration issues will play a decisive role in the elections in May 2019. Despite what nationalist rhetoric would have us believe, European public opinion is not polarised between adamant adversaries and absolute advocates of immigration; instead it is seeking a viable, forward-looking path. Because its purpose is to foster a broad understanding of Europe, and because its founder initiated the first steps towards a common policy on migration back in 1993, the Jacques Delors Institute wants to play a part in this issue. That policy must now be brought to fruition. The purpose of this report is to contribute to debate and respond to the need for clarity and meaningful action while looking beyond the current emergency.

*Enrico Letta, President of the Jacques Delors Institute*

1. Jacques Delors, Foreword to *En quête d'Europe, synthèse des carrefours européens des Sciences et de la Culture*, 1995

# INTRODUCTION: TODAY'S EMERGENCY MUST NOT JEOPARDISE THE FUTURE

The European refugee crisis\*<sup>2</sup> took form in autumn 2015 on the roads of the western Balkans. Few events in the history of the EU have merited the word “crisis” to this extent, with as many as 6,000 migrants a day crossing the borders of Greece, Serbia, Slovenia, Hungary, Austria, and Germany. The crisis was short-lived but triggered a profound disruption in the balance of political power, providing existing populist parties with all the impetus they needed to uninhibitedly champion values counter to European ideals and give themselves the leading role relative to the security needs of populations. This issue will thus play a key role in the upcoming European elections. The crisis and its attendant images have had a deep influence on perceptions, serving to distort the true underlying trends. And so we need to leave this crisis behind if we are to effectively prepare future debate:

- Because the crisis has bred demands for action primarily addressing the EU as such. More than any other event in a long time, it appeals to Europe as a subject of its own history.
- Because the crisis, exceptional by nature, has blurred the long-term view on which lasting solutions depend. The risk here, as posited by political scientist Zaki Laidi<sup>3</sup>, is that focusing on emergencies jeopardises the future. Consequently, shocking images need to be deconstructed and inappropriate associations disentangled.

The migration challenge will not be resolved by a policy of “zero immigration”. Closing off the paths of legal immigration\* with those of illegal labour immigration\*, undermining the effectiveness of the Common European Asylum System. Neither we will resolve illegal labour immigration\* by stepping up the development of poor countries. This process is inherently slow and driven instead by increased mobility, accomplished in part in Europe. This mobility must be recognised, organised and guided.

So what could the lasting solutions be? We will begin by looking at what Eastern and Western Europeans think and the reasons that have led most

2. The asterixes refer to the definitions in box 1.

3. Zaki Laidi, *La tyrannie de l'urgence*, Éditions Fides, 1999

of them today to see immigration in a negative light (1). Looking at the present design of the “common European policy on asylum and migration”, we will see that it falls short from addressing the new challenges as expected from the citizens (2). Responding to the need for a sustainable long-term perspective, we will then assess present and future changes in migration, taking account of the viewpoints of demographers and recent trends in “international mobility” (3). We will show how the EU could take on the “forced migration\*” resulting from war and persecution – currently Europe’s most pressing emergency – while respecting its identity, by fully enacting the unifying role of the Common European Asylum System, today at a crossroads (4). Doing so will require the implementation of a true European agency for the control of external borders, an essential tool for an EU subject to the rule of law (5). Making the EU’s external borders a shared reality will pave the way for the organisation at European level of legal labour immigration and mobility (6). This development is vital to fighting effectively against illegal labour immigration\* and initiating a co-development process with Southern countries taking into account reciprocal human and social issues, especially those of African countries (7). The last chapter of the report will take a concise look at what a European approach could contribute to the task of integrating migrants, which is first and foremost a question of national sovereignty (8).

#### BOX 1 ■ Every word counts

**Migrants:** people having in a given year left their country of origin to settle in a new country on a lasting basis.

**Immigrants:** population composed at a given moment of people who are foreign born in a foreign country.

**Emigrants:** population composed at a given moment of people with the nationality of a given country and who reside on a permanent basis in another country.

**Legal migration:** the entry of a foreign person into a given country, possessing a visa or permit. Legal migration occurs for reasons of work, family reunification, education and tourism.

**Illegal migration:** the entry of a foreign person into a given country, not possessing legal authorisation. This may be the case of a person seeking asylum (humanitarian migration) or employment.

**Forced migration:** the term now used by the United Nations to refer to the forced movement of populations owing to persecution, conflicts and natural catastrophes.

**Asylum seeker:** a foreign person requesting that a country (of destination or arrival) or the HCR (in the camps managed by this organisation) recognise his or her right to protection under the Geneva Convention of 1951.

**Protected person, refugee:** a foreign person taken in by a state that, having investigated his or her asylum

request, has recognised his or her right to protection. EU countries grant two types of protection: the title of refugee (or “conventional protection”) where the provisions of the Geneva Convention fully apply (belonging to a group of people subject to persecution or arbitrary treatment in their country of origin) or the granting of “subsidiary protection”, where it is demonstrated in the investigation procedure that the person risks serious mistreatment in his or her country of origin. These two types of international protection are subject to a European harmonisation directive to ensure similar treatment. Some states also apply a right to humanitarian protection not regulated by the EU.

**Illegal migration:** a situation in which a foreign person does not or is unable to seek protection status (the case of individuals who are rejected or whose asylum request is clearly unfounded) and resides in a country without a residence permit. This situation may result from a failure in the asylum-seeking procedure and the legal impossibility of return.

**Return:** the procedure whereby a person without a residence permit and unable to claim protection is sent to a “safe” country of origin or transit. The conditions relative to return procedures are governed by the European “Return” Directive.

# 1 ■ WHAT DO EUROPEANS REALLY THINK ABOUT FOREIGNERS AND MIGRATIONS FLOWS ?

“My question is (...) how can we today remember that we have been foreigners?”<sup>4</sup>

Paul Ricœur

Since the shockwave generated by the 2015-2016 crisis is first and foremost a political one, and since it influences the mental perceptions of citizens, we should begin by questioning what these last really think. What do they expect and of whom? The surveys administered regularly and according to stable methods in various EU countries, as well as the Eurobarometer surveys, provide two essential findings for this report.

For most Europeans, migration has been the main challenge of Europe since 2015. For 38% of the population, the issue of migration is more important than the threat of terrorism (29%), the fear of unemployment (14%) and even the fear of climate change (11%). But again for a majority, it is above all a question for the EU itself rather than for each state taken in isolation<sup>5</sup>. The urgency of the migration challenge falls from 38% to 21% where it concerns a national territory rather than Europe. It is Europe as a political body that is seen as responsible for the challenge. In other words, the control of migration exchanges constitutes, even in Germany, the epicentre of the crisis and an issue of shared responsibility.

However, opinion diverges strongly between Western European countries and Central and Eastern European countries. A majority of citizens in the West have interiorised the contribution of migrants to the well-being of their society and clearly see the necessity of offsetting population ageing. But the same is not true in the East<sup>6</sup>. Hence the paradox of a shared European responsibility for the more effective and more differentiated regulation of migration. What holds the two parts of the EU together in this respect is the attachment to the free movement of people, one of the four fundamental

4. Lecture by Paul Ricœur « Self as a foreigner » given at Saint-Germain l'Auxerrois, 1994. See also *Revue Esprit*, special issue Paul Ricœur 2005.

5. Eurobarometer, spring 2018.

6. See Daniel Debomy and Alain Tripier, “European public opinion and the EU following the peak of the migration crisis”, Policy Paper, Jacques Delors Institute, July 2017.

European freedoms. Labour mobility rights<sup>7</sup> are used as a majority by the citizens of the new Member States moving to Western European countries<sup>8</sup>.

Why such a substantial difference in perception? Other surveys show the importance of effectively meeting with “the foreigner” as a decisive factor in the perceptions people may have of this last. Not only are foreigners thin on the ground in the 12 states having joined the EU in 2004 (barely 2% of the resident population of non-European foreigners in 2010, compared with 9% in the 15 western EU countries<sup>9</sup>), but immigration was non-existent throughout the Communist era. Where the foreigner represents the unknown, their image is loathsome, especially when the distant memory of Ottoman occupation enters the picture. But knowing and meeting foreigners personally for occupational or family reasons changes the situation positively. According to a survey by Pew, a US research firm, the fact of personally knowing a person of the Muslim faith reduces the likelihood of strong hostility to Islam by 20% to 5%<sup>10</sup>. A common European policy on migration and mobility in the era of communication must not overlook the importance of this knowledge and these meetings, in both directions.

A further major finding as to the feelings of Europeans on immigration and foreigners is provided by more in-depth studies combining surveys with more qualitative face-to-face interviews. To what extent does the rise in xenophobia in Europe reflect an intrinsic hostility towards foreigners or rather a vague concern regarding an uncertain future, the uncertainty of which is heightened by immigration? Where such surveys have been led, including in Germany, France and the Netherlands, the findings converge. The opposition between resolute nationalists hostile to the continuation of immigration in all its forms and confirmed advocates of global multiculturalism is misleading. **Most of the citizens in these countries, i.e. 50% to 60%, are filled more with doubt than fear and are sincerely divided in their own minds.** On the one hand, the ethical requirements of hospitality and the clear fact of population ageing prevents them from ceding to nationalism. On the other, they are doubtful as to the EU’s ability to ensure the long-term integration of migrants and see the 2015-2016 crisis as a symp-

7. The free movement of goods, services, people and capital are enshrined in the Treaty of Rome as fundamental freedoms. The free movement of people is reflected primarily in the right of workers to mobility without the prior requirement of a residence and work permit.

8. Eurostat, Labour force forecast in the EU 27 according to two scenarios 2010-2020.

9. OECD DIOC database, population aged 15 and over.

10. Pew Research Centre telephone survey administered in 15 Western European countries, April 2017.

tom of the disorder and powerlessness of a Europe besieged by the poor<sup>11</sup>. The words of the German Chancellor, “Wir schaffen es” (“We’ll make it”), will go down in the history of Europe as a major act of loyalty to its ideals. For a majority of public opinion, which does not subscribe to populism, the criticism does not concern this act of generosity – which warded off a full-scale humanitarian crisis – but instead a sense of improvisation and disorganisation on the part of Europe and the lack of cooperation it underlines.

Even Italy, which has been dramatically impacted by the migration crisis, is far from being accurately reflected by Liga Nord, one of the winning parties in the parliamentary election in March 2018. In this respect, a deep rift lies between the sympathies of Liga Nord and those of the Five Star Movement, the other victorious party in the election.

The priority, then, should be on addressing this majority of public opinion in Europe, divided in itself, neither populist nor idealist (48% in Italy, 53% in France and 58% in Germany, according to research by *More in Common*, see Table 1). This population needs to be shown the prospect of a European response to the migration challenge that is both overarching and consistent in the long run, a credible narrative not dependent on present-day urgencies. But action also needs to be taken, concrete initiatives that show how we can overcome the contradictions that appear to be paralysing us.

Outlining such a prospect and proposing action is indeed the objective of this scoping report by the Jacques Delors Institute. It cannot claim to provide detailed technical responses; it aims instead to trace a consistent pathway sustainable over the long term. This approach must be informed by the founding values of the EU. The way in which contemporary Europe was formed has readied it for the adventure of new encounters and openness inherent to migration. The EU was built not through the fusion of national identities but through their mutual recognition on a common humanistic cornerstone. From the very beginning, it has defined itself not simply as a project for itself but as a contributor to a world peace enabling it to conceive, today in particular with Africa, a shared destiny<sup>12</sup>.

11. Results from *More in Common* surveys: “Attitudes Towards National Identity, Immigration, and Refugees in France”, July 2017; “Attitudes Towards National Identity, Immigration, and Refugees in Germany”, July 2017; “Attitudes Towards National Identity, Immigration, and Refugees in Italy”, July 2018.

12. Robert Schuman declaration of 9 May 1950.

TABLE 1 ■ Principal sets of attitudes towards foreigners in Italy, Germany and France (2017 to 2018)

	ITALY <sup>13</sup>	GERMANY <sup>14</sup>	FRANCE <sup>15</sup>
<b>RESOLUTELY HOSTILE GROUPS</b>	<b>Hostile Nationalists 7%</b> <i>- Profile:</i> substantial majority of Catholics <i>- Concerns:</i> worried about Italy’s economic decline, for which they hold Europe as responsible. No trust, not even in refugees	<b>Radical Opponents 17%</b> <i>- Concerns:</i> see migrants and refugees alike as dishonest. Feel abandoned, in favour of the closure of borders. Small towns and eastern Länder	<b>Identitarian Nationalists 17%</b> <i>- Profile:</i> more numerous among 25-49 year-olds and rural environments <i>- Concerns:</i> hostile to any further immigration. In favour of return of national borders
	Cultural Defenders 17% <i>- Profile:</i> workers in north-eastern Italy <i>- Concerns:</i> want a strong leader to reassert Italian cultural values. Tolerant of refugees but hostile to immigration		
<b>GROUPS UNCERTAIN ABOUT THE FUTURE</b>	<b>Security Concerned 12%</b> <i>- Concerns:</i> see migrants as potential threats to public order and health, but see immigrant workers as making a positive contribution	<b>Moderate Opponents 17%</b> <i>- Concerns:</i> have strong doubts as to the authenticity of asylum seekers. Concerned about Islam. Want stricter border control but not a return of nationalism	<b>Economically Insecure 17%</b> <i>- Concerns:</i> pessimistic about France’s economic future. Think life will become more difficult for them. Want to see a decrease in immigration
	<b>Left Behind 17%</b> <i>- Profile:</i> majority of women over 60 <i>- Concerns:</i> a feeling of injustice; consider they have made more sacrifices than others in Italy’s modernisation. Worried about the rise of racism. Open to refugees	<b>Humanitarian Sceptics 21%</b> <i>- Profile:</i> elderly, mid-sized towns <i>- Concerns:</i> see historical obligation of hospitality but do not believe Muslim migrants want to integrate	<b>Left Behind 21%</b> <i>- Profile:</i> majority of women, 50-65 years old <i>- Concerns:</i> feel cheated by globalisation. Want refugees to go home once calm has returned. Do not share the hostile feelings of nationalists

13. “Attitudes Towards National Identity, Immigration, and Refugees in Italy”, *More in Common*, July 2018.

14. “Attitudes Towards National Identity, Immigration, and Refugees in Germany”, *More in Common*, July 2017.

15. “Attitudes Towards National Identity, Immigration, and Refugees in France”, *More in Common*, July 2017.

	<b>Disengaged Moderates 19%</b> <i>- Profile:</i> majority under 30 <i>- Concerns:</i> no confidence in the Italian political system. Mostly sympathetic to immigrants and diversity	<b>Economic Pragmatists 20%</b> <i>- Concerns:</i> immigration necessary for German economic needs, but Islam incompatible with traditional German culture	<b>Humanitarians 15%</b> <i>- Profile:</i> older than average and more women <i>- Concerns:</i> believe in need for change to address social and environmental issues. Open to migrants and refugees, but concerned about their country's ability to properly take them in
<b>OPEN GROUPS</b>	<b>Catholic Humanitarians 16%</b> <i>- Profile:</i> 70% observant Catholics. Active supporters of Pope Francis <i>- Concerns:</i> confident in the future of Italy and the contribution of migrants. Often divided in real life on the issue of taking migrants in		
	<b>Italian Cosmopolitans, 12%</b> <i>- Profile:</i> mainly women <i>- Concerns:</i> proud of Italy's cultural and humanist history. Think migrants and refugees make a positive contribution.	<b>Liberal Cosmopolitans 22%</b> <i>- Profile:</i> often from recent immigrant families. Large cities <i>- Concerns:</i> positive assessment of cultural and economic contribution of migrants to Germany	<b>Multiculturals 30%</b> <i>- Profile:</i> younger than the average, across France and Paris <i>- Concerns:</i> favourable to the contributions of foreigners and other cultures. Confident about their future

## 2 ■ THE INCOMPLETE BASES OF A COMMON EUROPEAN POLICY ON IMMIGRATION AND ASYLUM

"Migration is a dignity-seeking journey."<sup>16</sup>  
François Crépeau

For a majority of European citizens, dealing with migration challenges is first and foremost a responsibility of the EU. But what kind of resources does the EU have to manage this task in a complex and little understood field? For many observers, including among the most competent, the main responsibility of the EU is to manage an economic, monetary and financial area governed by rules on competition. This viewpoint glosses over the major political developments of the EU since the mid-1990s aimed at the implementation of a common policy on migration and asylum, the corollary of an "area of freedom, safety, and justice". Its values are informed by the fundamental rights of citizens, as set out notably in the 1951 Geneva Convention on the international rights of refugees and stateless persons and in the European Charter of Fundamental Rights appended since 2009 to the Treaty on the EU.

This process of construction is now being put to the test. But it should not be called into question without measuring the extent of the work achieved, resulting in what is now a considerable and little-known corpus of legal texts, produced by the members of national governments and European agencies and institutions operating as part of sovereign national functions.

Immigration was not an EU concern before the mid-1990s. The preference was for the internal mobility of workers with Member State nationality. But with the approach of the historical enlargement of the EU to include new democracies in Central and Eastern Europe, and observing the structural rise of labour immigration related to population ageing, the management of an area of free internal circulation would no longer suffice. External borders also had to be erected as an issue of common interest from the standpoint of safety and justice, not just as a result of the elimination of internal border controls but also owing to the shared concern of Member

<sup>16</sup>. Quotation from an inaugural lecture by François Crépeau, Professor of International Law and United Nations Special Rapporteur on the Human Rights of Migrants (2011-2017)

States to protect citizens and respect the fundamental rights of migrants from third countries, be they asylum seekers, in an illegal situation, or otherwise. The first stones of this “common immigration and asylum policy” were laid comprehensively and explicitly by the Treaty of Amsterdam, which entered into force in 1999, and the policy was definitively enshrined by the Treaty of Lisbon in 2009 as an integral part of the legislative field governed by the Community method. Every five years, the European Council, successively in Tampere, The Hague and Stockholm, gave impetus to a legislative programme.

Developing over a 15-year period through 2014, the programme’s achievements serve today to distinguish between **four permanent pillars of the common policy on immigration and asylum: the Schengen free movement area and its corollary, the Common European Asylum Policy (CEAS); the integrated system for the management and protection of external borders; the European framework on legal labour immigration; and common European tools for cooperation with third countries, both origin and transit**<sup>17</sup>. In the Treaty of the EU, each of these pillars has a specific basis corresponding to the precise nature of the fields concerned, and notably how they touch on the sovereignty of states.

## 2.1 The Schengen Area and its corollary, the Common European Asylum System

The origins of the Schengen Area can be traced back to an agreement signed in 1985, on the margins of the European treaties in Schengen, with the practical aim of eliminating long lines of trucks at internal border control points and lending concrete form to the principle of free movement. The Schengen Agreement was signed in 1990 and gradually extended to the majority of Member States and incorporated into the Treaty on the EU. At the same time, the Schengen Borders Code was introduced, applying to all signatory states and setting out the standards on controls, the harmonised granting of visas and the exceptional circumstances in which a state claiming internal or external threats would be able to reintroduce border controls.

The Dublin Regulation was also adopted in 1990, establishing the Member State responsible for the examination of asylum applications. The complementary fit of the Dublin Regulation and the Schengen Agreement is vital, as the former was introduced to prevent illegal migrants from circulating

<sup>17</sup>. The references in this chapter and the next owe considerably to the [www.europeanmigrationlaw.eu](http://www.europeanmigrationlaw.eu) website created by Yves Pascouau, researcher at Université de Nantes and associate researcher at the European Policy Centre and the Jacques Delors Institute. The website contains supplementary information on the ideas addressed in this report.

within the EU in search of the asylum of their choice, where necessary introducing competition between states and necessitating the return of border controls. Mindful of the imbalances liable to result from such a system if the conditions of examining and granting asylum protection were to remain excessively divergent, the European Council meeting in Tampere established from the outset the principle of convergence aimed at the near equivalence of national asylum systems. In a sense, it was already clear at the time that an internal area of free movement and common rights for European citizens would in the long term involve a common conception of asylum, while maintaining the granting of protection as a sovereign decision. This was the objective of the Common European Asylum System (CEAS) introduced in 2013 on the basis of five harmonising directives and two regulations supporting implementation that established the European Asylum Support Office and a fund to assist countries in the taking in and integration of refugees, the Asylum, Migration and Integration Fund (AMIF). The crisis of 2015-2016 highlighted the structural failings of the CEAS. One of the aims of this report is to learn the lessons of those shortcomings but without neglecting the achievements that have made the EU an exemplary area for asylum worldwide, as addressed in Chapter 4.

## 2.2 An integrated system for external border control and management

Introduced by the European Council in The Hague in 2004, the principle of an integrated system to protect external borders aims to establish near uniform controls, in particular by harmonising the granting of temporary visas, close cooperation between national police forces and a number of common information systems (including the Schengen Information System) with data supplied by national forces and Europol alike. The protection of external borders regarding inflows presenting security risks and the surveillance of illegal inflows also rely on common tools such as the “bona fide travellers” system and the electronic system for travel authorisation. They also rely on a common system for returns to the country of origin where residence permits are refused.

Supplementing these systems, the Frontex agency was created in 2008, initially to provide technical aid (including assistance for states subject to exceptional migration pressure, and risk assessments). In 2016, the Frontex agency became the European Border and Coast Guard Agency, equipped with substantial resources for assisting states in difficulty. In September 2018, the European Commission (EC) proposed the consider-

able reinforcement of the resources and prerogatives of the Agency, raising issues of national sovereignty reviewed here in Chapter 5.

### 2.3 The European framework of legal labour immigration

The European Council recognised as early as the start of the 2000s that the migration and asylum policy must not be purely defensive; it also had to be able to organise legal labour immigration consistent with the structural requirements of its ageing labour market, based on the principle that Member States were solely responsible for deciding the number of immigrants authorised in this respect to reside on a permanent basis. The EU has also long been concerned about preventing workers with third-country nationalities from becoming the instruments and victims of a form of social dumping between Member States.

European regulation on legal labour immigration also comprises, in respect of the competitiveness of the European economy, an initial series of “sectoral” directives adopted between 2005 and 2014. The aim is to supervise the conditions in which Member States grant work and residence permits to foreign workers with sought-after skills and qualifications, including students and researchers in 2005<sup>18</sup>, the transferred employees of transnational groups in 2014<sup>19</sup> and highly qualified workers in 2009 (European Blue Card System)<sup>20</sup>.

Further directives seek to attribute social rights to foreign workers equivalent to those of national workers, including the right to free movement in the EU after five years of permanent residence (2003)<sup>21</sup>, and to prevent social dumping (foreign seasonal workers (2014)<sup>22</sup>, directive on the single work and residence permit applying to all foreign workers (2011)<sup>23</sup>).

18. Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.

19. Directive 2014/67/EU of the European Parliament and Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

20. 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.

21. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

22. Directive 2014/36/EU of the European Parliament and 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.

23. Directive 2011/98/EU of the European Parliament and the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

While substantial, this set of regulations does not serve to organise a European strategy on legal labour immigration, which is a key issue for this report, addressed in Chapter 6.

### 2.4 Tools for cooperating with third countries of origin and transit

From the start, with the Treaty of Amsterdam in 1999, the common policy on immigration and asylum addressed cooperation with third countries. This aspect was initially approached in a broad and open manner by the European Council meeting in The Hague in 2005, followed by a Commission communication entitled “Migration and development: some concrete orientations”. The communication drew parallels between the needs of the EU and those of countries of origin, and in particular the need to prevent brain drain. But in practice, European strategy on external cooperation and a common migration policy would remain disjointed until 2015, essentially taking the form of a partnership for migration with countries of transit and origin aimed at facilitating the return or re-entry of people in illegal situations and ineligible for asylum.

Since 2015, the EU has taken a significantly different direction in terms of external efforts on development cooperation, aimed at strengthening the long-term development capacities of its partners, including social and job-creation aspects. But at the same time, the EU is sending out other signals showing that its assistance is now predicated on the efforts made by beneficiaries to control migration flows. This is one of the contradictions that this report will examine in Chapter 7.

### 2.5 Since 2015, European asylum and immigration policy has been governed by a state of emergency

Since the first premises of the refugee crisis in 2013 and 2014, the common policy of the EU has no longer been subject to strategic planning as was the case with the multi-year programmes promoted by the European Council meetings of Tampere, The Hague and Stockholm. While the EC has continued to draft documents and agendas simultaneously covering the four pillars of the common policy, they are no longer accompanied by medium-term schedules and reflect more than before the need to precisely remedy the failings observed.

The common policy on asylum and migration has become the main priority of the EC since 2015. Marked by short-term emergencies, the measures

taken by the EC conceal what could be an adjusted response to the new situation. Providing the corresponding orientations is the main purpose of the following chapters. But, first of all, we need to assess as clearly as possible the challenges that lie in store for this common European policy as it attempts to respond to the doubts and worries of European citizens.

### 3 ■ ASSESSING THE PRESENT AND FUTURE MIGRATION CHALLENGE

“Facts are our masters”<sup>24</sup> Antonio Gramsci

“Reality is above idea”<sup>25</sup> Pope Francis

In response to the legitimate doubts and concerns of our fellow citizens, are we able first of all to assess the extent of the challenge? We will naturally be wary of figures, which are always misleading when it comes to human realities. And yet an attempt must be made to establish a clear assessment, an order of magnitude, and, above all, to interpret the fundamental trends. Four key findings emerge from today’s increasingly precise demographic forecasts and studies.

**The world as a whole, all continents combined, has entered a phase of increasing mobility.** While the word “migration” brings to mind unequivocal and definitive movements, migration trajectories today are accomplished in several steps and are often reversible. That reversibility is made possible by the fluidity and price of transport. Mobility is increasing as a result of higher qualifications, the need to exchange knowledge and experience, and the transfer of technologies. In short, migrations are an integral part of the deepening of globalisation itself<sup>26</sup>. As a consequence, emigration and immigration rates for the active population have increased in the last 20 years. This trend applies to the EU, where immigration rates caught up with the average rates seen in the rest of the OECD countries in 2010 (see Table 2). Between 2000 and 2010, the pace of immigration towards the EU was twice as high as in the rest of the OECD countries (rising 64% compared with 29%). This led to an increase in the EU 15 of 7.3 million foreigners, nearly half of whom originating from Member States having joined the EU after 2004. In the EU from 2000 to 2010, the foreign population of African nationality contributed 2.7 million to this increase, less than the Asian-origin population (+3.5 million).

At the same time, the yearly reports published since the beginning of the decade by the OECD<sup>27</sup> show an increase in outflows, reflecting a gener-

24. Antonio Gramsci, Jails diary, « A philosophy of praxis », 1932.

25. Pope Francis, Apostolic Exhortation *Evangelii Gaudium*, para.233, 2016.

26. Hervé Le Bras, *L'Âge des migrations*, Éditions Autrement, 2017.

27. OECD, *International Migration Outlook 2018*, OECD Publishing, Paris.

al rise in mobility. The need for identity and roots is becoming stronger across the board. Working here does not mean forgetting being born there.

**TABLE 2 ■ Immigrant population aged 15 and over in 2010 in the EU and OECD**

REGION	NUMBER OF IMMIGRANTS IN MILLIONS	IMMIGRATION RATE AS A %
EU 15	28.5	8.9
EU 12	1.7	2.0
EU 27	30.2	7.5
Europe excl. EU	1.1	12.1
OECD excl. Europe	48.6	9.0
Total OECD	80.0	8.4

Source: OECD, *Database on Immigrants in OECD and non-OECD Countries: DIOC, 2010-2011*.

**The rise in living standards in poor countries and emerging countries will be accompanied by an increase in emigration rates, particularly those of young professionals.** Demographers have for some time now observed that the emigration rates of developing countries rise with the increase in average wealth per inhabitant and the opening up of international trade<sup>28</sup>.

More recently, a study of the situation in Africa by the EC Joint Research Centre shed light on the positive correlations between development and migration<sup>29</sup>. Individuals having completed secondary education are twice as likely to effectively undertake an emigration procedure; the average disposable income of those undertaking such a procedure is three times higher than the average; and previous mobility experience also plays an accelerating role<sup>30</sup>. But emigrating for Africans does not necessarily mean turning to Europe. African migrations take place first and foremost within Africa. More than half of the Africans having emigrated live in other African countries (19.4 million out of a total 36.3 million in 2017). In 2017, Europe admitted around half of extra-African emigration (9 million, of whom 5 million from North Africa). Concerning refugees, Africa admits the large majority of refugees of African nationality, 5.3 million in 2016 compared with 0.9 million Africans receiving protection in Europe and North America.

28. European Political Strategy Centre (European Commission), "10 Trends Shaping Migration", 2017.

29. Fabrizio Natale, Silvia Migali, Rainer Münz, "Many more to come? Migration from and within Africa", Publications Office of the European Union, March 2018.

30. Neli Espipova, Julie Ray and Anita Pugliese, "Gallup World Poll: The Many Faces of Global Migration", International Organization for Migration, 2011.

In addition to these Africans having been obliged to emigrate, some 12.6 million Africans have been displaced in their country as a result of civil war and violence<sup>31</sup>. These data put into perspective the weight that could be placed on Europe by "African disorder" and also underline the shared urgency of finding political solutions to existing conflicts, notably by fostering lasting development.

The population flows from Morocco, Senegal and Nigeria will not be stemmed by additional development. Employment in these countries is a process based more on complementarity with rather than the replacement of employment in more advanced countries. The creation of new business activities in poor countries hinges on training and the acquisition of qualifications that can only be obtained elsewhere and, at least in part, in Europe. As such, we need to let go of the objective of development in Southern countries as a way of halting emigration. As in Europe, development for these countries is a means to stability and peace to be pursued for itself.

The correlation between development and emigration will lead to a significant increase in African emigration rates to the EU, which today are very low. Researchers in recent years have sought to gain a firmer grasp of the potentialities of African emigration, in particular by using "gravitational" models based on the assessment of mutual attractiveness factors between the country of origin and the host country. Regarding African emigration, these models have served to establish that the presence of diasporas in host countries, the proportion of the urban population in the country of origin and the degree of bilateral trade increase emigration rates more than differences in income<sup>32</sup>. Using these models, the International Monetary Fund (IMF), World Bank and OECD have established that the immigration rate of the Sub-Saharan African population to the OECD countries could rise from today's 0.4% to 2.4% by 2050 (or from roughly 6 million to 34 million people). These figures refute the delusions fuelled by talk of a "rush of young Africans" towards Europe<sup>33</sup>. However, they should also prompt us to plan for and organise this trend, given that it will play out to the greater benefit of both parties, Europe and Africa, if intra-African emigration were also to develop. The role of the diasporas present in Europe and Africa will be directly related to increased exchanges between African countries themselves.

31. UN Refugee Agency and International Organization for Migration.

32. Fabrizio Natale, Silvia Migali, Rainer Münz, "Many more to come? Migration from and within Africa", Publications Office of the European Union, March 2018, pp. 21-25.

33. Gonzalez Garcia J, Hitaj E, Mlachila M, Viseth A, Yenice M, "Subsaharan African migration, Patterns and spillovers", International Monetary Fund, Spillover Note No.9, 2016.

**The net immigration needs of EU countries stemming from population ageing and the net emigration needs of external partners of the EU are compatible**, providing that an adjustment is achieved regarding the quality of flows assessed on the basis of the qualification levels of labour migration.

From 2000 to 2010 the labour needs of European economies were covered 70% by immigration. According to the forecasts of the Europe 2020 strategy, between 2010 and 2020 an estimated nine million immigrant workers will only barely balance out the decline in the European labour force resulting from population ageing. Even as part of an assertive scenario on the increase in the labour force, the need for foreign workers with low or average skills will remain close to seven million. More than three-quarters of the demographic shortfall in the labour force will concern low- or average-skilled jobs in the coming years<sup>34</sup>. The EU's immigration needs cannot be reduced merely to high-skilled labour, as suggested by OECD research<sup>35</sup>. Europe also requires a flow of legal labour immigration for low- or average-skilled jobs<sup>36</sup>. At the same time, it is in the interest of developing countries to not part with their highest-skilled labour.

Looking further into the future, to 2050 and 2060, an exercise recently carried out by Eurostat demographers shows that an external migration contribution of 40 million people will be required in the EU 28 between 2020 and 2040 if employment is not to hit a ceiling by 2025. This corresponds to a net migration balance of 0.9 million to 1.1 million people every year, which is much lower than the peak in 2015 and close to the 2000-2010 trend. Demographers are not ruling out a scenario in which the net migration contribution would be doubled, which in their opinion would make it easier to balance out pension schemes<sup>37</sup>. Comparing these projections with those of African immigration to Europe of up to 11 or 12 million people, an increase can be expected in the African share of European immigration, closer to 20% rather than today's 16%.

The problem here is that these estimates are too global to assess any reciprocal adjustment between the EU and developing or emerging countries that would be mutually beneficial. Account needs to be taken first of all of the integration conditions of individuals from poor countries of

34. Eurostat, Labour force forecasts in the EU 27 according to two scenarios, 2010-2020.

35. OECD/EU, *Recruiting Immigrant Workers: Europe 2016*, 2016, OECD Publishing, Paris.

36. Eurostat, op.cit.

37. Tim Van Rie, Jörg Peschner and Bettina Kromen, "Intergenerational fairness and solidarity today", in *Employment and Social Developments in Europe 2017*.

origin in the European market, which are far from satisfactory. In 2015, the unemployment rates of foreigners from Sub-Saharan Africa and North Africa were respectively twice and three times higher (18% and 27.3%) than the unemployment rate for the rest of the population (9.8%)<sup>38</sup>. This situation has worsened since the economic crisis of 2008. The difficulties encountered by European countries in successfully integrating this population through work are a reality that any European migration policy must address. Conversely, the skilled labour needs of the EU's African partners also deserve to be explicitly taken into account if migration to Europe is to foster mobility beneficial to African development.

**As spectacular as they were in 2015 and 2016, the South-North migration flows resulting from forced displacements caused by persecution and civil war do not account for a preponderant share of migration towards the EU, which will continue to be mainly a question of labour or family migration**<sup>39</sup>. The overwhelming majority of people fleeing their country due to war or persecution initially find refuge in neighbouring countries, as shown by the situations in Syria and Iraq, and as illustrated in general by Africa, which hosts over 90% of its own refugees. But humanitarian flows made up of recognised or potential refugees will remain irregular and subject to considerable change, as evidenced in the global data recorded by the UN Refugee Agency in the last 30 years. In addition, and again according to the UN Refugee Agency, the people who succeed in entering the EU are generally those with the greatest resources.

The likelihood of major climate events forcing the displacement of considerable populations is now considered as strong, and specialised international agencies are beginning to factor this issue into their work. The extensive research on the relationships between migration and climate change has failed to establish a clear link between these two aspects of globalisation. Research does however point to an increase in forced displacements at local level for climate reasons. According to the EC Joint Research Centre study mentioned earlier, if current projections on the rise in average temperatures prove accurate, by the end of the century nearly 90 million Egyptians will be affected by increasingly longer drought periods (of over 20 days), while nearly 40 million inhabitants of the Democratic Republic of the Congo will be impacted by periods of extreme tempera-

38. OECD, *International Migration Outlook 2017*, OECD Publishing, Paris.

39. OECD, *International Migration Outlook 2015*, OECD Publishing, Paris.

tures lasting over 100 consecutive days<sup>40</sup>. The inclusion of environmentally displaced people in the Geneva Convention, or the creation of a climate refugee status, is currently a focus of debate. The EU has already addressed the prospect of forced migration owing to climate reasons in the Stockholm Programme<sup>41</sup> adopted in 2009. This awareness has led the EU to develop world-leading experience in external humanitarian interventions, coordinated by the EC Humanitarian Aid (ECHO) department. Yet the potential scale of the human drama to come stands only as a further obligation for the EU to consider as a whole the building of a global development outlook that is sustainable for itself and for its partners, including in its human and migratory aspects.

<sup>40</sup>. Fabrizio Natale, Silvia Migali, Rainer Münz, “Many more to come? Migration from and within Africa”, Publications Office of the European Union, March 2018, pp. 21-25.

<sup>41</sup>. The Stockholm Programme established a roadmap for EU work on justice, freedom and security for the 2010-2014 period.

## 4 ■ PROVIDING THE COMMON EUROPEAN ASYLUM SYSTEM WITH THE RESOURCES COMMENSURATE WITH ITS INITIAL GOAL

“Give me your tired, your poor,  
Your huddled masses yearning to breathe free...”  
Excerpt from the poem “The New Colossus” by Emma Lazarus  
inscribed on the pedestal of the Statue of Liberty in New York

The Common European Asylum System was initially devised with a long-term objective<sup>42</sup>. The aim was not simply to consolidate the EU as an area of free labour circulation but also to make it a space of values, informed by fundamental human rights and principles<sup>43</sup>. In the long term this involved the introduction of uniform humanitarian protection based on the Geneva Convention protecting refugees. The heads of state at the European Council meeting in Tampere in 1999 confirmed the objective of building a Common European Asylum System leading to the introduction of “a common asylum procedure and a uniform status, valid throughout the EU, for persons granted asylum”<sup>44</sup>. Given that a nation granting asylum is bound to that decision in the long term, this was an ambitious statement at the time – and today is particularly topical.

### 4.1 An ambitious vision on harmonising EU asylum access conditions

With a view to the final complete unification of procedures on the granting of asylum, the “Asylum” directives were drafted. For many legal specialists, these rules are one of the finest achievements of the Community, having

<sup>42</sup>. This was part of the conclusions of the Council meeting in Tampere in October 1999, the first to focus entirely on the issue of migration.

<sup>43</sup>. These rights and principles were subject to extensive collaborative work starting in 1998 in the form of successive agreements, ultimately leading to the Charter of Fundamental Rights of the European Union, appended to the Treaty of Lisbon in 2009.

<sup>44</sup>. Communication from the Commission to the Council and the European Parliament, “Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum”, COM/2000/ 0755 final, 22 November 2000.

improved the guarantees to which asylum seekers and people recognised as vulnerable on their entry into an EU country are, in principle, entitled. The Asylum directives establish precise rules for Member States on the conditions of each step in the procedure, from initial reception to the eligibility criteria for the access to rights through to the return application procedure. They have been updated several times to take account of the extensive set of precedents resulting from the numerous rulings handed down by the European Court of Justice, this last playing the role of ultimate decision-maker in the event of disputes.

### BOX 2 ■ The basic texts of the Common European Asylum System (CEAS)

Since the entry into force of the Treaty of Amsterdam (1999), the EU has sought to establish a framework with a view to harmonising as closely as possible the conditions in which EU Member States and signatory countries of the Schengen Agreement (adopted in 2000) examine and grant legal protection to people seeking asylum in their territory, knowing that this decision remains the sole competency of each state. The European Council meeting in Stockholm in 1999 sketched out from the start an objective of near uniform procedures, whence the name “Common European Asylum System”.

That objective gave rise to seven main texts, which have already been amended several times since their adoption in 2001:

1. The **Qualification** Directive sets out the criteria on the justification (or refusal) of the granting of “conventional” protection (in compliance with the Geneva Convention) or “subsidiary” protection (where the Geneva Convention does not apply but major risks remain).
2. The **Asylum Procedures** Directive determines the examination period, appeal conditions and guarantees of fairness and assistance to which asylum seekers are entitled, as well as the specific rights of “vulnerable” people (for example, unaccompanied minors).
3. The **Reception Conditions** Directive specifies the concrete measures of identification and control taken on arrival, accommodation conditions (including allowances) in waiting areas during the examination of the asylum request, the processes involved in the return to a country of origin or transit where the request is denied, and the legal guarantees of the people in this situation.
4. The **Dublin Regulation** (revised several times since adoption in 2000) establishes that the country where initial entry into EU territory was observed, or which granted an initial residence permit on its territory, is responsible for examining asylum applications. The aim of this principle was to protect the Schengen free movement area by preventing the illegal movement of asylum seekers within the EU. The regulation also sets out the conditions in which people having requested asylum in a Member State other than the country of initial entry may be returned or taken in charge by the Member State responsible (these individuals being referred to as “Dublined”).

5. The **Eurodac Regulation** establishes harmonious registration conditions on “Eurodac terminals”, in particular regarding the fingerprinting of people having applied for asylum on entering EU territory.
6. The regulation establishing the **Asylum, Migration and Integration Fund (AMIF)** to help Member States develop the capacities for the reception, control and processing of asylum applications with a view to compliance with the CEAS directives.
7. The regulation establishing the **European Asylum Support Office**, based since 2006 in Malta. An agency of the EU, it supports national governments implementing the CEAS and since 2015 has provided direct support for the Member States with the most pressing needs, including Greece, Italy, and Spain, assisting them in their reception, registration, and information functions relative to asylum seekers. The asylum examination procedure remains the responsibility of Member States.

These directives and regulations have been revised several times since their entry into force in the 2000s to improve the harmonisation of asylum examinations and increase pressure on the countries the most at fault. A major revision was made in 2015 to the Dublin Regulation when the EC adopted a rule on quota-based relocation to ease the pressure on the most impacted countries. The rule applies to asylum seekers belonging to the nationalities most likely to be granted protection. Rejected in 2016 by the Visegrad countries, the relocation system was confirmed by the European Court of Justice in 2017. The practical difficulties involved in the application of the rule led to the non-renewal of the period of application of renewal obligations in 2018. In 2016 the EC proposed a further revision of all the CEAS texts, the approval of which continues to prove a stumbling block for the Council as concerns two texts, the Dublin Regulation and the Asylum Procedures Directive, the latter including a new concept of “safe transit country” aimed at facilitating returns.

To help Member States acquire and implement these rules, a special agency, the European Asylum Support Office (EASO), was set up in 2006 based in Malta. The EASO has successfully assisted and trained national civil servants in the understanding and application of the law, particularly in the most sensitive aspects of this last such as processing the situation of unaccompanied minors. The EASO conducts its activity in cooperation with the UN Refugee Agency, the reference body regarding the fair implementation of the right to asylum and support for protection applicants. As such, more than a simple coherent legal system, at EU level there exists a true European professional asylum community, in which mutual assistance and the sharing of practices are being developed in an exemplary manner, notably on the impetus of the EASO.

## 4.2 The 2015-2016 crisis revealed serious shortcomings in the implementation of the CEAS

Despite these admirable qualities, the system was unable to cope with the extremely serious refugee crisis that began in 2013 and peaked from

September 2015 to March 2016. The number of first-time asylum seekers rose from 398,000 to 1,236,000 per year between 2013 and 2016<sup>45</sup>. The system broke down as the sheer number of arrivals exceeded national capacities and was unable to address the “mixed” nature of the arrivals, not all of whom could claim refugee status or subsidiary protection. On average from 2014 to 2017, the proportion of protections granted relative to submitted applications was 40%, giving an idea of the scale of applications not directly linked to persecution and conflicts. That these people were ineligible in no way lessened the basic humanitarian obligations that their situation often made indispensable. Images from the camps in Calais (evacuated in October 2016) and Lesbos (where the situation remains critical, see box 4) illustrate these dysfunctions in the collective memory.

**TABLE 3 ■ Number of initial asylum applications submitted, in thousands, 2013-2018**

COUNTRY	2013	2014	2015	2016	2017	1ST SEM. 2018
EU 28	398	595	1,325	1,236	672	284
Germany	109	172	441	722	198	84
Italy	26	63	83	121	126	31
France	60	58	70	77	92	51

Source: EASO, *Annual Report on the Situation of Asylum in the EU in 2017*.

**TABLE 4 ■ Number of asylum applications under review, in thousands, 2013-2018**

COUNTRY	2013	2014	2015	2016	2017	1ST SEM. 2018
EU 28	380	551	1,061	1,137	954	886
Germany	134	221	424	601	443	411
Italy	14	46	60	99	152	132
France	39	36	34	44	49	45

Source: EASO, *Annual Report on the Situation of Asylum in the EU in 2017*.

45. Source: Eurostat. These figures concern not people but registrations. A first-time applicant may have to repeat his or her application in the event of an appeal. Secondary flows also lead the same person to make several applications in different countries.

**TABLE 5 ■ Protections granted, in thousands, 2013-2018**

COUNTRY	2013	2014	2015	2016	2017
EU 28	145	213	354	743	540
Germany	26	47	149	345	324
Italy	14	20	29	39	35
France	16	21	27	36	40

NB: Protections all statuses combined: refugees, subsidiary protection, humanitarian protection.

Source: EASO, *Annual Report on the Situation of Asylum in the EU in 2017*.

**TABLE 6 ■ Reception of unaccompanied minors, in thousands, 2013-2018**

COUNTRY	2013	2014	2015	2016	2017
EU 28	14	23	102	65	32
Germany	2	4	22	36	9
Italy	1	2	4	6	10
France	0.4	0.3	0.3	0.5	0.6

Unaccompanied minors: under the Geneva Convention, children and young people aged under 18 arriving with no parent are received and treated as vulnerable people according to rules relating to the best interests of the child.

Source: EASO, *Annual Report on the Situation of Asylum in the EU in 2017*.

Subject to these unprecedented demands, the asylum capacity of Europe failed on two fronts. In legal terms it was unable to identify in a timely manner the people requiring protection, while in humanitarian terms it left numerous individuals in a state of indignity. This clear failure on the borders of the EU was felt inside the EU in the form of “secondary”<sup>46</sup> flows of migrants seeking refuge with the total absence of control or orientation towards other countries. The Dublin Regulation designed to assign as a priority to entrance countries on EU territory the responsibility of examining asylum applications already appeared in itself as a doubtful inspiration, and extremely difficult to apply. In 2015, the regulation fell to pieces. It still stands as a symptom of the gravity of the crisis, as the EU Council of Ministers responsible for updating the regulation remains deeply divided on the issue despite the new proposals tabled by the Council and the EC ahead of the Council meeting in Salzburg in September 2018.

46. A secondary flow comprises a displacement of migrants, often without residence permits, from a country of first entry or first asylum examination towards another EU Member State.

### BOX 3 ■ The latest Juncker Commission “package” to reach an agreement on the Dublin Regulation

In autumn 2018 negotiations in the Council of Ministers on the revision of the Dublin Regulation remained in a deadlock:

- A fault line lies between Member States wanting to maintain the possibility of receiving asylum seekers on EU territory, and to that end proposing the implementation of “controlled centres” within the EU in countries of first entry, and Member States seeking the “complete externalisation” of asylum through cooperation agreements such as that between the EU and Turkey and the organisation of “disembarkation platforms” in third countries.
- The latter group is itself divided between countries calling for increased solidarity (Italy) and those who in no event want to be required to examine asylum applications from people having not entered their territory directly (the Visegrad group).

To overcome these obstacles, following the Council of Europe meeting of June 2018, the EC tabled new proposals in September 2018 in the form of a “package” including:

- A substantial strengthening of the resources and mandate of the European Border and Coast Guard Agency, with a budget of €11.3 billion between 2019 and 2024;
- An extension of the European Asylum Support Office’s mandate, notably to enable it to provide decisive operational assistance in all the administrative procedures involved in asylum examinations (including appeals and preparations for returns) to Member States on the front line (hotspots and controlled centres) for an additional €1.3 billion in EASO operating costs over the next five years;
- A new adaptation of the Return Directive aimed at making returns more effective, particularly for people in illegal situations arriving at EU borders and including the possibility of extending to three months the detention period for people liable to “abscond”.
- A review of existing legal immigration pathways either in the form of resettlement (asylum seekers identified before they enter the EU) or through recourse to the European Blue Card Directive, which today is extremely limited. A new initiative encouraging Member States to commit to pilot projects on labour immigration.

To remedy the obvious inconsistencies of the Dublin Regulation, in the event of a substantial increase in the number of asylum seekers, the EC in 2015 introduced a waiver to the principle of countries of first entry. The EC lightened the principle through a relocation system aimed at distributing in two years some 160,000 asylum applicants received in Greece and Italy, thus expressing the solidarity of Member States located in the “interior” of the EU. However, this solidarity was supposed to apply to asylum seekers of Syrian and Iraqi nationality, the validity of whose applications was

largely acknowledged. The mechanism did not apply for other nationalities (notably Afghan, Sudanese and Eritrean). This explains the anger of Italy, which in 2016 and 2017 saw a resurgence of arrivals on its territory not liable to solidarity treatment, even though the country had since 2013 called for its special efforts to take in people rescued at sea to be shared to a greater extent.

The second reason for the failure of the implementation of the relocation programme is the refusal in principle by the Visegrad countries of the imposition, in the name of the principle of solidarity, of a system that they regard as contrary to national sovereignty. This symbolic opposition (symbolic as it concerned very few people) has since fuelled a revolt concerning the very principles of democracy in Europe, led by the Hungarian Prime Minister Viktor Orbán. For the Bulgarian political scientist Ivan Krastev, this revolt should not be taken lightly as it reveals the disregarded significance, and the unfair treatment by European institutions, of the differences in the historical sensibilities separating Eastern and Western Europe<sup>47</sup>. Without plumbing the depths of this issue, it must be said that the Member States having joined the EU in 2004 and 2008 were required to transpose legislation on asylum and immigration that was foreign to them and of much greater significance than legislation on the free movement of goods and services.

The central nature of the Dublin Regulation is once again underlined here. It conveys how the EU and its Member States intend to deal with their obligations relative to the right to asylum and also how continued circulation will be guaranteed in an area without internal borders. What kind of new balance needs to be struck between the responsibility expected of countries of first entry and the necessary solidarity of the others when the granting of asylum for the countries in question is a considerable commitment that also involves integration?

### BOX 4 ■ Why are there still so many migrants in the hotspots on Lesbos?

In September 2018 the number of migrants awaiting a decision on their status from the Greek authorities remained extremely high, at roughly 11,000. This is three times higher than the official capacity of the initial reception centre, which is working towards relocation as adopted by the EU in 2015. The humanitarian situation on the island is dramatic, even though some 4,000 people have been transferred to the continent since September.

First of all, despite the agreement signed between the EU and Turkey in March 2016, numerous migrants, mainly arriving from Afghanistan, continue to cross the sea from Turkey to Lesbos, at the rate of several hundred a week.

<sup>47</sup>. Ivan Krastev, *Le destin de l'Europe, une sensation de déjà-vu*, Éditions du Premier Parallèle, 2017.

Turkey has not abandoned the implementation of the agreement, but a border can never be completely sealed. Few Syrians liable to be returned to Turkey in exchange for relocation arrive in Greece.

Secondly, the relocation mechanism is working, but at a slow pace, having not been renewed by the EC. In practice, relocations are not carried out from Lesbos, where reception conditions have become chaotic, but from Athens.

The Greek administration responsible for examining asylum applications is compliant with standards but extremely slow, including as part of the new legislation on asylum. Delays in the examination of asylum applications and appeals are building up on Lesbos.

The Lesbos hotspot stands as a catastrophic illustration of the limits of a policy that externalises asylum to “safe return countries” and the pressing need to upgrade the operating conditions of asylum systems, especially in countries of first entry.

### 4.3 The Juncker Commission’s last-ditch attempt to end the political deadlock on Dublin

To resolve the Dublin Regulation deadlock, in September, shortly before the Council meeting in Salzburg, the EC tabled four proposals. At least two of the proposals are substantial, involving a considerable strengthening of the competencies and resources of the European Border and Coast Guard Agency, for a total of €11 billion over five years, and the European Asylum Support Office, at €1.3 billion over five years (see insert 3).

The EC seems to have taken on board the operational dysfunction of the CEAS, particularly as regards external borders, where it relies solely on the administrative capacities of Member States. Despite the honing of the directives, the major amounts allocated to “front line” countries and the litany of recommendations issued by the EC to these countries concerning the “monitoring” of the CEAS, the countries in question are unable (Greece) or reluctant (Italy) to shoulder the responsibilities expected by the other Member States so that these last express on their part solidarity in the collective processing of initial asylum applications at the gates of the EU.

The new proposals of the EC thus aim for the partial substitution of the most ineffective national systems by European tools. The subtly dosed substitution goes as far as possible without calling into question the ultimate responsibility of each Member State to grant or refuse asylum. Combined with draconian systems for repressing abuses and implementing returns as quickly as possible, the new “package” can be seen as a last-ditch attempt by the current EC to restore the trust of second-line Member States and lead them to adopt a Dublin Regulation that, failing a radical change in philoso-

phy, comprises automatic mechanisms for a united approach to relocation.

The direction taken in this report also aims to cut the “Gordian knot” of the Dublin Regulation, divided between responsibility and solidarity. Together with the EC and a number of observers, we would also admit that the CEAS suffers primarily not from inadequate regulation but from a lack of administrative application, which proves particularly dramatic in crisis situations. The situation calls for an increased operational role for the European Asylum Support Office relative to front-line countries. **This report diverges from the EC’s approach for two reasons:**

- The European political crisis, and the Italian crisis in particular, result from a lack of solidarity. This is why the process of restoring the CEAS should begin with the question of solidarity.
- The solution envisioned by the EC pays insufficient mind to the fact that it is people and not refugee quotas that are the issue in the search for reasonable and lasting solutions. By maintaining the principle of “first entry”, the solution envisioned by the EC fails to address a basic element, namely that most of the people having entered illegally have a plan and skills<sup>48</sup>. This must be taken into account as much as the legitimate concern of countries to not be placed into competition by these same people and to not be confronted with an excessive integration load.

**Consequently, to overcome today’s gridlock, this report places a priority on a reform of the Dublin Regulation emphasising the principle of solidarity between Member States (1). This change must lead to an increased and substantial role for the European Asylum Support Office (2) and a readiness on the part of front-line States to not simply improve their national asylum system (3) but to accept the reinforcement, on their territory, of the mandate of the European Border and Coast Guard Agency (the focus of Chapter 6).**

### 4.4 Orientation 1 A new solidarity-based philosophy of the Dublin Regulation

Two observations may help “second-line” countries to accept the highlighting of solidarity as a key principle in the orientation of people asking for protection.

The first observation issues from a two-year analysis of the situation in Greece regarding people received in hotspots or future “controlled cen-

<sup>48</sup>. See for example a survey done by the French Caritas organization “ We didn’t even know where our bark was heading”, Exiles’ words in Calais 2015..

tres”. Two-thirds of these individuals have succeeded in pursuing their initial plan rather than accepting the localisation decision taken concerning them<sup>49</sup>. Failing to take account of the survival issues of people may lead to the continuation of secondary flows, though this does not mean that the desires of the people in question should not be “corrected” or modified. But this can be achieved only through dialogue, which requires listening and time, a message constantly repeated by the organisations contributing to reception and support across Europe.

The second observation is obvious when analysing the statistical data produced by Eurostat in the last five years. These data underline the fact that, whatever the scale of migration and asylum, the same seven countries take on 75% of examination and 78% of the granting of protection in EU(27). This share rises to 85, 90% respectively for the ten most important countries for asylum in the EU. Taking into account the UK’s contribution in EU (28), those shares are not significantly modified (Tables 7 a and b, 8 a and b). A sense of solidarity already exists, one that needs to be developed without focusing on distributions in theory, and one that will grow over time.

**TABLE 7 ■ Asylum applications registered for the first time EU(28)**

	2013	2014	2015	2016	2017
EU in thousands	398	595	1325	1236	672
Share of 8* as a %	71.6	73.9	67.9	87.9	86.3
Share of 11* as a %	81.9	83.4	77.0	92.7	93.3

\*Germany, Italy, France, the UK, Greece, Austria, Sweden and Spain. \*\*The 8 plus Switzerland, Belgium and the Netherlands.  
Source: Eurostat.

**TABLE 7 bis ■ Asylum applications registered for the first time EU(27)**

	2013	2014	2015	2016	2017
EU in thousands	369	565	1286	1197	639
Share of 7* as a %	69,2	72,1	66,9	87,5	85,6
Share of 10* as a %	80,3	82,4	76,2	92,4	93,0

\*Germany, Italy, France, Greece, Austria, Sweden and Spain. \*\*The 7 plus Switzerland, Belgium and the Netherlands.  
Source : Eurostat

<sup>49</sup>. Field surveys led by the European arm of the International Migration Centre with people having transit-ed through Greek hotspots in 2016 and 2017 show that only one-third of them complied with the decisions taken concerning them.

**TABLE 8 ■ Total number of protections granted on initial application and appeal EU(28)**

	2013	2014	2015	2016	2017
EU in thousands	144	213	354	767	558
Share of 8 as a %	72.9	70.4	79	82.6	84.9
Share of 11 as a %	84	85.9	94.9	91.2	93

\*Germany, Italy, France, the UK, Greece, Austria, Sweden and Spain. \*\*The 8 plus Switzerland, Belgium and the Netherlands.  
Source: Eurostat.

**TABLE 8 bis ■ Total number of protections granted on initial application and appeal EU(27)**

	2013	2014	2015	2016	2017
EU in thousands	130	199	336	750	532
Share of 7 as a %	70,0	68,3	77,7	87,5	85,6
Share of 10 as a %	82,4	84.9	94.9	92,4	93

\*Germany, Italy, France, Greece, Austria, Sweden and Spain. \*\*The 7 plus Switzerland, Belgium and the Netherlands.  
Source : Eurostat.

This being the case, the solidarity-based operation of the renewed Dublin Regulation should include:

- **The introduction of a European pool of solidarity for asylum composed of countries situated on the external borders of the EU and other volunteer countries** (EU Member States and non-Member States belonging to the Schengen Area) accepting to take responsibility, in the name of the EU, for examining asylum applications on their territory in addition to the applications they receive directly. The sharing of this responsibility with countries of first reception will be carried out on the basis of annual caps, with no distinction made between origin nationalities. The caps will be established by shared agreement on the basis of a reasonable key adjusted annually according to the efforts observed for each one globally. The expenditure stemming from these efforts should be covered in full by the EU budget through to the completion of the asylum procedure, including the initial expenses linked to integration.
- **The distribution of receivable applications registered on the borders of the EU will be carried out by the European Asylum Support Office in conjunction with the competent national administrations on the basis of an in-depth orientation interview**

**taking into account the plans of individuals**, their abilities, a broad understanding of family relations and the chances of integration. It is in this spirit that the first relocations made between 2016 and 2017 from Greece were implemented, with dialogue between national protection officers, EASO representatives and migrants.

- In the event of repeated refusals of EASO proposals or where the application is observed to be unfounded, the return procedure is initiated.
- **If any blockages occur due to exceeded national caps and leading to excessive waiting lines and times, the EC will propose adjustments to the EU Council of Ministers and, where necessary, the introduction of an emergency procedure<sup>50</sup>.**

#### 4.5 Orientation 2 Towards a reciprocal understanding: a true European Asylum Support Office

Constituting a reduced form of a European asylum area, the founding countries of this pool of solidarity should no longer experience “secondary flows” between them. **In other words, where one of them grants or refuses refugee or subsidiary protection, the others would automatically approve that decision.** This mutual recognition of the validity of procedures corresponds precisely to the objective of the Council meeting in Tampere. It will also be necessary if we are to prevent the exercise of solidarity between Member States from being constantly challenged by the formation of secondary flows formed by people seeking protection not found in the country of first entry or in a relocation country<sup>51</sup>. If this mutual recognition of the quality of the decisions taken in respect of asylum examinations were to prove effective, even in a limited number of Member States, **it would make it possible to transform the existing EASO into an operational European asylum office able to carry out common, fair and effective actions on behalf of Member States** either in initial reception centres on EU territory or in conjunction with the UN Refugee Agency for

<sup>50</sup>. In a document entitled “[Better Protecting Refugees in the EU and Globally](#)” published in December 2016, the UN Refugee Agency established the precise functioning of a well-managed common asylum system ensuring access to the territory and taking into account the plans of migrants in preliminary interviews. A similar system was proposed by the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs in its review of the revised proposal for the Dublin Regulation in 2017.

<sup>51</sup>. “Relocation” means the transfer of a person arriving in an EU country to apply for asylum in another EU country where this application will be examined.

the reintroduction and creation of humanitarian corridors outside the EU.

The prospect of a solidarity-based functioning of the Dublin Regulation based on a “pool of volunteer countries” does not in theory require a radical transformation of the EASO. It would be compatible with a reinforcement of the EASO as proposed by the EC in September 2018. The acceptance of this proposal by all Member States would be a justified trade-off for the solidarity-based functioning of the Dublin regulation. It would however be necessary for the countries of the pool to commit to closely aligning their asylum systems with a view to equivalence. An existing provision in the Dublin Regulation allows Member States to replace countries of first entry on a voluntary basis, but this would not suffice to achieve this alignment. The legal bases would need to be found in the “reinforced cooperation” set out in the Treaty of Lisbon, which initially must involve at least nine Member States. If this objective, involving great complexity, were to fail, **the objective of an international public law treaty would remain open. The goal of this last would be to define the status, and in particular the autonomy, of a European asylum office providing signatory states with the safeguards necessary to their national prerogatives.** The rules established by this international treaty would be based on EU *acquis* and make it easier to build bridges with existing EU institutions, particularly between this office and the EASO.

#### 4.6 Orientation 3 Increase and diversify the extra-territorial possibilities of asylum access

**Whatever the method envisioned for reinforcing the EASO, the process must go hand in hand with the ongoing, though still modest, diversification of extraterritorial access pathways to asylum in the EU**, so as to spare those requiring humanitarian protection from the tribulations of travel organised by smugglers. The resettlement in cooperation with the UN Refugee Agency from refugee camps is appreciable in that it concerns refugees in the most dramatic humanitarian situations. If the EU were to regularly employ this practice, it would also be a way of stabilising the populations waiting in these camps. The implementation of humanitarian corridors<sup>52</sup> and the sponsorship of refugees by reception communities prepared to welcome and support refugees (a widespread practice in Canada) both have the advantage of ensuring the best possible conditions for subsequent integration.

<sup>52</sup>. Such as the corridors introduced successfully in France and in Italy by the Community of Sant’Egidio.

## 5 ■ A FEDERAL-STYLE AGENCY TO PROTECT THE EU'S EXTERNAL BORDERS

"Being truly European, I will celebrate what others deplore: borders as vaccines against the walls epidemic, remedy to indifference, safeguard for life."<sup>53</sup>  
Régis Debray

Not all the people entering the EU illegally are bound to remain on the territory. This right may only be guaranteed for people whose status as refugees, or as vulnerable or in danger and deserving protection, may be recognised on the basis of a fair procedure. These principles are constitutive aspects of the EU as subject to the rule of law. Their corollary calls for the existence of a border protection system ensuring reliable controls of EU territory entries and exits, the aim being to fight against threats, including terrorism, and to guarantee the access of people eligible for asylum. As demonstrated in the hotspot experience, in which the EASO and Frontex (reinforced since 2016 by the European Border and Coast Guard Agency) worked closely together with national administrations, the examination of asylum applications cannot be done fairly in the absence of secure borders.

### 5.1 A rare point of agreement for the EU 27: more efficient external border controls

The refugee crisis of 2015-2016 showed and continues to show that these controls are fragile or uneven, as performing these controls does not mean blocking or rejecting people but carrying out all the checks necessary to authorising entry in a reliable and timely manner. Righting this situation is one of the rare points of convergence between Eastern European and Western European countries in the Council of Europe. If external borders are overrun, states in the interior of the EU have the right to re-establish controls on their own borders and thus restrict the right of free movement, subject to the application of the Schengen Borders Code. And for new Member States, more than for old Member States, the free movement of people is of vital importance. In 2010 over six million people of working age had left the eastern EU to work in the western EU compared with just

<sup>53</sup>. Régis Debray, *Eloge des frontières*, Gallimard, 2012.

240,000 in the opposite direction. From 2000 to 2010, mobile workers from the new Member States accounted for more than one-fifth of the increase in the number of foreign workers in the old EU Member States, or some 17 million people. This fully demonstrates the interest for all Member States, including those not in favour of asylum solidarity, of reliable controls of the EU's external borders.

The Schengen Area resulted originally from an intergovernmental agreement signed in 1985 by six founding Member States, independently of the EEC Treaty and with no consideration of the common surveillance of the external borders of the area, instead relying on the reliability of national controls. Concerns over the reinforced surveillance of external borders did not arise until later, when in the early 2000s an awareness formed of the scale of illegal labour immigration. This led to the creation in 2004 of the Frontex agency, initially staffed by 30 people tasked with assisting Member States and Schengen associated States in the management of their external borders by contributing to the harmonisation of controls and facilitating cooperation between the surveillance authorities of the different countries. Meanwhile, the spectacular growth in smuggler networks facilitating and even organising illegal immigration added the inescapable issue of security to these concerns.

Taking account of these issues, compounded by the refugee crisis (the beginnings of which were evident as early as 2013), the mandate of the Frontex agency was extended and its human resources increased substantially so as to assist the most exposed countries. In 2015 it had a budget of €80 million and was able to coordinate the deployment on the ground of 300-strong teams made available by the Member States and already equipped with naval and maritime surveillance logistics in the Mediterranean<sup>54</sup>.

In March 2016 the size and remit of the Frontex agency were considerably expanded through a new European regulation. The agency's operational capacities on the ground were increased to 1,000 permanently mobilised people, earning the title of the European Border and Coast Guard Agency, composed as a majority of agents provided by national administrations and coordinated by Frontex agents. These "European guards" fully contributed to the implementation of the initial reception centres in Greece and

<sup>54</sup>. In this respect, the sea rescue operations led as part of Triton, Sofia and Themis in parallel to Italian operations are carried out under the operational responsibility not of the European Border and Coast Guard Agency but of the competent CROSS maritime control centre.

Italy (hotspots), where they participated in registration<sup>55</sup> and the gathering of information prior to asylum examinations, which remained the prerogative of the Member State. Their security function was extended, now being included in surveillance assignments and boosting Europe's capacity to detect external threats. The European Border and Coast Guard Agency has since 2016 been tasked with continuously assessing the "vulnerability" of national control systems. Any critical assessments result in recommendations, which are addressed to the Member States concerned and may be brought to the attention of the board of the agency, in which all EU Member States are represented, placing effective pressure on the national authorities in question.

## 5.2 Towards a federal-style European Border and Coast Guard

Addressing the European Parliament in 2018, Jean-Claude Juncker advocated further reinforcements of the European Border and Coast Guard Agency, including a substantial increase in workforce, which could rise to 10,000 by 2020 compared with around 2,000 today. The EC's proposal is highly ambitious, not just in terms of the resources to be mobilised but also in the qualitative changes it would make to the agency's operations and mandate. Under the proposal, a significant share of the border and coast guards would have a European status to ensure their harmonious coordination. The agency's operational centre in Warsaw would be responsible for ensuring the interoperability of the numerous information systems underpinning the functioning of the Schengen Area, notably increasing their capacity to detect risks during and prior to external border crossings. The added value resulting from the European integration of information collected from the 600 million EU border crossings registered annually would be undeniable.

However, the draft regulation submitted by the EC in September 2018 to lend concrete form to this proposal raises major objections as to feasibility and legitimacy. The desired increase in employees, who would to a large extent be subtracted from national resources, appears difficult to achieve. More significantly, several Member States have in the past proved highly reluctant to abandon their national sovereignty in respect of border controls, even in situations of emergency. In the eyes of legal specialists, a clear mismatch exists between the legal instrument used by the EC – a

55. Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard, 12 September 2018.

mere regulation – and the qualitative leap that it deems necessary for the protection of the EU's external borders.

Overcoming these contradictions calls for further collective discussions. Considering that the European area without internal border controls stands as the quintessence of a legal area in which free movement is an essential right, the responsibility for protecting the exercise of this right though the surveillance of external maritime and airport borders is a considerable task shared by the Member States of the EU. Free movement needs to be seen as a common good shared by the countries in this area, as important as the single currency for EMU countries. A difference in context can also be seen between questions concerning European military defence and those relative to the protection of common borders. While Member States often have different perceptions of military threats, the same is not true of assessments of external border threats. The latter are assessed jointly on a regular, monthly basis by the European Border and Coast Guard Agency and supplemented both by the agency's own analysis resources and the cooperation network (Europol) of national services. Lastly, the European momentum generated by the overhaul of the Dublin Regulation with a view to greater solidarity should for countries of first entry create a climate favourable to the effective involvement of the EU in the protection of external borders (Chapter 5).

As such, the logical approach would consist in forming an agency integrating as much as possible national capacities for the surveillance of external borders and implementing the attendant policing measures. But the legal instrument of a Council regulation delegating an executive function of such importance to a conventional European agency subject to national controls through a board of directors only and subject to European Parliament control solely through the approval of its budget is no longer relevant. Inspirational models here are to be found in governance terms in the European Central Bank and in operational management terms in the integrated military corps of, for example, NATO and the Franco-German Brigade.

**The proposed orientation is for the European Border and Coast Guard Agency to become an integrated agency with a high level of institutional legitimacy, similar to the European Central Bank**, which federates national central banks and implements a process of joint decision-making in which each national bank is a full stakeholder. This status of shared sovereignty would lend the European body in question a key symbolic significance with a view to establishing the EU as a uniform area from the standpoint of the

rule of law. It would also enable a decisive qualitative leap in the effectiveness of controls from a European and national perspective:

- By organising on the principle of subsidiarity the sharing of identification and control tasks between national and European bodies, it being acknowledged that the resources of the agency on external borders operate under the authority of the Member State concerned;
- By ensuring the best possible coordination of information and prosecution bodies (Europol) with the fight against smuggler networks led by the agency, and by enabling this last to initiate transnational lawsuits via Eurojust;
- By adopting the integrated management of the eight information systems linked to the Schengen Area, allowing real-time support for all Member States in their responsibility for controlling national security;
- By opening the way to the integrated and sustainable functioning of the European Border and Coast Guard Agency, in which all national civil servants would be called to serve for a significant part of their professional life.

Just as the introduction of the European Central Bank was preceded by the implementation of a “European national central bank system” governed by the principles of voluntary cooperation, so we could also see the gradual introduction of a federal-style agency to control the external borders of the EU. This gradual approach would enable us to better factor in trade-offs between national sovereignty and the collective security of Europeans. The challenge there is indeed as much practical as symbolic, as it goes about coordinating first line, mainly national forces on the ground with standing European operational support capacities.

## 6 ■ ORGANISING A NET FLOW OF LEGAL LABOUR IMMIGRATION AT EU LEVEL

“To name things wrongly is to add to the misfortune of the world”  
Albert Camus<sup>56</sup>

The trends observed since the early 2000s attest to the reality of a positive net flow of labour and family immigration towards the EU, which has continued even after the slowdown in growth starting in 2008. Reasoned estimates of the EU labour force suggest that this trend will continue and even heighten given the increasingly elderly population and the rise in the average qualifications of European labour. According to these projections, the net flow of immigration will remain stable in the next 30 years, at between 1.1 million and 1.3 million people a year (excluding internal EU mobility). These numbers are comparable with the trends of the last 15 years and will vary depending on the vitality of the European economy. Among these immigrants, Europe will need to be capable of attracting more high-skilled individuals from the rest of the world, though it will also continue to require a net contribution of low- or average-skilled people (see Chapter 3).

### 6.1 The birth of a common policy on labour immigration

Until the mid-1990s, the Council and EC implicitly admitted that external labour immigration was not desirable, since the priority was to be placed on internal labour mobility. This mindset changed in the 1990s with strong calls for labour immigration from Southern European countries (Spain, Greece and Italy). At the same time, the prospect of a major enlargement of the EU to include Central and Eastern European countries required the reinforcement of Treaty provisions on equal social and legal treatment for workers with third-country nationalities residing in Member States, in particular to guard against the risks of social dumping.

This led to the gradual emergence of a European area of freedom, safety, and justice, built on the Schengen Area and, since the Treaty of Amsterdam and the Council meeting in Tampere in 1999, aimed at a common

<sup>56</sup>. Albert Camus, *Sur une philosophie de l'expression*, 1944.

policy on legal labour immigration subject to the exclusive responsibility of Member States to determine the number of permanent residence permits to be issued for work reasons. This policy today is based on three types of directives adopted between 2001 and 2014:

- An initial directive, the inspiration for which can be traced back to the origins of the internal market, was aimed at the convergence of the social rights of foreign workers based in a Member State as “permanent residents” with those of national workers. The objective was to encourage their integration in the country of residence and in the EU (2003). After five years’ residence, these rights had to be identical and thus include the right to free movement in the EU. Together with a further directive on the right to family reunification, this text made a considerable contribution to national strategies on the integration of foreign workers and their families (2003)<sup>57</sup>.
- Two directives aimed at preventing the social dumping that would result from the unequal treatment of foreign workers having resided in the EU for a short time or on a temporary basis. The goal of the directive on the single work and residence permit was to build a simplified and harmonious cornerstone of rights for all foreign workers in legal situations in the EU (2011). It was supplemented in 2014 by a directive on seasonal work setting out the conditions for work permits of a maximum duration of nine months.
- Lastly, several “sectoral” directives establishing the conditions under which Member States grant residence permits and special rights intended to attract high-skilled workers and, in particular, the conditions under which these last may move freely in the European area. The directives address students and researchers (2004, 2005, 2016) and the mobile employees of large multinationals in Europe. As proposed by the EC, the objective of the European Blue Card Directive adopted in 2009 was to showcase the attractiveness of the European area with regard to other OECD areas.

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<sup>57</sup>. Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification and Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

## 6.2 A European framework and national practices that fail to discourage illegal immigration

The OECD recently examined, upon request by the EC, the European framework for labour migration<sup>58</sup>. The first point to emerge from the analysis is the progress made in aligning the conditions for legal labour immigration entry across the EU’s different Member States. The report also highlights clear weaknesses. The system of alignment, developed over time and without an overarching strategy, does not really succeed in reducing competition between Member States when it comes to attracting the most qualified workforce. For example, Member States retain the possibility of using national schemes independently of the system instigated by the EU Blue Card Directive, the effectiveness of which is therefore greatly reduced. While there is worldwide awareness of a European model of society in emerging countries, there is no vision of a European labour market, only that of separate national markets.

Illegal labour immigration is further encouraged by the systematic use by EU Member States of the requirement to present a work contract permit before entering the country. However, few companies hire without knowing the candidate. The majority of low and medium-skilled foreign workers in the EU have therefore entered the EU illegally or through family immigration. This practice is the opposite of that of the so-called “installation” countries of the OECD, such as Canada, often cited as an example, but also Australia and New Zealand, which periodically open calls for expressions of interest on the basis of an a priori programming of their labour needs.

The unpredictable nature of the management of legal European labour immigration also deprives the EU of a negotiating tool with third countries, especially countries of emigration and transit, whose cooperation is now especially sought after, particularly for the success of return policies. Legal labour migration channels are far too complex to be made sense of by candidates for emigration to the EU with low or medium qualifications. These types of emigrant therefore tend to simply set off and take their chances, aided only by the diasporas who facilitate integration through the margins with the help of smuggling organizations.

In these circumstances, it is essential to renounce the fiction of a “zero immigration” hypothesis, which is accompanied with increasingly numerous exceptions, at European level. Acknowledging labour immigration at

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<sup>58</sup>. OECD, « Recruiting migrant workers, Europe » Policy paper, 2017

European level and organising it on a legal basis would have two virtues:

- Providing alternatives to illegal immigration, which today is a heavy burden on asylum management in the EU;
- Offering a practical tool for negotiating with poor and emerging countries to facilitate their cooperation in the field of migration.

In this way, the concept of a European migration policy enshrined in the Lisbon Treaty in 2009, but whose modalities were only designed to support free movement within the EU, would be effectively implemented. We will argue here for a **European migration and mobility policy that emphasises the mutual interest of Europe and its external partners**. However, Chapter 4 showed the specificity of the political stakes of the asylum issue, which establishes a unique relationship between host countries and protected persons. We will therefore refer here to the “migration and mobility” aspect of a common European policy on asylum, migration and mobility.

### 6.3 Four guidelines for the European management of migration and labour mobility

The global international context certainly seems conducive to a “Europeanisation” of labour migration policies. The United Nations is now moving towards establishing a harmonised global set of rights and obligations for mobile workers. The Global Compact for Safe, Human and Orderly Migrations, which should be signed at a conference organised by the United Nations in Marrakech on 10 and 11 December 2018<sup>59</sup>, is already the result of three years of negotiations<sup>60</sup>. It paves the way for a comprehensive system of international mobility law, corresponding to the diverse situations that persons across all situations of transnational mobility may encounter, articulated with the degree of integration of mobile workers in the society in which they are or are likely to be integrated.

Due to its experience in managing the transnational mobility of workers internally, the EU seems well placed to be able to put the Compact into practice and to show it working. The Compact provides an international framework for better articulating the internal mobility of national workers and the legal immigration of foreign workers, with a view to encouraging not only their settlement but also their mobility within the EU. This would be consistent with the EU’s support for the “Sustainable Development Goals

<sup>59</sup>. Intergovernmental Conference to Adopt the Global Compact on Safe, Orderly and Regular Migration (ICD 2018)

<sup>60</sup>. The conference is a follow-up to the New York Declaration on Migration and Refugees of October 2016. A separate process will lead to the adoption of a Comprehensive Framework for Action for Refugees.

2015-2020”<sup>61</sup> adopted by the United Nations in 2015 and would increase its legitimacy with emerging States and poor countries that are signatories to the Marrakech Compact. It would also give a common thread to the tidying up of the complex system of sectoral directives that currently confuse residence permits for work reasons. Four guidelines could thus give substance, at the level of the Schengen area of free movement, to the migration and mobility component of a “European policy on asylum, migration and external mobility”, thereby clarifying the channels for legal European labour immigration:

1. On a proposal from the EC, the Councils of Ministers of the Interior and Social Affairs should **adopt a five-year target for net labour migration** as well as a target for family immigration. This target would be indicative and would not deprive the Member States of their ability to rule on admission quotas. The target would be established by taking into account the different levels of qualification required by the EU but also the needs of the major regions of the world with which the EU has a political partnership, especially the African continent.
2. The definition of this indicative target, broken down by major category of qualifications, should make it possible to **launch a European programme of calls for expressions of interest** in countries or areas that are of strategic importance to the EU in terms of migration, development and stability. The pools of applications thus created would have a dual purpose: to encourage the acquisition of useful skills in the EU and among its partners; and to facilitate the conclusion of employment contracts between European companies and foreign workers by avoiding the passage through illegality. Applicants responding to these calls and meeting the required qualifications should, under certain conditions, be eligible for **work visas allowing them to seek employment in the EU for a short period of time**.
3. Consolidate the current set of work visa texts into a single directive by defining a basic regime, based on the 2011 Single Work Permit Directive<sup>62</sup>, for a period of two to three years. Beyond this base, depending on the degree of integration into the labour market, the single directive

<sup>61</sup>. United Nations, “Transforming Our World: The Sustainable Development Agenda to 2030”, a sustainable development agenda adopted in September 2015

<sup>62</sup>. Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 establishing a single application procedure for a single permit allowing third-country nationals to residing and working in the territory of a Member State and establishing a common set of rights for third-country workers legally residing in a Member State

would specify the additional rights corresponding to different degrees of contribution to the European economy (for students, researchers, workers posted as part of a transnational service provision, entrepreneurs, workers with long-term resident status). The challenge is to harmonise the conditions of the right to internal mobility within the EU, which is an essential element of external attractiveness and internal rebalancing for EU countries. The crowning achievement of this piece of legislation would be the European Blue Card, which already facilitates “circular” migration<sup>63</sup>. Access to it should be open to low and medium-skilled workers whose skills are essential to the development of their region of origin. The scale of rights corresponding to various types of contracts should be internationally backed up by the international agreements to be signed shortly at the Intergovernmental Conference to Adopt the Global Compact on Safe, Orderly and Regular Migration (ICD 2018) organised by the United Nations on 10 and 11 December 2018. Since the prospect of such a unification of visas and the organisation of labour immigration to the EU implies a reduction in the margins of appraisal currently available to Member States, it should be implemented gradually.

4. Provide alternatives to family reunification while encouraging mobility and circular migration. While family reunification is essential in cases of permanent or long-term migration, the right to live and work in the country of migration with one’s family must also be promoted. Opening up rights related to mobility and not to settlement to legal migrants, as suggested in a joint text by the Terra Nova think tank and the Institut Montaigne<sup>64</sup>, seems all the more promising as it corresponds to the structural evolution of migration flows. This would involve introducing the portability of certain social rights (pension rights), adapting bilateral agreements on health risks, or establishing rights to stay spread over a period of 10 to 20 years<sup>65</sup>.

<sup>63</sup>. Migration is called circular migration when it involves the persons concerned travelling back and forth between the country of origin and the host country.

<sup>64</sup>. Thierry Pech, Jean-François Rial, Jean-Paul Tran Thiet, Jean-Claude Cousseran, Jean Faber, Alice Guelde and Leïla Vignal, “European asylum law: rediscovering solidarity”, Institut Montaigne and Terra Nova, 15 June 2018

<sup>65</sup>. *Ibid.*

## 7 ■ CO-BUILDING DEVELOPMENT AND MIGRATION

“Europe will be able, with increased resources, to pursue the achievement of one of its essential tasks: the development of the African continent.”

The Robert Schuman Declaration - 9 May 1950

From the outset, the EU established a privileged relationship with the so-called developing countries. Its own post-war renewal also signalled a new relationship with the former colonies of Africa, the Caribbean and the Pacific. Even today, the EU is still the main provider of global development assistance, notably through the EU-ACP partnership<sup>66</sup>. At the beginning of the century, the European cooperation strategy aimed to become less “Euro-centred” by putting itself at the service of the Millennium Development Goals (MDGs)<sup>67</sup>. The EC has maintained this aim with its latest proposals “Our world, our dignity, our future<sup>68</sup>”, which adjust European cooperation to the now shared challenges of sustainable development, i.e. economic, environmental and social.

### 7.1 The EU’s ambiguous message to developing countries

In line with this aim, which is open to the human development needs of the EU’s external partners, in 2005 the EC proposed positively linking migration and development in a balanced and landmark text<sup>69</sup>. For the first time, it referred to reciprocal migratory exchanges, the importance of avoiding a brain drain and the role of diasporas in the development of countries of origin. Today, however, the EU’s messages to developing countries, particularly in Africa, have become ambiguous and even unreadable. On the one hand, the EU affirms its support for the formation of free trade and

<sup>66</sup>. Economic Partnership Agreements (EPAs), trade agreements aimed at developing free trade between the European Union and the so-called ACP countries (Africa, Caribbean, Pacific)

<sup>67</sup>. Adopted in 2000 in New York, with the United Nations Millennium Declaration, by 193 UN Member States and 23 international organizations

<sup>68</sup>. New European Consensus on Development “Our World, Our Dignity, Our Future”, Joint statement by the Council and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the Commission, 7 June 2017

<sup>69</sup>. European Commission, “Migration and development: concrete guidelines”, COM(2005) 390 of 1 September 2005

human mobility areas on the African continent, which are indeed the key to self-sustaining development. On the other hand, as a result of the shock caused by the migration crisis of 2015-2016, foreign development policy tools and resources appear to be increasingly used to freeze this mobility, with the aim of diverting irregular immigration from the EU. In addition to migration partnerships with transit or readmission countries, there are now agreements on flow control such as those signed in 2016 with Turkey and 2017 with Libya; the establishment of the EU Trust Fund for Africa<sup>70</sup> to support forces and equipment controlling population movements; and the introduction of a general conditionality principle binding EU cooperation with migration control within the “compact 2016”<sup>71</sup>. The ongoing discussions on possible “landing platforms” in countries on the southern shore of the Mediterranean envisaged by the Austrian Presidency of the Council of the EU are also in line with this logic of externalising asylum and controlling immigration.

While it is understandable that urgent measures were necessary to address serious imbalances, maintaining them would contradict both the EU’s development requirements and its long-term interests. We must recall the impasses of a European policy conditioned by the desire to systematically stop the movement of people:

- In the short term, this blindly applied conditionality unbalances the local economies of the poorest countries such as Niger and increases the risks faced by populations forced to move<sup>72</sup>; it strengthens the hand of the most assertive dictatorships that use militias to extend control of populations such as in Sudan and Eritrea<sup>73</sup>.
- In the medium term, it reduces the role of vital savings flows returned by migrants to their countries of origin. It makes it difficult to exercise free movement between African countries.

<sup>70</sup>. The EU Trust Fund for Africa for Stability and Addressing the Root Causes of Irregular Migration and Displacement

<sup>71</sup>. « Compacts » or « Comprehensive partnerships » are defined by the European Commission as “a new partnership with third countries framed in the European Agenda for Migrations”, COM(2016) 385 final.

<sup>72</sup>. Friends of Europe, “Global flows, migration and security”, Discussion Paper, November 2017; Sara Prestianni, “L’externalisation, nouveau pilier européen de l’asile”, Confrontations Europe n°123, October/December 2018

<sup>73</sup>. Stiftung Wissenschaft und Politik, “Profiteers of migration?, Authoritarian states in Africa and European Migration Management”, Research Paper, July 2018

- Finally, it fundamentally contradicts the need highlighted in Chapters 3 and 5 to organise long-term legal immigration and mobility from Africa to the EU.

It is therefore necessary to restore clear visibility to the migration issue in the common construction of sustainable development between the EU and African countries. This should be done in the spirit of the renewed “equal to equal” partnership mentioned by the EC President Jean-Claude Juncker in September 2018. The EU’s decision on a new external investment<sup>74</sup> plan for developing regions, modelled on the Juncker plan, will find favourable ground in Africa. But it must be complemented by a clear message and initiatives regarding the EU’s willingness to contribute to the construction of a future for the younger generations of Africans. The report presents here guidelines aimed at enhancing the role of African populations in their own development, with the full support of the EU.

## 7.2 Guidelines for a genuinely new direction in the Europe-Africa relationship

- **Increase recognition by the EU of the role of the Organisation of the African Union (OAU) as a political body for unification and pacification**, which should also include the southern Mediterranean states. Morocco’s recent accession to the OAU is an important event that provides an alternative to the division between the North and South of the Sahara and is part of a vision for the future of Europe-Mediterranean-Africa cooperation. According to the prospective intuition of the IPEMED think tank, this development will rewrite the maps between the three zones and multiply interactions around new places of cooperation: diaspora forum; network of national development banks around a Euro-African bank for sustainable development<sup>75</sup>. The EU-Africa partnership as announced by Jean-Claude Juncker also aims to bridge the gap between the North and South of the Sahara on the continent.
- **Confirm the EU’s commitment to promote the development of the five major regional areas that are meant to become the frameworks for the development of free trade and the mobility**

<sup>74</sup>. “Strengthening European investment for jobs and growth: towards a new European investment plan” COM(2016)581 final. This plan aims to mobilise 44 billion euros over 4 years, made up of public and private funding.

<sup>75</sup>. See Jean-Louis Guigou and Pierre Beckouche, “La verticale, fondation pour accélérer l’intégration Méditerranée, Europe, Afrique”, December 2017

**of people.** Africa will first of all be rich in the exchanges and complementarities that it can develop within its own borders. The lowering of customs tariffs, the convergence of basic standards for food and industrial goods and the alignment of customs practices potentially generate considerable economies of scale, as shown by the example of the Organisation of East African States, which is currently the most advanced in this process of mutual opening. The EU could **appoint high representatives for sustainable development** cooperation in each of these areas by calling on European and African personalities who would embody this renewal. They would be responsible for strengthening the coordination of European aid in order to encourage progress towards mutual openness and ensure coherence between economic aid, aid for structuring labour markets, aid for personal security and stability of the rule of law.

- **Optimise the efficiency of the return of African savings to countries of origin.** The savings sent by African migrants in Europe back to their families are considerable and are estimated to be three to four times higher than the official development assistance received by these same countries. These resources are particularly necessary to support consumption and activity in the most fragile countries where public aid is often diverted. Securing the flow of these resources, avoiding excessive levies, could be the subject of joint initiatives between European development agencies with experience working and investing in Africa. They could also propose investment instruments linking African diasporas to local development and new activity projects.
- **Thwart tax evasion and fraud procedures that penalise African development.** This is becoming a major political emergency, given the considerable financial resources now at stake. So far, the initiatives taken by both the EC and the EP to ensure at least the transparency of the accounting and profit allocations per country made by European companies, in particular those exploiting raw materials, have faced alleged competitiveness challenges. Measures taken to combat fiscal opacity in Europe should be extraterritorialised. Following the model of the Social and Environmental Compacts set up at the initiative of the United Nations, to which companies can join individually, the EU should take the initiative for tax compacts.

### 7.3 Refocusing EU-Africa relations on work, vocational training and mobility

However, the main thrust of this report aims to **thwart smuggling networks by organising the conditions for legal immigration and mobility from African countries to the EU.** In addition to opening channels for the resettlement in the EU of persons identified by UNHCR as a priority for asylum protection (Chapter 4), it should be possible to grant visas for labour immigration from European consulates in Africa, in accordance with the approach proposed in Chapter 6.

In concrete terms, the EU will support the creation of labour exchanges located in intermediate areas (cities or regions) that already polarise intra-African mobility (map). Four-fifths of young Africans migrate in Africa between these intermediate and rural areas<sup>76</sup>. Such work grants would first of all have a function of facilitating vocational training for the basic and intermediate qualifications that are sorely lacking in Africa for the mechanical, transport, construction and public works sectors and the major collective water and energy services. They could also initiate activities related to the acquisition of basic skills in partnership with cooperative financing networks. They would also be responsible for organising the calls for expressions of interest organised by the EU described in Chapter 6 and likely to lead to the granting of a work visa facilitating professional mobility, with or without a contract. The EU, for its part, will set up, on the basis of the experience of the European EURES network, a process for the recognition of qualifications acquired in African training centres.

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<sup>76</sup> Fabrizio Natale, Silvia Migali, Rainer Münz, "Many more to come? Migration from and within Africa", European Union Publications, March 2018.

## MAP 1 ■ Migration routes in Africa



Source: Stiftung Wissenschaft und Politik, "Profiteers of migration?, Authoritarian states in Africa and European Migration Management", Research Paper, July 2018

Through these work experience grants, the EU must make itself known to young Africans for what it is, notably an EU based on the rule of law that also organises its migratory exchanges. This communication should be one of the tasks of major international organisations such as the International Organisation for Migration (IOM, the United Nations migration agency based in Geneva) that already cooperate with the EU on the implementation of voluntary returns. At a time when the migratory choices and pathways of young Africans are constantly being informed by the social networks of families and diasporas, the EU and its Member States must feed these new media by opening a portal where the opportunities they offer, but also the risks of failure and the penalties incurred in the event of irregular entry for the purpose of job searching, would be made visible. The Rabat Process<sup>77</sup> is a potential example of these new "good practices". The Rabat Process brings together more than 50 European and African countries from North, West and Central Africa, as well as the EC and the

77. Rabat Process - Euro-African Dialogue on Migration and Development

Economic Community of West African States (ECOWAS). It was set up on the initiative of Spain, France, Morocco and Senegal and aims to promote synergies between migration and development. It could serve as a pilot example for the concrete launch of other such African labour exchanges.

As Stephen Smith explains, in a book that is also highly questionable in its demographic references, "Africa is neither late nor early, it is elsewhere"<sup>78</sup>, driven by younger generations who no longer wish to be relegated to a dead end by the older generations. Africa is moving in a perhaps unexpected direction that is creating social, environmental and cultural innovation. It is vital for the future of Europe that Africa succeeds in this new journey. Africa must be supported by new actors, in whom trust must be placed: members of the diasporas both in Europe and in Africa, including many potential entrepreneurs; operators of development banks transformed into incubators for local projects; NGOs mediating new technologies and multiplying network exchanges; European companies involved in "co-industrialisation"<sup>79</sup> and the circular economy.

The renewal of the Cotonou Agreement<sup>80</sup> would provide a unique opportunity for the EU to convey such a message, which makes human development the main focus for a rebuilding of the Europe-Africa relationship, in contrast to that of clearly self-centred global powers such as the United States and China. The new Euro-African situation also encourages the oldest Member States committed to Africa, such as France, Germany, Spain, the United Kingdom, Italy and Portugal, to overcome the mutual mistrust that often drives them, by agreeing to act more collectively under the EU's identity.

78. Stephen Smith, *The Rush to Europe: Young Africa on the Road to the Old Continent*, Grasset, 2018

79. The idea of co-industrialization is inspired by the relationship in the division of manufacturing labour that was built after 1989 between Germany and some Eastern European economies.

80. Partnership Agreement 2000/483/EC between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (OJ L 317, 15.12.2000, p. 3-353). This agreement will expire in February 2020.

## 8 ■ EUROPEAN MEMBERSHIP TO STRENGTHEN NATIONAL INTEGRATION

“Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States”  
Communication from the Commission<sup>81</sup>

Most Europeans support a reduction in immigration flows. They believe that the priority should be to address the failure of integrating migrants and their descendants already present in our society. Convinced by this failure, they also tend to raise the scale of a foreign presence by their side. However stopping immigration is not the appropriate answer. If we drastically reduced annual external immigration flows from the EU, the resident foreign population would decline by 2%, leaving only the question of integration, which however, is hardly the subject of bold proposals.

Above all, we have to recognise European citizens’ apprehension with regard to integration, concerning the difficulties felt and/or stated for the people of Islamic culture to finding their place in the European habitus. Within this apprehension, there is a trap as far as the mistrust felt through Islamic sensitivity fuels temptations of isolationism and identity-based reflexes and stands in the way of the patient efforts for interaction across the territories. We need to free ourselves from this trap, by not denying the difficulties on the ground, but also by recognising the real and rare breakthroughs in encounters with the other. The aim of this report is not to merely go into serious detail on this matter. We will merely highlight two aspects towards which Europe in the broad sense, and the EU in particular, may contribute to create a favourable environment for nations’ efforts to “successfully integrate”.

### 8.1 Europe as an opportunity for Islam’s modernisation

#### BOX 5 ■ Ahmed the European

Ahmed was born forty-five years’ ago in Morocco. Arriving in France as a small child, he chose to naturalise his identity. Such a choice was not necessarily imposed but seemed logical to him with a plan to integrate into

<sup>81</sup>. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: A Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union, COM (2005) 389 final, dated 01/09/2005

French society. He was encouraged to do so through his qualification acquired in a business school. His talent along with his intercultural baggage meant he was quickly hired by a company in the agri-foods sector. In no time, he was sent to work on a mission for a long-term stay in Sweden. In this country, he assessed what he owed to his education and the social codes received in France, which provided a stark contrast with the Swedish setting. Gradually, his work colleagues, integrating him as a southern type that they associated with France, referred to him as “Ahmed, the Frenchman”. Ahmed appreciated this name, recounting his journey before an audience of French compatriots... When we ask him if, first and foremost, he feels French, Swedish or Moroccan, Ahmed replies that, above all, he feels European. That is the best way to describe the combination of his various kinships.

The first aspect focuses on the opportunity offered to Islam, in search of its own modernity, by the melting pot of European civilisation, implying a system combining a single model for society based on infinite cultural varieties. To demonstrate this opportunity, we will first discover Ahmed the European’s personal story, among many others. Ahmed’s story (see boxed text 5) suggests a potential resonance between two varieties; that of Islam and that of Europe. Islam in Europe is fundamentally diverse and by no means monolithic, neither from a cultural or theological perspective. Such diversity, which is also a source of conflict and rivalry, should be well received in diversity and fundamental pluralism, which are the hallmarks of European unification. As pointed out by the writer, Frédéric Sarter, “it is the values themselves that we vindicate (freedom of expression, freedom of religion), which should enable “Muslims” in the broad sense to live their religion in Europe fully, openly and in a diverse way”<sup>82</sup>. The “Shared basic principles from the integration policy” adopted by the Justice and Home Affairs Council in November 2004, are still useful today to help overcome the national dilemmas of integration and find compromise required by genuine integration in each particular context.

Perhaps we would be more inclined to compromise, as Europeans, if we looked back over our long history again. It is through the Arab-Muslim world that the ancient wisdom of Greek philosophy was passed on to the European Middle Ages, and subsequently by Thomist thought. As Europeans in search of the sources of an identity that is constantly being questioned by new contributions, we would benefit from reconnecting the old thread with Islamic culture and the Islamic faith. Conversely, though, Europe would undoubtedly be a suitable place for the renaissance of a European Islam, open to a re-reading of the many traditions that coexist or clash. This was

<sup>82</sup>. Frédéric Sarter, « Intégrer l’islam à l’Europe ? » (“Integrating Islam in Europe?”), *Études – Revue de culture contemporaine*, janvier 2012 (Studies – Contemporary Culture Review, January 2012)

the ambition of a certain Mohammed Arkoun in France, with his university of Muslim science and knowledge, a project that could not be completed against the stringent background of French *laïcité* (secularism). The “open, transparent and regular” dialogue that the Union’s institutions conduct with churches, associations, and religious communities<sup>83</sup> could champion the idea of a European university dedicated to the knowledge of Islam.

## 8.2 Mutual learning of integration processes

A second, practical aspect through which the EU could contribute to the success of national integration processes for foreign persons lies in the need and opportunities to learn from each other. The EU is not directly responsible when it comes to integration. It is the Member States that educate, house, care for and provide access to work. They are also the ones who set the concrete framework of secularism. However, the EU is responsible for supporting the national integration policies<sup>84</sup> in the form of a coordination capacity.

As demonstrated by a comparative study conducted among 28 States (27 members of the EU and Norway) by researcher Yves Pascouau<sup>85</sup>, the EU has already played an important role in developing national policies, leading to genuine convergence in certain areas such as language learning and civic knowledge in the host country. While the idea that integration is generally a failure prevails, the comparative study reports on the many improvements to deliver more effectively on an integration pathway for workers and their families. For the author, this real and constructive influence is above all owing to the legal basis provided by the two directives governing family immigration and acquiring permanent residence status after five years of residence, which, in particular, provides for the right to mobility within the EU (Chapter 6).

There is a huge need for Member States, and more generally all integration actors, to learn from each other. Based on common principles adopted in 2004 by the Council of Europe meeting in The Hague, an extensive network of correspondents and informal exchange mechanisms has been developed. Yves Pascouau’s comparative study highlights areas where best

<sup>83</sup>. Treaty on the functioning of the EU, article 17.3

<sup>84</sup>. Recognised in article 79 of the Treaty on the functioning of the EU (TFEU)

<sup>85</sup>. Yves Pascouau, « *Les dispositifs d’intégration des ressortissants de pays tiers dans les États membres de l’Union européenne : rapport comparatif* », (Measures and rules developed in the EU Member States regarding integration of third country nationals: Comparative Report) European Policy Centre, December 2014

practices could be extended:

- In terms of access to the labour market, success depends on the involvement of employer companies and the methods used to acknowledge qualifications already obtained, which are often very rigid.
- With regard to language learning and civic knowledge in the host country, few countries invest upstream in countries of origin. Moreover, the investment should be made as a matter of priority during the very first years of residence.

The richness of mutual learning from national practices is strongly reflected in other more specific but compelling reports such as the Franco-German report on integration, written by Jean-Marc Ayrault and Annegret Kramp-Karrenbauer<sup>86</sup> or the report focusing on access to work and vocational training for refugees from a peer review exercise held in Berlin in October 2017<sup>87</sup>. These various reports are not systematically monitored. The EC, on the basis of Article 79 TFEU, should take the initiative to organise a form of open method for coordination based on the adoption of integration targets, leaving it to the Member States to choose the means to achieve them.

<sup>86</sup>. Jean-Marc Ayrault and Annegret Kramp-Karrenbauer, « *Promouvoir l’intégration au sein de nos sociétés* » («Promoting integration within our societies»), a report addressed to the President of the French Republic and the Chancellor of the Federal Republic of Germany at the 18<sup>th</sup> Franco-German Council of Ministers, April 2016

<sup>87</sup>. Peer review “Integration of Refugees in the labour market”, conference organised in Berlin on 11 and 12 October 2017. Report for France by Jean Claude Barbier: “Forward to before 1991? Strengthening integration in the labour market for Refugees and asylum seekers”.

# CONCLUSION: REASONABLE EXPECTATIONS

The EU is not doomed to repeat the chaos caused by the migration crises of 2015 and 2016. On the contrary, it is better equipped than its individual Member States to manage humane and effective external migration, which in any case is part of its demographic future. It is better equipped because of the dimensional effect that its size gives it to engage in useful dialogue with its neighbouring countries, particularly with African countries. This is due to the benefits of solidarity that result from the mutual commitment to apply the same rules of law.

The migration crisis of 2015 and 2016 is characterised by an exceptional influx of people seeking asylum, including many who could not receive such protection. It is not yet completed. In fact, it leaves deep traces in public opinion, seized by doubt, in the overload of reception facilities, in the creation of networks and passageways that continue to haunt the people's imaginations, especially as the apparition of an impasse remains for many young people, especially in Africa. Moreover, some of the decisions taken to contain the crisis do not seem to have a promising future, particularly those based on the goodwill of uncertain partners and those that thwart the development process itself.

We wanted to demonstrate that it was appropriate to “take the bull by the horns” by refusing to give in to the populist injunctions taken together with impossibilities and contradictions, while making it even more difficult to achieve the necessary progress towards integration.

Reason was used based on two coherent lines of causality:

- If we want to be able to meet the EU's fundamental commitments on access to asylum in a sustainable way, while maintaining the securities of free movement, we cannot avoid creating a new solidarity pact between a group of voluntary Member States and the others, especially those at the external borders. Such a political gesture would change relations between all States, warranting protection of external borders as a real subject of common interest and ultimately leading to the creation of a federal structure for the European Border and Coast Guard Agency, inspired by the European Central Bank model. This solidari-

ty pact, designed in the interest of all Member States, is obviously a collective financing initiative and commits the countries that pledge to take a major step towards the mutual recognition of asylum procedures. It should not be ruled out that this last step could be taken under a separate treaty if the framework for enhanced cooperation was not accepted or could not be implemented in practice. Asylum and border protection should not be confused. They also have different legal bases.

- Another common theme is the need to provide the EU with the capacity to organise, manage and propose legal labour migration. This is necessary for two complementary reasons: illegal labour immigration must be discouraged as far as possible from interfering with asylum; the EU's partners, particularly in Africa, must be offered positive outcomes that encourage them to structure themselves the labour market for the younger generations. The proposed guidelines in this area are part of an ordinary legislative programme for legal immigration. They are likely to give a new direction to cooperation in the area of qualifications and skills, the creation of new activities and investment that should no longer be disjointed to lead to what have been specified as labour exchanges, but which would have significantly different operating modes and functions in Africa from what they have historically been in Europe. The issue of mobility, i.e. the reversibility of labour force flows, would play a key role here: it meets the expectations of the younger generations and would create synergies between mobility to the EU, from the EU and between the countries that make up the African fabric.

These two main themes justify the title of this policy report “For a common European policy on asylum, immigration and mobility”. At a time when the European institutions are normally due to be renewed in 2019, it would be legitimate to wait for this renewal to give a new Commission and a new Parliament the chance to consider a programme for the duration of its legislature that would include two distinct branches: one relating to enhanced cooperation for asylum and the other to the traditional Community method for all other areas. It is up to the European Council, as it was until 2009, to drive such an initiative.

This outlook will appear to be out of step with the current deliberations in the EU Council of Ministers, which are creating the spectacle of being locked into an exclusively short-term, case-by case approach, with the inhuman ramifications that this entails. We are convinced that the majority

of public opinion is not fooled by the vanity of the false pretences that are opposed by the upholders of a completely outsourced asylum system and complete extinction of migration. They are waiting for reasonable expectations that also respond to the share of generosity that is within them and that corresponds to what they conceived of Europe. This report wishes to contribute to this.

## LIST OF PERSONALITIES MET FOR THE REPORT

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- Elisabeth Guigou, former minister, president of the Anna Lindh Foundation, member of the Board of Directors of the Jacques Delors Institute
- Pascal Lamy, former director of the WTO, president emeritus of the Jacques Delors Institute
- Joachim Bitterlich, former adviser to Chancellor Helmut Kohl for European Affairs, member of the Board of Directors of the Jacques Delors Institute
- Jean-Christophe Dumont, Head of the International Migration Department at the OECD
- Yves Pascouau, associate researcher at the European Policy Center and the Jacques Delors Institute
- Stefano Manservigi, Director General of DG DEVCO (DG International Cooperation and International Development) at the European Commission
- Stefano Signore, Advisor to the Director General DG DEVCO at the European Commission
- Vincent Picard, in charge of international relations of Sant'Egidio France
- Jean-Louis Guigou, President of the Institute for Prospective Economics of the Mediterranean World (Ipemed)
- Zoé Campiglia and Annabelle Roig-Granjon, members of the Brussels office of the Office of the United Nations High Commissioner for Refugees
- Rainer Münz, Migration and Economic Adviser at the European Political Strategy Center at the European Commission
- Laurent Muschel, Director for Asylum at DG HOME (DG Migration and Home Affairs) at the European Commission
- Corinne Balleix, in charge of European asylum and immigration policy at the Ministry of Europe and Foreign Affairs
- Pascal Brice, Director General of the French Office for Refugees and Stateless Persons (OFPRA)

- Thibault de la Haye Jousselin, Head of Cabinet to the Managing Director of Frontex
- António Vitorino, President of the International Office for Migration (IOM), former President of the Jacques Delors Institute
- Antoine Cahen, Secretary of the LIBE Committee of the European Parliament

The author thanks Yves Pascouau, Corinne Balleix and Antoine Cahen for their careful reading.

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