

## **EUROPEAN COMMISSION'S ROLE IN DEVELOPING AN EFFICIENT MANAGEMENT OF MIGRATION FLOWS.**

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### **ABSTRACT:**

*IN THE LAST DECADES EUROPEAN UNION WAS FORCED TO COPE WITH MULTIPLE EXTERNAL CHALLENGES. NOWADAYS, THE PROFOUND TRANSFORMATIONS OF THE INTERNATIONAL SYSTEM AND THE EFFECTS OF GLOBALISATION AND INTERNATIONALISATION ARE MAKING THE RISKS AND THREATS HARDER TO MANAGE. FROM THIS PERSPECTIVE A HUGE PRESSURE IS EXERCISED ON THE DECISION MAKING SYSTEM, BOTH AT NATIONAL AND EUROPEAN LEVEL. THIS ARTICLE FOCUSES ON THE ROLE PLAYED BY THE EUROPEAN COMMISSION IN DEVELOPING AN EFFICIENT MANAGEMENT OF MIGRATION FLOWS. OUR ANALYSIS IS CONSIDERING THE STATUS OF THE E.C. WITHIN THE E.U.'S STRUCTURE AND THE INSTRUMENTS AVAILABLE FOR NOW.*

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**KEY WORDS:** EUROPEAN COMMISSION, MIGRATION FLOWS, MANAGEMENT, POLICY, GOOD GOVERNANCE.

### **INTRODUCTION**

Since ancient times people have sought better living places, more stable and more favorable for their personal development. It is in the human nature to explore, to travel, to search and most of the times, when it comes about large masses of individuals that moved from one space to another, all these desires were activated by contextual or specific events. For example, issues like lack of food or drinking water, epidemics, natural disasters, wars or other types of conflicts always resulted in population moving to a different place, looking for a safer and stable environment. In the last decades, due to globalization and internationalization, migration has become more diverse and dynamic. Nowadays, the most common reasons why people migrate are related to environmental, economic, cultural and socio-political aspects of their daily life. These factors, that can be placed in one of the aforementioned categories, may act both as pushing or pulling factors. More than this, there are very rare cases in which we can talk about forced or involuntary migration, but more often we can identify situations of impelled migration.

Regarding the European space, it was over time one of the most preferred destinations for individuals, when it comes about migration. In the last two decades, except the most recent massive flow, the Old Continent received people from Asia, Africa, Middle East and so on. According to Sander, Abel and Bauer, between 2005 and 2010, the most significant

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migration flow to Europe was from Africa, and they talk about almost 2 million people.<sup>3</sup> If then, the issue of migration was not considered a high-priority one, in the last year it claimed the first place on the list.

### EUROPEAN UNION AND THE IMMIGRATION ISSUE

Over time, European Union developed a specific interest, mostly at a theoretical level, on what concern the migration flows, but because major issues were not recorded at regional level, the member states and the decision makers cope with the topic in a relaxed way. Starting with the '80's the immigration flow started to increase substantially, especially in the western countries, and the main reasons for immigration resulted from the growing global inequalities between poor and rich countries as noticed by Patrizia Calefato.<sup>4</sup>

More than this, in the last decades the European Union made efforts to adopt a common approach in what concern the immigrants flows. Instruments and policies were created to be useful for both Member States and for the community as a whole. This is because in 2000 Jef Huysmans brings into discussion the securitization of migration at EU level. After more than two decades of intensifying immigration, the author recognize a reluctant European trend related to this phenomenon<sup>5</sup> and in an indirect way the fact that the member states started to understand that for the long term migration is not only about benefits and advantages. He said that the third pillar - Justice and Home Affairs, the Schengen Agreement and also the Dublin Convention indicated an increase of restrictiveness in terms of migration and a more intrusive way on how is managed at community level. It was a turning point when the European Union became more aware that the security issues and the challenges to national identity and European resources were not isolated situations but a more frequent reality.

We can say that 2000 was the specific point in time when the European community has realized its cultural and societal vulnerability in front of external elements. At that time, during an intensive process of enlargement and horizontal integration (between 1990 and 2005), the European Union realized that immigration can only be managed through joint efforts and should not be seen as a private issue that belongs to each member state. That happened because immigration was not seen anymore as a need for covering the national needs of workforce or an instrument that helps economic growth. Moreover, although the approach was not a new one, the European community became more aware of the effects produced by the immigration flow recorded between the 80's and 90's. Even if, two decades before the labor immigration was intensively restricted, individuals were allowed to come to Europe on the basis of family reunion<sup>6</sup>. The effects and the effective adaptation of the European Union occurred in the same time, but in some aspects it was already too late.

Refocusing our attention to aspects related to joint management of the immigration issues, we must mention that in its earlier phase this approach was first put into practice through the establishment of TREVI, the Ad Hoc Group on Immigration and the Schengen group. Although these entities were not formally part of the process of European integration they have helped to unite all the national approaches into a single migration policy. As noted by Huysmans, following on from the Single European Act (1986) and the momentum developed in the Schengen group, the Treaty on European Union (1992) introduced the Third

<sup>3</sup> Guy Abel, Nikola Sander, "Quantifying Global International Migration Flows", *Science*, 343 (6178), 1520-1522.

<sup>4</sup> Patrizia Calefato, *Europa Fenicia: Identità linguistica, comunità, linguaggio come pratica sociale*, (Milano: Franco Angeli, 1994), 80-81.

<sup>5</sup> Jef Huysmans, "The European Union and the Securitization of Migration", *Journal of Common Market Studies*, 38(5), 2000, 751-777.

<sup>6</sup> Russel King, "European International Migration 1945-1990: A Geographical and Statistical View", in King, R. (ed.), *Mass migration in Europe*, (London: Belhaven), 1993, 19-39.

Pillar on Justice and Home Affairs in which migration was explicit subject of Intergovernmental regulation Within the European Union<sup>7</sup>. But, in few years dissatisfaction with the approach promoted by the Third Pillar emerged, intergovernmentalism being the main reason for disputes. Like this, in the Treaty of Amsterdam all the section referring to immigration, asylum and refugees were communitarized.<sup>8</sup>

After that moment, at European level an intense struggle started in order to achieve a common immigration policy. But that did not happened and today we are having two sets of laws concerning this issue: one represented by the EU rules and the other containing the member states national rules. Even if, since 2009 the member states and the European institutions are developing a common immigration policy for Europe, most of the work was made on the immigration and visa rules that should be valid all across the 28 member states (27 if Brexit will happen). From this perspective the Treaty on the Functioning of the European Union (2009) includes common rules on: entry and residence conditions for migrants; procedures for issuing long-term visas and residence permits; the rights of migrants living legally in an EU country; tackling irregular immigration and unauthorized residence; the fight against human trafficking; agreements on the readmission of citizens returning to their own countries and incentives and support for EU countries to promote the integration of migrants.<sup>9</sup> More than this, nowadays there are specific measures at European level that cannot be fully implemented inside the member states because there are some aspects that rely entirely on national decision: the total number of migrants that can be admitted to the country to look for work, the rules on long-term visas (more than 3 months) and all the conditions to obtain residence and work permits when non EU-wide rules have been adopted. Additional to those mentioned above all the final decisions related to migrant applications are taken by the national states.<sup>10</sup>

In 2016, due to the most recent immigration flows we faced, immigration became one of the biggest concerns. More than this it was related with the latest terrorist attacks and used by the far right groups to promote and motivate their position and ideological beliefs. Even the debate for BREXIT in the United Kingdom was rigged out with the challenges to security and welfare caused by the old and new immigrants. Like this, the phenomenon became also a tool and a ground to redesign and recalibrate former instruments and policies designed to administer the flows of immigrants. Is not that what was elaborated before is useless or not good enough to manage the new challenges, but the fact that the previous measures and instruments were not transformed into functional and accessible mechanisms, is the main reason why the entire European political class is now looking for different approaches. No one asked how the current laws and tools can be adapted and streamlined to face the contemporary challenges.

However, to better understand what was done and the role of the European Commission in this whole context in the following pages we will identify and analyze the most recent policy developments.

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<sup>7</sup> Abdelmalek Sayad, "L'asile dans "l'espace Schengen": la définition de l'autre (immigré ou réfugié) comme enjeu de luttes sociales" in Caloz-Tschopp et al. (eds), *Asile- Violence - Exclusion en Europe. Histoire, Analyse, Prospective*, (Geneva: Section des Sciences de l'Education de l'Université de Genève), 1994, 193–238.

<sup>8</sup> Theodora Kostakopoulou, "The "Protective Union": Change and Continuity in Migration Law and Policy in Post-Amsterdam Europe", *Journal of Common Market Studies*, 38(3), 2000, pp. 497–518.

<sup>9</sup>[http://ec.europa.eu/immigration/who-does-what/more-information/explaining-the-rules-why-are-there-eu-rules-and-national-rules\\_en](http://ec.europa.eu/immigration/who-does-what/more-information/explaining-the-rules-why-are-there-eu-rules-and-national-rules_en)

<sup>10</sup>[http://ec.europa.eu/immigration/who-does-what/more-information/explaining-the-rules-why-are-there-eu-rules-and-national-rules\\_en](http://ec.europa.eu/immigration/who-does-what/more-information/explaining-the-rules-why-are-there-eu-rules-and-national-rules_en)

## RECENT POLICY DEVELOPMENTS AND THE ROLE OF THE E.C.

The Treaty of Lisbon brings a new approach and represents a step forward in the management of migration flows. By entering into force in December 2009, the procedure of codecision and qualified majority voting on legal migration and a new legal basis for integration measures were introduced. As mentioned on the official website of the European Parliament „(now) the ordinary legislative procedure applies to both illegal and legal immigration policies, making Parliament a co-legislator on an equal footing with the Council. It may be noted, however, that the provisional measures to be instituted in the event of a sudden inflow of third-country nationals are to be adopted by the Council alone, after consulting Parliament (Article 78(3) TFEU). The Lisbon Treaty also clarified that the competences of the EU in this field are shared with the Member States, notably concerning the number of migrants allowed to legally enter a Member State to seek work (Article 79(5) TFEU). Finally, the Court of Justice now has full competence in the field of immigration and asylum.”. All these, as a result of the previous policy developments registered at European level until then.

One of the most important steps taken by the European Commission was the Global Approach to Migration and Mobility, adopted in 2011. The document establishes the general framework for the relations between the European Union and other countries in the field of migration. An important aspect is that the document was based on four pillars: legal immigration and mobility, illegal immigration and trafficking in human beings, international protection and asylum policy, and maximizing the impact of migration and mobility on development<sup>11</sup>. From our perspective it was an essential step in order to better organize the dialogue and the "mobility partnerships" between the community and other actors. Its limitations were determined by the level of involvement presented by other actors in relation with the European Union and by the willingness of the member states to become involved. Overall, the initiative was designed to promote a concept broader than migration and, in the same time to keep the European Union's interests above all other good intentions.

However, the approach has drawn criticism from Member States, some of them showing themselves reticent, especially with regard to receiving refugees and asylum seekers. Despite assurances that the program wanted the partner states to reach a level of development sufficiently high that those who wanted to move no longer do, it was felt that issues of development and instability in states where they wanted to signing agreements (Tunisia, Ghana, Jordan, Egypt, Morocco) are more serious to be solved from the outside. Also in close proximity to the European Union states were frequently violated human rights and demonstrating indifference to the rights of migrants, which caused concern among critics of the GAMM program.

On the other hand, the Stockholm Programme - An open and secure Europe serving and Protecting Citizens, adopted in December 2009, represents a new phase of the programs adopted at Tampere in 1999 and The Hague in 2004, is a plan that ended in 2014. Even if it represents a framework for action in areas such as citizenship, justice, security, asylum, immigration and visa policy were not noticeable results that contribute to better managed migration flows. It should be noted that at that time, the European Union was not faced with the situation in 2016 and pressure on policy makers was not so great. Moreover, in institutional terms, the organization meets the requirements. Another blockage that was identified was that Member States were not struggling to implement the European provisions and despite political steps were not taken the necessary measures. For example, a report on the program made the following recommendations:

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<sup>11</sup> \*\*\*, E.C. website, *Global approach to migration*, available at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration/index_en.htm)

- Strongly endorses the European Council's call for Frontex's role to be reinforced in accordance with the Stockholm Programme in order to increase its capacity to respond more effectively to changing migration flows;
- Calls on the Member States to make use of the current provisions of the Visa Code and the Schengen Borders Code allowing the issuing of humanitarian visas, and to facilitate the provision of temporary shelter for human rights defenders at risk in third countries;
- Acknowledges that the recent changes and turmoil in Northern Africa and the Middle East have intensified the pressure on the EU's eastern and southern borders;
- Stresses the need to encourage voluntary return policies;
- Urges the Commission and the EEAS to take practical steps to ensure greater coherence and consistency between internal and external EU policies;

However, even if institutional and political demarches were made consistent, bureaucratic bottlenecks have contributed to the materialization of this program ineffective. At the end of the implementation period, in March 2014, the Commission published a new vision called - An open and secure Europe: making it happen - to allow the European Council and Parliament to discuss strategic proposals in June. In conclusions issued on 26 and 27 June 2014 the Council defined the "strategic guidelines for legislative and operational planning within the area of freedom, security and justice" for the period 2014-2020. *These no longer constitute a programme but rather guidelines focusing on the objective of transposing, implementing and consolidating the existing legal instruments and measures. The guidelines stress the need to adopt an overall approach to migration, making the best possible use of legal migration, affording protection to those who need it, combating irregular migration and managing borders effectively*".<sup>12</sup>

However, we find that the steps taken at Community level have been rich and complex, but their implementation was done poorly. Clearly, the decisions taken by the Council and Parliament are more numerous than previously presented but relationship between the Commission and institutions above was hit by bureaucratic and logistical bottlenecks. Furthermore, migratory phenomena occur increasingly unannounced, which puts even more pressure on the European institutions. Another element that contributed to management immigrants inefficacy it was the reluctance of Member States. In the flow of migration, many have chosen to manage the problem individually through its own resources and its own decision-making system. This is an evidence that the importance and role of the nation state has not been reduced but experienced new dimensions.

Regarding the role played by the European Commission we must reiterate that this institutional instrument is the executive body of the European Union and that national interests are not represented particularly through her. Executive powers it has makes it most competent actor in the European internal terms of responding effectively to new challenges such as illegal immigration, be it refugees or asylum seekers. As evidence, in relation to the refugee crisis in 2016, the European Commission's answer was one we consider effective. Thus, in April 2016 were released about 83 million euros for emergency support Projects in Greece, Turkey has ben given over 450 million euros (from early 2011) to manage the refugee situation from Syria and Iraq and there were sent humanitarian aid to Serbia and Macedonia to provide the necessary logistics and transit points registration facilities. At the same time, funds and assistance was granted to Libya, especially from mid-2014 to prevent flows of migrants and to help local actors to better manage the situation in the country. In all these activities, the Commission has supported and assisted by UNHCR, Red Cross,

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<sup>12</sup> \*\*\*, E.P. website, *Fact Sheets on the European Union* , available at [http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU\\_5.12.3.html](http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.12.3.html)

International Rescue Committee, Danish Refugee Council, Medecins du Monde, OXFAM, Save the Children and Arbeiter-Samariter-Bund.

Thus, the role of the Executive Council is indisputable, but in the coming period this Institute must assert itself more consistent on the European scene. That's because, in addition to "the fight" that must lead to legislative wing of the European Union, the Commission is the only entity that can provide collective action to the detriment of national measures, especially in managing migration flows. At the same time, the Commission is likely to contribute effectively to long-term,, federalization "European conferring unity of action and decision-making while respecting national options.

In the current regional and international context the European Commission should materialize decades-old desire of Europeans to form a European identity based on facts and results, where the national interest is positioned as being second when in report with the Community. Clearly, the contribution of Member States is necessary but they must be convinced that there is capacity to initiate action at European level and that national approaches must be seen as a last resort.

As evidence of flexibility, the Commission continued the role it has in the effective management of immigrants and established a new Partnership Framework-oriented deeper on results. On this occasion Frans Timmermans First Vice President said:

*"To stop the unacceptable loss of life in the Mediterranean Sea and bring order into migratory flows, we need to rethink how the EU and its Member States join efforts to work together with third countries. The Commission proposes a new partnership framework: starting with a first group of priority third countries, compacts tailored to the circumstances of each of them will mobilise all our policies and tools to achieve these objectives, tapping into the EU's collective influence in close coordination with Member States and focusing our resources including through the swift deployment of €8 billion over the next five years. We will also work on an ambitious External Investment Plan to help create opportunities and tackle the root causes of migration. Without concrete results from our partners in managing migration better, we should collectively be ready to adapt our engagement and financial aid."*<sup>13</sup>

Thus, this approach is intended as a tool to contribute to enhance convergence of efforts at European level and has implications for domestic policies and external action instruments. It is intended that the effective management of all available actions and instruments to be adapted to contribute to:

- Focused engagement
- Enhanced support
- Breaking the business model of the people smugglers
- Creating legal routes
- Implementing all the financial instruments
- Working together.<sup>14</sup>

Of all these objectives hardest hit will be the last of them: working together. That's because it requires better coordination and increased coherence between Community actions and Member States. However, there were few cases when at the Community level a position was promoted and the next day the national decisions were diametrically opposed.

<sup>13</sup> James Crisp, *Commission asks member states for 3.6 billion to tackle refugee crisis*, available at <http://www.euractiv.com/section/trade-society/news/commission-asks-member-states-for-e3-6-billion-to-tackle-refugee-crisis/>

<sup>14</sup> \*\*\*, E.C. website, availbe at [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication\\_external\\_aspects\\_eam\\_towards\\_new\\_migration\\_ompact\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf)

The central issue that faces European Commission is a delicate one and is related to the inconsistency that lies within widening participation of the member state to deepening the European integration. Clearly, this is not new, but it was manifested much stronger in the current context when joint efforts were needed to counter the effects of a genuine, palpable threat. Also, for the first time in decades, several Member States face the same problem and in some way it was expected from them to act as a group, but the national decisions had primacy in front of the group decision, aspect that proves the inexperience Member States are presenting in terms of teamwork.

From another perspective, related to the effective management of migration flows, the European Commission must ensure, together with Parliament and the Council that Member States will not suffer from fatigue donor`s phenomenon. Despite the instability on the European political scene and counter with national political trends (increasingly nationalist and radical) economic support should be constant and supplemented as appropriate. While so far the Member States were conferring legitimacy and cohesion of the European Union, it is time for the Union to be the one that holds states together and facilitates cooperation and coordination. Thus, the Commission's roles, in addition to executive and political one, is to demonstrate that it can achieve a new level of efficiency and that the participation of Member States is embodied in the common approaches that have measurable effects for/in each Member State.

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