



Balancing Fundamental Rights and Migration Management in the External Dimension of the EU Migration Policy

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Abstract Does the European Union ensure an appropriate balance between migration control and the protection of migrants' fundamental rights? The present contribution addresses this question in the context of the EU's efforts to externalise its migration policy and to cooperate with third countries. Its competences, and the measures adopted on their basis, partially integrate fundamental rights' considerations. Recent measures justified by the current situation complement the long-term comprehensive efforts carried out in specific regional frameworks. However, these evolutions do not seem to change the (in)balance in favour of migration control to the detriment of the protection of fundamental rights.

Keywords: • fundamental rights • migration management • migration policy • EU

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1 Introduction

Between January 1st and May 3rd 2016, more than 180 000 persons crossed the Mediterranean to enter Europe, and around 1357 deaths at sea have been recorded by the IOM.¹ Labelled by the Commission as the “refugee crisis”, this situation refers to the migration of thousands of persons mainly from war zones, such as Syria or Iraq, but also from areas where economic and social opportunities were lacking. The unprecedented flows of refugees and migrants follow among others the Western Balkans’ route, which became the focus of the challenge faced by Europe, with over 650 000 people crossing from Turkey to Greece in 2015, most travelling up through the Western Balkans to Central and Northern Europe.² In this context, migration issues have marked the political agendas all over Europe during the last few months,³ and the external borders of the European Union and their management have received a lot of public attention. Whereas the EU institutions attempt to organise a common European answer to the challenges brought up by the situation, tensions arise with certain Member States pleading in favour of national solutions and contesting the legality of EU initiatives, e.g. the case introduced before the European Court of Justice by Hungary (C-647/15) against the “Relocation Decision”.⁴ Despite the sensitive context, the Commission stresses the importance of adopting measures realising a delicate balance in order to uphold the EU’s international commitments and values, while securing its borders and at the same time creating the right conditions for its economic prosperity.⁵ The desire to control and manage borders cannot indeed be achieved at the detriment of the protection of fundamental rights of migrants and refugees, and requires a comprehensive approach to ensure border management in compliance with the protection of fundamental rights of migrants, and especially of those in a vulnerable situation.⁶

The European Union and its Member States have developed important instruments and mechanisms in the field of migration, which have been criticised for focusing on stopping irregular migration through the strengthening of external borders controls, and for positioning irregular migration within the realm of criminality and security.⁷ Measures aimed at addressing irregular migration and at combating transnational organized crime, play an essential part in this regard. These measures may participate in the protection of migrants’ rights, as they allow for the detection of victims of crime, and for the reception of assistance, protection and compensation for the harm they suffered. Nevertheless, fundamental rights of migrants⁸ and their legal guarantees aiming at protecting them from harm, discrimination and violations of their rights⁹ are considered as not being sufficiently implemented.

These critics on the precedence given to security and migration control considerations extend also to the external dimension of the EU migration policy. The latter has been considered as a political priority since the early 2000’s¹⁰ and remains of crucial importance today.¹¹ The EU institutions and the Member States have indeed constantly developed and adapted tailor-made packages of incentives, in order to ensure cooperation from third countries, especially those considered as strategic partners

because of their geographic proximity or their status of countries of origin and/or transit.

The present paper aims at assessing whether the European Union ensures an appropriate balance between migration control and the protection of migrants' fundamental right in the context of the externalisation of its migration policy and its efforts for ensuring cooperation from third countries in this field. To that end, a first part will be devoted to the legal competences at the disposal of the EU to conduct this external policy (I). In the second and third part we will discuss the content of the measures (II.), and the frameworks in which they are traditionally promoted (III.) In conclusion, we will discuss the emergency measures adopted in the last few months.

2 Enhanced external competences for the externalisation of the EU's migration policy

Whereas the European Union's intention is well established concerning its desire to develop the external dimension of its migration policy, the achievement of this objective depends to a large extent on the existence and the scope of its external competences. Like in internal matters, the external action of the Union is strictly framed by the principle of conferral of competences enshrined in Article 4 TEU, obliging the Union to continuously give precedence to considerations of competence over considerations of effectiveness (De Baere, 2008: 10).

The EU institutions can rely on two types of competences: express competences foreseen in Treaty provisions on the one hand, and implied competences on the other hand.

Concerning the first type of competences, the entry into force of the Treaty of Lisbon introduced two new express external competences in the field of the Area of Freedom, Security and Justice (AFSJ). Article 78 §2 g) TFEU foresees the possibility of partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum, subsidiary or temporary protection. Article 79 § 3 TFEU provides for the conclusion of agreements "for the readmission to their countries of origin or provenance of third-country nationals who do not or who do no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States". This express competence acknowledges the role taken by the EU institutions, which had already received the mandate to negotiate such agreements, and concluded on the basis of the doctrine of implied powers readmission agreements with third countries. Although these two provisions do not create new competences, and "are in fact only a codification of existing practices" (Monar, 2012: 26), their explicit insertion in the Treaty establishes even further the importance of EU actions in the external dimension of migration control.

The second type of external competences, i.e. the implied competences, finds its origins back at the time when EU treaties did not contain many provisions on the external dimension of the European integration process, and when the Court of Justice exploited

the embryonic legal framework to read external competences into the Treaties. Luxembourg judges notably introduced with the ERTA case (C-22/70)¹² the doctrine of implied powers, which has been constantly developed ever since (Eeckhout, 2012: p. 70 – 119). The Treaty of Lisbon even codified this doctrine in its Article 216 TFEU, which provides that the “Union may conclude an agreement with one or more third countries or international organisations (...) where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union’s policies, one of the objectives referred to in the Treaties (...)”. This provision, read together with Article 3 § 2 TEU, confers to the EU an implied external competence for the realisation of the AFSJ. As a consequence, the European Union may under certain conditions be competent to enter into international agreements on migration and/or the fight against transnational crime.

Most of the legislative instruments adopted within the framework of the Union’s migration policy concern non-EU citizens, i.e. third-country nationals already present in the Union’s territory or willing to join this territory. “One can say that they form an externally-oriented policy of the EU, even if it mostly consists of the adoption of internal legislation” (Eeckhout, 2012: Loc. 5435). Measures such as the Directive on residence permits for victims of trafficking (OJ L 261, p. 19), the Employers’ Sanctions Directive (OJ L 168, p. 24,) and the Seasonal Workers Directive (OJ L 94, p. 375) are relevant examples of that trend. One could also refer here to the rules adopted within the Common European Asylum System.¹³

These instruments share common characteristics: they target directly third-country nationals, they are *de facto* inapplicable to Union’s citizens, and they aim at establishing common rules, binding upon Member States, and at realising to a certain extent a harmonisation of national legislations. They also participate in the protection of migrants’ fundamental rights, since they help to prevent their labour exploitation, and provide them assistance once they are identified as exploited workers.¹⁴ However, the degree of harmonisation they reach is limited, and it only amounts to a minimum harmonisation. The Member States remain authorised to adopt or maintain more favourable provisions.¹⁵ Nevertheless, in theory, the existence of common rules could potentially trigger the recognition of AETR-type of implied powers (Eeckhout, 2012: Loc. 5465) at the condition that provisions of international agreements could affect these common rules or alter their scope.

In practice, only the rules contained in the Seasonal Workers Directive may be affected by external agreements, a possibility that has been recognised in the text of the directive itself.¹⁶ The European Union could thus potentially claim the recognition of an external competence to conclude such provisions, but its competence would remain parallel to the competence of the Member States, which have under Article 79 § 4 TFEU retain their right “to determine volumes of admission of third country nationals coming from third countries to their territory on order to seek work”.

In the field of judicial cooperation in criminal matters, the European Union is internally competent to adopt rules approximating substantive and procedural criminal law (Art. 82 § 2 and 83 § 1 TFEU), and these internal competences could be invoked for the

recognition of two types of implied external competences, i.e. when the agreement is necessary in order to achieve one of the objectives referred to in the Treaties or when the provisions of an agreement come within the EU's substantive powers. It can be argued that the enhanced action potential on common rules, notably the approximation of substantive criminal law on human smuggling and trafficking, could, via the strengthening of the internal EU acquis, provide a stronger common platform for mutual legal assistance agreements with third-countries (Monar, 2012: 26). A similar reasoning applies in the field of police cooperation, where implied external competences may be recognised on the basis of Article 87 TFEU. To support that claim, it is worth noting that the Commission proposed the conclusion of several external agreements dealing with policing and criminal law issues.

Although most of its external competences remain based on implied powers and are shared with the Member States, it is undoubted that the European Union possesses competences to engage with third countries in order to develop the external dimension of its migration policy. Explicit provisions in the TFEU reveal the consensus among Member States on the need of a common external policy in this field, and the importance of cooperation and partnerships with third countries.

3 External measures: when migration control takes over prevention and protection

The EU institutions and the Member States have always been pursuing the objective to involve third countries in the EU's efforts to fight irregular migration, and they are to that end promoting the adoption and/or implementation of a large range of measures that would potentially impact on migration flows.

A first category encompasses measures aiming at externalising migration control. These measures are so multi-faceted that they can be themselves divided in two sub-categories. On the one hand classical migration control instruments are "exported" to sending or transit countries outside the EU, which are for instance invited to transpose and implement the EU acquis in the field of migration. The main "exported" measures aim to strengthen border control, to improve the fight against irregular migration, smuggling and trafficking in human beings, or to develop capacity-building systems and migration management in transit countries (Boswell, 2003: 622). Capacity building projects are considered necessary to improve border and migration services in third countries, and to support their compliance with international standards in the fields of asylum and international protection. Fundamental rights of migrants and refugees may then be protected as they wait for a prompt and motivated decision on their status, while being accommodated in reception centres complying with international standards. On the other hand, the EU measures encompass a series of provisions for facilitating the return of asylum seekers and illegal migrants to third countries. The instruments used in this regard are the readmission agreements signed with third countries, and committing them to readmit irregular immigrants who had passed through their territory into EU countries, or are their nationals. These instruments are accompanied by the elaboration of a list of safe countries to which EU Member States can return asylum seekers, either

as nationals or as persons who transited through. It could be argued that some measures of migration control, in particular those against smuggling of migrants and trafficking in human beings, pursue a dual objective of fighting against crime and protecting fundamental rights of the victims, but they do not alter the fact that they place migration in the realm of security, where the main concern may not be the protection of migrants' fundamental rights.

The second category of "exported" measures is composed of those following a logic of prevention, and adopted in various fields, such as development policy, trade, etc. They aim at improving the political, social and economic situation in third countries, in order to "influence the factors forcing or encouraging migrants and refugees to travel to the EU" (Boswell, 2003: 624). As the Commission has indeed recently stressed, "civil war, persecution, poverty and climate change all feed directly and immediately into migration, so the prevention and mitigation of these threats is of primary importance for the migration debate".¹⁷ Prevention measures can be considered as being in favour of the protection of fundamental rights of migrants and refugees, since they aspire to address the problem of migration control in a way that would not jeopardise the rights and freedoms of migrants and refugees.

In abstract terms, one could conclude that some elements included in the measures "exported" to third countries support the identification of a balance between migration control and the protection of migrants and refugees' fundamental rights. Some measures may indeed have an indirect role in their protection, and whereas the impact of long-term measures, such as prevention or capacity-building measures may be difficult to apprehend, this does not imply that they have no influence at all. The role of EU institutions and Member States is in this regard crucial to ensure constant monitoring of their implementation, as well as to provide sufficient incentives to stimulate cooperation from third countries.

4 Regional frameworks as comprehensive tools to promote cooperation

The EU institutions soon realised that the process of externalisation of the migration policy, and in particular of border management, should be conducted in a coherent way. For that reason, regional frameworks of cooperation have been the preferred forums for such externalisation efforts, as they encompass a wide range of policy fields, allowing for comprehensive and integrated actions. Regional frameworks such as the pre-accession policy, and more particularly the Stabilisation and Association Process, or the European Neighbourhood Policy, are particularly important for the externalisation of measures of migration control. These countries constitute, in a sense, the Union's external "glacis" when it comes to preventing crime and migration challenges from reaching and crossing the EU's external borders (Monar, 2012: 62). As a consequence, developing cooperation with them has been considered as a priority. Furthermore, in its relations with the countries participating in these frameworks, the European Union can also rely on a new form of leverage based on policy conditionality: the prospect of visa-free travel (Trauner, 2009) which constitutes a very relevant issue for the daily life of the populations, and for the public authorities of the countries concerned. As a mean of

pushing for further reforms, the European Union conditions the opening and the conduct of negotiations for visa facilitation agreements to the guarantee of smooth functioning visa facilitation and readmission practices, together with evident efforts to fight corruption, improve cross-border police cooperation and border control (Trauner, 2009).

For the countries participating in the Stabilisation and Association Process, i.e. countries from the Western Balkans, their cooperation with the EU in migration matters has been a political priority since the Thessaloniki Declaration in 2003, in which the EU encourages cooperation with and/or between these countries “in order to cope effectively with illegal migration flows originating in or transiting through Western Balkans”.¹⁸ The European Partnerships concluded with each SAP country reaffirmed the importance of such cooperation and contained specific and individualised measures relating to border control, asylum and migration.¹⁹ Some of these measures have been transformed into legally binding obligations through their insertion in the Stabilisation and Association Agreements.²⁰ Cooperation is foreseen for the drafting of legislation, the enhancement of the capacity and efficiency of the institutions, and the training of staff and border management. Provisions on prevention and control of illegal immigration and readmission are also present, but they foresee mainly the obligation to readmit any national illegally present on the territory of a SAP or EU country.²¹ Fundamental rights considerations are also present: it is for instance provided that in the area of asylum, cooperation shall focus on the implementation of national legislation to meet the standards of the Geneva Convention, to ensure the respect of the principle of non-refoulement as well as other rights of asylum seekers and refugees. Furthermore capacity building projects are funded through the Instrument for Pre-Accession.²²

The progresses of each country are carefully monitored every year, through the publication of annual reports, sometimes complemented by other sources, e.g. reports from the IOM, or the UNHCR, and/or civil society organisations. For instance, concerning the Former Republic of Macedonia, the Commission invited the country, considered as moderately prepared for implementing the *acquis* in the AFSJ, to strengthen capacity, especially for the early identification of the migrants needing protection, vulnerable groups and minors, to ensure effective border management and to step up action against people smuggling and trafficking as a high priority.²³ This example illustrates the attention granted to both measures of migration control and measures in favour of migrants and refugees’ rights.

Countries participating in the European Neighbourhood Policy are also considered as important partners in the field of migration. When it was launched in 2004, the European Neighbourhood Policy was seen as a possibility to “help the Union’s objectives in the area of Justice and Home Affairs”, since the countries “are facing increased challenges in (this) field, such as migration pressure from third countries, trafficking in human beings and terrorism”.²⁴ In 2015, a review of this policy was conducted. The EU institutions insisted the necessity of a proactive engagement with partners in the neighbourhood to address root causes of cross-border threats, to contribute to securing common borders, and to tackle cross-cutting migration related

security challenges, such as smuggling of migrants, trafficking in human beings, social cohesion and border protection/management.²⁵ The future policy contains measures to promote the protection of the migrants' fundamental rights, as the EU institutions stress for instance that the EU should assist partner countries in developing their asylum and protection systems to ensure that their human rights are protected.²⁶ However, despite the latter measures, migration still remains very much within the realm of security.

Within the European Neighbourhood Policy, a specific instrument, the Mobility Partnerships, has been developed with the aim to address migration issues in a comprehensive way. Although most of these partnerships have been concluded with countries participating to the ENP,²⁷ they are open to other third countries²⁸ and they aim at promoting sustained cooperation with third countries along the migration routes towards the EU. They provide for a politically agreed, although not legally binding, framework for the coordination and monitoring of external actions, to be conducted by the EU institutions, the Member States and each third country concerned. The objective of tackling irregular migration is for instance addressed, and partner countries are expected to commit themselves to take "specific measures and initiatives seriously to combat migrant smuggling and human trafficking, in line with the Council of Europe Convention (... and) the relevant protocols of the UN Convention on transnational organised crime".²⁹

The Mobility Partnerships are also pursuing objectives in favour of the protection of fundamental rights of migrants and refugees. They aim for instance at combating irregular migration and promote an effective return and readmission policy, while the countries concerned ought to respect fundamental rights, the relevant legislation, to ensure the dignity of the people concerned, and to comply with duly ratified international instruments concerning the protection of refugees.³⁰ In that regard, the EU institutions and Member States commit themselves to support the strengthening of legislative and institutional framework for asylum, in accordance with international standards, and to promote the capacities of national authorities responsible for asylum procedures through technical support and close cooperation with the relevant EU bodies and agencies, and the UNHCR. The increase in the capacities of civil society organisations, particularly of those involved in the protection of the most vulnerable groups, is also envisaged.³¹ A specific fund has been established to support the efforts of ENP countries,³² notably to support the creation of conditions for the better organisation of legal migration and the fostering of well-managed mobility of people.³³ However, the monitoring of the efforts carried out by each participating country varies a lot depending on the stage of its cooperation with the EU. For instance, the Commission initiated a Dialogue on Migration, Mobility and Security with Lebanon only in December 2014. Furthermore, despite the allocation of EUR 459.4 million to the country to support refugees from Syria and vulnerable communities, the country continued to lack an adequate legal framework in line with international standards providing protection and assistance to people in need of international protection.³⁴

In both frameworks, despite the financial support provided and the regular monitoring of each country's achievements, it is very likely that the impact of the EU's

externalisation efforts, if any, will only be noticeable in the long-term. The influence of the EU's actions is also difficult to detect in the field of the protection of migrants' fundamental rights, as in many countries of these regions, the political priority may be to prevent the irregular migration of nationals abroad, rather than ensuring international protection to vulnerable migrants. This creates an additional difficulty for the EU, which needs to find proper incentives to ensure sustainable and permanent changes in national policies, legislations and practices. However, such context is not particularly adapted to solve the additional difficulties and urgent challenges arising in the management of the current refugee crisis.

5 Conclusion

The recent crisis, unprecedented by the scale of the migration flows, has transformed drastically the context in which the EU's externalisation efforts and cooperation with third countries take place. A series of measures, dictated by emergency, has been adopted since last summer. In order to address the particular situation in the countries forming part of the Balkan Route, an Action Plan has been agreed in October 2015,³⁵ and it includes a wide range of measures. Although concerns about migrants and refugees' fundamental rights were expressed, and the participating States committed themselves to increase their capacity to provide temporary shelter, rest, food, health, water and sanitation to all in need, many measures implemented a more "criminal and/or security approach" to the situation. The action plan also provided for measures on information exchange and coordination, especially to foster the fight against smuggling. It also included measures relating to border management, and especially return and readmission of migrants not in need of international protection. Their analysis reflects the duality of the EU's and countries' efforts, encompassing both repression of irregular migration and protection of those in need.

The reports about the implementation of these objectives support the conclusion that the priority remains placed on the security dimension.³⁶ The national authorities have adopted strict principles concerning border management: the principle that – as long as there was a prior non-refoulement and proportionality check – countries could refuse entry only to individuals who did not express a wish to apply for international protection and the principle of "no registration, no rights". In practice their implementation led to a *de facto* nationality based approach of refusing entry to all those who are not of certain nationalities (Syrian or Iraqi). Similarly, the importance of return as one of the essential components of effective migration management has been underlined in different contexts, and the Commission notes that more needs to be done, as the number of return is not increasing, and searches to obtain the support of key third country partners.

Furthermore, since the adoption of these reports in December 2015, the situation has evolved: in early March, the European Council acknowledged the closure of the Western Balkans Route, i.e. the closure of the borders of the countries located on this route (Macedonia, Croatia and Slovenia), by stating that "irregular flows of migrants along the Western Balkans route have now come to an end".³⁷ This decision had and

still has an huge impact on the fundamental rights of the migrants, as many of them (more than 53 000) are now stranded in Greece.³⁸

The cooperation between the European Union and Turkey has also changed in the last months. Turkey distinguishes itself as the EU also seeks its cooperation in stemming the influx of people into Europe,³⁹ despite the concerns voiced about fundamental rights' violations in the country.⁴⁰ The launch of a refugee facility for Turkey, designed to support humanitarian assistance to refugee camps in Turkey, with the hope that better conditions in Turkish camps will mean that fewer people risk the perilous sea crossing from Turkey to Greek islands,⁴¹ illustrates the political priority given to the reduction of migration flows into Europe, which remain very much perceived as a security threat. The "conclusion" on 18 March 2016 of an agreement between the European Union and Turkey further illustrates this trend.⁴² In order to "break the business model of the smugglers", the return of irregular migrants to Turkey is one of the priorities, and one of the first actions to be implemented.⁴³ The protection of migrants' fundamental rights is taken into account, as all of them "will be protected in accordance with the relevant international standards and in respect of the principle of non-refoulement". Nevertheless, human rights advocates and organisations have expressed reserves about this agreement. For instance, the UNHCR urged for immediate safeguards to be in place before any returns begin,⁴⁴ and expressed concerns about the return of migrants despite their intention to apply for asylum.⁴⁵

In definitive, the balance seems to tilt sharply in favour of migration control to the detriment of the protection of migrants and refugees' fundamental rights. Such conclusion is reinforced by the fact that although all countries have made significant efforts to increase their capacity to provide temporary shelter, less than half the figure of 50 000 reception places committed has been created so far. Many countries only established short-term places (up to 24 hours), which reflect a "transit" philosophy,⁴⁶ and many of the countries, being EU Member States and third countries, located on the main migration routes fail to comply with international standards. Whereas the national governments invoke exceptional circumstances and unprecedented flows of people, the EU institutions face the unexpected challenge to have to monitor actions carried out within and outside the EU in a particularly sensitive context.

Notes

¹ IOM, Mediterranean Update, Migration Flows Europe: Arrivals and fatalities, 3 May 2016, available at: <http://missingmigrants.iom.int/mediterranean-migrant-arrivals-2016-184546-deaths-1357>, lastly accessed on May 5th.

² Commission, 'Report on the follow-up to the Leaders' Meeting on refugee flows along the Western Balkans Route', COM (2015) 676.

³ See for instance the example of Austria, where in the first-round presidential vote, the leader of the extreme-right party has obtained the higher score (<http://www.theguardian.com/world/2016/apr/25/austrian-far-right-partys-triumph-presidential-poll-turmoil-norbert-hofer>, lastly accessed on May 5th), and a bill has been adopted shortly after, allowing the government to declare a state of emergency – including the examination and potential rejection of asylum claims at the border – if the migrant numbers suddenly rise

(<http://www.thelocal.at/20160427/austria-considers-rejecting-most-migrants-amid-far-right-surge>, lastly accessed on May 5th).

⁴ The contested Decision is Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ L 248, p. 80).

⁵ Commission, ‘A European Agenda on Migration’ (Communication), COM (2015) 240.

⁶ The latter are often categorised in different groups, such as unaccompanied or separated children, migrants in irregular situation, smuggled migrants, or victims of human trafficking. These categories do not reflect the complex reality, as people may simultaneously fit into several categories, or change from one to another in the course of their journey.

⁷ UN General Assembly ‘Regional Study: management of the external borders of the EU and its impact on the human rights of migrants’ (Report of the Special Rapporteur on the Human Rights).

⁸ The most known measures are the principle of *non-refoulement*, which forbids returning a person to a situation of persecution or danger (UN High Commissioner for Refugees ‘Note on the Principle of Non-Refoulement’ (1997)) and the prohibition of arbitrary and collective expulsions, that entitles every non-national to an individualised examination before his or her removal (UN High Commissioner for Human Rights, *Intervener Brief before the ECHR in the N.D. and N.T. v. Spain*, Applications N° 8675/15 and 8697/15).

⁹ International instruments include the Geneva Conventions on refugees, or the Convention on the protection of the rights of all migrant workers and members of their families. Regional instruments include the European Convention on Human Rights as amended by the Protocols N°11 and 14 and the EU Charter of Fundamental rights (Article 18 and 19).

¹⁰ European Council, Presidency conclusions, Tampere, SN 200/99, 15–16 Oct. 1999; European Council, Presidency conclusions, Laeken, 14–15 Dec. 2001, SN 300/1/01 REV 1; European Council, Presidency conclusions, Seville, 21–22 June 2002, SN 200/1/02 REV 1.

¹¹ Commission, ‘A European Agenda on Migration’ (n 4) 7: “migration should be recognised as one of the primary areas where an active and engaged EU external policy is of direct importance to EU citizens”.

¹² Case 22/70 *Commission v. Council* [1971] ECR I - 263.

¹³ Asylum Procedures Directive (OJ L 180, p. 60), Reception Conditions Directive (OJ L 180, p. 96) Qualification Directive (OJ L 337, p.9), Dublin Regulation (OJ L 180, p. 31) and EURODAC Regulation (OJ L 180, p. 1). The Commission has proposed on 4th May 2016 a package of instruments, aiming at reforming the Dublin System, which contains proposals for a recast of the Dublin Regulation (COM (2016) 270) and of the EURODAC regulation (COM (2016) 272). The package also contains a proposal to transform the European Asylum Support Office (EASO) into an EU agency for Asylum (COM (2016) 271).

¹⁴ For more details, see EU Agency for Fundamental Rights, *Severe labour exploitation: workers moving within or into the European Union, States’ obligations and victims’ rights*, 2015, 104 pages at p. 30.

¹⁵ Article 4 of Directive 2004/81; Preamble, point 4 of Directive 2009/52/EC and Article 4 § 1 a) and b) Directive 2014/36/EU.

¹⁶ Article 4 § 1 a) and b) indeed provides that more favourable provisions can be agreed upon in bilateral or multilateral agreements concluded either between the Union, between the Union and its Member States or between one or more Member States on the one hand, and one or more third countries on the other hand

¹⁷ Commission, ‘A European Agenda on Migration’, COM (2015) 240, p. 7.

¹⁸ Council ‘The Thessaloniki Agenda for the Western Balkans – Moving towards European integration’ (Conclusions), 10369/03 (Presse 166).

¹⁹ For instance, Bosnia and Herzegovina was invited to provide adequate staffing for the migration services, or to ensure that reception centres meet international standards and assume full ownership of their financing and management.

²⁰ Article 75 SAA FYROM; Article 80 SAA Albania; Article 82 SAA Montenegro and Article 82 SAA Serbia

²¹ Article 76 SAA FYROM; Article 81 SAA Albania; Article 83 SAA Montenegro and Article 83 SAA Serbia

²² Council Regulation 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA), *OJ L* 210, 31.07.2006, p. 82 – 93, now replaced by Regulation (EU) No. 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument for Pre-Accession Assistance, *OJ L* 77, 15.03.2014, p. 11 – 26

²³ Commission ‘FYROM Report 2015’, SWD (2015) 212, p. 61.

²⁴ Commission ‘European Neighbourhood Policy - Strategy Paper’ (Communication), COM (2004) 373.

²⁵ Commission and High Representative, ‘Review of the European Neighbourhood Policy’ (Joint Communication), JOIN (2015) 50, p. 12 – 13. See also *ibid*, p. 17.

²⁶ *Ibid*, p. 17.

²⁷ Mobility partnerships have been concluded with Armenia, Azerbaijan, Georgia, Jordan, Moldova, Morocco and Tunisia.

²⁸ Participating countries are selected according to strict criteria “The eligibility criteria applied were the geographical balance between Eastern Europe and Africa, the importance of migration flows from or through the country to the EU, the readiness to cooperate on readmission and fight against illegal migration, the interest of EU Member States to cooperate with the country in question and its interest to enter such a partnership” – Commission ‘Mobility partnership as a tool of the Global Approach to Migration’, SEC (2009) 1240.

²⁹ Commission ‘Circular migration and mobility partnership between the European Union and third countries’ (Communication), COM (2007) 248.

³⁰ See as an example, Joint Declaration establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and its Member States, 3 June 2013, Doc. No. 6139/13, p. 4.

³¹ *Ibid*. p. 10.

³² Regulation 16/38 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument, *OJ L* 310, 09.11.2006, p. 1 – 14, now replaced by Regulation (EU) No. 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument, *OJ L* 77, 15.03.2014, p. 27 – 41.

³³ Regulation (EU) 232/2014, Article 2 § 2 c)

³⁴ Commission and High Representative for Foreign Affairs, ‘Implementation of the ENP in Lebanon, Progress in 2014’, SWD (2015) 68, p. 11.

³⁵ Leaders representing Albania, Austria, Bulgaria, Croatia, FYROM, Germany, Greece, Hungary, Romania, Serbia and Slovenia were present. Source: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/western_balkans_route_state_of_play_report_en.pdf.

³⁶ Commission ‘Report on the follow-up to the Leaders’ Meeting on refugee flows along the Western Balkans Route’ COM (2015) 676.

³⁷ Statement of the EU Heads of State or Government, 7 March 2016, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/07-eu-turkey-meeting-statement/>, lastly accessed on May 5th.

³⁸ Source: <http://www.ekathimerini.com/208353/article/ekathimerini/news/more-than-53700-migrants-and-refugees-stranded-in-greece>, lastly accessed on May 5th.

³⁹ European Council, Conclusions of 15 October 2015, EUCO 26/15

⁴⁰ See for instance, Amnesty International, *Europe’s gatekeeper, unlawful detention and deportation of refugees from Turkey*, Dec. 2015, 14 pages.

⁴¹ Eszter Zalan, *EU finalises €3bn fund for Turkey refugees*, EU observer, 3 February 2016, <https://euobserver.com/migration/132126>.

⁴² Text of the statement available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>, lastly accessed on May 5th.

⁴³ Commission, 'First Report on the progress made in the implementation of the EU-Turkey Statement' (Communication), COM (2016) 231, p. 4.

⁴⁴ <http://www.unhcr.org/56fe31ca9.html>

⁴⁵ Source : http://www.theguardian.com/world/2016/apr/05/greece-deport-migrants-turkey-united-nations-european-union?CMP=share_btn_tw, lastly accessed on May 5th. See also Human Rights Watch, <https://www.hrw.org/news/2016/04/19/eu/greece-first-turkey-deportations-riddled-abuse>, lastly accessed on May 5th.

⁴⁶ Commission 'Report on the follow-up to the Leaders' Meeting on refugee flows along the Western Balkans Route' COM (2015) 676.

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