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EU IMMIGRATION POLICY IN THE LIGHT OF THE ARAB SPRING

GENESIS OF EU MEMBER STATES' COOPERATION ON IMMIGRATION

Multilateral cooperation between EU Member States on developing common provisions for the treatment of foreigners applying for entry and residence in the territories of the Member States dates back to 1985. Instruments allowing for combating illegal immigration and regulations on crossing external borders and travelling within the EU were specified in the Schengen Agreement and the Implementing Convention adopted in 1990.[1] In October 1986, an *ad hoc* group on migration was appointed. It was responsible for specifying the principles of granting third-country nationals access to the territory of the European Community (immigration, visa and asylum policies). In 1988 another group was appointed to work on the free movement of persons. The most important achievement of the former group was its drafting of the so-called Dublin Convention that specified Member State responsible for the examination of the asylum application. The agreement, adopted in June 1990, has become the main tool of the asylum policy as it eliminated submission of multiple asylum applications by one person. The combat against illegal entry and/or residence in the territory of EU Member States was to be supported by the Schengen Information System foresaw in the Schengen Agreement.

Although the declaration that made the free movement of persons dependant on cooperation in the area of immigration was added to the Single European Act (adopted in 1986)[2], the breakthrough in the cooperation progress was the adoption of the Maastricht Treaty on the European Union. In Title VI, which defined common interest areas, the immigration, visa and asylum policies were identified. Moreover, it was declared that principles governing the crossing of external borders and entry and residence of third-country citizens in the territory of the European Union would be adopted and actions to combat illegal immigration, residence and employment of third-country nationals undertaken. The above areas were regulated in the third

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[1] These instruments included cross-border pursuit, observation, removal, and readmission.

[2] See: F. Jasiński, P. Rakowski, *Walka z przestępczością zorganizowaną i terroryzmem*, in: *Obszar wolności, bezpieczeństwa i sprawiedliwości Unii Europejskiej. Geneza, stan i perspektywy rozwoju*, F. Jasiński, K. Smoter (ed.) (2005), Warsaw, p. 16.

pillar of the European Union, which from then on was to be characterised by international cooperation and lack of communitisation. In result, Member States played the key role in deciding on the pace and directions of cooperation, while the role of community institutions was notably limited. Cooperation within the third pillar was conducted mainly on the basis of international law, and the connection with the first pillar was to be maintained by "renting" community institutions whose tasks and competences were described anew.[3]

The weak points of the third pillar made it impossible to actually cooperate in the area of immigration, visas and asylum. As that cooperation needed to be closer, the immigration, visa and asylum policy issues were shifted from the third to the first pillar of the European Union under the Amsterdam Treaty (Title IV *Visas, asylum, immigration and other policies connected with the free movement of persons*). It was agreed that within five years from the entering of the Amsterdam Treaty into force, measures aimed at lifting border control at internal borders would be introduced, and the principles of crossing external borders would be specified.[4] The comprehensive approach taken involved legal and institutional solutions concerning the principles of entering the territory of the European Union, visa issues, and terms and conditions of short- and long-term residence. An opportunity for strengthening the cooperation in the area of immigration, visa and asylum policy arouse when the Schengen *acquis* was incorporated into the EU framework. The second Protocol to the Amsterdam Treaty facilitated implementation of the principles specified in the Schengen Agreement and the Implementing Convention on immigration, visas and asylum cooperation, though the UK, Ireland and Denmark were granted a special status. Those Member States, already at the stage of negotiations, opposed the inclusion of Schengen provisions to the *acquis communautaire*.[5] Derogations concerning those Member States entailed the introduction of the enhanced cooperation procedure.[6]

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[3] *Zwalczanie przestępczości w Unii Europejskiej. Współpraca sądowa i policyjna w sprawach karnych*, A. Górski, A. Sakowicz (ed.) (2006), Warsaw, pp. 34-35.

[4] In the years 1993-1997, six acts delineating the EU immigration policy were adopted. In June 1993, the family reunion principle became part of the EU immigration policy. This principle foresaw that the spouse and children of the person that holds a residence permit issued by an EU Member State are entitled to reside in that EU Member State. In December 1994, the residence permit was granted to students (persons obtaining education of the highest level) and self-employed persons. In accordance with the arrangement made in 1996, a person who continuously resided in a Member State for ten years had the right to pursue the status of long-term resident (LTR), but was not entitled to equal treatment in terms of access to employment. In December 1997, the issue of the so-called marriage of convenience was regulated. Member States received the right to verify marriages, and if the marriage is found to be a sham marriage, the non-EU spouse loses the right to reside in the EU.

[5] S. Peers (2000), *EU Justice and Home Affairs Law*, Essex, p. 39.

[6] Enhanced cooperation could be taken up if it was aimed at facilitating the conversion of the European Union into an area of freedom, security and justice (Article 40 of TEU), served the implementation of EU goals and boosted integration (Article 43, point a), respected EU Treaties and single institutional frameworks and respected the *acquis communautaire* (Article 43 point b and c), concerned at least eight Member States (Article 43, point g), respected the rights and freedoms of the states that did

The entering into force of the Nice Treaty brought about intensification of legislative work on policies complementing immigration solutions, i.e. the visa and asylum policies. In 2003, the so-called Common Consular Instructions were agreed upon. They introduced a uniform procedure for examining visa applications. In the same year, a decision to harmonise visa application formats was taken and necessary security standards for visas issued by Member States (both Schengen and national visas) were indicated. It was also precisely stipulated what information would be indicated on the visa form. In the area of asylum solutions, on 18 February 2003, the so-called Dublin II regulation was adopted. It applies to all Member States, except for Denmark. The regulation confirmed the provisions of the 1990 Dublin Convention and gave asylum seekers one chance to receive protection in the European Union. On 29 April 2004, the directive that specified the minimum standards for granting and withdrawing the asylum seeker status was adopted. The criteria decisive for granting protection in the form of the refugee status or a beneficiary of subsidiary protection were specified. The most important provision is the recognition that prosecution by state authorities or non-state actors is the basis for granting protection.

Upon the entering into force of the Lisbon Treaty, in reference to the policy for the protection of borders, immigration and asylum, it was agreed to lift internal borders and control of the movement of persons, irrespective of their nationality. This control was moved to the external borders of the European Union as part of the integrated border protection system. This is especially important as every year 1.5-2 million persons enter the territory of the European Union[7], 500,000 of whom are illegal immigrants. Close cooperation of border protection services of EU Member States supported by Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, was judged necessary to ensure increased effectiveness of combating illegal immigration. Actions of national border services and Frontex must comply with the binding legislative regulations on different treatment of illegal immigrants and persons applying for international protection. For this reason, it was underlined in the Lisbon Treaty that it was necessary to introduce further regulation in the area of asylum, immigration and visa policies and external border control. The European Union received the right to conclude international agreements on cooperation in managing the movement of persons, especially those seeking asylum and temporary or subsidiary protection, with third countries.[8]

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not cooperate in the enhanced cooperation procedure (Article 43, point h), was open for all EU Member States (Article 43, point j and Article 43b); it was implemented as a final measure if the cooperation goals could not be reached in a reasonable period by means of appropriate provisions foreseen in the treaty (Article 43a).

[7] G. Gancarz, J. Wiśniewski, *Unia Europejska a wyzwania migracyjne*, "Biuletyn Analiz UKIE", 2009, no. 23, p. 42.

[8] Cf. Article 79(3), *Treaty on the functioning of the European Union*, "Official Journal of the EU" C 115/358, 9.05.2008.

EU IMMIGRATION POLICY CHARACTERISTIC

The cooperation of EU Member States in the area of immigration focuses on combating illegal immigration and regulatory management of legal entries. The question of immigration is considered in reference to two contradictory rules: the freedom of movement and state sovereignty. The right of the individual to leave the country of origin, and then to enter and reside in a third state does matter. Those rights, however, are not absolute. The state has the right to define terms and conditions on entering its territory and residing there. It can also refuse a foreinger to enter or order an individual to leave its territory, if that person poses a threat to the security of the state, its internal order or public health.

In this very context, it needs to be made clear that legal immigration refers to third-country nationals who meet the EU requirements for a short-term stay, i.e. have a valid identity document that confirms their citizenship and entitles them to cross the EU border and a visa (if required by the EU). Illegal immigration refers to the following cases:

- illegal entry into the territory of a Member State via a green or blue border without the required documents or using false documents (individually or in result of international human trafficking);
- overstaying the EU visa or, in case of citizens of states that are not required to obtain visas, overstaying residency period by three months;
- human trafficking, understood as (in accordance with the definition provided in Council framework decision 2002/629 of July 2002) recruitment, transportation, transfer, harbouring, subsequent reception of a person, where use is made of force, threat, deceit or fraud, financial abuse, abuse of authority or if such actions are aided and abetted. The consent of the person that is the victim of human trafficking is not taken into account if any of the above actions was performed.

Effective regulation on legal immigration and the struggle against illegal immigration are conditioned by the strength of external border control. This, in turn, is connected with the necessity to establish mutual trust between EU Member States. Responsibility for supervision of external borders must not rest entirely upon the Member States with such borders but also on other European Union Member States, as halting the inflow of immigrants is in the interest of all EU Member States.

Taking the above into account, in May 2002, the Council accepted a proposal of a common, integrated policy for security and management of external borders of the European Union, which was crucial to the establishment of a coherent immigration policy. Security on external borders is dependent on the coherent functioning of four elements.[9]

The first element is constituted by external **border control**. In compliance with the provisions introduced under the Schengen Agreement and the Implementing

[9] Cf. *Report on the implementation of programmes, ad hoc centres, pilot projects and joint operations*, 10058/03, 3.06.2003.

Convention, it was agreed that crossing external borders (land – green, sea – blue and air borders at international airports) was only possible within designated zones. Each attempt of crossing the border anywhere else is considered to be illegal and is subject to punishment. Persons who cross the EU external border are obliged to provide their documents for control and identification purposes. The aim of the inspection is to ascertain the identity of the person on the basis of the provided document and to counteract and detect any threats to national security. Citizens of third countries must also have a visa if required, indicate the purpose and period of their stay in the Member State they wish to enter, and cannot pose a threat to the law and order of the Member State (SIS data, among others, are employed to this end). Member States have retained their exclusive right to decide on the granting or refusal of the right to enter the EU by a third-country citizen.

In order to streamline external border control, on 26 October 2004, the Council decided to establish the abovementioned European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. The mandate of Frontex covered: coordination of Member States' cooperation in the scope of EU external border management, providing EU Member States with technical and operational assistance, providing training to national institutions responsible for border protection, assistance in organising deportation of illegal immigrants who have been issued a decision on removal or readmission, as well as the refugees' return to safe states, and repatriates' issues. The agency is supported by the Mediterranean Coastal Patrol Network (MEDSEA), the European police supervision system, national police, and border and customs services. Rapid Border Intervention Teams (RABITs) are an important cooperative component. The proposal to establish them, which was aimed at curbing illegal immigration, was put forward by the European Commission in July 2006, and approved by the Council under Regulation 863/2007/EC of 11 July 2007. In accordance with its provisions, RABITs are permanent teams of about 200-300 persons capable to immediately respond to each and every request of any Member State. Participation of Member States in these forces is voluntary. RABITs are not the EU border guard but a group established to carry out particular tasks and respond to particular immigration crises.

External border protection is the subject of the common responsibility of the EU Member States. Therefore, it was decided to cover its costs from the EU budget. Initially, actions aimed at ensuring external border security were financed from the Schengen Fund. Currently, the management of EU external borders is supported by the European External Borders Fund established under decision 574/2007/EC of 23 May 2007, in reference to the provision of the Programme on Solidarity and Management of Migration Flows. The Fund is responsible for, *inter alia*, supporting Member States in: maintaining registers of persons crossing external borders, enhancing the qualifications of border guards and introducing a uniform training system, effective management of the movement of persons at external borders, organising training in detecting falsified documents, applying the provision of EC law concerning border crossing in a uniform manner by the border guard (especially the regulation estab-

lishing the EC code of principles regulating the movement of persons across borders, i.e. the Schengen Borders Code). The Fund supports development of border crossing infrastructure, related buildings and systems required for surveillance between border crossings and operating equipment (sensors, ICT monitoring equipment, document verification devices, terminals with access to SIS, VIS and FADO systems, means of transport for the control of external borders, equipment for information exchange, training and secondment programmes, R&D investments). In 2007-2013, the budget for the implementation of the activities financed from the External Borders Fund in the years 2007-2013 amounted to over EUR 10 million. Allocations are proportional to the involvement of the Member States (except for the UK and Ireland which do not participate in the Fund, and Bulgaria and Romania which joined the Fund in 2010[10]) in the management of external borders. The assessment is performed on the basis of two types of factors:

1) permanent factors that embrace, *inter alia*, the length of the external border, the number of border crossings and border security guards, and
2) variable factors (number of persons crossing the external border).

The second element of the integrated policy for security and management of external borders is **information** exchange about persons who cross the external borders of the European Union. To this end, mainly the Schengen Information System (SIS and SIS II), the Visa Information System (VIS), the European fingerprint database for identifying asylum seekers and irregular border-crossers (EURODAC) and the Europol information system are employed.

Keeping the EU's external borders secure also depends on the **effective detection of cross-border crime**, especially illegal immigration. This is both about the combat against international smuggling of people and illegal human trafficking. The framework decision 2002/946/JHA of November 2002 on the strengthening of the penal system to prevent the facilitation of unauthorised entry, transit and residence is a crucial regulation on counteracting illegal immigration. Member States are obliged to ensure that assisting in or organising illegal entry, transit or residence of third-country residents is effectively punishable by criminal penalties. Apart from isolatory sanctions (sentence of not less than six years of imprisonment, and if the infringements were committed for financial gain, as an activity of an organised criminal group or while endangering the lives of the persons who are the subject of the offence – sentence of not less than eight years), it is possible to confiscate the means of transport used to commit the offence, prohibit practising the occupational activity in the exercise of which the offence was committed, and even deport the perpetrator.[11] To legal persons facilitating illegal entry, transit or residence, financial penalties apply too, as well as exclusion from public benefits or aid, temporary or permanent ban on commercial activities, a judicial supervision and even a dissolution measure.

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[10] *Commission Decision of 18.12.2007 adopting the annual programme for Community actions within the framework of the External Borders Fund for the year 2007*, C (2007) 6437, Brussels 2007.

[11] See: "Official Journal of the EU" L 328, 5.12.2002.

Having regard to the fact that the fight against human trafficking and international smuggling of people is dependent on the elimination of possibilities of transporting those persons, on 28 June 2001 the Council adopted Directive 2001/51/EC on the financial penalties provided for by Member States for carriers. The Directive obligated carriers to return third-country nationals who are refused entry to the European Union. Member States undertook to take the necessary measures to ensure that carriers who commit the specified infringements are fined with penalties for each person carried: minimum EUR 3,000 (or equivalent in national currency) and maximum EUR 5,000. Additionally, the judicial authority may decide on the confiscation of the means of transport used for illegal transit, prohibit practising the occupational activity in the exercise of which the offence was committed, order temporary suspension or withdrawal of the operating licence.[12]

The last element of the policy for security and management of external borders is constituted by **cooperation with the countries of origin of immigrants,** especially MENA states. In November 2006, the European Commission presented its communication on "Global Approach to Migration One Year on: Towards a Comprehensive European Migration Policy".[13] In reference to the report of December 2000, it opted for changing the approach to immigration, and pointed to three reasons for such a position: 1) demographic perspectives and the ageing of the European society (see: Table 1 below); 2) the necessity to ensure EU competitiveness on the global market; and 3) the lack of possibilities for effective prevention of illegal inflow of persons. As a result, the following approach to immigration was proposed. Cooperation with third countries was to be crucial. It was postulated to strengthen the dialogue and cooperation not only with countries of origin but also with transit states, especially in North Africa. It was proposed to create protection zones in countries of origin, which would prevent the inflow of immigrants into the European Union. Buffer zones were linked to activities of Migration Support Teams tasked with providing technical and specialist assistance to third countries. At the same time, the 2000 proposal concerning legalisation of immigration in accordance with the quota system was repeated, i.e. the number of persons who can legally enter, reside and take up employment in EU Member States would be specified annually, and each year a list of job positions, aimed mainly at highly-qualified immigrants, would be drafted. There was also a postulate to create European Job Mobility Portals which would provide information on job opportunities in the European Union.[14] Migration Mobility Centres, financed from the EU budget, would be responsible for the or-

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[12] See: "Official Journal of the EU" L187, 10.07.2001.

[13] More: *The Global Approach to Migration One Year on: Towards a comprehensive European migration policy, Communication from the Commission to the Council and the European Parliament*, Brussels, 30.11.2006, COM (2006) 735 final.

[14] More: *Communication from the Commission to the European Parliament and the Council on Circular Migration and Mobility Partnerships between the European Union and Third Countries*, Brussels, 16.05.2007, COM (2007) 248 final, p. 10.

ganisation of exchange programmes for students and researchers, employment for seasonal employees and professional training adjusted to the needs of the European labour market. These initiatives were to cater for mutual benefits by strengthening labour markets and economic development. On 20 November 2007 also the EU Foreign Affairs Council pointed to the link between immigration and development. In the conclusions adopted at the time it was underlined that adequate management of migration might "promote close relations" between countries of origin, transit states and target countries, and consequently contribute to the development of those states and provide assistance in the process of developing employment policies.[15] The *Agenda for new skills and jobs* was to ensure practical implementation of those objectives. The Agenda was presented by the European Commission in 2010. The main aim of the programme is to pursue a "comprehensive economic migration policy that would enable the flexible appeasement of labour market needs"[16] in cooperation with third countries.

Table 1

Demographics in the Middle East and North Africa as compared to the European Union in the years 2005-2030 (persons aged 15-64, in millions)

Year	Middle East and North Africa	European Union
2005	286,836	330,137
2010	322,423	332,364
2015	354,452	328,430
2020	384,648	322,832
2025	414,696	315,800
2030	443,154	306,471

Source: author's own calculations based on Ph. Fargues (2008), *Emerging Demographic Patterns across Mediterranean and Their Implications for Migration through 2030*, Washington, p. 7.

THE ARAB SPRING AS A FACTOR DETERMINING CHANGES IN THE EUROPEAN MIGRATION POLICY

Governments of Member States exposed to the inflow of persons from North Africa, especially Algeria, Egypt, Libya, Morocco and Tunisia (see: Table 2 below), understood how important cooperation with countries of origin of immigrants was.

[15] Point 7, *EU Council conclusions on coherence between EU migration and development policies*, CL 07-275EN, 20.11.2007.

[16] *Ibid*.

Table 2

Migration from North African states in 2000

Country of origin	No. of emigrants	% of persons staying in the EU
Algeria	2,070,840	79.1%
Egypt	2,173,711	8.9%
Libya	78,109	24.6%
Morocco	2,589,108	71.9%
Tunisia	607,491	75.1%

Source: author's own calculations based on L. Marchiori, F. Docquier (2010), *The impact of MENA-to-EU migration in the context of demographic change*, Luxembourg, pp. 8-9; and Ph. Fargues (2006), *International Migration in the Arab Region: Trends and Policies*, United Nations Expert Group Meeting on International Migration and Development in the Arab Countries, Beirut, pp. 24-25.

Taking into consideration the scale of immigration from those states, in 1999 ministers of internal affairs of France, Spain, the United Kingdom, Germany and Italy launched a discussion on the risks connected with illegal immigration. The meeting held in La Baule in 2003 led to the adoption of three recommendations on safe and secure third countries, minimum amounts of funds that persons applying for Schengen visas must hold upon entering the EU area, and the obligation of airlines to provide passengers' data (for the purpose of identifying persons who did not use their return tickets and might have stayed in the European Union).[17] During the meeting, it was proposed to establish a security zone in the western part of the Mediterranean Sea. Member States most threatened with illegal immigration were to take part in the project (Spain, France, Italy), as well as countries of origin of immigrants (Algeria, Tunisia and Morocco). The objective was to provide African states with financial support to enable more effective management of migration flows.

During the informal Summit of the European Council at Hampton Court held on 17 October 2005, the Franco-Spanish initiative to develop effective measures combating illegal immigration from African states was discussed. In result the European Commission issues its communication titled "Priority actions for responding to the challenges of migration: First follow-up to Hampton Court". The adopted global approach to migration, confirmed in the conclusions of the Council of December 2006, came down to establishing cooperation between the EU and African and Mediterranean states.[18] The involvement in migration management together with North

[17] E. Posel-Częścik, *Grupa Pięciu plus Polska?*, "Polski Przegląd Dyplomatyczny" 2004, vol. 4, no. 1, pp. 60-61.

[18] In June 2007, cooperation was extended to cover states of other regions, among others Central Asia and the Far East, Russia, Ukraine and the Balkan states. More: *Communication from the Commission of 16 May 2007 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions applying the Global Approach to Migration to the Eastern and South-Eastern Regions Neighbouring the European Union*, COM (2007) 247 final.

African states was discussed at the Rabat Conference on Migration and Development in July 2006 and at the conference held in Tripoli in November 2006.[19] Special attention was paid to the necessity to pursue political dialogue, including Article 8 and 13 of the Cotonou Agreement. As a result, in December 2007 at the EU-Africa summit held in Lisbon, the action plan and common strategy constituting "The Africa-EU Partnership on Migration, Mobility and Employment" were adopted. This partnership provided responses to migration and employment challenges in the interest of all partners.

The events of 2011, referred to as "the Arab Spring", contributed to the launch of the EU-wide debate on immigration policy. Although the first reactions of EU diplomacy to the 2011 developments in North African countries were but an appeal to restrain using force and to respect fundamental freedoms, as well as a call for hearing out protest participants,[20] the influx of immigrants to EU Member States forced the EU to become more active. Both ECHO (the Directiorate-General for Humanitarian Aid) and Frontex were put on high alert.[21] It was assumed necessary to take specific actions that would support EU Member States hit by the influx of migrants and to develop and adopt new solutions that would become part of the EU migration policy.

Support for Member States

According to the data provided by the United Nations High Commissioner for Refugees, from 20 February to 2 March 2011 about 88,500 people left North Africa, 85,000 of whom left Tunisia.[22] The humanitarian crisis sparked evacuation missions. By 14 March, 161 flights with the participation of UNHCR and the International Organisation for Migration were organised enabling about 25,500 people to leave Egypt and Tunisia.[23] Apart from the evacuations organised from the outset of the

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[19] More in: *Rabat Declaration and Action Plan*, Euro-African Ministerial Conference on Migration and Development, Rabat, 10-11 July 2006, http://europa.eu (18.12.2011) and *Joint Africa-EU Declaration on Migration and Development and Ouagadougou Action Plan to combat trafficking in human beings, especially women and children*, Africa-EU Ministerial Conference on Migration and Development, Tripoli, 22-23 November 2006, http://europa.eu (18.12.2011).

[20] Words of Catherine Ashton. After: *Tunisia closes schools and universities following riots*, BBC News, http://www.bbc.co.uk (4.03.2011) and *Libia jak Egipt? "Dzień gniewu" wobec Muammara Kaddafiego*, http://www.tokfm.pl (17.10.2011).

[21] *Voice after exit revolution and migration in the Arab world*, http://www.social-euro-pe.eu/2011/05 (14.10.2011).

[22] *Update No. 1 on the Humanitarian Situation in Libya and in the Neighbouring Countries*, UNHCR, Geneva, 2.03.2011, http://www.unhcr.ch (7.11.2011).

[23] *Update No. 8 on the Humanitarian Situation in Libya and in the Neighbouring Countries*, UNHCR, Geneva, 15.03.2011, http://www.unhcr.ch (7.11.2011).

Arab Spring, unorganised waves of migrants headed for the European Union, especially Italy. From mid-January to 14 March 2011, the small Italian island of Lampedusa, 225 km away from the coast of Tunisia and around 280 km away from Sicily, was entered by over 8,800 migrants. Authorities of Malta recorded the entry of over one thousand migrants by mid-April 2011.

Under these circumstances, the European Union was forced to take immediate actions aimed at supporting the Member States exposed to the increased influx of migrants from states affected by the Arab Spring. *Hermes 2011* operation, initiated at the request of Italy in February 2011, was directed at providing assistance in supervising the southern EU border and controlling ships with migrants attempting to enter Italy's territorial waters. Twenty Frontex specialists were delegated to the South of Italy and additional aerial and maritime assets were deployed as part of RABITs' action. Frontex led support was provided by France, Spain, the Netherlands, Malta and Germany.[24] On 23 March 2011, it was decided to prolong the *Hermes* operation by five months and extend it to cover Sardinia (the island suffered migration inflow from Algeria). Underlining the necessity to ensure technical and personnel support, the number and outreach of patrols was increased. The task of patrols was to turn back boats carrying migrants and prevent them from crossing EU borders[25]. The other support provided was one in examining applications for the granting of refugee status or other forms of protection foreseen by the EU law. The case of the *Mistral Express* ferry illustrates how controversial actions taken as part of the *Hermes* operation were. With over 1,800 persons from Morocco, Egypt, Libya, Algeria, Tunisia, Syria, and even Sudan and Mauritania on board, the ferry was not allowed to enter Italian territorial waters, as the Italian Ministry of Interior tried to learn how many migrants would submit asylum applications, and how many would seek the right to reside in the EU. The Ministry demanded such data prior to issuing its consent to the ship's entering Italy's territorial and internal waters. Some of the migrants, who managed to legally enter Italy, but were refused the temporary residence permit, attempted to enter the territory of France. This triggered a heated dispute between Rome and Paris.[26] The French authorities, referring to the necessity to ensure internal order and striving to stop the inflow of immigrants, issued a decision banning Italian trains from entering France. This was tantamount to restoring border control at the Ventimiglia-Menton border crossing. The example of France was followed by Danish authorities which reinstated internal border control. As a result, the myth of European unity and solidarity in the face of challenges and threats was dispelled. It turned out that the support of EU institutions and other Member States was indispensable.

It is worth underlining that support for Member States exposed to massive migration from North Africa was not limited to the technical and personnel assistance provided within the *Hermes 2011* operation. At the first stage of actions taken in re-

[24] *Hermes 2011 Running*, http://www.frontex.europa.eu/newsroom (14.12.2011).

[25] *Hermes Operation Extended*, http://www.frontex.europa.eu/newsroom (14.12.2011).

[26] *Voice after exit revolution...*

sponse to the crises in North Africa, the European Union allocated EUR 102 million to evacuation and repatriation of EU citizens and provision of aid to those in need. Another EUR 25 million was allocated to support Member States pressurised by migration from North Africa. The funds were obtained from the External Borders Fund and the European Refugee Fund. That was especially important, as until mid-May 2011 about 38,000 migrants entered Italy. Most of them fled from Tunisia (about 24,000) and Libya (about 14,000). By mid-June those figures increased to 43,000[27], of which 1,500 reached Malta and the rest entered Italy. In mid-August, the number of migrants that arrived in Italy amounted to over 52,000.

It is worth noting that the decision on increasing funds allocated to external border management and visa policy implementation was a direct consequence of the Arab Spring and related events. In 2012 the External Borders Fund for the implementation of national programmes was to be increased by 35% to the amount of EUR 370 million. The largest part was to be allocated to EU Member States of the Mediterranean: EUR 53 million to Italy, over EUR 48 million to Spain, over EUR 44.5 million to Greece, just under EUR 15 million to Malta and EUR 7 million to Cyprus.[28]

Proposals of new immigration solutions

The inflow of migrants in result of the Arab Spring made the authorities of Member States and EU representatives aware of the necessity to reform the Common Immigration Policy.

On 11 March 2011, an extraordinary European Council dedicated to the analysis of the situation in North Africa was held. The objective of the meeting was to discuss measures for ensuring security of EU Member States and stopping the inflow of migrants. On the other hand, it was recognised that it was necessary to support democratic aspirations of African states. In the opinion of Alvaro de Vasconcelos, Director of the Institute for Security Studies, the events of the Arab Spring should be useful for the European Union: "We should stop thinking that the people fighting for democracy in North Africa are extremists. We should treat Syria just like we treat Belarus [...]. The European Union must show now that it supports democratic aspirations of these nations".[29] The position adopted by the Council was reflected mainly by its declaration that support for countries of the region would be provided on condition that they make progress on their path to political transformation. The support

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[27] *Update No. 26 on the Humanitarian Situation in Libya and in the Neighbouring Countries*, UNHCR, Geneva, 27.05.2011, http://www.unhcr.ch (7.11.2011)

[28] *EU External Borders Fund to allocate euro 370 million to Member States in 2012*, European Commission Press Release, 5.08.2011, IP/11/953.

[29] *11 marca szczyt UE ws. Libii, a potem strefy euro* http://europarlament.pap.pl (14.10.2011) and the comment for "Gazeta Wyborcza" of 9 March 2011, http://www.gazeta.pl (14.10.2011).

was to encompass organisation of parliamentary elections (Tunisia) and a dialogue with the new authorities (Egypt). The main topic of the Council was the situation in Libya. While underlining that the government of Muammar Gaddafi was no longer a dialogue partner for the European Union, a dialogue with the Libyan National Transitional Council was initiated. The main objective was to guarantee that EU citizens were safe in Libya and that they were evacuated.[30]

Initiatives of the European Commission and the conclusions of the EU Council and European Council had the greatest impact on the new immigration policy.[31] Pressurised by the governments of France and Italy, in its Communication of 4 May 2011, the European Commission considered it necessary to attain greater solidarity among EU Member States in receiving immigrants and strengthening external border control to ensure more rapid and effective responses to migration challenges. It underlined the necessity to expand the Frontex mandate and the need to deal with unilateral restoration of border control by a Member State. In the opinion of EC representatives, restoring border control might be justified "under very exceptional circumstances, such as where a part of the external border comes under heavy unexpected pressure". [32] At the same time it was emphasised that such controls can be reinstated after all other available measures of migration management fail, and that such controls would be limited in time and geographically. On 24 May 2011, in its Communication on immigration and asylum, the European Commission recognised as indispensable the improvement of border crossings infrastructure and further training programmes for border services to ensure effective border control. Moreover, in the Communication, it was also underlined that it was necessary to establish the proposed Schengen evaluation mechanism that would allow for reviewing the effectiveness of the functioning of the Schengen area and to tighten cooperation between Frontex, Europol, and national immigration, border and police authorities.[33]

On 9 June 2011, those proposals were discussed by the Justice and Home Affairs Council (JHA). Similar issues were touched upon by the JHA during the Polish Presidency of the Council of the European Union. On 18-19 July 2011 in Sopot, an informal meeting of ministers of justice and ministers of interior of Member States was held. It was devoted to the functioning of the Schengen area, the Common European Asylum System, and measures to increase the effectiveness of external border management.[34] Differences in interests between EU Member States surfaced. Repre-

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[30] To this end, cooperation was launched with the Office of the United Nations High Commissioner for Refugees, the International Organisation for Migration, as well as the International Red Cross and Red Crescent Movement and non-governmental organisations.

[31] Cf. M. Duszczyk, *Polityka imigracyjna UE – odpowiedź na "kryzys migracyjny" 2011 r.*, "Wspólnoty Europejskie" 2011, no. 4, p. 20.

[32] After: A. Franco, *EU moots new Schengen rules*, http://www.swissinfo.ch (14.10.2011).

[33] *Annual Report on Immigration and Asylum (2010). Communication from the Commission to the European Parliament and the Council*, Brussels, 24.05.2010, COM (2011) 291 final, p. 10.

[34] *The Informal Meeting of the Justice and Home Affairs (JHA) Council,* http://pl2011.eu/content (14.10.2011).

sentatives of France and Italy, supported by German diplomacy, opted for amending Schengen agreements and enabling the reintroduction of external border control. The Polish Presidency, supported by, *inter alia*, Belgium, pointed to the fact that such ideas contradicted the idea of "Europe without frontiers". As an alternative, the Presidency postulated that the EU should undertake activities aimed at streamlining the management of the Schengen area, border management and establishing new immigration and asylum policy instruments that would allow for the legalisation of immigration and the establishment of an "effective and sustainable policy on returns and readmission".[35]

The issue of immigration and asylum was also debated by the European Council. At its meeting on 24 June 2011, it emphasised that it was necessary to seek close co-operation with Mediterranean states to advance the dialogue for migration, mobility and safety.[36] This was a reference to the European Parliament's resolution of 5 April 2011, where this postulate was crucial.[37] The objective was to increase the effectiveness of legal immigration management and limiting illegal immigration. Similarly as the European Commission had done before, the European Council also considered introducing the possibility of unilateral reintroduction of border control by a Member State. In the Council's Conclusions of 23-24 June, it was proposed to strengthen the competences of Frontex and the Schengen area, and establish a common policy for managing immigration in cooperation with third countries.

Taking the above postulates of the JHA, the European Council, and the European Commission into account, and in an attempt to reconcile contradictory visions of the European immigration policy, the decision to extend the Frontex mandate was taken. The EU Frontex Regulation of 26 October 2011 foresees the increase in the agency's operational capacity, among others thanks to increasing its personnel, the quantity of border rapid response groups and the possibility of receiving support from international teams of Member States that owing to excessive migration pressure would not be capable of exercising border control on their own.[38] Cooperation with third countries based on projects that would provide financial and technical support in implementing the return (readmission and removal) programmes was considered to be crucial. Additionally, at the initiative of the European Parliament, the European Commission was given 12 months to examine the possibilities of establishing

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[35] *Programme of the Polish Presidency of the Council of the European Union.* 1 July 2011 – 31 December 2011, Ministry of Foreign Affairs, Warsaw 2011, p. 25.

[36] This was postulated already in March 2011. Cf. *Komisja Europejska nawiązuje ambitne Partnerstwo na rzecz Demokracji i Wspólnego Dobrobytu z południowym regionem Morza Śródziemnego*, http://europa.eu/rapid/press-release_IP-11-268_en.htm (14.10.2011).

[37] Cf. *European Parliament resolution of 5 April, 2011 on migration flows arising from instability: scope and role of EU foreign policy*, 2010/2269 (INI).

[38] See: points 9,13 and 14 and Article 3 (1b), 3b, 8a, *Regulation (EU) No. 1168/2011of the European Parliament and the Council of 25 October 2011 amending Council Regulation (EC) No. 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union*, "Official Journal of the EU" L 304/1, 22.11.2011.

a European border guard composed of existing support teams, border rapid response groups and national border officers delegated by Member States. Expanding the existing competences and adding new ones was to improve operations of the agency. The aim was also to respond more effectively to future migration crises.

In reference to previous arrangements, after the events in North Africa, specific actions were taken to launch the online Immigration Portal connected with Migration and Mobility Resource Centres. The portal, which was launched on 18 November 2011, is available in English, Spanish and Arabic. It contains basic information on the requirements that must be met by persons intending to enter the European Union, migration procedures, as well as on the possibility of taking up legal employment or education in EU Member States.

On the same day, the European Commission presented its Communication on the global approach to the issue of migration. Further amenities for migrants applying for legal residence and employment in the EU were hinted at. Simultaneously intensification of the struggle against illegal immigration, smuggling of people and human trafficking was announced. Visa procedures was to be shortened for those who apply for short-term residence (for purposes such as tourism, education, research or seasonal employment) and the quota system for persons intending to take up permanent residence and employment was to be implemented.[39]

The system of mutual recognition of qualifications and diplomas and further development of cooperation on asylum and other forms of protection will constitute significant elements of the new approach to immigration. At first, these enhancements will be directed mainly at potential immigrants from Egypt, Tunisia and Morocco. The EU also foresees the possibility of a dialogue on this issue with the new Libyan authorities.

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In 2003, immigrants constituted 3.6% of the population of the European Union. Seven years later, the number of immigrants exceeded 20 million which accounted for 4% of the total of EU inhabitants.[40] Legal and illegal arrivals of third-country nationals intending to take up long-term residence forced the European Union to adopt common principles of immigration management. Though the beginnings of the EU immigration policy date back to 1993 (when Pillar III encompassing immigration, visa and asylum solutions was introduced under the Maastricht Treaty) and its development was significant under the Amsterdam Treaty, the Arab Spring contributed to the launch of the debate on the necessity to reform the EU's approach to immigration. The postulates put forward in 2011 have yielded some results and will entail the adoption of new legal solutions in the near future. However, it is worth

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[39] Cf. Part 5, *The Global Approach to Migration and Mobility, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, Brussels 18.11.2011, COM (2011) 743 final.

[40] *Annual Report on Immigration and Asylum (2010)...*, p. 1.

underlining that though the dominant factor of change was constituted by the inflow of immigrants from North Africa, the consequences of the new EU immigration policy will affect not only illegal immigrants but also those third-country nationals who enter the EU for short term visits (tourism, education, studies or research, business) and long periods (legal residence and employment).

The goal that according to Member States justifies the immigration policy reform has been clearly specified: counteracting illegal inflow of third-country nationals and their illegal stay in EU Member States. The task of the EU is therefore to protect the 136-thousand-kilometre-long external sea border, the 9-thousand-kilometre-long external land border and more than 300 international airports. However, it is worth noting that all EU bodies and institutions also support the legalisation of immigration in view of ensuring the growth and stabilisation of the European labour market. Undoubtedly, such an approach will protect the European Union from becoming trapped in a possible vicious circle of immigration policy[41] where the increase in outlays on external border control aimed at increasing its effectiveness leads to an increase in social belief in a migration threat, which in turn leads to further growth of allocations to border control.

ABSTRACT

Multilateral cooperation of the Member States of today's European Union which is oriented towards the creation of uniform immigration legislation goes back to 1985 when the Schengen Treaty was signed. However, it was the ratification of the Maastricht Treaty on European Union that marked a turning point. When defining the areas of common interest the Member States indicated immigration, visa and asylum policy and declared to accept regulations on the crossing of external borders. The objective agreed upon was to suppress illegal immigration, residence and work in the EU of the citizen of third countries. Implementation of a unified immigration policy for the Member States of the EU proved to be especially important in the situation of an increased influx of people from the region of North Africa. Developments known as the Arab Spring and the migration pressure from North Africa triggered a debate on the necessity of reforming the EU's immigration policy. The object of the reform is twofold. On the one hand, it is to increase the effectiveness of preventive measures against illegal influx of persons from third countries and their illegal residence in the EU. On the other hand, attention is drawn to constructing the EU's immigration policy in such a way as to facilitate legal immigration with a view to the development and stabilisation of the European labour market.

[41] Compare Douglas S. Massey's approach.