

## TRENDS IN EU POLICIES TO COMBAT ILLEGAL MIGRATION (LEGAL - ADMINISTRATIVE MECHANISMS DEVELOPMENT)

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**Abstract:** *The EU's comprehensive, multilateral approach on migration covers all phases related to this process, searching to capitalize on its benefit, and to implement effective policies and measures on illegal migration and human trafficking combating. It is derived from commonly accepted principles of subsidiarity, proportionality, solidarity and respect for the law, and the Member States economic-social framework. It is also based on human rights effective enforcement and migrants fundamental freedoms, including access to actual asylum mechanism.*

*Regarding this matter there is no general strategy to promote the return of migrants, although there are strategies and plans at regional and local level. EU has engaged a strong legislative framework considering the European peoples' well-being by establishing and strengthening their rights as citizens, consumers and workers in many domains, including mobility, health and safety, social security, working conditions, information and consultation, gender equality and non-discrimination.*

**Keywords:** *EU policies, laws, treaties, human rights, refugees, European citizens.*

### **Introduction**

Europe, on the strength of its geographical position and reputation is a pattern of stability, generosity and openness in the growing international and internal conflicts framework and therefore it is likely to remain a point of reference for asylum seekers and migrants. This is also reflected in the increased amounts, and EU funding flexibility and diversity for migration and asylum policies, within EU's current and future budgets.

In this study is highlighted the EU „*legal-administrative approach*” described as a fusion of instruments and mechanism at the legislative and administrative level in order to prevent the threats towards migrants engender from the growing international and internal conflicts.

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Nowadays, EU measures regarding migration issues has improved: border control systems can rapidly provide the necessary financial and operational support to the Member States being under pressure; new channels are put in place to support vulnerable people and provide alternative, safe and legal ways of accessing Europe for people in need of protection; cooperation on migration management field along with partner countries outside Europe is stronger. Based upon these elements, efforts must be continued to establish a sustainable system that ensures efficient and decent, respecting human rights, migration management in line with future challenges, and establishing the right Common European Asylum System framework to be managed responsibly and fairly. Further efforts will be needed to this end and migration will remain high positioned on the EU political agenda in the coming years. Therefore, regarding this matter, EU proposes a comprehensive European policy to address the challenges of migration.

Migration is an important factor for the contemporary European society evolution. Among its many benefits, one can mention: *facilitating economic integration and intercultural dialogue at global and regional level; ensuring the necessary labor force in developed countries and better use of labor work from the countries of origin; generating cash flow transfers to less developed countries; facilitating the transfer of knowledge and technology to migrants' countries of origin, after their repatriation*<sup>1</sup>.

European policy on asylum and migration is established on European traditions, considering respect for human rights and humanitarian issues, in the benefit of the European Union, migrants and their countries of origin. Thus, the migrants' integration into European society aims at a balance between their rights and the culture of their country of origin.

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<sup>1</sup> Mădălina Popa, Dragoș Ungureanu, Iulian Onească, „Politica de migrație a Uniunii Europene – implicații pentru piața muncii”, Centrul de Informare Europe Direct București, Institutul European din România, Biblioteca Națională a României, 2013, p.5.

## **1. EU instruments and mechanisms evolution in preventing illegal migration**

The Europe Council has several customary instruments and mechanisms implemented in time towards migrants, as we mention below:

### **a) Instruments**

- European Convention on Human Rights (1950). According to *Article 1*, the Europe Council Member States shall pledge the rights provided for in the Convention not only to their own nationals but also to all those within their jurisdiction, including foreigners;
- Geneva Convention on the protection of refugees (1951) and its Protocol to the European Convention on Consular Functions on Refugee Protection (1967);
- European Convention on Extradition (1957), the 4 additional protocols and European Convention on the Legal Status of Migrant Workers (1977);
- European Agreement on the Abolition of Visas for Refugees (1959);
- European Social Charter (1961), revised in 1996;
- European Agreement on Transfer of Responsibility for Refugees (1980);
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987);
- European Security Strategy in 2003;
- European Asylum Dactyloscopy Database (EURODAC) established in 2003;
- Dublin Regulation (Dublin Convention in 1990 substituted in 2003 with Dublin II Regulation that was replaced afterwards by Dublin III Regulation in 2013, proposal Dublin IV Regulation in 2016);
- Employers' Sanctions Directive from 2009;
- Convention on Preventing and Combating Violence against Women and Domestic Violence (2011);
- European Border Surveillance Regulation (2013);
- The EU Global Strategy in 2016;
- EU Security Union Strategy for the period 2020-2025.

**b) Mechanisms**

Most irregular migrants originally entered the EU territory legally on short-stay visas, but remained in here for economic reasons once their visa has expired. Therefore, effective and credible management of the external borders is essential. In this concern, the EU has developed an integrated border management strategy which aims to maintain high levels of security by using, for example, information technology (like the Visa Information System) and biometric features (e.g. fingerprints) for identification<sup>2</sup>. In this matter had been developed:

- *The European Court of Human Rights*, since 1959, an international court aiming “on individual or State applications alleging violations of the civil and political rights set in the European Convention on Human Rights”<sup>3</sup>;

- *Common European Asylum System along with European Asylum Dactyloscopy Database (EURODAC)*, that has as main purpose to serve the implementation of the Dublin III Regulation entered into force in 2013;

- *Dublin System*, based on the two instruments, Dublin III Regulation and EURODAC, has an extended interpretation on asylum applications and it “operates on the assumption that, as the asylum laws and practices of the EU States are based on the same common standards, they allow asylum seekers to enjoy similar levels of protection in all EU Member States”<sup>4</sup>. “The largest numbers of outgoing requests using the Dublin procedure were sent by Germany (48 844), France (48 321), each representing close to one-third of the total number of outgoing requests recorded in 2019. They were followed by Belgium (11 882) and the Netherlands (9 267). These four

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<sup>2</sup> \*\*\*, Migration and Home Affairs, “Irregular Migration & Return”, European Commission.

<sup>3</sup>\*\*\*, European Council on Refugees and Exiles, The Court in brief, available at: [https://echr.coe.int/Documents/Court\\_in\\_brief\\_ENG.pdf](https://echr.coe.int/Documents/Court_in_brief_ENG.pdf), accessed on 05.02.2021.

<sup>4</sup>\*\*\*, UNHCR, “Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national”, European Council on Refugees and Exiles.

Member States together sent more than four-fifths (83%) of all outgoing requests in 2019<sup>5</sup>;

- *Visa Information System (VIS)* that prevents visa fraud between the EU Member States, also aids control at external border crossing points and supports the identification process regarding listed persons within Member States territory;

- the *European Border Surveillance System, EUROSUR*, that is multipurpose system for cooperation put into effect in order to ameliorate the situational sensibility and enhance the reaction ability as a response in combating the illegal migration regarding EU's external borders in close cooperation between FRONTEX and EU Member States;

- *European Council on Refugees and Exiles (ECRE)* founded in 1974 is a pan-European Agency that gathers 98 NGOs from 40 countries; the alliance purpose addresses the protection and the rights of refugees, asylum seekers and displaced persons;

- *EUROPOL, EUROJUST* and *CEPOL*, that are specialized EU agencies; they carry out activity in combating organized crime, a threat to EU citizens;

- To save lives of those in distress at sea, EU States' coastguards and naval services need to make major efforts, with assistance from the European Border and Coast Guard Agency FRONTEX.

## **2. Trends in EU legislation and policies on migration**

Even with the various legal acts managing migration phenomena in the EU and efforts to enhance this set of legislation, in order to make the EU more attractive, reducing red tape and divergences between European and national laws, analysts believe that too much progress has not been made. In the majority of Member States, unemployment and underemployment coexist with labor shortage. The labor deficit is systemic, for certain professions and sectors such as health, information and communication technology, finance, etc., and also disparities between countries are massive.

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<sup>5</sup>\*\*\*, EUROSTAT, "Key figures on functioning of Dublin system in 2019", available at: <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/DDN-20201009-1?inherit-Redirect=true&redirect=%2Feurostat%2Fnews%2Fwhats-new>, accessed on 06.02.2021.

It is assessed that the considerable obstacles regarding the European legislative framework inefficiency and the exclusive Member States full ability to determine the admission volumes of immigrants are the vulnerability matter. Despite the existence of a fairly important set of European immigration directives, legislative ambivalence sometimes develops turmoil and a lack of coherence.

Most EU countries have introduced the so-called principle of “safe countries” in the refugee status procedure, Romania as well. For people from countries considered safe, the risk of political, religious, ethnic persecution is considered to be extremely low or non-existent, which allows asylum applications submitted by these people to be examined under an urgent procedure, and measure of expelling rejected applicants becomes applicable immediately.

*The Stockholm Programme* established the EU priorities towards the *area of freedom, security and justice* for the period 2010-2014. Standing on prior attainments of *Tampere programmes (in 1999)* and *The Hague (in 2005)*, this programme focus on addressing future challenges and further solidification considering the *area of freedom, security and justice*, via actions focused on citizens interests and needs. Proactive policies considered migrants and their rights with the purpose in ensuring comparable rights and liabilities to Union citizens for third-country nationals residing legally in EU Member States by 2014.

The unprecedented arrival of refugees and irregular migrants in the EU, which peaked in 2015, exposed a series of deficiencies and gaps in EU policies on asylum, external borders and migration.<sup>6</sup> Thus, the European Commission embraced a new *European Agenda on Migration* adopted on 13 May 2015, in which are proposed the immediate measures needed to address regarding the current migration challenges, as well as the medium and long-term initiatives to be taken in providing structural solutions for improved migration management in all its aspects. Migration management encloses an internal dimension, which derives from shared Member States responsibility, but as well as an external dimension, managed in cooperation

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<sup>6</sup> Nikolai Atanassov, Anja Radjenovic, “EU asylum, borders and external cooperation on migration”, European Parliamentary Research Service (EPRS), 2018, p. 1.

with non-EU states, countries of transit and origin of immigrants. Fusing both internal and external policies, the *Agenda* proposes a holistic approach, leaned on trust and solidarity between EU states and institutions. In another words the *EU Agenda for Migration* emphasizes the necessity for the latest, comprehensive approach that applies all internal and external policies and instruments available within EU.

„2018 marked a decrease of arrivals of asylum seekers and irregular migrants compared to pre-2015 levels. Despite this reduction, Member States and Norway still had to face challenges to manage the integration or return of large number migrants arrived in Europe during the previous years. As a result, Member States and Norway introduced changes in their legislation, policies and measures as a means to foster legal migration pathways, promote inclusion of migrants as well as ensure protection of refugees and vulnerable groups”<sup>7</sup>. In response, a *new Pact on Migration and Asylum*<sup>8</sup> was initiated in 2020 by the European Commission, encompassing all the various items needed for a comprehensive European approach to migration. The new pact establish an expanded and strong procedures into asylum and migration system and assures a stability between the responsibility fair sharing principles and solidarity. An essential action in re-establish confidence among Member States and in the EU capacity to handle the migration phenomenon.

The pact is found on four pillars:

❖ **Sharpened trust which stands on improved and more efficient procedures**, in this matter the Commission suggested to insert an cohesive border procedure, for the first time involving pre-entry check meant to determine the identity of all persons passing the EU external borders without permission or who have been unshipped upon save and rescue actions; and managing of medical and security checks, fingerprinting and registering in the EURODAC database;

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<sup>7\*\*\*</sup>, Migration and Home Affairs, “New trends in legislation, policies and practise across the EU on Migration and Asylum”, Annual Report on Migration and Asylum 2018, European Migration Network, May 2019.

<sup>8\*\*\*</sup>, European Commission, “Communication from the Commission on a New Pact on Migration and Asylum”, available at: [https://eur-lex.europa.eu/legal\\_content/-EN/TXT/?qid=1601287338054&uri=COM%3A2020%3A609%3AFIN](https://eur-lex.europa.eu/legal_content/-EN/TXT/?qid=1601287338054&uri=COM%3A2020%3A609%3AFIN), Brussels, 23.09.2020, accessed on 07.02.2021.

❖ ***Righteous division of responsibility and solidarity***, thus, each Member States in crisis times, without exception, is ought to contribute in solidarity, support in consolidating the entire system, maintain a good cooperation regarding the parts facing migratory pressures and guarantee that the Union fulfils its humanitarian liability;

❖ ***Paradigm shift in cooperation with third countries***, therefore, the EU will be interested to promote mutually beneficial partnerships with third countries, in order to contribute in addressing common challenges such as migrant smuggling and the development of legal migration routes and will address the effective implementation of readmission agreements and mechanisms;

❖ ***Comprehensive approach*** aimed to promote a ***Common European System*** that will include a more effective legal framework for managing the **return** of irregular migrants; a ***Common Governance for Migration***, with an improved strategic planning to establish the EU and national policies alignment and the survey of migration management on the field, in order to strengthen mutual trust.

The Commission will also adopt a new comprehensive ***Action Plan on Integration and Inclusion for the period 2021-2024***. The document is divided into actions on four topical areas (education, employment, health and housing) and five cross-topical areas (partnerships, EU funding, host society participation, new technologies and digital tools, and monitoring) with a close observation on the insufficient access to healthcare as a major obstacle to integration and inclusion and names the COVID-19 pandemic as a key factor in shedding light on inequalities in this area<sup>9</sup>. In fact, the outbreak of COVID-19, since the end of 2019, showed how quickly criminals take advantage of a changed environment: cybercriminals have been particularly swift and industrious in exploiting the fears and anxieties

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<sup>9</sup>\*\*\* EURO CITIES, “The EU Action Plan on Integration and Inclusion 2021-2027–Policy Brief”, available at: <https://eurocities.eu/wp-content/uploads/2020/11/Policy-Brief-EU-Action-Plan-on-Integration-and-Inclusion-2021-2027.pdf>, accessed on 10.02.2021.



of citizens by deploying phishing and malware attacks to extract payment card information and extort victims<sup>10</sup>.

In the turmoil engendered by the COVID-19 pandemic, almost all Member States notified the provisional reintroduction of national border control as a measure to protect the population against the virus. Also, a set of regulations, directives and guidelines have been issued at European Union level covering this emergency situation, as well as the European Commission's recommendations, which aim to establish and lift travel restrictions, to grant visas and to repatriate citizens.

The migrants and EU citizens' role in the context of the crisis caused by the COVID-19 pandemic has become essential by providing important services or working as doctors and nurses. Concomitantly, the COVID-19 pandemic effects are also felt in migrants' countries of origin. Bank transfers from those working abroad to families left at home have fallen sharply.

The EU will need everyone's contribution to the recovery and resilience of economies in the post-COVID-19 pandemic. *Organisation for Economic Co-operation and Development* (OECD) analysts believe that coordinated action of the authorities in immigrants' preferred countries to combat illegal migration has led to increased frustration in countries of origin. Therefore, stepping up actions to promote integration and inclusion of immigrants is not only a moral obligation in line with the European core values but also an economic imperative.

### **Conclusions**

The EU requires to enhance a comprehensive migration policy, focused on solidarity and responsibility in line with the needs of both EU countries and migrants. The European Pact on Immigration and Asylum is an essential action in expanding a common policy of migration in the EU. To provide operative management regarding the involvements of migration phenomenon, Europe demands a flexible policy that is competent in

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<sup>10\*\*\*</sup> European Commission, Commission Staff Working Document, "Implementation of Home Affairs legislation in the field of internal security-2017-2020", Brussels, 09.07.2020, p. 54.

responding to Member States' priorities and needs and allowing migrants to attain their full potential.

The COVID-19 pandemic have affected the lives of people around the world, but migrants are much more affected than any other population group. Migrants have managed to ensure the functioning of sectors such as health, trade and logistics, even during restrictions although due to the higher number of direct contacts and to inadequate living conditions, in overcrowded areas, a large percentage of migrants had been infected.

Ongoing trends manifest that Europe will continue to be “attractive” to migrants and asylum seekers, and that the migration flows management will continue to be keen on *EU Agenda*. This fact is led by a number of factors, such as growing international and domestic conflicts, climate change and persistent economic disparities between EU Member States and other countries. The EU must therefore gather a number of internal and external migration policy instruments. EU migration policy, which the European Commission appreciated as effective, equitable and strong, adapted to future challenges, *will allow asylum to those entitled to international protection and return to those who do not have that right; prevent the loss of human lives, especially in the Mediterranean; dismantle human traffickers networks and guides; strengthen external borders and ensure a real alternative for perilous travel, such as the opening of legal migration channels, as the appropriate way to combat human traffickers networks and guides.* This must be followed by a reinforcement of external borders management, including through more efficient use of the opportunities offered by the information technology systems.



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