



Thinking Ahead
for the Mediterranean



WP 9 - Scenarios for regional integration and cooperation with the EU

EU Migration Policy in the wake of the Arab Spring What prospects for EU-Southern Mediterranean Relations?

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Abstract

The outbreak of the Arab Spring and the unrest, revolution and war that followed during the course of 2011 have forced the EU to acknowledge the need to radically re-think its policy approach towards the Southern Mediterranean, including in the domain of migration. Migration and mobility now feature as key components of High Representative Catherine Ashton's new framework for cooperation with the region (Partnership for Democracy and Shared Prosperity), while the EU has declared its intention to strengthen its external migration policy by setting up "mutually beneficial" partnerships with third countries – so-called 'Dialogues for Migration, Mobility and Security' – now placed at the centre of the EU's renewed Global Approach to Migration and Mobility (GAMM). However, the success of this approach and its potential to establish genuine cooperative partnerships that will support smooth economic and political transformation in North Africa hinge on the working arrangements and institutional configurations shaping the renewed GAMM at EU level which has long been marked by internal fragmentation, a lack of transparency and a predominance of home affairs and security actors.

This paper investigates the development of the Dialogues for Migration, Mobility and Security with the Southern Mediterranean in a post-Lisbon Treaty institutional setting. It asks to what extent has the application of the Lisbon Treaty and the creation of an "EU Foreign Minister" in High Representative Ashton, supported by a European External Action Service (EEAS), remedied or re-invigorated the ideological and institutional struggles around the implementation of the Global Approach? Who are the principal agents shaping and driving the Dialogues for Migration, Mobility and Security? Who goes abroad to speak on the behalf of the EU in these Dialogues and what impact does this have on the effectiveness, legitimacy and accountability of the Dialogues under the renewed GAMM as well as the wider prospects for the Southern Mediterranean?

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What prospects for EU-Southern Mediterranean Relations?

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Introduction

The shockwaves of what has become known as the ‘Arab Spring’ have unsettled the complex web of institutional arrangements and policy strategies governing the EU’s management of migratory flows from the Southern Mediterranean. As the events of 2011 unfolded from civil unrest to uprisings, revolution and war, the EU’s progressive externalization of its migration policy agenda has come under the spotlight.

The Arab Spring forced EU leaders to acknowledge the need to re-think its policy approach towards the Southern Mediterranean, including in the domain of migration. Migration and mobility now feature as key components of High Representative Catherine Ashton’s new Partnership for Democracy and Shared Prosperity with the Southern Mediterranean, launched in March 2011.¹ Subsequently, the European Commission called for the EU to strengthen its external migration policy by setting up partnerships with non-EU countries that make cooperation on migration “*mutually beneficial*” – so-called ‘Dialogues for Migration, Mobility and Security’.² This approach was reinforced by the adoption of the EU’s renewed Global Approach to Migration and Mobility (GAMM) in November 2011,³ which aims to initiate a more strategic phase of the Global Approach with a stronger emphasis on legal migration, development promotion and migrant rights. The GAMM is to be translated into action via Migration and Mobility Dialogues in which policy tools known as Mobility Partnerships are foreseen as the principal instruments for future cooperation. Mobility Partnerships are to be conceived as “*a long term framework based on political dialogue and operational cooperation...within the general context of the relations between the EU and the partner country concerned*”.⁴ Consequently, autumn 2011 saw Dialogues on Migration, Mobility and Security launched with Tunisia and Morocco,

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¹ European Commission, High Representative, Joint Communication, A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean, Brussels, 8 March 2011, COM(2011) 200 final.

² European Commission, Communication, A dialogue for migration, mobility and security with the Southern Mediterranean countries, COM(2011) 292 final.

³ European Commission, Communication, The Global Approach to Migration and Mobility, COM(2011) 743 final, Brussels, 18.11.2011.

⁴ See European Commission Communication, A dialogue for migration, mobility and security with the Southern Mediterranean countries, op. cit., p. 11.



with similar dialogues foreseen with other countries in the Southern Mediterranean region, namely Egypt, Jordan and eventually Libya.

The success of this new approach, and its potential to establish genuine cooperative partnerships that will support smooth economic and political transformation in North Africa, hinges on the working arrangements and institutional configurations shaping the renewed GAMM at EU level. The last decade of European integration has seen the emergence of the ‘external dimension’ as a new and distinct policy domain of Justice and Home Affairs (JHA) and now the EU’s Area of Freedom, Security and Justice (AFSJ), one in which member state Interior Ministries and EU Home Affairs officials have played a dominant role. As member states have been hesitant to develop common EU frameworks on immigration legislation and policies internally, the external dimension has been seized upon by EU home affairs actors as an opportunity to develop and push forward certain EU home affairs agendas, thus circumventing the deadlocks that have blocked the construction of the AFSJ.

The Commission’s DG Home Affairs (formerly part of the DG Justice, Freedom and Security) has used ‘going abroad’ as a strategy to increasingly acquire authority and expand its responsibilities, supported by the decision-making structures of the Council. Moreover, the predominance of Home Affairs officials effectively playing the part of diplomats within the external dimension has had a profound effect on the policy priorities and actions implemented under the Global Approach, enabling the logics of security, policing and mobility as ‘migration control’ (in particular readmission agreements and border controls) to prevail over collaboration on legal channels for human mobility, such as labour immigration, and the promotion of migrants’ rights.

Has the entry into force of the Treaty of Lisbon changed this picture? Today the migration debates in the wake of the Arab Spring occur in the context of a new EU landscape provided by the Lisbon Treaty, whose legal innovations and institutional modifications have reshaped the architectures and actors underpinning the EU’s external actions and practices. The abolition of the old JHA pillar structure (First/Third Pillar divide), the expansion of the EU’s competences and decision-making processes on legal immigration policy and streamlining of decision-making procedures via the creation of the EU’s High Representative for Foreign Affairs promised to smooth the challenges of fragmentation and (in)coherence between the EU’s foreign policy instruments and internal policy domains with significant external dimensions, e.g. migration policy. The High Representative, supported by the creation of a European External Action Service (EEAS) would have an extensive mandate to centralize the conduct of the Union’s foreign and security policy, coordinate the Commission’s external relations portfolios and mediate between the EU institutions and third countries. This new framework held the potential to create the legal and institutional conditions that could support a GAMM more in sync with the wider European Neighbourhood Policy and complementary to the broader objectives of the EU’s foreign policy and development cooperation.

More than a year since the outbreak of unrest in the Southern Mediterranean, this paper aims to apply the EU’s migration policy response in the wake of the Arab Spring as a test case, investigating the development of the Dialogues for Migration, Mobility and Security with the Southern Mediterranean in a post-Lisbon Treaty institutional setting. What have been the main EU policy responses to human mobility flows from North Africa? How do we need to understand them in light of the new inter-institutional setting emerging from the Lisbon Treaty? This paper asks in particular to what extent has the creation of an ‘EU Foreign Minister’ in High Representative Ashton, supported by a European External Action Service, remedied or re-invigorated the pre-Lisbon Treaty EU institutional struggles around the implementation of the Global Approach between ‘home affairs’ and ‘foreign affairs’ actors? Who are the principal agents shaping and driving the Dialogues for Migration, Mobility and Security, ‘who’ goes abroad to speak on the EU’s behalf in these Dialogues and what impact does this have on *the kind* of EU policy responses and the scope of the Dialogues under the renewed GAMM?

We examine the first set of Dialogues established under the renewed Global Approach: the bilateral partnerships being established under the Dialogue for Migration, Mobility and Security with the Southern Mediterranean Countries, as presented in the Commission’s Communication of 24 May 2011



(hereinafter the Dialogue Communication).⁵ The paper assesses the potential for the dialogues and their core tool of implementation, the Mobility Partnerships, to put into practice the EU's commitment to a stronger engagement and partnership in the region that “*would foster people-to-people contacts and further promote mutual understanding as well as business and employment*”.⁶

Our assessment is carried out in three main steps. We start by examining the main policy initiatives that were taken by the EU in response to the migratory phenomena ensuing from the events in North Africa during 2011. It highlights the nature of the substantive policies and actions implemented in particular by the European Commission and EU agencies, noting the reliance on security-centred migration management measures.

Section 2 then moves into critically analysing the Dialogues for Migration Mobility and Security, focusing in particular on the Mobility Partnership instrument.

Section 3 of the paper takes the third step by examining the political and institutional actors behind the development and implementation of the Dialogues, which, as we will argue, are central when understanding the deficits and incoherencies affecting the EU policy responses.

Based on this analysis the paper argues that a Home Affairs approach continues to dominate the EU's external dimension on migration, and may even have been reinforced following the entry into force of the Lisbon Treaty. The paper exposes a fragmented and competitive field of action within the Global Approach characterised by a multitude of turf sensitivities between the Commission and the EEAS and still dominated by an overriding framing of mobility as insecurity, emergency-driven policy responses and conditionality-based partnerships with third countries.

On the basis of this evaluation, the paper concludes by presenting two scenarios for taking forward the dialogue with southern Mediterranean countries: the first based on a ‘business-as-usual’ scenario of a conditional partnership led principally by DG Home Affairs; the second, based on reoriented Mobility Partnerships with a coordinating role assigned to the European External Action Service.

1. Assessing the EU's migration policy responses to the Arab Spring

The uprisings of the Arab Spring produced a highly insecure situation for individuals in the North African region and prompted significant cross-border movements in the spring and summer of 2011 as people fled violent street clashes, arrests, political turbulence and, in the case of Libya, heavy military ground fighting. Migration flows were largely confined to intra-regional movement between the countries of North Africa with by far the heaviest flows occurring from those fleeing fighting in Libya. More than 1 million individuals left Libyan territory in the spring and summer of 2011, of which around 400,000 were Libyans seeking safety abroad and approximately 700,000 were foreign nationals. A substantial proportion of the outflow from Libya was received by Tunisia and Egypt (both recuperating from their own revolutions), who between them admitted approximately half a million migrants (alongside half a million of their own returning nationals).⁷ According to the UNHCR, this group included a significant minority of individuals in need of or seeking international protection. For arrivals in Tunisia alone, the UNHCR registered around 1,500 refugees and 2,000 asylum-seekers between January and August 2011.⁸ At the start of 2012, the population residing in the UNHCR-run

⁵ Ibid.

⁶ Ibid., p. 7.

⁷ International Office of Migration (IOM), “Response to the Libyan Crisis”, External Situation Report, 31 October 2011 (http://reliefweb.int/sites/reliefweb.int/files/resources/external_sit_rep_31st_october.pdf); UNHCR, 2012 country operations profile – Libya; UNHCR, 2012 country operations profile – Tunisia; UNHCR, 2012 country operations profile – Egypt (<http://www.unhcr.org>).

⁸ UNHCR, Southern Tunisia Weekly Update, 1 August 2011, Issue 2.



transit camp in southern Tunisia still comprised around 1,470 asylum-seekers and more than 2,230 refugees from 31 countries, mostly Eritreans, Somalis, and Sudanese.⁹

By contrast, the number of individuals that fled the upheavals in North Africa by crossing the Mediterranean to Europe was relatively minor. The EU, primarily Italy and Malta, saw a rising inflow of migrants during the first half of 2011, but overall figures were a fraction of the population displacement witnessed in the Southern Mediterranean. Between 1 January and 31 July 2011, Italy received approximately 48,000 irregular migrants as part of the 2011 influx from North Africa of whom 24,769 originated from Tunisia and 23,267 arrived from Libya (made up largely of migrants originating from sub-Saharan Africa).¹⁰ Malta received just over 1,500 individuals during the spring and summer of 2011, the vast majority from Libya and again comprising individuals from sub-Saharan Africa.¹¹

How did the Union respond to both these immediate migration pressures and the deeper challenges revealed by the Arab spring?

1.1 *Emergency responses to migration flows from the Southern Mediterranean in 2011*

The EU's immediate response to increased flows of migrants fleeing the unrest, revolution and war in North Africa in the first half of 2011 centred largely on control and containment of migrants (including asylum-seekers and refugees) in the Southern Mediterranean. In addition to deploying considerable sums of humanitarian aid and supporting repatriations of foreign nationals stranded in Libya,¹² EU actions in response to human movements was broadly divided into four types of measures: i) the intensification of border control and surveillance, ii) pressure on new authorities in North Africa to cooperate in curbing irregular migration, iii) the introduction of new legislative proposals suspending mobility and iv) the attempt to address the refugee crisis in North Africa.

1.1.1 *Border Control and Surveillance: Frontex and Europol*

The most immediate EU response was to intensify border control and surveillance policies through the mobilisation of the EU border agency, Frontex. On 20 February 2011, four days after receiving a request from Italy, Frontex deployed the Joint Operation EPN Hermes extension 2011 aimed at “assisting Italy in controlling vessels carrying immigrants and refugees”.¹³ The operation was led by Italy which provided naval and aerial equipment (supported by France, Germany, Malta, the Netherlands and Spain) and brought together experts from 11 member states. Actions focused primarily on “detecting and preventing illegitimate border crossings to the Pelagic Islands, Sicily and the Italian mainland”,¹⁴ but also encompassed the pre-screening of intercepted migrants by Frontex

⁹ UNHCR, 2012 UNHCR country operations profile – Tunisia (<http://www.unhcr.org/pages/49e486166.html>)

¹⁰ Figures provided by the Italian Ministry of Interior at a press conference held in mid-August 2011 and cited in Nascimbene & Di Pascale (2011, p. 343). See also International Office of Migration, “Response to the Libyan Crisis”, op. cit.

¹¹ IOM, *ibid.*

¹² Humanitarian aid allocated to the crisis by the EU was first earmarked at €3 million in February 2011, rising to €70 million out of a total EU (European Commission and member states) humanitarian aid and civil protection financing of €160 million. Aid was used to support the financing of relief assistance in Libya and transit camps in Tunisia and Egypt as well as the evacuation and repatriation of third country nationals, carried out with the support of IOM. See Commission Press release, “The European Commission’s humanitarian response to the crisis in Libya” MEMO/11/143, Brussels, 4 March 2011; Commission factsheet, “Humanitarian aid and civil protection: Libya crisis”, 25 October 2011 (http://ec.europa.eu/echo/news/2011/20110823_02_en.htm).

¹³ EU Commissioner Malmström, Statement announcing the launch of the Frontex operation ‘HERMES’ in Italy as of 20 February 2011, MEMO/11/98, Brussels, 20 February 2011.

¹⁴ Frontex Press Release, “HERMES 2011 running”, 21 February 2011, p. 2.



officials and gathering information on routes and arrival numbers for the development of risk analyses. A delegation of agents from the European Police Office (Europol), an agency whose primary role is to coordinate action on serious international crime and terrorism, was also deployed in Southern Italy in order to “help [Italy’s] law enforcement authorities to identify possible criminals among the irregular migrants having reached the Italian territory”.¹⁵ Agents were purportedly searching for human smugglers and traffickers among the new arrivals although the precise objectives and activities of this delegation remained somewhat opaque.¹⁶

In April the Commission announced its intention to launch procedures for reinforcing the Frontex 2011 budget with an additional €30 million.¹⁷ The Hermes operation was subsequently extended on several occasions,¹⁸ and is now expected to run until the end of 2012. Furthermore, the JHA Council of 11-12 April also called on Frontex to speed up negotiations to conclude working arrangements with countries in the region, particularly Tunisia, with a view to organising joint patrol operations.¹⁹ However, it failed to secure the agreement of the transitional authorities in Tunis to undertake surveillance in Tunisian waters. Despite the Hermes Joint Operation reportedly fulfilling a ‘search and rescue’ function, the EU came in for criticism for not doing enough to prevent deaths at sea and for primarily focusing attention on the prevention of irregular entries.²⁰ According to UNHCR figures, more than 1,500 people drowned or went missing while attempting to cross the Mediterranean to reach Europe, making 2011 the deadliest year on record.²¹ Reports of military vessels failing to assist a boat drifting in the Mediterranean upon which 63 sub-Saharan Africans subsequently died point to the lack of a coordinated response to the boat migration from the Southern Mediterranean.²² A subsequent report by the Council of Europe based on a nine-month investigation into the incident revealed a catalogue of both human and institutional errors and a “vacuum of responsibility” regarding search and rescue in the Mediterranean sea.²³

1.1.2 *Strengthening ‘capacity building’ in “the fight against irregular immigration”*

The EU began at a relatively early stage to exert pressure on the burgeoning democracies in North Africa to cooperate in clamping down on irregular migration. As the dictatorships in Tunisia, Egypt and Libya fell, so too did the bilateral agreements that ensured regimes in North Africa act as gatekeepers, policing the flow of migrants to Europe. Individual EU member states quickly began positioning themselves to set up new bilateral arrangements with post-revolution transitional authorities.

Italy for instance moved fast to conclude an accelerated repatriation agreement with the authorities in Tunis, signed on 5 April 2011, by which it offered €200 million in aid and credit in return for

¹⁵ European Commission, Communication on Migration, COM(2011) 248 final, Brussels, 4 May 2011.

¹⁶ Guild et al. (2011).

¹⁷ Commission Press release, “The European Commission’s response to the migratory flows from North Africa”, MEMO/11/226, Brussels, 8 April 2011.

¹⁸ Answer by Commissioner Malmstrom to Parliamentary Question of 21 September 2011 [E-006719/2011].

¹⁹ Council Conclusions on the management of migration from the Southern Neighbourhood, JHA Council meeting, Luxembourg, 11-12 April 2011.

²⁰ Human Rights Watch, “EU: Put Rights at Heart of Migration Policy”, 20 June 2011.

²¹ UNHCR, “Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011”, Briefing Note, 31 January 2012.

²² Jack Shenker, “Aircraft carrier left us to die, say migrants”, *The Guardian*, 8 May 2011 (<http://www.guardian.co.uk/world/2011/may/08/nato-ship-libyan-migrants>).

²³ Parliamentary Assembly of the Council of Europe report “Lives lost in the Mediterranean Sea: Who is responsible?”, Committee on Migration, Refugees and Displaced Persons, Rapporteur Ms Tineke Strik.



Tunisia's cooperation in preventing further departures and accepting returned migrants,²⁴ a move that led almost immediately to a 75% drop in the flow of Tunisian migrants.²⁵ Italy also reached an agreement with the National Transitional Council of Libya on 17 June 2011, for cooperation in the fight against illegal immigration, including the return of irregular migrants.²⁶ As a result of these agreements, over 13,000 migrants were returned between January – July 2011.²⁷ It was not clear whether these repatriations took full account of the risks of returning individuals to post-revolutionary and post-conflict zones (including potential reprisal attacks). Their compliance with international law and the principle of *non-refoulement* is highly questionable, particularly the Italy-Libya accord, which was severely criticised by NGOs for its apparent disregard for international legal standards.²⁸

Yet despite these critiques, the EU lost little time in following Italy's example to secure cooperation on limiting migration in return for aid, particularly with Tunisia. In a visit to Tunis by Commission President Barroso in April 2011, it was made clear that the EU's offer of around €400 million of aid to support Tunisia's democratic transition would necessitate reciprocal actions to counter irregular migration.²⁹ Reports have suggested that the new Tunisian authorities were initially reluctant to engage with the EU on this matter, determined that post-revolutionary Tunisia would dissociate itself from the stance of former President Ben Ali when confronted with European pressure on migration, and resolving that to treat migration only as a security issue to the benefit of EU states would run counter to the goals of economic, social and democratic transition.³⁰ Nonetheless, EU pressure and the offer of substantial financial incentives appeared to have won out when Home Affairs Commissioner Malmström proposed to the European Council of June 2011 a 'joint EU-Tunisia operational project'. The project would support the new Tunisian authorities to undertake a number of capacity-building measures in the field of border control, smuggling and trafficking of human beings, asylum, return and reintegration of returnees, and to support access to legal migration channels.³¹

1.1.3 Suspending Freedom of Movement

The third key EU action in the face of immigration from the Arab spring was to insert clauses in current pieces of EU legislation imposing restrictions on mobility justified by factors of "external migratory pressure". In its Communication on Migration of May 2011, the Commission signalled its intention submit two separate proposals designed to insert "emergency mechanisms" in existing legislation to allow the EU "to better respond to future influxes of migrants".³² Although the first of these proposals – a modification to the Visa Regulation – had been in the pipeline for some time, the

²⁴ ANSA English, "Italy continues talks with Tunis, no halt to migrant flood – over 900 arrive in Lampedusa late Monday, early Tuesday", 5 April 2011; Reuters (Africa), "Italy, Tunisia sign deal to ease migrant crisis", 5 April 2011.

²⁵ Frontex (2012), *FRAN Quarterly, Issue 3, July – September 2011*.

²⁶ This agreement has since been complemented by a verbal agreement between the Ministers of Interiors of Italy and Libya signed on 3 April 2012, which sets out a number of additional areas of cooperation including border surveillance and voluntary return and repatriation. See Minutes of the meeting of the Ministers of the Interior of Italy and Libya (Tripoli, 3 April 2012).

²⁷ As stated by the Italian Minister of the Interior and quoted in Nascimbene & Di Pascale (2011, p. 358).

²⁸ For instance, see Statewatch (2011), "ASGI questions the lawfulness of Italy's agreement with the NTC" (<http://www.statewatch.org/news/2011/jun/04italy-libya-asgi.htm>).

²⁹ T. Vogel, "Barroso Pledges Extra Aid for Tunisia", *European Voice*, 13 April 2011.

³⁰ Based on reports by French and Moroccan NGOs 'CIMADE' and 'GADEM' and *La Presse de Tunisie*, quoted in Y. Maccanico (2011), "The EU's self-interested response to unrest in North Africa: the meaning of treaties and readmission agreements between Italy and North African states", Statewatch Analysis.

³¹ COM(2011) 292 final, op. cit., p. 5. See also Commissioner Malmström's response to a written question of the European Parliament on "EU-Tunisia joint operational project", 18 October 2011. The proposed project was later incorporated into the Dialogue for Migration, Mobility and Security.

³² European Commission, Communication on Migration, op. cit.



second proposal to amend the Schengen Borders Code (SBC) was directly influenced by the events of the Arab spring.³³

In the spring of 2011, a diplomatic dispute between France and Italy was responsible for sparking renewed debates around the reform of the SBC. The Italian government, faced with the arrival of approximately 30,000 Tunisian migrants in the first quarter of 2011, granted temporary protection permitting travel throughout the Schengen area, a move which in turn prompted France to introduce spot checks at its Italian frontier.³⁴ This sequence of events revived discussions at the political level of the EU over the justifications and procedures for the reintroduction of internal border controls, with a joint letter from former Presidents Sarkozy and Berlusconi calling for the European Council to include “the possibility to temporarily re-establish internal border controls in case of exceptional difficulties in the management of common external borders”.³⁵

It was widely questioned at the time, including in a public statement by Home Affairs Commissioner Cecilia Malmström,³⁶ whether the volume of Tunisian migrants arriving in Italy and crossing the French border, could indeed constitute a genuine threat to public policy and internal security (particularly when placed against the enormous displacement of people in North Africa following the events of the Arab Spring. However this did not prevent the European Commission from addressing the Franco-Italian request in its proposal for an amendment to the Schengen rules adopted in September 2011.³⁷ The so-called Schengen Governance Package thus now explicitly states that “the crossing of the external border of a large number of third country nationals might, in exceptional circumstances, justify the immediate reintroduction of some internal border controls”,³⁸ although it emphasises that evidence of a serious risk to public policy and internal security is necessary to justify applying such an exception. Furthermore, the proposal states that reintroduction of internal controls would be justified by a member state’s persistent failure to protect a part of the EU’s external border (again insofar as this poses a threat to public policy and internal security).³⁹

The origins of the SBC reform provides the clearest illustration of the ‘emergency-driven’ decision-making process that characterised the EU’s immediate response to the migration flows from the Southern Mediterranean in the first half of 2011. The response revealed the limits to the EU’s claims of solidarity with the peoples and new regimes in North Africa, with generous humanitarian assistance directed to migrants and refugees *within* the Southern Mediterranean region, while ensuring that movement of migrants towards EU territory was restricted.⁴⁰

³³ Proposal for a Regulation amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, COM(2011) 560 final, Brussels, 16.9.2011.

³⁴ Carrera et al. (2011).

³⁵ See the website of the Italian ministry of foreign affairs (http://www.esteri.it/MAE/IT/Sala_Stampa/ArchivioNotizie/Approfondimenti/2011/04/20110426_ItaliaFrancia.htm).

³⁶ Statement by Commissioner Malmström following her visit to Tunisia, in the European Commission Midday Press Briefing of 1 April 2011 (<http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=76390>).

³⁷ For a discussion on the necessity and proportionality of the Schengen Governance Package, see Carrera (2012).

³⁸ Preamble of the Proposal for a Regulation amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, COM(2011) 560 final, 16.09.2011, Brussels.

³⁹ Article 26 of the Proposal for a Regulation amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, COM(2011) 560 final, 16.09.2011, Brussels.

⁴⁰ Martin (2011).



1.1.4 Failure to alleviate the refugee crisis in North Africa

Efforts to alleviate the refugee crisis in North Africa showed a similar pattern. In December 2011, the Commission launched a Regional Protection Programme (RPP) in North Africa designed to support capacity-building in refugee assistance in the region (particularly Tunisia, Egypt and eventually Libya). RPPs, which are supported by the EU and depend on a partnership with the UNHCR for their implementation, provide the EU with a means to manage refugee crises beyond European borders.⁴¹ The partnership approach underpinning RPPs presumes the resettlement of refugees on EU soil alongside capacity-building in countries of origin and transit. However, efforts by the European Commission to encourage the resettlement of refugees stranded in North Africa in 2011 bore little fruit.

The results of a Commission-organised ‘pledging conference’ of 12 May 2011, which aimed to encourage member states to voluntarily resettle refugees in North Africa and beneficiaries of international protection in Malta, were underwhelming. EU member states and a number of associate states volunteered to relocate within their territory approximately 300 persons granted international protection in Malta,⁴² while eight member states pledged approximately 700 places for refugees emerging from the conflict in Libya and neighbouring countries. The latter figure fell some way short of the 7,000 refugees that the UNHCR has estimated will need resettlement from Libya, Tunisia and Egypt and provoked criticism from human rights and refugee organisations.⁴³ Consequently, Commissioner Malmström conceded that Europe had “failed” refugees fleeing the crisis in the Southern Mediterranean in 2011.⁴⁴

1.2 The EU’s ‘medium- to long-term’ response – paving the way to Dialogue

How do we locate the development of the Dialogue for Migration, Mobility and Security with the Southern Mediterranean in relation to these four responses? The European Commission itself acknowledged the emergency-driven nature of its immediate responses to the migration from the Arab Spring, justifying these actions in its Communication on Migration of May 2011 as necessary to cope with the unfolding crisis. Yet, the Commission was careful to discursively frame these measures as “short term” emergency actions, and distinguished them from a “longer term”, more “comprehensive” response to the migration impacts of the Arab Spring stated to be under elaboration:

The need to address this challenging and evolving situation should not lead to a short-term approach limited to border control without taking account of long-term issues. Dialogue and cooperation with countries of origin and of transit of these migrants is essential. Such collaboration needs to be built on security and good governance for the establishment of mutually beneficial policies in the field of legal migration.⁴⁵

The framing of a “comprehensive”, “longer term” response to migration found its roots in the renewed vision of the EU’s partnership with the region presented in a joint communication by the Commission and EU High Representative Ms Ashton of 8 March 2011. Entitled “A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean”, the overarching approach was to create an incentive-based regime (‘more for more’) in which North African countries would be expected to

⁴¹ Ibid.

⁴² European Commission, Statement by Cecilia Malmström, EU Commissioner in charge of Home Affairs, on the results of the Ministerial Pledging Conference 12 May, 13 May 2011.

⁴³ Amnesty International for instance labelled the outcome of the pledging conference “an abysmal response”. See Amnesty International, “Europe, Now is Your Turn to Act: Refugees Forced out of Libya Urgently Need Resettlement”, September 2011.

⁴⁴ C. Malmstrom, “Refugees: How Europe Failed”, *The Times of Malta*, 19 January 2012.

⁴⁵ European Commission, Communication on Migration, op. cit.



make advancements towards democracy, civil society involvement and human rights, with free and fair elections being the prerequisite for the partnership to be entered into.⁴⁶ A substantial proportion of the Communication is devoted to economic, financial and trade aspects of EU-North Africa cooperation.⁴⁷ However, “mobility” was also identified as a key priority, and Mobility Partnerships proposed as a means to provide for a “well managed” movement of persons between the southern Mediterranean and the EU and to facilitate “people to people contacts”. The communication also suggests legal migration legislation and changes to visa policy to enhance mobility in the short term, envisaging “gradual steps towards visa liberalisation for individual partner countries’ over the longer term”.⁴⁸

The European Council endorsed the Partnership at its meeting of 24 March 2011, and called on the Commission to present a plan for the development of capacities to manage migration and refugee flows in the Mediterranean in advance of the June European Council.⁴⁹ Unlike the Partnership Communication, which was spearheaded by the High Representative for Foreign Affairs and the External Action Service, responsibility for developing the migration aspects, what was later to become the Dialogue for Migration, Mobility and Security, was passed to DG Home Affairs. This, as we will argue in section 3 below, constituted a decisive factor in terms of the scope and nature of the EU policy responses.

Work on the dialogue was taken forward by DG Home Affairs in the spring of 2011, against the background of the Franco-Italian dispute over the influx of Tunisian migrants and wider political concerns regarding the supposed ‘flood’ of migrants arriving from the Southern Mediterranean. In the midst of the Franco-Italian affair, the Justice and Home Affairs Ministers met on 11-12 April and concluded that:

The Dialogue should in first instance focus on the identification and promotion of measures which can contribute in a concrete and effective way to the prevention of illegal migration, to the effective management and control of their external borders, to the facilitation of the return and readmission of irregular migrants, and to the development of protection in the region for those in need, including through regional protection programmes. Subsequently, this dialogue could explore the possibilities for facilitating people-to-people contacts using instruments such as mobility partnerships.

The Council conclusions thus firmly established the order of priorities underpinning the Dialogue. The emphasis clearly shifts from a dynamic mobility policy aimed at supporting burgeoning democratisation in North Africa, to migration management and border controls.

As media debates around the migrant ‘crisis’ from North Africa intensified, the Commission adopted an interim Communication on Migration on May 4th in which it set out an array of current and future policy proposals in the domain of border, migration and asylum policy.⁵⁰ The text largely re-states existing proposals (from border surveillance systems like EUROSUR to the employers sanctions Directive), but in some cases demands legislative and institutional changes (such as the revision to the Schengen Borders Code). The Communication also prepared the ground for a package of proposals due on May 24th which will “ensure a coherent EU approach in the area of migration, mobility and security with the Southern Mediterranean countries”. In a section towards the end of the document entitled “Beyond the Crisis: The EU and the Southern Mediterranean in Partnership”, the

⁴⁶ Commission, High Representative, Joint Communication to the European Council, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean, Brussels, 8 March 2011, COM(2011) 200 final, p. 5.

⁴⁷ *Ibid.*, pp. 7-13.

⁴⁸ *Ibid.*, pp. 6-7.

⁴⁹ Conclusions March European Council, 2011.

⁵⁰ European Commission, Communication on Migration, *op. cit.*



communication draws links with the March 8th communication and the revised European Neighbourhood Policy to acknowledge a broader view of migration policy:

People-to-people contacts across the Mediterranean should support burgeoning democratisation in North Africa. Enhanced mobility will increase understanding and boost trade relations. The EU needs to offer its partners in the neighbourhood a dynamic mobility policy, including visas, which is also solidly anchored within the EU external policy.

The resulting Dialogue on Migration, Mobility and Security with the Southern Mediterranean was finally adopted by the Commission on 24 May 2011 and endorsed by the subsequent June European Council.⁵¹ The Dialogue Communication again distinguishes ‘urgent’ and ‘short term’ actions needed to address the immediate flows of migrants and refugees from North Africa from its ‘plan of measures for the longer term’ based on enhanced cooperation with the Southern Mediterranean countries and aiming to ensure that “migration and mobility between the EU and the South Mediterranean countries are channelled through regular processes and take place in an orderly and efficient manner.”⁵² The Dialogue communication positions the Mobility Partnership as the main tool through which to achieve this objective. This approach was later re-affirmed when the Commission adopted its renewed Global Approach to Migration and Mobility (GAMM) which likewise foresees Mobility Partnerships, within the framework of ‘Dialogues for Migration and Mobility’ to be:

Upgraded and promoted as the principal framework for cooperation in the area of migration and mobility between the EU and its partners, with a primary focus on the countries in the EU neighbourhood.⁵³

The GAMM was reframed around new Migration and Mobility Dialogues based on a two-speed system that will see certain third countries singled out for Mobility Partnerships, while those international partners deemed unready (or unwilling) to enter this framework of cooperation will be offered a Common Agenda for Migration and Mobility (CAMM). The latter entails ‘softer’ forms of cooperation in the shape of common recommendations, targets, information exchange and capacity-building measures.

One of the core goals of the renewed GAMM is to ensure that the Global Approach to Migration is more closely embedded in the wide spectrum of the EU’s external policies. The European Commission underscores the necessity for the GAMM to be “complementary to other, broader objectives that are served by EU foreign policy and development cooperation” and to “address migration and mobility, foreign policy and development objectives in a coherent and integrated way.”⁵⁴ The extent to which the GAMM delivers on this promise is tested via the first major policy initiative falling within this framework – the Dialogue for Migration, Mobility and Security with the Southern Mediterranean.

2. Migration, Mobility and Security with the Southern Mediterranean – Whose Dialogue?

When analysing the Dialogue for Migration, Mobility and Security, it is necessary to ascertain *whose* dialogue is at stake in the Dialogue Communication: who are the principal interlocutors and do these first steps lay the ground for a genuine dialogue or rather pave the way to a home affairs-driven monologue?

⁵¹ European Council, Conclusions of Meeting 23-24 June 2011, Brussels, 24 June 2011, p. 28.

⁵² European Commission, Communication, A dialogue for migration, mobility and security with the southern Mediterranean countries, op. cit., p. 7.

⁵³ European Commission, Communication, The Global Approach to Migration and Mobility, op. cit., p. 10.

⁵⁴ Ibid., p. 4.



The answer to these questions is to be found first and foremost in the Mobility Partnership instrument. As the principal tool for operationalizing the Dialogues with the Southern Mediterranean countries, they provide a powerful indicator of the overall content and rationale of these new policy frameworks. By renewing the place of Mobility Partnerships at the heart of the re-launched GAMM, they also tell us much about the policy priorities underpinning the ‘renewed’ Global Approach.

2.1 The Mobility Partnership – the tool to deliver a renewed Dialogue?

Mobility Partnerships first gained traction at EU level in 2006, promoted as part of a Franco-German initiative for reducing irregular immigration by offering circular migration schemes to third countries in return for readmission agreements.⁵⁵ They have since been presented as the key policy tool for integrating labour migration measures into the EU’s Global Approach to Migration. The European Commission has previously qualified these instruments as “the most innovative and sophisticated tool to date of the Global Approach to Migration”.⁵⁶ They constitute non-legally binding joint declarations negotiated between the Commission on behalf of interested member states and a third country. Member states offer a range of benefits, from visa facilitation schemes and regular channels for temporary migration in exchange for a commitment on the part of the signatory third country to cooperate with the EU in the management of irregular migration, in particular readmission, return and border control/surveillance policies. Mobility partnerships have been launched so far with just four countries: Cape Verde, Georgia, Moldova,⁵⁷ and most recently Armenia.⁵⁸ Efforts to conclude a partnership with Senegal proved unsuccessful following the reluctance of the latter to conclude readmission agreements with the EU.⁵⁹

Although the Mobility Partnership has been hailed as the means for the EU to move its migration policies away from an overriding focus on security and border control and towards opening up channels for mobility, practical experience with the first set of mobility partnerships has shown a discrepancy between rhetoric and reality.⁶⁰ Current Mobility Partnerships reveal a heavy emphasis on border control reform as the condition for signatory states to access what amounts in reality to very few labour migration opportunities.⁶¹ For instance, in the case of the Moldovan Mobility Partnership, it was noted that the majority of the ‘mobility’ or ‘development’-related projects listed in the Annex to the Declaration either simply renewed measures already in progress or had very limited reach.⁶² It has been suggested that Mobility Partnerships are used as a vehicle in which to promote the EU’s highly

⁵⁵ Carrera & Sagrera (2009).

⁵⁶ The European Commission has qualified these instruments as “the most innovative and sophisticated tool to date of the Global Approach to Migration”. See European Commission, “Mobility Partnerships as a Tool of the Global Approach to Migration”, Commission Staff Working Document, SEC(2009) 1240, Brussels, 18 September 2009.

⁵⁷ See the Annex to Council of the European Union, Joint Declaration on a Mobility Partnership between the European Union and Georgia, 16396/09, Brussels, 20 November 2009(c); Annex to Council of the European Union, Joint Declaration on a Mobility Partnership between the European Union and the Republic of Cape Verde, 9460/08, Brussels, 21 May 2008; Annex to Council of the European Union, Joint Declaration on a Mobility Partnership between the European Union and the republic of Moldova, 9460/08, Brussels, 21 May 2008.

⁵⁸ A Mobility Partnership between Armenia and ten EU Member States (Belgium, Bulgaria, the Czech Republic, France, Germany, Italy, the Netherlands, Poland, Romania and Sweden) was signed on 27th October 2011. See Council Press Release, Joint Declaration on a Mobility Partnership between the European Union and Armenia, 3121st Justice and Home Affairs Council meeting, Luxembourg, 27-28 October 2011.

⁵⁹ See Chou & Gibert (forthcoming).

⁶⁰ See Collett (2007).

⁶¹ See Carrera & Sagrera (2009) and Parkes (2009).

⁶² Jeandesboz (2011).



controversial readmission agreements with third countries.⁶³ This view is supported by a 2008 statement by the Commission which called for an intensification of readmission efforts by “*placing the readmission policy more firmly within the Global Approach and its priorities and using the potential of mobility partnerships*”.⁶⁴ The mobility partnerships have thus provided a more favourable framework for the EU to pursue its traditional external policy agenda (readmission and countering irregular migration) – utilising the discourse of development, partnership and mobility promoted by the Global Approach, without altering its traditional policy goals.

The Mobility Partnerships with the Southern Mediterranean countries are currently still under negotiation. As a “flexible instrument”, developed under a “tailor-made, country-by-country approach”⁶⁵ one cannot predict for certain the final shape each Partnership will take. Nevertheless, some clues are provided by the previously mentioned Dialogue Communication, as well as the Communication on the GAMM.

To begin with, it is clear that the Commission intends to pursue the offer/reward structure on which current Mobility Partnerships are based. The offer to the third state includes the conclusion of visa facilitation agreements, and potentially labour and circular migration schemes, flanked by a package of capacity-building measures in the areas of asylum (e.g. development of asylum legislation), migration and development (e.g. facilitating low-cost remittances and measures for countering brain drain) and measures to support the respect for fundamental rights for third country nationals in the partner country (further details of which are not provided).

However, access to these ‘benefits’ will, as stipulated in the Dialogue Communication, “depend on the prior fulfilment of a number of conditions...”⁶⁶ Among others, partner countries will be required to conclude readmission agreements with the EU; sign working arrangements with Frontex; cooperate in joint surveillance operations in the Mediterranean sea; and build capacity in other aspects of integrated border management – such as document security and countering the trafficking and smuggling of human beings.⁶⁷ Translated into Mobility Partnerships, the EU’s supposedly ‘comprehensive’ or ‘longer-term’ approach to migration policy in the region therefore begins increasingly to resemble a continuation of the standard ‘short-term’ security measures of the kind enacted during the height of the Arab Spring. Closer examination further puts into doubt the claim of a comprehensive and renewed policy approach to migration from North Africa via the Mobility Partnerships. In particular, we identify two principal deficits in the Mobility Partnerships as set out in the Dialogue Communication which are explored further below: first, that of limited possibilities for ‘mobility’; and second, a guiding principle of conditionality that undermines the claim of a genuine and balanced ‘partnership’.

2.1.1 Locating ‘mobility’ within the Partnership

A long-running deficit of Mobility Partnerships is the gap between the opportunities for migration and labour mobility that these instruments supposedly promote, and their materialisation in practice. Inclusion of projects which would offer labour migration for third country nationals is entirely dependent on the willingness of individual member states to volunteer for such schemes. Current pilot projects with Mobility Partnerships indicate little enthusiasm in this regard from participating member states.

⁶³ Nellen-Stucky (2009).

⁶⁴ European Commission, Strengthening the Global Approach to Migration: Increasing coordination, coherence and synergies, COM (2008) 611, Brussels, 8 October 2008.

⁶⁵ European Commission, Communication, A dialogue for migration, mobility and security with the southern Mediterranean countries, op. cit., p. 10.

⁶⁶ Ibid., p. 7.

⁶⁷ Ibid., p. 11.



When examining the text of the Dialogue Communication, stimulating mobility does not appear to be the central imperative underpinning the approach and references to labour migration opportunities are ambiguous. To begin with, the term ‘mobility’ is preferred over that of ‘migration’, reflecting the general shift in official EU language (evident for instance in the renaming of the Global Approach). ‘Mobility’ here implies temporary movement rather than more permanent forms of migration, reflected in the general emphasis in the Dialogue communication on short-term, temporary movement. Mobility of third country nationals is underlined as being of ‘strategic importance,’ so long as it applies to the following categories of “short term visitors, tourists, students, researchers, business people or visiting family members”.⁶⁸ By contrast, there appears to be an explicit shift of emphasis away from more permanent (or semi-permanent) forms of legal migration.

In the Dialogue communication, possibilities for labour migration are couched in highly provisional terms:

“Depending on the actual possibilities and needs of the EU Member States interested in actively participating in the Mobility Partnerships and of their respective labour markets, and taking into account their right to determine the volumes of economic migrants to be admitted, the Mobility Partnerships could also encompass specific schemes for facilitating labour migration between interested member states and the Southern Mediterranean countries.” (emphasis added)⁶⁹

Under the umbrella of ‘schemes for facilitating labour migration’ are placed activities such as measures to improve skills recognition, portability of social rights, and measures for return and reintegration which – though welcome – do not imply concrete new channels for prospective workers in North Africa to access EU labour markets.

The ultimate prize of visa liberalisation is referenced towards the end of the document, again, in highly provisional terms:

In the long-term, provided that visa facilitation and readmission agreements are effectively implemented, gradual steps towards visa liberalisation for individual partner countries could be considered on a case-by-case basis, taking into account the overall relationship with the partner country concerned and provided that conditions for well-managed and secure mobility are in place.

The mobility offered by the Dialogue therefore, is restricted, non-permanent and highly conditional. It is this conditionality, a central guiding principle of the Mobility Partnership, which gives rise to the second main weakness of this instrument.

2.1.2 Dialogue or monologue? An imbalanced partnership

The extent to which ‘the Dialogue’ offers a genuine and equal partnership through the Mobility Partnership instrument is in doubt, at least if we understand partnership to imply an agreement between parties to work together in the pursuit of common goals, on the basis of mutual trust and cooperation. This understanding is at odds with the conditionality that underpins the structure of the Mobility Partnership.⁷⁰ In the words of the Dialogue Communication, this conditionality:

⁶⁸ European Commission, Communication, The Global Approach to migration and Mobility, op. cit., p. 3.

⁶⁹ European Commission, Communication, A dialogue for migration, mobility and security with the southern Mediterranean countries, op. cit.

⁷⁰ ‘Conditionality’ is identified as one of the four principles governing the Mobility Partnership as presented in the Dialogue Communication (alongside ‘bilateralism’, ‘differentiation’ and ‘monitoring’). See European Commission, Communication, A dialogue for migration, mobility and security with the southern Mediterranean countries, op. cit., p. 8.



“will enable the EU to extend the benefits of mobility proposed in the Partnership *to those who demonstrate their willingness and capability to make progress, especially in those areas that are of importance to the EU.*” [emphasis added].⁷¹

Aside from initial meetings between high-level EU officials and members of the interim authorities in Tunisia and Egypt, there is little indication that the Dialogue was developed in close consultation with the third countries it intends to target. Rather it appears to have been presented as a *fait accompli* to the authorities of Egypt, Tunisia and Morocco with the expectation that those states would be ready to undertake the strict security requirements demanded in return for limited mobility possibilities.

Yet the willingness of the third countries in question to sign up to the Mobility Partnerships is far from certain. This is particularly the case as the credibility of the incentives on offer are questionable. The Mobility Partnerships rely on voluntary proposals by interested member states which are articulated in Joint Declarations – non-legally binding policy instruments the enforcement of which cannot be guaranteed by the Commission.⁷² The high costs associated with implementing the EU’s demands, together with the uncertainty of the rewards, would support the contention in Cassarino & Tocci (2011) that the Mobility Partnerships are in many ways of greater value to the EU than to the countries of the Southern Mediterranean.⁷³ This is born out in the lukewarm reception accorded to the Dialogues by the North African countries targeted. We have seen (in section 1) that the new authorities in Tunis were initially reluctant to bow to EU pressure to cooperate on the security dimensions of migration. This is confirmed by reports that scoping talks on the launch of the Dialogues have proved more complicated than the EU anticipated. Egypt has now declined the offer of a Mobility Partnership outright. Negotiations with Morocco have also been highly problematic, with the conclusion of a readmission agreement between the EU and Morocco proving a major sticking point.⁷⁴ Meanwhile priorities laid down by Tunisia for its Mobility Partnership (including labour migration, fundamental rights protection for migrants, wide visa facilitation and development) reveal a divergence of interests that may also complicate discussions going forward.⁷⁵ Faced with this less than successful progress, in early 2012 the EU added Jordan as a fourth country with which it envisages establishing a Mobility Partnership. A DG Home-led mission was subsequently despatched to Jordan to conduct exploratory talks and the outcome remains to be seen.⁷⁶

With the appropriateness of the Dialogues on Migration, Mobility and Security in question, the following section explores the reasons for this outcome, examining the institutional power plays behind the EU’s overarching policy approach towards the Southern Mediterranean region.

3. DG Home affairs diplomacy: An AFSJ foreign policy post-Lisbon

To better understand *the why* behind the nature of the EU policy responses in the wake of the Arab Spring and the Dialogues for Migration, Mobility and Security, this paper argues that it is necessary to examine the institutional factors and agents that have shaped their preparation, content, negotiation and implementation. Over the past decade, the two main actors responsible for setting up the Mobility Partnerships, as well as steering the wider Global Approach to Migration, have been the European

⁷¹ Ibid.

⁷² Carrera & Sagrera (2009).

⁷³ Tocci & Cassarino (2011).

⁷⁴ Interviews with officials of the Council, Commission and EEAS; see also Fargues & Fandrich (2012).

⁷⁵ Memo presented by Ambassador Ridha Farhat in Brussels (2012), “Les Grands axes en matière d’immigration et d’intégration”, cited in Fargues & Fandrich (2012).

⁷⁶ Joint Commission-EEAS Press Release, “EU-Jordan Task Force – Co-chairs Conclusions”, Brussels, 22 February 2012.



Commission's Directorate-General for Home Affairs (DG Home) and the Council's High Level Working Group on Migration and Asylum (HLWG). Both have played the part of 'political entrepreneurs' in driving the formidable expansion of the external dimension of migration at European level.⁷⁷ As Guiraudon (2003, p. 267) has appropriately signalled, the phrase "when policemen replace diplomats"⁷⁸ describes "in a nutshell the increasing involvement of law and order personnel at the European level since the early 1980s and, among them, civil servants in charge of migration management".⁷⁹

Interviews conducted for the purposes of this paper revealed that EU Home Affairs officials remain very much in the driver's seat of the external dimensions of the EU's migration policy agenda, with the EEAS appearing to be sidelined in the decision-making processes. For instance, it was the European Commission's DG Home that was given lead responsibility ('*Chef de file*') in drafting the Dialogue Communication (as well as the Communication on the GAMM). This is a strategically important position: the service that prepares a draft for proposal has a huge advantage over other actors and usually wields the real power over the policy issue in question.⁸⁰ The EEAS, despite having made substantive comments on the draft Dialogue communication, reportedly met with little success when it tried to steer the policy formulation of the dialogue via the Commission's inter-service consultation mechanism into a more 'positive' (i.e. less security-focused, conditionality-based approach) engagement with the North African countries.

Further, the predominance of a 'home affairs approach' and marginalisation of the EEAS runs through the institutional structures that frame the development and implementation of the Dialogues. Members of the EEAS voiced frustration that in Council working group discussions the service could give its comments but remained only 'one of the voices' around the table.

The primary site of negotiations in the Council on the Dialogues – and specifically on the preparation of the Mobility Partnerships – is the HLWG on Migration and Asylum. The origins of this working group are primarily rooted in Justice and Home Affairs objectives. Although the HLWG reports formally to the Foreign Affairs Council, its conclusions receive little attention in this forum and its de facto line of command is to the Justice and Home Affairs Council. Indeed, it is telling that Mobility Partnership Joint Declarations are signed in the margins of the Justice and Home Affairs Council and not the Foreign Affairs Council. Previous research has highlighted the predominance of senior officials from the Interior Ministries of the member states in the HLWG,⁸¹ noting that in practice, it is often the same interior ministry officials who attend the meetings in the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) who also represent their countries in the HLWG.⁸² Further, recent Council guidelines stipulate that the Chair of SCIFA should participate in the HLWG, "ensuring that SCIFA plays the lead role in coordination of and interplay between the internal and external dimensions of migration".⁸³ Although latterly a concerted effort has been made to re-balance representation in the HLWG between officials from interior and foreign ministries, nevertheless it is clear that the working configurations of the Council permit interior ministry officials to play a central role in formulating the Dialogues (see Figure 1).

⁷⁷ See Wolff (2007, pp. 77-99).

⁷⁸ A. Turk (rapporteur), *Quand les policiers succèdent aux diplomates. Rapport d'information 523 (97-8) de la Commission des lois du Sénat*, Sénat, Paris, 1998.

⁷⁹ Guiraudon (2003, p. 267).

⁸⁰ Pawlak (2009, p. 28).

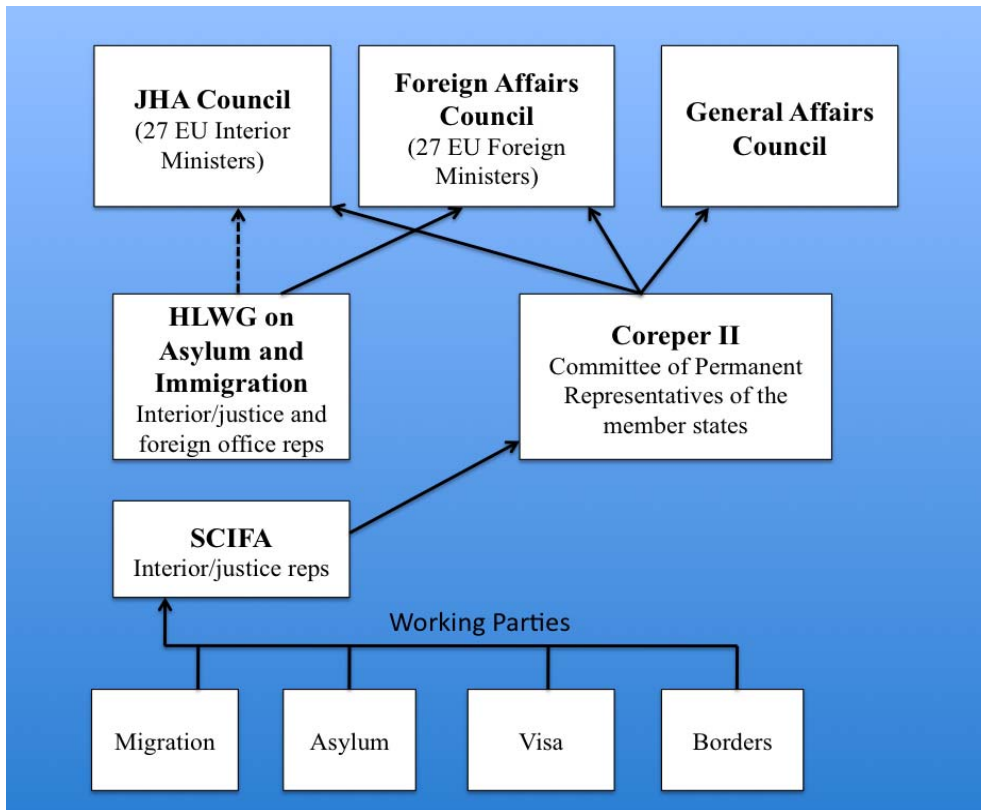
⁸¹ Boswell (2003, pp. 619-638) and Chou (2009, p. 551).

⁸² Chou, *ibid.*, p. 551.

⁸³ Council doc. 17182/11, The Future of SCIFA, 18 November 2011.



Figure 1. JHA working structures inside the Council of the EU



Source: Authors' elaboration.

It is not only in the internal preparation of the Dialogues, but also in the negotiations with third countries that DG Home Affairs has been taking a lead role. Somewhat surprisingly, it is this DG and not the EEAS that is leading diplomatic missions abroad to promote and discuss the content of the Mobility Partnerships in North Africa. Indeed, Stefano Manservigi, the Director-General of DG Home Affairs headed two visits in October 2011 to Tunisia and Rabat with the aim of launching the Dialogue on Migration, Mobility and Security,⁸⁴ accompanied only by a junior representative from the EEAS. Interviews with policy-makers confirm that DG Home, and even the EU Border Agency Frontex,⁸⁵ appear to enjoy a surprising degree of autonomy from the EEAS and Foreign Affairs Council when conveying their views to third states' authorities.

Examination of the institutional arrangements surrounding the elaboration of the Dialogue for Migration, Mobility and Security for the Southern Mediterranean reveals therefore that, despite the creation of the EEAS, this body is far from steering the agenda on the external dimension of migration. This outcome has a very real impact on the policy process.

EU home affairs and national level interior ministry officials tend to have different substantive interpretations, points of reference and priorities when formulating policy compared to diplomats and foreign ministry actors. On one side, foreign ministry actors tend to approach questions related to human mobility within an integrated approach to wider social, economic and environmental policy challenges, one that is informed by the wider negotiation agenda they undertake with third states and the deeper understanding gained of the political interests and issues of interest of the partner country.

⁸⁴ See the Tunisia News Agency report, "Tunisia – EU: Making Visa Getting for Europe Easier (Manservigi)", 6 October 2011 (<http://www.tap.info.tn/en/en/politics/6143-tunisia-eu-make-visa-getting-for-europe-easier-manservigi.html>). See also S. Bennani, "L'Europe va faciliter la mobilite", *Le Soir Echos*, 17 October 2011.

⁸⁵ On the external activities of Frontex, see, Bigo & Guild (2010).

Within the perspective of the EU neighbourhood, this policy approach may be labelled ‘inclusive’ – rooted in a strategy that envisages closer integration with the countries of the EU neighbourhood so as to share the benefits of the internal market and four freedoms (including free circulation). By contrast, national ministry of interior officials are characterised by a more ‘exclusive’ outlook and internally-framed interest, primarily concerned with the need to reinforce the external borders of the Union, ‘police’ migration and consolidate the Area of Freedom, Security and Justice for the benefit of EU citizens.⁸⁶

Indeed, DG Home’s outlook on migration from the Southern Mediterranean during the outbreak of the Arab Spring was summarised by one EU official as “thinking from Lampedusa”, perceiving migration through a narrow lens: namely its expected short-term effect on the EU member states. Combined with a policy framing of migration that is increasingly dominated by security concerns, in which migrants and asylum-seekers are inherently depicted as a threat,⁸⁷ the result is a restrictive stance on human mobility, in which the overriding concern is to stem irregular immigration. Therefore, when DG Home goes abroad, it does so without taking into account the broader sectoral issues at stake in the EU’s wider negotiations with third countries.

By contrast, a ‘foreign ministry’ outlook of the EEAS would be expected to better allow for a more ‘global’ understanding and ‘balancing of issues and interests’ relevant for relations with North African countries (of which only one includes human mobility). Within the overall framework of the ENP and its bilateral Action Plans drawn up between the EU and third countries, migration issues are situated within the context of a wide range of priorities and measures designed to promote economic growth, employment and social cohesion, reduce poverty, and protect the environment.⁸⁸ Ideally, the migration-related policies and initiatives pursued by DG Home should aim to exploit synergies within this wider range of objectives.

However, reports from EEAS officials indicate that migration management activities in third countries can often clash with wider foreign policy goals. For instance, return and reintegration actions have been found to be in tension with development goals in certain African countries; another example is the insertion of readmission clauses in Partnership and Cooperation Agreements (PCAs) which have reportedly made negotiations with third countries a “nightmare”.⁸⁹ The concern is that the home affairs-centred Dialogues for Migration, Mobility and Security divert attention from the process of wider economic and political reform and obstruct constructive relations between the EU and Southern Mediterranean states. Indeed, the two policy processes (based on a foreign affairs approach within the Partnership for Democracy and Shared Prosperity with the Southern Mediterranean and the home affairs approach under the Dialogues for Migration, Mobility and Security) could even stand in contradiction of one another if the Dialogues encourage third states to enact migration and border control-oriented policies that endanger human rights.

Fargues & Fandrich (2012) have also observed the tension between the EU’s ‘more for more’ approach under the renewed ENP, which focuses funding on democracy promotion and ‘common values’, and the EU’s activities under the GAM. For instance, the EU states in its Partnership for Democracy and Shared Prosperity that this framework “needs to support wholeheartedly the wish of the people in our neighbourhood to enjoy the same freedoms that we take as our right” and that it should be “rooted unambiguously in a joint commitment to common values” including democracy,

⁸⁶ S. Wolff (2007).

⁸⁷ Europol, Eurojust and Frontex, *The State of Internal Security in the EU*, joint report to the Standing Committee on operational cooperation on internal security (COSI), p. 2.

⁸⁸ The ENP Action Plan is a bilaterally agreed contractual working agenda concluded for a three year period between each ENP partner country and the EU covering political, economic, social, trade and market related issues.

⁸⁹ Interview with officials of the EEAS.



human rights, good governance and rule of law.⁹⁰ Thus any parallel policy agenda that seeks to engage undemocratic third states in readmission agreements and to fund capacity-building in border controls and asylum will have to pay careful attention to the human rights impact of its activities, their compliance with rule of law standards and their democratic accountability. To ignore the potential contradictions between these external policies risks not only undermining the very principles that underpin the ENP, but also the basis for cooperation with third countries as laid down in the Lisbon Treaty (Art. 8 TEU), which requires cooperative relations with the neighbourhood to be “founded on the values of the Union”, including the respect of fundamental rights.

What are the reasons for the continuing dominance of a home affairs approach within the post-Lisbon institutional set-up of the EU’s external action on migration policy cooperation? We distinguish between three factors: i) questions of competence and competition, ii) the internal dynamics of DG Home Affairs and iii) the role of ‘venue shopping’ in shaping the external dimension of migration.

3.1 Competence and competition

Ultimate responsibility for the external dimension of migration remains with DG Home in so far as the EEAS’ responsibility and mandate in this domain has not been properly spelled out. This is a challenge facing the functioning of EEAS more generally. From the outset it was clear that the creation of the EEAS, and the complexity of its tasks, would entail a number of portfolio overlaps between the EEAS and the European Commission. Despite the need for an effective *modus operandi*, none has been developed, leaving room for tension (see Dimulescu, 2011). The provisions on the EEAS in the Lisbon Treaty are minimal, and state rather ambiguously in Art. 21 (3) TEU that the EEAS should comprise officials from relevant departments of the General-Secretariat of the Council and the Commission. By not specifying which are the ‘relevant departments’, this has paved the way for a multitude of turf sensitivities between the Commission and EEAS (see Duke, 2008). A confidential report prepared by HR Ashton in December 2011 on the first year of operations of the EEAS acknowledged problems in the division of roles between the EEAS and the Commission. The report was accompanied by reports of ‘hostile’ and obstructive behaviour on the part of the Commission and relations between the two institutions resembling “internecine warfare”.⁹¹

The most contentious of these turf battles occurred during early negotiations on the design of the EEAS over development policy, with one camp arguing that aid is so intimately linked to foreign policy that it should be fully embedded within the structures of the EEAS, and the second arguing that development cooperation should be kept separate from foreign policy objectives (see Drieskens & Van Schaik, 2010, p. 13). The rivalry between the EEAS and the Commission was especially intense because at stake was control over the EU’s substantial aid budget. After intervention by President Barroso, it was decided that development policy, management and implementation would remain in the hands of the new Commission DG Development and Cooperation – EuropeAid, while the EEAS was given responsibility for setting strategic priorities for development policy.

This example serves to demonstrate the Commission’s reluctance to relinquish control over strategic policy portfolios to the EEAS. It also reminds us that the position of DG Home Affairs is not exceptional – there are other policy fields with strong external impacts that have not been transferred to the EEAS.⁹² What makes the isolation of DG Home from the EU’s broader external relations more

⁹⁰ European Commission, High Representative, Joint Communication on A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean, Brussels, 8 March 2011, COM(2011) 200 final.

⁹¹ EEAS officials quoted in T. Vogel, “Ashton on Defensive over EU’s Diplomatic Service”, *European Voice*, 5-11 January 2012.

⁹² The most important portfolio is probably the Common Commercial Policy (CCP), which remains with DG Trade. DG Humanitarian Aid & Civil Protection also operates in principle isolated from EEAS policy formulation, for reasons of remaining apolitical when delivering humanitarian aid. To add to this divergent picture, DG Enlargement and Neighbourhood Policy draws upon the Commission’s resources for enlargement but on the EEAS for the ENP.



precarious, however, is that it seems to have been ‘forgotten’ as a DG dealing with external issues, as demonstrated by a recently instituted coordination mechanism between those Commissioners dealing with external policies, chaired by HR Ashton. This grouping involves Commissioner Piebalgs (development), Füle (enlargement, ENP), Gorgieva (humanitarian aid, crisis response), De Gucht (trade) and Rehn (economic and monetary affairs), but not Home Affairs Commissioner Ms Malmström.⁹³ Although this structure is not strategically central, it signals nonetheless that DG Home is not naturally thought of as an external actor.

3.2 DG Home Affairs’ expansion via foreign policy

A second institutional factor relates to the internal dynamics of DG Home, which have favoured an expansion of activities towards the JHA external dimension to the exclusion or sidelining of other Commission services. Here DG Home Affairs’ efforts to expand its influence are not particularly unusual – it is common practice for DGs and their sub-units to protect their area of activity and try to broaden the scope of their responsibilities in new directions, competing as they are for budgets, scarce resources and status. In the case of DG Home Affairs, however, an added driver has been the difficulty this DG has encountered in moving Europeanization forward on immigration policies. Coming up against the obstacles of national sovereignty and interests by national officials, efforts to establish an AFSJ have seen protracted negotiations inside the Council and substantial watering down – if not blocking – of proposals resulting in minimal harmonisation.⁹⁴

By contrast, ‘the external dimension’ has offered new avenues or ‘policy venues’ for DG Home to advance its migration agenda and policy interests, via a route that does not threaten to directly encroach on national immigration and asylum systems and does not come up against the constraints of national bureaucracies.⁹⁵ Thus where DG Home Affairs has come up against internal blockades, it has shifted its policy cooperation to the external dimension, through cooperation and relations with third countries. As member states have shown increasing resistance to European-level attempts to harmonize elements of immigration policies, DG Home may well have viewed ‘going abroad’ as a means of extending its powers, discretion and competences.

As a measure of its success, this DG has seen its institutional stake in ‘the external dimension’ of migration increase dramatically. A small Task Force on external aspects situated in the former DG Justice, Freedom and Security has progressively evolved into a large Unit for International Affairs in DG Home Affairs. As DG Home Affairs expanded its competences in the external dimension of migration, it simultaneously limited the influence of other Commission services, such as the former DG for External Relations (DG Relex – now replaced by the EEAS), in key communications on the external dimension of migration.⁹⁶ Today, for the DG to cede full or partial responsibility on the Global Approach to another institutional actor like the EEAS would be to strip this Commission service of a core competence; hence, protecting and consolidating this area of responsibility becomes a key strategic objective.

A recent example is DG Home’s efforts to increase its leverage over ‘the external dimensions’ by extending its mandate for Home Affairs funding in third countries. Currently the main EU funding instrument managed by DG Home is the General Programme on Solidarity and Management of Migration Flows (SOLID), which only allows for small-scale funding of activities in third countries.⁹⁷ The external dimension of home affairs policies is currently supported primarily through geographical

⁹³ Minutes of the 1914th meeting of the Commission, Strasbourg, PV(2010)1914 final, Brussels, 4 May 2010, Section 11.2. Groups of Commissioners, 16 April 2010 (SEC(2010)475).

⁹⁴ See Wiesbrock (2010).

⁹⁵ For an extended discussion of this phenomenon, see Lavenex (2006).

⁹⁶ As documented in Pawlak (2009).

⁹⁷ For more information on the SOLID funds, see http://ec.europa.eu/home-affairs/funding/solid/funding_intro_en.htm.



and thematic external instruments which are programmed and managed by the Directorates-Generals for Enlargement and Development and Cooperation – EuropeAid, including the Thematic Programme on Cooperation with Third Countries in the Area of Migration and Asylum under the Development Cooperation Instrument (DCI), which is the main instrument for providing assistance to third countries in the context of the Global Approach.⁹⁸ However, DG Home Affairs has expressed its dissatisfaction with the status quo. In a background document to the 2011 public consultation on EU Home Affairs funding, it contended that:

These instruments are designed to mainly cater for other policy objectives (enlargement, development, neighbourhood policy) and not to support primarily the external dimension of home affairs policies. Moreover, as a rule EU funding essentially qualifies as Official Development Assistance (ODA) and must therefore by definition target the needs and priorities of the beneficiary countries, not the interests of donors. However, there is a clear need to increase the EU's leverage in order to allow it to achieve its own policy priorities and to cater for the EU's interests, such as security and migration management, even when these are not a priority for the partner countries.⁹⁹

The wording of this document demonstrates in stark terms the diverging policy priorities of Home Affairs and Foreign Affairs. Despite the rhetoric of the Global Approach which operationalises the ‘migration-development nexus’, DG Home Affairs puts a separation between funding for development purposes which meets the needs of beneficiary countries, and funding that supports home affairs’ objectives and serves EU interests of security and migration control. Thus it goes on to cite as a “drawback” of the Thematic Programme on Migration and Asylum that “*it faces growing pressure to emphasise its development component to the detriment of the more security-related aspects of the migration phenomena.*” In response to these perceived deficiencies, EU Home Affairs Commissioner Malmstrom has pushed for substantial funding to home affairs-related activities in third countries in advance of the next Multiannual Financial Framework. The current Commission proposal on the new EU budget post-2013 stipulates that the new Home Affairs funds (a Migration and Asylum Fund and an Internal Security Fund):

should have a sizeable external dimension in order to ensure that the EU has the means to pursue its home affairs policy priorities in relations with third countries.... in relation to resettlement of refugees, readmission agreements, regional protection programmes, the fight against irregular migration, reinforcing border management and police cooperation with e.g. neighbouring countries.¹⁰⁰

The European Parliament has expressed concern that this increased funding could lead to a redeployment of funds away from budget lines for development cooperation.¹⁰¹ Nevertheless, if passed, the new funding arrangements would substantially increase DG Home Affairs’ clout under the Global Approach by providing the incentives the EU currently lacks to persuade countries of the Southern Mediterranean to cooperate on migration management.

⁹⁸ For more information on this funding instrument, see http://ec.europa.eu/europeaid/how/finance/dci/migration_en.htm.

⁹⁹ European Commission, Public Consultation on EU Funding in the Area of Home Affairs after 2013, Directorate-General for Home Affairs, 2011.

¹⁰⁰ Commission Communication on A Budget for Europe 2020 - Part II: Policy fiches, COM(2011) 500 final, Brussels, 29.6.2011, p.53.

¹⁰¹ Question to the Commission - Committee on Development by Franziska Keller, MEP (for DEVE 24 May 2011) on the Multiannual Financial Framework.



3.3 The 'External dimensions' of EU migration policy as 'venue shopping'

A third factor takes into account the interests driving national level policymakers. Guiraudon has shown how the EU provides a supranational venue where national actors cooperate on policy in order to gain 'autonomy' from constraints that would otherwise impede their actions at the domestic level (see Guiraudon, 2000 and 2003). Member state representatives do not only use the EU level to project their national interests, but political actors may also take the 'Brussels route' where they are less encumbered than in national settings by other institutions, governmental ministries and the judiciary, which can act as veto points to policy initiatives.

For example, in most member states, the national interior ministries cannot autonomously conduct and implement policy on 'the external dimensions' – whether that be visas, readmission, security and policing in third countries or technical and financial capacity-building for migration management. Their actions in these domains would require checks and validation by foreign and international development ministries, seriously constraining their leeway. However, as the EU institutional set-up does not yet have a strong 'foreign ministry' actor, with the EEAS still at an early stage in its development, these restraints are almost absent. Lavenex (2006, p. 330) has gone so far to argue that:

The search for policy solutions beyond the territory of the EU is motivated less by the search for innovative solutions than by the interest of justice and home affairs officials to increase their autonomy vis-à-vis other actors in the domestic and European policy arenas.

This search for autonomy and discretionary power has resulted in the highly fragmented character of the Global Approach as different institutional actors and member states have pursued separate policies and engaged in various disjointed initiatives on the external dimension of migration.¹⁰² Initiatives under the GAMM are highly piecemeal and there appears to have been little effort made to streamline the scattered, obscure and inconsistent policy frameworks in which current 'dialogues' with third countries are set.¹⁰³ The challenges to accountability are therefore substantial. First, because such lack of knowledge on the part of the EU of what precisely it is doing abroad prevents a basic evaluation and scrutiny of the EU's actions in the domain of the AFSJ in third countries. And second, because much of the decision-making on the external dimensions has been – and continues to be under the Lisbon Treaty – a highly inter-governmental process, driven by member states within the Council, often to the exclusion of European Parliament oversight (as in the case of Mobility Partnerships).

In a similar fashion, EU Home Affairs agencies, such as Frontex and Europol, have become increasingly active in the external dimension of migration policy, thereby also gaining autonomy from domestic and European accountability and central foreign policy coordination constraints (see Guild et al., 2011). Frontex is the prime example of this development; the Agency now plays an important role in central EU border and migration initiatives such as the Mobility Partnerships (where third countries are obliged to sign working arrangements with Frontex) and in the setting up and future operation of the "European border surveillance system" (EUROSUR).¹⁰⁴ The agency has already concluded 17 working arrangements with third states, with several more currently under negotiation.¹⁰⁵ Moreover, during the Frontex joint operations HERA I and HERA II of 2006, it cooperated with the Senegalese and Mauritanian authorities in joint surveillance exercises beyond EU borders.¹⁰⁶ The amended

¹⁰² See Boswell (2008) and Alegre et al. (2009).

¹⁰³ According to the Council of the EU, "no comprehensive overview of EU relations and agreements with all relevant third countries is currently available". See Council doc. "Operationalising the Council Conclusions of 9-10 June 2011 defining the European Union strategy on readmission", 5728/12, Brussels, 25 January 2012.

¹⁰⁴ European Commission, Communication, Examining the creation of a European border surveillance system (EUROSUR) COM(2008) 68 final, 13 February 2008.

¹⁰⁵ Frontex, 'Third Countries', at: <http://frontex.europa.eu/partners/third-countries>

¹⁰⁶ S. Carrera (2007), *The EU Border Management Strategy FRONTEX and the Challenges of Irregular Immigration in the Canary Islands*, CEPS Working Document No. 261/March 2007.



Frontex Regulation (October 2011) further consolidates the external relations role of the agency. It can now launch and finance assistance programmes in third states and place liaison officers there, as well as receive third-state officers and observers within the Frontex structures.¹⁰⁷

These activities and competences combined show that the agency bears the potential to be an all-round external relations actor: it can steer policy formulation, conduct traditional foreign policy (external representation and international agreements) and implement policy on foreign soil. This push by Frontex can be seen as a way for member state home affairs officials to gain autonomy from the (constitutional) constraints connected to external relations at the domestic level. For example, the working arrangements with third states are not disclosed and are hence not subjected to any form of public accountability. As a matter of fact, democratic scrutiny is evaded altogether here, also on the European level; the European Parliament is not involved in any way when working arrangements are concluded. It is hence not only a push away from national constraints, but the rationale for setting up such agencies – namely to create *autonomous* expert entities – also offers European policy-makers an opportunity to work in an EU setting of limited accountability.¹⁰⁸ Furthermore, the lack of coordination by a central foreign ministry is aggravated in the case of EU agencies' external relations, as they are in an 'orbit' around the Community method with loose strings to the 'core' where the EEAS and the Commission are located.¹⁰⁹ The agencies thereby also gain a more independent voice vis-à-vis third states. The evident danger is that this independent voice for Frontex further exacerbates the potential for incoherencies with the central EU external relations objectives and outputs towards third countries.

4. Conclusions, scenarios and policy recommendations

The events of the Arab spring have offered the EU a unique opportunity to assess and renew its policy strategies towards the Southern Mediterranean, to make a break with the policy approaches of the past and re-shape its policies to better support sustainable development on its Southern shore. This opportunity has been reinforced by the new institutional and legal setting provided by the entry into force of the Lisbon Treaty. Meanwhile the re-launched ENP and Global Approach to Migration and Mobility have renewed strategic frameworks addressing the Southern Mediterranean. Yet, the realisation of these policy goals rests on the EU institutional configurations driving the policy agenda on the external dimensions of migration and the balance of power between institutional actors within the Global Approach.

The result of this study depicts the complex picture of an EU institutional setting riddled with struggles for autonomy and authority to control the policy and funding agenda within the Global Approach. The entry into force of the Lisbon Treaty, the disappearance of the JHA Pillar Structure and the creation of an EEAS has not halted the trend of an ever-expanding Home Affairs diplomacy, propounded by the Commission's DG Home, certain EU agencies and the working structures of the Council, which continue to dominate policy formulation on the external dimensions of EU migration policies. On the contrary, it appears to have been reinforced

Rather than resolving and streamlining cumbersome EU decision-making procedures and pillar structure politics, the turf wars or ideological conflicts between institutions have intensified post-Lisbon. Despite the 'turf battles' being fought where migration policy intersects with EU external affairs, the Commission's DG Home Affairs remains very much in the driver's seat of the EU's policy

¹⁰⁷ Art. 14, Regulation (EU) No 1168/2011 of the EP and the Council of 25 October 2011, amending Council Regulation (EC) No 2007/2004 establishing FRONTEX,

¹⁰⁸ There is an extensive academic debate about the balancing of autonomy and accountability for EU agencies. See for example, Busuioc et al. (2012).

¹⁰⁹ Ibid., pp. 848-849. They refer to: D. Curtin (2009), *Executive Power of the European Union: Law, Practices and the Living Constitution*, Oxford: Oxford University Press.



approach to the external dimension of migration. Indeed the predominance of home affairs actors and interior ministry officials continues to have a profound effect on the policy priorities and objectives framing the Global Approach, constituting the main driving factor justifying the control-oriented (in)security approach in the EU policy responses towards human mobility in the Mediterranean.

This was evident in the EU's immediate 'emergency' responses to the increased mobility in North Africa sparked by instability and war in the first half of 2011. The series of EU measures to step up border surveillance and to contain migrants and refugees in North Africa signalled a 'business as usual' approach that stood in sharp contrast with public declarations of solidarity and support for the peoples of the Southern Mediterranean.

Despite claims of a 'medium-longer term' and more 'comprehensive' strategy for addressing migration and mobility from this region, the strong incentive-based conditionality regime embodied by the Mobility Partnerships at the heart of the Dialogues and the renewed GAMM undermines the claim of a renewed approach to migration policy from the Southern Mediterranean. Of course, it is too early to comprehensively predict the impact of the Dialogues for Migration, Mobility and Security and the renewed Global Approach. To a great extent the devil will be in the detail as these frameworks are translated from paper into practice. However, as this study has shown, early signals concerning prospects for the EU's external migration policy agenda to impact positively on the Southern Mediterranean are not encouraging.

The package presented in the Dialogue struggles to fulfil its promise either of opening channels for 'mobility', nor of offering a genuine 'partnership' and throws doubt on the appropriateness of the Dialogues on Migration, Mobility and Security to deliver the EU's ambitious political goals voiced in the midst of the Arab Spring. Rather the Dialogues point to a continuation of the status quo: the securitisation of movement, the proliferation of policies that endanger the human rights of migrants and weak and imbalanced partnerships between the EU and its neighbours in the Southern Mediterranean. Furthermore, DG Home's near monopoly on the external dimension and its disregard for EEAS input erects obstacles to reaching an EU migration policy response to the developments in the Southern Mediterranean that is consistent with the EU's wider foreign policy objectives under the European Neighbourhood Policy.

The potential for the Dialogues for Migration, Mobility and Security to facilitate economic and political transition of the Southern Mediterranean will in large part depend on the EU institutional configurations driving their design and implementation in the years ahead and the extent to which the imbalance in the EU power relations framing their development is addressed. We envisage two, broad-brush scenarios over a 2030 perspective for the future direction of the EU's migration policy agenda towards the Southern Mediterranean region, and particularly the North Africa states of Morocco, Tunisia, Egypt and Libya. The first consists of a 'business as usual' scenario with the likelihood of negotiations on Mobility Partnerships coming to a standstill and a clear risk to the effectiveness of the EU's response. The second envisages a re-orientation of the EU's long-term vision on human mobility with increased opportunities for a genuine cross-Mediterranean partnership.

4.1 Scenarios

4.1.1 A Home Affairs-centred dialogue

The first scenario envisages the continued semi-monopoly of DG Home on the Dialogues for Mobility, Migration and Security, accompanied by increasing competition between DG Home and other EU actors.

Under this scenario, the potential to deliver credible Mobility Partnerships with Southern Mediterranean states is slim. It envisages an EU incapable, and member states unwilling, to offer improved legal channels for economic migration beyond a narrow category of individuals, particularly in an economic climate of low growth and high unemployment. On the North African side, the readmission agreement would be highly problematic to accept in light of lacking real and credible



upfront incentives by the EU and (in particular) the member states. Without credible channels for labour migration, this scenario diminishes the prospect for ‘mobility’ to support development in North African countries via remittances, skilling and brain circulation.

At the same time, increased control over funding programmes for the external dimension of migration and asylum by DG Home would see strengthening support for activities in pursuit of EU internal security and migration management objectives. Financial and technical support is channelled to governmental police, border and asylum authorities with the primary objectives of containing migration towards the EU territory, rather than addressing the deeper socio-economic and governance causes of migration. In parallel, increased cooperation between EU JHA agencies such as Frontex, Europol and EASO and their equivalents in third states reinforce the problems of fragmentation, low visibility and low accountability that currently characterises the Global Approach.

Ultimately, this is likely to reinforce inconsistencies in EU policies towards North African states and result in decreased leverage for the EU. North African regimes, presented with an inconsistent policy agenda, may choose to appease the Union by fulfilling ‘security’ measures aimed at preventing irregular migration while creating leeway to slacken efforts towards the overall goals relating to democracy, stronger civil society and human rights protection.

In sum, the continuing dominance of the home affairs approach sees the GAMM remain trapped in the logic of security, short-termism, insularity and bi-lateralism. Accordingly, in the long run this would contribute to a business as usual scenario in the Southern Mediterranean where political reform and human rights are sidelined while issues such as combating terrorism and containing migration continue to dominate the policy agenda. The EU’s failure to deliver substantive commitments through the Global Approach results in a failure to establish strong and mutually cooperative partnerships with the new regimes in the Arab world, contributing to a slide towards increasing polarisation of the two regions. According to the MEDPRO project’s reference scenarios, this would accord with the red transition to – ‘The Euro-Mediterranean area under threat’ and of a widening gap and increasing tensions and conflicts between the two shores of the Mediterranean.¹¹⁰

4.1.2 A Re-oriented Dialogue

The second scenario is one in which the EU manages to conclude *re-oriented* Mobility Partnerships across the Mediterranean. The ‘Home Affairs focus’ is replaced with a balanced, fully accountable framework that roots human mobility modalities into a wider agenda that complements social and economic development in the region. On the level of political discourse, the securitisation of human mobility and restrictive (control-oriented) policies are ceased. In such an environment, the member states are able to offer real and credible incentives for labour migration and visa facilitation allowing the Mobility Partnership to evolve into a powerful tool for EU external relations.

Firstly, in this scenario the EEAS fulfils the ‘foreign ministry’ role at the EU level. The EEAS would be mandated to coordinate the elaboration and identification of strategic priorities for the EU’s dialogues, and to lead dialogues abroad, drawing on the input of all relevant actors. Putting the EEAS in the lead of this policy agenda ensures that migration policy aspects become truly embedded in the EU’s external relations towards the North African countries. Care is taken to avoid a scenario in which competences (planning and management functions) on the external dimension of migration are simply transferred to the EEAS, and with them home affairs security objectives which could exacerbate creeping contamination of EU foreign affairs and development policy with traditional JHA priorities. Clear and distinct boundaries between those areas that fall under the mandate of the EEAS and those falling under the responsibility of DG Home are identified and the EEAS as overall coordinator of the GAMM would ensure that the Dialogue is informed and shaped by the expertise of a wide range of Commission Directorates-General, such as DG Development, DG Employment as well as DG Home.

¹¹⁰ See Ayadi & Sessa (2011). For a study on population projections under this scenario, see also Groenewold et al. (2012, pp 9-10).



It would thus meaningfully enhance horizontal policy cooperation on the EU level while maintaining the competition and ‘checks and balances’ which are necessary for a healthy policy process. Ultimately, this could help towards establishing a more convincing ‘EU voice’ abroad and increased leverage for the overarching EU policy objectives vis-à-vis the North African states.

Secondly, this involvement of a wider scope of actors would increase the prospect of the EU engaging the North African states in reoriented mobility partnerships. As flexible instruments, mobility partnerships hold the potential to develop into more balanced frameworks of cooperation. Here, mobility partnerships are legally binding international agreements, injecting the legal certainty, democratic accountability and judicial scrutiny over their compliance with rule of law and human rights standards that is currently lacking (see Carrera, 2011, pp. 19-20). In this scenario, the EU gives real and credible incentives for labour migration, including packages of measures to support and improve migrants’ rights, features that will take on increasing importance as the EU competes with other regions of the world for labour, skills and talent. The EU diversifies its ‘demands’ from irregular migration aspects to overall reforms needed to fulfil the promised ‘Partnership for democracy and shared prosperity’. Moreover, the conditionality approach does not feature in this scenario. Here, the envisaged cross-Mediterranean cooperation is a genuine dialogue. The expected result is an increased willingness of the part of the North African countries to conclude an overall agreement with the EU and, in the longer run, movement towards the establishment of a Euro-Mediterranean zone of increasingly liberalised movement of individuals between the EU and North Africa.

4.2 Policy Recommendations

In view of the advantages of Scenario 2, the following recommendations are proposed to contribute to a re-framing of the Dialogue for Migration, Mobility and Security:

1. The role of the EEAS in the domain of the external dimension of migration should be strengthened by increasing the service’s institutional capacities in this portfolio and revisiting the division of responsibilities between the EEAS and Commission DGs such as DG Home and DG Devco. For instance, in the case of funding instruments, this may involve a wider interpretation of ‘strategic planning’ as performed by the EEAS and a narrower understanding of funding ‘management’ as performed by the Commission. Communications concerning the external dimensions of migration should always be jointly issued by the Commission (DG Home) and the High Representative (EEAS), accompanied by an EEAS-chaired inter-service consultation mechanism. In the negotiation phase, the EEAS should act as the prime interlocutor for the dialogue vis-à-vis the North African states. Respective responsibilities, once reassigned, should be clarified and laid down in a detailed set of internal guidelines.
2. Modifications to the Council working structures could be made to reflect the expanded remit of the Mobility Partnership and its potentially stronger role in the ENP. It might be examined to what extent the Council’s High Level Working Group on Immigration and Asylum provides the appropriate forum for decision-making on this tool, how to accord the EEAS a stronger role in discussions and how to ensure increased engagement by the Foreign Affairs Council (for instance, by having Mobility Partnership agreements signed in the margins of the Foreign Affairs Council).
3. The Dialogues should be re-focused on the central aim of opening and supporting channels for legal migration, including labour migration. Given that admission of third country national workers is currently highly restricted by national laws, consideration should be given to allocating the EU greater capacity in this domain. The potential window opened by the recognition of EU competence to legislate on ‘the internal dimension’ of labour immigration policy in Art. 79.4 TFEU could be explored as a means for the EU to engage (on grounds of implied external competence) more actively in the domain of labour immigration with third countries. This should be flanked with concrete arrangements within Mobility Partnerships to facilitate mobility, including the recognition of qualifications of immigrant workers, guarantees



for the portability of social security rights and schemes to encourage training and educational exchanges.

4. In order to ensure legal certainty, policy coherence and the necessary democratic accountability and judicial control of Mobility Partnerships, the EU should make use of international agreements (similar to those used in the context of readmission and asylum cooperation) in place of Joint Declarations as the framework for cooperation and dialogue with third countries. This should better ensure compliance of the Mobility Partnership instrument with rule of law and fundamental rights principles. Mobility Partnerships should also be subject to regular, independent evaluations of their value added and overall impacts, both on their capacity to widen external migration policies beyond security aspects and towards agreements and initiatives on labour migration schemes, and on the impact on the fundamental rights of individual migrants.
5. To arrive at the conclusion of a Mobility Partnership, the EU and the North African states should agree on a ‘Roadmap to Mobility’ which would sequence the steps needed from both sides. To ensure an equal partner dialogue, this cannot be a rigid conditionality approach, but rather a way to build mutual trust by offering specific incentives on both sides. The EU should streamline the dialogue into the overall approach to the North African countries, as worded in the Joint Communication “Partnership for democracy and shared prosperity”. Most importantly, mobility should not be ‘exchanged’ for measures stemming irregular migration flows, but should be used rather to encourage reforms needed for safeguarding human rights, building independent courts and narrowing socio-economic differences. In return, the Dialogue should also include obligations and measures to improve compliance with human rights standards in the EU, including in EU migration and border policies. This would ensure that there is a consistent line on human rights protection within the framework of mutually reinforcing negotiations.
6. The transparency and accountability of EU action in the external dimensions of migration should be strengthened. The increased role for the EEAS as proposed here should not lead to more intergovernmental decision-making with the accompanying challenges to accountability. Translating Mobility Partnerships into international agreements would already be an important step towards democratic accountability as agreements would be subject to scrutiny by the European Parliament. But more widely, the activities of the various institutional actors engaged in devising and implementing actions under the GAMM, especially those of Home Affairs agencies such as Frontex, Europol and EASO, should be subject to greater scrutiny, both judicial and democratic. To that end, the working arrangements concluded with third states by the Home Affairs agencies should be publicly accessible and reviewed by the European Parliament. Only if strictly necessary, the European Parliament could have the possibility to set up ‘confidential working groups’ assessing the secret/non-publicly disclosed operating plans, risks analyses, threat assessments and working arrangements with third countries and other actors constituting the basis of their operations in order to examine their proportionality (including from a budgetary point of view), soundness and added value. The European Parliament should also have a binding say in the appointment of key officials in the Home Affairs agencies and time limits should be imposed on the confidentiality and non-disclosure of documents, reports and arrangements of the external relations actors, including Home Affairs agencies.



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About MEDPRO

MEDPRO – Mediterranean Prospects – is a consortium of 17 highly reputed institutions from throughout the Mediterranean funded under the EU’s 7th Framework Programme and coordinated by the Centre for European Policy Studies based in Brussels. At its core, MEDPRO explores the key challenges facing the countries in the Southern Mediterranean region in the coming decades. Towards this end, MEDPRO will undertake a prospective analysis, building on scenarios for regional integration and cooperation with the EU up to 2030 and on various impact assessments. A multi-disciplinary approach is taken to the research, which is organised into seven fields of study: geopolitics and governance; demography, health and ageing; management of environment and natural resources; energy and climate change mitigation; economic integration, trade, investment and sectoral analyses; financial services and capital markets; human capital, social protection, inequality and migration. By carrying out this work, MEDPRO aims to deliver a sound scientific underpinning for future policy decisions at both domestic and EU levels.

Title	MEDPRO – Prospective Analysis for the Mediterranean Region
Description	MEDPRO explores the challenges facing the countries in the South Mediterranean region in the coming decades. The project will undertake a comprehensive foresight analysis to provide a sound scientific underpinning for future policy decisions at both domestic and EU levels.
Mediterranean countries covered	Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria, Tunisia and Turkey
Coordinator	Dr. Rym Ayadi, Centre for European Policy Studies (CEPS), rym.ayadi@ceps.eu
Consortium	Centre for European Policy Studies, CEPS , Belgium; Center for Social and Economic Research, CASE , Poland; Cyprus Center for European and International Affairs, CCEIA , Cyprus; Fondazione Eni Enrico Mattei, FEEM , Italy; Forum Euro-Méditerranéen des Instituts de Sciences Economiques, FEMISE , France; Faculty of Economics and Political Sciences, FEPS , Egypt; Istituto Affari Internazionali, IAI , Italy; Institute of Communication and Computer Systems, ICCS/NTUA , Greece; Institut Europeu de la Mediterrania, IEMed , Spain; Institut Marocain des Relations Internationales, IMRI , Morocco; Istituto di Studi per l’Integrazione dei Sistemi, ISIS , Italy; Institut Tunisien de la Compétitivité et des Etudes Quantitatives, ITCEQ , Tunisia; Mediterranean Agronomic Institute of Bari, MAIB , Italy; Palestine Economic Policy Research Institute, MAS , Palestine; Netherlands Interdisciplinary Demographic Institute, NIDI , Netherlands; Universidad Politecnica de Madrid, UPM , Spain; Centre for European Economic Research, ZEW , Germany
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