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Did 2016 Mark a New Start for EU External Migration Policy, or Was It Business as Usual?

by Anja Palm

ABSTRACT

2016 has been sold as the year of innovative EU external migration policies. Have recent EU decisions and initiatives in this field really represented a change in direction? This paper argues that the EU's external migration policy has long been based on the principles of externalization of migration control and conditionality in the relationship with third countries. The securitization of the EU's external borders has long existed along with the lack of adequate legal migration channels. This has come at the cost of the protection of migrants' and especially refugees' rights. The EU-Turkey agreement and the New Partnership Framework are examined in order to assess whether they represent a change of this trend or merely its latest manifestation. The paper concludes that, despite some clear steps forward in 2016, there is still much left to do in order to create a real framework of common external migration action which moves away from securitization and externalization towards a protection-sensitive entry system.

European Union | Migration | Refugees | Human rights



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1. The EU's external policy on migration: A long history of denying access to protection through externalization and securitization

Over the years, and following the evolution towards a "Union without frontiers," the necessity and the advantages of coordinated EU policies in the area of migration have been recognized, both at the internal and external level. Whilst some cooperation with countries of origin and transit has been on the agenda since the 1990s, first steps towards a gradual "communitarization" of migration matters were made through the Amsterdam Treaty, a development strongly reinforced by the 2007 Lisbon Treaty.¹ The treaties have been strengthened through the strategic guidelines set by the European Council in five-year programmes and the Commission's Global Approach to Migration and Mobility (GAMM), which represents the overarching framework of the EU external migration and asylum policy.

The external dimension of migration law has been increasingly recognized to be crucial in relations with third countries. Yet, it appears that the EU has interpreted the nexus between EU migration law and other policies (in particular development and foreign policy) so as to instrumentalize development and support initiatives to prevent emigration or stop it before it reaches the EU's shores. Indeed, over time, the EU has increasingly outsourced tools of migration control to third countries and "externalize[d] the barriers against irregular migratory movements to areas

¹ For the evolution of the EU's external policy, see Christina Boswell, "The 'External Dimension' of EU Immigration and Asylum Policy", in *International Affairs*, Vol. 79, No. 3 (May 2003), p. 619-638; Sandra Lavenex and Frank Schimmelfennig, "EU Rules Beyond EU Borders: Theorizing External Governance in European Politics", in *Journal of European Public Policy*, Vol. 16, No. 6 (September 2009), p. 791-812, <http://dx.doi.org/10.1080/13501760903087696>.

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outside the physical territories of the States or of the whole of the European Union,² creating a “buffer zone” and integrating third States into the EU border control apparatus.

The “local approach” rhetoric, which prioritizes humanitarian assistance and enhances protection in the region of origin and transit, has usually been employed to justify this logic. Indeed, in what has been defined as a “concentric circles approach,” in terms of protection and humanitarian aid, “priority is always given to solutions closer to the source of flows,” starting from the country of origin, countries of transit and the EU as last resort.³

Throughout recent years, a great number of agreements have been concluded with states on migratory routes. Nevertheless, in contrast to the local protection rhetoric, these have focused mainly on joint operations and the enhancement of migration control instruments through funding and capacity building of the border control ability of countries of origin and transit. Another focus has been on readmission agreements, to ensure the return of any irregular migrant through accelerated procedures and presumptions, often at the cost of asylum and human rights protections.

In order to incentivize third States to enter such agreements, the principle of conditionality has been shaping the EU’s external relations since the early 2000s. As a result, “cooperation on irregular migration has become a precondition for an intensified partnership for third countries,”⁴ requesting border management and cooperation in stemming migratory flows to the EU as a condition for financial and development support. This has been done mainly through individual agreements and the platform of the European Neighbourhood Policy.⁵

This approach presents a number of issues, of which the greatest concern is the lack of a long-term perspective on tackling migration. Indeed, the EU’s external approach addresses symptoms instead of causes: the focus on stemming numbers and shifting the burden elsewhere demonstrates a lack of permanent strategies

² Maria Cordeil de Donato (ed.), *Access to Protection: Bridges not Walls*, Roma, Consiglio Italiano per i Rifugiati, October 2014, p. 12, <http://www.cir-onlus.org/it/comunicazione/news-cir/13-news/1472-nuovo-rapporto-cir-access-to-protection-bridges-not-walls>. See also Human Rights Watch, “Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees”, in *HRW Reports*, Vol. 18, No. 5 (September 2006), p. 91-99, <https://www.hrw.org/node/255402>.

³ Paolo Biondi, “Human Security and External Burden-Sharing: The European Approach to Refugee Protection Between Past and Present”, in *The International Journal of Human Rights*, Vol. 20, No. 2 (February 2016), p. 213.

⁴ Canan Ezel Tabur, “Renewed Inter-institutional (Im)balance after the Lisbon Treaty? The External Dimension of the EU’s Migration Policy”, in *Perceptions*, Vol. 18, No. 3 (Autumn 2013), p.13, <http://sam.gov.tr/?p=4254>.

⁵ For the latter, see Steven Blockmans, “The ENP and ‘More for More’ Conditionality: plus que ça change...”, in Gloria Fernández Arribas, Karolien Pieters and Tamara Takács (eds.), “The European Union’s Relations with the Southern-Mediterranean in the Aftermath of the Arab Spring”, in *CLEER Working Papers*, No. 2013/3 (2013), p. 53-59, http://www.asser.nl/media/1638/cleer_13-3_web.pdf.

of cooperation, which would be more beneficial for all interested parties. Further, the outsourcing of migration control not only neglects the special needs of people demanding international protection, not guaranteeing a due distinction according to international refugee law, but also determines a “legally restricted or practically impossible” recourse to EU human rights mechanisms for all individuals concerned.⁶ In addition to challenging moral and legal boundaries, the externalization of migration control has not even proven to be successful in deterring irregular migration: it seems merely to lead to the opening of other routes or temporary declines in numbers and may even be counterproductive.

1.1 No way in: Securitization and the asylum-migration nexus

Whilst at the rhetorical level the EU’s external action is envisaged as approaching the migratory challenge from a multitude of angles,⁷ the reality is strikingly different. The focus, in fact, is and has always been predominantly on strengthening external borders and combatting irregular migration, reflecting the security concerns of the Member States.

Harmonization of migration policy at the EU level has indeed long concentrated on locking down the Schengen Area and intensifying migration and border control, without counterbalancing with adequate human rights protections. The development of “integrated border management” has enhanced border control cooperation both at the external level, strengthening the capacity of neighbouring countries, and at the EU level through increasing centralization (see Frontex and the naval operations Triton and EUNAVFOR MED’s Sophia) and the recent acceleration which has led to the establishment of a reinforced European Border and Coast Guard.

According to international human rights organisations, the closing of the EU’s external borders, in combination with the requirement to be in EU territory to access international protection, has contributed to the increase of irregular migration, trafficking and smuggling and deaths at sea.⁸ The combination of policies which govern the Schengen system, such as the visa regime, requiring visas for countries “perceived at risk of illegal immigration,” and carrier sanctions, give those in search of international protection virtually no other choice than to enter the territory

⁶ François Crépeau, *Regional Study: Management of the External Borders of the European Union and Its Impact on the Human Rights of Migrant* (A/HRC/23/46), 24 April 2013, p. 14, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.46_en.pdf.

⁷ See the four policy objectives of the GAMM in: European Commission, *The Global Approach to Migration and Mobility* (COM/2011/743), 18 November 2011, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52011DC0743>.

⁸ For more detail on the influence of EU policy on the access to protection, see Médecins Sans Frontières, *Obstacle Course to Europe. A Policy-Made Humanitarian Crisis at EU Borders*, January 2016, <http://www.doctorswithoutborders.org/node/64761>.

irregularly.⁹ This broadens the substantial gap between political statements and practice: indeed, whilst protection concerns are repeatedly mentioned in the objectives and in legislation, existing policies demonstrate that they have clearly not been taken into consideration in the elaboration of, for example, the list of countries for which visas are required.

This creates a migration-asylum nexus which demonstrates a (voluntary) failure to differentiate people in need of international protection from other migrants, assimilating all in a "class of (potentially illegal) immigrants and thus required to submit to general immigration conditions."¹⁰ The distinction becomes relevant only once asylum seekers have accessed the territory clandestinely, as part of such "undifferentiated 'irregular movement.'"¹¹

Keeping in mind the high complexity of operating such distinctions preventively, in particular due to the phenomenon of mixed migration, the different legal statuses of individuals can nevertheless not be ignored, particularly because the recognition of an individual as a refugee is merely declaratory in nature. Accordingly, Article 6 of the Refugee Convention suggests the exemption from certain bureaucratic requirements as a means to enable effective access to protection for refugees, recognizing the different legal qualification of the latter.

There is consequently a debate as to the responsibility of the EU to ensure access to protection, and regarding the scope of the fundamental principle of *non-refoulement*. Particularly challenging is the question whether passive interceptions of access, such as through visa policies, can result in its violation. Judge Pinto de Albuquerque affirms in the ECtHR Hirsi judgement, that international refugee or at least human rights law "imposes on States a duty to protect [...] and failure to take adequate positive measures of protection will constitute a breach of that law."¹² It appears indeed absurd to conceive the right to seek asylum as independent from refusal or obstruction of admission to territory, the latter being necessary to escape the danger of persecution and to ask for recognition of refugee status. According to the author, the two concepts cannot be detached and must be framed as a unique right to access territory to enjoy protection.¹³

⁹ Violeta Moreno Lax, "Must EU Borders have Doors for Refugees? On the Compatibility of Schengen Visas and Carriers' Sanctions with EU Member States' Obligations to Provide International Protection to Refugees", in *European Journal of Migration and Law*, Vol. 10, No. 3 (2008), p. 323; Maarten den Heijer, *Europe and Extraterritorial Asylum*, Oxford and Portland, Hart, 2012, p. 172-179 (dissertation available at <https://openaccess.leidenuniv.nl/handle/1887/16699>).

¹⁰ Violeta Moreno Lax, "Must EU Borders have Doors for Refugees?", cit., p. 315.

¹¹ Alexander Betts, "Towards a Mediterranean Solution? Implications for the Region of Origin", in *International Journal of Refugee Law*, Vol. 18, No. 3-4 (September/December 2006), p. 655.

¹² European Court of Human Rights, Judgment of the Grand Chamber on the Case of *Hirsi Jamaa and Others v. Italy* (Application No. 27765/09), 23 February 2012, <http://hudoc.echr.coe.int/eng?i=001-109231>.

¹³ Gregor Noll and Jessica Fagerlund, *Safe Avenues to Asylum? The Actual and Potential Role of EU Diplomatic Representations in Processing Asylum Requests*, Copenhagen, Danish Centre for Human Rights, April 2002, p. 12, <http://www.unhcr.org/3cd000a52>; Maarten den Heijer, *Europe*

Whilst at a theoretical level it might be lawful to limit access to only those who do not come from or have not crossed a safe country,¹⁴ there is currently no instrument for the EU to make such an assessment before individuals access its territory. As a response to this challenge the EU appears to have chosen the easier policy of hampering access for all, instead of elaborating proposals which enable such differentiation beforehand. According to major humanitarian organizations, the resulting denial of access to protection is a violation of the right of asylum and of the prohibition of *refoulement*.¹⁵ The current immigration system, which applies to third country nationals regardless of the different legal status people requesting international protection embody, must consequently be challenged.

In that sense it is necessary to push for a shift in the EU's external action from an externalization and containment elsewhere approach to the development of a common external asylum policy. In particular, voluntary non-differentiation must be replaced by a protection-sensitive entry system, which takes into account the state's obligations under international human rights and refugee law, ensuring that "legitimate measures to control entry are not applied arbitrarily and that they allow asylum-seekers and other groups with specific protection needs to be identified and granted access to a territory where their needs can be properly assessed and addressed."¹⁶

1.2 The shortcomings of existing legal migration channels

Due to the worrying state of play, a number of human rights organizations have long called on the EU to establish channels through which individuals in need of international protection can access the EU territory legally to be able to then seek international protection "in country." The proponents of this approach suggest that the creation of such channels of access has the potential to prevent human suffering and death along irregular routes and challenge trafficking and smuggling networks.¹⁷

and Extraterritorial Asylum, cit., p. 120-139; Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, Oxford, Oxford University Press, 2007, p. 387-388; Satvinder S. Juss, "Free Movement and the World Order", in *International Journal of Refugee Law*, Vol. 16, No. 3 (July 2004), p. 289-335.

¹⁴ According to the Asylum Procedures Directive at premises, points 40-42, 46-48. See Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:32013L0032>.

¹⁵ PRO ASYL, *Out of Sight, Out of Mind: Externalisation of Migration and Refugee Policies*, 5 August 2016, <https://www.proasyl.de/en/?p=12753>; Red Cross EU Office, *Position paper on the Right to Access to International Protection*, 17 November 2011, <http://www.redcross.eu/en/What-we-do/Asylum-Migration/Access-to-International-Protection-Position-Paper/?sw=2011>.

¹⁶ UNHCR, "Protection-Sensitive Entry Systems", in *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*, February 2011, p. 76, <http://www.unhcr.org/50a4c0a89>.

¹⁷ European Agency for Fundamental Rights (FRA), "Legal Entry Channels to the EU for Persons in Need of International Protection: A Toolbox", in *FRA Focus*, No. 02/2015 (March 2015), <http://fra.europa.eu/en/node/12443>.

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The EU itself, in its official statements and policies, has repeatedly endorsed the importance of proposing legal migration channels. Nevertheless, these assertions are not reflected in practice: very few resources have been invested in promoting legal migration for asylum seekers today. Indeed, taking into consideration the restrictive trend regarding family reunion and the great struggle in promoting resettlement in the EU, channels for legal entry are substantially blocked.¹⁸

Whilst the academic world and major organizations propose alternatives such as humanitarian admission or private sponsorship schemes,¹⁹ the EU has increasingly focused on indiscriminate labour migration, without specifically taking protection concerns into account and concentrating its efforts on highly skilled workers through the Blue Card directive. The requirements set by the directive are not only usually impossible for asylum seekers to meet, but they also do not correspond with the demands of the market for medium- and low-skilled workers.²⁰ As a consequence, people in search of international protection are not given effective legal access routes to the European Union, which, as mentioned above, results in a violation of international law. Furthermore, as long as economic migrants are not offered effective access to labour migration, the abuse of the asylum system for non-protection reasons will not decline, leading to increasing loss of public and institutional support for asylum, and increasing the burden on coastal Member States for search and rescue, reception, and processing of claims.²¹

It is consequently fundamental to focus on the creation of alternatives, through the development of existing or the creation of new legal migration channels. In particular, these should, on the one hand, aim at an *ex ante* differentiation of claims in order to foresee regular access to EU territory for asylum seekers and, on the other hand, enhance entry possibilities for low- and medium-skilled workers.

As becomes clear from the picture described above, the external dimension of EU migration policy has long been formed by the principles of externalization and securitization, without taking a long-term approach, which allows for a differentiation of flows and the realization of the right to access territory to enjoy protection. On the contrary, it has tended to move always further away from

¹⁸ Elizabeth Collett, Paul Clewett and Susan Fratzke, "No Way Out? Making Additional Migration Channels Work for Refugees", in *MPI Reports*, March 2016, <http://www.migrationpolicy.org/node/15593>.

¹⁹ *Ibid.*; Judith Kumin, "Welcoming Engagement: How Private Sponsorship Can Strengthen Refugee Resettlement in the European Union", in *MPI Reports*, December 2015, <http://www.migrationpolicy.org/node/15498>.

²⁰ Elizabeth Collett, Paul Clewett and Susan Fratzke, "No Way Out?", *cit.*, p.4-6; François Crépeau, *Regional Study: Management of the External Borders of the European Union...*, *cit.*, p. 6; Alexander Betts, "Towards a Mediterranean Solution?", *cit.*, p. 670.

²¹ European Commission, *Towards More Accessible, Equitable and Managed Asylum Systems* (COM/2003/315), 3 June 2003, p. 12, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52003DC0315>; Elspeth Guild et al., *Enhancing the Common European Asylum System and Alternatives to Dublin*, Brussels, European Parliament, July 2015, p. 11, [http://www.europarl.europa.eu/thinktank/it/document.html?reference=IPOL_STU\(2015\)519234](http://www.europarl.europa.eu/thinktank/it/document.html?reference=IPOL_STU(2015)519234).

this objective and towards a Euro-centric approach which focuses mainly on containing flows elsewhere.

Due to an unprecedentedly high number of irregular entries in 2015 and the consequent political attention devoted to the issue, 2016 had the potential of being a year of great policy changes; the next section will assess whether these have the potential to really be innovative.

2. 2016: The year of innovative policies or just business as usual?

After decades of national restraint, in 2015 the discussion on the external dimension of migration policies has increasingly been raised to the supranational level. This has mainly been due to a peak in flows through the Western Balkan route into northern European countries previously protected through the Italian-Greek "buffer zone" and the breakdown of the Dublin Regulation.

As a consequence of this boosted dialogue, a range of proposals has been brought forward, concerning both internal burden sharing and an increased common response at the external level. Due to the dramatic failure of the former, there has been an increased focus on the latter, putting cooperation with third countries to stop the flows high on the agenda, with a particular focus on Turkey. Ankara has been identified as the main partner for immediate action due to the extremely high flows into Greece from its shores, and its geographical position which makes it one of the main entry points to Europe.

2016 has consequently seen the external dimension of migration policies as a (if not "the") top priority on the European agenda: the completion of the EU-Turkey dialogue through the deal concluded on 18 March and the Commission's New Partnership Framework can be identified as the cornerstones of this approach. But there are some doubts as to how innovative these instruments actually are.

2.1 The EU-Turkey deal: The first implementation in practice of the externalization approach?

The new dynamic brought into EU-Turkey relations by the migration issue culminated in the package of documents commonly referred to as the EU-Turkey deal.²² The latter certainly represents some innovative aspects, of which the main one is that the management of the relations with third countries has been raised to the supranational level. The deal serves indeed as an aggregate instrument of migration cooperation concluded by the EU with a third country in a policy area which rarely sees any consensus by member states: "the mere fact that the EU-

²² For a historical analysis, see Hanna-Lisa Hauge et al., "Mapping Periods and Milestones of Past EU-Turkey Relations", in *FEUTURE Papers*, No. 2 (September 2016), <http://www.iai.it/en/node/6966>.

28 were able to (consensually) agree on the elements of a deal with Turkey is already *per se* good news.”²³ This cooperation seems nevertheless to have recently shifted back to a nationalistic approach, distrustful of the EU. A positive outcome is that the deal has (at least initially) created a bond between the EU and Turkey on migration issues, which has the potential of putting the former in a position of monitoring the promised improvements in the area of reception conditions and asylum procedures.

However, even if the deal’s content might be broader than previous readmission agreements, most aspects essentially represent a practical application of the externalization and securitization approaches examined above. First, it links back to the outsourcing of migration control, as it foresees the financial and logistical support of Turkey’s border control and migration management efforts. Second, the conditionality approach strongly emerges in relation to resettlement, the activation of the voluntary readmission scheme, and the disbursement of further economic support, all of which are conditional upon effective returns and a reduction in irregular entries. Also, migration has been the driving factor in EU-Turkey relations: the entire negotiation on the revitalization of the accession and cooperation dialogue is based upon the fundamental condition of Turkey’s role as a gatekeeper.

The agreement further substantially replicates the EU’s long trend of focusing on preventing migratory flows from entering its territory and containing them elsewhere, instead of creating effective legal access to the Union and providing for adequate reception and protection of people in need. Whilst the aspects of resettlement and a voluntary humanitarian admission scheme could have represented the real innovation in an agreement with a third State, in practice they are clearly left in the shadow of the primary goals of stopping the influx and returning those who have managed to cross from Turkey’s shores. This lack of interest is also demonstrated by the poor implementation so far: as of 21 November 2016, only 2,343 had been resettled under the 1:1 mechanism,²⁴ leaving a long way to go and confirming the same old externalization approach.

²³ Janis A. Emmanouilidis, “Elements of a Complex But Still Incomplete Puzzle: An Assessment of the EU(-Turkey) Summit”, in *EPC Publications*, 21 March 2016, p. 9, http://www.epc.eu/pub_details.php?cat_id=5&pub_id=6417. See also Laura Batalla Adam, “The Refugee Card in EU-Turkey Relations: A Necessary but Uncertain Deal”, in *Global Turkey in Europe Working Papers*, No. 14 (September 2016), <http://www.iai.it/en/node/6737>.

²⁴ See *Operational Implementation of the EU-Turkey Statement* (as of 21 November 2016), available on the European Agenda on Migration webpage as the latest “State of Play – EU-Turkey Agreement Implementation”: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agendamigration/press-material/index_en.htm. See also European Commission, *Seventh Report on Relocation and Resettlement* (COM/2016/720), 9 November 2016, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52016DC0720>.

2.2 Is the EU-Turkey deal “exportable”? The New Partnership Framework

Following the “success” of the EU-Turkey deal in stopping the flows from Turkey, the proposal to extend the approach to other States along migratory routes to Europe has been increasingly voiced. Whilst most have argued that the deal cannot be flagged as having a favourable outcome, due to a high number of controversial issues that have emerged as to its compliance with European values and legal obligations, for policy-makers the reduction of entries seems once again to prevail over humanitarian concerns.

Italy has taken a strong position in promoting the need to extend such an approach to states along the Central Mediterranean route, particularly in the Northern African region. In April 2016, Prime Minister Matteo Renzi proposed the so-called Migration Compact to the European Commission and Council.²⁵ It indicates that reinforced cooperation with countries of origin and transit is fundamental to the strategic management of migration flows, and requests that the EU-Turkey deal is not a unique event but must be “exported” elsewhere to avoid an imbalance of resources and political capital when compared to other geographical areas no less impacted by the phenomenon.

The Union’s “response” to the Migration Compact is to be found in the Commission’s communication on a New Partnership Framework, which is meant to integrate the European Agenda on Migration and further develop its external dimension. Its main aim is the “enhanced cooperation with countries of origin, transit and destination with a well-managed migration and mobility policy at its core” as “a solution to the irregular and uncontrolled movement of people is a priority for the Union as a whole.”²⁶ This should be obtained through tailor-made partnerships (“compacts”) with third countries, which have the nature of political frameworks for cooperation and include technical and legal agreements.

In relation to the New Partnership Framework, the Commission also published the European External Investment Plan in September 2016. The plan presents itself as the first step to realizing the long-held objective of addressing root causes of migration, by affirming that it will take up an “essential role in boosting jobs and growth in developing countries, bringing in more stability and improving conditions on the ground in fragile countries affected by conflict.”²⁷ The plan is connected to the New Partnership Framework, as it underlines the relationship

²⁵ Italian Government, *Migration Compact: Contribution to an EU Strategy for External Action on Migration*, 15 April 2016, <http://www.governo.it/node/4509>.

²⁶ European Commission, *On Establishing a New Partnership Framework with Third Countries under the European Agenda on Migration* (COM/2016/385), 7 June 2016, p. 2 and 3, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52016DC0385>.

²⁷ European Commission, *Strengthening European Investments for Jobs and Growth: Towards a Second Phase of the European Fund for Strategic Investments and a New European External Investment Plan* (COM/2016/581), 14 September 2016, p. 6, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52016DC0581>.

between investments by the EU and its Member States and the prevention of migration through eradicating its causes, mentioning how it will offer “lifelines for those who would otherwise be pushed to take dangerous journeys in search of a better life.”²⁸

2.3 How new is the New Partnership Framework?

Whilst the short-term objectives of the framework again prioritize the securitization approach, mentioning returns, border controls and the containment of migrants in the area of origin and transit as priorities, there are most certainly some new approaches that should be analysed.

First, it aims at establishing a single framework for the conclusion of agreements with third states. In order to realize an EU-Member States joint approach, there is a strong focus on coordination and cooperation; indeed, the proposals of the section concerning how to deliver the “compacts” are twofold: on the one hand the need for coordination and coherence between the EU and Member State action emerges, and on the other hand the “exploitation” of Member States’ relations with third countries is proposed.

Similarly, the European External Investment Framework aims at representing a coherent and unique framework for investment support in third countries, bringing together efforts from various organs of the EU, Member States and the private sector. This aspect clearly represents a positive step towards a greater influence of the Union in the relations with third states and a future disentanglement of the chaotic picture of numerous bilateral and multi-lateral agreements and investment instruments between the Union or single/groups of Member States and third countries. It is indeed fundamentally important to increasingly present the EU as a Union of one voice in the external dimension of its migration policies, promoting EU-third state agreements and coordinating, enhancing or replacing bilateral agreements with Member States.

Second, there appears to be a timid change of direction towards a more multi-focal viewpoint on the migration issue, reflecting “both the EU’s interests and the interests of our partners,”²⁹ shifting away from the Euro-centric approach that has long been taken in the EU’s relations with third states. This is also reflected in the choice of terminology such as “horizontal cooperation” and “reconcile interests.” Further, it is in this context that the European External Investment Framework is conceived, its aim being to foster “sustainable development, inclusive growth,

²⁸ Jean-Claude Juncker, *State of the Union Address 2016: Towards a Better Europe - A Europe That Protects, Empowers and Defends*, Strasbourg, 14 September 2016, http://europa.eu/rapid/press-release_SPEECH-16-3043_en.htm.

²⁹ European Commission, *On Establishing a New Partnership Framework with Third Countries...*, cit., p. 5.

economic and social development and regional integration outside Europe.”³⁰ This shift from a Euro-centric approach to the migration issue to an increased bi-/multi-lateral viewpoint, which takes into consideration the interests and needs of countries of origin and transit, would indeed represent a fundamental step in the direction of a long-term solution as it is crucial to ensure lasting relations with the EU’s partners.

Nevertheless, the highly debated aspect of conditionality in EU-third state relations emerges even more strongly from the framework: it indeed expressly refers to positive and negative incentives in development and trade policies bound to readmission agreements and migration management. Going a step further, it affirms how “[a]ll EU policies [...] should in principle be part of a package, bringing maximum leverage to the discussion.”³¹ This “global approach” carries the “risk [of] cementing a shift towards a foreign policy that serves one single objective, to curb migration, at the expense of European credibility and leverage in defence of fundamental values and human rights.”³² It is therefore essential to avoid confusion between having a global approach in relations with third countries and a conditionality approach, which couples any promise of support by the EU to the engagement of third States in managing migratory flows.

There is also a complete lack (even in the long-term solutions) of proposals concerning the opening of legal migration channels: apparently the Commission remains careful in touching upon such topic in times of precarious consent. This is nevertheless a major failure, as there is a strong need for a shift in the EU’s approach towards understanding the essentiality of regular alternatives to effectively stem irregular entries.

To conclude, the New Partnership Framework contains multiple new approaches which demonstrate substantial improvements on past regimes. These are the shift of focus to the African region, finally realizing the necessity of recognizing the continent as a fundamental partner concerning migration issues, and the distancing from the EU-Turkey deal with High Representative Federica Mogherini stating that the latter is not a blueprint for the compacts, as these operate with other mechanisms. Notwithstanding these upgrades, there is a complete lack of

³⁰ European Commission, *First Progress Report on the Partnership Framework with Third Countries under the European Agenda on Migration* (COM/2016/700), 18 October 2016, p. 14, <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52016DC0700>.

³¹ European Commission, *On Establishing a New Partnership Framework with Third Countries...*, cit., p. 9.

³² Joint NGO Statement ahead of the European Council of 28-29 June 2016: *NGOs Strongly Condemn New EU Policies to Contain Migration*, 27 June 2016, <https://www.hrw.org/node/291288>. Further see European Association for the Defense of Human Rights (AEDH), *The Obsession With Migration. Or How The Commission Wants to Create New “Partnership Frameworks” with Third Countries, by Using All European Policies to “Protect” the EU From Migrants*, 27 June 2016, <http://www.aedh.eu/The-obsession-with-migration.html>; Patrizio Fiorilli, “New Partnership Framework with Third Countries’: The Commission’s Three Basic Mistakes”, in *EurActiv*, 9 June 2016, <http://eurac.tv/25TM>.

any proposal concerning regular entry channels and the conditionality approach remains critical: whilst a global approach is certainly advantageous, it indeed risks neglecting the objective of establishing relations which are truly bilateral and consequently failures in cooperation in the long term.

Conclusions

From the analysis of European external policies on migration emerges a picture which can be summarized with four key concepts: externalization of migration control, conditionality in relations with third countries, focus on securitization of borders and absence of legal routes for asylum seekers. All these policies have undoubtedly negatively impacted the international protection guarantees.

In 2016, this status quo has partially been challenged: the conclusion of a broad agreement with a third state on migration cooperation seems at first sight a positive step forward, even if, when looked at more closely, the latter reveals to be mainly a reflection of the abovementioned key concepts.

The recent New Partnership Framework nevertheless appears to have the potential to challenge the current setting: it aims on the one hand to create a single framework for agreements with third states to enhance coordination and avoid segmentation and, on the other hand, to take a more multi-focal viewpoint representing also the interests of third states. If these aspects are reinforced in the future, 2016 could really represent a turning point. But in order for it to be so, the EU's solidarity impasse, demonstrated both by the lack of agreement on relocation and the absence of any discourse on opening regular access channels, needs to be overcome – but at present it sadly looks like the EU will continue on its path of turning to third countries in order to distract from its internal divisions.

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