
How Can Europeans Agree on a Common Migration Policy ?

*Report of the Ifri/Barrow Cadbury Trust
"Anglo-French Policy Dialogue on Regularisation and Co-Development"*

Edited by Christophe Bertossi

February 2009

The Institut Français des Relations Internationales (Ifri) is a research center and a forum for debate on major international political and economic issues. Headed by Thierry de Montbrial since its founding in 1979, Ifri is a non-governmental and a non-profit organization. Using an interdisciplinary approach, Ifri brings together political and economic decision-makers, researchers and internationally renowned experts to animate its debate and research activities. As an independent think tank, Ifri sets its own research agenda, publishing its findings regularly for a global audience. With offices in Paris and Brussels, Ifri stands out as one of the rare French think tanks to have positioned itself at the very heart of European debate.

The opinions expressed in this text are the responsibility of the author alone.

ISBN : 978-2-86592-490-5
© All rights reserved, Ifri, 2009

IFRI
27 RUE DE LA PROCESSION
75740 PARIS CEDEX 15 - FRANCE
PHONE. : 33 (0)1 40 61 60 00
Email: ifri@ifri.org

IFRI-BRUSSELS
RUE MARIE-THÉRÈSE, 21
1000 - BRUSSELS, BELGIUM
PHONE : 00 + (32) 2 238 51 10
Email: bruxelles@ifri.org

WEBSITE : Ifri.org

Contents

<i>Acknowledgements</i>	3
<i>List of participants</i>	5
INTRODUCTION	9
THE POLITICAL CHALLENGE OF FUTURE EU IMMIGRATION POLICIES	11
<i>By Christophe Bertossi</i>	
The 3-D challenge of future immigration policies in Europe	12
<i>Dimension 1: Defining new policy instruments that can meet new policy objectives</i>	13
<i>Dimension 2: Adopting the relevant operational scale for migration policy</i>	13
<i>Dimension 3: Reconfiguring the production of political legitimacy ...</i>	14
The European Pact and the reform of EU migration policies	15
<i>Objectives of the “European Pact on Immigration and Asylum”</i>	15
<i>First Dimension Change</i>	17
<i>Second Dimension Change</i>	19
<i>Third Dimension Change</i>	22
REGULARISATION, CO-DEVELOPMENT AND THE EUROPEAN PACT	23
Case-by-case regularisation: how? for what? at what cost?	23
<i>The decision (not) to regularise undocumented migrants</i>	24
<i>“Illegal migrants”: more a policy outcome than a policy category</i>	26
<i>What are the costs of the non regularisation of undocumented migrants?</i>	27
Co-Development: to do what? at which level? with whom?	29
<i>Contradictory rationales behind “co-development” policy</i>	30
<i>What are the conditions of a migration-cum-development policy?</i> ...	32
Recommendations	35
<i>New migration policies and regularisation</i>	35
<i>Migration-cum-development policies</i>	36
CONCLUSION	39

Acknowledgements

This project was carried out by Ifri and the Barrow Cadbury Trust in autumn 2008, thanks to the support of the Barrow Cadbury Trust.

We are much indebted to all our contributors for their willingness to discuss their ideas throughout the two seminars we organised at Ifri on 29 October and 25 November 2008.

This report could never have come to life without the support of Ayesha Saran, Project Manager “migration/Europe” at the Barrow Cadbury Trust. We thank her very much for her particularly friendly and efficient help in organising our seminars.

We are also especially grateful to Françoise Gardes, Junior Research Assistant at Ifri, whose unflagging commitment to the project made this report possible. Finally, we thank Marie Bassi and Dorothee Prud’homme at Ifri for their support to the project.

Finally, we are very much indebted to Rania Nader for her proof-reading of this report.

List of participants

Seminar on Regularisation (29 October 2008)

Sean Bamford, Policy Officer, European Union and International Relations Department (TUC)

Marie Bassi, Junior Assistant, “Migrations, Identities, Citizenship” Programme, Ifri

Christophe Bertossi, Senior Research Fellow, Head of the “Migrations, Identities, Citizenship” Programme, Ifri

Yannick Blanc, Member of the SSAE board, Former director of the Police Générale, Préfecture de Paris

Neil Clowes, Head of returns enforcement and compliance service, UK Border Agency

Natasha Collis, Political Analyst, Great Britain Embassy in Paris

Ana Feder, Researcher, European Foundation Centre, AISBL

Don Flynn, Director of Migrants Rights Network

Françoise Gardes, Junior Assistant, “Migrations, Identities, Citizenship” Programme, Ifri

Gilles Garnier, Conseiller général, adjoint au maire de Noisy-le-Sec

Jean-Pierre Garson, *Head of the Department of Non-Member Economies and Migrations, Organisation for Economic Co-operation and Development (OECD), Paris*

Stéphane Joulain, National delegate at the Secrétariat national de la Pastorale des Migrants

Fernando Isuiza, Pastorale des Migrants

Sonia McKay, Principal Research Fellow, Working Lives Research Institute, London Metropolitan University

Akli Mellouli, Conseiller technique, Cabinet du Président du Conseil

Jean-Christophe Peaucelle, Director of the European Affairs, Ministry of Immigration, Integration, National Identity and Solidarity Development

Patrick Peugeot, President of Comité intermouvements auprès des évacués (CIMADE)

Dorothee Prud’homme, Research assistant, “Migrations, Identities, Citizenship” Programme, Ifri

Sarah Toucas, PhD candidate, Sciences Po

Ayesha Saran, Project manager Migration/Europe, Barrow Cadbury Trust

Maria Vicenza Desiderio, Consultant, *Department of Non-Member Economies and Migrations*, Organisation for Economic Co-operation and Development (OECD), Paris

Catherine Wihtol de Wenden, Director of Research, Centre d'études et de recherches internationales CERI/Sciences Po.

Seminar on Co-Development (25 November 2008)

Sylvie Aboa-Bradwell, Co-ordinator London Office, Centre for Democracy and Development

José Manuel Albares, Head of the Department of Development Cooperation with sub-Saharan Africa, Agencia Española de Cooperación Internacional para el Desarrollo, AECID, Spanish Ministry of Foreign Affairs, Madrid

Marie Bassi, Junior Assistant, "Migrations, Identities, Citizenship" Programme, Ifri, Paris

Christophe Bertossi, Senior Research Fellow, Head of the "Migrations, Identities, Citizenship" Programme, Ifri

Clara Rachel Casseus, MA, American University, Paris

Idrissa Diabira, Technical advisor "Co-development", Assemblée Régionale de Kayes (Mali)

Françoise Gardes, Junior Assistant, "Migrations, Identities, Citizenship" Programme, Ifri, Paris

Philippe Gautier, Head of the Africa, Europe and Development service, MEDEF International, Paris

Peter Gordon, Policy analyst (Migration), Department for International Development (DFID), London

Jacob Halpin, Policy Advisor, UK Border Agency, London

Fernando Isuiza, Pastorale des Migrants, Paris

Stéphane Joulain, National Delegate, Pastorale des Migrants, Paris

Henry Marty-Gauquié, Director, Liaison with International Organisations, European Investment Bank Group Representative in Paris

Susanna Mitchell, Senior Researcher, New Economics Foundation, London

Ruth Newsum, Research and Partnerships Manager, Barrow Cadbury Trust

Ferruccio Pastore, Centro Studi di Politica Internazionale (CeSPI), Rome

Julian Prior, Centre for Social Justice, London

Dorothee Prud'homme, Research assistant, "Migrations, Identities, Citizenship" Programme, Ifri, Paris

Ayesha Saran, Project manager Migration/Europe, Barrow Cadbury Trust

Nick Sigler, Head of International Relations, UNISON, Public Sector Union, London

Patrick Taran, Migrations specialist, International Labour Organisation (ILO), Geneva (attending in a personal capacity)

Chansamone Voravong, *President of FORIM (Forum des organisations de solidarité internationale issues de l'immigration), Paris*

Catherine Wihtol de Wenden, *Director of Research, Centre d'études et de recherches internationales CERI/Sciences Po, Paris*

Introduction

Immigration was a key priority of the French EU Presidency in 2008. In its attempt to provide EU Member States and institutions with a framework for the future of European migration policies, the French government found strong support from other EU countries, particularly the UK. The result took the form of a “European Pact on Immigration and Asylum” that was accepted by the EU Council on October 16 2008.

Against this background, one French institute of international relations and one British foundation decided to work together on the way European countries were trying to set up a common framework of migration policy. In autumn 2008, Ifri, together with the Barrow Cadbury Trust, carried out a project entitled *Anglo-French Policy Dialogue on Regularisation and Co-Development*.

The objective of this “policy dialogue” was to assess the extent to which the European Pact was proposing adapted solutions to the future of EU migration policy. Two specific aspects of the Pact were discussed: the proposed interdiction of “generalized regularisation” of undocumented migrants; and the synergy between migration and development in the countries of origin and transit, and the corresponding “co-development” approach.

Two one-day seminars were held at Ifri in Paris in October and November 2008, bringing together French and British policymakers, experts and academics, representatives of NGOs, trade unionists, and representatives of local authorities (see List of Participants). These seminars were conducted according to the so-called “Chatham House Rules”.

This document constitutes the final report of our project. As such, it represents a collective effort to clarify migration policymaking in the EU after the European Pact.

The report is organised in two parts. In the first part, Christophe Bertossi tries to understand the extent to which the Pact can be considered as a step forward in the construction of a common European migration policy.

He argues that the Pact cannot be assessed neither as a set of implementable policy perspectives on how to organise migration policy in the European context, nor as a policy framework clearly endowed with a strong European tropism. Instead, the Pact must be regarded as what it stands for: today’s credo of European

policymakers in the field of migration, and a non-legally binding compromise of political principles. As such, Bertossi argues, the Pact fails to provide Europeans with a policy paradigm for implementing a viable, consistent, and efficient migration policy. Three dimensions illustrate such a failure: the Pact does not propose a clearly defined set of objectives and instruments for such a migration policy; it does not provide for the necessary expansion of the operational scale of migration policymaking, but remains driven by national principles; it cannot help Europeans to define a new approach to citizenship, and the corresponding form of political legitimacy needed in the age of global migrations.

The second part is based on the proceedings of the two Anglo-French migration policy seminars.

It evaluates the relevance of the policy guidelines and instruments advocated in the Pact in two different but interrelated fields: policies that address the regularisation of undocumented migrants; and the synergy between migration and development. On both topics, the report shows how much the propositions of the Pact are based on ambiguous and somewhat incorrect diagnoses, and how they fail to solve the issues posed by the presence of undocumented migrants in the EU, and the interplay between the internal and external dimensions of migration policymaking in Europe.

Although the two parts can be read independently, they are connected to one another, as future EU immigration policies must answer two different and closely related questions: What changing reality does the Pact reflect? How far can the Pact address this changing reality so as to give Europeans a just, viable, efficient, coherent, and consistent migration policy?

The political challenge of future EU immigration policies

Times have certainly changed for migration policy in Europe. Today, the objective of “zero immigration” appears “unrealistic and dangerous” to European governments¹ as much as it has constituted an “essential” and “self-evident” policy goal throughout the last three decades until the beginning of the 2000s in most EU countries. This call for a comprehensive reform of European immigration policies was recently crystallized by a new “European Pact on Immigration and Asylum”, adopted by the EU Council on 16 October 2008.

The terminology used for presenting this document cannot be clearer: as the French Minister for Immigration who conducted the negotiations under the French Presidency of the EU put it, “thanks to this Pact, Europe has turned, *at last*, to action. (The EU) has proven its ability to address the challenges facing our society, and to deal with the everyday concerns of our citizens. In the field of immigration and asylum, *nothing will ever be the same*”².

This apparent U-turn of European migration policies is embedded in two quite different views: one about past policies and another about what future migration policies in Europe must be. The first appreciation is that “zero immigration is an illusion”³. This sounds like a recognition that former immigration policies in Europe have led to anomalies in the regulation of immigration to Europe. The second appreciation is that “organised and regulated immigration can offer opportunities, as it is a factor in promoting human exchanges and growth, especially for countries where economic development and an ageing population result in an increasing need for renewed legal immigration”⁴ that is, European countries.

Christophe Bertossi is a Political Scientist, Senior Research Fellow and Director of the “Migrations, Identities, Citizenship” Programme of the French Institute of International Relations, Ifri (Paris).

1 Council of the European Union, “European Pact on Immigration and Asylum”, 13440/08, Council of the EU, Brussels, 24 September 2008, p. 2.

2 Ministère de l’Immigration, l’intégration, l’identité nationale et le développement solidaire, “Discours de Brice Hortefeux à la presse”, 13 January 2008, http://immigration.gouv.fr/article.php?id_article=699. Our translation. Emphasis added.

3 Ibidem.

4 Ibidem.

To put it shortly, the “European Pact on Immigration and Asylum” does not only constitute an attempt to define a new policy framework but also, clearly, the recognition of the failure of the former framework.

As a result, the two aspects underlying the Pact must be assessed against each other. The Pact does not only raise the question of whether European governments have opted, “at last”, for a genuine shift from traditional to new migration policies. It is clear that this is not the case. Being a nonbinding petition of political principles, the Pact can hardly be seen as providing any real implementable common policy in the field of migration. Neither does it raise the question of whether the text is endowed with a genuine European approach. It is rather the opposite, with a move towards a strong nationally orientated approach to the European agenda of migration policies.

The authority of the Pact lies elsewhere, precisely because it is neither a real common policy nor a real European framework. It crystallizes a type of “philosophy” of migration policies that will certainly influence future immigration policies in Europe in the long run. The subsequent question is the following: what new type of “policy philosophy” does the Pact propose? What changing reality does the Pact reflect? And what place does the Pact hold in this changing reality that will impact migration policymaking?⁵

The 3-D challenge of future immigration policies in Europe

Changing the migration policy paradigm in Europe⁶ is suggested by the twofold governmental diagnosis we highlighted: 1. past migration policies are based on “an illusion”; 2. new socioeconomic needs must be fulfilled by the re-opening of European borders to “legal migration”. But shifting from “zero immigration” policies is not only a matter of defining new policy tools and objectives. The re-opening of European borders suggests instead a broader transformation of the

5 More than a solution to the issue of immigration in Europe, the Pact represents a symptom of the necessity to reform European immigration policies. Any assessment of the European Pact must then confront the claim made by European governments about a U-turn in the field of migration policies in Europe with the “philosophy” embedded in the Pact. What paves the way to a paradigm shift in European immigration policies? How does the Pact answer this change? See C. Bertossi, “Immigration: le rendez-vous européen manqué”, *Libération*, 10-11 January 2009, p. 28-9.

6 This approach is influenced by the notion of “policy paradigm” proposed by Peter A. Hall, “Policy paradigms, social learning, and the state: the case of economic policymaking in Britain”, in *Comparative Politics*, April 1993, p. 275-96.

policymaking of immigration, involving three different but inter-dependent dimensions.

Dimension 1: Defining new policy instruments that can meet new policy objectives

Migration is increasingly considered by national governments, EU institutions, policy experts, and international organisations as a profitable resource in light of the current transformation of European societies and economies, and a strong factor that could – at least partly – address the demographic crisis of an ageing and shrinking European population, with the consequent problem of maintaining the Welfare system, as well as the need to tackle severe shortages in European labour markets⁷.

Figures can be debated but the main diagnosis seems consensual: Europe needs to reopen its borders to additional waves of labour immigration, notably because it will loose about 20 million workers within the next decade⁸. Since the beginning of the 2000s, new selective immigration policies have developed in EU countries, aimed at attracting the levels of migration as well as the profiles of migrants European countries need.

The key question here concerns policy instruments with which policymakers will be able to develop viable, coherent, and successful migration policies that can meet this new European dependency on migration.

Dimension 2: Adopting the relevant operational scale for migration policy

This shift in the policy approach to migration contributes to an even more complex changing reality, further complicating the issue. It is not only a matter of new types of instruments adapted to new objectives of migration policies. Above all, the context for thinking about migration – and consequently migration policy – has changed drastically in the last few years.

7 See European Commission, Green Paper on an EU Approach to Managing Economic Migration, COM(2004) 811 Final, Brussels, 11 January 2005; European Commission, Communication from the Commission: Green Paper “Confronting Demographic Change: A New Solidarity Between the Generations, COM(2005) 94 Final, Brussels, 16 March 2005; Economic Policy Committee and European Commission (DG ECFIN), (2006), The impact of ageing on public expenditure: projections for the EU-25 Member States on pensions, health-care, long-term care, education and unemployment transfers (2004-2050), European Economy, Special Reports No 1, 2006.

8 Franco Frattini, “Enhanced mobility, vigorous integration strategy, and zero tolerance on illegal employment: a dynamic approach to European immigration policies”, High-Level Conference on Legal Migration, Lisbon, 13 September 2007.

On the one hand, migration has become global: migratory routes have diversified at unprecedented levels⁹; all the regions of the world are affected by this human global mobility, which involves 200 million people today; and within this migratory globalization, Europe has been occupying a central position since 2004, as the foremost destination of international migrations. On the other hand, within this increasing globalization of migration, the idea has progressively developed that migration also constitutes a key asset to the successful transformation of the European community as a new global competitor in an already globalized world¹⁰. The EU Strategy of Lisbon is one illustration of this challenge.

The rediscovered usefulness of immigration to Europe is therefore not only an internal agenda but one of the conditions for the EU to succeed in its objective of emerging as the first knowledge-based economy of the world, and a political community that can impact the process of globalization.

As a result, in a world of global migration, the EU cannot become a global actor without migration. Migration and Europe share a house full of interdependencies, a situation which sounds the death knell of traditional conceptions of national sovereignty, national identity, national citizenship, and national policymaking. Nation states can no longer pretend to be sovereign when they deal with global affairs¹¹. Another operational scale for migration policies must consequently replace the monopoly of nation states in this field of policy.

Dimension 3: Reconfiguring the production of political legitimacy

Such a situation can however be puzzling for the traditional policymaker in a field that has always involved emotional discourses about national sovereignty and anti-immigration politics.

On the one hand, turning to selective immigration policies aimed at attracting “high-skilled” migrants implies the ability to compete internationally with other destinations (Northern America, Australia). European nation states are not equipped to fight this battle alone, and the EU constitutes a more scale for such a global game. At the same time, however, national policymakers must find a new rationale for migration policies, one that can explain why national sovereignty is no longer sufficient for the success of the new

9 Catherine Wihtol de Wenden, *Atlas des migrations dans le monde*, Paris, Autrement, 2005.

10 Commission Communication, *The European Interest: Succeeding in the Age of Globalisation*, COM(2007) 581 final, 3 October 2007.

11 B. Badie, R. Brauman, E. Decaux, G. Devin, C. Wihtol de Wenden, *Pour un autre regard sur les migrations: construire la gouvernance mondiale*, Paris, La découverte, 2008.

immigration policy, while proving to their public opinion that nation states remain accountable for the security and welfare of their citizens.

The abandonment of “zero immigration” policy turns out to be a democratic dilemma about the political legitimacy of the traditional nation state. Re-opening the borders constitutes a striking challenge to this legitimacy which restrictive immigration policies have long been used to create¹².

Acknowledging the “illusion” of “zero immigration” implies new policy objectives and instruments, in a new global context, with the invention of parallel new forms of political legitimacy. Herein lies the political challenge of future immigration policies in Europe: defining and implementing new efficient policy instruments that will regulate migratory flows to Europe according to new objectives, in a “flat”¹³ but also “full”¹⁴ world made of global interdependencies, where less weight is given to the “national” element in efficient policymaking whilst it remains the basis for the strongest narrative of political legitimacy.

The European Pact and the reform of EU migration policies

Any future migration policy will have to strike a balance among these three dimensions. Is this what the Pact proposes?

Objectives of the “European Pact on Immigration and Asylum”

The Pact is based on what is presented as a coherent assessment of what migration policies should be in the EU context. This framework

12 Denis Duez, *L'Union européenne et l'immigration clandestine: de la sécurité intérieure à la construction de la communauté politique*, Brussels, Editions de l'Université de Bruxelles, 2008.

13 Christian Joppke, *Veil: Mirror of Identity*, Cambridge, Polity, 2009.

14 As Zygmunt Baumann claimed, the “house is full”. What Baumann highlights is that globalization is a reality that no one can escape, one that creates complex interdependencies among all the regions of the world, and that there is no alternative but to live in this common global world. National policymakers have no choice but to share one common planet. No escape is possible. There is a sharp interpretational problem that confuses a ‘full house’ in the sense of globalised planet with a house that is ‘full’ of migrants. What is needed are new migration policies that are adapted to the ‘full house’ in the first sense and not the second. Herein lies the challenge to future migration policies: migration is one pillar of this “full house”. There is no alternative to a world of migration. Z. Baumann, *Society Under Siege*, Oxford, Blackwell, 2002.

is based on (at least) eight explicit “theses” about how migration policymaking must be reorganised in Europe.

- *Thesis 1 Europe needs migrants, but not all migrants.* The need to attract new labour migration to Europe is primarily limited to so-called “high-skilled” migrants, whose contribution to the development of European societies is perceived as crucial. Parallel to this claim, is the idea that efforts must be made to decrease entries of “low-skilled” and “family” migrants.
- *Thesis 2 Europe fails in attracting “useful” migrants.* When compared with other immigration regions in the world, Europe attracts more so-called “family migrants” or “low-skilled” labour migrants, and seems to lose its share of “high-skilled” migrants (to the benefit of the US – or even the UK).
- *Thesis 3 The fight against irregular migration is a priority.* Irregular migration is seen as a matter of deficient border control policy (the Mediterranean, Eastern external border) as much as a phenomenon generated by development and demographic gaps between Southern (mainly African) and European countries. The solution would lie in strengthening external border control and enacting effective policies that return undocumented migrants to their countries of origin or transit. When dealing with “stocks” of undocumented migrants, governments ought to abandon “massive regularisation” and adopt a case-by-case approach.
- *Thesis 4 Regulation of migration calls for a comprehensive approach.* These issues cannot be dealt with in piecemeal fashion. The Pact argues that it is impossible to organise legal migration without fighting so-called “illegal migration”, regulating family migration, and configuring new asylum policies. All these objectives are presented as mutually interdependent.
- *Thesis 5 National migration policies call for common European rules.* In a space without internal borders (Schengen), national policies compete against one another when they do not follow the same rules. Therefore, the rationale of the Pact is that a European solution to immigration policy must proceed from an agreement among all Member States on minimal rules in order to reach consistent outcomes. Solidarity is advocated as the best way to confront “illegal migration” and the “massive influx” of asylum

seekers, as well as to succeed in organizing “legal migration”.

- *Thesis 6 Regulation of migration calls for a global approach.* Precisely because these objectives are interdependent, and because migrations are at play at a global level, a proper “European” migration policy must involve cooperation among countries of origin, transit, and destination.
- *Thesis 7 Development of the migrants’ countries of origin will reduce (“less desired”) immigration to Europe.* Connected to the so-called “global approach to migration”, is the idea of a link between immigration policies and the development of countries of origin. The more developed these countries become, the less numerous immigration to Europe would be (i.e. irregular migration, “family” migration, or “low-skilled” migration).
- *Thesis 8 Selective immigration is the sine qua non of successful integration policies.* “Family” migrants are conceived as less economically “useful” and more problematic when it comes to their integration. The same is implied about “low-skilled” migrants. On the contrary, “high-skilled” immigration is not seen as posing a problem of integration.

Each of these axioms can be challenged separately. But they must be taken for what they stand for. They are the credo of today’s national policymakers in Europe. Before de-constructing this credo, it is important to assess the extent to which it constitutes a shift in European migration policies, as the creators of the Pact claim. Do these eight theses pave the way for 3-D reform of migration policies in Europe?

First Dimension Change

The Pact emphasizes the extent to which migration is needed. However, if the objective of attracting new labour immigration to Europe is in sharp contrast with “zero immigration”, the rupture is less obvious when the Pact turns to a more detailed description of how to regulate migration.

Selection vs. restriction

The idea of selective immigration policies is still mostly embedded in what were the main goals of “zero immigration” policies: the absolute primacy of the fight against irregular migration, the attempt to stem “family reunion”, and a better regulation of asylum in an effort to limit these flows (theses 1, 2, 3).

The strong correlation between a successful selection of migrants on the basis of their profile and the successful integration of future migrants in European countries is also a direct import from the “zero immigration” paradigm (thesis 8). Only, the argument of equivalence between the strict control of migratory flows and migrants’ integration is transformed into the claim that the most skilled migrants must not be part of this equation. The assessment remains focused on immigration conceived as a challenge to national identity and public order. Furthermore, the idea of selecting among migrants is embedded in the politics of the recent “crisis of national models of integration”, which is most often explained as a “failure” of former control policies: selecting the profile and origin of the migrants is perceived as a solution to the existing problem of integrating ethno-cultural and religious minority groups. Selection does not break with the rationale behind former “zero immigration” policies as both are based on the same equivalence between the restrictive admission of Third World migrants and the successful integration of “allochton” ethnic diversity¹⁵.

The presentation of the policy instruments that should be developed for attracting new labour migration to Europe involves a categorization of migrants, according to their statute (“legal” vs. “illegal”), the channels they use (“labour” vs. “family”, asylum), and the skills they prove to have (high-skilled vs. low-skilled) (theses 1 and 3). These distinctions support the idea that governments have the sovereign power to decide what migrants to accept or not¹⁶. The idea was central to “zero immigration” policies. The paradox is that while the Pact recognizes the “illusion” of “zero immigration” policies (i.e. the impossibility for governments to “stop” immigration), it claims that governments can filter immigration, and select migrants according to the receiving societies’ capacity and needs. Actually, both “zero immigration” and new selective immigration policies involve the definition by states of numerical caps (either zero or more). This does not solve the problem of the “unrealistic” approach to migration that the Pact attributes to past policies. Governments commit themselves to objectives they assess as difficult to meet. The problem also concerns the relevance of the policy categories that the Pact defines (“family” migrants are also integrated in the labour market, “low-skilled” migrants are also needed because of identified labour shortages); the instruments to achieve the balance between the different types of flows (how will policy instruments be effective if

15 See the conclusions of the European Summit on Integration held in Vichy (France) on 3 November 2008.

16 As the French Minister for Immigration argued: “France has the right to choose those who are welcome in France”. See “Immigration: entretien du ministre de l’immigration, de l’intégration, de l’identité nationale et du co-développement, M. Brice Hortefeux avec l’hebdomadaire Le Figaro Magazine, le 19 janvier 2009”: <http://www.ambafrance-uk.org/Entretien-de-M-Brice-Hortefeux-sur,10201.html>

the categories are irrelevant?); and the possibility for national governments to succeed in reaching such a balance¹⁷.

Regulating vs. controlling

Strong ambiguities result from the distinction between these different categories (thesis 1), when the notion of “organisation” or “regulation” of legal migration is concerned: it is not clear whether “regulation” is – or is not – another term for the restrictive controls that characterize traditional “zero immigration” policies, and the Pact constantly hesitates between a stronger security-based approach to migration (thesis 3), and the objective of attracting labour immigration (thesis 2). This hesitation is probably rooted in the fear that European public opinions would be opposed to immigration. But it can also be explained by more “micro” sociological reasons: the policymakers who are creating these new selective immigration policies remain strongly influenced by the credo of “zero immigration” policies. The possibility of entirely resetting their understanding of new tools, new objectives, and therefore new categories in an attempt to effect a real shift towards a new migration policy is therefore limited.

A more significant evolution is embodied in frameworks of temporary and circular migration, which imply a new understanding of mobility as part of the migration policymaking. However, these frameworks still belong to the selective policy rationale, and are contradicted by the emphasis on strict border control measures. As for the approach of offering incentives to “high-skilled” migrants, it is far from certain that it will encourage migrants to choose to come to Europe instead of other destination regions.

Consequently, beyond a rephrasing of the place of immigration in the development of European societies and economies, the Pact runs short when it explains what can be done: the categories remain the same, the objectives are still security-based, and only a minority of migrants are targeted by the re-opening of European borders.

Second Dimension Change

Regarding the operational scale for future migration policies in Europe, the Pact implies a dual diagnosis. First, Member States cannot implement any efficient migration policy without a coherent set of common rules, particularly in an area with no internal borders (thesis 5). Second, destination countries in Europe will not succeed in

17 In other words, the approach advocated by the Pact does not break with the lack of realism that characterized “zero immigration” policies in the past. Contrasting sharply with other policy fields, the policymaking of immigration is based on the idea that the reality of migration must fit in the categories policymakers have pre-defined for action. A more efficient policy approach would be to start with the identification of the reality of migration, and then define categories policymakers could use for achieving the objectives they pursue.

regulating legal and irregular migration without establishing strong partnerships with countries of origin or countries of transit (thesis 6). As such, this diagnosis suggests that the national level cannot be the relevant level for implementing viable and efficient migration policies. However, strong ambiguities remain in this approach.

European solidarity vs. national sovereignty

On the first aspect of the shift in the operational scale of immigration policies, the Pact is not aimed at defining an integrated and comprehensive European migration policy. It only recognizes the limitation of isolated national sovereignty in the field of migration policy. The model proposed by the Pact is a model of *relative* (but resisting) sovereignty through which nation states claim to retain the monopoly of migration policies, using intergovernmental methods¹⁸.

To that extend, the Pact is primarily a national narrative: it is substantially a European Pact on National Immigration and Asylum Policies. The few instances mentioning the *acquis* in the migration field illustrates this approach, as much as the anticipation by the Pact of the next 5-year programme on immigration that will be launched by the Swedish EU Presidency, after the end of the Hague programme in the second half of 2009.

As a non-legally binding document, the Pact also presents a set of political principles that hide varying interpretations behind an apparent consensus among the 27 EU Member States. Mostly inspired by the French policy approach to migration ("*immigration choisie*"), the Pact is defended by its French creators as a genuine European venture. French Minister Hortefeux¹⁹ claimed that he "took the opportunity of the French EU Presidency, in (his) policy field, for reinvigorating a political dimension into the heart of Europe, and

18 This approach to "solidarity" between Member States is very different from the EU Commission's view of the need for "coordinated" actions, implying a key role to be played by EU institutions. As the Commission stated in June 2008: "A common immigration policy must be based on solidarity among the Member States, as enshrined in the EC Treaty. Solidarity and responsibility are essential in an area where competences are shared between the European Community and the Member States. The implementation of the common policy can only be successful if it is based on joint efforts. While Member States have different historical, economic and demographic backgrounds that determine their national immigration policies, these clearly have an impact beyond national borders and therefore no Member State can effectively control or deal with all aspects of immigration on their own and therefore decisions likely to have an impact on other Member States need to be coordinated": European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a Common Immigration Policy for Europe: Principles, Actions and Tools COM (2008) 359 final, 17 June 2008. Emphasis added. The European Pact conceives this "joint effort" as a re-investment in the monopoly of traditional policies in the field of migration, while the EU Commission sees it as the first move towards a common EU migration policy.

19 Brice Hortefeux received the grade of 9 / 10 for his European commitment under the French Presidency of the EU by the Thomas More Institute on 9 December 2009.

Europe into the heart of our (French) citizens”²⁰. FSJ Commissioner Jacques Barrot argued the Pact was “a great step forward for the EU, in a field where, until now, national policies have prevailed”²¹. Meanwhile, the Spanish Immigration Minister explained that “this pact is a great step forward. It’s a political pact, but *does not impose rules*. This pact has the great virtue of allowing countries some leeway”²².

Consequently, the call for all EU Member States to play the same game with common rules will not create a homogeneous approach to migration policy nor will it soften sharp differences among EU countries on the articulation between migration policies and organisation of national labour markets: after the Pact, the Spanish or Italian economies will not become similar to the French or German economies. To that extent, the scope of an interdiction of “massive regularisation” of undocumented migrants in all countries is limited. In the Pact, the lack of a real prospect of institutionalization of a European approach makes the eventuality of convergence of national immigration policies in Europe even less likely.

Global approach vs. Global governance

On the second aspect of the apparent shift of the operational scale of immigration policymaking, the importance of the “global approach” in the Pact is equally ambiguous. The recognition that migration policies in Europe cannot be efficient without partnerships with countries of origin and transit (thesis 6) belongs to the same model of relative national sovereignty.

The Pact sees these countries not so much as real partners than as simple supporters of the European approach, particularly on the issue of the fight against irregular migration (through readmission agreements, and joint border control). Few opportunities are left for a genuine co-production of legal immigration policies, by Southern and European countries as equal partners of the “Global Approach”.

The only lever proposed by the Pact for doing so concerns the idea of co-development. However, co-development is conceived as a way to reduce irregular migration to Europe as a result of the expected socioeconomic development of countries of origin. Co-development remains embedded in security-based immigration policies designed exclusively by Northern nation states. The extension of the operational scale for policymaking is consequently limited. Such a “global approach” to migration is weakly institutionalized (i.e. following the Rabat and Lisbon Euro-African conferences on co-development and migration), and is not meant to anticipate a possible global regulation of migration. The rationale is driven by national concerns, through a strong conception of national

20 “Discours du Ministre Hortefeux à la presse”, op. cit., 13 January 2009.

21 Jacques Barrot, “L’asile: un devoir pour une Europe fidèle à ses valeurs”, *Le Figaro*, 1 December 2008.

22 “EU ministers seal European pact, progress on labour card”, *AFP*, 25 September 2008.

sovereignty and national identity. To that extent, the Pact proposes migration policies that are not adapted to a “full house” context.

Third Dimension Change

The prevailing national approach to migration in the Pact does not propose any ideas on how new politics of immigration could break with traditional links between restrictive political narratives on immigration and national sovereignty.

This is probably the dimension where the Pact fails the most. And if it does, it is not by accident. As others have already emphasized, the Pact is driven by nationalism and inter-governmentalism²³. However, beyond these two principles that challenge any further Europeanization of migration policies, the place reserved to national public opinions in the document. seems fundamental. The Pact openly proposes a policy framework aimed at answering the “concerns of citizens” of EU Member States, as much as the “zero immigration” framework was more a “public opinion”-driven policy rather than a policy aimed at solving economic and social issues at stake with immigration.

The priority placed on the fight against so-called “illegal migrations”, the question about the “integrability” of “family migrants”, the strengthening of FRONTEX, the development of biometric technologies fit this perspective. Rejected by the Spanish government, the French proposition to include in the Pact compulsory “integration contracts” for new migrants is another illustration (see thesis 8). Such a rationale also explains the quasi-absence of any reference to the rights of migrants in the document (including the 1990 UN Convention on the rights of migrant workers and their family members).

As a consequence, the initial objective of re-opening European borders to further labour migration vanishes in the rhetoric of the Pact, which is used to reinforce the citizens’ feelings of security and protection guaranteed by nation states. The Pact not only avoids addressing the issue of the reform of citizenship in migration-based European societies; it avoids even asking a question which remains unsolved: how is it possible to adapt today’s principles of political legitimacy to an already globalized world, where migration constitutes a “global public good” on which European societies already depend?²⁴

23 S. Carrera, E. Guild, “The French Presidency’s European Pact on Immigration and Asylum: Intergovernmentalism vs. Europeanisation? Security vs. Rights?”, CEPS Policy Brief, n°170, September 2008.

24 Or, as the Preamble of the Pact puts it: “International migration is a reality that will persist as long as there are differentials of wealth and development between the various regions of the world. It can be an opportunity, because it is a factor of human and economic exchange, and also enables people to achieve what they aspire to. It can contribute decisively to the economic growth of the European Union and of those

Regularisation, Co-Development and the European Pact

In this formal “policy philosophy” of the European Pact we portrayed in the previous sections of this report, the interdiction of massive and “generalised regularisation” of undocumented migrants and the notion of co-development are of key importance. They are centre stage in the rationale behind the Pact, and they illustrate the way this rationale is based on an unclear, and somewhat mistaken, diagnosis.

The issue of regularisation involves the ability of governments to regulate migration and to select migrants effectively. The question of co-development reveals the complexity of the interplay between the internal and external dimensions of an efficient and viable migration policy. Both are centre stage in the model of “relative” sovereignty as they suggest stronger co-operation between Member States and Third Countries. They also constitute two stimulating study-cases for assessing how far the very “philosophy” behind the Pact is grounded in a nationally-based ideological diagnosis rather than on the complex reality that the policymaking of immigration must regulate.

The next sections are aimed at deconstructing the problems of the Pact’s approach to both issues.

Case-by-case regularisation: how? for what? at what cost?

With the Pact, the EU Council is committed:

Member States which need migrants because of the state of their labour markets or of their demography. Not least, it provides resources for the migrants and their home countries, and thus contributes to their development. The hypothesis of zero immigration is both unrealistic and dangerous”. Council of the European Union, “European Pact on Immigration and Asylum”, op. cit., p. 2.

This second part is based on the proceedings of two seminars held at Ifri on October 29 and November 25 2008 as part of the Ifri/Barrow Cadbury Trust “Anglo-French Policy Dialogue on regularisation and Co-Development”. As such, it constitutes a collective effort (see List of participants).

“To control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a country of transit”²⁵

“To that end, the European Council agrees [...] to use only case-by-case regularisation, rather than generalised regularisation, under national law, for humanitarian or economic reasons”²⁶

More than any other issues related to migration policies, irregular migration is assessed as a direct challenge to the ability of policymakers to control the territory and regulate migratory flows. Consequently, the issue is highly politicized: policies to address irregular migration are not based in reality but mostly in public perceptions.

In this context, the EU Council argues that “generalised regularisation” undertaken by one Member State directly affects other EU countries in an area with no internal borders. Regularisation is also seen as an incentive for “illegal immigrants” to try to enter European countries in an irregular way, a sort of “irregularity bonus” given to undocumented migrants at the expense of legal migrants.

What the Pact proposes is to simply forbid future “generalised regularisation” of undocumented migrants. Instead, it calls for “case-by-case regularisation” and the systematic repatriation of undocumented migrants in an irregular situation. This approach to regularisation is ambiguous: what does the notion of “case-by-case regularisation” really mean? What is the issue behind the presence of undocumented migrants in European countries? Are the costs of the non-regularisation of undocumented migrants lower than the costs of regularising them?

The decision (not) to regularise undocumented migrants

The very notion of “case-by-case regularisation” is unclear as even “massive” regularisation policies are based on the examination of *individual* applications made by undocumented migrants against *specific criteria* (i.e. permanent residency, work contract, family ties, etc.). In the Pact, the distinction between “case-by-case” and “general” regularisation is therefore artificial. It is thus far from clear whether this interdiction of “general regularisation” will change any national policy in the future: countries that will need to adjust their needs on the labour market will be able to undertake large-scale regularisation which is not formally forbidden by the Pact.

A more substantial distinction can be made between publicly advertised regularisation, and discrete and discretionary regularisa-

²⁵ European Pact on Immigration and Asylum, op. cit, p. 4.

²⁶ Ibid., p. 7.

tion. National governments can conduct publicised large-scale regularisation programs (Spain, Italy), while others will apply more limited or less publicised programs (Germany, France). Despite the fact that the French government advocates the interdiction of “massive regularisation”, France has had a long experience of ongoing regularisation of undocumented migrants which policymakers have not always made public. Unpublished figures show that in the Parisian region between 10 and 15 thousand undocumented migrants are regularised each year.

Therefore, real differences between national policies in Europe appear in the way these policies of regularisation are aimed at public perceptions, and lead to more or less restrictive discourses around the necessity to regularise migrants. This is what constitutes the very rationale behind the notion of “case-by-case regularisation” in the Pact. However, these national politics of “exceptional case-by-case” regularisation can produce dangerous and non-effective policies.

Firstly, national governments have been forced to regularise undocumented migrants because of fundamental principles of law (right to normal family life, specific ties with the receiving country, failed asylum seekers who cannot be repatriated to their countries of origin, etc.). In contrast with this obligation to regularise, the decision to regularise becomes politically difficult to advocate in a context of politicisation of non-regularisation policies. This creates gaps between public expectations and actual policies conducted under the rule of law. The risk of a publicised restrictive approach to “case-by-case regularisation” is that it may further alienate public opinion.

Secondly, when regularisation is conceded by a government, it happens that numerical caps (quotas) are assorted to qualitative criteria for deciding who is entitled to regularisation. This was the case in France in 2006. Ex-ante quantitative objectives were defined and despite the fact that more undocumented migrants were meeting the formal criteria for gaining a legal status, only 6,000 were finally regularised, corresponding to the initial numerical target that had been defined by the French Interior Minister²⁷. This undermines the equality of all individuals before the law. The uneven application of common criteria by different local administrations is another problem that challenges the principles of equality before the law.

Thirdly, most migrants in an irregular situation who fail to be regularised in this manner end up staying in the host country. What is the alternative to regularisation for these non-regularised undocumented migrants? Removing them is what the Pact proposes. However, removals are costly and almost unfeasible for practical as

²⁷ 6 000 families out of 30 000 applicants were concerned by this exceptional regularisation procedure, despite the fact that most of the applications (70-80%) met the criteria for regularisation.

well as sometimes for legal reasons. What is more, it is difficult to imagine removals affecting the *estimated* number of undocumented migrants in Europe (between 400 and 600 000 in the UK, between 200 and 400 000 in France, and around 5.5 million in the UE).

Fourthly, no government has any interest in keeping a sizeable population in an irregular situation. Aimed at managing this uncontrolled migration, the interdiction of “generalised regularisation” results in creating even more inextricable situations. The vulnerability of undocumented migrants impacts the organisation of labour markets, with some labour sectors being highly dependent upon the employment of undocumented migrants, causing unfair competition. There is a trend to subordinate employment law to immigration legislation as a way to fight against irregular migration. However, just like international conventions, domestic laws and jurisprudence do not provide clear legal means for refusing to enforce undocumented migrants’ work contracts because of their “irregular” status.

On the other hand, employers have become key actors in the decision of regularising undocumented migrants, particularly in low-skilled jobs (catering, construction, etc.). The issue of the vulnerability of undocumented migrants on the labour market remains unresolved. Unions can probably play a role. The unionisation of undocumented migrants would give collective and anonymous legal support to them. However, Unions must also face their own dilemma: it is difficult to represent undocumented migrants as the latter may be reluctant to unionise and prefer to remain in the shadow; Unions must also convince their members that such support will not be at the expense of national workers.

“Illegal migrants”: more a policy outcome than a policy category

The rationale behind restrictive regularisation policies is that the very existence of undocumented migrants is the illustration of a failure of law enforcement. The opposition between “legal” and “illegal” migration is used by policymakers as a proof of this failure.

However, it is not clear whether the notions of “illegal” or “irregular migrants” constitute an operational policy category used to define objectives of migration policies, or whether it is one side-effect of un-adapted migration policies. Is “illegal migration” the underachievement of “legal migration” policies? Or is it what today’s “legal migration” policies produce, because the former are based on “unrealistic and counter-productive” objectives?

As a matter of fact, the category does not refer to a homogeneous population of migrants. Speaking of “illegal” or “irregular” migrants is not describing a single and actual social or legal reality. It is rather a discourse of policymakers about the realisation of their objectives. OECD has shown that under the umbrella category of “irregular migrants”, 18 different situations of

irregularity co-exist, with very different implications²⁸. One consequence of the apparent consistency of the category of “irregular migrants” used by policymakers also concerns amalgams between the (highly politicised) issue of “cayucos” and irregular border crossing on the one hand, and the whole population of undocumented migrants on the other. Most of today’s undocumented migrants have entered European countries legally: they are overstayers. The issue at stake with “irregular migration” cannot be reduced to under-developed border control policy.

Instead, the question about “irregular migration” is mostly: what transforms legal migrants into overstayers? Interestingly enough, this question is never asked by policymakers. As a result, the intense politicisation of the policy category of “irregular migrants” hides the manner in which the policymaking of legal migration produces a numerous foreign population in an irregular situation. This contradiction works as a “vicious circle”: the more “legal migration” policies are grounded in the fight against “illegal migration”, the larger the number of undocumented migrants will become, and the more migrants in an irregular situation will have difficulties in regaining legal status²⁹.

This puts in question the way European policymakers have actually reached a policy framework that breaks with the “illusion of zero immigration” as the Pact claims. In reality, a solution to these contradictions requires substantial reform of European migration policies: the need to allow for more flexible mobility and a subsequent fluid visa policy; clarification of the needs for low-qualification jobs and the consequent organisation of legal migration for low-skilled migrants as well; a real assessment of the economic impact of “irregular migration” in European countries; a new evaluation of the way regularisation policies work as pull-factors for further “irregular flows”.

What are the costs of the non regularisation of undocumented migrants?

A restrictive “case-by-case regularisation” policy is based on the idea that if refusing to regularise undocumented migrants entails costs, “doing nothing” undermines the system. The question here is whether non regularisation is less costly than regularisation.

Regularisation implies some costs for the receiving societies: a political cost (the permanent and visible proof of a failure of national law enforcement); an economic cost (destabilisation of the market); and a migration cost (regularisation as a possible pull-factor for

28 Y. Moulier Boutang, J.P. Garson, and R. Silberman, *Economie politique des migrations clandestines de main-d’oeuvre*, Publisud, Paris 1986.

29 See Sarah Toucas, “Push and Pull Factors Towards and Against a Common European Migration Policy”, Notes de l’Ifri, Paris, Barrow Cadbury Trust/Ifri.

“irregular” migration). Among all these costs, the political cost is probably the most important because market instability would only be temporary and the pull-impact of regularisation is relative³⁰.

What are the costs of non-regularisation? These costs include but are not limited to:

- *loss of social and income taxes* because undocumented migrants are mostly employed in underground economic sectors³¹. At the same time, it must also be emphasized that not all taxes are lost, as undocumented migrants also pay direct and indirect taxes without having access to social benefits because of their “irregular” status. Consequently, it is difficult to accuse them of abusing social benefits;
- *waste of qualifications*, as most undocumented migrants are already integrated into the labour markets, but in jobs they are often overqualified for due to their vulnerability. This waste of available qualifications is compounded by the fact that undocumented migrants spend the most productive period of their life in European countries, and can hardly be seen as a unproductive population;
- *loss of competitiveness* of European labour markets, because of a lack of dignity in the treatment of undocumented migrants, which also constitutes a practical problem in dealing with creative and proactive people on the global market;
- *lack of rights, individual suffering, and social and economic vulnerability* of undocumented migrants, which in turn negatively impact the organisation of labour markets and the development of a modern society;
- *social and economic costs for local authorities*, which provide emergency support to undocumented migrants (housing, childcare...);

30 Whether the political cost of regularisation would be reduced if policymaking were based on a genuinely reformed “philosophy” is probably an important question. In other words, this political cost can be seen as the outcome of an incomplete shift from “zero immigration” to “new selective immigration” policies (see. Part I of this report).

31 An estimation by the Institute of Public Policy Research shows that regularising undocumented migrants in the UK would generate tax income receipts of 1 billion British Pounds.

- *serious deficit of integration* for a numerous foreign population, forced to live in the “shadow” of national societies;
- *increasing racism and anti-immigration attitudes* within public opinions that consider the presence of undocumented migrants as a challenge to the sovereignty of nation states, and a permanent “threat” to public order. This feeds into the racialised attitudes on migration;
- *serious expectation gaps*, with the permanent claim that “irregular migration” must be fought off by governments while the number of undocumented migrants is systematically increasing. This can transform into growing popular support of extreme-right-wing parties and organisations;
- *serious challenge to the principle of liberal equality-based societies* governed by the rule of law: the fight against “illegal migration” reinforces the feeling among national citizens that migrants have only limited rights, and that undocumented migrants have no rights.

To these direct costs, one must add the costs of removal policies. It would cost between 4.4 and 6.6 billion British Pounds (11,000 GBP per capita) – and take 25 years – to remove the estimated foreign population that is in an irregular situation in the UK. In France, the cost would be between 4.2 and 8.4 billion euros (21,000 Euros per capita) – and take 20 years. This high-cost removal of “stocks” of undocumented migrants would have no effect on those new migrants who are falling into “irregularity” every year. Finally, it will probably leave an important “hole” in the labour market, which is what new immigration policies in Europe are meant to avoid.

Co-Development: to do what?

At which level?

With whom?

Another key line of the Pact concerns the interplay between the internal and external dimensions of future European migration policies. From this angle, the notion of “co-development” is essential in the document. Beside numerous references to the need for cooperation between countries of destination, of transit, and of origin in

the rest of the text, the Pact devotes an entire chapter to the creation of

“a comprehensive partnership with the countries of origin and of transit to encourage the synergy between migration and development”³².

Interestingly enough, this chapter on the “synergy between migration and development” deals with more than what the title suggests. While the issue of the way migration is conducive to the development of countries of origin is addressed, most of the chapter focuses on the importance of co-operation in the fight against irregular migration, and organisation of legal migration through the Global Approach policy and the EU-African dialogue. As a result, the specific articulation between migration and development is blurred by constant references made to other policy objectives.

This hierarchy of policy objectives behind a development-cum-migration approach challenges what is meant by the very notion of “co-development”: is it a policy aimed at “using” migration as a “positive” tool for the development of both receiving and sending countries? Does it mean anything? What is the rationale behind “co-development” policies? What are the conditions that could guarantee the success of a migration-cum-development policy?

Contradictory rationales behind “co-development” policy

The notion of “co-development” first appeared in the context of the shift of French migration policy from a “guest-worker” framework to the limitation of labour (and family) migration after 1974. As such, it finds its origin in “zero immigration” policies developed in France in the 1980-90s, without any success³³. Later, European support to the growth of developing countries (for example, Ecowas countries) became increasingly linked to border control and migration management. In the European migration policy thinking, “Co-development” became a coverall concept for pursuing the export of the control of EU external borders into origin and transit countries, as well as a framework for negotiating readmission agreements with these countries.

As such, it is less a “development” policy than another policy line based on the objective of “managing unmanaged migration”. It is hence difficult to provide a clear definition of “co-development”, as it turned out to be mere policy discourse claiming positive solutions for an impressive range of heterogeneous policy objectives, ranging from

32 European Pact on Immigration and Asylum, op. cit., p. 13

33 See Catherine Wihtol de Wenden, “Co-Development Policies in Europe: Objectives, Experiences and Limits”, Notes de l’Ifri, Paris, Barrow Cadbury Trust, Ifri.

the management of legal migration to the collaborative policing of irregular migration in departure countries.

This mixed “nature” of “co-development” is embedded in a twofold rationale:

- the more developing countries will develop, the less migrants would be likely to leave their countries;
- European countries could support the development of sending countries in order to achieve European migration policy objectives, and condition their support to these countries on the achievement of these migration policy objectives.

This rationale is misguided and has three implications for the viability of so-called “co-development” policies.

First, these policies are based on a partial appreciation of the complex interplay between development and migration³⁴. On the one hand, poverty is a very strong migration push-factors but only one among many others. Migrants also invest in emigration as a way to gain better life opportunities, and to improve their social, economic, and human capital (education, health, professional opportunities). The political and institutional structure of sending countries (i.e. nepotism, clientelism, overbureaucratisation, corruption) constitutes other push-factors. Migration networks represent an important pull-factor for migration, as well as the needs of labour supply on European markets, which in turn implies further policy thinking on how to lower the costs of “brain drain” and “care drain”. The link between migration and development is consequently not limited to poverty in the countries of origin.

On the other hand, an emerging consensus has developed among international organisations since the 1990s about the positive relation between development and migration: migrants are seen as net contributors to the development of their countries of origin (notably through remittances – \$300 billion in 2007), and mobility a factor of global development. This has provided further support to the “co-development” policy agenda of Northern countries, while also hiding the negative relationship between the two concepts: Northern countries’ migration policy hampers development by hampering mobility. In other words, migration is not a “problem” of under-development but a lever for development: Southern countries’ development is hampered by Northern countries’ restrictive migration policies and not the other way around.

This leads to a second problem of the “co-development” approach: the idea that development can stem migration is false. First

34 Ibidem.

of all, more development in the sending countries will increase emigration in the short and medium terms: the emergence of a new “middle class” that will have opportunities to emigrate, while local labour markets will not be able to create enough jobs to absorb the demographic growth of Southern countries; rapid urbanisation and socioeconomic transformations will leave the most vulnerable population outside the outcomes of development, and push part of them on (irregular) emigration routes. Second, development also depends upon on-going mobility. Research has clearly proved that the involvement of migrants in the development of their origin country stops with the second generation of migrants. The resources driven from migration are also reinvested in further migration, as illustrated by the case of Filipino female migrants. To that extend, migration and development accompany each other, and the “co-development” approach is mistaken if it aims to reduce migration. It will not happen in the short term.

Third, the objectives of “co-development” contradict the very rationale of “development” policies. While no one can deny the positive synergies between development and migration, the short-term impact of migration on the development of the countries of origin is limited. Migrants’ remittances are not transformed into sustainable investment, but function mainly as a provider of insurance for migrants’ families in countries of high social insecurity (unemployment, illness, old age). If development is conceived as a sustainable process aimed at improving people’s skills, human capital, job opportunities, the quality of the infrastructure, and the social and political institutions in the countries of origin, then the role of migration has only a limited scope.

Moreover, it is difficult to see how migration policies can fulfill these objectives. The conditioning of European support to the development of Southern countries on a reciprocal support of these countries to the objectives of European migration policies is not viable but counterproductive. Development policymakers and migration policymakers do not share the same rationale. The former are not interested in supporting activities driven by domestic agendas which are not about development but belong instead to the migration policy field. The competition between two distinct policy fields and two groups of policy professionals creates a problem for institutionalising the “co-development” agenda.

What are the conditions of a migration-cum-development policy?

The fact that “co-development” is based on mistaken diagnoses does not imply that the link between migration and development is not a relevant policy perspective. What conditions could constitute ground for an effective migration-cum-development policy? Following are a few of the dimensions that are essential to inform the design of a viable and consistent migration-cum-development policies:

- *reform of Northern countries' immigration policies*: there cannot be any talk of migration-cum-development without liberalisation of labour mobility, consistent with free movement of capitals, trade, goods, technology, and services. This is where European migration policies can play a direct role in the economic development of emigration countries. Irregular migration is not an issue of economic under-development of the sending countries. Both irregular migrations and under-development are results of a dysfunctional regime that frames human mobility. A migration-cum-development policy cannot aim to restrict migration and cannot condition support to development on the level of bilateral co-operation in the field of migration policy;
- *migrants are key actors in migration-cum-development policies*: migrants are major actors for creating synergy between development and migration, in the short and medium terms. Their ability to mobilise, create transnational voluntary organisations, and reinvest their economic, social, cultural and human capital back into their countries of origin is a key component of such a synergy.
- *migrants have rights*: if migrants are key actors, they must be supported by States. However, today, the deficit or vulnerability of rights experienced by migrants both in their country of origin and of destination hampers development. First, the relationship migrants have with the institutions of the country of origin is sometimes difficult. Second, the liberalisation of European migration policies cannot be complete without the enforcement of a consistent framework of social and civil rights for migrants. Rights constitute a concrete lever for global development, and the liberalisation of human mobility cannot be achieved at the price of a loss of the rights of migrants as actors of socio-economic development in their countries of origin and of destination. The implementation by EU countries of the 1990 UN Convention on the rights of migrant workers and members of their families is consistent with a migration-cum-development approach;
- *dual citizenship as a lever for transnational development*: social and civil rights are very important for creating a synergy between migration and development. However, political rights can also contribute to this synergy by helping the formation of transnational communities and enhancing the circulation of social,

economic, cultural, and political capital in the countries of destination, of origin, and of transit.

- *political reform in the South and migrants' trust:* a political transformation in the sending countries and the ensuing trust that migrants can feel vis-à-vis their countries of origin are necessary for creating synergies between migration and development. Migrant entrepreneurs can be very active in both destination and sending countries, but their reinvestment in their country of origin can be frustrated by the lack of political and bureaucratic conditions for developing businesses back there;
- *political will in Southern countries:* linked to issues of political reform and trust is the capacity of Southern countries to express the political will to go ahead with development policies, and frame their own expectations toward both European development policies and migration policies;
- *private/public synergies in Southern countries:* development cannot be understood merely in terms of poverty reduction. Consequently, the levers for development include an articulation between the public sector (infrastructure improvement and regulation enforcement) on the one hand and the private sector on the other. Private sector development will be necessary to meet the level of investment needed during the next decades (€250 billion by the 10 Mediterranean partners only until 2025 for transport, energy, education, health, waste management, water, and sanitation fields), and create employment conditions that allow the absorption of demographic growth and the quick urbanisation of these countries (30 million new jobs must be created in these countries before 2025);
- *the "bankarisation" of remittances, and co-operation between Northern and Southern banking systems:* the propensity of migrants to transform their remittances into investments is conditioned by the development of local banking systems in the countries of origin, the formalisation of these remittances through an increased rate of bankarisation, and developed co-operation between banking systems in the countries of origin and of destination.

Recommendations

In light of this assessment of the European Pact's policy guidelines to address undocumented migrants and "co-development", we propose the following recommendations:

New migration policies and regularisation

1. The narratives and language used by migration policymakers must shift from security rationales to a social justice discourse. There is a paradox in the fact that although migration is economically positive governments do not convey this to their citizens.
2. Members of the Council of the European Union should refrain from using the term "illegal migrants" and are invited to use the term "undocumented migrants" instead. More generally, the policy narratives about "irregular migration" must be transformed as well. Undocumented migrants pay taxes (i.e. income taxes, local taxes, pensions, etc.) and they contribute to maintaining European welfare systems without receiving any benefits.
3. Employment law should not be subordinated to immigration law. There is no statute or case law to support the view that undocumented workers cannot enforce their contracts because of their illegal status, under international law or under domestic law.
4. The creation of new migration policies in the EU ought not be restricted to high-skilled migrants but ought to involve low-skilled migrants as well. European countries must clarify their needs in terms of unskilled workers and the way these migrants are entitled to equal opportunities of legal admission into European countries.
5. Governments and EU institutions must work on improving legislation so to better protect migrants from falling into unwanted irregularity, and to limit to the extent possible the instances of overstaying using more flexible rules.
6. Policies of circular and pendular migration must be dissociated from the security-based approach to mobility and the fight against irregular border crossing. To the contrary, they must be developed as a new approach that favours mobility, particularly in the context of the European Neighbourhood Policy.
7. Governments and EU institutions must produce a real assessment of the economic costs created by the presence of migrants in an irregular situation in European countries.

8. The real pull-effect of regularisation in an area without internal borders (Schengen) must be documented and the orientation of migration policies must take this assessment into account.
9. Civil society organizations must be involved in the process of setting the orientation of future migration policies in Europe. Because they have concrete expertise in the field of migration, they are well positioned to assess the implementation consequences of any proposed new rules.
10. Civil society organizations must exercise better control of the discretionary regularization of undocumented migrants by national authorities.

Migration-cum-development policies

11. Co-development policies must not involve the conditioning of development policies on other policy concerns. This will help strengthen policy coherence and strategy behind a viable and efficient migration-cum-development policy.
12. Migration-cum-development policy must aim to achieve sustainable development outcomes and not only poverty reduction.
13. The political reform of Southern countries is a sine qua non for their durable development.
14. A carefully institutionalized international dialogue on the synergy between migration and development should be initiated by the EU, based on existing forums between European and African states.
15. Partnership should be developed between countries of origin, of transit, and of destination on the one hand, and the corresponding civil society organizations, including migrants' organisations, in the definition and implementation of a migration-cum-development policy framework.
16. Governments and EU institutions should not simply encourage people to return using financial incentives but also provide them with security incentives such as allowing migrants the possibility of returning to European countries should they face difficulties in their country of origin.
17. The development of an environment of free circulation is essential: supporting labour mobility and economic integration is vital for the reduction of poverty, the sustainable development of origin and transit countries, and the creation of strong dynamics of development in immigration and emigration countries.
18. Experts, researchers and officials must preserve the strong core of evidence of the positive linkages between mobility and development, and must work together on gathering additional

strong evidence on the efficiency of policy instruments and corresponding objectives behind a migration-cum-development policy. The issue of assessment is crucial.

19. Migrants' remittances are private transfers of money and must be considered as such. Transaction costs must be reduced.
20. Dual citizenship must be generalized and favoured as a positive lever for the construction of transnational areas of development and mobility.

Conclusion

The future of EU immigration policies remains in doubt. The “European Pact on Immigration and Asylum” is only one step on the difficult path toward providing the EU with a proper policy framework capable of answering tomorrow’s challenges in European societies and economies. However, this step is a long way from attaining the balanced migration policy Europeans need.

Part of the puzzle will be the ability of Europeans to agree on common principles that would act as a foundation for a viable, efficient, and sustainable migration policy that will prove its ability to address the complexity of the globalized “full house” in which the European countries and the EU aim to become key actors.

This report shows that the counterproductive approach to irregular migration and co-development policies can be explained by the incomplete and somehow backward shift from “zero immigration” to a new model of migration policy in the EU. All the dysfunctions that were identified above are rooted in the fact that the European Pact does not fully address the 3-D challenge of migration policy: 1. the need for new tools that are consistent with new policy objectives; 2. a subsequent enlargement of the policy scale for efficient migration policy; 3. the refiguring of citizenship, and the corresponding production of political legitimacy in migration-based societies.

To the critical assessment this report proposes on the European Pact and the subsequent “philosophy” of today’s migration policies, some may respond that this assessment cannot be translated into implementable policy, because policymakers must also face political reality, including what they assume as sensitive voters’ concerns about immigration issues. The contributors to this report are not naive. They are committed to political reality. This report argues that policymaking also requires political leadership that will provide European citizens with solutions that are adapted to their future, and will be able to create the political conditions for doing so. Migration policy can no longer be based on political perceptions of public perceptions and the monopoly of high politics.

If the future of EU migration policies is above all a matter of reality, this reality must also be framed by the democratic rules that are the founding principles of the EU project. To that extent, principles matter. Migration policies in the EU must be based on a wider understanding of citizenship. This new understanding of common belonging has to reflect how much nation states, the European Union,

and international migrations already share the same world. It should help Europeans succeed in creating, politically, the “full” world that they already share with migrants for their mutual benefit.