DISCUSSION PAPER

PREVENTION OF MASS IRREGULAR IMMIGRATION TO EUROPE

EUROPEAN VALUES
Protecting Freedom

Wilfried Martens Centre for European Studies

Internal Security Program 2018
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INTRODUCTION

The purpose of this discussion paper is to contribute to the ongoing political debate in the European Union about finding solutions to migratory pressures and implementing the European Council’s conclusions aimed at stemming the unprecedented migratory flows Europe has been facing since 2015 (bearing in mind that the number of irregular arrivals has been reduced significantly by now). This paper should serve primarily to policy makers, policy advisors and government officials in the EU Member States and institutions.

As a mere discussion paper, this document does not have the ambition to present a complete, detailed, and definitive answer or blueprint for the EU migration and asylum system. Instead, it provides a framework for further policy debate as well as a toolbox of policy options the EU and its Member States have at their disposal. At the same time, this paper is not a PR document for selling a new policy idea to a wider audience, or a draft of a political declaration, and therefore its language is technical rather than diplomatic or political. For the same reason, the added value of this paper is not to be found in delivering novel policy ideas and original measures, but rather in offering a comprehensive framework with a clearly defined policy problem, policy goal and policy solutions. While the paper focuses mostly on irregular immigration from Africa, as this is the most likely source of future mass movements to Europe, the analysis and recommendations are applicable equally to the Middle East, Asia and Eastern Europe.

This paper uses the standard terminology as defined by the International Organization for Migration. Irregular migration is a movement that takes place outside the regulatory norms of the sending, transit and receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries, it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the sending country, the irregularity is, for example, seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country. From the perspective of EU Member States, irregular migration consists of both (a) forced migration - including displaced persons such as refugees and asylum seekers, and (b) illegal economic migration – including any illegal migrants who, owing to illegal entry or the expiry of their visa, lack legal status in a transit or host country.

Irregular immigrants in a country therefore consist of four general categories:

a) asylum seekers who will be granted some form of protection or legal status;

b) asylum seekers whose application will be rejected and they will therefore fall under the category of illegal economic immigrants subject to return;

c) illegal economic immigrants who arrived illegally in the country as they did not apply for asylum and did not have any legal permission for entry and are thus subject for return;

d) and illegal economic immigrants who arrived legally in the country, but for some reason lost their legal status and are thus subject for return.

The paper adopts the following structure: the first part defines the policy problem at hand, i.e. what is the situation that is supposed to be changed through policy measures, and breaks it down into primary, secondary, tertiary, and complementary problems. This distinction does not imply a degree of importance, but only serves as an analytical categorisation. The second part offers a clear definition of the policy goal which is supposed to be brought about by the proposed policy measures. This part also discusses some of the most prominent policy proposals being on the political agenda and explains why they are inadequate or even misleading in relation to the defined policy goal. The third and final part presents a toolbox of policy measures structured into four areas: primary prevention, (i.e. foreign and security policy), secondary prevention (i.e. compacts against irregular migration), tertiary prevention (i.e. returns of illegal migrants), and complementary measures.

GLOSSARY ON MIGRATION http://www.iomvienna.at/sites/default/files/IML_T_EN.pdf
DEFINITION OF THE POLICY PROBLEM

One of the most common deficiencies of many political and policy documents on irregular immigration is that they fail to clearly define the problem that is supposed to be solved. In fact, there is not one single problem, but rather a plethora of interconnected issues that need to be addressed individually, yet in a coordinated fashion. However, there is consensus that the root cause of increased irregular migration are specific conditions in the countries of origin and transit.

The current potential for irregular immigration from Africa

The global level of forced displacement across international borders is continually rising. The total number of refugees and asylum seekers in the world was estimated at 25.9 million by the end of 2016, representing 10.1% of all international migrants. Overall, the number of migrants worldwide is increasing, and the number of international migrants has grown faster than the world’s population. The share of migrants in the total population increased from 2.8% in 2000 to 3.4% in 2017.

The population of Africa itself is expected to grow rapidly in the coming decades. The UN estimates that more than half of the anticipated growth in global population between now and 2050 is to occur in Africa. Between 2017 and 2050, the population of Africa is set to increase by 1.3 billion. Additionally, the UN predicts that after 2050, Africa will be the only region still experiencing substantial population growth. The working age population in Africa will grow significantly and the number of people attempting to reach Europe while pursuing higher living standards will increase in correlation. The trend of increased migration to advanced economies is therefore expected to continue and increase in intensity. Various surveys show that approximately one third of the African population would like to leave the continent, mostly with Europe in mind.

Migration alone has a significant importance for Africa. After foreign direct investment, Africa’s largest source of net foreign inflows are remittances from migrants abroad. In the 20 years between 1990 and 2010, remittance inflows to Africa quadrupled, reaching nearly $40 billion (2.6% of GDP) in 2010. Remittances are considered to be the central link between migration and development. However, the widespread idea that most African migration is driven by poverty ignores the complexity of migration and development. According to Clemens, the available data show an inverted-U pattern in the relationship between overall economic development and emigration across countries. Correspondingly, they do not support the assumption that rising income is associated with smaller emigrant stock or lower emigration rates among low-income or lower-income countries. For example, sub-Saharan low-income countries exhibit low emigration rates despite their economic underdevelopment.

Viewing development aid to the poorest countries as a solution to irregular migration is rather problematic. As Flahaux and De Haas point out, people will only migrate if they have the ambitions and resources to make it happen. People generally move to improve their social and economic living conditions and not to simply flee from poverty. Most international migrants from Africa go to other African countries as they lack resources to go further. With development, people gain greater access to material resources, media coverage and knowledge about the lifestyle abroad and the travel possibilities. This may affect their perception of a ‘good life’ and their material aspirations. At the same time, infrastructure and transport are usually improved.
The number of irregular immigrants who entered the EU in 2015 can easily be doubled or tripled given the migration potential from Africa.
which creates the perception that travel is easier and less hazardous, even at longer distances. 12 The telecommunication boom in form of widespread accessibility of smartphones and social media, which provide knowledge and feed desires to migrate, only intensifies these trends. In order to effectively address irregular migration, the simplified push-pull model must be overcome.

Environmental degradation is predicted to create a strong impulse for large numbers of people in Africa to move. A majority of land in Africa is lying across the warming tropics and with the limited social, human and economic capacity to adapt, the population of Africa will be particularly affected by climate change.13 Experts expect that extreme weather events, including droughts and floods, will become more frequent and the agricultural yield losses will soon reach 22% across sub-Saharan Africa. 14 According to the UN Food and Agriculture Organization, drought in the Horn of Africa is deteriorating faster than expected. 15 Most Sub-Saharan Africans live in rural areas and make their living through agricultural activities. 16 With agricultural systems remaining largely rain-fed and underdeveloped, the consequences of climate change in this region are disastrous. As the living conditions worsen, they not only set people on move but also create an environment conducive to political instability. The drought between 2007 and 2010 highly contributed to the conflict in Syria,17 from which 5,4 million people fled since 2011 and over 6 million are internally displaced.18

We can safely assume that the number of people attempting to travel from Africa to Europe will increase. Many migrants travel irregularly, relying on smuggling networks and risking their lives on dangerous routes. The perception that irregular immigration will decrease after the so-called migration crisis passes is not based on empirical grounds. Should a more substantial crisis break out in Africa, Europe may be confronted with millions of people on the move. This would mean that more than one hundred thousand of irregular immigrants within a month and more than one million over a year could be attempting to enter the EU territory. In fact, the number of irregular immigrants who entered the EU in 2015 can easily be doubled or tripled given the migration potential from Africa.19 The fact that the number of irregular arrivals to the EU has been reduced—and is in 2018 even lower than in the years before the crisis of 2015—is a mere consequence of current conditions and does not tell us much about the migration potential.

Definition of mass irregular immigration

Under the current legal conditions, the EU Member States accept a certain level of irregular immigration of genuine asylum seekers, especially those for whom an EU Member State is the first safe country. For this purpose, there are standard border control and asylum application procedures, which are largely harmonized at the EU level by the Schengen Border Code and the Common European Asylum System (now under reform). However, a policy problem emerges when the number of irregular immigrants, with a growing share of illegal economic immigrants, suddenly and significantly increases (as it did in 2015 and was termed the migration or refugee crisis). There is no objective way to determine what number of irregular immigrants is above the acceptable limit for a country, as it is clearly a sovereign political decision dependent on many factors. Perhaps each EU Member State should define the number of

12 Flahaux & Haas, supra note 8, pp. 3-6.
19 Frontex reported 1,822,337 detections of illegal bordercrossing at the EU’s external borders in 2015, while only 33% (594,059) of them were Syrians (if deduct 764,038 who crossed the border illegal twice – through Eastern Mediterranean route and through Western Balkan route we have approx. 1,058,299 individual irregular migrants (Frontex (2016) Risk Analysis for 2016: https://frontex.europa.eu/assets/Publications/Risk_Analysis/Annula_Risk_Analysis_2016.pdf). Frontex reported 511,371 detections of illegal bordercrossing at the EU’s external borders in 2016 (Frontex (2017) Risk Analysis for 2017: https://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2017.pdf).
irregular immigrants it is prepared to process per month and per year.\textsuperscript{20} Such a definition could include three basic levels:

1. a **standard** number of irregular immigrants, which requires standard border control and asylum procedures capacities;

2. an **above-standard** number of irregular immigrants, which requires an increase of capacities;

3. and a **mass** number of irregular immigrants, which is to be prevented as it requires emergency capacities and crisis management procedures under a *contingency plan.*

On the basis of Eurostat’s data regarding the number of asylum seekers and Frontex’s data regarding the number of illegal border-crossings in the last 12 years (2006-2017),\textsuperscript{21} we can propose the following **sample definition** for the EU:

1. **standard** irregular immigration: up to 250 thousand individuals within a 12-month period;

2. **above-standard** irregular immigration: 250 – 500 thousand individuals within a 12-month period;

3. and **mass** irregular immigration: above 500 thousand individuals within a 12-month period or 42 thousand individuals within one month.

The numbers could be re-defined on a regular basis every six months by the European Council on the basis of national contingency plans.

Against this background, we can establish that the policy problem at hand can be defined as mass irregular immigration to the EU territory which exceeds 500 thousand irregular immigrants within a 12-month period or 42 thousand individuals within one month. However, this problem is both the result of, as well as the cause for, other interrelated problems that create a whole plethora of policy issues to be tackled.

With respect to the territorial area where the problem manifests itself, we can distinguish between primary, secondary, tertiary, and complementary policy problems of mass irregular immigration. This distinction does not imply a degree of importance, but only serves as an analytical categorisation. It can be generally argued that the failure to prevent the primary problem leads to the secondary problem, and failure to prevent the secondary problem, leads to the tertiary problem.

**The Primary problem** is the primary cause of the rise of irregular immigration to Europe, which is an **increasing number of (a) people in need of protection and (b) those seeking better economic situation** in broad European neighbourhood, especially in Africa and the Middle East. Therefore, deteriorating security, political, social, economic, and environmental conditions in the countries of origin and transit are primary problem to be tackled.

**The secondary problem** is an increasing number of irregular migrants attempting to enter the EU territory. This involves a spectrum of events surrounding illegal attempts to cross the external EU border, including humanitarian tragedies, death at sea and criminal activity, such as migrant smuggling, human trafficking and other security risks.

**The tertiary problem** is an increasing number of irregular immigrants inside the EU territory. These immigrants have most often the status of *asylum seekers* as they most often apply for asylum upon arrival, but after the asylum application procedure is concluded, their status is changed to either *refugee* or another status with a legal permit to stay, or *illegal immigrant* who is subject for return from the EU territory. This second category also includes *illegal residents* who originally arrived legally, but for any reason lost their legal status. The tertiary problem involves various consequences including secondary movements, disputes between EU Member States, strains on national social and security systems and integration capacity, as well as radicalisation of the public and political debate.

**Complementary problems or constrains** include a spectrum of issues that are not directly linked to the rise of irregular immigration but further complicate the

\textsuperscript{20} In accordance with the definitions given above, the number of irregular immigrants received in a country includes both refugees with the right to stay as well as illegal economic immigrants subjected to return.

definition and implementation of effective and sustainable solutions to the actual policy problems. These complementary problems include mainly EU institutional design, normative constrains and conflicting interests.

Aspects of the current EU legal and institutional design that make the response to irregular immigration more complicated. This constrain is rooted in the existence of a common area of free movement, but not a corresponding common immigration law enforcement authority authorised to operate across this area independently of individual Member States. This is only to pronounce the current situation, not to call for a substantial change of this design as it is politically inconceivable to introduce new law enforcement agency with authority throughout the EU territory.

Normative constrains are discursive, political, and legal norms that prevent or hinder an open and pragmatic policy debate about irregular immigration. The most prominent manifestation of this constrain is the discrepancy between the official political rhetoric about irregular immigration emphasising the protection of the migrants’ rights and respecting the sovereignty and interests of third countries on the one hand, and on the other hand the unofficial practice of some Member States involving covert diplomacy and secret political and financial deals with authoritarian leaders. Again, this is a mere descriptive observation, not a normative judgement.

The contradictory interests and conflicting lines between the major actors and stakeholders involved in the prevention of irregular immigration include, among others:

- mainstream political forces within the EU prioritising rights of the migrants, advocating for an extensive interpretation of refugee law and an expansion of reception capacities;
- mainstream political forces within the EU prioritising security of the citizens, advocating for a narrow interpretation of the refugee law and an expansion of restrictive measures;
- radical political forces within the EU opposing any restrictions on irregular immigration and advocating for a completely open-door policy;
- radical political forces within the EU opposing any immigration, advocating for a completely closed-door policy and suspending the existing refugee law;
- political forces within the EU preferring policy solutions and measures at the EU level;
- political forces within the EU preferring policy solutions and measures at the national level;
- third countries of origin which benefit from remittances of both legal and illegal economic migrants;
- third countries of transit which do not want to burden themselves by halting irregular migrants in their territory;
- and international governmental and non-governmental actors advocating for the rights of migrants.

22 This list is an inexhaustive illustration of the different interests and does not attempt to present mutually exclusive categories.
DEFINITION OF THE POLICY GOAL

Before any effective and sustainable policy solutions and measures can be proposed, there should be a very clear definition of the policy goal, i.e. description of the situation in which the aforementioned policy problems are prevented. As we have formulated a set of interlinked policy problems, the following corresponding policy goals can be defined:

The primary policy goal is to prevent further deterioration of security, political, social, economic, and environmental conditions in the countries of origin and transit of irregular migrants and thus achieve a decrease in the level of irregular migration to Europe, including both forced migrants and illegal economic migrants. In order words, the primary policy goal is to reduce the potential irregular flow of migrants to Europe, i.e. the number of people who are considering migrating to Europe for humanitarian or economic reasons irregularly.

The secondary policy goal is to reduce the number of irregular migrants attempting to enter the EU territory across sea, land, or air borders illegally, and thus prevent humanitarian tragedies, criminal activities and security risks surrounding illegal border crossings. In other words, the secondary policy goal is to reduce the attempting irregular flow across EU borders. In accordance with the above proposed levels of irregular immigration to the EU, this policy goal entails the avoidance of reaching the level of mass irregular immigration, i.e. above 500 thousand migrants within a 12-month period or 42 thousand within one month. This entails the prevention of any sudden mass influx exceeding the standard levels.

The tertiary policy goal is to increase the return rate of illegal immigrants staying within the EU territory and thus reduce the number of illegal migrants in the EU. These unauthorised residents include migrants who arrived illegally, asylum seekers whose application was rejected, and migrants who arrived legally but lost their legal status for some reason.

When it comes to the aforementioned complementary problems or constrains, solving them is not a direct policy goal within this paper. However, the complementary problems must be noted when formulating actual policy solutions and measures to primary, secondary and tertiary problems.

Approaches that do not lead towards achieving the stated policy goals

Certain policy directions were tabled in the current European policy and political debate and presented as responses to the irregular immigration, but do not in fact lead towards achieving the above defined policy goals.

"No solution." The most prominent among these proposals is the claim that there is no solution to mass irregular immigration to Europe. According to this view, EU Member States should simply accept the rising inflow of irregular migrants and focus on their redistribution and integration into European societies. Moreover, this approach argues that irregular immigration should be legalised as it provides a desired supply of labour and enriches diversity of ageing European societies. Such an approach does not lead to the defined policy goal and even directly contradicts the very definition of the policy problem.

"No mass influx." Another stream of proposals is predicated on the assumption that there will be no more mass influx of irregular immigrants to Europe similar to the one of 2015 and 2016, and certainly not one that is even greater. This view does not advocate for legalising irregular immigration, but rather for reaching deals with third countries which will allow for effective returns of irregular immigrants in exchange for resettlements of legal immigrants, i.e. the one-for-one model. This approach could only work under two preconditions: (i) if the number of arriving irregular migrants would remain within acceptable figures (i.e. under mass numbers), and (ii) if the respective third country would have enough potential migrants who would qualify for legal resettlement. Both conditions are very unlikely to hold continuously. Especially the reliance on the prediction of no more mass influxes is rather irresponsible.
The policy problem can be defined as mass irregular immigration to the EU territory which exceeds 500 thousand irregular immigrants within a 12-month period or 42 thousand individuals within one month.
“Extraterritorial asylum.” Quite popular are proposals arguing for the introduction of the possibility to apply for asylum in the EU or its Member States already from third countries. This would supposedly reduce the number of asylum seekers attempting the irregular and dangerous way across the Mediterranean Sea. This argument does not account for those illegal economic migrants who know that they would not qualify for international protection and therefore would still prefer to migrate irregularly. But there are more serious flaws. First, the EU asylum application centres in third countries would very probably turn into enclaves surrounded by masses of asylum seekers, including both genuine refugees and de-facto economic migrants ineligible for international protection. It is highly plausible that these centres would soon meet conditions and incidents known from the Spanish enclaves Ceuta and Melilla. Second, it could only work if there was a permanent relocation system to individual EU Member States (which in itself is extremely difficult to achieve both politically and practically), or the majority of the applicants would apply to their favourite destinations such as Germany or Sweden, which is politically unacceptable either. Third, the inevitable limited capacities (quotas) provided for these relocations and very long waiting times would most probably lead to the continuation of irregular travels to Europe. Consequently, this measure alone would in all probability not lead towards the reduction of irregular immigration.

“Uncoordinated re-nationalisation.” Not as an official policy proposal, but rather as a reaction to the inability of reaching a coordinated approach at the European level, some national politicians would prefer uncoordinated re-nationalisation of border protection and asylum practice. The current reintroduction of border controls inside the Schengen Area and introduction of national upper limits on asylum seekers are practical manifestations of this approach. If national governments under domestic political pressure will not see an effective European solution on the horizon and if they continue torpedoing the processes of reaching European solutions, the response could be a reintroduction of national border controls (including physical barriers such as fences) and refusing entry to any irregular immigrants with the argument that they are coming from another safe country. This would lead to tensions, disputes and open conflicts between EU Member States, effectively terminate free movement within the Schengen Area and spill over to other areas of EU cooperation. At the same time, if such a practice would be introduced by only some EU Member States, it would not prevent irregular immigration to Europe and thus would not contribute to achieving the aforementioned policy goals.

“Stop asylum.” Finally, some of the radical political forces in Europe are proposing that the EU should give up its responsibility for people in need in Africa and Middle East, suspend the Refugee Convention and seal the external borders. While this approach is contrary to the European values and fundamental principles, it would also be conflicting with the EU Member States’ pragmatic long-term interests and would not fully lead towards the prevention of potential mass immigration influxes. Forced deportations of illegal immigrants and application of coercive practices at the borders could lead to a reduction of irregular immigrants arriving and staying in the EU territory. However, should the EU Member States abandon efforts to improve conditions in the countries of origin and transit, major crises might erupt in the neighbourhood resulting in unprecedented influxes of irregular migrants attempting to enter the EU. Without addressing the primary policy problem (situation in the neighbourhood), the secondary and tertiary problems (irregular immigration) cannot sustainably be prevented.

Necessary but not sufficient

Several measures that are discussed in connection with irregular immigration are an important and indispensable part of the overall policy mix, but we should not fall under the illusion that they are also sufficient solutions. Reforming the Dublin system, further reinforcing Frontex, improving rates of returns and establishing more legal channels are all very important, but neither of them alone will solve the policy problems at hand. Presenting them as the key solutions would only widen the gap between expectation and reality.

Determination of the EU Member State responsible for examining an asylum application. While this is very important in order to prevent disputes between Member States as well as guarantee due examination for the applicants, this system cannot in itself prevent mass irregular immigration. However, as long as the system is dysfunctional (regardless of whether in the form of the Dublin III Regulation or under the envisaged mandatory relocation system) and the majority of asylum seekers and refugees can move to countries of their preference, i.e. mainly Germany, it rather serves as a pull-factor since asylum seekers can successfully reach the country of their preference. Realistically speaking, due to
conflicting interest of the EU Member States, it is rather unlikely that a functional compromise can be reached in the foreseeable future. Frontline EU Member States’ priority is that irregular immigrants do not stay in their territory. Since they do not trust that an effective relocation system which would move all irregular migrants from their territory to other countries could be implemented, they prefer a dysfunctional system under which they can keep the current practice of letting irregular immigrants move on to other EU states. For these reasons, implementing a system of determination of responsible EU Member States is important, but any substantial reform which would contribute to the prevention of mass irregular immigration is rather unlikely in this area.

**Setting up “controlled centres” on the EU territory.**
Transforming the current hot spots in the EU frontline states into “application centres” or “waiting zones” where rapid and secure processing would allow, with full EU support, to distinguish between irregular migrants, who will be returned, and those in need of international protection, is certainly a very good idea. However, since the motivation of Member States to create de-facto detention centres without credible option of relocating eligible asylum seekers and returning illegal migrants, is very low, it is rather unrealistic that these centres will be set up in a forceable future and contribute to the policy solutions.

**Reinforcing the European Border and Coast Guard Agency (Frontex).** Frontex is an essential part of the EU’s border protection system, and its powers and capacities should be extended substantially (even beyond 2016 amendments). However, Frontex cannot and will not play other than a complementary function at the EU side of the external border because the EU Member States will never grant Frontex officials independent executive powers. As a result, any Frontex operation will continue to be commanded by the respective national authority and therefore play only a supportive role. Border control quality will continue to be only as high as the national authority would allow, regardless of any increase of powers or capacities for Frontex. To put it simply, more Frontex does not mean more border security.

Having said that, Frontex can play an exceedingly important role in third countries in situations where its powers would not conflict with the EU Member States’ authorities (as explained above). In this area, Frontex could form expeditionary units that would be deployed overseas upon invitation (as we can see in the agreements with Albania, the former Yugoslav Republic of Macedonia and Montenegro). Potential conflicts with local law enforcement authorities remain a challenge but can be resolved more realistically than within the EU.

**Effective returns.** Increasing successful return rates is clearly essential in reducing the number of illegal immigrants in the EU. However, in the current legal and political environment, there are intrinsic limits to this particular measure. While there is Frontex with its financially funded and logistically organized Return Operations, actual successful returns depend on two other factors: (i) the willingness and ability of national law enforcement authorities to make returnees ready for the transfer, and (ii) willingness of the returnees’ country of origin or transit to receive the migrants back. Both factors need to be improved so that the return rates increase. However, a significant number of illegal immigrants will not be subjected to a return (e.g. because they claim statelessness or due to the non-refoulement principle). In order to avoid a strong pull-factor based on the inability to return illegal immigrants, the EU Member States should consider establishing Return Centres outside the EU territory as a stop-over on the way to the migrants’ designated destination. More details on this concept are provided in the final section of this paper.

**Legal channels.** Finally, while legal channels for economic migrants with an appropriate permission and for “invited refugees” through resettlement programmes are an important complementary measure, they cannot by any stretch of the imagination replace irregular channels. The EU Member States made 973,8 thousand decisions on asylum applications in 2017 and 54,5% of the applications were rejected 23, which makes 530 thousand illegal immigrants who should be returned. According to the logic of “legal channels instead of illegal routes”, an equivalent of 530 thousand legal economic immigrants should be received by the EU Member States. The problem is twofold. First, there is no reason to expect that an equivalent number of qualified migrants fulfilling all necessary conditions would be available in the illegal migrants’ home countries. Second, it is highly unlikely that the EU labour market will be in demand for legal economic migrants from just such countries in just such a moment. This is not to rule legal channels entirely out. They are, and will continue to be, an important part of the policy mix, but can by no means be considered a solution to irregular immigration as these are two overlapping but mostly parallel phenomena.

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POLICY TOOLBOX

Policy measures are policy actions that eliminate policy problems and lead to the policy goal. In this paper, we have defined three levels of policy problems with corresponding policy goals. The following section provides a set of policy measures which, if implemented, would lead to the desired outcomes. It is important to realise that the respective measures are to be put in place by various actors and institutions, including national governments and EU institutions and agencies. In the toolbox provided below, we list both activities already implemented by the EU and its Member States as well as those initiatives that are only being discussed so far. The added value of the proposed toolbox is the provision of an overview for policy makers, policy advisors and government officials. The following part discusses the most important existing policy measures against irregular immigration.

Existing measures of the EU and its Member States against irregular immigration from Africa

The cooperation with third countries is currently running under the framework of the Global Approach to Migration and Mobility (GAMM), adopted in 2005.\(^24\) The migration crisis which unfolded in 2015 revealed weaknesses of existing cooperation, such as the absence of a strategic vision on part of the EU, a lack of coherence, low involvement of EU Member States in EU-level initiatives and weak bargaining power of the EU. In response, the Juncker Commission adopted the European Agenda on Migration in May 2015, a political programme that sets out new objectives of migration policy, namely reducing the incentives for irregular migration, saving lives and securing the external borders and strengthening a common asylum policy.\(^25\) Under this programme, the Migration Partnership Framework was adopted in June 2016.

Demonstrating the new emphasis to cooperation with third countries, the Migration Partnership Framework represents a step towards the full integration of migration into the EU foreign policy. It comes up with the concept of migration compacts as an improved form of cooperation between the EU and its partners. Compacts are targeted to each specific country and may not take the form of formally concluded agreements. Five priority countries were chosen in July 2016: Mali, Nigeria, Niger, Senegal and Ethiopia. Collett and Ahad point out that the initial EU strategy targeted poorer and often fragile countries in regions with significant migration to the EU with the aim of halting journeys as early as possible.\(^26\) Nigeria, Senegal, Niger and Mali are among the main source countries of irregular migration to Europe, while Ethiopia hosts a high number of refugees. In Collett and Ahad’s opinion, it would be more beneficial to target migration hubs such as Ghana, Kenya and South Africa while making African countries more attractive as destinations compared to EU countries.

Cooperation based on compacts includes financial contributions under the EU Trust Fund of Africa. The fund is focused, in addition to development aid, on enhancing third-state capabilities in the field of security and counter-smuggling, as well as deployment of European migration liaison officers in the given countries.

Cooperation on the returns of irregular migrants and the conclusion of readmission agreements is especially crucial for the EU. In the fifth Progress report on the Migration Partnership Framework published in September 2017,\(^27\) the Commission, while acknowledging overall progress in cooperation with priority countries, stated that the pace of progress on returns is low and must be substantially improved.

In addition to these five priority countries, the EU targets other regions with the aim of lowering the pressure on the Central Mediterranean migration route. This necessitates focus on countries in West Africa, namely Guinea, Gambia, Ghana and Côte d’Ivoire. North Africa represents a particularly strategic region for the EU as it

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\(^{24}\) https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration_en

\(^{25}\) https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-migration_en


is the main transit point for irregular migrants, with Libya being the biggest embarkation point. The EU is continually implementing projects aimed at strengthening operational capacities of the Libyan border guard. In June 2017, the Commission and the Italian Coast Guard signed a grant agreement under the emergency assistance strand of the Internal Security Fund for a budget of EUR 1,84 million for providing technical assistance to the Libyan Coast Guard.28 Based on the EU Trust Fund for Africa’s EUR 90 million project adopted in April 2017, the EU also works with the UNHCR and the International Organization for Migration (IOM) to ensure the social and economic development of host communities in Libya, focusing on protection monitoring and fulfilment of the refugees’ and internally displaced persons’ humanitarian needs. These joint efforts have increased the number of people who decided to return from Libya to their country of origin.29 The EU works operationally in the Mediterranean Sea along the main migration routes. EUNAVFOR Med Operation Sophia, aiming to disrupt the smuggling networks and the capacity building of the Libyan Coast Guard, was extended in July 2017 until the end of 2018, along with EUBAM Libya.30

Effective cooperation with third countries on preventing irregular migration is often reached through bilateral relations with EU Member States, such as between Italy and Libya or between Spain and Morocco. As Italy already has a history of effective cooperation with Libya, it took the lead in negotiations. In February 2017, Italy and Libya signed the Memorandum of Understanding on development cooperation, illegal immigration, human trafficking, fuel smuggling and reinforcement of border security. Italy also drafted a new code of conduct for non-governmental organizations performing SAR in the Central Mediterranean.

The EU Action Plan against migrant smuggling accompanying the adoption of the European Agenda on Migration in 2015 highlighted the importance of conducting information and awareness campaigns about the risks of smuggling and of irregular migration with the aim of preventing people in vulnerable situations from embarking on the hazardous journey to the EU. It is necessary to provide potential future migrants with reliable information, as many have a false vision about life in Europe and the journey to get there. The information vacuum is filled by smuggling networks, which benefit from exploiting the migrants. Information campaigns can also introduce the possibilities of legal migration to the EU and persuade the people to go with this option. Information and awareness raising campaigns have been carried out for the past few years by the EU and Member States. The EU conducted pilot information campaigns in Ethiopia/Sudan31 and Niger,32 together with EU Member States. According to research requested by the Commission33 and the analysis done for the Dutch Ministry of Justice and Security,34 implementation of information campaigns targeted at countries of origin, transit and destination have the potential to reduce irregular migration flows to Europe. The source of the information received is key to campaign effectiveness, as it must be conducted by actors who hold credibility in the eyes of the potential migrants.35

**Recommended policy toolbox against irregular immigration**

1. **Primary Prevention: Foreign and Security Policy**

The first set of measures and polices is designed to address the primary policy problem, which is defined as the increasing number of (a) people in need of protection and (b) those seeking a better economic situation in the broad European neighbourhood, especially in Africa and the Middle East. Deteriorating security, political, social, economic, and environmental conditions in the countries of origin and transit represent the root causes of irregular immigration to be

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29 Until 1 September 2017 the IOM assisted 7084 to return voluntarily against 2775 in the whole year of 2016. European Commission (2017), supra note 18, p. 12.
32 Project „Supporting Informed Migration Decision in Niger” was funded by AMIF under the 2014 Annual Work Programme and implemented by International Organization for Migration.
33 Study by Seefar and Optimity advisors for the European Commission from October 2017 on how West African migrants engage with migration information en-route to Europe.
tackled. Most of the proposed measures already exist but must be better coordinated with the explicit objective to reduce the number of irregular migrants leaving the respective countries or the regions. The logic of primary prevention is based on the assumption that it is more effective and less costly to intervene early and directly in the region rather than react to the consequences of crises. The following policies and measures fall under primary prevention:

a) Economic Partnership, Trade and Development Aid. These policies, their objectives, respective instruments, and implementation must be re-evaluated in the light of prevention of irregular migration. Possible positive as well as negative incentives vis-à-vis each relevant country must be identified and used to improve existing agreements and set up new ones. Overall, the EU and its Member States must become more active and involved in Africa, so that other players, such as China, are not draining all the benefits while the EU is engaged in mitigating all the difficulties.

b) Humanitarian Aid and Interventions. Humanitarian assistance to people hit by man-made and natural disasters with particular attention to the most vulnerable victims has a merit on its own. However, current programmes of the EU and its Member States should be re-examined in order to better contribute to the prevention of mass irregular migration.

c) Conflict Prevention, Peace building and Mediation. The EU Member States and the European External Action Service, in coordination with the UN and NATO, should be more active especially in those situations which might produce mass irregular migration.

d) Safe Zones. Ideally designated by agreement of parties to an armed conflict, safe zones are established as areas in which military forces do not deploy or carry out attacks and often include no-fly zones. Generally, most people affected by armed conflicts or humanitarian crises are not refugees but internally displaced people in their own country. In many instances, safe zones can be the only tool to guarantee safety to people who are unable to leave their country. It is necessary to ensure the protection of internally displaced persons and to provide them with access to humanitarian help. The inability to establish effective safe zones for more than 6 million people in Syria is a failure of the international community. Safe zones should be established in unstable regions to ensure the immediate help and stop people in a vulnerable situation from going on a dangerous journey beyond the border. The creation of safe zones must be supported through cooperation of key actors. First, there must be the will of the state concerned and the agreement of the parties to the conflict. Second, the humanitarian component must be ensured under the leadership of the UNHCR. Third, although safe zones are by principle demilitarised, there must be an international force protecting the safe zone. However difficult it is to set up and maintain safe zones, and bearing in mind past mistakes of the international community in maintaining them, they remain an essential tool for protecting people and preventing mass irregular migration.

e) Refugee Centres. If safe zones cannot be created in unstable regions, it is crucial to build refugee centres in cooperation with the UNHCR in the neighbouring states. Every state should have a refugee crisis management plan and respond as quickly as possible if necessary. Refugee centres are never the preferred solution. However, they are a key element in protecting people on the run and it is essential that states have the fundamental infrastructure to ensure their functioning. The EU must logistically and financially support the establishment of refugee centres in safe countries closest to the destabilized region to ensure the protection of refugees as close as possible to their home, with a view towards their possible return and re-integration in the near future. Semi-permanence of refugee centres significantly affects their management. Refugee centres must be established with the outlook for potential sustainability, ensuring their economic and social development and possibly even integration into local communities and economy, while offering return solutions.

2. Secondary Prevention: Compacts against Irregular Migration

The second set of measures and policies is designed to address the secondary problem, which is defined as an increasing number of irregular migrants attempting to enter the EU territory. A whole spectrum of undesirable events surrounding illegal attempts to cross the external EU border must be prevented, including humanitarian tragedies, death at sea, criminal activity such as migrant smuggling or human trafficking and other security risks. The major challenge in this secondary area of prevention is that the majority of the policy action must be realised by, or in close cooperation with, third countries. Such cooperation must be built on specific agreements and deals. The EU
itself is not always the best partner for such deals and in many cases, these would instead be signed by particular Member State governments. Furthermore, third countries are usually not eager to cooperate on holding irregular migrants in their territory. Therefore, the EU Member States must employ a spectrum of positive and negative incentives to persuade the partner countries to cooperate. The compacts would generally involve:

a) **Border Protection & Asylum Systems in Third Countries.** EU Member States and EU missions must increase direct assistance to third countries in establishing and improving their border protection systems and asylum procedures. This is particularly acute in countries immediately bordering the EU. Advanced border controls should be able to prevent irregular crossings of the respective third country borders and process asylum claims. Moreover, the third countries should not only focus on preventing unauthorised entry of irregular immigrants but should also carry out exit checks in order to apprehend irregular migrants and prepare them for return. Highest possible standards of human rights protection should be a condition of the EU and its Member States’ involvement.

b) **Countering Migrant Smuggling.** Well-coordinated action against criminal smuggling networks is an essential part of cooperation with third countries. This includes measures to create alternative economic models in regions dependent on profits from migrant smuggling.

c) **Deterrence Campaigns.** Many irregular migrants attempt to reach the EU under a false perception of an easier life. Once in the EU territory, they are disappointed with the reality. The EU and its Member States must conduct awareness raising and information campaigns to better inform potential irregular migrants about the reality of migration to Europe, in close collaboration with third countries. The general aim of the campaigns is to provide potential migrants with objective information to help them make the decision to migrate to the EU legally and protect them from false narratives offered by smuggling networks. At the same time, the EU must send a clear message that once someone decides to migrate to the EU illegally, they will be detained and returned. That is also why function “Return Centres” are indispensable part of credible deterrence of illegal immigrants.

d) **Centres for Illegal Migrants.** The third countries will need to be able to distinguish forced migrants eligible for protection and illegal economic migrants subjected for detention and deportation. The EU must cooperate with its partners to build centres for illegal migrants apprehended on their territory, with the EU’s help and financial assistance. The irregular migrants detected would be registered at these centres and then returned to their country of origin or transit. The centres should be built primarily along the main migration routes, for example in Libya. The creation of these centres presumes and supports effective cooperation between African countries themselves and between the EU and its African partners. High priority must be given to ensuring decent standards of human rights protection.

e) **Search and Rescue Operations.** As a priority, the EU and its Member States must ensure that irregular migrants do not embark on unseaworthy boats or any other ships in the Mediterranean Sea in the first place. The border and coast guards of partner third countries should play a role in preventing such a scenario. If that fails, search and rescue operations should be conducted directly by the coast guards of the third countries to save lives as close to the coast as possible, potentially with financial and technical support from the EU and its Member States. The partner countries would also operate Search and Rescue Centres where irregular migrants would be identified and separated into those eligible for protection and those subject to detention and deportation. On 28 June 2018, the European Council ordered the Council and the Commission to swiftly explore the concept of “regional disembarkation platforms”, in close cooperation with relevant third countries as well as the UNHCR and the IOM. Such platforms should operate distinguishing individual situations, in full respect of international law and without creating a pull factor.
As a priority, the EU and its Member States must ensure that irregular migrants do not embark on unseaworthy boats or any other ships in the Mediterranean Sea in the first place.
3. Tertiary Prevention: Returning Illegal Migrants

The third set of measures and polices is designed to address the tertiary problem, which is defined as an increasing number of illegal immigrants inside the EU territory. The inability of the EU Member States to remove the unauthorised residents from its territory leads to various negative consequences, including security risks and radicalisation of the public and political debate.

a) **Readmission Agreements.** As discussed above, the key factor for successful returns of illegal migrants are functional readmission agreements with third countries. In order to negotiate and enforce them, the EU and its Member States must employ skilful and tough return diplomacy using both positive and negative incentives towards third countries.

b) **Return Operations.** The second key factor for successful returns of illegal migrants is the willingness and ability of the EU Member States governments and law enforcement authorities to prepare returnees for the transfer. This may involve detentions and deportations.

c) **Return Centres.** As explained above, a significant number of illegal migrants will not be returned to their country of origin or transit because they claim statelessness or the principle of non-refoulement applies in their case. For these cases, the EU and its Member States must negotiate the establishment of so-called Return Centres as stop-over facilities in third countries for returnees who may not be returned to their country of origin or transit immediately. The availability of these centres would ensure that illegal migrants subjected to return could not remain in EU territory. In turn, the existence of Return Centres would send a strong signal to discourage a large portion of potential irregular immigrants from attempting to come to the EU illegally. High priority must be given to ensuring decent standards of human rights protection in the Return Centres.

4. Complementary Measures

In contrast to the aforementioned areas of prevention, the complementary measures do not have a preventive character and do not address the complementary problems or constrains introduced above. Rather, they are policy actions that complement the restrictive policies against irregular immigration. As such, they involve resettlement programmes for “invited refugees” from refugee camps and centres in third countries, programmes for legal economic migration, and integration programmes for returnees in third countries.
# A Framework for the Development of an Effective and Sustainable Policy on Prevention of Mass Irregular Immigration to Europe

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