

# The External Dimension of the UE Immigration Policy. Relations with the Countries of Origin and Transit

**Gemma Pinyol**

Political Scientist

Coordinator of Migration

Programme

Fundació CIDOB, Barcelona

The dramatic events which took place in Ceuta and Melilla in the autumn of 2005 revealed the need to reflect on the external dimension of the European Union immigration policy. The images of the sub-Saharan immigrants trying to get over the railings of both cities added to the European institutions' concern regarding other frontiers which also undergo a high migratory pressure of an irregular nature, such as Lampedusa, Malta or the Eastern Greek Islands. Given the attention this gave rise to, together with the numerous references in official documents made that year, it would appear that the year 2005 represented the *discovery* by the European Union of the sub-Saharan immigration and its impact on their Mediterranean member countries. On acknowledging the fact that a global approach is required for migration, the European Union confirms the need for a coherent external dimension for its immigration policy and recognizes that both the Mediterranean and Africa have become priority regions within it.

## From Tampere to The Hague

In the conclusions of the Tampere European Council in 1999, the European Union acknowledged the importance of managing the waves of immigrants in a global manner by establishing relations with the countries of origin or transit and jointly carrying out cooperation proj-

ects and activities with them. The Tampere Agenda, which together with the Treaty of Amsterdam can be considered the basis of common immigration policy, was also the pioneer in acknowledging the importance of the external dimension of the aforesaid policy. From the time the period for the implementation of Tampere was finalized, however, there has been a noticeable difference between the objectives aimed at and the results obtained in the last five years. On the one hand, it is clear that there has been a manifest lack of harmony between the Commission's proposal capacity and the decisions taken by the Council, which has left matters unsolved and has obliged the European Parliament, consultative in terms of justice and home affairs (JHA), to try to reduce the effects of many of these decisions. On the other hand, the requirement of unanimity has also been an element of distortion, as it has made it easier for the member states, especially those which are sensitive to home affairs, to obtain a consensus of minimums in the European framework. Further elements which have postponed the development of this common policy have been the process of expansion in 2004 and, on a greater scale, the obstacles which were encountered in a constitutional process which anticipates that the matters on the JHA Agenda will now be the object of a co-decision – a complex proceeding which grants the European Parliament a greater capacity of intervention in the Union's regulation process, and prevents the European Council from confirming a common position which does not rely on the approval of the Parliament – and which extends the use of the qualified majority in this area.

With regard to the external dimension of the immigration policy, this area was clearly disrupted by the unexpected, fateful events of September 11th, which changed the priorities on the European agenda for immigration, focusing in particular on the security aspects. From the five years of the application of Tampere, it is clear that a greater *securitization* has been laid on the immigration agenda – discussed basically in the Home Affairs Councils –, which has pushed other aspects of economic development and social integration into the background. Although The Hague Programme has continued on the lines initiated in Tampere with regard to the priority given to the dimension of security in migratory policies, what is certain is that it has incorporated new elements into its plan of action, like the employment policy – following the Lisbon Agenda – and integration or external policy. On this latter point, The Hague Programme points out that cooperation with the countries of origin or transit of the migratory waves must be intensified, co-development should be tiptoed over and the competence of the European Union should be set out in order to reach re-entry agreements. The events of the final quarter of the year have once again stressed the importance of the external dimension of immigration policy.

## 2005 or the Importance of the External Dimension

In the area of Justice and Home Affairs, relations with third countries are basically linked to technical programmes to seal off their borders, re-entry agreements or clauses which have become an essential requirement in relations

with other countries and one last element, which has undergone and acquired a pre-eminence in recent years, which is the connection between migration and development.

Although the determining of access to official financial aid funds for development arose in Seville in 2002, on the signing of the re-entry agreements, this was neither the Tampere nor The Hague option. On the contrary, both agendas consider this aid to be an instrument to prevent the *forced* migratory waves due to their having reached the limits of human endurance like poverty, the collapse of social systems and political instability among other things. On the same lines, Communication 390 on Migration and Development from September, 2005 acknowledged the deterring nature that the promotion of economic, social and civil rights might have on immigration in the countries of origin and it stresses the potential of the link between migration and development.

In 2005, three documents acquire special relevance with regard to the external dimension of the European immigration policy. All three of them emphasize the importance of the Mediterranean area and they came out shortly after the shocking images of hundreds of people trying to get over the frontier railings in Ceuta and Melilla. Firstly, Communication 491 came out on the relative strategy of the external dimension of the freedom of space, security and justice in October, 2005, in which the Commission, following The Hague Programme, reiterates the importance of the external dimension of JHA matters and the relevance of immigration and asylum in this field. It is, therefore, necessary to improve the capacities of other countries in migratory management, especially with regard to frontiers, irregular immigration and the binomial migration-development.

Moreover, in the conclusions of the informal Council of Home Office Ministers in Hampton Court at the end of October, and the subsequent Communication 621 regarding the monitoring of the priorities therein, the positive aspects of immigration both for the European Union and the countries of origin were underlined, but the importance of fighting against irregular immigration to avoid human tragedy was pointed out. In a

conceptual turn, the idea of greater development to reduce immigration was considered substituting for that of improved management of immigration for better development; signifying, among other things, a guaranteed contribution of migration to development while mitigating brain drain and making expeditions easier, and fighting illegal immigration by controlling frontiers and re-entry agreements. In the Presidency conclusions of the Brussels European Council from December, the growing importance of immigration in the European Union and its member states was emphasized and the need was underlined to find a global approach that would signify, at least, an increase in the dialogue and cooperation with African countries and with all those countries which span the Mediterranean area.

#### **Objective: Africa and the Mediterranean**

Annexed to the aforesaid conclusions, the Council expressed the need, in answer to the events which took place at the end of 2005, for its "Global approach to migration: Priority actions focussing on Africa and the Mediterranean", in which it requests a greater collaboration among the member states with regard to JHA matters. Furthermore, the Council demands that migrations be a priority in the political dialogue between the European Union and the African Union, that information mechanisms be established with regional network links with priority countries and that work be done with the African states in order to promote the role of Diaspora in projects of co-development. The Euro-African ministerial conference on migrations, due to be held initially in June, 2006 in Rabat, should be the first step in this direction.

However, and with regard to the Mediterranean neighbours, they acknowledge the new challenges in the management of the waves of immigration and border controls which they are coming up against as transit countries, and the resulting need to bring existing instruments like the MEDA Programme or the association agreements up to date. Apart from planning a Euro-Mediterranean meeting on migrations, the Council wish-

es to apply the best practice of other models of cooperation like, for example, the Baltic Sea, and to study the participation of other countries in coast patrol networks or in the system of external surveillance. Finally, and along the lines of the regional MEDA JHA I programme, they wish to intensify research to know more about and improve the management of the waves of immigration and migratory routes and, at the same time, contribute to strengthening the regional links between the Mediterranean and sub-Saharan countries.

#### **A Euro-Mediterranean Opportunity**

It is clear that the European Union has to find a way, with regard to the countries of origin and transit, to coordinate the waves of immigration, and that requires an effective policy of common immigration. However, there are several unfinished elements on the work agenda in the aforesaid policy: on the one hand, the procedure of co-decision should be revitalized, and this signifies overcoming the inter-governmental cooperation which has operated until the present time. On the other hand, the external dimension of immigration policy will have to be defined more clearly, specifying the contents of relations with the countries of origin and transit, as well as bringing the instruments necessary to carry this out up to date and making them available. In order to make the immigration policy coherent, its external dimension should be complemented with elements from other areas of common action, such as cooperation, commercial or employment policies, among others.

In a figurative sense, the borders of the European Union are not situated in the Mediterranean anymore and have been moved to the Sahara. To ask the countries on the southern shore of the Mediterranean to cooperate in the co-management of the waves of immigration or, what would appear to be the same thing, to ask them to become the gendarmes of the European borders, cannot just be based on the obvious need for controlling the irregular waves of immigration, but should be accompanied by a package of measures which

## IMMIGRATION POLICY IN SPAIN. IMMIGRATION LAW

The government's immigration policy that emerged from the legislative elections on March 14th, 2004 has put emphasis on the employment issue, in contrast to the previous phase of the policy which focused on domestic issues. The change in policy orientation came about when the development of governmental policy on the issues of immigration, emigration and asylum was allocated to the Ministry of Labour and Social Affairs, and a State Department for Immigration and Emigration was created within its remit. The responsibilities of the Ministry with respect to immigration matters accordingly remain confined to the field of police intervention, in addition to responsibilities for asylum, refugee status, rules regarding stateless persons and services for refugees. Royal Decree 2393/2004 of 30 December that developed the Constitutional Law 4/2000 of 11 January (amended on a number of occasions), is a clear example of this vocation to link immigration to the labour market, subject to the consideration of other non-employment situations that would be duly authorised for implementation and regulation on Spanish territory, primarily family reunification procedures. The text of the regulations highlights the eminently economic nature of migratory flows, binds the normal administrative situation of the immigrant to the requirement to possess a residence permit, as well as a work permit in the majority of cases governed by the aforementioned regulations. Completely in tune with the most recent Community legislation on the subject, it emphasises the employment situation of the foreigner as the key element in his integration, since a regular employment relationship provides access to an acceptable and stable level of social acceptance, and is ultimately

the fact that determines his social participation. As set forth in the introduction to the Royal Decree, acceptance of new immigrants in Spain is primarily based on the necessity to fill job vacancies and therefore, as a general rule, "Immigrants who wish to take up employment will have to obtain a visa in their homeland which will permit them to work or to seek work."

The Regulations paved the way for normalisation or regularisation of a large number of foreigners who found themselves engaged in casual labour in Spain. At the end of this procedure, the quantitative balance should merit a positive evaluation based on the data expounded below. A total of 691,655 applications were submitted, 688,419 of which had been dealt with by 30 December 2005. The number of positive authorisations totalled 573,270, i.e. 83.3%, and negative authorisations were 115,149, i.e. 16.6%.

The number of foreigners granted an authorisation and subsequently insured under the general Social Security scheme was 550,136. The Madrid Region has the highest number of members, 130,741, followed by Catalonia with 111,062, the Valencian Region with 81,904 and the Andalusian Region with 67,803. In terms of nationalities, the Ecuadorians have the highest rate of membership with 122,636, followed by the Romanians with 95,993, the Moroccans with 64,697 and the Colombians with 48,355.

The normalisation procedure has enabled the legitimisation of the employment of 242,586 female workers (44.10%) and that of 307,491 (55.89%) male workers. The majority of this working population is aged between 25 and 39 (60.51%), with older workers comprising 21.44%, and younger workers 18.05%.

Finally, it is very important to emphasise that the normalisation procedure has enabled the legitimisation of a large number of people who are engaged in casual work in the domestic, agricultural and construction sectors. The Social Security scheme for domestic workers has accordingly enrolled 33.42% new members, the scheme for agricultural workers 14.16%, and the construction sector (the general scheme) comprises 21.19% of the total.

The new rules and the finalised normalisation procedure should provide a considerable number of foreign citizens with an entitlement to the assistance and benefits offered by the public employment services. The regulations for the general scheme should, moreover, apply in such a manner that they enable the recruitment of people who find themselves in and reside in Spain, as well as the flexible and smooth management of the annual contingent where necessary; it should also enable them to rely on significant participation by the autonomous regions that have been given the remit of managing active labour policies. It is very important to highlight the role that the new regulations confer on the autonomous regions in managing immigration policies; autonomous participation in establishing the contingent and the list of occupations for which it is difficult to recruit, as well as their participation in verifying a shortage of indigenous job applicants as a prerequisite for an employer to be able to recruit a foreign worker that is not resident in Spain.

Eduardo Rojo Torrecilla  
Head of the Immigration, Rights and  
Citizenship Department.  
Universitat de Girona.

acknowledge the contribution of immigration to development both in the Mediterranean countries of origin and the destination countries. At the same time, one must work on this so that these instruments and actions are spread to the sub-Saharan countries, which have become a challenge for the foreign action of the European immigrant policy. In this sense, it may be particularly suggestive to strengthen the Euro-Mediterranean dialogue and incorporate immigration matters into the *new* European Union's neighbourhood policy.

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