CROSSING BORDERS AFTER STOCKHOLM[1]

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The recent announcement by the Greek government to build a wall on its border with Turkey to stop irregular migrants entering the EU might be a sign of a serious need to review EU border and migration policies. Walls and fences will not stop migrants of looking out for a better life. The installation by Spain of the SIVE, a surveillance system that enables to detect vessels, in the Gibraltar straight a few years ago drove migrants to look out for more dangerous routes starting further south in Western Africa. While Greece has certainly become the new gate to Europe, notably via Turkey with about 90% of all detections of illegal border crossings to the EU, according to Frontex. Deploying a rapid border team to Greece with Frontex was one solution, but building a wall certainly not.

This anecdote shows the extent to which it is difficult to find a balance between border management and human mobility while respecting EU member states concerns over who enters their territory. Enforcing the principle of solidarity amongst the member states which face very different situations when it comes to borders and migration is not an easy task. Member states like Italy, Malta or Spain having long maritime coasts to patrol whereas other countries like the Netherlands or Luxembourg deal mostly with immigration through their airports. In addition, because the EU is one single mobility space where internal borders have been lifted, the challenge is to ensure the best standards of protection for asylum-seekers and refugees throughout Europe.

Those difficulties are emblematic of the incremental construction of an Area of Freedom, Security and Justice (AFSJ). Underpinned by the principle of freedom of movement, the realization of an AFSJ has led to schizophrenic policies. The completion of the internal market propelled the lifting up of internal borders with Schengen, enabled EU citizens to travel freely, to work more easily in other EU member states, and led for instance to successful initiatives like the Erasmus programme for students willing to study in other EU member states.

But the intra-mobility of Europeans is actually not a reality yet. Important obstacles still exist like the difficult recognition of professional qualifications or the existence of twenty-seven different social security systems.[2] Also, in the aftermath of the 2004 and 2007 enlargements Eastern Europeans were imposed transitory periods to come and work in old member states. Today, there is still an intense debate on whether Bulgaria and Romania will join the Schengen area any soon. The intricacies of

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[1] An in-depth analysis of EU border and migration policies can be found in S. Wolff 'EU border Policies beyond Lisbon' in: R. Zapata (ed.) Shaping the normative contours of the European Union: a Migration-Border framework, Barcelona, CIDOB, September 2010, pp. 23-36
[2] Alain Lamassoure (2008). The citizen and the application of community law. Report to the President of the Republic. 8 June 2008. Available at http://www.alainlamassoure.eu/liens/975.pdf

finding a job, settling and travelling within the EU can therefore easily become a complex bureaucratic maze for third country nationals.

This brings us to the new initiatives taken in the field of border and migration policies in the Stockholm Programme. Endorsed a day after the Lisbon Treaty, this policy programme needs to be implemented through a decision-making process that gives a prominent role to the European Parliament as a co-legislator with the Council and to the European Court of Justice. Border and migration policies being so sensitively linked to the sovereignty of each EU member states, the latter retain the possibility to determine the volumes of admission of third country nationals coming to seek work on their territory. Also measures like passports, identity cards and residence permits continue to be decided by member states unanimously after a mere consultation of the European Parliament.[3] The UK and Ireland also continue to have an opt-out on some JHA issues including asylum, migration and border management. This means that different immigration standards could continue to apply in the EU.

It is in this context that the Stockholm programme brings an explicit law enforcement dimension to border management. The recently agreed EU internal security strategy[4] details further the next steps to be taken. For that purposes databases such as SIS II (Schengen Information System) that stores data on i.e. stolen vehicles or wanted individuals or VIS (Visa Information System) registering who enters and exit the EU territory need to be upgraded. Eurosur, a system that should be set up this year, is another system linking EU member states surveillance satellite imagery to help detecting suspicious trafficking at EU's maritime borders.

Another issue currently intensively debated in the European Parliament and in the Council is the possibility for Frontex to process the information that it gathers when intercepting vessels where traffickers are also on board. At present, Frontex does not have the mandate. This would open the possibility to Frontex to manage personal data for law enforcement purposes. An issue that would not only duplicate the work of Europol but would also need to be accompanied by the necessary data protection safety measures.[5]

Proposals to strengthen the human rights curricula of EU border guards as well as ways to turn the principle of *non-refoulement* into a reality have been tabled. The possibility of cooperation between Frontex and the European Asylum Support Office that became operational in Malta should help improving the coordination of the reception of migrants in the EU.

To conclude, the Stockholm programme addresses some of the weaknesses of EU border policies, notably on fundamental rights. It seems however that this 'human control' dimension is not balanced well enough by progresses in terms of human mobility. Facilitating labour migration and rethinking integration policies are necessary for the sustainability of European societies and economies in the coming

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[3] Article 77§3 TFEU

[4] Council of the EU (2010). Draft Internal Security Strategy for the European Union: 'Towards a European Security Model'. Brussels 23 February 2010, 5842/2/10.

[5] Proposal for a Regulation of the European Parliament and the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) COM/2010/0061 final - COD 2010/0039.

decades. A psychological barrier on how to communicate the benefits of other EU or non-EU migration in Europe needs to be overcome. Stockholm is therefore only a small step in the right direction.