



**Global Migration Policy Associates**

*An International research, policy development,  
advisory services and advocacy group*

## **A CONTRIBUTION TO EVALUATING THE STOCKHOLM PROGRAMME REGARDING MIGRATION**

This contribution offers four key elements essential to conducting a full and valid assessment of the migration dimensions of the Stockholm Programme. It is intended as impetus to a serious further evaluation of the Stockholm Programme components on migration. It was initially prepared for The Hague Migration Conference on 9-10 December 2013, organized by the Netherlands Ministry of Security and Justice.

First is to suggest a reference point for evaluation by clarifying purposes and proposing specific criteria for evaluation. The second is to outline the contextual situation that the Programme presumed to address and that should be a fundamental basis for assessing the Programme content, scope and results.

Thirdly, it incorporates several contemporary contributions reviewing migration elements of the Stockholm programme, produced by European Institutions and other stakeholders. It concludes with an identification of the issue lines meriting consideration in defining a sequel programme supporting governance of migration in the European Union.

### **I. EVALUATION**

Evaluating implementation of the Stockholm Programme carries four fundamental purposes. Firstly to determine what the programme accomplished in terms of outputs, outcomes, and impact. Second, to review whether what it intended was what was needed. Thirdly, to learn lessons on how to do it better over the next period. And fourthly, to identify what next learning from the experience of this period and anticipating the situation over the next years.

A useful evaluation would normally seek to judge the programme on both its purpose –its content--and its performance. It is helpful to identify several key criteria for evaluation in order to structure the assessment, identify indicators and measurements, and produce valid conclusions.

This consultation is not expected to come up with a definitive evaluation. However, it can draw out important contributions to a comprehensive assessment. To guide commentary and discussion, it may be useful to keep in mind several standard criteria used in assessing programmes, projects, actions etc. These include:

Relevancy: are the programme components and activities relevant to key issues and needs? To what extent is the activity explicitly built on the evidence base?

Appropriateness: do the programme activities reflect proven approaches or those demonstrably likely to obtain expected results?

Comprehensiveness: how widely, comprehensively does it address defined and relevant needs?

Accomplishment: what was produced, accomplished, done by the programme: the *outputs*, in quantitative and qualitative terms?

Effect: what *outcomes* were achieved: law, policy, practice at national and EU levels?

Effectiveness: to what extent did it achieve planned *outputs*? To what extent did outputs contribute to expected outcomes?

Efficiency: to what extent did resources invested obtain results?

**Core questions:**

Taking these criteria into account, several key questions can help focus a review of the situation and analysis of data. The following may be helpful:

1. What conditions, factors, issues and needs does EU migration and asylum policy need to address?
2. What range of issues needs to be addressed, and with what spread of actions?
3. What actors need to be involved in design, implementation and evaluation?
4. What appropriate and effective measures address the evidence-based needs and issues?
5. What *outputs* were scheduled and what were actually delivered?
6. What indicators and measures demonstrate the *outcomes*?
7. How and to what extent were outcomes achieved: Among these we may presume: a) policy elaborated and implemented; b) laws/legislation adopted; c) administrative and practical measures operationalized?
8. What was the impact on the EU, on member countries, on the public?
9. What resources were allocated and expended for which component activities?
10. How long did it take to produce respective *outputs*?

**Precedent evaluative efforts**

The mid-term review of the Stockholm Programme in 2012 brought forth observations and conclusions from a number of actor institutions. The reviews and commentary reflected a variety of approaches and depths, but not overall convergences.

A number of documents were produced by the European Council, the Commission, the European Parliament, policy centers notably CEPS and the EPC, and civil society NGOs such as Amnesty International. However, most of these either focused on specific aspects of the existing programme, or they reflected political assessments and conclusions more than a thorough, objective evaluation.

However, these published reviews tended to focus on reporting outputs and, to some extent, outcomes, without qualitative evaluation of relevance, effectiveness or impact.

Only one document reviewed emphasized need to consider the contextual situation for this EU policy framework addressing migration.

The EPC (European Policy Center) Information Paper "*The Stockholm programme: what's next? a contribution to the informal meeting of Justice and Home Affairs Ministers at Vilnius, July 2013*" highlighted need to address a "A changing EU in a changing world." It noted that:

Several elements have or will have an effect on the guidelines:

- Economic dimension: while the EU is facing a tough economic crisis it is competing with new players at the global level, i.e. emerging economies. This situation has an impact on movement of people – migrant workers as well as EU citizens – and will have an effect on inflows and outflows.
- Demographic dimension: the demographic decline of the EU's population, which is accompanied by an ageing society, is a key concern. It will have an impact on member states' social welfare – in particular pension systems – and skill/labour shortages. These elements will affect movement of persons to, within and outside the EU. This will make the task of making the EU attractive in a globalised world even more challenging.
- Structural limits: the economic crisis has put national budgets under severe strain. Hence, member states will have to square the circle, i.e. be able to create jobs and growth and at the same time respond to budgetary constraints. This may affect, in a positive or restrictive manner, further developments in the field of freedom, security and justice (development of IT systems, legal aid, solidarity mechanisms,...). (page 4)

The Information paper further emphasized the **Economic situation as a key driver:**

In any case, views exchanged within the different workshops made clear that the economic situation will have a crucial impact on the content of the guidelines. The perspective of economic recovery or otherwise, as well as the focus on growth, will definitely frame the content of the guidelines and therefore their level of ambition for the forthcoming years. (page 4)

The EPC paper also raised an important concern **re participation:**

The June 2013 European Council conclusions remain silent regarding the involvement of other institutions, in particular the European Parliament, and relevant stakeholders, such as NGOs or civil society organisations. The way in which these players should be/are involved in the process will have a strong political impact, in particular in terms of democratic legitimacy and acceptance. (page 4)

While the EPC Vilnius paper looked towards eventual post Stockholm guidelines, its admonishments on taking into account the context and important stakeholders are equally valid for evaluation of the Stockholm programme.

## II. THE CONTEXT:

### *Certain Key Issues, Situations and Responses*

Anchoring an assessment of the Stockholm Programme will usefully and only be accomplished by reviewing the contextual characteristics and importance of international migration; these are the factors that drive and shape governance responses.

Following are a number of considerations; this initial inventory is, however, neither comprehensive nor complete. However, there are other important factors to take account of, not necessarily noted below, such as socio-political considerations, decision making, democratic participation, and human rights considerations across the EU and in member states.

#### **Outline:**

2. Migration is here to stay; 90% of migration today has labour/employment related outcomes.
3. Impact of migration
4. Demand for international labour and skills mobility is structural, systemic and expanding
5. Europe stands to loose in growing competition for talent and labour
6. Absence of decent work, political-military conflicts, environmental degradation 'push factors'
7. Structural and systemic factors reproduce exploitation and discrimination of migrants
8. Gender specificity of migration risks for women

9. Rise in xenophobia and violence towards migrants
10. The global framework for governance of migration.
11. Changing governance structure
12. Governance Issues requiring policy responses

## 1. *Migration today*

There are an estimated 232 million people residing today in countries other than where they were born or are citizens.<sup>1</sup> ILO calculated that 105 million of the 214 million people living outside their countries of birth or citizenship in 2010 are economically active.<sup>2</sup> That is to say: employed, self-employed or otherwise engaged in remunerative activity. That represents nearly all of those of working age. Given an estimate of one accompanying dependent for each active adult, well over 90 per cent of migration today is bound up in labour and employment outcomes.<sup>3</sup> This proportion applies to Europe as elsewhere.

These figures do not register the millions more people around the world, including in Europe, in short-term, temporary situations where they are not counted as residents.

Foreign-born workers now comprise 10% to 15% of labour forces in Western European countries, and growing proportions in Central and Eastern Europe.<sup>4</sup> Taking account of offspring of recent immigrants gives 20% or more of work forces “issue de l’immigration” in several EU member countries. It also represents growing portions in many countries elsewhere in Africa, the Americas, Asia, the Caribbean, and Eurasia, and 50% to over 90% of work forces in several member States of the Gulf Coordination Council (GCC).

Migration has become crucial to sustaining and maintaining *Development* across the industrialized north.

Elaborating and sustaining the means and processes of production, of distribution, of services, of building and maintaining infrastructure and providing for welfare of populations all require labour force and skills. These are also required to continue expanding technology, knowledge, and capital itself as factors of development.

Evolution and diversification of technology along with transformations of industrial processes and changes in the organization and location of work itself are constant characteristics of the world of work today. This constant evolution requires accelerating complexity, diversity and specialization in the competencies and skills of work forces in every EU member country.

No country today can form or train the entire range and number of evolving skills needed to perform the ever more complex work done on its territory. This drives a constantly increasing, international mobility of skills, competences and labour at all skill levels.

## 2. *Impact*

For Europe today, migration serves as an instrument to adjust the skills, age and sectoral composition of national and regional labour markets. Migration provides responses to fast-changing needs for skills and personnel resulting from technological advances, changes in market conditions and industrial transformations. In a region of ageing populations and declining work forces, migration is replenishing labour markets and injecting younger workers, in turn contributing to increased dynamism, innovation and domestic mobility in those work forces.

Despite considerable rhetoric to the contrary, actual data generally show net positive contributions of migrants/immigrants to economic growth, national skills profiles, employment/jobs creation, net fiscal outcomes, and social security systems as well as demographic stability.<sup>5</sup>

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<sup>1</sup> UN Department of Economic and Social Affairs 2013 *Estimate* issued 1 October 2013

<sup>2</sup> ILO, *International Labour Migration: a Rights Based Approach*, International Labour Office, Geneva, 2010, page 1.

<sup>3</sup> *ibid*

<sup>4</sup> Recent figures for most EU countries and “immigration countries” mentioned are found in the OECD *International Migration Outlook: SOPEMI 2011 Statistical Annex*

<sup>5</sup> An overview of such data is contained in: *International Labour Migration: a Rights Based Approach*, International Labour Office, Geneva, 2010

Data on impacts on wages and working conditions is mixed; generally, impacts correlate with the extent of application or not of regulatory regimes and conditions applying to the domestic work force.

Irregular migration is of relatively modest proportions in Europe and overall figures slightly declined between mid-2000's and 2010 according to best available data. The large majority of persons who end up in situations of unauthorized/irregular immigration status and/or employment in Europe entered in regular status.

### **3. Increasing mobility**

Within 15 years, the majority of world's countries and populations will be in serious work force decline.<sup>6</sup> Germany loses 5 million members of work force in next ten years, the Russian Federation has lost 10 million since 2000, and rate is now some 1 million workers less per year in its domestic labour force. The Japanese labour force will shrink 37% over the next 25 years. A recent study indicates that Switzerland will need 400,000 additional workers by 2030. China's work force will decline by at least 126 million people in 20 years.

Some 127 of 224 recognized countries and political territories are at or well below zero population growth fertility rates<sup>7</sup>. Examples from regions: Africa: Libya, Mauritius, Morocco, Seychelles, Tunisia. Asia: Bhutan, Brunei, Hong Kong, Indonesia, both South and North Korea, Mongolia, Singapore, Sri Lanka, Taiwan, Thailand, Vietnam. Americas: Brazil, Canada, Chile, Colombia, Costa Rica, El Salvador, Nicaragua, Paraguay, Uruguay, USA, plus nearly all Caribbean states. Argentina, Mexico, Peru are 'almost there' with 2.25 in 2013. Eurasia: Armenia, Azerbaijan, Belarus, Georgia, Moldova, Russian Federation, Ukraine, Uzbekistan. Europe: all EU member countries, also Albania, Bosnia-Herzegovina, Serbia. Middle East: Bahrain, Iran, Lebanon, Qatar.

If not already today, over the next 15 years all of these countries face increasing departures from the work force ever less compensated for by entrants.

In conceptual terms, mobility of capital, goods, services and technology requires mobility of labour; first and foremost to ensure that skills and labour are available where capital is invested or where it is moving to. In a world of globalized free trade and mobile capital, if labour and skills are not available or are in restricted supply, capital tends to move elsewhere to where those factors can be more readily obtained.

### **4 Needs and competition for skills and labour**

The above factors indicate increasingly intensified global competition for what may be the most crucial economic resource of all today, skills at all levels as well as labour power. A forecasting study by the McKenzie Global Institute estimated that the global shortage of high skilled with tertiary education in developed countries will reach 40 million by 2020. Another 45 million persons with needed technical and vocational skills will likely be lacking in developing countries. This shortage is projected to reach 85 million skilled persons in just in seven years, when employers in Europe and around the world today complain that they cannot fill one in three jobs on offer with the needed level of skills.

At the same time, national educational systems are not training the scientific, vocational and technical skills needed today or anticipated in the near term future. The globalized mismatch between what skills are trained versus what are needed undermines viability and competitiveness of enterprises and economies worldwide. It also leaves many youth unable to find employment either at home or abroad.

Paradoxically, migrants with acquired skills and training commonly face non-recognition of training credentials and experience in countries of employment. The result is 'deskilling' where they obtain jobs

<sup>6</sup> For a corporate view on the phenomena, see Ernst & Young online report: "Six global trends shaping the business world: Demographic shifts transform the global workforce" at <http://www.ey.com/GL/en/Issues/Business-environment/Six-global-trends-shaping-the-business-world---Demographic-shifts-transform-the-global-workforce>

<sup>7</sup> This and following figures drawn from the on-line *CIA World Factbook, Country Comparison: Total Fertility Rate(s)* at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2127rank.html>. 2.1 to 2.2 children per woman is considered the 'replacement rate' of zero population growth, below which population will decline.

at far below their level of qualifications. Not infrequently, this relegates them to precarious and poorly paid work. This represents an appalling 'brain waste' at a time in which skilled workers are lacking.

The European Commission has noted that to retain current social security dependency rates, the EU would need to count on some 60 million immigrants from now until 2050. However, calculating replacement population is not necessarily the viable approach. Nonetheless evolving work force and skills characteristics make evident that Europe will need to rely on above current immigration levels to meet labour and skills needs. Projected needs will not be fully addressed by any likely combination of alternatives including raised retirement age, increased female workforce participation, increasing productivity, and economic growth.

Obtaining skills and labour will be key to survival of viable European economies over the coming decades. However, the absence of third country migration admissions regimes based on clear, objective labour market measuring and facilitating job-seeker-employer contact –key for SMEs who generally cannot recruit abroad, and will not employ unseen applicants-- poses two major constraints for business in Europe. It results in employers simply not obtaining the labour and skills they need that is not available locally. And it obliges or provides incentives to attract migrants in irregular situations.

## **5. Evolving 'push' factors compelling displacement**

Pressures for labour displacement and emigration from countries North and South remain strong; in some situations they have significantly intensified in the last five years. A main factor remains the absence of jobs and decent work in so called 'developing' countries with growing youth populations. Job creation has remained consistently flat while youthful populations continue growing significantly, adding millions of new workers each year to labour markets in which new jobs generally only match jobs lost.

Financial crises and austerity measures that devastated national economies as well as social protection in several European countries have produced youth unemployment rates ranging from 30-50% and widely reported new waves of emigration of young skilled workers from Greece, Ireland, Italy, Portugal and Spain.

Impoverishment of populations, political-military conflicts and environmental degradation are factors that portend increased internal and cross border displacement.

The pressures of absence of work, economic desperation and in some cases violent conflict and civil warfare 'at home' continue driving highly visible irregular movements, particularly the dramatic 'boat people' crossing the Mediterranean.

There are emerging predictions that tens of millions of people may be displaced in the coming decades by consequences of climate change (rising sea levels, devastating storms, desertification, etc). There is however no established framework providing for legal or social protection for persons displaced across borders by environmental or climate change impact. At present, no coherent international process has been undertaken to determine rights protections applying, appropriate policy responses, or how to accommodate displaced populations unable to return to unlivable homelands.

Meanwhile, the global refugee protection and assistance regime has been and remains under pressure, manifested in States' led efforts narrow the scope of refugee protection, to undermine application of refugee and asylum determination standards and to reduce support for refugee assistance.

## **6. Structurally defined exploitation and abuse of migrants**

When people do move as they must, they are often subject to abuse, exploitation and draconian repressive measures. Those who suffer most are the many persons simply obeying –often with little choice—the laws of supply and demand of the globalized capitalist market economy. In this situation, the basic dignity and rights of migrants as workers and human beings are undermined, especially those in irregular situations.

Exploitative conditions for migrants are structurally driven. This is particularly the case for women. For many enterprises in many countries, for entire economic sectors, low cost foreign labour is the only factor supporting competitive survival. Literally. Agriculture would not be viable in Europe nor in North America --nor would a part of the population afford to eat-- without cheap immigrant labour. Health,

home care and schooling for children and care for increasing populations of ageing people depend on migrants. As do hotel, restaurant and tourist sectors in many countries. Global competition, free trade, and the race to the bottom phenomena push against costs of labour and provision of social services.

Providing for cheap, docile, flexible labour becomes not desirable but imperative to keep certain jobs 'at home' and economies afloat. Despite rhetoric about controlling migration, migrant workers remain in irregular situations, tolerated because they provide that cheap, docile, flexible labour needed to sustain enterprises, employment and competitiveness.

An excerpt from the executive summary of a report on the UK sums up features consistent with data from other EU countries.<sup>8</sup>

“Migrants, especially those from outside the EU15 who have limited access to social security provisions, face the paradoxical position of being welcomed by businesses and the state due to their high flexibility and minimal utilisation of the welfare state on the one hand, whilst facing increasing unease and hostility from anti-immigrant groups, the same state that welcomes them, and large numbers of the general public on the other.

The highly unregulated and flexible economy has allowed many migrants to easily find work and businesses to remain competitive whilst simultaneously creating the conditions for widespread exploitation and producing divisions amongst workers, both between (native) born/migrant and between different groupings of labour migrants.

Exploitation is linked to a hierarchy of vulnerability with the rights and entitlements guaranteed or not by a migrant's legal status, the legal provisions between the UK and a migrant's 'home' country, unionisation, racism, contract type and flexibility all affecting this vulnerability hierarchy.”

## **7. Gender Specificity**

Half of all migrants today are women and girls. In some countries in Europe, women predominate with up to 55%. The feminization of migration is, however, less about the gender proportions of migration; female participation has been above 45% for decades. The difference today is that most women migrants are economically active. They often migrate on their own rather than as dependants.

In a context of stratification of employment and segmentation of labour markets, women migrants are sought after and recruited for 'women's work' that, not coincidentally, is usually low paid and unprotected: domestic work, healthcare, agriculture, hotel and restaurant, semi-skilled manufacturing in export processing zones.

Women and girl migrants face high risks of sexual and gender based exploitation as well as violence, both in the migration process and in destination countries. Adoption of ILO Convention 189 on Decent Work for Domestic Workers has brought attention to a sector of activity almost entirely comprised of women workers. Attention to the risks faced by migrant domestic women workers should be made a springboard to highlight the generalized lack of effective protection faced by women migrant workers in agriculture, in textile sweatshops and elsewhere. Testimony abounds of women working in these sectors subject to exploitative working conditions, sexual harassment, unprotected exposure to dangerous pesticides or chemicals and other risks.

## **8. The challenge of xenophobia**

A burning concern is the recognized generalized rise in both discriminatory practices and of racist, xenophobic behaviour against migrants. Hostility towards migrants is widely manifested. Not only are manifestations generalized across Europe and elsewhere, numerous reported incidents suggest increasing intensity: shootings of groups of migrants, commonplace attacks on and killings of migrants, and in some cases police round-ups and mass detention.

The concern is aggravated by the absence, with few exceptions, of vigorous responses by governments to anticipate, discourage, and prevent manifestations of racist and xenophobic hostility against foreigners, and to prosecute perpetrators. It is further aggravated by discourse and action that

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<sup>8</sup> Ian M. Cook, *Hierarchies of Vulnerability: Country report United Kingdom; Labour migration and the systems of social protection*, Multikulturni Centrum Praha, Czech Republic, 2011, page 4

engage in public brutality and violent repression against migrants.

Social cohesion can only be maintained by deliberate legal, institutional and practical measures. Demonstrable proof is that in a few countries –such as Ireland-- there have been almost no racist killings of migrants nor burnings of businesses, homes or places of worship of foreigners. Anti-immigrant politicians and political parties have gained no traction and no prominence. Discrimination against foreigners may be manifested. But is expressly made unacceptable.

More generally, the rise in anti-immigrant and anti-migration discourse as a staple of political party mobilizing, electoral campaigning and yellow journalism across Europe directly threatens social cohesion and social peace in a region characterized by increasingly multi-ethnic societies. It clearly undermines rational, evidence based policy making to the extent that Europe is losing advantages and competitiveness in obtaining needed skills and labour-- and thus means to sustain its productivity and economic viability in future years.

## **9. The governance framework**

The elaboration of national and international systems of government over the last century recognized that the economic processes of capitalist industrialization required normative regulation to provide protection and decent conditions for persons engaged in work. Regulation was also essential to promote employment, to ensure social protection, and to invoke social dialogue to resolve contentions between the main economic actors: employers and workers.

International concern for protection of workers outside their own countries was explicitly established in the Treaty of Versailles of 1919. The first international conference on migration took place in 1923, in Bologna, Italy, convened by the Italian government under ILO auspices to press the destination countries of the day to reduce the terrible abuse of migrants. The first international treaties with provisions on legal and social protection for migrant workers were drawn up in the 1930s. Subsequently, a range of instruments in five areas of international law<sup>9</sup> established a comprehensive framework of legal norms for governance.

Three complementary, sequential instruments contain specific norms for governance migration including on international cooperation as well as recognizing and protecting the rights of migrant workers and their families: ILO Convention 97 on Migration for Employment (of 1949), ILO Convention 143 on migrant workers (Supplementary Provisions) (of 1975), and the 1990 International Convention on the Protection of All Migrant Workers and Members of Their Families (ICRMW).<sup>10</sup> 87 countries have ratified at least one of these three instruments, including 11 EU member States.

## **10. Governance shift; redefining a new regime for labour?**

The governance structure for migration –and the ideology as well as practice of governance of migration-- is changing in both old and new immigration countries. The locus of migration governance in immigration or migrant receiving States over previous decades was generally in labour and employment-concerned ministries. This designation reflected the primacy of needs to regulate labour markets and protect workers as well as oversee employment relations and social dialogue. Those ministries retained the vitally important competences not only in labour market administration, but also in supporting and mediating as needed dialogue and negotiation between social partners, the employers and the unions representing the collective voice of workers—including migrants. This reflected the reality that then and now, regardless of migrant motivations --whether seeking employment, refugee flight, family reunion, environmental displacement, or pursuing studies-- some 90% of migrants end up economically active or directly dependent on those who are.

Security and control institutions of States increasingly predominate in managing and controlling migration. This appears to be coincident with a broad redefinition of conditions for labour. Considerable data highlights coincidences between expansion of precarious work, declining job stability

<sup>9</sup> These are: the nine main Human Rights Conventions; 2) all up-to-date International Labour Standards; 3) the widely ratified 1951 Convention and 1967 Protocol on the Status of Refugees, 4) the Vienna Convention on Consular Relations; and 5) the two Protocols on trafficking in persons and smuggling of migrants to the Convention against transnational organized crime.

<sup>10</sup> Texts and related information available respectively at [www.ilo.org/ilolex](http://www.ilo.org/ilolex) and [www.unhchr.ch](http://www.unhchr.ch)



and employment security, expansion of informal work and reported worsening of working conditions alongside conditions facing migrant workers that oblige them to accept sub-standard work. The treatment imposed on a substantial migrant component of work forces can and does influence treatment of the work force more broadly.

Administration of the increasing foreign component of European work forces by interior or home affairs ministries has significant consequences in shifting emphasis of law enforcement affecting workplaces from labour standards inspection to immigration enforcement and in imposing policing solutions to labour conflicts at the expense of social dialogue.

## **11. Governance issues**

A number of important policy issues merit responses in a coherent and comprehensive European approach to migration. Some of these are simply not addressed in the Stockholm Programme which covered areas security, justice and home affairs. The paradox remains that migration is neither addressed elsewhere at EU level nor are the relevant competences of other Directorates engaged in the migration and asylum components of the Stockholm agenda. Thus the Stockholm Programme defined to a large extent a common European agenda on migration while not being able to achieve a comprehensive approach.

The absence of either comprehensive or competent attention to some key areas of migration policy raises two important questions in reviewing the Stockholm programme and identifying the sequel agenda. Are major challenges requiring a coherent European approach to migration left unaddressed? Do some elements of the Stockholm agenda produce contradictory or counterproductive results for other policy areas?

Several challenges highlighted in the preceding contextual review and other inputs merit responses. How these were or were not addressed by the Stockholm Programme or other EU initiatives, and how these should be addressed in future EU policy-making are important questions for review of Programme implementation.

The following inventory lists issues highlighted in academic research, policy assessments, public domain news and information, and expert analysis by national, European and international institutions. This list does not pretend to be complete or definitive. Some of the issues are explicitly or implicitly addressed by the Stockholm programme, many are not.

### **I. Migration and Economic Needs: skills and labour**

#### **1. Absence of assessment of migration role in economy and lack of economic and labour market data on skills and labour needs**

- 1 Lack of data on role and contributions of migrants/migration to economic viability, productivity, competitiveness
- 2 Absence of forecasting of trends in skills and labour needs
- 3 Lack of interface of evolving labour market needs assessment with skills formation and sourcing
- 4 Inadequate linkages between national and European skills training and likely needs for 'outsourcing'

#### **2. Growing deficits of skills and labour**

- Severe shortages of high-skilled workers forecast for Europe
- Inadequate capacity and curricula in training institutions
- Limitations to retraining of retrenched workers
- Need to retool vocational education and training to meet future needs in quality and quantity

#### **3. Non-recognition of qualifications; deskilling, "brain waste"**

- Skills and qualifications of immigrants not recognized
- Waste of talent, educational resources
- Lost opportunities to meet employer and labour market needs

## II. Labour Mobility

### **4. Absence of a comprehensive EU policy framework for labour immigration addressing all skills levels and needs.**

- 5 Absence of harmonized EU approaches and policy frameworks on other than high skilled migration
- 6 Unaddressed need for national labour (im)migration regimes to measure and meet labour needs
- 7 Obtaining recognition of education, qualifications and work experience obtained elsewhere.
- 8 **Need to incorporate social partners and civil society in policy formulation and implementation.**

### **5. Impeded Circulation of people/labour in Regional Economic Communities**

- Lack of implementation deriving from lack of support for operationalising free circulation regimes
- Efforts sorely needed to build political will in concerned States
- Inadequate assessment and sharing of lessons and benefits achieved by EU mobility model

### **6. Unregulated inter-regional mobility**

Inadequacy or absence of regular channels for extra-European immigration

Irregular migration

Lacuna in mobility partnerships

### **7. Development cooperation**

- Absence of coherency between development cooperation and migration control initiatives
- Emphasis on border control impeding circulation within regional economic community spaces
- Diplomatic relations difficulties

## III. Protection and Treatment

### **8. Non-protection, non-recognition, inequality of treatment of migrants**

- Non-recognition of some migrants; inadequate recognition of basic migrants rights under national law; inadequate transposition of international and European standards.
- Regimes explicitly applying reduced rights (such as for migrants under temporary regimes)
- Lacuna in effective supervision of relevant law where applicable in nation-states.
- Inadequacy of existence/access to redress mechanisms for migrants/non-citizens
- Absence of coherent response & protection for environmental- or climate change-displaced persons
- Diminished respect for and implementation of Refugee protection and access to asylum

### **9. Prevalence of sub-standard, abusive employment relations and conditions of work**

- 9 High rates of discrimination excluding immigrants and second generation from formal employment
- 10 Concentration of migrant workers in 3-D jobs and/or informal work without protection
- 11 Absence of labour inspection, or labour inspection function *neutralized* by immigration enforcement
- 12 Deregulation diminishing or withdrawing OSH, working conditions and employment relations standards in general, and to migrants in particular.

### **10. Increasing xenophobic hostility and violence against migrants**

- Direct violence, attacks and killings of migrants reported across the EU
- Incidences at or around workplaces of violence including shootings of migrant workers
- Manifestations of violent treatment in police operation round-ups and detention

### **11. Discrimination and exploitation of migrant women**

- Tracked into and concentrated in low paid, low- or unprotected workplaces
- High risk of gender-based sexual harassment, abuse

- Commonly subjected to precarious immigration conditions and status
- Absence of policy and practice extending protection, decent work and equality of treatment
- Subject to trafficking, and forced labour outcomes, in particular in compelled sex work.

#### **IV. Social Protection**

##### **12. Inattention to public health**

- Absence of public health policy to address important population present in all EU member countries
- Restrictions on access by migrants to health services, including to emergency care
- Non-existence of health facilities in areas of concentration of migrants

##### **13. Need for extension of social protection and social security to migrants**

- Non- or restricted access to participate in countries of employment
- Non-portability of contributions and earned benefits
- Discourse and policy initiatives of reduced rights and entitlements for migrants

##### **14. Family disruption and decomposition**

- Family separation compelled by restrictive immigration regimes.
- Extended separation of parents from children and couples/parents from each other

##### **15. Prevalence of youth, adolescents and children among migrants arriving and among immigrant parents in both regular and irregular situations.**

- Exposure to risks to exploitation and marginalization
- Emerging recognition of need for specific, targeted policy and practice

#### **V. Social Cohesion**

##### **16. Invalidation of migrants and migration in Europe**

- Generalized villifying and scapegoating migrants and migration in public discourse, in communications media
- Widespread political discourse of *othering*, exclusion and expulsion
- Reinforcement of identity based on place of origin, with racial-ethnic-religious markers

##### **17. Criminalization of migrants as well as migration.**

3. Changing legal regimes to criminalize immigration related infractions.
4. Institutionalization of detention of migrants for non-criminal immigration control infractions
5. Shift of governance from labour institutions to internal security and police control institutions.

##### **18. Integration challenges**

- Objective difficulties to integrate across highly differentiated cultural, historical and class origins
- Confusion between assimilation expectations and integration conditions
- Resistance to accommodation by host populations.
- Exclusion, marginalization and alienation of migrant and migrant-origin populations

#### **VI. Democratic Participation**

##### **19. Participation of Stakeholders**

- Exclusion of main economic actors from migration policy process
- Inadequate consultation and involvement with social partners in policy implementation
- Exclusion of civil society and migrant representation from migration policy dialogue

##### **20. Lack of migrant organization and participation, particularly as workers**

5. Working conditions and isolation impeding or preventing freedom of association

6. Legal restrictions on migrant/undocumented participation in trade unions and/or official posts
7. Disinterest by existing worker unions to affiliate migrant workers

### **III. CONTRIBUTIONS TO AN EVALUATION**

A number of European institutions and processes have articulated interim assessments of the Stockholm program, particularly through elements of the mid-term review carried out in 2012.

#### **The Council Review:**

The review produced by the European Council is reproduced below as a reference. It provides a useful list of the outputs obtained along with some discussion of outcomes.

COUNCIL OF THE EUROPEAN UNION, Brussels, 13 November 2012

15921/12

NOTE from: Presidency to Coreper/Council

Subject: Stockholm Programme mid-term review

Asylum / Migration

As foreseen in the Stockholm Programme, building on the 2008 European Pact on Immigration and Asylum, work in the area of asylum and migration focused on a comprehensive set of measures relating to the Common European Asylum System, Legal migration, Borders, Visa and Readmission as well as on Schengen.

The Commission has reported yearly on Immigration and Asylum through its Annual Reports on Immigration and Asylum, which covered also the implementation of the Stockholm programme. In the area of asylum, the main objective fixed by the Stockholm programme was the establishment of a Common European Asylum System (CEAS) by the end of 2012. Work is progressing well.

The Parliament and Council adopted in December 2011 the Qualification Directive (standards for the qualification of third-country nationals as beneficiaries of international protection). Political agreement has been reached on the Reception conditions Directive as well as on most of the so-called "Dublin" Regulation, where rules on comitology still have to be agreed by Parliament and Council. Final adoption of both texts is expected soon. Work on the Asylum procedures Directive is ongoing. Several trilogues have taken place and it is expected that an agreement can be reached before the end of the year. The Council adopted in October 2012 a general approach to the Eurodac Regulation, based on an amended proposal by the Commission from 30 May 2012. Discussions with the European Parliament are still needed. The objective remains to reach a political agreement this year and it is hoped this can be achieved.

The European Asylum Support Office (established in 2010) became operational in June 2011. EASO is intended to help improve the implementation of the CEAS and strengthen practical cooperation among Member States. The Office will also continue to have a central role in the further development of solidarity in the field of asylum, in line with the Commission's December 2011 Communication on this issue, related Council Conclusions of March 2012 and the Parliament's Resolution of September 2012.

On the external dimension of asylum, the Joint EU Resettlement Programme was adopted by Parliament and Council in March 2012. The development of Regional Protection Programmes continued with the prolongation of the programmes in Eastern Europe and in Tanzania and the creation of two new programmes in 2010: in the Horn of Africa (including Kenya, Yemen and Djibouti) and Eastern North Africa (Egypt, Libya and Tunisia).

In order to address the growing challenge of Unaccompanied Minors, the Commission presented in May 2010 an Action Plan for the period 2010-2014, which was also the basis for Council Conclusions adopted in June 2010. On 28 September 2012 the Commission

presented a mid-term report on the implementation of the Action Plan.

On Legal Migration, the Parliament and the Council adopted in December 2011 the directive on the single permit for third-country nationals to reside and work in Member States. Work is ongoing concerning the proposals for Directives on Intra-corporate transferees and Seasonal workers which were submitted by the Commission in July 2010 and which complete the Policy Plan on Legal Migration from 2005. Trilogues for Intra-corporate transferees have commenced whereas for Seasonal workers are expected to start soon. The Commission also is expected to submit, at the beginning of next year, a proposal for amending the Directives concerning the admission of third-country nationals for the purpose of studies or scientific research.

The EU Immigration Portal was launched to inform potential migrants on the possibilities for legally entering the EU, as well as on the dangers associated with trying to enter irregularly.

After extensive consultations, it was decided not to reopen the Directive 2003/86/EC on the right to family reunification of third-country nationals living in the EU but to reinforce the implementation of the existing rules. The Commission, therefore, decided to convene an expert group on family reunification to help improve the implementation of the Directive as well as cooperation among Member States. It was also asked to consider drawing up interpretative guidelines with the same purpose.

On integration, the Commission's European Agenda for the Integration of Third-Country Nationals, which outlines how the objectives of the Stockholm Programme and the Europe 2020 Strategy in terms of integration could be achieved, was the basis for Conclusions adopted by the Council and Representatives of the Member States in December 2011. The aim is to ensure that integration issues are being incorporated in the relevant policy areas.

In order to maintain credible and sustainable immigration and asylum systems in the Union, the Stockholm Programme highlighted the necessity to prevent, control and combat illegal immigration as the Union faces increasing pressure from illegal immigration flows, and particularly the Member States at its external borders, including at its Southern borders in line with the Conclusions of the European Council of October 2009.

To this end, the EU Action on Migratory Pressures – A Strategic Response was approved by the JHA Council in April 2012. This "roadmap" brings together in a coherent manner the various measures to effectively reduce illegal immigration and, since it is a "living document" is updated and reviewed under each subsequent Council Presidency.

As regards the EU policy on readmission, in the context of fight against illegal immigration, the relevant agreements with Pakistan, and Georgia have entered into force. Those with Turkey, Cape Verde, Armenia and Azerbaijan are expected to be signed in the near future, with a view to their conclusion after the consent of the European Parliament.

In May 2012, the Council adopted Conclusions, building upon a Commission Communication, on the renewed Global approach to Migration and Mobility. These Conclusions define the objectives of the EU in its external action on migration, mobility as well as on asylum, the subjects of cooperation with third partners and the tools that need to be implemented and developed. Special importance can also be attached to the launch in 2011 of dialogues on migration, mobility and security with Morocco and Tunisia, in the perspective of establishing Mobility Partnerships with these countries.

COUNCIL OF THE EUROPEAN UNION Brussels, 13 May 2013 9190/13

CO EUR-PREP 25 POLGEN 57

NOTE From: Presidency On: 13 May 2013

To: Permanent Representatives Committee/Council

Subject: European Council follow-up:

= Presidency Report on the implementation of EC conclusions

Excerpts:

17. Labour mobility - ongoing

EU Skills Panorama presented by the Commission in December 2012. Negotiations with EP on the EU Programme for Social Change and Innovation 2014-2020, which will incorporate three existing programmes including EURES EU-level actions, are expected to be finalised under the IE Presidency. A Commission Implementing Decision on EURES, adopted in November 2012, will enter into force on 1 January 2014. A legislative proposal on EURES reform is expected in the autumn. The Commission has presented a proposal for a Regulation on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents (amending Regulation (EU) No 1024/2012) end of April.

#### JUSTICE AND HOME AFFAIRS

##### 36. Common European Asylum System - agreement reached

The EC has repeatedly confirmed the objective of completion of the Common European Asylum System by the end of 2012. While this deadline could not be met, negotiations are now completed on all building blocks of the CEAS. The legislative procedure is finalised regarding the Qualifications Directive. On 27 March Coreper confirmed the agreement with the EP on the Procedures Directive and the EURODAC Regulation; agreement had already been reached at the end of 2012 on the Reception Conditions Directive and the Dublin Regulation. These four acts will be adopted as a package in June 2013.

##### 37. Schengen governance - contacts with EP ongoing

The June 2011 EC mentioned as priorities the proposals on Schengen governance (evaluation mechanism and temporary reintroduction of border controls). After an agreement at the June 2012 JHA Council on the substance of the two proposals, work on these, and a number of other files, has been suspended by the European Parliament. Negotiations resumed in autumn 2012 but stalled, inter alia over the bridging clause requested by the EP. The IE Presidency is pursuing exploratory talks with the EP with a view to resolving the outstanding issues.

##### 38. Stockholm programme - work to start on strategic guidelines by the EC

In December 2009, the EC had invited the Commission to present a midterm review of the Stockholm programme before June 2012. The Presidency prepared a mid-term review under its responsibility for the JHA Council in December.

### European Parliament

A joint **European Parliament** group has prepared a "*Draft Report on the mid-term review of the Stockholm Programme (2013/2024(INI))*," coauthored by the Committee on Legal Affairs; the Committee on Civil Liberties, Justice and Home Affairs; and the Committee on Constitutional Affairs (Rapporteurs: Luigi Berlinguer, Juan Fernando López Aguilar, Carlo Casini) 11 July 2013.

In it, the EP:

1. Believes that the Treaty of Lisbon brought important positive elements to the area of freedom, security and justice but deplors certain shortcomings in its implementation; is no longer willing to accept that the Council and the Commission, in many instances, continue to act as if the Treaty of Lisbon had not entered into force; requests the fulfilment of the obligation to inform the Parliament 'immediately and fully at all stages of the procedure' leading to the conclusion of international agreements; regrets the unacceptable delays in bringing the acts of the former third pillar in line with the Treaty of Lisbon; calls for a case-by-case assessment of the former third pillar acts with regard to how they impact on fundamental rights, with a view to bringing them in line with the new hierarchy of norms of basic, delegated and implementing acts;

5. Takes the view that the era of large-scale multiannual programmes based on the intergovernmental approach is over, given the array of legal bases provided for by the Treaties in the policy spheres covered by the area of freedom, security and justice, the scope for the Commission to make use of its right to propose legislation and its stated ambition to do so;

6. Encourages the Commission, therefore, to assume its role in framing policies and setting legislative priorities and to make use of its right to propose legislation whenever necessary;

states, at the same time, its opposition to any return to the intergovernmental approach which characterised the era prior to the entry into force of the Treaty of Lisbon;

#### On Fundamental rights

15. Is of the view that, in general terms, the implementation of the Stockholm Programme does not live up to its ambition to promote citizens' rights;

18. Emphasises that the accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as provided for by Article 6(2) of the Treaty on European Union, will strengthen even further the protection of fundamental rights in the Union, as guaranteed by the Charter of Fundamental Rights and the case law of the Court of Justice;

#### On judicial cooperation in civil and criminal matters

22. Notes that the Stockholm Programme aims to facilitate the free movement of European citizens by defending and respecting all the rights deriving from a European area of justice, and that judicial cooperation represents the main tool to achieve this objective;

38. Considers the absence of controls at internal borders as one of the major achievements of European integration; requests the Commission to pay particular attention to the absence of controls at internal borders, and firmly rejects all attempts to limit the freedom of movement of persons;

39. Acknowledges that the Schengen area is a kind of laboratory that so far has been developed step by step; is nevertheless of the opinion that a long-term reflection about its further development is necessary; believes that the Schengen external borders should in the future be guarded by European border guards;

40. Welcomes the reform of the mandate of FRONTEX and the agreement on Eurosur; considers that the new rules for the surveillance of sea borders need to be agreed on as soon as possible, that priority should be given to saving the lives of migrants and that the principle of non-refoulement is to be fully respected;

41. Welcomes the successful migration to the Schengen Information System II, the continued roll-out of the Visa Information System and the setting-up of the agency eu-LISA for their operational management; underlines that these new systems now need to stand the test of everyday use; recalls its request that 'new border management instruments or large-scale data storage systems should not be launched until the existing tools are fully operational, safe and reliable'; is looking forward to the evaluations of the systems foreseen in the respective legal instruments;

42. Calls for a much better implementation of the visa acquis and greater harmonisation of visa procedures and practices; believes that common visa application centres should become the standard; calls for an interinstitutional discussion on the objectives of the common visa policy

#### On Asylum and migration

43. Recalls that in the Stockholm Programme the European Council had underlined 'that well-managed migration can be beneficial to all stakeholders'; regrets the limited progress made in the adoption of legislation in the field of legal migration, and calls for greater efforts in the future in view of the demographic challenges and the needs of the economy; believes, at the same time, that the integration of migrants requires greater attention;

44. Welcomes the adoption of the asylum package; calls on the Commission to monitor the correct implementation of the package by the Member States as from the date of application;

45. Deeply deplores the failure to make the principles of solidarity and fair sharing of responsibility, as laid down in Article 80 TFEU, a reality; believes that accentuated and more concrete measures will be necessary in the future;

46. Believes that the external dimension of asylum should be expanded, especially in relation

to resettlement;

On methods, tools and processes:

47. Profoundly deplores the low quality of the policy-making process; observes that the definition of problems, the discussion of possible solutions and the choice between possible options usually does not follow a sequential order, as would be correct, but is rather often done simultaneously; calls on the Commission first to present reports on the issues to be addressed, then to invite a discussion on possible solutions and finally to present legislative proposals;

### **CEPS: Does the Stockholm Programme matter?**

An article “*Does the Stockholm Programme matter? The Struggles over Ownership of AFSJ Multiannual Programming*” by Sergio Carrera and Elspeth Guild in the Center for European Policy Studies Review No. 51 of December 2012 raises relevant questions:

“Several other legislative proposals included in the 2010 Commission’s Action Plan are expected to be fulfilled before the end of 2014. Among them are an immigration code,<sup>43</sup> which was not included in the Council’s 2009 Stockholm Programme, and the long-term development of Frontex, including the feasibility of creating a European system of border guards. The Commission has been particularly cautious, however, when presenting new legislative acts covering existing legal instruments, such as the Directive on the Right to Family Reunification (2003/86/EC)<sup>44</sup> and the Citizens Directive (2004/38/EC), to avoid creating opportunities for Council negotiations to further lower existing EU standards in these domains and regain powers conferred on the EU concerning issues of mobility and the rights of individuals on the move.

The Commission has instead sometimes opted for issuing ‘soft policy documents’, such as guidelines for improving EU member states’ implementation.<sup>45</sup> This corresponds to what Groenendijk has signalled as one of the main dilemmas in AFSJ cooperation, which comes out of the unpleasant surprise in many member state governments about the ‘loss of sovereignty’ and discretionary decision-making in these areas, especially during the last decade of European integration. He anticipates that this “will translate [into] a defensive attitude toward proposals for new common rules that will result in a further reduction of the room for national policies” (Groenendijk, 2012).

An exemplary case illustrating the tendency to ‘renationalise’ or return to the period of intergovernmentalism has been the debates surrounding the Schengen system, which has been challenged throughout 2011 and 2012 as a result of member states’ attempts to limit or apply unlawful exceptions to the right of free movement of persons and the abolition of internal border checks (Carrera, et al, 2011; Hobbing, 2011). The Commission responded to these controversies with the publication of the so-called ‘Schengen Governance Package’ in September 2011 (Carrera, 2012b).<sup>46</sup> The stronger Union-led approach proposed by the Commission for national governments to reintroduce internal border controls and for improving the evaluation of their application of the Schengen acquis in 2011 has met huge resistance within the Council, which is trying to widen existing exceptions for suspending free mobility in the Schengen area. The Schengen affair has also led to unresolved struggles between the Council and the European Parliament, which is strongly claiming its co-ownership on Schengen-related policy matters and has for the first time in the history of JHA cooperation frozen cooperation with the Council on five AFSJ dossiers until the Schengen question is resolved.<sup>47</sup>

43 The Commission’s Action Plan implementing the Stockholm Programme (COM(2010) 171 final, op. cit.) said that by 2013 an immigration code would be proposed, focusing on the “[c]onsolidation of legislation in the area of legal immigration taking into account the evaluation of the existing legislation, needs for simplification and where necessary extend the existing provisions to categories of workers currently not covered by EU legislation” (emphasis added), p. 57.

47 On 14 June 2012, the Conference of Presidents (leaders of political groups and the President of the European Parliament) of the EP decided to suspend cooperation with the Danish Presidency of the Council on five JHA dossiers. Voting on these dossiers remains blocked by the European Parliament, although informal discussions with the Council continue. The five dossiers are as follows: Amendment of Schengen border code and the Convention implementing the Schengen Agreement; Judicial



cooperation in criminal matters: Combating attacks against information systems; the European Investigation Order; Budget 2013 aspects relating to internal security; and EU Passenger Name Records.

## **CEPS: Challenges and Prospects**

An earlier contribution by CEPS “*Challenges and Prospects for the EU’s Area of Freedom, Security and Justice: Recommendations to the European Commission for the Stockholm Programme*” (CEPS Working Document No. 313/April 2009, by Elspeth Guild, Sergio Carrera and Anaïs Faure Atger) remains a useful reference for evaluating the programme:

### **Recommendations for Stockholm**

#### **3.2.3 Immigration and integration**

- The right to family reunification is the right of families to live together and for children to be with both of their parents. As such, it forms the basis of society and is a principle set out in the Universal Declaration of Human Rights, the European Convention of Human Rights and the Charter of Fundamental Rights. The vague and unsatisfactory notion of ‘reception capacities’ must not be used to interfere with the right to family reunification in Europe as provided in these legal instruments as well as in Council Directive 2003/86. The Commission should bring to the attention of member states the need to stop using mandatory integration conditions/programmes within the EU and abroad, based on the transposition of EU immigration law, as this not only goes against the objectives of EU directives, it also contravenes fundamental rights, non-discrimination and the principle of proportionality (suitability, necessity and proportionality stricto sensu).
- Integration measures/conditions must not be used as an immigration control mechanism preventing family reunification nor designed to restrict the legal channels that enable families to live together. Integration should favour the social and economic inclusion of newly arrived family members after the family has been reunited in the EU.
- The ‘exchange of information’ between the member states on national integration policies and programmes in the scope of the EU framework on integration should not leave the door open to transfer to the European level restrictive national immigration policies limiting access to rights and security of residence, and thus leading to the social exclusion of TCNs.
- Mandatory, civic integration programmes on ‘national and European values’ pose serious conflicts with fundamental rights and non-discrimination. Imposing values (and national identity) in the context of immigration law on TCNs leads to illiberal practices. Imposing national values (civic integration as an exception or derogation) on immigrants for enabling access to EU rights and freedoms gives rise to various contradictions with fundamental rights and the rule of law. Fundamental rights are there to set the limits on official criteria calling for nationalisation of the immigrant into a conception of national identity that goes beyond any acceptable remit of the rule of law in the EU. As stated by Art. 22 of the Charter (Title III, Equality), “[t]he Union shall respect cultural, religious and linguistic diversity”.
- The European Commission should ensure that mobility partnerships with third countries comply with a common immigration policy, fostering a rights-based and fair treatment approach. The wide diversification in terms of member states’ participation (differentiation) and the proposed actions included in the remit of these partnerships make it difficult to guarantee the consistency, commonality and comprehensiveness of a common EU migration policy. Furthermore, these instruments must not end up bringing back the illusion of the 1970s that migration is a temporary phenomenon that can be ‘managed’ selectively by the state. The temporary nature of migration policies (circular migration) might conflict with guaranteeing, and further ensuring, the security of (permanent) residence and the social inclusion of TCNs within the Union.
- The European Commission should carefully evaluate the external relations consequences of the message that is being sent abroad by giving an overriding priority to policies on return, readmission and border controls. This securitarian approach engenders multiple negative effects in terms of the EU’s own credibility on human rights and the principle of solidarity in the world.

## **Amnesty International Comments**

“Amnesty International’s Comments on the Mid-Term Review of the Stockholm Programme” of 5 December 2012 also offer critical perspective useful to sharpen an overall assessment:

On borders and migration, an important development has been the initiative to strengthen Frontex and clarify its legal framework. We welcome the fact that Regulation 1168/2011 has made explicit the human rights framework applying to Frontex activities. It has also established a fundamental rights monitoring mechanism in the form of a consultative forum and a fundamental rights officer appointed by the Border Agency. It has not, however, ensured independent monitoring of compliance by Frontex with its fundamental rights obligations, as we called for. Moreover, it remains to be seen to what extent this mechanism will be sufficient to ensure that monitoring is meaningful and effective and leads to proper investigation and follow-up of incidents and means of redress.

Migration at sea has increasingly become associated with the deaths of thousands of migrants and the rescue of countless others who have attempted the dangerous sea crossing to reach Europe. We urge the Council to place the prevention of deaths at sea at the heart of a coordinated Europe-wide approach to migration at sea and to recommit itself to rescuing people in distress at sea and to prompt and safe disembarkation in the context of the renegotiation of the Guidelines for Frontex Operations at Sea.

We have consistently argued for a rights-based approach to migration, which means that policies in this field, including border control measures, must be guided by the principle of safeguarding the human rights of migrants. In practices seen in member states this has often proved not to be the case. There is compelling evidence that in many cases migration control policies and practices have put migrants, asylum-seekers and refugees at risk both at the EU borders and in non-EU countries through the operation of cooperation agreements. In February this year, the European Court of Human Rights, in the case *Hirsi Jamaa and Others v. Italy*, has condemned the Italian Government’s policy of intercepting migrants at sea and pushing them back to Libya. As recently as 22 November, the European Parliament adopted a resolution raising the alarm over the treatment of migrants in Libya and warning against any cooperation on migration control which might put people at risk there. We reiterate the need to ensure that any co-operation with third countries on migration control fully respects the rights of asylum-seekers, refugees and migrants and to ensure that adequate monitoring mechanisms are in place to guarantee that human rights are observed in practice.

We welcome the fact that the renewed Global Approach to Migration and Mobility (GAMM) has added the key aspect of people’s mobility and introduced a more migrant-centred approach by acknowledging that migrants’ human rights must be strengthened in source, transit and destination countries. We note, however, that the securitisation approach to migration remains prevalent and policy instruments conceived to engage third country cooperation, such as ‘mobility partnerships’, are geared to preventing migration rather than fostering mobility. We are particularly concerned at the lack of any human rights impact assessment in policies which promote migration management with third countries. Enhanced border management at the external borders, and particularly the prevention of irregular migration across the Greek-Turkish border, has been identified as a key goal in the EU Action on Migratory Pressures: a Strategic Approach, the roadmap listing various measures to reduce ‘illegal immigration’ into the EU. These measures need to be reviewed

#### **IV. PENDING ISSUES OF LAW, POLICY AND PRACTICE**

Following from this contextual review, key legal and policy issues that should frame a review of the Stockholm Programme and any future framework include:

##### **I. Migration and Economic Needs: skills and labour**

###### **1. Assessment of migration role in economy and obtaining labour market data on skills and labour**

- 13 Support research on role and contributions to economic viability, productivity, competitiveness
- 14 Develop labour migration statistics, indicators, measures (as recently agreed by the

- International Conference of Labour Statistics  
15 Refine interface and application of OECD, Eurostat and ILO data  
16 Utilize/implement emerging forecasting methodologies trends in skills and labour needs

## **2. Skills training and higher education**

- Utilization of assessment of forecast shortages to revise capacity and curricula in training institutions
- Retool vocational education and training to meet future needs in quality and quantity

## **3. Enhance recognition of qualifications, educational attainment and work experience**

- 17 Support technical and professional bodies as well as State regulatory agencies to develop frameworks, processes, criteria and measures to facilitate review and recognition of education, qualifications and work experience obtained elsewhere.

## **II. Labour Mobility**

### **4. Comprehensive and coherent EU policy framework for labour migration**

- 18 Prioritize elaboration of comprehensive harmonized EU approaches and policy frameworks on migration, including all skills levels  
19 Establish research and consultative process to elaborate guidance for national labour (im)migration regimes to measure and meet labour needs  
20 Incorporate social partners and civil society in policy formulation and implementation.

### **5. Facilitating circulation of people/labour in Regional Economic Communities**

- Assess experience and disseminate research on European mobility
- Provide support for operationalising free circulation regimes in partner regional economic communities (EAC, ECOWAS, SADC, etc)

### **6. Develop regulated inter-regional access and mobility**

### **7. Development cooperation**

## **III. Protection and Treatment**

### **8. Recognition and legal protection of migrants**

- Support ratification and implementation of relevant international and regional legal standards recognizing and protecting rights of all migrants: the ICRMW, ILO C-97, ILO C-143 and ILO C-189, relevant.
- Engaging in research and dialogue towards a law and policy framework for recognition and protection for environment- and climate change displaced persons
- Uphold full implementation of the existing refugee protection and assistance regime, based on the 1951 Convention and 1967 Protocol on the Status of Refugees
- Research and consider possible options for regularization of migrants in unauthorized situations.

### **9. Decent Work for all migrants: Vigorous enforcement of labour standards**

- Extend and provide capacity for labour inspection in sectors and workplaces where migrants concentrated.
- Fully 'firewall' labour inspection from immigration control.

*References: All International Labour Standards, ILO C-81 (labour inspection), CEACR rulings.*

### **10. Fighting xenophobia, racism and discrimination against migrants**

- Reinforcement of non-discrimination/equality of treatment law and practice
- Propose elaboration and implementation of national action plans against racism, xenophobia, discrimination
- Support for public repudiation of any and all acts of xenophobic violence.

*Normative references: ICERD, ILO C-111 (discrimination in employment, occupation), ICRMW also 2001 Durban Declaration and Program of Action.*

#### **11. Discrimination and exploitation of migrant women**

- Identify and disseminate effective policy and practical approaches to reduce risks, protect, prevent exploitation, etc.
- Support gender-specific policy, measures and practices recognizing specific gender-based risks and ensuring equality of outcomes as well as intent.

*Normative references: CEDAW, ILO C-100 (equal remuneration)* Provide guidelines for policy and practical interventions that obtain equality of outcomes, not just intent

### **IV. Social Protection**

#### **12. Elaborating a deliberate public health approach**

- Elaborate public health policy guidelines to provide full access by migrants to health prevention and care services and facilities for important population present in all EU countries
  - Support elaboration of specific national public health policy on health for migrants
  - Monitor adequate occupational safety and health (OSH) protection for migrants in all workplaces
  - Explore incentives to extend health services and facilities in areas of concentration of migrants
- Normative references: UDHR, ICESCR, ILO C-155, 161, 187 on OSH plus over 30 others on specific branches or specific risks*

#### **13. Social Security for migrants**

- Review further measures to extend social security coverage and portability to migrant workers
  - Ensure that regional efforts incorporate and harmonize social security access in regional integration spaces.
  - Promote ratification and implementation of ILO C-102 (social security) C-118
- Normative references: UDHR, ICESCR, ILO C-102, C-118*

#### **14. Family unity, reunification**

- Identify models, experiences and outcomes where family unity, family reunification policy approaches have been implemented
- Identify approaches and guidelines applicable in EU context
- Support measures to sustain socialization and education for immigrant children and adolescents.

*Normative references: UDHR, CRC, CEDAW*

#### **15. Prevalence of youth and adolescents among migrants arriving**

- Obtain age as well as gender disaggregated data on migration flows and immigration
- Elaborate specific policy initiatives and responses to address risks and opportunities for young migrants.

### **V. Social Cohesion**

#### **16. Validation of migrants and migration in Europe**

- Identifying, researching, disseminating facts, discourse and approaches to transform public opinion
- Generating EU discourse and policy approaches
- Influencing communications media
- Developing curricula and material for schools.

#### **17. Decriminalization of migrants, refugees, and migration:**

- De-criminalize/non-criminalization of immigration law and infractions to it

- Non-detention/ending detention of migrants for non-criminal offenses
  - Treatment of minors according to best interests of child
- Normative references: UDHR, ICRMW, EU treaties.*

## **18. Integration challenges**

- Identify, research and disseminate experiences where integration has taken place
- Identify policy models and 'good practices' that supported successful integration
- Reinforce EU mutuality definition and approach to integration

## **VI. Democratic Participation**

### **19. Participation of Stakeholders**

- Exclusion of main economic actors from migration policy process
- Inadequate consultation and involvement with social partners in policy implementation
- Exclusion of civil society and migrant representation from migration policy dialogue

### **20. Support freedom of association participation of migrants in unions and associations**

- Advocate for legislation ensuring freedom of association rights for migrants
  - Support migrant organizing in unions, by unions
  - Conduct outreach to engage migrants in unions, associations, CSOs where they live and work.
  - Support migrant entrepreneur participation in employer organizations
- Normative references: ILO C-87 (freedom of association), ILO C-98 (collective bargaining rights), ICPCR, rulings of ILO Committee on Freedom of Association*

**Several areas of urgent need for research, documentation and policy development include, among others:**

1. *Environmental degradation and climate change induced displacement.* characteristics and forecasting scenarios; actors and stakeholders concerned: elements towards defining a legal and social protection framework; addressing containment efforts; etc.
2. *Free circulation regimes:* assessing prospects and problems to enable and defend them, contesting impediments to implementation; obtaining realization and respect for rights vs imposition of new control regimes; etc.
3. *Discrimination and Xenophobia:* documenting the real extent and character of manifestations; identifying underlying conditions and incentives; determining viable and effective means to impede, prevent and repress; etc.

**Submitted 21 January 2014**

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