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## Working papers

### EU LABOUR MIGRATION POLICY BY OTHER MEANS?

The potential impact of EU economic governance reforms  
on labour migration policymaking

*Yves Pascouau*

*Director of Migration and Mobility Policies  
Senior Policy Analyst  
European Policy Centre*

*Editor of the Website [www.EuropeanMigrationLaw.eu](http://www.EuropeanMigrationLaw.eu)*

January 2015



This working paper benefits from research carried out in the framework of the LAB-MIG-GOV project ([www.labmiggov.eu](http://www.labmiggov.eu)) and from additional support from the Compagnia di San Paolo.

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<sup>1</sup> The author would like to thank Janis Emmanouilidis, Jan David Schneider and Fabian Zuleeg for their comments on an earlier version of this paper.

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## Introduction

With the entry into force of the Amsterdam Treaty in 1999, the European Union (EU) has been awarded the competence to act in the field of visa, asylum and immigration. Almost 15 years later, results achieved portray an imbalanced picture<sup>2</sup>. Irregular migration and border management have received the strongest political support and therefore led to extremely important legal and operational developments. The asylum side of EU policy has been subject to significant focus and enable the progressive establishment of a so-called Common European Asylum System.

At the same time, two other policy fields have not been addressed in an in-depth manner at EU level. This concerns, on the one hand, the integration of third country nationals residing in the EU Member States. Due to the domains covered – work, education, health, culture, etc. – and the number of players involved – local, regional, national, etc. – this policy field is considered as falling mainly within the remit of the Member States. Here, EU action is limited to the coordination of national policies as the Lisbon Treaty indicates.

The second field suffering from a low EU footprint is related to admission policies, i.e. EU rules defining entry and residence of third country nationals in the Member States. The approach developed in this policy field at EU level has been twofold. The first set of EU rules has concerned domains where Member States could agree together, i.e. family reunification<sup>3</sup> and long term residence<sup>4</sup>. While family reunification was already ruled in national law and framed by the jurisprudence of the European Court of Justice, offering a stronger status to third country nationals according to the length of their stay was also an approach shared by a strong majority of Member States<sup>5</sup>.

However, defining common rules to decide about the entry and residence of third country nationals was more difficult. The differences between national systems, the history and traditions regarding relationships with specific third countries or regions, different economic situations as well as the fear from being deprived of the sovereign right to decide who is entitled to enter and reside were, among others, the main factors which have made and still make a significant move towards EU action difficult.

Regarding the specific issue of labour migration, Member States have marked a clear resistance to transfer to the EU the power to establish a general rule defining the conditions under which third country national could come to the EU for economic purposes<sup>6</sup>. Instead, Member States have opted for a “step by step approach” whereby common EU rules would apply to specific

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<sup>2</sup> For an overview, Y. Pascouau “La politique migratoire de l’Union européenne. De Schengen à Amsterdam”, LGDJ-Fondation Varenne, 2010.

<sup>3</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 03.10.2003.

<sup>4</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16, 23.01.2004.

<sup>5</sup> K. Groenendijk, E. Guild and R. Barzilay “The Legal Status of Third Country Nationals who are Long-Term Residents in a Member State of the European Union”, Centre for Migration Law, University of Nijmegen, Netherlands, European Commission DG Justice and Home affairs, 2000.

<sup>6</sup> As it was proposed by the European Commission, Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities, COM(2001)386 final, 05.09.2001.

categories of migrant workers, i.e. students<sup>7</sup>, researchers<sup>8</sup>, highly skilled workers<sup>9</sup>, seasonal workers<sup>10</sup> and intra-corporate transferees<sup>11</sup>.

Over the last 15 years, irregular migration and asylum have been sometimes deeply addressed at EU level. It is obvious that the issue of labour and, in a broader view, legal migration should now be higher on the agenda in order to establish the Treaty's objectives: the establishment of a common immigration and asylum policy. While theoretically true, this assertion is in practice very difficult to put into motion. Indeed, there are currently no signs that such a move towards a greater management of labour migration policy at EU level is coming (I). However, the deadlock may be broken with the development of new policy tools taking place outside of the migration sphere. It should indeed be acknowledged that recipes adopted to overcome the so-called 'euro crisis' may well have an impact on labour migration issues and therefore start a coordination process which was not called for by home affairs decision-makers (II).

## **I. Front door obstacles: the blocked migration agenda in the home affairs arena**

It is a matter of fact that the migration agenda is heavily sensitive and driven by several parameters taking place outside of the migration field. This is particularly the case when it comes to dealing with legal migration issues. Addressing this issue at EU level has become considerably more difficult due to the economic and political environment (A). Such a blocking has been translated in a series of political documents adopted in the last couple of months (B).

### **A. Crisis as a deterrent factor**

It is now well understood that the economic crisis had a severe impact in both the economic and the political fields. On the economic side, the crisis is still producing its devastating effects on unemployment and therefore social insecurity. While reforms undertaken since the beginning of the crisis might slowly start producing their effect, a significant share of people living in the EU are still struggling. Hence, the economic crisis has progressively become a social and political crisis.

One main political impact of the crisis has materialised in a widespread 'political contraction' whereby all sorts of anti-establishment, anti-EU, anti-migrants forces and parties have emerged on the national and European political scene. This shift is accompanied with a nationalistic and sometimes xenophobic rhetoric which has a major impact on both themes: EU integration and immigration. In such circumstances, the possibility to address legal migration at EU level has considerably diminished.

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<sup>7</sup> Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375, 23.12.2004.

<sup>8</sup> Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289, 03.11.2005.

<sup>9</sup> Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155, 18.06.2009.

<sup>10</sup> Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, 28.03.2014.

<sup>11</sup> Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ L 157, 27.05.2014.

In a more specific manner, extreme right parties have strengthened their presence in the national and European political landscape. As a consequence, migrants have become a useful scapegoat in times of crisis and migration has been systematically turned into a threat. As a result, talking about migration issues has become extremely difficult and sensitive and focused on the security side of the policy, i.e. border management, the fight against irregular migration and the fight against abuses. In this context, addressing labour migration policies has become extremely challenging.

In addition, the growing numbers of refugees arriving on EU shores and coming from unstable regions of the world – like Syria, Eritrea, Somalia, Afghanistan, Pakistan – had the effect to push labour migration off the political agenda.

Another side effect of the crisis has also emerged at an institutional level. Labour migration issues should not be seen as the sole property of home affairs players. This policy fields is also closely linked to issues and actors related to labour and employment policies. But given the magnitude of the crisis and the high level of unemployment in the Member States, ministers and administrations in charge of labour policies have been reluctant to address the issue of immigration and focused more on policies and tools directed towards their citizens.

Hence, labour migration issues remained in the sphere of Home Affairs Ministers and administrations. As a matter of fact, these stakeholders do not have a strong tendency to developing admission schemes. And when they do so, the process of establishing common rules regarding the admission of categories of workers often becomes extremely cumbersome and primarily led by security concerns. As a result, admission procedures are over-detailed from an administrative point of view.

It is clear that the economic crisis has had a significant impact on the political willingness and ability to move ahead in the field of legal migration and in particular, labour migration. The problem is that the current atmosphere still strongly weights on future developments. Indeed, documents and orientations which have been issued in the framework of the big institutional changes that occurred at EU level in 2014 do not show that the current trend will be overcome.

## **B. Low profile perspectives**

The year 2014 was a crucial political year at EU level with the European Parliament elections, the renewal of the Commission and the appointment of the three “top jobs”, i.e. President of the European Commission, the High Representative of the Union for Foreign Affairs and Security Policy and finally the President of the European Council.

In this big renewal, two main sequences were awaited: the strategic orientations adopted by the European Council in June 2014<sup>12</sup> and the orientations of the new European Commission. Results achieved in both cases are not at the level of those who would have liked to see the EU taking a stronger stance in the field of legal and labour migration.

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<sup>12</sup> According to Article 68 TFEU “The European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice”.

The strategic guidelines were adopted by the heads of state and government during the June 2014 European Council<sup>13</sup>. These guidelines are however rather general and disappointing. At a critical political juncture, the European Council did not take the opportunity of the Guidelines to define a real common EU migration policy identifying the challenges, defining the objectives and organising the actions. On the contrary, the strategic guidelines lack of political vision, are limited in scope and do not address institutional challenges ahead. In the end, and as a consequence, the strategic guidelines are extremely low profile when it comes to legal and labour migration.

The issue is dealt with within one single paragraph as follows: “To remain an attractive destination for talents and skills, Europe must develop strategies to maximise the opportunities of legal migration through coherent and efficient rules, and informed by a dialogue with the business community and social partners. The Union should also support Member States' efforts to pursue active integration policies which foster social cohesion and economic dynamism”.

Summarising the European Council's orientations may be portrayed in a straightforward way: EU rules already adopted regarding students, researchers and highly skilled workers should be modified to make the EU more attractive for talents and skills. This goes along the lines of current proposals and projects. Indeed, the recast of the students and researchers directives<sup>14</sup> was already discussed at the time of adopting the strategic guidelines and the idea to modify the “Blue Card Directive” seriously discussed<sup>15</sup>. The only positive hint and innovation of the strategic guidelines reside in the involvement of the business community and social partners.

In this context, reading the political guidelines<sup>16</sup> of the new European Commission President, Jean-Claude Juncker, for the next five years spanning from 2014 to 2019 is all but a surprise. Presented in July 2014, these guidelines focus on ten policy areas comprising of one entitled “Toward a New Policy on Migration”. The section devoted to legal and labour migration is also limited to one paragraph and reads as follows: “I want to promote a new European policy on legal migration. Such a policy could help us to address shortages of specific skills and attract talent to better cope with the demographic challenges of the European Union. I want Europe to become at least as attractive as the favourite migration destinations such as Australia, Canada and the USA. As a first step, I intend to review the “Blue Card” legislation and its unsatisfactory state of implementation”<sup>17</sup>.

The issue of skills, talents and attractiveness is here again addressed as a priority, related to the challenges of labour shortages and demographic change, which were also tackled by the European Council. In order to move ahead in this policy field, the first step is to review the existing “Blue Card” Directive, i.e. turning old into new. In sum, it is rather clear that the new political guidelines are not portraying a major leap in the field of legal and labour migration.

The same applies to the orientations developed by Commissioner Dimitris Avramopoulos, the new Commissioner in charge of “Migration, Home affairs and Citizenship”. From the mission

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<sup>13</sup> Strategic Guidelines on the Area of Freedom, Security and Justice, OJ C 240, 24.07.2014.

<sup>14</sup> Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing, COM(2013) 151 final, 25.03.2013.

<sup>15</sup> In particular since the publication of the report on the implementation of the Directive. Communication from the Commission to the European Parliament and the Council on the implementation of Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, COM(2014) 287 final, 22.05.2014.

<sup>16</sup> [http://ec.europa.eu/priorities/docs/pg\\_en.pdf](http://ec.europa.eu/priorities/docs/pg_en.pdf).

<sup>17</sup> [http://ec.europa.eu/priorities/docs/pg\\_en.pdf](http://ec.europa.eu/priorities/docs/pg_en.pdf), sp. p. 9-10.

letter the new Commissioner received from Jean-Claude Juncker<sup>18</sup> to the speeches he has provided in several places, the tune is not radically different.

This is even clearer in the opening statement Commissioner Avramopoulos gave during the November 2014 European Parliament plenary debate on migration<sup>19</sup>. On this occasion, the new Commissioner addressed the issue of legal migration in a similar way as already mentioned. He stated the following: “On legal migration, for obvious demographic and economic reasons, Europe needs to address labour and skills shortages and address the challenges of an ageing continent. We will work closely on this with business and social partners. Our first step will be looking at existing policies in place, such as the EU Blue Card, and see what can be done to increase their attractiveness and effectiveness”.

From the European Council to the President of the European Commission and the Commissioner for Migration and Home Affairs, the political line is exactly the same. Legal and labour migration should be focused on labour and skills shortage with a primary action to put in motion “looking at existing policies, such as the EU Blue Card”. In other words, future developments in the field of legal and labour migration will mainly consist in the adaptation of the existing.

There is neither political willingness nor orientation to overturn the current selective approach and to start developing a common EU labour migration policy. This derives clearly from the strategic guidelines where the Lisbon Treaty objective to set up a common immigration policy<sup>20</sup> is replaced with the one to develop “*strategies* to maximise the opportunities of legal migration”<sup>21</sup>. In practice, several Member States, with Germany taking the lead, refrain from giving the EU too much power in the field of legal and labour migration.

It is obvious that a move in the direction of the adoption of general EU admission rules for the purpose of exercising an economic activity is not on the agenda. Here again, the economic crisis, the political climate as well as the humanitarian situation in Europe’s neighbourhood play a strong impeding role. For the time being, the EU does not have any kind of policy other than a selective approach targeting specific workers and safeguarding their sovereign power.

It is clear also that changes will not take place in the current situation and institutional framework where legal and labour migration are dealt with by home affairs stakeholders<sup>22</sup>. However, since the crisis, home affairs is not the only area where labour migration issues are addressed. Indeed, some developments taking place outside of the migration sphere may initiate a shift as well as dislocate labour migration issues from their home affairs silo.

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<sup>18</sup> “Developing a new European policy on regular migration. Such a policy should help Europe address skills shortages and attract the talent that it needs. A first step will be to address the shortcomings of the “Blue Card” Directive: I would ask for a first review to be concluded within six months of the start of the mandate. Further steps will require reflection on the best ways to make the EU an attractive place for migration destination, on the basis of other existing models”, Mission letter to Dimitris Avramopoulos, available at the following address [http://ec.europa.eu/commission/sites/cwt/files/commissioner\\_mission\\_letters/avramopoulos\\_en.pdf](http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/avramopoulos_en.pdf).

<sup>19</sup> Opening Statement by Commissioner Dimitris Avramopoulos during the European Parliament plenary debate on Migration, Strasbourg, 25 November 2014; [http://europa.eu/rapid/press-release\\_SPEECH-14-2140\\_fr.htm](http://europa.eu/rapid/press-release_SPEECH-14-2140_fr.htm).

<sup>20</sup> Article 79 (1) TFEU starts with the following words “The Union shall develop a common immigration policy (...)”.

<sup>21</sup> Italics added.

<sup>22</sup> The idea to move away from classic approaches and to establish a DG Mobility did not come through, see Y. Pascouau “The European Council’s strategic guidelines and immigration: can the EU be bold and innovative?”, European Policy Centre, Commentary, June 2014.

## II. Back door opportunities: the effect of stronger economic coordination

Addressing labour migration issues should not always be locked into the provisions of the Treaty dealing with third country nationals. Back in 1987, the Court of Justice had the occasion to recognise the ability of the European Community to act in the field of labour migration through its competences in the social policy field<sup>23</sup>. While it should be underlined that no competence in the field of immigration was recognised at that time, case law shows nevertheless that policy fields are sometimes interlinked and that action in one area may have an impact or even require action in another.

This part of the paper tries to shed light on potential linkages existing between EU policy fields regarding labour migration (A). In addition, it also tries to demonstrate how current changes in the field of economic policies may have or already have an impact on Member States actions regarding labour migration and how this translates in institutional terms (B).

### A. EU policy fields connected to labour migration

It is commonly understood that labour migration issues are dealt with within the scope of the Treaty provisions devoted to the area of freedom, security and justice. This approach is also influenced by the fact that these issues are falling within the scope of home affairs players. But, when looking more closely to the Treaty, the isolation of labour migration policies in this ambit is less evident. Indeed, in the field of social (1), employment (2) and economic policies (3) labour migration policies can be addressed<sup>24</sup>.

#### 1. Social policy

This is obviously the case when looking at the title of the Treaty dealing with “social policy”. The objectives of the Union and the Member States in this field are “the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion”<sup>25</sup>.

While this area remains mainly a national competence, the Treaty nevertheless recognises that the Union shall support and complement the activities of the Member States. This action may concern, according to Article 153, paragraph 1, point g) “conditions of employment for third-country nationals legally residing in Union territory”. The Treaty in itself contains provisions,

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<sup>23</sup> Judgment of the Court of 9 July 1987, *Federal Republic of Germany and others v Commission of the European Communities*, Joined cases 281, 283, 284, 285 and 287/85.

<sup>24</sup> While employment and social policies are usually dealt together from an economic perspective, the distinction between these policy fields in the paper is based on the Treaty provisions.

<sup>25</sup> Article 151 TFEU.

outside of the migration field, which allow common action regarding employment conditions of foreigners.

However, and given the sensitivity of the domain, EU competence is limited. Article 153, paragraph 2, point a) indicates that when acting together, the European Parliament and the Council “may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States”. In addition, and when it comes to several specific areas, including third country nationals, point b) of the same provision indicates that these institutions “may adopt, (...) by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States”. The Treaty has added an institutional safeguard as the Council shall act, in the specific field of third country nationals, unanimously.

It derives from these provisions that dealing with third country nationals within the scope of “social policy” is subject to strong limitations in terms of content and voting procedures. Nevertheless, these provisions demonstrate that it is possible to address third country nationals’ conditions of employment. While this does not concern admission as such it is related to some elements of national labour policies. In this regard, the possibility to encourage cooperation, knowledge and exchange of information and practices regarding migrant workers may be a strong factor in coordination of national policies.

## ***2. Employment policy***

Here, links with labour migration are less obvious. But the Treaty allows for the developments of common actions which may lead the EU and Member States to move ahead in the field of labour migration.

Article 145 of the Treaty states “Member States and the Union shall, (...), work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article 3<sup>26</sup> of the Treaty on European Union”. In this regard, Member States have to coordinate their action<sup>27</sup> and the Union “contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action”<sup>28</sup>.

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<sup>26</sup> Article 3 (3) TEU “The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance. It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced”.

<sup>27</sup> Article 146 (2) TFEU “Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with the provisions of Article 148”.

<sup>28</sup> Article 147 TFEU.

The employment situation in the Union involves a wide range of EU players from the European Council<sup>29</sup> to the Council, which is in charge, after a large consultation process, to adopt guidelines<sup>30</sup>. Such guidelines should be taken into account by the Member States and be consistent with broader guidelines adopted in the field of the economic policy. In addition, Article 149 stipulates that the European Parliament and the Council “may adopt incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects”.

Here again, the capacity of the Union to deal with employment issues may well lead EU institutions to touch upon labour migration issues. In this regard, more intense cooperation and exchange of information and practices between Member States may concern labour migration, including rules regarding the admission of migrant workers. While such a process may not lead to harmonisation of national rules and regulations, it may nevertheless end up in strengthening the coordination between national policies.

### ***3. Economic policy***

A similar process may also be encountered in the field of economic policy. Indeed, and according to the Treaty, “Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council”<sup>31</sup>.

Here again, treaty provisions organise the adoption of a series of tools and mechanism aiming at coordinating national economic policies. Without targeting specifically the field of legal or labour migration, actions in this field could nevertheless target Member States labour markets and therefore approach this sensitive domain.

It is interesting to underline that in the fields of social, employment as well as economic policies, the Union is entrusted with a wide range of tools, which aim at fostering the coordination between national policies. As already mentioned, and when it comes to the coordination of national labour policies, the Union may well be entitled also to consider the question of national labour migration policies and propose some actions which could end up with to the coordination of national labour migration policies.

While largely theoretical in 2009 when the Lisbon Treaty entered into force, the potentiality for the EU to start addressing Member States labour migration policy has become less theoretical with the tools developed in order to address the 2008 economic crisis. Therefore, the potential for the EU to deal with labour migration issues through other tools than the ones devoted to immigration should now be seriously considered.

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<sup>29</sup> Article 148 (1) TFEU The European Council shall each year consider the employment situation in the Union and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission”.

<sup>30</sup> “On the basis of the conclusions of the European Council, the Council, on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 150, shall each year draw up guidelines which the Member States shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article 121(2)”.

<sup>31</sup> Article 121 TFEU.

## B. The solutions to address the crisis and their impact on EU labour migration

The magnitude of the economic crisis which has started in 2008 and led to the risk of a breakdown of the Eurozone has forced the EU and its Member States to adopt a series of instruments to find adequate responses. Without entering into the details of an extremely complex and technical set of rules, actions developed to address the crisis have been the following:

- the adoption of a huge bail-out programmes for Greece, Ireland, Portugal, and Cyprus, with strong conditions attached and supervised by the Troika of the European Commission, International Monetary Fund (IMF) and European Central Bank (ECB).
- the creation of two multi-hundred-billion-euro rescue mechanisms (firewalls), including the *ad hoc* European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM).
- unprecedented fiscal consolidation efforts in the deficit countries, accompanied by deep and painful structural reforms.
- the ECB engaging in unprecedented action to support the sovereign debt market and provide liquidity lifelines to banking systems under stress.
- a strengthening of the governance of Economic and Monetary Union, especially within the euro area, with numerous innovations including a tougher Stability and Growth Pact (through the so-called ‘Six-Pack’ and ‘Two-Pack’);
- the introduction of stronger and new instruments of economic governance to enhance coordination of key economic and fiscal priorities, including the European Semester;
- the creation of an annual system of macroeconomic surveillance to assess the risks of macro-economic imbalances and vulnerabilities;
- the entry into force of an intergovernmental fiscal compact treaty (the Treaty on Stability, Cooperation and Governance, TSCG) which includes the introduction of binding ‘debt brakes’ at national level; and
- the creation of a limited banking union with a Single Supervisory Mechanism (SSM) for all major European banks and a Single Resolution Mechanism (SRM) backed by a Single Resolution Fund to be built up in the upcoming years.

Obviously, many measures have been adopted to respond to the crisis. Their general objective could be summarised as an effort aiming to enhance the economic governance through fiscal and economic surveillance of the Member States and the adoption of corrective mechanisms. Among these tools, one will retain our attention: the European Semester. Indeed, despite its conflicts with national policy agendas, it could in theory embed a strong potential for accelerating the coordination of labour migration policies at EU level (1) and also created the conditions of an institutional redistribution of competences (2). While true in theory, it will have to prove efficient and strong enough to overcome migration sensitiveness in national debate.

### *1. The European Semester and labour migration*

Among the tools created, the European Semester presents some interesting links with the issue at stake in this paper, i.e. the coordination of Member States’ labour migration policy. Created in September 2010 to enhance economic governance and better policy coordination between the Member States regarding, in particular, the goals of national budgetary, growth and employment

policies, the European Semester establishes a process allowing Member States to coordinate *ex ante* their budgetary and economic policies.

As explained by the Council's website<sup>32</sup>, in broad terms the European Semester contains a clear timetable, according to which the member states receive EU-level advice ("guidance") and then submit their policy plans ("national reform programmes" and "stability or convergence programmes") to be assessed at the EU level. After their evaluation, the member states are given individual recommendations ("country-specific recommendations") for their national budgetary and reform policies. If necessary, they also receive recommendations to correct macroeconomic imbalances. The objective is that member states take into account recommendations when they define their next year's budget.

In the framework and for the purpose of this paper, the analysis will focus on recent Country Specific Recommendations (CSR). Indeed, the latest CSRs have shown an interesting movement whereby they start addressing labour migration issues. While it remains unclear whether and to what extent this kind of non-binding instrument will be implemented by Member States, the assumption is that the use of CSRs could be considered as tools to initiate a greater coordination of Member States' labour migration policies.

According to the Commission, CSRs offer tailored advice to Member States on how to boost growth and jobs, while maintaining sound public finances. They are published every spring, following months of analysis by the Commission. While in practice their impact on national policy has been rather limited so far, the CSRs are intended to provide instructions to Member states for the next 12-18 months on how to make growth stronger, more sustainable and more inclusive, in line with the Europe 2020 strategy, the EU's long-term growth and jobs plan<sup>33</sup>.

Tackling unemployment and the social consequences of the crisis are objectives targeted in the Europe 2020 strategy and reflected in the CSRs. In this view, the recommendations have started to spot the specific problem of third country nationals' unemployment and recommend actions in this regard. More precisely, recommendations do address this issue where the level of unemployed third country nationals compare to unemployment rates of national workers exceeds a certain threshold. According to information, seven Member States were considered under this criterion: Sweden, Belgium, the Netherlands, Denmark, Finland, France and Germany. This was to a certain extent reported in the recommendations concerning Austria<sup>34</sup>, Belgium<sup>35</sup> and Sweden<sup>36</sup>.

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<sup>32</sup> <http://www.consilium.europa.eu/special-reports/european-semester/how-does-the-european-semester-work>.

<sup>33</sup> [http://europa.eu/rapid/press-release MEMO-14-388\\_en.htm](http://europa.eu/rapid/press-release_MEMO-14-388_en.htm).

<sup>34</sup> "Reinforce measures to improve labour market prospects of people with a migrant background, women and older workers. This includes further improving childcare and long-term care services and the recognition of migrants' qualifications. Improve educational outcomes in particular for disadvantaged young people including those with a migrant background, by enhancing early childhood education and reducing the negative effects of early tracking", OJ C 247, 29.07.2014, sp. p. 96.

<sup>35</sup> "Increase labour market participation, in particular by reducing financial disincentives to work, increasing labour market access for disadvantaged groups such as the young and people with a migrant background, improving professional mobility and addressing skills shortages and mismatches as well as early school leaving", OJ C 247, 29.07.2014, sp. p. 5.

<sup>36</sup> "Take appropriate measures to improve basic skills and facilitate the transition from education to the labour market, including through a wider use of work-based training and apprenticeships. Reinforce efforts to target labour market and education measures more effectively towards low-educated young people and people with a migrant background. Increase early intervention and outreach to young people who are unregistered with the public services", OJ C 247, 29.07.2014, sp. p. 135

In addition to the CSRs, a European Commission staff working document, issued in April 2014, also highlighted the situation of migrants regarding Austria, Sweden, Belgium, Denmark and Luxembourg<sup>37</sup>. While the document underlined the need to enhance labour market participation of migrant workers for Belgium<sup>38</sup>, Denmark<sup>39</sup> and Sweden<sup>40</sup>, it mentioned the difficult situation for migrants and young people with low skills in a strongly specialised Luxembourgish labour market and measures taken in Denmark to tackle labour market participation of people with migrant background.

It derives clearly from these examples that enhanced economic coordination between the Member States through the European Semester, in line with the objectives set out in the Europe 2020 strategy, addresses labour migration and more precisely labour market participation of residing third country nationals or people with a migrant background. In practice, such recommendations, if implemented, could initiate a movement towards a greater coordination between national labour migration policies.

In this regard, economic integration in the EU and more particularly in the Euro-zone and its potential effect on labour migration cannot be disregarded. Moreover, the development of the coordination process should in the short and medium run lead to increase this phenomenon and therefore address the entire field of labour migration, including admission rules and procedures.

## ***2. Institutional consequences of enhanced economic coordination***

As a matter of economic coordination, a policy field traditionally managed by ministers of home affairs is slowly coming under the wide remit of economic and finance ministers. This institutional shift is looked at carefully in the Commission's Directorate Generals (DGs) and calls for the development of new strategies.

This is more precisely the case of DG Migration and Home Affairs. Indeed, in the framework of the European Semester DG Migration and Home Affairs is not a key player. In practice, the European Semester is led by a core group composed of officials from DG Economic and Financial affairs, DG Taxation and Customs Union and DG Employment, Social Affairs and Inclusion. DG Migration and Home Affairs is only associated. It has therefore to develop a strategy to be involved in the process if possible from the very beginning.

One solution could come from an enhanced collaboration between DG Migration and Home Affairs and DG Employment, Social Affairs and Inclusion. The new Juncker Commission<sup>41</sup> enables this form of rapprochement when it comes to labour migration. The Commissioner for Employment, Social Affairs, Skills and Labour Mobility, Ms Thyssen, is in charge of "the employment and social aspects of the European Semester, promoting labour market reforms and

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<sup>37</sup> Commission Staff Working Document "Overview of the progress in implementing Country-Specific Recommendations by Member State", SWD(2013)800 final, 30.04.2014.

<sup>38</sup> "Concrete measures are also required to tackle increasing youth unemployment, as well as labour market-and social integration of people of migrant origin", SWD(2013)800 final, 30.04.2014.

<sup>39</sup> "However, further efforts are needed to improve the employability of those at the margins of the labour market, such as low skilled workers, people with reduced work capacity and people with a migrant background", SWD(2013)800 final, 30.04.2014.

<sup>40</sup> "The Swedish labour market is generally performing well but there are groups with weak attachment on the labour market, notably the youth and people with a migrant background", SWD(2013)800 final, 30.04.2014.

<sup>41</sup> See organigram here: [http://ec.europa.eu/about/structure/docs/structure\\_en.pdf](http://ec.europa.eu/about/structure/docs/structure_en.pdf).

helping to co-ordinate the employment policies of the Member States and to strengthen the EU's social market economy"<sup>42</sup>. In addition, her mission letter highlights that she should "support the work of the Commissioner for Migration and Home Affairs in developing a new European policy on legal migration to Europe to address skills shortages and attract the talent that Europe needs".

Within the context of a stronger coordination of national economic policies focusing on employment and social policies, the role of DG Employment, Social Affairs and Inclusion will increasingly be central. In this regard, and given the developments currently taking place, the breadth of DG Employment, Social Affairs and Inclusion action will extend to labour migration, including in the first phase policies addressing residing migrants and at a later stage possibly also admission rules and procedures.

It should therefore be a priority for Commissioner Avramopoulos to improve collaboration between Home affairs and Employment and social affairs to be involved in the process at the earliest stage possible.

## Conclusions

The economic crisis has had a double and paradoxical effect on EU labour migration policy. It has firstly frozen a political process which was already advancing at slow pace. With the crisis destroying jobs, creating social insecurity and fuelling anti-immigration discourses, addressing immigration and more particularly labour migration has become "toxic". This policy field remained therefore within the strict limits of the existing in terms of rules and prospects.

The second effect came with the development of new priorities, rules and tools precisely to address the crisis. Within the context of a common currency and intertwined economies, it was urgent to improve significantly the coordination of national economic policies. This movement has primarily focused on national labour policies. But, these policies cannot be dealt with without taking into account at some stage labour migration policies. Paradoxically therefore, defining solutions to solve the crisis could have the effect to extend the scope of coordination to labour migration.

Whereas this process is at its initial stages, and has not produced its full effect, it may initiate a process of better coordination regarding labour migration policies. It is of course too early to ascertain the extent to which this phenomenon will take place. Indeed, there are still some doubts about the capacity of CSRs to efficiently shape national policies and in particular migration ones. In addition, negative debates taking place in Member States regarding immigration undermine the capacity of non-binding instruments like CSRs to play a role in this particular policy field.

Nevertheless, a process has been launched and is now ongoing. It may therefore be the role or the choice of the European Commission to seize this opportunity and move towards a greater coordination of national labour migration policies within the framework of policies aimed at better coordinating national fiscal and economic decisions. In this perspective, the Commission could rely on "positive subsidiarity" theory which acknowledges that there are good reasons to act at EU level. But this will of course require political willingness. If it nonetheless decides to do

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<sup>42</sup> Mission Letter to Marianne Thyssen, Commissioner Employment, Social affairs, Skills and Labour Mobility: [http://ec.europa.eu/commission/sites/cwt/files/commissioner\\_mission\\_letters/thyssen\\_en\\_1.pdf](http://ec.europa.eu/commission/sites/cwt/files/commissioner_mission_letters/thyssen_en_1.pdf).

so, the Commission might also contribute to change the security-oriented/home affairs approach into a more social and inclusion-oriented approach which is currently lacking at EU and national level.

In the end, the recipe adopted to answer to the economic crisis could be good news, as it may lead to a better and swifter management of migration related issues and in particular regarding labour migration.