

# CHALLENGE EUROPE

## Challenges and new beginnings: Priorities for the EU's new leadership

September 2014



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## **EU migration policy – new realities, new opportunities**

*Cecilia Malmström*

European countries, like the United States, Canada, and Australia before them, are becoming lands of immigrants. While the percentage of foreign-born residents in the EU is still relatively low, immigration is a significant factor in European societies and their labour markets. Therefore, the question whether or not we need migrants is moot. Instead, we should focus on how to make the most of migration and how to make Europe attractive to the migrants we need.

### **The pedigree of EU migration policy**

The European integration we have achieved to date can trace its roots to developments over half a century back. The political decision to integrate the economies of Europe and to create a single market resulted in a strong institutional framework. The European Commission acted as the emerging Union's executive, while the Court of Justice played an important part in the establishment of the single market by striking down internal barriers.

European policies in the domain of home affairs do not have the same pedigree. They came to the fore in the 1970s and were mainly driven by events such as the Munich hostage crisis. Member States then saw the benefits in cooperation and exchange of information on specific topics. Gradually, a structure of intergovernmental cooperation was put in place, with a growing number of working groups in very specific areas of common interest. In 1985, six EU Member States agreed to set up a borderless zone, allowing their citizens to travel to each other's territory without being stopped and checked at the border crossing (the so-called "Schengen area"). This agreement resulted in true free movement of persons across EU internal borders and is considered one of the main achievements of the EU.

In spite of their significance, these developments took place outside the institutional framework of the EU. They were governed by separate structures, and decisions – sometimes important ones – were taken solely between Member State officials. The European Parliament, which played an increasingly important role in EU policy making elsewhere, was not involved in any way. Neither was the European Court of Justice.

The treaties of Maastricht (1993) and, in particular, Amsterdam (1997) were the first steps towards the integration of justice and home affairs policies into the EU institutional framework. However, the pillar structure embodied the special status and reflected the reluctance of Member States to share sovereignty in this field.

When, in 2001, the Commission proposed to put in place EU rules for the admission concerning migrants for employment purposes, Member States rejected it. Instead, they chose to advance on specific categories where they shared an interest and saw an added value. This has led to a "sectorial approach" on legal migration.

The Treaty of Lisbon, in force since 2009, marked a sea change, making EU legal migration policy subject to the ordinary decision making process used for other policies. The European Parliament became an equal partner with the Council in negotiations on new legislation, playing its role, often forcefully.

## **What we have achieved**

Migration policy is a very young policy from a European perspective, rooted in an intergovernmental approach. We have, nevertheless, made significant achievements in this short history.

Eight Directives covering different categories of migrants have been adopted, each containing specific rules on admission and residence, as well as on migrants' rights.

The Long-Term Residents Directive is particularly important to the EU's approach, as it awards migrants who have resided legally for five years or more the same treatment and rights in certain areas as nationals, and gives them the right to move to another Member State under certain conditions.

The Blue Card Directive was the first true labour migration policy agreed at EU level. It was adopted in 2009, still under the unanimity rules which were in place prior to the Lisbon Treaty. As a result, it offers significant leeway to Member States in their implementation and the admission conditions reserve it for the most highly-qualified and well-paid of foreign employees.

The Single Permit Directive was the first to be adopted under the Lisbon rules, resulting in an important role of the European Parliament. It ensures that non-EU nationals coming to the EU to work and those already present can do so on the basis of a single residence and work permit and a single application procedure. They are also ensured a set of equal treatment rights (e.g. as regards working conditions, access to social security).

Earlier this year, the EU agreed common rules on seasonal workers, who are the backbone of several important sectors. The directive will allow for seasonal workers to benefit from the same rules as EU nationals, notably on working hours, minimum wage, leave and holidays, as well as health and safety requirements, and access to appropriate accommodation. Thus the Directive will allow for employers to draw on foreign labour in a responsible manner and facilitate "circular migration" into the EU.

The recently adopted Directive on intra-corporate transferees harmonises rules for this small but highly valuable group of foreign employees and their family members, and foresees true intra-EU mobility. It will allow the EU to present a common approach in its negotiations with its trading partners, who may, in turn, facilitate mobility of specialised staff from the EU.

The Commission's proposal for a Directive on students and researchers aims to attract talented non-EU students and researchers who can contribute to our growth and competitiveness with their knowledge and skills. If agreed, the legislation would allow

students and researchers to take up employment or start a business following their studies or research. The proposal corresponds to the increasing global mobility and is similar to policies being implemented in other advanced nations.

Recognising the importance of accurate information, we have set up an EU Immigration Portal, which serves as a first point of entry to reliable, practical and up-to-date information on immigration issues, in several world languages.

After many years of deliberation, Europe has now finally united around a Common European Asylum System. Once fully in place by 2015, the system will make sure that asylum seekers are treated fairly and humanely wherever they arrive. Europe will have modern, transparent, legally safe and predictable rules on who should be considered a refugee, how they should be treated in the procedure as well as common standards on the rights. It will also mean that *all* Member States will have to have the capacity to receive asylum seekers. Today only a handful of Member States take the responsibility in receiving people coming to Europe for protection.

During the past years, the EU has considerably reinforced the external dimension of migration, which is an essential component in the development of a comprehensive immigration policy. The Global Approach to Migration and Mobility (GAMM) is the overarching framework of the EU's external migration policy. We now work with countries of origin and transit to open legal channels, prevent unsafe or irregular migration, including through the conclusion of readmission agreements, stop smuggling and fight trafficking in human beings, and ensure adequate protection to those in need.

The EU has made large strides in harmonising return policy and rendering it more humane, in particular through the implementation of the Return Directive. The Member States will have to ensure the Directive is correctly applied, including the provisions which aim at strengthening the rights of the returnees.

We have taken measures to prevent abuses of migrant labour, by establishing EU-wide standards for imposing sanctions on employers who take advantage of irregular migrants' precarious position, thereby also reducing the incentive for migrants to come to the EU irregularly. The EU has also helped create the means to fight criminals who are exploiting the willingness to migrate, and who are turning the unwitting migrants' ambitions into a nightmare by trafficking and exploiting them.

The EU does not have the competence to legislate in the area of integration, but since migration and integration are closely related and as many cities in Europe are facing the same challenges, there is also a dimension of integration policy at the EU level. Member States share a commitment to integration and the EU's policy framework on integration is about integrating third country citizens who are legal residents in the EU. It is mainly focused on assisting national, regional and local organisations and authorities in identifying and sharing best practices on successful integration strategies with each other. A European Website on Integration was also set up, in order to facilitate the sharing of best practices and benchmarking at EU level.

These recent achievements constitute the building blocks of a comprehensive EU-level migration policy. If applied correctly, they provide the tools to allow us to effectively manage migration to the EU and to pool our resources to that end.

## **The way forward**

It is of the utmost importance to consolidate and effectively implement all agreed legislation, and to give it wider publicity among migrants, international organisations, Member States and other stakeholders. The policies have to work in reality, and the EU should foster cooperation between Member States to ensure the laws are implemented in a coherent manner. There are political forces which would want to roll back on this and on so many other accomplishments of the Union. Following the rise of xenophobic parties in elections and in parliaments, we should be on guard against such backsliding and prevent these forces from taking over the political agenda.

At the same time, the EU should continue to develop a strategic and comprehensive approach to migration. The deep economic crisis and the resulting unemployment have to some extent revealed shortages and EU enlargement has increased the labour market significantly. However, the effects of this are temporary and should not detract from the long-term challenges we are facing.

The baby boom generation and the generations that followed it, are highly educated, with many having completed tertiary education. Indeed, a highly-qualified and productive labour force has always been one of Europe's most important assets. It ensures that high living standards and global economic competitiveness can coexist in the EU. Moreover, a more diverse workforce favours innovation. The shrinking of the workforce, which we are beginning to witness this decade, can therefore have immense consequences for Europe's social model, the vitality of its cities, its ability to innovate and compete, and for relations among generations as the old become more reliant on the young.

The needs of the labour market are evolving, with demands for new skills and qualifications appearing and others disappearing. Most native workers, as well as the economy as a whole tend to benefit from the growth that is generated by labour migrants because the economy is not a zero-sum game. Gains by one group do not require losses by another one. Filling a vacancy which would otherwise have remained open creates additional income and wealth for our society, increases productivity and contributes to the creation of jobs in related activities. Well-managed migration is therefore an essential part of the policy response to the challenges faced by the EU economy.

A key element of well-managed labour migration is respect for the rights of workers, be they migrant or native. Flexible labour migration policies which allow our economies to address real shortages are essential to sustainable economic growth, but they should not be used to instigate unfair wage competition. Any decision to recruit from abroad should be driven by real needs, not a desire to simply increase profits at the expense of native workers.

Providing comprehensive and accurate information to potential migrants prior to their decision to migrate will remain a cornerstone of any sound migration policy. International recruitment is challenging for all parties involved and carries significant risks. Here, authorities can work together with employers to devise credible approaches to prevent disappointments and abuses.

It is worth recalling that Europe is not the only region in the world which is aiming to address ageing through managed migration. Other major economies are rolling out ambitious policies to attract 'the best and the brightest', to various degrees of success.

We should not forget that the EU is the largest economy in the world. Our single market is one of its main achievements and a major attraction for ambitious migrants and investors alike. This has been achieved whilst maintaining, compared to our trading partners, exceptionally high living standards and relatively low levels of inequality. Europe remains a good place to live and work, and to raise a family. While individual Member States may struggle to gain recognition in the global competition for talent, Europe has the potential to do so very successfully. Nevertheless, voluntary migration to Europe is decreasing as shown by OECD reports. We must increase our efforts to be attractive in the global competition for skills and talents.

EU legislative instruments provide consistency and transparency across the EU while leaving a certain degree of flexibility and the possibility for more favourable provisions to Member States. EU-wide instruments leverage the attractiveness of the EU as a whole towards migrants, in particular when allowing intra-EU mobility.

Enabling integration and labour market participation of all migrants, in particular of those already present in the EU or arriving for reasons other than work, will be an essential component of a successful migration policy. In a study as part of its 2013 Migration Outlook, the OECD highlighted the enormous potential of increasing employment rates amongst migrants, in particular of highly-educated migrants and women, in countries with large and long-standing immigrant populations. Additionally, over-qualification and under-employment of foreign workers is a widely known issue.

The European Union should also face the fact that as long as there is war, dictatorship, oppression, and poverty in the world, people will try to seek refuge in Europe. This is a challenge that will not go away and which cannot be addressed simply by putting in place legal migration channels. A sustainable migration policy for the future requires a comprehensive strategy, including search and rescue at sea, enhanced cooperation with third countries, fight against migrant smuggling networks, and emergency support for the countries facing greater pressures. A new policy must be based on solidarity where all 28 Member States take their part of the responsibility. Today only five countries receive 70% of the asylum seekers. In the future all Member States must be involved in resettlement programmes. We need to reflect on how we can ensure a more orderly arrival of those who have strong claims to international protection to reach Europe safely for instance by exploring possible use of humanitarian visas or other ways of protected entries.



We should continue to engage with countries of origin and transit, using the channels already available to us, such as Mobility Partnerships and regional dialogues. We should not waiver in our struggle to combat trafficking in human beings and to prevent unsafe forms of migration but then alternatives must be produced

## **Conclusion**

History suggests that countries that welcome the energy and vibrancy of newcomers, compete the best internationally. We need Europe to be open to the world, bringing in skills and talents that we need, to ensure our levels of prosperity. We also need a Europe that offers protection for those in need of it, true to our founding principles and values. If we succeed, human mobility can become one of the great assets of the twenty-first century.

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