

### Migration, Borders, and the EU's Capacity to Act

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# DGAP REPORT

THIS VOLUME IS THE SECOND OF FOUR MONITORING STUDIES

## Migration, Borders, and the EU's Capacity to Act



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## IDEENWERKSTATT DEUTSCHE AUSSENPOLITIK

This monitoring study was written within the framework of the project “Ideenwerkstatt Deutsche Außenpolitik,” a process of reflection on the capacity to act in German and European foreign policy, the underlying conditions for which are undergoing a fundamental transformation. In addition to the much-discussed changes to the international system and increasing great power competition between the United States and China, technological developments, new security threats, the consequences of climate change, and socioeconomic upheavals are just some of the developments that will determine the future tasks and international impact of German foreign policy. Furthermore, the COVID-19 pandemic poses numerous political, economic, and societal risks and accelerates many existing trends in the multilateral system with immediate consequences for Germany and the EU. In light of these challenges, the project “Ideenwerkstatt Deutsche Außenpolitik” aims to put German foreign policy to the test – through evidence-based analyses and interdisciplinary strategy discussions – and contribute to strengthening Germany's and the EU's capacity to act in foreign policy.

The project focuses on four thematic areas that are highly relevant for the future ability of German and European foreign policy to act: **geo-economics, migration, security and defense, and technology**. As part of the project's overall strategic and analytical effort, DGAP will produce a monitoring study on each of these areas – four in total, including this one. All four studies analyze Europe's capacity to act and provide recommendations to EU and German policy-makers on how to strengthen this capacity. In order to provide a nuanced and yet comprehensive picture, they take the different stages of the policy cycle into account: (1) problem definition, (2) agenda-setting, (3) policy formulation, (4) implementation, and (5) impact assessment. In gauging Europe's capacity to act, the studies refer back to a series of scenario workshops on the four thematic areas that were held in late 2020 and in which DGAP and external experts created status quo, best-case, and worst-case scenarios for how the future might look in 2030. Taking the respective scenarios into account, the monitoring studies analyze to what extent the EU and Germany are prepared for the worst case, are aware of the implications of the status quo, and move toward achieving the best case. The report that distills the results of the scenario workshops and all four monitoring studies can be found here as soon as they are published: <https://dgap.org/en/ideenwerkstatt-aussenpolitik>.

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This paper examines the EU's capacity to act in the face of large-scale migration, looking at the five basic steps of the policy cycle – from the capacity to frame the problem through to the capacity to evaluate and correct policy. It finds that, although the EU has built its capacity to act in this field, it is not using it to act well. Having been forced by member states to fight for its competencies, the European Commission has locked itself into a set of negative practices more likely to exacerbate a crisis than to resolve or even harness it.

### The Three Elements of Good Crisis Response

At first glance, the EU's capacity to act on migration seems to have improved dramatically since its 2015 crisis. Brussels has built its ability to anticipate migration trends and drive through defensive border reforms; it has become adept at using its market power as leverage to buffer against unruly migration flows before they even hit Europe. But raw capacity is not everything, and there is a body of good practice for dealing with disruption and uncertainty. This paints a very different picture.

Successful crisis response requires three basic traits: internal trust and cohesion, joined-up government, and a readiness to change path. The EU tends to treat each crisis individually, and without joining the dots – the "Schengen crisis," the "Eurozone crisis," and so on. It uses each as an opportunity to drive through a pre-existing policy course, following the mantra "never waste a crisis"; and it does so in ways that upset key stakeholders, notably peripheral member states in the south and east. The result is internal division, "silozation," and path dependency. For the EU to meet even the most basic prerequisites for managing migration crises, this needs to change.

#### 1. The EU responds best to disruption when it has previously invested in its internal cohesion.

Experience shows that, when the EU has invested in bottom-up cohesion, it is better able to absorb unexpected shocks, adopt nimble new policies on the basis of political consensus, and respond well to cooperation from its international partners. The need for cohesion sounds so obvious as to be a platitude, but when it comes to dealing with migration, the EU has tried to push through reforms in the face of member state dissent, and to impose its rules on its partners. The EU justifies this top-down asser-

tiveness by reference to big foreseeable migration threats related to global demographic growth, conflict drivers and climate change. The worrying trends identified by the EU should not be downplayed, but by focusing so much on predictable threats, the EU has sidelined its response to the unforeseen – and the opportunities this sometimes brings.

#### 2. The EU responds best when it breaks silos and mixes and matches across its competencies and market projects.

The second major principle of dealing with disruptive forces is a joined-up approach. This means overcoming the administrative silos which sometimes prevent governments and authorities from linking different competencies and policy fields. Again, the desirability of "joined-up government" sounds like common sense, and the EU has itself traditionally pointed to its sheer range of competencies as a comparative advantage over other more specialized bodies when it comes to dealing with crisis. But, again too, the EU's actual response to migration crises has been the opposite – silozation. Insofar as the EU has looked outside its borders toolbox to other policy fields, it has been to raid these for political leverage, using its economic, trade and development powers to push member states and neighboring states to act as migration buffers.

#### 3. The EU responds best to disruption and crisis when it is ready to change course and break unnecessary path dependencies.

The last really important attribute of states that respond well to crisis and disruption is the capacity to step back, reassess, and (where sensible) chart a new course. History shows that the EU has always been most successful when it was most adaptable. For decades it responded to shifts in the international environment using connectivity, mobility and border cooperation in multiple inventive ways, with the Schengen project accounting for just one iteration. It is positive, therefore, that the European Commission has recently boosted its capabilities to assess the migration situation and propose new policies. But it has also adopted a mantra of "never waste a crisis" which means using its powers to push Europe further down a pre-existing policy path, rather than considering alternatives. The EU has exploited migration crises to try to "complete" the Schengen Area by pushing through a pre-cooked agenda.

# The Need for European Adaptability

The coming decade will be characterized by crisis and disruption, and the EU's capacity to act will define whether Europe remains secure, prosperous, and democratic. For this reason, the present series of papers has already looked at the EU's ability to handle geo-economic shifts, and technological innovation, with this paper zeroing in on large-scale migration. As the EU is first and foremost a market power, it is its regulatory capacity that matters when dealing with these disruptive forces. Each paper therefore judges the EU's ability to carry out the basic steps of the regulatory cycle in the face of disruptive forces, starting with its ability to make sense of the challenge, and continuing all the way through to look at its ability to evaluate and correct its policies. The question is not only *if* it can act, but *how well*?

How do we claim to know what kind of attributes the EU will need if it is to act in the face of large-scale migration? And how do we know what style of regulation the EU should promote? Does Europe need, say, firm border rules to protect from a chaotic neighborhood, or a generous naturalization policy that boosts its demographic weight vis-à-vis China and the US? And should it pursue its policies by means of cooperation or by coercion? To give ourselves a set of benchmarks, we **(a)** scrutinized how the EU acted during previous crises<sup>1</sup> and **(b)** drew up scenarios for future migration patterns in the decade 2020-2030. On this basis, we were able to imagine what would happen if the EU behaved in the future as it had done in the past – whether the outcomes would be good or bad. And we also tested what other kinds of behavior would end well or badly.

That preliminary exercise confirmed the importance of three attributes generally recognized as good for handling disruption: political cohesion, coordination and responsiveness. In all the scenarios, these attributes proved decisive to the EU's adaptability, and to whether it exited crisis well. Worryingly, today's EU is not investing enough in this trio. It appears inhibited by a defensive posture towards migration which leads it to focus on protecting the Schengen Area. This threat perception has led the EU to misinterpret migration disruptions: It sees only threats where there are

opportunities, and it treats unexpected shocks as confirmation of its underlying assumptions. This defensiveness is understandable: Migration is a political minefield. But, in our assessment, the Commission's handling makes a bad situation worse.

## THE EU IS BECOMING MORE CAPABLE - AND MORE ASSERTIVE OF OLD POLICIES

A basic answer to the question whether the EU is capable of action in the field of migration would nevertheless be that, yes, the EU is increasingly capable. Over the course of two decades of recurrent migration crises, the European Commission has fought for greater competencies and capacities, and has dedicated considerable resources to strengthening its ability to assert its rules both at home and abroad. It has, moreover, been single-minded in its priorities. The guiding goal is to finally complete the protection of the Schengen Area, bringing to an end a reform agenda that was first set out in the 1990s. This agenda has three pillars:

### 1. Harmonizing rules inside the EU's passport free travel area.

The Commission has worked to build a "level playing field" between member states through regulatory harmonization in the fields of asylum and irregular immigration. Common EU rules on processing asylum-seekers, and identifying and repatriating irregular migrants have been put in place to prevent migrants "shopping" for the best berth. These common rules are designed to counteract the "pull factors" which result in greater migration flows for some member states relative to others – economic performance, language or geography. Harmonization aims to prevent member states from shifting the burden to one another by undercutting standards.

### 2. Preventing irregular entry at the EU border.

The Commission has worked to build a shared external border protecting the Schengen passport-free travel area. Border screening for travelers and common rules for granting Schengen visas are being put in place, while the EU border agency Frontex has been expanded, and joint operational actions have been launched at the external border. Defenses are currently being mounted against the "weaponization" of migration by countries like Russia and Turkey, and the European Commission uses access to Schengen as political leverage to impose its rules on asylum, irregular migration and repatriation upon its neighbors.

<sup>1</sup> The historical analysis draws on multiple informal and semi-formal interviews with policymakers, largely during the author's time working for the European Union on migration affairs, 2015-2020.



### 3. Migration-route diplomacy.

The Commission has forged border and migration agreements with strings of nearby countries lying on migration routes to Europe, notably the routes from West and East Africa through Libya; the Silk Roads route from Pakistan and Afghanistan; and the Atlantic route from those Latin American states whose citizens do not currently require a Schengen visa. These agreements pertain to the repatriation of these states' nationals, and sometimes also the expulsion of those citizens of other states which have transited through their territory en route to the EU. The European Commission has also exported to neighboring regions its particular model of border management, "Integrated Border Management."

But while the Commission has certainly improved its raw capacity to act at home and abroad, it has not invested enough in the qualities of consensus-building, coordination and responsiveness that are generally agreed to be key to forward-looking crisis management. Far from adapting, the Commission is focused on the old goal of gradually building its power to regulate the Schengen Area. This path dependency has become a familiar part of the Commission's crisis response, and not just in the sphere of migration: The EU has got into the habit of using crises to centralize power and to push further along the current course.<sup>2</sup> The EU's dogged persistence is not necessarily a bad thing, of course, if its existing path is a good one. But in the field of migration, this agenda of "completing the Schengen Area" is not an innovative recipe for facing the future.

## THREE POTENTIAL DEVELOPMENTS THE EU IS SET TO MISS

The Commission's efforts to protect Schengen appear to be driven by deep pessimism about global affairs - a vision of a world beset by chaos and power politics. In interviews, Commission officials tend to portray the EU as having over-extended itself, lifting borders too fast on a wave of over-optimism about the benefits of global market integration. They see Schengen sitting at the core of a huge regional economy that stretches out beyond the Middle East, Ethiopia and Nigeria, dangerously exposed to the adverse effects of what Commission officials call "globalization-gone-wrong," bereft of friendly partners and the natural destination for millions of irregular migrants from Africa and Eurasia. This pessimistic picture is confirmed daily by

new disasters, and the Commission encourages Europeans to huddle together for mutual protection.

Our scenario exercise, by contrast, highlighted several drivers of migration disruption that all too often go unnoticed amongst policymakers, and which could lead to greater international cooperation just as easily as to chaos and power politics:

1. **Europe is no longer the center even of its own neighborhood.** Power and attraction are shifting towards the Global South and East, and this shift plays out in growing South-to-South and even North-to-South migration. This shift in global market power is leading to challenges to international migration norms, but also to a new prestige amongst states that handle migration well.
2. **The distinction between the world's traditional countries of origin, transit, and destination is becoming less pronounced.** The effect of this is that almost all countries world-wide share a basic interest in both emigration and immigration, brain drain, and repatriation. These shifts call for cooperation and also competition from the EU.
3. **Regional cooperation in Africa, Asia and Latin America is growing stronger.** This is leading to messy efforts to create border-free travel zones and shared labor markets in poor and badly-governed regions. But these regional groupings are becoming increasingly capable of retaining local workers and even attracting migrant labor from abroad.

The present paper works on the basis of a different diagnosis of world affairs and the EU's place in them, one more attuned to the drivers of disruption that the EU tends to miss. The EU does not lie at the center of this map; it is just one of several global poles each potentially drawing migrants away from one another. This map is polka-dotted with regional economies, each of which might add to or detract from the multilateral system. In this world, migration is a prime tool of order, alliance-building and also geo-economic competition. This is a world where Europe, far from being bereft of partners, might cooperatively exploit some extremely tricky opportunities, and where Europeans might band together out of fear of what lies beyond their outer border, but also because they know they have joint capacities to influence the world.

<sup>2</sup> Sebastian Kurpas, "The Treaty of Lisbon - How Much 'Constitution' is Left? An Overview of the Main Changes," *CEPS Policy Brief*, No. 147, December 2007, <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1334072](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1334072)> (accessed on March 30, 2021); Valéry Giscard d'Estaing, "The EU Treaty is the same as the Constitution," *Independent*, October 30, 2007.

## AN ALTERNATIVE THREE-TIER POLICY FOR ADAPTING TO GLOBAL SHIFTS

We imagined policies that seemed better suited to positioning the EU to exploit these international shifts. These are not policy recommendations. Rather, they should give the reader a sense of the degree of adaptability we expect from the EU when dealing with crises, and thus of the benchmarks we used to judge the EU's current posture. Rather than doggedly pursuing an old agenda focused on harmonizing Schengen rules, restricting the immigration of foreigners, and bilateral route diplomacy, the EU could move towards the following:

### 1. Harmonizing the EU labor market.

The first tier is about deepening the integration of the European labor market. It involves policies to improve labor mobility within the EU (skills recognition between member states, pension portability, etc.), and policies to align national labor market institutions as part of Eurozone reform and Covid recovery. More broadly it involves coordinating European labor markets with the needs of the EU's digital, capital, and energy markets so that businesses have access to brains, investment, technology, and affordable energy. A focus on labor market integration does not automatically make the EU better at absorbing immigration (this was clear in the 2000s when the EU expanded and "Romanians replaced Moroccans" as a source of cheap labor), but a proper policy of innovation and growth would almost certainly make the EU more adaptable than if it continues to

rely on the Schengen Area. It would mark a positive adaptation of Europe's market power.

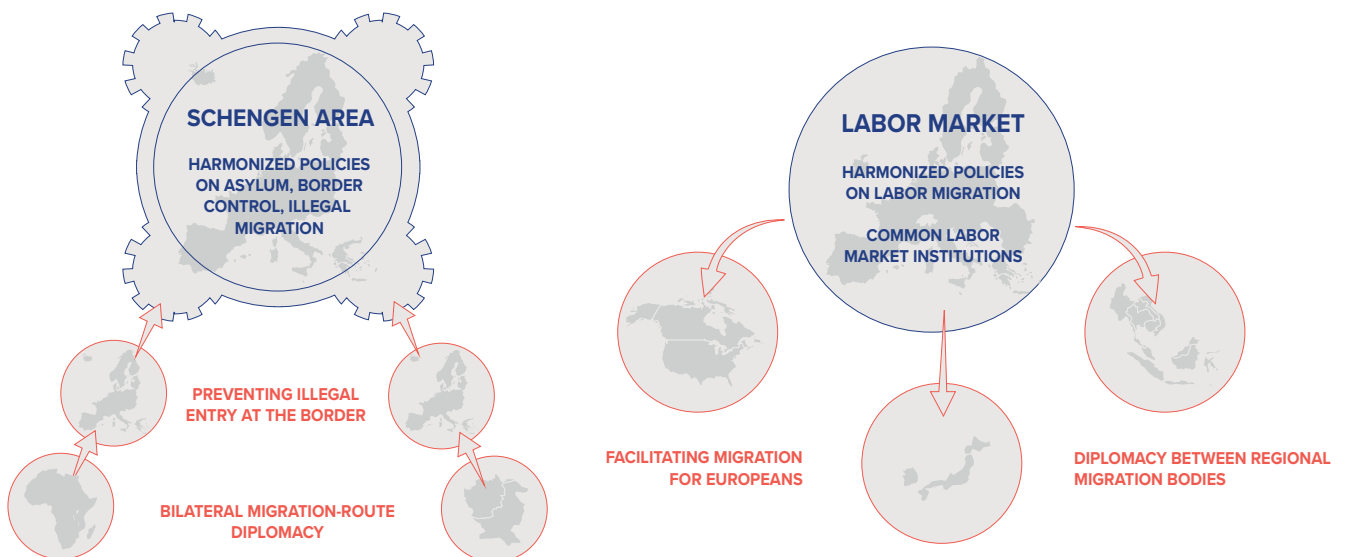
### 2. Facilitating the migration of Europeans.

This tier consists of policies that acknowledge emerging migration flows away from the EU and formalize new migration opportunities for Europeans. It draws lessons from longstanding EU mobility partnerships with poorer economies, from policies that counter brain drain from the Global South, and from policies ease circular migration for citizens of emerging economies into the EU, and applies these to the EU itself, and to ensuring that EU citizens who emigrate also return. It also learns policy lessons from African countries in fields such as diaspora policy and "brain gain," in order to ensure that the EU protects European citizens abroad. The point is that an acknowledgment that Europeans do not only have defensive interests when it comes to global migration would give the EU a much greater stake in the international regulation of migration than if it focuses narrowly on border control and immigration.

### 3. Inter-regional diplomacy.

This tier involves the EU developing tools to help build regional labor markets in traditional migrant-sending regions like West Africa, as well as regions like the Western Balkans and Eastern Europe, where the EU currently tries to export its rules through bilateral "route diplomacy" rather than regional frameworks; the deployment of EU conditionality and diplomatic leverage to build re-

FIGURE 1: COMPLETING SCHENGEN VS LABOR MARKET INTEGRATION





gional immigration standards and ensure that countries in West Africa and elsewhere do not use “regional free movement” simply as a means to send nationals abroad; and efforts to make regional labor regimes pillars of a multi-lateral global migration regime in UN agencies such as the



### BOX 1. HISTORICAL DEVELOPMENT(S) OF EU MIGRATION POLICY

In the 1990s, EU member states began to develop a common policy toward migrants from outside the EU. Five years earlier, half of the EU's ten members had signed the Schengen Agreement on the abolition of passport controls, but the initial focus of these northwestern members had been on protecting their project from European criminals and terrorists. By 1993, when the Treaty on European Union (TEU) was agreed, Greece, Italy and Spain had also signed up for Schengen. The treaty listed asylum, immigration, and border management as “matters of common interest,” and in 1997 – two years after Schengen's launch – the Treaty of Amsterdam equipped the EU with the authority to enact policy in each of these fields.

After Amsterdam, work began on a “Common European Asylum System” (CEAS) and a “European Immigration Policy.” For the first decade, this involved the harmonization of existing national asylum and immigration policies. New competencies on legal migration and migrant integration were included in the “Treaty establishing a Constitution for Europe,” and after its failure in 2005, they were transferred to the Treaty of Lisbon, which was concluded two years later. But governments were suffering from norm-setting fatigue, and, alongside perennial efforts to build solidarity between EU member states, attention turned more assertively to border operations outside of the EU and the task of controlling migration flows abroad.

The legal basis for political action on asylum, immigration, and border management today lies largely in the Treaty on the Functioning of the European Union (TFEU, a revised and renamed version of the Lisbon Treaty), with the remains stemming from the Treaty on the European Union (TEU). The TFEU's Title V section on the “Area of Freedom, Security and Justice” with its chapters one (“general provisions”) and two (“policies on border checks, asylum and immigration”), containing Articles 67, 78, 79 and 80, sets out the legal

International Labor Organization (ILO) and the High Commission for Refugees (UNHCR), as well as the International Organization for Migration (IOM). In the long term, this inter-regionalism would be more fruitful than the defensive buffering of “migration route diplomacy.”

basis for decisions in the fields of asylum and immigration policy. Similarly, the legal basis for border management policy can be found in Art 3.2 of the TEU.

The EU's immigration policy cannot be compared with sovereign national immigration policies: The EU's competencies are shared with the member states, and its approach to asylum is still largely limited to creating a “level regulatory playing field” so that asylum-seekers do not pick and choose between member states based on national rules. Insofar as the EU regulates legal migration, it focuses on the kinds which are most attuned to the passport-free travel area, and which require least work from member states when it comes to migrants' long-term social and labor market integration: Highly mobile migrants like students and fruit-pickers who come and go.

It is important to note that the Schengen Area was just the latest effort by the EU to work on borders and mobility. In 1957, its founding members recognized that a lack of skilled workers could pose a security threat to each of them, and so regulated for the “free movement of labor.” Members still regulated their migration relations to third countries like Turkey, Morocco, or indeed Spain, through bilateral treaties, but they lifted restrictions on labor between themselves which had only really emerged about 50 years earlier. Only in 1974 did they acknowledge irregular migration as a problem, albeit only in relation to unforeseen consequences of these bilateral treaties, such as family reunification.

All this is a sign of how drastically and frequently the EU's approach to migration has changed over the decades (between emigration and immigration), but also of how often the EU invented and reinvented its approach to borders, connectivity and cross-border mobility prior to the signing of the Schengen Agreement. Each time, the EU harnessed markets to achieve strategic objectives. This raises the question of whether the EU needs to “complete” Schengen or to once again reinvent its approach to borders. That capacity for reinvention is a theme of this analysis.

# Scoping Future Disruptions: Three Migration Scenarios for 2030

In November 2020, we asked a group of around 20 experts and officials to develop three alternative scenarios describing the state of “international cooperation and competition around migration” in 2030, and then to model the EU's response. This is why we did it and what we learnt.

## ACCEPTING “POLITICAL REALITIES”: THE RISK OF SELF-FULFILLING FEARS

A recurrent theme across all four policy areas examined by this project (migration, tech, geo-economics and security) are “negative policy loops,” or self-fulfilling fears. These occur when the EU envisions a pessimistic and hostile future, and then brings it to life by missing opportunities and new modes of cooperation that do not fit with its preconceived ideas. It has become apparent from this project that the EU's mode of anticipating disruption reflects a deep pessimism about the state of the world. Its go-to solution across all four fields is to leverage its market power in a bid to unilaterally regulate a global economy that it believes is running out of control. If handled badly, however, the assertive use of the EU's internal market (the “Brussels effect”) will end up creating the very threats it is meant to defend from, isolating the EU from global markets and partners.

Tellingly, the “Brussels effect” is a modus operandi that the EU pioneered in the field of migration, where it has long

closed off the Schengen Area to the outside world, then leveraged visa access to spread its rules abroad. Rather than looking for mutual interests with foreign governments and stakeholders, it has often resorted to transactionalism – most recently through trade and aid incentives – to get partners to comply with its priorities. Case upon case emerges in this report to show that, by hardening its outer border and making deals with neighboring strongman governments in the Western Balkans and North Africa, the EU is creating the ideal conditions for disorderly migration and people smuggling. By picturing itself as the natural destination for the world's irregular migrants, moreover, the EU neglects to cooperate with emerging destinations. Migration is thus a good example of how the EU's rather Eurocentric defensive standpoint can prove self-defeating.<sup>3</sup>

It must be said that EU law-makers are more than aware of the case in favor of changing this posture, adapting to embrace migration and cooperating with other countries wherever possible. The Commission, in teeing up reforms to its Migration Blue Card, Single Permit for Work Directive and Talent Partnership scheme, notes that the “EU is currently losing the global race for talent,” with other OECD countries such as the USA, Canada, and Australia proving more able to attract talent from abroad.<sup>4</sup> The Commission also notes that Europe has an ageing and shrinking population,<sup>5</sup> which is currently forecast to peak in five years' time at a number just 2.5 million higher than today, reaching 449 million before gradually sliding downwards.<sup>6</sup> On top of this, Covid-19 border lockdowns have forced the EU to recognize that 13% of Europe's key sector workers are immigrants.<sup>7</sup>

Commission officials point to political realities in European capitals as reason to maintain the current, defensive course. This is understandable. But it may be that member states' resistance to change is down to the fact that their fears of disruptive migration have so often been confirmed, and that these migration shocks are themselves the product of bad EU policy – that this is all part of the negative loop. Signs that such loops can nevertheless be broken and policy change made possible can be found in an unlikely place – just across the Channel, where the UK recently opened itself up to immigration from India in a bid to improve the treatment of British workers in Asia.<sup>8</sup> It appears Downing Street was able to adapt to shifts in the

<sup>3</sup> It funded the creation of a migration buffer at the Nigerien-Libyan border by pulling out development aid from South Africa, a major destination for migrants at the opposite end of the continent to the EU; it leaped on Nigeria's calls for help with border control, although Nigeria could be the powerhouse drawing in migration from across West Africa.

<sup>4</sup> European Commission, “Attracting the Talent We Need,” *Official Commission website* (online): < [https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum/skills-and-talent\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum/skills-and-talent_en) > (accessed March 30, 2021).

<sup>5</sup> Ibid.

<sup>6</sup> Eurostat, “Population Projections in the EU,” *Eurostat Statistics Explained*, March 24, 2021: < [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=People\\_in\\_the\\_EU\\_-\\_population\\_projections&oldid=497115#Population\\_projections](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=People_in_the_EU_-_population_projections&oldid=497115#Population_projections) > (accessed on March 31, 2021).

<sup>7</sup> European Commission, “Immigrant Key Workers: Their Contribution to Europe's COVID-19 Response,” *Report*, April 24, 2020: < [https://knowledge4policy.ec.europa.eu/publication/immigrant-key-workers-their-contribution-europes-covid-19-response\\_en](https://knowledge4policy.ec.europa.eu/publication/immigrant-key-workers-their-contribution-europes-covid-19-response_en) > (accessed March 30, 2021).

<sup>8</sup> In May 2021, the British government eased visa restrictions for Indian migrants. Notably, it did not do so just for leverage to impose one-sided migration rules. Rather, it pursued reciprocity for British workers in India, including what was described as an Erasmus+ program for British professionals. Liz Barratt, “The new migration and mobility

global economy because it has seen popular support for migration grow since it left the crisis-prone EU, as faith in migration management has been partly re-established.<sup>9</sup>



Scenario exercises are a useful means to test whether the EU finds itself locked in a negative policy loop and to model ways to break out.

## BOX 2. THE THREE PRIORITIES OF OUR SCENARIO EXERCISE

European Commission President von der Leyen has herself adopted strategic foresight to guide policy-making, appointing Maroš Šefčovič as Vice-President for Foresight. Šefčovič has, in turn, used the other half of his portfolio ("Inter-institutional Relations") to streamline foresight practices across all Commission services. That includes the Commission's Directorate-General for Migration and Home Affairs (DG HOME), the part of the Commission which drives migration policy. Indeed, our own scenario group included a number of experts who had led these Commission-wide efforts, and who joined us in a private capacity from DG HOME, the Joint Research Centre (JRC) and several of the EU's various home affairs agencies.

While our approach to foresight might at first seem familiar to those versed in the Commission's work, we structured our effort in such a way as to achieve three important elements which we felt were missing when the Commission's work was transmitted into the policymaking process:

### 1. Focus primarily on the world beyond the EU.

We asked our experts to think about the state of global migration cooperation and competition, rather than the future of EU cooperation, or the Schengen Area. There were numerous reasons for this framing, but one obvious goal was to combat Eurocentrism, and in particular the tendency to start foresight exercises by talking about the prospects for deepening EU integration and the dangers of fragmentation. Instead, we looked at the prospects for deepening global migration cooperation. And while it is by no means the case that the world is developing a global labor migration regime to rival that of the EU, it is perfectly plausible to imagine a further thickening of international rules, not least as former countries of origin also become

countries of transit and destination. To ignore this is to give succor to an unhealthy siege mentality in Europe.

### 2. Focus on the uncertainties and opportunities

We put a focus on uncertainties and on opportunities. One European Parliament official pointed out that policymaking at the European level is typically like capability-planning in the defense sphere: It has a time horizon of 8-10 years from conception to realization, and involves agenda-setters competing for resources and trying to inject governments with a sense of urgency. Indeed, DG HOME and Frontex really are involved in capability development. As such, they (and other EU rule-makers) find it expedient to cite future certainties and concrete threats, not uncertainties or potential opportunities. Inevitably, they use the least speculative of foresight tools (trend analysis and threat assessment) to make their case. By contrast, nimble policymaking requires an EU that is good at seizing unexpected opportunities, and this requires a more speculative approach.

### 3. Rethink assumptions about cause and effect

We also moved away from drawing projections, trajectories or trends from the present day; and tried to avoid applying to the future current causal assumptions about migration, such as laws of "push" and "pull." We began instead by imagining various features of global order in 2030, sketched out how migration would look in this world, and then worked backwards to the present day. The idea was that this approach would force us to find causal chains explicable only in retrospect. This approach challenged our ideas. So, for instance, one of our expert groups proposed a causal link between the price of oil and the growth of irregular migration in a future scenario, and then noted that this might apply to the current growth of irregular migration from oil-producing countries like Libya, Nigeria, and Venezuela.

partnership with India - what we know now," *Bindmans Insight*, May 17, 2021: <<https://www.bindmans.com/insight/updates/the-new-migration-and-mobility-partnership-with-india>> (accessed June 30, 2021).

<sup>9</sup> Jamie Grierson and Pamela Duncan, "Britons most positive in Europe on benefits of immigration," *The Guardian* (online), May 2, 2019: <<https://www.theguardian.com/world/2019/may/02/britons-more-sold-on-immigration-benefits-than-other-europeans>> (accessed on March 30, 2021); Jemima Kelly, "Why is Britain feeling more positive about immigration?" *Financial Times* (online), July 23, 2020: <<https://www.ft.com/content/944fab8-61d3-43a2-9c11-9d92937ea887>> (accessed on March 31, 2021).

## THREE SCENARIOS FOR GLOBAL MIGRATION IN 2030: THE UGLY, THE BAD AND THE GOOD

Our group of experts vividly illustrated what would happen if the EU maintained its current *modus operandi*, or even bolstered its defensive stance, when they developed their three skeleton scenarios for 2030. The first of the three was a status quo scenario, which pictured how the EU's current policy trajectory would play out in the face of future migration disruption. The second, a worst-case scenario, imagined the EU not only failing to adapt to disruption but actively reinforcing its current policy course (pushing it through despite resistance at home and abroad using excessive leverage). In the third, best-case scenario, the EU adapted well to these migration disruptions by building up its internal cohesion and responding quite quickly to opportunities abroad. We describe these scenarios, and the lessons we draw from them, in more detail elsewhere.<sup>10</sup>

### Status quo scenario: The EU's fears of mass migration become self-fulfilling.

In this version of 2030, the EU sticks closely to today's policy trajectory, leveraging access to the Schengen Area (and member states' labor markets) in an attempt to create a rules-based approach to migration based on European norms. Through carrots and sticks, the EU spreads asylum rules and Dublin-style returns policies to countries on migration routes into Europe. It claims to be enforcing the "rules-based international order," on the grounds that treats readmissions agreements as an obligation under international law, and an attribute of any responsible state. The EU incentivizes neighboring governments in the Western Balkans, Eastern Europe and North Africa into buffering arrangements, propping up autocratic governments and creating arbitrary new border regimes which are greedily serviced by smugglers. As a result, the EU's fear of future migration shocks becomes self-fulfilling, as its defensive buffering policies lead quite directly to sporadic inflows of mass migration. The EU has failed to take account of trends which might have made cooperation easier, such as regional labor market integration in these areas.

### Negative scenario: Migration becomes a vector of power politics.

In this scenario too, Brussels leverages access to Schengen and member state labor markets in an attempt to create a rules-based approach to migration based on European norms. But, if this differs from its behavior in the first scenario, then it is because here the EU seeks to achieve this by engaging in power politics. The initial focus of this scenario is Asia, where new alliances form in order to counterbalance China, and where parties begin to use migration as a vector of alliance-formation and ideological affinity. A defensive EU presents itself as a bastion of stability and civilizational values, and treats Schengen as a space to be protected at all costs. As a result, majority Muslim countries like Morocco turn away from Europe, increasingly focusing on regional migration agreements and cooperation with southern neighbors in order to gain regional influence. In West Africa, Morocco seeks to play kingmaker between regional rivals by controlling migration movements. But, overwhelmed by the effort of marshalling migration for grand geo-strategic purposes, it suffers sporadic dips in its ability to control its borders, and people move on to Europe.

### Positive scenario: The EU avoids the trap of embracing its declining attractiveness to migrants.

In this scenario, migration loses salience as the EU begins to build its immigration and border policies not around the Schengen Area, as today, but around a more integrated and elastic European labor market. It gradually ceases to use protective policies (visas and border controls) and broader trade and aid tools as political leverage, returning them to their original purpose. Seeing that it can indeed stabilize crisis regions and – through more effective use of trade, aid and diplomacy – support the emergence of new local migration hubs in their neighborhood, European governments likewise cease using the EU's international tools to buffer or address the "root causes" of migration, instead allowing trade, development, peace-keeping, and diplomatic resources to fulfil their usual functions. Its focus shifts to overcoming the unforeseen effects of trade and aid on forced migration, such as when the EU reduces tariffs on certain crops and its trading partners respond with large-scale land clearances to capitalize on the new commercial opportunity.

<sup>10</sup> See: Parkes et al. "Building resilience," 2021.



### BOX 3. ACKNOWLEDGING THE EXPERT GROUP'S OWN BIASES

In order to avoid self-fulfilling prophecies and negative feedback loops of their own, our experts audited the scenarios for evidence of blind spots. There were at least three biases which needed to be fixed in order to generate proper benchmarks from the exercise.

First, the experts acknowledged their **tendency to portray large-scale migration as an “inevitable” part of modern life.** In reality, it simply is not. Many people are bound to their locality, and not because they are “trapped” there; often they simply do not want to move.<sup>11</sup> This notion of migration-as-inevitability was, moreover, belied by the ongoing Covid-19 lockdown. At the time of the workshop, global migration had dipped markedly, and the EU was experiencing a 33 percent year-on-year dip in asylum claims, and a 6-year low in irregular border crossings. The experts thus acknowledged that whilst they criticize the EU for missing the policy options available to it, they do too: They downplay the scope to steer migration by the simple means of visa and border restrictions. They also had a disinclination for the use of political conditionality by the EU to influence migration flows by other countries – although conditionality would be key to securing broadly positive developments such as cajoling other world regions to build up their regional labor markets.

Second, despite picturing themselves as reform-minded and free of the EU's shibboleths, the experts came to recognize that **they too were largely socialized in the EU's policy terms.** They had a habit of thinking in terms of “migration management,” the European Commission's rather techno-

cratic attempt to “harness mobility.” On the whole, this involves short-term migration into the EU in the interests of both sending and receiving countries, with migrants returning home once they have worked, armed with investment-ready cash and new skills. This might seem modern, but it recalled the era of temporary workers in the 1950s: “We asked for workers, and we got people instead,” said one participant, quoting a dictum from that era. By 2030, there may well be an EU “nation-building” dimension, as Europe uses immigration to grow its population and compete for status with populous countries of the Global South. Commission President von der Leyen has already appointed a Commissioner for European Demography, for instance.

Lastly, the experts noticed their **tendency for “declinism.”** They acknowledged that they were a little too keen to highlight that the EU is not the world's only labor destination, too quick to envision the EU being tipped into decline by its obsession with restricting immigration. Many painted China as the world's up-and-coming power, drawing the brightest and best away from a West which is too self-absorbed to note the challenge. And one pointed out that the UK is banking on pulling in the best minds from abroad and linking them to a healthy start-up culture.<sup>12</sup> This is not quite how the EU likes to picture Brexit-Britain.<sup>13</sup> But at the end of the exercise, the experts acknowledged that China and the UK – not the EU – are most likely to be dented by demographic decline and hostility to immigration.<sup>14</sup> Moreover, as highlighted by a participant based in Singapore, the EU often underestimates the progressiveness of its own immigration policies.<sup>15</sup>

11 Sonya Ayeb-Karlsson, Christopher Smith, and Dominic Kniveton, “A discursive review of the textual use of ‘trapped’ in environmental migration studies: The conceptual birth and troubled teenage years of trapped populations,” *Ambio* 47, (2018), pp. 557–573.

12 Ana Gonzalez-Barrera and Philip Connor, “Around the World, More Say Immigrants Are a Strength Than a Burden” *Pew Research Center*, March 14, 2019, <<https://www.pewresearch.org/global/2019/03/14/around-the-world-more-say-immigrants-are-a-strength-than-a-burden/>> (accessed on March 31, 2021)

13 Josh Gabatiss, “Brexit strongly linked to xenophobia, scientists conclude,” *Independent*, November 27, 2017, <<https://www.independent.co.uk/news/science/brexit-prejudice-scientists-link-foreigners-immigrants-racism-xenophobia-leave-eu-a8078586.html>> (accessed on October 26, 2021).

14 Alex Gray, “India Will Take Over From China to Drive the Third Great Wave of Asian Growth,” *World Economic Forum*, October 6, 2017: <<https://www.weforum.org/agenda/2017/10/china-will-grow-old-before-it-gets-rich/>> (accessed on March 31, 2021).

15 The Expert Council on Integration and Migration, “SVR Releases 2015 Annual Report,” *Expert Council and Scientific Staff Press*, April 28, 2015: <<https://www.svr-migration.de/en/press/press-expert-council/svr-releases-2015-annual-report/>> (accessed on March 31, 2021).



# Judging the EU's Capacity to Act in the Field of Migration

This, the third and main part of the study, evaluates each of the key aspects of the EU's capacity to act in the field of migration. Since the EU is essentially a regulatory power, we do so by referencing the stages in the EU policy cycle, namely:

- (1) **Defining the policy problem;**
- (2) **Setting the agenda, and (3) formulating policies;**
- (4) **Implementing policies;**
- (5) **Evaluating the impact of policies.**

Our evaluation is based partly on the EU's handling of the 2015-6 migration crisis, and partly on benchmarks drawn from our "Scenario-2030" workshops. It asks whether the EU has the attributes needed to maintain regulatory capacity in the face of disruption, and whether it is deploying these capacities well. The analysis focuses on the European Commission as the preeminent EU body in the field of migration regulation.

A coherent story emerges over the next chapter. The Commission has fought hard for its competencies, putting years of effort into building up the EU's capacity to regulate in this field. But it has achieved this by highlighting the vulnerabilities facing the Schengen Area if member states hold on to their remaining powers or continue to delay reforms, and by encouraging a kind of tunnel vision that compels member states to believe that they have no choice but to "complete Schengen." These techniques, in turn, have served to narrow down the political choices available to its members, and have left the EU in real terms less able to act than if it had built EU cohesion and international cooperation.

## DEFINING THE MIGRATION POLICY PROBLEM

The first step of the policy cycle concerns the Commission's capacity to frame migration challenges facing Europe. Here, the balance sheet for the EU seems positive – at least at first sight. The Commission has been able to build up considerable data resources to identify and define strategic challenges. Besides situational tasks such as monitoring EU borders and asylum backlogs, it has focused on problems like the global demographic trajectory, drivers of irregular migration, such as resource conflict and economic shifts, and the potential instrumentalization of cross-border flows of people for geostrategic reasons. It has also invested in its capacity to communicate policy, including researching how best to package statistics for political effect. Judged in the raw quantitative terms of analytical and messaging capacity, the EU can be considered capable of action.

However, it matters how the EU acts, and the Commission uses these capabilities in a rather instrumental way to frame migration so as to propel member states further along a pre-existing policy path, one that has more to do with boosting the Commission's authority than nimbly adapting to disruption. Policy-makers in Brussels are quite open about the need to build up informational asymmetries vis-à-vis member governments "in order to steer policy forwards". This instrumental use of knowledge is entirely understandable in a policy field where there is so little consensus. But the risk is that the Commission's attempts to override the lack of political will in Council simply stores up political problems, with dissent from member states simply being delayed until a later stage of the policy cycle.

### How the EU built up its capacity to define migration problems

When the EU's migration deal with Turkey came into force in March 2016, the Commission illustrated its effectiveness by providing member states with a basic before-and-after comparison of the numbers of migrants who had crossed the Aegean. That month, there had been a huge decrease, and the message was clear: The Commission was capable of dealing with crisis and disruption even under hostile geopolitical circumstances. If member states could again muster the political will Berlin and the Dutch Council Presidency had displayed in negotiating the deal, the Commission could play its part by not only by restricting access to the EU, but



also by leveraging visas and other access rights for geopolitical purposes.<sup>16</sup> Its capacity to define, package and sell migration statistics even in this rather basic way had been unthinkable mere months before.

At the beginning of 2015, the Commission had been accused of being caught unprepared by the crisis. Some of this was self-imposed: The Commission had long been reluctant to collect information on some issues for fear of politicizing them.<sup>17</sup> Some of the Commission's other blind spots were the result of civil liberties and data protection concerns defended by the European Parliament. But the majority were down to member states, which were reluctant to share data, even at the cost of an evidence base for EU policy. The cumulative result was that EU data ignored politically difficult issues, were hived into silos along what one Europol official described as "19th century constitutional principles in the age of cloud computing,"<sup>18</sup> and generally failed to provide a rounded situational picture.

In 2015 the EU had over 100 warning and sense-making systems for crisis management,<sup>19</sup> but it had none to anticipate when migrants would start arriving at its borders. Only Sweden and non-EU Schengen member Switzerland had such systems, and these largely focused on modelling onward flows of refugees within the EU itself.<sup>20</sup> A 2008 suite of rules obliging member states to report asylum data had given the Commission access to the basic data needed to gauge asylum backlogs inside the EU but the Commission was "blind" to the crisis outside the EU, even as this became critical. Throughout much of 2015, indeed, it was watching events to the EU's east almost as closely as those in Syria and Turkey, assessing the likelihood of a wave of refugees from war-hit Ukraine which might finally force Poland and Hungary to favor coordinated EU action on asylum.<sup>21</sup>

The Commission's shaky attempts in mid-2015 to produce a weekly analysis of the numbers crossing the EU's borders, – and the constant corrections which its migration numbers underwent – attest to its weak starting point, but also to the quick progress made.<sup>22</sup> Tellingly, it had been a Council mechanism, the Integrated Political Crisis Response, which was the first mover when it came to establishing a situational picture. The IPCR is a standing capability, activated to coordinate the EU's response to major crises. In late October 2015, the IPCR was triggered, and a small unit in the Council duly worked to build a picture from member state, Commission and European External Action Service (EEAS) sources. IPCR coordinated member states' activities at home and abroad (preventing third countries from exploiting the fact that one EU member did not always know what diplomatic initiatives another had launched).

But the Commission felt (rightly) that this was inadequate: The IPCR is a temporary mechanism which national governments had explicitly chosen not to upgrade into a more permanent 360° threat analysis capability in 2013–14.<sup>23</sup> Seizing on this weakness, the Commission nudged it aside, reportedly sidelining the Council and the intelligence center in the EEAS, and dipping directly into the information available to its own DG HOME and even DG HR (Directorate General for Human Resources and Security which provides analysis on risks to EU staff and assets), as well as risk analysis networks managed by Frontex, which span the EU, Western Balkans, Eastern Europe, and Africa. To process this data and work out what kind of messaging would resonate with voters, the Commission relied on its Joint Research Council (JRC). When the EU-Turkey deal came into effect, the Commission had all the tools it needed to spin the agreement politically.

16 N.N., "Turkey losing hope for EU visa-free deal," *BBC News*, May 11, 2016, <<https://www.bbc.com/news/world-europe-36272677>> (accessed on June 1st 2021).

17 One former Commission advisor complains that this left him unable to compute after 2004 how migration from the new member states displaced immigration from Africa and led to restrictions in Spain or Portugal – or in his words how "Romanians replaced Moroccans." This substitution was immediately felt in a growth in irregular migration from Africa, but the Commission was left unable to explain it. Another says that, when Poland and Romania joined the EU, and its citizens ceased to count as migrants, she lost the richest source of migration data possibly world-wide.

18 Author interviews, October 26, 2016, Europol Headquarters, The Hague.

19 Arjen Boin et al., "Making Sense of Sense-Making: The EU's Role in Collecting, Analysing, and Disseminating Information in Times of Crisis," *The Swedish National Defence College*, March 2014: <[http://www.societalsecurity.eu/uploads/Articles/2014\\_Boin%20Ekengren%20Rhinar%20Sensemaking\\_FHS%20Book.pdf](http://www.societalsecurity.eu/uploads/Articles/2014_Boin%20Ekengren%20Rhinar%20Sensemaking_FHS%20Book.pdf)> (accessed on March 31, 2021).

20 According to a survey of 15 member states carried out at the time, some members (like Belgium) did have systems with names such as "migration barometer," but for all their apparent sophistication, these relied on the same few data sources – inside the EU, the UK and Belgium relied on data from Italy and Germany. And outside, the UK relied on data from its defense ministry, and France and Belgium on diplomats. Within member states, data was hardly linked up, with the Netherlands the first to create a data center that linked the local and federal levels. But in Germany and France, for instance, migrant returns was typically an affair of the local level, rather than law enforcement, so data were incomplete – and, as we have seen, other member states were relying heavily on them. The UK had been inspired to try modelling data by the US "volume projection" committee, and flagship work in Canada, but it abandoned the attempt in 2014. Interview, Paris, June 16, 2017.

21 In later 2014, the author briefed member states ambassadors to the EU's Political and Security Committee, where discussion focused on the east as much as the south. This paper resulted: Roderick Parkes, "Integrating EU defence and migration policies in the Mediterranean," Working Paper 125, *FRIDE*, November, 2014, <<https://www.files.ethz.ch/isn/185698/Integrating%20EU%20defence%20and%20migration%20policies%20in%20the%20Mediterranean.pdf>>.

22 The author worked with EU officials to improve their oversight of the situation: Roderick Parkes and Annelies Pauwels, "Getting the Numbers Right," *ISSUE paper 9*, EU Institute for Security Studies, April 5, 2017, <https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief%209%20Migration%20statistics.pdf>.

23 On the reforms: Agnieszka Nimark and Patryk Pawlak, "Upgrading the Union's response to disasters," *ISSUE Paper 45*, European Union Institute for Security Studies, 2013: <<http://www.jstor.com/stable/resrep06911>>.



## BOX 4. MIGRATION DATA GAPS

As crisis hit in 2015, what greeted the burgeoning group of migration analysts in the Commission was a chaos of numbers and gaps. Take expulsions, an important plank of EU migration policy and viewed by many as a deterrent for “bogus” asylum claimants as the crisis broke. In September 2015, the Commission delicately pointed out that, although “Member States provide statistical data on returns to Eurostat, inconsistencies have been identified.”<sup>24</sup> What this meant in practical terms was rather more drastic than the tone suggested.

The EU had, for example, no shared definitions of migrants’ various legal statuses, nor an overview of the numbers of migrants currently eligible for return. What data was collected by EUROSTAT, moreover, had absolutely no operational value as it was only published 18 months after the fact. And where data were diligently collected, these often distorted the picture because of blind spots elsewhere. Member states collected data on those resisting expulsion, but those who returned home voluntarily barely featured in either the data or the policy discussion.

At the outset of the crisis, anxious Commission analysts described Frontex data analysis as a “black box.” Early in 2015, for instance, an automatic alert had gone out from the borders agency, calling attention to the high number of arrivals recorded at the “Kosovo-Afghan border.” An amber warning was triggered, but no clear operational conclusions were forthcoming. It turned out that the alert had, in fact, been about the Kosovo-Albania border. While this may sound trivial, it had serious knock-on effects. Because the data classification was wrong, past numbers were rendered invalid, leaving the EU without data on historical trends.

Following this and other similar incidents, it apparently became clear that there was no mechanism for auditing or correcting migration data provided by Frontex. Member states had never noticed because they tallied these EU migration data against the figures provided to them by organizations with a high reputation for data mastery like the IOM and UNHCR. But soon it became clear that these organizations were also getting data raw and unfiltered from Frontex, and were not correcting them.

Data on the Balkan route was truly chaotic. Most Balkan authorities were logging data by the calendar day, but Greek

border guards started with their first shift at 7.30 am. This small disparity emerged only late in the year and explained why it had been so hard to judge the immediate effects of emergency border measures on this part of the route. Moreover, the EU had asked Greek authorities to record where immigrants were intercepted, providing just two options – on land or at sea. Consequently, the statistics did not differentiate between mainland and island, so there was no situational picture for Lesbos or other Greek islands just off the Turkish coast.

Some member states like Bulgaria had been faithfully registering data on asylum-seekers who had entered and exited their territory. They did this so faithfully, in fact, that it turned out Bulgaria was even reporting those who merely attempted to exit before being turned back. Member states like Cyprus, by contrast, simply refused to pass data on. Any clues that might have been drawn about “secondary flows” were thus misleading. Moreover, the refusal by some maritime member states to pass on data again meant that corrections came too late. Births on board Mediterranean rescue vessels were not being counted as irregular migrants, while bodies at sea were.

There were also problems inside the Commission apparatus. The Commission’s analytical powerhouse, the JRC, had watched jealously as IOM and UNHCR trawled the media, using AI to gain detailed information about migrants and migration. The JRC discovered that Frontex itself had a Media Monitoring Team, but that it focused mainly on monitoring the agency’s media reputation. But the JRC needed the MMT to continue in this role if it was to gain access to even basic data: Frontex was so worried about its external image that it refused to risk publicity by giving its data to the JRC because this meant putting it into the public domain.

It didn’t take long for the Commission to realize that poor data governance posed a serious threat to the EU’s capacity to act. Officials at DG HOME began actively promoting to member states the benefits of harvesting large reliable data sets. This proved increasingly attractive to member states, particularly after the decisive messaging around the EU-Turkey agreement, which had reassured EU citizens about the EU’s capacity to control its borders, and deterred prospective migrants for the same reason. With the member states behind it, the Commission could now begin fixing the problem.

<sup>24</sup> European Commission, “EU Action Plan on return,” (COM/2015/0453).

### How the EU uses this capacity to frame the debate: “Globalization Gone Wrong”

The Commission needs data not only to boost the EU's evidence base. Migration is a divisive field, and the ability to marshal numbers and narratives is necessary to press politicians towards agreement as well as to maintain the upper hand in international talks. President Juncker's team, for instance, recognized the political importance of data, and was quick to nudge aside the member states' IPCR mechanism in its coordinating role so as to squeeze information from national authorities, convening regular video conferences which drew information from officials on the ground, often bypassing their national principals. This was carried out on the conviction that a “muscular pro-Europeanism” was needed, that the European level of action and oversight was the natural one in such a crisis, and that the Commission was the natural focal point for this.<sup>25</sup>

On the other side of Brussels' Schuman Roundabout, the EEAS was putting in place its own, very different information system inside PRISM, its new conflict prevention section. Whereas the Commission placed Europe and European security in the center ground, the EEAS took a “human security” angle, and PRISM monitored migration drivers globally before identifying those that might be addressed using the EU's combined toolbox, even if the EU itself might not be affected. PRISM tried to mobilize Commission DGs HOME, NEAR, DEVCO (Development Cooperation) and CLIMA (Climate Action). In the ensuing interinstitutional tug-of-war, the Commission highlighted that its own monitoring focused on the few conflicts that might drive migration to the EU, apparently seeing this appeal to national interests as a way to win political battles and secure its authority.<sup>26</sup>

When Ursula Von der Leyen became Commission President she swept away her predecessor's blunt *raison d'état*.<sup>27</sup> President Juncker had been guided by a basic conviction that the strengthening of Commission capacities was an end in itself; as for the political spin given to these data, his narrative emerged almost by accident, as the PRISM case indicates. By contrast, von der Leyen has made shap-

ing a political story to guide the interpretation of the data a prime focus. Her team has used data and strategic foresight to tell a story about the EU and its place in the world, and projections on migration and demography feature centrally.<sup>28</sup> Indeed, the von der Leyen Commission uses worrying migration and demographic data to support a narrative about not only migration policy, but about the Commission's need to “become geopolitical.”

By all accounts, her notion of a geopolitical Commission is inspired by the EU's decisive handling of Turkey in early 2016. The experience of asserting European order by coercive means seems to have broken a taboo for the Commission. During her stint as German Defense Minister at the time, von der Leyen also broke taboos in dealing with Turkey, helping set up a naval operation in the Aegean to reduce the flow of people. The sharp drop off in the numbers of Syrians crossing to the Greek islands evidently confirmed her decision to disregard common wisdom that the flow of people could not be stopped.<sup>29</sup> Her whole narrative of a “Geopolitical Commission” thus relies on a picture of a chaotic and hostile international environment in which the EU must be ready to unilaterally assert its standards.<sup>30</sup> It is a narrative which in turn defines how migration data are gathered and packaged.

### Judgement: The Commission has a sizeable capacity to define the challenge – but may be misusing it.

The current Commission has been able to persuasively frame the challenges facing Europe thanks in part to its emergent monopoly on the relevant migration data and analysis. And yet, it is worth recalling the geopolitical reasons why governments resisted this heavy centralization of data systems in the past. It was noted above, for instance, that the member states refused to turn the IPCR into a common situational awareness and threat analysis system in 2013-14. This was not only because of a narrow desire to hold onto their sovereign prerogatives; they also deemed a centralized capacity to be a significant vulnerability in itself – one that overshadows the (still unproven) capacity of joined-up systems to flag up threats ahead of time. In nego-

25 Quite by chance Juncker had been able to draw on a cabinet team with a strong background in migration because he had been “inherited” them from the previous Luxembourg Commissioner, Viviane Reding, responsible for the EU Justice portfolio. Martin Selmayr, Juncker's chief of staff had been her head of cabinet, 2010-2014. This team thus had experience and heft in the world of EU justice and home affairs, and were able to convert these links into knowledge-networks. They were well known to border authorities across Europe (unlike the IPCR analysts in Council who must stand ready to respond to a whole range of different challenges, from terrorist attacks to a pandemic). Moreover, some of Juncker's team had, under Reding, been the very people who had ushered in the new suite of EU asylum-data reporting obligations.

26 Interviews, Brussels, February 16-17, 2017.

27 N.N., “Von der Leyen's deSelmayrisation of the European Commission,” *New European* (online), January 31, 2020, <<https://www.neweurope.eu/article/von-der-leyens-deselmayrisation-of-the-european-commission/>> (accessed June 1st 2021).

28 Roderick Kefferpuetz, “Where is Europe's place in the new age of geo-economics?” *Heinrich Boell Foundation* (online), January 25, 2021: <<https://www.boell.de/en/2021/01/25/where-europes-place-new-age-geo-economics>> (accessed March 31, 2021).

29 N.N., “Profile: Ursula von der Leyen,” *BBC Radio Four* (online), May 2, 2021: <<https://www.bbc.co.uk/programmes/m000vp0r>> (accessed June 1st, 2021); N.N., “Migrant crisis: Nato deploys Aegean people-smuggling patrols,” *BBC News* (online), February 11 2016: <<https://www.bbc.com/news/world-europe-35549478>> (accessed June 1st, 2021).

30 Ursula von der Leyen, “Press Statement by President von der Leyen on the New Pact on Migration and Asylum,” *European Commission Press Corner*, September 23, 2020: <[https://ec.europa.eu/commission/presscorner/detail/en/statement\\_20\\_1727](https://ec.europa.eu/commission/presscorner/detail/en/statement_20_1727)> (accessed on March 31, 2021).



## BOX 5. GLOBALIZATION GONE WRONG: A SNAPSHOT OF THE COMMISSION'S THINKING

One interviewee described the theme of von der Leyen's geopolitical Commission as "globalization gone wrong,"<sup>31</sup> that is, the idea that the EU has entrusted its fate to global market forces for too long, and now they have soured. Global economic development was (in this telling) meant to be a force for good, and a dip in irregular migration was to be the proof.

Global development was meant to bring multiple benefits when it came to migration control: industrialization would drive down family sizes in the developing world, leading in turn to the emergence of European-style welfare systems; the spread of prosperity to poor countries would not only create jobs but also lead to the development of a global middle class, and a new era of peaceful and democratic cooperation where the raw drivers of migration would diminish. As a result, irregular migration would be replaced with mobility of highly-skilled individuals travelling for their vocation.

But little of this has happened, and where it has, it has produced difficult side-effects. To quote von der Leyen herself, "changes in climate, technology and demography [...] have left] a feeling of unease and anxiety."<sup>32</sup> More than one interviewee at the Commission relished presenting the migration crisis of 2015 as a rebuke to the "1990s mindset" which supposedly gave birth to Schengen.

To speak with high-level officials of the "Geopolitical Commission" is thus to receive a bracing set of statistics about overpopulation and resource shortage. They talk about population growth in Africa outstripping governments' capabilities to manage scarce local resources;<sup>33</sup> a youth bulge causing civil unrest in the Global South, where the median age is 20 years younger;<sup>34</sup> the fact that 60 percent of global conflict occurs within five hours travel from Brussels; and Europe's own demographic balance being upset by the fact that it is primarily young men who move.<sup>35</sup>

In a typical exchange, one Commission official told us that the world today needs to create 600 million jobs just to sustain current levels of development. And this is just the tip of the iceberg. Today, only 73 million youths are unemployed; so imagine the scale of the task in 2030, when one billion more have joined the global the job market. Another argued that it is not in the EU's interest to help create jobs: Many developing countries are approaching the wealth threshold where the "migration hump" is said to occur.<sup>36</sup> One logical conclusion, evidently, is that migration can be controlled by simply holding back development.

Importantly, neither of the two officials believes these dire projections call into question Schengen itself. Rather, they frame a world view in which the EU is a fragile beacon and must be ready to protect itself assertively.

tiations on the reform of the IPCR mechanism, even Council officials themselves argued against gaining these powers.

National intelligence officers have always worried that a concentrated EU pool of sensitive information might be

vulnerable to hackers, criminals, and foreign governments. These fears are not unfounded: In 2020, when EU officials were forced by the pandemic to hold a joint threat assessment by videocall, a journalist hacked into the ministerial discussion.<sup>37</sup> Intelligence professionals know from their

31 Dennis J. Snower, "Assessing Ursula von der Leyen's Proposals for a New Chapter in European Cooperation," *LSE Blog*, July 24, 2019: <<https://blogs.lse.ac.uk/europpblog/2019/07/24/assessing-ursula-von-der-leyen-proposals-for-a-new-chapter-in-european-cooperation/>> (accessed on March 31, 2021).

32 European Commission, "The von der Leyen Commission: For a Union That Strives for More," *European Commission Press Corner*, September 10, 2019: <[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_19\\_5542](https://ec.europa.eu/commission/presscorner/detail/en/IP_19_5542)> (accessed on March 31, 2021).

33 Interview with Commission official, September 23 2018.

34 Lena Gerling, "Rebellious Youth: Evidence on the Link between Youth Bulges, Institutional Bottlenecks, and Conflict," *CESifo Economic Studies* 64, no. 4 (2018), pp. 577–616.

35 In 2015, 58 percent of the refugees were adult males and just 17 percent adult women. See: Valerie Hudson, "Europe's Man Problem: Migrants to Europe Skew Heavily Male – and That's Dangerous," *Politico Magazine*, January 5, 2016: <<https://www.politico.com/magazine/story/2016/01/europe-refugees-migrant-crisis-men-213500/>> (accessed on March 31, 2021); Pew Research Center, "Asylum Seeker Demography: Young and Male," *Pew Research Center Global Attitudes & Trends*, August 2, 2016: <<https://www.pewresearch.org/global/2016/08/02/4-asylum-seeker-demography-young-and-male/>> (accessed on March 31, 2021).

36 This threshold lies at a GDP per capita of around \$7000. David Benček and Claas Schneiderheinze, "More Development, Less Emigration to OECD Countries – Identifying Inconsistencies Between Cross-sectional and Time-series Estimates of the Migration Hump," *Kiel Working Paper Nr. 2145, Kiel Institute for the World Economy* (December 2019): <[https://www.ifw-kiel.de/fileadmin/Dateiverwaltung/IfW-Publications/Claas\\_Schneiderheinze/KWP\\_2145.pdf](https://www.ifw-kiel.de/fileadmin/Dateiverwaltung/IfW-Publications/Claas_Schneiderheinze/KWP_2145.pdf)> (accessed on March 31, 2021).

37 Deutsche Welle, "Dutch Reporter Hacks EU Defense Ministers' Meeting," *Deutsche Welle*, November 11, 2020: <<https://www.dw.com/en/dutch-reporter-hacks-eu-defense-ministers-meeting/a-55682752>> (accessed on March 31, 2021).





## BOX 6. "INTEROPERABILITY" AND THE BATTLE FOR MASTERY OF EU DATABASES

As the Schengen crisis broke in 2015, Commission officials started to criticize the decentralized web of European migration databases, referring to its separate systems as the "G11." The most successful of these databases is the Schengen Information System (SIS II), which was used for 3 billion searches in 2015. The Commission exploited the fact that this database was still relatively disconnected from the other databases in order to call for reform and centralization – glossing over the fact that one of the reasons SIS II works so well is precisely that it remains separate.

Ironically, it was Brexit – and the loss of the member state which has driven EU security data initiatives – which catalyzed the shift. When Julian King took over as the UK's EU Commissioner following the Brexit vote, many EU governments believed that his new role of "Commissioner for the Security Union" was a "non-job." But it seems King believed he could cement relations between the UK and the Commission during rocky Brexit negotiations if he diligently played his part in building up EU databases. The Brexit crisis provided the alchemy for linking up the EU's databases under the auspices of the Commission and its agencies.

"Interoperability" became the key word as desk officers in the Commission began stressing the need to ensure the EU's databases generate "usable information." There was no point, they said, in having all these millions of datasets if they had no operational value. The average border check takes 12 seconds, and border guards simply do not have the time to scramble around across different systems. This was true enough, but, according to one official, the Commission's real interest was in gaining access to information for strategic purposes. And in order to achieve this, it was exploiting the operational strains at the EU's borders.

To centralize Schengen's 11 databases, the Commission had to overcome the European Parliament's concern about the possible abuse of data rights, and interior ministries' concerns about the shift of power to the EU. These were formidable obstacles, but the Commission was able to play divide and rule. The EP is pro-civil liberties, but skeptical of

intergovernmentalism, whereas EU interior ministries are pro-intergovernmentalism, but not always keen on civil liberties. The Commission and EU-LISA were able to appeal to both separately, tailoring an argument to each and presenting its preferred outcome as the solution.

To get interior ministries on side, the Commission criticized the EP for putting its concern for civil liberties ahead of the effective protection of society. Interoperability was the solution, but the EP was preventing the EU from hooking up its terrorist and refugee databases because it did not want to face up to the connection between the two phenomena. Commission officials argued that this dogmatism actually increased the risks. Thus, they convinced member states that the only way to overcome this was to give the Commission greater scope to centralize these databases.

To get the EP on board, the Commission criticized interior ministries for putting dogmatic concerns about national sovereignty ahead of all else, arguing that only interoperability would iron out the rights abuses that resulted. One example was the "hit-no-hit" system for accessing another member state's data. This principle allowed national authorities to see whether their counterparts held data, but not what these data actually were. This highly decentralized approach was leading to visas being turned down unnecessarily simply because an applicant happened to be in another member state database.

Interior Ministers did stage a bit of a fight back when a coalition of the willing tried to set up its own database to exchange the names records of passengers heading into the EU (a so-called PNR system). But they had picked the wrong fight: Transport firms refused to hand over the data for free, and asked for 30 cents for administering each dataset. This humiliating state of affairs opened the door for the Commission to make its argument: If there was a centralized EU PNR database, the Commission could threaten these firms with exclusion from operating in the whole internal market if they refused to abide by EU rules.

own long experience that analysts make mistakes, that they might be purposefully misled by third parties, and that they might even mislead their principals. This kind of misdirection and faulty sense-making has huge implications when scaled up to the EU-27. Rather than having a handful of analysts in the Commission draw conclusions for the whole EU, there is good reason for the EU to rely more on the wisdom of crowds – on decentralized intelligence networks.

The growth of Commission data powers has gone hand in hand with a narrative about the need for a top-heavy form of European geopolitics. The proof of the effectiveness of

this geopolitical model is supposedly found in that simple graph created and circulated in 2016 – and is confirmed by the sense in Berlin and the Commission's DG HOME that they began thinking for themselves when dealing with Turkey, breaking with the received wisdom of the 1990s about the difficulty of closing borders. The trouble is that a retrospective review of the EU Turkey deal and that graph suggests a rather different picture – that Turkey was struggling to play power politics with the EU and was seeking a sympathetic outcome, that numbers of Syrians were anyway falling, and that Turkey was keen to get its own borders under control. A less "geopolitical" deal was possible.

### BOX 7. TURKEY AND THE DANGER OF INFORMATION CENTRALIZATION

During the negotiation of the EU-Turkey deal, the EU was reportedly subject to severe misdirection. Officials in Greece allege that Turkey hacked into the communications systems used by the Greek coastguard.<sup>38</sup> Subsequently, whenever the Greek government organized the transfer of migrants from the overcrowded islands of the Aegean, Turkish smugglers would funnel a new group through – sometimes the very same number as were being removed from the island, as if to communicate to Athens that Ankara was in control.

If it was indeed using this technique, then it is one reason why Turkey kept the EU's threat perception high. In response, the EU began to centralize its threat analysis capabilities, but Ankara was apparently quick to react. Turkish sources started feeding analysts in Brussels information about the country's potential to "open the floodgates," allowing countless Syrians to move onwards to Europe. Once again, Ankara's aim was to keep the EU's threat perception high – and to exploit this for Turkey's gain.

Turkey increased its hold over the EU as the Commission sought to centralize analytical capabilities. And yet, the picture painted by Ankara appears to have suited the Commission, which gained from the threat perception and its involvement in the EU-Turkey deal. Even today, many Brussels-based analysts say that the real picture of the situation at the EU's borders emerged only as the crisis in the Aegean abated. In the lull after 2016, they audited and analyzed their initial statistics, and found them to be wanting.

Their starting point appears to have been the famous graph showing the striking effect the deal had on the number of Aegean crossings in March 2016. But when this data is put in a wider context, it becomes clear that numbers had already been falling for some time. One analyst likens the graph to an optical illusion: Numbers rose at the beginning of March because news of a potential deal with Turkey had leaked out, and this "artificial" spike magnified the downward trend once the deal entered into force.<sup>39</sup>

Since 2016, Frontex analysts have also become far more cognizant of Turkey's own interest in reducing migration flows, raising questions about whether this deal was drawn up on the best evidence base. By threatening "open the floodgates" to Europe, President Erdoğan inflicted both instability and reputational damage upon his country.<sup>40</sup> Indeed, according to a classified Frontex analysis, each time Erdoğan made the threat, around 30,000 migrants moved towards the EU, and around a million people in Syria started moving towards Turkey.<sup>41</sup>

All in all, Ankara's actions were almost as costly for Turkey as they were for the EU, and both sides had an interest in a more cooperative outcome. And yet, such analysis of mutual EU-Turkish interests does not fit the narrative chosen by the Geopolitical Commission, and so has not properly fed into its policymaking.

38 Interview with Greek border officials, Samos, June 12th, 2018.

39 Thomas Spijkerboer, "Fact Check: Did the EU-Turkey Deal Bring Down the Number of Migrants and of Border Deaths?", *University of Oxford: Border Criminologies Blog*, September 28, 2016: <<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2016/09/fact-check-did-eu>> (accessed on March 31, 2021).

40 Roderick Parkes, "The Siege Mentality: How Fear of Migration Explains the EU's Approach to Libya," *The East Mediterranean and Regional Security: A Transatlantic Dialogue*, *Foreign Policy Research Institute, Heinrich Böll Stiftung Istanbul and Heinrich Böll Stiftung*, Washington DC (December 2020): <<https://www.fpri.org/article/2020/12/the-siege-mentality-how-fear-of-migration-explains-the-eus-approach-to-libya/>> (accessed on March 31, 2021).

41 Interview, Lisbon, December 5th, 2019.



There is nothing unusual about the instrumentalization of information in politics. When Juncker launched his External Investment Plan for Africa in 2016, for example, he played up its volume as well as the likelihood of beneficial “trickledown” for Africans: He was hoping to persuade member states to match Commission spending and make his positive predictions self-fulfilling.<sup>42</sup> But the current Commission appears to be using data to paint an altogether bleaker picture of the world to justify a top-heavy geopolitics. And that matters for the underlying question of how adaptable the EU is to disruption. Historically, the EU has been at its best when it has taken an inventive approach to geopolitics, using borders and connectivity, cross-border investment, and mobility in novel ways.<sup>43</sup> But a Commission that depicts a world-gone-wrong risks drawing the EU towards an unyielding geopolitics.

Politicians should in particular avoid framing a rise in demography and migration as a geopolitical threat.<sup>44</sup> This is Malthusian thinking, and it is dangerous when used to frame a Geopolitical Commission.<sup>45</sup> That is not to say that this is happening: Commissioners are rightly careful about how they talk about concerns such as overpopulation and resource shortage.<sup>46</sup> They are also perfectly justified in their use of demographic data for foresight and strategy-making. Birth and death rates tend to be quite stable over a ten-year frame, providing a good scaffolding for imaginative scenarios.<sup>47</sup> But behind closed doors, the idea of a hard correlation between population and conflict has been taught to European military staff, and ideas such as the “demographic war index” are circulating, bereft of the necessary context provided by their progenitors.<sup>48</sup>

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If we take the metaphor of a traffic light for the EU’s capacity to act, with green representing a strong ability to act, and red a total inability, then a basic analysis would suggest green. The von der Leyen Commission enjoys a motor unrivalled in its history and fueled by a massive tank of data.

But a deeper analysis shows that amber is more appropriate. The Commission is pressing ahead with its attempts to frame the strategic problems facing the EU, despite the warning signs. It may have a big motor, but it has not yet learnt to apply the brake.

CAPACITY TO DEFINE THE PROBLEM



The von der Leyen Commission enjoys access to a vast amount of data. Yet rather than using this data to identify strategic issues, it tends to use this selectively to push ahead with its own framing of the strategic problems facing the EU.

42 Interview, Stockholm, February 2nd, 2017.  
 43 For an analysis of how this might be applied to the migration crisis: Roderick Parkes, “Migration, borders, and the EU’s geopolitics,” in: Zoran Nechev (ed.) *Stimulating Strategic Autonomy, IDSCS Edited Volume*, No.54/2020, pp.48-57: <[https://idscs.org.mk/wp-content/uploads/2020/11/finalB5\\_TTF\\_EDITED\\_VOLUMEENG.pdf](https://idscs.org.mk/wp-content/uploads/2020/11/finalB5_TTF_EDITED_VOLUMEENG.pdf)> (accessed March 31, 2021).  
 44 Jean-Pierre Guengant, and John F. May, *Africa 2050: African Demography* (2013), p. 38: <[https://horizon.documentation.ird.fr/exl-doc/pleins\\_textes/divers13-07/010059333.pdf](https://horizon.documentation.ird.fr/exl-doc/pleins_textes/divers13-07/010059333.pdf)> (accessed on March 31, 2021).  
 45 Stefano Guzzini, “Which Geopolitics?” in *The Return of Geopolitics in Europe?* Ed. Stefano Guzzini (New York, 2012), pp. 18–44.  
 46 Frédéric Simon, “EU’s Sefcovic: Europe must be ‘much more strategic’ on raw materials,” *EURACTIV.com* (online), October 20, 2020: <<https://www.euractiv.com/section/energy-environment/interview/eus-sefcovic-europe-must-be-much-more-strategic-on-raw-materials/>> (accessed on March 31, 2021).  
 47 Interview, May 30th, 2020.  
 48 Interview, January 15th 2020.

## SETTING AN AGENDA, AND FORMULATING POLICIES

In the previous chapter, we showed how the Commission uses its growing access to information to frame migration problems in such a way that it seems to justify the shift of competencies and authority upwards to Brussels. If that is an accurate assessment, it would be no surprise if it met resistance from other stakeholders during the second step in the policy cycle, which is dedicated to policy formulation. This is indeed the case: Member states resist being ratcheted into common policies, at least along the lines suggested by the Commission. But here too, the Commission is ready to pull all available levers, proving surprisingly capable of action. It boosts its power of initiative by relying on pre-cooked proposals, placing the same few variations on the agenda repeatedly.

Interior ministries have achieved the absolute minimum of reform over the past decade, even though Schengen membership has tripled and the need to deepen cooperation is clear. The Commission argues that the benign environment in which Schengen was launched has disappeared, and there can be no more delays: EU governments have to agree defensive policies identified as long ago as the 1990s. But, in assessing how well the Commission is using its capacities, this chapter asks the logical question: If the Commission's argument is that the world has fundamentally changed since 1995 when Schengen was launched, why reheat the proposals of that era? Are no better alternatives available?

### The Commission Method: "Falling Forwards"

In September 2020, the von der Leyen Commission offered member governments a New Pact on Migration. The Pact was new because after years of repeat appearances, the Commission had abandoned a core object of reform, the Dublin Regulation.<sup>49</sup> The Pact also proposed a new high-profile measure, "Returns Sponsorships." The former hands the responsibility for handling of any asylum claim in the EU to the member state that allowed the claimant entry to the EU; the latter allows EU governments which refuse

to support each other by relocating asylum seekers to their own territory from a hard-hit member states to instead show solidarity by covering the costs of expelling migrants from the EU.<sup>50</sup> These two moves – Dublin out, Sponsorship in – are related; they are about overcoming the divisive problem of burden-sharing between member states.

Von der Leyen's Pact thus seems more pragmatic than Juncker's reform packages.<sup>51</sup> The New Pact's emphasis on border restriction and effective expulsions is, for instance, designed to show governments that the EU can control the volume of international migration to which Schengen is subject. This pragmatism was singularly missing during the Juncker years, when member states complained that they were being asked to sign open-ended commitments to one another without knowing just how many refugees might come. It also signals a return to a measure of practical cooperation vis-à-vis the usual divisive legislative harmonization. Von der Leyen is demonstratively listening to the concerns of frontline states like Greece and Italy, states at the eastern land border like Poland, and of course destination states like Germany.

Still, the newness of the Pact is only skin-deep. The Commission hoped that dropping the Dublin reform and introducing Returns Sponsorship would help ease through an old set of proposals. The Commission itself concedes that the New Pact is made up almost entirely of old "asylum and return reforms proposed [...] in 2016 and 2018 and on many of which the co-legislators have already found political agreement."<sup>52</sup> Those earlier reform proposals, in turn, have roots in the Amsterdam Treaty, which in 1997 called for measures to flank Schengen, including a package of standards for the reception of asylum-seekers and for processing their claims; a single definition of refugee status; and, of course, the Dublin Regulation. And, in truth, the New Pact retains the last of these measures too, by simply leaving its core principle in place.<sup>53</sup>

A straw poll of commentators suggests these legislative proposals may well suffer the same fate as Juncker's, with – at best – bits and pieces being advanced by pilot schemes

49 N.N., "EU 'puts Dublin to bed' and launches new Pact on Migration and Asylum," *Protect*, September 25, 2020, <<https://protectproject.wuib.no/eu-puts-dublin-to-bed-and-launches-new-pact-on-migration-and-asylum/>> (accessed on June 1 2021).

50 Under this proposal, member states which do not wish to relocate asylum-seekers originating from third countries with known human rights problems would be able to volunteer to help other member states repatriate failed ones.

51 For instance: Alberto Tagliapietra, "The EU's Unbalanced New Pact on Migration and Asylum," *German Marshall Fund*, blogpost, November 24, 2020, <<https://www.gmfus.org/blog/2020/11/24/eus-unbalanced-new-pact-migration-and-asylum>> (accessed March 30, 2021).

52 European Commission, "New Pact on Migration and Asylum – Building on the Progress Made Since 2016: Questions and Answers," *European Commission Press Corner*, September 23, 2020: <[https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_20\\_1707](https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_1707)> (accessed on March 31, 2021).

53 Sergio Carrera, "Whose Pact? The Cognitive Dimensions of the New Pact on Migration and Asylum," *CEPS Insight*, 2020, No.22, p.6 <<https://www.asileproject.eu/wp-content/uploads/2020/09/PI2020-22-New-EU-Pact-on-Migration-and-Asylum.pdf>> (accessed on March 31, 2021).



## BOX 8. RETURNS SPONSORSHIP: A CASE-STUDY OF HOW THE COMMISSION RATCHETS THE EU ONWARD

The Returns Sponsorship proposal in the New Migration Pact is a good example of how the Commission ratchets member states towards completing an old set of reforms. It is a seemingly novel proposal which demonstratively incorporates the concerns of recalcitrant member states like Poland and Hungary, which blocked progress under the last Commission. But in practice this proposal could actually serve to narrow down member states' choices and channel them towards the Commission's pre-existing policy course. It reflects a strong conviction that member states can only defer their obligations for so long.

In 2015, Juncker tried to push through a system to redistribute asylum-seekers across the EU, identifying this as the key to achieving the long-delayed deepening of EU asylum and immigration rules. If a front-line state such as Greece or Italy was overwhelmed by asylum-seekers who had a high chance of being recognized as refugees, the redistribution system would kick in.<sup>54</sup> But Central European member states signaled their opposition, calling instead for a system of "flexible solidarity," where guarding the EU's long eastern land border or the expulsion of migrants was treated as burden-sharing in the same way as redistribution.

Von der Leyen has now seemingly accommodated this request in the form of the Returns Sponsorship. Yet her officials candidly admit they suspect that the proposal will fail, and, moreover, they show little concern about this very real prospect. Failure would, after all, force Central Europe back in line with the usual Commission course by shutting off an alternative. The Commission has begun to refer to the proposal as the embodiment of a new European principle: "mandatory flexible solidarity."<sup>55</sup> One official predicts that even if the proposal should fail, we can be sure this phrase at least will remain.

All this shows how the Commission has bolstered its capacity to shape political outcomes, even in the face of member state opposition. It views itself, as one interviewee put it, as "the grown up in the room, ... forcing member states to face up to the fact that they have no other choice but to complete old reforms."<sup>56</sup> She argues that the Commission was already taking this approach as far back as 1989, long before it had any power to propose policies in the field of irregular migration. That year, it established a tiny four-person unit, anticipating that member states would soon turn to it for ideas, mediation, and increasingly also discipline.

One academic expert has his own term for what some Commission officials call "falling forwards" - that is, the way they use the mix of big systemic crises and political disunity in Council to push forward regulatory alignment in Europe by narrowing down political choice. He described it as "late neo-functionalism," citing this as a typical example of how EU officials have turned academic theory into political strategy.<sup>57</sup> It is worth spelling out what exactly he means.

If European governments of the 1980s were drawn to the seemingly radical idea of lifting controls at their borders, it was in part because this promised an easy economic boost. Schengen signatories would do away with border checks which were leading to tailbacks and slowing down the transport of goods. But in lifting this trade barrier, they unwittingly exposed themselves to the logic of "spillover," whereby a seemingly low-cost effort of deregulation and cross-border cooperation between national governments ends up requiring ever more political regulation at a supra-national level (in this case controls at the new outer border).

This was a practical demonstration of "neo-functionalism," a theory dreamt up by professors in the 1950s to explain how European integration would work, and which the Commission subsequently embraced as strategy.<sup>58</sup> Spillover described an almost ineluctable and inevitable process of centralization, whereby more and more powers would gradually be transferred to the EU, whether member states liked

54 According to one member of the Cabinet of Cecilia Malmstrom, EU Home Affairs Commissioner 2010-2014, this was very literally the case. The relocation scheme which Juncker deployed had been sketched out by Malmstrom in order to build on the 2001 Temporary Protection Directive (Council Directive 2001/55/EC). Malmstrom deemed the proposal premature and left it in a drawer, where Juncker's team gratefully found it.

55 Angeliki Dimitriadi, "If you can dream it, you can do it? Early thoughts on the New Pact on Migration, and the impact on frontline States," *Eliamep*, Policy Brief No.132, September 2020, <<https://www.eliamap.gr/wp-content/uploads/2020/09/Policy-brief-132-FINAL.pdf>> (accessed March 30, 2021)

56 Author Interview, February 3, 2021.

57 Author Interview, February 5, 2021.

58 For an up-to-date take: Arne Niemann and Johanna Speyer "A Neofunctionalist Perspective on the 'European Refugee Crisis': The Case of the European Border and Coast Guard," *Journal of Common Market Studies* 56, No. 1, (January 2018) pp. 23-43.

it or not. The Commission adopted this *modus operandi* as routine, luring member governments in with seemingly simple deregulation or open-ended market-making measures, before entrapping them into transferring powers to the EU.<sup>59</sup>

By contrast, today's *late* neo-functionalism is less about starting projects for their open-ended potential, and more about completing them. In what EU leaders present as an

unprecedentedly hostile geopolitical environment, the focus is on fencing existing market projects off from the outside world, creating more uniform policies and giving the EU state-like attributes to defend them. For the most part, the Commission is focusing on the projects dreamt up at the time of the Single European Act (1985) and launched in the 1990s. It points to the dangers of national governments delaying the inevitable centralization of powers.

and coalitions of the willing.<sup>60</sup> Once again, member states appear minded to treat this as a package and refuse to adopt one part until all have been agreed.<sup>61</sup> The EU's Migration Commissioner, Ylva Johansson, has understandably described reform as "a slow road."<sup>62</sup> Still, her choice of metaphor is apt: the Commission truly sees this as a road, with a clear direction of travel. Only one Migration Commissioner, António Vitorino (1999-2004), has ever deviated from this course, focusing less on protecting the passport-free travel area and instead on the needs of Europe's labor markets.<sup>63</sup> The Commission has not repeated the experiment, with one Commission official memorably describing Berlin as "Taliban-like," such was its vehement opposition.<sup>64</sup>

Von der Leyen, like her predecessor, has boosted her capacity to act by aligning closely with German preferences (and making to other members concessions that Germany is happy with).<sup>65</sup> But despite having Germany on board, the Commission still assumes large parts of its reforms will fail. Indeed, it understands this as part of the game - and the Commission is playing a *long* game. Pact upon Pact, package upon package, the Commission calculates that it will suffer setbacks but will win in the end, helped by the ratchet logic of European integration. Commission officials describe this as "falling forwards." The term is borrowed from academic theory, but officials seem to have turned it into political strategy.<sup>66</sup> They treat legislative failures and inter-

national crises as a means of propelling Schengen towards completion: The Commission makes proposals, member states resist, and then a crisis shows they have no choice but to concede.

### The Commission's Rationale for "Completing Schengen"

In 1997, when the Amsterdam Treaty set out the necessary measures to "flank" the Schengen border-free Area, the focus - like today - was on getting member governments to harmonize a core set of national asylum and immigration rules. But besides creating a regulatory "level playing field" inside the EU, and thus preventing members from undercutting one another, harmonization back then was meant to provide clear rules for non-EU states to adopt as they moved closer to the bloc.<sup>67</sup> The EU was in an expansionist period, well-governed, wealthy, and surrounded by neighbors that were keen to join. Today, by contrast, although the focus is still on harmonization, some neighboring countries like Moldova, Ukraine, and Montenegro seem too weak and unreliable to properly align with the EU, while others such as Morocco or Belarus try to influence EU rules by instrumentalizing migration flows.<sup>68</sup>

The EU's current Migration Commissioner therefore presents a more defensive picture when explaining the Pact than did her predecessors. True, she depicts a series of

59 Ruben Zaiotti, *Cultures of Border Control: Schengen and the Evolution of Europe's Frontiers*. (Toronto, 2008).

60 Kemal Kirişci et al., "The EU's 'New Pact on Migration and Asylum' is Missing a True Foundation," *Brookings: Order from Chaos*, November 6, 2020: <<https://www.brookings.edu/blog/order-from-chaos/2020/11/06/the-eus-new-pact-on-migration-and-asylum-is-missing-a-true-foundation/>> (accessed on March 31, 2021).

61 EU governments complain that, in an earlier round of harmonization, the Commission pushed through prototypes of most of these measures, but starting with those proposals where it expected to meet least resistance from capitals. This meant that policies which were meant to build logically on one another were designed in an illogical order.

62 Sofia Branco, "Commissioner acknowledges 'slow progress' on migration pact," *Euractiv*, May 12, 2021 <<https://www.euractiv.com/section/eu-council-presidency/news/commissioner-acknowledges-slow-progress-on-migration-pact/>> (accessed on June 1, 2021).

63 This was the 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 Activities" (COM/2001/386). The measure was withdrawn, along with 67 others, in 2005: "Communication from the Commission to the Council and the European Parliament - Outcome of the screening of legislative proposals pending before the Legislator, (COM/2005/0462).

64 Interview with Commission official, May 4, 2007.

65 Christina Grossner, "A migration pact in the spirit of the German government?" *Euractiv* (online), July 2, 2020, <<https://www.euractiv.com/section/justice-home-affairs/news/a-migration-pact-in-the-spirit-of-the-german-government/>> (accessed on June 1, 2021).

66 One official referred to "falling forwards," another - more properly - to "failing forward"; Marco Scipioni, "Failing Forward in EU Migration Policy? EU Integration after the 2015 Asylum and Migration Crisis," *Journal of European Public Policy* 25, no. 9 (2018), pp. 1357-1375.

67 Heather Grabbe, "The Sharp Edges of Europe: Extending Schengen Eastwards," *International Affairs* 76, No. 3, (September 2000) pp. 519-536.

68 David Herszenhorn, "EU deploys border force in Lithuania as Belarus opens pathway for migrants" *Politico* (online), July 12, 2021: <<https://www.politico.eu/article/eu-deploys-border-force-in-lithuania-as-belarus-opens-pathway-for-migrants-frontex/>> (accessed August 6, 2021).

three concentric circles just as they did, with Schengen lying at the center, as it always has, ringed by an external border and a tight arc of neighbors, then an outer ring of migrant-producing and transit countries with which the EU must engage through trade, aid and state-building operations.<sup>69</sup> But in the past, these concentric circles showed an EU that was expanding one ring at a time, using market integration to spread its rules southwards and eastwards in a process of regulatory alignment. Today, the map signifies a Schengen with fixed outer borders surrounded by a “safety ring” of neighbors, and an outer ring of African and Asian countries offered highly conditional access to Europe in return for approximating EU rules.

Officially, the Pact prescribes policy harmonization within the EU on the high-minded grounds that this will boost European resilience and put an end to the EU's practice of burden-shifting towards its fragile neighbors. In practice, the Pact embraces *assertive* EU efforts to bind these same weak neighbors to European rules – sometimes before EU members have signed up themselves.<sup>70</sup> The Pact envisages the EU hardening its outer border, turning neighboring states into a protective buffer, and then leveraging access to the EU for an outer ring of African and Asian countries in order to spread rules abroad. Commission officials justify this harder approach by claiming that in order to convince reluctant member states to deepen EU integration, they need first to showcase what European unity can achieve – and the best place to do this is *outside* the EU, towards weaker states like Ukraine or Morocco.

The narrative of the New Pact is about correcting the over-exuberance of the past. Today's EU leaders, the narrative goes, have no alternative but to settle the bill for the expansionism and openness advocated by their predecessors.<sup>71</sup> In the 1990s, EU governments were apparently happy to lift borders, seeing intra-EU trade rise to the level of €2,800 billion following the creation and expansion of the Schengen Area.<sup>72</sup> They have no choice but to complete protective reforms because abolishing the Schengen Ar-

ea would cost them a prohibitive €5-18 billion a year.<sup>73</sup> And how to do it? In the 1990s, EU governments lazily trusted in a combination of trade, aid and nation-building operations to solve global problems like irregular migration.<sup>74</sup> Today, trade, aid and state-building tools must be used for more assertive ends: To assert EU rules abroad and to protect the “rules-based international order.”

### Judgment: The EU must take some blame for “Globalization Gone Wrong”

The New Pact frames international migration primarily as a burden and a negative international phenomenon. This is a result of the way the Schengen project forces the EU to focus on the downsides of migration, and to view human mobility as a threat. Schengen is a passport-free travel area, not an integrated labor market. As such, it was built neither to absorb immigration nor to generate positive migration interests for member states. Irregular migrants benefit hugely from Schengen: they can take advantage of the passport-free travel to circulate between illicit employment opportunities, picking and choosing between the EU's national labor markets. European citizens, by contrast, make little use of their right to move and work across Europe: Even within the Schengen area, EU labor markets are still quite discreet, segmented by language and national institutions.<sup>75</sup>

But this begs the obvious question why the EU doesn't invest in integrating its member states' labor markets. Besides potential benefits for EU citizens, this would potentially allow it to absorb migrants, funnel them to parts of the economy where they are required, ensure they contribute to public revenue, and spread the costs and benefits of international mobility more easily. Building up its labor market would also put the EU squarely in the mainstream of international developments, as regions worldwide seek to integrate their borders and labor markets on the basis of lockdown travel bubbles. And it would see the EU return to a form of market power based on growth and adaptation – a marked change to the way it currently uses its market pow-

69 In fact, this time round they gave the slightly confusing image of a “three floor construct,” with foundations, a ground floor and a pent house – the foundations being deals with foreign countries, the ground floor being border controls and the pent house being internal EU harmonization.

70 Margaritis Schinas, “Speech by Vice-President Schinas on the New Pact on Migration and Asylum,” *Speech*, September 23, 2020, <[https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_20\\_1736](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1736)> (accessed March 23, 2021).

71 “TINA” is the slogan of EU crisis management, as the Commission and Germany try to drive through their preferred agenda(s); Astrid Séville, “From ‘one right way’ to ‘one ruinous way’? Discursive shifts in ‘There is no alternative,’” *European Political Science Review* 9, no. 3 (2017), pp. 449–70.

72 European Commission, *Back to Schengen – A Roadmap. Communication from the Commission to the European Parliament, the European Council and the Council* (Spring 2016), pp. 3–4: <[https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/borders-and-visas/schengen/docs/communication-back-to-schengen-roadmap\\_en.pdf](https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/borders-and-visas/schengen/docs/communication-back-to-schengen-roadmap_en.pdf)> (accessed March 31, 2021).

73 European Parliament, “The Cost of non-Schengen,” *European Parliamentary Research Service, European Value Added Unit*, April 2016, p.17, <[https://www.europarl.europa.eu/RegData/etudes/STUD/2016/581383/EPRS\\_STU%282016%29581383\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2016/581383/EPRS_STU%282016%29581383_EN.pdf)> (accessed March 30, 2021).

74 One Commission advisor, who strongly advocates the narrative about the naivety of the 1990s, even describes how his predecessors believed they could “abolish” migration (large-scale, involuntary movement) and replace it with mobility (Schengen-friendly forms of economic movement, like tourism and transfers between multinational corporations).

75 Even after the Eurozone crisis, where some member states experienced shocking levels of youth unemployment, as few as 4 percent of working-age Europeans are resident in another member state.





## BOX 9: HOW THE EU NOW LEVERAGES TRADE POLICY FOR MIGRATION CONTROL

Since the 1990s, trade has been the jewel in the EU's crown. Brussels enjoys an exclusive competence in this field, and is not constrained by a constant process of compromise and competition with member states, unlike in other policy areas such as migration. Although trade is seldom included in the EU's list of foreign policy tools, it is the bedrock for its engagement in the world, and forms the basis for EU relations with enlargement, neighborhood and African, Caribbean and Pacific (ACP) states.

If trade is not usually thought of as a foreign policy tool, then it is because DG TRADE has made efforts to keep it from being leveraged in pursuit of the EU's narrow interests, including those pertaining to migrant readmission. Although the EU's trade and aid agreement with ACP countries has long included a loosely worded obligation on repatriating illegal migrants from Europe, the assumption has always been that open markets and economic development will eventually resolve the push and pull factors that drive migration.

In the past decade, the EU has introduced conditionality to its trade deals, but less to assert its immediate interests, and more to iron out the unexpected consequences of free trade. This has meant conditions about the good treatment of workers, for instance, and other means of softening the birth pangs of economic development. During the migration crisis of 2015, when migration control became the EU's highest imperative, the Commission's DG HOME became more assertive, effectively pulling rank on DG TRADE.

In the early days of the migration crisis, DG HOME focused on including immigrant repatriation and refugee-hosting obligations in the trade formats for major sending and transit countries – in other words, for some of the world's poorest countries. The GSP+ (General Scheme of Preferences Plus) format already includes conditionality on labor standards, so DG HOME considered this an easy addition. But soon it was pushing for immigration conditionality for even the Everything But Arms (EBA) format, applied to the world's least developed states.

For officials at DG TRADE, this undermined any positive effect that trade might have. The three main formats DG TRADE had carved out over recent decades for dealing with poor economies – GSP, GSP+ and EBA – were already considered discriminatory by the World Trade Organization, but the EU was permitted to offer such formats because

the discrimination was deemed positive, in favor of the poorer economies. DG HOME's efforts to generate leverage from these formats politicized the EU's privileged position in the WTO.

Migration conditionality was, by mid-2016, seeping into the EU's trade policy even with wealthier countries. DG TRADE had unwittingly opened the door to this when it tried to insert a condition for a quota of visas for EU citizens into the Transatlantic Trade and Investment Partnership (TTIP) deal with the US. DG HOME now talked of including migration conditions in the Trade in Services Agreement (TiSA), and in deals being negotiated with Morocco, Pakistan and others that, for reasons of prestige, did not want to avail themselves of the protections of the GSP formats.

At this stage, DG TRADE tried to show that the EU's coercive conditionality was mainly for domestic political consumption, with the symbolic effect for EU voters more real than the effect on partners. The best way to achieve genuine, meaningful migration outcomes, by contrasts, was to use the positive conditionality of labor and environmental standards, and to work to curb the unintended negative effects of trade deals. A trade deal with Cambodia, for instance, which had allowed tariff-free access to the EU for Cambodian sugar had led to massive land grabs for sugar plantations, displacing thousands.

DG TRADE likewise pointed to the constructive possibilities to regulate migration within WTO trade deals, treating migration as "trade in services." The Commission had tried to make use of this in its 2014 directive on intra-corporate transferees (that is: on staff migrating between outposts of their multinational firm). DG GROW (Internal Market) was also trying to include mobility requirements within the next ICT directive as part of multinational firms' Corporate Social Responsibility. These were obvious ways of using trade deals to tie partner countries and industries to migration rules.

DG TRADE was also able to point to the impracticalities of the HOME agenda, including DG HOME's drive to sanction states and businesses which refuse to cooperate on controlling migration. Officials asked how the EU could sanction the Venezuelan government for refusing to hold back its citizens, given the collapse of government in Venezuela is at the heart of the displacement, or how the EU could hope to prevent large companies like Siemens from setting up manufacturing hubs in developing countries that refuse to cooperate on repatriations. But DG TRADE's arguments had little success.



er for blunt leverage, a diminishing form of power that cut its economy off from the world's human resources and antagonizes its neighbors.

Changing paths and harmonizing Europe's labor markets would of course be a difficult path given the sheer diversity of member states' labor market institutions. Back in 2001, the Commission proposed just such an initiative (with Victorino's abovementioned push to get interior ministers to focus on labor migration rather than Schengen reform a corollary to this).<sup>76</sup> At the time, the EU consisted of only 15 members, and even this small grouping struggled to find common ground, so it seems unlikely that the EU-27 could readily agree on integration today.<sup>77</sup> Nevertheless, Europe's need for a strong post-pandemic recovery, and the re-emergence of imbalances within the Eurozone have already broken other such political taboos. Furthermore, it is hardly as if the Commission's perennial attempts to get member states to focus on asylum or border harmonization come without a political backlash.

On the surface of course, the current international situation would make such a move highly risky. The Commission's last bid to launch a more integrated labor market, in 2001, was immediately torpedoed by the terror attacks in the US and the invasion of Afghanistan. The Commission is keen not to repeat the mistake of launching an ambitious change of course. Given that it is today facing a significant movement of Afghans towards Europe, now hardly feels like the time. But has it learnt the right lessons from history? Over the past five years DG HOME has in fact used Afghanistan as a guinea pig when it comes to the assertive new style of engagement with migrant-producing states advocated in the Pact. EU diplomats themselves concede this has undermined stability in region, effectively making Europe more vulnerable. Change means stepping into the unknown, but continuity is evidently high risk too.

Given all these considerations, the more interesting question, perhaps, is why 2001's European Commission did decide to take the risk of changing path. One explanation is that its leadership still believed in the "End of History," and were naïve about the risks. But the other is that Commissioners foresaw the eventuality of today's cri-

sis-prone Schengen project and wanted to avoid it. Conflict was bubbling in the Balkans and Schengen had had its first big crisis.<sup>78</sup> Commissioners feared that voters would simply conclude that the benefits of Schengen no-longer outweighed the costs.<sup>79</sup> Moreover, Schengen was hardly indispensable to the European economy, despite the Commission's best efforts to present it as such.<sup>80</sup> Back then, the Commission's favored solution was to link Schengen to labor market integration, giving the EU the capacity to absorb migration and boost the economy. Today's solution is to embrace the cycle of crisis.

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A basic analysis of the EU's agenda-setting and policy formulation capacity would suggest "amber" or even "green." The European Commission's capacity to act in proposing policies may be informally constrained by member states. It has nevertheless found ways to boost its power using path dependencies.

A more in-depth analysis suggests "red." The Commission's preferred path for EU integration faces resistance from member states, but nevertheless, the Commission is revving its engine, looking to press ahead until the next red light. In a disruptive policy field, where the ability to be flexible and change course is vital, the Commission has instead embraced the "ratchet" effect of EU integration.

76 European Commission, "Commission Adopts New Strategy on Creating New European Labour Markets by 2005," Press Release, IP/01/276, February 28, 2001.

77 Back then, lifting barriers to labor mobility still counted as low-hanging fruit; today, there is skepticism about market liberalization and a good number of members would want a more interventionist "European jobs union," whilst others would see such intervention as intrusive. Eurozone governments would want labor market integration to act as an absorber of asymmetric shocks, leaving out states like Sweden with no intent to join the Euro and very distinctive labor market institutions; but non-Euro members like Poland would reject anything that looked like excluding them. Agnes Bénassy-Quéré, "A European Jobs union," *Les rencontres économiques*, 2017; Sofia Fernandes, "The Reform of the Economic and Monetary Union: What Social Dimension?" *Jacques Delors Institute*, Report No. 118, February 2019: <<https://institutdelors.eu/wp-content/uploads/2020/08/TheReformoftheEconomicandMonetaryUnionWhatSocialDimension-Fernandes-Fev19.pdf>> (accessed March 30, 2021).

78 On the crisis: United States Committee for Refugees and Immigrants, "World Refugee Survey 2000 - Italy," June 1 2000, <<https://www.refworld.org/docid/3ae6a8d01c.html>> (accessed 30 July 2021).

79 One red flag was that member states were already talking of suspending one another, with Italy singled out for failing to tackle smuggling into the EU across the Adriatic from Albania.

80 Even today, estimates suggest that full border reintroduction would shave 0.05-0.13 % off annual European GDP.

CAPACITY TO SET THE AGENDA



Despite member states' informal efforts to constrain the Commission, it has found ways to boost its power by embracing the „ratchet“ effect of EU integration as a way to drive forward its preferred po-

CAPACITY FOR POLICY FORMULATION



licies. But migration is a disruptive policy field where flexibility and agility are vital, so this approach in fact weakens the EU's capacity to act in both agenda-setting and policy-making.



BOX 10. HOW EU MIGRATION POLICY TOWARDS AFGHANISTAN HAS BACKFIRED

At the height of the 2015 migration crisis, the EU deemed it acceptable to use any and all means at its disposal to pursue its migration objectives. This included a suite of policies which are meant to contribute to global goods, namely trade, development and humanitarian policy. One of the first manifestations of this new approach was at the Brussels Conference on Afghanistan, a huge international donor conference hosted by the EU in October 2016, during which the EU's High Representative and International Development Commissioner used their gatekeeping role for international funding to squeeze a migrant repatriation arrangement from Kabul.

In early 2016, the Commission was under heavy pressure to squeeze such a deal from Kabul. The Afghan authorities had summarily cancelled Frontex flights carrying returnees from frontline member states like Greece and Bulgaria, states which alone had little leverage over Afghan elites. And at the same time, nine wealthy European states were demanding proof that the Commission was ready to go beyond them when it came to leveraging development support. When one Afghan Minister caused a media uproar in the EU by opining that it was Europe's "duty to host refugees," the Commission saw that it had the legitimacy to play hardball.

The Commission's efforts resulted in an informal readmissions arrangement which has proved hardly workable, and which fell far short of the formal deal some had hoped for. Nonetheless, the episode marked a definite change in the

EU's approach. Where previously the EU had tried to gain readmissions deals by pitching itself to partner countries' societies, using incentives like visa access to encourage citizens to pressure governments to cooperate, it now focused directly on the elite. Not only was it leveraging development and humanitarian aid in ways that might hurt society, it was also offering rewards quite directly to elites.

This new approach has created instability in Afghanistan and the broader region. According to diplomats, the Commission encouraged the EU representation in Kabul to identify relevant ministers in Afghanistan, and ensured that they received VIP treatment in the EU as a sweetener for facilitating expulsions from Europe. One EU liaison reportedly even tried to ensure that the children of an influential minister had access to the European university of their choice. The EU's usual policy of visa facilitation for the many had been replaced by a policy of diplomatic visa facilitation for the elite few.

This policy apparently continued when Afghan politicians solicited the EU for funding for a new airport in Kabul. They explained that returning to Afghanistan was shameful for migrants who had made it to Europe, and they needed a means to get people back into the country with their dignity intact. The Commission chose to take this assertion at face value, despite suspicions that all the government really wanted was to show it was able to extract something from the EU. The perception among ordinary Afghans, meanwhile, was that the airport was a simply a deluxe channel for

elites flying to Europe, only adding to their mistrust of both local politicians and international donors.

Despite Brussels and Kabul's proclaimed concern for the dignity of returnees from Europe, the pair did relatively little to help them. Some had been born abroad, and were "returning" to a place they had never been before. Even those who had previously lived in Afghanistan often sat disconsolate miles from home. Returning to their hometowns would have meant almost certain death, so the EU returned them to "safe" areas like the capital instead. But not only did this leave them bereft of social contacts, it also meant that they were unable to obtain a health card or work permit, which could only be issued in their hometowns.

Some European governments did avail themselves of Commission support to create legal pathways for Afghans to migrate to the EU. This was meant to put cooperation on a firmer footing, and shift the focus from irregular to regular migration. But an effort to create a Filipino-style labor deal with Afghanistan failed because, in the words of one EU diplomat, huge numbers of Afghanistan's high-skilled workers had trained as economists, hoping to join the ranks of highly-paid experts from the EU, US and the World Bank who had swamped their country in the 2000s.

The actions of the Commission also alienated Afghanistan's neighbors – countries which always bear the immediate consequences of any refugee movements and whose behavior defines whether Afghans stay in the region or move on – often towards Europe. DG HOME chose Pakistan (and Bangladesh) as test cases for leveraging EU trade. The EU is Pakistan's prime trade partner, but has yet to translate this into political influence. So Brussels took the opportunity to squeeze it for concessions on migration. There were even discussions in DG HOME about whether to stop funding for de-mining efforts in former warzones across the region in a move which was meant to increase the pressure for Afghanistan's neighbours to cooperate on migration.

Diplomats from the region say that the EU's standing has suffered quite considerable damage in recent years. In one incident, migrants from Pakistan were hospitalized following a riot in a European refugee camp. The government of the EU state where the camp was located apparently contacted the local Pakistani consul, whom they berated for being uncooperative on returns, and claimed was effectively responsible for the injuries sustained. Pakistan reciprocated. Just days after the EU concluded its deal with Ankara in March 2016, the country ended border cooperation with Brussels, demanding a Turkey-sized kickback.

## IMPLEMENTING MIGRATION POLICIES

In the previous section, we showed how the Commission (with German backing) used migration crises to ratchet governments towards long-mooted Schengen reforms, and to make alternative approaches appear unrealistic. Given the means by which the Commission achieves progress during that second stage of the policy cycle, it is no surprise that some governments are less than cooperative in the third, simply refusing to implement norms. This resistance can be documented easily in returns and relocation numbers, both within the Schengen Area (based on the Dublin Agreement) and to third countries. Between 2016–18, Germany made more than 170,000 applications for Dublin transfers, but only around 10 percent were carried out.<sup>81</sup> Each year, around 500,000 foreign nationals were ordered to leave the EU, but as few as one third of them did.

Again, the Commission has developed a workaround, using the EU's suite of home affairs agencies to implement policy rather than relying on member states or foreign govern-

ments. Where governments dragged their feet, the Juncker Commission relied on Frontex, which was given important new executive functions both within Europe and abroad. This meant that even while negotiations on Juncker's broader reform package were deadlocked, border personnel were able to alter facts on the ground. The von der Leyen Commission appears to be echoing this approach with the European Asylum Support Office (EASO). As a result, the EU seems surprisingly capable of action, even without political consensus. Yet a deeper analysis suggests that such workarounds may in fact be part of the problem as they exacerbate the very issues of uneven implementation that they are meant to resolve.

### How the Commission supplements its power to implement policy: Frontex

President Juncker's package of migration reforms never made it through Council negotiations, and von der Leyen's

<sup>81</sup> Amandine Scherrer, "Dublin Regulation on International Protection Applications: European Implementation Assessment" (Spring 2020) <[https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642813/EPRS\\_STU\(2020\)642813\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/642813/EPRS_STU(2020)642813_EN.pdf)> (accessed on March 31, 2021).

is still in the works. But that does not mean that governments have nothing to implement. There is still a significant backlog from earlier waves of legislative harmonization, and both Juncker and von der Leyen have managed to push through some new initiatives.<sup>82</sup> Since November 2014, the Commission has brought forward more than ten major packages and strategies, including the 2015 European Agenda on Migration. The Commission has made use of pilot projects, emergency schemes, benchmark-setting and network-building.<sup>83</sup> These measures may have appeared informal and temporary, but they were designed to have lasting effects.<sup>84</sup> And the Commission was even more active outside the EU when it came to racking up new deals and agreements.<sup>85</sup>

But member states' implementation of these new policies has been patchy,<sup>86</sup> and the Commission has looked for new ways to boost its capacities using agencies. Juncker turned to Frontex to support implementation, pushing through changes to the agency's mandate in both 2016 and 2019.<sup>87</sup> Frontex is a Swiss Army knife, providing its owner with technical expertise, financial resources, and highly-trained personnel. Most obviously, it has the capability to assess gaps in member states' border standards, and presides over a system of carrots and sticks to ensure they fix them.<sup>88</sup> On the basis of its assessments, the Commission makes decisions about EU security spending. Frontex also dispatches liaison officers to member states to influence standards there, and it has deployed personnel to hands-on roles in migrant-processing hotspots like those set up in front-line states like Greece and Italy.

The Commission has very few powers of implementation and execution. But Frontex provides it, almost for the first time, with an executive arm. One Brussels official explains that the decision to bolster Frontex's powers was justified by the crisis: The Commission needed to ensure the EU had a measure of "output legitimacy," securing results on the ground while member states squabbled over their input on legislation. That is not to say that Frontex has gone rogue, operating on its own initiative rather than that of the member states. Its Management Board is made up mainly of representatives of the member states, with the Commission occupying just two additional seats. And yet, by some accounts, these two seats do appear to suffice for the Commission to dominate affairs.<sup>89</sup>

Even if that is the case, Commission officials point out that Frontex is bound by European law, so it cannot act where there is no political agreement amongst member governments. Member states have, moreover, agreed to circumscribe its powers and refused, for instance, to empower the agency to initiate actions on their territory or launch operations without their say-so.<sup>90</sup> But again, some caveats are necessary. Frontex has been granted unusual powers to actually shape talks between member states, gaining influence over the early stages of the policy process through exercises such as the Strategic Risk Analysis, designed to frame a "multiannual policy cycle" on the future of EU borders. Indeed, the ubiquity of Frontex at all stages of the policy process during the Juncker Commission led commentators to speak of the "agencification" of Europe's migration policy.<sup>91</sup>

It is a trend that von der Leyen has further reinforced. She accelerated the timetable for Frontex to meet its new exec-

82 European Commission, "Progress Report on the Implementation of the European Agenda on Migration," European Web Site on Migration, October 16, 2019: <<https://ec.europa.eu/migrant-integration/librarydoc/progress-report-on-the-implementation-of-the-european-agenda-on-migration>> (accessed on March 31, 2021).

83 Sergio Carrera, "An appraisal of the European Commission of Crisis: has the Juncker Commission delivered a new start for EU Justice and Home Affairs?" CEPS, Print Book, 2018: <<https://www.ceps.eu/ceps-publications/appraisal-european-commission-crisis/>> (accessed March 30, 2021).

84 So, for instance, a project on relocating refugees from Malta saw twelve member states participate; five through bilateral agreements, and seven through the project itself. This paved the way for an emergency relocation system, based on a Commission proposal to take 120,000 asylum-seekers from Italy, Hungary and Greece. On these, and other emergency measures: European Commission, "Refugee Crisis – Q&A on Emergency Relocation," Memo, September 22, 2015, <[https://ec.europa.eu/commission/presscorner/detail/it/MEMO\\_15\\_5698](https://ec.europa.eu/commission/presscorner/detail/it/MEMO_15_5698)> (accessed June 1, 2021).

85 These include a set of readmissions arrangements (that is: a semi-formalized system of incentives) with countries which have proved resistant to repatriating their nationals in the past. At the end of his tenure, Juncker had notched up the Joint Way Forward on Migration Issues Between Afghanistan and the EU (2016) and the EU-Bangladesh Standard Operating Procedures for the Identification and Return of Persons (2017) alluded to in the previous chapter. The Commission also signed transactional migration deals with sub-Saharan countries, including arrangements with Guinea in 2017 and in 2018 with Côte d'Ivoire, Ethiopia, and The Gambia.

86 Karin Schittenhelm, "Implementing and Rethinking the European Union's Asylum Legislation: The Asylum Procedures Directive," *International Migration* 57, No. 1 (February 2019) pp. 229-244.

87 N.N., "EU Super Agency to Police Borders," *Connexion* (online), December 16, 2015: <<https://www.connexionfrance.com/index.php/French-news/EU-super-agency-to-police-borders>> (accessed on March 30, 2021).

88 FRONTEX's assessments of member state border vulnerabilities, for instance, underpin the Commission's decisions about where to channel the EU internal security budget.

89 The national representatives come from interior ministries and border police and, whilst they are well networked on a working group level, they have limited experience coordinating diplomatically before strategic decisions are made. They tend to be reactive, returning to national ministers for guidance as the discussion in the MB unfolds; Commission representatives, by contrast, go into talks with a strong vision of FRONTEX's role and development. The Commission has further boosted its influence on the MB, using its power of the purse and in the appointment of the FRONTEX executive director.

90 Rafael Bossong, "The Expansion of Frontex," SWP Commentary, no. 47, December 2016, <[https://www.swp-berlin.org/publications/products/comments/2019C47\\_bsg.pdf](https://www.swp-berlin.org/publications/products/comments/2019C47_bsg.pdf)> (accessed on March 31, 2021).

91 Ron Korver, "EU Agencies, Common Approach and Parliamentary Scrutiny: European Implementation Assessment (November 2018):" <[https://www.europarl.europa.eu/RegData/etudes/STUD/2018/627131/EPRS\\_STU\(2018\)627131\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/627131/EPRS_STU(2018)627131_EN.pdf)> (accessed on March 31, 2021).

utive tasks, prefacing her tenure as Commission President with the pledge to “reach a standing corps of 10,000 Frontex border guards not by 2027, but earlier, at least by 2024.”<sup>92</sup> She further promised to increase funding to Frontex, which had already seen a budget increase every year since 2015. And then, in June 2021, she repeated the Juncker method, isolating the proposed reform of an agency, this time EASO, from broader negotiations around the New Pact, and securing agreement between Council and Parliament to increase its capabilities. The EASO reform echoes the changes made to Frontex in 2016, and indeed builds on a proposal made at that time.<sup>93</sup> Where implementation lags, the Commission appears ready to take things into its own hands.

### How the Commission views its actions: correcting history

If the Commission is indeed taking the implementation of its policy goals into its own hands, this is, of course, controversial. But the relevant Commission officials, and their supporters in member states like Germany, would probably (and justifiably) say that the EU has every reason to behave in an assertive way. With every new attempt by the Commission at European migration reform, relations between member states have deteriorated, and the non-implementation of even longstanding EU rules has become more conspicuous and brazen. The member states which make up the EU's southern and eastern flanks have made something of a display of their refusal to implement policies, treating a refusal to comply as something of a badge of honor. The sheer openness of their resistance to their obligations provides a justification for the Commission's move.

For a long time, mere under-implementation was the problem. Governments put laws into print but not into practice, for example failing to register asylum seekers' fingerprints in EURODAC so as to avoid obligations under the Dublin Agreement.<sup>94</sup> It was difficult for the Commission to prove that this was intentional because member states could attribute it to a simple lack of capacity or differences of in-

terpretation. In 2011, however, the fallout of the Arab Spring brought these practices out into the open when Italy broke the rules and funneled Tunisian migrants across the border in a very public way. Italy shrugged off criticism, blaming the unfair Dublin system.<sup>95</sup> It nevertheless stopped short of claiming its actions as a badge of honor, and it was not until 2015 that non-implementation really morphed into a politicized act of resistance, with Hungary, Poland, and Czechia openly violating EU law.<sup>96</sup>

Yet Commission officials are surprisingly sympathetic to this behavior. Those officials who have worked in the field since the 2000s (or were brought in by the Italian Migration Commissioner Franco Frattini) point to the deep historical roots of this demonstrative non-implementation by border states. One expert blames it on “Schengen's original sin,”<sup>97</sup> referring to the fact that Schengen began life outside of the Commission's ambit, nurtured by a group of five Western European member states that excluded even Italy, a founding member of the EU. By disregarding parallel Commission proposals to lift passport controls across the whole of the EU, these governments broke the unity of the Single Market. This leaves a toxic legacy, the feeling of a two-tier hierarchy in which newer member states struggle to influence rules first codified by a core of states in the 1990s, and so refuse to implement them.

If the Commission is sympathetic to this rationale then not because it condones it. Rather, it appears to view it as justification for its own slightly extraordinary behavior. Schengen's five founding states rejected the tried and tested methods of EU integration in the 1980s, so why should the Commission stick to them today? How else to improve implementation levels than by extraordinary measures? After all, patterns of implementation in the Schengen Area still tend to split two or three ways – between the original north-western core of the EU and its southern and eastern flanks, a legacy of the way the Area was created. And at the root of the problem sits the original system of mutu-

92 In the event, a compromise brokered by Finland and Croatia during their stints at the helm of the EU saw Frontex receive less money than initially foreseen, leading it to scale back its plans for instance to procure its own border equipment.

93 EASO, or the European Union Asylum Agency as it will now be known, gains the capacity to deploy from a pool of 500 case officers, drawn from member states, and will be able to send its personnel to migration operations more readily. It will also become a “centre of expertise in its own right,” the primary knowledge hub within the Common European Asylum System. And it will gain an oversight role towards member state vulnerabilities, including the financial health of their asylum systems. So there is the same mix of expertise, money and trained personnel as in the Frontex reform. N.N., “Moving on with the EU Asylum Agency,” *European Council for Refugees and Exiles*, Policy Note 31, 2021: <<https://www.ecre.org/wp-content/uploads/2021/01/ECRE-Policy-Note-Moving-on-with-the-EU-Asylum-Agency-January-2021.pdf>> (accessed August 8, 2021).

94 Under the 2013 EURODAC Regulation, border guards were expected to fingerprint irregular migrants to prevent them from moving on to a member state of their choice to make an asylum claim. But Greek authorities selectively put applicants in the category where the fingerprints would be deleted fastest (18 months for people caught irregularly crossing the border, compared to 10 years for those who made an asylum application). The authorities may even have given migrants hints about how long to wait before they could safely move on. Brigitta Kuster and Vassilis Tsianos, “How to Liquefy a Body on the Move: Eurodac and the Making of the European Digital Border,” in *EU Borders and Shifting Internal Security*, ed. Raphael Bossong and Helena Carrapico (Heidelberg, New York, Dordrecht, London 2016), pp. 45–63.

95 Martin Brandt, “France clashes with Italy over cross-border traffic of Tunisian migrants,” *Deutsche Welle* (online), April 18, 2011: <<https://www.dw.com/en/france-clashes-with-italy-over-cross-border-traffic-of-tunisian-migrants/av-6506848>> (accessed on March 30, 2021).

96 The Council, under pressure from Germany, had introduced this measure under qualified majority voting, and Hungary, Czechia, Slovakia and Romania criticized the failure of consensus-building. Eszter Zalan, “Court: Three Countries Broke EU Law on Migrant Relocation,” *EU Observer*, April 2, 2020: <<https://euobserver.com/migration/147971>> (accessed on March 31, 2021); Jacopo Barigazzi and Maia De La Baume, “EU Forces Through Refugee Deal,” *Politico* (online), September 21, 2015: <<https://www.politico.eu/article/eu-tries-to-unblock-refugee-migrants-relocation-deal-crisis/>> (accessed March 30, 2021).

97 Roundtable discussion, June 18, 2018.



al evaluation created by the five Schengen founders: They preferred sympathetic peer review, with national officials keeping an eye on one another, to empowering a single supranational body to oversee affairs.

Indeed, this toxic legacy has prevented the Commission from gaining its usual powers to monitor implementation. In 2013, a formal attempt to boost the Commission's right to oversee national implementation was split along exactly these lines, and the final agreement produced such

basic deficiencies as the excessive length of the Commission's evaluation process (10-12 months), and the period allotted for governments to implement recommendations (2 years).<sup>98</sup> Although the original north-western member states do like the idea of the Commission monitoring the periphery, they resist the notion of it overseeing their own implementation. And, predictably, eastern and southern member states still resist empowering the Commission to oversee the transposition of rules they view as fundamentally unfair.



### BOX 11. SCHENGEN'S ORIGINAL SIN: WHEN FIVE MEMBERS FORGED AHEAD

The original Schengen Agreement was signed in 1985 by just five EU members: West Germany, France, Belgium, the Netherlands, and Luxembourg. It would have been confined to just France and Germany had Belgium and Luxembourg not objected. Other EU members like the UK, excluded themselves on the grounds the initiative was dangerous, and Italy was simply not invited to participate. The exclusive nature of these beginnings still matters, and the question of the rights and duties newer members have vis-à-vis older ones remains unsettled. All this goes some way towards explaining why some member states have seen non-implementation as a form of resistance, and why the Commission feels justified to act as it does, also breaking protocol.

As Schengen's membership has grown from five to 26, first the new southern and then new eastern members have been expected to take on the club's rules without complaint. This is quite usual for any club. What is unusual, however, is that almost always new members also take on the disproportionate burden of overseeing Schengen's new outer border. Moreover, even once they have joined, newcomers struggle to influence Schengen's rules, not least because of informal constraints on the powers of the Commission, whose role it usually is to represent the common interest. Thus, a kind of two-tier hierarchy persists within Schengen, between the original members and the newer ones.

The five core interior ministries resisted the pressure to bind themselves to formal rules, eventually engaging in rule-setting as a means of constraining newcomers, not

themselves. This reflects their initial dislike of the whole project, which had been forged by their colleagues in foreign ministries and Chancelleries looking for a way to reconnect Europe to national citizens and to integrate economically marginal borderlands into the Single Market. Interior ministries, by all accounts, dreaded the idea of lifting border controls. They had been cooperating quietly on internal security issues since the 1970s, focusing on mafias, Red Brigades, armed separatists, and the like. To them, the promise of lifting border controls represented a dangerous diversion.<sup>99</sup>

From 1985 to 1990, a closed network of securocrats from the original five signatories prepared for borders to be lifted by agreeing loose principles and operational practices, rather than hard-and-fast rules. The simple reason for this was that they trusted one another, functioning very much as their own exclusive members club.<sup>100</sup> In 1990, that all changed when Rome demanded membership. The Italians pointed out that they were a founder member of the Single Market, that France and Germany had no right to exclude them from an initiative which deepened it. With Italy on board, the original members saw no other option than defining rules: how else could they trust the Italians to cooperate faithfully on matters of cross-border crime?

A flurry of Schengen rules were put in place after 1990 by this small club, and these still set the template for many of today's EU norms. The Dublin Regulation's precursor, the 1990 Dublin Convention, was conceived by the core Schengen states as a kind of control mechanism, placing

98 European Commission, "Report on the Functioning of the Schengen Evaluation and Monitoring Mechanism," (COM/2020/779 final).

99 Guiraudon, *Venue-shopping*, 2000.

100 Chantal Joubert, "Review: Policing the European Union, M. Anderson, et al," *European Journal of Crime, Criminal Law and Criminal Justice*, 5, No.2 (June 1997) pp. 177-178.



the responsibility for handling asylum claims on the states where asylum seekers enter Schengen, and granting other member states the power to return them there. This offered a means for them to ensure frontier states like Italy properly implemented the rules, rather than simply letting migrants move onwards. Now associated with intractable battles over solidarity between member states, the Convention encapsulates that era's toxic political legacy.

In the early 2000s, interior ministries began once again to complain of "legislative fatigue," having been presented by the Commission with a suite of asylum proposals to create a "level regulatory playing field" in the EU to prevent Schengen members from undercutting one another. At the same time, their disinclination to bind themselves to new rules was tempered by their fears about the impending eastern enlargement of the EU (2004) and Schengen (2007). They worried about extending the Schengen border as far as the

western fringes of Ukraine, Moldova, and Belarus, seeing a threat of mass migration and smuggling from the countries of the former Soviet space: They wanted a means to control what happened at the Polish border.

The core Schengen states, encouraged from outside the Schengen Area by the British government, which held the EU Council Presidency in 2005, viewed Frontex as the solution. They saw the establishment of a borders agency as a way of resolving these contradictory impulses. By focusing on practical cooperation they would avoid the need to bind themselves to new legislation whilst nevertheless creating a way to influence border standards in the new member states. It was in this context that Frontex was established in 2004, with its headquarters in Warsaw. Today, the European Commission sees it as justified to use Frontex in a similar way – as a tool to achieve a harmonization of EU standards, even where the legislative path is blocked.

### Why the Commission really needs Frontex: A solution to a problem of its own making

One EU official did acknowledge a circularity to the problem of implementation: One obvious explanation why non-implementation became so political and overt in 2015 (and has remained so ever since) is precisely because this was when the Commission began to resort to emergency measures, pilot schemes and informal international deal-making to achieve its migration policy objectives. Angry governments in front-line states like Greece, Italy and Hungary felt emboldened by what they saw as the Commission undermining the unity and standing of EU law-making by resorting to unusual, non-consensual or exceptional ways to set norms and apply them. The Commission's decision to try to bypass the tricky politics of law-making in fact served to politicize implementation, and its attempt to assert a European *raison d'état* undermined the EU's authority to act.

Interviewees in eastern member states confirmed that their governments do indeed view the non-transposition of EU norms as an act of protest against the Commission's erosion of the EU's legal and democratic legitimacy. They also point to the way the Commission is being backed by a core of Western members – to the way France and the Netherlands have floated ideas of a mini-Schengen that excludes peripheral members, and Germany has backed mini projects.<sup>101</sup>

Such initiatives hold out the implicit threat of further marginalization if they do not comply, and reminds them of the unfair beginnings of Schengen. States like Germany have also heavily backed the Commission's efforts to bolster Frontex, and are seen to be using Frontex to siphon off border professionals from front-line member states, and then re-deploying them there in a bid to redefine these very states' own border practices.

Commission officials themselves acknowledge that this may be a problem, but they fall back on the argument that France and Germany are quite capable of excluding the Commission too, so Brussels has little choice but to fall in line with Paris and Berlin. Over the past two decades France and Germany have repeatedly formed a nucleus and driven forward EU borders policy outside the framework of the EU, and thus without the Commission. Their cooperation on Passenger Names Records outlined in an earlier chapter is one such *avant garde* initiative.<sup>102</sup> The core states, say Commission officials, are being given an excuse to behave in this way precisely by frontier states' refusal to implement EU rules. The Commission needs to ensure the proper implementation of common rules because Germany and its closest partners will go it alone outside of EU structures if it does not.

101 N.N., "VVD calls for 'mini-Schengen zone' to better control borders," *Dutchnews* (online), November 25, 2020: <<https://www.dutchnews.nl/news/2020/11/vvd-calls-for-mini-schengen-zone-to-better-control-borders/>> (accessed on March 30, 2021).

102 Hugo Brady, "An Avant-Garde for Internal Security," *Centre for European Reform*, Bulletin Article, October 03, 2005: <<https://www.cereu/publications/archive/bulletin-article/2005/avant-garde-internal-security>> (accessed March 30, 2021); Helmut Gaisbauer, "Evolving patterns of internal security cooperation: lessons from the Schengen and

One national diplomat from a north-western member state is quite clear, moreover: Peripheral members cannot complain if they are marginalized by the Commission and an alliance of core states because they too have played divide and rule. Italy may criticize the way Germany negotiated the 2016 EU-Turkey deal, pledging Commission funds without properly briefing its partners, and then expecting front-line states like Bulgaria to implement an agreement they had not previously seen. But it was Italy that set the precedent here. Ahead of the November 2015 EU-Africa Summit in Valletta, Italian diplomats made a deal with the Libyan regime, pledging Commission funds without first asking permission. Rome then gave the Commission President and member states just two hours to take a decision on the draft deal, which was circulated only in Italian.

As with all circular problems, discussions over who is in the wrong can go on forever. Given these negative patterns of behavior between the political institutions of the EU, it is therefore no wonder the Commission has tried to cut the Gordian Knot by taking things into its own hands. What is harder to accept is the impact the Commission's assertiveness has had beyond the EU's borders because this is the second sphere in which the Commission has tried to circumvent the usual mechanisms of implementation. The Commission has used crises inside and outside of the EU to justify sending Frontex staff abroad, where they participate in advisory and executive tasks ranging from crisis management to development implementation.<sup>103</sup> Often overlooked in Brussels, the deployment of Frontex personnel in an implementation role has led quite directly to growing resistance to EU norms.

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In the field of implementation, a similar picture emerges to that seen in previous chapters. A basic analysis suggests that the EU is capable of implementing its policies, even where political agreement has not been reached. But a deeper reading uncovers red flags that the Commission has ignored.

According to our analysis, the Commission has used home affairs agencies – by definition, vehicles to carry out the political will of their principals – in order to cut through the absence of clear political will. Now, overburdened by political expectations and unusable resources, Frontex is dogged by suspicions about human rights abuses and unfair procurement practices.

CAPACITY TO IMPLEMENT POLICIES



The Commission is able to implement its policies, even where political agreement between member states has not been reached. However, it relies on home affairs agencies to cut through the absence of clear political will, resulting in agencies becoming overburdened with political expectations and unusable resources.



BOX 12. THE PERILS OF EU ASSERTIVENESS: BORDER GUARDS ABROAD

The assertive way in which Frontex has been deployed outside the EU has alienated foreign governments. In Africa, the Juncker Commission repurposed unspent development aid, pouring it into Emergency Migration Trust Funds instead. This allowed the EU to allocate money according to its own interests, without the usual constraints

imposed by development programming (at the decision-making stage, at least). Local Frontex liaisons have leveraged this cash to gain compliance from their host governments, and the leverage has been considerable. Between 2015 and 2019, nearly €4 billion worth of projects were approved. The EU also pledged €3 billion in humanitarian aid to Tur-

Prüm laboratories," *European Security* 22, No. 2 (March 2013) pp. 185-201.

103 Roderick Parkes, "Healthy Boundaries: Remedies for Europe's Cross-Border Disorder," EU Institute for Security Studies, *Chaillot Paper*, No.152, 2019: <<https://www.iss.europa.eu/content/healthy-boundaries-remedies-europe%E2%80%99s-cross-border-disorder>> (accessed March 30, 2021).

key, host to large numbers of displaced persons who, the Commission feared, might move onwards towards the EU.

The Commission has also found ways to use Common Security and Defense Policy (CSDP) missions and operations designed for crisis management and peace-keeping as a means of sending Frontex staff to Africa. This, too, is a controversial use of the EU's powers. Frontex could not ordinarily reach the kinds of places to which CSDP missions and operations are deployed as they rely on hosting agreements with local governments, which are difficult to conclude in spots like Libya. But CSDP missions and operations are designed to work in badly-governed parts of the world with the blessing of the international community. The point, thought, is that they are meant to act in the interests of local society. Frontex, by contrast, acts in the interests of the EU.

African countries have grown suspicious about the way that Frontex has been deployed, most obviously because of the colonial overtones of having Europeans defining how their borders work. A scandal erupted when an Italian member of the EU Border Assistance Mission (EUBAM) in Libya appeared to be representing Libya at a meeting of the World Customs Organization. They complain that the EU is even using Frontex to implement development projects, thus recouping development spending for the EU's coffers, and increasing the EU's control over its implementation. However, the deployment of Frontex in this role may also lead directly to implementation problems, including armed resistance against border personnel who are seen to be insensitive to local practices and needs.

In the Western Balkans, the Commission has negotiated hosting agreements for Frontex personnel to play an executive role, effectively behaving like local border guards. DG HOME has justified these operations on the grounds that the Western Balkan Six will one day join the Schengen Area, and so can gain useful expertise from watching Frontex work. Nonetheless, there are serious ethical questions surrounding the deployment of armed Frontex personnel to the Western Balkans, and demanding legal immunity for them. Serbia, North Macedonia, and Bosnia and Herzegovina all resisted this demand. Above all the West Balkan countries worry that the EU will use them as a buffer against migration, deploying Frontex personnel to the region to implement the EU *acquis* because this is more expedient than having them active on their own territory.

Whilst most interviewees are sympathetic to the constraints under which the Commission is operating, many believe there are other, potentially better ways to improve implementation, and they rest in sympathetic law-making at home and deft diplomacy abroad. Create broad alliances with governments, businesses, voters, and indeed migrants at the earliest stages of policy formulation, and good implementation usually follows. In a multi-level polity, where the EU must constantly demonstrate why it is the right level for action, the Commission has always benefited when ordinary citizens feel they have a stake in policy. This kind of alliance-building was precisely how the "four freedoms" (free movement of capital, goods, services and, of course, labor) developed at EU level, as ordinary Europeans took governments to court to assert their rights.

Fifteen years ago, the Commission was charting precisely this line in borders and migration policy, trying to mobilize a new coalition of stakeholders at home and abroad. At the time, interior ministries were complaining of "legislative fatigue," and the Commission responded by trying to bring new momentum into law-making, flirting with new stakeholders like businesses, development ministries and foreign governments.<sup>103</sup> But the effort proved too much, and the Commission has ended up aligning ever more closely with a core of interior ministries. This has reduced the recourse of migrants to judicial remedy, as well as co-opting businesses into enforcing unworkable border restrictions, punishing transport companies that bring in migrants with the wrong paperwork.

One obvious effect has been a kind of "agency fatigue." At home, Frontex is overstretched and scandal hit; abroad its staff are becoming the object of violence and attack. With the ongoing reform of the European Asylum Support Office (EASO), meanwhile, member governments are becoming wary in the extreme. Mediterranean member states, for instance, insisted on a sunset clause that would prevent EASO from gaining the same kind of executive powers that Frontex now has if they do not agree to the full package of legislative rules in the New Pact. Meanwhile, the Commission is now appealing to member states by proposing measures that would further clamp down on NGOs that aid irregular migration and cut migrants access to justice. This is understandable, but alienates many potential stakeholders.

103 Roderick Parkes and Moritz Schneider, "Partnership: a new approach to fighting irregular immigration?", *SWP Comments* 26, Stiftung Wissenschaft und Politik, November 2010, <[https://www.swp-berlin.org/fileadmin/contents/products/comments/2010C26\\_pks\\_snd\\_ks.pdf](https://www.swp-berlin.org/fileadmin/contents/products/comments/2010C26_pks_snd_ks.pdf)>.

## EVALUATING THE IMPACT OF POLICIES AT HOME AND ABROAD

This final section looks at the EU's capacity to act in the last stage of the policy cycle; that is, its ability judge the impact of its policy and draw the right conclusions for the next cycle of regulation. In each of the previous three sections, we have seen examples of how the Commission has built its capacity to analyze policy, for example introducing data-reporting obligations, or boosting the powers of its agencies to assess member state vulnerabilities. But we also saw examples of how the Commission has used this capacity to push through a pre-defined agenda. This calls into question the extent to which the Commission is genuinely evaluating policy, as opposed to using the evaluation processes merely to confirm preconceived conclusions. The key point for judging the EU's capacity to act in a crisis is whether it seizes the chance to respond to disruptions by changing paths and breaking silos.

EU officials talk about "chicken or the egg" problems, where it is hard to tell which came first: the problem itself or the EU's response to it. Similarly, our scenario workshop revealed the danger of self-fulfilling fears; of the EU becoming so convinced of a migration threat that it introduces defensive policies that actually bring it into being. Finding evidence that the EU's development Trust Funds or hard-nosed diplomacy are in fact at the root of migration problems is near impossible: Migration drivers such as civil conflict have genuinely grown, and the EU's neighbors have indeed become less cooperative on border control. And yet, interviews with officials in Brussels do give a picture of a Commission with such dysfunctional relations with member states that it is compelled to take action to show that its high risk approach is working, even though it has evidence that this will backfire.

### The problem with marking your own homework

In February 2021, the European Commission released an evaluation of how efficiently it was able to expel migrants from the EU. This issue of readmissions has been identified by the von der Leyen Commission as the foundation of the

New Migration Pact, and the EU's effectiveness in this field will determine the likelihood of her reform package going through.<sup>104</sup> The evaluation made thorough use of a new array of reporting obligations under the reformed EU visa code,<sup>105</sup> and even the sensitive parts of the analysis are available to read.<sup>106</sup> The Commission reached a positive conclusion: "Member States' data and information confirm that all EU readmission agreements bring a significant added value in facilitating cooperation on readmission."<sup>107</sup> The main problems arose in returning migrants to countries which did not have an agreement with the EU.

The public message was therefore one of self-confidence: Member states should trust the Commission with handling returns. But behind the scenes, the Commission was, by all accounts, worried. For one thing, this was its first serious evaluation of readmissions in some time. As late as 2017, DG HOME had treated the signature, rather than the actual enforcement and impact of readmission deals as the measure of success.<sup>108</sup> Under pressure from DGs DEVCO and TRADE, which had seen trade and aid used as bargaining chips in pursuit of such deals, DG HOME had finally started collecting data to evaluate whether this led to *good* arrangements. But as this evaluation process became formalized, DEVCO and TRADE were themselves worried about the implications: The process might move beyond the Commission's control and lead to sanctioning states that failed to faithfully implement returns deals.

On the basis of the evaluation process, member states can increase visa processing fees for citizens of any state deemed uncooperative on returns, with the possibility of further escalation if the state remains unresponsive.<sup>109</sup> At the height of the migration crisis, the Commission made it clear that it was open to using all available leverage, including EU trade and aid policies, to ensure returns were carried out effectively. But member states' interior ministries remained skeptical about whether the Commission would follow through. This, in turn, prompted concerns in the Commission that interior ministries would take it upon themselves to act in its stead. The Commission fears that interior ministries will use EU trade and aid policy as leverage even where it has reservations.

104 Madalina Moraru, "The new design of the EU's return system under the Pact on Asylum and Migration," *EU Migration Law Blog* (online), January 14, 2021: <<https://eumigrationlawblog.eu/the-new-design-of-the-eus-return-system-under-the-pact-on-asylum-and-migration/>> (accessed June 30, 2021).

105 In quantitative terms, these data focused on third countries whose nationals are still subject to Schengen visa requirements and which had received more than 1,000 repatriation orders in 2018. In qualitative terms, they relied on detailed information from member governments on issues such as whether foreign authorities acknowledged their nationals living in the EU and gave those who had destroyed their paperwork new documents.

106 The NGO Statewatch has posted the Commission's restricted analysis here: <<https://www.statewatch.org/media/2297/eu-com-readmission-report-on-cooperation-restricted-com-2021-55-final.pdf>> (accessed August 9, 2021).

107 European Commission, "Enhancing cooperation on return and readmission as part of a fair, effective and comprehensive EU migration policy," *Communication*, (COM/2021/56 final), February 10, 2021, p.9.

108 Interview, Brussels, 2017.

109 N.N., "EU moves ahead with plans to use visa policy as 'leverage' to increase deportations," *Statewatch briefing*, April 14, 2021: <<https://www.statewatch.org/analyses/2021/eu-moves-ahead-with-plans-to-use-visa-policy-as-leverage-to-increase-deportations/>> (accessed August 9, 2021).



These concerns appear to have been allayed. Commission officials judge that the February 2021 evaluation report has finally convinced member states that they can be trusted. Admittedly, some interior ministries felt the EU still needed to “debate at a political level ... how to enhance leverage vis-à-vis third countries,”<sup>110</sup> and some wanted the Commission to name and shame uncooperative states. But it seems interior ministries broadly welcomed the Commission’s self-evaluation, and do now believe the Commission is ready to play hard-ball where necessary. But here is the odd thing: The Commission’s evaluation confirms its starting assumption that the EU’s use of leverage, and threat of escalation is the key to success. Yet conventional wisdom, even among interior ministries themselves, is that returns cooperation often works best when it is depoliticized and based on shared interests.<sup>111</sup>

It is telling that the Commission’s analysis does not attempt to explore the readmissions practices employed by various member states on precisely this principle of shared interests. Spain, for example, makes returns deals with West African countries based on mutual interests and occasionally using EU funding, and makes these available to other member states. The logical inference of this oversight is that the Commission is now too heavily invested in the leverage-based approach to consider the alternatives.<sup>112</sup> It has persuaded member states to commit to EU returns deals on the understanding that it can do something national deals cannot, namely getting third countries to accept back not only their nationals but also foreigners who have transited through their territory.<sup>113</sup> The Commission is able to achieve this because of its size and leverage, not good diplomacy, and that is what it is now judged on.<sup>114</sup>

### How the Commission risks confusing cause and effect

The Commission’s increased capacity to evaluate its own policies is, in principle, a positive development. For one

thing, it is a sign that the EU wants to move away from “solutionism”; that is, the tendency to treat a signed EU deal or policy as a success in itself, and to neglect to evaluate its impact. For another, it is a welcome correction to the 2015 crisis, when member governments gave the EU new tasks for which it lacked expertise, and where Commission has been improvising.<sup>115</sup> But the trouble remains that the Commission has had to fight to exercise its competencies in this field, and so migration is rife with “policy-based evidence-making,” rather than the reverse. The Commission cherry-picks information supportive of its political goals, and rather than solving the problem, giving it stronger powers of evaluation could make things worse.<sup>116</sup>

When evaluating the impact of policies, all authorities are faced with the dilemma that their own policies may be part of the problem they are trying to resolve. Commission analysts say they are indeed asking themselves these questions. Did trade and aid cease to have a positive effect on the causes of irregular migration before or after the EU began to use them as bargaining chips in migration talks? Did countries like Belarus, Turkey and Morocco begin to instrumentalize immigration flows into the EU before or after Brussels started using access to Schengen for leverage towards them? Did the recurrence of migration shocks in Europe come before or after the Commission embraced them as a means of driving forward EU integration? And most fundamentally: Did the Commission diagnose the root of the migration problem to be “globalization-gone-wrong” before or after it began to leverage its market power to gain concessions from other countries?

A good evaluation process would unravel these questions, with huge potential benefits for policy effectiveness. But the answers are unlikely to be definitive because, as with every good “chicken or egg” problem, it is almost impossible to separate cause from effect.<sup>117</sup> EU policy is unlikely to be the cause of its migration problems, but it could very well

110 Presidency of the Council of the EU, “Communication on enhancing cooperation on return and readmission,” *Presidency Discussion Paper* (6583/21), March 5, 2021, p. 6.

111 There are some exceptions to this rule, but not many. Only on one occasion, when the EU used all its leverage to achieve a deal in which it was able to very publicly return migrants did it buck this trend – but that kind of deterrent effect was achieved with an absolute minnow, Kosovo. Generally well-functioning returns relations with Eastern Europe are frequently ascribed to the degree of leverage the EU has, and the EU’s implicit or explicit use of visas, trade and aid to get deals. But this is smoothed over by a sense of strong mutual ties, and where that is missing it can frequently lead to countries like Belarus (or Turkey) turning the tables on the EU and instrumentalizing migration.

112 Florian Trauner and Sarah Wolff, “The Negotiation and Contestation of EU Migration Policy Instruments: A Research Framework,” *European Journal of Migration and Law*, 16, No. 1 (January 2014) pp. 1-18.

113 Article 4 of the “Agreement between the European Union and the Republic of Belarus on the readmission of persons residing without authorization,” *Official Journal of the European Union*, June 9, 2020.

114 If third countries do sign up, this extra obligation can additionally strain their own neighborly relations; and if they do not, a refusal to sign can significantly damage their relations to the EU. Turkey points out that when it agreed to such an agreement, it needed to make repatriation deals with as many as 20 countries of origin due to the transit clause, and this is a sour point with the EU. Morocco warns that if it signed any such deal would create domestic unrest, as the government would be seen to put European interests ahead of Muslim kinship.

115 Elizabeth Collett, “Understanding the Role of Evidence in EU Policy Development: A Case Study of the ‘Migration Crisis,’” in Martin Ruhs, and Kristof Tamas, and Joakim Palme, *Bridging the Gaps: Linking Research to Public Debates and Policy Making on Migration and Integration*, Oxford, 2019.

116 Christina Boswell, *The Political Uses of Expert Knowledge: Immigration Policy and Social Research*, (Cambridge: 2009).

117 Niels Keijzer, and Erik Lundsgaarde, “When ‘Unintended Effects’ Reveal Hidden Intentions: Implications Of ‘Mutual Benefit’ Discourses For Evaluating Development Cooperation,” *Evaluation and Program Planning*, Volume 68, (2018), pp. 210-217.



be making them worse, aggravating troubles that it could have alleviated. Migration policy in most advanced economies is known to be rife with such “negative feedback loops,” where legislators get locked into a vicious cycle of self-defeating behavior. Border cooperation can entail propping up authoritarian neighbors, creating borders that provide business for smugglers, and systematically missing opportunities for cooperation rather than coercion.<sup>118</sup> The result of this will likely be a rise in irregular migration, meaning legislators will respond to the negative effects of their policies with more of the same.

There are certain in-built biases in the starting points taken by advanced economies when analyzing migration risks. They tend to picture themselves primarily as destinations for migration, which means that they misread global migration patterns. For instance, only a small percentage of the migrants who entered Libya in 2015 seem to have been intent on reaching the EU, while the majority were attracted by employment in Libya's extractive and household sectors,<sup>119</sup> and remained in Libya even under harsh circumstances. In March 2016, a UN official tried to explain precisely this, saying that the Libyan labor market had

the capacity to employ 1 million immigrants. But this was widely reported in Brussels as a UN prediction that a 1 million migrants would flood from Libya into the EU.<sup>120</sup> This misrepresentation triggered a whole series of defensive policies that made the movement of people towards Europe more likely than it had been before.<sup>121</sup>

Libya is thus a good example of a loop where law-makers interpreted the negative effects of policy as confirmation of its necessity, and which the Commission could now usefully correct. Another type of negative policy loop occurred when the EU cycled continuously through the same few policy approaches, even though these had all already failed in the past. One cycle involved melding EU development policy with migration control.<sup>122</sup> It began by using development policy to “tackle the root causes of migration;” then (when migration actually rose as a result) tried to turn migrant expulsion into a benefit for countries of origin through “brain gain” and “circular migration.” Next, it used development aid as blunt leverage to coerce African countries to control migration, before cycling back to the beginning. An effective evaluation policy would put an end to this constant loop.



### BOX 13. TRANSACTIONAL DIPLOMACY: THE EU TRUST FUNDS FOR MIGRATION

The EU Trust Funds for Africa were originally meant to be a temporary measure to help the EU circumvent its own administrative blockages in development programming and quickly address the drivers of migration and find ways to handle migration to the mutual benefit of the EU and African states. Hungry for quick results, however, the EU soon began to use the funds as blunt leverage. Five years after their launch, their financial largesse shows little sign of having disciplined third countries when it comes to migration control. A good evaluation process by the Commis-

sion would not only identify where things are going wrong, but act upon them.

African Union officials have been quite transparent about how they exploit the funds. They say they have made a simple calculation: If the EU is ready to bring so much money to the table, Africans must sell it something worth the price. They encourage their members to exaggerate the feasibility and impact of closing their borders in order to gain cash. States like Sudan, meanwhile, try to use the border funds to

118 See also Bodo Weber, “The EU-Turkey Refugee Deal and the Not Quite Closed Balkan Route,” *Report*, Friedrich Ebert Foundation, June 2017: <<http://library.fes.de/pdf-files/bueros/sarajevo/13436.pdf>> (accessed August 30, 2021).

119 Fransje Molenaar and Floor El Kamouni-Janssen, “Turning the Tide. The Politics of Irregular Migration in the Sahel and Libya,” in *CRU Reports*, February 2017, p. 16-17, <[https://www.clingendael.org/pub/2017/turning\\_the\\_tide](https://www.clingendael.org/pub/2017/turning_the_tide)> (accessed March 30, 2021).

120 For a typical example: N.N., “UN warns of up to 1 million migrants heading to Europe from Libya,” *Deutsche Welle* (online), April 13, 2016: <<https://www.dw.com/en/un-warns-of-up-to-1-million-migrants-heading-to-europe-from-libya/a-19184574>> (accessed March 30, 2021).

121 Roderick Parkes, “The siege mentality: how fear of migration explains the EU's approach to Libya,” *Foreign Policy Research Institute, Special Report*, December 2020: <<https://www.fpri.org/article/2020/12/the-siege-mentality-how-fear-of-migration-explains-the-eus-approach-to-libya/>> (accessed March 30, 2021).

122 Mark Furness, and Luciana-Alexandra Ghica, and Simon Lightfoot, and Balázs Szent-Iványi, “EU Development Policy: Evolving as an Instrument of Foreign Policy and as an Expression of Solidarity,” *Journal of Contemporary European Research* 16, No. 2, (March 2020) pp. 89 – 100.

gain paramilitary equipment, and use negotiations with the EU to achieve international rehabilitation. They, and other strong negotiators like the Egyptians, have had a field day.

Anecdotal evidence also suggests poorer and weaker African countries were no more pliant. These countries can only absorb so much cash, meaning they were able to pick and choose between donors and even impose their own conditions upon them.<sup>123</sup> Old hands describe a free-for-all. In Tunisia in 2014, only the Vienna-based International Centre for Migration was really active on migration; by 2015, the EU was there, alongside members France, Italy, Germany and the UK, not to mention the UN and US.<sup>124</sup>

EU development specialists are, of course, accustomed to attempts by African negotiators to play pick-and-mix or even divide-and-rule with Europeans. But rudimentary evaluation shows that the appearance of negotiators from DG HOME and member state interior ministries was a gift to Africans. EU migration officials thought they were playing tough, but by all accounts they were simply being played. It is a difficult lesson for the Commission to address, but a necessary one.

African states proved highly resistant to DG HOME on migration and readmissions, but were quick to cooperate on other issues. When the Trust Funds were launched, many UN committees and processes were chaired by representatives of African states; their governments exploited the fact that the EU's need for smooth Euro-African cooperation went far beyond migration issues. When the EU began using development aid as a bargaining chip in migration talks, African representatives at the UN reportedly started demanding incentives for cooperating on these broader matters too.

EU member states responded by putting pressure on the Commission to reduce the amount of direct budgetary support it disbursed to African governments. These funds,

transferred directly to governments by donors could be spent according to the government's own priorities, rather than those of the donor. This signaled a certain degree of trust on the part of the EU, and usually helped build good governance. But European interior ministries felt that this kind of funding amounted to a loss of leverage. The Commission duly changed the way these funds were distributed, resulting in a loss of local ownership.

The EU also applied transactional diplomacy to the African Union, which responded by taking a large cut of the Trust Funds for itself. This too undermined the sense of local ownership for development projects. As the EU's approach to Africa became increasingly transactional, it began to feel competition from China more acutely. While China's approach to development does not involve local ownership as such, it boasts of being based on shared interests. Increased competition pushed the EU to dispense with its usual political conditionality, financing Chinese-style infrastructure projects, complete with Chinese-style kickbacks for local elites.

Unfortunately, Eurocentrism is a recurrent theme in the application of the Trust Funds, and something which European officials in the field are acutely aware of. One Rabat-based EU official says the issue is that Trust Funds are managed from Brussels rather than from local EU delegations, making them unsympathetic to local needs.<sup>125</sup> Another complained about the Eurocentric "migration trackers" funded by EU development aid. These data systems keep track of where migrants are, but do so without giving context, so all Africans heading northwards are assumed to be aiming for the Mediterranean.

The real litmus test for how the Commission exercises new powers in this final step of the policy cycle is its ability to honestly evaluate policies, learning lessons and breaking negative policy loops.

### Signs that the EU engages in "policy-based evidence making"

The above analysis of the Trust Funds relies on information and opinion from well-placed officials from the Commission, the EEAS, and member state authorities. That information is, of course, incomplete and offers just a snapshot of

the in-house evidence available to Commission evaluators. Nevertheless, critical voices within the EU institutions themselves are apparently quite numerous, and it is telling that this basic analysis does not appear to have led to a course correction. At this point, then, it is worth considering whether those in charge of evaluation are cherry-picking evidence to support pre-existing decisions rather than

<sup>123</sup> Hugo Brady and Roderick Parkes, "Home affairs diplomacy: why, what, where – and how," EU Institute for Security Studies, *Chaillot Paper*, No. 135, July 2015, <[https://www.files.ethz.ch/isn/193609/CP\\_135\\_EU-home-affairs\\_why-what-where\\_and-how\\_01.pdf](https://www.files.ethz.ch/isn/193609/CP_135_EU-home-affairs_why-what-where_and-how_01.pdf)> pp. 53-56.

<sup>124</sup> Interview, Vienna, February 24, 2018.

<sup>125</sup> Interview, Brussels, February 17 2017.

basing decisions on the best available evidence – that they are engaging in “policy-based evidence-making” instead of “evidence-based policymaking.”

There are certainly hints that officials might be picking the information that best suits their pre-defined policy priorities. One high-level Commission official, for instance, explained to us the need for a defensive approach to migration by referring to a forecast that there would be a significant 22 percent increase in irregular migration to Europe by 2030, even as the EU's birth rates stagnated.<sup>126</sup> Tellingly, the only reference to this figure we could find was part of an academic scenario exercise.<sup>127</sup> Far from being a firm prediction, the exercise gave the figure as an eventuality, one of several alternative futures that Europe might face. More telling still, the scenario imagined a world in which unilateralism was the defining factor. The report also outlined more positive scenarios where the EU worked actively to avoid unilateralism and thus irregular migration was much lower, but the official had apparently overlooked these.

Such hints are worrying, but reflect little more than the fact that migration data is complex.<sup>128</sup> More worrying are the signs of more systemic biases. Another official argued that certain analytical blind-spots arise from the EU's nature as a diplomatic community. The Brussels institutions offer a safe space for European states to scrutinize each other – permitting “mutual interference in (traditional) domestic affairs and mutual surveillance; transparency.”<sup>129</sup> But this has begun to backfire; to maintain harmony, the Commission increasingly has to tiptoe around national sensitivities, replacing scrutiny with diplomatic fig leaves to maintain this elaborate system of secretive diplomacy.<sup>130</sup> When it comes to borders, this results in some of the data blind-spots and faulty classifications detailed in earlier sections.<sup>131</sup>

Another official gave a slightly different explanation of why Commission officials might be motivated to suppress their concerns about EU policy. He blamed the Commission's constant battle to engage member states – and one

in particular. The Commission needs to persuade Germany to stay on board, especially now that officials in Berlin have apparently begun to talk of their country as a “superpower in migration management.” No other country in the world, German officials and experts reportedly say, has taken in so many people seeking protection since 2015, and at the same time contributed so much to international organizations such as the UNHCR. And there is no larger asylum agency in the world than the German Federal Agency for Migration and Refugees (BAMF). No other member state can go it alone, without the Commission. Germany is one of the states that has pressed the Commission hardest to make use of trade and aid leverage.

Read between the lines in the above-mentioned returns evaluation, however, and the EU does appear to be trying to press hawkish member states towards a more sensitive approach to the world outside its borders. A possible example is Afghanistan. As might be expected, the evaluation reported that the returns rate was low, with Afghan authorities earning a reputation for turning down repatriation flights at the last moment. The Commission gives a cryptic explanation: Kabul “takes into account additional elements other than nationality [...] when deciding whether to issue travel documents.”<sup>132</sup> One national official speculated that this line refers to the fact that a small group of EU states had a habit of putting convicted violent criminals on repatriation flights without warning, and then using all available leverage to ensure Kabul accepted them.<sup>133</sup> The Commission does not dare to be more forthright.

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The Commission has quite strong powers of evaluation. However, analysis suggests that it struggles to use these powers to challenge the underlying assumptions of bad policy, and sometimes even mistakes the negative side-effects of assertive policies as grounds for more of the same. This is a product of the way it has had to fight for its powers, and by the continued need to prevent it-

126 Interview with Commission official conducted by the author in December 2020.

127 Eduardo Acostamadiedo, *Assessing Immigration Scenarios for the European Union in 2030* (April 2020), p. 25: <<https://publications.iom.int/system/files/pdf/assessing-immigration-scenarios-eu.pdf>> (accessed on March 31, 2021).

128 We came across numerous examples of statistics being misinterpreted during the research. For instance: N.N., “Survey Shows 31% of Working-Age Immigrants Are Key Workers in EU,” *Schengen news* (online), June 26, 2020: <<https://www.schengenvisainfo.com/news/survey-shows-31-of-working-age-immigrants-are-key-workers-in-eu/>> (accessed August 30, 2021).

129 Robert Cooper, “The New Imperialism,” *The Guardian*, April 7, 2002: <<https://www.theguardian.com/world/2002/apr/07/1>> (accessed August 30, 2021).

130 Corneliu Bjola, and Stuart Murray ed.s, *Secret Diplomacy: Concepts, Contexts and Cases*, Abingdon, 2016.

131 In the initial section, it was shown how the Commission has tried to close blind-spots in the information it collects on phenomena such as “secondary flows” of asylum-seekers in the EU – phenomena which highlight the ineffectiveness of EU norms.

132 European Commission, “Assessment of third countries' level of cooperation on readmission in 2019,” *Report*, Brussels, February 10, 2021 (COM/2021/55), p.4

133 This has apparently been down to an unholy alliance of states which have been under pressure to get rid of violent immigrants – Poland, Hungary, Sweden and Germany. The excuse was either that they had served their time – or to ask why declare sex-offenders to Afghan authorities if there is no sex-offenders register there. At the same time, the Belgian project EURES-CRIM was rolling out the practice that even those migrants who had finished their prison sentence and had a legal status would be expelled from the EU. Things were becoming highly politicized, and these member states were ready to use all available leverage to get rid of undesirable individuals.

self being outflanked by hawkish member states – notably Germany – when it comes to leveraging EU markets and money in migration deal-making with third countries.

IMPACT CAPACITY



The Commission has strong powers of evaluation, but it seldom uses them to challenge the underlying assumptions of bad policy.



BOX 14. EU DEAL-MAKING IN THE HORN OF AFRICA: DID OFFICIALS IGNORE THE EVIDENCE?

Some interviewees believed that the Commission was systematically missing the scope for policy improvement. They offer an alternative vision of policy in which the EU might work on more even terms with Africans, but instead insists of leverage. One diplomat who worked on migration for the EU during the 2015 crisis related his experience of trying to replicate the EU-Turkey method with African states. Under strong pressure from member states, he helped prepare a deal for the Horn of Africa that would award countries like Ethiopia greater EU investment, as well as increased access to European labor markets in return for holding back the bulk of their citizens and anyone transiting the territory.

But Ethiopian diplomats in particular had no interest in playing the game, having seen the effects of EU engagement in West Africa, which they believed had succeeded only in creating migration dependencies, later exacerbated by the EU's well-meaning efforts to reduce the cost of remittances, making it cheaper to send money back from the EU than from other countries in the region.<sup>134</sup> The EU's policies in West Africa seemed actually to have encouraged irregular migration.

Addis Ababa was apparently blunt in its response. Insofar as Ethiopians were interested in migration at all, they looked not to Europe, but to the Gulf, South Africa, the US and even Libya. If the EU was genuinely interested in cooperation, then it could usefully do two things.

The first was to stop pressing African states to crack down on migrants, and instead to encourage them to open up to migration from elsewhere in the region. A regional border regime was key. The second was to team up with local bodies like the Intergovernmental Authority on Development (IGAD) once the Horn had established a capacity to manage borders and retain local labor, and to put joint diplomatic pressure on more attractive destinations like the Gulf to open up their labor markets and to improve conditions for migrants.

Unlike their counterparts in Brussels, Ethiopian officials evidently did not see the EU at the center of the migration map. Instead, they imagined migration moving away from the Europe, given half a chance. They saw regional labor markets trying establish themselves, and fleeting opportunities for intra-African cooperation.

Of course, Ethiopian diplomats have their own political agenda. They are not shy of taking concessions from Europeans, but they prefer these to come in the form of direct investment with few strings attached. Perhaps this was the reason they were so keen to rebuff the EU's proposal. This was certainly the line taken in Brussels, where our interviewee was unable to persuade his colleagues to re-evaluate their policy approach.

134 Luigi Scazzieri and John Springford, "How the EU and Third Countries Can Manage Migration," Policy brief, November 1, 2017, <https://www.cer.eu/sites/default/files/pbrief\_amato\_migration\_1nov17.pdf> (accessed March 30, 2021).

# Germany's Role in Helping Europe Act

What is Germany's contribution to the EU's capacity to act in a crisis? How does it contribute to the three underlying attributes of good crisis response – the capacity for joined up government, an ability to change path, and – perhaps most important – internal cohesion? The answer is simple. Germany's role in EU affairs is usually perceived as both selfless and exemplary.<sup>135</sup> But in times of crisis, it is seen to veer towards dominance.

It seems there are certain features of Germany's day-to-day policymaking which help it to "lead from behind" in routine times. These include its constitutional support for EU integration; its treaty-based cooperation with France, the EU's second biggest member; and the internal constitutional structures that make it so well-attuned to sectoral European integration and the EU's federal set-up. But in times of crisis, these same characteristics become a hinderance, diminishing the EU's resilience and responsiveness. Put bluntly, when crises hit, Berlin sometimes confuses ownership with leadership, hooking up with France and telling other states how to run projects for which it feels particular responsibility. The result is that Germany asserts its rules and disjointed governance structures on other member states.

German officials have often expressed frustration at the criticism they face from other EU member states during times of crisis – that when Germany doesn't lead, other members complain; and when it does, they still complain. "Damned when we do, damned when we don't," Berlin says. But analysis shows the real problem is that when Germany leads, it leads badly, lacking self-reflection and alienating partners.<sup>136</sup> The solution, therefore, is to lead better. In particular, respondents point to Germany's habit of picturing

itself as "the Good European," the member state most committed to the European project. Even if this is true, it does not justify Germany's tendency to push through its own priorities at the expense of others, or to accuse member states that oppose these policies of obstructionism. Schengen is one field where Germany appears to have undermined EU cohesion.

## Lessons from the Past: more leadership, less dominance

Adaptiveness – the ability to change course – is vital in a crisis. In the field of borders and migration, the Commission lost this capacity – or at least the self-confidence to exercise it – way back in 2001. That was the year Commissioners tried to bounce back from the refugee crisis by putting labor market needs on an agenda then dominated by concerns about protecting the Schengen Area. It faced heavy resistance from the German interior ministry, which channeled Germany's historic ownership of Schengen in order to assert narrow national concerns.<sup>137</sup> Without the support of the EU's biggest labor market, the Commission's plan was unworkable – a bruising incident. After wasting four years on the proposals, the Commission adopted a policy of alignment with German interests, focusing ever since on a few specific forms of migration which Germany is easily able to absorb.<sup>138</sup>

One Commission official, who remembers the political fall-out of that episode, described a recent meeting with German business leaders grappling with the economic repercussions of the Covid crisis. The very same German industries that had opposed the Commission's 2001 initiative now criticized the EU for making insufficient efforts to attract labor migrants. Far from being dismayed by this turn-around, the official welcomed Germany's basic lack of self-awareness. Having forgotten that it ever opposed the EU's efforts to build a comprehensive labor migration policy (or, for that matter, a relocation key for redistributing refugees between member states), Germany could soon be expected to help the Commission to drive the policy forward when it met opposition from other member states. The Commission has learnt to work with the German style of "leadership."

135 For instance: Daniela Kietz and Volker Perthes (ed.s) "The Potential of the Council Presidency: An Analysis of Germany's Chairmanship of the EU, 2007," *SWP Research Paper*, RP/2008/01 <<https://www.swp-berlin.org/en/publication/the-potential-of-the-eu-council-presidency>> (accessed on March 30, 2021); "The EU After Germany's "Corona Presidency": Taking Stock and Identifying Challenges for 2021," *Webtalk*, European Policy Centre, Brussels, December 15, 2020, <<https://dgap.org/de/node/34725>> (accessed March 30, 2021).

136 Almut Moeller and Roderick Parkes (ed.s) "Germany as Viewed by Other EU Member States," *EPIN Working Paper No. 33*/June 2012 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2091023](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2091023)> (accessed June 1, 2021).

137 The interior ministry pointed out that German industry was perfectly capable of recruiting high-skilled workers via national channels, and that German apprenticeship schemes meant its low-skilled labor needs were too specific.

138 The EU's flagship Blue Card scheme for high-skilled workers recruits migrants with doctorates rather than useful skills or experience, because that is what the German system rewards. Besides this, the EU has tended to focus on attracting the kinds of labor migrant who will leave again – "circular migrants," students, fruit-pickers, managers moving within multinational corporations: the German development and interior ministries had found agreement that this was a field where they could agree – a sweet spot between the development concept of "brain circulation" and interior ministry concerns about migration control.



German diplomats acknowledge their country's tendency to picture itself as the Good European, and to forget that Germany once strongly opposed certain aspects of the Commission's current agenda.<sup>139</sup> By aligning its migration proposals so closely with German interests, the Commission harnesses this lack of self-awareness, allowing countries like Poland that have other preferences to be portrayed as obstructive. One retired German diplomat says the tragedy is that Germany did initially act as the Good European when launching Schengen and today's other crisis-hit projects. It was inventive and inclusive, finding ways to adapt the EU's market projects to deal with tricky new geopolitical challenges. This marked an attempt by German diplomats to adapt the EU's old geopolitical third way between Liberalism and Communism to a new era.

The question is, what went wrong? When Schengen was first conceived, it was about more than just pursuing economic gains by lifting border controls and deepening the internal market as the Commission would have liked.<sup>140</sup> Schengen was to serve a geopolitical purpose, transforming problems of territoriality, and turning old border disputes into issues of technical regulation.<sup>141</sup> But the German foreign ministry's impulse was to launch the project with France, and this partnership gave the Schengen project a divisive character. As we have seen, the Schengen Agreement, signed by just five member states and operating outside the EU's political institutions, not only broke the unity of the single market, it also created new geopolitical hierarchies. The political after-effects of these early choices undermine today's crisis response, robbing the EU of the political cohesion needed for a nimble response.<sup>142</sup>

The German Foreign Office would probably have been able to handle the geopolitical fallout of these beginnings. But in line with the principle of ministerial authority (*Resortprinzip*), the implementation of the Schengen Agreement passed instead to the relevant German line ministry, the Ministry of the Interior. The Ministry had the requisite

technical knowledge to deal with borders and migration, but was simply not aware of the way Schengen impacted other EU projects, or how it affected peripheral member states in what had become a "multi-speed Europe."<sup>143</sup> This meant that whenever crisis hit, the Interior Ministry pressed for a response that followed its rules, narrowly framing the problem as a "Schengen crisis," and the task as deepening internal rules. As the crisis escalated, it eventually fell to the German Chancellery to act – behaving as the "Good European".<sup>144</sup>

The original idea behind projects like Schengen was to remove issues of territory and identity from the geopolitical realm and to reduce them to issues of technical regulation, using cross-border markets to incentivize societies to rethink the way they approached them. The gradual effect of German statecraft has been to invert this. German technical regulations have been raised up to the realm of geopolitics, and they are asserted using all the EU's market leverage. Once upon a time, the EU was able to deploy the Schengen method to deal with tensions not only inside Europe, but also in active conflict zones like Georgia, Moldova, and even Lebanon.<sup>145</sup> But what began as cutting-edge governance in the hands of Germany's diplomats lost its flexibility in the hands of its line ministries. Top-heavy, defensive, and unable to reinvent itself, Schengen is now in perma-crisis.

### How German Crisis Leadership Creates Splits and Silos

The crisis of the EU constitutional treaty, the financial crisis, the migration crisis, the rise of populism, today's supply chain crisis: Since 2005, the Chancellery (sometimes with the relevant line Ministry) has steered the EU through what Berlin has treated as a series of discrete European crises, each supposedly arising from the EU's failure to "complete" an individual project, be it the Eurozone or Schengen. Somehow, it managed to miss the cascading links between these crises: How the botched handling of the constitutional crisis narrowed down the scope to deal with the finan-

139 Sophia Besch and Christian Odendahl, "The Good European? Why Germany's Policy Ambitions Must Match Its Power," *Centre for European Reform, Policy Brief*, February 22, 2018: <<https://www.cer.eu/publications/archive/policy-brief/2018/good-european-why-germanys-policy-ambitions-must-match-its>> (accessed March 30, 2021).

140 On the history of Schengen: Ruben Zaiotti, *Cultures of Border Control: Schengen and the Evolution of Europe's Frontiers*. (Toronto, 2008).

141 Veit Bachmann and James Sidaway, "Zivilmacht Europa: a critical geopolitics of the European Union as a global power," *Transactions* 34 No. 1 (January 2009) pp. 94-109; Robert Cooper, *The Postmodern State and the World Order* (London: Demos, 2000).

142 N.N., "EU-China Opinion Pool: The Franco-German Tandem," *MERICs Opinion*, Berlin, June 4, 2021, <<https://merics.org/en/opinion/eu-china-opinion-pool-franco-german-tandem>> (accessed June 30, 2021).

143 Jacqueline Sirotova, "Is Europe's future 'multi-speed'? Today seems like 'Nothing but Schengen' type of cooperation matters," *Globsec, Commentary*, March 2, 2020: <<https://www.globsec.org/publications/is-europes-future-multi-speed-today-seems-like-nothing-but-schengen-type-of-cooperation-matters/>> (accessed March 30, 2021).

144 N.N., "Kohl macht Flüchtlingsfrage zur Chefsache," *Welt*, January 8, 1998: <<https://www.welt.de/print-welt/article596471/Kohl-macht-Fluechtlingsfrage-zur-Chefsache.html>> (accessed March 30, 2021); Artur Ciechanowicz, "Germany's 'refugee' problem. The most important test for Chancellor Merkel and the grand coalition," *OSW Commentary*, No. 182, November 2015: <<https://www.osw.waw.pl/en/publikacje/osw-commentary/2015-09-11/germanys-refugee-problem-most-important-test-chancellor-merkel>> (accessed March 30, 2021).

145 Thomas Diez, Stephan Stetter and Mathias Albert, "The European Union and Border Conflicts: The Transformative Power of Integration. *International Organization*," 60 No. 3 (September 2006) pp. 563-593.



## BOX 15. GERMANY AND GREECE

The epicenter of multiple recent EU crises, Greece bears responsibility for its own fate, but the scars of Germany's crisis leadership. Despite formally being part of Schengen since January 2000, Greece has been purposefully buffered out by the EU, which has delayed the entry of Romania and Bulgaria to the passport-free travel area in order to prevent a land bridge forming between Greece and the rest of Schengen. French officials are quite open about the defensive rationale: Greece is exposed to upheavals in the Balkans and Middle East, so needs to be buffered against. Germans are coy, explaining that Romania and Bulgaria's exclusion from Schengen stems from concerns about corruption.

Because Schengen's other member states had cushioned themselves from developments there, Greece was able to spend years undercutting its standards without being sanctioned. Neither part of the Schengen area had much incentive to try to adapt common rules to suit Greece's geographic and geopolitical situation, so the status quo remained until 2011, when the cracks began to show. That year, European courts prevented governments from transferring asylum-seekers back to Greece under the Dublin Regulation on account of asylum conditions, which were deemed inhumane – at least in part because of the crippling austerity cuts that had been imposed on the country's asylum authorities in the wake of the Eurozone crisis.

This began to pose serious problems for Germany in 2015, when large numbers of Syrians began arriving at its borders, having entered the EU via Greece. In the early days of the crisis, Germany chose to unilaterally welcome migrants, much to the dismay of member states along the

transit route from Syria. It was not long, however, before Berlin changed course, adopting a policy of buffering and deal-making – unilaterally, once again. According to Council officials, when EU leaders arrived on the tarmac at Brussels Airport for their Spring 2016 summit, most had no idea about the deal with Turkey that Germany (together with the Dutch Council Presidency) had negotiated in their name.

Officials in Athens claim that they could have warned of the effects of the EU-Turkey deal had they been better informed about it. With the Greek asylum authority having been decimated under German-led austerity, it was clear to Athens that the deal could not be properly implemented. Under pressure to hire new staff at lightning speed, Greece turned to the NGO sector. This new cohort of asylum officers have been largely unwilling to approve migrant transfers to Turkey on grounds of principle, but the EU has warned them against transferring migrants to the mainland, as this would make them ineligible for return. As a result, migrants are left languishing in limbo on the islands.

On the few occasions when Athens has allowed transfers to the mainland,<sup>150</sup> local officials have reported new arrivals – sometimes the exact same number – smuggled in by Turkish gangs the very next day. They reason that Ankara is trying to send a message – not only that it has hacked into Greece's internal communications system, but also that it is more than capable of maintaining pressure on Greece, and by extension, the EU. Local officials, meanwhile, fear that the islands will become a permanent home to the refugees, and so have refused to allow the camps either to expand or to provide sustainable services.

150 Karoline Popp, "No more Morias"? Die Hotspots auf den griechischen Inseln: Entstehung, Herausforderungen und Perspektiven," *SVR-Policy Brief*, January 2021: <<https://www.svr-migration.de/publikationen/hotspots/>> (accessed on August 30, 2021).

cial crisis; how this exacerbated socio-economic problems in the EU's neighborhood; how the resulting migration crisis fueled the rise of populism; and how populism disrupted the pandemic response. Today, Berlin is having what it thinks is a hard-headed conversation about how hostile the world has become and how weak the EU is – without considering whether this might be a problem of its own making.

Germany may struggle to join the dots, but its neighbors are able to see things much more clearly. This is particularly true of the outer tier of member states that are acutely exposed to international shifts and struggle to influence the EU.<sup>146</sup> Poland is a case in point: A decade ago, both the country's government and voters were pro-European, and Warsaw optimistically assessed that it was time for Poles to graduate from being "policy-takers to policymakers." For too long, Poland had behaved as if it were still an accession candidate, rather than a full member of the EU, passively taking policies without comment. With the Polish economy quite robust, Premier Tusk judged that the crisis-hit eurozone would be receptive to his input. Indeed, many of the Visegrád Group (Poland, Hungary, Czechia, Slovakia) saw an opportunity to become a more positive force in EU politics.<sup>147</sup>

This begs the question, how is it that today, the Visegrád Four are seen as a negative grouping, particularly in the wake of the migration crisis, and why has Warsaw, in particular, turned away from the EU?<sup>148</sup> One answer is that from 2009, Warsaw watched as Berlin and a Franco-German "engine of the EU" took ownership and pushed forward policies that not only disregarded Central Europe, but actively damaged the regional economy. This applied to everything from the French proposals for a Eurozone budget and parliamentary chamber, to rules on the assets which Eurozone banks needed to hold. Poland suddenly faced the prospect of Eurozone governments and banks diverting funds from its quite stable economy. The Commission, instead of promoting the combined interests of all EU members, increasingly deferred to a Franco-German agenda.<sup>149</sup>

No wonder, then, that when the migration crisis hit, Visegrád governments took a far more cynical approach to influencing policy. They felt they had more to gain domestically

by blocking EU initiatives than by accepting what they saw as unreasonable demands from Brussels, dictated by Berlin. Indeed, such was the public mood that it appears some Visegrád governments were even deliberately trying to provoke Berlin, counting on harsh German criticism to rally voters behind them. They also implemented harsh national border policies, claiming they were doing the dirty work to allow the rest of the EU to retain its old ideals. The EU's frontier states criticized Germany, which had out-sourced its borders to Eastern Europe and the Mediterranean, but still had the audacity to moralize about how they were being guarded.<sup>150</sup>

### Lessons for the Future: More *Europäische Handlungsfähigkeit*, less *autonomie stratégique*

The sources of the disruption that the EU will face over the next decade are already quite foreseeable: Geo-economic shifts, new digital technologies, emergent security threats like climate change, and large-scale migration will all take their toll. There are two ways of preparing. One involves the EU setting itself big strategic targets and actions. In the field of migration, this would mean defending against obvious push factors like Africa's demography, resource competition, and the rise in civil and political conflict. The other is through a bottom-up investment in the EU's internal cohesion and capacity for government. When it comes to migration, this latter approach would mean readying the EU for unforeseen shocks in the hopes of building sufficient political cohesion to break paths and seize any opportunities that might arise.

The German government has traditionally invested in the more open-ended, joined-up, bottom-up approach. This is summed up today as *Handlungsfähigkeit*; that is, a kind of cautious networking and learning by doing, rather than getting caught up in grand strategy-making exercises that are unsympathetic to Germany's own constitutional limitations. Just as in the past, this can be achieved through cautious investment in building cross-border markets and connectivity in Europe and beyond, rethinking seemingly intractable geopolitical issues. In the past, Germany and France have managed to cooperate on the EU's geopolitics on equal terms, with Germany's decentralized power structures

146 Ullrich Fichtner and Alexander Smolczyk, "Schäuble's Search for a Way Forward," *Spiegel* (online), September 26, 2013 <<https://www.spiegel.de/international/germany/how-german-finance-minister-schaeuble-navigates-the-euro-crisis-a-924526.html>> (accessed June 23, 2021).

147 Agata Gostynska, and Roderick Parkes (eds) "Towards a V4 Position on the Future of Europe," *Policy Report*, 2012, Polish Institute of International Affairs, <<https://www.ceeol.com/search/gray-literature-detail?id=572399>> (accessed on March 30, 2021).

148 N.N., "Big, bad Visegrad Group," *The Economist*, January 30, 2016, <<https://www.economist.com/europe/2016/01/28/big-bad-visegrad>> (accessed March 30, 2021).

149 Andrew Rettman, "Poland: Multi-speed EU could 'break apart,'" *EUobserver*, September 6, 2017: <<https://euobserver.com/political/138903>> (accessed on March 30, 2021).

150 Greek border authorities say openly that this is why they called in a German coast-guard vessel to patrol the Aegean: not because they felt this Baltic vessel would be any use, but rather to acquaint Germany with how things work on Europe's front line.

### FIGURE 2. RECOVERING THE EU'S FORMER ADAPTABILITY IN BORDERS AND MOBILITY

Schengen is just one iteration in the EU's long history of creative border geopolitics. It is not and should not be the EU's only borders project. Rather than focusing on "completing" Schengen, the task facing the EU today is arguably to do what it has always done – to go back to the drawing board to come up with inventive new approaches to borders and mobility.

1950s

**European Coal and Steel Community established**

Cross-border mobility is used to diffuse the fuels of war: coal, steel and large numbers of unemployed young men. Shortly after, the free movements of goods, capital services, and labour is established.

**Doctrine of "domesticating geopolitics"**

The sources of inter-state war are brought within the ambit of domestic style regulation via a mix of cross-border cooperation, technical expertise, and territorial enlargement.

1960s

1970s

**First territorial enlargement**

This helps Europeans absorb shifts in global order: decolonization (🇬🇧🇮🇹🇩🇪🇩🇰🇵🇹), the spread of democracy (🇺🇸🇪🇸🇵🇹), the end of Cold War bipolarity (🇷🇺🇩🇪🇯🇵), and the creation of a Europe "whole and free" (Southern and Eastern Europe).

**Doctrine of "Hot Peace"**

The EU espouses the belief that peace is more than just the absence of war, and frozen conflicts will thaw only if populations actively interact and mix across borders.

1980s

1990s

**Schengen project launched**

The Schengen area is launched in 1995, with 7 EU states participating. Over time, the Schengen area grows, encompassing not only most EU states, but also members of EFTA (🇩🇪🇳🇱🇩🇰🇸🇪).

**Integrated Border Management (IBM)**

The EU distills its Schengen know-how to create IBM, a method to ensure that even poor countries with border tensions (🇷🇺🇪🇸🇵🇹) can quickly get goods and people across borders and so share in the benefits globalization.

2000s

2020s

In short, the EU's ability to grasp political opportunities and choose for itself different paths has been tried and tested over 70 years. Since the 1950s, Europeans have repeatedly exercised a spirit of inventiveness under pressure, doing so in geopolitical environments far more hostile than that of today. That spirit has got lost in the current defensive and protectionist approach to borders contained in slogans like "Geopolitical Commission" and "strategic autonomy."

cross-fertilizing with grand French geo-strategy. Today, this is perhaps the ideal mix to counter the way Europe's decentralized markets and infrastructure are being infected by great power politics from China and elsewhere.

The big open-ended EU integration projects of the past were based on this mix. But, after a decade of crisis and of bad crisis response, Paris has persuasively painted these projects as somehow naïve, and its arguments have, in turn, fallen on fertile ground in a Berlin which appears to have lost faith in its capacity for creative geopolitics.<sup>151</sup> A new generation of German foreign policy thinkers today accuse their predecessors of naively embracing “the End of History” in the 1990s, and call for something more heavy hitting. Germany must become geopolitical. This has caused dismay among an older generation of officials in Berlin, who argue that the 1990s suite of projects was, in fact, spurred by a hard-headed geopolitical assessment, not liberal naiveté. Those projects marked an inventive way to rethink seemingly intractable old conflict lines that had re-emerged following the end of Cold War bipolarity.<sup>152</sup>

France is now pressing the EU to adopt a French-style geo-strategy. This can be seen clearly in its distinctive approach to migration: French officials speak of the need to boost European demography, project a civilizational space beyond its borders, and welcome in those migrants that adhere to its values, while freezing out those that do not (for example, those that embrace political Islam). Berlin has not slavishly copied Paris, but it has tried to make the EU's in-

stitutions and markets more heavy hitting. If Paris has operated through Charles Michel, President of the European Council, Berlin has operated through von der Leyen in the Commission. Paris politicizes international matters, threatening to leave behind recalcitrant member states if they refuse to line up behind it. Germany brings these matters within the ambit of the Commission, in order to include all member states, but on the basis of a Franco-German compromise.

Increasingly, Berlin's determination to somehow match Paris has led it to back big top-down strategic approaches. Berlin's desire to prove itself to the French is the pedigree behind fashionable terms like a “geopolitical Commission,” and the “Brussels effect.” This combines the worst of both countries: Paris's traditional protectionism and Berlin's zeal for regulation. This method is advertised as a bid to unilaterally regulate globalization by imposing EU rules on an inherently hostile environment.<sup>153</sup> This has created pressure for the Commission to leverage relevant European projects – the Currency Union, Digital Single Market, Energy Market, Schengen – for geopolitical effect. The result is an EU that decouples its various projects, surrounds each with borders and buffers, then deepens internal rules, before leveraging market access to impose them on foreign countries and businesses.

151 Thomas Bagger, “The World According to Germany: Reassessing 1989,” *Atlantik-Brücke*: <<https://www.atlantik-bruecke.org/the-world-according-to-germany-reassessing-1989/>> (accessed on March 31, 2021).

152 When Schengen was launched in the 1990s, German officials contend, it was amid wars that had broken out in the Balkans and the Caucasus and the re-emergence of geopolitical imbalances in Europe caused by German reunification. German diplomats championed Schengen and the Eurozone not in spite of these challenges, but because of them, perceiving that they needed to once again adapt Europe's geopolitical approach to these old identity and territorial conflicts.

153 The most obvious example is the digital single market: the Commission is putting up new investor protections, and then introducing new internal norms in a bid to repeat what it deems what it views as the success of the General Data Protection Regulation, which provided a global standard. The effect is to cut the EU off from global markets and potential partners, smother innovation in red tape, shrink the EU's real market power, and of course politicize investor screening and other forms of protection which are genuinely needed because the EU treats them as a tool for international leverage.



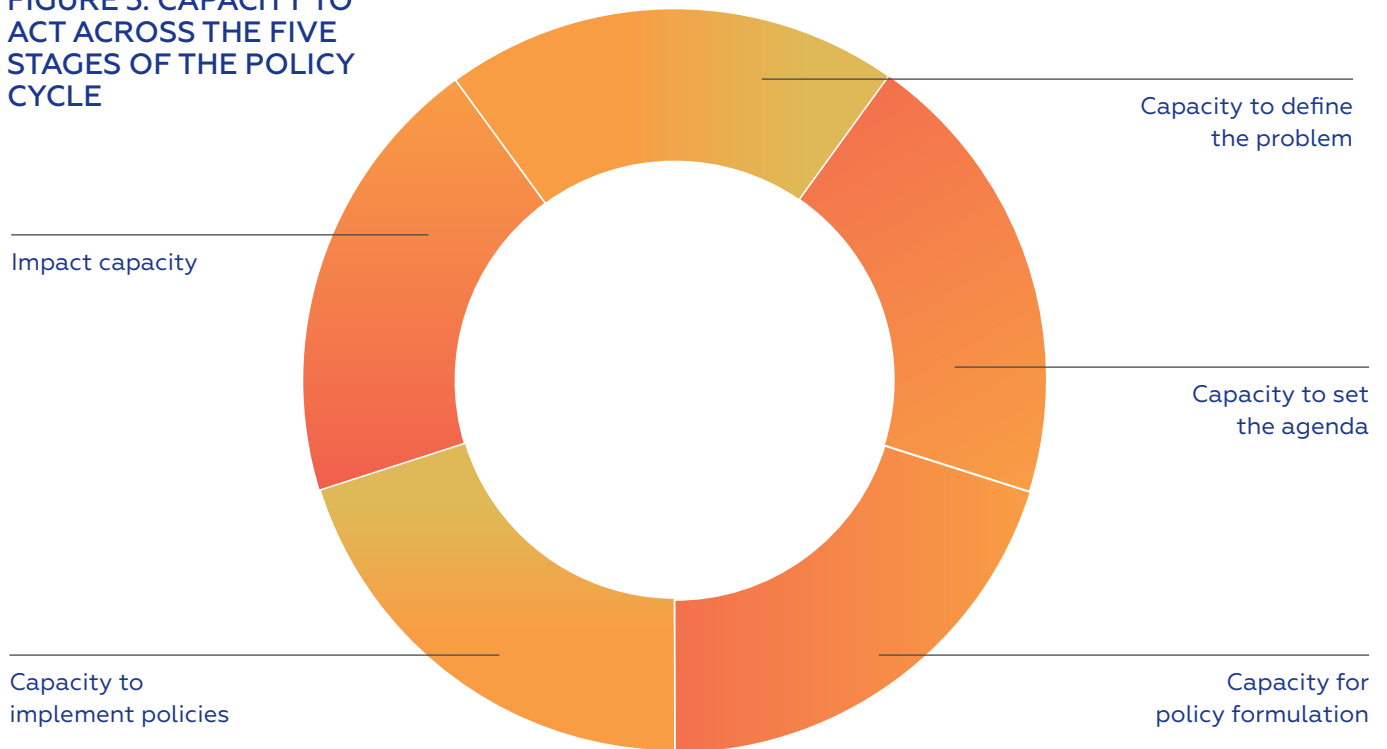
# Stocktaking: Assessment of Capacity to Act as a Whole

Our experts imagined best-case, worst-case, and status quo migration scenarios for 2030. This helped guide our assessment of the EU's migration policy and its capacity to act well in a crisis. The best-case scenario provided a way to judge whether the EU was able to harness crisis and disruption to positively shape its place in the world; the worst-case scenario, to judge what would happen if the EU

managed future migration disruptions poorly; the status quo scenario, whether the outcome would be positive or negative if the EU stuck with the kind of response it has shown during past migration crises, most recently in 2015-16.

The best-case scenario confirmed the importance of the three traits generally recognized as the key to good crisis response: internal cohesion, joined-up government, and the ability to change the course of policy. The worst-case crisis illustrated the effects of their absence. Worryingly, the status quo scenario was almost indistinguishable from the worst-case scenario. In other words, it emerged that the EU's current response to migration crises rests on top-heavy policymaking, which alienates important stakeholders in the EU and outside; treats migration crises as "Schengen crises," as if in a silo; and exploits crises not to change course, but to push through old policies. The result of resorting to divisive policymaking, siloization and path dependencies was negative.

FIGURE 3: CAPACITY TO ACT ACROSS THE FIVE STAGES OF THE POLICY CYCLE



Source: Author's compilation

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Germany seems to have found the Commission's crisis response lacking - but only because it believes the EU is not making a sufficient impact at home or abroad, and should increase its leverage. The analysis here suggested that the Commission does have a significant impact, but its assertive approach creates resistance and chaos on the ground. Abroad, it can be shown to have strengthened authoritarian partners, alienated players that might respond to a more consensual approach, and created artificial border restrictions that provide business opportunities for people smugglers.<sup>154</sup> At home, its attempts to push through policies and take their implementation into its own hands has led - and continues to lead - to division. Again and again, we found that the EU is indeed shaping the world - but in such a way that it takes it closer to our worst-case scenario.

The specific experience of the 2015 migration crisis led to the emergence of a number of ideas about how to respond to international crises that are now in vogue in Brussels and Berlin. Experiences of 2015, such as playing power politics with Turkey, and driving through the refugee relocation key at home had an exhilarating, taboo-busting effect on policymakers in both capitals. Ideas that emerged in this context include "European autonomy," and more recently the "Brussels effect". The goal of the latter is to unilaterally regulate unruly aspects of globalization, surrounding crisis-prone EU projects with buffers, deepening the internal regulation of each, and then leveraging market access as a means of imposing these rules on foreign governments and businesses. This is the *modus operandi* of the migration crisis: Put up external borders, deepen internal rules, and then leverage visas. And it has negative results.

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154 Marco Funk, Frank Mc Namara, Romain Pardo, and Norma Rose, "Tackling irregular migration through development-a flawed approach?" *EPC Discussion paper*, May 22, 2017: <[http://aei.pitt.edu/87406/1/pub\\_7693\\_tacklingirregularmigrationthroughdevelopment.pdf](http://aei.pitt.edu/87406/1/pub_7693_tacklingirregularmigrationthroughdevelopment.pdf)> (accessed March 30, 2021).

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# Recommendations

If the EU were to apply best practice in the field of crisis response to migration, the following 3 shifts would be required:



## 1. BUILD INTERNAL COHESION

At present, the EU tends to rely on the existence of external migration threats to build internal cohesion, or at least to achieve the minimum level of agreement required to drive through defensive border policies. These policies are based on the idea that the EU is a fragile beacon of order surrounded by chaos and power politics. One theme of this paper, however, has been the risk of “negative policy loops” and self-fulfilling fears. Too often, the defensive policies the EU has brought in to head off migration threats appear to have aggravated those risks, and perhaps even called them into existence. A better approach would be to build internal cohesion on a sense of common mission and agency.

A better for policy would be EU governments that see that migration can be handled through international cooperation, and EU citizens who see they can participate in migration. There are a number of positive international trends that could be key to the EU's successful regulation of migration, if only it would focus more on exploiting them. These include the growth of regional labor markets in Africa and Asia, capable of retaining labor locally; emerging economies that increasingly draw low-skilled migrants away from the EU; and the blurring of distinctions between countries of destination and origin, which has increased the scope for international cooperation.



## 2. CHANGE COURSE WHERE SENSIBLE

At present, the EU tends to use crises to drive through a pre-cooked agenda, rather than to change course. Its current agenda focuses on “completing” Schengen – but this may in fact perpetuate the EU's propensity for succumbing to crisis. The Schengen Area is, after all, little more than a passport-free travel area; it was never designed to absorb immigration, let alone generate positive shared migration interests amongst member states. The Commission's heavy focus on completing Schengen and creating protective barriers around it only deepen the EU's vulnerability by maintaining the project's centrality to EU immigration regulation.

From a crisis-response perspective, it seems strange that the EU has not adapted to migration crises by changing path, for instance matching its focus on border control with an equal effort at labor market integration. Placing a more cohesive, elastic, integrated labor market at the heart of its migration and borders regime could make the EU more resilient.<sup>155</sup>



## 3. PRACTICE JOINED-UP GOVERNMENT

At present, top-heavy leverage, policy inertia and, above all, siloization have become inherent in the EU's whole geopolitical posture. The EU is building up buffers around the Schengen Area, deepening its internal border rules, and then leveraging access to EU visas to spread these rules abroad. It has previously done the same with other crisis-prone fields, such as finance, energy, technology. This *modus operandi* is disjointed, smothers European businesses in red tape, and – perhaps most problematically – politicizes protective measures like visa rules that are necessary in their own right. This pattern is playing out not only in the field of migration, but in its digital, capital and energy markets too.

A better idea would be to join up these individual market projects to ensure businesses have access to fine minds, modern technologies, investment capital and efficient energy. This would equip the EU with a model of market power that grows, innovates, and absorbs crises,<sup>156</sup> rather than simply surviving them.

<sup>155</sup> Lucas Rasche, “The EU talent pool: An opportunity for skills-based pathways to protection,” *Hertie Policy Paper*, April 29, 2021: <<https://www.delorscentre.eu/en/publications/detail/publication/the-eu-talent-pool-an-opportunity-for-skills-based-pathways-to-protection>> (accessed August 30, 2021).

<sup>156</sup> Astrid Ziebarth, and Jessica Bither, “AI, Digital Identities, Biometrics, Blockchain: A Primer on the Use of Technology in Migration Management,” *GMFUS Report*, June 15, 2020:



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