



Statewatch Analysis

“A radically changing political landscape in the Southern Mediterranean¹”?

The Dialogue for Migration, Mobility and Security with the Southern Mediterranean countries

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As announced on 4 May 2011 in its Communication on Migration², the European Commission proposed a set of measures presenting a “credible, fair and effective EU migration policy”³ with Southern Mediterranean countries on 24 May 2011, in the framework of the major changes brought about by the “Arab spring”: an offer by the Commission for a Partnership for Democracy and Shared Prosperity⁴, a Dialogue for Migration, Mobility and Security⁵ and an anew European Neighbourhood Policy⁶.

While addressing a clear political shift at European borders and positioning the EU as a supporter of the major changes looming in Northern African countries, this strategy is also the result of a much older debate on a “*long-term structural challenge for both the EU and the region*”, most notably the critical stakes related to regular and irregular mobility across the Mediterranean. Hence the adoption of the EU Neighbourhood Policy parallel to this Communication.

Thus, although this new strategy intends to announce a new approach to migration flows, doubts remain, when putting this declaration in context, as whether the claimed concerted approach with EU’s South Mediterranean neighbours will meet its alleged ambition of having “*a positive impact on both the EU and its partners*”⁷.

¹ European Commission, A dialogue for migration, mobility and security with the southern Mediterranean countries COM(2011) 292 final

http://ec.europa.eu/home-affairs/news/intro/docs/110524/292/1_EN_ACT_part1_v12.pdf

² European Commission, *Communication on migration*, COM(2011) 248 final

<http://www.statewatch.org/news/2011/may/eu-com-migration-com-248-11.pdf>

³ European Commission, Press Release, *A credible, fair and effective EU migration policy: the way forward* IP/11/629

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/629&format=HTML&aged=0&language=EN&uiLanguage=en>

⁴ European Commission, *A Partnership for Democracy and Shared Prosperity*, COM(2011) 200 final

http://eeas.europa.eu/euromed/docs/com2011_200_en.pdf

⁵ Ibid at 1

⁶ European Commission, *A new response to a changing neighbourhood*, COM(2011) 303

http://ec.europa.eu/world/enp/pdf/com_11_303_en.pdf

⁷ Ibid at 6

An updated approach to the management of migration in South Mediterranean countries

The new political context in the Southern Mediterranean countries has, as underlined by the Commission, “*induced a significant movement of people*”⁸, leading the EU to address this challenge on both a short-term and long-term basis. The uprising in Tunisia, Egypt and Libya as well as in some Middle Eastern countries has generated large population displacements in the region, which constitute an additional challenge for these countries being in the midst of a political transition. Led by both humanitarian as well as securitarian motives, the EU has been supporting the countries where displaced people were massively fleeing, while addressing the deep concerns expressed by Member States located on the Mediterranean coast where many migrants headed to (Italy, Malta, but also France) in the hope to find a safe haven.

As an “*immediate response*” to the European Council’s request to address the situation before the European Council (scheduled in June 2011), the Commission presented short and medium-term measures. This action plan was endorsed by the Justice and Home Affairs Council held on 11-12 April, 2011⁹ and comprises:

- A humanitarian and resettlement section: humanitarian aid and financial support to resettlement operations in countries neighbouring Libya will be provided, coupled with the reinforcement of the national mechanisms available to people seeking international protection in Egypt, Tunisia and Libya (Regional Protection Programmes). Resettlement will also be proposed in EU countries while those of the Member States where arrivals of migrants will be more numerous will be supported through the deployment of EASO (European Asylum Support Office) support teams and the allocation of Solidarity Fund (External Border Fund; Refugee Fund) and potentially of funding part of the EU Structural Fund;
- The reinforcement of Frontex¹⁰ through the strengthening of its financial capacities and technical capacities (especially for the joint sea patrolling operations, Hermes and Poseidon, which are to be prolonged) as well as its operational capacities through working arrangements with Turkey, Morocco and Turkey;
- An immediate answer to the management of irregular flows from Tunisia through an EU-Tunisia operational project.

Beyond the management of the humanitarian crisis, the Commission believes that the call for democratic changes in the Arab world should be considered as an opportunity for cooperation with Southern Mediterranean countries with the aim of a sustainable *Partnership for democracy and shared prosperity*, in line with the request made during the European Council meetings on 11 and 25 March¹¹. To this end, the Commission is planning to implement Mobility Partnerships with EU’s Southern neighbours. Talks are already in process with Morocco, Tunisia and Egypt¹². Mobility Partnerships, as suggested by the Commission in 2007¹³, are part of the toolbox developed in the framework of the EU Global Approach to Migration. They consist of bilateral agreements between the EU and third states to facilitate mobility of nationals of the non-EU states in the EU provided the

⁸ Ibid at 6

⁹ Council of the European Union, Press Release, *Council Conclusions on the management of migration from the Southern Neighbourhood*,

http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/121479.pdf

¹⁰ Frontex is the European Agency for the Management of Operational Cooperation at the External Border

¹¹ Ibid at 1

¹² Ibid at 6

¹³ European Commission, *On circular migration and mobility partnerships between the European Union and third countries*, COM(2007) 248 final

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0248:FIN:EN:PDF>

latter offers some guarantees of managing irregular migration and controlling its borders in accordance with EU standards. Within this partnerships, agreements may be concluded on specific matters such as border management or social security for migrant workers (this involves cooperation with EU institutions and with Frontex when appropriate). So far, Mobility Partnerships have been signed with Moldova, Cape Verde and Georgia while negotiations with Armenia and Ghana are ongoing¹⁴.

A new impetus to the Barcelona Process: furthering cooperation to enhance mobility and the protection of people seeking international protection

This new strategy aims to give a new impetus to the Euro-Mediterranean cooperation in the field of migration: the Dialogue on Mobility, Security and Migration is presented by the Commission as being "*part of a much wider engagement with and assistance for the countries of North-Africa in the framework of the renewed European Neighbourhood Policy*". Indeed, the Barcelona Process, which was supposed to be "*revitalised*"¹⁵ through the Union for the Mediterranean (UfM), did not achieve much, despite the creation of a field of cooperation specifically dedicated to migration issues (Euromed Migration projects I and II¹⁶). The different meetings and working groups did not result in any major progress in the adoption of multilaterally elaborated strategies in this respect, something the Commission somehow acknowledges by setting as a goal for the UfM to "*focus (...) on concrete projects with clear benefits to populations of the Mediterranean region*"¹⁷.

Importantly, the Commission is maintaining its support to further mobility, based on a win-win approach which would benefit countries of origin through remittances, capacity-building in countries of origin to better manage migration to Europe, visa facilitations for tourists, high skilled migrants, students, and potentially middle and low skilled migrants. In times when Member States show a growing reluctance to open their borders to migrant workers, it is worth noting that the Commission has been continuously defending mobility as an important aspect of the cooperation with its neighbours¹⁸. To this end, the Commission views Mobility Partnerships as possibly "*encompass[ing] specific schemes for facilitating labour migration between interested Member States and the Southern Mediterranean countries*", including seasonal migration. It thereby reasserts its proposal made back in 2010 of "*seasonal workers and inter-state transferees*"¹⁹ as well as the importance of the portability of rights, already mentioned in its Communication on Strengthening the Global Approach to Migration in 2008²⁰.

Finally, and as required by the current context of population displacement, international protection matters are proposed to be dealt with on a regional and a cooperative basis. Indeed, the Commission is putting forward the idea of Regional Protection Programmes (RPP) in Tunisia, Egypt and Libya. Although North Africa was identified by the Commission

¹⁴European Commission, *Cooperation with third countries on migration*,

http://ec.europa.eu/home-affairs/policies/immigration/immigration_relations_en.htm

¹⁵European Parliament (External Affairs Committee), *Breathing new life into the Union for the Mediterranean*, <http://www.europarl.europa.eu/sides/getDoc.do?language=en&type=IM-PRESS&reference=20100426IPR73472>

¹⁶The Euromed Migration II ended on May 4, 2011. A Euromed Migration III is foreseen.

¹⁷Ibid at 6

¹⁸Ibid at 13 and European Commission, Tenth Anniversary of the Euro-Mediterranean Partnership: A work programme to meet the challenges of the next five years, COM(2005) 139 final http://eur-lex.europa.eu/smartapi/cgi/sqa_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2005&nu_doc=139

¹⁹Ibid at 3

²⁰European Commission, Strengthening the Global Approach to Migration: increasing coordination, coherence and synergies, COM(2008) 611 final <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0611:FIN:EN:PDF>

as "clearly a preoccupation of the Member States"²¹, no pilot programme has been implemented in the region yet. These RPP will aim at "enhancing the possibility to assist refugees stranded in these countries and to develop locally the legislation and the administrative capacity to treat them in line with international standards"²². On its side, the Commission calls, in its Communication on Migration, Mobility and Security, for agreeing on a "joint proposal for the establishment of an EU joint resettlement programme", while meanwhile, encouraging Member States to be supportive and resettling "as many persons in need of international protection as possible from the territory of the countries neighbouring Libya towards the EU Member States and to other countries willing to accept them"²³.

A "win-win" process?

Behind particularly pro-active and co-operative intents towards "shared prosperity", the Commission's discourse should be contextualised in what it really is: a step further towards an EU-wide approach to the management of migration, in line with the main purpose of the EU's strategy with its neighbours, i.e. addressing labour shortage and ageing population in the Union, while securitising the EU through efficient cooperation with its neighbours.

Like the Neighbourhood Policy, the Global Approach of Migration, through Mobility Partnerships, is based on the principle that cooperation with third states will only be ensured through a win-win process. It has to be questioned to what extent such cooperation serves the interests of both parties or if we are dealing here with another bargain where the EU gains more than its partners. Indeed, some elements make wonder whether the Dialogue on Mobility, Security and Migration would result in a real win-win cooperation. For example, the Commission lists, among the non-exhaustive list of measures to be implemented the "ratification and implementation of the UN Convention on Transnational Organised Crime (TOC) and its protocols on trafficking in human beings and smuggling of migrants"²⁴. On the contrary, the EU is not offering to ratify and implement the International Convention on the Rights of All Migrants and Members of their Family, which none of the Member States has signed, but which Cape Verde, Morocco, Algeria, Egypt and Libya have signed²⁵.

Indeed, although the interest of partner states is very much emphasised as being taken into account, with for instance the portability of rights and the recognition of academic skills and qualifications being importantly mentioned in the Communication, the nature of the mobility to be facilitated through specific partnerships once again shows how European-centric the Commission's road map is. According to the Communication, the condition for a sustainable Mobility Partnership is to address the "root causes of migratory flows". For this reason, unemployment and poor economic conditions are identified as the main causes of emigration to Europe: "Cooperation with the Southern Mediterranean countries should be enhanced to effectively address the challenge of creating jobs and improving living conditions throughout the region"²⁶. This constitutes one of the three pillars of the Partnership for Democracy and Shared Prosperity proposed by the Commission and the High Representative for Foreign Affairs and Security Policy. This socio-

²¹European Communication, *Communication from the Commission to the Council and the European Parliament on Regional Protection Programmes*, COM(2005) 388 final

http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi:celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2005&nu_doc=388

²² Ibid at 1

²³ Ibid at 1

²⁴ Ibid at 1

²⁵ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en

²⁶ Ibid at 1

economic argument, coupled with the necessity to “mitigate” if not “counteract brain drain”²⁷ in line with the migration and development nexus which underpins the EU Global Approach on Migration, eventually legitimates the promotion of “return and reintegration” measures as part of the labour migration schemes to be developed.

No mention is made in the Communication of any facilitation for family reunification (contrary to the Communication on Migration issued on 4 May, 2011) or for long-term residence permit. Although long-term residence is accessible, according to the directive 2003/109/EC, after five years of legal residence in the EU, the emphasis is laid on the migration and development nexus and on the necessity for migrants to return to their country to contribute to its development. Behind this stance lies the EU’s desire to meet its labour shortage and demographic stakes²⁸ while encouraging return, with safeguards for it through the necessary commitment of partner countries to the readmission clauses if they want to benefit from the EU’s financial support²⁹.

By explicitly linking the Dialogue on Mobility, Security and Migration to the European Neighbourhood Policy, the Commission is enshrining the conditionality of support to democratic reforms and development to one of its main priorities: the externalisation of border controls and management of migration in its neighbouring countries³⁰. Indeed, conditionality is one of the bases of the European Neighbourhood Policy³¹. In coherence with this principle, the Commission makes it very clear in its Communication that support to countries in transition in Southern Mediterranean is conditioned to their cooperation:

“This layered approach will enable the EU to extend the benefits of mobility proposed in the Partnership to those who demonstrate their willingness and capability to make progress especially in those areas that are of importance to the EU (...) The increased mobility(...) will depend on the prior fulfilment of a certain number of conditions, aimed at contributing to the creation of a secure environment in which the circulation of the persons would take place through regular channels and in accordance with the agreed modalities”³².

Despite former criticism in regards to the poor human rights record which did not preclude cooperation between the EU and its Northern African neighbours, it is likely that neither the EU administration nor its Member States will be of the same flexibility when it will come to managing migration flows.

²⁷ Ibid at 1

²⁸ As for a long-term cooperation on migration and mobility between the EU and the Southern Mediterranean countries, the Commission explains that “This latter challenge should be seen in the broader context of the evolution of the EU’s demographic situation, as well as the labour shortages it is confronted with”. Footnote 4

²⁹ In 2007, the Commission wrote that “*However, circular migration also poses certain challenges: if not properly designed and managed, migration intended to be circular can easily become permanent and, thus, defeat its objective*”. Footnote 13.

³⁰ This principle has been made official by the Commission for a few years now, as exemplified by the Communication on “the Global Approach to migration one year on” stating that “*once certain conditions have been met, such as cooperation on illegal migration and effective mechanisms for readmission, the objective could be to agree mobility packages with a number of interested third countries which would enable their citizens to have better access to the EU*”. COM(2006) 735 final
http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0735en01.pdf

³¹ “Engagement should therefore be introduced progressively, and be conditional on meeting agreed targets for reform. New benefits should only be offered to reflect the progress made by the partner countries in political and economic reform. In the absence of progress, partners will not be offered these opportunities”. European Commission, *Wider Europe— Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, COM(2003) 104 final
http://ec.europa.eu/world/enp/pdf/com03_104_en.pdf

³² “Increased EU support to its neighbours is conditional.” ENP 2011

³² Ibid at 1

Overall, the action plan proposed by the Commission, whether on a short-term or on a long-term basis, mainly entails readmission and border management clauses, thereby furthering the externalisation of border controls by the EU and managing migration flows with South Mediterranean countries, not only as countries of origin, but also as countries of transit:

"The Commission believes that the launching of Mobility Partnerships with the Southern Mediterranean countries is a crucial tool, beneficial for both sides to ensure better and more effectively managed migration and mobility, not only of the citizens of the partner countries but also of the nationals of other countries, in particular those of Sub-Saharan Africa and of the Middle East, who increasingly reside on or transit through the territory of the Southern Mediterranean countries"³³

The EU agenda, listing some *"specific measure to be implemented"*, is detailed throughout the Communication: voluntary return of irregular migrants; readmission agreements; cooperation with Eurosur (European Border Surveillance System) and Frontex; cooperation of South Mediterranean countries in Integration Border Management mechanisms.

It should be noted that this Communication is made at a strategic moment when the scope, the structure and the future of Frontex are strongly debated at an EU level. It seems that anchoring the use of Mobility Partnerships (which allow for some cooperation between Frontex and third countries³⁴) as well as highlighting the importance of Frontex to secure mobility, gradually renders the border agency unavoidable and indispensable, with a strong emphasis laid by the Commission on the necessity for the European Parliament and the European Council to adopt the amended regulation *"as a matter of urgency"*³⁵.

The EU-Tunisia operational project is telling in this regard: whereas agreeing on a Mobility Partnership, from which both parties are supposed to be beneficiaries, will result in a long-term negotiation process, the EU is attempting to accelerate cooperation on what is of its main concern, namely countering irregular migration flows.

Facilitating mobility: which reality?

Criticism may be made of the nature of the support provided to Southern Mediterranean countries, which consists of meeting EU's security, economic and demographic concerns rather than in a mutually beneficial partnership.

While there is hardly anything new in this strategic approach to its neighbourhood by the EU, concerns remain as whether such cooperation is not going to be so unbalanced that it will eventually jeopardise mobility instead of promoting it, in addition to some critical human rights issues which may result from the implementation of such partnerships.

First of all, this Communication for a Dialogue for Mobility, Security and Migration should not be overestimated; whereas the action plan endorsed by the Justice and Home Affairs' Council on 12 April 2011 is already in its implementation phase, the set of measures for cooperation with Southern Mediterranean countries in the long run are simply proposals by the Commission waiting for approval and implementation. While this *"declaration of*

³³ Ibid at 1

³⁴ The Commission explicitly calls Frontex to "speed up" the negotiations on working arrangements with Morocco, Egypt and Turkey.

³⁵ Ibid at 1

*content*³⁶ clearly sets the direction in which the Commission would like to see the management of migration going, migration issues are still a field of Member States' sovereignty.

Thus, the adoption and the implementation of any decision regarding the main proposals of the Commission will have to be agreed unanimously by Member States before any progress is made, which will certainly take some time. The main "pulling" factors put forward by the Commission, namely Mobility Partnerships, may themselves be hampered since, as far as visa issuances are concerned, Mobility Partnership appear as a facilitators, but the final decision will eventually be made bilaterally between Member states interested and the third state in question. Considering the reluctance of many of EU Member States regarding immigration in all its forms, it is likely that the negotiation process of Mobility Partnerships will take some time.

The same argument goes for the resettlement of the displaced people from Northern Africa to the European Union: a Ministerial Conference was held on relocation and resettlement on May 12, 2011 where the High Representative, Mrs. Malmström, announced that "*About 300 relocation places for Malta have been pledged, and over 700 resettlement places for refugees stranded in North Africa*"³⁷. As the UNHCR puts it: "*This support is appreciated, but most places offered are largely within existing yearly resettlement quotas and do not keep pace with the increasing numbers of persons in need of resettlement*"³⁸.

Indeed, the inter-governmental nature of migration and asylum related issues makes it delicate for the Commission to prove as generous in reality as it may sound in its Communications. For example, the Temporary Protection directive³⁹, which was hinted at in the Communication on Migration on 4 May, 2011, would be a useful tool in granting protection to people fleeing some of the unstable countries in Southern Mediterranean after the EU Council agrees on a list of vulnerable groups from specific countries by a qualified majority. Nevertheless, the reference to the directive, which since 2002 has never been used, has disappeared in the Commission's Communication on 25 May, 2011: any decision to grant international protection will remain individually based according to nationally established standards.

An unbalance thus appears in the time frame which will see the whole set of the measures suggested by the Commission to be enforced. Meanwhile, the adopted measures by the Justice and Home Affairs Council which, as mentioned above, mainly focus on financial support to Southern Mediterranean countries to relocate in non-EU countries or provide humanitarian aid and on a reinforcement of border controls through Frontex and a specific cooperation with Tunisia, will prevail over the claimed mobility for third country nationals of the partner countries; meanwhile, resettlement will hardly address the scope of the

³⁶ Euro-Mediterranean Human Rights Network, *Position of the EMHRN in view of the forthcoming review of the European Neighbourhood Policy, and in response to the European Union Communication on "A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean" and the following Conclusions of the European Council*, <http://www.euromedrights.org/en/publications-en/emhrn-publications/emhrn-publications/9558.html>

³⁷ Statement by Cecilia Malmström, EU Commissioner in charge of Home Affairs, on the results of the Ministerial Pledging Conference 12 May, MEMO/11/295
<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/295&format=HTML&aged=0&language=EN&guiLanguage=fr>

³⁸ UNHCR, *Responsibility sharing for relocation and resettlement of those fleeing Libya*, <http://www.unhcr.org.uk/resources/monthly-updates/may-2011/resettlement-and-relocation.html>

³⁹ European Council, 2001/55/EC, *Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:212:0012:0023:EN:PDF>

needs in Southern Mediterranean countries. Already, the situation on the Libyan-Tunisian border is getting worse, with about 4,500 being stranded in a temporary camp next to Choucha in Tunisia⁴⁰. This time difference between the facilitation of mobility, under humanitarian or regular migration schemes, and the securitization of the Southern Mediterranean border may lead to some still trying to reach Europe irregularly. In that respect, keeping in mind that Member States will still have the leading role in implementing migration-related decisions, a worrying trend towards the criminalisation, not only of irregular entries, but also of irregular departures is obvious at both a national and at a European level: in a letter dated 26 April 2011, the President of the French Republic, Mr. Sarkozy, and the President of the Ministerial Council of the Italian Republic, Mr. Berlusconi, coming back to the importance of a partnership with Southern Mediterranean countries in dealing with migration flows, epitomized the nature of the cooperation which should "*address the management of their borders, with Frontex possibly helping these countries fight against illegal departures, and with European support in their fight against criminal gangs*"⁴¹. As a reply to this letter, the Commission underlined that both countries were "*targeting the same goals*" and that Southern Mediterranean countries should "*take their responsibilities*" as regards "*irregular emigration*"⁴².

Moreover, with the strengthening of border controls to tackle irregular migration in Southern Mediterranean countries and the alleged reinforcement of the capacities of these countries to offer appropriate support to people in seek of international protection, there might be an increased risk for people originating from these countries or having transiting through them to be denied international protection in an EU Member State on the basis that these countries are "safe", despite the low protection standards and often non-existing asylum procedures (Libya is not signatory of the 1951 Convention relating to the status of refugees; discrimination of refugees in Egypt is very much documented; there is no domestic law on asylum in Tunisia).

The strategy of using the voice of the people on the other side of the Mediterranean to legitimate its policy⁴³ does not convince anyone: the externalisation of border controls and the management of migration flows remains the top priority on EU's agenda, far ahead of human rights considerations.

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⁴⁰ UNHCR, *Disruption at Choucha Camp near Tunisia-Libya border*, <http://www.unhcr.org/4ddf97119.html>

⁴¹ "*Cette coopération doit porter sur la gestion de leurs frontières, avec un rôle possible de Frontex pour aider ces pays à lutter contre les départs illégaux et avec une aide européenne pour les accompagner dans leur lutte contre les filières criminelles*". Letter to the President of the European Council and to the President of the European Commission, April 26, 2011
http://www.esteri.it/MAE/approfondimenti/2011/Lettera_Barroso-VanRompuy.pdf

⁴² Reply to the letter by the President of the European Commission, April 29, 2011

⁴³ "*It [EU's strategy] will be developed by listening, not only to requests for support from partner governments, but also to demands expressed by civil society*", Ibid at 1