

THE EXTERNAL DIMENSION OF THE EUROPEAN UNION'S IMMIGRATION  
POLICY AND ITS IMPLICATIONS FOR TRANSIT COUNTRIES: A  
COMPARISON OF TURKEY AND MOROCCO

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## **ABSTRACT**

### **THE EXTERNAL DIMENSION OF THE EUROPEAN UNION'S IMMIGRATION POLICY AND ITS IMPLICATIONS FOR TRANSIT COUNTRIES: A COMPARISON OF TURKEY AND MOROCCO**

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The purpose of this thesis is to analyse the external dimension of the European Union's (EU) immigration policy and its implications for transit countries through a comparative study of Turkey and Morocco. The thesis examines the development and institutionalization of the EU's externalization of its immigration policy within a chronological and theoretical context. Applying the theoretical debate concerning "Europeanization beyond EU borders", it investigates to what extent the EU has successfully externalised its immigration policy to non-EU members, and what kind of intended and unintended impacts this has had on these countries. The thesis tries to explore both the successes and limits of the Europeanization of Turkey's and Morocco's domestic immigration policies by benchmarking progress in the harmonization of legal contexts, border management, visa policies, readmission agreements and asylum policies in each case. This study reaches similar conclusions concerning Turkey, as a candidate country within the EU's enlargement policy, and Morocco, as a country without membership prospect within the European Neighbourhood Policy, not only in terms of conceptualizing the EU's externalization of its immigration policy, but also for understanding the negative externalities it creates for transit countries which also limit further policy expansion.

*Keywords: Migration, Europeanization, externalization, Turkey, Morocco*

## ÖZ

# AVRUPA BİRLİĞİ GÖÇ POLİTİKASININ DIŞ BOYUTU VE TRANSİT ÜLKELER ÜZERİNDEKİ UYGULAMALARI: TÜRKİYE VE FAS KARŞILAŞTIRMASI

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Bu tezin amacı Avrupa Birliği (AB) göç politikasının dış boyutunu ve bunun transit ülkeler üzerindeki etki ve sonuçlarını Türkiye ve Fas'ı karşılaştırarak incelemektir. Bu tez, AB'nin göç politikasını dışsallaştırmasının gelişim ve kurumsallaşma sürecini tarihsel ve teorik açıdan irdelemektedir. “Avrupa sınırları ötesinde Avrupalılaşma” teorik tartışması kapsamında, AB üyesi olmayan ülkelere karşı göç politikasını dışsallaştırmada AB'nin ne derece başarılı olduğunu ve bu ülkeler üzerinde hangi etkileri yarattığını incelemektedir. Bu bağlamda, Türkiye ve Fas'ın göç politikalarının Avrupalılaşma sürecine ilişkin başarı ve kısıtları, her iki ülkenin yasal mevzuatının AB ile uyumlaştırılması, sınır yönetimi, vize politikaları, geri kabul anlaşması ve iltica politikası kapsamında karşılaştırmalı olarak analiz etmektedir. AB'nin genişleme politikasında yer alan ve aday ülke olan Türkiye ile AB'nin komşuluk politikasında yer alan ve üyelik perspektifi olmayan Fas'ın karşılaştırması; gösterdikleri benzer sonuçlarla sadece AB'nin göç politikasının dış boyutunun kavramsallaştırmasına katkı sağlamakla kalmayıp, ayrıca transit ülkeler üzerinde doğan olumsuz etkilerin bu dışsallaştırmayı hangi yönde kısıtladığını da anlamamızı sağlamaktadır.

*Anahtar Kelimeler: Göç, Avrupalılaşma, dışsallaştırma, Türkiye, Fas*

To my only love, my precious mother, Selma YILDIZ

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## LIST OF ABBREVIATIONS

ACP	African, Caribbean and Pacific
AS	Advance Status
CFSP	Common Foreign and Security Policy
EBF	External Borders Fund
EDF	European Development Fund
EEAS	European External Action Service
ENP	European Neighbourhood Policy
EU	European Union
EURA	European Union Readmission Agreement
EUROPOL	European Police Office
EUROSUR	European Border Surveillance System
FRONTEX	The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
GAM	Global Approach to Migration
GAMM	Global Approach to Migration and Mobility
HLWG	EU's High Level Working Group on Asylum and Migration
IOM	International Organization for Migration
IPA	Instruments for Pre-Accession Assistance
JHA	Justice and Home Affairs
MMF	Annual Financial Framework
NAP	National Programme for the Adoption of the <i>Acquis</i>
OECD	Organization for Economic Cooperation and Development
PCA(s)	Partnership and Cooperation Agreement(s)
RPP	Refugee Protection Programmes
SIS	Schengen Information System
TAIEX	Technical Assistance and Information Exchange
TCNs	Third Country Nationals
TEU	Treaty on European Union
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees

## **CHAPTER I**

### **INTRODUCTION**

The attempts of the European Union (EU) to externalize its immigration policy towards non-EU member states have significantly increased in momentum during the 2000s in response to intensifying concerns about the changing context of the EU's external security challenges and its strategic aim to guarantee stability and peace in its neighborhood through fostering development. Accordingly, three main developments have characterized the external dimension of the EU's immigration policy. Firstly, the 2004 and 2007 eastern enlargements brought a new debate to the EU concerning the security of its expanded borders, especially against increasing flows of irregular migrants and asylum seekers. Secondly, the terrorist attacks of 9/11 and the subsequent attacks in Madrid and London led to an increasing emphasis on linking migration issues with security and terrorism. Lastly, due to intensifying demographic challenges in the EU, migration started to be addressed within a Europe-wide debate about the transformation of European welfare states and the consequent need for new migrants within Europe's labor markets. Thus, the EU's perception of immigration has become somewhat paradoxical: on the one hand, the EU views increasing migration flows as a security challenge to be controlled through establishing effective cooperation mechanisms with third countries and influencing their migration policies in order to ensure the sustainability of the EU's internal security; on the other hand, it also recognizes that migration can be a tool for development, in both the EU and non-member third countries. As a result of this tension that has developed around the twin discourses of "security" and "development", the gradual evolution of the external dimension of the EU's immigration policy and its implications for third countries has emerged as a new and challenging field worthy of study, both theoretically and empirically, to gain a better understanding of these developments.

Following the Tampere European Council in 1999, which consolidated the idea that asylum and migration policies require a more comprehensive approach involving stronger external action, the EU agreed on a number of new policy orientations and priorities that launched the development of an external aspect to its Justice and Home Affairs (JHA) policies. It initiated a strategic approach by addressing the most important countries and regions of origin and transit of asylum seekers and migrants (Council of the EU, 1999), together with concrete suggestions concerning measures for managing and containing migration flows from these countries. The formal incorporation of transit and origin countries into the EU's comprehensive migration policy became more visible through the intensification of the EU's policy initiatives to establish cooperation, mainly focusing on the effective control of the EU's external borders, signing readmission agreements, combatting irregular migration, supporting the voluntary return of migrants, establishing mobility partnerships, improving asylum protection capacities and providing technical and financial assistance for the better management of migration flows. In fact, these attempts not only reflect the significance of the development of the external dimension to EU's immigration policy, but also give an idea about the institutionalization of the main policy instruments for consolidating the EU's attempts to expand its migration system to the third countries in order to achieve its JHA objectives and to cope with new transnational challenges. Hence, this complex and multilayered initiative, which incorporates different logics, actors and instruments to address a broad spectrum of issues, requires an in-depth analysis to conceptualize the evolving external dimension of the immigration field.

Studying the aims, strategies and instruments of the EU's policy, which is still in the making, raises this study's main research question of how, or through which mechanisms, the EU extends its internal policy objectives and regulations in asylum and migration policy to third countries' domestic policies. That is, the EU's aim to benchmark third countries' progress in migration control, and transfer its legal and institutional models to non-member states, requires explanation within appropriate theoretical frameworks. Of the various theories within political science, international relations and European integration, three approaches appear to offer the most relevant theoretical insights to understand and explain the EU's policy externalization, as specifically applied to the migration field. These are international

regime theory from international relations, external governance theory from political science, and “Europeanization beyond Europe” from the literature of European integration. After considering both the contributions and shortcomings of these three theoretical debates in general, this study will adopt “Europeanization beyond Europe” as the main theoretical framework, since it offers the most comprehensive scope to explore the subject matter of this thesis.

The application of these theoretical approaches requires us to take account of the EU’s unique structure, which complicates any attempt to explain the EU’s engagement with third countries, since the mechanisms of cooperation differ depending on the distinct context of grand policy frameworks, such as enlargement and the European Neighborhood Policy (ENP), because each has its own explicit aims, strategies and instruments. Thus, specific country studies, where special importance is attached to grand policy frameworks of enlargement as well as the ENP, can best pave the way to describing the development of the external dimension of EU immigration policy and how it affects domestic policy transformations in transit third countries, with a focus on successes and constraints in the gap between rhetoric and practice.

### **1.1. The Purpose and Relevance of the Study**

Stemming from its own security concerns, the EU’s policies have increasingly aimed to manage migration flows by attempting to influence and change third countries’ migration policies. This has also become a significant issue to be tackled at the EU level, rather than through member states’ individual bilateral efforts. These policy changes have gradually turned the migration issue from being just an internal problem for the EU or its individual member states into an external issue that is the shared problem of both the EU and third countries involved in migration management with Europe. In recent years, we have started to hear EU discourses that include terms such as “readmission agreements”, “increased border controls”, “hardened visa requirements” and “return policy”, as migration has become an issue of external governance and Europeanization.

These developments have been reflected in the academic literature, which has raised many critical questions concerning the extent to which the EU’s policies are security

or development driven, whether the EU's externalization of immigration policy really represents burden sharing with third countries, as suggested by EU rhetoric, or whether it is more burden shifting onto partner states. Furthermore, the literature discusses how the external dimension is evolving, through which instruments, mechanisms and frameworks the EU's migration policy is expanding beyond EU borders, to what extent it effectively influences third countries, and whether it achieves the shared strategic policy targets. So far, however, the literature investigating the external dimension of the EU's immigration policy contains only limited studies on the theoretical aspects of these issues, while there are also very few empirical analysis using comparative country studies.

Given this context, the overall purpose of this thesis is to conceptualize the development and institutionalization of the external dimension of the EU's immigration policy and its implications for transit countries by conducting a comparative case study of Turkey and Morocco. The main research questions for this study are why the EU has been developing an external dimension to its immigration and asylum policy, and why and how it has attempted to govern and transform the immigration policies of non-member third countries beyond its borders. In an attempt to address these questions, the thesis first aims to identify the reasons that have influenced the EU to externalize its immigration policy by considering the EU's need for third country cooperation in order to better manage migration and asylum flows into Europe. Secondly, this study seeks to understand the institutionalization of policy externalization by focusing on relevant gradually evolving legislation, pillarization and conflicts of competence between EU institutions, and identifying the evolving policy instruments. Thirdly, applying relevant theoretical frameworks on external governance and Europeanization beyond Europe, the study also aims to conceptualize the external dimension of the EU's immigration policy by analyzing its implications for transit countries. These implications are evaluated in two ways: (a) the success and effectiveness of the EU in stimulating policy expansion and change in non-EU member transit countries in terms of the transformation and Europeanization of their domestic policies in migration management; (b) the consequences of the EU's policy externalization of immigration to transit countries, with a focus on the increased negative externalities for them. Finally, two specific cases, Turkey and Morocco, will be examined in order to better explain and

understand how, and to what extent, the EU has successfully externalized its migration policy. In answering these questions, this study will also contribute to the theoretical debate concerning the limits of external governance and Europeanization with regards to their application to specific policy areas and specific country cases.

The main distinctive feature of this thesis is that it tries to conceptualize the external dimension of EU immigration policy by examining its implications for transit countries through an in-depth analytical comparison between Turkey and Morocco. This not only provides a comparison between the Europeanization of migration policies in the two countries, but also provides a unique study field for understanding the successes and limits or constraints of the relevant theoretical approaches by applying them specifically to the migration field. The effectiveness of two approaches will be tested through both policy specific and country specific analyses: external governance (Lavanex, 2004a; Lavanex and Schimmelfennig 2009), as a holistic approach<sup>1</sup>; and “Europeanization beyond Europe” as the main overarching theoretical framework (Schimmelfennig, 2012)<sup>2</sup>. Hence, this thesis not only aims to contribute innovatively to the under-investigated issue of the external dimension of EU immigration policy by incorporating transit countries into the debate, but also aims to contribute to the understanding of the EU’s contested external governance paradigm, and to the Europeanization literature in general.

### **1.1.1. Research Questions and Hypotheses**

The main research question of this dissertation is how one can conceptualize the gradually evolving external dimension of EU immigration policy, its influence and impacts on non-EU member transit countries. Taking as its starting point the debate concerning the tension between the securitization of migration and migration’s developmental aspects, the study also investigates which one of these dominates the EU’s external actions in immigration policy by focusing on possible consistencies

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<sup>1</sup> Lavanex, S. (2004). “EU External Governance in Wider Europe”. *Journal of European Public Policy*, 11(4): 680–700.

Lavanex, S., Schimmelfennig, F. (2009, September). “EU Rules Beyond EU borders: Theorizing External Governance in European Politics”. *Journal of European Public Policy*, 16(6): 791-812

<sup>2</sup> Schimmelfennig, F. (2012). "Europeanization Beyond Europe", *Living Reviews in European Governance*, 7 (1)

and contradictions between the EU's rhetoric and practice. More specifically, this study aims to explore the following complementary research questions:

- What main policy instruments are being developed and used for the externalization of the EU's immigration and asylum policy?
- Through which mechanisms does the EU control the migration policies of third countries beyond its borders?
- To what extent does the EU successfully influence and Europeanize the domestic migration policies of non-EU member transit countries?
- To what extent does the externalization of the EU's immigration policies act as "burden sharing" with, or "burden shifting" onto transit countries?
- What kind of negative externalities are imposed on transit countries by the EU's externalization policies?
- How effective is the prospect of EU membership in helping the EU achieve its aim of policy expansion towards non-member countries in the field of migration management?

The main argument of this thesis relates to two main fields: the development of the external dimension of EU's immigration policy; and the Europeanization of non-member transit countries in the realization of policy transfer and policy adaptation in the field of migration. This study proposes the following four main hypotheses related to these fields:

- **H1:** The external dimension of the EU's immigration and asylum policy towards non-member countries is driven by the securitization of migration in practice, although the EU's discourse promotes developmentally driven actions and policy objectives as well.
- **H2:** Concerning the Europeanization of non-member countries' migration policies, the EU uses conditionality with different meanings and hierarchic modes of governance as the central mechanisms of policy expansion regardless of grand policy frameworks of enlargement or ENP/membership perspectives.
- **H3:** Network governance works better than hierarchical modes of governance in achieving the Europeanization of migration policies because conditionality

does not work conventionally, due to the “reverse dependency” between the EU and non-member states in relation to issues of combating irregular migration, asylum policy and reaching readmission agreements.

- **H4:** The external dimension of the EU’s immigration policy is evolving in a Euro-centric manner that ignores the negative externalities imposed on non-member transit countries.

### **1.1.2. Methodology and Research Design**

In order to respond to the academic challenge posed by the broad and complicated context of this policy area, this thesis uses three different research methodologies interchangeably in different parts of the research. First, it attempts to conceptualize the development of the external dimension of the EU’s immigration policy with a focus on its reasons, aims and policy instruments through a descriptive and qualitative analysis. One of the innovative contributions of this part of the thesis is that it provides a categorization of the policy instruments used as indicators in the two case studies, on Turkey and Morocco. The main driving force of EU policy evolution in general is analyzed with reference to the approaches of “remote-control” and “root-cause”, first proposed by Boswel (2003). Second, based on the findings of the literature review, the study uses a qualitative method derived from the theoretical frameworks of international cooperation, external governance and Europeanization beyond the borders of the EU, applying them to the migration policy field. Of these three theoretical approaches, the Europeanization literature is taken as the main theoretical approach to apply throughout the thesis as it provides the most relevant framework for the cases of both Turkey and Morocco. The external governance literature is also useful to an extent, in terms of its contribution to modes of governance. Thirdly, in the last part of the study, a comparative analysis of Turkey and Morocco is conducted to understand how the EU’s externalization of immigration policy affects migration patterns and policies in these two important transit countries.

In doing so, the same innovative research design is used for both cases, in four main sections. Each case study starts with a descriptive analysis of the country’s experiences, characteristics and patterns of migration flows, with reference to its engagement with European migration regimes as a transit country. In the second

section, the implications of the external dimension of the EU's immigration policy are assessed through Europeanization mechanisms, within the framework of enlargement for Turkey, and the ENP for Morocco. The progress and limits of cooperation are evaluated by analyzing the policy instruments identified in Chapter 2 as indicators for understanding the degree of policy transfer and adaptation. The third section presents information on the technical, administrative and financial mechanisms of assistance provided by the EU in order to give an idea about the functioning of task-specific cooperation in both cases. The last section of each case study introduces the perspectives of the Turkish and Moroccan sides, with a focus on the negative externalities imposed on them, which provides a basis for understanding their resistance to cooperation in some specific areas of migration, the limits to the theoretical frameworks, and to suggest how migration policy cooperation might function better.

The empirical information comes from a combination of document analysis, using the basic methods of content analysis, and semi-structured interviews with officials and experts. The relevant primary and secondary sources are mainly dated post-2005, which indicates that the issues studied in this research are recent developments. The resources were drawn from three main categories. First, there are specific EU documents, namely Communications, Regular Reports, Action Plans and Progress Reports of the European Commission, European Council decisions and Conclusions of the European Council. Secondly, data were derived from official legal texts, such as laws, draft laws and regulations, EU harmonization packages, constitutional amendments issued by the Turkish and Moroccan authorities, official documents of the Turkish Ministry for EU Affairs, the Turkish Ministry of Interior, and the Ministry in Charge of Moroccan Community Residents Abroad. Finally, several policy papers and reports of relevant international organizations, such as IOM and UNHCR, various think-tanks, and NGOs were used, especially for comparative analysis.

Another important primary source of information was the speeches of officials and experts, and interviews with a number of them<sup>3</sup>. These semi-structured interviews using open-ended questions were conducted between 2010 and 2011 with high-level

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<sup>3</sup> The complete list of interviews conducted with EU officials is presented in the bibliography.

officials working at Home Affairs, External Relations, Enlargement and the ENP units of the European Commission in Brussels. The speeches and comments of officials and scholars during various seminars, the pronouncements of several organizations, the press releases of the European Commission, and the weekly bulletins of the Turkish Ministry for EU Affairs, including statements by official policy makers also contributed to the study's analysis.

Secondary sources included articles, conference proceedings, working papers, and statistical data retrieved from Eurostat, IOM, UNHCR and FRONTEX. One of the main constraints of the study was the limited number of resources and scientific research available in English on Morocco<sup>4</sup>. Even the Commission reports on Morocco are published mostly in French only. However, thanks to the considerable efforts of a number of prominent authors, such as Hein de Haas and Michael Collyer who publishes their researches in English, it was possible to analyze Morocco's already limited literature on migration using the same methodology applied to the Turkish case.

### **1.1.3. Rationale for Comparing Turkey and Morocco**

Concerning the comparative part of the study, Turkey and Morocco were chosen as case studies within the framework of John Stuart Mill's study of "most similar system design"<sup>5</sup>. His "method of agreement" idea, which deals with similarities in similar cases, forms the methodological basis for the comparison made in this study between Turkey and Morocco. These two countries act as the two main gates of the EU's external borders because they serve as two significant transit countries, especially for irregular migration and asylum flows heading for Europe. Both are located between the prosperous West and other politically and economically unstable regions, which makes them an attractive destination for many irregular migrants and asylum seekers. As the largest share of migrants, refugees and asylum seekers in

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<sup>4</sup> Berriane and Aderghal (2008) underline the limited amount of research on Morocco in general, and on immigration in particular. In their paper, they present detailed information about the number of conducted studies and their main features. By pointing out that attention must be drawn to this discrepancy, they highlight the need for scientific discussion involving Morocco that should be supported by sufficiently developed research projects.

<sup>5</sup> Mill, J.S. (1976). "System of Logic". In John Stuart Mill . *Politics and Society*. London: Fontana.

Europe come from the Middle East and Africa, Turkey has become the preferred gate for flows from Middle Eastern countries, whereas Morocco is an important gate for flows from Africa.

When compared with the economic and political situations in the migrants' countries of origin, Turkey and Morocco can be considered to have relatively much better situations for their region. This also puts both countries at risk of becoming attractive destination countries for migrants. Moreover, both countries are allies of Europe, which therefore has a vested interest in maintaining their economic and political stability at the external borders of Europe, in contrast to the increasing tensions in the region, such as the "Arab Spring" and, more recently, the "Syrian crisis". Accordingly, Turkey and Morocco are both highlighted by the EU as two main transit countries that the EU should strengthen cooperation with in many areas. Another prominent factor is that both countries have a strong interest to cooperate with the EU and maintain a two-way process, which increases the degree of intended and unintended effects of EU actions on their policy changes. In contrast to some other North African countries, such as Libya, which did not react to EU actions, this dialogue is reciprocal in the cases of Turkey and Morocco. As a candidate country, Turkey is dealt with within the EU's enlargement policy while Morocco is dealt with within the ENP, and lacks the prospect of EU membership perspective, although there is still a strong interest to develop closer cooperation with the EU<sup>6</sup>. Rapprochement with the EU represents a fundamental foreign policy choice of Morocco, which provided a conducive environment to test the progress of "policy transfer" or "policy adaptation" in many areas. Finally, both countries share a long history and experience in policies of migration management as Turks and Moroccans have formed two of the largest migrant communities in Europe.

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<sup>6</sup> Turkey and Morocco applied for membership of what was then called the European Community in 1987. 25 years later, the geopolitical map of the EU has drastically changed. While Turkey was granted candidate status in 1999 at Helsinki, it is still in the middle of accession negotiations that began in 2005. In contrast, Morocco's application was promptly turned down on the grounds that the country is not located in Europe.

## **1.2. Overview of the Study**

Following this brief introduction, Chapter 2 will present the theoretical and conceptual framework that serves as the basis for the comparative analysis in later chapters. The chapter will first review the relevant approaches and theoretical debates by focusing on international regime theory, external governance and Europeanization beyond the EU borders, in order to understand how and through which mechanisms the EU attempts to externalize its policies towards non-member third countries. It will then conceptualize the external dimension of the EU's immigration and asylum policy by first identifying the main reasons behind this effort. Focusing on the debate concerning the internal-external security nexus and the EU's "global approach to migration", the "remote-control" and "root-cause" approaches will be compared as candidates to explain the underlying reasons for the externalization of EU's immigration policy. This theoretical debate will then be applied to the specific policy field of migration in relation to "policy transfer" and "policy adaptation", which provides a basis to understand how the Europeanization of the EU's immigration policy towards non-members has developed.

Chapter 3 will explain the institutionalization and development of the external dimension of the EU's immigration policy, primarily by examining various treaties, presidency conclusions and policy papers in chronological order. It will try to explain the pillarization conflict over whether the management of the EU's external dimension falls under the competence area of Home Affairs or External Relations. The significance of the chapter results from its attempt to lay out the policy instruments which will be used as indicators to assess the impact and progress of the Europeanization of the immigration policies of Turkey and Morocco. To do this, it will analyze the general aims, strategies, implementation and critiques of the EU's actions in border management, mobility partnerships, visa policy, readmission agreements and asylum policy. The chapter will also discuss the EU's new budget for 2014-2020 which aims to prioritize migration and external relations as one of the expected future strategic priorities of the EU. Overall, this chapter will provide a critical analysis of the interaction between EU rhetoric and practice by answering the question of whether EU policy evolves with the aim of "burden sharing" with non-member transit countries, or "burden shifting" onto their shoulders.

Chapter 4 will analyze Turkey's relevance as a case study for assessing the implications of EU immigration policies on transit candidate countries with EU membership prospects. Before describing Turkey's role in international migration flows, the chapter will argue that the conceptualization of "transit migration" and "transit countries" are politically constructed concepts. It will then explore international migration patterns from and to Turkey under the categories of regular migration, irregular migration, shuttle/circular migration and asylum seeking. In the following section, Turkey's case will be analyzed in terms of the Europeanization of its migration policy within the enlargement process, where conditionality mainly dominates relations to induce policy change. Using the policy instruments identified in Chapter 2 as indicators, progress on the harmonization of legal and institutional frameworks, cooperation on border management, visa policy, asylum policy, and the issue of the readmission agreement will be each examined in depth, with a focus on the limits of conditionality as a way to achieve policies in the migration field. After examining how effective technical and financial mechanisms are for inducing policy change in Turkey, the last section will highlight the negative implications for Turkey as result of the Eurocentric externalization of EU migration policies. This will provide a basis for understanding Turkey's resistance to further cooperation in migration management. Turkey thus represents a unique case for studying the theoretical debate on the limits of conditionality in stimulating policy change in migration issues.

Chapter 5 will apply the same methodology as in Chapter 4 to the Moroccan case. Accordingly, it will first describe the migration experience of Morocco, particularly its evolution from being an "emigration" to a "transit" and "destination" country. The dynamics and characteristics of migration in Africa will then be discussed in order to understand the main features of international migration to and from Morocco, with an emphasis on recent developments and the impacts of the "Arab Spring". The chapter will move on to consider the strategic importance of Africa for EU migration policy, with the ENP being used to demonstrate Morocco's distinctiveness in being granted "advanced status" by the EU. The chapter will also describe Morocco's political and economic situation vis-à-vis its relations with the EU to provide a clear background to understanding the context of the Europeanization debate. Following

this descriptive analysis, the Europeanization of Morocco's immigration and asylum policy will be analyzed in terms of the harmonization of its legal and institutional framework, cooperation on border management, visa policy, asylum policy and the issue of reaching a readmission agreement. The focus will be on the mechanisms and limits of Europeanization in the migration policy field when the partner state has no prospect of gaining EU membership. The chapter will then evaluate the effectiveness of task-specific cooperation in Morocco by examining both financial and technical assistance mechanisms. In the last section, the chapter will consider the negative externalities imposed on Morocco as a result of the EU's policy externalization of its efforts to control migration.

Chapter 6 will summarize the main findings of this thesis, offering several concluding remarks with reference to the hypotheses proposed in this chapter. By providing a comparative analysis of Turkey and Morocco, the final chapter will try to outline the most important findings and conclusions of the thesis, arguing that there are both potentials and problems affecting the evolution of the EU's external dimension of its immigration policy. Finally, given the relevance and timeliness of this thesis to current developments, the chapter will try to offer suggestions for future studies concerning the theoretical debate on "Europeanization beyond Europe" and applying it to the specific policy area of migration through country cases.

## CHAPTER 2

### **THEORIZING AND CONCEPTUALIZING THE EXTERNALIZATION OF EU IMMIGRATION POLICY: EUROPEANIZATION BEYOND EUROPE**

This chapter aims to present a broad theoretical and conceptual framework for analyzing and explaining the externalization of the EU's immigration policy. It first considers the relatively new literature on theorizing the EU's relations with the third countries, with a special focus on why the EU has been developing an external dimension to its policies, and how these attempts have been evolving. The chapter will scrutinize the relevant theoretical framework, approaches and concepts that include various common, interlinked themes, concepts and also potential constraints on the formulation and implementation of policy externalization. More specifically, "regime theory", "external governance" and "Europeanization beyond the EU borders" will be studied to guide the research of this thesis by providing a broad analytical basis for understanding the nature of EU's relations with the third countries. The empirical links and tools discussed in this chapter will then be applied to the migration field with a focus on the nature, scope, actors, modes and limits of cooperation concerning relations between the EU and third countries.

The ultimate aim of the chapter, which is to provide a theoretical and conceptual analysis for understanding the EU's external policies, specifically in migration, will be addressed by investigating the following research questions: "Why does the EU need to influence the policies of third countries beyond its borders, what are the main motives?"; "What kind of 'Europeanization' does the EU pursue or produce beyond its borders?"; and "Why and how does the EU externalize its migration policy towards non-members?" Finally, after providing a general theoretical framework for analyzing the external dimension of the EU policies, two main approaches namely "remote control" and "root cause" that help to explain the essential motives behind EU's externalization of its migration policy towards third countries will be examined

with reference to the theoretical debate on “policy transfer” and “policy adaptation” of external domain in migration policies.

### **2.1. Theoretical Framework: Externalisation of EU Policies**

As one of the most complex examples of regional integration, European integration has been extensively studied, mainly through the approaches of functionalism, neo-functionalism, and liberal intergovernmentalism, with the aim of understanding and explaining the EU’s internal dynamics of integration. In particular, the enlargement process was important in not only introducing new questions concerning its implications for the sustainability of European integration and the internal market, but also for stimulating interest in investigating the external implications. In other words, the expansion of EU borders raised new questions concerning the emerging challenges for the stability of the EU’s internal social, political, and economic institutions and policies. At the same time, it raised questions concerning the EU’s ability to manage beyond its borders, with major consequences for regional and global stability. Hence, the EU’s expansionist efforts have created an important theoretical debate concerning its foreign policy and international relations regarding its capability to govern beyond its borders.

The increasing interest of scholars in the external impacts of European governance is the result of three major developments in European integration since the 1990s (Schimmelfennig, 2010). Firstly, as a consequence of a deepened and strengthened EU single market, in terms of its size and attractiveness, the EU has gained significant power to shape both global governance and that of its trading partners. Secondly, following the large and unique eastern enlargement, the EU has had to pursue the ambitious goal of transforming new accession countries through its Europeanization process, and make them introduce the whole *acquis communautaire* – the body of EU law. Thirdly, beyond its attempts at coordinated external action through its common foreign and security policy (CFSP), as a significant driver within a new framework, the EU has aimed to govern effectively those neighboring states that are either unwilling to become members or not eligible for membership. However, in order to increase stable regional cooperation on its borders, the EU has had to develop a clear vision for positive relations regarding these countries’ economic well-being, domestic stability, and security considerations. Since the

previously most successful foreign policy approach of offering membership<sup>7</sup> is no longer sustainable, the EU has sought to develop a new framework concerning to manage its larger neighborhood. In other words, exploring the EU's relations beyond its borders entails understanding its attempts to promote and transfer its policies, norms and values to countries in its "near abroad" without being able to offer full EU membership as a key incentive for securing their compliance.

It has been observed that policy externalisation occurs in different ways through different mechanisms. In the first one of these, third country cooperation is primarily achieved through autonomous political action taken by a political entity that impacts the legal order of that third country and its nationals outside the territory of EU, yet develops independently of the third country. The second form is external political action, where third countries undertake to align their national law with the community *acquis* or other complex interactions. The third type involves the promotion of the EU *acquis* amongst third countries through the adoption of their own domestic legal framework through formal agreements such as association agreements (Rijpma and Cremona, 2007; 13-14).

Regarding the existing literature on the EU's relations with external actors, it can be said to be either descriptive or limited in terms of theoretical focus. That is, whereas European integration has been intensively studied in theoretical terms, theoretical studies of its external features and implications have remained narrowly focused, although the EU has become increasingly influential in a number of external policy areas, such as trade, development, humanitarian aid, environment, energy, competition, immigration and asylum (Orbie, 2009:1). It would not be wrong to say that the EU, with its distinct and in many ways unique characteristics, is developing as an international actor with an assertive role in the world arena, involving complex interactions. This development has caused scholars to grapple with the way in which the EU's role can be best conceptualized, such as whether it is a "normative" or

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<sup>7</sup> As indicated in the European Commission's Communication (2003/104) titled "Wider Europe – Neighborhood: A New Framework for Relations with our Eastern and Southern Neighbors", and also as EU external relations Commissioner Chris Patten noted, "over the past decade, the Union's most successful foreign policy instrument has undeniably been the promise of EU membership" (European Commission, 2003/104).

“civilian” power<sup>8</sup>, and how the EU’s external conduct can be best explained. The resulting debates mean that conceptualizations of the topic have been as heterogeneous as the EU’s involvement in external policies itself.

The literature on the “externalisation of policies”, which involves the gradual extension of EU policies to non-members, tends to be defined and associated with many interconnected notions, such as “extra-territorialisation” (Rijpma and Cremona, 2007), “external governance” (Lavanex, 2004a) or “Europeanization beyond the borders of the EU” (Schimmelfennig, 2010). Currently, this relatively new kind of foreign policy and institutionalized interaction with non-members is usually referred as the “external dimension of a policy field” (Lavanex and Wichmann, 2009), and the EU itself also prefers to use “external dimension” in its official documents to refer to all aspects of engagement and policies directed beyond its borders.

The process of externalization might, in a way, be considered as an attempt to extend the scope of European integration. However, it differs significantly from simply exporting EU norms and rules to membership candidates within the context of EU enlargement. Rather, it is more the case that the EU seeks to export its own regulatory model, institutions, and rules of governance beyond the borders of formal membership (Lavanex and Schimmelfennig, 2009:795). In this regard, the external dimension of a policy is associated with political practices having diverse but inter-related conceptualizations. That is, it refers to

designing governance and policy extension beyond borders between at least two countries sharing a specific asymmetrical relationship, not only in terms of power and socio-economic disparities, but also in their capacities to politically respond to the same phenomenon (Aubarell, Barrero, and Aragall, 2009: 12).

Hence, the basic characteristics of the common conceptual core of externalisation reveal a link between policy, territory and sovereignty, where policy-making, its

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<sup>8</sup> Various role concepts have been advanced to explain the EU’s external actions, with each of them suggesting that the EU exerts a particular kind of power in the world. This power conceptualization has been defined in several different ways: as civilian power (Telo 2006), normative power (Manners 2002), magnetic force (Rosecrance 1998), a European superpower (McCormick 2007), a quiet superpower (Moravcsik 2003), a post-modern state (Cooper 2003), middle power (Laatikainen 2006), and even a neo-medieval empire (Zielonka 2006).

implementation and the outcomes of these decisions differ territorially in a hierarchical manner.

Employing this argument more specifically to the case of the EU, one finds that there is indeed no general grand theory of EU internal governance explaining the EU's multi-level character or implications of its policies for its members. Given this lack of theorization of the EU's internal governance, it becomes even more difficult to conceptualize the external dimension of EU policies and their impacts on non-member countries. Even without this theoretical lack, the EU's foreign policy making is already a complex and difficult issue<sup>9</sup>. As the EU is not a single unified actor, its foreign policy making involves the interaction of the three strands: (a) the national foreign policies of member states; (b) EU external trade and development policy (furthered as EU's external relations); (c) the EU's common and foreign security policy (Wong, 2008: 322). However, the literature on the EU's foreign and external policy focuses on "what the EU *is* in the international system and what it *does* in its external relations (policy decisions, content, instruments and strategies)", with an emphasis on the impact of the EU on the international system, rather than on "if and how it *affects* third countries", with an emphasis on the impact of the EU in states beyond Europe (Schimmelfennig, 2012:6).

This situation demonstrates the need for theorization to move beyond the existing grand theories and approaches of international relations or European integration to explain the external policy domain of the EU. Among the alternatives, regime theory for explaining international cooperation, external governance and Europeanization seem to provide the most relevant frameworks for scrutinizing the relations of the EU with non-member states. While none of these approaches is sufficient on its own to explain the field in its entire scope and context, by complementing each other, Europeanization towards non-members appears to offer the most adequate conceptual framework to underpin the empirical research of this study, as will be argued below.

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<sup>9</sup> To clarify the difference between foreign policy and external relations, foreign policy is defined as "ideas or actions designed by policy makers to solve a problem or promote some changes in policies, attitudes, or actions of another state or states, in non-state actors in the international economy, or in the physical environment of the world" (Holsti, 1992: 82). It is also defined as "an attempt to design, manage and control the external activities of a state so as to protect and advance agreed and reconciled objectives" (Allen, 1998: 43)

### **2.1.1. International Regimes Theory: Explaining International Cooperation and Policy Coordination**

The theory of international regimes still remains as one of the important theories of international relations in drawing and explaining general findings about international cooperation. As such, it can also shed light on the EU's relations and cooperation framework with third countries. Regime theory is classified under the three schools of thought: interest-based theories, power-based theories, and knowledge-based theories, in which realists focus on power relationships, neoliberals, on constellations of interests, and cognitivists on knowledge dynamics and communication respectively (Hasenclever, Mayer and Rittberger: 1-2).

The literature on theories of international cooperation mainly refers to a dominant state, or hegemon, for providing the leadership, resources, and even punishments needed to maintain cooperation (Kindleberger 1973; Krasner 1976; Keohane 1980). Accordingly, the hegemon sets the basic principles, rules, and decision-making procedures of the system, which is accepted by other countries as the established international regime. Thus, the existence of a hegemon is seen as an essential prerequisite. However, some scholars argue that cooperation is possible even in the absence of a hegemon where there is conflict of interest, suggesting that strategies of reciprocity, iteration, and outright *quid pro quo* bargaining can be used in such circumstances (Axelrod 1984; Oye 1986). International regime theory argues that the prospects for such cooperation are even greater if it occurs within a larger institutional framework (Krasner, 1981). Similarly, studies of global norm-creation, diffusion, and internalization also emphasize the importance of common institutional frameworks in facilitating cooperation, even where no formal regime is present (Axelrod 1986; Nadelmann 1990; Cortell and Davis 1996).

The theory of international cooperation also assumes that cooperative arrangements between parties occur individually and are collectively "rational". This means that the choice of whether to be a party to a treaty or agreement is voluntary, and that the parties decide collectively concerning the potential joint gains from cooperation. Thus, compliance must be enforced on the basis of an agreed credible strategy that

must be in the interests of the parties. Individual rationality implies that free-riding and non-compliance with the agreed strategy are punished (Barrett, 2008:3).

From the perspective of cognitivism, which strongly criticizes traditional rationalism, international cooperation should be analyzed by looking at international ethics and the roles of knowledge, ideas, culture, identity and norms in modifying relations and interests among states. Referring to international regimes, it emphasizes the roles of subjective factors (such as culture and norms), and stresses the significance of process (Wendt, 1995) by conceptualizing international regimes as dynamic and by studying process. It emphasizes that knowledge and beliefs affect the parties' calculations of costs and benefits that can increase the likelihood of cooperation.

The table below summarizes these three schools of thought in order to account for instances of rule-based cooperation in the international system.

**Table 2.1. Theoretical Explanation of Cooperation in International System**

	<b>Realism</b>	<b>Neoliberalism</b>	<b>Cognitivism</b>
<b>Central Variable</b>	Power	Interests	Knowledge
<b>Institutionalism</b>	Weak	Medium	Strong
<b>Meta-Theoretical Orientation</b>	Rational	Rational	Sociological
<b>Behavioral Model</b>	Relative Gains	Absolute Gains	Roles

*Source: Hasenclever, Andreas, Mayer, Peter, Rittberger, Volker, 1997:6*

In applying international cooperation or regime theory to the case of the EU's relations with third countries, it is debatable whether the EU can be considered as a regional center of power, or even a "hegemon". According to regime theory, the EU would have to possess certain attributes to influence policy coordination or harmonization with non-members. However, as a "nascent political system" comprising multi-level relationships between member states and EU institutions, the EU has a distinctive character (Lavenex and Uçarer, 2006:5). Hence, the nature of its active international role remains problematic (Knodt, 2003:1) because it lacks a number of attributes that have traditionally been associated with actors in the

international arena. The EU is neither merely a “regime,” nor a “federal state,” nor an “international organization,” and even its impact on its member states concerning some policy issues is limited. Furthermore, as a regional co-operation scheme between sovereign states, it lacks the kind of centralized authority that “traditional” nation-states usually possess. In this regard, the role of EU-level institutions is limited, in that decision making and implementation remain under the member states’ remit (Knodt, 2003: 2), which creates complexities concerning its external competences as well.

Besides the debate on the EU’s attributes and external competencies as a source of regional power, the EU’s most significant and successful driver of international cooperation is the incentive of membership. However, in the broader context beyond the enlargement, in which the incentive of membership is missing, as in the ENP<sup>10</sup>, norm transfer and policy coordination with neighbors occurs through iteration and reciprocity. That is, the EU has to rely on its other sources of power, such as leadership/agenda-setting, program funding or other side-payments, education/training, access to its market, security assistance, policy bargaining (or “logrolling”), and other similar measures (Smith and Weber 2006).

As a result, while the theory of international regimes is able, to a significant extent, to contribute to explaining and understanding the concept of cooperation, it is insufficient to entirely theorize the EU’s relations and cooperation with third countries. One of the main problems occurs with the asymmetrical interdependence between the EU and its apparently subordinate neighbors (Keohane and Nye, 1977), where the EU is in a much stronger position than most, if not all, of its ENP partners. Thus, coercion or even dominance by the EU more likely exists with regards to implementing cooperation through the ENP. However, the lack of membership incentive constitutes a great challenge for implementing an effective and successful cooperation scheme. Therefore, a major research question is whether the EU can realistically achieve such a relationship through its ENP without offering full or

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<sup>10</sup> The ENP outlines a new framework for relations with Russia, the Western Newly Independent States (Ukraine, Moldova, and Belarus), the Southern Caucasus (Armenia, Azerbaijan and Georgia) and the Southern Mediterranean countries (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Syria, and Tunisia). It aims “to develop a zone of prosperity and a friendly neighborhood – a ‘ring of friends’ – with whom the EU enjoys close, peaceful and cooperative relations” (European Commission, 2003a,: 4), but without offering the possibility of membership.

some other form of partial membership that would allow the EU to employ different sources of power. However, it is questionable whether the internal complexity due to the governance structure of its own member states can be overcome and effectively adapted to the EU's foreign policy, and exported to states that have virtually no chance of joining the union. Overcoming this issue requires outlining a conceptual framework that focuses on the EU's ability to set the agenda and structure incentives for institutionalized cooperation in security, economic, and normative affairs.

The second main problem with applying the theory of international regimes is that, while it emphasizes cooperation through incentives, it assumes distinct issue areas and stable national interests during negotiations. However, in reality, the EU's cooperation with third countries covers a wide range of topics, as seen in the ENP. Within this ambitious agenda, the EU develops evolving competencies across these topics, but also experiences difficulties associated with national interest formation. Thus, cooperation between the parties cannot take place in the usual form of regular intergovernmental bargains over individual policy problems. Rather, policy coordination is more often achieved in far more complex and even incoherent ways. In other words, contrary to the expectations of theories of international cooperation, which assume a collective rational process and "relative gains", in the case of EU, the parties find it more difficult to prioritize their competing and complementary interests, and to determine their individual "payoffs".

Thirdly, international regime theory ignores the role of international institutions in cooperation formation and reformation. This matters because an examination of EU's relations with third countries clearly reveals that international organizations, such as the UN, ILO, IOM and WTO, are effective and influential actors in pushing for policy reforms and changes in these countries, which facilitates the cooperation context of the EU to succeed its policy aims.

The final problem is that regime theory regards power resources as the core, decisive variable of international regimes, while assuming that moral foundations have no substantial meaning in the analysis. However, both the EU, with its unique structure, and other international regimes have their moral foundations and values. The moral principles of the EU create a sense of responsibility to guide the behavior of other

states. Given this, cognitivism seems to be a valuable approach to explain international cooperation and regimes through moral principles, although it overstates sociological methodology, and the role or importance of discourse, construction and identity, which implies defects in theory's ontology.

In sum, different types of international regime theory focus on different notions behind the dynamics of international cooperation. While the neoliberal strand emphasizes "interest" as the driving factor, neorealism puts the focus on power, power positions, relative gains and security concerns. On the other hand, cognitivism sees causality and social knowledge as being the core concepts in the theoretical development of international cooperation and international regimes. Clearly, the theorization of international cooperation is problematic, since it depends on various assumptions within each school of thought about the nature of agents and their interactions. Regarding the EU, with its given unique institutional nature, the community constitutes a unique and complicated actor compared to other agents described in regime theory, with its own dynamics, and its highly differentiated relationships with third countries that vary according to the scope of cooperation, countries, regions, policy frameworks and issues. However, although critiques of regime theory have some validity, particularly in exposing its limited scope of application to certain issue areas, it would nevertheless be wrong to ignore its contribution to explaining the cooperation framework of the EU's relations with third countries.

### **2.1.2. "External Governance": Policy Externalization Towards Non-Member Third Countries**

Turning from the general framework to the EU's case specifically, analysis of policy externalization is usually associated with the "external governance" approach as an attempt to conceptualizing the EU's international role (Lavanex and Schimmelfenning, 2009:792), which goes far beyond the existing frameworks used to explain international cooperation. Although the notion of "governance" has traditionally been used to address policy changes in the EU with regards to "internal governance", the concept of "external governance" explains some elements of the EU's relations with other countries. While the two forms of governance are closely

related, internal governance focuses on the creation of internal rules, whereas external governance focuses on the extension of these internal rules and policies beyond formal membership to non-EU states (Schimmelfennig and Sedelmeier 2004: 661; Lavenex, 2004a). Accordingly, the debate on external governance addresses the EU *acquis*, rules and norms reaching beyond EU territory to affect third countries, and how these third countries adopt them within their own legal systems (Rijpma and Cremona, 2007; 12).

Using Smith's (1996:13) distinction between four types of boundaries (geopolitical, institutional/legal, transactional, and cultural), external governance is explained as occurring when the institutional/legal boundary is extended beyond the circle of member states (Lavenex, 2004: 683); that is, a "shifting of the legal boundary beyond institutional integration" and "the extension of the regulatory scope of parts of the *acquis communautaire* to the EU's neighborhood through the inclusion of third countries in the pursuit of the EU's internal policy goals" (Lavenex, 2004; 682-683). This can be interpreted in terms of extra-territorialization via the extension of the EU's legal boundary of authority<sup>11</sup>.

In addressing the theoretical foundations of external governance, it has been inspired by the debates in international relations and comparative politics in bringing a new approach to studying the EU's relations with third countries. In particular, this differs from traditional foreign policy analysis in adopting a more institutional and structural view, in which the EU's relations with external partners are mostly analyzed through a unified state actor model and agency based perspective regarding the EU's performance as a foreign policy actor. Within traditional foreign policy studies, the unit of analysis is taken as the countries or regions, where the EU's capacities are limited due to a lack of formal competences, legal authority, power resources or strategic coherence. In contrast, a governance approach takes a more institutional and structural perspective, with a focus on rule expansion. It takes the systems of rules as the unit of analysis and emphasizes institutional processes of norm diffusion and

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<sup>11</sup> An important contribution of this definition is that it explicitly claims that governance is produced not only by nation-states but also by the EU. Thus, one of the assumptions taken for granted is the EU's role as dominant focal point and norm/rule creator.

policy transfer as the point of reference, rather than focusing on coordinated action between the states (Lavanex and Schimmelfennig, 2009: 792-795).

### **2.1.2.1. Modes of External Governance**

Modes of external governance constitute the first essential dependent factor for the study of external governance. They provide the institutional forms and define the framework of the actors' interactions and the mechanisms of rule expansion. Lavanex and Schimmelfennig (2009:796) define three modes of external governance: hierarchical governance, network governance, and market governance.

Hierarchical governance refers to a formalized relationship, where dominance and subordination occurs through legislation and enforceable rules that are legally binding upon actors. The size of incentives and their credibility play significant roles in determining the success of the rule expansion that occurs through harmonization. This mode of governance is particularly visible in the EU's relations with the candidate countries, as hierarchy is a necessary prerequisite for the effective working of conditionality in the framework of top-down policy transfer (Schimmelfennig and Sedelmeier, 2004: 664).

The second institutional form of governance is network coordination, where the actors have equal rights and cannot bind each other to a measure without the other's consent to the relationship (Börzel, 2007:64). Networks produce instruments based on mutual agreement, and involve negotiations and voluntary agreements in response to conflicts of interest, rather than producing binding authoritative legislation. Network coordination also requires decentralized sectorally specialized governance institutions based on functional expertise rather than political affiliation (Lavanex and Schimmelfennig, 2009: 798). In fact, it can be argued that this type of governance better serves rule expansion, specifically in the migration policy field, by providing more room for third countries to express their own dynamics and allowing more progress.

The third mode of external governance, market governance, takes its essence from the principle of mutual recognition as a consequence of competitive pressure. In this

case, the EU's impact on third countries is motivated by the foreseen negative and positive externalities of third countries' ignoring or violating the EU's internal market rules and its competition policies. EU rules can then be adopted indirectly by third countries more through their interdependence with the single market than through any form of association policy.

#### **2.1.2.2. Conditions and Effectiveness of External Governance**

The modes of governance provide the tools and mechanisms for exploring which conditions or frameworks are associated with more effective external governance that has a greater degree of impact on other states. Lavanex and Schimmelfennig (2009:802) explain the conditions of external governance through three perspectives: the institutional perspective, the power based perspective and domestic explanations of external governance.

The institutional perspective explains how the effectiveness of external governance depends on existing EU institutions that provide a model for the externalization of both EU policies and its internal policy making structures. The quality of existing EU institutions and the legitimacy of its rules are presented as influential factors. If the EU rules are precise, binding and enforceable then it is more likely that the rules are adopted and implemented by third countries. The hierarchical mode of external governance is also emphasized as significant factors in determining the effectiveness of external governance (Lavanex and Schimmelfennig, 2009: 802).

The power based perspective suggests two set of factors as determining factors on modes and effectiveness of external governance: the EU's power over, and interdependence with third countries. This perspective proposes that the asymmetric interdependence in the EU's favor is a precondition for implementing the EU's hierarchical governance of third countries. According to this perspective, rule selection<sup>12</sup>, adoption<sup>13</sup> and rule implementation<sup>14</sup> by third countries depend on the

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<sup>12</sup> Rule selection refers to extent that EU rules constitute the normative reference point for third countries. It relates to whether third countries accept EU rules as the focus during their international negotiations and agreements, or rules set by other international organizations (which might include EU rules embedded in them as well). It is a relevant indicator for effectiveness since, unlike enlargement, in rule selection, the EU cannot dominate the negotiations.

bargaining power of the EU, the incentives it provides and the nature and degree of interdependence between the EU and third countries concerned.

The domestic structure explanation provides another important perspective in suggesting that the effectiveness of external governance depends also on the compatibility and affinity of institutional structures of domestic politics with international governance. That is, if the third country's domestic governance, rules, traditions and practices are corresponding with the EU rules then it is more likely to speak about a successful functioning of external governance. Additionally, the degree of similarity of types of states, societies, and administration in third countries with the EU member countries plays another prominent role to determine the effectiveness of external governance.

To summarize, and conceptually link external governance with migration policies, it can be said that external governance makes a significant contribution in terms of institutionalizing a sectoral and policy specific logic, in contrast to over-arching macro-institutional frameworks, such as the ENP. Lavanex (2009) highlights the issue-specific modes of governance and expansion of EU rules through sectoral lines instead of through macro and highly political frameworks. Regarding the highly contested and sensitive nature of migration issue, external governance provides networked forms of interaction as a more effective mode of policy exportation than on hierarchical forms.

Additionally, it should be emphasized that, even though the interdependence between the EU and its non-member neighbors is hierarchical, the scope and degree of this interdependence varies across different policy areas. In fact, we can claim that there is also "reverse interdependence" concerning issues of migration policy, where the EU perceives most of its non-member neighbors as posing the challenge of irregular migration and asylum claims. Such specific policy conditions make migration issues more conducive to network governance than a hierarchical mode of governance. As

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<sup>13</sup> Rule adoption refers to whether third countries incorporate the selected EU rules into their domestic legislation.

<sup>14</sup> Rule implementation refers whether rule adoption is transformed into action in political and administrative practice. It constitutes one of the most important indicators of the impact of external governance.

the EU mostly tries to employ a hierarchical mode of governance in migration issues, progress on rule expansion remains limited. This observation is supported one of the concluding remarks of Lavanex and Schimmelfennig (2009: 808)

In sum, whereas the EU has shown its ability to establish institutional order in its neighborhood without at the same time expanding its membership, this order is more sectorally fragmented and differentiated and less ‘Europeanized’ than the order projected through enlargement.

### **2.1.3. Europeanization beyond Europe**

Recent literature has developed several overlapping definitions of “Europeanization” (Radaelli 2000, Diez, Stetter, and Albert 2006; Bauer, Knill, and Pitschel 2007; Schimmelfennig 2009), although it is generally considered as referring to the domestic impact of, and adaptation to, European governance in the EU’s member states. In more concrete and broader terms, Europeanization is defined as

formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’, and shared beliefs and norms, which are first defined and consolidated in the making of EU public policy and politics ... in the logic of domestic discourse, identities, political structures, and public policies” (Radaelli, 2003:30).

Within this literature, it is observed that Europeanization was previously largely confined to the impact of European integration and governance on member states (Goetz and Meyer-Sahling 2008; Ladrech 2009; Treib 2008). However, the main focus of such studies has expanded first from member states to candidates for membership (Schimmelfennig and Sedelmeier, 2005) and, more recently, to non-candidate states lying beyond EU borders (Schimmelfennig, 2012). This has brought about a renewed and increased attention on Europeanization, which has also been reinforced by the declining momentum of enlargement, since the EU does not foresee any further enlargements in the near future. Europeanization beyond the EU borders therefore gained importance mainly to export the principles of “European governance” beyond the EU. These can be listed as promoting its model of regionalism, supranational integration, multilateralism, regulated transnational markets, the regulatory state, and constitutional norms such as human rights, the rule of law, and democracy (Schimmelfennig, 2012:10). However, while the EU has

been increasingly intensifying its relations with third countries and impact beyond its borders, the academic literature remains silent on how these changes can be associated by European integration.

In contrast to the generally limited theoretical context in the literature, where Europeanization is studied only in terms of its domestic impact on member states or candidate countries, Schimmelfennig (2012) tries to employ the literature on Europeanization in candidate states as a benchmark for the analysis of “Europeanization beyond Europe”. He organizes his study around the following research questions: “Is there Europeanization beyond Europe?”; “Can the EU also have a systematic and distinctive influence beyond Europe?”; “To what extent and under which conditions has the EU been effective in Europeanizing countries beyond its membership region?” Thus, when the literature is comprehensively examined, it shows that a focus on “Europeanization beyond Europe” can provide the most relevant conceptual analysis and empirical tools to understand the EU’s actions of policy externalization.

#### **2.1.3.1. Mechanisms and Conditions of Europeanization**

The literature on Europeanization beyond the EU borders analyzes the process through various mechanisms and conditions, particularly conditionality, socialization, externalization, and imitation where the EU employs external implications (Schimmelfennig, 2010). EU conditionality, market power and supranational, centralized and hierarchical regulation are considered to be critical for achieving effective Europeanization results. Without these three, as Schimmelfennig (2010:1) states EU institutions just serve as a socialization agency and a model for imitation. In addition to several overlapping classifications of Europeanization mechanisms, Schimmelfennig (2010:8) puts a simple table which focuses on direct and indirect mechanisms as indicated below.

**Table 2.2 Mechanisms and Conditions of Europeanization**

	<b>Direct</b>	<b>Indirect</b>
<b>Logic of Consequences<sup>15</sup></b>	<u>Conditionality</u> (Size and credibility of incentives, costs of compliance)	<u>Externalisation</u> (market size, legalization and centralization of rules)
<b>Logic of Appropriateness<sup>16</sup></b>	<u>Socialization</u> (noviceness and uncertainty; legitimacy, authority of EU; identification, resonance with EU; frequency and density of contacts)	<u>Imitation</u>

*Source: Schimmelfennig, 2010:326*

With direct mechanisms, the EU acts pro-actively, intentionally seeking to transfer its model and rules of governance beyond its borders, whereas with indirect mechanisms non-EU members have no active part, and the EU itself generates external effects as a mere presence. The logic of consequences refers to Europeanization through manipulation of incentives and cost-benefit calculations in third countries, while the logic of appropriateness means that Europeanization occurs as result of the perceived authority and legitimacy of the EU.

Conditionality is a central concept of Europeanization, where membership as the ultimate goal/reward is conditional on the adoption and implementation of EU rules. It is used as one of the main foreign policy instruments of the enlargement policy, where EU holds the greater bargaining power to ensure the third country's compliance (Schimmelfennig and Sedelmeier, 2005). Policy transfer occurs in a predetermined framework, performed through regular monitoring mechanisms in respect to the adoption of EU rules. The EU pro-actively promotes its model and rules of governance by making the rewards for external actors from the EU conditional (Schimmelfennig, 2010:326). The effectiveness of this conditionality depends upon the size of the rewards, the degree of EU credibility and the EU's greater bargaining power. However, if the domestic adaptation costs are higher than the rewards then the rational choice of the non-EU member might prevail over the

<sup>15</sup> Logic of consequences refers to the case that actors choose the behavioral option that maximizes their utility under the circumstances. It assumes that Europeanization can be driven through sanctions and rewards.

<sup>16</sup> Logic of appropriateness assumes that actors choose the behavior that is appropriate to their social role and the social norms in a given situation. It suggests that Europeanization may be induced by social learning.

conditionality.

Externalization occurs as result of the indirect impact of the EU, depending on the cost-benefit calculations of external actors. That is, although the EU does not act pro-actively and there exists no conditionality, external actors feel the need to follow and adopt EU rules due to possible externalities and net costs that they may incur. In other words, the existence of EU as a market and regional system of governance induces the policy expansion in the third countries. The EU's market size, the degree of interconnected economic relations and the strength of its regulatory institutions are all influential factors in making Europeanization through externalization effective.

Socialization refers to the EU's efforts to promote European governance by teaching external actors its norms and ideas. However, the adoption of EU rules strongly depends on the third countries' perceptions of the EU's legitimacy and the authority. Imitation of the EU as a role model, the final mechanism of Europeanization, involves external actors emulating the EU's model of governance without the pro-active role of the EU when non-EU members find that EU rules and policies provide appropriate solutions for their own problems.

#### **2.1.3.2. Concentric Circles of Europeanization**

In addition to these mechanisms, the scope of Europeanization beyond EU borders differs according to the conditions and contexts in which EU is acting with quasi-member states, candidate countries, European neighborhood states or other OECD countries (Schimmelfenning, 2010).

**Table 2.3 Concentric Circles of Europeanization**

	<b>Contents</b>	<b>Mechanisms</b>	<b>Conditions</b>	<b>Impact</b>
<b>Quasi-Members</b>	Market regulation	Conditionality and Externalization	Strong dependence	Strong, partial
<b>Candidate Countries</b>	All	Conditionality	Strong dependence, strong incentives	Strong, general
<b>Neighbourhood Countries</b>	All	Conditionality and Socialization	Medium dependence, weak incentives	Medium, partial
<b>OECD Countries</b>	Market regulation	Externalization	Medium interdependence	Medium, partial
Other Regions	Regionalism	Imitation (and Socialization)	Weak interdependence	Weak

*Source: Schimmelfennig, 2010*

Quasi-members such as European Economic Area (EEA) countries; Iceland, Norway, and Liechtenstein are formally obliged to adopt all EU legislation regarding the single market and several other related policy fields. Quasi-members incorporate the core of EU rules and governance in almost the same way as member states. However, as they are not members of the EU, they do not take part in the formal decision-making process, or in policies beyond the Single Market. Similarly, Switzerland demonstrates *de facto* alignment with EU governance, although it is selective with respect to Europeanization. Quasi-members have strong economic interdependence with the EU, but they are against full membership. Overall, the Europeanization mechanism with quasi-members is a highly institutionalized form of conditionality, which guarantees equal market access in return for selective rule adoption.

For candidate countries, Europeanization occurs as result of the strong dependence emanating from accession conditionality. To meet the requirements of membership criteria, candidate countries are obliged to adopt and implement general principles of European governance, in particular the political criteria of freedom, democracy, the rule of law, and respect for human rights. The entire adoption of the body of EU legislation and policies codified in the *acquis communautaire* is thus a process of rule transfer dominated by conditionality, where membership is the biggest reward

for external countries. Two factors have a critical role in determining the success of conditionality: the first is the offer of a clear and credible membership perspective; the second is the level of domestic political costs of compliance.

Neighboring countries mainly fall within the framework of the European Neighborhood Policy. Covering similar notions of Europeanization as the accession policy, the ENP lacks the main incentive of membership yet expects the full participation of the neighboring countries in European governance. As Schimmelfennig (2012:6) indicates, “The ENP can be seen as a most-likely case for Europeanization beyond Europe because it deals with close neighbors, covers a broad range of policies, and is based on the explicit commitment of the EU to extend its *acquis* beyond membership”. While allowing flexibility to avoid costly obligations, the major incentive offered for Europeanization is liberalized access to the EU for both goods and people. However, in reality, the credibility of the incentive offered for market access has been weak due to protectionist interest groups within the EU. For instance, the EU’s agriculture sector, where ENP partners are competitive, was excluded, and restrictions on free movement of labor due to EU fears of irregular migration also weakened the credibility of EU conditionality. At the same time, the EU does not hold the same greater bargaining power as it does over accession countries. The relatively low degree of dependency of ENP partners on the EU constitutes another obstacle for transferring EU’s own rules and norms to the neighborhood. In addition, the geostrategic and political interests of partner countries sometimes prevail over conditionality. Accordingly, in addition to conditionality, socialization is also observed as a mechanism of Europeanization, where EU rules are promoted in the context of ENP negotiations and policy networks to extend EU governance and foster change in domestic politics. However, again, the effectiveness of these networks has proved to be limited due to incompatible administrative structures, cultures and expertise, and lack of trust (Schimmelfennig, 2010). Thus, the effective impact of Europeanization in neighboring countries has been weaker than that which occurred in candidate countries.

OECD countries constitute an example of the indirect mechanism of Europeanization, where the EU, in contrast to its role regarding quasi-members, candidate or neighboring countries, is not pro-active. The shift towards EU

governance is mainly observed to happen through externalization based on economic interdependence and competition, though also through imitation of EU governance in other regions. In this case, the EU does not aim to export its rules and norms; neither do the OECD countries seek membership. Instead, the EU just concerns itself with issue-specific rules related to its internal market, and looks to increase its exclusive power and impact to shape international standards.

Concerning the other regions, the indirect mechanism of imitation has been effective, with the EU acting as a model for regional economic integration. The EU does not aim to foster regional organizations such as Mercosur or the African Union, nor do they have any interdependence with the EU. Nevertheless, they have emulated EU institution building and policies. Since the EU has also established relations and political dialogue with these regional organizations, socialization works together with imitation. In this case, the legitimacy of the EU and the degree of perception of the EU as a source of inspiration are both important factors determining the impact of this mechanism of Europeanization.

In conclusion, it can be acknowledged that, as the EU has become a global player, Europeanization beyond EU borders has developed as a new foreign policy issue which needs to be analyzed in terms of its differing mechanisms, conditions, policies and geography, in order to better scrutinize the scope and limits of externalizing the EU's immigration policy to non-member countries. In doing so, the division between candidate states and other third countries seems to constitute a determining categorical difference for the analysis of the effects of Europeanization. This claim will be applied in chapters 4 and 5 in relation to the cases of Turkey and Morocco specifically for migration policy.

## 2.2. Conceptual Analysis of the External Dimension of EU Immigration Policy

The development of the consideration of migration issues at an EU level, with an attempt to articulate common norms and rules beyond its borders to neighboring third countries constitutes a significant policy area during the last two decades, which has been hitherto overlooked in the context of the international relations of Europe. This new direction in immigration policy is labeled by the EU itself as the “external

dimension of migration policy”. In academic discussions, it is named “the externalization of immigration policy” or simply “extra-territorialization of immigration policy” (Aubarell, Barrero, and Aragall, 2009: 5).

Within this action field, a prominent area of the externalization of relevant policies involves Justice and Home Affairs (JHA), which requires both cooperation within the EU and, increasingly, the development of cooperation with third countries. It mainly concerns the EU’s attempts to push back its external borders, or rather to police them at a distance, in order to control unwanted migration flows. “Extra-territorialization” attempts to prevent non-EU nationals leaving their countries of origin, or if they decide to leave then at least to ensure that they remain as close as to their country of origin as possible, outside EU territory. If, however, they manage to enter the EU, extra-territorialization also includes measures for repatriation or removal to “safe third countries” (Rijpma and Cremona, 2007; 12). This approach brings the EU’s relations with both sending and transit countries into the debate concerning the development of the external dimension of migration management.

This need to address migration management through an external dimension by involving migrant sending and transit countries emerged as a result of the shortcomings of traditional migration policies (Boswell, 2003:619). However, the engagement of countries of origin and transit reflects a growing emphasis on controlling migration flows through cooperation. This extra-territorial control is mainly referred to in a series of European Council conclusions around the strategic aims to enhance management of legal migration, curb illegal flows, control borders, cooperate against terrorism, refugee protection and boost the effects of migration on development. These related actions of the EU have become known collectively as the “external dimension of EU cooperation in justice and home affairs”.

It is important to review the conceptualization of these developments which have been rapidly gaining momentum in relation to the EU’s external policy in order to better analyze their external impacts in detail. This first entails studying the main motives behind the need for, and subsequent emergence of, externalization of EU’s immigration policy. Secondly, it means that, since the impact of the policy extends well beyond EU member states, due to its multilayered and complicated structure, it

is necessary to examine externalization as played out across different levels and institutional contexts through multilateral and bilateral efforts as well as intergovernmental and supranational channels (Lavanex and Uçarer, 2004: 29). This can be pursued and examined by employing the conceptual framework and analytical tools of Europeanization. After providing the general basis on how the external dimension of EU policies can be conceptualized, the external dimension of its immigration policy can be better explained through also using policy specific approaches.

### **2.2.1. Why did the EU Develop an External Policy on Immigration and Asylum?**

The main reasons and logic behind the development of EU external policy on immigration and asylum can be explained under three different tracks shaped mainly by changing security and economic challenges in and around Europe. These can be outlined as ensuring the sustainability of the European area of freedom, security and justice against the new security challenges; internal-external security nexus, and realizing the global approach to migration and mobility.

First, the main logic and objectives behind the development of the EU's external policy on immigration can be explained as one of its attempts to identify its role in the new geopolitical environment in the face of new challenges resulting from increasing economic and security interdependencies (Zeilinger, 2010:3). This is associated to an extent with the geopolitical ambitions of the EU, defined as "the use of space for political purposes, that is, control and management of people, objects and movement" (Balzaq, 2008: 1). However, the EU's geopolitical ambitions, which entail control and management, have been increasingly constrained by emerging challenges, such as economic and financial crises, demographic changes, integration problems, political transformations and conflicts within neighboring regions, and changing security concerns. Regarding the responses of the EU to these new challenges, the externalization of immigration has developed around the reflection of the external dimension of the EU's principles and norms, stemming primarily from its internal security concerns. These security concerns, emerging within the context of a changing international environment and the developments pushing migration

more towards the EU, are considered to constitute a serious threat to the sustainability of the European area of freedom, security and justice.

The second track towards answering the question of why the EU developed an external policy on immigration requires analyzing the debate over the EU's internal-external security nexus in the context of global changes, which has involved a reformulation of the conceptualization of "security" that inevitably and urgently requires essential third country cooperation in migration management. Lastly, the "Global Approach to Migration" (GAM) based on building dialogue and partnerships with third countries needs to be analyzed as one of the push factors that serves to stimulate legal migration in response to labour market needs and curb irregular migration in order to contribute to the EU's development cooperation. Thus, while aiming to tackle economic challenges head-on, through an economic perspective, the development of the external dimension of EU immigration policy, involves seizing opportunities that can contribute to the EU's economic development and its welfare in the long run.

#### **2.2.1.1. Sustaining the European Area of Freedom, Security and Justice**

According to the EU, the primary purpose of the external dimension of Justice and Home Affairs is the establishment of an area of freedom, security and justice within the Union. The presidency document indicating the objectives of the external dimension of JHA states that one of the guiding principles for determining priorities in the implementation of external policies is the relevance of measures for the creation of an "area of freedom, security and justice" within the Union (Council of the EU, 2000a: 5).

Cooperation in the field of JHA was officially integrated into the Treaty on European Union (TEU) that entered into force in 1993. Following this, the idea of establishing a "European area of freedom, security and justice" as a policy field was first introduced with the Treaty of Amsterdam (1997), with a focus on minimizing barriers to the free movement of people across borders and enhancing the EU's internal security. Reflecting its key importance as one of the objectives of the EU, it is stated in the Article 2 of the Lisbon Treaty as follows:

The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime (2007:11).

Today, regarding the Europe 2020 strategy, the European area of freedom, security and justice is considered to be a key element of the EU's response to long-term global challenges and contributing to strengthening and developing the European model of the social market economy into the 21st century (European Commission, 2010/171:2).

The completion of the Single Market and its four "freedoms", which have resulted in the abolition of controls at the internal borders of the countries belonging to the Schengen Area<sup>17</sup> is seen as one of the drivers underlying the creation of an area of freedom, security and justice (Council of the EU, 2004b:2). Indeed, the abolition of internal borders while strengthening the Union's external borders has raised issues for internal security requiring cooperation in justice and home affairs, including the need for a common visa, migration and asylum policy. Jorg Monar explains it by addressing two sets of factors behind the rapid development and expansion of cooperation in JHA; "laboratories" and "driving factors". The Council of Europe, the Trevi Group<sup>18</sup>, and Schengen are identified as laboratories, while transnational challenges are highlighted as being one of the major driving forces concerning cooperation in JHA (Monar, 2001:748).

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<sup>17</sup> The Schengen Area comprises the territories of 25 European countries (Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland) that have implemented the Schengen Agreement by guaranteeing free movement of persons and abolishing all internal borders in lieu of a single external border. The agreement was signed in 1985 and started to be implemented in 1995 after its Convention was signed in 1990. It includes 3 non-EU member states, namely Iceland, Norway and Switzerland, while Bulgaria, Romania, UK and Ireland are not in the Schengen area, although Bulgaria and Romania are currently in the process of joining it.

<sup>18</sup> The Trevi Group was created under the impetus of the Rome European Council on 1 December 1975 to address the question of combating terrorism and strengthening cooperation against terrorism. The TREVI Group laid the foundations for JHA policy, particularly in matters of counter-terrorism (TREVI I), police cooperation (TREVI II), the fight against international crime (TREVI III) and the abolition of borders (TREVI 1992).

In the last decade, the sustainability of the European area of freedom, security and justice has been significantly challenged by the increase in irregular migration, international terrorism and organized crime (Wessel, Marin and Matera, 2011: 277). Among these challenges, the increasing migration rate and asylum flows, in particular irregular migration to the EU, is considered to be one of the most serious threats to the sustainability of the European area of security and justice (Kicinger, 2004).

Since the 1960s, EU member states have been amongst the most important migration destination countries, registering a substantial increase in the absolute number of migrants. The total number of international migrants in EU-27 is estimated to be 46.9 in 2010, representing nearly 10% of the total EU population of 501 million people (UN, 2009). The number of irregular migrants in the EU is estimated to represent between 6 and 15 % of the total number of migrants (UNDP, 2009:1). In 2009 alone, the number of irregularly staying third country nationals apprehended in the EU was about 570,000 (European Commission: 2011/248).

**Table 2.4 Number of International Migrants in the EU**

EU	1960	1990	2005	2010
<b>International Migrants (million people)</b>	13.5	26.6	41.5	46.9

*Source: United Nations (2009) World Population Prospects: The 2008 Revision. New York: United Nations, Population Division.*

Besides their high numbers, the migration flows to the EU have also become increasingly diversified, together with the new patterns of mobility. One of the important shifts has been the increase in short-term, circular migration,<sup>19</sup> as proposed by the European Commission’s Communication entitled “Circular Migration and Mobility Partnerships between the European Union and the Third Countries” (European Commission, 2007/248). The other shift has been the increase in irregular migration in the form of illegal entry or overstay. It is estimated that nearly 500,000 irregular migrants enter the EU each year (Boswell, 2005:3). Apart from the new

<sup>19</sup> The notion of circular migration is widely debated in the literature both analytically and empirically. In simple terms, circular migration refers to temporary movements of a repetitive character formally or informally across borders, in generally for work which is in the framework of temporary migration (Wickramaseka, 2011).

patterns of mobility, and in addition to traditional and relatively long-standing flows between countries that have historic, cultural or geographical links with EU member states, new migratory flows from Russia, Ukraine, China, Pakistan, the Central Asian Republics, West and East Africa countries are emerging, together with increasing flows from the South Mediterranean as result of recently changing dynamics, new conflicts and developments in the neighboring regions. Among these routes, while the dramatic events which took place in Ceuta and Melilla in the autumn of 2005 increased Europe's attention towards sub-Saharan immigration and its impact on their Mediterranean member countries (Pinyol, 2006: 205), this attention has tremendously increased since December 2010, with the recent demonstrations and upheavals known as the "Arab Spring" that have occurred in Tunisia, Egypt, Algeria, Morocco, Syria and the civil war in Libya that resulted in the fall of its regime. The arrivals of masses of irregular migrants and persons in need of international protection from the region headed mainly to Italy, Malta and Greece are high. It is estimated that more than 20,000 migrants, mainly from Tunisia and, to a lesser extent from other African countries, have managed to enter the EU irregularly, reaching the shores of Italy (mostly to the island of Lampedusa) and Malta, both of which are, as a result, under strong migratory pressure (European Commission, 2011/248:5). The massive displacement of populations from several North African countries has put the protection and reception systems of some member states under increasing strain. The EU has so far contributed to the repatriation of approximately 50,000 third country nationals, although these numbers are expected to increase due to ongoing events in the region. In this regard, recently the Commission published a Communication on migration that confirmed again the need for third country cooperation for a strong and common EU policy in the field of migration and asylum. By highlighting its concerns about political unrest and military conflicts that may entail upheaval and uncertainty in the short and medium term in the Southern neighborhood, it emphasizes: "Making substantial progress on legislation, operational cooperation and in our relations with third countries is more necessary than ever." (European Commission, 2011/248: 3).

In close association with these changing geopolitical conditions and increasing conflicts in the neighboring regions, the EU also continues to receive a high number of refugees and asylum seekers. According to the OECD (2011: 61), France was the

largest recipient country in 2009, with about 42, 000 asylum applications, followed by the USA, Canada, the UK and Germany, with requests numbering between 28,000 and 38,000. However, relative to population, Norway, Sweden and Switzerland receive the highest number of asylum applications, with more than 2,000 requests per million population.

According to Eurostat, 257,800 asylum applicants were registered in the EU27 in 2010 (Eurostat, 2011a). As a consequence of the ongoing events of the “Arab Spring”, the number of asylum seekers in the EU-27 increased by 4,000 during the first quarter of 2011 compared with the same period of 2010 (Eurostat, 2011b). Additionally, a substantial number of economic migrants are known to use the asylum procedure to try to enter or stay on EU territory. These developments have led to Africa and the Mediterranean becoming priority regions, with increasing migration flows towards EU member states strongly driving the need of a coherent external dimension to EU immigration policy with the main aim of sustaining the European area of security and justice. This requires active cooperation with the regions of origin and transit.

In relation to these issues, as noted before, the Treaty of Amsterdam is a significant initiative in bringing a new quality and dynamic to the EU’s cooperation in JHA, which has turned into a major field of EU policy making. However, the increasingly high migratory pressure on Europe, which has created one of the major transnational challenges to cooperation in JHA, has revealed the need for a global approach to migration, beyond what was introduced in the Treaty of Amsterdam. The multilayered nature of EU’s cooperation in JHA, in particular regarding migration management, organized as it is around the duality of an intergovernmental and supranational internal regime, lacks a nascent external one. In other words, cooperation in migration management has developed in relation to liberalizing migration inside the Union through freedom of movement, in contrast to control over immigration from outside the Union (Lavenex and Uçarer, 2006; 5). In this regard, while the free movement of persons within the EU is actually encouraged for EU nationals, the movement of non-EU-nationals across external borders into the EU is considered as a challenge to be controlled. As Monar puts it, the EU-space is “safe(r) inside” and contrasted with the “unsafe(r) outside” (Monar, 2001: 762). This

distinction has created a dividing line between “inside” and “outside” that has become embodied in “law enforcement” and “border controls” as the key instruments emanating from the need to control external frontiers, which became one of the major objectives of EU cooperation in JHA. Thus, “border confirming” and “border transcending” became a central debate in formulating the external dimension of migration policy in the context of creating and sustaining the area of freedom, security and justice within the EU (Zeilinger, 2010:19). It is increasingly being argued that ‘border confirming’ represents the materialization of the EU as a “gated community” by defining the outer edges of the EU in sharper form (Grabbe: 2000). On the other hand, “border transcending” means transforming the EU’s external boundaries into zones of interactions, opportunities and exchanges (Dimitrovova 2010:1). However, the current strict controls at EU borders and the EU’s restrictive visa policy towards the non-EU citizens of neighboring countries can be evaluated as “confirming the borders”, by extending the security concerns beyond its borders in order to maintain the area of freedom, justice and security within EU borders.

This external dimension of immigration policy was only officially recognized by the Tampere Presidency Conclusions in 1999, which acknowledged that the realization of the internal area of freedom, security and justice does indeed have an external aspect. Tampere explicitly revealed that the EU’s external relations should be used to attain the EU’s internal security objectives (Wolf, 2009:13). This stance was reinforced by the Feira European Council of 2000, which emphasized that the main purpose of the JHA external dimension was to contribute to the establishment of the area of freedom, security and justice, rather than developing a “foreign policy” specific to JHA (Council of the EU, 2000: 5). That is, it refers again to the development of EU’s foreign policy objectives in relation to internal security concerns from a realist perspective.

In addition to protecting its internal security, the EU, through its initiative of “A Strategy for the External Dimension of JHA: Global Freedom, Security and Justice”, also appears to be a normative power, active in the area of human rights and promotion of good governance (Council of the EU, 2005a). This articulates, for the first time, a strategy that needed to be adopted for the external dimension of the area of freedom, security and justice as an integral part of the EU’s external relations

policy. This strategy also introduced the concept of “partnership” with third countries in the field of JHA, emphasizing international cooperation in order to guarantee security, not only inside, but also outside the EU by making the area of security, freedom and justice in the EU a source of inspiration for other countries. To secure this stability, the EU encourages third countries to promote EU norms and values, such as the rule of law, institution building, good governance, enhancing non-EU countries’ capacity to manage migration and combat terrorism and organized crime. This is clearly emphasized in the strategy as

The development of the area of freedom, security and justice can only be successful if it is underpinned by a partnership with third countries on these issues which includes strengthening the rule of law, and promoting the respect for human rights and international obligations (Council of the EU, 2005a: 2).

These developments show the urgent need for the EU to cooperate with third countries and develop policies for managing and controlling legal migration as well as curbing irregular migration. From this perspective, it can therefore be argued that that the main rationale for the development of an external dimension of immigration policy is closely associated with the EU’s ultimate goal of achieving internal security. That is, externalization has developed to respond to the needs of EU citizens, taking its main motivation as the creation of an area of freedom, security and justice. This motivation is clearly stated in the objective of the Commission’s Communication

The purpose of this Communication is to demonstrate how the external dimension of justice and home affairs contributes to the establishment of the internal area of freedom, security and justice and at the same time supports the political objectives of the European Union’s external relations, including sharing and promoting the values of freedom, security and justice in third countries (European Commission, 2005a)

Externalization thus complements the creation of the internal area of freedom, security and justice, and supports the development of external relations in general (Ramses, Wessels, Marin and Matera, 2010: 284). As the European Commission Home Affairs notes, “[h]aving an effective strategy for the external dimension of Home Affairs contributes to the further development of the EU’s internal area of freedom, security and justice” (European Commission, Home Affairs, 2012). This

initiative also highlights another significant main driving force for the development of an external dimension of EU's policies in JHA: the debate over the EU's internal and external security nexus as a result of the securitization of migration.

#### **2.2.1.2. Securitization of Migration: The internal-external security nexus**

Traditionally, migration has been seen as primarily an economic and social issue, rather than a security issue. While it would be wrong to link migration too closely to security issues, recent international challenges point to an increasing number of areas where migration policies intersect with security issues (IOM, 2010a:6). The EU confirms that economic migration is relevant here, since migration can have a substantial positive impact both for host and source countries, if it is managed effectively. Uncontrolled and illegal migration, however, are seen as crucial problems and challenges which endanger the internal security of the EU (Council of the EU, 2005b). The emergence of external approaches to immigration policies have thus emerged mainly on the basis of this debate about the EU's internal-external security nexus.

Security issues have diversified since 1980, with the re-conceptualization of "threat" requiring international cooperation on security policy areas of terrorism, organized crime, trans-border crime, irregular immigration, asylum seekers and minority ethnic groups. Especially following the end of the Cold War, security threats became perceived as more than simply military issues. Instead the focus widened to include societal, economic and environmental security. Insecure borders, irregular migration, organized crime and terrorism were identified as new, non-traditional, soft security threats that could not be tackled by military means. Unlike the Cold War era, where the nuclear confrontation between East and West was considered as the major security threat, present security challenges are characterized as more diverse, less identifiable and less predictable (Council of the EU, 2003a: 3).

The securitization of migration, which deals with the link between migration and security, has been extensively studied in the literature (Bigo 2001, Huymans 2006). Of the various threats, Kirschner and Sperling (2002) identified ethnic factionalism and migratory pressures as the two most likely to occur among a list of twelve types

of threats, while Buzan and Waever (1998:121) give migration as one of the three main threat categories in the societal sector of security.<sup>20</sup> They argue that the host society is changed by the influx of outsiders by changing the composition of the population and also by increasing fears over competition for often scarce local sources. Buzan claims that migration threatens communal identity and culture by altering the ethnic, cultural, religious and linguistic composition of the host population, (Buzan, 1991: 447). However, the question of whether migration is a threat or only a challenge to security is still a contested issue in the literature. Theoreticians and practitioners also dispute whether migration itself, or only irregular and uncontrolled migration, constitutes a security threat. In this regard, the concept of the migration-security nexus focuses on the relation between, and impact of, migratory flows on social stability, demographic security, cultural identity, the social security system and welfare state philosophy, and internal security.

The debate on securitization of migration dates back to the conclusion of the Single European Act in 1986, which aimed at abolishing internal border controls in order to focus on controlling cross-border irregular migration. Thus, in the early stages, the literature on the securitization of migration developed around the conceptualization of irregular migrants as a “threat” which required “urgent” measures. The focus then shifted to a “management discourse”, which emphasized the need to manage and control the already securitized issue of migration. The Maastricht Treaty placed migration, together with other law enforcement issues, such as terrorism and organized crime, under the same intergovernmental pillar of “Justice and Home Affairs”. After the Tampere European Council, which emphasized the necessity to “manage migration flows”, the phrase “migration flows” became commonly used in EU discourse on migration, with an increasingly negative connotation of the need for management and control (Babayan, 2010:20). At the Seville European Council, the securitization of migration was explicitly highlighted, with an emphasis on the urgent need for political action, listening “terrorist threat” and “illegal migration” side-by-side as issues to be combatted and resisted (Council of the EU, 2002).<sup>21</sup>

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<sup>20</sup> Societal security concerns the ability of societies to reproduce their traditional patterns of language, culture, association, and religious and national identity, and custom within acceptable conditions for evolution (Buzan: 1991, 433).

<sup>21</sup> Although international terrorism and organized crime are beyond the scope of this study, it should

In general, therefore, the EU is more likely to perceive migration as a challenge to internal security, rather an opportunity for development. Irregular immigration, in particular, is seen as a serious security threat, with the Commission describing it as “a political priority at both national and EU level” (European Commission, 2004: 11). In this way, rather than focusing on military defense, the management of external borders became more concerned with diverse and complex new soft security issues, beyond the fight against illegal immigration, such as crime, terrorism, arms trafficking, corruption and fraud.

From a traditional perspective, the internal-external security nexus separates internal security (public order, political stability) from external security (external peace, military engagement). However, the boundaries between internal and external security have become blurred due to the increasingly trans-boundary nature of new security issues. In particular, the debates on linking uncontrolled migration with other security issues, such as organized crime or terrorism, blurs the distinction between internal and external security, which leads to an increasing attention on the external sources of the problem (Bigo, 2001). The EU responded to this development in its external JHA strategy adopted by the Council in December 2005 by indicating that the policy field of JHA should become a “central priority” of the EU’s external relations (Council of the EU, 2005a:2).

Thus, it can be seen that, as a result of the diversification of security issues and the emergence of global transnational challenges, the EU attempted to develop an external dimension of its immigration policies. This need intensified in the mid-1990s, especially with the rise in the number of refugees and fears about a mass influx of immigrants from Central and Eastern Europe (Boswell, 2003: 621). Later, the terrorist attacks on the USA on 11 September 2001 marked a critical point in perceptions of security that had a lasting impact on many areas, including migration

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be noted that, due to their cross-border dimension, they involve a range of matters linked with the externalization of immigration policies, such as border and entry controls, visa policy and irregular migration. It has been observed that, especially after the 9/11 terrorist attacks on the USA, measures aimed at preventing terrorism were, in a simplistic and tendentiously casual manner, explicitly linked to and reflected in stricter immigration policies, although migration management is not the primary tool in the fight against terrorism (IOM, 2010a:6).

management and border control. The Eastern enlargement of the EU in 2004, which brought it closer to a new neighborhood, was another main impulse for the emergence of an external dimension of European immigration policy. Finally, irregular migration, perceived as one of the most dangerous forms of migratory flows due to its uncontrolled character, constitutes another prominent driving factor for externalization.

As mentioned, the tragic events of September 11 were a critical moment that demonstrated the vulnerability of developed states to terrorist attacks, and the need for closer international cooperation to combat terrorism as a global challenge. This newly globalized struggle against terrorism was integrated into all aspects of EU's external relations and policies. The subsequent terrorist attacks in Madrid on 11 March 2004 and in London on 7 July 2005 caused a strategic shift that changed the priorities of the EU concerning migration to focus more on its security aspect. The EU began to highlight the link between migration and international terrorism by accepting that terrorism is no longer limited to specific nations and regions. Rather, the ease of travel, economic and cultural exchange can also be exploited by terrorists (IOM, 2010a:6). As a result, after 2001, migration issues were shifted from so-called "low politics" to so-called "high politics" related to state security (Lahav, 2003: 90). The securitization of migration was prioritized, becoming more strongly linked to national security issues with a particular focus on border security, whereas other aspects of economic development and social integration were pushed into the background (Pinyol, 2006:205). In a similar manner, the mainstreaming of internal security objectives in EU external relations concerning immigration also pushed human rights and civil liberties-related issues into a secondary status (Trauner, 2011:5).

The urgent need for international cooperation in external action against the security threats challenging the EU is explicitly reflected in the European Security Strategy of 2003. The strategy clearly stresses the fuzzy nature of common soft security threats and highlights the need of a long-term solution, which entails cooperation with neighboring states and between policy areas: "Better co-ordination between external action and Justice and Home Affairs policies is crucial in the fight both against terrorism and organized crime" (Council of the EU, 2003a: 13). Similarly, the

“European Internal Security Strategy” (2010), which serves as an indispensable complement to the EU Security Strategy (2003), recognizes the interdependence between internal and external security in establishing a “global security” approach with third countries. In Article 9, “external dimension of internal security/cooperation with third countries”, the “European Security Model” emphasizes that “concept of internal security cannot exist without an external dimension, since internal security increasingly depends to a large extent on external security” (Council of the EU, 2010a: 16). The external dimension of migration and cooperation in migration management with the third countries thereby associated with the transfer and externalization of EU’s internal security threats in the area of freedom, security and justice (Lavanex and Wichmann, 2009), as stated in the European security model

The quality of our democracy and public confidence in the Union will depend to a large extent on our ability to guarantee security and stability in Europe and to work with our neighbors and partners to address the root causes of the internal security problems faced by the EU (Council of the EU, 2010a:3).

The EU’s eastward enlargement towards Central and Eastern European countries is also seen as another major challenge to the EU’s internal security interests, particularly sharing a border with four new countries (Belarus, Moldova, Russia, and Ukraine). The prospect of eastward enlargement fostered a link between European internal and external security since there was the risk that the new EU members would import insecurity factors inherent to post-communist countries and former war-torn regions and also expand EU borders to regions of transit and migration source countries. The attempt to reinforce the internal security apparatus of candidate countries and prepare them during pre-accession so as to successfully integrate them into the European internal security area can be considered as being one of the first concrete initiatives of the JHA external dimension.

It was claimed that this major enlargement would eliminate the “buffer zone” between the “core” and the “outside” as the EU’s borders move closer to its new neighborhood. However, the enlargement also brings threats closer because of the new members’ mainly ill-defined migration control systems and porous borders, as well as their lack of expertise in migration and border management (Zeilinger, 2010:

16), which has led to the need for a novel EU security approach for the neighboring states. This is also clearly stressed in the European Security Strategy

The integration of acceding states increases our security but also brings the EU closer to troubled areas. Our task is to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations” (Council of the EU, 2003:8).

Given their key geographic position, lax entry controls, and liberal visa regulations, the EU sees these countries as providing the conditions for attracting transit migration (IOM 2003), and thus as a source of “soft security threats” for the EU, being both countries of origin and transit countries for irregular migrants (Lavanex, 2004:89). Thus, controlling migration has become a particularly important issue regarding the EU’s cooperation with third countries, with a primary focus on minimizing irregular migration to the EU (Lavenex, 2006), in particular through transit countries. Indeed, part of the underlying logic of the ENP and Strategic Partnerships is the EU’s effort to secure its own area (Zeilinger, 2010: 18) through these countries, by improving their capacity to control and restrict migration (Guild 2005). Therefore, the EU has focused on both new members and new neighboring countries to help them to develop effective migration management and border controls, including obligations to control migration flows through their territory to contribute to common security in Europe.

In summary, the linkage between internal and external security is acknowledged as a relatively recent phenomenon that became more evident after the sharp divide between internal and external security disappeared with the shift to a post-Cold War security environment. The external dimension of JHA has therefore come to be seen as the thematic external dimensions of various EU internal security policies (Wolf, 2009: 10). Thus, the external dimension of immigration policies did not develop independently from this security context, as acknowledged in the EU’s Hague Programme, which highlights the need to complement the internal dimension with external action (Council of the EU, 2004a:12).

### **2.2.1.3. Global Approach to Migration for Economic and Social Development**

While the diversification of security issues and transnational challenges was one factor that forced the EU to strengthen its external migration policy by cooperating with non-EU countries, the other motivating factors that have contributed to the development of external cooperation in migration are the EU's global economic objectives and development cooperation. Geddes as argues that internal changes in labor markets, populations and welfare states have played a significant role in shaping the external dimension of EU action, whereby the external is "internalized" (Geddes, 2005:788). In a similar manner, the EU emphasizes that effective cooperation with third countries on JHA issues supports the EU's own economic and trade objectives by ensuring a conducive political and legal environment for economic development (Council of the EU, 2005a). While the EU acknowledges the contribution of legal migration to the EU's economic development, its development strategies in third countries also aim to eliminate the root causes of migration and reduce uncontrolled irregular migration to the EU.

In the recent years, with the continuing severe effects of the 2008-2012 global financial crisis, the labor markets of EU member states have shrunk, leading to both increasing unemployment and specific labor market shortages. The financial crisis, which quickly turned into an employment crisis, mainly hit the key migrant destination countries, such as Germany, France, UK and Italy (UNDP, 2009: 41). Eurostat indicates that this increase in unemployment rates has been felt in every EU country, although the severity varies widely between countries and sectors (Eurostat 2009). For example, the EU's unemployment rate in December 2011 was 9.9%, which approximates to 23,816,000 people in the EU, with the highest rate in Spain (22.9%) and the lowest rate in Austria (4.1%) (Eurostat, 2011c). Conversely, certain specific sectors, such as health, science and technology, were experiencing labour shortages, since the domestic workforce could not offer the necessary specific skills. European Commission's Communication on new skills and jobs estimates that by 2020 there will be a shortage of about one million professionals in the health sector while the labor shortage of ICT practitioners is expected to reach 384,000-700,000 jobs by 2015 (European Commission, 2010/682). Moreover, there is not only a shortage of labor expanding sectors of the economy, but also for jobs requiring a mix

of lower skills. Thus, the EU recognizes that accepting migrants with the skills that correspond to EU needs could be a possible response to labor and skills shortages in certain sectors (European Commission, 2011/248).

In addition to the current economic and financial crisis, Europe is also facing a demographic challenge as the population is both ageing and declining. For example, it is estimated that, by 2050, 33% of the EU population will be over 65 years old, which implies having 2 retirees for every active person as a consequence of low birth rates and ageing population (World Bank, 2009). The working age population for Europe is estimated to have decreased by 23% in 2050 (UNDP, 2009: 44). From almost 501 million in 2010, the EU population is projected to rise to 520.7 million in 2035, but then fall to 505.7 million in 2060 (European Commission, 2011/ 291). It seems that the future workforce needed to finance the shrinking social security systems and mitigate the negative implications of demographic challenges can only be supplied from labor markets outside the EU. Given this context, migration as a policy alternative to provide the required active labor force is increasingly seen, or at least considered, in conjunction with other policies as a means to tackle these demographic challenges (OECD, 2011: 104). Currently, net migration already contributed 0.9 million people, or 62% of the EU's total population growth in 2010 (Eurostat, 2011d). In order to maintain European social security systems, a net inflow of 66 million labor migrants is required (Munz, Straubhaar, Vadean, 2007:5). Thus, the Europe 2020 Strategy also emphasizes the need for a rational migration policy, recognizing the contribution of migrants to economic dynamism, new ideas and creating jobs, while helping to fill gaps in the EU's labor market that EU workers cannot or do not wish to fill (European Commission, .

In a similar manner, the Europe 2020 Strategy accepts that migration and mobility can contribute to the vitality and competitiveness of the EU. Securing a workforce from outside the EU with the necessary skills to cope with the evolving demographic and economic changes has been set as a strategic priority for Europe, with well-functioning border controls, lower levels of irregular migration and an effective return policy being seen as mechanisms that create opportunities for the legal migration and mobility (European Commission, 2011/743:5) that can contribute to increasing the EU's competitiveness and enrich European societies. Indeed, the

contribution of immigrants to the EU's economy has been substantial, as observed in the period 2000–2005 in which third country immigrants to the EU accounted for more than a quarter of the overall rise in employment and for 21% of the average GDP growth in the EU-15 (European Commission, 2011/291:2). Consequently, as Boswel (2005:1) notes, European countries wish to recruit more migrants to fill the labor and skills shortages in the coming decades.

As a result of this combination of various challenges and opportunities in the area of migration and mobility, the EU realized the need for a strategic approach for relations with third countries. The development of a comprehensive migration policy was defined as a core objective at the October 2005 Summit at Hampton Court. Following this, the “Global Approach to Migration” (GAM) was adopted in 2005, which is an important initiative setting a path towards a more integrated and global approach by coordinating relevant policies to fight against illegal immigration and benefit legal migration, in cooperation with third countries (Council of the EU, 2005b). GAM illustrates the EU's ambition to manage migration in a coherent way through political dialogue and close practical cooperation with third countries. Thus, it recognizes migration issues as central to the EU's relations with a broad range of third countries, including, in particular, the neighboring countries east and south of the Union. It aims to bring together the various relevant policy areas, including external relations, development, employment, and justice, and freedom and security, by determining target actions mainly centered on Africa and the Mediterranean region. However, GAM includes only a limited emphasis on development, which is only mentioned as a commitment of the EU to support the development efforts of countries of origin and transit as part of a long-term process. Nevertheless, it was an important step since it acknowledged that the fight against illegal migration flows was no longer the only priority, and that “migration and development” would now be placed on an equal footing, at least politically (Weinar, 2011:5).

“Arab Spring”, further highlighted the need for a comprehensive EU migration policy and revision of the GAM to respond to the changing international context. The proposed new version, entitled “Global Approach to Migration and Mobility” (GAMM) in 2011 (European Commission, 2011/743:3-4), explicitly highlights the potential contribution of third countries to the development of the EU's economy and

labor market within the framework of “migration and mobility for development” instead of the notion of “development” referring to the improvement of third countries in economic and social terms, which focuses on decreasing poverty and creating jobs in these countries. The document emphasizes a broader thematic and geographical balance with stronger policy coherence and integration with the EU’s external policies, such as trade and development cooperation. However, in GAMM, the emphasis on development appears to have shifted towards promoting legal migration from third countries and boosting the positive synergies between migration and development rather than aiming to reduce the root causes of migration as a priority in third countries. This is more visible in the case of “mobility partnerships”<sup>22</sup> that have been prioritized in GAMM, which offer a concrete framework for dialogue and cooperation between the EU and non-EU countries.

In providing a consolidated, overarching framework for the EU’s external migration policy, GAMM provides a series of priority activities based on the following four pillars concerning the EU’s dialogue and cooperation with non-EU countries:

1. organizing and facilitating legal migration and mobility,
2. preventing and reducing irregular migration and trafficking in human beings,
3. promoting international protection and enhancing the external dimension of asylum policy,
4. maximizing the development impact of migration and mobility.

GAMM demonstrates that the issues concerning development, employment and economic progress also encouraged the externalization of EU migration policies since it provided a consistent, systematic and strategic policy framework for the EU’s relations with all relevant non-EU countries. However, it should also be noted that, while the existing focus on a security-centered approach continues, GAMM has brought the development approach into the debate by providing an understanding of migration and mobility as positive forces for development, which contribute to

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<sup>22</sup> Mobility partnerships focus on facilitating and organizing legal migration, effective and humane measures to address irregular migration, and concrete steps towards reinforcing the development outcomes of migration, which mainly refers to concluding visa facilitation and readmission agreements.

European welfare by better managing economic migration. In this regard, somebody from outside the EU is no longer defined solely as a soft security threat but rather, as Geddes put it, as a potentially “useful migrant”, understood in terms of his or her putative economic contribution (European Commission, 2005:788).

In sum, control of external frontiers has become one of the major objectives of the EU’s external cooperation effort in JHA. The above discussion of the factors and motivations for this shift show that the main policy objectives of the EU’s external policy on migration management can be summarized as follows: 1) improvement of border control and border management that facilitate legitimate migration 2) prevention of irregular migration and return of illegal migrants to their countries of origin or former residence (transit country) and, 3) ensuring the protection of recognized refugees and developing infrastructure to handle asylum seekers (Zeilinger, 2010:20). These objectives are directly reflected in the instruments used in implementing EU migration policy cooperation with third countries, which will be studied in detail in Chapter 3.

### **2.2.2. Approaches Explaining the External Dimension of European Immigration Policy**

There is no clear pattern or form of cooperation or defined policy instruments concerning EU policies on the external dimension of JHA. As mentioned earlier, Boswell identifies two main approaches to externalization of migration policy in the context of cooperation with sending and transit countries: the “remote control approach”, which refers to the externalization of control tools; and the “root-cause approach”, which is also known as “prevention” (Boswell, 2003, 620). These two approaches both transfer classic migration management instruments to non-member countries and orient arguments for normative debate (Aubarell, Barrero, Araga, 2009:15). They can be placed within the context of the main logic and objectives mentioned in the first part of this chapter, which motivate the development of an external dimension of the EU’s immigration policy. The aim to sustain a European area of freedom, security and justice, and take a global approach to migration, leads to the development of policy being based around these two approaches of “remote control” and “root-cause”. Remote control is a security-based and reactive approach,

aiming to restrain the movement of people, whereas the root-cause approach is development-based and proactive in character, which aims to stimulate alternatives to migration through political innovations that the push factors causing people to leave their home countries.

#### **2.2.2.1. Remote Control Approach**

The EU has perceived and approached uncontrolled migration in recent decades as a soft security threat. In addition, the eastern enlargement brought the EU into proximity with new regions and countries, so stabilizing the neighborhood emerged as a major challenge for the EU's internal security. The potential for irregular immigration by third-country nationals travelling through applicant and new member countries was the most evident and pervasive of these concerns (Grabbe, 2000). In support of the idea that EU's security is interdependent with that of neighboring countries and regions, Buzan and Waever argue that "most threats travel more easily over short distances than over long ones, security interdependence is normally patterned into regionally based clusters: security complexes" (Buzan and Weaver, 2003:4). Accordingly, a strong and effective control of external frontiers became a crucial objective of EU cooperation in justice and home affairs, leading in turn to the securitization of migration and border policies (Aubarell, Barrero, Araga, 2009: 10; Vink 2002).

The first form of cooperation addresses the externalization of traditional tools of domestic or EU migration control to sending and transit countries. Lavanex sees this externalization as conditioned by the construction of a "security community" in a geographical context, which aims to ensure the area of freedom, security and justice within the EU (Lavanex, 2004a:681). Thus, the externalization of migration policies occurs at the EU level in the form of domestic policy transfer beyond EU territories to third countries, with a strong focus on a security and control approach (Aubarell, Barrero, Araga; 2009; 6). In terms of a conceptual analysis of the external dimension of migration policies, this extra-territorial control can be labeled as the "remote control" approach (Zolberg, 2003) with its growing emphasis on the external dimension of migration. It includes the need for cooperation with sending and transit countries by strengthening border controls, combating illegal entry, migrant

smuggling and trafficking, or readmitting migrants who have crossed into the EU illegally (Boswell, 2003: 619).

As already outlined, the remote control approach is a security-based and reactive one which mainly aims to restrict the movement of people. Thus, its basic logic is to sort prospective migrants before their arrival in EU territories since it is very difficult to expel unwanted migrants once they have entered the EU due to various legal and human rights protections. In other words, the remote control approach is associated with the reproduction of Europe's internal migration policy at the external level, which emphasizes burden-sharing in the policing of European borders with bordering countries, and the setting up of migration management policies in the countries of origin in line with European interests. Papadopoulos explains remote control as creating policies that are implemented in the sending country yet derived from the receiving country's internal dynamics and internal need for security and stability (Papadopoulos, 2007:98). Or, as Trauner and Kruse put it, the security approach is "the explicit attempt of the EU to balance internal security concerns and external stabilization needs" (Trauner and Kruse, 2008: 2). In the same manner, Lavanex (2006: 330) sees the EU's shift towards extraterritorial control as the continuation of the trans-governmental logic of a policy framework which emphasizes the control and security aspect of migration in an altered geopolitical context. In short, it entails the transfer of border controls to third countries or border countries, meaning that cooperation involves prioritizing European interests in border controls. This, however, contradicts European rhetoric based on openness to development, since implementation proves, in practice, to have a Euro-centric perspective that privileges border management and control of irregular migration flows. It implies a downgraded interest in development and cooperation for a well- functioning legal migration regime (Doukouré and Oger, 2007). Moreover, the security concerns of EU member states concerning cooperation and integration in immigration policies has made the nature of these efforts highly restrictive (Geddes, 2003). As Huysmans notes, European immigration policies are driven by "restrictive and control-oriented imperatives", which makes all the regulations at the EU level on migration having one point in common: they all "emphasize the need for restriction of population flows" (Huymans, 2000: 756).

The traditional instrument of “remote control” is visa policy, which sorts migrants at the border through state agents. The second instrument is mobilization of third countries to control migration flows to Europe, which involves processing demands outside the EU. (Aubarell, Barrero, Araga, 2009:13). The use of readmission agreements, mobility partnerships, and increased coastguard patrols and other forms of surveillance are other instruments for controlling migration and asylum flows. The intensity of the EU’s and member states’ use of these instruments demonstrates which approach currently prevails over the other concerning the development of the external dimension of migration.

#### **2.2.2.2. Root-Cause Approach**

The second approach involves policies and measures aimed to affect potential migrants’ decisions to move, and their destinations. It is preventive in nature, aiming to eliminate the root causes of migration, especially in countries with high emigration rates. The root-cause approach is included in the 1992 Council of the EU Declaration concerning the principles governing external aspects of migration policy, which acknowledges: “the importance of analyzing the causes of immigration pressure and analyzing ways of removing the causes of migratory movements”. Thus it focuses on eliminating the push factors, the causes of migration and refugee flows. Its primary focus is on ameliorating employment issues, developing governance and demographic changes to minimize economic migration, and increasing respect for democracy and human rights to minimize the number of asylum seekers and refugees. These measures are considered as development-based and proactive “preventive approaches” by Boswell (2003). Preventive approaches deploy a rather different range of tools, including development assistance, trade and foreign direct investment, or foreign policy tools (Boswell, 2003: 620). Unlike the remote control approach, its basic orientation is not to restrain the movement of people but to construct and encourage it. Similarly, Papadopoulos discusses a capacity-building strategy implemented in sending and transit countries, aiming at the transfer of know-how, surveillance technologies, facilities and institutions (Papadopoulos, 2007:98). The rationale of this approach is to reduce the push factors that motivate people to migrate, so it includes elements of conflict prevention, peace-keeping, protection of human rights and rule of law, support for economic and trade

liberalization, and provision of development aid (Aubarell, Barrero, Araga., 2009;15). In economic and social terms, it focuses on issues like reform and job creation, decreasing poverty, improving socio-economic prospects, and wider access to quality education. In short, the root causes approach involves the integration of asylum and immigration policies with the EU's other external policies related to development, trade, human rights, humanitarian assistance and foreign and security policy.

The impetus for a root-cause approach was provided in 1999 by the Tampere Conclusions, which called for “a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit” (Council of the EU, 1999). This was then reinforced by the European Council Conclusions in Seville in 2002, which acknowledged that “closer economic co-operation, trade expansion, development assistance and conflict prevention are all means of promoting prosperity in the countries concerned and thereby reducing the underlying causes of migration flows” (Council of the EU, 2002:10).

However, the most prominent attempt at introducing a developmental approach was the initiative of the “Global Approach to Migration”, adopted in 2005, mentioned above, which aimed to increase legal migration while decreasing irregular migration through a perspective of development cooperation. The commitment of the EU is clearly indicated in the Presidency Conclusions

The European Council recognizes the importance of tackling the root causes of migration, for example through the creation of livelihood opportunities and the eradication of poverty in countries and regions of origin, the opening of markets and promotion of economic growth, good governance and the protection of human rights<sup>23</sup> (Council of the EU, 2005c:3).

However, although the EU recognized that the prime challenge is to tackle the main push factors for migration, such as poverty and the lack of job opportunities (European Commission, 2006/735: 5), these early initiatives were not sufficiently

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<sup>23</sup> In this regard, the increase of financial assistance by up to 3% of the ENPI concerning migration cooperation in respect of relations with third countries has been welcomed by the Council.

effective to shape the Council's agenda accordingly. Instead, trans-governmental cooperation took the direction of focusing on control of flows rather than motives to move (Lavanex; 2006, 333). The migration-development debate shifted towards an approach of favoring legal migration mobility for development purposes, mainly in the EU. This will eventually have side-effects for the development of the sending third countries, whether positively in remittance flows or negatively in brain-drain effects. The EU's development initiatives to eliminate or decrease the root-causes of migration, such as decreasing poverty and creating new job opportunities, remains limited within this new approach of the migration-development nexus, which perceives migrants primarily as a development resource for the EU's benefit. This limited focus on third country development is very clear in the Communication of the Commission, "The Global Approach to Migration one year on: Towards a comprehensive European migration policy", in the section concerning migration and development agenda: "Migrants should be supported in contributing to the development of their countries of origin" by putting an emphasis on the issue of remittances (European Commission, 2006/735:5). Migration and development in Africa is discussed in terms of facilitating intra-African labor migration and mobility. Moreover, the "development" aspect also considers helping third countries in building their capacity to manage migration and asylum flows. This demonstrates, however, that the emphasis is still on the security aspect, with development perceived more in terms of managing legal migration than dealing with root causes.

This shift is also very prominent in the 2011 GAMM package, since the migration and development pillar is expanded, in which GAMM is defined as the "overarching framework for the EU external migration policy complementary to the European foreign policy and development cooperation" (European Commission, 2011/743:4). The fourth pillar of GAMM, "maximizing the development impact of migration and mobility", makes reference only to issues of legal migration, remittances, involvement of diaspora and migrant groups, improvement of migrant rights, intra-regional migration and capacity building. That is, the emphasis in practice is still more on the "mobility and development" aspect, despite the arguments in favor of prioritizing migration and development, and the realization that successful control of migration requires the constant integration of migration priorities with development policies. In short, referring to the general understanding of this migration-

development link, which revolves around “the three R’s” of Recruitment, Remittances, and Return (Papademetriou and Martin, 1991), the EU, in its actions, has given the latter two more prominence.

Further evidence of this prioritization is the structuring and allocation of financial assistance concerning a root-cause or development approach. Financial and technical assistance to Central and Eastern European countries since 1989, association agreements with potential EU member states, and the Stabilisation and Association Process with the Western Balkans have all contributed to enhancing the prosperity and stability of Europe’s neighbors, thereby addressing some of the causes of migration. The European Development Fund (EDF) is one of the most important mechanisms that allows non-EU countries to obtain substantial additional financial support to develop and implement governance reforms. However, Directorate General Development of the European Commission is rather reluctant to use already limited funds for migration purposes. Furthermore, the incentive resources depend on the outcome of a dialogue between the Commission and the partner country on regarding past performance and future commitments in the area of governance, including migration. Under the 9<sup>th</sup> EDF, the fund allocated to support migration and development related initiatives, has been increased from €25 million in 2006 to €40 million for intra-African, Caribbean, and Pacific Group of States migration and mobility for 2008-2013. However, this support through regional instruments has been concentrated on just a small number of countries, and it is too early to observe the results of the EDF funds allocated for migration activities (Thematic Programme 2011-13).

Following the “Arab Spring” crisis, in order to manage the humanitarian emergency generated by the sudden inflows of refugees and displaced persons, the EU and individual member states mobilized €100 million for humanitarian aid, of which almost half - €48.8 million - was provided by the Commission (European Commission, 2011/458). However these collective efforts to provide financial resources have proved inadequate to respond to the growing flows of refugees and irregular migrants from North Africa and Middle East. In addition, the Commission has been implementing, since 2007, a Thematic Programme called “Cooperation with Third Countries in the areas of Migration and Asylum”, which complements the

contribution of “geographical financial instruments” in assisting third countries in their efforts concerning migration and asylum matters. The general objective of the Thematic Programme is to support third countries in developing better management of migratory flows in all their dimensions. It seeks to enhance capacity building and encourage cooperation initiatives in the areas of migration and asylum. However, it does not deal with the root causes of migration because this is already supported by other financial instruments. Instead, the programme uses its budget, of around €384 million for 2007-2013, for capacity building in countries of origin and transit to encourage cooperation initiatives to develop and share experience, working methods and best practices regarding various aspects of migration. The Commission’s proposed financial allocation for 2014-2020 is 447 billion Euros (European Commission, 2011/840).

Migration related expenses, such as the building and maintenance of irregular migrants’ detention centers or hosting refugees, are included under “development” strategy by countries such as Spain, Malta and Slovak Republic, although these do not match the aims of the development aid, which must target spending on the enhancement of the people’s life conditions, such as developing work opportunities, income growth and accessibility to basic services (water, food, health and education). Thus, contrary to the discourse of a global approach to migration, external aid is being used more as an instrument for pushing the EU’s political, economic and security interests than alleviating poverty, injustices and inequalities, although the objective of migration control should be clearly separated from the objectives of development aid and eliminating the root causes of migration.

Apart from the contradiction on migration and development nexus, another critical issue is that a new security-related conditionality clause is being used for development support, namely conditionality based on cooperation regarding migration and repatriation. In relation to some migratory flows, EU Mediterranean countries prioritize mobility related development facilitations to those countries that are willing to cooperate on border controls, fighting irregular migration and accepting returned migrants (Caristas, 2010). The European Pact of Migration and Asylum, proposed during the French Presidency and adopted in October 2008, is a clear example of this implementation of a new conditionality. The pact makes EU

opportunities for legal migration conditional on a commitment from third countries to fight irregular migration (Caritas, 2010). More recently, the Communication on migration of 2011 emphasizes that cooperation to develop the conditions for growth and employment in countries of origin should be built on the principle of conditionality, specifically the commitment of partner countries concerning issues of preventing irregular migration flows, managing their borders efficiently and cooperating on the return and readmission of irregular migrants (European Commission, 2011/248: 3). Thus, rather than allocating development aid to eliminate the root causes of migration, this signals to third countries that Europe intends to offer “comprehensive packages” to foster legal and circular migration on condition that they prevent irregular migration and improve coordination concerning readmission agreements. Similarly Italy and Malta have chosen their cooperation priority countries according to their own migration patterns and concerns. This kind of conditionality associated with a facilitated mobility and performance based approach will be scrutinized in the next chapter of this study concerning visa policy and readmission agreements.

These observations support the conclusion that there is no clear pattern of cooperation and use of policy instruments concerning the external dimension of EU migration policy, but instead that there is a combination of the two approaches of “remote control” and “root cause”. These differ profoundly concerning their assumptions of influence levels, patterns of migration and refugee flows, impact on migration management and refugee protection, development and stability in sending and transit countries, and the nature of the EU’s relations with third countries. Thus, it is crucial to examine which pattern of cooperation is likely to predominate in the future. The root cause approach underlies, to a certain extent, EU initiatives such as multinational policies, the Global Approach to Migration, as well as the Global Commission on International Migration. GAM also introduces to some extent a development approach, by combining border security and protection with socio-economic and development aspects. However, GAM is also criticized as being limited and slow in influencing migration and development (Bruycker, 2009). Thus, although the root cause approach is highlighted in many EU documents, it often appears to reflect wishful thinking rather than action (Aubarell, Barrero, Aragall, 2009:15). Boswell also finds that repressive measures have had more resonance for

European governments, keen to reassure their electorates that they are resisting irregular migration. Preventive measures, on the other hand, take a long time to achieve results which may be less tangible (Boswell, 2005: 15).

Many scholars (e.g. Boswell 2003; Lavanex 2006; van der Klaauw 2002; van Selm 2002) argue that the remote control approach towards the externalization of EU immigration and asylum policy through political and institutional factors predominates over root-cause approach. Lavanex, for example, defines the “externalization strategy” of the EU as consisting of the externalization of EU migration control through exporting it to third countries (Lavanex, 2004b:94). Supporting this observation is the European Security Model, which states that “[t]he EU’s policies with regard to third countries need to consider security as a key factor and develop mechanisms for coordination between security and other related policies, such as foreign policy, where security issues must increasingly be taken into account in an integrated and proactive approach” (Council of the EU, 2010a: 16). Babayan also addresses the EU’s obsession with control, which has led to “development” becoming not an end in itself, but merely a means of achieving the goals of migration control (2010: 32).

All this demonstrates that the migration management concerns are being handled within more security constructive patterns of cooperation in the EU’s relations with third countries. However, instead of this, the EU should go beyond concern with border controls and fighting illegal migration to incorporate, through a comprehensive approach, other dimensions, in particular development and employment. The links between migration and development should be acknowledged in the broader context of supporting development in third countries, promoting well-managed labor migration, protecting migrants against exploitation and exclusion, and promoting asylum and international protection.

### 2.3. Europeanization of EU Immigration Policy Towards Third Countries

After clarifying the main objectives of the EU's attempt to externalize its immigration policy, and the main approaches dominating the field, the theoretical tools offered by the literature on Europeanization beyond the borders can now be applied to the specific and increasingly salient policy field of migration.

As discussed in the theoretical framework part of this chapter, the scope, conditions, and mechanisms concerning relations between the EU and individual third countries are determinant factors in terms of the effectiveness of policy externalization. The differing circumstances, institutional affiliation, geographic and institutional proximity, degree and motivation of interest toward European integration, identity of the third country as receiving, transit or sending of immigrants, interdependencies and externalities all provide a distinct scope of actions for the EU (Lavanex and Uçarer, 2004:420).

Before applying Europeanization to the migration case, four main obstacles can be identified that limit external cooperation on migration at the EU level (Weinar, 2011: 1). The first challenge is the limited ability of an organization comprising 27 sovereign States to define its migration policy, mainly due to the conflicting division of competence at the EU level. The second one is the tensions between the national and supranational level in the EU as regards international cooperation on migration. Thirdly, the diverging interests and priorities of sending regions and partner countries limit external cooperation on migration. Finally, cooperation is weakened by the limited implementation capacities of the EU and its member states, as well as partner countries.

#### **2.3.1. “Policy Transfer” and “Policy Adaptation” in Migration Policy**

In conceptualizing the external impact of the immigration regime on third countries, Lavanex and Uçarer (2004), in their study of the external dimension of Europeanization in the area of immigration policy, distinguish two modes of external

governance: “policy transfer” and “policy adaptation”<sup>24</sup>. They explain the externalization of EU migration policy through these analytical tools. Policy transfer can be defined as “a process in which knowledge about policies, administrative arrangements, institutions etc. in one time and/or place is used in the development of policies, administrative arrangements and institutions in another time and/or place” (Dolowitz and March, 1996: 344)<sup>25</sup>. It can occur in the form of obligated/coerced transfer which operates vertically as a top-down and binding process on third countries. In this form of obligated and direct imposition, it is not necessarily in the interest of the third country. In the other form, policy transfer and adaptation takes place voluntarily in a bottom-up horizontal process (Lavanex and Uçarer, 2004: 420). The cooperation develops according to the nature of the relationship, such that some countries might be more willing to cooperate, whereas others may be in conflict with EU’s efforts in the region to compel adaptation and change. In this context, cooperation on migration issues between the EU and the third countries varies according to whether the third country perceives a necessity to change its policies voluntarily or involuntarily. This is directly related to the form of institutional affiliation, governance mechanisms and conditions concerning the framework of relations as explained in the theoretical section on Europeanization.

Regarding institutional affiliation and conditions, policy transfer might happen through conditionality: that is, a strategy of reinforcement by reward in which EU acts as a policy entrepreneur and cooperation takes place through a bilateral agreement offering a formalized framework between the EU and the third country (Lavanex and Uçarer, 2004: 421). These agreements also provide opportunities for side-payments and issue-linkages by altering the costs and benefits of adaptation. In broader terms, adaptation of a decision in immigration policy might be motivated by another policy or serve for a more important goal of the third country’s politics. In the ENP, it works in a similar manner of positive conditionality, in that the

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<sup>24</sup> Lavanex and Uçarer (2004) mention that policy adaptation occurs through “unilateral emulation” or “negative externalities”. In unilateral policy emulation, third countries are convinced of the superiority of the EU’s rules and adopt them in order to more efficiently solve domestic problems. Negative externalities occur if non-adaptation would create net costs.

<sup>25</sup> The policy transfer includes a variety of modes, such as policy diffusion (Majone, 1991; True and Mintrom, 2001), policy convergence (Bennett, 1991), policy learning, and lesson drawing (Dolowitz and Marsh, 1996; Dolowitz and Marsh, 2000: 13).

neighboring countries develop their societies in the direction of the core norms of the EU, while the EU in turn agrees to deepen political and economic relations. In other words, progress is rewarded with greater incentives and benefits. Concerning external relations, another technique employed often by the EU in the form of conditionality is to highlight the costs of non-adaptation to induce compliance and bring about policy coordination (Grabbe, 2001; Schimmelfennig et al., 2003).

Policy externalization can also occur in response to negative externalities. In some cases, the cost of negative externalities for third countries – such as an increasing number of asylum seekers as result of tighter controls at the EU's external borders - might be higher than engaging in a unilateral alignment with European policy. Similarly, geographic proximity and degree of interdependence with the EU can also determine whether third countries adopt EU immigration policies voluntarily or involuntarily. Lavanex and Uçarer (2002; 212) argue that greater geographic proximity to the EU leads to a stronger degree of interdependence with the EU's migration regime. It is obvious that, in addition to energy security, transport and environment, migration, and in particular border control, is an important area of common concern where the EU is heavily dependent on its neighbors' cooperation (Bengston, 2008:608). The dynamics created by third countries being traditionally either a sending or transit state is also an influential factor which determines the nature of the cooperation.

Referring to the issue of interdependence, as international migration is characterized by intensive interdependence, changes in the immigration policy of one country have implications for the immigration policies of other countries. The immigration policies of the EU, as a major destination for voluntary and forced migrants, must therefore eventually have implications for other countries, especially origin and transit countries, but also vice-versa as well. The emerging JHA foreign policy dimension includes new initiatives of developing measures outside EU territory, such as countering irregular migration, and emphasizing expulsion and readmission. This interdependence is shaped around the EU's perception that the neighborhood is in need of political and economic development (Bengston, 2008:608). The EU associates the performance of its neighbors, including their political will and capacity, as an important factor determining their relations as the EU seeks to change

their immigration policies in line with its objectives. As Barroso (2007) describes it, “[t]he closer you – neighbors - want to be to the EU, and the greater your commitment to reform, the more we will offer you in terms of both assistance to reach those goals, and opportunities to expand and deepen our relations”. In fact, this can also be interpreted as implying that, although the neighboring countries may be in dire need of EU support, migration management issues in practice are more likely to highlight the dependence of the EU on these countries.

In addition, the domestic patterns of interests, both in the EU member states and third countries, also affect the nature and impact of policy transfer or diffusion. For instance, if the export of common policies solves shared problems within the EU, the policy transfer is promoted more by the EU and its member states. Conversely, if domestic structures offer more opportunities, third countries are not favorable to policy change. Thus, the impact of policy transfer depends upon the degree of “fit” or “misfit” between EU policies and domestic arrangements in the third country. The context is also affected by the degree of interdependence in migration and asylum policies, and by the strategic interplay of the domestic institutional framework of the third country in promoting or opposing closer approximation to EU policy (Lavanex and Uçarer, 2004: 423).

Control of the EU’s external borders is a strong common aim for most of EU member states. Thus, the common efforts concerning the external dimension of migration policy appear to have developed faster than have efforts to improve the common immigration policy as its internal policy issue among the member states. Therefore, the EU strongly promotes policy transfer to third countries on controlling their borders and fighting irregular migration. However, it does not necessarily consider the impact of third countries’ domestic structures and the externalities created as result of required policy changes. Both the following section and the next chapter of the study focus on these dynamics, in order to apply and evaluate these dynamics under different mechanisms of cooperation through an institutional framework of bilateral and multilateral relations.

### **2.3.2. Multilateral and Bilateral Mechanisms of Third Country Cooperation**

The form of institutional affiliation is a critical determining factor in explaining the externalization of EU's immigration policy. Referring to the general framework, the development of the external dimension of a common policy can be explained mainly in two ways (Lavanex and Uçarer, 2004: 418). First, it happens through international multilateral negotiations, in which the European Commission adopts a shared or exclusive competence to act on behalf of the community and its member states. This treaty-making power of the European Commission can be considered as EU policies gaining an external dimension on the international scene. The second way refers to bilateral and/or multilateral agreements that aim to export and extend European policies to third countries by using institutionalized forms of cooperation.

In the same manner, mechanisms of cooperation with third countries in migration management do not develop irrespective of patterns of bilateral or multilateral relations, the institutional framework of the relations, or the international environment including the policies of sending, transit and receiving countries. In the literature, there are different classifications of third countries according to their institutional frameworks. Lavanex and Uçarer (2004:423), for example, differentiate five types of institutional affiliation: (a) Comprehensive forms of association, such as EEA; (b) Accession association with new member states of CEE countries; (c) Pre-accession association with candidate countries, namely Turkey and the Balkan countries; (d) Neighborhood association with the Maghreb countries and Russia and Ukraine; (e) Loose association with African, Caribbean and Pacific countries (ACP). Although this classification very much resembles the concentric circles of Europeanization, this study, while encompassing these classifications, will analyze the EU's external migration cooperation with third countries through the more comprehensive categorization of Zeilinger (2010). He assumes three major dimensions based on the main aim of the EU to create a common area of "Justice, Freedom and Security". The first dimension includes a comprehensive legal and organizational framework which aims to elaborate the common interests and concrete measures to monitor the agreed obligations and the execution of the respective policy. The second dimension refers to the need to provide technical and financial assistance to third countries concerning the legal harmonization necessary

to reach certain standards of migration management. The last aspect involves governmental, intergovernmental and multilateral task-specific agencies that aim to implement the EU's external policy objectives. The success of developing an external dimension of migration, and its implications for third countries, will be analyzed in terms of how various mechanisms of cooperation prevail over each other or work together. In the following chapters, the EU's external policy and cooperation on migration management with Morocco and Turkey will also be scrutinized along these three institutional dimensions in order to apply the theoretical arguments to the case studies.

### **2.3.2.1. Comprehensive Institutional Framework: European Neighborhood Policy and Enlargement**

The modes of cooperation with third countries on migration management develop around both a formal and informal institutional set up that includes both bilateral and multilateral processes. The degree of institutional affiliation with the EU determines the intensities of external relations, ranging from comprehensive transfer in the case of EU accession countries to more selective forms of targeted interaction in countries that do not share the prospect of joining the EU. Thus, types of institutional linkages, institutional "distance" of the third parties from the EU, the possibilities for issue-linkages and side-payments are all influential factors in determining the content and scope of cooperation mechanisms in migration management.

The most prominent example of a comprehensive institutional framework with third countries is the ENP, which constitutes a wider cooperation framework seeking to go beyond a merely economic rationale to significantly institutionalize cooperation between the EU and its neighbors. The ENP, which is a very decisive attempt to structure EU's external relations, aims to establish close relations with EU neighbors while making it clear that full membership is not an option. The major incentive offered is the vision of both an open and integrated market with access to the world's biggest single market and also deepened political cooperation in return for working together on issues of mutual concern. As in the enlargement process, the EU expects these countries to align themselves with its own structures, including "demonstrating shared values and effective implementation of political, economic and institutional

reforms, including aligning legislation with the *acquis*” however without the membership perspective (European Commission, 2003: 10).

In relation to migration management, Lavenex defines the ENP as a political project of the EU “with the aim to manage its new interdependence in an altered geopolitical context” (Lavenex, 2004: 680). This new interdependence concerns in particular “soft security” issues to be dealt within JHA cooperation (Wichmann, 2007). The EU considers that its neighborhood presents enormous challenges with respect to minority issues, visa, border and trade policies, cross-border cooperation and security policies (Kempe and van Meurs 2002; Emerson 2003; Dannreuther 2004). The European Security Strategy clearly demonstrates the EU’s perception of some of these neighbors in terms of threats and danger: “Neighbours who are engaged in violent conflict, weak states where organized crime flourishes, dysfunctional societies or exploding population growth on its borders all pose problems for Europe” (2003:7). Consequently, migration pressure from third countries is perceived as a rooted concern, while the ENP Action Plans and Strategy Paper explicitly highlights managing legal migration and preventing irregular migration as priorities, and increasing challenges (European Commission, 2004/373).

However, the ENP, as one of the mechanisms of a multilateral framework of cooperation in close association with the European foreign policy context, faces constraints and potential obstacles regarding the further formulation and implementation of policy. Cooperation with third countries in migration issues falls within these policy constraints as well. One limitation is that, although the EU possesses certain attributes, such as being a regional center of power that helps meaningful policy coordination with its new neighbors, the ENP lacks the most obvious source of influence: the membership incentive. Without being able to offer full EU membership to these countries as a key incentive for securing their compliance, cooperation in the very sensitive policy field of migration has lagged far behind the EU’s targets. This is also evident in ENP country progress reports, as issues of visa facilitation, developing mobility partnerships, capacity building measures through EU agencies on border security (FRONTEX, EUROPOL, etc.) are all regularly evaluated as needing improvement in the communications prepared for a renewed ENP (European Commission, 2011/303).

The second issue constraining the ENP is asymmetrical interdependence, as represented by the EU and its apparently subordinate neighbors (Keohane and Nye 1977). Not only in the ENP framework, but also in enlargement, the EU is in a much stronger position than most of its ENP partners and applicant countries. The existing asymmetry is greatest in terms of economic well-being and domestic stability, which makes the ENP states highly sensitive to the possibility of coercion or even dominance by the EU. This issue, together with the ambitious nature of the ENP agenda, means that both the EU and the ENP partners face difficulties to prioritize their competing and complementary interests and to determine their individual “payoffs” from alternative courses of action.

Thirdly, as studied in the literature, bringing about a structurally sophisticated institutional arrangement requires a high level of threat perception (Williamson 1985; Weber 1997; Weber and Hallerberg 2001). The cooperation with high transaction costs means that, although the EU views irregular migration as a clear security threat, third countries are more concerned about the level of costs and burdens it would bring to their domestic arrangements. Therefore, from their perspective is necessary to evaluate whether they perceive an economic threat in case they do not cooperate with the EU. This paradox implies that the EU should offer stronger incentives according to the degree of threat perception concerning the migration issue, not only from its own side, but also from the perspective of third countries’ perceptions and preferences.

Concerning the enlargement framework, the location of candidates on major transit routes for migrants and asylum seekers, as in the case of some new member states, such as Poland, and the current candidate country, Turkey, has stimulated member states to include them in the EU’s system of migration control. Within enlargement framework, the cooperation mechanism involves the strong incentive of membership in promoting strict immigration control standards, such as making adoption of the complete EU and Schengen *acquis* compulsory for candidate countries where the boundaries of immigration control extends beyond the member states (Lavanex 2006, Grabbe 2002). Moreover, since the accession countries will become EU members at the end of the process, the burden of controlling external borders is perceived as a common burden. That is, accession countries currently involved in negotiations

concerning cooperation on the external dimension of migration will become members who will share the EU's common immigration policy as an internal actor in the same policy field. Thus, changing national policies on migration cooperation is strongly linked with the credibility of the promise of EU future membership.

In the enlargement of 2004, two modes of governance of immigration policy were employed by the EU: "governance by conditionality" and "governance by hierarchy", both of which have been studied within the Europeanization literature. With conditionality as part of the accession criteria, countries had to adopt the EU's immigration policy because it had already been incorporated into the EU *acquis*. Accordingly, policy convergence occurred under high pressure which necessitated the binding and compulsory adoption of most of the *acquis* prior to the date of accession. In this case then, policy adaptation emanated from the linkage of cooperation in migration issues with political and economic conditionality. After becoming EU members, "governance by hierarchy" worked for these candidate countries, since they had to obey and adopt the pre-determined, established immigration policy of the EU as policy-takers. Thus, European integration has been able to function as a crucial catalyst for changes in domestic migration legislation. In addition, EU has employed positive integration of immigration policies through its union-wide institutional models, such as the Schengen and Eurodac systems, which define the prescribed rules for the newcomers. Such mechanisms of institutional compliance work for the new members in the field of migration policy.

An important point to be emphasized regarding the new members in the enlargement framework concerns these countries' transformation from being emigration or transit countries to destination countries, while having undeveloped immigration infrastructures and traditions. Therefore, their adaptation to EU policy was determined largely in the terms set by the EU in the form of comprehensive policy transfer, including not only general principles but also policy instruments, programmes, institutions, and administrative and judicial structures.<sup>26</sup>

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<sup>26</sup> The Pre-Accession assistance (IPA) for the period 2011-2013 amounts to 5,756,293,000 Euros in total, with a share of 17.02 million Euros specifically for cross-border cooperation, while JHA accounts for 4.61% of the total IPA budget.

The Partnership and Cooperation Agreements (PCAs)<sup>27</sup> describing the continuous cooperation between the EU and the Eastern neighbors are another example of macro-institutional and bilateral cooperation in major policy areas - including JHA - that has brought about a comprehensive legal and organizational framework. The PCA has a centralized structure, since the Partnership and Cooperation Council is the main decision-making political body that monitors third countries' progress in implementing PCA action plan commitments. Within this institutional cooperation structure, although approximation to the EU *acquis* is not obligatory, it is nevertheless used as a model for guiding these states in fostering domestic reforms. Two examples of the successful results of PCAs are joint visa and joint readmission cooperation (Zeilinger, 2010:12). In addition to the EU accession processes and the European Neighborhood Policy, the Strategic Partnership with the Russian Federation, the "Budapest Process"<sup>28</sup>, the "5+5 Dialogue",<sup>29</sup> and the "Söderköping Process"<sup>30</sup> are other examples of such comprehensive multilateral institutional frameworks justifying the institutionalization of the EU's external cooperation concerning migration in the region (Zeilinger, 2010:10).

Apart from such multilateral processes, externalization of migration has, to a certain extent, developed at a bilateral level through association agreements or sector specific bilateral treaties. However, these arrangements become a challenge when they go beyond the EU's collective bargaining power. For instance, while the Euro-

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<sup>27</sup> The EU has concluded ten partnership and cooperation agreements (PCAs) with Russia, the countries of Eastern Europe, the Southern Caucasus and Central Asia. The aim of these agreements is to strengthen their democracies and develop their economies through cooperation in a wide range of areas and through political dialogue. The partnerships also aim to provide a basis for cooperation in legislative, economic, social, financial, scientific, civil, technological and cultural fields.

<sup>28</sup> The Budapest Process is a consultative forum launched in 1993 of more than 50 Governments and 10 international organizations, aimed at developing comprehensive and sustainable systems for orderly migration. Its purpose includes exchanging information and experiences on topics such as regular and irregular migration, asylum, visa, border management, trafficking in human beings and smuggling of migrants, and readmission and return.

<sup>29</sup> Launched in 2001, under the International Organisation of Migration (IOM), it involves Algeria, France, Italy, Libya, Malta, Mauritania, Morocco, Portugal, Spain, and Tunisia. It focuses on the fight against irregular migration and trafficking in human beings.

<sup>30</sup> The Söderköping Process (Cross-Border Co-operation Process) was launched in 2001 to coordinate cross-border cooperation in asylum, migration, and border management between the EU and the countries on the EU's Eastern border (Söderköping countries), namely Belarus (2001), Estonia (observer, as of 2007), Hungary (2003), Latvia (2002), Lithuania (2001), Moldova (2002), Poland (2001), Romania (2003), Slovakia (2003), and Ukraine (2001).

Mediterranean Partnership (the Barcelona Process) aims to manage and control migration issues within a multilateral framework, in practice, migration management takes place mainly at the bilateral level through association agreements. These agreements mainly include identical provisions on migration policy and cooperation issues, such as reducing migratory pressure, improving employment opportunities, developing training in the source regions, and resettling migrants who have been repatriated due to their illegal status. (Lavanex, 2004a:690). Indeed, strategically located countries follow more of a “border logic” (Spain, Italy, Morocco) with a greater presence of measures such as diplomatic practices and readmission agreements whereas others develop a more “remote protection” logic (France), which is dominated by entry, return and repatriation control policies (Aubarell, Barrero, Aragall, 2009:6). The long-standing relations across the Mediterranean and established migration routes and flows are also important factors in fostering bilateral relations. For example, Spain and Morocco started joint naval patrols in 2004, with Morocco agreeing to readmit non-national sub-Saharan boat migrants according to their readmission agreement. However, Morocco refused to sign a readmission agreement with the EU as a whole. The same applies to the joint efforts of Italy and Tunisia in 2004 concerning the establishment of reception centers and modernizing border control equipment. Cooperation was even initiated with Libya in 2004, although it is neither a party to the UN Geneva Convention nor has any asylum procedures in place. The migration policy developments that separately evolve in each member state under their competence affect the external dimension of migration. For instance, since 2009, governments have introduced a more restrictive approach to labor migration, notably in Spain, the UK and Ireland, which characterized by tightened border controls and family policies (OECD, 2011: 36). Thus, it also can be concluded that, concerning the external dimension of immigration, a bilateral framework may prevail over the multilateral one, particularly in the case of border countries or countries that have close historical or migration related relations.

### **2.3.2.2. Technical and Financial Assistance Frameworks**

In terms of migration cooperation, the EU provides third countries with specific financial and technical assistance, while also allowing these neighboring countries to benefit from various EU programmes, in order to promote Europeanization by implementing reforms and improving their administrative capacity. These steps include establishing adequate humanitarian conditions in detention centers, improving health care to asylum seekers, developing readmission procedures and the social reintegration of returnees, providing assistance for capacity building, training activities and law enforcement. All these policy objectives are specified in the “Country Strategy Papers” and the agreed “National Indicative Programmes”. Further specific action plans for the source and transit countries defining the assessment of the political, economic and human rights situation, with an analysis of the causes and consequences of migration are also introduced by the High-level Working Group on Asylum and Migration.

Since 2005, nearly 300 migration related projects, amounting to a value of €800 million, have been implemented in non-EU countries, funded under various thematic and geographical financial instruments of the EU (European Commission, 2011/743:10). Previously, funding for the external dimension of migration and asylum was only available through external aid instruments. Recently, however, the external dimension strand has been created within the Asylum and Migration Fund (which will replace the European Refugee Fund, the European Integration Fund and the European Return Fund) and the Internal Security Fund (which will replace European Borders Fund) to support actions in, and in relation to, third countries. However, this funding framework can only target actions in third countries that are seen to be of “direct interest” to the member states and, more specifically, readmission agreements, cooperation in the area of migration management and mobility partnerships, return, and resettlement. The external aid instruments continue to apply the same structure of geographic and thematic bases, covering actions in all areas of migration and asylum that have a development objective. However, this separation of instruments as internal and external, on the basis of having a “development” and “non-development” objective, carries the risk of endangering coherence and consistency in the EU’s relations with third countries, thereby

potentially undermining partnerships already established with these countries through development policy (ECRE, 2012: 10).

The EU's technical and financial assistance institutions are involved mostly within the pre-accession period during enlargement or within the ENP. Technical Assistance and Information Exchange (TAIEX) is one example of targeted expert assistance, implemented by seconding staff to long-term twinning arrangements for joint operations. Similarly, the European Neighbourhood and Partnership Instrument (ENPI, former TACIS) and AENEAS Programme<sup>31</sup> provide financial and technical aid to third countries for the better management of migration and asylum issues. The Commission has also been implementing a Thematic Programme entitled "Cooperation with Third Countries in the areas of Migration and Asylum" since 2007 in order to assist third countries enhance capacity building and encourage cooperation initiatives in the areas of migration and asylum. The new thematic programme allocates financial and technical assistance for the social and professional reintegration of returnees, establishing adequate humanitarian conditions in detention centers, strengthening third countries' institutional capacities to provide asylum and international protection, and to develop national legal frameworks in line with the agreement.

Although EU has been criticized for intentionally creating buffer zones around through such financial and technical aid, which aims to establish infrastructures and practices that could stem the flow of immigrants, the cooperation also allows an enduring and dynamic mechanism. It helps to develop on specific issues, such as visas, border control, exchange of information on legislation and practices, enhancing efficiency of the institutions and training of staff.

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<sup>31</sup> The ANEAS Programme was established by the European Commission decision of 12 November 2004 with a total grant of €120 million to provide technical assistance to third countries to develop their legislation in the field of legal immigration and improve management of migration flows and migratory movements. ANEAS covers the period 2004-2006 and was replaced by the new programme, "Cooperation with third countries in the field of migration and asylum", in 2007 with a budget of €380 million for 2007-2013.

### **2.3.2.3. Governmental, Intergovernmental and Multilateral Actors**

Cooperation between the EU and neighboring countries in terms of improving standards and aligning the neighboring countries' regulation in migration management with the EU *acquis* is also institutionalized through governmental, intergovernmental and multilateral agencies and organizations. These governmental agencies cooperate with neighboring countries as part of their regular foreign policy and development assistance. Some relevant examples are the Swedish Migration Board "Migrationsverket" and the Swedish International Development Cooperation Agency SIDA, the Danish International Development Agency (DANIDA), the Danish Refugee Council, the Hungarian Office of Immigration and Nationality, the Border Guard of the Republic of the Poland and the Polish Office for Foreigners, the Department for Asylum and Migration Policy of the Ministry of the Interior of the Czech Republic, the Immigration and Naturalisation Service of the Ministry of Justice from the Netherlands, the Migration Office of the Ministry of Interior of Slovakia, and the UK Border Agency (Zeilinger, 2010:14).

Intergovernmental agencies at the EU level, by extending their competences in the wake of the enlargement process, also undertake operational projects with neighboring countries. These agencies carry out a long list of concrete tasks, and collect and provide expertise on certain policy issues in order to support associate partner countries on, for example, the use of biometrics, data protection and document security. Some examples of these agencies are the European Agency for the Management of Operational Cooperation at the External Borders of the Member states of the European Union (FRONTEX), the European Law Enforcement Organisation (EUROPOL), the Centre for Information, Discussion and Exchange on the Crossing of Borders and Immigration (CIREFI), the European Border Surveillance System (EUROSUR), and the judicial cooperation body (EUROJUST). These agencies have a legal personality, meaning that they have been conferred with treaty-making powers. For example, Article 14 of the FRONTEX regulation envisages external powers such as establishing operational cooperation between third countries and member states by facilitation agreements within the framework of EU external relations facilitation agreements. It also allows FRONTEX to cooperate directly with the authorities of third countries having the same competences to

conclude working arrangements.

In addition to the cooperation between EU agencies and state authorities of partner countries, the EU also increasingly involves the expertise and experience of multilateral agencies and international organizations, such as the International Organization for Migration (IOM), the International Centre for Migration Policy Development (ICMPD), the United Nations High Commissioner for Refugees (UNHCR), and the International Labour Organization (ILO), with regard to operational asylum and migration matters. Indeed, such international legal frameworks also put pressure on states, since their principles, norms and practices are binding on national governments through international law. Besides, while the ongoing dialogue of the EU with international organizations stimulates the promotion of common values and priorities, the EU also pushes third countries to ratify and implement international conventions such as the 1951 Geneva Convention (Sterkx, 2008:123).

#### **2.4. Conclusion**

This chapter has attempted to demonstrate that theoretical literature on the relatively new but intensifying issue concerning the external dimension of the EU's immigration and asylum policy remains nascent, whereas the policy field is increasingly active, with many cases now available for empirical research. In this regard, the analysis on the relevance of various theories prioritizes three main theories and approaches to understand the policy externalization of the EU. First, theory of international regimes provides, to an extent, a conceptual explanation for understanding the EU's cooperation framework. However, it has only a limited ability to offer relevant analytical tools to scrutinize the entire context of policy externalization, since the EU's structure differs as a unique international actor. Secondly, "external governance" provides some relevant tools and mechanisms to explain rule expansion towards non-member third countries through an institutionalist and structural perspective. Hierarchical, network and market governance, to a large extent, can contribute towards understanding the EU's external actions and policy effectiveness of rule expansion towards third countries within the framework of institutional, power based and domestic explanation

perspectives.

However, this study shows that Europeanization serves as the most relevant and comprehensive theoretical framework to scrutinize the external dimension of EU's immigration policy. Although the literature on external governance and Europeanization uses some concepts interchangeably and intersects mainly at the points referring to modes of governance and policy outcomes observable at legislative and institutional levels, Europeanization offers a broader context to understand how EU initiates its policy expansion beyond its borders to non-member countries as a process rather than outcome. In this regard, Europeanization provides a better framework not only to analyse how and whether the policy expansion is achieved in third countries but also to examine the implications of policy transfer on these countries.

Thus, Europeanization as a benchmark is studied beyond its traditional context, by focusing on both candidate states, and being further applied to neighboring third countries that do not have any membership perspective. The mechanisms and conditions of Europeanization beyond EU borders are applied across concentric circles in close association with the form of institutional affiliation. It is this relatively new literature that expands the applicability of Europeanization which gives us the necessary analytical tools to engage with the externalization of the EU's immigration policies towards third countries.

Considering Europeanization beyond Europe as the most relevant theoretical framework to explain the externalisation of EU policies, gradual evolution of the external dimension of EU's immigration policy is tried to be explained through the debates on "policy transfer" and "policy adaptation". While explaining how policy externalisation occurs in specific migration field, the chapter also argued the main logic and essential driving factors for externalizing EU migration policy. Accordingly, it concludes that sustaining the European area of freedom, security and justice, securitization of migration policy, and a global approach to migration with a development perspective constitute the essential aims of EU's attempt to externalise its immigration. In fact, these aims directly match with two main approaches namely "remote control" and "root cause", that are considered to

dominate the essence of EU's external actions in migration policy field.

The chapter also demonstrates the multilateral and bilateral mechanisms of third country cooperation specific to migration field with a focus on policy actors. It is underlined that to achieve its goal of a stable, safe and secure Europe, the EU seeks good relationships with the neighbouring "outsider" states, based on mutual trust and close cooperation (Lavanex 1999, Grabbe 2000). However, it can also be argued that this increased engagement with third countries serves to prevent the spill over of insecurity to the EU (Wichmann 2008: 6). Accordingly, this study shows that, especially in the migration policy field, the EU needs to implement "soft modes" of cooperation in its dialogue with third countries, aiming to improve their legislation in crucial policy areas, by also taking into account of the need to reduce externalities for both sides of alignment with EU legislation.

Regarding the effects of EU's policy externalisation, cooperation mechanisms suggest that non-hierarchical modes and task-specific policy networks are more effective than hierarchical governance modes. As Zeilinger argues, "[the] new form of non-hierarchical coordination in foreign policy allows for cooperation in a broad area of issues on a voluntary basis and helps to overcome former deadlocks in interstate relations" (2010:21). These modes include policy-emulation over informal agreements, information exchange, knowledge transfer and technical and financial assistance, which creates cooperation that is either ad-hoc or rather formalized by a set of institutional conventions.

In relation to this argument, the Europeanization of migration policies in third countries that occurs through "policy transfer" or "policy adaptation" is also significantly affected by multilateral or bilateral mechanisms encompassing the cooperation framework. These different mechanisms of a comprehensive institutional framework, technical and financial assistance frameworks, governmental, and intergovernmental and multilateral actors, reveal two other related questions. Firstly, to what extent the institutional frameworks (enlargement policy or ENP) are influential to shape the success and impact of the externalization of the EU's migration policy? Secondly, specific to the contested and difficult policy area of migration, do the technical and financial assistance mechanisms, together with task-

specific policy networks, tend to prevail and dominate the external dimension of migration policy more effectively than other forms of cooperation framework? These two questions will be studied in the further chapters by employing them to the country case studies of Turkey and Morocco to be formulated as some of the concluding remarks of this thesis.

## CHAPTER 3

### INSTITUTIONALIZATION AND DEVELOPMENT OF THE EXTERNAL DIMENSION OF EU IMMIGRATION POLICY

From the beginning, the process of European integration has had significant external ramifications so the EU has never been able to confine itself solely to internal matters. Since the EU has always been a predominantly economic union, it has been able to assume the greatest role in policies that are now associated with Pillar I, where EU has some exclusive powers, such as in external trade policies, as well as a number of powers it shares with its member states, such as in the field of external environmental policies. As a result, EU member states have relinquished part of their sovereignty over Pillar I issues, giving a much greater role to European level representation. However, policies under Pillars II and III (foreign and security policies, and justice and home affairs, respectively) have remained firmly intergovernmental.

Concerning immigration policies, because of the decreasing capabilities of individual nation states to deal effectively with problems at the national level, asylum and migration as domestic policy fields have been at least partially transferred to supranational responsibility (Scharpf, 2003; Zürn, 2000). A common immigration regime has gradually developed in the EU, following nearly twenty years of intergovernmental cooperation on asylum and immigration matters. As will be explained in detail in the following section of this study, today it functions mainly through the coexistence of intergovernmental and supranational forms of cooperation (Lavenex, Uçarer, 2006:1). In other words, the EU migration regime is a multilayered regime, which involves developing supranational European policies that coexist with the domestic regulations of member states and intergovernmental agreements between member states.

The externalization of migration management cannot be analyzed separately and irrespective of the development of the common immigration and asylum policy at the EU level. The gradual development of cooperation on migration management between member states has, in the recent years, expanded to include cooperation with third countries on joint objectives. This evolution is incorporated into various EU treaties of in an attempt to institutionalize this cooperation on the external dimension of migration management. Since the development of a common immigration and asylum policy at EU level is beyond the scope of this study, just a brief analysis will be provided to contribute to better explaining the development of the external dimension, which is the key focus of this study.

This chapter aims to provide an overview of some milestones in the emergence and further development of the external dimension of the EU's immigration policy, through a chronological approach, with a focus on the incorporation of the issue into EU treaties and legislation. It then seeks to highlight the institutional framework by examining how the competences of the Union and the member states are allocated, and how different policy areas of JHA and external relations interact as reflecting the evolving nature of the institutionalization of the external dimension of immigration. After discussing competence rivalry, the chapter will examine the policy instruments for externalizing European immigration policy by focusing on border management, mobility partnerships, visa policies, readmission agreements and asylum policy. Lastly, the EU's cooperation with third countries will be considered in the context of the debated issue of shifting the burden or sharing the burden by referring to the negative externalities created by cooperation for third countries. This will then provide a basis for a critical policy analysis to understand whether the EU's policy practice meets its policy objectives, before applying them to the case studies of Turkey and Morocco.

### **3.1. Development of the Institutional Legal Framework: From “Intergovernmental Cooperation” to “Task-Specific Policy Network”**

The development of the EU's externalization of migration management can be approached through four main steps, which evolved as a reflection to the challenges mentioned in the previous chapter. These steps involve “intergovernmentalism”,

“communitarization” or “supranationalism”, “externalization”, and finally “sectoral integration beyond the EU”, which refers to a “task-specific policy network” (Zeilinger, 2010:3). The gradual evolution of the legal framework and institutionalization is clearly reflected in EU treaties and has been shaped by the changing challenges that have required third country cooperation rather than the earlier bilateral and intergovernmental attempts of Members States.

### **3.1.1. Intergovernmental Cooperation in Migration**

The issues of migration management within the EU were mainly dominated by intergovernmentalism until the 1990s, whereas more recently the EU has attempted to develop a common immigration and asylum policy, together with foreign and security policy (CFSP), at the supranational level. The origins of the external dimension of cooperation date back to the work of the Trevi Group, established in 1976 by 12 EC states, which addressed closer cooperation on cross-border issues to combat terrorism. In 1986, the purview of the Trevi Group was broadened beyond cooperation against terrorism and organized crime to include cooperation in immigration. The group consisted of EU Justice and Interior Ministers, policy experts, and practitioners (police officers), and was based on strong intergovernmental cooperation between the 12 EC states which excluded the main EC institutions - the European Commission, the European Parliament and the European Court of Justice (Occhipinti, 2003:31)

In the 1970s and 1980s, a new momentum in terms of cooperation efforts occurred, with two prominent developments within the Western European context. The first one was the restrictive immigration policies introduced in 1973-74 in Western European countries following the oil crisis and resulting economic recession. Having actively recruited migrant labor in the 1950s and 1960s out of the need for manpower following World War II, Europe increasingly introduced restrictive immigration policies. The 1970s were thus characterized as a period stressing control of the influx of migrants, during which member states were hesitant to delegate their authority to the EU concerning border control and migration issues.

The second development was the Single European Act within the European integration process that set 1992 as the deadline for completion of the common market, including the achievement of free movement of persons within EU territory. The realization of the free movement of labor under the Single European Act, and the first stages in the creation of a borderless Europe under the Schengen Agreement, have brought to the fore the issue of controlling the EU's external borders. The abolition of internal borders with the aim to achieve freedom of movement across EU territories has required complementary convergent policies set out by the extension of cooperation at the Community's external borders. This stimulated a shared initiative to develop common measures on immigration and asylum, though mainly with a security focused approach.

In addition to these factors, significant increases in immigration and asylum in the 1980s also motivated policy makers to cooperate on this sensitive area. For example, Western European countries launched drafting instruments to manage and control movements across borders. The commitment on the external dimension of a common migration policy was raised explicitly in the "Palma document" (1989) that called for "a system of surveillance at external frontiers, combating illegal immigration networks and a system to exchange information on people". The Palma document also introduced the principle doctrine of current EU migration policies, which states that free movement internally requires tough immigration rules and external border controls (Bünyan, 1993). However, the break-up of the Soviet Union and the end of the bipolar Cold War world created an international environment that raised new challenges from outside the EU. EU member states reacted to these new challenges with an attempt to maintain their own authority to decide about the control of their own borders.

The Schengen Agreement in 1985, and its Implementation Agreement in 1990, created a new institutional mechanism to launch an ambitious effort to develop common EU border policies. The Schengen Agreement removed border controls between member countries, complemented by the harmonization and strengthening of external border controls. The Agreement also provided for the exchange of information on non-EU nationals through the computerized Schengen Information System (SIS) and the development of a common list of undesirables as defined by

each state's security services. The Schengen mechanism further set out a list of countries whose nationals required visas by establishing common visa requirements. The Schengen group enlarged to include all EU member states except the United Kingdom and Ireland. The provisions of Schengen Convention were duplicated in the Dublin Convention, signed in 1990, which launched the so-called Ad Hoc Immigration Group (AHIG). It came into force in March 1995 and was incorporated into the Treaty of Amsterdam in 1997.

### **3.1.2. Communitarization of Migration Management**

Until the 1990s, all these developments remained intergovernmental in nature so an international, multilateral framework was missing in managing migration and asylum issues. However, following the Single European Act, the Schengen Agreement and the changing international environment, it became recognized that there was a need to establish a common EU immigration policy to replace the existing fragmented and inconsistent national regimes. In addition, at the same time as the development of a supranational common asylum and immigration policy became a priority in the EU, the issue of irregular migration as a soft security threat pushed the need for cooperation at the supranational level (Trauner and Kruse, 2008:1). Thus, the development of common policies inside the union were also closely linked with the EU's international role, so that the migration regime developed with a strong emphasis on its foreign policy dimension, mainly associated with measures taken outside EU territory, such as fighting irregular migration, controlling borders and readmission. As a result, inter-governmental cooperation in migration management gradually evolved towards the "communitarization" or "supranationalism" of competences at the EU level, as member states became convinced about the need for a common policy in the field of migration management in order to tackle the transnational challenges of irregular migration, organized crime and terrorism.

Cooperation in immigration, asylum, police and judicial affairs were brought into the competence area of the EU through the Maastricht Treaty in 1992, although the third pillar of Justice and Home Affairs cooperation remained intergovernmental in nature. Rules governing external frontier controls and immigration policy were merely

recognized as matters of common interest.<sup>32</sup> In fact, although this new institutional arrangement was a significant improvement over the previous ad hoc arrangements, it still retained many governance problems. The supranational context and communitarization in the area of asylum and immigration could only be initiated with the creation of a European area of freedom, security and justice by the Amsterdam Treaty in 1997, in which the competence of EU institutions was improved by bringing some of the migration issues into the first pillar. However, the Amsterdam Treaty did not foresee change from unanimity to qualified majority voting on issues of asylum, refugees, external borders, measures on immigration policy, common rules on illegal migration and repatriation. Nevertheless, it marked a major step in terms of justice and home affairs and in the EU's external relations by incorporating Schengen regulations and rules into the EU's *acquis communautaire*, although these issues were only "communitized; they were not supranationalized" (Geddes, 2003:6). It also gave the Commission the competence to negotiate external agreements in the areas of Justice and Home Affairs by transferring them to the Community pillar.

In the post-Amsterdam phase, the migration regime in the EU developed within a more comprehensive approach as issues of asylum and migration expanded. This wider scope advanced the transfer of competences to supranational institutions of the EU that had originally rested with national authorities (Lavenex and Uçarer, 2006; 5). The need for common action created the policy objective to harmonize and improve cooperation on police, customs, and justice in migration and asylum matters by giving competence to the EU to launch external policy initiatives targeting JHA. However, effective and comprehensive migration cooperation requires the inclusion

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<sup>32</sup> Article K1 (Title VI) of the Maastricht Treaty: For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member states shall regard the following areas as matters of common interest: asylum policy; rules governing the crossing by persons of the external borders of the Member states and the exercise of controls thereon; immigration policy and policy regarding nationals of third countries; (a) conditions of entry and movement by nationals of third countries on the territory of Member states; (b) conditions of residence by nationals of third countries on the territory of Member states, including family reunion and access to employment; (c) combatting unauthorized immigration, residence and work by nationals of third countries on the territory of Member states; combating drug addiction in so far as this is not covered by 7 to 9; combating fraud on an international scale in so far as this is not covered by 7 to 9; judicial cooperation in civil matters; judicial cooperation in criminal matters; customs cooperation; police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (EUROPOL).

of JHA issues in the broader external framework, and also the adoption of JHA-specific external instruments. In this regard, the post-Amsterdam phase of cooperation in asylum and immigration was characterized by a more comprehensive approach that was not only binding over existing members of the Union, but also over candidates and cooperating third countries. (Lavenex and Uçarer, 2006: 3-5)

### **3.1.3. Externalisation of Migration Management through Third Country Cooperation**

The second step of “communitarization” was followed by “externalization” (Boswell 2003) or “extra-territorialization” (Rijpma and Cremona, 2007:11). At the EU level, the “external dimension” of EU immigration and asylum policy (Boswell, 2003) was formally embraced by the Tampere European Council in October 1999, which consolidated the idea that asylum and migration policies require a more comprehensive approach involving stronger external action (Sterkx, 2004). In Tampere, the EU reaffirmed its objective to develop the Union as an area of freedom, security and justice by setting up stronger external action, and also agreed on a number of policy orientations and priorities. This policy objective was placed at the very top of the political agenda by the European Council. The shared commitments to common values of freedom based on human rights, democratic institutions and the rule of law were reaffirmed for EU citizens in the Tampere Conclusions. However, the document also stressed that “this freedom should not be regarded as the exclusive preserve of the Union’s own citizens” (Council of the EU, 1999), which indicated that people seeking access to EU territory should also hold these values, and that there was a need to develop common policies on asylum and immigration at the EU level with consistent control of external borders to stop irregular immigration and to combat those who organize it. Tampere decided that these policies must be based on clear principles for EU citizens, and that they also offer guarantees to those seeking protection in, or access to, the EU.

In order to create a closer internal-external security nexus, the externalization of migration policy exported the EU’s internal policy objectives and regulation to third countries’ domestic policies by introducing new modes of cooperation in the EU’s external policy on asylum and migration policy. The establishment of the High Level

Working Group on Asylum and Migration (HLWG) in 1998 clearly indicated the basis of the externalization of migration policy with its mandate to “develop a strategic approach and a coherent and integrated policy of the European Union for the most important countries and regions of origin and transit of asylum seekers and migrants, without geographical limitations” (Council of the EU, 1999), and to “provide concrete suggestions for measures for managing and containing migration flows from these countries” (Council of the EU, 1998). Tampere made migration issues become more visible in the EU’s external relations by formally incorporating transit and origin countries into a comprehensive migration control policy, as clearly stated in Article 11: “The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit”. This global approach of supporting partnerships with third countries and international organizations, encompassed objective such as combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular the rights of minorities, women and children. To this end, both the Union and Member states were invited to contribute, within their respective competences under the Treaties, to developing a greater coherence between the EU’s internal and external policies (Council of the EU, 1999).

The main guidelines of the Tampere Programme were adopted a year later at the Feira European Council (Council of the EU, 2000), which emphasized the “external dimension of migration policy, effective control of the EU’s external borders and signing readmission agreements with countries where migratory flows originate” (Lavanex, 2004: 689). Many subsequent Council conclusions continued to refer officially to externalisation of migration management (European Council Presidency Conclusions Laeken, 14-15 Dec. 2000, SN 300/1/OI REV I; European Council Presidency Conclusions Seville, 21-22 June 2002, SN 200/1/02 REV) in an attempt to expand the EU’s supranational migration control system to third countries in order to achieve its JHA objectives and to cope with new transnational challenges.

The integration of migration into the EU’s external policy advanced significantly following the European Council of Seville in 2002. This brought the use of new external EU instruments for developing a common asylum and immigration policy in

cooperation with third countries including supporting voluntary return, combating illegal migration and assisting them to cope with their readmission obligations. The “readmission of illegal immigrants” clause was introduced to apply to any future cooperation, association or equivalent agreement of the EU with third countries, as the Commission gained competence to negotiate readmission agreements with relevant third countries. The Seville European Council also raised the issue of penalizing third countries who failed to fulfill their obligations in border management and migration management by reference to common external and security policies (Council of the EU, 2002). Following the Seville meeting, on the recommendation of the Commission, the issue of “positive conditionality” was implemented, by which the EU began to offer rewards to third countries in return for their undertaking serious reforms in crucial policy areas. In most of the new cooperation negotiations, or agreements with countries of origin and transit migratory flows to the EU, this new conditionality required third countries to introduce new measures to curb irregular migration and readmission policies in order to get European development aid, support for reconstruction, or trade cooperation.

The terrorist attacks of 9/11 in New York and Washington had a dramatic impact on the overall strategy of the migration management with respect to external relations and the fight against terrorism. The Hague Programme of 2004 gave new impulse to the domain, calling for the development of a coherent external dimension in JHA cooperation and an overall strategy prioritizing JHA cooperation with particular countries or groups of countries or regions (Council of the EU, 2004a).

#### **3.1.4. Towards a “Task- Specific Policy Network”**

In practice, the implications of externalization policies are seen in the form of interstate negotiations and coordination of cross-national policy issues through coordinative and/or regulatory bodies. This last step is defined as “sectoral integration beyond EU member states”, which can also be associated with task-specific policy networks (Lavenex, 2008). For example, in 1997/98, the Partnership and Cooperation Agreement (PCA) was introduced, and the Strategic Partnership with Russian Federation in 2004, as new tools of cooperation with third countries. These tools address cooperation on migration management between the EU and its

neighboring countries, performed through task-specific networks and within-sector-specific institutions, such as FRONTEX (Zeilinger, 2010:29). The implementation of specific action plans within and through these policy networks and institutions seem to provide a more efficient working basis than a general intensification of migration dialogue. These developments concern cooperation at an operational level, such as when the EU establishes a network of liaison officers in third countries to assist and monitor specific tasks concerning border security, airport checks, or asylum procedures that require capacity and institution building in third countries (Sterkx, 2008:123). The twinning projects on the training of border and security personnel of migration officers, transfer of technical equipment, establishing asylum systems can also be listed under this cooperation framework.

More recently, the Stockholm Programme (2010–2014), called “An Open and Secure Europe Serving and Protecting the Citizens”, replaced the Hague Programme to exploit the new arrangements and possibilities offered by the Lisbon Treaty. Openness and security indicates a paradigm of freedom and control, and one of the priorities of Stockholm Programme is listed as controlling migration flows through strengthening cooperation with countries of origin and transit, and facilitating the readmission of unwanted migrants and asylum seekers (Carrera and Merlino, 2010: 5). Although it pays attention to sustaining internal security, it also includes the protection of rights, and the dissemination of the EU’s values through a more organized and integrated framework policy. In doing so, the Stockholm Programme specifies the systematic use of all available instruments of a global approach to migration, in particular mobility partnerships, circular migration schemes, readmission agreements and regional protection programmes. Following GAM, the Stockholm Programme also acknowledged Eastern Europe, the Mediterranean and Sub-Saharan Africa as EU priority regions concerning cooperation in the areas of migration and asylum.

Today, it can still be debated whether the EU’s external dimension has evolved into a fully-fledged policy area, although there have been strong efforts. For future prospects, migration constitutes its key role, as it is addressed in one of the seven flagships initiatives devoted to “new skills for new jobs” in the Europe 2020 Strategy. In examining the latest debates, it seems that EU aims to promote a

comprehensive, future-oriented labor migration policy responding to the labor needs of Europe in a flexible way while preventing irregular migration flows into the EU.

### **3.2. Locating the External Dimension of Immigration under the EU's Competences: External Relations or Justice and Home Affairs?**

The domain of immigration and asylum issues covers fields that lie at the heart of state sovereignty, since the related policies are highly sensitive with national implications. However, regarding the international challenges posed by irregular migration, organized crime and terrorism, it is evident that the development and consolidation of the EU as an area of freedom, security and justice cannot be achieved without allowing the EU to become a global actor. Thus, the external dimension of the immigration field, which is not an intergovernmental area of cooperation, has developed in such a way that member states clearly allow the Union to play a normative role. This raises the issue of the transfer of competences from Member states to the Community level, particularly over trans-border issues, as part of the institutionalization of the external dimension of immigration policies. However, this re-allocation of competences at the EU level is complicated in terms of locating it under External Relations, JHA or CFSP, due to its multi-dimensional and contested nature touching on national sovereignty. It also has interactions with many other policy domains, such as development policy, neighborhood policy and enlargement policy. Indeed, the Union's actions concerning the external dimension of immigration varies depending on the policies concerned, the competence of the EU and Member states, the institutions involved within the EU, and the actions of other international organizations. In short, the external dimension lacks legal clarity and constitutional legitimacy, which leads to 'cross-pillarization', since boundaries between competences and policy areas remain unclear (Wessel, Marin and Matera, 2011: 277).

The unique character of the EU shows a clear separation between the pillars, with external relations being mainly concentrated on the second pillar, which is Common Foreign and Security Policy. Concerning migration, in the 1992 Maastricht Treaty, Justice and Home Affairs and related competences were listed only in the third pillar as matters of common interest, which includes asylum policy, control of external

borders, migration by nationals of non-member states, judicial cooperation in civil and criminal matters, customs and police cooperation. Although the external dimension was referred to, the focus was limited to internal cooperation between Member states. The 1997 Treaty of Amsterdam implied the communitarisation of immigration and asylum policy, and also the external competences of the Community in these areas. However, it also kept some pre-existing national competences regarding certain external aspects of immigration policy, such as guaranteeing member states competences to conclude agreements concerning “conditions of entry and residence, and standards on procedures for the issue by member states of long-term visas and residence permits, including those for the purpose of family reunion” (Treaty of Amsterdam, 1997:28). European visa policy did not constitute an exclusive external competence either. Rather, the salient competence of the EU emerged in a similar manner concerning readmission agreements, where concluding readmission agreements fell within the exclusive competence of the EU, although in practice both member states, such as Italy, Spain and France, and the EU have concluded readmission agreements. On the other hand, the Treaty of Amsterdam gives competence to third pillar agencies, EUROPOL and EUROJUST, to conclude international agreements concerning the exchange of information and personal data.

Certainly, externalization has not developed independently from the on-going process creating a common European migration policy. Member states have proven reluctant to relinquish control over an area that is closely linked to the notion of sovereignty. Thus, some areas have already been covered by Community legislation (visa policy, external border control, and to considerable extent asylum system), while some (labor migration, integration policies) remain to state’s exclusive competences. Concerning the current situation, the Treaty on the Functioning of the Union (TFEU) created a new Title V (Arts. 67-89), which integrates all the provisions of the area of freedom, security and justice, defining them as shared competences between the Union and its Member states. However, specific external competences are still virtually absent, with the only one being the competence of the Union to conclude international agreements, as stated in Article 79 (3): “The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer

fulfill the conditions for entry, presence or residence in the territory of one of the Member states” (TFEU, 2010: C83/77).

In fact, the separation between CFSP and other external EU policies leads to a fragmented external policy. In broader terms, the legal framework regulating the external competences of the EU in respect to the second and third pillar is very different to that of the first pillar, which makes it unclear who is responsible for the external dimension of the JHA. The authority of the new High Representative extends to the coordination of the Union’s external relations beyond the CFSP (Article 18 (4) TEU). In addition, the newly established European External Action Service (EEAS) is assigned to cover most areas of external relations. According to the guidelines adopted by the European Council in October 2009, the EEAS is defined as a service of a “sui generis” nature under the authority of the High Representative and separate from the Commission and the Council Secretariat. Article 27 (3) of the TEU indicates that the High Representative for Foreign Affairs and Security Policy shall be assisted by the European External Action Service (EEAS) to ensure consistency and better coordination of the Union’s external action (Council of the EU, 2009). While European Security and Defense Policy (ESDP) are listed as part of the EEAS, trade and the development policy remain the responsibility of the relevant Commissioners and Directorate Generals (DG) of the Commission. This fragmentation leads to competition, with an internal game evolving between DG Home Affairs and EEAS (formerly DG for External Relations). While the EEAS mainstreamed migration into its external relations with a greater focus on giving incentives in return for cooperation on migration management, DG Home focuses instead on the readmission issue, prioritizing restrictive policy tools in relations with the neighbors. During my interviews with EU officials in Brussels, Michael Mann<sup>33</sup> noted a similar competence fragmentation by mentioning that the Treaty of Lisbon has brought a new institutional set up with new challenges, which affects both the identities and ways of working of Commissioners and Member State representatives. He gave the example of Vice President Catherine

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<sup>33</sup> Interview conducted with Michael Mann, Chief Spokesperson to Catherine Ashton (High Representative of the Union for Foreign Affairs & Security Policy/Vice-President of the European Commission) (Brussels, 6/9/2011)

Ashton, has seats in both posts and she is leading the newly created EEAS which makes it a huge task. Although he said that they have to get used to this new structuring, I clearly felt an uncertainty during all my interviews with officials about whether the new structuring of EEAS has been clearly understood and embraced by officials. This became much clearer during the interview with Laurent Muschel<sup>34</sup>, Deputy Head of Cabinet to Cecilia Malmström (Commissioner Home Affairs), as he emphasized that the external dimension of migration is mainly dealt with by Home Affairs, whereas EEAS is busy with the recent conflicts in the North Africa. While Mr. Mann emphasized notions of democracy promotion and assistance to the EU neighborhood from a more constructive and liberal perspective, Mr. Muschel was more concerned with irregular migration and the control of the migration flows with more of a focus on restrictive policies.

In this complicated context, it can be suggested that the external dimension of immigration policies remains divided between fragmented competences and interacting policy areas, being strongly linked to both external relation policies and JHA policies. The clear interplay between different EU policies constitutes the cross-pillar character of the issue. There is an important interaction between JHA and external relations, the CFSP, ESDP and the development policies of the EU. The JHA external action was intended to complement internal policy. (Wessel, Marin and Matera, 2011: 299). Thus, apart from the unintended effects of internal changes, the emphasis is growing on the development of a genuine foreign policy dimension, such as initiatives concerning measures taken outside the territory of the Union, combatting irregular migration, or facilitating readmission and expulsion (Geddes, 2000; Lavenex, 2001). In fact, the externalization of immigration was never meant to be an independent policy with specific objectives, but rather an action. This raises the question of to the extent to which the EU is competent in combining internal and external actions concerning migration management. It can be seen that issues concerning the external dimension of immigration policies retains its cross-pillar characteristic, since it is not clear whether competence lies in the policy field of JHA, external relations or other policy areas.

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<sup>34</sup> Interview conducted with Laurent Muschel, Deputy Head of Cabinet to Cecilia Malmström (Commissioner Home Affairs) (Brussels, 6/9/2011)

Nevertheless, despite the fragmented and complex structure described above, unlike the development of a common immigration policy that was, for years, mainly dominated by inter-governmentalism, the external dimension of immigration has been developing faster within the communitarization framework, since Member states see external factors as common threats requiring common action. Switzerland, although not a member of the EU, has participated since 2009 in the European fund for external frontiers, through which EU Member states share responsibility for the integrated management of the EU's external frontiers, and implement communal policies governing asylum and immigration. Viewing irregular migration as a shared challenge that needs to be tackled, the Swiss Parliament also agreed to harmonize its legislation with the EU concerning repatriation of illegal migrants. Lavanex also indicates that, in contrast to the slow and difficult transition from trans-governmental coordination to supranational coordination concerning migration issues as part of the internal harmonization process, the external dimension of European immigration policies has rapidly developed into a key focus of cooperation, with the greater involvement of sending and transit countries (Lavanex, 2006: 330, 337).

### **3.3. Instruments of the EU's External Policy on Migration Management**

Given the strong interdependence of "soft security" issues, the EU uses different policy instruments, cooperation methods and incentives in order to ensure compliance and transfer of its policies to non-member countries. The European Commission, in its proposal for a regulation on "establishing common rules and procedures for the implementation of the Union's instruments for external action", defines them more within a financial framework, including the Development Cooperation Instrument, the European Instrument for Democracy and Human Rights, the European Neighborhood Instrument, the Instrument for Stability, the Instrument for Nuclear Safety Cooperation, the Instrument for Pre-accession Assistance, and the Partnership Instrument (European Commission, 2011/0415: 6). Among these financial supports for action, including action programmes and other measures, migration constitutes a specific case requiring specific policy instruments. The development of a joint and coherent approach to immigration at the EU level, increasingly acknowledges the need for institutionalization of integrating the source and transit countries in its neighborhood. The general policy instruments of the EU's

external actions on migration management can be classified within five rather different yet similarly prioritized policy areas: border management, mobility partnerships, readmission, visa policy and asylum policy. The policy areas and instruments are considered to be influential factors as part of the political and technical cooperation. They provide the basis to better explain the nature and context of the EU's external dimension of immigration policy.

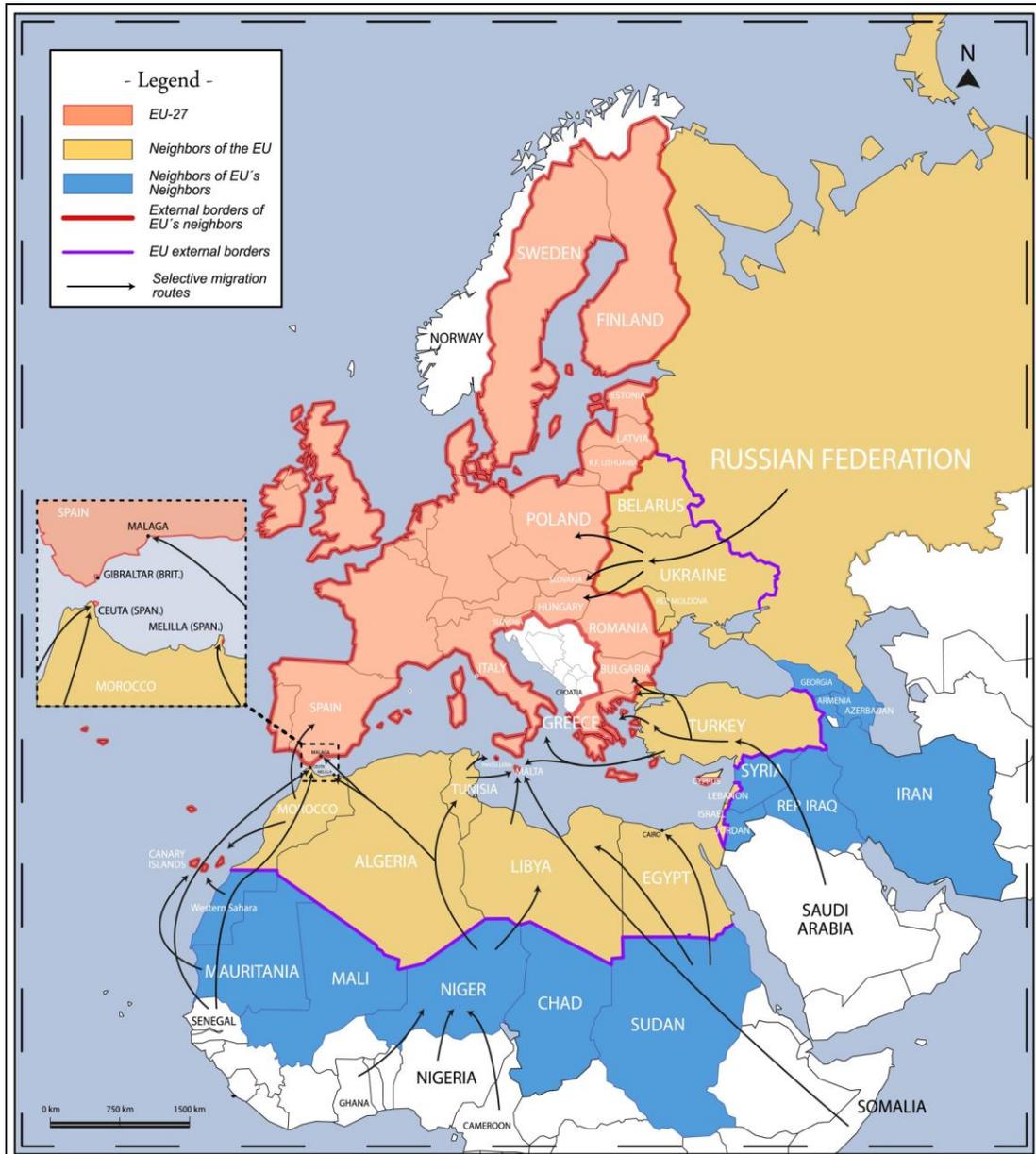
### **3.3.1. Border Management or Border Control?**

The external borders of the EU are defined in Article 2 of Schengen Borders Code<sup>35</sup> (2006) as including the following elements: “the Member states’ land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders”. A Weberian conceptualization of borders defining the boundaries of the state and its sovereignty is no longer valid, since Europe’s borders regime primarily focuses on the development of non-tangible, technology-based and dispersed borders, centered on the need to “manage” the individual through the use of new technologies, such as biometrics and Europe-wide data bases (Carrera, 2007: 5). Accordingly, border control is defined as “activities carried out at a border, in response exclusively to an intention to cross a border, and consisting of border checks and border surveillance” (Schengen Borders Code Article 2.9). Controlling the EU’s borders around the Schengen free-movement area of 25 countries means, in numerical terms, controlling 42,672 km of external sea borders and 8,826 km of land borders. The Schengen area enables free internal mobility of nearly half a billion people across the continent, with 300 million crossings per year at the external borders (FRONTEX, 2011). The map below indicates the main irregular migratory flows across and around the EU’s external borders, with 3 distinctive zones: the EU, its neighbors and the neighbors’ neighbors. It highlights the complicated and difficult task of managing, not only the EU’s external borders, but also beyond it, the neighbors’ borders.

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<sup>35</sup> Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders. The latest amendment is (EU) No 265/2010 which entered into force on 5.4.2010.

**Illustration 3.1. Irregular Migration Routes and External Borders of the EU with 3 zones: EU zone, Neighbors of the EU, Neighbors of EU's Neighbors**



The management of external borders has become a community interest in which all Member states have a stake, since the protection of a borderless interior space cannot be ensured through the efforts of just one or a few Member states. Thus, cooperation on border control management occupies a significant proportion of EU policy dialogue with neighboring third countries. As it is put in the ENP Strategy

[s]ecuring borders and effective border management is essential for joint prosperity and security. Facilitating trade and passage, while securing European Union borders against smuggling, trafficking, organized crime (including terrorist threats) and illegal immigration (including transit migration), will be of crucial importance (European Commission 2003/393).

The communitarization of the legal basis for border management stimulated an increase in border control-related measures by providing a legal framework to control the movement of third country nationals. With Schengen's being incorporated into the EU legal framework with an emphasis on border controls, it has been seen that tackling irregular migration has developed in the context of more protective measures at the borders (Mitsilegas, 2007: 361). Accordingly, there has been a proliferation of border control measures, together with a qualitative change in a number of such measures. Concerning this qualitative change, there are two important factors that shaped the development of the EU's external actions on border controls: enlargement of the Union to the East, and the changed security perception following renewed terrorist attacks, especially 9/11.

The 2004 enlargement of the EU created several concerns regarding the expansion of the EU's external border to the East, which became roughly 3,860 km long. These perceived difficulties included how these new members would guard the EU's external borders, given their inadequate capacity and lack of experience. These neighboring countries were considered to have ineffective border controls with porous borders allowing migrants to use their territory as a stepping stone, thereby constituting a soft security threat to the EU's internal security. The EU therefore intensified cooperation, particularly on border management. This perception also led to protracted accession negotiations concerning JHA matters, in particular border controls, including obligations to comply with the highly "securitized" EU immigration *acquis*. Additionally, the new members were expected to apply Schengen rules to their external borders towards nationals of non-member states (albeit neighboring countries with which they had long traditional links). Finally, their own citizens did not automatically become subject to Schengen rules despite the country becoming an EU member.

In order to improve the capacity of these new members to guard the EU's external borders, Commission published in 2002 a Communication entitled "Towards an integrated management of external borders"<sup>36</sup> (European Commission, 2002/233). The stress on the terminology of "management" instead of "control" seems to reflect a shift from a purely security-related approach to a more global one. It can also be interpreted as an attempt to de-politicize the issue and formulate a body to manage related Community policies (Mitsilegas, 2007:364). However, following this, the debate continued with greater emphasis on operational cooperation than on common legislation and financing. The intergovernmental cooperation structure prevailed over attempts to initiate common action, and consequently, the JHA Council was only able to reach a political agreement just two days before enlargement, in the text of 24 April 2004, which established a European Agency for the Management of Operational Cooperation at the External Borders of the Member states (FRONTEX). European Border Agency had been established as a specialized and independent Community body with legal responsibility. An important debate emerged concerning the centralized model emphasizing operational cooperation between member states, but also with the neighbors as some member states were against giving away sovereignty in managing their external borders. Evidence of this political constraints on developing integrated border management, which have led the vast majority of border control being done by police and guards of member states, is found in the following statement from the Council of the European Union (2004)

The responsibility for the control and surveillance of external borders lies with the Member states. The Agency (FRONTEX) should facilitate the application of existing and future Community measures relating to the management of external borders by ensuring the coordination of Member states' actions in the implementation of those measures.

The second factor shaping border management in the form of border controls, the terrorist attacks in the USA and then Madrid and London, have resulted in the implementation of maximum surveillance and controls at EU borders as part of the

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<sup>36</sup> Integrated border management refers to combining control mechanisms and tools, based on the flows of persons into the EU. It involves taking measures at the consulates of the Member states in Non-EU member countries, measures in cooperation with neighbouring Non-EU Member Countries, measures at the border itself, and measures within the Schengen area. IBM has four goals (and tiers): securing cooperation at the borders; conducting measures in the countries of origin of illegal mobility and threats; cooperation with security actors in other states; and cooperation with domestic security agencies.

EU's counter-terrorism strategy. The gathering of data by intelligence, use of biometrics, and creation of large databases became indispensable elements of border controls, which have developed around two main elements: inclusion of biometrics in EU visas and passports, the enhancement of interoperability between EU databases, and the creation of "synergies" between existing and future information systems, such as the Schengen Information System (SIS II), Visa Information System (VIS) and EURODAC. This trend has changed the characteristics of border controls related to migration, since immigration and border control measures have become closely and dangerously linked to security and counter-terrorism measures. Many EU documents, such as the European Council's 2004 Hague Programme, dubiously place border control in the same category as immigration and crime

The management of migration flows, including the fight against illegal immigration should be strengthened by establishing a continuum of security measures that effectively links visa application procedures and entry and exit procedures at external border crossings. Such measures are also of importance for the prevention and control of crime, in particular terrorism. In order to achieve this, a coherent approach and harmonized solutions in the EU on biometric identifiers and data are necessary" (Council of the EU, 2004a: 25)

### **3.3.1.1. Constraints on Managing External Borders**

An analysis of cooperation in border control demonstrates that, aside from the strong security focus, cooperation is merely on technical issues, including document security and biometrical passports, providing and improving technical equipment for border controls, assisting capacity building in the areas of border management, training border guards, risk analysis and information gathering. In doing this, the EU provides financial assistance to foster technical competence, with the specific aim to control migratory flows through these borders and prevent illegal border crossings. The External Borders Fund (EBF) is such an initiative, with substantial resources totaling €1.820 million for the period 2007-13. Cooperation is developed ad-hoc, with certain projects being implemented just by technical bodies, such as FRONTEX, member states' security forces or international organizations, such as IOM and ICMPD. Although these task-specific agencies and international organizations have more capacity to perform efficiently in achieving common targets, the autonomy of Member states in controlling their borders still remains

unchanged, which leaves only limited autonomy for the Community Agencies concerned with technical and operational cooperation.

Another issue concerning EU external border management relates to the type of border, since not all borders can be managed in the same way and with the same infrastructure. Depending on the border type, there is variation in the space and area that have to be controlled, equipment required and skills needed to use it, the number of required personnel, the extent to which information has to be immediately accessible in shared databases, and the overall costs of routine control efforts. Therefore, as Marenin remarks (2010: 35), “a one-size-fits-all border management regime is not likely to work well”. This is important to note, since the expectation from border countries is that immigration should be managed by taking into account the costs and burdens imposed by efforts to improve the management of these borders. As will be shown in later chapters, Turkey and Morocco are two unique examples demonstrating the particular difficulties of different border types.

Airport borders are the easiest to control, whereas the main problems occur at long borders with widely dispersed checkpoints, which cannot be patrolled in an efficient manner. These borders represent the ‘holes’ through which illegal crossers are transported or can even walk. Securing them requires technologically advanced surveillance instruments (e.g. long-range radars, sensors dispersed along suspected immigration routes), small planes and/or observation towers. Sea borders, needless to say, constitute another major challenge, with effective surveillance requiring massive investment in sea-craft and observation technology to spot small boats carrying illegal migrants towards long coastlines before they reach the EU’s territorial waters or shores. For example, in one of my interviews, the Turkish sea police team operating from Izmir noted the huge costs of the new techniques and equipment needed to secure the Turkey’s highly indented Aegean coast<sup>37</sup>. Although they are well-trained and capable personnel, they stressed that, due to the lack of advanced technology surveillance systems and additional equipment, such as enough boats equipped with the necessary technology, it is very difficult to guard one of the most crucial transit routes for illegal migrants into Europe. Therefore, cooperation

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<sup>37</sup> Meeting with a group of officials from Izmir Directorate General of Security, Sea Police (January 2010, Izmir).

between the EU and its neighbors should include the needed technical and financial assistance in order to meet the ambitious and very costly expectations of the EU in controlling its external borders.

### **3.3.1.2. Criticisms of EU Border Management**

The EU's border management strategy, which is one of the clearest examples of the instrumentalization of the externalization of the EU's migration policy, has been labelled at an official level as a key policy priority on Europe's agenda. However, it has some weaknesses inherent to its nature, scope and practical implementation.

The first problem is that the EU's border management strategy is based on two distinct but closely interrelated approaches: an integrated approach to the management of common territorial borders and a global approach to migration, studied in the second chapter of this study. One of the paradox is that, despite the declared notion being "border management", actual practice is devoted to "border control" in association with the concept of "secure borders", which is to a great extent ignoring the global approach to migration. That is, despite the EU's discourse on a "global and integrated approach" to border management, it is more likely, as Carrera notes, that "the enhancement of security at the EU external territorial border occurs through an increased use of coercive measures and surveillance technology, as well as the deployment of an improved system of coordinated actions under the umbrella of FRONTEX" (Carrera, 2007:1). Increased securitization through operational cooperation in an effort to tackle irregular migration has been intensifying, with the temptation becoming stronger than ever for EU governments to allow its external aid to third countries for development to stagnate or even decline, while trying to resuscitate the sick economies of several EU member states and struggle with the ongoing global financial crises.

The second problem is that the EU's policies of border management and the institutions involved are diverse, so they need to be integrated into a more comprehensive and effective system through a holistic approach. As the OECD (2007:22) mentions, border management is only effective if four sets of actors are integrated: core security actors (police, border guards, intelligence agencies), security

governance and oversight bodies (parliaments, NGOs), justice and rule-of-law agencies, and non-statutory bodies (media, private security providers). Efficient and integrated border management not means seeking to control external access and prevent threats to domestic territories, but also requires a precise and legitimate conception of managing proper borders and legal crossing. The control of the mobility should not disturb the legitimate mobility of goods and people. In order not to unjustifiably harm people's fundamental rights concerning mobility, the relevant actors should also remember that not all illegal border crossings and transactions are equally threatening to security. However, for the EU currently, the need for control apparently prevails over the right for mobility (Marenin, 2010: 42).

The third problem is that, whereas the EU declares that "management of EU's external borders is based on the principles of solidarity, mutual trust and co-responsibility among Member states, and has as a basic pillar full respect for human rights in both actions and procedures" (Council of the EU, 2006: 5), it is clear that developments to enhance border controls, and the intensification of surveillance, pose potential challenges to fundamental rights. These controls may impinge on an individual's private sphere when, for example, personal data is gathered, not merely on specific categories of suspect individuals, but shifts to general surveillance by attempting to track everybody's movements across the globe. This development neatly demonstrates the paradox concerning the concept of an EU without frontiers yet with more controls infringing fundamental human rights. A similar risk exists also regarding asylum seekers at borders in terms of conducting the appropriate actions in accordance with the principle of *non-refoulement* and the 1951 Geneva Convention on the status of refugees. For instance, preventive actions that label individuals as "irregular migrant" even before they leave their country to enter EU territory ignores the fact they can be a potential asylum seeker or refugee.

The final problem is that FRONTEX, which is presented as the institutional actor responsible for putting the integrated and global paradigm into practice, is also criticized for its nature, legal basis and specific actions. The key issue concerns the sharing of competence, as FRONTEX is associated only with the "the external borders of the Member states", while it is strongly emphasized that competence over the area of "borders" remains under the sovereignty of individual states. This means

that competencies for border management fall within the responsibility of many different actors: for instance, border controls are a community decision, while police cooperation among the security agencies of member states is a member state competency. As long as the interests of the Community and Member states persist separately, it will not be possible to develop a clear form of border management cooperation; currently, while coordination is neither purely supranational nor purely intergovernmental the aim of improving operational cooperation and management at the EU's external borders remains unfulfilled.

### **3.3.2. Mobility Partnerships to Foster Legal Migration**

Mobility partnerships were launched with the Communication of the European Commission (2007) on “Circular Migration and Mobility Partnerships between European Union and Third Countries”, becoming an important migration policy tool for the EU, with the aim to foster circular migration and mobility partnerships between the EU and third countries.<sup>38</sup> Mobility Partnerships are clearly an instance of the externalisation of EU migration policy, which are intended to “give operational substance to the EU's Global Approach to Migration” (European Commission, 2007/248: 2). These agreements include certain commitments, such as readmitting own- and third-country nationals, undertaking efforts to discourage irregular migration, strengthening border control in return for EU commitments on improved opportunities for legal migration for nationals of the third country, assistance to help third countries develop their capacity to manage migration, measures to address the risk of a brain drain and promote circular migration, and improving procedures for issuing visas to nationals of the third country. The agreements are tailored according to the shared interests and concerns of the partner country and EU participants with regards to the level of commitments offered by the third country in terms of action against illegal migration, and accepting and reintegrating returnees.<sup>39</sup>

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<sup>38</sup> Pilot partnerships were concluded with Moldova (2008), Cape Verde (2008) and Georgia (2009)

<sup>39</sup> Conditionality dominates in the Mobility Partnerships since the EU's commitment to allow legal migration is conditional on the commitments of third countries in taking action against irregular migration and accepting returnees.

For several reasons, these mobility partnerships have been unable to accomplish their objectives of fostering legal migration from third countries to the EU to the expected level. Firstly, cooperation on legal migration is a sensitive issue for member states, when reaching agreement at the EU level is difficult (Carrera, 2007). Member states are concerned to retain their own control of such a sensitive issue, seeming more concerned with prioritizing their own national policy on legal migration than provisions on illegal migration or migration and development (Trauner and Kruse, 2008:414). In 2004, therefore, it was decided that qualified majority voting and co-decision with the European Parliament would apply to all areas of migration and asylum policy, except legal migration for the purposes of employment. Similarly, the unwillingness of member states to cooperate on legal migration is codified in Article 79 (5) of the TFEU: “This Article shall not affect the right of Member states to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work”.

This hesitation of member states to support legal migration was confirmed for me in an interview with Kristina Lindhal<sup>40</sup>, Cabinet Member of the European Commissioner for Home Affairs, Cecilia Malmström. She has mentioned that, although many member states are aware that they need legal migration primarily due to the domestic demographic challenges of an aging and declining population, they are still reluctant to carry out the necessary reforms and agree to more legal migration. However, she sees it as a good development that many EU states now recognize that there is a shortage of labor. She referred to mobility partnerships as a pilot concept for legal migration, stating that a new communication would be published in the near future including more concrete information about mobility partnerships. She clearly argued that mutual mobility between the citizens of states inside and outside the EU offers a win-win situation rather than a threat. Likewise, Peter Bosch,<sup>41</sup> Cabinet Member of the European Commissioner for Home Affairs

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<sup>40</sup> Interview conducted with Kristina Lindhal, Cabinet Member of European Commissioner for Home Affairs, Cecilia Malmström. She is responsible for legal migration and common asylum policy (Brussels, 5.9.2011).

<sup>41</sup> Lecture titled “Towards a Truly Comprehensive Policy on Migration: Challenges and Opportunities for the 21<sup>st</sup> Century” at the Fifth Summer School on Euro-Mediterranean Migration organized by the European University Institute Consortium for Applied Research on International Migration (CARIM), 22.06.2009, Florence. Peter Bosch is a Cabinet Member of the European Commissioner for Home

Cecilia Malmström, also viewed the mobility partnerships as a very new policy instrument, aiming to consolidate a global approach to migration. However, he also confirmed the hesitation and consternation of member states by referring to the case when India offered to sign a mobility partnership. Reiterating the EU's need for labor, he highlighted the critical demographic distortions occurring within the EU, and emphasized especially the shortage of high-skilled labor in Europe that, requires a proactive policy at the EU level concerning legal migration. Accordingly, he mentioned that EU will promote circular migration more in the following years. In reality, however, due mainly to the serious doubts and conflicting perceptions of EU states towards legal migration into the EU, mobility partnerships have resulted in the development of more projects relating to illegal migration than those relating to legal migration.

The second reason for the relative failure of mobility partnerships is that the projects did not create new opportunities for legal migration for the citizens of the partner country. Instead, they were mostly limited to disseminating information about living and working in the EU. This problem also relates back to the question of competence, since it is individual member states that decide whether to allow legal migration into their territories. Without their initiative and approval of legal migration, mobility partnership agreements cannot offer new concrete opportunities of employment in EU countries for third country nationals. This issue of competence also creates problems and constraints for the Commission during negotiations of the partnerships because it also cannot propose any legal migration opportunities itself.

The third problem is that mobility partnerships, as a new mode of governance, do not have any legally binding character. Rather, they are signed as political declarations. Enforcement of commitments therefore falls under the responsibility of member states, meaning that the European Commission can only monitor progress through "scoreboards", without having any competence to impose official sanctions in case of lack of progress. Besides, participation in these agreements is voluntary, so not all member states participate in every agreement.

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Affairs, Cecilia Malmström, responsible for irregular migration, readmission, Schengen Border Code, migration and development.

Finally, the third countries themselves lack any strong ability to influence the content of the partnerships, so their concerns tend not be taken into account during the preparation of the agreements. As the European Commission has acknowledged, “mobility partnerships with third countries which clearly state their interest, needs and expectations [remain] at a very preliminary stage” (European Commission, 2009: 3). In sum, this general assessment of mobility partnerships demonstrates that, in terms of contributing to the EU’s migration and development track with its objective to improve legal migration from third countries to EU Member states, these agreements have not successfully achieved their aims or brought about concrete results. It seems instead that mobility partnerships will remain as wishful thinking. For the future, EU needs to revitalize these objectives to achieve greater legal migration as intended by the mobility partnership and also as suggested by the new context of the ENP with three “M”s: money, market access and mobility.

### **3.3.3. Visa Policy**

Visa policy is one of the most important tools in the EU’s understanding of effective and comprehensive border management, and linked with idea of the EU’s policies extending beyond its borders. Since border control starts in third countries, visas can play a significant role in “policing at a distance” (Bigo & Guild, 2005b: 1). Therefore, rather than being an instance of cooperating with third countries, visa policies became an instrument of EU external governance whereby it exports its migration policies beyond its borders. As Schimmelfenning and Sedelmeier explain, while “internal governance” focuses on the creation of rules, “external governance” focuses on rule transfer to non-EU states (2004: 661). Since the EU has been granted competences and responsibility by its member states in the visa domain, its attempts to extend the *acquis communautaire* in visa policy requires attention in order to determine the motivations behind this.

The competencies concerning visa policies in the EU have progressively evolved as a result of the inability of EU member states to deal effectively with the challenge of controlling the EU’s external borders, although controlling access to its territory is one of the core functions of any state. Such competencies were often developed outside the EU framework by individual member states and then incorporated

in the EU *acquis*. Competences in the visa domain were first transferred to the European Community through the Maastricht Treaty in terms of prescribing third countries whose nationals must be in possession of visas when crossing the external borders of EU member states, and the establishment of a standard model visa. The Amsterdam Treaty extended the transfer of competences in visa policies to the European Community by introducing the legal framework of Title IV, “Visas, Asylum, Immigration and other policies related to free movements of persons”. The Schengen *acquis* was then annexed to the Amsterdam Treaty to become part of the EU’s legal framework, requiring member states to agree on harmonization measures regarding visas for non-EU nationals. The Schengen agreements shifted the focus from nation state borders to external borders, leading to the introduction of provisions for uniform visas and a common visa policy as part of the *acquis communautaire*. As a result, all EU member states, with the exception of the United Kingdom and Ireland, currently have a unified EU visa system.

The currently strict nature of EU visa policies clearly reflects the dominance of a securitization perspective concerning migration policies, confirming that visa policy is employed as a preventive tool to control migration flows, with internal security considerations being exported into the foreign policy domain of visa policies. As Balzacq notes, the EU’s incorporation of visa policies as a securitization tool limits third country nationals’ freedom of movement because of a proliferation of migration control mechanisms, such as the Schengen Information System (SIS), Eurodac, the Visa Information System (VIS), the Europol-USA agreements and the Passenger Name Record Data (PNR) (Balzacq, 2008). In the Schengen system, for example, citizens of third countries who require a visa to enter the EU (Council of the European Union, 2001a) and get placed on the “negative visa list” according to Council Regulation 539/2001 are thereby stigmatized to an extent as potential security risks (Bigo and Guild, 2005: 236). The notion of negative visa list countries involves a generalization of so-called “rogue states” and the resulting consideration of their citizens with suspicion, mistrust and fear. The implementation of these strict visa policies, which applicants perceive to be opaque, costly, complicated and troublesome, also negatively affects the EU’s image in its neighborhood, with such policies being described as a tool for building “Fortress Europe”. The humiliation frequently caused by visa officials during the application process, or facing the

impossibility of obtaining a visa at all due to the cost and conditions, also leads to a feeling of “ghettoization” among the affected populations (Trauner, 2009: 787). This has created a dilemma for the ENP, because it claims that one of its aims is to mitigate the negative effects of new dividing lines and to avoid historical, economic, cultural and social ties being broken. All the countries involved in enlargement and the ENP are in the list of countries whose citizens require an EU visa, with two exceptions: Israel and Croatia. Globally, there are currently still over 100 nationalities that require a visa to enter the EU, accounting for more than 80% of the world’s non-EU population. Conversely, about 1 billion nationals of 37 countries do not require a visa (FRONTEX, 2011: 10).

The transfer of the EU’s visa regime to the accession countries constitutes another particular concern, since candidate countries are asked to adopt the EU’s visa regime in full and impose visas on the citizens of those neighboring countries listed on the EU’s negative visa list. In this way, the EU forces the candidate states to upgrade their external border control regimes to the high legal, organizational and technical standards outlined in the Schengen *acquis*. Accordingly, these new members were required to give up their visa-free policy in return for EU membership which was put as the “big carrot” to ensure compliance. However, this imposition of visa requirements has been criticized for disrupting these countries’ existing traditional, socioeconomic and political cross-border relationships, as happened with the EU’s enlargement into Central and Eastern Europe and their relations with Western Balkan states, Russia, Ukraine and other CIS countries (Grabbe, 2002: 91; Trauner and Kruse 2008: 5). Historically, because some accession countries have minorities and ethnic groups spread across the borders with their neighbors, some have preferred to maintain good relations through an open border policy. However, as part of the accession process, they have had to adopt the EU’s rigid border control policies, which have created barriers between countries that traditionally had close relations.

The transfer of visa policies and related *acquis communautaire* to impose strict visa requirements on non-EU countries has been able to succeed due to the credibility of EU membership conditionality for the accession countries. However, for other third countries, the lack of a membership perspective makes compliance more difficult to achieve since those countries do not share the same common concern as accession

states concerning control of the EU's external borders, although they would like to gain visa facilitation for entering the EU. Consequently, the EU has had to develop a different conditionality for neighboring states between visa facilitation and liberalization, conditional on their adoption of readmission agreements. The aim is to ensure that, before visa obligations are facilitated or lifted, a number of specific benchmarks are fulfilled by the partner countries, including in areas such as asylum, border management and irregular migration, to ensure mobility in a secure environment (European Commission, 2011/743: 5). This visa facilitation and liberalization conditional on readmission agreements will be analyzed in the next section of this chapter.

There is a paradox in EU policies concerning the visa domain. Although the EU promotes and encourages the legal mobility of TCNs within a global and comprehensive migration approach, and uses visa policy as an influential instrument for a forward looking policy on mobility, in practice this openness policy has developed more around an idea of "Fortress Europe". For instance, whereas the Visa Code - applicable since April 2010 - allows EU states to issue multiple entry visas with long validity periods to frequent travelers, there is still reluctance by the member states to use it to its fullest potential (European Commission, 2011/248: 11). Instead, Schengen countries still implement very strict visa rules that prevent the properly managed potential of legal mobility being realized in practice.

In summary, EU visa policies, which are driven mainly by the internal security concerns of the EU, have not been able to achieve the desired results in combating irregular immigration and organized crime (Trauner and Krause, 2008:6). Rather, these policies have served as a bargaining tool for achieving the domestic security considerations of the EU, focusing on migration control rather than foreign policy aims of ensuring stability and integration with the neighborhood.

#### **3.3.4. EU Readmission Agreements and Visa Facilitation**

In addition to strict visa policies, EU have focused its attention on concluding EU readmission agreements (EURAs) as an ambitious and indispensable external policy instrument for reducing irregular migration. Readmission agreements can be studied

within the cooperation framework of the remote-control approach of the EU's externalization of its migration policy with a strong security concern focus. These agreements aim to control and facilitate the return of irregular migrants and rejected asylum seekers. The contracting parties, without any formalization, agree to readmit their own nationals who have entered or stayed illegally in the other country, as well as nationals of non-contracting parties or stateless persons who have illegally crossed the shared frontier<sup>42</sup>.

Readmission agreements have been used since 1980 at a bilateral level in order to return undocumented aliens to their countries of origin and/or to countries of transit. The guiding principles for implementing readmission agreements at a Community level were adopted in 1995, and are based upon the provision of Title IV of the Treaty Establishing the European Community (TEC). The Amsterdam Treaty transferred the competence to negotiate and conclude readmission agreements with third countries to the European Union according to the reciprocity principle, which means that all contracting states must be prepared to readmit on the same terms, not only their own citizens, but also third country nationals. It is a principle of (customary) international law that each country should take back its own nationals, as clearly defined in Article 13 of the 1948 UN Universal Declaration of Human Rights, which enshrines the right to return to one's own country, the corollary of which must be the obligation of the state to allow one to do so. However, no country is obliged to take back nationals of another country.

The Laeken European Council of December 2001 mentioned the need to conclude European readmission agreements without referring to any other external measure. Supporting this, the Seville European Council of 2002 agreed to include "joint management of migration flows and compulsory readmission in the event of illegal immigration" for future cooperation concerning association and cooperation agreements (Council of the EU, 2002: 33). In this way, migration control policies became associated with conditionality for third countries. In the Lisbon Treaty (TFEU), Article 79 (3) gives the conclusion of EURAs an explicit legal basis

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<sup>42</sup> The content of readmission agreements mainly covers procedural provisions regarding return procedure, transit return arrangements, responsibility criteria, standard of proof, time limits and cost distribution. However, the details and exact nature of these procedures vary significantly according to the different geographical conditions, political situations and histories of the signatory countries

The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third country nationals who do not or who no longer fulfill the conditions for entry, presence or residence in the territory of one of the member states.

Concluding readmission agreements is a slow and highly complex process that includes tough negotiations (Trauner and Kruse 2008: 17). Except with a few countries (notably the Western Balkan countries, Moldova and Georgia), the negotiation of EURAs has taken a very long time (European Commission, 2011/76: 6), since the third countries have not appeared to be particularly interested in concluding the agreements. For example, in the case of Morocco, the negotiating directives were received in 2000 but negotiations are currently in their 15th round with little progress. One of the main reasons is that the EU requires, not only the readmission of nationals of the third country, but also those non-nationals who transited the territory of one of the parties en route to the other. During my interview, Laurent Muschel confirmed that the North African countries in particular are not interested in signing readmission agreements since they do not want to take back the many irregular migrants who transited their territory.<sup>43</sup> He reported that those countries preferred to continue with their bilateral agreements, so EU-wide REAs are lacking in this region. In short, there are significant difficulties in motivating third countries to sign readmission agreements, as acknowledged in the Commission's Green Paper: "Readmission agreements are solely in the interest of the Community, their successful conclusion depends very much on the 'leverage' at the Commission's disposal" (European Commission, 2002/175: 23). The Commission highlights two main reasons for this difficulty: lack of incentives and lack of flexibility from member states on some technical issues.

As a result, experience demonstrates that the success of negotiations on readmission agreements depends mainly on the incentives that the EU is able to offer third countries, with some of the more salient ones being visa facilitation regimes and the attraction of EU membership. However, in the field of JHA, there is little that can be offered in return. As result of the insufficient progress achieved in the negotiations,

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<sup>43</sup> Interview conducted with Laurent Muschel, Deputy Head of Cabinet to Cecilia Malmström (Commissioner Home Affairs) (Brussels, 6/9/2011).

the EU began to consider offering incentives such as generous visa policies, or increased quotas for migrant workers in order to facilitate the conclusion of readmission agreements with non-member states. In particular, visa facilitation or the lifting of visa requirements was discussed as a realistic option. Subsequently, visa facilitation agreements within the competency of the EU which aim to facilitate entry on the basis of reciprocity, and cover the issuance of short-stay visas (90 days per period of 180 days), became the major compensation issue during readmission agreement negotiations. The agreements also provide facilitation concerning the high costs of visa applications and agree a fixed fee for processing visas for all citizens of the target country. It also provides for the waiving of visa fees for certain categories of citizens, such as close relatives, members of official delegations, pupils, students and accompanying teachers, and participants in scientific, cultural and artistic activities. The period of issuance of visas is also facilitated with the decision on the visa application being taken within ten calendar days. The agreements also aim to introduce more transparent procedures for short-stay visas and simplify the documentary evidence requested of applicants. However, long-stay visas remain within the authority of individual member states, and a visa-free travel regime is only recognised as a long-term objective.

The link between the conclusion of readmission agreements and visa facilitation was seen first with the Russian Federation in 2004, followed by Ukraine. Visa facilitation proved to be a strong incentive to conclude the EURAs without increasing irregular migration (European Commission, 2011/76). For instance, the EU has not so far been able to start negotiations with Algeria or China due to not offering the incentive of visa facilitation, for various reasons. In general, readmission agreements have become a major part of the conditionality applied to any member pursuing EU candidacy and accession, or even just closer relations with the EU (Apap, 2004: 9). Referring to the developments indicating how useful the incentive of visa facilitation is to achieve the objective of signing readmission agreements, especially with the Western Balkans, the EU has implemented a more precise strategy on extending visa facilitation and readmission agreements as a standard instrument in the ENP as well (Trauner and Kruse, 2008:14). The EU made signing a readmission agreement a priority for visa-free travel or visa facilitation, which has been an issue of high importance for neighbouring countries, an integral part of the EU's "global approach

on migration”. As a result, the link between visa facilitation and readmission developed as a critical element in the EU’s efforts to sign readmission agreements (Zeilinger, 2010: 26). The following table demonstrates the current situation on EUREAs with some selected countries, with reference to the duration of negotiations and the date that visa facilitation agreements entered into force. It reflects the significant fact that all visa facilitation agreements were implemented in the same year as the readmission agreements, except in the case of Albania. However, since the EU was reluctant to initiate visa facilitation with certain countries, namely Algeria, Morocco, Pakistan and Turkey, readmission negotiations with these countries could not make any progress.

**Table 3.1. EU Readmission and Visa Facilitation Agreements**

<b>Country</b>	<b>Type of Agreement</b>	<b>Negotiation Mandate</b>	<b>Start of Negotiations</b>	<b>End of Negotiations</b>	<b>Entering into Force</b>
<b>Albania</b>	RA	Nov 2002	March 2003	April 2005	May 2006
	VF	Nov 2006	Nov 2006	Nov 2007	January 2008
<b>Bosnia</b>	RA	Nov 2006	Nov 2006	Nov 2007	January 2008
	VF	Nov 2006	Nov 2006	Nov 2007	January 2008
<b>Macedonia</b>	RA	Nov 2006	Nov 2006	Nov 2007	January 2008
	VF	Nov 2006	Nov 2006	Nov 2007	January 2008
<b>Moldova</b>	RA	Dec 2006	Feb 2007	Nov 2007	January 2008
	VF	Dec 2006	Feb 2007	Nov 2007	January 2008
<b>Russia</b>	RA	Sep 2000	April 2001	May 2006	June 2007
	VF	July 2004	June 2005	May 2006	June 2007
<b>Serbia</b>	RA	Nov 2006	Nov 2006	Nov 2007	January 2008
	VF	Nov 2006	Nov 2006	Nov 2007	January 2008
<b>Ukraine</b>	RA	Feb 2002	August 2002	Oct 2006	January 2008
	VF	Nov 2005	Nov 2005	Oct 2006	January 2008
<b>Algeria</b>	RA	Nov 2002	June 2005	-	-
	VF	-	-	-	-
<b>Morocco</b>	RA	Sep 2000	May 2001	-	-
	VF	-	-	-	-

**Table 3.1 (continued)**

<b>Pakistan</b>	RA	Sep 2000	April 2001	-	-
	VF	-	-	-	-
<b>Turkey</b>	RA	Nov 2002	March 2003	January 2011	-
	VF	-	-	-	-

One of the most sensitive issues concerns inconsistencies in the EU's wording of its visa facilitation and visa free travel regime with different countries in return for signing readmission agreements. For instance, in the visa facilitation agreement with Ukraine, Russia and Moldova, the EU acknowledges the introduction of a visa free travel regime as a long-term objective. However, with the Western Balkan countries, it went further than visa facilitation to include visa liberalization, in terms of visa free travel regime for more categories of citizens, including tourists. It is clear that the promise of EU membership and the credibility of this relationship increase the leverage over visa liberalisation. However, the EU is reluctant to offer visa liberalisation to non-EU member states, meaning that, eventually, the partner countries are reluctant to sign readmission agreements because the EU does not offer them a visa liberalisation regime as they see was the case for the Eastern Partnership.<sup>44</sup> In fact, the EU imposes "policy oriented conditionality" in cases where accession conditionality does not exist, offering visa liberalisation or visa facilitation as the promised "carrot" in return for signing readmission agreements, under the terms that the visa facilitation and readmission agreements first enter into force to be later followed by negotiations on visa liberalisation. However, this does not appear to be a convincing promise, as seen in the case of Ukraine, which signed a readmission agreement and visa facilitation in 2008, but remains far from gaining visa liberalisation.

The readmission and visa facilitation agreements themselves have been criticized on various points. Regarding the facilitation agreements, firstly, rather than covering all the citizens concerned, only include specific categories of citizens may benefit from facilitated visa procedures. These include members of official delegations participating in meetings, consultations, negotiations, exchange programmes and

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<sup>44</sup> The Eastern Partnership was officially launched at the Prague Summit in May 2009, as an initiative of Poland and Sweden to complement the efforts of the ENP. It aims to develop a specific dimension to the ENP with six eastern partner states: Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.

events, business people and representatives of business organisations, journalists, and scientists and persons active in cultural and artistic activities, including university and other exchange programmes. This limitation has been severely criticised for dividing the society by privileging some people over the vast majority of ordinary citizens (Boratynski, 2006: 2). The privileging of some groups with easy access to Europe is seen as serving the interests of “elite” groups in neighbouring states, which can create deeper socio-economic divisions and factions across already divided societies in the EU’s neighborhood (Guild, 2005).

Secondly, although strictly linking readmission agreements to visa facilitation agreements can be of benefit to non-EU countries by providing opportunities for mobility while safeguarding security and reducing risks of irregular migration, since it is set as an obligation for further development of relations, it carries the risk of becoming an obstacle and preventing any other future cooperation possibility. Thirdly, there are various questions about their effectiveness, the actual numbers of readmitted persons, the TCN clause, human rights safeguards, and the leverage issue. A systematic analysis of the objectives, nature and broader implications of these agreements, and visa facilitation discourse in general, demonstrates that they mainly constitute means to implement a new EU security approach in the neighborhood. Through these agreements, the EU attempts to establish strong external border controls and externalize its restrictive migration policy, while also seeking to foster good neighborly relations by easing the tight visa regime with neighboring countries. This demonstrates the insufficiency of domestic border controls and the inevitable need to cooperate with countries of origin and transit within the external dimension of JHA policies. Furthermore, the EU uses readmission agreements and visa facilitation as means of influencing reforms in neighboring countries to serve the interests of EU justice and home affairs ministers in keeping problems out and the external borders closed (Trauner and Kruse: 2008:7).

This is clearly reflected in the 2003 Thessaloniki Agenda, which first introduced the prospect of a liberalised visa regime and linked it, not to the signing of EC readmission agreements, but to implementing major reforms in areas such as strengthening the rule of law, combating organised crime, corruption and illegal migration, and strengthening their administrative capacity in border control and

security in documents (Council of the European Union, 2003b). Consequently, EC visa facilitation and readmission agreements became a major means to push for further reforms.

The other most debated aspect of readmission agreements is the issue of the difficulty to agree on readmission of third country nationals and stateless persons. Determining the route taken by these migrants, providing proof that they transited a particular country before entering the EU's territory, and particularly proof of nationality all usually remain contested and highly critical. The time limits applicable, the use of the EU standard travel document for expulsion, the means of evidence including *prima facie* evidence constitute the other technical disputed issues.

Data on rates of return are scarce, with only limited reliable EU-wide data being available to differentiate between voluntary and forced return. The actual numbers are considered to be higher than the indicated ones since EU member states have not agreed upon common criteria and definitions, and some of them provide only incomplete information. The only recent reliable data was presented in the European Commission working document on "Preparing the next steps in border management in the European Union" with national statistical data on refused entry, apprehension of irregular migrants, and removal. However, this data neither indicate separately numbers of rejected asylum seekers and irregular migrants, nor the countries to which removal was implemented.

Ambiguous or missing data or estimations about the number of future returnees create many challenges for the transit countries. Readmission agreements cover the return of three different groups of people: (a) their own state nationals; (b) third country nationals; and (c) asylum seekers. It is obvious that a significantly high number of irregular migrants in Europe are nationals of neighbouring countries. Thus, their return creates major difficulties, especially for the neighbouring and migrant transit countries. Additionally, their return means the end of remittances, which may play a major role in the transit country's economy. Apart from this economic damage to the transit countries, the returnees will most likely prefer to stay in or around the capital or major cities, which will create problems of internal

migration and rapid urbanization for the authorities of transit countries to deal with. Another implication of forced return is that the attempts of many migrants to re-emigrate create serious challenges that are rather complex issues for transit countries (Trauner and Kruse, 2008: 29).

The most challenging aspect is the return of third country nationals to transit countries, since it involves many uncertainties that cause severe difficulties for transit country authorities regarding personnel and administrative capacities required, the extent of reintegration programmes, assistance and job training required, and the scope of detention facilities needed. Another difficulty is to determine which third country nationals will be readmitted by EU member states and to launch negotiating bilateral readmission agreements with these countries of origin. None of the transit countries have any experience of readmitting third country nationals to their home countries, nor do they have readmission agreements with countries of origin. The potential number of third country nationals to be returned by EU member states is also unclear. Moreover, the institutional infrastructure of government authorities and technical equipment are insufficient, with staff not having experience concerning return procedures and, more importantly, being untrained, especially regarding the human rights aspects of the situation and respect for migrants and their needs. For example, there are no facilities for adequately accommodating returnees. In short, the return of migrants to their home countries is nearly impossible, given all the administrative, organisational, and financial implications of readmission.

There is also a risk of the return of readmission of third country nationals from the EU to neighboring transit countries since a substantial number of these, including many irregular migrants, can apply for asylum, with most of these transit countries having young, weak asylum systems. Transit countries that already have several difficulties in providing the necessary services for the asylum seekers, such as adhering to time limits, providing interpreter services, running shelters for asylum seekers, or ensuring local integration of refugees, might soon be overloaded and get even worse with an increasing number of applicants. The most criticized aspect of

the readmission agreements relating to asylum-seekers is the non-refoulement<sup>45</sup> principle. The Commission is not involved in the operation of EURAs, but the actual physical return of a person rests entirely with the competent authorities of the Member states. This creates the serious concern that the competent authorities generally fail to consider the specific situation of individual asylum seekers, and their actions may entail serious risks of refoulement, which may lead to violations of a person's customary right to seek and enjoy asylum from persecution. However, most readmission agreements between EU member states and third countries do not contain any explicit reference to the principle of *non-refoulement*. Nor do they refer to a "safe third country" to secure each person's fair access to a refugee determination procedure in line with international standards. In fact, most transit countries are not "safe third countries" of asylum according to UNHCR criteria. Thus, readmission policies are criticized for shifting the burden of refugee protection and reception onto countries that lack adequate resources and facilities. Most of them have insufficient resources, administrative capacity, or procedures necessary for the processing of asylum claims in accordance with the standards required by the UNHCR (Trauner and Kruse, 2008:30). Consequently, transit countries are left with many uncertainties in dealing with substantial numbers of readmitted third country nationals, who pose a serious social and economic burden. The eventual outcome is that transit countries are left at risk of becoming a destination country themselves.

In sum, it is not clear how many irregular migrants and rejected asylum seekers EU member states intend to, or are also able to readmit. Since transit countries have limited capacity, the EU prefers not to harm the economic, social and political stability in its neighbourhood by readmitting too many people. Moreover, identifying an individual's nationality or providing sufficient proof of migration routes is a very difficult and contested issue. Therefore, even if a readmission is signed, its implementation often fails due to insufficient proof. Therefore, finding ways to deal with irregular migrants whose nationality or migration routes cannot be identified remains a crucial matter to resolve. These various issues mean that the origin and transit countries in particular hesitate or resist signing Community readmission

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<sup>45</sup> According to the Geneva Refugee Convention, the non-refoulement principle means receiving states are obliged to examine and verify the claim before returning the applicant to a safe third country.

agreements, both for their own nationals as well as the third country nationals they may expect to arrive from EU member states after Community readmission agreements are concluded. Concerning visa facilitation agreements, it is still too early to assess the quality of their implementation, although in many cases bureaucratic practices in visa applications have hitherto not changed significantly.

### **3.3.5. Asylum Policy in External Cooperation**

Although the Amsterdam Treaty and the Tampere European Council paved the way for trans-governmental cooperation in pursuit of stronger external action, the attempt to develop a common asylum system and its external dimension fell behind efforts on the externalization of migration management. The High Level Working Group (HLWG), established in 1998 by the General Affairs Council, set up a common, integrated, cross-pillar approach, targeted at the situation in the most important countries of origin of asylum seekers and migrants. The Tampere Presidency Conclusions likewise emphasized partnerships with third countries to address political, human rights and development issues in regions of origin and transit. However, the internal goals of common European asylum system and the fair treatment of third country nationals were not prioritized in the external policy agenda.

Asylum policy became an important integral part of the EU's external relations in 2011, with "Global Approach to Migration and Mobility", since one of its four pillars is devoted to "promoting international protection and enhancing the external dimension of asylum policy". Before then, as defined in the Hague Programme (2004), external relations only focused on improving the capacity of third countries to better management migration, prevent and combat illegal immigration, build border-control capacity, enhance document security and tackle the problem of return. The measures that were adopted, in general focused on combatting irregular migration and abusive asylum claims (Guild, 2005). For over two decades, individual Member states have introduced increasingly restrictive measures rather than protection in their asylum policies, such as increased use of immigration detention, withdrawal of social benefits, safe third country practices, and lack of effective

opportunities to challenge detention and deportation, resulting in increased risk of *refoulement* (Baldaccini, 2007: 278).

Shifting the focus from control to protection, the new pillar of GAMM aims to increase cooperation with relevant non-EU countries in order to strengthen their asylum systems, national asylum legislation and to ensure compliance with international standards. Asylum policy frameworks and protection capacity in non-EU countries are supposed to be strengthened under the “Regional Protection Programmes” as the key instrument that focuses on building up protection capacity and asylum systems in partner countries and regions. The new pillar also targets enhanced resettlement in the EU in cooperation with partners (European Commission, 2011/743:17).

The new pillar of the Regional Protection Programmes is a prominent issue for debate concerning the development of external cooperation in migration management. The traditional asylum policies of European states focused on granting protection to a refugee by admitting him/her to their territory and abstaining from expulsion. However, the EU’s cooperation with third countries over asylum issues has brought about a significant shift, in that European states have begun to designate foreign territories as the primary place of protection to process asylum applications outside Europe and build protection capacities in regions of origin. In addition, deterrent mechanisms have been implemented to prevent undocumented migrants from arriving at the EU’s external borders.

The idea of processes asylum applications in third countries was suggested by the UK government, as early as 2003, based on a detailed proposal from Tony Blair, then UK Prime Minister, to the Greek Presidency of the Council of the European Union. The proposal, “New international approaches to asylum processing and protection” (UK Government, 2003) claimed to complement the EU-wide approach set in Tampere to tackle irregular migration by strengthening the EU’s external frontiers and its management of asylum processing through two complementary elements: improved regional management of migration flows, and transit processing centers. Regional management involved long-term action in the source regions to address the root causes of migration through the effective use of development assistance, to

increase protection capability, to develop resettlement, and to induce source countries to accept returnees via the conclusion of readmission agreements.

One of the prominent points in the legal framework of this proposal was its declaration that, although the 1951 Refugee Convention obliges states to provide protection and not to return those with a well-founded fear of persecution, there is no obligation in the Convention to process claims for asylum in the country of application. The proposal therefore offered to establish “protected zones” in third countries, where asylum seekers could be transferred to have their claims processed. These centers would be located outside the EU, for example on transit routes into the EU which would host the people moved from Europe to protected areas for processing. Additionally, these regional protection areas were expected to host failed asylum seekers who had reached Europe but had been found not to have a well-founded claim to refugee status but who could be immediately returned to their country of origin (UK Government, 2003:5). The proposal raised a variety of legal, practical and ethical concerns, for which it was criticized by human rights groups and refugee advocacy groups for aiming to form a bulwark around the EU through Eastern European countries, Turkey, Morocco, Tunisia and Algeria. This attempt to create as many barriers to refugee movement across many different countries and regions, was roundly condemned, making it unable to find unanimous support from EU Member states themselves.

Nevertheless, today, formal asylum procedures are being “externalized” in a very similar manner to the UK’s proposal by fostering the Regional Protection Programmes<sup>46</sup> (RPP) to strengthen international protection and create so-called reception centers, similar to transit processing centers, where asylum seekers can be detained during the assessment of their claims. In these centers, depending on the outcome of their asylum claims, one of three “durable solutions” applies: repatriation to the home country (where there is no longer need for protection), local integration of refugees “into the community of a host country”, and resettlement in a third state in cases where neither of the first two options are possible (European Commission

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<sup>46</sup> Regional Protection Programmes were proposed by Commission Communication of 1 September 2001 (European Commission, 2005/388). RPPs aim to enhance the protection capacity of the regions of origin and transit and to improve refugee protection through durable solutions (return, local integration or resettlement in a third country).

2005/388). Indeed, within the framework of the externalization of asylum policy, this represents a fundamental shift from the traditional system of refugee protection, based on the individual responsibility of each asylum country, towards contracting protection out to less liberal and democratic third countries, where the economic, social and political costs of granting refugee status are seen to be relatively lower (Betts, 2003). Therefore, sending people back to these nations cannot be evaluated under a “burden sharing” discourse, since it only increases the burden on developing countries, which already cope with more than 70% of the world's refugees. These countries, especially those close to regions of origin of refugee populations, host far greater numbers of refugees and asylum seekers than do EU member states. Under these conditions, transferring refugee processing to those regions is inconsistent with the concept of international responsibility sharing and the principle of international solidarity as well. Denying access to territory and shifting asylum-seekers to zones outside the EU where refugee protection is weak and unclear, inevitably puts at risk the asylum seeker’s right to international protection, being incompatible with the fundamental right to seek and enjoy asylum as enshrined in the Universal Declaration of Human Rights (1948) and the Charter of Fundamental Rights of the European Union (2000).

In addition to the contested issues of the Regional Protection Programmes and reception centers, the recent external policies of asylum policies focus on transferring the asylum and human rights law accompanying migration control measures in third countries as a major impetus for the elaboration of common minimum standards for asylum procedures. The Asylum Procedures Directive of 2005 constitutes the legal framework which aims to establish minimum standards for Member State procedures for granting and withdrawing refugee status. Through its community instruments, the EU specifies minimum standards on reception conditions and procedures, and the conditions for qualification as a refugee or beneficiary of subsidiary protection, as well as an agreement on how to decide which EU member state should be responsible for determining an asylum application. However, the actual decision-making processes on asylum issues are problematically constrained by protracted intergovernmental negotiations in the Council. As a result, cooperation in asylum matters displays a complex interplay between trans-governmental cooperation and increasing mobilization of third countries through legal immigration (Lavanex, 2006:

337). Whereas the instruments of the externalization of immigration policy on control are evolving fast, the degree of ‘Communitarisation’ and the implementation of the external dimension of asylum procedures and granting of asylum remain tied to the territory and sovereignty of member states, since there is a lack of political consensus on this very sensitive policy issue (Lavanex, 2006: 342). Thus, even though only one year is left before the deadline to harmonize asylum legislation as the foundation of the common area of protection and solidarity envisaged in the Stockholm Programme, little progress has been achieved. Negotiations on the Commission proposal to recast the Dublin Regulation, the Asylum Procedures Directive and the Reception Conditions Directive also remain difficult (ECRE, 2012:1).

Another contested issue over the EU’s cooperation with non-members in asylum policy concerns the concept of a “safe third country” for return. The Commission indicates that returns to third countries can target, not only nationals of the country in question, also another third country that has been or could have been a “country of first asylum”, if this country had offered effective protection. The “safe third country” concept allows Member states to shift their responsibilities on asylum seekers to third countries without ensuring that these countries, which are thereby required to accept responsibility for refugees, have the capacity to do so. In contrast to transferring responsibility for assessing asylum claims, the EU’s strategy of engaging these countries as part of a durable solution for asylum seekers and refugees was severely criticized by UNHCR, since it could lead to violations of international law. It was also condemned as ‘burden-shifting’ that seriously undermines the international refugee protection regime.

These issues indicate that the EU needs to develop a coherent and protection-oriented communitarized approach with regard to the external dimension of the common asylum system. However, current practice illustrates that engagement with third countries mainly involves intercepting boats carrying undocumented migrants on the high seas, improving passport controls at the borders, training border guards, providing equipment for strict border controls, transferring asylum assessment procedures, and focusing on return policies through EU funding mechanisms. This has several critical implications concerning the international protection of refugees.

To give one recent example, the EU's response to the migratory pressures and protection challenges resulting from the Arab Spring was poor regarding the resettlement of persons in need of international protection and the strengthening of protection space in the region (ECRE, 2012:1). Constructing a common area of protection and solidarity and responsibility-sharing should serve as the main motivation of cooperation with third countries in the field of asylum. As stated in Article 80 of TFEU, the policies of the Union on border checks, asylum and immigration should be governed by the principle of solidarity and fair sharing of responsibility. Besides, Member states can never release themselves from their obligation to protect the individual from refoulement and should respect the right to asylum in accordance with Article 18 of the Charter of Fundamental Rights. This means that cooperation with third countries should involve the EU's clear commitment to the protection and respect of the human rights of all persons, including migrants and refugees. This commitment should also be better integrated in regional dialogues and partnerships, such as the EU Africa partnership, the EuroMed partnership and the Eastern Partnership. Lastly, the efforts and funding invested by the Community should primarily aim to assist the countries of origin and transit in order to establish an institutional framework that respects human rights and meets the needs of refugees, rather than to ensure co-operation in keeping migrants and asylum seekers out of and away from Europe (Baldaccini, 2007:298).

#### **3.4. Migration and External Relations in the EU's 2014-2020 Budget**

The European Commission's proposal on the 2014-2020 multi-annual financial framework (MFF) clearly demonstrates how Europe has shifted and increased its policy priorities towards its external border and external relations with an emphasis on its neighborhood. As indicated in the proposal, "the EU budget expresses policy in numbers" (European Commission, 2011/500:8) gives a clear idea of the key policy priorities and the means to finance them. In other words, the financial framework reflects changes in spending priorities and their design for achieving prioritized policy objectives.

The EU's external relations are financed under heading 4, "Global Europe", which the Commission proposed to increase, both in absolute terms and as a share of the total budget compared to the 2007-2013 financial framework. It suggests that the money invested in helping Europe engage with the world should be increased, with more money being allocated for the neighborhood (COM 2011/500: 2). Similarly, while the proposed share of the budget devoted to other items was reduced (except for smart and inclusive growth), security and citizenship received an increase.

**Table 3.2 Comparison of 2007-2013 MMF with 2014-2020 draft MMF**

2014-2020 MMF (Draft)			2007-2013 MMF		
Commitment Appropriations	Total (million Euro)	%	Commitment Appropriations	Total (million Euro)	%
Smart and Inclusive Growth	490,908	48	Sustainable Growth	382,139	44
Sustainable Growth: Natural Resources	382,927	37	Preservation and Management of Natural Resources	371,344	43
<b>Security and citizenship</b>	<b>18,535</b>	<b>2</b>	<b>Citizenship, freedom, security and justice</b>	<b>10,770</b>	<b>1</b>
<b>Global Europe</b>	<b>70,000</b>	<b>7</b>	<b>EU as a Global Player</b>	<b>49,463</b>	<b>6</b>
Administration	62,629	2	Administration	49,800	6
<b>TOTAL</b>	<b>1,025,000</b>		<b>TOTAL</b>	<b>864,316</b>	

More specifically, the European Commission proposes to allocate 96,249.4 million Euros in total for "Global Europe" under the following nine external instruments:

1. Pre-accession instrument (IPA): €14,110 million
2. European Neighborhood Instrument (ENI): €18,182 million
3. Development Cooperation Instrument DCI): €23,295 million
4. Partnership Instrument (PI): €1,131 million
5. Instrument for Stability (IfS): €2,829 million
6. European Instrument for Democracy & Human Rights (EIDHR): €1,578 million
7. Instrument for Nuclear Safety Cooperation: €631 million
8. Instrument for Greenland: €219 million
9. European Development Fund (EDF, outside EU Budget): €34,276 million

The proposal acknowledges that migration is a significant challenge (European Commission, 2011/500:4), and the MFF proposes establishing a common instrument by creating the “Asylum and Migration Fund” and also the “Internal Security Fund”, which together will lay down for both funds the common principles of assistance, programming, monitoring, and evaluation mechanisms. Both funds are indicated to have an external dimension, and the Commission proposes to allocate 8.2 billion Euros for the 2014-2020 period, in just the area of home affairs. Lastly, the proposal includes two major innovations for a key external policy tool: the principles of “differentiation” and “more for more” for the best performers are emphasized with a focus on reinvigorating the ENP. The principle of differentiation means that the EU will allocate the greatest proportion of funds where aid can have the highest impact.

### **3.5. Cooperation with Third Countries: “Burden Sharing?” or “Burden Shifting”?**

The shifting of responsibility under the cooperation framework is called a “policy of delegation” by some scholars (e.g. Başaran 2008: 344), and “burden shifting” by others (e.g. Du□vell and Vollmer 2009:9). This raises the question of whether the externalization of immigration policies is more likely in practice to mean “burden shifting” onto third countries or, as claimed in EU discourse, “burden sharing” with them.

The ENP is intended to develop a zone of peace and stability, or “a ring of friends” in the rhetoric, emphasizing joint responsibility and common interests in relation to a wide spectrum of transnational security issues, such as the fight against illegal migration, organized crime and terrorism. The idea of transferring responsibility is included in the ENP in that “shared neighborhood implies burden-sharing and joint responsibility for addressing the threats to stability created by conflict and insecurity” (European Commission, 2003/104:12). However, the nature of this cooperation concerning the “externalization of migration” is criticized by many scholars in terms of being more likely to allow the EU to “extra-territorialize” the management of its security threats to neighboring countries, which thereby primarily serve the EU’s interests (Bigo/Guild 2005; Balzaq 2008; Wolff et al. 2009). The “externalization approach” is thus restrictive and control-oriented, pushing the non-

member countries to undertake responsibility for common regulations towards migration management, capacity-building in the area of border control and asylum seekers. The EU's eastern and southern neighboring countries, such as Ukraine, Moldova, and Morocco, have been put under particularly strong pressure from EU member states to curb irregular migration and improve their border control management, agree on a common return policy for their citizens who have been irregular EU residents, as well as transit migrant through their territory.<sup>47</sup> These attempts can indeed be seen as examples of a shift of responsibility for preventing unwanted migration into the EU towards non-member and new member countries.

Similarly, the use of readmission agreements serves to shift the burden of dealing with both irregular migrants and asylum processing onto the neighboring countries, as is evidenced by EU discourse. In its recent Communication on "Improving Access to Durable Solutions" (European Commission, 2004/410), the Commission explicitly linked this goal to the enhancement of the protection capacity of third countries in the region of origin in the sense of global burden sharing (European Commission, 2004:8). However, it is difficult for third countries to accept the range of obligations required by readmission instruments, and the implementation of these agreements is seen as a burden that falls on their shoulders rather than the EU's. Especially, the EU's transfer of responsibility for processing asylum applications onto third countries of origin creates grave serious concerns regarding the capacity of these countries to undertake such additional protection responsibilities in the light of the unprecedented scale of the migration challenges that they already face. These countries are neither ready to conclude readmission agreements nor have the capacity and financial resources to cope with the consequences of such agreements. It should also be noted that several human rights violations have been reported by several NGOs and human rights organizations due to the incapacity of these countries, with regard to arbitrarily arresting undocumented foreigners, mistreating them in detention centers, and forcibly returning them to countries where they could face persecution or torture. Therefore, the EU has been harshly criticized for using neighboring countries as a dumping ground for politically unwanted migrants

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<sup>47</sup> Concerning the EU's eastern enlargement, the applicant countries for EU membership had no choice other than guarding their borders and comply with requests to take back illegal immigrants in order to stay in the good graces of EU governments (Vachudová 2000).

through these return policies, instead of undertaking its own international obligations towards them (Balzaq 2008). . These problems indicate that a different leverage or incentive mechanism is required for externalization to achieve its goals, beyond the promise of visa facilitation or liberalization, by including more concessions such as development aid and increased external trade, which are currently offered within very limited parameters.

From this perspective, the neighboring countries that are held responsible for keeping unwanted immigrants out of EU territory, have become “buffer zones”, since the EU expects them to absorb unwanted migration flow into the EU (Collinson, 1996). Actual practice is thus more likely to involve blocking immigrants from reaching Europe rather than helping them to get the protection they need. As Zeilinger argues (2010:23), the EU’s efforts to reach a high number of readmission agreements with more transit and origin countries, demonstrates that it is attempting to create concentric circles of demarcation, and expelling irregular immigration outside its territory. In the way, the new border policy of the EU’s readmission agreements and its establishment of FRONTEX are both criticized for creating buffer zones as part of the EU’s external policy on migration management (Dimitrovova, 2010: 7-8). Kemal Kirişçi (2006), who has conducted several studies on the Turkish case, also concludes that new neighboring countries have been designated as a “dumping ground” or a “buffer zone” for migrants unwanted in the EU. Lastly, the Eastern enlargement has also turned parts of East Central and South Eastern Europe into a potentially tense migration buffer zone (Vachudová, 2000).

Neighboring transit countries are also themselves concerned about this risk of becoming “buffer zones” so they demonstrate a certain reluctance to deal with irregular migration flows, since many irregular migrants travel to Europe through these transit countries. More critically, readmission agreements allow the EU to send an apprehended irregular migrant back to the transit country purely based on a declaration by that migrant, even if he/she cannot otherwise prove to have travelled through the transit country. Because an apprehended irregular migrant might prefer to be sent to a transit country rather than his/her own origin country, it is obvious that, for the EU’s partner states, readmission agreements, which include not only readmitting their own nationals but also other third country nationals, imposes a

serious financial, administrative and social burden on them, which is may even threaten their sometimes already weak economic, political and social stability. This puts the transit countries under a big burden, so they become very hesitant and reluctant about concluding readmission agreements with the EU. Indeed, dialogue with these countries tends not to focus on supporting their efforts to deal with their concerns but on concluding readmission agreements and keeping irregular migrants out of and away from EU territory.

Another burden for third countries is that restricting migration in the territories of non-EU member third countries may create negative externalities for their foreign relations, especially with their own bordering countries. This may result, in the long term, in unintended negative consequences for the political stability and economic prosperity of the region of these countries (Lavanex and Uçarer, 2004: 214). For example, in Eastern Europe, the introduction of strict visa regimes by new member states has had a particularly negative effect on people-to-people contacts across their border regions, rich in pre-existing cultural, familial and economic ties, as in the Polish-Ukrainian, Slovak-Ukrainian and Hungarian-Ukrainian border regions. For the sake of demonstrating their “Western” character in policing the common external borders of the EU borders, and moreover as part of the membership requirement of adopting the EU *acquis* in the field of Justice and Home Affairs, Poland, Hungary, Slovakia, Slovenia and the Czech Republic adopted the common visa list, which has isolated both ordinary citizens and the elites of most of the neighboring non-member states by requiring them to obtain visas to travel to the Schengen area. At the same time, this has imposed substantial costs on acceding states, such as for Hungary through closing of its borders to visa-free travel for ethnic Hungarians in neighboring states, and for Poland a loss of economic activity along its eastern border. For these countries, despite all the transformation and domestic upheaval, these changes were not perceived as an exclusively EU imposition since it formed part of a credible process of gaining EU membership. In contrast, while the reward of EU membership at least creates a reasonable cost-benefit analysis for these countries, a visa dialogue without any prospect of EU membership creates far more critical concerns over burden sharing. This is because the EU’s demands from neighboring non-member countries to employ strict visa regimes and border controls, without offering them credible incentives, create similar negative implications concerning the third

countries' political, economic and social relations within their region. The cases of Turkey and Morocco will be scrutinized in this respect in the following chapters.

The nature of the EU's asymmetric relationship with third countries, and their resulting differing perceptions, are two important factors that help explain the ambiguity between shifting or sharing the burden. The EU acts as a "norm setter" in matters of migration management with third countries since it sees itself as the superior power in the relationship. However, it is highly dependent on third countries' abilities to prevent the unwanted migration flows that are perceived as a security threat by the EU. As Patten and Solana (2002: 3) state, "[w]hen the frontiers of the Union shift eastwards, the opportunities and challenges raised by our [the EU's] eastern neighbours will affect us more directly than today". Similarly, Ferrero-Waldner (2006), European Commissioner for External Relations and European Neighbourhood Policy, declared that "[t]his is not just a political imperative, but a matter of self-interest. If Europe did not export stability, it would import instability".

Thus, the neighborhood is perceived by EU actors as a source of potential insecurity, so it is engaged through the logic of promoting change in the direction desired by the EU (Bengston, 2008: 609), with conditionality being seen as the primary instrument for change, although the EU stresses that cooperation should reflect the mutual interests of the two sides, rather than the EU imposing change. In practice, the asymmetric nature of the relationship between the EU and each neighboring country, coupled with the EU's coercive power, are evident, especially in the construction of the institutional framework. This allows the EU to set the agenda of the neighboring states (Bengston: 2008 611). The differing perceptions of both sides concerning their own needs and positioning therefore become influential in determining the success of the cooperation. More specifically, while the EU focuses on its own interests and objectives through a more rationalist approach, the ignored perceptions and needs of third countries strongly affect the success of EU policies, leading to many policy constraints. The EU presents itself as a potent actor possessing powerful resources (money, knowledge and normative framing), while regarding the neighboring countries as inferior states, in need of assistance and dependent on the EU for their future security and prosperity. However, despite these various forms of power available to the EU, in practice has so far been unable to make substantial changes in

the policies of neighboring countries. Evidence of the EU's overestimation of its own strength is clear from the slow progress in ENP Action Plans, the upheavals of the Arab Spring, and the EU's weak influence in shaping other recent developments, especially in the Mediterranean and the Middle East.

Another example of diverging perceptions is the readmission agreements. They are concluded on the basis of reciprocity and designed to stop any massive influx of irregular immigrants into the EU, but perceived as an EU imposition by the third countries for creating the risk that they become buffer zones. Neighboring countries view EU's strategy as too intrusive into their internal politics, so do not accept it as a legitimate addition to the general cooperation framework (Zeilinger, 2010: 26). Sub-Saharan African countries, in particular, are not necessarily interested in curbing migration of their own citizens, and are not interested either in cooperating on readmission of non-nationals. While the EU considers visa facilitation for some categories of people, such as students, academicians and business people, as a sufficient incentive for accepting a readmission agreement, third countries perceive the estimated burden of these partnerships as costing them more than the EU claims. African countries' main interest is the development agenda and access to EU labor markets, but the reality is that very little progress has been made on these issues. Regarding transit migration, North African countries perceive this as substantially a European issue but from which they suffer the consequences. Thus, EU attempts to impose conditionality on visa facilitation and conclusion of readmission agreements in relation to transit migration do not succeed easily. Although neighboring states may conclude EU visa facilitation and readmission agreements in principle, in practice concrete action in this field remains limited, as can be seen in the visa domain, with its vague calls for action, such as "establishing constructive dialogues" or "exchanging views" (Trauner and Kruse, 2008:16).

Concerning Mediterranean neighbors, the drawbacks of the Euro-Mediterranean Partnership and the ENP, criticized by many scholars and practitioners for failing to achieve its targets, have led to ineffective policy dialogues concerning the external dimension of migration in the region. The perception of countries in this region that "burden shifting" prevails over "burden sharing" has inevitably affected by the implementation of EU policies, which have mostly failed in terms of inadequate

financial disbursement, asymmetrical trade liberalization, inadequate encouragement of political reforms, ambiguity of action plans, and insufficient allocation of funding for promotion of human rights.

In relation to this, financial assistance also constitutes a critical issue. In general, the EU's external aid instruments do serve not only to promote EU migration management and the needs of third countries, but also contribute to enhancing protection space in third countries in a supposed spirit of responsibility-sharing. In addition, other external instruments, the proposed EU Asylum and Migration Fund, and the Internal Security Fund are also supposed to cover the required financing of the GAMM. These funds are not only intended to serve the interests of the EU, but should be allocated by taking into account their being implemented in a non-EU country. They should, therefore, be used for specific activities complementing these needs and dynamics with reference not only to the foreign policy considerations of the EU, but to the development policy purposes of the third countries as well.

### **3.6. Conclusion**

The institutionalization and development of the external dimension of EU immigration policy continues to evolve under the strong influence and stimulus of the EU's concerns and objectives regarding migration management. From the discussion in this chapter, it is evident that the gradual development of the EU's common immigration policy among member states and their shared internal concerns had significant implications for the development of its external policy dimension. To summarize the institutionalization of the policy field, the intergovernmental cooperation that has dominated the migration and asylum management for many years in the EU was identified as a "matter of common interest" only in the Maastricht Treaty (1992). Following this, the Amsterdam Treaty (1997) formally delegated powers over asylum and migration up to the EU level, but precluded the application of the community method. When the aim of establishing a common EU asylum and migration policy was declared in the Tampere European Council (1999), it also revealed that asylum and migration policies required a more comprehensive approach involving stronger external action. In turn, the formal embracing of this external dimension of migration policy highlighted the inevitable need to cooperate

with third countries on a number of external policy orientations and priorities, which have been repeatedly emphasized in many Presidency Conclusions and Commission's Communications. This leads to the conclusion that the EU's externalization attempts were constrained by competing competences within EU institutions rather than between EU institutions and Member states. That is, while the external dimension of migration lies, to an extent, within the responsibility of EEAS, it also remains within the remit of Justice and Home Affairs. However, despite this constraint, it should also be noted that progress on institutionalizing the externalization of EU immigration policy proceeded faster than did the development of a common EU immigration policy, since the Member states were more unified and agreed upon the common external challenges on migration issues.

In correspondence with the theoretical framework provided in the second chapter, it can be seen that the domination of two approaches, remote-control and root-cause, have strongly shaped the development of this institutionalization process. While the discourse of many EU policy documents reflects the security concerns of the EU as governing the cooperation framework with third countries concerning migration issues, controlling irregular migration and fostering legal migration to the EU have been the two main domains. In this regard, the employed policy instruments, their context, implementation and outcomes provide proof for the claim that remote-control prevails over the root-cause approach in externalizing the EU's migration policy towards third countries. The table below summarizes the categorization of these policy instruments and their impact within the conceptualization of the externalization of EU policy on immigration.

**Table 3.3 Institutionalization of the External Dimension of the EU’s Migration Policy**

<b>Policy Instruments</b>	<b>Remote Control Approach</b>	<b>Root Cause Approach</b>	<b>Context and Observed Outputs</b>
<b>Border Management</b>	✓		<ul style="list-style-type: none"> <li>• Increased border control measures</li> <li>• Securitized borders (focus on terrorism as a challenge)</li> <li>• Improve capacity of neighbors mainly on border controls</li> <li>• Integrated border management</li> <li>• Combat irregular migration</li> <li>• Focus on improving use of coercive measures and surveillance technology</li> <li>• Human rights abuses</li> <li>• Raising problems on legal mobility</li> </ul>
<b>Mobility partnerships</b>		✓	<ul style="list-style-type: none"> <li>• Non-fulfillment of targets on fostering legal migration</li> <li>• Not legally binding</li> <li>• Competence problem between EU and the Member states</li> <li>• No sanction mechanism</li> <li>• Not reflecting third countries’ needs and expectations</li> </ul>
<b>Visa Policy</b>	✓		<ul style="list-style-type: none"> <li>• Strict Schengen rules</li> <li>• Increased controls at entry and exit points</li> <li>• Use of biometric passports</li> <li>• Urging “Fortress Europe”</li> <li>• Damaging neighborhood relations and regional stability</li> </ul>
<b>Readmission</b>	✓		<ul style="list-style-type: none"> <li>• Return of irregular migrants</li> <li>• Highly complex and difficult process of negotiations</li> <li>• Lack of incentives</li> <li>• Huge burden and costs on third countries</li> <li>• Policy oriented conditionality for visa facilitation</li> <li>• Lack of effectiveness</li> <li>• Technical, administrative and financial incapacity of third countries</li> <li>• Risk of human rights abuses</li> <li>• Risk of refoulement</li> </ul>
<b>Asylum Policy</b>	✓		<ul style="list-style-type: none"> <li>• Late attention to its external dimension</li> <li>• Increasingly restrictive measures rather than protection</li> <li>• Focus on control rather than protection</li> <li>• Promoting Regional Protection Programmes, Durable Solutions and Reception Centers</li> <li>• Shifting asylum applications out of Europe, refugee status determination</li> <li>• Return to “Country of first asylum”</li> <li>• Return to “safe third country”</li> <li>• High risk of human rights abuses and refoulement</li> </ul>

The history of the EU's employment of policy instruments clearly demonstrates that they primarily serve the EU's interests and objectives in migration management while generating negative externalities for third countries. The EU's discourse justifying its cooperation with third countries on migration policy through the rhetoric of 'sharing a common burden' has been questioned, not only by many scholars, but even more so by the third countries themselves in terms of the EU's rather shifting the burden onto these countries. These countries' fear of becoming a buffer zone for the EU's unwanted migrants and asylum seekers, and the expected huge costs triggered by the negative externalities on third countries has restricted and blocked effective cooperation in migration policies. The EU's increased attention and policy prioritization on external actions and migration management is reflected in its 2014-2020 budget proposals. However, given the criticisms made in this chapter, careful analysis is needed to determine whether this financial allocation can be effectively used. The lack of a development and a root cause approach, coupled with the dominance of security concerns in determining the EU's external actions indicate that there needs to be a revision of the EU's current policies for third country cooperation in the migration field towards a common, comprehensive and mutual understanding that better reflects the needs and expectations of both sides.

## CHAPTER 4

### IMPLICATIONS OF THE EXTERNAL DIMENSION OF EUROPEAN IMMIGRATION POLICY FOR TURKEY

Turkey, located at the crossroads of Asia, Europe and Africa, has become a major country of “transit” and “immigration” within the context of the changing dynamics in types, flows and destinations of migration that have become more diversified in the last two or three decades (Içduygu, 2005:1, IOM 1995, Düvell 2011a). These changes have implications not only for social, economic and political dynamics in Turkey but also for the neighboring regions where migration routes exist, particularly movements from the Eastern-Mediterranean region into the EU. In this context, Turkey constitutes a major concern for Europe in terms of the high levels of irregular migration and asylum flows through its territory.<sup>48</sup> Due to its close proximity to the EU, it forms a bottle neck of the Eastern Mediterranean route taken by illegal migrants trying to reach Europe through eastern Greece, southern Bulgaria or Cyprus. As a staging post for onward migration towards Europe, Turkey not only poses a major challenge for Europe, but also for the Turkish authorities seeking to control and manage migration in the region.

As İçduygu refers, transit migration as a context related phenomenon that can be better understood through analyzing the issue comprehensively, by involving the countries of origin, transit and arrival (Içduygu, 2000:357). Therefore, it is important to identify the links between the stages of transit migration originating from various regions of the world through Turkey to Europe, and defining Turkey’s positioning as a transit country in this whole picture. This requires accommodating Turkey within

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<sup>48</sup> 2010 The Risk Analysis Report of FRONTEX highlights Turkey as the most important transit country for illegal migration into the EU (Frontex: 2010: 3).

current theoretical and analytical debates and the conceptualization of transit migration in its totality<sup>49</sup>.

Accordingly, this chapter aims to define the transit migration experience of Turkey in the last thirty years with the help of several data sets, and to examine the nature and dynamics of transit migration in Turkey with reference to its accession negotiation process with the EU as well. The chapter analyzes the discourses, their implications, and the way in which transit migration in Turkey has been approached within the EU's enlargement policy under existing dynamics concerning Turkey on the one hand, and the EU's efforts to externalize its immigration policy on the other hand. The chapter then seeks to explore the conceptualization of Turkey as a transit migration country and assess the implications of the EU's actions to externalize its migration policy within the enlargement process through employing the policy instruments studied in Chapter 3. Turkey's immigration policy will be tested in relation to the given theoretical framework on Europeanization in terms of its progress on legislative adaptation, border management, visa policy, asylum policy and readmission, with a focus on the limits and deadlocks of cooperation that reveal the negative externalities imposed on Turkey that have strongly affected the transformation and the success of cooperation in the policy field.

#### **4.1. Defining Transit Migration**

Migration studies traditionally involve two main areas of research: the already intensively studied pre-migration decision-making process, and the post-migration phase that investigates the impact of migration on sending and receiving countries (Schapendonk, 2008:130). More broadly, the diverse literature on international migration can be grouped into four major research areas: the origins of migratory flow, the determinants of their stability over time, the uses of migrant labor, and the integration of migrants into the receiving society (Portes and Borocz, 1985: 606). The first two areas investigate the causes of migration while the second two areas are concerned with the consequences. Paradoxically, migration, as a process of

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<sup>49</sup> In trying to conceptualize transit migration from an analytical perspective, this study does not attempt to elaborate competing migration theories in detail, as this goes beyond the scope of this study. Rather, it aims to elaborate the theoretical debate on transit migration as a component of the migration movement and position it within the whole process of migration.

“moving”, has not much been studied in great depth (International Migration Institute, 2006), and as İçduygu (1996) mentions, there has been very little consistent research conducted concerning “transit migration”. However, in the last few years, the focus on transit migration and its implications has received significantly greater attention, which requires both an analysis of causes and consequences together, but also investigation of the transit migrants themselves who formulate their own strategies and life projects (İçduygu, 2000: 359).

Defining “transit migration” itself is a contested and highly confusing issue in the international migration literature. Conceptually, it is often treated within a narrow understanding as “migration from country A via country B in order to reach country C”, although the real conceptualization of transit migration is far more complex than this assumes (Schapendonk, 2008:131). As a discourse, despite the widespread use of the concept, there is no commonly agreed single definition for transit migration in international policy or international law. Most existing definitions are too narrow or limited to explain it, mainly because researching transit migration involves several epistemological, methodological, and empirical difficulties due to the fuzzy nature of the concept. Therefore, even the most recent documents focusing on “transit migration” are always required to give an introductory explanation concerning what is meant by “transit migration” and “transit country”, while no reference is needed for countries of “origin” or “destination”.

Transit migration apparently entered migration policy discourse during the 1990s when it was first noted at the United Nation Economic Commission for Europe conference as: “migration in one country with the intention of seeking the possibility to emigrate to another country as the country of final destination” (UN/ECE, 1993:7). Similarly, İçduygu defines transit migration movement where “migrants come to a country of destination with the intention of going and staying in another country” (İçduygu, 2005:1). Papadopoulou describes transit migration more as a process: “the stage between emigration and settlement” (Papadopoulou, 2005) whereas Petras argues for contextualizing transit migration as a phenomenon of labor migration between core and peripheral countries (Petras, 1981:45). The most commonly accept universal definition on transit migration comes from the Assembly of the Inter-Parliamentary Union in Geneva: “aliens who stay in the country for some

period of time while seeking to migrate permanently to another country” (2005: 4). Thus, different debates on the definition of transit migration demonstrate that the use of terminology refers to a complex process since there is conceptual misunderstanding in defining it in absolute terms.

From an analytical point of view, İçduygu argues that transit migration is a context related phenomenon since its progress depends on many actors and conditions, such as sending countries, receiving countries, migration routes, and political and economic dynamics on the routes (İçduygu, 2000: 357). He argues that transit migration should be elaborated in its totality, and must involve countries of origin, transit and arrival, together with an analysis of the causes and consequences of transit migration (İçduygu, 2005: 1). Lee also notes that every migration includes origin, destination and a set of intervening factors in between, strongly associating transit migration to these intervening factors (Lee, 1969: 285-288). That is, the local, regional, national and international contexts and existing dynamics are influential determinants of transit migration. Similarly, Schapendonk defines migration, not as a simple movement from A to B, but rather as a process of continuous movements and temporal or semi-temporal settlements (Schapendonk, 2008:130). Hence, while analyzing migration patterns involving transit migration, a comprehensive and contextual approach is required for a better understanding.

#### **4.1.1. “Transit Migrants”: A Different Category?**

In fact, defining transit migration requires defining the term “transit migrant” itself, which emerges as a more complicated issue, since neither characteristics concerning space, nor time or intention seem to be enough to describe it. The Council of Europe vaguely defined transit migrants as “people who enter the territory of a state in order to travel on to another” (Council of Europe European Committee on Migration, 2002). İçduygu (2005) and IOM (1995a) put more emphasis on the notion of the “intention” of transit migrants that lies in the continuation of their journey. Cassarino and Fargues refer to transit migrants as “people on the move finding themselves in a situation called ‘transit’, namely migrants staying on a temporary basis in a country with a view to reaching another country, whether they eventually reach it or not” (Cassarino and Fargues, 2006)

The problem emerges from this lies not in reading the word “transit”, as it obviously refers to a wide set of people temporarily staying in a country other than their own, but in reading the word “migrant” when used in a misleading way. Without doubt, being a migrant is not a static status but a temporary contingency. Migrating itself is a process of action that applies to whoever emigrates from their country of origin until they voluntarily decide to stop (permanently or temporarily) in another place. Therefore, migrants are inevitably “in transit” while they move towards the place where they desire to immigrate. However, some researchers categorize people as transit migrants even if they stay for a long period in their former host country, for instance 12 years in a refugee camp (Roman, 2006). Düvell describes this conceptual dividing line between transit migration and multiple or repeated migration as blurred, and shows how this issue is treated inconsistently by pointing to several evidence-based migration theories (cumulative causation, culture of migration), which confirms that “once someone migrates, the more he or she is likely to continue migrating” (Düvell, 2006a:16). However, process tends not to conclude at the destination country, as some migrants end up in perceived transit areas while others end up changing their desired destinations to other places. Transit migration thus becomes a more concrete and visible reality, as Marconi notes,

...because of the many obstacles mainly of economic and/or political nature that are blocking migrants at some point of their trip, leaving them in a stall situation without immediate possibilities to reach their target destination nor, as is often the case, to go back home (Marconi, 2008:3).

The discussion so far highlights two common characteristics: first, transit migration encompasses both legal and irregular migrants; secondly, it puts a focus on “intention” and the “temporary” nature of a stay, which are planned at the beginning of the process before the migrant departs. However, these are again questionable since personal intentions are hardly quantifiable. As Papadopoulou states, transit migration can turn into further emigration and permanent settlement (2004:170). Moreover, any migrant, somehow can become a transit migrant in time, irrespective of intention whether or not it was planned before. Irregular transit migrants can legalize their status by regularization (amnesty) programmes and become regular migrants in the transit countries. In other words, referring to the Düvell’s description of transit migration as a perfect example of “mixed migration”, there is no clear

separation among the categorizations of migration flows, since most categories are intertwined (Düvell, 2008:5). Thus, there is a growing consensus in the literature to consider transit migration as a “phase” in the migration process for different types of migrants, rather than as a distinctive “migration category”, such as irregular migration or refugee migration. This reveals that the core problem does not relate to the conceptual definition but identification of transit migration.

Following the same line of argument, this study will not classify transit migrants as a separate category of migrants or a status, but rather approach it as a “process”. Any tourist, a student, an irregular migrant working in a country, or an asylum seeker can be described as a transit migrant. Over time, migrants can move from one status to another according to their life cycle of migrant status or depending upon changes in their aim of stay, duration, and legal status. In addition, although this migrant status is defined as temporary, in practice it may continue over the long-term and reach semi-permanency. Regular and irregular migrants, refugees and asylum seekers, can all experience a transit phase in their migration process (Schapendonk, 2008:131), which clearly demonstrates that there are no clear boundaries in defining transit migration and transit migrants as separate concepts in migration discourse.

#### **4.1.2. Transit Migration as a Politically Constructed Concept**

Defining transit migrants within a process-related framework brings us to a debate which addresses transit migration as a politically constructed concept rather than being a new separate category of migration. Haas argues that, although many migrants consider transit zones as their primary destination, a significant proportion who fail to enter their destination country prefer to stay in the transit country as a second best option (Haas, 2006a). This demonstrates that “transit migration” is a mere re-construction of reality rather than something original in terms of its content. Düvell (2006b: 5) supports this argument: “transit migration is as much a discourse as it is a scientific concept”, which to some extent is used as a control strategy against those countries expected to keep migrants outside EU borders. In recent decades this issue has been increasingly approached in a politicized manner by Europe as an important consequence of the economization and securitization of the European international migratory regime. İçduygu and Yüксеker argue that

[d]iscussions of transit migration in Europe and its peripheries are not simply descriptions of an existing reality, but to some extent also a part of the process of constructing that reality in such a way that discursive practices enable policy statements to conceptualise and talk about this phenomenon (Içduygu and Yüksek, 2010:1).

Transit migration has been introduced and popularized in a context which requires it to address various political motivations (Düvell, 2010:1) and discourses. In this regard, the rise in popularity of transit migration has been strongly reinforced by the EU's efforts to externalize its comprehensive migration control policy towards non-EU countries, as transit migration has become of growing concern for the EU. Düvell has notably points out the construction of two concepts: "transit migration" and "transit countries". He mentions that the re-construction of transit migration in political terms seems to be pronounced obsessively by the EU on the peripheries of the European continent which acknowledges the argument that conceptualization of the issue is part of the process constructing discursive practices to enable policy statements (Düvell, 2006 a,b). Therefore, in his study of transit migration, Düvell refers to theoretical abstractions and discursive deconstructions through a multidimensional analytical approach based on a new aspect of the longstanding politicization of the international migration system in the EU. This politicization involves the intertwined processes of securitization and economization of international migratory regimes (Içduygu and Yüksek, 2010:1). In other words, the security concerns of Europe on the one hand, and the economic interests of the major receiving countries on the other hand, make the political construction of transit migration more complex and multifaceted where securitization and economization clashes.

The concept became increasingly popular and widely used particularly after many policy papers and official documents of multilateral and intergovernmental agencies, think tanks and European institutions, notably the IOM, ICMPD, the EU's High Level Working Group on Asylum and Migration and others, began to highlight the importance of transit migration as a matter of controlling "unwanted migration". IOM in particular published a series of papers<sup>50</sup> recommending governments of its

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<sup>50</sup>IOM published research results between 1993 and 1995 on transit migration in 8 countries (Romania, November 1993; Bulgaria, March 1994; Poland, April 1994; Czech Republic, May 1994;

member states to consider transit migration as an important pattern of international mobility, and as an increasingly challenging feature of current migration flows given the high levels of “irregularity” it involves. Supporting this, the regional conference organized by the Council of Europe (2004) on “Migrants in Transit Countries” was an important attempt that has raised the attention of national authorities to take measures against transit migration as well. In this environment, the discourse on transit migration developed in a highly politicized way, with a misleading and negative notion of “threat” similar to that of “irregular migration”, although transit migrants include not only irregular but also regular migrants. In a fatal manner, it has also been mainly associated with organized crime, smuggling and trafficking and also to asylum migration (Düvell, 2010: 3).

The politicization of the issue created another debate on labeling some countries as transit countries in the migration lexicon as an intermediate category besides the migrants’ country of origin and destination. The notion of “transit country” was first used in the 1990 UN International Convention on the “Protection of the Rights of all Migrant Workers and Members of their Families”. As Article 6 states, “the term ‘state of transit’ means any state through which the person concerned passes on any journey to the state of employment or from the state of employment to the state of origin or the state of habitual residence” (UNESCO, 1990). Similarly, the IOM’s Glossary on Migration describes “transit” as “a stopover of passage, of varying length, while travelling between two or more countries, either incidental to continuous transportation, or for the purposes of changing planes or joining an ongoing flight or other mode of transport” (IOM, 2004). However, as more political and economic motivations and policies were implemented to increase control of unwanted migration, so more and more migrants and refugees started to become stuck in peripheral countries as a direct consequence of incoherent and ineffective migration policies or the externalization of migration policies. Additionally, people might not directly migrate from their countries of origin to the targeted country due to geographical proximity, social networks, or entry restrictions for migrants. (Içduygu, 2000: 358). In this context, the politicization of the issue eventually led to

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Russian Federation, June 1994, Ukraine, August 1994; Hungary, December 1994 and Turkey 1995. Following these, a new research report was published in 2003, titled “Study on transit migration through Azerbaijan”.

peripheral countries being labelled as “transit migration countries”, thereby associating them with the constructed concept of transit migration. They are described as geographically located between source and destination countries on international migration routes which have been put under pressure to cooperate to stem migration flows and readmit intercepted irregular migrants (Marconi, 2008:1). However, it should be underlined that, in the context of an evolving negative discourse that associates transit migration with irregular migration as a security threat, the peripheral countries are mainly portrayed as being “guilty of transit migration” and are held responsible for preventing migrants in transit reaching Europe.

Under this constructed concept of “transit countries”, almost all countries neighboring the EU have been associated with transit migration and stigmatized: first the Baltic states, Poland, Hungary and Romania; then the southern Mediterranean countries, namely Morocco, Tunisia and Libya; then Turkey and the Balkan countries; and finally the countries in the East, such as Ukraine, Russia, Azerbaijan and other Caucasus countries (Düvell, 2010:2). The principal routes heading towards Western Europe were soon identified, including a combination of overland, maritime and air routes (ICMPD, 2008). The identification of these routes determined where new fences should be build, and with which countries the partnership dialogues should be established for externalizing border controls and migration related policies.

From these routes, two main gate regions emerged as important for transiting and entering Europe: the Mediterranean and Africa. These two regions comprise five irregular migration sub-groups:

1. The West Africa Route (land and sea-based): Starts in West African countries and ends in the Canary Islands, via Senegal, Mauritania or Morocco
2. The West Mediterranean Route: Starts in West Africa, transits through Morocco and Algeria, and ends in Spain
3. The Central Mediterranean Route: Starts in West Africa, runs through Algeria, Libya and Tunisia, ends in Malta or Italy
4. The East Africa Route: Starts in the Horn of Africa, progresses through Sudan, Libya and Egypt, heading to Italy and Malta

5. The East Mediterranean Route: begins in Asia, Central Asia or the Horn of Africa, ends in Cyprus, Greece or Bulgaria via Turkey.

As can be clearly seen from the map of irregular migration routes, both Turkey and Morocco play a significant role as transit countries that constitute the first entry areas before the migrants leave for their actual target countries in Europe. During the “Arab Spring”, these two countries remained as two of the few secure countries in the region, and so became more attractive for migrants heading to Europe through the Central Mediterranean and East Africa routes. The diversification of routes towards Morocco and Turkey as more secure territories, increased the EU’s interest in fostering cooperation with these two countries in order to externalize its migration control regime.

**Illustration 4.1. 2012 Dialogue on Mediterranean Transit Migration (MTM)  
Map on Irregular and Mixed Migration Routes<sup>51</sup>**



<sup>51</sup> The 2012 MTM Map on Mediterranean and African Irregular Migration Routes is an output of the intergovernmental information exchange project Interactive Map on Irregular Migration Routes and Flows in Africa, the Middle East, and the Mediterranean Region, implemented in the framework of the Dialogue on Mediterranean Transit Migration (MTM), gathering officials from Algeria, Egypt, Ethiopia, 27 EU Member states, Lebanon, Libya, Mali, Morocco, Niger, Norway, Senegal, Switzerland, Syria, Tunisia, and Turkey. Routes are characterized by key migration hubs and known points of irregular border crossing, including land, sea, and airport borders.

## **4.2. Conceptualizing Turkey as a Transit Migration Country: Reformulating the Reality?**

As explained above, the analysis of the conceptualization of Turkey as a transit migration country requires approaching transit migration not as a separate category but by examining Turkey's experience with different forms of regular and irregular migration, since this will reveal the full complexity of contemporary migration movements involving mixed migration flows. That is, flows through Turkey composed of individuals looking for economic betterment, in need of international protection, or seeking to migrate further to Europe whether regularly or irregularly. In this respect, the analytical evaluation of transit migration in Turkey can only be better understood by examining the international migratory regimes and migratory flows around Turkey with a focus on their level and pattern over time, the origins of such flows, places of destination, and characteristics of migrants (Içduygu, 2000: 358). Therefore, based on Turkey's migration experience and the dynamics of migration flows, transit migration in Turkey will be scrutinized in its totality from a chronological perspective under four main categories of migration: regular migration, irregular migration, circular/shuttle migration,<sup>52</sup> and asylum seekers. Within this framework, the transformation of Turkey from being a "source country" to increasingly a "transit" and "destination country" will be studied in relation to the changing dynamics of migration trends and discourses. This analysis will provide a better basis to discuss and understand the policies and the Turkish authorities' efforts to control and manage transit migration flows through its territory in cooperation with the EU.

### **4.2.1. Turkey as an Emigration Country**

Turkey has long been defined as a "country of emigration", experiencing its first outflow of population during the early 20th century, when various non-Muslim populations were deported from Anatolia as part of the nation-building process.<sup>53</sup> At

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<sup>52</sup> Circular/shuttle migration is taken as a separate category since it can occur in regular or irregular forms in Turkey. Moreover, circular migration has a distinctive character in Turkey since it has been promoted for economic reasons and has had remarkable socio-economic impacts.

<sup>53</sup> Turkey is not the only country that has policies aimed at nation-building that have been the cause of international migratory movements; indeed, the first half of the twentieth century was very much marked by state and nation building, generating large waves of forced migrations and deportations.

the same time, Turkey accepted ethnic Turks and Muslims living in neighboring countries (Içduygu and Yökseker, 2010:2). The homogenization of the population into a Turkish-Muslim identity within the borders of the new Republic of Turkey was further consolidated by state policies in the early 1930s. The Law on Settlement of 1934 reflects this conservative state philosophy by formulating the basis of Turkey's immigration policy, strongly guided by the concept of national identity with an underlying principle of cultural unity. The 1934 Law prescribed who could immigrate, settle or acquire refugee status in the country, giving clear preference to immigrants and refugees of "Turkish descent and culture". The Settlement Law of September 2006, which amended the 1934 Law allows asylum seekers to stay in the country on an unofficial basis unless they are of "Turkish descent and culture". (Içduygu and Sert, 2009:2-4).

Emigration from Turkey increased in the 1960s and 1970s in the form of labor migration by Turkish nationals, mainly to Western Europe, which marked the establishment of the modern migration regime between Turkey and Europe. Turkey sent thousands of labor migrants in response to the demand for labor in Europe. In fact, this new migration pattern was also motivated by domestic economic concerns, namely the pressure of growing unemployment and the policies of the Turkish state seeking new markets for its labor exporting activities. Emigration to Europe was managed on the basis of bilateral agreements signed between Turkey and individual Western European countries (Içduygu, 2000: 358). The first bilateral agreement to export migrant labor was signed with Germany in 1961, followed by similar agreements with Austria, the Netherlands, and Belgium in 1964, France in 1965, Sweden and Australia in 1967, Switzerland in 1971, Denmark in 1973, and Norway in 1981. Turkish migrants were perceived as "guest workers" by the host European countries, and expected to return Turkey with new skills. However, this expectation of repatriation did not work out as the host countries expected it. Instead, the supposedly short-term labor migrants preferred to remain in their host countries. Consequently, the original recruitment of Turkish labor migrants was followed by a flow of Turkish migrants to Europe in the form of family reunifications and also asylum claims in the 1980s (Içduygu and Sert, 2009:2-3). Thus, from this period up till the 1990s, Turkey was known as an emigration country, sending labor migrants and their families (Düvell, 2011a:1). Although Turkey's post-World War II

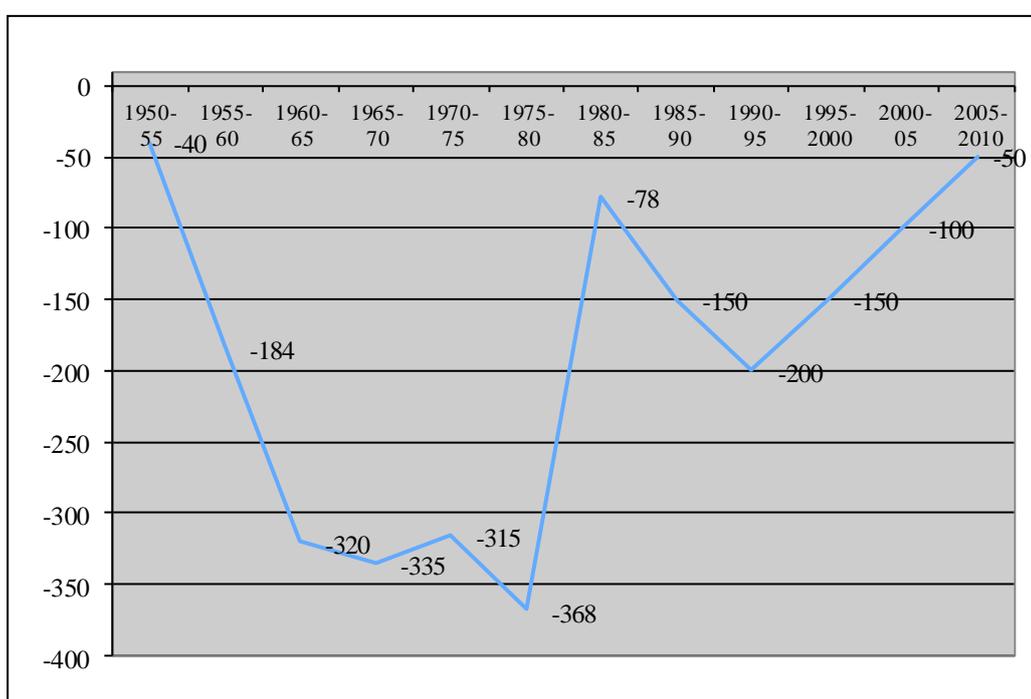
emigration experience began relatively late, as it lacked the colonial ties of countries such as Morocco and France, and also lacked an established tradition of emigration compared to other labor-supply countries, such as Italy and Spain, today it constitutes a large majority of the immigrant community in Western Europe (Içduygu and Sert, 2009:2).

In relation to more global political and economic developments, the 1973 oil crisis that induced an economic downturn in Western Europe led to Turkey diversifying its emigration pattern to Arab countries. An increasing number of Turkish labor emigrated to Libya and Saudi Arabia between 1967 and 1980, then to Iraq, Kuwait, Yemen, and Jordan between 1981 and 1992. However, after 1993, the number of Turkish migrants heading to these regions steadily declined. Following the end of the Cold War, the break-up of the Soviet Union and the foundation of the Commonwealth of Independent States (CIS) provided a new destination for Turkish migrants. For example, in 1995, the number of Turkish migrants to Russia, Ukraine, and the Turkic Republics, working mainly in the construction sector, was almost double the number of migrants to Arab countries.

As already mentioned emigration from Turkey also took the form of asylum-seeking, particularly during the 1980s. The intervention of the Turkish military in civilian politics in the early 1980s and the conflict with the separatist Kurdish movement in the Southeastern part of Turkey together resulted in many Turkish citizens applying for asylum in Western Europe. UNHCR reports that over 664,000 Turkish citizens applied for asylum in various European countries between 1981 and 2005, although actual rates of recognition of refugee status were low, since most of the asylum applications were a means of emigrating to Europe for other purposes. The number of applicants has decreased since the second half of the 1990s (Içduygu and Sert, 2009:4). According to the most recent data up to the end of 2010, the number of Turkish citizen asylum seekers is 7,509, while the number for recognized refugee status is 146,793 (UNHCR, 2010).

#### 4.2.2. Transformation into “Transit” and “Destination” Country

After the institutionalized promotion of emigration as a means to improve domestic development during the 1960s, Turkish governments abandoned the strategy of exporting workers as a way to absorb its growing labor force (Marconi, 2008:4). Currently, Turkey is no longer a country that exports migrants, but rather a receiving and transit country (Düvell, 2011a: 1, Kirişçi 2009). İçduygu reports how Turkey, which was generally considered a country of emigration throughout much of the 20th century (which, until recently, continued due to family reunification and the flow of asylum-seekers – as outlined above), has gradually become a country of immigration and transit, attracting both regular and irregular migrants from its neighboring countries (İçduygu: 2006). The IOM identified Turkey as a transit country, reporting that “thousands of migrants from the developing world who enter Europe are using Turkey as a transit area on their way to their preferred destinations” (IOM 1995: 4). It was also reported by the CIA that, since 2009, Turkey has become a positive net-immigration country (CIA 2010).



**Figure 4.1 Annual Net Migration Flows (Immigration minus Emigration) for Turkey in Thousands**

*Source: United Nations Population Division (April 2011): World Population Prospects: The 2010 Revision*

Although Turkey first experienced transit migration, including significant numbers of migrants, in the early 1980s, it didn't become an issue of concern until the mid-1990s. While many migrants had traversed Turkey before the mid-1990s, from Afghanistan, Iran, and Iraq, it was not till after this time that they were first labeled as "transit migrants". That is, before this time, as İçduygu and Yüksekser put it, "[t]ransit migration was ontologically present, but epistemologically absent. Thus, the study of transit migration in Turkey suffered from academic and public neglect in its early stages" (2010:12). It was the increasing securitization of migration by the EU and various other international bodies, and the associated heightened attention to the concept of 'transit' that led to the issue being studied and debated more in Turkey. Increasing concern, especially over "irregular migration", and its resulting conceptualization as a security threat for Europe, led to the emergence of a constructed discourse on "transit migrants" and "transit migration countries" as part of the EU's externalization of its migration policy through cooperating with neighboring third countries. Consequently, transit migration and asylum issues dominated the 1990s in Turkey within the context of Europe's formulation of a new migration and asylum regime, which aimed at exclusion on entry, strict border controls and visa policy, and prioritized action outside the EU, in reception countries, in order to keep potential asylum-seekers as close as to their countries of origin through readmission agreements and "safe third country"<sup>54</sup> resolutions. These developments inevitably had a strong impact on migratory flows from, to and through Turkey (İçduygu, 2000: 358).

In fact, as a transit and destination country, Turkey has strongly been shaped by the changing international environment, in that it has influenced migration movements from and to Turkey. Globalization has contributed significantly to Turkey's transformation into a "migrant-receiving" and "transit" country (İçduygu and Yüksekser, 2010: 3). As well as the 1973 oil crisis and the end of the Cold War, the Iranian Revolution, the Iran-Iraq War, the two Gulf Wars, the break-up of Yugoslavia, and the recent democratization movements in North Africa have all been factors contributing to the change in Turkey's role into becoming a transit and destination country in the international migration regime.

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<sup>54</sup> Council Regulation (EC) No. 343/2003 of 18.2.2003 published in *Official Journal of the European Union*, 25.2.2003, L 50/1

Içduygu lists four main factors that shape migratory movements into Turkey and make it a “hot spot” for transit migrants. Firstly he cites the ongoing political turmoil and violence occurring in neighboring areas that pushes people from their homelands to search for a better life, security and protection from persecution. Secondly, Turkey’s location makes it an attractive transit zone for migrants intending to reach European countries. Turkey’s position between the politically and economically unstable East and the prosperous West makes it both an obvious transit route and attractive destination in itself for migrants (Içduygu and Sert, 2009:1). Thirdly, the restrictive admission procedures and tightened immigration controls of “Fortress Europe” have diverted immigration flows towards peripheral zones around Europe, including Turkey. Finally, Turkey’s relative economic prosperity attracts migrants, both those choosing Turkey as a destination country and also those looking for income opportunities to fund their onward journey (Içduygu, 2000: 358 and Içduygu, 2003). Many irregular transit migrants also decide to stay in Turkey since it has a higher socio-economic level than their country of origin. In addition, cultural affinity with Turkey (in the case of Turkish-speaking or Muslim groups from the CIS) is another important motive for migrants’ decision to stay in Turkey (Içduygu and Yüksek, 2010:3).

Further factors making Turkey attractive for migrants include recent economic liberalization policies, its increasing attractiveness as a holiday destination, and the indirect result of the commencement of EU accession negotiations (Içduygu, 2009). Turkey’s relatively flexible and liberal visa policy also stimulates increased migration flows to Turkey. These factors will be considered in detail in later sections. Içduygu and Sert describe the situation as follows

Turkey is becoming a country of destination for a considerable number of foreign nationals, through both regular and irregular channels... and it is just now developing a ‘real’ foreign population comprised of ethnically non-Turkish immigrants” (Içduygu and Sert, 2009:6).

Arguably, transit migration in Turkey is also driven to some extent by Turkey’s “geographic reservation” clause, which recognizes only European refugees (Düvell, 2011a:2). Although Turkey was one of the signatories of the 1951 United Nations Geneva Convention, it maintains a “geographic limitation” clause, which means that

its obligations apply to persons seeking asylum from Europe, but not to non-European refugees<sup>55</sup>. Turkey therefore does not assume any obligations towards asylum-seekers and refugees from outside Europe, and thus applies its domestic laws to foreigners entering the country, which expects all such people to possess valid identification upon their arrival in the country and to depart within the permitted period of stay. Non-European asylum-seekers are offered temporary protection in Turkey and treated as someone who will leave the country one way or another: either to resettle in a third country if UNHCR accepts their asylum applications; or to return to their country of origin if UNHCR rejects their application (Içduygu and Sert, 2009:4). This temporary protection thus turns these people into transit migrants while they wait for their refugee applications to be evaluated or seek ways to enter the EU illegally during their time in Turkey. Turkey's geographical limitation clause has faced some serious criticism from the international community since, currently, almost no asylum-seekers in Turkey are European (Içduygu and Yüksek, 2010: 8).<sup>56</sup>

The discussion so far suggests that the dynamics of transit migration and Turkey's historical experience illustrate that there is no single international migration regime between Europe and Turkey since diverse regimes overlap and occur among the migrants, their homelands and destinations. As an integral part of the European migratory system, Turkey is located on many international migration systems that have come to overlap so that regular and irregular migration flows of transit migrants, asylum-seekers, and refugees from Iraq and Iran en route to Western Europe and North America all cross through its territory (Içduygu and Yüksek, 2010: 3). It should be noted that international migratory movements to Turkey include irregular migrant workers, asylum seekers and refugees who are either transit migrants already or can become transit migrants. Thus, any analysis of Turkey as a transit and destination country should include all these groups of migrants (Kirişçi,

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<sup>55</sup> Turkey adopted the 1951 Convention on the grounds of the Law numbered 359 dated 29 August 1961. However, Turkey opted to include a derogation in Law 359 Article 2, noting that "Any provision of the Convention shall not to be used to interpret to grant more favorable rights other than Turkish nationals". Any different interpretation will be null and non-binding under Turkish Law.

<sup>56</sup> Turkey only granted refugee status to a small number of people fleeing communist persecution in Eastern Europe during the Cold War period.

2002). Therefore, the conceptualization of Turkey as a transit and destination country requires an analysis of the main international migration flows around and to Turkey, with a special focus on their transit nature in a historical context.

#### 4.3. International Transit Migration Flows to Turkey

Turkey has a long established connection to European international migration regimes (Içduygu, 2000: 358), serving as a transit country for thousands of migrants coming from neighboring Iran and Iraq, and increasingly also from the Maghreb, Ghana, Nigeria, Bangladesh, Pakistan, Afghanistan, Sri Lanka, India, Palestine and Azerbaijan, with the aim of emigrating further towards more attractive destinations in the EU. (Içduygu, 2005:1).

Clearly, this inflow of migrants since the last quarter of 20th century is composed of diverse ethnic and religious backgrounds and national origins migrating with various purposes. These migrant groups are not homogenous, including transit migrants, irregular workers, professionals, workers, students, pensioners, asylum seekers, and refugees. The UN estimated the numbers of international migrants in Turkey in mid-2010 at 1,410,947, although the real numbers are estimated to be higher since the majority of arrivals from Asia and Africa are undocumented migrants who enter Turkey illegally and reside as transit migrants, or long-term as illegal immigrants.

Faced, since the 1980s, by such an intensive and high level of migration, successive Turkish governments have, unfortunately, failed to introduce a comprehensive migration law to effectively manage these migration issues. Migration policies formulated at the time of the early Republic are inadequate for managing the new environment and its challenges. Yet, despite Turkey's experience with these high migration flows, migration management has been dealt with in an "unsystematic, flexible and temporary" ad-hoc approach. It was only as a result of the EU accession process, and also partly through the influence of supranational and intergovernmental organizations that Turkey engaged in efforts institutionalize its migration management system. This process has tended to focus on irregular migration, asylum seekers, and refugees, rather than on transit migrants.

One of the first cases of international transit migration flow to Turkey was the

refugee flow that occurred when thousands of Iranians escaped to Turkey, without any valid documents, following the Islamic Revolution of 1979. As refugees, although they had not been officially recognized as asylum seekers in the sense of the Geneva Convention, most were transients, intending to continue on to Western countries through Turkey. The Turkish authorities exhibited a pragmatic and flexible response by offering some form of protection to the Iranians escaping from the Khomeini's regime. Although there is no exact data about the number of Iranians who may have entered Turkey, it is estimated that almost one million used Turkey as a transit route, while 200,000 stayed on in Turkey (Içduygu, 2000: 360).

Turkey experienced its second largest mass flow of transit migrants after the end of the Iran-Iraq War in 1988. Following the Halapja incidents, more than 50,000 Kurdish peshmergas (guerrillas) and their families, displaced by Iraqi military action, entered Turkey. Under the terms of "geographical limitation", Turkey considered them as "temporary guests" rather than asylum seekers. Since Turkey was expecting them to leave as soon as possible, and did not consider them as asylum seekers, UNHCR was also not allowed to intervene in their case, and Western countries were also reluctant to accept and resettle them. Instead, they were encouraged to accept voluntary repatriation, and a large proportion did indeed return after a safe zone was established in Northern Iraq. Another 2,500 left for Iran and Syria, while 3,000 were accepted as refugees and resettled in the West.

The third flow occurred across Turkey's western borders in 1989 when more than 300,000 ethnic Turkish asylum seekers fled to Turkey from Bulgaria, due to the repressive regime and harsh assimilation policies being imposed on Bulgaria's Turkish and Pomak minorities. In accordance with Turkey's Law of Settlement of 1934, which allows asylum seekers to settle in Turkey if they are of Turkish descent and culture, the Pomak and Turks expelled from Bulgaria received shelter in Turkey. After the regime change in Bulgaria, in 1990, more than half of these refugees returned, although nearly half remained to reside in Turkey and acquire Turkish citizenship (Içduygu and Sert, 2009:5).

The fourth mass influx of 60,000 foreign workers and their dependents came from Iraq and Kuwait during the Gulf War in 1990. They were temporarily hosted in a camp close to the Iraq-Turkish border and they returned after their governments or international agencies arranged transportation. Soon after, in 1991, nearly 500,000 Kurds escaping from the Iraqi military poured into the mountainous border region between Turkey and Iraq. Although Turkey was keen to keep its borders closed, the mass influx of migrants was not easy to control. In contrast to 1988, the international community assisted Turkey with a humanitarian programme to provide the necessary food and shelter to the refugees sheltering on the Iraqi side of the border. Due to the large number of Iraqi arrivals, and several cases of mass influx into Turkey, a residual population in Turkey is left, which has encouraged further migration to Turkey, not only of Kurds but also Arabs, Chaldeans, and Turcomans. In 1991, there were nearly 8,000 Iraqi asylum seekers, mainly Arabs, Chaldeans and Turcomans; almost half of them remained in Turkey, while the other half left for Europe and resettled there.

The fifth flow of transit migrants in the form of asylum seekers comprised Bosnians in late 1992, as a result of the hostilities in former Yugoslavia. Between 20,000 and 25,000 Bosnian Muslims were granted temporary asylum, either staying with relatives or others of Bosnian ethnic descent or intending to resettle in the West. More than three-quarters of the Bosnians returned to their homeland after the adoption of the Dayton Peace Agreement, while nearly 2,000 stayed in Turkey. Almost 5,000 obtained refugee status and migrated to Western countries (Içduygu, 2000: 363, Içduygu and Sert, 2009:5).

Sixth, in 1999, Turkey hosted nearly 20,000 Albanian refugees from Kosova, like the Bosnians as transit migrants, since the majority of them considered Turkey as a country of temporary asylum. Most then left Turkey and returned to their homelands, with only about 1,000 remaining in Turkey.

In the aftermath of the collapse of the Soviet Union, Turkey also became an important receiving country for post-socialist migration movements. These flows from ex-Soviet bloc countries, in the form of trader-tourists, are also noteworthy. They cannot be considered as transit migrants, but they have an impact on transit

flows since they move in and out, and their number has increased significantly since the 1990s, from less than 600,000 in 1989 to nearly 3,000,000 in 2009 (Elitok and Straubhaar, 2010:4).

The latest mass flow, which is still taking place, is the influx of Syrian refugees who have been fleeing the ongoing violence in their country since 2011. By March 2012, more than 17,000 migrants had entered Turkey from Syria out of a total number of refugees escaping to Turkey, Lebanon and Jordan of about 30,000, excluding unregistered individuals (UN Information Center Ankara, 2012). As the conflict in Syria bitterly escalates, Turkey continues to receive more people crossing its borders. For example, on 6<sup>th</sup> April 2012, nearly 3,000 Syrians entered Turkey in one night, which placed Turkey in a difficult situation to deal with such big flows that required international assistance. According to Reuters, in August 2012 there were more than 74,000 registered Syrian refugees in Turkey being hosted in nine camps in Turkey (Reuters, 2012a).

The numbers mentioned in this chronology highlight the significant increase in transit migration flows to Turkey, which raises a crucial concern for Europe. It is clear that, as long as social and political conflicts and economic problems are perpetuated in the Middle East, Asia, and Africa, Turkey will continue to receive an increasing number of migrants and asylum seekers. Due to the restrictive immigration and asylum policies of the developed Western and North countries, transit migrations flows will also increase in Turkey as migrants divert into the country because of its status as a secure peripheral country.

In order to understand the dynamics and the extent of the EU's efforts to externalize its migration policy towards Turkey, the nature, scope and volume of transit migration to Turkey, and the degree of its possible impacts on policy formulation and implementation, should be examined under the categories of regular migration, irregular migration, circular migration and asylum flows.

### **4.3.1. Regular Migration and Turkey**

Regular migration is defined as “migration that occurs through recognized, legal channels (IOM, 2004: 54). That is, it refers to migrants who entered a country lawfully and remain in the country in accordance with their admission criteria. Regular migrants may therefore turn into irregular migrants as a result of over-staying. While having a regular status, they may intend to migrate to another country and seek ways to achieve this goal, which makes them a transit migrant.

The data on regular migration indicates that Turkey has become a destination country. According to figures compiled by the State Institute of Statistics in Turkey, from 1979 to 1999, more than 55 million foreigners arrived in Turkey, some of whom were tourists, some were intending to settle in Turkey, temporarily or permanently, and some were transit travelers, intending to move on to stay in a third country. The number of foreigners arriving in Turkey tripled between 1989 and 1999 (Içduygu 2000: 359-360). In 2009 alone, 25.5 million foreigners arrived in Turkey, more than twice the number of 2000, and eleven times the number in 1990 (Elitok and Straubhaar, 2010:4) .

The number of issued residence permits gives an overall idea of the regular migrants that stay more than 3 months in Turkey. According to data provided by the Ministry of Interior, 1,739,188 residence permits were granted from 2000 to 2009 for work, study, family reunification and asylum (IOM, 2010b: 307). The majority of these migrants with resident permits came from Azerbaijan, Bulgaria, Greece, the Russian Federation, Iraq and Iran (IOM, 2010: 308). However, there are no exact official figures as to the number of foreigners currently residing in Turkey, in particular concerning those settled on a long-term basis. The number of foreign nationals with residence permits was 168,047 in 2000 and 187,000 in 2006, according to figures provided by the Directorate of General Security. In 2009, 163,326 residence permits were issued to foreign nationals in just one year, including 17,483 for work purposes, and 27,063 for studies (IOM, 2010b: 308). The increasing participation and successful performance of Turkish institutions in EU Education Programmes, such as Erasmus, LDV and Comenius since 2005, is an important factor behind the increase in residence permits issued for study purposes.

The residence and working status of foreigners in Turkey is determined according to the Turkish Law on Foreigners (Law No. 5683, dated 15 July 1950) and also the Law on the Residence and Travel Activities of Foreigners (Law No. 7564). The most important legislative change came with the new Law on Work Permits for Foreigners (Law No. 4817, dated 15 March 2003) which regulates the economic activities of foreigners on the basis of Turkey's labor market needs rather than nationalist criteria. It superseded the earlier discriminatory Law on Activities and Professions in Turkey Reserved for Turkish Citizens (Law No. 2007, dated 16 June 1932), providing easier access to foreigners to work in Turkey (İçduygu and Sert, 2009:4). This is an important initiative, making Turkey more attractive for regular immigrants and also for transit migrants to change their routes towards Turkey.

**Table 4.1 Number of Residence Permits Issued in Turkey (by Nationality, Main Countries of Origin 2000-2009)**

Nationality	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
<b>Bulgaria</b>	61,65	58,705	54,924	48,205	44,870	53,698	51,683	56,757	26,209	12,433	469,142
	8										
<b>Azerbaijan</b>	10,56	10,044	9,935	10,508	10,508	10,477	12,278	14,842	15,947	17,123	121,220
	4										
<b>Germany</b>	5,339	5,436	5,944	7,136	7,136	8,425	9,795	10,446	9,909	10,169	78,908
<b>UK</b>	3,281	3,192	3,219	4,777	4,777	6,444	7,849	8,648	8,318	8,506	58,022
<b>Russian Federation</b>	6,871	6,235	6,454	6,326	6,326	6,444	7,784	9,638	11,362	12,941	80,189
<b>Iraq</b>	5,506	5,482	4,904	4,645	4,645	6,133	6,959	9,039	8,961	7,119	63,219
<b>USA</b>	6,446	5,546	5,777	5,630	5,630	6,119	6,598	7,149	5,992	5,356	60,408
<b>Iran</b>	6,117	6,567	5,909	5,738	5,738	6,014	6,129	6,212	5,382	5,253	58,577
<b>Greece</b>	7,308	6,578	6,524	6,630	6,630	5,902	6,329	6,641	5,445	4,908	62,830
<b>Serbia and Montenegro</b>	4,408	4,036	4,075	4,433	4,433	4,519	4,734	4,984	1,626	839	37,833
<b>Afghanistan</b>	3,464	3,373	3,733	3,993	3,993	3,564	5,655	5,829	6,583	6,937	47,014
<b>Moldova</b>	889	855	890	1,637	1,637	3,065	5,547	6,635	3,414	3,422	27,409

Source: IOM, 2010: 308 (Migration and the Labour Markets in the European Union 2000-2009 Turkey)

According to the latest census, from 2000, there were 1,278,671 foreign-born residents in Turkey, about a quarter of which were from EU countries (SIS, 2003). Since 2007, there has been negative net migration between Turkey and the EU, i.e. more people have emigrated from Europe to Turkey than vice versa. This emigrant group is primarily composed of people returning to Turkey who have lived in Europe as Turkish migrants. Additionally, Turkey has become a popular destination for European retirees, in particular from the UK, Germany, the Netherlands and Scandinavia, and for many other foreign nationals as well. They settle mainly in the coastal areas of Turkey, even running small businesses in some cases (Balkır and Kırkulak, 2009: 126). Their numbers are currently estimated at around 100,000 to 120,000 (İçduygu and Sert, 2009: 6). Needless to say, developments in Turkey's political and economic liberalization and its bid for full EU membership, have made it an attractive destination for European tourists and migrants (Kaiser, 2004).

#### **4.3.2. Irregular Migration and Turkey**

There is no clear or universally accepted definition of irregular migration. IOM defines it as "...illegal entry, stay or work in a country, meaning that the migrant does not have the necessary authorization or documents required under immigration regulations to enter, reside or work in a given country" (IOM, 2004:34). In fact, irregular migration is studied in conjunction with several other connected migrant groups, since the categorization of migrants varies significantly on a shifting basis, depending upon the purpose and nature of migration, which can also change with time. As a result, stated numbers of irregular migrants may also include transit migrants (İçduygu and Sert, 2009: 7). Due to the mixed nature of the category of irregular migrants, and the formidable task of obtaining sufficient and reliable data, it is very difficult to estimate the total number of irregular migrants in Turkey. The data compiled by the Bureau for Foreigners, Borders, and Asylum within the Directorate of General Security of the Ministry of the Interior represents only apprehended irregular migrants. According to an IOM report (2010), 794,937 irregular immigrants were apprehended in Turkey between 1995 and 2009. However, it is likely that the scale of irregular migration through Turkey is much higher, with the real number being estimated at a couple of hundred thousand. Irregular migrants in Turkey

mainly come from Afghanistan, Bangladesh, Iran, Iraq, and Pakistan, and also from African countries. They intend to transit to Europe, but large numbers of them end up getting stranded in Turkey (Kirişçi, 2008:1). Turkey is also a destination country for irregular migrants coming from Moldavia, Romania, Belarus, Georgia and Russia, who are mostly working in Turkey illegally (Ministry of Interior Affairs, Arem 2006).<sup>57</sup>

The land border between Turkey and Greece, known to be porous (European Commission, 2011/248: 4), has become one of the most critical gates for irregular migration into the EU. FRONTEX has highlighted the increase of illegal border crossings at this border, indicating Greece has become the main entry point to Europe, with Turkey being the main transit country for irregular migrants (Frontex, 2010: 8). In 2010, for example, around 43,000 migrants and refugees transited Turkey and were apprehended in Greece. According to the EU's 2010 progress report on Turkey, 54,493 third country nationals were detected when entering or attempting to enter the EU illegally, who had come directly from or transiting through Turkish territory, which was a significant increase of around 44% over 2009 figures. The most commonly detected nationalities were Afghans, Iraqis and North Africans. Most Africans detected at the Greek land border had first taken cheap flights to Istanbul, taking advantage of Turkish visa liberalization with their countries of origin.

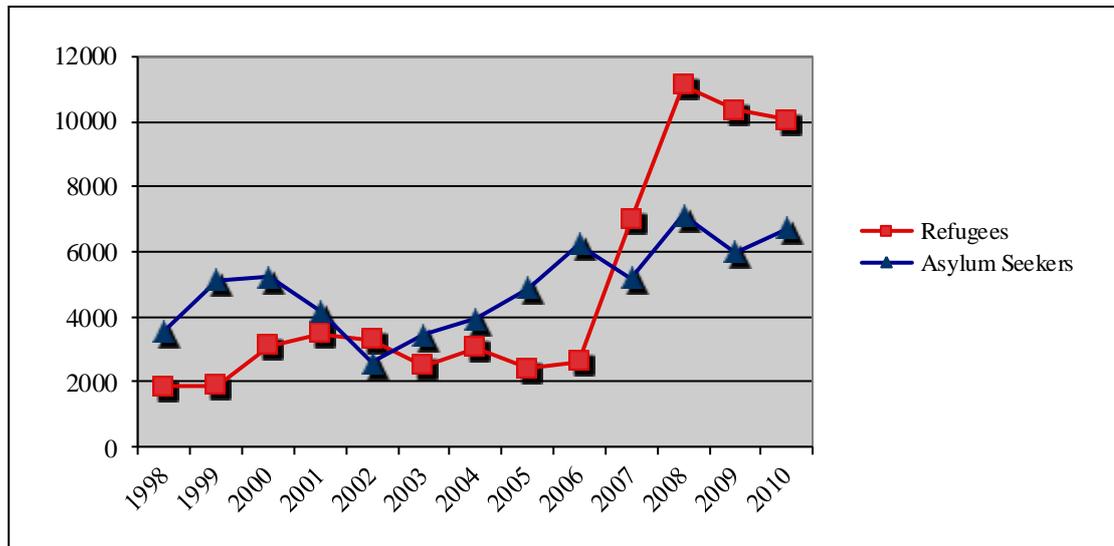
In estimating the number of irregular transit migrants, İçduygu and Yüksekler make the following assumption

Considering the countries of origin of irregular migrants, we argue that those migrants apprehended on the eastern and southern borders of Turkey intended to use Turkey as a bridge to reach their destination countries in the West and North, and therefore, are most likely transit migrants (İçduygu and Yüksekler, 2009:3).

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<sup>57</sup> According to the new regulation in the law "Residence and Travels of the Foreigners in Turkey", which entered into force on February 1, 2012, visitors/tourist visas last 180 days but holders are only allowed to stay in Turkey for up to 90 days within that period. If foreigners want to stay longer in Turkey, or do not want to wait 90 days more to re-enter Turkey, they are required to apply for a residence or work permit. This new rule is expected to curb the high number of illegal worker problem in Turkey. It will mostly affect illegal workers coming from Romania, Belarus, Georgia and Russia, who work illegally in the domestic and service sectors after entering in Turkey on tourist visas. Under this law, they will need to get a residence and work permit and be registered as tax payers.

Based on this, they estimate that 52% of the 620,000 apprehended irregular migrants from 1996 to 2006 were probably transit migrants. They also estimate that, in the beginning of the 2000s, 51,000–57,000 migrants annually intended to use Turkey as a transit country, although they believe that this has decreased to below 20,000 today (İçduygu and Yüksekler, 2009).



**Figure 4.2 Apprehensions of Irregular Migrants in Turkey, 1995-2009**

*Source: IOM, 2010b: 310 (Migration and the Labor Markets in the European Union 2000-2009 Turkey)*

While this decline has continued up to the present day, these migrants still form a high proportion of the total number of apprehended irregular migrants at European borders. İçduygu explains the decrease in illegal migration apprehensions as being the result of external pressures, mainly from the EU. He also refers to the impact of Turkey's own increased political will to combat trafficking and smuggling across its borders, and its intensified efforts at international cooperation on irregular migration, particularly in close cooperation with the EU (İçduygu, 2005:1). The decline is also associated with visa liberalization for Syrian, Iranian, Lebanese, Moroccan, Tunisian, Libyan and Jordanian citizens, since these countries no longer contribute to illegal entries. Additionally, citizens of many other countries, including Iraq, are able to obtain visas at the Turkish border (OECD, 2011:328). Finally, this decline can also be explained by referring to the reduced employment opportunities as a result of the 2009 global economic downturn, the worst global recession since the 1930s (IOM, 2010 b:

122, Morehouse and Blomfield, 2011:2).

Although the figures indicate a decline in illegal migration apprehensions in recent years, this does not mean that Turkey is receiving fewer transit and irregular migrants. The number of apprehended illegal migrants in Turkey remains high compared with the figures in Europe. For example, as Frontex reports, the total number of illegal border crossings on the Eastern Mediterranean route<sup>58</sup> was 41,500 in 2009, which constitutes 39% of all EU detections (Frontex, 2010:15). Some 80% of detections along the Eastern Mediterranean route were Afghan, Palestinian and Somali nationals. Most of these detections were made along the land border between Turkey and Greece, while numbers were lower at the Bulgaria and Cyprus borders.. In addition, in estimating actual numbers and analyzing current trends, the extension of Turkey's liberal visa system should be taken into account. This liberalization helped decrease the number of illegal entries, as reflected in the reduced numbers of apprehended irregular migrants. Since 2010, with the extension of visa free entrance to Turkey, in particular from Middle Eastern countries, people can easily and legally enter Turkey since 2010. However, we should note that the full effect of these changes will only be revealed when the new data of apprehensions of irregular migrants at border-crossings since this change are released.

#### **4.3.3. Shuttle/Circular Migration**

Turkey has also become a transit and destination country for migrants from the former Soviet Union, who consider Turkey as a stepping-stone to employment in Europe (IOM, 2010: 310). This category includes also people from Eastern Europe, mainly from Moldova, Romania, and Ukraine, who come to Turkey in search of work. These migrants mainly work in the domestic/home, sex, entertainment, textile, construction, or catering and other food related sectors. Içduygu and Yüksekler (2010) call these flows “shuttle” or “circular” migration, in reference to the mobility of people making multiple trips to Turkey in search of temporary economic opportunities. Many of these migrant workers in fact enter legally, but then may

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<sup>58</sup> The Eastern Mediterranean Route (sometimes called the South Eastern European Route) runs largely from Turkey to Greece via land or sea, and through future Schengen participants, Cyprus and Bulgaria.

overstay their visas or engage in brief circular movements out of Turkey in order to renew their visas and avoid overstaying (İçduygu and Yüksek, 2010:4). Most of them do not apply for work permits. Thus, Turkey has become a country of both destination and transit.

Since the 1990s, one type of circular migrants is the “suitcase traders”, who enter the country on a tourist visa, buy and sell various merchandise to try to profit from cost differentials, including taxes, tariffs, and transportation between origin and destination countries. The other group of circular migrants (mainly from Romania, Bulgaria, Moldova, Ukraine, Azerbaijan, Armenia, Georgia, and Turkmenistan) also enter Turkey on tourist visas, but work informally in domestic services, entertainment, sex work, construction, tourism, agriculture or garment workshops. Due to their frequent border crossings and unregistered working activities, it is difficult to estimate their numbers. Apprehensions of irregular migrants from the top five source countries for circular irregular migrants are: Moldova (53,000), Romania (23,000), Georgia (18,000), Ukraine (18,000), and the Russian Federation (18,000) (İçduygu and Yüksek, 2010:4). It is also argued that Turkey’s flexible visa regime with countries of the Commonwealth of Independent States (CIS), with which Turkey shares significant cultural and economic relations, to some extent raises irregular labor migration from the CIS. It is also argued that all migrants coming from countries in the Middle East, Asia, and Africa, such as Iraq, Iran, Afghanistan, Pakistan, Sudan, and Somalia, are transit migrants who intend to continue on to third countries, while all migrants originating from Eastern Europe and the CIS are circular migrants who frequently come to Turkey (İçduygu and Yüksek, 2010; Eder, 2007; Parla, 2007; Kirişçi, 2008; Brewer and Yüksek, 2009). That is, circular migrants tend to choose Turkey as their ultimate destination.

#### **4.3.4. Asylum Seekers, Refugees and Turkey**

Turkey’s location in the transit zone between Asia, Europe and Africa, and near the center of one of the most conflicted regions, with political irregularities, problems and turmoil on its periphery, means that its borders vulnerable to entries for asylum purposes. The recently increasing asylum flows from Syria due to uprisings there is a significant example of this vulnerability. Given that the asylum application process

can take several years, Turkey has become more of a transit country for those who have been granted refugee status and are waiting for resettlement. However, there are also many asylum seekers who entered Turkey illegally, and who therefore prefer not to submit their application there, since there is a possibility of its being rejected, which can result them being sent back to their home countries. On the other hand, asylum-seekers whose applications have already been rejected can also turn into irregular transit migrants. A final group of asylum seekers comprises those who paid to be taken to Greece or Italy by boat, but were cheated by smugglers and left on the Turkish coast, thereby becoming involuntary transit migrants, since Turkey was not there intended destination (Brewer and Yüksek, 2009). In short, the number of asylum seekers in Turkey *en route* to EU countries constitutes an important share of transit migrant numbers, as they have form fuzzy categories and are often intermingled.

The “geographical limitation” clause is the most important feature of the asylum regime in Turkey. As explained before, while Turkey receives asylum seekers mainly from Iran (46%), Iraq (44%), Pakistan and Afghanistan, it only considers asylum applications of persons from European countries since Turkey has no international obligation to grant refugee status to asylum seekers coming from outside Europe, but merely has to extend temporary protection. As such, Turkey is one of only four countries (the others are Monaco, Madagascar and Congo) that still maintain geographical limitation. Another key feature of asylum management in Turkey is that there is no any national immigration and asylum law, although it is anticipated that the country’s first ever asylum law will be adopted in the near future.

The source countries of asylum seekers from within Europe are varied. Data from the Ministry of Interior lists Albania, Belgium, Bosnia, Bulgaria, Germany, Georgia, Greece, Italy, Macedonia, Romania, Switzerland, Ukraine and Yugoslavia. However, the greater share of asylum seekers come from outside Europe, including Algeria, Bangladesh, Burma (Myanmar), Burundi, China, Congo, Egypt, Eritrea, Ethiopia, Ghana, Guinea, India, Israel, the Ivory Coast, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lebanon, Liberia, Libya, Malaysia, Mauritania, Morocco, Nigeria, Pakistan, Palestine, Philippines, Rwanda, Sierra Leone, Sri Lanka, Somalia, Sudan, Syria, Tunisia, Tajikistan, Turkmenistan, Uganda, the United States of America,

Yemen and Zaire (Kirişçi, 2012: 70).

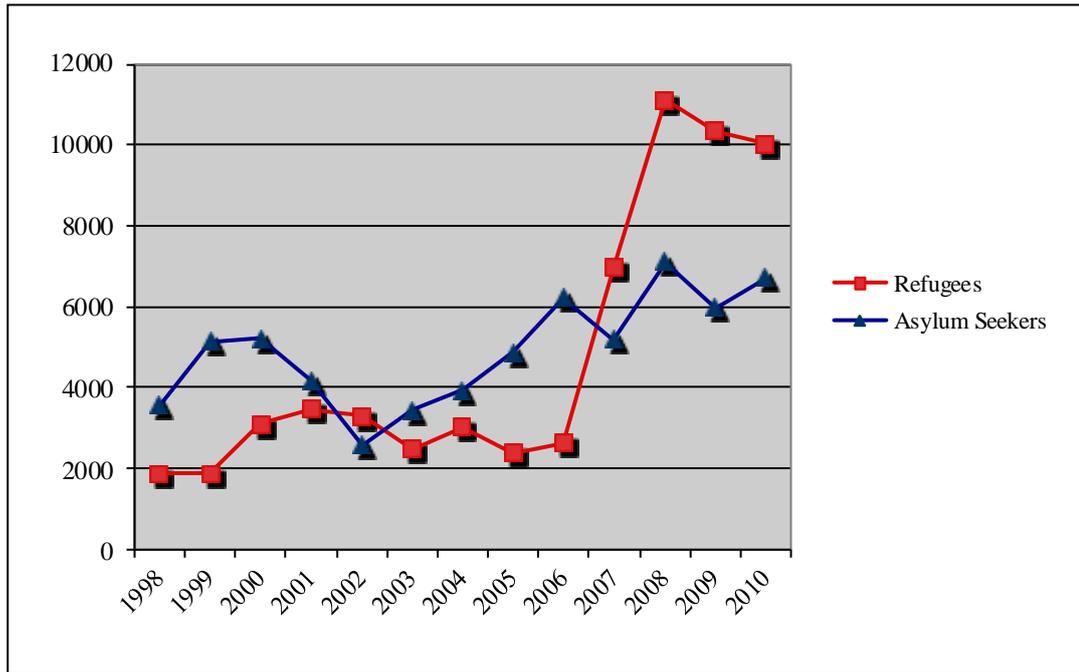
The total number of asylum applications were received in 1995-2009 was 68,802, of which 34,270 were approved<sup>59</sup> (IOM, 2010:308). The number has declined from 13,000 in 2008 to 7,800 in 2009. However, since 2010, the rate of new arrivals has increased substantially, with a significant increase in Iranians (45 per cent), followed by Iraqis and Somalis. Since the beginning of 2011, UNHCR has recorded an overall increase of 60 per cent in new arrivals. Metin Çorabatır, the external officer of UNHCR in Turkey, puts this down to the increase of asylum applications of Iraqi, Iranian, Somali and Afghan refugees. The highest increase with Afghan refugees is explained as being the result of increasingly restrictive asylum policies in Iran, which have diverted the transit route of Afghan asylum seekers to Turkey.

As of October 2011, the number of asylum applications in Turkey was sharply increased to 20,150, where there are many other more who have not yet applied (Çorabatır, 2011). One of the main reasons for this increase ultimately relates to the security situation in Syria. Turkey has established a *de facto* temporary protection regime for all Syrians through implementing an open border policy with no forced return, no limit of duration of stay in Turkey, and the possibility to get assistance in the camps in Hatay province.

In general, half of the asylum-seekers came from Iraq and a quarter from Iran; most of them were transiting Turkey on their way to Europe (OECD, 2011:328). In January 2010, there were 10,350 refugees, 5,987 asylum seekers and 2,739 stateless people, primarily from countries in the Middle East, mainly from Iraq, Afghanistan and Iran (UNHCR, 2010). Turkey issues residence permit for asylum seekers as well. According to data provided by the Ministry of Interior, 75,521 asylum seekers were granted a residence permit in 2005-2009, the majority coming from Iraq, Iran, Afghanistan and Somalia.

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<sup>59</sup> The number of rejected asylum seekers is also important since they often do not return but try irregular strategies to migrate to Europe



**Figure 4.3 Number of Asylum Seekers and Refugees in Turkey 1998-2010**

Source: UNHCR in Turkey, *Facts and Figures*, (2011, January), Issue 3: 23

#### **4.4. Implications of EU's External Policy on Migration and Asylum: Turkey as a Transit Migration Country within the EU's Enlargement Policy**

As transit country at the crossroads of Asia, Europe and Africa, Turkey is a important case in terms of its experience, first with high rates of emigration to Europe during post-war decades, and then as a major transit country for asylum seekers and irregular migrants heading to Europe. As a candidate country since 1999, and negotiating for full membership to the EU since 2005, Turkey has come to constitute part of both the sea and land borders of the EU, extending nearly 10,000 km in the EU's southeast. In addition, Turkey's long, rugged land borders with Iran, Iraq and Syria, neighboring one of the world's most conflicted regions, and its long sea borders in the Aegean with neighboring Greece, make it a prime location for transit *en route* to the well-protected borders of the EU. Thus, during the process of negotiating for EU membership, Turkey has received considerable attention in terms of being a transit migration country at the external borders of Europe, with migration management becoming a critical issue in EU-Turkey relations since whether Turkey, as a member state, will be able to manage the new and long external borders of the EU constitutes a significant political challenge.

Since it has lacked its own effective migration and asylum policy at its external borders with the EU, Turkey has become strongly affected by the immigration and asylum policies and practices of European countries (Içduygu and Keyman 1998). The challenges and changes in European migration and asylum policies have had a strong impact on the Turkey's policies not only because Turkey is closely related with Europe as a sending and transit country, but also mainly because of the negotiations and legislative requirements for admission to the European Union. In this context, management of migration and asylum flows to Turkey has developed around the question of how Turkey's state institutions and legal frameworks can handle especially irregular transit migration and asylum in line with EU requirements.

Turning to the mechanisms of cooperation in the externalization of EU migration policy towards Turkey, the multilateral framework of cooperation within the EU's enlargement policy has dominated bilateral cooperation mechanisms due to Turkey's negotiating for full EU membership. The central question that forms the basis of the cooperation framework is whether Turkey will be able to manage migration control and implement policies at the southeast gate of Europe in compliance with the EU-centric international migration and asylum regimes. As an extension of Europe's securitization of migration policy beyond its borders, the remote-control approach dominates EU's cooperation with Turkey on migration management. As an accession country, Turkey is expected to securitize migration and asylum at its borders and conform fully to the norms of EU migration and asylum regime, rather than following a liberal policy. This tendency becomes much clear when the instruments and mechanisms of cooperation between EU and Turkey are comprehensively examined. However, this raises the twin questions of the extent to which Turkey follows a compatible track with the aims and objectives of the EU under the influence of accession, and why Turkey has, at some points, transformed its migration and asylum policy differently to the EU's approach.

It is clear that the prospect of EU membership plays an important role in this relationship, although the EU has also questioned if Turkey is able to protect the EU's southeastern border from migration flows irrespective of the membership

process. This raises a crucial change in the dependent factor (membership), which strongly affects the nature, and progress of cooperation. At this point, multilateral task-specific actors and technical and financial assistance frameworks become significant factors that should be examined in order to understand the success, and also the limits, of enlargement's conditionality.

The impact of the EU process on the transformation of transit immigration and asylum-related policies and practices in Turkey can be analyzed within two frameworks. First, it has a positive impact in terms of improving legislative and institutional cooperation in Turkey in accordance with international standards and laws. Thus, within the comprehensive framework of enlargement, Turkey will be scrutinized as a case study through testing the instruments of EU's external policy on migration, cooperation on border management, visa policies, readmission and asylum issues. The second framework will focus on the limitations to, and challenges of this cooperation within the accession process which is shaped by the negative externalities raised by the externalization of EU's immigration and asylum policy to Turkey.

#### **4.4.1. Europeanization of migration and asylum management in Turkey**

Europeanization of Turkish migration policy refers to how and to what extent political engagement with the EU has promoted new narratives of migration management in Turkey, given that the EU holds strong power to transform Turkey's national policy discourses and the narratives within the accession negotiations framework. As discussed in the second chapter, although Europeanization is discussed in terms of many competing definitions, most of these approaches commonly agree on the idea that Europeanization "entails change of some form, on the national or EU level or on both, and that this change is driven by the process of European integration" (Geddes, 2008: 8). In other words, it refers to a transformation of normative, cognitive and ideational formations, beliefs, practices and identities, as well as of institutions, policies, mechanisms, instruments at the national level (Featherstone, 2003). Accordingly, the nature and scope of Turkey's integration of its migration management with EU practice also involves a broad transformation of institutional and policy change in economic, social and political terms with reference

to policy-making, norms, and discourses in migration management. The “Accession Partnership” (AP)<sup>60</sup> strategy adopted by the EU for Turkey in 2000 and revised in 2008, the National Programme for the Adoption of the Acquis (NPAA)<sup>61</sup> accepted by the Turkish government in 2001 and subsequently renewed in 2003, 2006, and 2008, finally the Negotiation Framework<sup>62</sup> (2005) are all lay out the legal basis for harmonization process of Turkey to achieve in a wide range of policy areas including Justice and Home Affairs.

The Europeanization of Turkish migration and asylum policy can be better explained by understanding the EU’s general policies towards transit migration, which aim to identify and intercept potential transit migrants, prevent them reaching EU borders, and either enable them to stay in the transit country by improving asylum procedures or return them to their country of origin. However, these measures not only include transit migrants of distant countries but also citizens from neighboring countries (Düvell, 2010:7). Given that the Europeanization of migration and asylum policies aims to achieve these aims, it becomes important to evaluate the extent to which Turkish authorities and policy makers recognize the principles of European governance of migration by adopting and incorporating them into their policy making and mode of governance, together with a Europeanized approach to relations with third countries of origin.

In addition, the broader context concerning the transformation of Turkey at a macro level within the accession framework also affects progress on the harmonization of migration and asylum policies. The demands and considerations of the EU on migration management create many areas of concern for both sides, from security and human rights issues to economics and politics (İçduygu and Yüksek, 2010: 14). Since 2001, Turkey has engaged in a fast-paced and extensive reform of its

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<sup>60</sup> The Accession Partnership Document of Turkey, 2008 (Council Decision of 18 February 2008) is available at:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:051:0004:0018:EN:PDF>  
(Accessed on 01.07.2012)

<sup>61</sup> “National Programme of Turkey for the Adoption of the EU Acquis” (2008) is available at:  
<http://www.abgs.gov.tr/index.php?p=42260&l=2> (Accessed on 01.07.2012)

<sup>62</sup> “Negotiation Framework” (2005) is available at:  
[http://www.abgs.gov.tr/files/AB\\_Iliskileri/Tur\\_En\\_Realitons/NegotiatingFrameowrk/Negotiating\\_Fra meowrk\\_Full.pdf](http://www.abgs.gov.tr/files/AB_Iliskileri/Tur_En_Realitons/NegotiatingFrameowrk/Negotiating_Fra meowrk_Full.pdf) (Accessed on 01.07.2012)

legislation and institutional restructuring in order to fulfill the Copenhagen political criteria. Improvement of civil-society relations, respect for minority rights, a reduction in the military's influence on Turkish politics, improvement in respect for human rights, and harmonization of Turkish institutions, policies and legislation with the EU *acquis* are some of the significant examples of this transformation, which have had direct impact on the progress of policy adaptation and changes in national immigration and asylum management as well.

Another prominent transformation, in line with the EU's external cooperation, is that the Turkey's relations with the outside world have changed to a "win-win" approach rather than old "zero-sum approach", which had been formed from narrow national security considerations and a deep mistrust towards the outside world (Kirişçi, 2007b: 4). This has had a significant impact on migration management, as Turkey has started to act as an active partner in dealing with migration issues, not only by itself but also through international cooperation by pursuing common efforts based on win-win approach. Finally, there has been an improvement in dialogue and close cooperation between Turkish officials and civil society. In particular, cooperation improved between Turkish officials from the Ministry of the Interior, the Gendarmerie and the Ministry of Foreign Affairs with UNHCR, IOM, and Turkish and international non-governmental organizations. Overall, this new grand framework of transformation is exerting a positive effect in shaping the nature and policy specific progress of the Europeanization of Turkish migration and asylum issues.

#### **4.4.1.1. Harmonization of the Legal and Institutional Framework**

Like other candidate countries, Turkey is required to harmonize its domestic rules with the EU's *acquis communautaire*. Despite the highly contested nature of this policy field, Turkey appears to have made slow but considerable progress in transforming the nature of its national migration policy on the way to adopting the EU *acquis* on migration and asylum. Accession negotiations with the EU were opened on October 3, 2005 by adoption of the Negotiating Framework by the European Council. Turkey completed the screening process of 33 chapters in 2007,

and thirteen chapters<sup>63</sup>, one of which was provisionally closed (science and research), have been opened for accession negotiations since 2005. In 2006, the European Council decided to suspend accession negotiations in eight chapters due to Turkey's refusal to open its ports to Greek Cypriot vessels before the Union ends its isolation of Turkish Cypriots. Under this slowly progressing and challenged negotiation framework, tough migration and asylum issues are dealt under Chapter 24, titled "Justice, Freedom and Security", which has not yet been opened for negotiations, and was evaluated as one where "considerable efforts [are] needed" during screening process, since it involves highly contested, sensitive and complicated issues. In fact, although the EU's 2011 Enlargement Strategy indicates that Chapters 23 on "Judiciary and Fundamental Rights" and Chapter 24 on "Justice, Freedom and Security" should be the first chapters to be opened to negotiations and the final ones to be closed and that no other chapters can be opened before the opening of these chapters, even their opening has been blocked by France and the Greek Cyprus. However, within the "Positive Agenda",<sup>64</sup> the EU has approved the formation of two "working groups", including one for Chapter 24, although currently it is not clear when accession negotiations may be opened on this chapter. The main topics of this chapter involve the Turkey's adoption of the EU *acquis* in migration and asylum issues, in particular to develop a fully-fledged national status determination process, adoption of the Schengen visa regime, development of integrated border management, development of legislation and institutional capacity to process asylum seekers, and granting local protection for recognized refugees.

In Turkey, two major ministries are in charge of dealing with migration matters: the Ministry of Interior (specifically the Bureau Responsible for the Development and Implementation of Legislation on Asylum, Migration and Administrative Capacity, Department of Foreigners, Borders and Asylum, of the Directorate General of Security) and the Ministry of Foreign Affairs. In addition a number of other government institutions also have secondary specific responsibilities concerning

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<sup>63</sup> Enterprise and industry, statistics, financial control, trans-European networks, consumer and health protection, intellectual property law, company law, information society and media, free movement of capital, taxation, environment and food safety, veterinary and phytosanitary policy.

<sup>64</sup> The "Positive Agenda" was officially launched on May 17, 2012 between Turkey and the EU in order to revive Turkey's EU accession process and to keep reforms going.

migration: the Ministry of Justice, the Ministry of Labor and Social Security, as well as the Ministry of Health, various State Ministries for settlement and for Turkish migrants abroad, the General Command of the Gendarmerie, and the Coastal Guard.

Concerning Turkey's laws and regulations, a number of different national laws lay down the entry, exit, stay and residence of foreigners, and other provisions on legal migration.<sup>65</sup> As mentioned earlier, Turkey's national immigration policy determining who is allowed to enter and/or stay in the country is strongly guided by the Republic's notion of national identity formation and citizenship. The dominance of this idea, which still exists today, is clearly reflected in the three legal documents which form the basis of the country's current immigration policy: the 1934 Law on Settlement (Law 2510), the 1951 Geneva Convention on Refugees, and the 1994 Regulation on Asylum. However, Turkey still does not have a comprehensive law on managing migration and asylum issues, which instead are handled by different governmental institutions in an ad-hoc way. Indeed, lack of such law constitutes one of the main problems in the cooperation framework between Turkey and the EU.

The most important progress in achieving the necessary harmonization of Turkey's national legislation with the EU *acquis* was made in the adoption of a "National Action Plan for the Adoption of EU *acquis* in the Field of Asylum and Migration" (NAP) in March 2005 and the "2008 National Programme of Turkey for the Adoption of the EU *Acquis*". The action plan set out in great detail a timeline listing the steps that Turkey had committed itself to in adjusting its policies to that of the EU relating to infrastructure and legislation in terms of three main areas: legal arrangements, institutional capacity building, and training facilities. Turkey thus recognized the need to revise its legislative framework, to establish a new Asylum and Immigration Unit under the Ministry of Interior complementing the administrative structure and the physical infrastructure relating to its asylum, emigration, and immigration system. However, NAP does not precisely indicate *when* Turkey will start to implement the *acquis* in this area.

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<sup>65</sup> Law No. 2510 on Settlement, Law No. 5683 on Residence and Travel for Aliens in Turkey, the Passport Law No. 5682, the Turkish Citizenship Law No. 403, Law No. 4817 on Work Permits for Aliens, the Labor Law No. 4857 and Law No. 2922 on Foreign Students Studying in Turkey.

The other prominent development is the finalization of a draft law on “Foreigners and International Protection”, prepared by the Bureau Responsible for the Development and Implementation of Legislation on Asylum, Migration and Administrative Capacity (2008) under the Ministry of Interior, but with the participation of relevant public institutions, international institutions, civil society organizations and other relevant parties. The law was submitted to the Prime Ministry on 13 January 2011 in fulfillment of the first stage of ratification, although it remains to be adopted as law. The law aims to strengthen the institutional capacity of Turkey’s immigration and international protection, laying down new principles and procedures concerning entry to, residence in and exit from Turkey, the scope and the implementation of the protection to be provided for foreigners who request protection, as well as the establishment of the Directorate General of Migration Management at the Ministry of Interior, along with its duties and authority.

These developments are evidence that, even though the chapter on “Justice, Freedom and Security” has not yet been opened for negotiations, the accession process has already had a major impact on Turkey’s legislation and systems for migration, asylum and foreigners. Turkey’s considerable efforts to amend and harmonize its legislation are summarized in the following table.

**Table 4.2 Harmonization of Turkish Legislation on Migration and Asylum with the EU *Acquis***

<b>Legal Developments</b>	<b>Date of Approval</b>	<b>Summary</b>
<b>Ratification of the United Nations Convention against Transnational Organized Crime and its Additional Protocol against the Smuggling of Migrants by Land, Sea and Air</b>	18 March 2003	
<b>Draft Law on “Foreigners and International Protection”</b>	Prepared in 2008 Remains to be adopted	Strengthen the institutional capacity of Turkey’s immigration and international protection, new principles and procedures concerning entry to, residence in and exit from Turkey, establishment of the Directorate General of Migration Management at the Ministry of Interior, along with its duties and authority

**Table 4.2 (continued)**

<b>Law on Work Permits for Foreigners</b>	27 March 2003	Authorizes the Ministry of Labor and Social Security to issue all types of work permits for foreigners to ensure better management and control over the process, and prescribes administrative penalties, both for foreigners working without a work permit and employers
<b>Law on Amendment of Turkish Citizenship (Law No: 403)</b>	4 June 2003	Introduces a probation period of 3 years for acquiring Turkish citizenship through marriage
<b>The Article 79 of the new Turkish Penal Code Law No:5237</b>	1 June 2005	Introduces a provision stipulating penalties of 3 to 8 years imprisonment and fines for migrant smugglers, to be increased by half if the crime is committed by perpetrators acting as an organization
<b>Establishment of the “Development and Implementation Office on Asylum and Migration Legislation and Administrative Capacity” as an agency of the Ministry of Interior</b>	October 2008	Designs the normative and administrative framework that regulates migration. It has completed the draft on “Foreigners and International Protection”
<b>Establishment of the “National Task Force on Asylum and Migration” and the “Coordination Board on Combating Irregular Migration”</b>	2009	Brings together high ranking state officials from relevant ministries, institutions and law enforcement institutions to take measures on regular and irregular migration
<b>Circular issued by Ministry of Interior on combatting irregular migration concerning the placement of irregular migrants whose legal procedures have been completed</b>	March 2010	Lays down the principles concerning the physical conditions in removal centers and the practices adopted in these centers
<b>Establishment of the Coordination Board for Combating Illegal Migration</b>	February 2010	Identifies measures to fight irregular migration, strengthen inter-institutional cooperation and coordination, and monitor operational activity
<b>Circular issued by Security Directorate General</b>	September 2010	Ensures that each illegal migrant apprehended is accommodated in a removal center with the written permission of the Governor, and that the costs of staying in the removal center will be paid by the state Gives migrants the right to appeal against the decision of deportation and administrative custody
<b>Continued efforts to increase the capacity to host irregular migrants in accordance with international standards</b>		Continued construction of four removal centers (at Bitlis, Van, Aydın and Edirne), with a capacity of 650 persons each Preparation of two additional removal centers in Ankara and Erzurum, with a capacity of 750 persons each

**Table 4.2 (continued)**

<b>Finalization of negotiations on an EU-Turkey readmission agreement</b>		
<b>Bilateral Readmission Agreements</b>		Positive steps in effective implementation of the existing readmission protocol with Greece Completion of completed the negotiations for a readmission agreement with Pakistan
<b>Efforts to combat irregular migration and smuggling</b>		Decline in the number of irregular migrants apprehended by the law enforcement forces from 65,737 in 2008 to 34,345 in 2009 Decline in irregular migration flow through the Greek and Bulgarian land borders by 40% compared to 2008 Decline in the number of irregular border crossings at sea by 16%. Apprehension of 1,027 smugglers in 2009, 970 of whom were Turkish nationals
<b>Amendment to the regulation implementing the Law on Work Permits for Foreigners</b>	January 2010	Softened the conditions for asylum seekers to be able to apply for work permits
<b>Circular issued by the Ministry of the Interior</b>	March 2010	Bringing a <i>de facto</i> procedure to remove residence permit fees imposed on asylum seekers
<b>Circular issued by the Directorate General for Social Services and the Child Protection Agency</b>	March 2010	Includes data protection, social and general health insurance as well as access to premises by UNHCR staff issued for asylum seekers who are hosted in institutions run by the Directorate General for Social Services and the Child Protection Agency

In assessing the progress and the success of the Turkey's efforts to harmonize and comply with the EU *acquis*, the European Commission's progress reports give a general idea about how Turkey performs in the accession process and in finalizing the negotiations. According to these reports, Turkey's efforts in the migration and asylum policy field have been appreciated, although they are regarded to be at an early stage in terms of improving Turkey's migration management system in line with core international and European standards. Therefore, the reports emphasize that more effort is required to harmonize and comply Turkey's system with the EU *acquis* and that more effective and uniform implementation in legislative amendments is needed. Below, Turkey's limited progress will be examined in detail in relation to cooperation on border management, visa policy, asylum policy and

readmission agreements, which are considered to be the instruments for externalizing the EU's migration and asylum policy.

#### 4.4.1.2. Cooperation on Border Management

Illustration 4.2 shows that managing Turkey's external borders means controlling a border of 9,479 km in total<sup>66</sup> which includes 2,949 km of land borders (green borders) and 6,530 km of sea borders (blue borders).

**Illustration 4.2 External Borders of Turkey**



*Source: Republic of Turkey, Screening Chapter 24 Justice, Freedom and Security, Agenda Item 13: External Borders, Country Session 13-15 February 2006*

Because of Turkey's strategic geographical position, the effective control of border crossings is very difficult, raising great concern for the EU due to the high level of irregular migration flows through Turkey. The mountainous and rugged east and southeast borders (65% of Turkey's green borders), the long distances between border patrol stations (5-10 km), the presence of neighboring countries with unstable political regimes and the close cultural relations with some of these neighbors, and the inadequate border surveillance systems, equipment and trained staff all make it

<sup>66</sup> Turkey has 117 border gates, which include 20 land border gates, 49 sea border gates, 7 railway border gates and 41 air border gates. Turkey has land borders with Bulgaria (269 km), Greece (203 km), Georgia (276), Armenia (328 km), Azerbaijan (18 km), Iran (560 km), Iraq (384 km) and Syria (911 km) (Içduygu and Sert, 2010:6).

more difficult and costly to manage the borders, leaving them very vulnerable to smuggling and irregular entry. Furthermore, Turkey has its own concerns with respect to the defense and protection of, in particular, its south-eastern borders, which are subject to infiltrations by militants of the PKK involved in terrorist attacks and other violence in Turkey (Kirişçi, 2007a:2). Thus, the physical protection of the borders and the national security challenges that Turkey faces constitute the main prior issues, rather than management of these borders in line with EU demands.

Looking closely at these long and mainly porous borders, a large proportion of irregular transit migration and asylum seekers enter Turkey from Iran and Iraq, which are vulnerable to smuggling as well (IOM, 2008: 20). Due to the military operations taking place against PKK's terrorist attacks around these borders, they have become heavily militarized and mined. In the south, the Syrian border, which previously was also militarized for the same reasons, nowadays faces another challenge, namely the high refugee flows escaping from the conflict and violence in Syria. Turkey, following an open border policy, has been hosting nearly 17,000 Syrian refugees in camps on Turkish territory. While hosting these Syrian citizens, Turkey has gradually toughened its criticism of the Syrian administration for its crackdown on protests and, as a result of the increased political tensions, closed its Embassy in Damascus and recalled its Ambassador. Turkey currently intends to create a buffer zone along its border with Syria to tackle the growing number of refugees. While the tensions between two countries have increased after the shooting down of the Turkish Jet by Syria on June 23, 2012, Syrians are increasing escaping to Turkey from the violence and civil war in Turkey. As noted by Reuters: "Already hosting more than 80,000 refugees, Turkey has warned it could run out of space if the number goes above 100,000" (Reuters 2012b).

The borders with Georgia and Nahçıvan are also busy, but more with regular and also circular migration, but Turkey's border with Armenia has been closed since 1993. Of the western borders, the one with Bulgaria was demilitarized after the collapse of the communist regime, and today it is extremely busy, serving as a transit path for Turkey's commercial relations with Europe, and also for seasonal movements of Turkish immigrants in Europe. The border with Greece was also previously strictly controlled and militarized, with no-go zones on both sides in the

early 1960s. Following the improvement in relations since 1999, the border has been demilitarized, with traffic from both sides significantly increasing for commercial and private movement. However, considerable irregular migration also happens across the Maritza River, which constitutes the Turkish-Greek land border.<sup>67</sup> The long sea border between Turkey and Greece is another very difficult border to control due to the nature of the coast and several islands that make the area an ideal environment for irregular migrants targeting Europe. Many irregular migrants are caught on the sometimes rough Aegean Sea where boats sink and many tragedies occur (Kirişçi, 2007a: 19). When interviewed, Laurent Muschel claimed that “Turkey is closing its eyes to irregular migration transiting over Turkey to Greece”.<sup>68</sup> He noted that this is actually a question of willingness rather than capacity, as Turkey had been able to control its eastern border perfectly during the Olympic Games in Greece, in response to a request by the USA, during which there were no documented irregular migration cases.

Considering the management of Turkey’s external borders, there is no central system of border coordination in Turkey, as each authority acts in accordance with its own priorities and assigned specific tasks. The overall supervision of the border management competence is entrusted to the Turkish Ministry of Interior, although there are several other actors that are responsible for border management. Duties related to the entry and exit of the persons at border gates are performed by the General Directorate of Security, while entry and exit of goods at border gates is controlled by the Undersecretariat of Customs. Border surveillance at other land borders is undertaken by the Land Forces General Command, but border surveillance between border gates is the responsibility of the Gendarmerie General Command, and maritime borders are controlled by the Coast Guard Command.

During the accession process, EU expects Turkey to harmonize its legislation and practices related to border management with the EU *acquis* through legislative and

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<sup>67</sup> Greece has announced its plans to build a 12 km fence along its border with Turkey to prevent irregular migrants from crossing. However, the European Commission refused to assist in building fences on the border, calling the project “pointless”. According to Frontex, the Orestiada area of north-eastern Greece has become the main route into Greece for migrants from Africa and Asia, with an average of 245 people crossing illegally every day in October 2010.

<sup>68</sup> Interview conducted with Laurent Muschel, Deputy Head of Cabinet to Cecilia Malmström (Commissioner Home Affairs) (Brussels, 6/9/2011).

institutional reforms, and efficient border management capacity, training activities, infrastructure and equipment investments.<sup>69</sup> To address the broad outlines of the harmonization process, Turkey first drafted in cooperation with suggestions by EU experts, and then adopted in 2003, the “Strategy for the Protection of External Borders in Turkey”. This strategy paper emphasizes the need for an “action plan” to ensure that all tasks related to border protection duties (to combat trafficking and illegal crossing and the security of the border gates, passenger entry and exit, passport checks and prevention of forgery, removal and deportation procedures, security of the borders and physical measures) in Turkey should be coordinated by a single authority under the Ministry of Interior, and performed by trained, non-military, professional law enforcement units. While the foreseen “Border Agency” has not to be established, the Integrated Border Management Coordination Board has been, and the road map on Integrated Border Management and the Protocol for Inter-Agency Cooperation have both been drafted (European Commission, 2011/666).

In line with the harmonization efforts, to ensure reinforced protection at the borders, the twinning project<sup>70</sup> on “Support for the Development of an Action Plan to Implement Turkey’s Integrated Border Management Strategy” (TR02-JH-02) was implemented between 2004 and 2006, with the EU’s financial assistance. The project resulted in an “Action Plan” setting out the legislative alignment, institutional reform, training, physical infrastructure and investment needed for effective implementation of a successful border management strategy. However, it ignores issues concerning the creation of a new and centralized national border agency, which was one of the most important expectations of the EU. Indeed, whereas for the EU the replacement of the current border control and management system with an integrated civilian border agency is of the utmost importance, the Turkish authorities are more deeply concerned about the capability of such a civilian institution to protect and control its difficult borders with Iran and Iraq (Kirişçi, 2007a: 21). Thus,

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<sup>69</sup> The main legislation in Turkey regulating border surveillance is Law No. 3497 on Protection and Security of Green Borders and the Coast Guard Command Law No. 2692.

<sup>70</sup> The projects that are commonly named as “twinning” refer to instruments for targeted administrative cooperation to assist candidate countries strengthen their administrative and judicial capacity and implement the EU framework in their national systems. They represent the joint efforts of the EU and the candidate countries to foster institution building. These projects are expected to result in the creation and implementation of Action Plans to adopt the EU *acquis* (Kirişçi, 2007a:8).

Turkey prefers to proceed in line with its general statements concerning strengthening border management, while continuing with preparations to implement the Schengen acquis.

Another twinning project, titled “Development of a Training System for Border Police” (TR 04/AB/ JH 04), was implemented in 2005-2006 within the scope of the EU-Turkey Financial Assistance, with a Spanish-Hungarian consortium. The project aimed to prepare a training strategy for the new border organization, a programme for pre-service, in-service and management of human resources development and training, including a curriculum and methodology in line EU standards. It also aimed to develop operational standards and best practices for the border organization, and to elaborate a “common manual of checks at the external borders” for border control personnel. In addition to these twinning projects, in fulfilling harmonization with the EU’s integrated border management, Turkish passports were also revised to introduce biometric security features that were implemented on 1 June 2010.

While these developments can be seen as forming a background of considerable improvements, the EU’s latest progress report on Turkey nevertheless stresses that “further efforts are needed in order to align border management with the acquis” (European Commission, 2011/666:93). The report notes that improvements are still needed for development of integrated border management, inter-agency cooperation and to establish a “Border Security Agency”. Border checking procedures and regulations are also assessed as needing improvement in order to control irregular migration. The report argues that further efforts are needed in specialized training, the establishment of more adequate infrastructure, and more extensive use of surveillance equipment (in particular electronic means, mobile and fixed, video surveillance infrared cameras and other sensor systems). While the report appreciates Turkey’s joint operations with Member states and efforts to conclude the working agreement with Frontex (European Commission, 2010/ 660: 82-83), it also emphasizes that operations need to be developed in order to prevent irregular migration and to combat cross-border crime (European Commission, 2011/666:92-93). Lastly, Turkey is expected to further its efforts to implement the national action plan on integrated border management to remedy the current lack of a central co-ordination system on border management issues and general risk assessment strategy

developed at a central level. Efficient and coordinated use of databases and risk analysis at the borders, together with deploying more trained staff and additional border check equipment at border crossing points are also indicated as missing elements for effective integrated border management.

The focus of the issues raised in this report demonstrate that the cooperation framework between EU and Turkey on “border management” appears to be developing around the EU’s attempts to externalize its own “border control” to Turkey’s borders. Referring to the EU’s focus on control rather than management through a securitization perception, Düvell notes an important issue: that, despite recently improving relations between the two countries, the control of Turkey’s land and sea borders with Greece have become increasingly “militarized”, just as happened between Morocco and Spain, where armed and naval forces are regularly deployed in border controls (Düvell, 2010:6). Turkey’s southeastern borders are already heavily militarized due to the fight against terrorists operating on and across these borders. The progress reports also reveal that the establishment of a centralized border agency will likely remain uncompleted, since its successful implementation would require an assertion of political will at the highest levels of the Turkish government, in response to the the EU’s offering credible prospects for Turkey’s EU membership which is currently lacking. However, work on the draft “Law on the Organization of the Directorate General for Border Security” still continues, which will eventually, depending on political conditions, constitute the basis for restructuring Turkey’s border management regime.

#### **4.4.1.3. Cooperation with the EU on Visa Policy**

In the visa policy domain, the adaptation of the EU’s visa policies to Turkey raises particular concerns since the Accession Strategy requires Turkey to replace its liberal Turkish visa policy with the standards of the Schengen visa regime, which would apply far stricter rules on entry into Turkey<sup>71</sup>. Accordingly, Turkey is also expected

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<sup>71</sup> The Turkish visa regime is mainly regulated by the Passport Law No. 5682 of 24 July 1950 and by the Law on The Residence and Travel of Aliens in Turkey No. 5683 of 17 July 1950.

to completely adopt the Schengen negative visa list<sup>72</sup> on countries with which Turkey has close cultural, historical, economic and social ties (e.g. Western Balkan countries).<sup>73</sup> In addition, if the EU continues requiring visas from Turkish nationals to enter the EU, Turkey will be the only country implementing the Schengen negative visa list while being itself on the list as well (Kirişçi, 2005:349). Ironically, Turkey's current liberal and flexible visa policy is much closer to the philosophy of peace-building among societies that, rhetorically at least, is one of the main motives of the European integration project. In contrast, the strict Schengen *acquis* places obstacles and difficulties in the way of easy travel by requiring significant administrative work and financial cost in the name of securing the EU's borders.

Faced with the negative externalities raised by the EU's expectations, which will be discussed in later in this study, Turkey has further liberalized its visa policy and signed visa-free agreements with many countries as part of Justice and Development Party's (AKP) foreign policy of "zero problem with neighbors", which contradicts the EU's demands for a hardening of visa policy. Turkey already had mutual visa exemptions with Iran (1964),<sup>74</sup> and made similar agreements with Serbia (October 2010), Georgia (February 2011) and Russia (March 2011), covering all types of passports. Visa-free agreements were signed with Syria (September 2009), Jordan (2009), Libya (2009), Tajikistan (2009), Azerbaijan (2009) and Lebanon (January 2010) with the aim to increase and improve regional trade, and economic and cultural dialogue. As most of these countries are in the EU's negative list, it creates a challenge for the EU-Turkey cooperation dialogue by reflecting the two sides' conflicting national and regional interests. Two of my interviewees had contrasting perspectives on the implications of this. Laurent Muschel (Home Affairs) believed

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<sup>72</sup> The third countries whose nationals must be in possession of visas and those whose nationals are exempt from that requirement when crossing the external borders of the EU are listed in Council Regulation (EC) No 539/2001 of 15 March 2001, online available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:081:0001:0007:EN:PDF> (Accessed on 01.07.2012)

<sup>73</sup> For many, it is a questionable, unfair and controversial practice for the EU to expect Turkey to implement the Schengen visa system at a time when Turkish nationals remain subject to Schengen visa requirements for travel to the EU (Kirişçi, 2009).

<sup>74</sup> This practice continued even during the change of regime in Iran following the revolution, and many regime opponents have benefited from this visa-free system. The gradual liberalization of the regime has also led to an increase in trade relations and in the number of Iranian tourists visiting Turkey instead of Europe, which has complicated visa requirements for Iranians.

Turkey's visa liberalization policy carries the major risk of making Turkey more of a migrant destination country, whereas Michal Mann (External Affairs) evaluated it more positively, as respecting Turkey's own priorities with regards to its own neighborhood relations.<sup>75</sup> Indeed, it seems that Turkey does not have any strategy that considers the possible impacts of this policy on Turkey's visa policy harmonization with the EU by taking into account the costs and benefits of this implementation (Eralp, 2011:2).

Another area of concern is that, although the EU previously asked Turkey to abolish its system, applied to the nationals of 48 countries, of issuing sticker and stamp-type visas at its borders,<sup>76</sup> the Turkish authorities have yet to take any administrative initiative on this (European Commission, 2011/666: 92). The sticker visa system was introduced during the 1990s, after the end of the Cold War and the establishment of the Black Sea Economic Cooperation Area (BSECA). It not only aimed to facilitate the movement of BSECA members' nationals but also to enable easy travel for the nationals of the new Turkic Republics in the Caucasus and Central Asia, which have close linguistic and cultural ties to Turkey. During the Cold War, contacts between Turkey and these Turkic communities were nearly non-existent since there were major restrictions on Soviet nationals travelling abroad, plus they had first to travel long distances to Moscow in order to obtain a visa for Turkey. Thus, the sticker visa system has helped increase the informal import and export activities, known as the "suit-case" trade. In 1995, the estimated trade volume peaked at 10 billion US dollars. It also led to establish close cultural, commercial, social and political relations especially across the Black Sea since the end of the Cold War (Kirişçi, 2005: 345). Accordingly, while the EU criticizes this "sticker visa" system for helping those irregular migrants targeting Europe through Turkey, the Turkish authorities argue that the evidence contradicts this assumption, explaining that illegal migrants from the former-Soviet Republics and Balkan countries apprehended in Turkey are mainly caught because of overstaying or breaking Turkish law, rather

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<sup>75</sup> Interviews conducted at the European Commission, Brussels, 6/9/2011.

<sup>76</sup> The practice of issuing visas at borders is contrary to Article 12 of the Convention Implementing the Schengen Agreement, which requires that entry visas can only be issued by the diplomatic and consular authorities of the Contracting Parties. Thus, the EU objects to Turkey issuing the "sticker visa" at its frontier in return for a fee.

than any intention to transit to Europe. In line with EU aims, these irregular migrants are then deported back to their country (Kirişçi 2007a: 33-34).

Another area of concern is that Turkey does not implement uniform visa policy towards all EU citizens regarding visa obligations. While citizens of 16 EU Member states are exempted from the visa obligation for short stays of up to 90 days, citizens of 11 EU Member states are still required to obtain a visa, which can be done at the border, to enter Turkey. This practice should be seen a response, in line with reciprocity being a leading factor in Turkish visa policy, to the many EU countries that have strict and inconsistent visa procedures for Turkish citizens, which leads to their suffering many administrative difficulties and obstacles during their visa.

In a recent development, in order to harmonize with the EU *acquis* in the visa domain, Turkey introduced a new visa regulation by revising its law 5683 titled “Residence and Travels of the Foreigners in Turkey”. The new regulation came into effect on 1 February 2012. According to this new regulation, foreigners visiting Turkey may stay a maximum of 90 days within a 180 day period. This means that the maximum length of time one may stay in Turkey as a tourist has become only nine consecutive months. The new rules replaced the old 90 day visa that could be purchased back-to-back or renewed before the expiry date, and which had been frequently used, especially by illegal workers from Romania, Ukraine and Moldavia, to arrive on a tourist visa but work in Turkey illegally. Under the new regulation, foreigners who wish to prolong their stay in Turkey for study, work, or residence beyond the initial 90 days are now required to apply for the appropriate visa and/or residence permit from the Turkish authorities. Residence permit charges have been reduced and the permits themselves have also become much easier to obtain. However, overstaying visa periods will result in heavy fines and/or a ban on re-entering Turkey for up to five years. The new regulation aims to reduce the number of illegal foreign workers in Turkey and combat Turkey’s unregistered economy.

Overall, harmonization of visa policy with EU standards still is still a key outstanding issue. The progress report notes that Turkey has made little progress in aligning its visa policy in line with the EU *acquis* (European Commission, 2011/666: 92). Harmonization of visa descriptions and types with the EU visa formats,

compliance with the EU negative list, termination of the sticker and stamp visa issuance at border checkpoints, and the introduction of airport transit visas constitute the main issues to be resolved. However, Turkish officials have become more reluctant to harmonize Turkish visa policies with those of the EU, having noticed that most of the member countries accepted in the latest EU expansion only started to fully implement the Schengen acquis much closer to their date of accession. As clearly stated in the 25th Reform Monitoring Group Meeting, Turkey finds the EU's behavior in this policy field discriminatory and unfair, due to its negative effects on the competitiveness of Turkish citizens, especially concerning commercial relations with the EU. As Egemen Bağış, Minister for EU Affairs and Chief Negotiator declared, "There have not been significant developments regarding the full application of EU regulations on visa regimes to Turkey that are applied to candidate and potential candidate countries as well as some third countries" (Der Standard, 2012). Furthermore, the uncertainty over Turkey's final membership status has led to a loss of enthusiasm among Turkish officials to pursue harmonization efforts. Currently, it appears that developing economic, political and cultural relations with neighbors, and the use of visas as a tool to foster these relations, benefits Turkey more than does satisfying the EU's expectations. Details of possible negative externalities of harmonizing Turkey's visa policy will be examined in a later part of this study.

#### **4.4.1.4. Readmission Agreements and Visa Liberalization: From Accession Conditionality to Policy Conditionality**

Readmission constitutes one of the other challenging and critical issues in the relations between EU and Turkey. The EU sees convincing Turkey to cooperate and readmit all irregular migrants who have entered the EU through Turkey as a very tough and crucial target in terms of its fight against irregular migration. The EU expects Turkey to sign readmission agreement together with implementing the integrated border management return for visa exemption (Eralp, 2010: 3).

As a candidate country engaged in accession negotiations since 2005, Turkey has to assume all obligations arising from the EU *acquis*, so is required to negotiate a readmission agreement with the EU. Turkey already readmits its own nationals in

accordance with the Passport Law No. 5682. Additionally, if illegal third country nationals have departed from Turkey, they will be readmitted as long as they are returned on the same or subsequent flight according to the ICAO rules and practices<sup>77</sup>. Turkey also admits foreigners if they hold a valid Turkish residence permit.

As with its other existing bilateral readmission agreements, the EU-Turkey readmission agreement is of crucial importance for the EU<sup>78</sup>. After eight years of negotiation, including some years of suspension, the content of the agreement was finalized and presented to the European Council on 25 February 2011. The agreement would cover both Turkish nationals and third-country citizens who have entered the EU via Turkey illegally. Asylum-seekers and refugees would be exempted in line with international agreements. However, although the content has finally been agreed after long years of tough negotiations, Turkey has not yet signed it due to its unmet demands on visa exemption, which will be studied in detail in a later section.

While getting Turkey to sign the readmission agreement is a priority for the EU, Turkey's own priority is to first sign readmission agreements with source countries on its eastern and southeastern borders, rather than with the EU. This is because it is evident that, if Turkey signs a readmission agreement with the EU before concluding readmission agreements with these neighboring countries, which generate irregular migration, this will create huge problems and a burden for Turkey. Thus, Turkey has so far signed bilateral readmission agreements with Syria (2003), Greece (2002), Kyrgyzstan (2004), Romania (2004), Russia (2011), Ukraine (2005) and Bosnia (2012), and completed negotiations with Pakistan. Readmission negotiations are ongoing with Serbia and Belarus, while talks are ongoing to start negotiations with Azerbaijan, Bangladesh, Georgia, Lebanon, Libya, Moldova, Sri Lanka and Uzbekistan. However, progress is often extremely slow since third countries,

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<sup>77</sup> The scope of Turkey's readmission policy is currently limited to aliens arriving by air, and not by sea and land.

<sup>78</sup> Progress on the Turkey-Greece readmission agreement in 2010 is also noted by the EU. To give an idea about the potential scale of readmissions, in the first 6 months of 2011, Greece asked Turkey to readmit 2,508 people, but Turkey only agreed to readmit 450 of those, of which Greece handed over 412 (European Commission, 2011/666: 91).

especially those sending migrants and generating asylum seekers, have little incentive to cooperate because it will increase their share of the burden of dealing with migrants.

As discussed in Chapter 3, progress in EU readmission negotiations have become conditional on visa facilitation or visa liberalization. However, the EU employs this conditionality in different ways, depending upon each country's situation. In Turkey's case, the visa issue involves complex bargaining because Turkey finds the EU's insistence on "visa facilitation" rather than "visa liberalization" to be unfair compared with the EU's earlier treatment of new members. For example, the EU agreed visa liberalization with Macedonia, Serbia, Albania, Bosnia and Georgia, and signed visa liberalization plans with Ukraine (2010) and Georgia (2010), even though the EU offers no membership prospects to these countries, nor they are even potential candidates. Yet, despite being a candidate country negotiating for full membership, Turkey is offered only "visa facilitation" instead of "visa liberalization", and this is even without a clear action plan. In response, in recent years, Turkey has increased its pressure on the EU to ensure that the European Council gives the go-ahead to the European Commission for talks on a visa-free travel regime for Turkish nationals with concrete commitments. The last-minute insertion of a new paragraph in the agreement that explicitly stated that the dialogue does not constitute a negotiating mandate, reinforced the Turkish authorities determination not to sign the readmission agreement and to block the approval process unless there are some significant moves by the Council on visa liberalization (Özler and Toygür, 2011:3). Turkey's attitude on the readmission of illegal immigrants, which was included as a condition at the beginning of talks on a visa-free regime can also be clearly seen in this statement of Turkish Foreign Minister, Ahmet Davutoğlu: "Without visa exemption we shall in no way sign the readmission agreement" (News EU, 19 November 2011). As a result, recently in June 2012, the EU authorized the European Commission to conduct visa exemption talks with Turkey. Following this Turkey and EU initialled the readmission agreement. However, the actual visa-free for Turkish citizens seems to be a difficult case which would require a majority of votes in the EU. On the other hand, Turkey demands simultaneous implementation of visa-exemption and the readmission agreement. Thus the case seem to stay as a challengic issue without its implementation aspect.

At this point, it should be noted that Article 41 of the Additional Protocol to the Association Agreement between the European Economic Community and Turkey (1973) contains a standstill clause, which prohibits the contracting parties from introducing any new restrictions on the freedom of establishment and the freedom to provide services. Many decisions of the European Court of Justice involving Turkish citizens reference this article, as recently seen with the milestone “Soysal” case of February 2009<sup>79</sup>. From a Turkish perspective, visa facilitation is not an additional benefit; rather, it would be a step backwards in terms of abandoning the rights that Turkish citizens already possess, but are unable to enjoy due to EU member states’ political resistance.

Even on the so-far rejected option of visa facilitation, the EU has failed to enhance trust. The absence of clear visa road map dramatically hampers the EU’s credibility and influence. Many Turkish citizens now travel to Europe for business, study or tourism, yet the EU maintains a very strict visa policy towards Turkey using the framework of the Schengen visa. Turkish citizens bitterly complain about the effects of these restrictions: high costs, excessively long queues and processing times, documentation requirements, and negative attitudes of consular officials. Consequently, the EU loses credibility and trust with Turkish society, as Egemen Bağış, Minister of EU Affairs and the Chief Negotiator emphasizes: “All these restrictions create new psychological barriers against the EU in the minds and hearts of Turkish citizens” (Der Standart, 2012). One Commission official I have interviewed who does not want to be quoted, has acknowledged that both sides are blocking progress,<sup>80</sup> arguing that willingness is needed from both sides, such that the EU should offer a work plan and Turkey should implement more harmonization. He suggested that if visa facilitation, as the first step, could at least proceed faster for certain groups, such as business people and students, this would indeed promote positive thinking rather than blocking the process. He saw visa liberalization as a

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<sup>79</sup> According to the decision on the Soysal case of 19 February 2009, the European Court of Justice ruled that Turkish citizens may enter EU territory to render services, without a visa. In its judgement, the Court ruled that Article 41(1) of the Additional Protocol signed between Turkey and the EU on 23 November 1970 obliges EU member states to refrain from introducing further restrictions on the freedom of establishment and the freedom to provide services.

<sup>80</sup> Interview conducted with a Commission official (whose words I am not allowed to quote), Enlargement, Turkey Team.

step-by-step process requiring a practical but constructive plan, while accepting that ultimately it is not a legal issue but a political one.

#### **4.4.1.5. Asylum Policy and Turkey**

As a prominent transit country between refugee generating countries and countries offering welfare, Turkey has a significant place in the external aspects of the EU's asylum policy. Turkey's consistent experience clearly proves that it is strongly exposed to ongoing asylum flows, as seen in the late 1980s and 1990s with events such as the Iranian Islamic Revolution, the end of the Cold war, political turmoil in the Middle East, the Gulf War (1991), the wars in Bosnia (1992) and in Kosovo (1999 and 2001), and the US-led international intervention in Iraq in 2003. Most recently, Turkey has hosted huge and rapidly increasing asylum flows from Syria, nearly reached to 80.000 people staying in nine refugee camps in Turkey (Reuters, 2012b). The consequence of this history of regional instability and conflict, coupled with Turkey's location as a transit zone between Asia/Africa and the West, is that Turkey has been forced into being a *de facto* "country of first asylum". Turkey's asylum regime therefore constitutes one of the most challenging areas with respect to the EU's external cooperation.

As explained in Chapter 3, the externalization of the EU's asylum policy demonstrates a strong tendency to deter refugees from seeking asylum in the territories of its member states. Accordingly, the EU's transit migration discourse mainly focuses on its efforts to negotiate return and deportation policies with many non-EU neighbors and various sending countries (Düvell, 2010: 6). For example, as stated in the Dublin Convention (1990), the EU obliges refugees to apply for asylum from the "first safe country", which is often a transit country. It also obliges countries transited by refugees to readmit them, should they manage to reach the EU, by asking these countries to sign the so-called readmission agreements as well. Thus, through the legal modifications required within the asylum *acquis*, the EU tries to keep both refugee applications, and the refugees themselves, in transit countries, including Turkey, within the framework of an intensive harmonization process with the *acquis*. For example, the EU has encouraged Turkey to improve its conditions regarding access to the asylum process, status determination, enhanced facilities for

asylum-seekers protection and, most notably, to lift its “geographical limitation” on its implementation of the 1951 Geneva Convention.

One of the main challenges is that the EU expects Turkey to develop a fully-fledged national asylum management system, including a national status determination process for asylum seekers coming from outside Europe. However, there is no provision in the Turkish Constitution concerning asylum or asylum issues since, as already outlined, this is currently regulated in a fragmented manner under separate laws and regulations.<sup>81</sup> Since there is no specific domestic law governing the state’s conduct towards refugees, asylum seekers, the asylum issues are governed by secondary legislation, with the only important relevant legislation being the 1994 Asylum Regulation,<sup>82</sup> the first piece of national legislation aiming to bring status determination under the control of the Turkish government. Current Turkish legislation allows immigration and the obtaining of fully fledged refugee status with the option of integration only to persons of “Turkish descent or culture”. Thus, the majority of refugees requesting asylum in Turkey have to resettle in third countries.

Concerning the assessment of asylum applications and refugee status determination, the 1994 Asylum Regulation identifies the Ministry of Interior as the responsible body for status determination by introducing strict regulations governing access to asylum procedures, since the system is mainly framed within national security concerns. This regulation has been criticized by western governments and many human rights advocacy groups for undermining the rights of asylum seekers and refugees to access asylum procedures and for violating the principle of “non-refoulement”<sup>83</sup> (Kirişçi, 2012a:67). According to the regulation, asylum applications must be submitted to the officials of both the Turkish Ministry of Interior and

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<sup>81</sup> There are other Turkish Laws with separate provisions and definitions on asylum seekers and refugees, such as the Settlement Law (numbered 5543) amended in 19/09/2006, the Law on Combatant Members of Foreign Armies Seeking Asylum in Turkey (numbered 41/4104 of 11 August), the Passport Law of 15 July 1950 (numbered 5683), the Turkish Citizenship Act of 11 February 1964 (numbered 64/403), and the Law on Work Permits of Aliens of 27 February 2003 (numbered 4817). However, asylum seekers or refugees are taken into consideration under the category of “aliens” in general.

<sup>82</sup> Official Gazette, No 22127, 30 November 1994

<sup>83</sup> Article 33 of the 1951 Convention prohibits returning any refugee for any reason, whatsoever to a country where their life would be threatened. Non-refoulement is a custom and protects anyone, whose life or freedom would be threatened.

UNHCR in order to determine whether Turkish law or UNHCR regulations apply in their case for conducting refugee status determination. In practice, since the late 1990s, UNHCR *de facto* has been the one to determine refugee status, and Ministry of Interior officials have come to rely increasingly on the judgment of UNHCR. In other words, Turkey is quite content to work with UNHCR, as long as the asylum seekers are also registered with them, and that the refugees (unless they meet the criteria of Turkishness) are eventually resettled outside Turkey.

However, although status determination as a refugee has potentially profound implications for the life and security of the person concerned, this process currently lacks synchronization between the Turkish Ministry of Interior and UNHCR. Refugee status determination can take between 6 months and 3 years for the detained asylum seekers, who are offered just a temporary stay in Turkey. Additionally, the 1994 regulation imposed strict rules governing access to asylum procedures, thereby undermining the rights of asylum seekers and refugees. For example, asylum applications had to be completed within a maximum of five days after entry to Turkey, otherwise the applications were refused. This regulation caused conflicts between the Turkish authorities and UNHCR, since many refugee cases were recorded as violating the “non-refoulement” principle, resulting in several deportations by the Turkish authorities, although those people had been recognized or registered with UNHCR as asylum seekers. In 1999, however, the five day limitation was raised to ten days, and then completely lifted in 2006. These two amendments are considered as turning points in the “Europeanization” of Turkish asylum policy (Kirişçi, 2007a:14). The other very important turning point is the draft law on “Foreigners and International Protection”, Turkey’s first draft asylum law, which brings a significant number of improvements to current Turkish practice by ensuring better-quality protection for asylum seekers in Turkey (Kirişçi, 2012a:63-64). If the law is adopted by the Parliament Turkey will, in a major step forward, finally have a legal framework concerning protection of asylum seekers and refugees.

As already mentioned, Turkey’s “geographical limitation” clause constitutes another main challenge for the EU concerning its aims of external cooperation. After the official declaration of Turkey’s EU candidate status at the Helsinki Summit in 1999,

Turkey was expected to lift this clause, as indicated in the Accession Partnership Document. From a Turkish perspective, lifting “geographical limitation” will dramatically change Turkey’s role as a transit country because, removing the limitation and developing its asylum framework by signing a Community readmission agreement will make Turkey become a “safe third country” according to the Asylum Procedures Directive, adopted by the EU Council in December 2005. This will mean that any asylum seeker who passes through Turkish territory will be directly returned to Turkey. Given the likely burden that this will impose on Turkey, the Turkish authorities postponed lifting geographical limitation until 2012.

**Table 4.3 Resettlement out of Turkey by Country of Origin and Country of Settlement**

Country of Origin	Country of Settlement						
	Canada	USA	Oceania	Other Europe	Scandinavia	Others	Total
<b>Afghanistan</b>	192	258	3	17	89		559
<b>Iran</b>	4 ,841	10 ,061	2 ,921	269	3 ,667	12	21 ,771
<b>Iraq</b>	1 ,043	10 ,355	1 ,788	689	1 ,732	33	15 ,620
<b>Africa</b>	436	326	1	7	55		825
<b>North Africa</b>	15				1		16
<b>Asia</b>		34			13		145
<b>Middle East</b>	74	4	10	7	6	1	102
<b>Bosnia Herzegovina</b>		45		1			46
<b>Total</b>	<b>6 ,699</b>	<b>21 ,063</b>	<b>4 ,723</b>	<b>990</b>	<b>5 ,563</b>	<b>46</b>	<b>39 ,084</b>

Africa: Angola, Burundi, Congo, Eritrea, Ethiopia, Ivory Coast, Pakistan, Rwanda, Sierra Leone, Somali, Sudan

North Africa: Guinea, Mauritania, Morocco, Libya, Tunisia

Asia: Burma, China, India, Uzbekistan, Tajikistan, Turkmenistan, Kyrgyzstan, Sri Lanka

Middle East: Jordan, Palestine, Syria, Egypt, Yemen

Oceania: Australia, New Zealand

Other Europe: Austria, Austria, Britain, France, Germany, Hungary, Ireland, Italy, Luxemburg, Netherlands, Spain, Switzerland, Ukraine, Greece, Poland, Czech Republic, Belgium

Scandinavia: Denmark, Finland, Norway, Sweden

Others: Azerbaijan, Bosnia Herzegovina, Indonesia, Israel, Saudi Arabia, Syria, United Arab Emirates

*Source: Kirişçi, 2012a:72*

The detention of asylum-seekers and irregular migrants in Turkey constitutes another challenging area of concern. Turkey does not have a detention policy. Instead, it maintains a large network of secure “guesthouses”<sup>84</sup> in nearly all major Turkish cities that are used for the administrative detention of asylum seekers and irregular migrants (CHR, 2009: 15). “Guesthouses”, which can be categorized as ad hoc detention centers, function under the authority of the Ministry of Interior and are managed by the police.<sup>85</sup> Apprehended irregular migrants without any valid travel documents are deported as soon as valid travel documents are provided. Until then, they are hosted in these guesthouses. However, among these irregular migrants, there may also be asylum seekers. Turkey has been criticized for often keeping apprehended people in detention for long periods, such as more than six months, and with limited access to interpreters and lawyers to apply for asylum when they sometimes may be unaware of their rights<sup>86</sup> (Amnesty International, 2009:13). Additionally, some international judicial and human rights bodies, including the UN Working Group on Arbitrary Detention, the European Court of Human Rights, and the Council of Europe’s Commissioner for Human Rights, have highlighted the poor facilities and improvised legal context of these guesthouses (CHR 2009; HRW 2008). More recently, however, conditions are being improved in some of the guesthouses. From my observations and interviews, especially with children and women at the Izmir Removal Center in 2010, which was rebuilt in 2008 with a

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<sup>84</sup> There 12 main guesthouses in Turkey include three in Istanbul, two in Edirne, and one each in Kırklareli, Izmir, Ankara, Van, Bitlis, Muş (Haskoy District), and Hatay. It is planned to expand the detention infrastructure with two new centers that will be built in Aydın and Van with a capacity of 700 inmates. There is also a plan to convert two former prisons to guesthouses in Burhaniye and Ayvalık, Balıkesir.

<sup>85</sup> Concerning the grounds for confining non-citizens to administrative detention, Turkish government frequently cites Article 4 of the Passport Law (Law No. 5683 of 1950) and Article 23 of the Law on the Sojourn and Movement of Aliens (Law No.5687 of 1950) as grounds for “accommodating” undocumented foreign nationals. However, many international bodies argue that the law does not provide clear grounds either for detention for this type of accommodation. Since administrative detention is not recognized by the Turkish authorities, irregular entry, stay, or attempted exit resulting in apprehension and detention in a so-called “foreigners guesthouse” is solely based on an administrative ruling from the Ministry of Interior (CHR, 2009:14).

<sup>86</sup> Council Directive 2003/9/EC on minimum standards for the reception of asylum applications indicates that applicants must be informed of their rights and the benefits which they may claim within a reasonable time, not exceeding 15 days. In principle, applicants must be allowed freedom of movement within the territory, with detention only allowed to check identity.

capacity of 250 people, it became clear that apprehended irregular migrants were kept under proper conditions.<sup>87</sup>

Asylum seekers and refugees recognized as being in need of international protection are usually assigned to one of fifty-one “satellite cities” scattered across Turkey. They receive residence permits, but no assistance from the state so are left to their own devices to survive. Furthermore, the residence permit has to be renewed every six months for a fee of around 150 euros per person, and although refugees may be exempted from paying residence fees, this concession is implemented unevenly. There are no specific public assistance programmes for them (İçduygu and Sert, 2009: 5).

Although there are issues such as these to be resolved, there has been significant progress in terms of improving asylum management issues in Turkey. Definitely, the impact of both UNHCR and the EU has helped transform Turkish asylum policy, previously framed primarily from a “national security” perspective, towards one framed more from a human rights and international refugee law perspective (Kirişçi, 2007a:15). The draft law on “Foreigners and International Protection”, prepared with the significant contribution of UNHCR, reflects this shift to a human rights-focused approach from a purely security driven one. It signifies a major positive transformation in Turkey’s asylum policy in terms of both its preparation process, which has been based on open consultation, and its content, which enlarges the protection space for asylum seekers, ensures non-refoulement and improves detention conditions and access to judicial review. This positive development has also been highlighted and appreciated by many academicians and Turkish bureaucrats as well.<sup>88</sup> For example, Attila Toros, Head of the Migration and Asylum Bureau, at the Turkish Ministry of Interior, mentioned that the new draft law reflects a policy that, instead of hindering migration, takes responsibility for immigrants that have been excluded by “Fortress Europe”. In criticizing Europe for becoming more restrictive, he stressed that managing migration does not mean preventing it, and that

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<sup>87</sup> Official Visit to Removal Center in Izmir, 09.07.2010.

<sup>88</sup> Academic Workshop on Migration organized by the Ministry of Interior Bureau Responsible for the Development and Implementation of Legislation on Asylum, Migration and Administrative Capacity, 04.04.2012, Ankara.

he was proud of the Turkish draft law with its human rights-focused approach. Similarly, Engin Yürür, Director for Migration, Asylum and Visas of Consular Affairs of the Turkish Ministry of Foreign Affairs, confirmed that Turkey no longer perceives migration from a security perspective.

Further significant evidence of improvements with respect to a human rights focus is that, in response to the sudden and rapid increase in asylum seekers from Syria, Turkey exhibited a more human rights-centered approach with its open border policy, rather than its traditional security-oriented approach. Unlike in past instances, this time there was not a high number of refoulement cases or complaints about access to asylum procedures. In his comments, Metin Çorabatır, the external officer of UNHCR, also acknowledged how Turkey's open border policy, offer of temporary protection and non-refoulement have facilitated the access of asylum seekers to protection (Çorabatır, 2011).

The second noteworthy area of progress in the asylum field is that Turkish authorities engaged in closer cooperation with UNHCR and demonstrated Turkey's intention to improve its asylum system from an ad-hoc one to an official one. In close cooperation with UNHCR, Turkey has continued to improve conditions for asylum seekers within the framework of existing legal structures by introducing administrative instruments. Meanwhile, the Turkish government completed its efforts on preparing an asylum management law after several rounds of consultations with Turkish civil society and the involvement of external stakeholders such as the IOM, UNHCR, and the European Commission.

The circular issued in June 2006 by the Ministry of Interior has also contributed to advance asylum policy in Turkey. Concerning the identity determination of asylum seekers, it clarified that if they enter Turkey without identity, this should no longer pose any problem for the process of their asylum application. The circular also defined the procedures to follow after an asylum application and the appeal procedures for rejected cases. Some progress was also achieved with the circulars issued in 2010 that required the relevant law enforcement forces to systematically inform irregular migrants in removal centers of their rights.

Although these developments bring Turkey closer to satisfying EU demands on asylum policy, the Progress Reports show that Turkey is still expected to go a long way further in adapting to the EU *acquis*. The reports maintain that only limited progress has been made in areas such as the 1951 Convention relating to the status of refugees and the related 1967 Protocol, since Turkey still maintains its geographical limitation stance. The absence of a fully-fledged asylum system remains a major concern. A comprehensive legal framework on refugees and asylum-seekers needs to be implemented, together with the effective implementation of amended circulars in this area (European Commission, 2010/660: 36). Two laws on asylum and aliens should have received parliamentary approval by 2012. However, because negotiations with the EU have slowed down, this legislation has not been presented yet (OECD, 2011:328).

The 2011 Progress Report for Turkey (European Commission, 2011/666) sees the limited capacity of Turkish institutions, and the lack of the Turkish authorities' ownership of the refugee status determination process for non-European asylum seekers, as key issues to be improved. Other stated priorities include ensuring equal and fair access to asylum procedures, shortening waiting times and facilitating the full access of asylum seekers to legal aid. Finally, Turkey is expected to establish country of origin and asylum case management systems and facilitate the involvement of civil society organizations more effectively to cooperate with the administration in providing assistance to refugees and migrants. In particular, progress is needed in enhancing the reception conditions of irregular migrants during their detention and removal, and also the general conditions in foreigners' detention centers through providing a comprehensive set of rules and guidelines for the management and operation of removal centers (European Commission, 2011/666:90). The same Progress Report argues that consultation with civil society, international organizations and academia are crucial, recommending that concrete measures should be taken to increase awareness concerning the rights of irregular migrants and procedures involved in migration management among administrators, governors, district governors, municipalities and the public at large. Voluntary return also needs to be assisted, yet there is currently no institutional capacity in the administration to facilitate this.

#### **4.4.2. Limits of Cooperation**

As relations between the EU and Turkey operate within the framework of Turkey's EU accession process, this constitutes a very important and influential factor in shaping and determining the success and the progress of the relationship. However, in comparison to other policy fields, migration and asylum policy involves more conflicting issues, as reflected by the limits and restrictions of the cooperation dialogue so far. The externalization of the EU's immigration policies, especially towards transit migration countries, represents a unique case to test the limits and effectiveness of the EU's mechanisms for policy transfer and stimulating domestic change. It seems that it is not an easy task to reach a consensus over mutual interests about migration and asylum policies in order to bring about policy adaptation or change, even with the offer of EU membership as the grand reward. Such negotiations might even fail. This policy field emerges as a unique case where accession conditionality can both lead to gridlock but at the same time continue to play a very critical determining role. In this context, the limits of cooperation with regards to deadlocks over accession conditionality and developments in domestic politics will be analyzed in the next section in terms of causes, consequences and possible implications.

##### **4.4.2.1. Deadlocks of Conditionality**

The Europeanization of Turkish immigration and asylum policy as part of the EU's attempts at externalization of the policy field constitutes a valuable example to test the limits and effectiveness of conditionality. As Kirişçi states, Turkey represents a unique case where "conditionality" has become insufficient to explain the resistance of policy makers in Turkey concerning cooperation in migration and asylum (Kirişçi 2007b). Conditionality has failed to work over three main issues: Turkey's reluctance to lift its "geographical limitation" to the 1951 Geneva Refugee Convention, to sign a "readmission agreement" with the EU, and to adopt the Schengen acquis on visa requirements. The limits to the success of conditionality regarding Turkey's policy adaptation in the migration and asylum field can be explained by two main factors: erosion of the EU's credibility over ultimate membership and the likely size of adaptation costs.

Schimmelfening argues that the “credibility of threats and rewards is a core prerequisite of any effective bargaining process” (Schimmelfening and Sedelmeier, 2005: 33), so the developments that caused a loss of trust in the EU’s credibility, and the increasing doubts of Turkish policy makers about the ultimate reward of membership, are the main determinant factors in the success or failure of Turkey’s policy adaptation (Kirişçi, 2007a). The single most crucial aspect of the negotiation process for Turkey has been the final aim, which for Turkey is accession to the EU. Therefore, the continued uncertainty over its eventual EU membership has caused increasing, as well as declining support for EU membership among Turkish society. This trend has negatively reduced motivation and progress in the necessary reforms, since the government does not feel an impetus itself or public pressure to proceed with the reforms and negotiations. According to Eurobarometer, in 2004, only 20% of Turkish citizens were against EU membership, but the latest data for 2011 reveal that this has increased to 32%. Supporting this, according to the Transatlantic Trends Survey (2010) issued by the German Marshall Fund, the proportion of Turkish public opinion in favor of EU membership dropped from 73% in 2004 to 38% in 2010.

Mistrust of the EU is clearly reflected in many platforms by Turkish officials, who complain that the EU does not treat Turkey fairly, in the same way as former and other current candidate countries, but instead applies double standards towards Turkey. For example, Egemen Bağış, Minister of EU Affairs and Chief Negotiator, wrote in his commentary for the Guardian newspaper that “[the] EU’s credibility has weakened in Turkey and public support for EU membership has declined, with less than half in favour of joining. More alarming, 92% of Turks believe that the union has ‘double standards’ when it comes to Turkish accession” (The Guardian, 2011).

The negative discourse on Turkey’s membership became more visible in several speeches by former French President Nicolas Sarkozy and former German Chancellor Angela Merkel against granting full membership to Turkey, offering instead a “privileged partnership”, a “strategic partnership”, or a “Mediterranean Union”, together with a renewed emphasis on worries about the “EU’s absorption capacity” concerning Turkey’s membership prospects (BBC News 2010; EUobserver 2007; The New York Times; 2008, Reuters, 2008). Stefan Füle, EU Commissioner for Enlargement, expressed his fears concerning the possibility of a “train crash”

over Turkey's accession process due to the Cyprus problem and voting over the so-called Armenian Genocide in the French Parliament. The repeated emphasis on "cultural differences" in EU-Turkey relations has triggered this mistrust and reinforced the decline in support for EU membership and the loss of trust in the EU among Turkish society. As Turkey's ambassador to the EU, Selim Kunalalp, told EUobserver in an interview on 17 June 2011,

[t]he European Commission's recommendations will be taken on board to the extent that they reflect universal norms. Take the death penalty [which Turkey abolished in 2004]. Whether or not you want to join the EU, it's a good thing to abolish the death penalty. But in the absence of any clear perspective of accession, there's no reason why Turkey should align its legislation toward narrow EU standards. To put it simply, the EU has lost its leverage on Turkey (EUobserver, 2011).

In terms of the "external incentive model", it is clear that the likelihood of the ultimate reward of EU membership is in doubt for both the Turkish public and public policy makers. As result of this decreasing credibility of the EU, policy adaptation for Turkey has become difficult, meaning that conditionality based on the reward of membership no longer works effectively to promote Turkey's further transformation through Europeanization. Migration and asylum issues constitute a very good example of this problem.

First, conditionality has not led to Turkey's lifting its "geographical limitation" clause and introducing a fully-fledged national asylum system (Kirişçi, 2007b:9). Removing the clause would place all the burden on Turkey regarding both existing and potentially huge future asylum flows towards Turkey. Turkish authorities are uneasy about this since there is a risk that Turkey could become a buffer zone at the same time as the EU becomes more restrictive in its own asylum system. Therefore, Turkey has agreed in its National Program for the Adoption of the *Acquis* (NAP) to remove geographical limitation, but only on condition that the EU introduces "legislative and infra-structural measures" and changes in "the attitudes of the EU Member states on the issue of burden-sharing". NAP also makes Turkey's agreement directly conditional on its membership process by stating that "a proposal for lifting the geographical limitation may be expected to be submitted to the Parliament in 2012 in line with the completion of Turkey's negotiations for accession" (NAP,

2005). Since then, however, Turkey has kept geographical limitation as the conditions it indicated have not been realized by the EU.

The second example of the failure of conditionality concerns governmental adaptation costs. The cost-benefit calculations of Turkish policy makers concerning governmental adaptation costs of harmonizing with EU legislation have indicated much greater costs than benefits, even with the prospect of membership, which is in fact uncertain given the currently open-ended accession negotiation process. A fully-fledged migration and asylum system according to EU standards requires very costly decisions, both financially and politically. Without the prospect of EU membership, Turkey would be left to face the challenge of vulnerability to irregular migration and asylum flows on its own since it would not be able to benefit from the EU's burden sharing mechanisms, such as EURODAC or the European Refugee Fund, which are only open to EU member states.

The readmission issue is the third example of the limits of cooperation seen in EU-Turkey relations. In this area, it can even be argued that accession conditionality works in the reverse direction, since Turkey has made slow progress on the way to conclude readmission negotiations while the EU was spending more effort to take further steps. Turkey firmly declared that the signing of any readmission agreement was conditional on the EU's commitment to visa liberalization for Turkish nationals (Özler and Toygur, 2011:5), which supports Marconi's argument that, when it comes to readmission, transit countries' governments actually have unexpected bargaining power to achieve their own ambitious political goals (Marconi, 2008:5). Therefore, the readmission issue not only constitutes a unique case for "reverse conditionality" but is also an example of shifting the focus from "accession conditionality" to "policy conditionality". While Turkey was required to adapt to the EU *acquis*, it seems that burden sharing and the financial aspects of implementing a readmission agreement dominated Turkey's approach to cooperation in this area. The limits of cooperation and the reasons for the possible negative externalities for Turkey of readmission will be discussed in later sections.

To summarize, lifting geographical limitation, establishing a border agency, signing the readmission agreement and adopting EU visa policy have all become issues where conditionality has limited effect or even fails to work due to the decreasing credibility of Turkey's EU membership prospects and the increasing costs of policy adaptation. As the deep doubts of Turkish officials with respect to the EU's commitment to Turkey's eventual membership have increased with the slowing down of the accession process, this has drastically influenced their efforts to take risks with reform and also the cost-benefit analysis.

#### **4.4.2.2. Implications of domestic political and economic developments**

The limits of cooperation in migration and asylum policy are not only shaped by the framework of the accession process but also affected by Turkey's changing domestic policies, foreign policy priorities and also crises, neighborhood relations and economic development.

Turkey's economy has recently grown significantly, and continues to develop fast. It is now the 16th largest economy in the world and will assume the Presidency of the G20 in 2015. In the recent years, its economy is no longer characterized by high levels of inflation, interest rates or instability, instead achieving 8.5 percent growth in 2010, which was one of the highest rates in the world and the fastest in Europe. Turkey's economic growth is much faster than all its neighbors except for Russia and Iran, which makes it an attractive country for many migrants (Kirişçi, 2012b). Besides these economic improvements, Turkey has also attempted in transforming its governance, society and democracy. It is now embarking on a new transformation through discussing the replacement of the current constitution drafted by the military in 1980.

Turkish foreign policy has also being transformed through the rapprochement policies of Foreign Affairs Minister, Ahmet Davutoğlu, with the focus now on "zero problems with neighbours". However, the rapproaching relations have entered into a period of crises such as with Syria and Iran. The main motivation behind this ambitious comprehensive approach policy aiming to embrace enhanced economic, cultural and social ties, as well as political and security relations appears to be

Turkey's intentions to become a regional power. Hence, Turkey is involving itself more in regional trade and energy deals and lifting visa requirements for citizens from Russia, Syria, Lebanon, and several other countries in the region. Consequently, the number of people coming for business or tourism from neighboring countries is increasing, together with the positive impacts of increased trade and improving social and political relations.

Accordingly, as a middle-income country experiencing relative peace and stability in the region, Turkey is also witnessing increasing migration trends. In line with its domestic policy concerns and changing foreign policy priorities, Turkey has increasingly preferred to go its own way of dealing with migration and asylum issues. Consequently, without rejecting the European framework of cooperation, Turkey is increasingly shaping its progress on the Europeanization of its migration and asylum policies according to its own domestic and foreign policy considerations.

#### 4.5. Task Specific Cooperation through Financial and Technical Assistance Mechanisms

Within the accession process, mostly dominated by the deterioration of relations between the EU and Turkey, improvements to comply with the *acquis* have occurred together with deadlocks preventing smooth progress. It is evident that the EU process was significantly influential and effective in transforming Turkey's migration and asylum policy. However, the role of various international organizations with which Turkey has had long and patient engagement should also strongly noted in explaining the future of this transformation. Because of the deadlocks and the slow progress of harmonization with the EU *acquis*, international organizations such as UNHCR and IOM, multilateral task-specific actors, and technical and financial assistance frameworks have had a greater impact in stimulating progress and resolving contested issues in the policy field.

The asylum field provides one good example of UNHCR's significant role concerning the socialization of Turkey into the norms and rules of an international refugee regime. The very long-standing relationship between UNHCR and the Turkish government, which has also extended to Turkish civil society, formed the basis for the transformation of Turkey's asylum policy, which has helped it

harmonize with the EU process. Kirişçi also explains the shift of framing Turkish asylum policy from a “national security” perspective towards one focused more on human rights and international refugee law as “primarily a product of the UNHCR’s long and patient engagement of Turkey” (Kirişçi, 2012a:74-73). Metin Çorabatır, the external officer of UNHCR in Turkey, confirms this by declaring that this engagement, which was difficult in the beginning, has advanced in time to include strong and closer cooperation between UNHCR and Turkish authorities. He believes that successful engagement has had a direct positive impact on improving Turkish asylum management.<sup>89</sup>

Needless to say, this relationship has played a significant role in the improvements achieved in Turkish asylum management in a slow but progressive manner, whereas EU process has been dominated more by tortuous dialogue constrained by the conditionality and credibility of the membership framework. The EU process has contributed more to the setting of a formal agenda and a time-table for adopting the EU *acquis*. Similarly, growing criticism of Turkish policy and rulings of the European Court of Human Rights against Turkey have also been very effective in triggering reform of its asylum policy, as confirmed by the authors of the draft law.

In Turkey’s case, task specific actors, including task based international organizations, supported by technical and financial assistance programmes appear to have performed better than other actors pushing for general grand policy frameworks. For instance, rather than focusing on broad problems of harmonization in asylum issues, the specific task based action of the High Level Working Group, which has promoted several training seminars on asylum, have contributed a lot to improving the administrative capacity building of Turkish officials. As another example, Frontex, operating mainly on border management, has been successful with its Rapid Border Intervention Teams (RABIT) operation deployed at the Greek-Turkish border. This operation resulted in a decrease in irregular crossings by approximately 75%, which had peaked in 2010. The operation has also helped in gathering information on migration routes and facilitator networks.

Regarding technical and financial assistance programmes, the twinning system of the

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<sup>89</sup> Seminar held at Yasar University titled “Refugees in the world and in Turkey” on Migration, 30 November 2011, Izmir.

European Commission, established in 1998, is an effective key tool used to influence Turkish immigration policies in order to restructure the Turkish public institutions and incorporate EU legislation. Most of the twinning projects have been implemented concerning policies and issues falling under “justice, freedom, and security”, as seen in the table , which demonstrates Turkey’s determination to strengthen its law enforcement capacity, as well as the EU’s priorities in these particular areas (Kirişçi 2007a:8). Turkey has implemented several twining projects that have resulted in rather successful outcomes to take issue-specific steps in transforming Turkish immigration and asylum policies.

**Table 4.4 Twinning Projects in Turkey (Per Sector)**

<b>Sector</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>Total</b>
Agriculture	2	1	2	1	2	2	10
Environment	1	2	4	1	1	2	11
Social Policy	-	-	-	1	1	-	2
Standardization and Certification	-	1	5	1	-	-	7
Finance (competition, state aid, customs etc)	-	5	2	-	3	2	12
Structural Funds	-	1	-	-	-	-	1
<b>Justice and Home Affairs</b>	<b>6</b>	<b>5</b>	<b>4</b>	<b>1</b>	<b>4</b>	<b>5</b>	<b>25</b>
Energy	1	1	-	-	1	-	3
Transport	1	1	1	-	-	-	3
Statistics	-	-	-	1	-	-	1
Other	-	-	2	-	-	-	2
<b>Total</b>	<b>11</b>	<b>17</b>	<b>20</b>	<b>6</b>	<b>12</b>	<b>11</b>	<b>77</b>

*Source: Republic of Turkey, Ministry for EU Affairs, Statistics Concerning the Twinning Projects in Turkey (2002-2007)*

For example, the twining project titled “Asylum-Migration” (€807,000), implemented 2004-2005 in cooperation with Denmark and the United Kingdom within the framework of alignment of Turkey’s asylum and migration strategy with the EU legislation, resulted in the “National Action Plan on Migration and Asylum” (NAP) in March 2005.

Following this, as part of the 2007 twinning project titled “Support to Turkey’s Capacity in Combating Illegal Migration and Establishment of Removal Centres for Illegal Migrants” (TR07 IBJH05), €15,000,000 was approved for Turkey for the

establishment of two removal centers and the development of standards for their management by 2012 that will serve as models for future facilities (European Commission, 2007:4). The “investment component” of this twinning project includes the establishment of six asylum seeker reception and accommodation centers (each with a capacity of 750) in Istanbul, Izmir, Ankara, Gaziantep, Van, and Erzurum provinces (CHR, 2009:30). Turkey also completed the twinning project on “Integrated Border Management”, which was implemented with the cooperation of France and England, and that resulted in the signing of the “Action Plan for Implementing Integrated Border Management Strategy” in March 2006. Some other successful examples of these twinning projects include “Strengthening the Institutions in the Fight against Trafficking in Human Beings” (TR03-JH-03) and “Visa Policy and Practice” (TR03-JH-05).

All these twinning projects are financed by Instrument for Pre-Accession Assistance<sup>90</sup> (IPA) to Turkey, which is implemented under decentralised management according to five IPA components. Concerning 2007-2013 period, financial assistance allocated for Turkey amounts 4.872,9 million Euros. Component I refers to Institutional Building through four priority axes: progress towards fully meeting the Copenhagen political criteria, adoption and implementation of the *acquis communautaire*, promotion of an EU-Turkey Civil Society Dialogue and supporting activities. Component II covers cross-border cooperation, and Components III, IV and V refer to regional development, human resources development and rural development respectively.

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<sup>90</sup> The IPA pursues the general policy objective of supporting candidate countries and potential candidates in their preparations for EU membership and the progressive alignment of their institutions and economies with the standards and policies of the European Union.

**Table 4.5 IPA funds allocated to Turkey by components (million Euros)**

<b>Component</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>Total</b>
<b>Transition Assistance and Institution Building</b>	257	256	240	211	229	234	238	<b>1.665</b>
<b>Cross-border Co-operation</b>	2,1	2,9	3	9,6	9,8	10	10	<b>48</b>
<b>Regional Development</b>	168	174	183	238	293	368	378	<b>1.801</b>
<b>Human Resources Development</b>	50	53	56	63	78	90	96	<b>486</b>
<b>Rural Development</b>	21	53	86	131	173	198	213	<b>874</b>
<b>Total</b>	497	539	566	654	782	900	936	<b>4.873</b>

*Source: Republic of Turkey, Ministry for EU Affairs*

As the IPA will expire at the end of 2013, in its Communication of December 2011, “Proposal for a regulation on the Instrument for Pre-accession Assistance (IPA II)”, the European Commission proposed allocating 14.110.100 Euros to the new Instrument for Pre-accession Assistance for the period 2014-2020 (European Commission, 2011/838). The document indicated that up to 3% of the financial reference amount should be allocated to cross-border cooperation programmes between beneficiary countries and EU Member states. The new proposal puts a strong focus on external relations and suggests making financial assistance more directly conditional on improved governance and growing ownership by the beneficiary countries.

#### 4.6. Negative Externalities for Turkey: Understanding Turkey’s Resistance

The external cooperation of the EU on migration and asylum policy creates huge burdens for non-member third countries, although the EU claims that one of the main motives of its efforts on policy transfer is to share the common burden. In fact, the EU’s cooperation dialogue, which underestimates the negative externalities for third countries, can be characterized as Euro-centric and interest-based in terms of shifting the burden rather than sharing it. Turkey provides a unique case study to discuss this paradox concerning the externalization of the EU’s immigration policy, since Turkey is dealt with as a candidate country with EU membership prospect.

When closely examined, the demands of the EU concerning the externalization of its immigration and asylum policy raise considerable concerns among Turkish officials in terms of the economic, social and political implications of the harmonization process. The debate on burden sharing emerges as the major challenge, in particular, regarding issues of readmission, asylum policy, border management and visa policy. As the first concern, the signing and implementation of the readmission agreement has been strongly questioned by Turkish officials because of its huge estimated financial, administrative and social costs on Turkey. Indeed, Turkey emerges as an example of the argument that the EU's burden sharing policy is, in reality, an act of shifting the burden to its neighboring countries, who are held responsible for keeping unwanted immigrants (Kirişçi, 2006). It is argued that the readmission agreement will increase the risk of Turkey becoming a "buffer zone" or a "dumping ground" for the EU's unwanted irregular migrants, asylum seekers and refugees. Moreover, in the case of signing the readmission agreement with the EU without Turkey first signing parallel agreements with origin countries, Turkey would risk becoming a "pool of irregular migrants". Under these conditions, even if the EU offers Turkey a visa-free regime in return, which is a very low possibility, the political and economic cost of the readmission agreement is extremely high with respect to Turkey's location and geopolitical position. Yet, although the EU strongly insists that Turkey should sign and implement the readmission agreement, it offers no concrete burden sharing mechanism to help Turkey cope with the expected influx of returned illegal migrants and rejected asylum seekers.

The externalization of EU asylum policy constitutes a second significant concern for Turkish officials in terms of its economic, social as well as political implications. Owing to its location, Turkish officials are aware that adoption of the current *acquis* would make Turkey a typical "first country of asylum" responsible for status determination and a "safe third country of first asylum". While Turkey expects recognized refugees to be resettled outside Turkey and keeps its geographical limitation, its fears of becoming a buffer zone for asylum seekers is reinforced by the growing perception of a "Fortress Europe" that increasingly tries to push migrants and asylum seekers out of Europe. This engenders distrust among Turkish officials in terms of harmonization and the EU's credibility (Kirişçi 2012a: 75) as the EU tries to shift the greatest burden of asylum applications onto Turkey. In close connection

with this predicted burden, Turkish officials, referring to the country's proximity to regions in conflict and sources of large refugee movements, logically and justifiably resist lifting geographical limitation until the EU offers the clear prospect of full membership.

Thirdly, adopting Schengen rules and introducing strict visa requirements by Turkey towards its neighbors create several negative externalities for Turkey that merely serve the EU's interests. As Cassarino and Fargues explain, changing flexible visa regimes or readmitting intercepted transit migrants and then pursuing massive expulsions, might damage strategic political relations with migrants' countries of origin. This becomes more critical if the countries concerned have historical and cultural relations or cooperate in regional trading blocs, based on mutual obligations and commitments that favor the cross-border circulation of goods, services and persons (Cassarino and Fargues, 2006). For similar reasons, Turkey is reluctant to adopt and implement the Schengen visa regime since its current flexible visa policy has been critical in helping Turkey to integrate with its neighborhood in cultural economic and political terms (Kirişçi, 2009). In fact, it has also been a very effective "soft power tool" that has increased interdependence and peace building in the region. Thus, Turkey's open border policy has profound positive implications on both sides of the border. Firstly, a liberal visa policy with Turkey's neighbors brings significant economic benefits to Turkey as result of increased trade<sup>91</sup> and also an increased number of tourists coming mainly from Middle Eastern countries. In addition to this economic dimension, especially at its southeastern borders, Turkey has close cultural relations with its neighbours. Third, abandoning sticker visa regime will increase the burden of expanding the administrative and institutional capacity of Turkish representations abroad to receive and process visa applications (Kirişçi, 2005: 350). For example, in 2004 and 2005, Turkish representations abroad issued 1.1 million visas out of 1.7 million applications. However, in the same period, nearly 20 million sticker visas were issued at Turkey's borders, indicating the scale of the increase that would be required in Turkey's overseas administrative capacity (Kirişçi, 2007b). Overall, the imposition of visa requirements is likely to disrupt socio-

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<sup>91</sup> For example, within the context of increasingly intensified relations in the recent years, in 2010, Turkey, Syria, Lebanon and Jordan signed a free-trade agreement indicating that the four countries will drop all trade and visa restrictions. The volume of trade between the four countries amounts to \$12 trillion.

economic and political relationships across border regions and create a major administrative and financial burden for Turkey. It may also aggravate the problem of illegal migration through Turkey by forcing some of these people to become illegal transit migrants or asylum seekers unless the region around Turkey can maintain stable and peaceful economic and political relations.

The hardening of visa requirements and control procedures in Europe also has a negative impact on Turkey as it influences many migrants targeting Europe to choose to migrate through Turkey. Similarly, refugees who turn to dangerous routes, or who become trapped or stranded in third countries, are seen as a direct consequence of EU immigration restrictions (Düvell, 2010:1). Such increasing transit migration flows have significant economic and social costs for Turkey, which does not want to be the EU's gatekeeper. Thus, in Turkey, the EU's restrictive efforts control migration within countries on its periphery is seen as an attempt to shift the burden rather than share it (Içduygu and Kirişçi 2009). Turkish authorities are increasingly concerned about the country turning into a buffer zone between the immigrant-attracting European core and the emigrant-producing peripheral regions.

Border management constitutes another area of disagreement over the cost of aligning Turkey's policy and practice with that of the EU. Turkey argues that protecting and managing its vast and porous borders carries high financial and administrative costs which Turkey is not able to cope with by itself. However, the EU expects Turkey to meet these costs as part of its aspiration to join the EU, as noted in the NAP for the implementation of Turkey's integrated border management. Although Turkey is willing to improve its border management system for its own interests, it is evident that changing the existing border protection system and setting up a new unit would cause an excessive financial burden for Turkey.

Given all these negative externalities and costs, Turkey expects to see the EU produce concrete burden-sharing mechanisms and legislative and infrastructural measures that go beyond the limited IPA framework and twinning projects because the existing ones are not adequately allocated and managed by the EU in comparison to the actual costs and requirements of rule adoption. For example, just for the period 2007-2011, as a member state located at a very critical external EU border, Greece

received €119 million from the External Borders Fund and €52 million from the Return Fund (EU Press Release, 2011). This suggests that Turkey, as a candidate country in a critical location that leaves it more exposed to irregular transit migration, should receive greatly increased EU financial support. Between 1999 and 2008, Turkey spent over 16.5 million USD just for food, shelter, medical care and transportation of illegal migrants (Government of Turkey in CHR 2009: 32).

Lastly, the EU should understand that shifting the burden of international migration management to Turkey is not the solution for either side, and will not satisfy the targets of EU's externalization. As long as differing perceptions on cooperation mechanisms exist and the cost-benefit analyses of both sides do not match, the issue of the negative externalities for third countries will continue to dominate the conduct of cooperation in the migration field. Therefore, the EU should prioritize and take into account the perceptions and expectations of its partner countries, and provide more assistance with the aim to expand the area of freedom, justice and security on the European continent. On the other hand, while better migration management by the EU's partners is becoming a key requirement for negotiating accession to the EU or for achieving strategic objectives in acting as a buffer zone, the result of this focus is evidently that both sides lose. Meanwhile, however, the greatest losers remain almost forgotten – the transit migrants themselves.

#### **4.7. Conclusion**

Turkey constitutes a unique case to test the implications of the external dimension of the EU's immigration and asylum policy in transit countries. Before defining Turkey as a "transit" country, this chapter argued that the conceptual debate in Europe on "transit countries" is indeed a politically constructed one. Although transit migration should be defined as a "process" and existing reality rather than naming a new category of migrants, the EU uses the concept as a tool in externalizing its security concerns with a focus on irregular transit migration. Considering transit migration as a threat to be controlled at the EU's external borders supports the concluding remarks of chapter 3 by demonstrating that securitization of migration dominates the externalization of the EU's immigration and asylum policy. That is, labeling countries as "transit" countries provides the basis to associate and accommodate

them within EU led cooperation frameworks through employing relevant externalization policy instruments.

Turkey, located as it is between the politically and economically unstable East and the prosperous West, constitutes both an important transit route and attractive destination for many migrants. It reveals all the complexity of contemporary migration movements with mixed flows including individuals looking for economic opportunities, people in need of international protection, those seeking to further migrate to Europe, both as regular or irregular migrants. On the basis that all migrants may have a transit character, this study classified international migration flows to Turkey under four categories: regular migration, irregular migration, shuttle migration and asylum-seeking. The chapter's analysis of Turkey's historical experience of international migration flows, with a focus on their nature, scope, patterns and the relation with European migration regimes, reveals that Turkey is no longer an "emigration country" but rather has become a "transit" and "destination" country in the last quarter of the 20th century, as result of changing global and regional dynamics that have influenced migration movements from and to Turkey. Since the external dimension of migration policy gained significance at the EU level during 2000s, the reality of Turkey being a transit country, in particular for large numbers of irregular migrants targeting Europe, is being reformulated and increasingly re-emphasized by EU officials as a new conceptualization in last decade.

In testing the implications of the EU's external policy on immigration and asylum, this chapter has argued that the EU employs the same policy tools defined in chapter 2 towards Turkey, including border management, visa policy, asylum policy and readmission agreements. As a candidate country in the EU's enlargement process, Turkey presents a case where conditionality is expected to work concerning the Europeanization of Turkish immigration and asylum policy. However, contrary to expectations, the analysis of these policy implications demonstrates the deadlocks and pitfalls of the current cooperation dialogue. The decline in the credibility of the prospect of Turkey's eventual full EU membership for Turkish society and politicians, the negative externalities for Turkey in terms of the huge costs and predicted burdens in reforming Turkey's immigration and asylum policy, and the

changing priorities of Turkish foreign politics towards its neighbors all constitute significant challenges for the progress and likelihood of success for the Europeanization of Turkish immigration and asylum policy. Furthermore, at the same time the EU is becoming more of a “Fortress”, Turkey is becoming an attractive country for migrants, which increases the danger of Turkey becoming a “migration hub” for the Black Sea area and the Middle East. Thus, Turkey provides a notable case study regarding the EU’s debate over “burden sharing” and “burden shifting” concerning the externalization of its immigration policy.

The Turkish case also provides challenges to theoretical deliberations over the specific policy field of immigration and asylum. In applying a theoretical analysis to the Turkish case, both the frameworks on external governance and Europeanization beyond EU borders suggest that the hierarchical modes of governance and conditionality, used as mechanisms of policy transfer. However, the study of Turkish case clearly reveals that the success of policy transfer on migration and asylum issues depends strongly on the dynamics of the partner country, failing to work effectively with the conditionality and hierarchical modes of governance, while offering more scope for network governance. Certainly, unclear membership prospects and high domestic political costs of compliance also play significant roles in explaining this situation. In contrast, network governance and task specific institutions supported by technical and financial mechanisms have proved to contribute more effectively to the contested policy field of immigration and asylum than grand and comprehensive multilateral cooperation frameworks, which often lead to gridlock due to their often being dominated by political concerns.

This study of Turkey also demonstrates that, although conditionality seems to influence the reform of Turkish immigration and asylum policy, the practice implies that socialization has been the prevailing mechanism in recent years. Although progress has been slow, Turkey’s interest in reforms seems to be determined, not because “the EU wants it to be done” as a condition of the membership process, but by Turkey’s own need to develop solutions for its own problems. Progress thus occurs more through socialization in terms of learning and adopting the international standards promoted by UNHCR or the EU, as long as they do not raise serious domestic concerns for Turkey. The new human rights focused draft law prepared to

manage Turkish immigration policy and efforts to provide better management of asylum issues in cooperation with UNHCR are two examples of socialization, rather than conditionality, operating as a mechanism of policy transfer.

Finally, this study of the Turkish case highlights the need to revise the EU's security oriented and Euro-centric approach to externalization of its migration policy. Turkey's experience makes it clear that targeted cooperation on migration and asylum policy cannot be effectively achieved by employing grand policy frameworks such as enlargement, as proposed by the EU, unless this occurs within a context where the third country's perceptions, interests and expectations are also represented.

**Table 4.6. Externalization of EU's Immigration Policy Towards Turkey**

MECHANISMS OF EUROPEANIZATION					
Externalization of EU's immigration policy towards Turkey	Conditionality (Direct)	Socialization (Direct)	Externalization (Indirect)	EU's Policy Externalization	Implications on Turkey
<p><b>Harmonization of Legal and Institutional Framework</b></p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Changing national laws and regulations in harmonization with the EU <i>acquis</i> (Partly)</li> <li><input checked="" type="checkbox"/> Becoming Party to International Agreements</li> <li><input checked="" type="checkbox"/> Policy Implementation (Partly)</li> </ul>	<p>Membership, Accession Partnership, National Action Plan for the Adoption of EU <i>acquis</i> in the Field of Asylum and Migration, IPA funding, technical and financial assistance through twinning projects</p>	<p>Increased efforts to harmonize with also international law</p>		<p>Successful</p>	<p>Increased efforts to harmonize Turkish legislation Draft Law on "Foreigners and International Protection" Amendment of Turkish Citizenship Law Law on Work Permits for Foreigners New Turkish Penal Code Law Establishment of Office on Asylum and Migration Legislation and Administrative Capacity</p>
<p><b>Border Management</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Securitized Borders</li> <li><input type="checkbox"/> Increased Capacity</li> <li><input type="checkbox"/> Operational Cooperation, Common Operations</li> <li><input checked="" type="checkbox"/> Combating irregular migration (Partly)</li> <li><input type="checkbox"/> Combating migrant smugglers</li> <li><input type="checkbox"/> Policy Implementation</li> </ul>	<p>Accession Negotiations, Chapter 24 (not yet opened), Membership Integrated Border Management Twinning projects</p>			<p>Unsuccessful</p>	<p>No central authority of border coordination Militarized borders, fight with terrorism at eastern and south-eastern borders Efforts required for integrated border management Negative Externalities: Relations with the neighbours, huge financial and administrative costs</p>
<p><b>Visa Policy</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Uniform Visa</li> <li><input type="checkbox"/> Increased controls at entry and exit points</li> <li><input checked="" type="checkbox"/> Use of biometric passports</li> <li><input type="checkbox"/> Visa for TCNs</li> <li><input type="checkbox"/> Harmonization with Schengen System</li> <li><input type="checkbox"/> No visa-free systems</li> <li><input type="checkbox"/> Policy Implementation</li> </ul>	<p>Membership Schengen Code Visa Facilitation conditional to EU readmission agreement, technical assistance through twinning projects</p>			<p>Unsuccessful</p>	<p>Not adopted Schengen visa system but implements more liberal and flexible visa system, signed visa-free agreements  Revision of law on "Residence and Travels of the Foreigners in Turkey"  Not adopted Schengen negative list Difficulties for Turkish citizens to travel to Europe.</p>

**Table 4.6 (continued)**

<p><b>EU Readmission Agreement</b>  <input type="checkbox"/> Conclusion of Read.Agr.  <input type="checkbox"/> Implementation of Read.Agr.  <input type="checkbox"/> Return Policy  <input type="checkbox"/> Policy Implementation</p>	<p>Membership                      Visa exemption                      Integrated border                      management</p>			<p>Partly Successful                      (Credibility of                      membership, visa-                      exemption)</p>	<p>No progress to sign an EU readmission                      agreement.                      Negative Externalities; third country                      nationals, huge domestic adaptation costs</p>
<p><b>Asylum Policy</b>  <input type="checkbox"/> Refugee Status Determination  <input checked="" type="checkbox"/> Securing non-<i>refoulement</i>(Partly)  <input checked="" type="checkbox"/> Improving reception conditions (Partly)  <input checked="" type="checkbox"/> Increased protection capacities (Partly)  <input type="checkbox"/> Sustaining durable solutions  <input checked="" type="checkbox"/> Securing respect for asylum and refugee                      rights (Partly)  <input type="checkbox"/> Safe third country  <input checked="" type="checkbox"/> Comply with international                      standards(Partly-Still maintains geographic                      limitation clause)  <input checked="" type="checkbox"/> Policy Implementation (Partly)</p>	<p>Membership                      Lifting geographic                      limitation                      Refugee status                      determination                      National law for                      asylum</p>	<p>Some progress                      in improving                      human rights                      aspect</p>		<p>Partly Successful                      (weak incentives,                      lack of capacity,                      high domestic                      adaptation costs)</p>	<p>No national law on asylum                      Maintain “geographic limitation” clause                      Negative Externalities; buffer zone for                      potentially high number of irregular                      migrants and asylum seekers, worsening                      relation with the neighbors in the region</p>

## CHAPTER 5

### IMPLICATIONS OF THE EXTERNAL DIMENSION OF EUROPEAN IMMIGRATION POLICY FOR MOROCCO

For many years, the Kingdom of Morocco, a constitutional monarchy with a population of around 33 million people, has experienced high levels of emigration from Morocco to European countries, as well as irregular transit migration from sub-Saharan Africa<sup>92</sup> to North Africa<sup>93</sup> including migrants heading for Europe. Thus, due to its colonial history and geographical proximity to Europe, Morocco has always been a significant country of emigration to Europe, and an attractive transit and destination zone for African migrants.

In recent years, Morocco has increasingly drawn the attention of many European countries since it has not only has the largest emigrant population, with nearly 3 million expatriates<sup>94</sup> living in Europe, but also constitutes an important transit gate to Europe, especially for irregular migrants. In fact, migration plays an inherent and determinant role in both internal and external policy making in Morocco. Needless to say, the political, social and economic transformations that North Africa region has

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<sup>92</sup> According to World Bank country classification, the Sub-Saharan African region consists of the following countries: Angola, Gambia, Nigeria, Benin, Ghana, Rwanda, Botswana, Guinea, São Tomé and Príncipe, Burkina Faso, Guinea-Bissau, Senegal, Burundi, Kenya, Seychelles, Cameroon, Lesotho, Sierra Leone, Cape Verde, Liberia, Somalia, Central African Republic, Madagascar, South Africa, Chad, Malawi, Sudan, Comoros, Mali, Swaziland, Congo, Dem. Rep., Mauritania, Tanzania, Congo, Rep Mauritius, Togo, Côte d'Ivoire, Mayotte, Uganda, Eritrea, Mozambique, Zambia, Ethiopia, Namibia, Zimbabwe, Gabon and Niger.

<sup>93</sup> This study will limit North African countries to those bordering the Mediterranean: Morocco, Algeria, Tunisia, Libya, and Egypt.

<sup>94</sup> Ministry in Charge of the Moroccan Community Residents Abroad  
[http://en.marocainsdumonde.gov.ma/media/66038/mre%20en%20chiffre\\_histogramme\\_fr.jpg](http://en.marocainsdumonde.gov.ma/media/66038/mre%20en%20chiffre_histogramme_fr.jpg)  
(Retrieved on June 16, 2012).

witnessed over recent decades and, more recently, the uprisings and on-going events in North Africa, known as the “Arab Spring”, have all had direct impacts on migration movements from and to Morocco.

In terms of its role and significance concerning migration movements, Morocco constitutes a unique case to study the implications of the EU’s externalisation of its immigration policy towards non-member countries. Moreover, although being within the ENP, Morocco has a privileged relationship with the EU as it has been granted “advanced status”<sup>95</sup>, which labels Morocco as a closer ally of the EU than other North African countries. This chapter aims to analyse to what extent and how Morocco’s immigration policies are affected by the EU, and what the implications are for Morocco of the EU’s externalization of its immigration policy. The chapter will explain the progress and limits of this cooperation, using the same indicators employed for the Turkish case, including harmonization of legislation, border management, visa policy, readmission agreements and asylum policy. In doing so, although there are significant differences between the two transit countries concerning the mechanisms of cooperation (enlargement and neighbourhood policy), the study will try to highlight both convergence and divergences of policy cooperation in migration, irrespective of grand policy frameworks, but rather by attending to the similar deadlocks concerning migration policy. The negative externalities raised for Morocco will be studied to understand how EU immigration policy may have similar implications for third countries, which might help explain the resistance of these countries to accepting further EU externalisation.

### **5.1. Defining Morocco’s Experience of International Migration**

Morocco, being the closest African country to Europe, lies on a frontline characterised by many different patterns of migration flows, making it one of the most significant emigration countries in the world (Collyer, 2009: 1555). Spain, which is the main entrance to the Schengen area for African immigrants is just located 14 kilometers from Moroccan coast. Moreover, the Spanish enclaves of

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<sup>95</sup> The European Union has granted Morocco advanced status in 2008 aiming to enhance the EU-Morocco bilateral relations mainly in three areas; closer political relations, integration of the single market on the basis of gradual adoption of the Community *acquis* and sectoral cooperation, and a focus on the human dimension. Morocco is the first country in the region to be granted advanced status.

Ceuta and Melilla on the North African coast, surrounded by Morocco, represent “Europe in Africa” (Haas, 2007:51).

**Illustration 5.1. Map of Morocco**



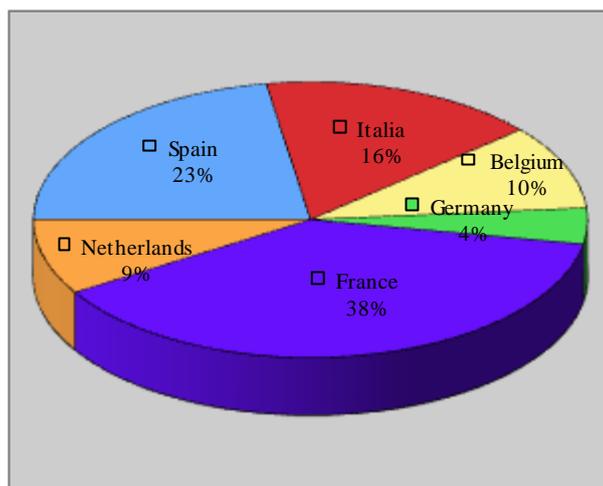
Given its geographical location between Africa and Europe, its colonial history with France, fundamental changes in the political and economic macro-context, both in Europe and the region, together with its comparatively liberal political evolution and dynamic economy, Morocco has not only exported migrants abroad, but also attracted intense migration flows from Sub-Saharan and North Africa. This has made Morocco become firmly integrated in the Mediterranean-European migration system, with its evolving and increasingly complex patterns of migration, which includes a variety of migrant profiles, types and diversity of destinations.

Moroccan society is also evolving under the impact of the migration issue. It not only experiences both regular and irregular international migration, but also internal migration between certain rural areas, and intra-regional migration with other Maghreb countries, including various patterns, such as circular or seasonal movements (Haas, 2007: 44). In examining the migration experience of Morocco, four main factors can be listed that characterize Morocco’s specific long-term migration patterns. First, the historical macro-context with its established tradition of colonial migration links and Moroccan migration networks constitutes a significant

factor which has engendered large-scale migration from Morocco, especially to Western Europe. This will be presented in detail in the next section while explaining Morocco's emigration experience. Secondly, Morocco's demographic transition in 1970s and 1980s, with a decline of population growth but an increase in the working age population that led to higher unemployment, pushed Moroccans to migrate in search of employment opportunities abroad. Thirdly, in addition to the demographic transition, fundamental changes and the interplay between internal and external political and economic trends have fostered migration from Morocco to Europe. The high demand for unskilled labour in Northwest Europe in the 1960s, the huge gap in social and economic opportunities between Morocco and European countries, and the pro-emigration policies of the Moroccan government in response to economic downturn and political instability are all examples of these contextual influences. Finally, Moroccan migration patterns have to a great extent developed within the framework of European policy towards Morocco, such as Schengen visa regulations, border control measures through ANEAS, FRONTEX operations, EU return agreements, and developments in the ENP (Collyer, 2009: 1561).

### **5.1.1. Morocco as an Emigration Country**

Morocco has been one of the world's leading emigration countries since the second half of the twentieth century, with Moroccans constituting the largest and most dispersed migrant community in Western Europe. According to Eurostat figures, the country with highest number of its citizens acquiring new citizenship in EU Member states in 2009 was Morocco with 59,700 people, corresponding to 8% of all citizenships granted, followed by Turkey with 51,800 people (Eurostat, 2011). France is home to the largest legally residing population of Moroccan descent (1,146,652), followed by Spain (671,669), Italy (486,558), Belgium (297,919), the Netherlands (264,909), and Germany (125,954) (Ministry in Charge of the Moroccan Community Residents Abroad, 2012).



**Graph 5.1. Moroccans resident in the EU**

*Source: Ministry in Charge of the Moroccan Community Residents Abroad, 2012*

The colonial historical background of Morocco plays a significant role in understanding the emigration patterns of the country, so its evolution should be characterized within the colonial and post-colonial periods. The main emigration pattern first emerged within the Maghreb<sup>96</sup> region during the French colonization of Algeria in 1830 in response to increasing demands for wage labour on the farms of French colonists, leading many Moroccans to move to Algerian cities like Algiers and Oran as seasonal and circular migrants. Later, in 1912, Morocco became under protectorate of France and Spain, also strongly affected future migration patterns (Haas, 2007:44).

A second emigration pattern emerged during World War I when nearly 40,000 Moroccans left the country to join the French army as result of France's active recruitment of Moroccan men due to its own lack of manpower. Similarly, in World War II, 126,000 Moroccan men emigrated to serve in the French army, and also in the subsequent wars in Korea and French Indochina. The Algerian war of independence (1954-1962) played another significant role in fostering emigration from Morocco, since the French stopped recruiting Algerian workers. Consequently, migration from Morocco to France, in particular factory and mine workers, increased from 20,000 in 1949 to 53,000 in 1962 (Haas, 2007:45). After Morocco gained

<sup>96</sup> Morocco, Algeria, Tunisia are the main Maghreb countries, although Mauritania and Libya are often also included as part of the region.

independence from France in 1956, the “colonial” migration patterns persisted. However, circular migration to Algeria came to an end as result of political and military tensions between Morocco and Algeria that led to the closure of the border in 1962.

In the post-colonial period, migration patterns from Morocco to Europe changed dramatically due to rapid post-war growth in northwest Europe which created an urgent need for unskilled labour in mining, construction and agriculture. Similarly to the Turkish case, emigration from Morocco increased in the form of “guest workers” in the 1960s, mainly directed to France, Belgium and the Netherlands<sup>97</sup>. However, as the biggest difference with Turkey, Morocco’s large-scale emigration was strongly influenced by its colonial links with France especially. Migration from Morocco to Europe boomed from 1967 onwards, before peaking in 1975, when over 400,000 Moroccans were living in Europe, especially in France (Haas, 2007: 46). Following the 1973 oil crises, however, the global economic downturn, and also two failed coups attempts against King Hassan II in 1971 and 1972, caused Morocco to enter a period of increasing political instability and repression. Therefore, although many Moroccan migrants had intended to return home, they ended up staying permanently in “safer Europe”, so that “family reunification” migration began, and continued until the end of 1980s. Thus, there was a shift in the nature of Morocco’s migration from a traditionally circular one towards permanent migration. The registered population of Moroccans in Europe increased from 400,000 in 1975 to almost 1 million in 1992 (Muus, 1995:202).

During the 1980s, when the traditional receiving countries of Europe increased their restrictions on accepting further migrants, low-skilled irregular migration from Morocco began to increase to new destinations, particularly Spain and Italy<sup>98</sup>. Through a large-scale legalization process, thousands of irregular Moroccans were

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<sup>97</sup> Morocco signed labor recruitment agreements with former West Germany (1963), France (1963), Belgium (1964) and the Netherlands (1969).

<sup>98</sup> Even in the reverse case, with high economic growth in the 1990s, irregular migration still increased, since migrants were seen as a cheap labor source by European employers, especially in agriculture, construction and the service sector.

granted legal status by the Spanish and Italian governments,<sup>99</sup> whose countries became the preferred destination countries for Moroccan labour migrants after France.

In the 1990s, Moroccan emigration was characterized by new patterns. With family reunification to a large extent completed, family formation, which refers to Moroccan immigrants marrying a European partner, emerged as a new legal way of migrating to Europe. Since many second-generation Moroccans also prefer to marry someone from the home country, family formation became a new source of emigration. Meanwhile, irregular migration of Moroccans to Europe has also increased since 1990s, following Spain and Italy's closure of their borders and their introduction of visa requirements for non-EU nationals.

Today, Morocco still remains a major sending country of immigrants, with annual flows currently estimated at 140,400 individuals (Bartolomeo, Fakhoury, Perrin, 2009:1) since the socioeconomic conditions in the country and the population's age distribution still constituting a breeding ground for unrest and further migration (Migrationsverket, 2011:3). Furthermore, government policy on migration management is directed towards supporting successful Moroccan emigration, as the flow of remittances is an important resource, representing the Moroccan economy's second largest source of hard currency after tourism. Remittance transfers amounted to 7,100 million USD in 2011, constituting nearly 10% of GDP<sup>100</sup>. It is evident that such remittances prevent, to a great extent, increases in poverty, functioning as a migration-development nexus. Thus, Moroccan governments are always keen to manage these transfers and prevent any decline in remittance income because it considers emigration as part of the national development strategy, by actively stimulating international out-migration for political and economic reasons. It supports action plans for the socio-economic, cultural and political integration of Moroccans abroad, facilitates the transfer of remittances, and fosters bilateral agreements to increase economic emigration. In economic terms, remittances are

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<sup>99</sup> The number of Moroccans living in Spain and Italy is 671,679 and 485,558 respectively (Ministry in Charge of the Moroccan Community Residents Abroad, 18.05.2012)  
<http://en.marocainsdumonde.gov.ma/ministry-/statistics-of-moroccans-living-abroad.aspx>

<sup>100</sup> <http://www.imap-migration.org/index.php?id=299> and <http://www.iom.int/jahia/Jahia/pid/406>  
(Accessed on June 16, 2012)

further encouraged by currency devaluations, flexible financial instruments and a stable macro-economic framework<sup>101</sup>. In 1989, Al Amal Bank was established to help finance emigrants' investment projects. However, this investment-stimulating programme generally failed due to poor implementation, lack of commitment among the migrants, the general distrust in government agencies, and also the migrants' preference to spend their money on consumption and "non-productive" housing construction, rather than investing in productive enterprises (Haas, 2006b:5). Thus, it seems that policies to increase remittance transfers were more successful than those to stimulate investments.

Emigration has not only been used as an economic tool but also to prevent political tensions, especially in Berber areas which have been rebellious against the central state (Haas, 2006c:84). Emigration, especially from these regions, has been promoted by the Moroccan government in order to maintain the Berber's loyalty to central authority by supporting their economic development. In 1990, one of the principal government organizations, the Hassan II Foundation for Moroccans Resident Abroad (Fondation Hassan II pour les Marocains Résidents à l'Étranger), was created to address the legal, social, economic, educational and cultural needs of Moroccans abroad. Following this, in 2002, as the second principal government organization, the Ministry in Charge of the Moroccan Community Residents Abroad was established (*Ministère de la Communauté Marocaine Résident à l'Étranger*). In fact, these institutional developments and new terminology mark a significant shift of mentality from "Moroccan labour abroad" towards "Moroccan residents abroad" (Collyer, 2009:1558). Consequently, the Moroccan government's "diasporic" management of migration policy has made Morocco one of the world's most significant remittance receivers, with such funds representing a significant share in its GDP. This development has been advanced by the rapid growth of Moroccan communities, mainly in Italy and Spain, and by the large-scale regularization schemes since mid-1990s, which have made Moroccans one of the largest officially resident migrant communities in Europe.

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<sup>101</sup> As result of Morocco's new migration and development policy, remittances increased in 2001 to 3.3 billion USD from 2.2 USD in 2000. They amounted 4.2 billion in 2004 (Haas, 2006b: 1).

To summarize, emigration patterns from Morocco have been characterized by the significance of its colonial links with France and Spain, the encouraging role of the Moroccan government in regulating migration, increasing networks as result of large-scale emigration and the growing Moroccan communities in Europe, and the eventual social transformation of Moroccan society, since almost all have been influenced by processes of national and international migration. Migration from Morocco to Europe have mainly taken the following six forms: (1) labour migration with colonial links intended to be temporary, (2) family reunification, (3) family formation, (4) natural increase, (5) irregular migration, and (6) new labour migration to Spain and Italy (Haas, 2007:48). It seems clear that, despite the restrictive immigration policies of Europe, and also Morocco's restrictive immigration law of 2003, Moroccan emigration will persist as long as the root causes and the main characteristics of these migration patterns exist.

#### **5.1.2. Transformation of Morocco to a “Transit” and a “Destination Country”**

While emigration from Morocco to Europe still persists, since mid-1990s, Morocco has also become a significant “transit” and “destination” country, mainly for the gradually increasing number of undocumented Sub-Saharan Africans travelling through Morocco heading to Spain and further into Europe.

The increase in transit migration to Morocco has been mainly affected by two factors. The first is that, whereas Libya was the main destination country for Sub-Saharan Africans as result of Muammar Qaddafi's Pan-African policy in 1990s, following his anti-immigrant backlash in the 2000s, migration flows have diverted to Maghreb countries. Secondly, increasing political conflicts and unrest, civil wars and economic downturns in the region have pushed more Sub-Saharan Africans to migrate north in search of a better life. Therefore, Morocco has been targeted by many migrants as an attractive country among the Maghreb countries both for permanent settlement and also for step-by-step transit migration to Europe. Trans-Saharan migration flows may also have been diverted to Morocco as result of the recent severe events of the “Arab Spring<sup>102</sup>” which have left Morocco as a relatively

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<sup>102</sup> The revolutionary wave of demonstrations and protests in the Arab world that have started in on 18 December 2010 are known as Arab Spring or Arab Revolution. It has occurred in many North African

safe country in North Africa. However, up until now there has been no academic study investigating this issue.

The migration to and through Morocco includes a mixed group of labor migrants, asylum seekers and predominantly irregular migrants, coming from mainly Nigeria, Senegal, Gambia, Mali, Ghana, Burkina Faso, Niger, The Central African Republic, Cameroon, India, Pakistan and Bangladesh (Mhgari, 2009). Most of them consider Morocco as transit country to enter southern Spain or the Canary Islands illegally. Although it is very difficult to estimate the number of transit migrants, as it is not a distinctive category but a process, routinely conducted surveys with regular and irregular migrants indicates it is roughly between 8,000 and 15,000 each year (Lahlou, 2007).

In addition to being a transit country, Morocco has also become a destination country for intra-African migration. Thus, it would be wrong to assume that the majority of sub-Saharan African migrants in Morocco are in transit to Europe. In fact, while Morocco appears to serve as a “hub for migrants” from outside the region, an increasing number of Sub-Saharanans also prefer to stay in Morocco, either for studying or for work (Lahlou, 2008). Accordingly, the nature of migration flows in Morocco can be categorized into four significant groups of migrants. The first is those who intentionally choose Morocco as they perceive it to be a “safe haven” and hence a destination country (Schapendonk, 2008:136). The second group sees Morocco as a transit route for reaching Europe while also offering slight job opportunities and better economic conditions with respect to other North African countries. Haas refers to the misconception that most Sub-Saharanans are transit migrants. He estimates that 65,000-120,000 Sub-Saharan Africans reach Maghreb,, of which around only 20 to 38 per cent attempt to reach Europe, while the rest remain in the Maghreb (Haas, 2008:9). The third group of migrants do not intentionally choose Morocco as their first destination, but end up there because of being misled by smugglers/traffickers who abandoned them in Morocco having agreed to bring them to Europe (Schapendonk, 2008:136). The last group of migrants are the irregular ones who failed to enter Europe and preferred to settle in Morocco as

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and Middle eastern countries including Tunisia, Egypt, Libya, Yemen, Syria, Algeria, Morocco, and Sudan

the “second best” option, rather than returning to their poor, politically unstable or dangerous home countries (Haas, 2007: 51). This group are also the result of the strict border controls and restrictive immigration policies of the EU that have pushed people into permanent settlement in Morocco. This has meant that Morocco has become a destination country by default for some irregular migrants as well<sup>103</sup> (Lahlou, 2008:7).

In fact, getting stuck in Morocco for a long period of time while intending to reach Europe has become one of the main characteristics of transit migrants in Morocco. Schapendonk’s analysis (2008: 135) lists four essential reasons for the immobility of migrants in Morocco that has transformed Morocco into more of a “destination country”. One of the reasons is that transit migrants lack the financial resources to continue on their way to Europe. These migrants usually reach Morocco with “no or very few money” as the journey to Morocco is very expensive, especially through the Sahara Desert, taking months and even years, and generally made in stages (Haas, 2006:91). Migrants have to spend money paying the smugglers and bribing the border officials en route. When they reach Morocco, life is not cheap for them there either. In addition, due to lack of transnational support, or any form of social support network, they mostly have to depend on themselves to find ways to earn money (Schapendonk, 2008:135). In addition to their lack of financial resources, another reason that they get stuck in Morocco is the dangerous and life-threatening route to Europe, as irregular migrants often try to cross the sea in fragile boats. Such physical challenges are an important reason why many transit migrants delay or even abandon their migration plans. With the increasing cooperation between the EU and Morocco on strict border controls, the fences of the Spanish exclaves have been doubled, making them extremely difficult to cross, while Spanish and Moroccan border guards often use violence when migrants attempt to climb the fences<sup>104</sup>. The third factor that leads to migrants getting stuck in Morocco is that it takes time to find the right person or a trustworthy smuggler for the onward journey to Europe. The fourth reason is social attachment. While in transit, Sub-Saharan African migrants get used

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<sup>103</sup> Morocco is still primarily a significant country of emigration rather than immigration with an estimated net migration rate of -2.2 migrants for 2010-2015, <http://www.iom.int/jahia/Jahia/pid/406>, (Accessed on June 16, 2012).

<sup>104</sup> 2,200 migrants were recorded between 2003 and 2005 who had experienced excessive violence by government authorities and needed medical consultations (Medecins sans Frontieres, 2005).

to their lives in Morocco: they might start a business, marry someone and decide to stay in Morocco instead of continuing their aspiration to migrate to Europe. These personal factors that change their migration plans are also affected by the social environment they experience in Morocco, which is culturally and socially closer to their Sub-Saharan African inheritance.

## **5.2. International Migration Flows to Morocco**

Although Morocco has been mostly known as primarily an emigration and transit country for migrants aiming to enter Europe, intra-regional migration, which is inherent in Africa, remains still far more important. In fact, migration between Sub-Saharan Africa and the Maghreb countries, within and between the Sahelian zone<sup>105</sup> and the Maghreb region has always existed in connection with shared historical and economic relations. Seasonal and circular migration patterns between the Maghreb countries, as well as the trans-Saharan caravan trade, have existed for centuries. However, especially after 2000, there has been an increase in trans-Saharan migration to the Maghreb countries due to the increasing political conflicts and poverty in Africa. Zimbabwe, for example, has experienced many human rights violations, brutality towards political opposition and an inflation rate approaching 4,500%. Western Sudan has the Darfur conflict, which has killed at least 200,000 people, displaced 2.5 million people internally, and sent another 200,000 people as refugees into Chad. Nigeria, with a 35 billion USD foreign debt and 60% of its population below the poverty line, is one of the biggest “migrant producers” in Africa. Democratic Republic of Congo with its huge reserves of gold, some 30% of the world’s diamond reserves, more than 70% of the valuable mineral coltan, and vast deposits of cobalt, copper and bauxite, had a bloody civil war from 1998 to 2002 that resulted in the deaths of at least 4 million people. Most recently, since 2010, the “Arab Spring” has been shaking the region with the civil war in Libya and killing of Muammar Gaddafi, the on-going bloody revolts in Syria, and the unclear political situation in Egypt. Inevitably, these developments have not only affected out-migration but also the role of North Africa as a transit zone for sub-Saharan and even Asian migrants who want to migrate to Europe.

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<sup>105</sup> There is no certain categorization; however, it is generally agreed to include Burkina Faso, Guinea, Mali, Niger Senegal and Chad.

Therefore, given these facts and developments, in order to better analyse the Europeanization of Morocco's immigration policy, it is first necessary to provide a clear picture of Morocco's migration profile.

### 5.2.1. Regular Migration and Morocco

The foreign population living legally in Morocco is very low. According to Morocco's census of 2004, the number of foreigners registered amounted to 51,435, which constitutes only 0.17% of the total population, whereas 10% of the Moroccan population lives abroad (Lahlou, 2008: 10). The foreign nationals in Morocco holding residence permits mostly came from France and Algeria.

**Table 5.1. Foreign Documented Population living in Morocco (2007)**

Nationality	Number
French	21,108
Algerians	11,900
Spanish	3,213
Tunisians	1,916
Mauritanians	1,678
Congolese	1,537
Maltese	1,451
Italians	1,415
Ivorians	1,370
Americans	1,308
Turks	1,185
Maliens	1,106
Syrians	1,004
Guineans	937
Belgians	899
Chinese	881
Egyptians	850
Germans	823
English	821
Iraqis	744
Other	3.038
<b>Total Foreign Population</b>	<b>59.374</b>

*Source: Lahlou, 2008:11*

Registered foreigners in Morocco are mostly composed of the staff working at diplomatic representations and their families, teachers (especially French) working for foreign cultural and scientific missions (French, Spanish and American, in

particular), as well as the staff of foreign companies settled or represented in Morocco. They mostly live in Casablanca (the country's major industrial and financial centre) and Rabat (the administrative capital) (Lahlou, 2008: 10).

Since the mid-1990s, there has also been an increase in the number of Europeans moving to Morocco to become residents by establishing businesses or buying traditional houses, generally in the old quarters of cities such as Marrakech, Fès or Essaouira. In a similar trend to the Turkish case, retirement migration of European pensioners to Morocco is also increasing. In addition to some intellectuals, senior white collar workers, painters, musicians, and young middle-class investors from European countries have begun settling in Morocco. The French constitutes 50% of this foreign community, followed by the English (20%), the Americans (9%), the Spanish (3%), then Irish, Australians, Germans, and Dutch (Berriane and Aderghal, 2008).

### **5.2.2. Irregular Migration and Morocco**

As noted earlier, due mainly to its geographic situation, Morocco is considered as one of the most attractive transit gates to Europe for irregular migrants, especially from sub-Saharan Africa. Irregular transit migration has become more visible in Morocco since the early 1990s (Lahlou, 2008:17). This development parallels the gradual closure of European borders, increasing border controls and the establishment of the Schengen area. The number of irregular migrants in the country was estimated by Moroccan Ministry of Interior as 15,000 in 2007<sup>106</sup> (Bartolomeao, 2009:1), mostly split between the cities of Rabat, Oujda, Tangier, and Casablanca. The International Centre for Migration Policy Development estimated that nearly 100,000 irregular migrants cross the Mediterranean each year, 30,000 of whom are estimated to be of sub-Saharan origin, and 45,000 of whom are from northern Africa or the Eastern Mediterranean (Simon, 2006).

As Haas mentions, irregular migration from Africa to Europe is not something new as commonly perceived, although there has been a major change since 2000, when

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<sup>106</sup> The number is estimated from a study conducted during 2007 and carried out under the order of ONUSida (MENA - Cairo) and the Moroccan Ministry of Health on "Mobility and HIV / AIDS" and on "Migrants access to health care in Morocco"

Sub-Saharan Africans overtook North Africans as the largest category of irregular boat migrants (Haas, 2008:9). In 2004, Moroccans represented only 9% of migrants apprehended in the Canary Islands, whereas 86.8 % were from other, predominantly West African countries, up from only 11.8 % in 1999 (Coslovi, 2007). Haas notes a similar trend where sub-Saharan migrants represented 30% of all migrants apprehended in Italy in 2002 (Haas 2008: 33) However, we should not assume that this indicates that sub-Saharans are now the largest group of trans-Mediterranean irregular migrants; rather, the figures just indicate that sub-Saharan Africans are more likely to be apprehended. It is known that the majority of irregular West African migrants actually first enter Europe legally but then became irregular due to overstaying their visas. As seen from another study, the data for 2007 demonstrates a different situation, where 45.8 % of the intercepted irregular migrants were Moroccan, 8.7 % Algerian, 7.6% Malian and 7.6% from Senegal (Bartolomeo, Fakhoury, Perrin, 2009:2). After 2003, as seen from the table below, a relative decrease in the numbers of arrested irregular migrants was observed, as a result of the strengthened fight of Moroccan authorities against human trafficking networks. A combination of factors helps explain this decrease in numbers: the new law (2003) on “Entry and Stay of Foreigners in Morocco, Irregular Emigration and Immigration”, the policy of encouraging voluntary return and Morocco’s increased cooperation with the EU, in particular with Spain, and the role of FRONTEX and international organizations.

**Table 5.2 Number of arrested irregular migrants by Moroccan authorities between 2000 and 2006**

	2000	2001	2002	2003	2004	2005	2006	2007
Moroccans	9,353	13,327	16,034	12,493	9,353	7,440	7,091	6,023
Foreigners	15,056	13,100	15,363	23,851	17,252	21,140	9,469	6,954
<b>Total</b>	<b>24,409</b>	<b>26,427</b>	<b>31,397</b>	<b>36,344</b>	<b>26,605</b>	<b>28,580</b>	<b>16,560</b>	<b>12,977</b>

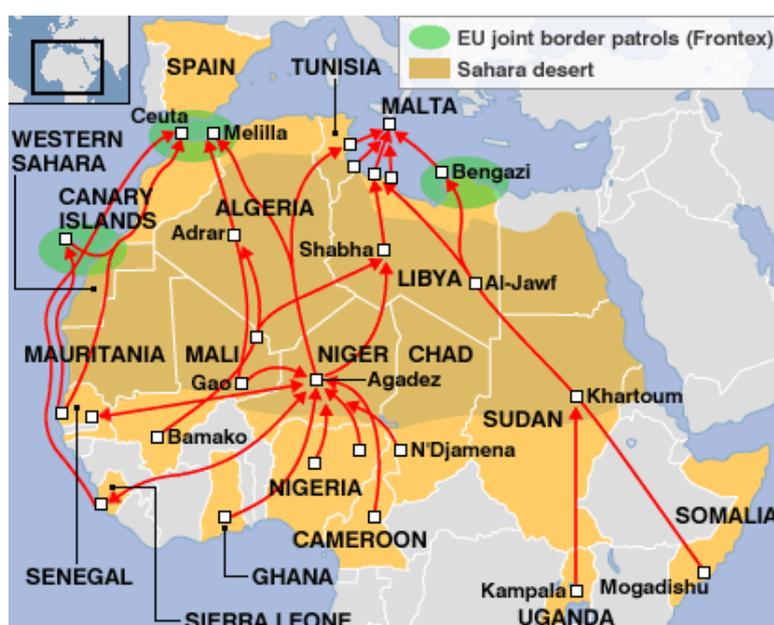
*Source: Ministry of Interior, Directorate of migration and border surveillance. Rabat*

Contextual changes, such as the global financial crises which have decreased the demand for foreign workers and the EU’s increasingly stricter procedures for legal migration and migration policies, have had a direct impact on migration flows.

Indeed, these factors, especially restrictive procedures for legal migration, have increased the pressure on irregular migration. This is supported with the reports of the Spanish Ministry of Interior and the Asociación Pro Derechos Humanos de Andalucía (APDHA), which have documented the increase in irregular migrants who reached Spain by sea in 2011 as 5,433 from 3,632 in 2010<sup>107</sup>. Although the peak was in 2006, with 36,000 migrants reaching Spain by sea or via the North African Spanish territories of Ceuta and Melilla, the substantial decrease in numbers due to increasingly strict controls does not necessarily mean that irregular migration is decreasing.

Concerning the irregular migration routes, as a result of increased controls in the Strait of Gibraltar, the starting points of migratory routes have been diverted southwest to Mauritania and Senegal for reaching the Canary Islands and also northeast for reaching the islands of Malta and Lampedusa. The initial targets for many irregular migrants are Spain's enclaves of Ceuta and Melilla in northern Morocco or islands in the Atlantic and Mediterranean. Lahlou refers to the result of a study in which migrants confirmed that, after the events of Autumn 2005, crossing through the Strait of Gibraltar or into Ceuta and Melilla have become extremely difficult (Lahlou, 2008: 25).

**Illustration 5.2. Irregular Migration Routes from Africa to Europe**



Source: UN/Frontex, 2007

<sup>107</sup> Official web site of Ministry of Interior, [www.interior.gob.es](http://www.interior.gob.es) (Retrieved on June 16, 2012)

**Table 5.3. Classification of Main Irregular Migration Routes in Africa**

<b>Route</b>	<b>Destination</b>	<b>Via (Transit)</b>	<b>Departing From</b>
<b>West African Coast</b>	Canary Islands	Liberia, S Sierra Leone, Guinea, Guinea-Bissau, Senegal, The Gambia, Mauritania and Western Sahara to northern coast of Morocco	Mainly migrants from these countries
<b>Western Sahara</b>	Canary Islands	Mali, Mauritania, Western Sahara or southern Morocco	Mainly migrants from Ivory Coast, Ghana, Burkina Faso, Togo and Benin
<b>Central Sahara</b>	Canary Islands, Spain, Italy	Niger, northern Mauritania, Western Sahara or southern Morocco; northern Morocco; Tunisia or Libya	Mainly migrants from countries south of Niger, via Cameroon and Nigeria
<b>Eastern Sahara</b>	Lampedusa, Sicily, and Malta	Tunisia and Libya	Mainly migrants from Sub-Saharan Africa
<b>Horn of Africa to Libya</b>	Lampedusa, Sicily, and Malta	Sudan	Mainly from Somalia and Ethiopia

*Source: BBC, 2007*

The city of Oujda, lying near the Algerian border, is one of the main irregular entry points into Morocco, and a transit zone mainly for reaching Melilla. The 2004 CIMADE survey demonstrated that 90% of undocumented migrants in Morocco had entered the country via Oujda. It is also where majority of migrant deportations (executed by Moroccan authorities) are carried out (Schapendonk, 2008:137). Following Oujda, Morocco's capital city of Rabat is the other main destination for irregular migrants. There are various reasons for targeting Rabat. Firstly, it is well-known as the so-called "dealer city", where migrants can contact smugglers to arrange their illegal entry into Europe. Besides, UNHCR office is located in Rabat, where migrants apply in the hope of gaining refugee status. Once they secure refugee status, they feel safe and relaxed to make new migration plans. Another driving force for migrants to choose Rabat as their destination city is security. Rabat is viewed as a relatively safe place to live in due to the presence of national and international media and NGOs. Moreover, the risk of deportation is less in Rabat since the authorities in

general show more tolerance towards Sub-Saharan African migrants, whereas in Oujda, migrants are at constant risk of permanent deportation.

Since the EU perceives irregular migration as a serious security concern, it has placed an increasing emphasis on collaboration with Morocco, in particular on the issues of border control and readmission. However, even though EU-Morocco cooperation, especially on intensified border controls, functions in line with the EU's demands, because the causes of migration still exist, irregular migration persists along diverted routes, despite the increased risks, costs, and suffering on the part of the migrants involved (Haas, 2009: 5).

### **5.2.3. Asylum Seekers and Refugees**

For decades, Africa has witnessed many political and armed conflicts, persecution, humanitarian crises, famine and natural disasters that have forced large and growing numbers of people to flee their homes in search of safety and protection. According to UNHCR, by the end of 2011, there were close to 2.7 million refugees in sub-Saharan Africa, roughly half a million more than at the beginning of 2012 (UNHCR 2012a: 11). Violence and famine persist in Somalia, while tensions along the border region between Sudan and South Sudan have increased (UNHCR, 2012b).

In this environment, Morocco has a long-standing tradition of hosting refugees escaping from the persecution or life-threatening circumstances in the region. The asylum seekers in Morocco mainly come from sub-Saharan and Middle Eastern countries. According to UNHCR, 34% of refugees are from Ivory Coast, 26 % from the Democratic Republic of the Congo and 20.0% from Iraq (UNHCR, 2012a). By the end of 2011, the number of asylum seekers in Morocco was 615 (UNHCR, 2012a:38).

**Table 5.4. Refugee Population in Morocco (As of 31 December 2011)**

Country of Origin	Number of Refugees	%
Ivory Coast	249	34.44%
Democratic Republic of Congo	195	26.97%
Iraq	149	20.61%
Palestine	31	4.29%
Liberia	16	2.21%
Congo Brazzaville	11	1.52%
Somalie	8	1.11%
Afghanistan	8	1.11%
Cameroon	7	0.97%
Senegal	7	0.97%
Pakistan	7	0.97%
Others	35	4.84%
<b>Total Number</b>	<b>723</b>	<b>100%</b>

Source: UNHCR, *Representation in Morocco*

Morocco has been a party to the 1951 Convention since 1956, and ratified the 1967 New York Protocol in 1971. Accordingly, Morocco adopted a Royal Decree in 1957 agreeing on the modalities for the implementation of the 1951 Convention. The decree proposed to establish a Refugee Office and an Asylum Appeal Instance to recognize each person as refugee if he/she is accepted under the mandate of UNHCR or by virtue of the criteria of the 1951 Convention. However, Morocco still lacks a comprehensive national asylum law and the effective institutional mechanisms it proposed. As an improved step, the new law of 2003 regulating the entry and residence of foreigners in Morocco contains important provisions prohibiting the expulsion of refugees and asylum-seekers and allows for appeals against expulsion orders. However, it does not provide any legislative or institutional framework dedicated to refugee and asylum issues. Following this, the Moroccan government signed an *accord de siège* with UNHCR in 2007 giving them full-fledged representation in Morocco. Therefore, due to the absence of a refugee office, UNHCR has been undertaking Refugee Status Determination in Morocco, which only protects against arrest and refoulement but does not provide for legal status yet in practice. Although Article 9 of the Moroccan Constitution guarantees foreigners, including refugees who are legally present in the Morocco's territory, the right to freedom of movement and residence, since most refugees recognized by UNHCR are not automatically granted refugee status by the Moroccan authorities, they are unable

to access the rights to employment, education, and health care enshrined in domestic legislation (Lindstrom, 2002:13).

#### **5.2.4. The Impact of the “Arab Spring” on Migration Flows to Morocco**

Morocco, which is already a transit and destination country for many migrants, is now at risk of becoming an increasingly attractive destination for possibly many other diversified new waves of migrants who cannot follow the existing insecure routes where “Arab Spring” is still persisting<sup>108</sup>.

The Arab Spring has resulted in the expulsion of rulers in Tunisia, Egypt, Libya, and Yemen, civil uprisings in Bahrain and Syria, and major protests in Algeria, Iraq, Jordan, Kuwait, Morocco and Oman. It has also led to minor protests in Lebanon, Mauritania, Saudi Arabia, Sudan, and Western Sahara. However, despite such widespread disruption, large-scale migration or displacement has only taken place in Libya and Syria, although it is possible that further revolts may stimulate new migration depending on their political and socioeconomic outcomes. If the revolts result in the establishment of new governments that are responsive to people’s demands and economic conditions improve, a movement of return migration from the diaspora may take place. If the revolts continue and intensify, the opposite may also happen where emigration is expected to increase (Fargues, 2011). Haas argues that mass emigration will not happen, although some politicians and media like to present to their audiences a picture of miserable and desperate Africans invading Europe (Mazili, 2011).

Whatever is expected regarding the estimated numbers of future migrants, due to the on-going conflict in many North African countries, including civil war and national revolts, there is a risk the diversion of existing transit migration routes towards

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<sup>108</sup> The number of people attending demonstrations in Morocco was far less than in Tunisia and Egypt. At most there were 20,000 demonstrators in Rabat, and across the country 100,000. The focus of the demonstrations was more directed against the machinery of power and the corruption within it. It was not only about politics, but also unemployed teachers demonstrated for employment and employees for higher salaries as well. In fact, the demonstrations were not as serious as in Tunisia and Egypt, and they were quickly suppressed by King Mohammed VI’s accelerated democratic reforms. Demonstrations have been mainly carried through without any repression. They have decreased in time, particularly after the voting of the new constitutional reform in 2011 which is liberal compared to the constitutions of the other countries of the Maghreb.

Morocco, which has remained economically and politically more stable than its Mediterranean counterparts<sup>109</sup>. One of the most influential factors that might cause a shift of migration routes is the civil war in Libya. Before the war, which is considered as the second most severe migration crisis in the region since the First Gulf War in the 1990s (Abdelfattah, 2011:1), Libya was the main destination country for many labor migrants from North Africa and Sub-Saharan Africa, and also a transit country for foreign workers and refugees moving to Europe. However, the Libyan revolution has impact migration, with an estimated 1.3 to 1.8 million migrants fleeing from the region (Abdelfattah, 2011: 13). Migrant workers are considered as the largest single category of people forced from their homes during the “Arab Spring”, since Libya and Syria hosted about 2.5 million migrant workers before the upheavals. While the majority of these migrant workers were from Egypt and Tunisia, about 250,000 were from other countries, in particular sub-Saharan Africa (Brookings-Bern Project, 2012). In this context of war, the flows of existing migration routes to Libya dried up, mainly due to security concerns and economic slowdown. Furthermore, the crisis is expected to increase poverty in the short run, which generates push factors for more emigration from Libya.

The second factor is Europe’s increasingly strict control of its borders, especially after “Arab Spring”, which pushes people towards other countries that are still willing to accept them. In contrast to the open border policy of Egypt and Tunisia, who have admitted nearly half a million migrants from Libya and greatly facilitated the work of UNHCR and IOM, the EU responded to the increased flows by increasing its security and border controls through maritime operations and surveillance. Haas describes this as a “disgrace” (Mazili, 2011). There was even a debate among EU countries about temporarily suspending the Schengen Treaty (Brookings-Bern Project, 2012). In fact, when the numbers are closely examined, it is seen that only 4 to 5 percent of more than 700,000 displaced migrants have attempted to reach Europe, whereas 95% have headed mainly for African and Asian destinations (Fargues, 2011). Nevertheless, it should also be noted that 25,000 irregular migrants landed on the Italian island of Lampeduse, with a native

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<sup>109</sup> According to forecasts of Morocco’s High Commission for Planning, Morocco’s economic growth is estimated to stand at 4.1 % in 2012 (Morocco World News, <http://www.moroccoworldnews.com/2012/02/27491/moroccos-economic-growth-will-stand-at-4-1-in-2012/> (Accesssed, February 15, 2012).

population of only 5,000, as the island was the first entry point to the Schengen area. Unfortunately, as Haas states, while Egypt, Tunisia and Turkey were accepting tens of thousands of refugees, European countries were arguing about sharing the burden for a few thousand (Mazili, 2011). This has once more proved that the EU's migration policy is dominated by security concerns, and that it will continue to resist migration or asylum flows by leaving the burden to neighboring countries, as has happened with the Syrian case where the burden of displacement has fallen on Turkey.

These developments increase the pressure to divert migration routes to a safer target. Up until now, there has been no official study analyzing the diversification of migration routes, but just the increase of Moroccans returning from Tunisia and Libya is noted. However, the impact of internal uprisings on migration and displacement has been largely overlooked and ignored in discussions (Brookings-Bern Project, 2012).

### **5.3. Implications of the EU's External Policy on Migration and Asylum: Morocco as a Transit Migration Country within the EU's Neighborhood Policy**

Referring to the theoretical debate studied in Chapter 2, Morocco fits into the third mechanism offered by Rijpma and Cremona (2007) concerning how policy externalisation occurs. Accordingly, the promotion of the EU *acquis* to be adopted by Morocco through domestic legal change is strongly enforced by the EU's Association Agreement with Morocco. However, referring also to the "domestic structure explanation", which focuses on the compatibility and affinity of institutional structures of domestic politics with international governance for effective external governance, the interplay between Morocco's domestic governance, rules, traditions and practices with the EU's governance should be taken into account in order to better explain the implications of the EU's externalisation of its immigration policy towards Morocco.

Thus, analysis of externalisation and the implications of the EU's policies towards Morocco require reference to three essential frameworks that determine both the progress and limitations of cooperation in the field. The first one is the grand general

framework of the ENP, with a special focus on relations between the EU and North African countries. Secondly, the dynamics of EU-Morocco relations in terms of economic and political factors constitutes another significant framework, when compared with the dynamics of EU relations with other countries in the region. Thirdly, the “advanced status” of Morocco granted by the EU needs to be taken into consideration while trying to understand how and to what extent Morocco’s immigration policy is Europeanized, and how Morocco is affected by the implications of the EU’s external dimension of immigration.

### **5.3.1. Migration and North Africa Region in the ENP**

EU policies towards North Africa and Mediterranean region are mainly developed within the ENP framework, which can be considered as the most ambitious policy of the EU concerning its attempts to create a stable, secure and prosperous neighbourhood. Launched in 2004, the ENP aims to avoid the emergence of new dividing lines between the enlarged EU and its neighbours by strengthening the prosperity, stability and security of all concerned (European Commission, 2003/104). The ENP fits into a broader picture of the EU’s external relations, which provides the framework for achieving the EU’s ambitions to evolve into a global political player. Whatever its success of influence or effectiveness, it clearly demonstrates the ambition of EU institutions and representatives to raise their international presence (Bengtsson, 2008: 598).

European migration policy was integrated into the ENP from the very beginning as EU neighbouring countries are among the main countries of origin and transit of legal and irregular migration headed towards Europe. It is obvious that as long as economic, demographic and security gaps exist between the EU and its neighbouring countries, legal and irregular migration will increase further. Thus, migration constitutes one of the essential issues of the ENP. In addition, the geographical proximity, and the close economic, cultural and historical links with the EU make neighbouring countries an important labour source. Lastly, migration constitutes a prominent basis for EU’s development purposes through human mobility and the cross-border exchange of skills, knowledge, and experience. Therefore, migration is crucially integrated into the ENP Action Plans concerning actions in the field of

migration, asylum, visa policies, trafficking and smuggling, irregular migration, police and juridical cooperation and cooperation with EU bodies such as EUROPOL and EUROJUST. All the Action Plans contain, with the exception of the Palestinian Authority's Action Plan, proposals for improved border protection and controls on cross-border movement. The EU also requires its ENP partners to conclude readmission agreements.

In this regard, North Africa, bordering the wealthy countries of the EU, has always been an important strategic region for the EU as it is exposed to migration pressures from the region. North Africa, having evolved into one of the world's leading "labour frontiers" (Skeldon, 1997), has not only provided large-scale migration in response to the demand for labour in the EU but has also been transformed by the impacts of migration concerning social and economic development in migrant sending regions (Haas, 2006: 83). However, as a result of the persistent migration from and through North Africa, the EU defines Africa as a strategic region in terms of European migration policies (Aubarell, Barrero, and Aragall, 2009: 8), considering the increasing flow of irregular migrants from Africa as a key threat to EU security (Council of the EU, 1999; Council of the EU 2004a). Since political violence and poverty are considered to be the main push-factors behind irregular migration, securing Africa politically and economically is an essential target for the external dimension of EU policies, as is clearly stressed in the Annual Policy Strategy for 2008

the EU needs to prevent illegal migration, counter human trafficking and protect its external borders...The Commission will also work further on the external dimension through a combined migration and development agenda, especially from Africa (European Commission, 2007/65: 6).

In this context, since 1990, the attempts of European states to externalize immigration policy to Africa has focused on intensified border controls, and on pressuring certain North African countries to combat irregular migration and sign readmission agreements in return for aid, financial support, and work permits (Haas 2008:10), rather than eliminating the root causes of migration. The Declarations of

the Euro-African Conferences on Migration and Development in Rabat<sup>110</sup> (July 2006) and in Tripoli (November 2006) have all been organized to develop these strategies to manage African migration to Europe. In Tripoli, the EU-Africa Ministerial Conference on Migration and Development adopted a joint comprehensive strategy to cooperate to meet the challenges and maximize the benefits of international migration. Moreover, the status of transit country was introduced in addition to sending and receiving countries, which has expanded the collective responsibility and solidarity of the EU's African partners. This politically re-constructed labeling of transit countries influenced the Maghreb countries to revise their legal and institutional mechanisms (Aubarell, Barrero, and Aragall, 2009:9). This step was followed by the Euro-Mediterranean Ministerial Summit on Migration in Algarve (November 2007), where the main priorities were described as migration and development, legal migration, and fighting against illegal migration, together with providing the required funding tools and follow-up mechanisms.

All of these declarations have highlighted partnerships between the countries of origin, transit, and destination in migration management, and outlined various strategies to address the problems of poverty and conflicts that push irregular migration. They mainly focus on key objectives, such as effective governance, the integration of Africa into the global trade system, peace, and coherent international policies of development cooperation. In addition, facilitating legal migration, protecting migrants through the rule of law, fighting irregular migration, controlling borders in the countries of origin and transit, and setting up efficient readmission systems are addressed in order to solve the systemic crises of Africa: namely, underdevelopment (especially in rural areas), political conflicts, and high population growth (Gebrewold, 2008:120).

However, beyond the rhetoric, cooperation with African countries is observed to be dominated by the EU's own security concerns, characterized by an intensifying southern border control policy, especially after "Arab Spring". The EU's actions have been criticized for externalizing its restrictive immigration policies by

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<sup>110</sup> The Euro-African Conference on Migration and Development prioritises development in African countries within the external EU policy on migration. It was organized as an initiative of the Spanish and Moroccan governments with the support of the EU, and hosted fifty-six countries involved in African migratory routes.

pressuring North African states to adopt restrictive immigration laws and regulations and increase their border controls. For example, the security focus was raised again by the former French President Nicolas Sarkozy when he proposed the creation of a “security zone’ on the western Mediterranean Sea involving three European states (Spain, France and Italy) along with the three North African states from which most illegal migrants come (Morocco, Algeria and Tunisia), in the so-called “3 plus 3”project (Dietrich, 2005). In fact, the EU has measured good cooperation by its partner states by the number of detected irregular migrants rather than the partner’s progress on development, eliminating the root causes of migration or benefiting from legal migration. Indeed, the long-term strategic objectives for African states require a genuine and coordinated EU policy focusing on the development of lasting solutions, including politics, economics and justice. However, history records that EU member states have long supported undemocratic and corrupt African leaders, as happened, for example, in Zaire/Congo, Togo, Gabon, Cameroon, and Kenya. On the other hand, increasing border controls have led to the swift diversion of migration routes rather than a decline (Haas, 2009). Moreover, it is a reality that most European economies have become dependent on cheap migrant labour, while sending countries are dependent on remittances (Haas, 2008:10). This match also makes European immigration policies contradictory, as they declare themselves to be in favor of “development” but foster under-development in practice.

In short, it is likely that migration from Africa to Europe will continue. Furthermore, unless new legal channels for immigration are created to match the EU’s real demand for labour, and as long as large informal economies persist within Europe, it is likely that a substantial proportion of this migration will remain irregular.

### **5.3.2. Dynamics of EU-Morocco Relations: Europeanised Morocco?**

The EU considers Morocco as a model of advanced cooperation in the North Africa region in terms of its close cooperation with the EU. Despite the authoritarian nature of its constitutional monarchy<sup>111</sup>, the King is referred to as “not so bad a King”

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<sup>111</sup> As a very important factor in comparing the Moroccan case with Turkey, the authoritarian nature of the constitutional monarchy plays a significant role in analyzing the Europeanization of Moroccan’s immigration policy. According to the 2011 Economist Intelligence Unit’s Democracy index, on all five categories (electoral process and pluralism, functioning of government, political

(Cavatorta, 2006) and the country is judged to be a “willing and positive partner” in meeting the EU’s demand “to integrate and identify closely with the EU” (Emerson, 2007:9). As a privileged partner of the EU, the Association Agreement which entered into force on 1 March 2000, constitutes the legal framework for relations between the EU and Morocco. It was among the first countries of Mediterranean to sign a Neighbourhood Action Plan within the framework of ENP.

Referring to the theoretical debate on external governance and Europeanization beyond the EU’s borders, Morocco constitutes a good example that can be tested in terms of network and market governance due to its high economic dependence on European markets, both in terms of trade relations and also the income generated by the remittances of the Moroccan diaspora living in European countries. A power-based perspective also highlights the asymmetric interdependence between the EU and Morocco, which provides a basis to understand how policy transfer and adaptation takes place. In terms of the mechanisms of Europeanization, Morocco fits in with the direct mechanisms of conditionality and socialization. As explained in the theoretical chapter, the effectiveness of conditionality depends upon the size of the rewards, the degree of credibility and the superior bargaining power of the EU. In this context, the size of the EU’s economic incentives offered to Morocco, the degree of credibility in economic, political and social relations, and the existing asymmetrical relations between the dominant EU and Morocco as far as the negotiations are concerned (Gillespie, 2004), all help to explain to what extent Morocco is Europeanized.

However, it should be noted that the policy field of migration imposes some distinct conditions when testing this theoretical framework, such as reverse dependency, where the EU needs Morocco to control its borders and accept returned irregular migrants more than Morocco needs the EU. The possible negative externalizations imposed on Morocco as result of the effects of European migration policies, and Morocco’s expected high domestic adaptation costs, also play significant roles in

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participation, political cultural, civil liberties, functioning of government, political participation and political culture), Morocco scores below 4, which confirms it as an authoritarian regime (<http://www.eiu.com/Handlers/WhitepaperHandler.ashx?fi=Democracy Index Final Dec 2011.pdf&mode=wp>).

understanding where policy transfer occurs and where it locks. This debate will be studied in later sections of this chapter.

### **5.3.2.1. Morocco's Advanced Status (Statut Avancé)**

EU-Morocco relations followed an acceleration of intensification and rapprochement starting from Association Agreement of 2000, and then the ENP Action Plan in July 2005, before reaching a new stage in the strengthening of relations through the distinctive nature of the “advanced status” (AS) EU-Morocco partnership granted in October 2008, which marked a new phase of privileged relations. Morocco is the first and only country to be granted this new enhanced status. Beyond the “everything but institutions” status of the ENP, “advanced status” offers enhanced cooperation, including political dialogue, trade liberalisation, cultural and human exchange, and a general alignment of the Moroccan economy to the standards of the EU’s internal market. Moreover, AS offers Morocco participation in community programmes, and ad-hoc alignment with EU foreign policy statements. Most importantly, AS covers the gradual approximation and harmonization of a considerable part of Morocco’s legislation with the EU’s *acquis communautaire*. More specifically, the joint statement of the EU-Morocco Summit in Granada, on 7 March, 2010, endorsed common action in four inter-related areas: approximation of Morocco’s legislative framework with the EU *acquis*; the conclusion of a deep and comprehensive free trade agreement; economic and social cooperation; and Moroccan accession to trans-European networks (Council of the EU, 2010b).

For a while, AS remained just a symbolic political label and forum for public discourse without any measurable, concrete commitments, timetables and benchmarks. However, two years later, in 2010, the EU and Morocco signed a National Indicative Programme worth €580.5 million for the period of 2011-2013, with a substantial budgetary increase of 20% in comparison with the budget of 2007-2010. The programme aims to promote social policies, modernize the economy, support institutions, foster good governance and protect the environment. 116 million euros was allocated to promote social policies and developing rural areas in addition to supporting a basic medical coverage programme. This made Morocco the largest recipient of EU funds under the ENP. The increase in the allocation of grants aims to

support the implementation of Morocco’s “advanced status”, and the two parties closer.

**Table 5.5. Grant Allocated for the Strategic Axes of Cooperation for Morocco**

Strategic Axes	2007-2010		2011-2013	
	Million EUR	%	Million EUR	%
<b>Development and Social Policies</b>	296	45.3	116.1	20
<b>Economic Modernisation</b>	235	35.9	58.05	10
<b>Institutional Support</b>	65	9.9	232.2	40
<b>Good Governance and Human Rights</b>	8	1.2	87.07	15
<b>Environment Protection</b>	50	7.6	87.07	15
<b>TOTAL</b>	<b>654</b>		<b>580.05</b>	

However, the advanced status agreement has also been criticized for being insufficiently developed to reach its potential. As a main challenge, Morocco is expected to commit to advanced political and economic reform, while EU member states are expected to implement concrete incentives by taking coherent, measurable and precise actions to strengthen cooperation with Morocco and achieve concrete results. In fact, the challenges of the partnership are better understood if the main benefits are assessed for both sides. The main benefit that Morocco expects as a consequence of AS is boosting its economy through being the EU’s closest Mediterranean partner. It demands the opening of the European internal market to Moroccan agricultural products and facilitation for migrant Moroccan workers. On the other side, for the EU, Morocco’s market will be opened to EU exports, and cooperation on key European interests, covering energy, migration, organized crime, and counter-terrorism, will be secured for the Europe’s future welfare. It also involves the aim to improve Morocco’s record in democratic governance and human rights, which are key priorities of the EU (Kausch: 2010; 2). However, the cooperation seems to have proved assymetrical since the EU has imposed tariff-rate quotas and import schedules for the products that Morocco is competitive in, such as against Spanish tomatoes and French courgettes in the EU market, whereas the EU itself retains its widened access to the Moroccan market. Therefore, “advanced

status”, while setting out an ambitious roadmap for the progressive and sustained development of bilateral relations, has fallen behind its potential, although it does provide a more conducive platform for the Europeanization of Moroccan policies.

### **5.3.2.2. Politics and Economics as determinant factors in EU-Morocco Relations**

In examining political and economic relations between the EU and Morocco, the literature clearly points out a distinction in relations before and after 2000, coinciding with an important turning point in Moroccan history and political evolution, namely the death of King Hassan II in 1999 and the succession of Mohammed VI. Before 2000, it can be said that trade, good governance, promotion of democracy and respect for human rights mainly dominated the literature, whereas after 2000, EU-Moroccan relations focused more on issues of migration, terrorism and defence cooperation, and energy and the environment. Moreover, after 2000, the EU also became more active in terms of its external actions and initiatives to cooperate with third countries.

Regarding policy transfer in political issues, first the political situation in Morocco should be defined. Morocco, which has been a strongly centralized monarchy, is dominated by the power of the parliament<sup>112</sup>. The new constitution proposed by the King was approved in a public referendum in 2011, and the moderate Islamist Justice and Development Party (PJD) has been leading the government for the first time after winning a majority of seats in legislative elections. The constitution has paved the way for major democratic reforms, introducing a separation of powers by increasing the role of parliament. However, the King still maintains significant authority, including the ability to dissolve parliament, and remains commander in chief of the armed forces and Morocco’s preeminent religious authority. King Mohammed VI has also promoted many human rights reforms in issues of torture, discrimination against women, and child rights. Many other reforms are also on the agenda in the fields of justice, education, agriculture, industry, energy, and water, in order to raise Morocco closer to international norms.

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<sup>112</sup> The referendum on the constitutional reforms was held on July 1, 2011, and the draft of the new constitution entered into effect on July 29, 2011. The first parliamentary elections under the new system were held on Nov. 25, 2011.

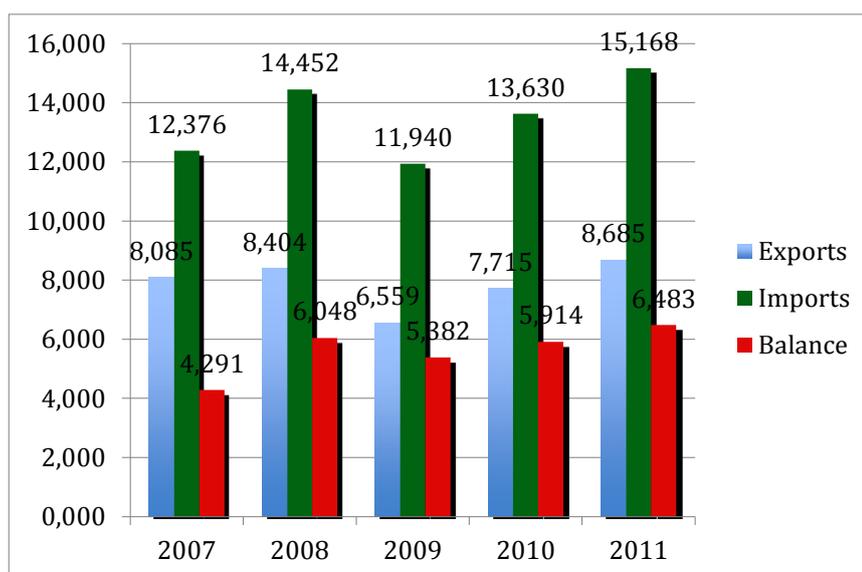
However, although there have been improvements in recent years, many restrictions continue to exist as well. Although the press is relatively free, criticism of Islam, the monarchy or Morocco's presence in the Western Sahara is not tolerated. Equality of opportunity and rights for the peoples of Western Sahara are still a problem. In addition, justice reform remains a key challenge to fully establish the rule of law and consolidate the credibility of reforms, and corruption also remains a major concern (SWD, 2012:2). In this regard, good governance and democratization constitute important areas of concern where cooperation efforts have been taking place between the EU and Morocco. According to World Bank governance indicators, including voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and control of corruption, Morocco scores only 43.01 over 100<sup>113</sup>.

Europeanization of the Moroccan economy has been the area for which concrete EU-Moroccan relations and cooperation are most strongly framed. The European Commission describes this close economic relationship as "more than association, but less than accession"<sup>114</sup>. Indeed, access to European economic markets, and free trade as a tool for development, constitute the central and most influential incentives in fostering the mechanism of EU conditionality dominating EU-Moroccan relations. The EU is Morocco's primary trading partner, accounting for approximately €20.6 billion in 2011 (60% of Morocco's total trade), the bulk of which is textiles and agricultural goods (SWD, 2012:9). In 2010, the EU's share of in Morocco's imports was 50.2%, and 59.1% of its exports.

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<sup>113</sup> Data retrieved from World Bank Governance Indicators (2011)  
<http://info.worldbank.org/governance/wgi/resources.htm>.

<sup>114</sup> Official web site of the European Commission, Trade  
<http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/morocco/>.



**Graph 5.2. EU-Morocco Trade Balance (in million Euros)**

*Source: Eurostat (Comext, Statistical Regime 4)*

Morocco signed the European Mediterranean Association Agreement with the European Union in 1996, which then entered into force on 1 March 2000 to replace the 1976 Cooperation Agreement. The EU-Morocco Association Agreement forms the legal basis of EU-Morocco relations. It aims to strengthen political stability, but also the economic development of the region by encouraging regional co-operation and the gradual establishment of a free trade area by 2012. It established guidelines for free trade in manufactured and industrial goods, as well as progressive and reciprocal liberalization for agricultural products between the two partners. It should be noted that, as part of this policy, the Commission received the mandate to start negotiations on an EC readmission agreement with Morocco in September 2000, which demonstrates the conditionality link between policy adaptation and offered incentives. The linkage is directly reflected in EU aid programmes being conditional on the establishment of free trade areas (Holden, 2004). Moreover, the EU's Euro-centric attitude dominated the negotiations, as can be seen in the contradictory outcome that Europe demands that Morocco liberalizes its agricultural trade, while retaining its own traditional protectionist measures in the same domain. The trade balance figures also clearly indicate the increasing volume of imports from the EU is creating a larger trade balance gap for Morocco.

The economic dependency of Morocco in terms of its trade relations, and its strong willingness to harmonize its economic and political relations with the EU, constitute the primary factors in understanding how conditionality, socialization and incentives have been used in externalising the EU's immigration policy towards Morocco. It is observed that EU uses economic incentives and trade dependency as conditionality for influencing Morocco's domestic immigration and asylum policies rather than fostering socialization as a mechanism of Europeanization.

### **5.3.3. Europeanization of migration and asylum management in Morocco**

In addition to Moroccan emigration to Europe, the increase in irregular transit migration since the 1990s has made Morocco a pivotal country in Euro-Mediterranean migration governance, particularly concerning border management<sup>115</sup>. Consequently, border control, legal and institutional changes in Morocco's migration management, visa policy, readmission and asylum issues have emerged as concrete actions through which the Europeanization of Morocco's immigration policy can be investigated.

Lavanex and Uçarer's (2004) study of policy expansion can be applied to Morocco's case in that "policy transfer" and "policy adaptation" in migration issues have taken place in a top-down manner, although this cannot be considered as a totally obligated or coerced forms of transfer. Rather, confirming Lavanex and Uçarer, Morocco's willingness to accept and adopt policy changes both voluntarily and involuntarily, together with the nature of EU-Morocco relations play a very crucial role in explaining how Morocco is affected, and to what extent it transfers and adopts the EU's migration management system. The geographic proximity of Morocco to the EU, and the strong interdependence of the two sides in trade relations inevitably affect whether Morocco adopts EU immigration policies voluntarily or involuntarily.

In this context, among the mechanisms of Europeanization, the EU uses conditionality for achieving policy transfer in migration issues in Morocco. The

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<sup>115</sup> However, although relations concerning cooperation on migration between the EU and Morocco gained significant importance after 2000, contrary to expectations, the literature remains limited (Sabiote, 2008:6). The main focus of existing studies is mainly on the security-focused approach together with critical insights into the cooperation.

strategy of reinforcement by reward, and providing side-payments and issue-linkages, can be seen from the EU's granting to Morocco "advanced status", and also from the economic incentives supported by financial and technical assistance mechanisms in return for asking Morocco to comply with EU requirements concerning border controls and combatting irregular migration, together with other additional policy harmonizations. In this case, the policy changes in Morocco's migration management are motivated by the country's more important political and economic goals. However, the issues of the readmission agreement and asylum policy are two areas where conditionality has not worked. These will be examined in the later section, Limits of Cooperation.

In addition to conditionality, other mechanisms of Europeanization are also observable in Morocco's case regarding policy expansion in migration. The closure of EU borders after the 1990s, and the EU's increased border controls and strict visa policies in the 2000s, have resulted in an increasing number of irregular migrants getting stuck in Morocco. Accordingly, Morocco increased its efforts to combat migrant smugglers and trafficking due to the negative externalities bearing on Morocco. This is thus an example of the mechanism of "externalization", where policy change occurs through a cost-benefit calculation by the Moroccan authorities that pushes them to follow and adopt EU rules. As another example, despite Morocco's liberal and flexible visa policy, increasing controls on the entry and exit of foreigners and with its regulation through new laws can be explained both through conditionality and externalization. Concerning the case of asylum and efforts to improve respect for human rights, socialization is relevant to a lesser extent, while supported by various specific technical assistance mechanisms as well.

In short, in general terms, Morocco appears to comply with European approaches to a large extent. The most significant development concerning the Europeanization of Morocco's immigration policy is that, since 2005, migration has become a political priority for Morocco. The government has started to implement a clear political strategy for handling migration, together with a willingness to cooperate with its European neighbors, especially Spain, with whom it shares common historical and strategic interests. After 2005, Moroccan policy on migration has been more likely to serve the purpose of "[the] EU's outsourcing the management of migration flows"

(Lahlou, 2008:31), with an increase in political and diplomatic initiatives by the Moroccan government towards African countries. Diplomatic visits about the issues of new operations, deportation and repatriation of migrants and “voluntarily returning to their countries” have been held, notably with Senegal and Mali (where most migrants are returned to as their country of origin). In 2006, the King of Morocco visited several African countries, Gambia, Congo, and the Democratic Republic of Congo, to negotiate cooperation on migration issues. Relations with Algeria, which was not concerned with migration transiting through Morocco, began to strengthen by the end of 2005, as seen in the fact that several hundred sub-Saharan migrants settled in a region near Moroccan border were sent back to their countries of origin by the Algerian authorities. Relations between the Moroccan government and UNHCR have also advanced positively. Lastly, a stronger rapprochement with Spain, France and the EU has been followed by the acknowledgement that Morocco is also a victim of its geographical situation, seen in a convergence of views between Moroccan and Spanish officials, as well as with the EU (Lahlou, 2008: 32). Sadiqi summarizes the general picture in a very clear way

The geographical position of Morocco (only 7 miles separate it from Europe by the Strait of Gibraltar) counts in the political will to tackle migration within the framework of Moroccan international relations. Due to the fact that Europe is by far the first commercial partner of Morocco as well as the first place of destination of its emigrants, the government is keen on establishing and maintaining good relations with Europe, and cooperating with Europe in the regulation and control of migration has become part and parcel of these relations (Sadiqi, 2004:2)

Thus, studying the Europeanization of Morocco’s immigration policy requires an examination of the progress and deadlocks of policy transfer and adaptation in the following areas where the EU’s policy of externalizing immigration is particularly observable. Following the same research design used in Chapter 4 for Turkish case, the following analysis of efforts in harmonizing legal and institutional frameworks, border management, visa policy, readmission and asylum policy in Morocco will contribute determining whether the ‘remote-control’ or ‘root-cause’ approach dominates the EU’s external actions in immigration related issues.

### 5.3.3.1. Harmonization of the Legal and Institutional Framework

Similarly to Turkey, migration management in Morocco is fragmented across several policies at national level, such as foreign affairs, development cooperation, border control management without a common strategy which reveals a complex approach<sup>116</sup>. However, unlike Turkey, Morocco has started to perform better, particularly in the 2000s, in terms of a progressive alignment of its migration policy with the European approach despite being in the ENP without any membership prospects. Rather than a liberal migration policy, Morocco opted for a framework closer to the European approach, with stronger surveillance and control of its borders, which serves the interests of Europe, and Spain in particular (Lahlou, 2008:13).

In the last ten years, within the cooperation framework pushed by the EU, Morocco has advanced its legislative activity concerning migration issues. The most significant development was the law of November 11, 2003, titled “Entry and Stay of Foreigners in Morocco, Irregular Emigration and Immigration”, which updated a law originally designed under the French Protectorate during the colonial era<sup>117</sup>. The new law proposed comprehensive reforms about the rules governing every aspect of migration. It sets conditions to regulate entry and residence of foreigners in Morocco, and also introduces significant sanctions regarding irregular emigration and immigration, such as expulsion and penalties for those who facilitate or organize irregular entry into or exit from the country. However, the law has been criticized by many scholars. Haas (2005), for example, criticizes it in terms of making Morocco into “Europe’s “policeman”. Similarly, Belguendouz argues that the law was a response to external pressures dominated by security concerns in an attempt to make Moroccan legislation fall into line with the Schengen Agreement, which “has assigned to Morocco the role of Europe’s policeman in North Africa” (Belguendouz,

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<sup>116</sup> The major government agencies dealing with migration in Morocco are Ministry in charge of the Moroccan Community Residing Abroad, Ministry of Interior, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Human Rights, Ministry of Labor, Ministry of Social Affairs, Ministry of Health, Ministry of Education

<sup>117</sup> Interestingly, the law was adopted just after the terrorist attacks in Casablanca on 16 May, when 45 people were killed. Thus, it is also marked for the first time by a link between terrorism and migration policy. However, Moroccan authorities always take migration as a “fight against the networks of trafficking of human beings” and never refer to terrorism. It should also be noted that Morocco has never discussed the arrest of irregular migrants within the framework of terrorism.

2003). As Lahlou puts it

... as the law does not respond to any internal logic, it may be considered in particular as a Moroccan-European co-sovereignty law in as much as it falls primarily within the will of the European Union to protect itself from illegal migrations bound from one of their major passage points towards Europe (Lahlou, 2008:14).

The law was followed by further important steps to construct an institutional framework for dealing with migration developments. In 2003, the “Directorate of Migration and Border Surveillance” and “Migration Observatory” were established to fight against irregular migration and human trafficking networks, as they have been considered a priority for government action. Many other legislative improvements have been completed to harmonize Moroccan laws with EU and international standards. Accordingly, the Ministry of Interior created a specific Directive dedicated to migration and border control, which elaborated a strategic framework for the management of migration, in particular on counter-smuggling. The 1990 Convention on the protection of all migrant workers and members of their families was also ratified. Retention of foreign nationals waiting for deportation or being readmitted after a transit through the country was extended to 25 days from 10 days. The 1951 Geneva Convention and the 1969 Organization of African Unity Convention governing specific aspects of refugees in Africa was also ratified. Morocco also acceded, in April 2011, to the Additional Protocol to the UN Convention against the transnational organized crime, which aims to prevent, suppress and punish trafficking. As a result, the EU’s 2011 progress report on Morocco’s implementation of the European Neighbourhood Policy notes that the country has seen real progress in the fight against trafficking in human beings (SWD, 2012:13).

All these legislative improvements are evidence of a better performance than Turkey, which still did not manage to implement its new law on migration, retains its geographical limitation stance, and has a poor record of cooperation on border controls, despite being a candidate country in the middle of accession negotiations.

### **5.3.3.2. Cooperation Border Management**

The southern European border is approximately 5,500 km long, shared between eight EU member states and ten neighbouring countries. Morocco is the closest land border due to the territorial remnants of past colonial ambitions, specifically, islands which are technically part of the EU, such the Canary Islands, Martinique and Reunion, and the the small Spanish enclaves of Ceuta and Melilla that lie completely within Morocco's land borders.

Concerning cooperation in border management, the main tension between Europe and Morocco involves irregular migrants entering Spain from Morocco. As a result of EU pressure on Morocco to take the responsibility for preventing undocumented migrants from entering Europe (Sadiqi, 2004), cooperation advanced in the 2000s in terms of strengthened border controls and the fight against irregular migration. In fact, beyond the EU, it should be noted that bilateral cooperation, chiefly with Spain, but supported mainly by financial assistance from EU institutions, has predominated over multilateral cooperation in Morocco's migration management development. Together, these two sources have influenced the Moroccan government to redefine its policy making on migration management in line with the EU demands, in both its foreign and development policies.

Regarding controlling Morocco's borders with its neighbours, the border between Algeria and Morocco is currently closed due to conflicts in Bechar and Tindouf Province due to Morocco's historical and political claims of a Greater Morocco. Concerning its southern border, Morocco has another unresolved territorial problem in the Western Sahara. After Morocco became independent when Spain withdrew from the region after the 1975 Madrid Agreement, it was decided that two-thirds of the northern part of Western Sahara would be granted to Morocco while the lower third would be given to Mauritania. However, the Polisario group proclaimed the Sahrawi Arab Democratic Republic as a government in exile to establish an independent Western Saharan state. This complicated situation has continued for decades with violent tension. Although some gradual political reforms have taken place in the region, even today the issue remains unresolved and has a major significance in domestic Moroccan politics (Haas, 2009).

Turning to cooperation on border management between the EU and Morocco, it is quite advanced in comparison to other North African countries, and even Turkey. However, border cooperation in Morocco's case mainly refers to strengthening border controls in order to prevent irregular migrants entering Europe. Since the 1990s, the EU has put increasing pressure on Morocco to introduce more restrictive immigration policies and to increase border controls (Haas, 2009: 5). Increased border patrols and coastal radar, doubled fences around the Spanish exclaves, the construction of borders with ultramodern detection means, and increased monitoring of Atlantic and Mediterranean waters by European border guards, have all made it more difficult to enter Europe from Morocco. Mainly in cooperation with Spain and through FRONTEX operations, the Mediterranean and Atlantic are now monitored by patrol boats, planes and helicopters off the shores of Mauritania, Senegal and the Cape Verde Islands along the main transit route from Africa to the Canary Islands (Gebrewold, 2008:118).

However, these stricter border controls have resulted the diversion of irregular migration routes, rather than significantly decreasing the number of migrants. The enclaves of Ceuta and Melilla, previously the two main gates for many irregular migrants, are no longer as big a concern as before since both countries have intensified their cooperation on controlling these borders to curb the inflow of illegal African migrants (Gebrewold, 2008:117). Barbed-wire border fences were constructed, starting in Ceuta in 1993, with a length of 7.8 km, and in Melilla in 1996, with a length of 10.5 km. In addition to Ceuta and Melilla, Morocco and Spain also introduced strict measures in the Straits of Gibraltar. Specifically, in 2002, they introduced the Integrated System of External Surveillance (SIVE) in return for 390 million USD of aid (Schuster, 2005:13) to create a liquid border between Spain and Morocco, which has improved the monitoring of the illegal marine immigration gates at the EU-Morocco border<sup>118</sup>. By the end of 2004, Morocco had increased the number of its border-control personnel by adding another 1,500 Auxiliary Forces agents to the total of approximately 3,000 in 1992 (Perez, 2010: 111). However,

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<sup>118</sup> Spain has attempted for years to raise awareness within the EU that irregular immigration is not just a bilateral issue between Spain and Morocco, but also a European problem. In the 1990s, the EU pressured Spain to control its borders, but later it was Spain that increasingly pushed the EU to consider border control as a European issue.

despite highly technologically developed border controls, such as the new radar system, day/night vision cameras, a tear gas diffusion system and detection wires, the number of people trying to reach the Spanish coasts on board small fishing boats has not decreased at all. Instead, these tighter controls and intensified operations have simply diverted irregular migration routes southwards to the Canary Islands, and to the professionalization of smuggling methods, rather than cause a significant decline in irregular immigration (Haas, 2008: 48). Before the start of the “Arab Spring”, the transit migration routes have become diverted towards Algeria to mainland Spain, from the Tunisian coast to the Italian islands, and from Libya to Italy and Malta<sup>119</sup>.

Morocco is a case where the securitization of the EU’s immigration policy became visible with increased and even armed border controls and surveillance, although the EU still considers its aggressive border control measures to be a preventative operation. As Neisser (2007) points out, the EU is expected to follow ethical principles in its migration policy, and is required to consider humanitarian values. However, its strict controls are leading to the indiscriminate designation of refugees as illegal immigrants, including those refugees fleeing persecution, displacement, and rape in the Congo, Sudan, and Somalia (Gebrewold, 2008:125). Each year, a significant number of people die or get seriously injured while trying to enter the EU in their attempts to circumvent the increased border controls.

In short, policy transfer in the field of border management demonstrates a strong cooperation between the EU, specifically Spain, and Morocco. Through hierarchical top-down governance and also network coordination, the EU uses conditionality to achieve its policy externalisation in border management. For example, the EU has been providing significant funding to Morocco since 2003 to train its police and improve border monitoring in return for assisting “managing the stock” of migrants by “closing down access points into Morocco in the south and blocking exit points to Europe in the north” (Global Detention Project, 2011). Finally, Morocco has proved to be a case where the EU’s externalisation of border management means more likely increasing border controls by using highly securitized and technologically advanced means. The domination of a remote-control approach in border management seems

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<sup>119</sup> The diversification of migration routes towards Libya has been particularly visible on Lampedusa, the small island south of Sicily, which is the first point of arrival for migrants coming from Libya.

to pay insufficient attention to the human rights aspects of the issue, as seen from several tragic events that have taken place at the borders of Ceuta and Mellila since 2005.

### **5.3.3.3. Cooperation with the EU on Visa Policy**

The EU uses visa policy as a tool for managing migration in Morocco as part of its external relations. The visa issue can be seen as another successful area of policy expansion since Morocco is one of the first regions where the information system on visas (VIS) became operational, in October 2011 (SWD, 2012: 13). The system allows better recording and exchange of information on short-stay visas by increasing efficiency and security procedures for issuing visas and border control. In 2009, Morocco became the first African state to launch biometric passports, and foreigners now have to pass through an official frontier post in order to enter and exit Morocco. Only nationals of eight African countries (Senegal, Niger, Tunisia, Mali, Gabon, Ivory Coast, DRC and Republic of Congo – Kinshasa) can enter Morocco without a visa. The citizens of all other countries must apply for visas in the Moroccan embassies present on their territory.

Morocco's efforts to follow a European approach in managing its visa policy, has had implications for migration flows from and through Morocco as well. The most significant direct impact on migration flows from and through Morocco was the introduction of a visa requirement for the Maghreb countries by Italy and Spain in 1990 and 1991 respectively. This marked the end of free seasonal and circular labour migration to these countries, which had an enormous influence on the size and composition of migratory flows from Morocco (Perez, 2010:109). Most notably, the visa requirement led to an increase in irregular migration (Haas, 2008: 32), while also encouraging the growth of a widespread informal economy connected to trafficking in migrants. This has pushed the Moroccan government to combat irregular migrant networks, smugglers and traffickers as an important priority of domestic politics.

#### **5.3.3.4. EU-Morocco Readmission Agreement**

Signing the EU readmission agreement has been one of the most contested political issues between Morocco and the EU. As Bernard Brunet <sup>120</sup> put it, “Morocco is the country that the EU has the closest cooperation with in the region. However, readmission constitutes one of the difficult issues”. The European Commission and Morocco have been negotiating a readmission agreement since 2000, but there still remain unresolved disagreements.

In the meantime, following the launch of Schengen system, Morocco has signed bilateral readmission agreements with many individual EU countries, such as with Germany (1998), France (1993), Portugal (1999), Italy (1998) and Spain (1992). For Morocco, the main incentive for signing such agreements was often the exchange of development aid and financial and material support for (joint) border controls. Another main motivation was related to its ambition to acquire special status in its political and economic relationships with the European Union, which has been a prevailing reward offered in this conditionality based governance process.

However, Morocco is still reluctant to conclude a general readmission agreement with the EU. Besides having a limited expulsion capacity, one of the main reasons is Morocco’s concerns about readmission of third country nationals, as Morocco is willing to take back its own nationals but not third country nationals. Since most of the apprehended irregular migrants are Sub-Saharan Africans, Morocco needs to make readmission agreements with their countries of origin before readmitting them into Morocco. However, Sub-Saharan African countries are often reluctant to collaborate with the forced readmission of large numbers of irregular migrants. Indeed, even though various EU countries have signed bilateral readmission agreements with some African countries, expulsions are often difficult to implement in practice (Collyer, 2006). Mr. Brunet confirms the same point that the main difficulty for Morocco concerns third country nationals, mentioning that Morocco has asked for a more balanced package with concrete commitments from the EU for

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<sup>120</sup> Interview conducted with Mr. Bernard Brunet, who is responsible for Morocco as Cabinet Member of Stefan Füle (Brussels, 07.12.2010).

more financial assistance, visa facilitation and improved mobility in return for signing the readmission agreement.

In fact, even though there has been a readmission agreement between Morocco and Spain since 1992, it has not been fully implemented owing to the reluctance of the Moroccan authorities to readmit third-country nationals, mainly from sub-Saharan Africa, who purportedly transited through Morocco before being apprehended on Spanish territory. In fact, Morocco has often questioned whether such migrants actually transited through its own territory or rather transited through Algeria (Cassarino, 2007. 183). As Mr. Brunet notes, this is another issue of concern for Morocco because of the difficulty of proving an irregular migrant's final entry point to the EU, since there is always the risk that irregular migrants may lie about this because they would prefer to be sent back to Morocco.

If the issue of third country nationals can be solved, Morocco seems likely to progress to signing the EU readmission agreement in return for visa facilitation or a mobility partnership, with an emphasis on labour market access quotas and circular migration. However, as Mr. Brunet mentions, the Commission is stuck in its attempts to gain further cooperation since Morocco does not want to make progress on readmission and, most significantly, the Commission itself does not have a Council mandate to negotiate for more successful action. Therefore, until today, Morocco has continued to resist signing the EU readmission agreement due to the problems discussed here, and also the likely costs for Morocco, as well as the lack of credible incentives offered by the EU.

#### **5.3.3.5. Asylum Policy and Morocco**

Morocco is party to the 1951 Refugee Convention and its 1967 Protocol. However, it has not yet adopted comprehensive national refugee legislation or established asylum procedures consistent with international standards – which are failings criticized by the EU. In fact, rather than the EU, it seems that, since 2004, UNHCR has been more actively involved in developments concerning asylum policy in Morocco. UNHCR has started to expand its operations in Morocco due to increasing immigration and rising political conflicts in Africa. Since Morocco lacks a law on national asylum

management, UNHCR has promoted the adoption of a comprehensive national asylum system in Morocco through capacity-building activities, including training in refugee law for government officials, the judiciary and civil society institutions. The Moroccan government is still working in cooperation with UNHCR on the introduction of a legislative and institutional framework on refugees and asylum.

The second main problem with asylum policy in Morocco relates to deportation and human rights abuses by Moroccan authorities during their operations. As Lindstrom mentions, the EU has increasingly pressured the Moroccan government to “deport any illegal aliens on Moroccan territory (2002: 4). The Moroccan state tends to consider all sub-Saharan immigrants in Morocco as “economic migrants” on their way to Europe, which ignores the possibility that some could be asylum-seekers. Thus, most asylum-seekers are commonly rejected at the border or deported as “illegal economic immigrants” (Haas, 2009:8). In fact, European states, such as Spain and Italy, have also been criticized by human rights organizations for seriously risking compromising the principle of *non-refoulement* by deporting African migrants and asylum-seekers to Morocco, where protection capacities are known to be weak. As a result, many tragic events have occurred in Morocco, such as foreign nationals becoming stranded in the desert, or Moroccan forces opening fire on migrants and even shooting those attempting to cross into the Spanish enclaves of Ceuta and Melilla, just for the sake of complying with the EU’s demands to prevent irregular migrants enter Europe.

#### **5.3.4. Limits of Cooperation**

Clearly, the effectiveness of the externalisation of EU migration policy is highly dependent on third countries’ participation in the process, and their “understanding” of externalisation. Thus, policy orientation and the degree of externalisation in migration are strongly shaped by the interaction between the EU and relevant third countries. In response to the EU’s broadened external dimension of its immigration policy towards North African transit countries, it can be seen that Morocco has demonstrated a relatively stronger degree of interest in cooperating with the EU, and has been committed to develop strategies in controlling and managing migrant flows. This should also be considered in relation to the important determinant factor

proposed by Lavanex and Uçarer (2002) as to whether policy transfer occurs voluntarily or involuntarily in the third country. In this case, Morocco can be considered to be one of receivers of externalisation and initiators of measures. However, despite progress in close cooperation, externalisation in the migration policy field constitutes one of the areas where cooperation is limited to some extent due to various deadlocks.

In the case of Morocco, the issues of the EU readmission agreement and the legislative and institutional development of asylum policy in accordance with the EU's demands constitute two significant policy areas where cooperation between EU and Morocco has proved to be limited. Concerning the EU readmission agreement, besides the problem of third country nationals creating a potentially huge domestic cost for Morocco, the EU has also failed to offer Morocco credible commitments and economic incentives. By trying to make Morocco's acceptance of readmission as the prior condition for further cooperation, the EU has ended up blocking the furtherance of its own strategic aims in other fields. The readmission issue can be examined through the modes of external governance since the EU aims to conclude a final agreement that refers to the extension of the EU's legal boundary of authority beyond its borders through an institutional and structural perspective. In this regard, it can be argued that, concerning the readmission agreement, the EU has employed hierarchical governance model in its relations with Morocco in the framework of top-down policy transfer, which indeed is the mode mostly used by the EU towards candidate countries. However, as the Morocco case demonstrates, when the third country has no prospect of EU membership, the EU has to offer economic incentives and visa facilitation as rewards in return for the conclusion of any readmission agreement.

Turning to the power based perspective, it suggests two sets of factors for effective hierarchical external governance. It seems that both conditions exist in this case as the EU has power over Morocco together with asymmetric interdependence. In fact, the main problem also occurs with degree of interdependence, which is reversed when it comes to readmission. That is, it is more crucial for the EU to reach a readmission agreement than Morocco, and thus the EU can be considered more dependent on Morocco in this specific policy field. Moreover, confirming the

“domestic structure explanation”, the readmission agreement creates huge domestic adaptation costs for Morocco, so the contrary to what might be expected from a hierarchical power relations perspective, Morocco is able to ask for greater and credible incentives from the EU before it takes any further steps in the field of readmission.

The second area where external cooperation is slow and limited is asylum policy. Despite the ENP framework and its advanced status, Morocco has made no progress in passing national legislation in conformity with international obligations, or in developing an administrative structure for managing an asylum system. Even though cooperation between Morocco and UNHCR has intensified, Morocco still does not automatically recognize persons previously identified by UNHCR as refugees, and therefore denies them any rights or social access to its labour market (SWD 2012:12). As with the issue of readmitting irregular migrants, Morocco does not want to take on the burden of refugees since it does not have enough administrative, financial and technical capacity to manage this. Moreover, it does not want to let the country become an attractive destination for the huge number of potential asylum-seekers and refugees in Africa.

Although asylum is a contested issue, and one where the EU’s externalization attempts have mostly failed, we can consider Morocco’s asylum case as being Europeanised to a slight extent through socialization. The law of 2003 at least sought to prohibit the deportation of refugees and asylum seekers, while guaranteeing their right to court appeal against deportation decisions. Needless to say, increasing technical and financial assistance for training the border guards, government officials and increasing awareness on civil society should also improve the situation.

#### **5.4. Task-Specific Cooperation through Financial and Technical Assistance Mechanisms**

Cooperation on the external dimension of migration is improving through the financial and technical assistance mechanisms that create a conducive context for network governance. A good example of this is control of Moroccan borders, where

cooperation has developed in line with the EU's demands through active task-specific and technical mechanisms.

The main overall supporting mechanism for EU-Morocco political and economic cooperation is the ENP. The European Neighbourhood Policy Instrument (ENPI) is endowed with 11.9 billion Euros for the period 2007-2013. In this framework, the 2011-2013 National Indicative Programme (NIP) allocated 580.5 million Euros to Morocco to support the following five priorities, listed in the table below, identified for financial cooperation (European Commission, 2012/14:60).

**Table 5.6. National Indicative Programme for Morocco, 2007-2013**

Social Sector	19-21%
Economic Sector	9-11%
Institutional Support Sector	39-41%
Governance Human Rights Sector	14-16%
Environmental Sector	14-16%

*Source: European Commission, Implementation of the ENP in 2011 Statistical Annex (European Commission, 2012/14)*

Over the years, the European Community has put in place a number of financial instruments, such as MEDA, TACIS, AENEAS, ENPI, the European Border Fund and the European Return fund, and Morocco has greatly benefited from these programmes. In MEDA, for example, the commitments to Morocco totalled 1.183 million Euros between 1995 and 2003. The AENEAS Programme of 2004-2008, which was created finance joint migration projects related to migration management, return, reintegration of migrants into their countries of origin, border controls, asylum and protection of refugees and displaced people, also allocated 7.37 Euros for projects involving Morocco. This was the largest amount spent on a single country in the programme. Morocco is also eligible for additional funds under the thematic programmes adopted for the financial period 2007-2013.

As part of Morocco's advanced status, twinning and Technical Assistance and Information Exchange<sup>121</sup> (TAIEX) are available as privileged instruments of cooperation. Accordingly, 13 twinning projects were launched between 2005 and 2008 in the areas of foreign trade, security and maritime safety, environment, migration, consumer protection, the fight against money laundering, competition, finance, health, sanitary and phytosanitary control, harmonisation of technical legislation and regional development. The following table also demonstrates that Morocco is one of the countries that greatly benefits from these technical assistance mechanisms.

**Table 5.7. TAIEX Number of Requests per ENP Partner Countries**

Country	2007	2008	2009	2010	2011	Total
Algeria			16	38	14	68
Egypt	31	22	22	26	10	111
Libya			8	43	1	52
<b>Morocco</b>	<b>27</b>	<b>10</b>	<b>26</b>	<b>26</b>	<b>27</b>	<b>116</b>
Tunisia	7	15	18	12		52

*Source: European Commission, Implementation of the ENP in 2011 Statistical Annex (European Commission, 2012/14)*

Concerning the successful cooperation with task-specific actors, the work of IOM with Morocco on the establishment of mechanisms for voluntary return and reintegration of stranded migrants is a good example. The Assisted Voluntary Return and Reintegration Project (AVRR, 2008) and the Regional Assisted Voluntary and Reintegration Programme were followed by a new Assisted Voluntary Return and Reintegration Project (AVRR, 2010) project, funded by the Governments of Belgium and Switzerland. As another example, IOM has conducted successful capacity-building interventions to prevent irregular migration in some areas of the country that are very prone to migration. In partnership with the UN Population Fund (UNFPA), IOM has also developed guides for peer educators in Morocco in order to raise awareness on the risks of irregular migration and train migrants in life skills.

<sup>121</sup> TAIEX was introduced to the ENPI region in 2006 to offer short-term assistance and advice to partner countries in implementing their ENP Action Plans. It supports neighboring countries in the approximation, application and enforcement of EU legislation. It is mainly demand driven and assistance is given through expert missions, workshops or seminars and study visits.

All these technical and financial assistance mechanisms have proved to improve progress in migration related issues in Morocco where mutual and voluntary agreements exist. Task-based cooperation, mainly through projects, provides functional expertise and facilitates rule expansion by providing more room for Morocco to express its own needs, which results in greater functional progress.

### **5.5. Negative Externalities Raised for Morocco: Understanding Morocco's Resistance**

The external dimension of the EU's immigration policy raises significant implications for negative externalities and concerns for Morocco, which leads to questions as to whether the burden is shared together with the EU in return for Morocco's better advancement, or whether the EU is attempting to shift the burden onto Morocco while trying to secure itself against the unwanted challenge of irregular migration.

While Lahlou (2005) criticizes the EU for reinforcing a Euro-centric migration management approach, Boswell (2003) points out the existing asymmetrical relationship between the EU and Morocco concerning in particular control of irregular migration flows, which indeed leads to imposition exerted through political pressure (Khachani, 2006). Following the progressive securitization of migration, Holm (2008) argues that the EU's efforts to externalize its migration standards and controls to Morocco have made Morocco into a subcontract guardian against Sub-Saharan immigration. However, when the ENP Action Plan on Morocco is examined, one can see that it states as one of its priority actions

effective management of migration flows, including the signing of a readmission agreement with the European Community, and facilitating the movement of persons in accordance with the *acquis*, particularly by examining the possibilities for relaxing the formalities for certain jointly agreed categories of persons to obtain short-stay visas (2005; 4)

Nevertheless, until now, there seems to have been no improvement concerning facilitating the movement of persons, and short-stay visas. Only recently, in October 2011, did the EU launch a dialogue on migration, mobility and security with Morocco to establish better and safer conditions for the migration and mobility of

European and Moroccan citizens (SWD, 2012). The dialogue aims to conclude a mobility partnership, which has still not been agreed with Morocco. These delays the observation that the EU's policies are not adequate to target the root causes of migration in Morocco, or to encourage legal migration (Haas, 2005).

Within this environment, in which the EU attempts to externalize its securitized Euro-centric migration management approach, readmission constitutes one of the most significant negative externalities for Morocco concerning the issue of third country nationals and relations with its Sub-Saharan neighbours. If Morocco signs the agreement, it will have to readmit not only irregular Moroccans but also third country nationals, most of whom are irregular Sub-Saharan migrants. This will impose a huge social and financial burden on Morocco, as it is one of the main transit gates for irregular migrants. It will eventually compel Morocco to sign readmission agreements with sub-Saharan countries, which will in turn raise the danger of *refoulement*. Moreover, Morocco's relationship with some of these countries is already in danger due to the Western Sahara question.

The second negative externality is the increasing number of Sub-Saharan Africans stuck in Morocco due to intensified cooperation on border controls between the EU and Morocco, which has made transiting to Europe from Morocco extremely difficult. Consequently, migrants often "get stuck" in the transit area of Morocco, which has far-reaching effects, not only on the migrants' lives but also on Moroccan society. (Schapendonk, 2008:130). King Mohamed VI, in an interview published in the Spanish newspaper *El Pais*, clearly states that irregular migrants represent a danger not only for Spain but also to Morocco, as half of the irregular Sub-Saharan migrants end up staying in Morocco (*El Pais*, 16 January 2005). The number of sub-Saharan migrants is also increasing due to the worsening economic, social and political situation in sub-Saharan Africa and the closure of the European borders. This most probably will create more damaging social and economic effects, given the high unemployment poverty rates within the Moroccan population, as the integration of these migrants into the labour market in Morocco is currently not possible (Lahlou, 2008:34). Moreover, Sub-Saharan irregular migrants face substantial xenophobia in Morocco and, as they lack legal status, they are vulnerable to social and economic marginalization (Haas 2009: 5). Currently, Morocco has been left to

deal with this burden by itself as the EU does not provide the necessary means to combat this problem.

Thirdly, the externalization of the EU's border controls to Morocco, which has a poor human rights record, creates the risk of inadequate refugee protection that may potentially jeopardize the rights and security of migrants, including asylum-seekers and refugees (Haas, 2009). In fact, as Arman indicates the unique approach to the concept of human security is one of the distinct features of ENP which differs it from from the rest of the Union policies with non-member countries (Arman, 2011). Morocco's experience with migrants and refugees constitutes a good example of this problematic human security aspect. Already, strict border policies have had a series of unintended side effects in the form of increasing violations of migrants' rights (Haas 2008:10), and Morocco has been harshly criticized for becoming the the EU's policeman. As a result of the EU pushing Morocco to strengthen its border controls and prevent irregular migrants entering Europe, Moroccan police, with a poor human rights record, have even shot people climbing border fences or left them to their fate on the Algerian border in the desert. Hundreds of North African and sub-Saharan irregular migrants have also died from drowning or thirst on their way to Europe by boat (Lahlou 2008:29). In the tragic events of 2005 in Ceuta and Mellila, 14 migrants died on the barbed wire whilst attempting to cross the frontier, while in 2006, twenty people were shot by the Spanish and Moroccan security forces. Such events not only shame the EU and Morocco, they also harm Morocco's relations with its neighbours in the region, in particular with Sub-Saharan Africans, who accuse Morocco of killing its own Muslim brothers. Thus, rather than the EU, it is Morocco that is increasingly being perceived as an aggressive country, as the "watchdog" of Europe in the region. Hence, the question of how to balance human rights with strong control of borders has become a serious challenge.

The final negative externality for Morocco is that the attempts of EU countries to externalize border controls towards the Maghreb countries carries the risk of transforming them into a "buffer zone" without any means to manage it, for the sake of reducing migratory pressures at Europe's southern border (Lutterbeck, 2006). Perez's interview with an official at the Moroccan Consulate in Las Palmas in 2008

very clearly demonstrates that Morocco is becoming a buffer zone for many irregular migrants

I want to make one thing very clear, okay? It is not only the Canary Islands, as the southern border of Europe, which is suffering from immigration, but also our own country, Morocco. We are suffering just like the Canary Islands or even worse, because we have a land border of 3,500 km with Algeria, and Mauritania. Most of this border is a great, uninhabited desert and those two countries don't control, they don't control their own territory very well . . . They cannot put their armies everywhere. . . . Morocco is suffering more than Spain from immigration, with the difference that Morocco does not have means within its reach. . . . We're doing everything that we possibly can to stop the flows from Morocco. When we have stopped it, some 80 percent of the flows moved to the south and this area suffers from all the cruelties of life (Perez 2010:110)

## **5.6. Conclusion**

Morocco, located just at the south-western border of the EU only 14 km. from Spain, has been a significant country for the EU, not only in terms of being one of the main “emigration” countries, but also increasingly as a “transit” and “destination” country for many regular and irregular migrants heading to Europe. Its geographical proximity to EU borders and relatively better economic and political conditions make it more exposed to transit irregular migration flows from Sub-Saharan Africa to Europe. Currently, with the on-going events of “Arab Spring”, which have left Morocco as a safer country in North Africa, there is also the risk of more migration flows as established migration routes may become diverted from Libya and Algeria towards Morocco as a better destination.

Although Morocco's 1987 EU membership application was rejected, it was granted “advanced status” in 2008, and is considered the most cooperative partner of the EU in the region in terms of its close and progressing relations. The EU is Morocco's leading trading partner with a share of nearly 60% of Morocco's total trade. Economic relations, and thus market governance, constitutes one of the central and most influential incentives dominating EU-Moroccan relations. Given the context of this hierarchal and dependent relationship, characterized by a strong mutual willingness for further cooperation, Morocco seems to perform well in terms of

aligning its migration policy with the EU, without membership prospects. Examination of progress on harmonization of the legal and institutional framework reveals that Morocco has advanced by adopting a new national migration law, the government has intensified its operations in combatting irregular migration and human trafficking, and it has ratified several international agreements in line with the EU's migration management expectations.

In explaining the implications of the EU's externalisation of its immigration policy, Morocco constitutes a case where conditionality, which is mostly used with candidate countries rather than an ENP partner like Morocco, seems to dominate the EU's efforts to achieve its goals of policy expansion. In Morocco's case, economic incentives, EU aid, technical and financial assistance through projects and programmes has replaced accession conditionality. The table below summarizes the analysis of this chapter and demonstrates that in Morocco's case, rather than socialization, as usually proposed for ENP partners, conditionality prevails as the mechanism for Europeanization in the contested policy field of migration. Since this study restricts its scope to the external dimension of migration policy, the policy instruments identified in Chapter 2 (harmonization of legal and institutional frameworks, border management, visa policy, readmission agreements and asylum policy) have been analysed in terms of which mechanism of Europeanization is used for each field, and whether this generates policy expansion. The table also indicates the implications of actually implemented policy expansion or the EU's attempts at policy externalisation in Morocco. This clearly reveals the contributions and also challenges to the debate on Europeanization beyond EU borders. The negative externalities raised for Morocco in the migration field, indicate that the issues of readmission and asylum policy remain important challenges to Europeanization.

**Table 5.8 Externalization of the EU's Immigration Policy Towards Morocco**

MECHANISMS OF EUROPEANIZATION					
Externalization of EU's immigration policy towards Morocco	Conditionality (Direct)	Socialization (Direct)	Externalization (Indirect)	EU's Policy Externalization	Implications on Morocco
<b>Harmonization of Legal and Institutional Framework</b> <input checked="" type="checkbox"/> Changing national laws and regulations in harmonization with the EU <i>acquis</i> (Partly) <input checked="" type="checkbox"/> Becoming Party to International Agreements <input type="checkbox"/> Policy Implementation (Partly)	Association Agreement, ENP Action Plan, Advanced Status, technical and financial assistance aids, economic incentives			Successful	Law of 2003 Establishment of Directorate of Migration and Border Surveillance” and “Migration Observatory” Directive on Migration and Border Control 1990 Convention on the protection of all migrant workers and members of their family
<b>Border Management</b> <input checked="" type="checkbox"/> Securitized Borders <input checked="" type="checkbox"/> Increased Capacity <input checked="" type="checkbox"/> Operational Cooperation, Common Operations <input checked="" type="checkbox"/> Combating irregular migration <input checked="" type="checkbox"/> Combating migrant smugglers <input checked="" type="checkbox"/> Policy Implementation	ENP Action Plan, Advanced Status, technical and financial assistance aids, economic incentives		Fight with irregular migration, operations against smugglers as result of EU's visa policy	Successful	Increased border controls Increasing number of Sub-Saharan Africans in Morocco Economic and Social Integration Problems Human rights abuses
<b>Visa Policy</b> <input checked="" type="checkbox"/> Uniform Visa (Partly) <input checked="" type="checkbox"/> Increased controls at entry and exit points <input checked="" type="checkbox"/> Use of biometric passports <input type="checkbox"/> Visa for TCNs <input type="checkbox"/> Harmonization with Schengen System <input type="checkbox"/> No visa-free systems <input type="checkbox"/> Policy Implementation (Low)	ENP Action Plan, Technical Assistance, economic incentives			Partly Successful	Implies visa free systems for some Schengen negative list countries Difficulties for Moroccans to travel to Europe mainly after the visa requirement in 1991.

**Table 5.8 (continued)**

<p><b>EU Readmission Agreement</b>  <input type="checkbox"/> Conclusion of Read.Agr.  <input type="checkbox"/> Implementation of Read.Agr.  <input type="checkbox"/> Return Policy  <input type="checkbox"/> Policy Implementation</p>	<p>ENP Action Plan,  Further cooperation  Visa facilitation</p>			<p>Unsuccessful  (Credibility of incentives, domestic adaptation costs, reverse interdependency)</p>	<p>No progress to sign an EU readmission agreement.  Negative Externalities; third country nationals, huge domestic adaptation costs</p>
<p><b>Asylum Policy</b>  <input type="checkbox"/> Refugee Status Determination  <input type="checkbox"/> Securing non-<i>refoulement</i>  <input type="checkbox"/> Improving reception conditions  <input type="checkbox"/> Increased protection capacities  <input type="checkbox"/> Sustaining durable solutions  <input checked="" type="checkbox"/> Securing respect for asylum and refugee rights (Partly)  <input type="checkbox"/> Safe third country  <input checked="" type="checkbox"/> Comply with international standards  <input type="checkbox"/> Policy Implementation</p>	<p>ENP Action Plan,  Technical and  Financial Assistance</p>	<p>Some progress in improving human rights aspect, prevention of deportation,</p>		<p>Unsuccessful (weak incentives, lack of capacity, domestic adaptation costs)</p>	<p>Negative Externalities; buffer zone for irregular migrants and asylum seekers, worsening relation with the neighbors in the region</p>
<p><b>Mobility Partnership</b>  <input type="checkbox"/> Implementation  <input type="checkbox"/> Visa facilitation  <input type="checkbox"/> Circular migration  <input type="checkbox"/> Financial Assistance  <input type="checkbox"/> Policy Implementation</p>	<p>-</p>	<p>-</p>	<p>-</p>	<p>Dialogue has already started in October 2011</p>	<p>-</p>

Besides constituting a case study for understanding how the EU's external dimension of immigration policy involves and affects the transit countries, the study of Morocco also reveals some insights for the theoretical debate. It constitutes a case which can be tested through the argument of Schimmelfennig that points out the relevance of market power and hierarchy in generating the strongest Europeanization effects (2010, 19). It can be seen that, although Schimmelfennig's two conditions certainly exist in Morocco's case, in the migration policy field specifically some issues, such readmission and asylum, can limit the policy change occurring due to resistance from the third country.

The study of Morocco also shows that, although a top-down perspective of Europeanization still exists, the bottom-up understanding appears to offer better progress. The EU readmission agreement is an example which demonstrates that no matter what the comprehensive institutional framework is, whether an ENP partner or candidate country, the EU employs a hierarchical governance model with conditionality in a framework of top-down policy transfer. Accordingly, the EU pressures Morocco to sign the EU readmission agreement by making it conditional for further cooperation. However, despite the EU's legitimacy and power over Morocco and the two sides' strong interdependence, due to the high domestic adaptation costs and weak incentives offered in a hierarchical top-down framework, conditionality does not offer an effective mechanism for policy expansion in this case. Asylum policy reveals a similar outcome, where cooperation has reached deadlock and limitations. At this point, the introduction of an external governance perspective can contribute by offering network governance as a way of producing policy outcomes through a non-hierarchical relationship. Even though EU actors play an important and often initiating role, it is seen that the policy field of migration, which involves many actors, might better progress toward policy harmonization if cooperation is based on decentralized sectorally specialized governance institutions with functional expertise. In this regard, Lavanex's (2009) issue-specific modes of governance model might better provide the expansion of EU rules through sectoral lines instead of through macro and highly political frameworks, since network governance allows more room for third countries to respond to their own dynamics,

which can help them to overcome resistance in areas where rule expansion is difficult in migration policy.

## CHAPTER 6

### CONCLUSION

This thesis analyzed the external dimension of the EU's immigration policy and its implications for transit countries by comparing Turkey and Morocco. Despite being a very lively topic that has developed increasing significance, especially after the intensifying migration pressures towards Europe from its neighboring regions, there have not yet been enough empirical studies in the literature explaining how and why the external dimension of the EU's immigration policy is evolving. In this context, this thesis tried to contribute to the literature by providing a conceptual analysis of the evolving external dimension of the EU's immigration policy through a theoretical framework and comparative case study.

For this purpose, this thesis first examined the relevance of current theoretical debates, and also considered a number of shortcomings in explaining the general framework concerning EU policy externalization in general. Three theories were identified as the most relevant to the subject matter of the study: "international regime theory" from the field of international relations, "external governance" from political science, and "Europeanization beyond Europe" from European integration theories. Among these, although international regime theory and external governance provide some insights, they were also observed to have some shortcomings in conceptualizing the subject matter of this thesis, mainly due to the unique structure of the EU, which is neither entirely a state nor an international organization. In contrast, "Europeanization beyond Europe" provided a comprehensive empirical framework to best scrutinize the EU's policy externalization towards non-member third countries. Thus, "Europeanization beyond Europe" was applied in the case studies to demonstrate the extent to which EU has been able to induce policy expansion in the field of immigration and asylum issues

under two grand institutional policy frameworks, enlargement and ENP. While exploring how policy externalization occurs in terms of the mechanisms and conditions of Europeanization, the study also attempted to analyze the main driving factors behind the EU's efforts to influence and transform non-member countries' migration policies through the dominating approaches of "remote-control" and "root-cause". In addition to understanding EU policy expansion attempts in the field of immigration, this study also explored the implications of the external dimension of European immigration policy as these represented significant factors for understanding the conceptual and theoretical limits and constraints of policy transfer, specifically in the migration field.

One of the main conclusions of the study is that, in contrast to rhetoric, actual practice demonstrates that the development and institutionalization of the external dimension of the EU's immigration policy is mainly security oriented, Euro-centric, and carries negative externalities for transit countries. Regarding one of the main research questions of the study, the main driving factors behind the EU's attempts to develop an external dimension to its immigration and asylum policy were identified as (a) sustaining the European area of freedom, security and justice (EAFSJ), (b) ensuring internal security by combating external security challenges at the EU level in cooperation with third countries, (c) developing a global approach to migration and mobility (GAMM) by fostering the developmental aspects of immigration. Apart from these reasons, the study also concluded that a "remote-control" perspective prevails over "root-cause" in explaining the main motives behind the development of EU policy externalization in immigration. This conclusion was also supported by the classification of policy instruments proposed by this study. The study suggested this categorization by observing the central issues that are most frequently prioritized in the EU's initiatives for developing cooperation with third countries concerning the management of migration flows. The table below matches the reasons, approaches and instruments to clearly support the main conclusion, which demonstrates the dominance of the "remote control" approach and security motivations for conceptualizing the external dimension of EU immigration policy.

**Table 6.1 Conceptualization of the External Dimension of EU Immigration Policy**

Instruments	Reason (s)			Approach
	Sustaining EAFSJ	Internal-external security nexus	GAMM	
<b>Border Management</b>	X	X		Remote- Control
<b>Mobility Partnership</b>			X	Root Cause
<b>Visa Policy</b>	X	X		Remote- Control
<b>Readmission Agreements</b>	X	X		Remote- Control
<b>Asylum Policy</b>	X	X	Partly	Remote- Control Root-Cause (to a lesser extent)

The conceptualization of the external dimension of EU immigration policy was also explored and tested through its concrete intended and unintended implications for transit non-member countries. The second main conclusion is that the EU's security oriented policy expansion attempts in migration management create negative externalities for non-EU member transit countries, which directly constrain the success and effectiveness of the Europeanization of these countries' domestic migration policies. These implications were analyzed in detail in the empirical chapters for Turkey and Morocco by benchmarking progress in policy transfer and adaptation. The case studies also demonstrated the development of deadlocks in cooperation, with an emphasis to reflect and incorporate the perceptions of third countries rather than focus on a solely EU-centered approach.

The main conclusions of the thesis confirmed the hypotheses of this study, and also contribute to the theoretical literature in general. The main findings of the empirical chapters are summarized in the following sections under three main strands of analysis: conclusions from the theoretical analysis, conclusions from the conceptual and institutional analysis, and conclusions from the comparative analysis.

## **6.1. Conclusions from the Theoretical Analysis**

The theory of international regimes, to an extent, provides a conceptual explanation for understanding why and how the EU cooperates with third parties. However, concerning the unit of analysis, as the EU differs from nation-states with its unique structure and features, the theory of international regimes is limited in its ability to provide a comprehensive framework for explaining the entire context of the EU's international cooperation and policy externalization. Taking the EU as the unit of analysis in the form of its systems of rules, an external governance approach necessitates a more institutional and structural perspective to explain the EU's performance in policy expansion towards third countries. By emphasizing the extension of internal rules and policies beyond formal membership to non-EU states, the external governance approach provides a perspective for understanding how policy expansion occurs beyond the EU's legal boundary of authority, and how it transforms the legal orders of relevant third countries. Three modes of external governance, hierarchical, network and market governance, contribute to understanding the nature of EU rule expansion and influence in third countries. While hierarchical governance provides a broad context for the analysis of "conditionality" and top-down policy transfer, "network governance" contributes to the literature of policy transfer by focusing on a bottom-up approach based on decentralized and sectorally specialized governance institutions with functional expertise. Lastly, the mechanism of market governance was studied to understand third countries' adoption of standards and compatibility with the EU, both in exchange for access to the EU's internal market and as a consequence of competitive pressure.

This study identified that the external governance approach also has a number of shortcomings in explaining EU policy externalization as it only refers to the assessment of the legal transformation, rule transfer and rule adaptation in third countries. When it comes to explanations beyond the question of legal and institutional adaptation, external governance was found to be limited in its scope and methodology. By applying the two other theories and approaches as well, at this stage, the thesis concluded that Schimmelfennig's (2010, 2012) study on "Europeanization beyond Europe" serves as

the most relevant and comprehensive theoretical framework for analyzing EU policy externalization in the immigration field, with an emphasis not only on outcomes but also strongly on process. Moving beyond the traditional scope of Europeanization studies, which are conceptually limited to the EU's impact on its member states, the thesis demonstrated that "Europeanization beyond Europe" provides the necessary analytical tools, not only to analyze how and whether the policy expansion and change in immigration policies are achieved in non-EU member third countries, but also to examine the implications and externalities for these countries.

One of the main conclusions from this theoretical analysis is that, in externalizing the EU's immigration policy, conditionality is observed more than socialization or externalization but it is used in different meanings by the EU, irrespective of grand policy frameworks of enlargement or the ENP. The policy area of migration illustrates that the EU uses conditionality, not with the same meaning as "accession conditionality", but as "policy conditionality" towards those countries that do not have membership prospects. Thus, for these countries, signing EU readmission agreements becomes closely associated with conditionalities like visa facilitation, or greater economic and political incentives, access to EU markets, development aid, and financial and technical assistance.

The second important conclusion is that, whether the reward is membership or visa facilitation or financial and technical assistance, conditionality does not work always conventionally and effectively, particularly with regard to readmission agreements, asylum issues and visa policy. While the study reconfirmed that, in the migration policy field, the effectiveness of conditionality is strongly influenced by the size of the rewards and the degree of EU credibility, domestic adaptation costs for third countries proved to be another strong determining factor in the success of EU externalization policies. For example, analysis of readmission and asylum issues demonstrated that if domestic adaptation costs and the burden of negative externalities for non-member countries, which require substantial administrative capacity along with a relatively advanced level of economic development, are higher than the rewards, then the rational

choice of non-EU member states may render EU conditionality ineffective. Consequently, readmission and asylum issues constitute two areas where conditionality is constrained and limited in their ability to foster the Europeanization of non-member countries' migration policies.

Thirdly, the thesis demonstrated that the EU mainly uses top-down hierarchical modes of governance in implementing policy transfer and adaptation concerning migration and asylum policy, whereas it should prefer network governance as this might bring about greater policy convergence with third countries. In fact, “dependency” is one of the primary pre-conditions for a hierarchical relationship. In the migration policy field, despite the EU's dominant status in its asymmetrical relationships with third countries, there exists to an extent “reverse dependency” whereby the EU is more heavily in need of non-members' efforts to control their borders, sign readmission agreements, and prevent irregular migration than non-members are in need of EU incentives. Therefore, non-member third countries do not perceive an urgent necessity to change their policies voluntarily. Hence, rather than employing hierarchical modes of governance, which does not seem to be plausible in this context, the EU should apply network governance supported by the active participation of task-specific actors on migration issues, technical and financial assistance mechanisms in order to bring about effective policy expansion. This would also decrease the impact of negative externalities for third countries.

## **6.2. Conclusions from the Conceptual and Institutional Analysis**

The analysis of the conceptual dimension, and the institutionalization of the EU migration policy issue, which has remained as neglected in the literature as the theoretical aspect, also leads to several significant conclusions. One of the main conclusions concerning the institutionalization of the external dimension of EU immigration policy is that, since most of member states perceive the migration issue as a common external challenge, the supranationalization of the external dimension has developed faster as a “matter of common interest” than the structuring of the EU's

common immigration and asylum policy, which remains still partly intergovernmental.

Following this, the second conclusion of the analysis refers to a paradox concerning the competing competences within EU institutions rather than between EU institutions and member states. In particular, there is competition in terms of whether actions relating to the external dimension of EU immigration policies remain the remit of European External Service Action or Justice and Home Affairs. Interviews conducted for this study with European Commission officials also revealed that confusion over pillarization of the external dimension is a contested ongoing issue.

Thirdly, this study showed that the development of this institutionalization process is shaped around two main central domains: preventing and tackling irregular migration with an emphasis on the securitization of migration, and fostering legal migration to the EU with a focus on the developmental aspect of migration. This argument also directly supports the conclusion that “remote-control” and “root-cause” are the two main approaches dominating the institutionalization of EU immigration and asylum policy externalization. In relation to this third conclusion, the thesis proposed a classification of policy instruments and action areas to apply to the case studies in order to benchmark the success of the Europeanization of non-member countries’ immigration policies. These indicators were identified as harmonization of legal and institutional frameworks, border management, visa policy, mobility partnerships, EU readmission agreement, and asylum policy.

Fourthly, the study of these indicators also reconfirmed that the issues of legal migration and development lag behind, and that in practice the securitization of migration dominates the external dimension of the EU’s immigration policy. The study found that border management, visa policy, readmission agreements and asylum areas all served the security concerns of the EU, as non-member third countries were expected to increase their border controls, tighten visa requirements, sign readmission agreements, combat irregular migration, or undertake responsibility for determining refugee status. In contrast, the actual implementation and effectiveness of mobility partnerships lagged far

behind their intended scope and results, while technical and financial aid mechanisms were observed to be implemented more to serve the security driven policy aims of the EU than to foster development in, and legal migration from the relevant third countries.

### **6.3. Conclusions from the Comparative Analysis of Turkey and Morocco**

The two empirical cases explored in this thesis, Turkey and Morocco, provided unique conditions to test the theoretical and conceptual aspects of the externalization of the EU's migration policy towards non-member transit countries. Turkey, as a candidate country in the grand policy framework of enlargement on one hand, and Morocco, without any membership prospects in the ENP on the other hand, were analyzed as two cases situated within different institutional mechanisms. Nevertheless, the two cases produced similar findings that contribute not only to the conceptualization of the subject matter of this thesis but also to the theoretical debate over migration policy in general.

Before engaging in the comparative analysis, the thesis first analyzed conceptualizations of "transit country" to confirm that it is not a new but rather a politically re-constructed concept, which is used by the EU to label and incorporate neighboring countries into its immigration and asylum policies. In this context, "transit migration" is defined as a process rather than a separate category of migrants, while the EU mostly uses the term "irregular transit migrants" to refer to a security challenge. Accordingly, mainly during the 2000s, Turkey and Morocco became rhetorically repositioned as two significant transit countries, although this was not in fact a new development, lying on major irregular migration routes, and thus attracting the EU's close attention in relation to external cooperation on managing migration flows.

One of the main conclusions of the comparative analysis is that both cases verified that increasing border controls and a securitized EU immigration policy have strongly transformed Turkey and Morocco from being "emigration" to "transit" or even "destination" countries. This unintended external effect of EU immigration policy has left these countries alone to deal with the increasing number of immigrants stranded in

their territories by also increasing the risk of their becoming “migration hubs” or “buffer zones”. Both countries, Turkey as the gate for irregular migrants mainly from Middle East, and Morocco on the transit route for irregular African migrants, have become two attractive countries for migrants heading for Europe, since both offer relatively better economic and political conditions than either the migrants’ home countries or other countries in their region.

The second major finding of this section is that, irrespective of membership prospects, the EU uses mostly conditionality both for Turkey and Morocco, but with different meanings that have created noteworthy implications and challenges specific to each case country. It seems that, although the political conditionality of eventual membership is the EU’s most effective tool for inducing mainly legal-institutional change, the Europeanization of Turkish immigration and asylum policy constitutes a challenge. In the Turkish case, hierarchical modes of governance and conditionality proved ineffective for achieving the Europeanization of Turkey’s immigration and asylum policy, which has instead been strongly affected by the decreasing credibility and the prevalence of ambivalent attitudes of the EU towards Turkey’s accession. The foreseen high domestic political costs of compliance constitute another major obstacle on Turkey’s path to Europeanize its immigration policy. Needless to say, it is particularly difficult to forge policy change and consensus in the field of migration as it has an extremely sensitive nature. For example, Turkey’s long and porous land and sea borders, adjacent to many geopolitically sensitive areas, makes the control of the borders in line with European standards very difficult and costly for Turkey. Furthermore, changing priorities of Turkish foreign policy towards its neighbours, increasing conflicts in Syria, and the fight against terrorism across its south-eastern borders all constitute significant challenges for the progress in, and the likelihood of the success of the Europeanization of Turkish immigration and asylum policy.

The third finding is that, although conditionality seems to have encouraged some reforms, it has failed to lead to the lifting of Turkey’s “geographical limitation” regarding immigration, to adjust Turkey’s visa policy to the standards of the Schengen

visa regime, to result in adoption of the Schengen negative list, to abolishing Turkey's "sticker visa" procedure, to any increase in border controls, or to the establishment of a dedicated border agency. Interestingly, rather than conditionality, current practice indicates that socialization has been the prevailing mechanism in generating those reforms that have been implemented in Turkish immigration and asylum policy in recent years. For example, the draft law on "Foreigners and International Protection" with its new human rights emphasis is more the result of the socialization process stemming from Turkey's own needs, from a policy learning process and its own will, rather than from the constraints of EU accession conditionality.

In contrast to Turkey, and although it has no EU membership prospects, this study found that Morocco has harmonized its legal and institutional framework in line with the EU to a greater extent than Turkey. In Morocco's case, the EU has used conditionality in for the form of promising to grant Morocco "advanced status", economic incentives, and technical and financial aid through projects and programmes, instead of the reward of eventual EU membership. Although the degree of fit between the domestic legal-institutional settings of Morocco, which is a constitutional monarchy, and EU norms and standards is relatively low, Morocco has advanced by adopting a new national migration law, intensified its operations in combating irregular migration and human trafficking, and ratified several international agreements. Thus, rather than the socialization that one might expect to serve as the Europeanization mechanism in the ENP, this study concluded that conditionality has dominated policy expansion in the contested field of migration in Morocco. It should also be underlined that the bilateral cooperation of Morocco, chiefly with Spain and France, has been a very influential and pushing factor for Morocco's changing migration management. The bilateral cooperation without no doubt have strongly influenced the Moroccan government to redefine its policy making on migration management in line with the EU demands

However, concerning readmission, asylum and to an extent visa policy, in Morocco's case, this study found that conditionality has again failed to overcome these important challenges to Europeanization. This conclusion also provides insights for the theoretical

debate as well. That is, a hierarchical relation exists due to Morocco's significant trade dependency on the EU, in which Morocco accepts the EU's legitimacy. However, the high domestic adoption costs and the weak incentives offered to Morocco in the current hierarchical, top-down framework, particularly over signing the EU readmission agreement and the harmonization of asylum policy, constitute two challenging areas where conditionality has not induced policy expansion in immigration issues for Morocco. However, although there are similarities with the Turkish case in terms of deadlocks in cooperation in migration policy, it is interesting to witness the paradox that Morocco is more closely associated with the EU in harmonizing its immigration policy than Turkey, which has chosen to pursue exclusively the all-or-nothing logic of accession. Indeed, when the implementation aspect of policy expansion is analysed, both countries seem to perform not very effectively regarding their actual implementation of expected legal and institutional changes. Only in the field of border controls, is Morocco observed to have implemented the EU's strict rules, which has been much appreciated by the EU in terms of "good cooperation".

The final conclusion from this section is that both cases demonstrated some similar negative externalities created for them as a result of the intended and unintended impacts of the externalisation of EU immigration and asylum policy. Firstly, recently imposed limits concerning entry to "Fortress Europe" through increased border controls and stricter visa policies have not decreased but increased the irregular migration towards Europe. As a result, Turkey and Morocco, which are both located at the gates of the EU as two important countries on irregular migration routes and exposed to refugee flows, are at great risk of becoming "buffer zones" for trapped or stranded migrants and asylum seekers in their territories. Additionally, the EU's demands from Turkey and Morocco to adopt a return policy, to become a "safe third country" or the "first country of asylum", and to sign EU readmission agreements have all increased the risk of the two countries becoming a "dumping ground" for the EU's unwanted immigrants, asylum seekers and refugees. Furthermore, both countries' relations with their neighbours in the region may worsen as result of the Europeanization of their domestic migration policies. While Morocco does not want to be perceived as the "guardians" or "police of the EU" and

harm its relations with Sub-Saharan African countries, Turkey is keen to safeguard its benefits from its economic, political and cultural relations with its neighbours. Signing any EU readmission agreement thus constitutes another negative externality that will impose a huge social, political and financial burden on Turkey and Morocco, especially concerning the return of third country nationals.

The comparative analysis of this study indicates that the debate over the EU's externalisation of its immigration policy is more likely to be perceived as shifting the burden of keeping unwanted migrants onto non-member transit countries, rather than sharing the burden with them. Both cases considered here have charted similar negative externalities that have also impeded further cooperation and an effective harmonization process. Furthermore, this study's analysis of EU policy instruments used in the case studies also confirmed that they primarily serve the EU's interests and objectives in migration management. This leads this thesis to question not only the Euro-centric cooperation framework but also to reveal the perceptions of third countries by clearly highlighting the negative impacts for them of EU policy externalisation.

To sum up, the table below presents and relates all the conclusions derived from the three strands of analysis considered above:

**Table 6.2 A Comparison of the external dimension of EU Immigration Policy in Turkey and Morocco**

	<b>TURKEY</b>	<b>MOROCCO</b>
<b>Grand/Institutional Policy Framework</b>	Enlargement	European Neighbourhood Policy
<b>Mechanisms of Europeanization used by the EU</b>	Accession Conditionality and/or Policy Conditionality	Policy Conditionality Economic Incentives
<b>Effective Mechanisms of Europeanization</b>	Socialization	Policy Conditionality Economic Incentives
<b>Successful Policy Externalisation</b>	Harmonization of Legal and Institutional Framework (partly)	Border Controls  Harmonization of Legal and Institutional Framework

**Table 6.2 (continued)**

<b>Constrained areas for policy externalisation</b>	Asylum Readmission Border Controls Visa Policy	Asylum Readmission Visa Policy (partly)
<b>Negative Externalities</b>	Damaging economic, social and cultural relations with the neighbours (Visa Policy and Border Management)  Risk of becoming buffer zone for irregular migrants and asylum seekers  Huge domestic adaptation costs of readmission agreement	Increasing number of trapped Sub-Saharan migrants  Economic and social integration problems  Risk of becoming buffer zone for irregular migrants and asylum seekers  Worsening relations with regional neighbors  Huge domestic adaptation costs of readmission agreement  Human rights abuses

#### **6.4. Future Prospects**

The field of international migration is inherently characterized by intensive interdependence requiring international cooperation between the countries of origin, transit and destination. Accordingly, the intensifying attempts of the EU to develop an explicit salient external dimension to its migration policy seems likely to further evolve as the EU is still a major destination for voluntary and forced migrants. The new Communication of the European Commission on Migration also supports this view by stating: “the EU should further strengthen its external migration policy, for which the Global Approach to Migration and Mobility provides the overarching framework” (European Commission, 2012/250:17).

Concerning future prospects, the domination of EU security concerns over the developmental aspects of migration and its root cause approach both highlight the need

to revise the EU's current cooperation framework with non-member transit countries towards a more balanced, coherent and comprehensive policy. In fact, the Communication on migration (2012) addresses this need by putting a special emphasis on ensuring and encouraging legal migration and boosting development oriented initiatives by also calling for effectively managed external EU borders that sustain appropriate legal channels for entry (European Commission, 2012/250: 9). Moreover, facilitating legal migration to Europe, whether circular, temporary or long-term, and also supporting development and investment in relevant home countries, would more likely contribute to curb irregular migration as a preventive strategy than current policies.

Secondly, the case studies demonstrated that, in order to achieve effective policy expansion towards third countries, the currently Euro-centric approach to the externalization of EU immigration policy should be modified to involve the perceptions and mutual understandings of third countries, and to be based on the underlying needs and expectations of both sides. At this stage, network governance as a mode of external governance might bring about more effective Europeanization in the migration field than the imposition of conditionality employed under grand institutional frameworks. This can provide a better ground to make significant progress towards overcoming the contested issues of readmission or asylum policy, since network governance ensures a voluntary cooperation framework where the perceptions, interests and expectations of third countries are represented, rather than a Euro-centric and hierarchical approach.

Thirdly, complementing the network governance context, task specific policy actors supported by technical, administrative and financial assistance mechanisms might facilitate the Europeanization of migration policies in transit countries by better serving the needs and expectations of these countries. Although FRONTEX is criticized by some circles, this study concludes that it might facilitate policy expansion in border management issues through specific operations. For example, twinning projects and special technical assistance programmes, applied both in Turkey and Morocco, have already demonstrated that it is possible to make it easier for third countries to take

further steps towards harmonization with EU rules and norms in the migration policy field.

Overall, this thesis is an attempt to contribute to the hitherto overlooked literature on theorizing and conceptualizing the external dimension of EU immigration policy, which needs further research employing more scientific and comparative methodologies, with a focus on understanding its implications beyond Europe. Moreover, the specific comparison of Turkey and Morocco in the specific field of migration demonstrated that EU's enlargement and neighbourhood policy are converging and they do not differ a lot in terms of the used mechanisms and induced impacts. This fact might be reasoned from studying the unique cases of Turkey in enlargement policy and Morocco in ENP with its "advanced status". Studying migration as a critical and unique policy field might also be another reason of this convergence. EU's treatment to Turkey and Morocco within a more securitized context and with a focus on the prioritized issues perceived as security challenges by the EU might also explain the convergence of enlargement and ENP specifically under the securitization umbrella. All these facts highlight the need for further study on this topic. In this context, the thesis provides an empirical study that first identified appropriate conceptual and theoretical argument focusing on "Europeanization beyond Europe" before testing them on the two cases of Turkey and Morocco by applying the same indicators in a comparative analysis. This approach provided several significant findings, although the literature is still incomplete and requiring further empirical analysis focusing on other policy fields beyond migration, and also other countries, in order to lead to a broader understanding of the issues considered in this thesis.

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## INTERVIEWS and SPEECHES

Attila Toros, Head of the Migration and Asylum Bureau, Turkish Ministry of Interior. *Academic Workshop* on Migration organized by the Ministry of Interior Bureau Responsible for the Development and Implementation of Legislation on Asylum, Migration and Administrative Capacity, Ankara, 04.04.2012

Bernard Brunet, (responsible for Morocco), Cabinet Member of Stefan Füle, *Interview*, Brussels, 07.12.2010

Christos Makridis, Deputy Head of Turkey Team, European Commission Enlargement Unit B, *Interview*, Brussels, 6.9.2011

Engin Yürür, Director for Migration, Asylum and Visas of Consular Affairs of the Turkish Ministry of Foreign Affairs, *Academic Workshop* on Migration organized by the Ministry of Interior Bureau Responsible for the Development and Implementation of Legislation on Asylum, Migration and Administrative Capacity, Ankara, 04.04.2012

Kristina Lindhal (responsible for legal migration and common asylum policy), Cabinet Member of European Commissioner for Home Affairs, Cecilia Malmström. *Interview*, Brussels, 5.9.2011.

Laurent Muschel, Deputy Head of Cabinet to Cecilia Malmström (Commissioner Home Affairs). *Interview*, Brussels, 6.9.2011

Metin Çorabatır, External Affairs/Public Information Officer at United Nations High Commissioner for Refugees in Turkey, *Speech*, Izmir, 2.12.2011

Michael Mann, Chief Spokesperson to Catherine Ashton (High Representative of the Union for Foreign Affairs & Security Policy/Vice-President of the European Commission). *Interview*, Brussels, 6.9.2011

Officials from Izmir Directorate General of Security, Sea Police, Izmir, January 2010.

Peter Bosch, (responsible for irregular migration, readmission, Schengen Border Code, migration and development), Cabinet Member of the European Commissioner for Home Affairs. *Speech*, Florence, 22.06.2009

## APPENDIX A

### CURRICULUM VITAE

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#### EDUCATION

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MSc	Middle East Technical University, European Studies	2004
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High School	Bornova Anatolian High School, İzmir	1997

#### WORK EXPERIENCE

Year	Place	Enrollment
2005- Present	Yaşar University	Director, European Union Center
2002-2005	METU, Center for European Studies	Research Assistant
1998-2000	Turkish Daily News	Part-time correspondent

#### LANGUAGES

Turkish (native)  
English (advanced) CEF Level; C2  
Italian (intermediate) Graduation Certificate from Center of Italian Culture, CEF Level;  
B1  
German (intermediate) CEF Level; B1

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Articles published on Turkish Daily News (1998-2000) and ABHABER ([www.abhaber.com](http://www.abhaber.com))

## **ACADEMIC AWARDS**

Research Fellow; University of California Berkeley, 2009, USA

Research Fellow and Project Assistant; University of Wageningen, 2004, Netherlands

## **MAJOR AREAS OF INTERESTS**

EU Migration and Neighbourhood Policy, EU-Turkey Relations, EU Enlargement, EU External relations, Europeanization, EU-Morocco Relations

Project Management (Project Cycle Management Trainer), EU Education and Youth Programmes, Bologna Process

**EU Project Management Experience of 10 years in the following programmes:** Life Long Learning (Erasmus, LDV, Grundtvig), Youth, Jean Monnet, 6th and 7th Framework Programme, Transversal Programme, Thematic Networks

## **APPENDIX B**

### **TURKISH SUMMARY**

#### **AVRUPA BİRLİĞİ GÖÇ POLİTİKASININ DIŞ BOYUTU VE TRANSİT ÜLKELER ÜZERİNDEKİ UYGULAMALARI: TÜRKİYE VE FAS KARŞILAŞTIRMASI**

Bu tez, Avrupa Birliği'nin (AB) göç politikasının dış boyutunu ve bu dışsallaştırmanın transit göç ülkeleri üzerindeki etki ve sonuçlarını Türkiye ve Fas'ı karşılaştırarak analiz etmeyi amaçlamaktadır. Bu çerçevede, AB'nin göç politikasını dışsallaştırmasının gelişim ve kurumsallaşma süreci tarihsel ve teorik açıdan irdelenmektedir. Tez, "AB sınırları ötesinde Avrupalılaşma" ve "dışsal yönetim" kuramsal tartışmaları kapsamında, AB'nin göç politikasını, AB üyesi olmayan transit göç ülkeleri üzerinde ne derece başarılı uygulayabildiğini ve bu politikanın transit ülkeler üzerinde hangi etkileri yarattığını incelemektedir. Bu bağlamda, Türkiye ve Fas'ın göç politikalarının Avrupalılaşma sürecine ilişkin başarıları ve kısıtları, her iki ülkenin yasal mevzuatının AB ile uyumlaştırılması, sınır yönetimi, vize politikaları, geri kabul anlaşması ve iltica politikası kapsamında karşılaştırmalı olarak analiz edilmiştir. Çalışmada, AB'nin genişleme politikasında yer alan ve aday ülke olan Türkiye ile AB'nin komşuluk politikasında yer alan ve üyelik perspektifi olmayan Fas'ın karşılaştırması, iki ülkenin gösterdikleri benzer etki ve sonuçlarla AB'nin göç politikasının dış boyutunun kavramsallaştırmasına katkı sağlamaktadır. Bunun yanı sıra, transit ülkeler üzerinde gözlemlenen olumsuz etkiler bu dışsallaştırmanın kısıtlarını açıklama açısından da ışık tutmaktadır.

Bu tez altı bölümden oluşmaktadır: Giriş bölümünden sonra, ikinci bölümde tezin kuramsal ve kavramsal çerçevesi temelde "Avrupa sınırları ötesinde Avrupalılaşma" tartışması etrafında incelenmiştir. Üçüncü bölümde ise AB'nin göç politikasının dış

boyutunun gelişimi ve kurumsallaşması, tezin literature orjinal katkısı olan beş farklı alanda analiz edilmiştir: (i) Sınır yönetimi, (ii) hareketlilik ortaklığı, (iii) vize politikaları, (iv) geri kabul anlaşması, (v) iltica politikaları kapsamında göç politikasının dışsallaştırılması gösterdiği gelişim ve kısıtlar kapsamında irdelenmiştir. Bu bölümde yapılan analiz, AB'nin göç politikasını dışsallaştırmada öne sürdüğü “yük paylaşımı” tartışmasının aslında uygulamada bu “yükün özellikle transit ülkeler üzerine kaydırılması” şeklinde yorumlanabileceğini göstermektedir. Dördüncü bölümde ise bu dışsallaştırma politikasının AB ile tam üyelik müzakerelerini yürüten ve genişleme politikasında yer alan Türkiye üzerindeki etkileri incelenmiştir. Türkiye’de göçe yönelik politikaların Avrupalılaştırma süreci analiz edilmeden önce, “transit göç ülkesi” kavramı irdelenmiş, Türkiye’nin göç deneyimi bu kavramsallaştırma kapsamında tarihsel süreç içerisinde değerlendirilmiştir. Türkiye’nin “kaynak ülke” iken “transit ülke” ve “göç alan hedef ülke”ye dönüşümü, Avrupa göç rejimi çerçevesinde tartışılmıştır. Bu kavramsal analiz sonrasında, AB’nin göç politikasının dış boyutunun Türkiye üzerindeki etkileri; mevzuat uyumu, sınır yönetimi, vize politikaları, AB Geri Kabul Anlaşması ve iltica politikaları kapsamında incelenmiştir. Bu işbirliğinin kısıtları, göç politikaları özelinde Avrupalılaştırma sürecinin tıkanıdığı noktalar ve genişleme politikasının” koşulluluk” ilkesi kapsamında tartışılmıştır. Beşinci bölümde ise, AB’nin komşuluk politikası kapsamında Fas örneği, Türkiye çalışması için uygulanan aynı göstergeler ve politika araçları kapsamında AB ve Fas arasındaki ilişkilerinin dinamiklerine vurgu yapılarak çalışılmıştır. Her iki ülke örneği için sadece belirli alanlarda işbirliği amaçlı faaliyet gösteren kurumların, AB’nin sağladığı mali, teknik ve idari destek programlarının, göç politikalarının Avrupalılaştırması ve AB’nin göç politikasının Türkiye ve Fas özelinde etkilerine yönelik katkısı incelenmiştir. Bu kapsamda, Türkiye’nin tam üyelik müzakerelerini sürdüren bir ülke olarak, Fas’ın ise üyelik perspektifi bulunmayan bir ülke olarak göç politikaları özelinde benzer dışsal olumsuz etkilere maruz kaldığı gözlemlenmiştir. Tezin sonuç bölümünde ise kurumsal, kavramsal ve kurumsal analizden çıkan sonuçların yanı sıra, Türkiye ve Fas örnekleri karşılaştırmalı bir analiz çerçevesinde sunularak konunun gelecekteki gelişimine yönelik bir takım çıkarımlar vurgulanmıştır.

Bu tezin vardığı en temel sonuçlardan biri, AB'nin kendi söyleminin aksine, uygulamaya ve sürecin gelişimine bakıldığında AB'nin göç politikasının dış boyutunun genelde “güvenlik” anlayışı çerçevesinde gelişip şekillendiği, AB'nin bu alanda daha çok tek taraflı bir yaklaşım sergilediği ve uyguladığı politikaların transit göç ülkeleri üzerinde olumsuz bir takım etkiler yarattığıdır. Bu kapsamda, AB'nin göç politikasını dışsallaştırması üç temel nedene dayandırılabilir; (a) Avrupa adalet, özgürlük ve güvenlik alanının sürdürülebilirliğini sağlamak, (b) dış güvenlik tehditlerine karşı AB ve üçüncü ülkeler arasında işbirliği yaparak Avrupa'nın iç güvenlik alanını korumak, (c) göçün kalkınma boyutunu güçlendirerek göç ve hareketliliğe küresel bir yaklaşım geliştirmek. Ancak bu nedenler de detaylı incelendiğinde, AB'nin göç politikasının göçe sebebiyet veren temel nedenleri ortadan kaldırmayı hedef alan bir yaklaşım yerine daha çok güvenlik ekseninde, “uzaktan-kontrol” yaklaşımının hakim olduğu bir anlayış geliştiği görülmektedir.

Tezin diğer çıkarımları, kuramsal, kavramsal ve karşılaştırmalı örnek ülke analizi kapsamında üç temel başlık altında özetlenebilir. Kuramsal çıkarımlar bağlamında, uluslararası rejim teorisi AB'nin üçüncü ülkelerle uluslararası işbirliğini hangi kapsamda ve nasıl geliştirdiğini açıklamaya yönelik önemli katkılar sağlasa da, AB'nin ulus-devletten farklı kendi özgü yapısı nedeniyle, politikalarını üçüncü ülkelere dışsallaştırmasını ve AB'nin dış ilişkilerini açıklayabilmek için kapsamlı bir çerçeve sunmada yetersiz kalmaktadır. “Dışsal yönetim” yaklaşımı ise, AB'nin yasal mevzuatının sınırları ötesindeki üye olmayan üçüncü ülkelere doğru nasıl genişlediğini, bunun ulusal politikaların değişimini nasıl etkilediğini daha çok kurumsal ve yapısal bir çerçevede incelemektedir. Bu kapsamda, “hiyerarşik yönetim”, özellikle üyeliğe dayalı “koşulluluk” ilkesi kapsamında bir bakış açısı sunarken, “ağ yönetimi”, hiyerarşik yönetimin tersine tabandan yukarıya doğru merkezi olmayan ve sürecin çok taraflı işlevsel aktörlerini içeren bir bağlamda konuyu irdelemektedir. Ancak, “dışsal yönetim” görüşü önemli katkılar sağlasa da, konuyu daha çok mevzuta ilişkin ve kurumsal bir kapsamda değerlendirdiği için, AB'nin göç politikasını dışsallaştırmasını açıklamada yetersiz kalmaktadır. Daha çok Schimmelfennig tarafından çalışılan “Avrupa sınırları ötesinde Avrupalılaşıma” (2010, 2012) yaklaşımı ise sadece çıktılara

değil sürece de odaklı bir bakış açısıyla konuya en kapsamlı kurumsal ve kavramsal çerçeveyi sunmaktadır.

Schimmelfenning'in bu yaklaşıma özgü sunduğu Avrupalılaştırma mekanizmaları kapsamında değerlendirildiğinde, AB'nin göç politikasını AB üyesi olmayan ülkelere karşı dışsallaştırmada “koşulluluk” ilkesini üyelik perspektifi olsun veya olmasın, “sosyalleşme”ye göre daha çok kullandığı gözlemlenmektedir. AB'nin genişleme ve komşuluk politikasının, göç alanı özelinde Türkiye ve Fas karşılaştırması kapsamında birbirine yakınlaştığı, “koşulluluk” ilkesinin ise birliğe tam üyelik haricinde “vize kolaylığı” ve/veya ekonomik, mali, teknik destek ve teşvik mekanizmaları gibi farklı politika alanlarına yönelik olarak, farklı bir kapsamda da kullanıldığı görülmektedir. Bir diğer önemli kurumsal çıkarım ise, koşulluluğun özellikle AB ile geri kabul anlaşmasının imzalanması, vize politikaları ve iltica politikasına yönelik konularda etkili çalışmadığı ve bu alanlarda beklenen değişimi/dönüşümü sağlayamadığıdır. Göç alanı özelinde koşulluluk ilkesinin etkili çalışabilmesinde ödül mekanizmasının ve üyelik sürecinin güvenilirliğinin yanı sıra, Avrupalılaştırmanın getirdiği uyum maliyetinin yüksekliği ve transit ülkeler üzerinde oluşan dışsallaştırmanın getirdiği olumsuz etki ve yüklerin oldukça belirleyici ve önemli bir rolü vardır. Bu kapsamda, göç alanında AB'nin sıkça kullandığı hiyerarşik yönetim modeli yerine, süreçteki diğer tüm aktörleri de dahil eden ve esnek bir yapılanma içinde politikaların transfer ve değişimini daha etkin sağlayabilecek “ağ yönetim” modeli önerilmektedir. Özellikle yasa dışı göçle mücadele, geri kabul anlaşması ve iltica konularında, transit ülkelerin AB'ye değil, tersine AB'nin transit ülkelerin işbirliğine daha çok ihtiyaç duyması, “tersine bağımlılık” durumunun varlığına işaret etmektedir. Bu da hiyerarşik modelden çok “ağ yönetim” modelinin tercih edilmesi gerektiğini daha güçlü kılmaktadır.

AB'nin göç politikasının süregelen ve devam etmekte olan kurumsal gelişimi ve konunun kavramsallaştırmasına yönelik çıkarımlardan ilki, AB'nin ortak göç politikası kısmen ulusüstü kısmen hükümetlerarası bir yaklaşım çerçevesinde oldukça yavaş bir süreçte gelişirken, göç politikasının dışsallaştırılmasının uluslarüstü bir yapılanmada ortak güvenlik tehditleri algısı nedeniyle AB düzeyinde daha hızlı geliştiği gözlemdir. İkinci çıkarım ise, göç politikasının dış boyuntunda AB kurumlarının yetkilerine

ilişkindir. Bu anlamda, Avrupa Dış Eylem Servisi ve Avrupa Komisyonu Adalet ve İçişleri birimleri arasında hangi kurumun hangi alanlarda yetkinlik ve sorumluluk sahibi olduğu çekişmeli bir konudur.

Sürecin kurumsallaşmasına ilişkin bir diğer çıkarım ise, AB'nin göç politikasını dışsallaştırma uygulamalarına bakıldığında, göç kaynağı ülkelerde göçe neden olan sorunların ortadan kaldırılması ve kalkınmayı destekleyen bir yaklaşım yerine, daha çok güvenlik eksenli bir yaklaşım sergilediği gözlemdir. Tezin orjinal katkısı olan göç politikasının dışsallaştırma araçları da bu bulguyu desteklemektedir. Yasal ve kurumsal çerçevenin AB mevzuatı ile uyumlaştırılması, sınır yönetimi, vize politikaları, hareketlilik ortaklıkları, AB geri kabul anlaşması ve iltica politikaları şeklinde belirlenen bu araçlar, AB'nin göç politikasını üçüncü ülkelere nasıl dışsallaştırdığını açıklayabilmek amacıyla gösterge niteliğinde Türkiye ve Fas örnekleri üzerinde karşılaştırmalı olarak incelenmiştir.

Türkiye ve Fas'ın karşılaştırmalı analizi ise, konunun kurumsal ve kavramsal tartışmasına önemli katkılar sağlamıştır. Genişleme politikasının bir parçası olan Türkiye ve komşuluk politikasının bir parçası olan Fas, AB'nin iki büyük farklı politika çatısı altında değerlendirilmelerine rağmen, göç alanı özelinde benzer etki ve sonuçların gözlemlendiği transit ülke örnekleri olarak ortaya çıkmıştır. AB'nin göç politikalarının güvenikleştirme ekseninde gelişmesi, dolayısı ile AB'nin dış sınırlarında artan güvenlik kontrolleri ve sertleşen vize politikaları, Türkiye ve Fas gibi göç yolları üzerindeki ülkelerin “transit” ve “hedef ülke”ye dönüşmelerini hızlandırmakta ve bu ülkeler üzerinde yasa dışı göçle mücadele konusunda büyük yükler ve baskılar oluşturmaktadır. AB sınırlarından geçiş yapamayan birçok göçmen Türkiye ve Fas'ta sıkışıp kaldıkları için çoğunlukla kaçak şekilde ve çok zor şartlar altında yaşamaya devam etmeye çalışmaktadır. AB'nin göç politikasının dış etkileri neticesinde, Orta Asya ve Orta Doğuda'dan Avrupa'ya yönelen göç yolu üzerindeki Türkiye ve Kuzey Afrika ve Sahara-altı bölgesinden gelen Afrikalı göçmenler için Avrupa'ya geçiş kapısı olarak görülen Fas, “kaçak göçmen deposu” veya “tampon bölge” olma riski taşımaktadır.

İki ülkenin karşılaştırması, AB'nin göç politikasını dışsallaştırmada üyelik perspektifinden bağımsız olarak “koşulluluk” ilkesini farklı şekillerde kullandığını ancak transit ülkelerin göç politikalarında istediği değişim ve dönüşümü yeterince sağlayamadığını göstermiştir. Türkiye örneğinde mevzuat uyumu oldukça yavaş ve çekişmeli gelişirken, “koşulluluk” yaklaşımı Türkiye'nin mültecilerin hukuki statüsüne ilişkin Cenevre Sözleşmesi'ne koyduğu “coğrafi çekinceyi” kaldırmasını sağlayamamıştır. Aynı şekilde, entegre sınır yönetimi, AB'nin negatif vize listesinde bulunan ülkelere karşı Türkiye'nin vize politikasını sıkılaştırması talebi, geri kabul anlaşmasının imzalanarak uygulamaya geçebilmesi ve mültecilerin statüsüne ilişkin konularda “koşulluluk” mekanizmasının gerek üyelik sürecindeki belirsizlik ve güvensizlikler, gerekse AB'nin beklentilerinin Türkiye'ye yüksek maliyet getirecek olmasından dolayı etkin işleyemediği görülmektedir. Kaldı ki, jeopolitik konumu ve coğrafi özellikleri nedeniyle kontrolü oldukça zor dış sınırlara sahip Türkiye, komşuluk ilişkileri ve kendi siyasi, ekonomik çıkarları nedeniyle vize politikalarında da liberal bir yaklaşım sergileyerek AB'nin beklentisinin tersine birçok ülkeye vize muafiyeti sağlamıştır. Bu kapsamda değerlendirildiğinde, Türkiye'nin göç ve iltica politikalarındaki AB ile uyumlu politika değişikliklerinin ise, “koşulluluk” mekanizmasından çok “sosyalleşme” mekanizmasına göre geliştiği gözlemlenmiştir. Türkiye, “AB böyle istiyor”dan çok, uzun yıllardır Avrupa ve daha çok UNHCR gibi uluslararası kuruluşlarla olan ilişkisi ve uygulama tecrübesinin bir sonucu olarak, kendi ulusal politikalarında bir takım olumlu değişimleri gerçekleştirmiştir. Türkiye Büyük Millet Meclisi'ne onay için sunulan “Yabancılar ve Uluslararası Koruma Kanunu”nun içeriği bu bulguyu destekleyen iyi bir örnektir.

Üyelik perspektifi olmayan ve ayrıca anayasal monarşi ile yönetilen bir ülke olmasına rağmen Fas, göç alanında yasal mevzuatını ve kurumsal dönüşümü Avrupalılaştırma süreci kapsamında Türkiye'ye göre göreceli olarak daha başarılı gerçekleştirmiştir. Bu çıkarımda, Fas ve AB arasındaki tarihsel ilişkiler, Fas'ın İspanya ve Fransa ile olan yakın ikili ilişkileri, AB'nin 2008'de Fas'a verdiği “ileri statü”, Fas ve AB arasındaki ekonomik ve ticari ilişkiler önemli belirleyici faktörlerdir. Bu bağlamda, Fas örneğinde “koşulluluğun” ödül olarak üyelik yerine “ileri statü”, ekonomik teşvikler, teknik ve

mali destek programları kapsamında kullanıldığı görülmektedir. Dolayısı ile göç politikaları kapsamında komşuluk politikasında öngörülen sosyalleşme yerine, Fas örneğinde AB'nin daha çok "koşulluluk" mekanizmasını kullandığı gözlemlenmiştir. Ancak, Türkiye örneğinde de olduğu gibi geri kabul anlaşması, vize ve iltica politikaları alanında "koşulluluk" çalışmamakta ve Fas'ın göç politikalarının Avrupalılaşmasını sağlayamamaktadır. Bunun yanı sıra her iki ülke örneği de AB'nin göç politikasının dış boyutunun transit ülkeler üzerinde olumsuz dışsal etkiler yarattığını göstermiştir. Her iki ülkenin de Avrupa'nın istemediği göçmen, sığınmacı ve mültecilerin sıkışıp kaldığı veya geri gönderildiği "göçmen deposu" haline gelme riski yüksektir. Ayrıca AB'nin vize politikaları alanında beklediği değişiklikler de Türkiye ve Fas'ın siyasi, ekonomik ve kültürel anlamda komşuluk ilişkilerine zarar vereceği için olumsuz bir dışsal etki olarak görülmekte ve bu alanda Avrupalılaşma süreci ilerlememektedir. Son olarak geri kabul anlaşmasının uygulanması da, sosyal, siyasi ve mali olarak getireceği büyük yük nedeniyle AB'nin beklediği işbirliğini kısıtlayan, olumsuz dışsal etkilerden biridir.

Bu analizlerden çıkan yorumlara ve sonuçlara bakıldığında, AB'nin göç politikasının dış boyutunun gelişimine yönelik bir takım önerilerde bulunulabilir: Bu önerilerin başında AB'nin göç politikasını tek taraflı değil, üçüncü ülkelerin beklenti ve dinamiklerini de göz önünde bulundurarak, güvenlik ekseninden çok kalkınma boyutunu ve yasal göçün teşvikini de söylemden öte uygulamaya yansıtılabildiği bir işbirliği çerçevesinde geliştirmesi gerektiğidir. Bir diğer öngörü ise, özellikle göç alanında, "ağ yönetişi" yaklaşımının "hiyerarşik yönetim"e ve ayrıca genişleme ve komşuluk politikaları altında kullanılan "koşulluluk" mekanizmasına göre Avrupalılaşma sürecinin daha başarılı gelişmesini sağlayacak bir model olduğudur. Bu kapsamda, göç alanında faaliyet gösteren aktörler, kurumlar ve organizasyonların yanı sıra, teknik, idari ve mali destek sağlayan programlar Avrupalılaşma sürecinin daha etkin ilerleyebilmesine önemli katkı sağlamaktadır.

Sonuç olarak bu tez, literatürde henüz çok fazla çalışılmamış olan AB'nin göç politikasının dış boyutunu kurumsal ve kavramsal olarak inceleyen kapsamlı bir çalışma sunmuştur. Bunun yanı sıra, "Avrupa sınırları ötesinde Avrupalılaşma" yaklaşımını da

göç alanı ve Türkiye-Fas karşılaştırması özelinde inceleyerek literatürdeki kuramsal tartışmalara da bir katkı sağlamıştır. Bu çalışma ve temel çıkarımları, farklı politika alanlarında, farklı ülkeler ve karşılaştırmalı analizler için kuramsal ve metodolojik bir temel oluşturabileceği gibi, göç alanında tezin konusuna ilişkin ihtiyaç duyulan farklı ve yeni akademik çalışmaların da oluşumuna ışık tutabilme potansiyeline sahiptir.



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**APPENDIX C**  
**TEZ FOTOKOPI İZİN FORMU**

**ENSTİTÜ**

- Fen Bilimleri Enstitüsü
- Sosyal Bilimler Enstitüsü
- Uygulamalı Matematik Enstitüsü
- Enformatik Enstitüsü
- Deniz Bilimleri Enstitüsü

**YAZARIN**

Soyadı : YILDIZ  
Adı : Ayselin Gözde  
Bölümü : Uluslararası İlişkiler Ana Bilim Dalı (Doktora)

**TEZİN ADI** (İngilizce) : The External Dimension of the European Union's Immigration Policy and Its Implications for Transit Countries: A Comparison of Turkey and Morocco

**TEZİN TÜRÜ** : Yüksek Lisans  Doktora

1. Tezimin tamamı dünya çapında erişime açılsın ve kaynak gösterilmek şartıyla tezimin bir kısmı veya tamamının fotokopisi alınsın.
2. Tezimin tamamı yalnızca Orta Doğu Teknik Üniversitesi kullanıcılarının erişimine açılsın. (Bu seçenekle tezinizin fotokopisi ya da elektronik kopyası Kütüphane aracılığı ile ODTÜ dışına dağıtılmayacaktır.)
3. Tezim bir (1) yıl süreyle erişime kapalı olsun. (Bu seçenekle tezinizin fotokopisi ya da elektronik kopyası Kütüphane aracılığı ile ODTÜ dışına dağıtılmayacaktır.)

Yazarın imzası .....

Tarih 05.09.2012