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EU BORDER REGIME IN CONTEXT OF LEGAL MIGRATION OF THIRD-COUNTRY NATIONALS*

In the European Union there is a regular adaptation of the principles laying down the basic standards dealing with the area of migration and asylum policy. EU migration policy regulates the migration of citizens within the multinational level and migration of third countries. The agenda of EU includes legal and illegal transboundary movements of Mediterranean area. The necessity of implementing the migration policy to the supranational level (EU) is closely related to the free movement of persons. Creating of area without borders between EU member states arose the need to establish external migration policy. While defining and developing a current European migration policy, the EU represents an increasingly important actor, which in its agenda presents broad powers of European immigration issues. EU externalise migration management and strengthen security at border crossings in the Mediterranean area.

Keywords: The European Union, legal migration, externalisation, Mediterranean area, migration and asylum policy.

Штупакова М., Янкурова А., Чайка П. Пограничный режим ЕС в контексте легальной миграции граждан третьих стран. В Европейском Союзе систематически принимаются правила, определяющие основные нормы миграционной политики и политики предоставления убежища. Миграционная политика ЕС регулирует миграцию граждан на многонациональном уровне и миграцию в рамках

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третьих стран. Программа работы ЕС включает легальное и нелегальное трансграничное перемещение на территории Средиземноморья. Необходимость применения миграционной политики на наднациональном уровне (ЕС) тесно связана со свободным передвижением людей. Созданием зоны без границ между государствами-членами ЕС возникла необходимость сформировать внешнюю миграционную политику. Так как проходит разработка и формирование настоящей европейской миграционной политики, ЕС играет все более нарастающую важную роль, которая в рамках программы работы имеет большое влияние на проблемы иммиграции в Европе. ЕС осуществляет управление миграционными процессами и укрепляет безопасность на границе на территории Средиземноморья.

Ключевые слова: Европейский Союз, легальная миграция, экстернализация, регион Средиземноморья, миграция и политика убежища.

Background. While rules for internal migration between individual Member States of the EU are guaranteed at the European level guaranteeing unlimited free movement of persons, immigration policy from countries outside the EU remains specific privilege of Member States. Migration flows from third countries differ in individual European host countries, mainly from the point of view of their size and composition due to the colonial past and previous immigration policy.

The **aim** of the research is to analyse theoretical principles and main directions of the EU border regime in context of legal migration of third-country nationals.

Materials and methods. The methodological basis of research is the system of methods of scientific cognition as a general scientific (dialectic, formal logical, analysis and synthesis, modelling) and special (historical, legal, functional and legal, etc.), that enables to achieves the goal, creates methodological basis of the article.

The results of the research. Since 1999 and after entering the Treaty of Amsterdam into force, great competences were delegated to the EU in passing regulations and directives in the area of migration. Both legislative and operative measures at the EU level were focused mainly on issues related to guarantee of safety. Agreement on administration of boundaries, visa policy, illegal migration and readmissions are precedents of joint actions of Member States. After the agreement entered into force, Member States agreed in the area of legal migration on the solution of family reunification, and defined status of long-term migrants in directives at the EU level. On the other hand, Member States hesitate to adopt common rules related to receiving migrants. Their unwillingness was manifested in refusing the discussion about proposal of the European Commission in 2001 to introduce common rules related to citizens of third countries into the area of labour market and self-employment. In the area of immigrants from third countries, Member States have right of priority in the application of their won selective and sectoral approach. Adopted uniform directives define rules for entry of students, researchers and highly qualified migrants [1].

After the Lisbon Agreement entered into force, new opportunities and perspectives were opened in the area of labour migration in the EU, above all in issues of receiving migrants. The agreement announced the creation of the Common immigration policy of the EU that expanded competences of the EU in this area. The EU is not only responsible for the solution of problems related to security, but also for the area of effective management of migration flows and for fair treatment with third-country nationals found to be illegally present on the territory of a Member State. (The European Council, 2010). The Lisbon Agreement constitutional objectives announced as early as in October 1999 at the meeting of the European Council held in Tampere in the form of common policy. Further, the agreement regulates rules of procedure, while the entire area of migration rules including legal migration falls under competence of co-decision of the European Parliament, and resolutions of the Council are passed by qualified majority of votes [2].

In the Stockholm Programme passed in 2009 by the European Parliament, a procedure for the development of real common migration policy consisting of new flexible procedures intended for admission of legal immigrants. Ambitious proposals of changes and amendments should help to cope with increasing mobility and demands of national labour markets respecting competences of Member States [3].

Mobility within the EU means possibility for a person to move to another Member State to find employment. Two different systems are available:

- The first programme is very opened, and applies to EU nationals, who have available full freedom of movement;
- The second programme is less opened, and is limited to special categories of third-country nationals.

The development of common immigration policy of the EU is an incomplete, relatively slow and still developing process. Additional steps are necessary for progress; adopting common rules for admitting selected group of immigrants and principles allowing third-country nationals acquire benefits of mobility within the EU. Rules adopted by the EU are limited, because their agenda deals only with selected groups of third-countries nationals:

- Immigrants with long-term residence;
- Highly qualified workers (holders of EU Blue Cards);
- Researchers and students (The European Council, 2010).

Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents follows the objective of strengthening rights of migrants taking into account the length of their residence in a Member State. It determines conditions according to which third-country nationals with legal residence in a Member State can acquire a position with long-term

residence after filing the application. The applicant must meet a few conditions as follows:

- Living in a Member State at least for 5 years before filling the application;
- Acquiring stable, regular and sufficient financial means;
- To be a holder of health insurance;
- Meeting requirements of integration measures (if the country asks for it);
- Not to represent a threat for the public order or security.

The long-term residence is accompanied with a larger set of rights as follows: equal treatment as regards employment, education and vocational training, social protection and assistance, as well as protection against expulsion and exercising right for freedom of movement. Article 14 of the Directive says: A long-term resident shall acquire the right to reside in the territory of Member State other than the one which granted him/her the long-term residence status, for a period exceeding three months. At the same time, the granted right open an opportunity for migrants to carry out economic activity. The granted right represents the innovation in the EU law. Before passing the Directive, third-countries nationals had to pass through «normal» immigration procedure if they wanted to move to another Member state in spite of long-term residence in the original receiving country. Further, the Directive includes two particular provisions that allow Member States to restrict right for freedom movement and to reside in another state.

Article 14 par. 3: the second Member State may examine the situation of its labour market and apply its national procedures regarding the requirements for filling a vacancy, or for exercising economic activity. At the same time, it may give preference to Union nationals or to third-country nationals, who reside legally on their territory and receive unemployment benefits or if they are persons with preference treatment according to the Community legislation*.

Article 14 par. 4 determines for Member States possibility to limit the total number of persons entitled to be granted right of residence based on the quotas system.

Mobility in the EU should contribute to effective access to the internal market of Member States and the EU as an area, where free movement of persons is guaranteed. The report of Member States on implementation of the Directive published in September 2011 by the European Commission states that the implementation of rules related to mobility within the EU has not fulfilled expectations and achieving of objectives due to possibility of manoeuvring with validity of the Directive and incorrect transposition of its provisions by Member States that make access of migrants to the right of freedom of movement difficult.

* The EU legislation consisting of founding treaties (primary legislation) and provisions, directives and regulations adopted by European bodies (secondary legislation).

In May 2011, the application of directive was expanded to persons with international protection, refugees and persons with additional protection. In spite of this fact, the number of permits for long-term residence was not increased.

Highly qualified workers are second category of third-country nationals who have the right for free movement. Directive 2009/50/EC, known as «Blue Card Directive», has a double objective. It determines conditions of entry and residence longer than three months for third-country nationals on the territory of Members States of the EU for the purposes of highly qualified employment as holders of EU Blue Card and for their family members. At the same time it determines conditions for their entry and residence in other Member States than the country of the first entry [4].

The right for free movement is defined in Chapter 5 titled «Residence in other Member States». The principle of mobility within the EU is stated in Article 18 that says: After eighteen months of legal residence in the first Member State as an EU Blue Card holder, the person concerned and his family members may move to a Member State other than the first Member State for the purpose of highly qualified employment. The provision defines procedure and conditions that must be fulfilled by the applicant in the second Member State, and rules, according to which national authorities will process applications. Member States have considerable freedom when granting EU Blue Cards. Conditions fulfilled in the first Member State need not be sufficient for the second Member State that can refuse to issue the EU Blue Cards due to various reasons*. The Member States have great decision competence to restrict and refused possibilities of highly qualified workers to move in the EU area. The Blue Card Directive has not any impact on the right of the second Member State to limit admission of highly qualified workers [5].

The EU Blue Card Directive is a small step ahead when achieving mobility in the EU. Acquiring freedom of movement is associated with many obstacles. The first and main obstacle in obtaining the EU Blue Card exists as early as in the state of entry. These are as follows:

- Unpleasant manoeuvring procedures in defining salary limit values;
- Possibility of limiting the volume for entry of third-country nationals;
- Possibility of verifying whether vacancies can be occupied by other workers;
- Possibility of refusing the application due to ethical reasons;
- Rights of the EU Blue Card user can be refused in the second Member State if national requirements are not met or due to achieving entry quotas [4].

* Inconvenient payment requirements on the basis of analysis of the labour market due to high ethic recruitment of workers in the case if the employer was sanctioned for illegal work ... [4].

The development of the EU Blue Card Directive has not significantly contributed to opening the door for highly qualified workers yet. Prognoses to the future do not indicate any movement in the prevailing trend and in filling niches on the labour market in the EU through granting the EU Blue Cards.

Council Directive 2004/114/EC, «Directive on Students» passed in 2004 brought additional changes in the area of mobility. Article 8 says: a third-country national who has already been admitted as a student in a Member State of the EU and applies to follow in another Member State part of the studies already commenced, or to complement them with a related course of study in another Member State, shall be admitted by the latter Member State within a period that does not hamper the pursuit of the relevant studies, whilst leaving the competent authorities sufficient time to process the application.

Directive 2005/71/EC, «Directive on Researchers» passed in 2005, Article 13 determines: A third-country national who has been admitted as a researcher under this Directive shall be allowed to carry out part of his/her research in another Member State. The procedure differs from the length of planned residence in the second Member State. Short-term residence (3 months) entitles for movement on the basis of the Hosting Agreement concluded in the first Member State. The researcher must prove sufficient financial capital and that he/she is a holder of residence permit or that he/she undergoes the valid visa arrangements*. In the case of long-term residences, the conclusion of the new Hosting Agreement is required that can be refused by the second Member State.

The implementation of directives opened new possibilities for persons admitted in one Member State to be transferred to another Member State, but they subject to directives with authorisation to restrict their effect in the practice. Their implementation by Members States was assessed in the European Commission Report declaring problems with the implementation of directives in some Member States with a potential to attract relevant groups in the period of «global war for talents».

Both directives are subject to the process of draft changes for improvement of mobility of students and researchers in the EU area, about whom the Council and the European Commission decide.

The EU system, which is focused on the aforementioned three categories of third-country nationals, limits opportunities of other migration groups to have freedom of movement and to contribute to potential positive effects of the development of economic and social sphere of the EU.

Migration is a global and complex phenomenon requiring general vision, comprehensive, coherent and long-term approach. Migration has been a focus of political discussions in the EU for several years, and is one of strategic priorities of external relationships of the Union. Correctly

* Residence permit issued by the state outside the Schengen area.

managed migration can be a positive factor for growth of the Union, as well as for affected countries [6].

At the present time, legal migration from third countries is influenced by the persisting atmosphere and attitude of Member States and the EU to migration and refugee crisis. In spite of actions taken and declarations on support of mobility, the EU externalises migration and asylum policy, and introduces restrictive political, legal and operative tool in the area of legal migration and granting asylum.

GAMM is a general framework for external migration and asylum policy of the EU since 2005, revised in 2012 and passed in April 2014 after the meeting of the Council on carrying out GAMM. Revision of GAMM enriched approach with new elements and thematic priorities: international protection and external dimension of asylum, expansion of political framework with mobility and highlighting the need of effectively managed mobility of third-country nationals through external border of the EU [7]. Approach is comprehensively focused on strengthening dialogue and cooperation with countries of origin and transit that is based on four strategic objectives:

- Prevention and fight against illegal immigration and strengthening of border management and return to the country of origin;
- Support of mobility and simplification of possibility of legal migration and integration of legal residents;
- Maximizing cooperation between migration and the development of countries of origin;
- Support of asylum and international protection [8].

Accepted political, legal and operational tools should help to achieve widely and vaguely formulated main objectives of external migration and asylum policy of the EU that should mitigate consequences of migration and refugee crisis in Mediterranean keeping legal migration. Main implementing means of GAMM in supporting mobility and legal migration are integral part of political and legal tools.

Within the framework of political tools, regional and bilateral dialogues, Mobility Partnerships (MPs) and Common Agendas on Migration and Mobility (CAMM) achieved considerable growth during the last period. Visa Liberalisation Dialogues are a particular tool supporting the second strategic objective of GAMM and an incentive for partner third countries to accept reforms and to cooperate closer with the EU in the area of migration [9–10].

Regional migration dialogues are multilateral cooperation in the area of migration and asylum between the EU and target transit or origin regions. Dialogues serve for identification of common interests and threats in the area of migration, development of practical cooperation in defined priority areas, exchange of know-how related to good practices and data and to general deepening of cooperation in achieving GAMM objectives.

So-called «soft» manner of cooperation covers main regions of migration flows to the EU. They include the country of origin or transit, as

well as target areas. Regional dialogues in the area of Mediterranean are represented mainly by:

- Rabat Process (countries of North, West and Central Africa);
- Khartoum Process (countries of East Africa);
- Prague Process (countries of the Western Balkans, Central Asia, South Caucasus and Eastern Europe except Belorussia);
- Dialogue on migration and mobility between Africa and the EU (African countries except Morocco);
- Dialogue on migration between African, Caribbean and Pacific countries (ACP);
- Partnership between Africa and the EU on migration, mobility and employment.

Multiplication of multilateral forums causes risk of overlapping of interests and areas in several common countries involved into more than one dialogue. Problems require rationalisation of processes*. Material or factual competences are usually identical. Objectives of regional partnerships are interconnected with four strategic pillars of GAMM. The Khartoum Process is an exception; its agenda is focused on trafficking in persons and people smuggling. Due to a great number of participating countries and parties, development and failure to achieve the final form of the Rabat Process and the Khartoum Process respectively, it is not possible to come to conclusions on effectiveness of their functioning [11–12].

On the basis of Council's declaration, regional dialogues contribute to improvement of political relationships with relevant third countries. Recommendations highlight need of greater focus on operational programmes and action plans, rational and simplified approach. Such initiatives of practical cooperation should replace encumbering and non-effective dialogues without any results and added value within regional dialogues on migration**.

Bilateral dialogues in the area of justice and internal affairs, «drivers of the Global Approach» have available tools intended for identification of areas of cooperation between participating parties. Intent is like in the case of regional dialogues, and difference is based on more technical approach [8].

After 2011, turbulent years of Arab Spring and its long-term impacts in countries of origin, the EU started to orient its interest towards areas of southern Mediterranean. Working group for social affairs and migration under the patronage of the Euro-Mediterranean Association Agreement concluded bilateral agreements on migration, mobility and security with Morocco (2011), Tunisia (2011), Jordan (2012) and Lebanon. Within

* The general method of optimum arrangement of the working process (regional dialogue in our case) to achieve continuously higher level of engineering, technology, organization and management in removing useless wastage Rationalization should gradually move from simplest activities to more complicated and complex ones. (EuroEconomist 2015).

** Added value of regional dialogues is based on time of duration, achieved level of cooperation, unity, number of participating parties and size of covered regional areas. Objective assessment of effectiveness is often controversial.

negotiations on the new action plan of European Neighbourhood Policy (ENP), the EU prepares open dialogues with other countries in the region: Algeria, Egypt and Libya*, as a priority interest country for the Union.

In spite of the primary intent of paying the same importance to all four strategic objectives of GAMM, bilateral initiatives cover mainly security efforts with unilateral advantage for Member States of the EU:

- Migration management;
- Border checks and support for return;
- Provision of protection in regions for persons in emergency** [8].

Dialogues on migration, mobility and security based on differentiation, bilateralism and striving for effective control are previous stage of passing MPs that is closed with each partner country. Additional bilateral dialogues on migration take place between Member States of the EU and ACP countries on the basis of Article 13 of the Association Agreement from Continuo. Developing *Visa Liberalisation Dialogues* are not represented in the Mediterranean area yet [8]. Prepared bilateral dialogues will cover above all technical cooperation in the area of readmissions and visas.

Within its initiatives, the European Council asks for larger engagement and cooperation with third countries to prevent migrants to start dangerous journey through the Mediterranean Sea to Europe. On 4 December, the Commission announce establishment of the Task Force Mediterranean with the task to avoid tragedies after events of 3 October 2013 on the coast of Lampedusa [7].

Mobility Partnerships (MPs) are main complex and long-term bilateral cooperation for facilitating political dialogue and operation cooperation in control of migration with third countries. Since 2007 they serve as a tool for support of legal migration between the EU and third countries. Substance of these partnerships is based on cyclic migration projects, offer for possibility of mobility and legal migration exchanged for cooperation in previous illegal immigration increasing border checks and passing readmission commitments [8]. At the same time they serve for unification of international cooperation in migration and asylum, and contribute to increased coordination and cohesion of national migration policies.

Eight Mobility Partnerships have been described up to the present day. As far as the geographical extent is concerned, this includes only three countries in the Mediterranean area: Morocco and Tunis in 2013 and Jordan in 2014. The EU wants to expand Partnerships with a greater number of countries of southern Mediterranean as an integral part of new immigration approach in this area [13].

* Algeria showed interest, Egypt not, Libya will be taken into account only after calming turbulent circumstances in this country.

** Preliminary condition for the provision of possibility of legal immigration and mobility for these countries on the basis of clear and strong conditionality.

Unbalance between their individual components is an insufficiency of Partnerships. They are focused on illegal migration, returns and readmissions and low progress in legal migration and mobility. Existing MPs indicate that this tool is not subject of any relevant discussions and negotiations with a partner country. This is rather the text prepared by the EU that requires compliance by the third country. Conditionality principle also evokes a question about the partner nature of MPs. Doubting the expansion of possibilities of legal migration for partner country nationals and pointing out the fact that initiatives related to transferability of social rights and acknowledgement of skills do not establish legal channels for the provision of working immigration in Member States of the EU belong among main critics of MPs [13].

MPs originate b signature of a common declaration between the EU, participating Member State and a third country. Due to their political nature, they cannot create rights and duties on the basis of international law, they can only be proposals of non-conventional behavior of participating parties or agreements without the standard creating nature. Signatories can be bound only by the good faith principle* (*Table 1*).

Table 1

**Mobility Partnerships between the EU and third countries
in the Mediterranean area**

Country	Signature date	Participating member states	Other tools of cooperation
Morocco	7.06.2013	BE, FR, DE, IT, NL, PT, ES, SE, UK	AA (2000); EURA (neg.); VFA (neg.)
Tunisia	3.03.2014	BE, DK, DE, FR, IT, PL, PT, ES, SE, UK	AA (1998); EURA (neg.); RPP North Africa (2011); VFA (neg.)
Jordan	9.10.2014	CY, DE, DK, EL, ES, FR, IT, HU, PL, PT, RO, SE	AA (1997); VFA (neg.); RDPP Middle East (2014)

Source: Processed according to Andrade, Martin, Mananashvili, 2015 [3; 13–14].

Bilateral cooperation at the political level with Syria in migration was suspended. In spite of failing bilateral cooperation, the EU with Member States belongs among largest providers of humanitarian and development assistance to Syria nationals and adjacent countries to Syria** [7].

Participation of Member States in MPs is voluntary and open. Normative softness of the MPs' structure anticipated lower interest of states to engage into cooperation and to offer particular initiatives, above all in the

* Good faith principle.

** Specialised international organisation and organisations of civil society were involved into assistance within the EU.

area of legal migration. Higher interest in participation in the development and financial programme has not manifested even in the case of the political tool of MPs. Croatia and Austria are not part of any MPs. France is the only Member State that is represented in all MPs. The level of participation of partner countries is also considerably different [8].

Low participation of Member States is based on negative perception of the task and orientation of the EU focusing its activity to readmissions, Schengen visa and financing only a part of projects within MPs. Initiatives presented by several Member States outside interest of the EU are also financially limited [8].

Controversial migration clauses in global agreements are main legal tools of cooperation in the area of migration: Agreements on association or special international agreements in the area of migration; readmission agreements, agreements on simplification of visa regimen or agreements on exemption from visa duty.

Intent of migration clauses is to support future negotiations and conclusion of readmission contracts between the EU and third countries. Methods and procedures of their adoption are disputable in several cases. Conclusion of the treaty of accession between the EU and countries of the Western Balkans and Georgia is stated as an example, when preparation of the treaty also resulted in negotiations on the conclusion of the agreement on readmission with the EU. Relation of migration clauses to the area of asylum and migration, border management and issue of visa is also controversial, where mutual consultations and coordination between participating parties are main absenting conditions including technical and administrative assistance in exchange of good practices, preparation of legal regulations, building up capacities and trainings [8].

Migration clauses were not formulated as an integral part of external dimension of the EU migration policy. Today, they respond to one of priority objectives of GAMM: integration of immigrants with a residence permit.

Effective and human return policy is integral part of comprehensive external migration policy preserving open Europe. Guarantee of safe and legal return of immigrants is inevitable part of increasing credibility of readmission policy of the EU in accordance with international law and principles of legal migration.

Readmission agreements belong among main means of the external dimension of the EU immigration policy, and are the most important tool of initiatives within GAMM. They are based on reciprocal duties between the Union and non-EU countries to facilitate return of persons into the country of origin or the transit country. The provision of simplified visa arrangements or special business conditions and financial support of the implementation of readmission commitments by the Union exchanged for readmission of persons with illegal residence on the territory of the EU are advantages of partner countries in the case of the conclusion of a readmission agreement with the EU.

The EU readmission agreements have preference to bilateral contracts on readmission between a Member State and a third country. The common legal basis is expressed in Article 79 of the Treaty on the Functioning of the European Union (TFEU), but effect of individual readmission contracts can be different. (EU Readmission Agreements, 2015). Individual return rules of Member States of the EU entered into force at the end of 2010. The Return Directive became integral part of national legislation of all Member States except the United Kingdom and Ireland and four Schengen associated states, Switzerland, Norway, Island and Lichtenstein [10].

Principles of EU Readmission Agreements in relation to adjacent states and their application result in discussions on compliance to international law and to the provisions on the protection of refugees and applicants for asylum. European representatives state that readmission agreements should facilitate expulsion and return of undesired persons to the country of origin in accordance with the principle of sovereignty of Member States. On the other hand, this is in contradiction with rules of international law in the area of asylum, mainly with the principle of non-expulsion in the Refugee Convention of 1951 and in the European Convention on Human Rights. Identification and definition of the refugee status and threat of so-called domino effect are also considered disputable.

On the basis of definition of the illegal immigrant in readmission agreements, the state must again receive each person who does not meet or ceases to meet criteria for entry or residence on the territory of the state, where he/she asks for help. The term «each person» is problematic, until it distinguishes between immigrants, who are present illegally in the hosting state and immigrants as persons, whom the rule of non-expulsion is related to. European readmission policy does not distinguish between foreigners, illegal immigrants, who should be legally protected and persons, who are not entitled for this protection. The European readmission legislative is in contradiction with international asylum law, until suspected person has any possibility of clarifying reasons for the origin of illegal situation, in which he/she is present [14].

The affected person can be returned through the readmission application prepared by the requesting state. The application does not state the information on reasons, while the person should be expelled from the state. In this case it is not possible to ascertain, whether the applicant for asylum passed through fair identification process intended for his/her real status. Relocation of applicants for asylum is legalised in spite of the non-expulsion principle [14].

Insufficient examination of individual applications for asylum causes transfer of persons to another country, where human rights need not be or are not guaranteed sufficiently. In this case it is a threat of domino effect. Prevention of domino effect is integral part of international common law, therefore it should be expressed even in readmission agreements. If the state, where a person was returned, is not the state of origin, readmission

should be issued only after thorough examination, whether the person would not be exposed to real danger in the new hosting state. EU readmission agreements do not contain request for the prevention of domino effect. This is expressed in the clause on a safe third country.

The readmission agreement between the EU and Turkey signed in December 2013 is stated as an example. It should allow readmission of illegal immigrants to Turkey, the transit country on journey to the EU. The agreement stipulates duty of Turkish authorities to admit not only own nationals, but also illegal foreigners, who will be subsequently expelled from Turkey to the country of their origin. Most of the foreigners and at the same time applicants for asylum, who travelled through the Turkish territory, are of Afghan, Syrian and Iraqi origin, running away due to danger in their country of origin. In this case it is very dangerous provision. On the basis of declaration of the director of the *Refugee Rights Turkey* non-governmental organisation and the readmission agreement between the EU and Turkey, the high number of refugees is represented by persons who need international protection. This will not be provided them in any Member State of the EU with threat of their further deportation from Turkey (Yilmaz, 2014).

The aforementioned example from Turkey is applicable to all countries that concluded readmission agreements with the EU or that are in process of negotiation. Similar readmission agreements were also concluded by Turkey with Syria, Uzbekistan, Egypt, Nigeria, Russia, and such agreements are prepared for Morocco, Pakistan, Iraq, Iran, India and China* [14].

The Commissioner for Human Rights of the Council of Europe states that readmission agreements as a part of migration policy control corrode the determined principles of international law. The European Parliament supported Commissioner's standpoint by declaration saying that readmission agreements represent direct or indirect threat of breaching human rights of applicants for asylum and illegal immigrants [14].

Just vacuum in the area of human rights in the case of readmission agreements reflects increased focus of the EU on security aspects of illegal migration control at expense of a wider approach based on the principle of shared responsibility with higher stress put on human aspect of the regulation of this very complicated phenomenon.

In average, 400.000 to 500.000 illegal immigrants are expelled each year on the basis of EU regulations. Approximately 40 % of them are returned to the country of their origin or to the transit country [10].

In spite of the intent of the Visa facilitation agreements for third-country nationals to facilitate the process of issuance of Schengen visa, their practical range is limited. Even in this case we met with an unsolved bureaucratic problem exceeding the intent of issuance of Schengen visas to support well managed mobility. On the other hand, the name of agreements

* Some of the aforementioned states are known for their indifferent approach to immigrants and their fundamental rights.

saying on simplification represents complication of paper procedures. Negotiations on conclusion of agreements at the stage of preparations in areas of Mediterranean took place with Morocco, Tunisia and Jordan (*Table 2*).

Table 2

Readmission agreements and Visa facilitation agreements

Country	Readmission agreements	Visa facilitation agreements
Turkey	2013	-
Tunisia	2014 (in process)	in process
Morocco	2000 (in process)	in process
Jordan	-	in process

Source: Processed according to Andrade, Martin, Mananashivili, 2015 [3; 8; 13–14].

The EU accepted possibility of exemption from visa duty in the area of Schengen visas through Contracts on visa-free arrangements with some third countries. Visa free arrangements allow nationals to travel maximum for three months during six-month residence within the Schengen area. Agreements on support of mobility are exceptional and rare, unreal for the Mediterranean area for the time being.

Conclusion. In context of European migration we can define four main legitimate reasons of immigration: job opportunities, study visits, family joining and possibility to acquire political asylum (escape from persecution). The right to move for job and study is a natural part of global economy. Taking into account demographic trends in Europe, migration rate will be rather increasing than decreasing from the long-term point of view. Family joining is integral part of the right for family life defined in international law as the basic human right. The right for escape from persecution is defined in international agreements. All Member States of the EU have moral and legal duty to offer asylum to the persons, who are entitled for it on the basis of the law. Each form of migration needs a clearly defined set of rules, transparent and correct interpretation in the entire area of the EU.

On the basis of the current definition and development of European migration policy, the EU represents increasingly more important actor presenting extensive authorities of European immigration problems in its agenda. More intensive attention paid to problems of migration can be seen since 2010 even in the EU.

Target countries are forced to deal with migration policy, to regulate and keep under control immigration of foreigners due to appearance of immigration phenomenon. They use more restrictive measures related to migration and asylum policy. The Member States of the EU are trying for coherent migration and asylum policy; to guarantee security of their inhabitants, to ensure unit in the area of migration of nationals, and to

provide asylum. Migration to the EU is conditioned mainly by freedom of movement and access to the labour market.

Acceptance of a few common steps related to both legal and illegal migrants in the EU and checks on external border must precede the creation of common migration and asylum policy. Elimination of differences in asylum procedures and unification of legal processes in the case of migration is necessary in relation to all categories of migrants: forced migrants, voluntary migrants, economic migrants, foreigners, applicants for asylum.

Increased mobility brings new challenges and opportunities. Balanced, comprehensive and common migration policy can help to face challenges and problems in a more effective way. The aforementioned policy is at the development stage now, and it is based on the principle of solidarity and responsibility. Its added value is based on valuable contribution to the economic development and efficiency of the EU in the long-term period.

The objective of comprehensive European immigration policy is to create a common framework of legal migration taking into account full integration into hosting countries. The Single Permit Directive was passed in December 2011; rights for workers from non-EU countries, who have legal residence in a Member State of the EU. In 2014, additional two directives were passed. They relate to conditions of entry and residence of seasonal workers and intra-corporate transferees to simplify and harmonize migration procedures and to provide clear rules related to employment for immigrants.

Sustainable and reliable political approach to migration management requires the solution of problem of illegal migration from the Mediterranean area. The EU copes with illegal issues through specific actions focused on employers, who employ migrating workers without valid documents, and is striving to create humane and effective policy of readmission in accordance with the Charter of Fundamental Rights. Attention is focused on elimination of smuggling networks.

Establishing dialogue and partnership with countries of the origin and transit is an important aspect of the common approach of the EU. GAMM covers external migration policy of the EU, and is complementary to EU foreign policy and its developing cooperation.

The first strategic objective of GAMM related to the area of legal migration and mobility is subordinated to political objectives and conditions above all due to strengthened check of illegal migration. Agreements on visa exemption from visa arrangements and Agreements on visa exemption are tools supporting mobility that are under preparation. Mobility Partnerships between the EU and third countries (MPs) have not achieved any results in supporting legal migration up to the present time. At the present time, legal migration from third countries towards the so-called «fortified» EU is suspended or very limited. Paradoxically, credibility of EU efforts to invest in the building up institutional capacities for better control of labour migration from third countries is undermined by the aforementioned limited possibilities of legal migration to Member States. We conclude that none

of EU tool in the area of migration participates in support of legal entry at the present time. Association and Cooperation Agreements serve only for strengthening integration of legal immigrants coming from partner countries.

Readmission policy and reintegration of illegal foreigners are main priorities of the EU in migration and asylum in the period of so-called migration crisis. Projects of return and reintegration are criticised due to their overlapping, parallel financing and duplicity of similar preparation.

Diversified nature and a great number of tools intended for the development of external activity of the EU in migration has general impact on achieving their intents and effectiveness. On one hand, legal tools represent cumbersome and lengthy procedures of entry and admitting migrants. On the other hand, their structure represents a suitable tool for the regulation of migrants' rights for social security, admission and integration, possibilities of simplified visa arrangements or complete visa exemption, guarantee of observing human rights in return to the country of origin, or in cases of detention, to countries providing legal certainty strengthened democratic legitimacy and checks by the court. Political tools react more flexible to demands and public opinion in third countries in comparison with legal tools.

Even in the case of the EU institutional framework, strengthened coordination at the supranational and national level is one of the most urgent tasks. Cooperation and systematic exchange of bilateral procedures between Member States are absent. Enhanced coordination between the supranational and national level could result in reduction of misunderstanding and difficulties between the EU and partner countries, overlapping and duplicity cooperation in initiatives that is provided by the Union on one hand and an independently acting Member State on the other hand. EU institutions are engaged into externalisation of immigration and asylum policy. The European Commission and the European External Action Service have different priorities.

At the present time, migration cooperation between the EU and a third country is not able to provide the complete and coordinated set of tools to partner countries that would guarantee observance of international law in the area of human rights. Deficiencies also arise from the unbinding nature of accepted tools. Analysis of priorities of the institutional system of political, legal and operational tools represents a diffused and non-coherent framework of European migration and asylum policy. Only migration dialogues, MPs and CAMMs are more complex tools. The institutions must make greater effort in working on all objectives with the same intensity that must be increased for least monitored objectives associated with migration and development, international protection and possibility of legal migration.

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Штупакова М., Янкурова А., Чайка П. Прикордонний режим ЄС у контексті легальної міграції громадян третіх країн.

Постановка проблеми. Поки правила внутрішньої міграції між окремими державами-членами ЄС гарантовані на європейському рівні, що гарантує необмежений вільний рух людей, імміграційна політика з країн, що не входять до ЄС, залишається особливим привілеєм держав-членів. Міграційні потоки з третіх країн відрізняються в окремих європейських приймаючих країнах, головним чином з точки зору їх розміру та складу через колоніальне минуле та попередню імміграційну політику.

Метою дослідження є аналіз теоретичних принципів та основних напрямів прикордонного режиму ЄС в контексті законної міграції громадян третіх країн.

Матеріали та методи. *Методологічну основу дослідження становить сукупність таких методів наукового пізнання як загальнонаукові (діалектичний, формально-логічний, аналіз і синтез, моделювання) та спеціальні (історичні, юридичні, функціональні і правові і т. д.), що дозволяє досягти мети, створює методологічну основу статті.*

Результати дослідження. *У випадку інституційної структури ЄС посилена координація на наднаціональному та національному рівнях є однією з найактуальніших завдань у сфері міграції. Співпраця та систематичний обмін двосторонніми процедурами між державами-членами відсутні. Посилена координація між наднаціональним та національним рівнем може призвести до зменшення нерозуміння та труднощів між ЄС та країнами-партнерами, дублювання та двосторонньої співпраці в ініціативах, що надаються Союзом, з одного боку, та незалежно діючою державою-членом, з іншого боку. Інституції ЄС займаються питаннями зовнішньої політики щодо імміграції та надання притулку. Європейська комісія та Європейська служба зовнішньої діяльності мають різні пріоритети.*

Висновки. *В даний час, міграційна співпраця між ЄС і третіми країнами, не в змозі забезпечити повний і узгоджений набір інструментів для країн-партнерів, які гарантували б дотримання норм міжнародного права в галузі прав людини. Недоліки також виникають внаслідок незв'язаного характеру прийнятих інструментів. Аналіз пріоритетів інституційної системи політичних, правових та оперативних інструментів являє собою розгалужену та несумісну основу політики європейської міграції та притулку. Інституції повинні докладати більших зусиль для роботи над усіма завданнями з однаковою інтенсивністю, які необхідно збільшити для найменш контрольованих завдань, пов'язаних з міграцією та розвитком, міжнародним захистом та можливістю легальної міграції.*

Ключові слова: Європейський Союз, легальна міграція, екстерналізація, регіон Середземномор'я, міграція та політика притулку.

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