

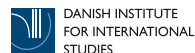


Think Global – Act European

The Contribution of 14 European Think Tanks to the Spanish, Belgian and Hungarian Trio Presidency of the European Union

Directed by:

Elvire Fabry and **Gaëtane Ricard-Nihoul**, Notre Europe



MIGRATIONS

Migration Policy-making under the Stockholm Programme and the Lisbon Treaty: Getting back to the Serious Business of Governing?

Steffen Angenendt Senior Associate, SWP

Roderick Parkes Head of Brussels Office, SWP

It is a myth long peddled by supporters of the Lisbon Treaty: with ratification of the Treaty complete, political leaders will finally be able to place a full stop after the question of institutional issues and “return to the serious business of governing”. We can apparently look forward to some serious politico-strategic thinking about the big issues – not least immigration policy in times of economic crisis.

The myth is a particularly mendacious one for two reasons:

Firstly, by increasing the clout of the European Parliament, giving national parliaments new powers to scrutinise policy and recognising the European Council as an institution with a semi-permanent President, the Treaty actually looks set to sharpen existing tensions between the EU’s institutions, at least in the short to medium-term.

Secondly, uncertainty about the EU’s institutional architecture has not been the sole, or even the main, reason for the focus on inward-looking, inter-institutional issues. More generally, there has been a marked loss of appetite for far-sighted – potentially divisive – political thinking, especially following the negative referendums in France and the Netherlands as well as enlargement.

In immigration and asylum policy the formulation of the Stockholm Programme has provided an opportunity to overcome the gulf between excitable public expectations and mundane European realities. It has marked a chance to set out a politico-strategic agenda sufficiently ambitious to ensure that the Lisbon Treaty’s institutional blueprint for justice and home affairs (JHA) is put to good use.

But the document adopted in December 2009 lacks the two core elements necessary to reinvigorate policy-making: a political rationale for cooperation and a concomitant horse-trading package defusing foreseeable tensions between the member states.

The likely deficits in the Programme place a heavy onus on the current Trio Presidency. Without a lasting political settlement for migration policy in place, the usual inter-institutional squabbling will ensue. In asylum and immigration policy, this wrangling has in the past entailed a concerted attempt to disrupt and even reverse the progress of European legislation by recalcitrant national ministries, sub-standard communication with EU citizens and a lack of coherence both within migration policy and between migration policy and ‘neighbouring’ policy areas.

Against this background the paper suggests means for the current Trio Presidency to overcome a trend towards the re-nationalisation of policy-making, to enhance the public legitimacy of policy and to improve links between EU policies.

The backdrop: despite an incipient economic crisis...

The economic crisis, which will increasingly define migration flows over the coming years, is already making itself felt. Receiving countries are experiencing a slowdown in labour immigration, whilst sending countries are confronted with increasing re-migration. And many migrants – especially low-qualified and irregular immigrants – are being forced to make tough choices between staying in the host countries under deteriorating conditions or returning home only to be met by even worse situations. Even if firm comparative data and in-depth assessments of the impact of the economic downturn on migration are still lacking, it can be expected that in the wake of the current crisis international labour migration will decline further.

Nevertheless, it is not at all certain that such a reduction of global labour migration would be large-scale or permanent. For decades, all industrialised countries have noticed a structural and increasing demand of foreign labour. Challenged by growing global competition and unfavourable demographic trends, many industrialised countries have become aware that labour migration is of critical importance for their future competitiveness and wealth. According to UN surveys, in 2007 13% of industrialised countries intended to increase the numbers of temporary immigrants, and 44% planned to increase the immigration of highly skilled workers.

Even before the crisis many European governments had already begun to review their migration policies and to develop new migration strategies. They introduced new instruments and institutional settings for a more comprehensive, although more selective, migration approach including shortage lists, quotas and caps, and new cooperation schemes

with sending countries. Competition between industrialised countries – especially between Europe and North America – has intensified, especially as regards efforts to fill future labour market shortages and attract highly skilled migrants.

European countries began introducing new human-capital-oriented immigration schemes and new options to allow foreign students to stay in the country (United-Kingdom). The definition of ‘skilled’ was extended (France, Norway), and the options for employer-driven labour migration were expanded (Sweden). Since a rising demand for highly skilled labour usually leads also to an increasing need for unskilled and low-skilled labour, some countries also opened new channels for these migrants to enter (Spain, Italy, Greece, Portugal), while other countries have encouraged ‘incidental’ migration (promoting working holidays, student jobs, etc.) or introduced new seasonal migration programs (Spain). In addition, most of the ‘old’ EU countries finally opened their labour markets to migrants from the new member states, which in many cases filled unskilled and low-skilled positions.

Now, due to the recession, governments have started to postpone these reforms. In particular, they have become more reluctant to admit labour migrants in sectors with uncertain economic perspectives. It can be expected that some governments will revise national shortage lists and remove occupations from these lists, reduce caps, quotas, and other quantitative migration targets, introduce new return policies, and generally further adjust to a more demand-driven migration policy to support their ongoing struggle with irregular migration.

Such restrictive migration policies are increasingly considered a legitimate means of ‘protecting’ national labour markets. Faced with a long-term, structural demand for labour migration, therefore, the Lisbon Treaty should – in theory – provide the means for the member states to overcome immediate political pressures for restriction and exploit the benefits of common action.

More inter-institutional wrangling...

The institutional changes made to EU JHA policy-making count amongst the most far-reaching of the Lisbon Treaty’s innovations. The intergovernmental traits of policy-making, including in the question of labour migration, will be thoroughly diluted. Yet, this will not automatically facilitate policy-making, and the institutional changes imposed by the Treaty may actually induce sclerosis rather than alleviating it.

For one thing, the Treaty gives the Commission new clout in the policing of policy implementation in former third pillar issues. This is a far cry from the current situation where decisions have actually been facilitated by member states’ expectation of never having to realise these common commitments. Should the Commission take its new policing role seriously, therefore,

decision-taking in Council will probably prove rather more laborious, as member states give more thought to the implications of their signatures – something which will have an impact on the speed of decision-making across the range of home affairs.

Lisbon's shift to qualified majority in Council on issues like police cooperation will do little to speed such decisions or move them beyond a lowest common denominator. After all, the member states tend to take decisions according to the consensus principle even when unanimity is no longer the rule. Even if the Commission adopts a more 'conciliatory' line to policing implementation and proposes the re-evaluation and re-negotiation of policies that have been poorly implemented rather than instituting proceedings, this will do little for the dynamism of the policy area. It will simply see old compromises unravel.

The European Parliament's influence in migration policy is boosted in two significant ways: firstly, the Parliament's new powers of co-decision in the former third pillar will have an impact on its clout over migration. In the past, MEPs have frequently engaged in 'issue-linkages': they made their approval of the migration proposals over which the Parliament enjoys rights of co-decision conditional upon the member states in Council taking account of their will in the largely intergovernmental third pillar. Under the Lisbon Treaty, the third pillar will collapse, and the Parliament will no longer have to dilute its influence over asylum and illegal immigration in this way. Secondly, and more simply, the Parliament receives more powers over questions of legal migration. Add to this potent mix a third factor – the powers afforded to national parliaments by the Treaty – and the spectre of 'legislative-executive' tension so familiar at the national level could become further entrenched at the European one.

The Treaty also looks set to exacerbate tensions between the member states. The Treaty formalises the European Council's role in setting the strategic guidelines for this area of policy. Small member states have often objected to the policy-planning role of the European Council, arguing that the European Commission – where parity between large and small member states is more robustly safeguarded – should take the lead.

And an inward-looking political programme

This situation clearly increases the pressure for politico-strategic thinking to replace inter-institutional wrangling. With the potential for inter-institutional deadlock unleashed by the new Treaty, moreover, it would also help if the tensions within the Council at least were defused at an early stage.

With the elaboration of the European Council's Stockholm Programme, the EU has had a plum opportunity to fulfil both tasks – setting politico-strategic guidelines and forging the concomitant political horse-trades between the member states.

Yet, the Programme makes a serious, if incomplete, bid to set out five years worth of proposals in advance without setting out either a political rationale or underpinning it with a serious compromise package. The Programme resembles much less the kind of political programme to be expected from the European Council than the technical Action Plan due to follow it up.

The relative absence of analysis of upcoming migration problems suggests that the Programme's misplaced bid for clairvoyance will follow its own logic. And that logic is one of entrenched institutional interests, played out in a long and laborious drafting process of future groups, migration pacts, Commission evaluations and 'non-papers'. This is a tug-of-war in which no political actor wishes to be identified as the winner for fear of jeopardising the semantic nuances they have succeeded in inserting into the text.

Without the mobilising force of a political rationale, however, or the credibility that derives from its authors standing by their prescriptions, the Programme's guidelines will likely fall prey to these same inter-institutional pressures.

The task for the Trio: finding a political rationale for policy

The challenges of the Lisbon Treaty and the deficits in the Stockholm Programme mean that the agenda for immigration and asylum policy will remain contested over the coming years, and key political conflicts that could have been settled will live on. The onus on the current Trio Presidency is clear.

Yet, the circumstances for the Trio seem hardly propitious. cursory analysis suggests the three will struggle to remedy the situation. After all, the influence of the member state presidency in the European Council diminishes with the establishment of the semi-permanent president, just as that body's role in agenda-setting receives a boost.

In other respects, however, the three governments have considerable advantages: between them, they incorporate the major political fault-lines in immigration and asylum policy – big member states versus small; southern versus eastern states; resource-rich versus resource-poor states; 'land-locked' states versus states on the external borders of the EU.

Their 'personification' of these political conflict lines presents the Trio with an excellent opportunity to resolve points of tension in the Stockholm Programme from the mutual recognition of asylum grants (land-locked / external), to the geographical focus of the external dimension (eastern / southern), from the powers of Frontex and the European asylum support office (large / small) to the financing of integration policy or the sharing of data on countries of origin (resource rich / poor).

However, they can only go about achieving political consensus on these disparate issues if they identify a common politico-strategic rationale for European JHA cooperation under their aegis. And this is perhaps the more intractable issue: how can they imbue the prescriptions in the Stockholm Programme with a political rationale?

Three competing political strands are visible in European JHA. In the 1980s, cooperation was driven by a liberal vision – the notion of a border-free Europe. The realisation of this agenda still counts as one of the defining achievements of European integration. A rights-based agenda has, by contrast, been identified in the cosmopolitanism of the Tampere Programme, where the interests of immigrants, asylum-seekers and third countries were afforded unexpected prominence. A more security-centric agenda was apparent in the emphasis placed on law and order by the Hague Programme, crystallising under the banner “a Europe that protects”.

The original liberal agenda not only boasts a legitimacy that reaches beyond the current political make-up of the European institutions, it also chimes with efforts to attract labour migration to the EU – something which is shaping up to be the defining political challenge of the next phase of cooperation.

Many elements conducive to such an agenda are actually contained in the Stockholm Programme, albeit without being tied to a clear rationale or compromise package.

Most obviously, there is mention of the principle of free movement – the original liberal goal of European cooperation in this area. This principle could usefully receive proper reaffirmation *vis-à-vis* labour migration from new member states. It could also be strengthened for third country nationals as a means of attracting certain kinds of labour to the EU – an aspiration which the Union has pursued and foundered upon in the past.

The Programme’s focus on the evaluation and review of existing measures also lends itself to a liberalising agenda that takes a critical eye to intrusive interventions in society and the economy. Too often, such intrusions unnecessarily disrupt the passage of labour migration to the EU, even pushing migrants into ‘grey’ situations in the name of combating irregular migration.

The Programme’s sympathy for economic and societal actors to become involved in policy-making is also to be welcomed. One useful suggestion made by the Commission has, however, been omitted – a platform in which social and economic actors could discuss ways of injecting dynamism into the regulation of migration.

The Programme’s openness towards palliative solutions to migration control is perhaps the final key element in a liberalising approach that requires a shift away from more traditional – and reactive – checks and controls. Sadly, various key proposals have gone missing as

negotiations have progressed. The Commission's proposal for a study on the long-term need for labour migration has disappeared. Meanwhile, the notion of a 'comprehensive' approach to migration has lost importance. It is precisely by comprehensively joining up the various elements of migration regulation – from the Union's increased competency to ensure proper recognition of migrants' qualifications and their social integration, to the full use of the EU's new foreign policy structures to offset brain drain, foster circular migration and reduce the push factors of migration – in a long-term perspective that Union action can make a valid contribution to the member states' migration goals.

In short, by joining the liberal dots and forging a comprehensive horse-trade in its wake, the Trio has the potential to turn the building blocks of the Stockholm Programme into a meaningful political and strategic settlement.