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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

4th Annual Report on Immigration and Asylum (2012)

{SWD(2013) 210 final}

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I. INTRODUCTION

The year 2012 saw a nearly 10% increase in the number of asylum applications due partly to the conflict in Syria necessitating both humanitarian¹ and protection responses from the EU. This illustrates the importance of finally completing the Common European Asylum System, in order to have a uniform protection status across the EU.

The economic crisis continued to focus the minds of Europe's leaders on ensuring recovery and growth. Although unemployment remained very high, many Member States faced labour and skills shortages in certain sectors. The share of the EU working-age population (15-64 year old age group) from the total EU population already reached its peak in 2006 according to Eurostat data. The old-age dependency ratio reached 26.8% in 2012² and it is projected to increase sharply up to 52.6% by 2060³. Against that background, well-managed migration can play a positive role in boosting growth and addressing labour market shortages.

In 2012 key initiatives were proposed negotiated and completed, reflecting the dynamism of policy-making on migration and asylum and the growing need for a coherent EU response. Negotiations continued to establish funding mechanisms beyond 2013 through the Asylum and Migration Fund Regulation⁴ and on the proposals for the recast of the EURODAC Regulation⁵, as well as on Directives on Asylum Procedures⁶, Seasonal workers⁷ and Intra-corporate transferees⁸.

Another important development was the start of operations of the EU Agency for the management of large-scale IT systems in the area of freedom, security and justice,⁹ notably for the Second Generation Schengen Information System (SIS II), the Visa Information System (VIS) and EURODAC. The Global Approach to Migration and Mobility (GAMM)¹⁰ furthermore continued to serve as the overarching framework of the EU's external migration and asylum policy. The role of the common visa policy to spur growth in the EU has also been in focus in 2012.

This report is principally based on the Commission's political assessments and is complemented by a factual staff working document¹¹ with an annex providing statistical

¹ Commission has pledged an additional €100 million of humanitarian funding for the more than 4 million people in need of aid due to the conflict in Syria. This funding, to be disbursed in 2013, brings the Commission's humanitarian funding to €200 million. See http://ec.europa.eu/echo/news/2013/20130129_en.htm.

² Eurostat (online data code: demo_pjanind)

³ Eurostat (online data code: proj_10c2150p)

⁴ COM(2011) 751final

⁵ COM(2012) 254 final. Amended proposal in second reading.

⁶ COM(2011) 319 final. Amended proposal.

⁷ COM(2010) 379 final

⁸ COM(2010) 378 final

⁹ Regulation (EU) No 1077/2011. See http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2012/docs/20121129_agency_large_scale_it_systems_en.pdf.

¹⁰ COM(2011) 743 final plus subsequent Council conclusions. A biennial report on the implementation of the GAMM will be published in June 2013, taking stock of progress made and contributing to the further strengthening of the implementation of the GAMM.

¹¹ SWD(2013) 210

details on developments at both EU and Member State levels, collected by the European Migration Network (EMN)¹². A report on the development of the Immigration Liaison Officers network¹³ is also included in the staff working document.

II. A SNAPSHOT OF EU MIGRATION IN 2012¹⁴

According to Eurostat data, on 1 January 2012, the EU's total population was 503.7 million, an increase of 1.3 million from 2011 which is equivalent to an annual rate of +2.6 per 1000 inhabitants made up of a natural increase of 0.4 million (+0.8‰) and net migration plus statistical adjustment of 0.9 million (+1.8‰)¹⁵. The 20.7 million third-country nationals living in the EU amounted to some 4.1% of the total EU population, exceeding the number of EU citizens who live in another Member State (13.6 million or 2.7% of the total EU population).¹⁶ First residence permits issued to third-country nationals, amounted to almost 2.5 million in 2011¹⁷; the number of permits issued for family reasons representing 30% of the total, against 26% for remunerated activities, 21% for study and 23% for various other reasons (e.g. protection-related, residence without the right to work). Most residence permits were in 2011 issued to nationals of Ukraine (around 204 000), the USA (around 189 000), India (around 179 000), China (around 153 000) and Morocco (around 120 000).

While the total number of asylum applications remained well below the peak of 425 000 in 2001, there was an increase of 9.7 % compared to 2011 in the total number of asylum applicants in 2012, amounting to just over 330 000, primarily resulting from an increased influx of asylum seekers from Syria (totalling some 23 510 in 2012 or 7 %, compared to 7 885¹⁸ in 2011). Other important countries for asylum seekers were Afghanistan (8% of total number of applicants), the Russian Federation (7%), Pakistan (6%) and Serbia (6%). Some Member States experienced an increase in unfounded applications from citizens of Serbia, the former Yugoslav Republic of Macedonia, and to some extent Bosnia and Herzegovina following visa liberalisation.

In terms of protection granted in 2012, a total of 71 580 asylum applicants received protection at first instance (refugee (37 245), subsidiary protection (27 920) or humanitarian (6 415)), around 27% of all decisions taken¹⁹.

2012 witnessed a slight increase of unaccompanied minors applying for international protection in the EU, from 12 350 in 2011 to more than 12 610 in 2012²⁰, with Germany, Sweden, Belgium and Austria receiving nearly 70% of the total number of applicants. These unaccompanied minors come mainly from Afghanistan (5 350), Somalia (850), Guinea (430) and Pakistan (415).

¹² EMN, <http://www.emn.europa.eu>

¹³ Council Regulation (EC) No 377/2004, as amended by Regulation (EU) No 493/2011. OJL 141, 27.5.2001, p.1.

¹⁴ Statistics presented here and throughout this Communication are primarily the latest available from Eurostat. More detailed statistics, some from the EMN, including breakdown by Member State, are given in the Statistical Annex of the accompanying Staff Working Document (SWD(2013) 210.

¹⁵ Net migration to the EU, without statistical adjustment, amounted to + 0.5 million, with 1.2 million emigrating and 1.7 million immigrating.

¹⁶ Eurostat Migration statistics. See also [EU Employment and Social Situation Quarterly review, March 2013, Special supplement on Demographic Trends](#)

¹⁷ Eurostat data for 2011, as of 31.3.2013. Eurostat data 2012 will become available in July 2013. SWD(2013) 210, Statistical Annex, includes 2012 data for most Member States submitted by the EMN.

¹⁸ The number including the 4 Associated States was 8,980.

¹⁹ Eurostat data. News release 48/2013 of 22 March 2013

²⁰ Eurostat, no data for Malta and the Netherlands available for 2012

Although statistics on irregular migrants continue to be incomplete or are by the very nature of the phenomena they intend to capture, affected by reliability weaknesses, irregular migration continues to be a major component of migration to the EU. Indicators such as refusals, apprehensions and returns may be used, although also subject to many caveats.

In 2012,²¹ some 316 060 persons were refused entry to the EU, a decrease of 8% from 2011, with the vast majority (63%) being refused in Spain, notably at the external land borders. Also in 2012, some 427 195²² persons were apprehended (a decrease from 2011 when it was 468 840) and in 2012 Member States returned around 186 630 third-country nationals²³ (around 4% less than in 2011). Quarterly Reports from Frontex²⁴ have also served to inform policymakers, in a timely manner, of the situation at the EU's external borders.

For the reference period 2008-2010 the profile of victims of trafficking in human beings by gender and age was 68% women, 17% men, 12% girls and 3% boys. The majority of the identified and presumed victims are trafficked for sexual exploitation (62%). Trafficking for forced labour (25%) comes second and trafficking in other forms such as trafficking for the removal of organs, for criminal activities or for selling of children follow with smaller percentages (14%).²⁵ Data provided by the EMN from some Member States show that in 2012, 736 third country nationals²⁶ received residence permits as victims of human trafficking in 2012, and preliminary data from some Member States show that that 4 351 traffickers²⁷ were arrested and 627 traffickers²⁸ were convicted.

III. MIGRATION AS A TOOL FOR GROWTH

The EU population of working-age (15-64 years) amounted to 335.4 million in 2012 and is projected to drop over the next 50 years to 290.6 million in 2060, according to the latest Eurostat projections²⁹. With an ageing population, and on the assumption that migration continues on average as before, the old-age dependency ratio will rise from 26.8% in 2012 to 52.6% in 2060. With less inward migration that ratio would be even higher³⁰. The EU is already seeing the effects of an ageing population on productivity, competitiveness and growth. Well-managed migration may not be the panacea to this common challenge, but can play a positive role. Political discussions are taking place during informal Justice and Home Affairs (JHA) Councils, as well as in the European Parliament on how migration can be more effectively managed to contribute to economic growth³¹.

²¹ Eurostat (as of 18.4.2013)

²² Eurostat (as of 18.4.2013). EU-27, excluding HU and NL

²³ Eurostat (as of 25.4.2013). EU-27 excluding DK, CY, NL. LU data related to March-December 2012.

²⁴ <http://www.frontex.europa.eu/publications>

²⁵ Eurostat. DG Home Affairs Statistical Report includes data for the years 2008, 2009 and 2010, from all 27 EU Member States, Croatia and the following EU Candidate and EFTA/EEA countries: Iceland, Montenegro, Norway, Serbia, Switzerland and Turkey. Available on the [Europa Anti-trafficking webpage](#).

²⁶ BE, BG, EL, FR, IT, MT, PL, RO, SI, SE, UK and NO. Statistical annex, Table 9, SWD(2013) 210. Source EMN.

²⁷ BG, EL, ES, FR, IT, LV, LU, MT, PL, SK, FI, SE. Source :EMN

²⁸ BG, EL, IT, LV, LU, MT, PL, RO, SK, FI, SE Source : EMN

²⁹ Eurostat2010

³⁰ Compared to the national populations, immigrants tend to be younger particularly in the 20-50 year age group.

³¹ http://epp.eurostat.ec.europa.eu/portal/page/portal/population/documents/Tab/ESSQR_Mar2013_demogr_suppl_final.pdf

³¹ Informal JHA Council meeting, 23-24.7.2012 and 17-18.1.2013. EP on integration of migrants, its effects on the labour market and the external dimension of social security coordination (vote 10.1.2013). European Economic and Social Committee's(EESC) Opinion on migrant entrepreneurs (2012/C 351/04)

III.1. Strategies to address existing labour market shortages

There are several complementary strategies for alleviating shortages in certain sectors of the labour market. These include further developing job-matching instruments³², extending the working age, raising participation rates, improving the skills of the existing labour force, finding jobs for those currently unemployed and increased mobility of workers within the EU³³. As part of this coherent strategy, making better use of the skills of third-country nationals already present in the EU³⁴ requires increased attention, as would well managed economic migration, in partnership with third countries³⁵. The "Employment Package"³⁶, which provides a medium-term agenda for EU and Member States action to support a job-rich recovery and to attain Europe's 2020 goals for smart, sustainable and inclusive jobs and growth, acknowledges that economic migration will be a key consideration for the EU's labour market in the longer term. This is in line with the Employment Guidelines which call on the EU Member States to ensure access and opportunities for all throughout their lifecycle, thus reducing poverty and social exclusion through removing barriers to labour market participation for people furthest from the labour market, including legal migrants³⁷.

For the 2012 European Semester, three Member States started implementing country specific recommendations (BE, DK, NL) for the integration of migrants on the labour market. For the 2013 European Semester, the Commission also launched an initiative on skills development and to make education and training more relevant to labour market needs³⁸, which is also relevant for the integration of third country nationals.

There were several initiatives in 2012 that looked at the contribution of migrants to economic growth³⁹. The socio-economic contribution of migrants is well-documented and evidence suggests that migrants can be complementary to EU workers rather than replacements and that they have contributed to greater labour market flexibility and to innovation⁴⁰.

The potential of migrant entrepreneurs⁴¹ and investors has gained more recognition. In its Entrepreneurship 2020 Action Plan⁴², the Commission proposed looking at initiatives to attract migrant entrepreneurs and to facilitate entrepreneurship among migrants already present or arriving, and to analyse the possibility of proposing legislation to remove legal obstacles for the establishment of businesses and giving qualified migrant entrepreneurs a stable permit.

Practical examples can already be given of where shortages exist⁴³, despite the crisis and the overall depressed labour demand. Severe skills shortages have been identified in the field of

³² E.g. EU Skills Panorama, <http://euskills Panorama.ec.europa.eu/> ; the analysis undertaken by CEDEFOP.

³³ E.g., via EURES (<http://ec.europa.eu/eures/>) and including facilitating the intra-EU mobility of third-country nationals (see EMN study).

³⁴ In the age group 20-64, the over-qualification rate of third-country nationals is much higher than the over-qualification rate of the total population (45% to 21%). SEC(2011)957 final, p. 28.

³⁵ COM(2012) 173 final, Towards a job-rich recovery, pp. 18-19. <http://ec.europa.eu/europe2020>

³⁶ COM(2012) 173 final

³⁷ 2010/707/EU: Council Decision of 21 October 2010 on guidelines for the employment policies of the Member States

³⁸ Rethinking Education: Investing in skills for better socio-economic outcomes, COM(2012) 669 final

³⁹ Notably in the context of projects and studies addressing this issue. E.g.: the Commission's EU Employment and Social Situation Quarterly Review and IOM LINET (<http://www.labourmigration.eu/>) and the 8th meeting of the "European Integration Forum".

⁴⁰ Brücker, H. "The Labour Market Impact of immigration and its Policy Consequences". Migration Policy Centre, MPC. (2012)

⁴¹ EESC (2012/C 351/04)

⁴² COM(2012) 795 final

⁴³ COM(2011) 815 final, Annual Growth Survey 2012, p. 11.

Information Technology (IT) with the demand for IT practitioners predicted to grow by around 3% a year and with labour demand outstripping the supply⁴⁴. Shortages in the health and engineering sectors are now also evident.⁴⁵ EU's migration policy should provide facilitation for companies to recruit the right people, who may otherwise decide to move operations away from the EU, with further negative consequences for the EU economy⁴⁶.

III.2. Attracting and keeping talent

The EU increasingly has to compete with, for example Canada, the US and Switzerland, to attract talent⁴⁷. Europe must remain an attractive destination⁴⁸ while, at the same time, ensuring security and preventing abuses. A dialogue with the rest of the world, in the context of the Global Approach to Migration and Mobility (GAMM), can serve to facilitate migration as part of a holistic approach to all facets of migration management⁴⁹.

EU migration legislation contributes towards attracting certain categories of migrants. One example is the 2009 EU Blue Card Directive⁵⁰, which enables the entry and residence of third-country nationals taking up highly qualified employment. The evaluation of the transposition of this Directive by Member States is on-going, and will help to assess how far the EU Blue Card Directive has attained its objective. The first statistics on its implementation should be available in 2013, and the Commission will publish a report by mid-2014. The Commission received the notifications from some Member States concerning the transposition of the Single Permit Directive⁵¹, and encourages other Member States to meet the transposition deadline set for the end of 2013. Further efforts are needed by co-legislators in order to agree the Intra-Corporate Transferees⁵² and the Seasonal Workers⁵³ Directives, on which negotiations made progress in 2012.

The EU Immigration Portal⁵⁴ is an important tool for better informing potential migrants about their options and conditions for legal migration. On average the webpage received around 7 000 visitors per month in the final quarter of 2012. The portal is currently available in French and English and new language versions are being developed⁵⁵.

To make the EU a more attractive destination for the most talented students and researchers and to stimulate research, development and innovative performance, the Commission adopted a proposal for a recast of the legislation on the rules for the conditions of entry, residence and

⁴⁴ <https://ec.europa.eu/digital-agenda/node/21022>.

⁴⁵ European Vacancy and Recruitment Report 2012, <http://euskills panorama.ec.europa.eu/docs/EVVR2012Factsheets/08-Bottleneck.pdf>

⁴⁶ For example in the IT sector : IP/13/52, Commission issues action call in Davos - with IT sector and telecoms companies - to close digital skills and jobs gap in Europe http://europa.eu/rapid/press-release_IP-13-52_en.htm

⁴⁷ OECD "Settling In: OECD Indicators of Immigrant Integration 2012", Table 1.A1.2 "Educational attainment of foreign-born and native-born populations aged 15 to 64 not in education, 2009-10".

⁴⁸ According to OECD figures, the share of highly-educated people among foreign-born inhabitants is lower in the EU than in the USA or Canada (Source data: "Settling In: OECD Indicators of Immigrant Integration 2012", Chapter 7, Table 1.A1.2)

⁴⁹ GAMM also addresses preventing and combating irregular migration and eradicating trafficking in human beings; maximising the development impact of migration and mobility; and promoting international protection and enhancing the external dimension of asylum.
Directive 2009/50/EC of 25 May 2009.

⁵¹ Directive 2011/98/EU adopted on 13 December 2011. Transposition of the Directive should be completed by 25 December 2013.

⁵² See [EP Legislative Observatory : Inter-institutional reference 2010/0209\(COD\)](#)

⁵³ See [EP Legislative Observatory : Inter-institutional reference 2010/0210\(COD\)](#)

⁵⁴ <http://ec.europa.eu/immigration>

⁵⁵ The Spanish version was launched in January 2013. The Arabic version will be launched later in 2013.

rights of third-country national researchers, students and other groups⁵⁶. This proposal addresses several weaknesses by introducing clearer admission conditions and procedural guarantees, increasing coherence with EU mobility programmes, such as Erasmus Mundus and Marie Curie Fellowships. It proposes to give students more opportunities to seek work during and after their studies. It also aims to provide better protection and to address certain rights of equal treatment with nationals.

A Commission proposal for a Regulation establishing the European Voluntary Humanitarian Aid Corps⁵⁷ envisages the possibility for third-country nationals with long-term resident permits to be eligible to apply for service as EU Aid Volunteer.

The Court of Justice of the EU (CJEU) gave two judgements⁵⁸ on the interpretation of the Long-Term Residents Directive⁵⁹. One of these addresses the issue of rights to equal treatment in relation to housing benefits granted to third-country nationals covered by the Directive. The Court also upheld that a Member State cannot impose excessive and disproportionate fees for granting of residence permits for third-country nationals.

III.3. Smarter visa and border controls to contribute to growth

Facilitating border crossing of third country nationals to enter the EU is another way to make the EU a more attractive destination. On 28 February 2013, the Commission adopted the "smart border package", consisting of proposals for an "Entry-Exit System"⁶⁰, a "Registered Traveller Programme"⁶¹ and subsequent amendments of the Schengen Borders Code, to speed-up, facilitate and reinforce border check procedures for foreigners travelling to the EU.

With the number of Schengen visas issued worldwide rising again in 2012 to 14.2 million, compared to 12.7 million in 2011, it is clear that the implementation of the Visa Code⁶² is delivering results.

In 2012, the Commission outlined⁶³ how a smarter visa policy could contribute to the growth objectives of Europe 2020 by facilitating travel opportunities, especially for tourists. A report on the implementation of the Visa Code will furthermore be accompanied by a proposal for amendments to ensure that EU visa policy fosters economic growth and cultural exchanges by facilitating travel of legitimate travellers, such as businessmen, tourists, students and young people, while continuing to ensure a high level of security for the EU. This will be subject to an impact assessment. Roll-out of the Visa Information System (VIS) continued in 2012 to include two additional regions (the Near East and the Gulf region). More visa applications are thus now subject to VIS procedures, enabling them to be processed faster and tackling identity theft more effectively.⁶⁴ The Commission is currently conducting a fingerprint recognition

⁵⁶ COM(2013)151 final adopted 25.3.2013. Existing legislation Directives 2005/71/EC (researchers) and 2004/114/EC (students)

⁵⁷ COM(2012) 514 final

⁵⁸ Cases C-571/10 and C-508/10, http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2012/20120510_en.htm

⁵⁹ Directive 2003/109/EC, as amended by Directive 2011/51/EU extending long-term residence to beneficiaries of international protection.

⁶⁰ COM(2013) 95

⁶¹ COM(2013) 97

⁶² Regulation (EC) No 810/2009

⁶³ COM(2012) 649 Final Communication from the Commission "Implementation and development of the common visa policy to spur growth in the EU", accompanied also by a report on the functioning of Local Schengen Cooperation (COM(2012)648 Final).

⁶⁴ Roughly 2.4 million visa applications were introduced in VIS in 2012. That is some 16% of total visa applications in that year.

study of children below the age of 12 years, to scientifically identify if there is an age limit for collecting fingerprint.

III.4. Enabling integration in our societies

The EU must ensure that effective measures are in place to promote integration, with the participation of both migrants and the societies in which they live.⁶⁵ Access to education, social and health services is important for integration. In 2012 Member States started the process of implementing the 2011 Single Permit Directives which gives third-country nationals covered by that Directive the right to equal treatment compared to EU nationals, for instance as regards working conditions and pay, education and vocational training and social security.

Beyond their contribution to the EU economy and innovation, the positive role of migrants themselves needs to be respected. The EU's rich cultural and societal diversity as well as tolerance needs to continue to serve as a positive example. However, it is alarming that there have been an increasing number of incidents of xenophobic violence against migrants across the EU. With well-managed migration and integration policies, the EU can actively contribute to counter xenophobic attitudes by, for example, supporting dialogue and increasing understanding and trust between different communities.

The situation of third-country nationals compared to the EU's population as a whole shows that more could be done to ensure that migrants already resident in the EU are well integrated, and can develop their full potential in an environment where their fundamental rights are fully respected and where they can contribute to our societies' prosperity.

According to the report on Employment and Social Developments in Europe 2012⁶⁶, unemployment rates are higher for third-country nationals (21.3 % compared to the EU average (10.5%). Third-country nationals were also found to be more likely to be over-qualified relative to national counterparts and more at risk of falling into poverty or social exclusion⁶⁷. The risk of poverty and social exclusion of foreign-born people aged 25-54 exceeds on average that of others by more than 10 percentage points across the EU as a whole. The gap in the risk of poverty after social transfer between migrants and EU citizens is also significant, with 8 percentage points. Further, children with a migrant background have a higher risk of leaving school early⁶⁸. Another study found that young people with an immigration background are significantly more likely to become "not in employment, education or training" (NEET) compared to their contemporaries⁶⁹. Recognising this challenge, the Council adopted Conclusions in November 2012 identifying the priorities needed to address the participation and social inclusion of young people with emphasis on those with a migrant background⁷⁰.

The Social Investment Package provides the EU Member States with guidance and support in their efforts to remove barriers to the participation of underrepresented workers, including migrants, in the labour market, and urges them to take action to address workplace

⁶⁵ The EU's current strategy in this regard is set out in the European Agenda for the Integration of Third-Country Nationals, see COM(2011) 455 final and subsequent 3135th JHA Council conclusions of 13 and 14 December 2011. See also the Committee of the Regions Opinion on the Agenda (CIVEX-V-024).

⁶⁶ Available at <http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=1774&furtherNews=yes> and Eurostat, EU-LFS, table lfsa_organ

⁶⁷ Member State specific unemployment rate statistics is available in SWD(2013) 210.

⁶⁸ COM(2013) 83 final, pp. 6-7

⁶⁹ Eurofound (2012), *NEETs – Young people not in employment, education or training: Characteristics, costs and policy responses in Europe*.

⁷⁰ See http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/133859.pdf.

discrimination, improve the schemes for recognition of skills and qualification, and facilitate migrants' access to education (especially higher education), employment services (including information on job vacancies), financial services, social security benefits and social assistance⁷¹.

Family reunification plays a part in facilitating and promoting integration. Following a public consultation of stakeholders after the 2011 Green Paper on Family Reunification⁷², the Commission is preparing guidelines to ensure the efficient, transparent and clear implementation of family reunification rules at EU level. These guidelines, due by the end of 2013, will address the need to balance the fundamental right to family life with a need to ensure that this right is genuinely and coherently applied according to the rules of the Directive⁷³.

III.5. External perspective

Migration is becoming an increasingly salient issue on the global agenda. Within the framework of the GAMM, which provides the overarching framework for the EU external migration policy, the EU has taken a series of initiatives both at regional and global level. Facilitating migration and mobility should contribute to economic growth and the competitiveness of the EU. The important links between migration and development issues are also clearly recognised in the EU's development policy framework, the "Agenda for Change".

In addition to existing Mobility Partnerships, negotiations with Morocco and Tunisia on new Mobility Partnerships took place in 2012, including facilitation of mobility and better managed legal migration⁷⁴. The EU has also initiated exploratory talks with Azerbaijan. A structured dialogue on migration, mobility and security has been launched with Jordan, possibly leading to a Mobility Partnership. Similar dialogues will follow with other countries in the Southern Mediterranean region, when the political situation allows this. Another framework of cooperation, the "Common Agendas for Migration and Mobility" is being considered with priority countries beyond the EU neighbourhood, such as India.

The EU also engaged in a number of regional and sub-regional dialogue and cooperation processes in 2012, covering all mutually relevant issues and themes in the area of migration and mobility. In line with the Council Conclusions of 29 May 2012,⁷⁵ priority has been given to the Africa-EU Partnership on Migration, Mobility and Employment and the Rabat Process⁷⁶ in the South, to the Prague Process⁷⁷ and to the Eastern Partnership panel on Migration and Asylum in the East, as well as to the EU-LAC Migration Dialogue and the

⁷¹ COM(2013) 83 final, Towards Social Investment for Growth and Cohesion – including implementing the European Social Fund 2014-2020, pp. 11-12, SWD(2013) 39 final, Follow-up on the implementation by the Member States of the 2008 European Commission recommendation on active inclusion of people excluded from the labour market - Towards a social investment approach, p. 56

⁷² COM (2011)735 final. Contributions received in response to this Green Paper are available at http://ec.europa.eu/home-affairs/news/consulting_public/consulting_0023_en.htm.

⁷³ EMN study entitled "Misuses of the Right to Family Reunification - Marriages and convenience and false declarations of parenthood"(June 2012) informs this debate.

⁷⁴ Political agreement was reached with Morocco on 1 March 2013.

⁷⁵ Council conclusion on the Global Approach to Migration and Mobility" (Doc ref. 9417/12)

⁷⁶ Euro-African Partnership for Migration and Development, Declaration signed in Rabat, 2006

⁷⁷ Political process promoting migration partnerships among the participating states of the European Union, the Schengen Area, South Eastern and Eastern Europe and Central Asia, in addition to Turkey, started with a Ministerial Conference in Prague 2009. See: www.icmpd.org

dialogue with the countries along the Silk Route within the framework of the Budapest Process⁷⁸.

Countries of origin also benefit from well-managed legal channels for entering the EU, and the importance of this should not be underestimated. Remittances are still a significant source of private income for many families in third countries and in 2011 they amounted to EUR 28.5 billion, a 3% increase from 2010⁷⁹. The Commission and Member States have undertaken a number of remittance related initiatives over recent years and improvements have been made, more work remains to be done⁸⁰. Diaspora groups also contribute to the development of their countries of origin in many other ways, including by transferring skills and promoting investments.

At global level the EU is actively involved in the preparations of the forthcoming second UN High-level Dialogue on International Migration and Development, to be held during the sixty-eighth United Nations General Assembly session on 3-4 October 2013, in order to contribute effectively to the achievement of a successful meeting. In its Communication “Maximising the Development Impact of Migration – The EU contribution for the UN High-Level Dialogue and next steps towards broadening the development-migration nexus”⁸¹, the links between migration and development are further addressed and the EUs common position is defined with key messages for enhanced global cooperation.

IV. RISING TO THE CHALLENGES IN INTERNATIONAL PROTECTION

IV.1. Completing the Common European Asylum System (CEAS)

Europe remains an important destination for those with a genuine need to seek protection. In order to have a uniform protection status across the EU, the European Parliament, the Council and the Commission worked intensively throughout 2012 to complete the necessary package of instruments for the second phase of the CEAS. After the adoption of the revised Qualification Directive⁸² in 2011, political agreement was reached in 2012 on the recasts of the Dublin Regulation⁸³ and the Reception Conditions Directive⁸⁴. The changes to the Reception Conditions Directive are particularly significant, as they introduce, for the first time, detailed rules concerning asylum-related detention, including an exhaustive list of restrictive grounds for such detention, and strict requirements on detention conditions. The changes to the Dublin Regulation will enhance both its efficiency and its protective aspects, particularly as regards the right to appeal against transfer decisions and the maintenance of family unity. Political agreement was reached in March 2013 on the final two pieces of legislation forming the CEAS, the recast of two instruments, the Asylum Procedures Directive⁸⁵ and the EURODAC Regulation, on a biometric database for the comparison of

⁷⁸ Consultative forum of more than 50 governments and 10 international organisations, aiming at developing comprehensive and sustainable systems for orderly migration. See : www.icmpd.org

⁷⁹ Eurostat Press Release 176/2012 of 11 December 2012.

⁸⁰ *EU Remittances for Developing Countries, Remaining Barriers, Challenges and Recommendations* . http://ec.europa.eu/europeaid/what/migration-asylum/documents/eu_remittances_for_developing_countries_final_19-11-2012.pdf.

⁸¹ COM(2013)292 of 21.5.2013.

⁸² Directive 2011/95/EU

⁸³ Recast Directive 2003/9/EC. Council press release 14556/12 JHA Council 25.10.2012.

⁸⁴ Recast Council Regulation (EC) No 343/2003. Council Press release 17315/12, JHA Council 6-7.12.2012

⁸⁵ Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status. OJ L 326, 13.12.2005, p. 13. [EP legislative observatory](http://www.epo.europa.eu), inter-institutional reference COD(2009)0165

fingerprints⁸⁶. The revised Asylum Procedures Directive will lead to fairer, quicker and better quality asylum decisions, and the special needs of vulnerable people will be better taken into account and in particular there will be greater protection of unaccompanied minors and victims of torture. The revised EURODAC Regulation will furthermore allow law enforcement access to the EU database of the fingerprints of asylum seekers under strictly limited circumstances in order to prevent, detect or investigate the most serious crimes, such as murder, and terrorism.

Once these CEAS measures are effectively implemented, the EU will have a comprehensive asylum system in place, providing common procedures and a uniform status for those granted asylum or subsidiary protection across the EU with sufficient safeguards in place to tackle misuse. These measures are also aimed at ensuring that the fundamental rights of asylum seekers are protected, in particular the principle of *non-refoulement* and the right to an effective remedy before the courts.

IV.2. Promoting Practical Cooperation and Intra-EU Solidarity

There was intense debate on intra-EU solidarity on asylum at EU level with strategic documents adopted by the European Parliament⁸⁷ and the Council⁸⁸ and Opinions by both the Committee of the Regions⁸⁹ and the European Economic and Social Committee⁹⁰. There was support for the broad lines of the Commission's strategy set out in the Communication on Intra-EU Solidarity in the field of asylum⁹¹. The strategy is based on furthering mutual trust and the parallel development of a variety of tools which can respond to the different needs and situations of Member States. These tools and frameworks can succeed in practice only with the full engagement of Member States' authorities together with the European Asylum Support Office (EASO).

Member States' engagement in solidarity measures faced a particular test on three occasions during 2012, namely in relation to the Greek National Action Plan on Asylum and Migration⁹², the conflict in Syria and the relocation of beneficiaries of international protection within the EU, notably via the EUREMA II project. All three demonstrated the need to develop further the implementation in practice of the solidarity commitments made.

Implementation was the topic of an expert meeting on intra-EU solidarity held early in 2013. The meeting confirmed that there is still scope for closer practical cooperation between national authorities. For example, it showed that despite the widely recognised high quality of the European Asylum Curriculum, only a handful of Member States use it extensively. At the same time, several Member States' experts expressed readiness for more EU-level scrutiny of national asylum procedures in the context of furthering mutual trust through a coherent transposition of new asylum laws. As regards crisis prevention and management, the meeting identified key challenges such as coordination responsibilities for solidarity actions at EU level, and contingency planning in asylum crisis situations.

⁸⁶ Council Regulation (EC) No 2725/2000. OJ L316, 15.12.2000, p.1. EP legislative observatory link. [EP legislative observatory](#), inter-institutional reference COD(2008)0242. The next EURODAC Annual Report will be published in the latter half of 2013.

⁸⁷ <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2012-310>

⁸⁸ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/130731.pdf

⁸⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:277:0012:0017:EN:PDF>

⁹⁰ <http://www.eesc.europa.eu/?i=portal.en.soc-opinions>

⁹¹ COM(2011) 835 final

⁹² See also the Commission's Task Force for Greece, see http://ec.europa.eu/commission_2010-2014/president/taskforce-greece/.

IV.2.1. A fully functioning European Asylum Support Office (EASO)

The European Asylum Support Office⁹³ plays a key role in implementing the CEAS, notably through enhancing practical cooperation and co-ordinating operational support among Member States⁹⁴. EASO gained full financial independence in September 2012 and the main practical asylum cooperation measures, previously managed by the Commission, were transferred to the Agency in 2012. While continuing to support the implementation of the EU Action Plan on Migration and Asylum in Greece, a second deployment of EASO Asylum Support Teams took place, this time in Luxembourg and provided help in training newly recruited staff. EASO increasingly acts as an information provider, with the goal of taking preventive actions and addressing specific concerns before they develop into crises. The Agency is dependent on Member States' resources to perform its duties, and Member States are also urged to increase their support and contribution to other EASO-led projects, such as the European Asylum Curriculum and the Country of Origin activities.

The partnership between the European Commission and EASO will be further strengthened in 2013, when the agency will become a crucial partner in the implementation of the new legislation. There will be a first evaluation of EASO in 2013, in line with the Communication on Intra-EU Solidarity⁹⁵. The Commission will also work with EASO to fully adopt the measures envisaged in the Joint Statement on Decentralised EU Agencies⁹⁶.

IV.2.2. Asylum Support to Greece

The Commission, along with EASO and other stakeholders, took steps to support Greece in improving its asylum system. This included missions on the ground, the provision of targeted funding and the deployment of EASO Asylum Support Teams and experts on implementing EU funding.

Positive developments included a new independent asylum service, the setting up of measures for addressing the backlog such as appeal committees and a special task force. Funding, totalling some EUR 19.95M for the period 2011-2013, has been provided to support these efforts via the European Refugee Fund, with some EUR 3.2M allocated in 2013 alone⁹⁷.

Whilst clearly welcoming these developments, the Commission considers that there are still gaps and further work will be needed, particularly as regards the respect of human rights in detention facilities, increasing access to the asylum procedure and increasing the availability of open reception facilities. The Commission will continue to work with the Greek authorities in order to prioritise and then facilitate the swift implementation of the action plan. Continued support and solidarity from other EU Member States is also necessary. The importance of continued vigilance in this respect is borne out by the implications for the entire European asylum system of the judgement of the Grand Chamber of the Court of Justice of the EU in Joined Cases C-411/10 and C-493/10⁹⁸.

⁹³ EASO also launched its official website in 2012, see <http://easo.europa.eu>, as well as published its first Annual Report in June 2012.

⁹⁴ EASO's Annual Report, to be published mid-2013, will provide more details of its various activities in 2012.

⁹⁵ COM(2011) 835 final

⁹⁶ http://ec.europa.eu/commission_2010-2014/sefcovic/headlines/news/2012/07/2012_07_17_joint_agreement_agencies_en.htm

⁹⁷ For the period 2011-2013, Greece was also allocated an amount of EUR 97.9M for the Return Fund and €129.7M for the External Borders Fund. In 2013 alone, the amounts allocated are EUR 35.3M and EUR 44M respectively. The EUR 19.95 M includes EUR 7.7M under the European Refugee Fund emergency funding.

⁹⁸ Joined Cases C-411/10 and C-493/10 (N.S., M.E. and Others) http://ec.europa.eu/dgs/legal_service/arrets/10c411_en.pdf

IV.2.3. Protection for those fleeing from Syria

Migration as a consequence of the conflict in Syria is an important challenge for the asylum systems of some Member States. The vast majority of the almost 600 000 Syrians who fled their country during 2012 went to Jordan, Turkey, Lebanon and Iraq⁹⁹, with approximately 23 770¹⁰⁰ requesting asylum in the EU. Of those, most applied in Germany and Sweden (approximately 33% of total each), with other Member States only marginally affected. Though these numbers were not high enough to destabilise the asylum systems, especially since the assessment of claims could be made rapidly especially in Germany, it became clear that there was nevertheless a need for greater preparedness given the unpredictable developments.

Starting in August 2012, the Commission set up a network with the relevant Agencies (EASO, Frontex, Europol) for regular information exchanges in order to coordinate action. This mechanism of coordination between the European Commission and EU Agencies is a blueprint to ensure a better overall monitoring of the situation at the EU's external borders and of its asylum systems. This will facilitate the activation of support instruments in a timely manner, including via the early warning mechanism envisaged in Article 33 of the revised Dublin Regulation.

IV.2.4. Relocation within the EU

Relocation of beneficiaries of international protection continues to be one of the most tangible acts of solidarity available to Member States wishing to relieve pressures on other Member States' asylum systems. It also remains one of the most controversial. While the EUREMA II project¹⁰¹, which started in 2012, has been extended until the end of 2013, there continues to be difficulties in relocating beneficiaries from Malta to certain participating Member States. According to EASO and to information supplied to the Commission by UNHCR, IOM and the Maltese Government, the reasons for this vary from the sometimes restrictive criteria applied by Member States for selecting beneficiaries for relocation, to perceptions by beneficiaries that family reunification and integration prospects in the Member State offering to relocate them could cause them difficulties.

IV.3. EU's external asylum dimension – Regional Protection Programmes and Resettlement

Solidarity should not stop at the EU's borders, and third countries should likewise benefit from EU support in international protection. Within the framework of the GAMM, the EU should increase cooperation with relevant non-EU countries in order to assist in strengthening their protection systems and to ensure compliance with international standards, as well as to show solidarity with the refugees and other persons in need of protection throughout the world. Regional Protection Programmes (RPPs) and resettlement are key instruments towards this goal, in parallel with the EU's on-going cooperation with third countries at both bilateral and multilateral level.

In addition to work on existing RPPs¹⁰², and following a call from the Justice and Home Affairs Council¹⁰³, the Commission is responding to the on-going conflict in Syria and the

⁹⁹ <http://data.unhcr.org/syrianrefugees/regional.php>, Number as of early January.2013.

¹⁰⁰ Data for December not available for all Member States. No data available for NL.

¹⁰¹ The first EU Relocation from Malta (EUREMA) project relocated 227 beneficiaries of international protection from Malta in 2010-11. For EUREMA II, 97 places were initially pledged plus a further 265 bilateral pledges outside the project. Over the course of 2012, 105 persons were relocated either through EUREMA II or the accompanying bilateral arrangements.

¹⁰² The Commission has been also very active in supporting the development of RPPs in North Africa (included Egypt, Tunisia).

refugee situation in neighbouring countries by setting up during 2014 a Regional Development and Protection Programme in the Middle East, complementary to the immediate humanitarian assistance already being provided.

The Commission is also providing financial support to the UNHCR to support efforts enabling refugees in countries neighbouring Syria to be properly registered and thus gain access to protection. The support includes assisting the local authorities with the provision of transport from border crossing points, providing the necessary equipment and supplies, as well as, wherever necessary, providing training and familiarising non-governmental organisations, officials, and other stakeholders with the basic principles of international protection.

The resettlement of refugees from outside the EU continues to be a key act of solidarity between the EU and its Member States with third countries that are hosting large refugee populations. The Commission's goal is to ensure that more refugees are resettled each year by more Member States, while respecting the voluntary nature of resettlement. In reaching agreement on the Joint EU Resettlement Programme¹⁰⁴ under the European Refugee Fund in March 2012, Member States agreed, for the first time, on specific common EU resettlement priorities for 2013¹⁰⁵. This gives a strong political signal of unity and solidarity with the international community and refugees in need of a sustainable solution and is an expression of the importance that the EU and the Member States attach to directing the Union's resettlement efforts towards protracted situations that need special attention and increased efforts. The outlines of the Union Resettlement Programme from 2014 onwards are under negotiation as part of the new Asylum and Migration Fund.

IV.4. Unaccompanied Minors

Unaccompanied minors, including also those who do not apply for asylum, form a vulnerable group that continued to receive much attention in 2012. The mid-term report¹⁰⁶ on the implementation of the Action Plan on Unaccompanied Minors (2010-2014)¹⁰⁷ highlighted the need to improve data collection, prevent unsafe migration as well as trafficking in human beings, to provide for reception and procedural guarantees in the EU and to find sustainable solutions to address this persistent phenomenon effectively. Integrating specific needs of (unaccompanied) minors and recognising their vulnerable position in asylum situations adequately, remained one of the most important points for the Commission during negotiations on the Common European Asylum System instruments.

EASO launched a number of initiatives on age assessment techniques and family tracing. The Commission also launched a call for proposals for projects to analyse policies and identify best practices for the reception, protection and integration of unaccompanied minors¹⁰⁸.

IV.5. Eradicating Trafficking in Human Beings and protecting victims of trafficking

Strong cooperation between the EU and its Member States is needed to eradicate trafficking in human beings which is predominantly a cross-border phenomenon. Victims from outside of the European Union come mainly from Nigeria and China.

¹⁰³ October 2012. http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/133241.pdf.

¹⁰⁴ Decision 281/2012/EU of 29 March 2012. <http://www.resettlement.eu>

¹⁰⁵ Under this scheme, the participating Member States pledged to resettle 3 962 refugees in 2013. This is an increase compared with 2012 when 3 083 resettlement places were pledged.

¹⁰⁶ COM(2012) 554 final, and accompanying Staff Working Document SWD(2012)281.

¹⁰⁷ COM(2010) 213 final

¹⁰⁸ See http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/other-programmes/pilot-project-unaccompanied-minors/index_en.htm.

In 2012 there were several significant and dynamic developments in the EU's legal and policy framework for addressing trafficking in human beings. In June 2012, the Commission launched the integrated EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016¹⁰⁹, putting victims at its heart and complementing the implementation of EU legislation on trafficking¹¹⁰. The Office of the EU Anti-Trafficking Coordinator, appointed in 2011, plays a key role in monitoring the implementation. In October 2012, the European Council adopted Conclusions¹¹¹ welcoming the strategy and reaffirming the political will and readiness of Member States to act on their policy commitments. The European Parliament, the European Economic and Social Committee and the Committee of the Regions have also welcomed the Communication¹¹².

On the external dimension of trafficking in human beings, the second (and final) report on the implementation of the Action-Oriented Paper (AOP) on strengthening the EU external dimension on action against trafficking in human beings¹¹³ acknowledged that the EU strategy should be used as the new guiding framework for the external dimension. This envisages concerted efforts to improve cooperation with third countries of origin, transit and destination. This is also in line with the Council Conclusions on the Global Approach to Migration and Mobility¹¹⁴. Trafficking in human beings is a topic in all migration and mobility dialogues conducted between the EU and its partners both at regional and bilateral level, as well as in Mobility Partnerships. The report included a specific list of countries and regions for further strengthening and streamlining such cooperation and partnership, which will be reviewed and updated at regular intervals.

V. EU'S POLICY RESPONSE TO MIGRATORY PRESSURES

V.1. A Coherent Approach to Reduce Irregular Migration

Irregular migration continues to present challenges to the EU and Member States who are all, albeit to varying degrees and circumstances, affected, as are migrants themselves, often in dangerous and inhumane conditions. The EU's clear aim is to prevent and control existing pressures deriving of irregular migration, as well as the misuse of legal migration routes. This is a pre-condition for a credible legal migration and mobility policy.

On 23 April 2012, the Council adopted the 'EU Action on Migratory Pressures – A Strategic Response'¹¹⁵, highlighting six strategic priority areas of action: (I) Strengthening cooperation with third countries of transit and origin on migration management; (II) Enhanced border management at the external borders; (III) Preventing illegal immigration via the Greek-Turkish border; (IV) Better tackling of abuse of legal migration channels; (V) Safeguarding and protecting free movement by prevention of abuse by third country nationals and (VI) Enhancing migration management, including cooperation on return practices.

¹⁰⁹ COM(2012) 286 final

¹¹⁰ Notably Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, OJ L 101, 15.04.2011., The deadline for transposition is April 2013.

¹¹¹ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/133202.pdf.

¹¹² <http://www.eesc.europa.eu/?i=portal.en.soc-opinions.23965> and <http://toad.cor.europa.eu/corwipdetail.aspx?folderpath=CIVEX-V/035&id=21618>

¹¹³ <http://register.consilium.europa.eu/pdf/en/12/st13/st13661-re03.en12.pdf>.

¹¹⁴ <http://register.consilium.europa.eu/pdf/en/12/st09/st09417.en12.pdf>.

¹¹⁵ Council document 8714/1/12 REV 1. See: <http://register.consilium.europa.eu/pdf/en/12/st08/st08714-re01.en12.pdf>. To reflect the need to constantly review this strategy, each Council Presidency has agreed to include this as part of their programme and update the "EU Action on Migratory Pressures – A Strategic Response", regularly, specifically within the context of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA).

The 'EU Action on Migratory Pressures – A Strategic Response' provides a tool allowing the EU and its Member States to address irregular migration, while ensuring respect for fundamental rights¹¹⁶. Implementing and following up its elements entails close cooperation between the institutional actors (Council, Member States, the Commission and relevant EU Agencies), each in accordance with their respective competencies and institutional role¹¹⁷. The Commission staff working document accompanying this report features a progress report on Member State actions in these priority areas¹¹⁸. The strategic priorities need to be seen as part of the broader aspect of managing migration flows, incorporating all facets ranging from dialogues with third countries, as part of the GAMM framework, to solidarity actions with Greece, down to actions undertaken by individual Member State within their borders.

Those who employ irregularly staying third country nationals have to be sanctioned. The Commission is currently assessing Member States' transposition of the Employer Sanctions Directive¹¹⁹. On the basis of this evaluation, the Commission will publish a report by mid-2014. Member States are requested to submit the required annual reports on inspections, due in July each year.

V.1.1 Identifying and tackling pressure points

Frontex plays a key role in analysing irregular migration routes and co-ordinates actions to tackle particular pressure points, such as the Greece-Turkey border at present. Pressure points may also build elsewhere, so it remains important to monitor developments continuously. As part of the Greece National Action Plan on Asylum and Migration, positive developments include improvements in the integrated management of external borders, via electronic surveillance as well as the establishment of a national coordination unit, plus an effective return policy, which will focus on supporting voluntary returns and in cases where these are not possible, forced returns.

V.1.2 Readmission agreements

The Commission continues to promote the implementation of 13 existing EU Readmission Agreements¹²⁰ taking into account the Council Conclusions of 9-10 June 2011 on the EU strategy on readmission. It is also pursuing its efforts as negotiator of EU readmission agreements. New Readmission Agreements were concluded with Cape Verde in April 2012 and with Armenia in October 2012. An agreement was also reached with Turkey in June 2012, which is now awaiting signature and ratification. Negotiations with Azerbaijan have progressed at a steady pace. The Commission is making efforts to strengthen guarantees of fundamental rights protection in newly negotiated EU readmission agreements with third countries.

A set of Recommendations of the expert meetings covering readmission *inter alia*, aiming to enhance the implementation of the relevant provisions of Article 13 (Migration) of the Cotonou agreement¹²¹, was endorsed at the ACP Ministerial Meeting in Vanuatu in June 2012.

¹¹⁶ E.g., the guidance document "Apprehension of migrants in an irregular situation – fundamental rights considerations" developed by the Fundamental Rights Agency in 2012 should be taken into account in apprehension practices.

¹¹⁷ E.g., readmission agreement negotiations are undertaken by the Commission which acts in strict co-operation with the Member States within appropriate Council groups.

¹¹⁸ SWD(2013) 210 final, Section 4.

¹¹⁹ Directive 2009/52/EC

¹²⁰ COM(2011) 76.

¹²¹ http://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index_en.htm

V.1.3 *Setting standards with a common Return Policy*

By the end of 2012, all States bound by the Return Directive¹²², except Iceland, had notified full transposition to the Commission. The EU is thus now very close to having common return standards, in full respect of fundamental rights. The evaluation of the correct transposition of the Return Directive into national legislation has been completed, and is currently being followed-up by the Commission. A key 2012 judgment from the CJEU clarifies the extent to which national law provisions criminalising irregular stay are compatible with the Return Directive¹²³. A Communication on return will be published by the end of 2013.

In 2012, 52.1% of all returns carried out were voluntary returns or departures. Voluntary return or departure remains the preferred option, although in some cases forced returns may be necessary. Member States should continue to make full use of the possibilities offered by the Voluntary Return European Network (VREN)¹²⁴, as well as funding from the European Return Fund. The use of joint return flights should be further promoted, making full use of the Return Fund and Frontex coordination¹²⁵. Procedural safeguards as prescribed by the Return Directive, including the presence of forced return monitors, need to be reinforced.

Member States are frequently confronted with significant numbers of third-country nationals who cannot be returned in practice, even though a return decision has been taken. A comparative study¹²⁶ carried out for the Commission found that a number of Member States envisage channels and conditions through which persons with a postponed return/removal order may enter a regularisation procedure, provided they fulfil certain conditions, such as a minimum length of stay, co-operation and absence of public order concerns. The Commission is currently reviewing the findings from this study and will propose possible actions as part of its Communication on return.

V.1.4 *Tackling misuse of visa liberalisation*

The Commission, with the assistance of EASO and Frontex, continues to monitor the effects of new visa-free regimes via the so-called post visa liberalisation monitoring mechanism. Negotiations also continued on the proposed amendments¹²⁷ to Regulation 539/2001¹²⁸. This revision to the Regulation would introduce a new visa suspension and revised reciprocity mechanisms as a last resort in cases when introducing a visa-free regime results in a sudden

¹²² Directive 2008/115/EC

¹²³ Most notably, Case C-430/11 (Sagor) further clarified the extent to which national law provisions criminalising irregular stay must not undermine the common standards of the Return Directive. In this case, the Court ruled that Member State legislation which allows irregular stays by third country nationals to be penalised by means of a home detention order is compatible with the common standards of the Return Directive only if that order comes to an end as soon as the physical transportation of the individual concerned out of that Member State is possible. This ruling further refines the CJEU's case law on this issue basing itself on the case law already established in cases C 61/11 (El Dridi) and C 329/11 (Achoughbabian) according to which national law provisions criminalising irregular stay, must be proportionate and must not delay the return procedure.

¹²⁴ <http://www.vren-community.org/>

¹²⁵ In 2012, Frontex co-ordinated a total of 39 joint return flights for 2 110 returnees. Twenty Member States (AT, BE, BG, DE, EL, ES, FI, FR, HU, IE, IT, LU, MT, NL, PL, RO, SE, UK) and two Schengen associated countries (CH, NO) participated in these flights. Countries of return were Armenia, Colombia, Ecuador, Georgia, Ghana, Gambia, Kosovo(*), Nigeria, Pakistan, Serbia, Ukraine and Uzbekistan. (* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence.)

¹²⁶ Available as of 11.3.2013 on http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/immigration/return-readmission/index_en.htm

¹²⁷ COM(2011) 290 final

¹²⁸ OJ L81, 21.3.2001, p.1.

and substantial rise in irregular migration or unfounded asylum applications. Agreement has not yet been found on the reciprocity mechanism.

V.2. Effective Border Management

V.2.1 EU's External Borders

Frontex continues to play an essential role in facilitating operational cooperation between Member States on border security and return. The implementation of its revised Regulation¹²⁹, which entered into force in December 2011, must now be a main priority for the Agency, in particular making active use of the appointed Fundamental Rights Officer and the Consultative Forum on Fundamental Rights. The Commission welcomed the EU Ombudsman's public consultation on Frontex and fundamental rights¹³⁰.

Following annulment by the CJEU of Council Decision 2010/252/EU in relation to guidelines on search and rescue operations¹³¹, the Commission presented a proposal¹³² in April 2013 replacing this Decision and taking on board a landmark judgement of the European Court of Human Rights rendered in 2012¹³³.

In close coordination with Frontex and the Member States, the Commission continued to develop the European Border Surveillance System (EUROSUR), due to become operational in October 2013. The Regulation establishing the system is expected to be adopted in the first half of 2013 and the European Council and Parliament are urged to support this schedule. In order to have a comprehensive set of tools for managing the EU's external borders, with state-of-art technology the Commission adopted the "Smart Borders package" in February 2013.

V.2.2 Schengen Governance

As announced in its 2011 Communication on Migration¹³⁴, the Commission published guidelines¹³⁵, as part of the first biannual report on the functioning of the Schengen area¹³⁶, to ensure a coherent implementation and interpretation of rules governing the Schengen area. Two areas were identified in which such guidelines could have an added value: issuing of temporary residence permits and travel documents to non-EU citizens plus police measures in the internal border zones. In regard to the latter, Member States are invited to ensure that their national legislation and practises are in line with relevant provisions of the Schengen *acquis* and the jurisprudence of the CJEU¹³⁷.

The legislative proposals proposed in 2011¹³⁸ for enhanced Schengen governance were intensely discussed throughout 2012 in the Council and the EP; discussions continue in 2013.

VI. CONCLUDING REMARKS

Migration has been and will be a part of what makes the EU. As shown in this report much has been achieved recently and the years to come will bring new challenges that will need to

¹²⁹ Regulation (EU) No 1168/2011 of 22.11.2011.

¹³⁰ http://europa.eu/rapid/press-release_EO-12-14_en.htm?locale=en.

¹³¹ Decision on Case C-355/10 of 5 September 2012

¹³² COM(2013) 197

¹³³ ECtHR, *Hirsi Jamaa and Others v. Italy* [Grand Chamber], No. 27765/09, 23 February 2012

¹³⁴ COM(2011) 248 final

¹³⁵ Annex to COM (2012) 230

¹³⁶ COM (2012) 230. This first report covered the period 1.11.2011 – 30.4.2012 and was discussed by the JHA Council on 7 June 2012 and by the European Parliament on 4.7. 2012. The second report (COM (2012) 686), covering 1.5–31.10.2012, was adopted on 23.11.2012, debated by the JHA Council 6-7.12.2012 and by the European Parliament on 18.12.2012..

¹³⁷ In particular the judgment in Case C-278/12.

¹³⁸ COM(2011) 559 ([Link](#) to [EP legislative observatory](#)) and COM (2011) 560 ([Link](#) to [EP legislative observatory](#).)

be addressed. The increasing number of incidents of xenophobic violence against migrants across the EU is alarming. With well-managed migration and integration policies, the EU can actively contribute to counter such attitudes.

Europe should welcome diversity and make migration a dynamic force for growth and progress. To attract the talents and entrepreneurs that Europe needs, the EU must keep pace with its global competitors. In support of the objectives of the EU 2020 Strategy, conditions need to be created for a forward-looking and comprehensive labour migration policy and to allow economic activity to thrive in a stable and secure environment. This includes working on a more modern and efficient management of traveller flows at its external borders, reinforcing well-managed legal immigration and integration policies and simultaneously, stepping up the fight against irregular migration and trafficking in human beings while ensuring throughout that the fundamental rights of immigrants and asylum seekers are guaranteed. This implies that co-legislators give the necessary priority to the adoption of the legislative packages on the table. It implies also that a more pro-active monitoring by the Commission of the implementation of the migration *acquis* is needed.

Development of immigration and asylum policies cannot be done without the necessary budgetary support. There is still a need to ensure that the overall framework for the European Union's budget for the period 2014 to 2020 is agreed and effectively put in place. Agreement on the Asylum and Migration Fund Regulation and the Internal Security Fund Regulation proposals should be found urgently so that necessary measures can be put in place for the beginning of 2014. The Commission will hold 'policy dialogues' with Member States and, as regards some parts of the Internal Security Fund, the Schengen associated states, prior to the negotiations on their multiannual programmes. The policy dialogue should lead to a better focus on objectives, results and impacts. In the meantime, Member States are called upon to make full use of the funds that are currently available, to support the implementation of EU's migration policy.

The Commission looks forward to further debates on the basis of this report, both in the European Parliament and the Council.