MIGRATION IN THE CONTEXT OF RELATIONS BETWEEN THE EU AND LATIN AMERICA AND THE CARIBBEAN
Abstract

The study ‘Migration in the context of relations between the European Union and Latin America and the Caribbean’ was drawn up at the request of the European Parliament’s Committee on Foreign Affairs (EXPO/B/AFET/2009/19). The project was coordinated by the Latin America Programme of the Barcelona Centre for International Studies (CIDOB), under the guidance of Anna Ayuso, Project Leader, and Gemma Pinyol, Coordinator of CIDOB’s Migrations Programme, who acted as content organiser. Mariana Foglia, a research assistant at CIDOB, drafted the final report in collaboration with the research project coordinators.

As groundwork for the report, 10 studies on specific areas were drawn up by specialists with recognised experience and expertise in the field of migration. The authors of these studies were: Anna Ayuso, Lorenzo Cachón, Mariana Foglia, Susanne Gratius, Florencio Gudiño, José Luis Ibáñez, David Moya, Gemma Pinyol, Andrés Solimano, Laura Tedesco, Pamela Urrutia and Alejandro del Valle.
This study was requested by the European Parliament's Committee on Committee on Foreign Affairs.

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**THIS STUDY IS AVAILABLE IN THE FOLLOWING LANGUAGES:**
ORIGINAL: ES    TRANSLATION: EN, FR, PT

**EDITOR:**
Manuscript completed on 30 October 2009.
This document is available on the Internet at: http://www.europarl.europa.eu/activities/committees/studies.do?language=ES
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EXECUTIVE SUMMARY

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As groundwork for the report, 10 studies2 on specific areas were drawn up by specialists with recognised experience and expertise in the field of migration. The authors of these studies were: Anna Ayuso, Lorenzo Cachón, Mariana Foglia, Susanne Gratius, Florencio Gudiño, José Luis Ibáñez, David Moya, Gemma Pinyol, Andrés Solimano, Laura Tedesco, Pamela Urrutia and Alejandro del Valle.

CONCLUSIONS AND RECOMMENDATIONS

The migratory flows between the European Union (EU) and Latin America and the Caribbean (LAC) have a historical continuity, their nature varying according to the period in question. It is possible to identify a transatlantic migratory system dating back to the age of colonisation, the specific dynamics of which have affected the building of society on both continents. Over the last few years, this process has reached a turning point, owing to the notable increase in migration from Latin America to the EU, which has been concentrated in Spain and other countries in southern Europe. The significance of these movements has led to the gradual appearance of migration issues on the political agenda and as subjects of discussion in dialogue and cooperation between the two regions. The Lima Declaration, which was adopted at the Fifth EU-LAC Summit, held in 2008, contained an agreement to institutionalise political dialogue between the EU and LAC on migration, thus incorporating the recommendations of the European Parliament and the Euro-Latin American Parliamentary Assembly.

In order to tackle the complex phenomenon of migration, this study begins with an overview of the migration dynamic between both regions and examines the political responses aimed at managing a situation that has considerable repercussions, both for destination societies and countries of origin. This will be followed by an outline of the international, regional and bilateral cooperation arrangements in place in Latin America and an analysis of the main European migration policy instruments and their application as regards LAC, as well as their coherence with other related policies. Finally, this report will examine the basis of the structured political dialogue launched recently between the EU and LAC on the subject of migration. On the strength of this analysis and in line with the report requirements, specific recommendations and proposals for action will be set out to support the work of the EuroLat Parliamentary Assembly’s Working Group on Migration Issues, which was set up in February 2009, and of the European Parliament committees dealing with migration.

1 Thanks are owed to Juan Carlos Triviño, Programme Assistant for CIDOB’s Latin America Programme, for his help in finding information for the final report.
2 A list of the specific studies assigned to the respective authors can be found in the annexes to this report.
Dialogue between Latin America and Europe on migration is not new but forms part of a long history of cooperation between the two regions. First of all, the political dialogue itself is the result of shared migratory trends going back more than 500 years, which represent the common basis of the bi-regional relationship. Secondly, one of the objectives of the bi-regional partnership founded 10 years ago at the first EU-LAC Summit in Rio de Janeiro is the promotion of the free movement of goods and services, which should, at some point, be extended to that of persons.

In spite of the sensitivity of this subject, or precisely because of it, migration has not been a priority on the EU-LAC agenda. One explanation is that, given the concentration of Latin American migrants in the EU, not all countries are affected to the same degree, which means that there is little incentive for discussion among those countries not concerned. However, the progress being made towards a common migration policy has made it necessary to hold joint dialogue on migration relations, while, within Latin America, a migration agenda based on regional and subregional dialogue is also emerging. These two developments, as well as the proportions the phenomenon has now reached, are driving an alignment of agendas in the context of an overall agenda for migration governance, while tying in with the specialised dialogue on migration that has begun with other regions.
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<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>AAs</td>
<td>Association Agreements</td>
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<tr>
<td>ACP</td>
<td>African, Caribbean and Pacific</td>
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<tr>
<td>BOE</td>
<td>Boletín Oficial del Estado [Official State Gazette] (Spain)</td>
</tr>
<tr>
<td>CAN</td>
<td>Comunidad Andina de Naciones [Andean Community of Nations]</td>
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<tr>
<td>CARICOM</td>
<td>Caribbean Community</td>
</tr>
<tr>
<td>CELADE</td>
<td>Centro Latinoamericano y Caribeño de Demografía [Latin American and Caribbean Demographic Centre]</td>
</tr>
<tr>
<td>CISA</td>
<td>Convention implementing the Schengen Agreement</td>
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<tr>
<td>EC</td>
<td>European Communities</td>
</tr>
<tr>
<td>ECFR</td>
<td>European Charter of Fundamental Rights</td>
</tr>
<tr>
<td>ECHR</td>
<td>European Court of Human Rights; European Convention on Human Rights</td>
</tr>
<tr>
<td>ECJ</td>
<td>Court of Justice of the European Communities</td>
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<tr>
<td>ECLAC</td>
<td>Economic Commission of the United Nations for Latin America and the Caribbean</td>
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<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<tr>
<td>EEC</td>
<td>European Economic Community</td>
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<tr>
<td>ENP</td>
<td>European Neighbourhood Policy</td>
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<tr>
<td>EP</td>
<td>European Parliament</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>EUROLAT</td>
<td>Euro-Latin American Parliamentary Assembly</td>
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<tr>
<td>GATS</td>
<td>General Agreement on Trade in Services</td>
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<td>GCIM</td>
<td>Global Commission on International Migration</td>
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<tr>
<td>GDP</td>
<td>Gross domestic product</td>
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<tr>
<td>GRECO</td>
<td>Global Programme for the Regulation and Coordination of Immigration and Foreigners</td>
</tr>
<tr>
<td>IACHR</td>
<td>Inter-American Commission on Human Rights</td>
</tr>
<tr>
<td>IDB</td>
<td>Inter-American Development Bank</td>
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<tr>
<td>IMF</td>
<td>International Monetary Fund</td>
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<tr>
<td>IOM</td>
<td>International Organization for Migration</td>
</tr>
<tr>
<td>ISTAT</td>
<td>Istituto nazionale di statistica [Italian Institute for Statistics]</td>
</tr>
<tr>
<td>JECHR</td>
<td>Judgment of the European Court of Human Rights</td>
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<tr>
<td>JCJEC</td>
<td>Judgment of the Court of Justice of the European Communities</td>
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<tr>
<td>LA</td>
<td>Latin America</td>
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<tr>
<td>LAC</td>
<td>Latin America and the Caribbean</td>
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<tr>
<td>MENA</td>
<td>Middle East and Northern Africa</td>
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MERCOSUR  Mercado Común del Sur [Southern Common Market]
MIF  Multilateral Investment Fund
MPI  Migration Policy Institute
MRAX  Mouvement contre le racisme, l’antisémitisme et la xénophobie [Movement against Racism, Anti-Semitism and Xenophobia]
MS  Member States
NGO  Non-governmental organisation
OAS  Organisation of American States
ODA  Official development assistance
OECD  Organisation for Economic Cooperation and Development
OJ  Official Journal of the European Union
PSOE  Partido Socialista Obrero Español [Spanish Socialist Workers’ Party]
RELEX  Directorate-General for External Relations of the European Commission
SEGIB  Secretaría General Iberoamericana [Ibero-American Secretariat General]
SENA  Servicio Nacional de Aprendizaje [Colombian National Training Service]
SICA  Central American Integration System
SIRENE  Supplementary Information Request at the National Entry
SIS  Schengen Information System
TCE  Treaty establishing a Constitution for Europe
TEU  Treaty on European Union
UFM  Unaccompanied foreign minors
UNASUR  Union of South American Nations
UNCRC  United Nations Convention on the Rights of the Child
UNDP  United Nations Development Programme
UNFPA  United Nations Population Fund
UNGA  United Nations General Assembly
UNHCR  United Nations High Commissioner for Refugees
US  United States
UTSTM  Unidad Técnica de Selección de Trabajadores Migratorios [Technical Unit for the Selection of Migrant Workers]
STRENGTHENING EU-LAC DIALOGUE AND COOPERATION ON MIGRATION

1.1 Contributing to the global migration agenda

Cooperation with the LAC countries in the field of migration should take place within the global framework provided by the work of the UN and its specialised agencies, in particular the International Labour Organization (ILO) and the UNDP, as well as the IOM. The latter carries out support programmes aimed at assisting a country’s migrants through the provision of information and humanitarian aid, and monitors migration trends, on which basis it should be strengthened as an instrument for achieving a better understanding of the scale and scope of international flows of persons. The ILO offers a basic legislative framework and serves as an international benchmark for basic legal standards, while monitoring international compliance with conventions. Together with the UNDP, it also promotes a Decent Work Agenda, which, in turn, is part of the global development agenda overseen by the UNDP. In addition, the UN as a body adopted the International Convention on the Rights of Migrant Workers and their Families in 1990, which serves as an international reference point in spite of its low ratification rate.

The countries of the EU and LAC can help to bolster the global migration agenda by adopting international conventions. At present, the ratification rate for the conventions in force is patchy, and the monitoring of their application even more so. Greater commitment to the objectives of the Decent Work Agenda is also required, and to the Millennium Development Goals, into which the former has been incorporated. National and regional social cohesion agendas must include migrant workers’ rights as an integral part of the individual right to work and the collective right to development. Furthermore, the organisations in question should take part in bi-regional dialogue and be involved in the cooperation measures and programmes in the pipeline, in line with their capacity and the comparative advantages they offer. A suitable cooperation model is multi-bilateral cooperation, which, in addition to the European Commission and the LAC countries of origin, involves multilateral organisations that can add their experience and technical resources to the equation. A specific example is the ILO project in the Andean region entitled ‘Fortalecimiento institucional en materia migratoria para contribuir al desarrollo de los países de la región andina’ [Improving institutional capacity with regard to migration to assist the development of the countries of the Andean region] (MIGRANDINA).

Another forum for the coordination of dialogue is that relating to the liberalisation of services as part of the WTO talks, which should be the subject of particular attention in the negotiation of association agreements.

1.2 Coordinating regional and bi-regional agendas

In view of the present level of intra-regional migration within LAC, a migration agenda has emerged that covers agreements, commitments and instruments for migration management at regional (within the OAS and at Ibero-American Summits), subregional (such as the Puebla Process and the South American Conference on Migration) and bilateral (bilateral migration agreements between countries within and outside the region) level. In spite of their difficult progress, subregional integration projects have also addressed the issue of migration. This dialogue and the fledgling coordination of migration in the region have been overlooked by the EU to a large extent, in spite of the increase in transatlantic flows and the importance now attached in areas such as social cohesion to a strategic alliance between the two
regions. Euro-Latin American dialogue should be coordinated with Ibero-American dialogue in order to align positions and move towards the adoption of a joint action plan. In this context, progress could be made along the lines of the approach adopted in April 2008 with the holding of the I Foro Iberoamericano sobre Migración y Desarrollo: unidos por las migraciones [first Ibero-American Forum on Migration and Development: united by migration] (organised by ECLAC, the IOM and SEGIB) in Cuenca (Ecuador).

It is important, therefore, to seek mechanisms that will connect the various fora for dialogue and cooperation on migration, through the sending of observers (to the EU-LAC summits and Summits of the Americas) or adoption of joint actions (for instance, linking the Ibero-American conferences on migration with Euro–Latin American dialogue on the issue). Practical experience shows that there is still significant institutional weakness in the region, which means that many of the high-level declarations and agreements remain unenforced. There is not even enough information available to provide an overview of the regional situation as regards the rules on migration. The dialogue on migration can help to improve awareness and to analyse both regions’ experience in this regard in order to identify best practices for the introduction of free movement of persons and services, in particular in the context of the regional integration processes under way.

### 1.3 Improving EU-LAC cooperation on migration

International migration involves a relationship between two or more states, which brings with it shared responsibility. Only through effective cooperation between the countries affected by the migratory flows can the protection of migrants’ rights be guaranteed, ensuring that a situation of legality and security is maintained while harnessing migration as a force for development, in both the destination economy and economy of origin. This requires migration governance that entails bilateral, regional and international cooperation for the purposes of managing migratory flows. It is important to monitor the different variables shaping the human and economic flows between the two regions, making it possible to identify the main challenges and draft policies accordingly. It is necessary to improve the quality of the data available, so that they can be analysed in evaluable sequential and comparative studies and that the effects occurring in each country can be assessed by region, but on the basis of a common methodology that makes it possible to carry out comparative studies.

The existing development cooperation instruments that cover migration issues do not allow a comprehensive approach to be taken to the migration process, nor are they deployed within a common framework. It is therefore necessary to align these instruments to the main topics of discussion within interregional dialogue. The association agreements should establish a regulatory framework, but more cooperation instruments for the promotion of comprehensive policies are also required. Enhanced EU-LAC cooperation on migration could play a significant role in strengthening the policies and organisations in place for the management of migration, at both national and subregional level. The international development cooperation measures adopted by the EU and aimed at LAC should include support for structures, processes, policies and organisations connected with migration, both through the inclusion of the region in thematic programmes, and the incorporation of this issue in its regional projects (e.g. the second phase of EURSOCIAL) and bilateral projects. Other sectoral programmes, such as the ‘Investing in People’ and ‘Non-state Actors and Local
Authorities in Development programmes, could help to set up local development and co-development programmes.

European development cooperation policy should also be adapted to reflect the commitments set out in the Paris Declaration and the Code of Conduct for the division of labour in EU Development Policy. This means moving towards results-based policies and defining objectives in line with dialogue with partners. The division of labour inevitably requires greater coordination of policies, not only among Member States but with partners and other donors, particularly international bodies.

1.4 Promoting a common policy with guarantees

Improving the coordination of individual migration policies is likely to strengthen the overall coherence of European migration policy, which is a welcome effect. However, less desirable effects are also present where the ongoing process of alignment of Community policies results in a deterioration of the standards some Member States had previously been enforcing. A classic example is Spain, which has gradually been applying the visa requirement to countries of Latin America that had previously been exempt under the common visa policy in force in the Schengen area. These changes to migration between LAC and Spain have had a sizeable impact, given that the latter is the main destination for Latin American migrants to the EU. Furthermore, the widespread rejection with which LAC countries greeted the Return Directive has made it necessary to shift dialogue towards a more comprehensive agenda. The harmonisation of migration policies within the EU should not mean deterioration but should help raise standards in the Member States, even if they are moving at different speeds, to ensure that there is no regression, especially as regards fundamental rights.

1.5 Defining structured dialogue

In order to create useful and effective political dialogue on the subject of migration, one that is based on mutual cooperation and shared responsibility, a blueprint for structured dialogue needs to be devised. The basic principles must be established, the specific scope defined, its aims set out and suitable instruments identified, while a roadmap must be agreed, even if it is one allowing for multi-speed progress. Without being exhaustive, it should recognise the importance of an integral approach to (legal and illegal) migration that acknowledges its interdependence with political and economic concerns and development and human rights in EU-LAC relations and seeks to guarantee the principle of shared responsibility among the countries of origin, transit and destination. The dialogue should also address the role of migratory flows, both historically and at present, as the basis of EU-LAC political relations, recognising, in line with the GCIM’s conclusions, the positive contribution migrants make to the society of origin and destination. The need to guarantee the joint planning of work agendas and promote civil society involvement should be key elements of a structured dialogue, which should aim, furthermore, to ensure that racism and xenophobia are tackled in the countries in question and, finally, to find a balance between security issues related to migration and the protection of fundamental rights.

In any case, expectations for the outcome of political dialogue on the subject of migration should be concise, specific and focused. Analysing the causes and effects means moving
Migration in the context of relations between the EU and LAC beyond regulatory policies and will lead, inevitably, to policies that affect the human, social, economic and political rights of migrants and their families. These policies will, in turn, also have an impact on the societies of origin and destination, which requires a multi-level and inclusive approach to be taken when developing responses.

1.6 Promoting the creation of an EU-LAC migration observatory

One of the first needs to be identified when talking about migration relations between both sides of the Atlantic is for shared information about LAC communities in the EU Member States, as well as for proper analysis to be carried out in the study of current and future migratory flows. It is necessary, therefore, to promote the creation of an EU-LAC migration observatory that not only provides detailed and exhaustive information about migrant communities in the EU but enables forward-looking studies to be produced that look at the key topics that should form the basis of EU-LAC migration dialogue. In terms of organisation, the observatory could be structured around six main thematic areas:

1. Information and statistics: analysis of EU-LAC migratory flows and root causes; evaluation of the impact of migratory movements on countries of origin and destination, at national, regional and local level.
2. Migration policies in countries of origin and destination: border control, visa policy; asylum policies, naturalisation policies; readmission agreements, return incentives etc.
3. Migration and the economy: migrants’ contribution to economic growth in countries of origin and destination; the role of remittances; working conditions etc.
4. Migration and development: consequences for the country of origin, remittances, bi-regional cooperation projects, cooperation and association agreements.
5. Migration, human rights and citizenship: integration and citizenship policies; protection of human rights; efforts to tackle racism and xenophobia; mechanisms for managing illegal immigration etc.
6. Migration and politics: civic rights and participation; political engagement of new citizens in destination countries; efforts to stop people trafficking, and assistance for victims etc.

In the interests of the effective and careful use of resources, the observatory should not be a new administrative structure; instead, there should be greater cooperation among existing centres, which would be responsible for the various lines of research carried out by the observatory. This new body should also be closely linked to the work of the groups of experts that are to be set up under the structured dialogue. For the purposes of outlining objectives, groups of experts should be formed in the countries involved for the exchange of information concerning the flows, conditions, rights, legality, integration and return of migrants. These groups should work along the proposed thematic lines to determine objectives, an agenda, actors and policies. The observatory should, in turn, coordinate the work of regional, national and local authorities, in addition to cooperation with international institutions, civil society organisations and immigrants’ associations.

APPLYING THE GLOBAL APPROACH TO MIGRATION TO LATIN AMERICA AND THE CARIBBEAN

The Global Approach to Migration has become a strategic framework for managing overlaps between the EU’s external relations and migration policies. It is based on the principles of
solidarity, balance and genuine partnership between countries of origin and transit. The European Council intends to extend the implementation of the Global Approach to different regions in the aim of promoting mobility and legal migration, controlling illegal flows and optimising the link between migration and development.

2.1 Promoting mobility and legal migration

Thus far, bilateral agreements have been a useful tool for certain EU Member States to manage migratory flows from various LAC countries. The possibility of ‘Europeanising’ these agreements should be given careful consideration, as should that of reaching a pilot mobility agreement with an LAC country.

Migration agreements should be drawn up within a framework of dialogue and cooperation among equals and should incorporate key measures, such as the recognition of qualifications, training in the country of origin and the promotion of voluntary returns, among others. Other points to be borne in mind are:

- making the pre-selection processes applied by competent bodies more rigorous and transparent;
- organising training in the country of origin that is recognised in both the country of origin and of destination;
- providing migrant workers with more and better information and documents before they reach their destination, concerning such points as the duration of the stay, work, accommodation, pay, rights and duties and employment guarantees in the EU;
- the systematic application by public authorities of voluntary return schemes, assisting migrants’ reinsertion, helping to develop projects to enhance skills and promoting the recognition of employment experience in the EU;
- promoting the creation of small and medium-sized businesses, the creation of bi-national companies, human resources training and technology transfers, as set out in both agreements;
- supporting the strengthening of public institutions. The great effort made in terms of police cooperation and border control should be extended to public employment and training bodies and the authorities responsible for managing migratory flows in countries of origin and transit. Similarly, it is crucial to provide support for all organisations acting as promoters of local development.

In the new bilateral agreements linking migration and development, the incorporation of new provisions aimed at a more comprehensive understanding of the ‘migration question’ should be encouraged. To ensure that these agreements are in keeping with the dual principle of effectiveness and respect for fundamental rights, they should cover the entire migration process and its implications for integration and development policies. Greater substance could be lent to these framework agreements on migration in the following ways:

- UN Convention of 1990 and ILO Multilateral Framework of 2005: these bilateral and/or regional agreements should secure the commitment of signatory states to ratify the UN Convention of 1990 and support the application of the 2005 ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration. Failing that, they could at least enforce the essential provisions of these international instruments in mutual relations and in
respect of their co-citizens. This would represent a qualitative step forward and one that goes some way towards supporting a general framework for the management of migration.

- **Social security agreements**: the signing of international agreements for the recognition of social security agreements has a long tradition, but the migration phenomenon makes it necessary to revise and widen these agreements. They could, for instance, serve to aid the (voluntary and positive) mobility of migrants between the country of destination and of origin and new migration to the same country or others without difficulties transferring pension rights or other social benefits based on the payment of contributions to public social security systems. The adoption of the Ibero-American Multilateral Convention on Social Security at the Ibero-American Summit held in Chile in November 2007 is a significant step in this direction. The agreement must be enforced to ensure the recognition of economic social security rights as regards invalidity, old-age, survival, and accidents in the workplace and occupational illness, which is why it is essential to encourage its ratification by all Ibero-American countries. This model could serve as a basis for other bilateral and regional agreements.

- **Agreements on employment, employment and training policy and public employment services**: cooperation in the area of employment and employment policy (and, to a lesser extent, public employment services) has traditionally been part of EU-LAC cooperation. Today, a fresh outlook on these three areas of activity is required, because support for employment and training in countries of origin is connected with the need for training in these countries themselves but also to the potential demand for workers in countries of destination. An improvement in the way public employment services operate in LAC countries will enable these countries not only to manage their respective labour market more effectively but will also allow them greater cooperation in the process of selecting workers in the country of origin.

- **Assistance for voluntary return**: as the Commission communication COM (2008) 359 indicates, the European Union should support ‘sustainable and effective return policies’, which should be developed in line with the IOM guidelines set out in the ‘International Dialogue on Migration in 2008: Key Policy Principles for Return Migration’. As this document states, return migration is neither a secondary nor ancillary phenomenon, and, although it is voluntary and a matter of individual choice, there are many opportunities for governments and other partners to guide and facilitate this process. This is essential if voluntary return is to become an instrument with the potential to foster development in the country of origin. In this regard, an environment should be created that aids the return and reintegration of migrants and offers them the possibility to contribute to the development of their society of origin. The transfer of knowledge, skills and technology, investment and entrepreneurial spirit, social, professional and scientific networks, and the development of shared human resources are some examples of how returning migrants can aid development in their country of origin.

- **Mobility for university students and residence for researchers**: given the capacity for growth in this area, measures should be adopted along the lines of the Erasmus Mundus programme to allow short stays and introduce new arrangements for periods longer than a year, which should make it a requirement for students and researchers to return to their country to complete their training.
Other issues: in view of the far-reaching nature of the migration question, it should be considered in the context of other agreements that may have a bearing on EU-LAC relations, in areas such as trade, capital investment and movements, the environment and sustainability and democratic development and human rights. Special attention should be paid to the protection of the rights of the most vulnerable groups, and, in line with the recommendations made by the Commission in its Communication COM(2008)359, the agreements signed by the EU and LAC should include mechanisms that strengthen the existing legal framework for combating the facilitation of illegal entry and residence and the sexual exploitation of children and child sexual abuse material, so as to take account of new criminal phenomena.

As regards visa policy, it should be borne in mind that this is a key tool for managing migratory flows and, since 2001, as the Commission describes it, a particularly useful instrument for tackling illegal immigration. However, the EU’s visa policy is also closely linked to its external actions. The decision to add a specific country to the list of countries requiring a visa for entry to the EU has a direct impact on the level of dialogue and cooperation this country enjoys with the EU in general and with individual Member States in particular. In this sense, migration (visa) policies need to be better coordinated with the Union’s external policies, especially when the inclusion of a country on the ‘black list’ may have a negative economic and social impact on the country in question.

Changes to visa policy are needed in connection with both short-stay and long-stay visas:

- **Visas for a stay of up to three months:** the thinking behind Regulation 539/2001 should mean that, in principle, LAC countries are included on the list of countries in Annex II, the nationals of which do not require a visa for stays of up to three months;

- **Visas for a stay of longer than three months – academic activities:** as recognised by European legislation, researchers are bona fide travellers. This is a highly visible and significant area, in which the EU can adopt rules more or less immediately, applying special arrangements to LAC countries by:
  i. extending to researchers the fast-track procedure for issuing residence permits that is already applied to students for short and long stays for academic purposes (with a broader definition than that of scientific research), regardless of whether their country is listed in Annex I or II of Regulation 539/2001;
  ii. gradually developing a student mobility programme similar to Erasmus/Socrates, following the example of initiatives such as Spain’s Pablo Neruda mobility programme.

It is necessary to devise long-term migration arrangements that take account of the economic, technological and demographic circumstances in countries of origin and destination, respect fundamental rights and fit into the framework of economic and political relations between the EU and Latin America. It is important to point out that, although we are in the midst of an economic crisis, it is likely that EU Member States will continue to need migrant workers from LAC and other regions. Migratory flows have many causes and depend on such diverse factors as long-term demographic issues in destination countries, changing working patterns among the nationals of destination countries, salary differences between LAC and EU countries etc. This requires a comprehensive approach, governed by the
principle of reciprocity, that takes a symmetrical view of the movement of goods, capital and persons between the two regions.

2.2 Optimising the link between migration and development

In discussions as to the link between migration and development, doubts have been raised on numerous occasions about the motivations of host countries, with the view taken that they want to promote development as a means of discouraging migration. It is a good idea to pay less attention to the motives and to concentrate on the objective in hand, as the aim of this approach is to promote greater coherence between migration policies and development policies and ensure that developing countries are involved as partners in this process. Two issues are usually highlighted in this context: the movement of professionals and the potential offered by remittances.

In terms of the movement of professionals, it is important to establish mechanisms that prevent brain drain, especially in key sectors such as health care. In this regard, agreements should be drawn up that guarantee the regulation of labour flows involving health workers in line with ethical standards. In any case, it should be borne in mind that the movement of workers can boost the training of human resources in the region of origin, by increasing the rates of return to education and widening employment opportunities and, in turn, the opportunity to acquire knowledge and make economic gains abroad. Countries of origin can also benefit through return migration and the contact migrants (professionals, businesspeople working abroad and workers) maintain with their country of origin via diaspora organisations and public and private efforts aimed at contact with human capital abroad. Turning the brain drain into a brain gain, by encouraging the movement of professionals, is a challenge for EU-LAC relations.

As for remittances, they have been an important source of additional outside income for low- and middle-earning Latin American families over the last 10 to 15 years and constitute a macroeconomic means of supplementing internal savings and boosting the flow of international currencies. From 2001 to 2008, there was a sharp rise in remittances, the result in part of improvements in the statistical reporting of this income. While the gathering of data and information concerning remittances should be a priority, as the information available is unreliable, it is clear that they are an important source of income for LAC. The bulk of remittances to the region come from the United States (around 70% of the total amount), while remittances from Europe account for 14% of the total, with Spain the main European provider. In order to promote the effective use of these funds, the financial integration of immigrants should be improved. At the same time, while respecting the fact that this is private income, arrangements aimed at ensuring a productive use of remittances should be encouraged. In this regard, mechanisms should be promoted that make it possible to extract the greatest possible potential from remittances, in both the country of origin and of destination:

- improving the financial integration of immigrants to reduce the cost of sending remittances, for both the remitter and the recipient. Special emphasis should be attached to reducing the high transaction fees that reduce the value of the remittances by promoting the use of banks and credit unions rather than informal operators and remittance companies, which charge higher commissions;
• encouraging arrangements aimed at a productive use of remittances, whether it is to support investment in small and family businesses or to improve the level of education, health or saving capacity of recipient families;

• working on the basis that this is private income, proposals to encourage productive or social investment should be examined. In the case of productive investment, this would be through loans or tax breaks for the start-up of production activities, and in the case of social investment through social programmes aimed at migrants’ communities of origin, financed by conditional State funding or international cooperation donor agencies.

In summary, the general recommendations are as follows:

1. Support better coordination of the many and varied fora in existence and promote an alignment of existing agendas, which should be in keeping with the international agenda and global migration governance.

2. Produce better information about migratory flows through the creation of an EU-LAC migration observatory.

3. Create a network of experts on specific issues affecting both sides of the Atlantic: remittances, development cooperation, brain drain, regularisation, visas etc.

4. Lend some substance to political declarations. The forum provided by the EU-LAC Summits should enable governments from both regions to launch bilateral discussions aimed at improving migration management, preventing migrant suffering and exchanging information on human and economic flows. The rhetoric of the declarations should, if only in part, be translated into firm action.

5. Promote a balanced and multi-level structured dialogue. Ideally, the principles of equality and reciprocity should be reflected in the structure of political dialogue, firstly through the involvement of an equal number of representatives from both regions and, secondly, through the participation of representative bodies such as parliaments and local and regional authorities, and organisations and NGOs on both sides of the Atlantic, as well as economic (including banks) and social actors.

6. Take steps to devise and implement specific instruments. The Commission should accompany its political rhetoric with practical measures in the field of cooperation, for instance through:

   • the creation of a new regional programme (MigraLat) aimed at countries that are the destination and transit point for Latin American migrants;

   • reference to the migration issue in the EU’s new communication on relations with LAC (scheduled for 2010);

   • the inclusion of migration (co-development, remittances etc.) in existing Euro-Latin American projects as a horizontal issue.

7. Recognise the context into which EU-LAC migration dialogue fits. In order not to create false hopes and to achieve a dialogue that is as frank and open as possible, it is important to recognise that, on this subject, Latin America has limited influence and interest.
INTRODUCTION

There is a long tradition of migration between Europe and Latin America and the Caribbean (LAC). Since the colonisation of the Americas, transatlantic migration has influenced the development of society in both regions, it being possible to identify distinct stages and specific trends at play in the light of the social, political and economic contexts that have provoked the movement of people throughout the years.

In the last century, migration between LAC and Europe saw a change of direction in connection with the general transformation of LAC from a region that was predominantly a destination for migrants – right up until the 1950s – to an area from which people are increasingly choosing to emigrate. This change has taken place in line with the global migration trends, in which greater movement from south to north has been observed, with the most developed countries the destination\(^3\). According to ECLAC figures for 2005, of the world’s 191 million migrants, Latin American and Caribbean migrants account for 13%, rising from 21 million in 2000 to 25 million four years later. At present, it is calculated that there are around 26 million Latin American and Caribbean nationals living outside their country of origin, 22.5 million of whom are residing outside their region (extra-regional migration), with around 3.5 million living in other LAC countries (intra-regional migration).

Against this backdrop, particularly in the last decade of the 20th century and the first few years of the 21st century, migration from LAC to Europe has increased exponentially, marking a turning point in the migratory dynamic between both continents and causing migration-related issues to appear on the agenda for bi-regional political and cooperation dialogue.

While the chief destination for migration from LAC continues to be the United States, towards which approximately three quarters of all migrants from the region head, the number of Latin American and Caribbean immigrants to the European Union has been rising. According to various studies\(^4\), in 2005 there were more than 1.6 million people from LAC living in 14 countries of the EU, two thirds of whom were in Spain. Spain’s dominance as the recipient country of this migratory influx means that its national statistics can be used to assess the magnitude of the phenomenon: while there were more than 130,000 Latin American and Caribbean immigrants in the country in 1998, 10 years later this figure had multiplied by 10, exceeding 1.3 million. During this period, there was also an increase in the number of LAC immigrants arriving in other European countries, particularly in southern Europe.

This report aims to analyse the complex phenomenon of migration from a Euro-Latin American point of view, in order to equip the Euro-Lat Assembly with the means to support the efforts of the Working Group on Migration Issues, which was set up in February 2009.

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\(^3\) The UN points out that, between 1990 and 2005, developed regions were the destination for more than two thirds of the international migrant population, hence the observation that the preferred direction for migration is now south to north, in particular since the 1990s (United Nations, 2006).

\(^4\) Of particular interest in terms of providing a context for these figures is the Rannvieg report (2006).
Part I of the report provides a context for the importance of migration between LAC and the EU by means of a diachronic analysis of the migratory flows and trends between the two regions. The effects of the mobility of human capital and the impact of emigrants’ remittances, subjects that have come to occupy a prominent place on the bi-regional public policy agenda, will also be considered.

Part II contains an analysis of the legal and political context of EU-LAC migration. It begins by looking at the initiatives aimed at achieving global governance, before going on to examine the cooperation measures in place in Latin America and, finally, the gradual creation of a European immigration policy.

Part III deals with the cooperation instruments for the management of migratory flows between the EU and LAC. The intention is to carry out a critical assessment of these instruments in the aim of identifying strengths and weaknesses in their application and determining their implications for bi-regional political dialogue. In this context, we shall look at the mechanisms and instruments related to the management of labour flows, border control cooperation and efforts to tackle illegal immigration. The section concludes by examining international cooperation and the mechanisms for ensuring policy coherence.

Finally, Part IV takes a look at the process of instituting dialogue on migration within the framework of EU-LAC relations, analysing their history, context and mechanisms for action. Special attention is given to the structure of dialogue at regional summits, the application of the Global Approach to the region and the relevance of EU-LAC parliamentary dialogue.

Forming a common thread throughout this study are the proposals that have emerged from the analysis contained herein. These proposals are set out in the executive summary and aim to identify the challenges and opportunities that will enable policy actors to determine possible lines of political action, in order to foster better management and make the most of the potential offered by migration between the EU and LAC.
PART I

TRENDS IN MIGRATION BETWEEN THE EU AND LAC

1. DIACHRONIC ANALYSIS OF MIGRATORY FLOWS BETWEEN LAC AND THE EU

This part begins with an overview of migration trends between LAC and EU, with emphasis on the nature and impact of recent human flows from the Americas. First of all, the report analyses the historical development of movements between both regions from the mid-19th century until the end of the 20th century. We shall then examine the present ‘Latin-Americanisation’ of migration, considering the push and pull factors at play. Thirdly, the report looks at the experience of Spain and other European countries in which migrants from LAC constitute a significant presence. This part concludes with a description of some key aspects of Latin American and Caribbean immigration to Europe, along with the characteristics and trends that have been studied by researchers and academics on both continents but have also found their way onto the EU-LAC political agenda on migration.

1.1 MIGRATION BETWEEN LAC AND THE EU

Europe’s transformation from continent of origin to destination continent for migrants in the course of its relations with LAC has taken place against a backdrop of profound economic, political and social change. Assessing this change in circumstances involves looking at some trends that remained in place until the middle of the 20th century and at others that began to alter the typical geographical destination model in the 1960s and 1970s, and especially since the 1990s.

European migration to Latin America and the Caribbean

While south-north migration is one of the characteristic features of the ongoing process of globalisation, from the colonial age until the mid-twentieth century Latin America was an important destination for Europeans. European immigrants were predominant among migrants to LAC, but they were not alone, as the region also saw the arrival of other groups from Africa – under the forced movements resulting from the slave trade – and Asia and the Middle East. Collectively, these groups helped shape LAC society. It is calculated that, between 1850 and 1950, around 52 million Europeans emigrated, 21% of whom travelled to LAC, with the majority (72%) heading to live in the United States. Of the 11 million Europeans who went to live in LAC, half settled in Argentina, 36% in Brazil and the rest in other countries in the region, including Uruguay, Chile, Cuba, Venezuela and Mexico. Among the European emigrants to LAC, 38% were Italian, 28% Spanish and 11% Portuguese (ECLAC, 2008). These movements of persons were accompanied by capital flows, with the United Kingdom the main source of outside revenue.

This stream of migrants from Europe to LAC was essentially motivated by a desire to find work. Most European immigrants were men of working age who were farmers and workers.

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*Groups from Eastern Europe, Russia and Scandinavia also migrated to LAC during this period.*
with industrial and trade union experience and arrived in search of personal fulfilment, having been lured by the exceptional economic opportunities the region offered. Europe was in the midst of agricultural revolution and industrial modernisation, which fuelled an internal exodus to cities and international emigration. The waves of people travelling from Europe were also attracted by the proactive migration policies adopted by the new Latin American republics, which sought immigrants to aid industrialisation and urbanisation. The early abolition of slavery in these countries also meant a need for new workers.

The story of migration from Europe to LAC reveals that, in spite of the humble origins and generally low level of education among Europeans arriving in the region, the immigrants managed to engage in a process of upward mobility. They gradually became the first generation of employees, small traders and budding entrepreneurs (ECLAC, 2008). Around 1930, this intercontinental flow came to a halt, resuming after the Second World War, when some two million people emigrated, mainly for political reasons. From 1950, the stream of European migrants to LAC began to slow down as a result of economic cooperation in Europe until it reached the minimal levels observed at present. The overall number of overseas immigrants to the region in 2000 was barely more than 1.9 million, compared with the almost 4 million recorded as living in LAC during the censuses carried out in the 1970s.

**Latin American and Caribbean migration to Europe**

Although migration from LAC to Europe became especially visible at the end of the 1990s, the first significant flows from LAC were recorded towards the beginning of the second half of the 20th century, with the return of some of the European emigrants in LAC to their countries of origin. In Spain they were known as ‘Indians’, emigrants who had come home after years on the other side of the Atlantic. This process was particularly marked between 1962 and 1973, during which time 50 000 emigrants returned each year, drawn by the huge demand for labour in European countries, which were in the middle of an economic boom. At the beginning of the 1960s, some Cuban political exiles had settled in Europe and other Caribbean immigrants had moved to live in its ancient metropolitan areas following the belated decolonisation processes.

The 1970s saw the first significant influx of Latin American migrants, albeit at a slow rate, who were mainly motivated by political concerns in the face of the wave of authoritarianism sweeping over the Southern Cone and Central America. The political violence unleashed in the region by military dictatorships forced Argentinians, Brazilians, Chileans and Uruguayans to seek refuge in the United Kingdom, France, Switzerland, Germany, the Scandinavian countries, Spain and Portugal. The majority of these immigrants were highly educated and integrated fairly easily into the labour markets of their destination countries (Padilla, 2007). It should be stressed that these arrivals took place at a time when Europe was applying a mainly ‘closed door’ migration policy with regard to foreign workers, as a result of the oil crisis and its repercussions on the economies of the old continent. Even so, several European countries showed themselves to be especially sensitive to the political persecution taking place in LAC (Pellegrino, 2004). With the restoration of democracy in LAC, some political

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6 Concerning the Spanish population in LAC specifically, in 2000 it was estimated that around 300 000 people were living in the region, mainly in Argentina, Venezuela, Brazil and Mexico (ECLAC, 2008).
exiles returned to their countries of origin, while just as many adopted the nationality of their European destination country.

A second significant wave of migration took place in the 1980s and was more varied in its make-up, extending to communities from Latin America and the Caribbean motivated mainly by economic and employment concerns. They were accompanied by Latin American students migrating to Europe to complete postgraduate studies and by middle-class economic migrants, who were becoming poorer as a result of the economic crisis in LAC (Yépez, 2007). The recession that hit most countries in the region during this decade led to one of the worst crises of the century, marked by economic stagnation and a sharp decline in the standard of living. People left in search of greater stability and better living conditions in Europe. In the 1980s, a larger proportion of migrants came from the Caribbean countries, women in particular, who were less qualified than the middle-class emigrants from the Southern Cone (Lopez de Lera, 2004).

In summary, the 1970s to the 1990s saw political refugees, first and foremost, migrate from LAC to Europe, followed by workers and university students, with both flows at a low rate compared with what would follow from the 1990s, when migratory currents from LAC reached unprecedented highs. In terms of these three waves of migration, the first consisted mainly of migrants from the Southern Cone (1960-1970), the second of those from the Caribbean (1980) and the third of those from the Andean region (1990 onwards).

1.2 CURRENT TRENDS: THE ‘LATIN-AMERICANISATION’ OF MIGRATION

Almost half the number of LAC migrants recorded in 2000 left the region during the 1990s and the majority of them settled in the United States. However, ECLAC observes that, in geographical terms, the destination for LAC migrants has gradually been diversifying. In keeping with this trend, a large number of people have moved to Europe, where Latin American and Caribbean immigration has increased exponentially over the last 10 years.

In 2005, there were already 1 646 663 people from South America, Mexico and Central America and the Caribbean living in 14 countries of the EU (MPI), although specialist literature in this area stresses how hard it is to quantify with any precision the scale of these influxes, owing to a lack of information, the disparate nature of sources, difficulties comparing the statistical data available (bearing in mind, for instance, that European records often do not include immigrants who have claimed the nationality of their ancestors) and the limited possibility of identifying the volume of illegal immigrants. The problem of illegality applies to these Latin American and Caribbean migrants who, in many cases, are undocumented in their country of origin, because they enter the EU with tourist visas but fail to observe the restrictions on the duration of their stay.

It should be pointed out that it is difficult to be more precise about the composition of these first migratory flows from Latin America to Europe, as the information available does not allow for strict comparisons: until the 1990s, official statistics did not differentiate between migrants from Latin America and the Caribbean on the basis of nationality.

Other new destinations for LAC migrants include Canada, Japan, Australia and Israel. There are 600 000 Latin American and Caribbean immigrants residing in Canada, followed by 312 000 in Japan. In the other OECD countries – not including Spain, the United States, Japan and Canada – there are approximately 950 000 immigrants from the region (ECLAC, 2008).
The new destinations for LAC immigrants to Europe include Spain for Latin Americans in general, Italy, France and Portugal for South Americans, and the Netherlands and the United Kingdom for Caribbean migrants. The statistics confirm the leading role played by Spain, in which two thirds of LAC migrants live. In 2005, there were 1 064 916 Latin American immigrants in Spain, and this figure had increased to 1 431 357 by June 2009. Meanwhile, in 2005 there were 204 826 Latin Americans residing in Italy, 112 781 in the United Kingdom, 93 760 in Germany and 56 442 in Portugal. Furthermore, in Spain, Italy and Portugal, the LAC immigrant community is more visible, as it accounts for a larger percentage of overall immigration, namely 35.2%, 9.2% and 15.3% respectively, whereas in other countries immigrants from LAC represent less than 5% of the total figure.

This preference for countries in the south of Europe has been attributed to various factors, which include the existence of historic, cultural and linguistic ties with LAC, the size of the informal labour market in these three European countries and the periodic regularisation schemes that have benefited a large number of foreigners residing in Europe illegally. Before we look at the specific situation in each of these countries, it is worth considering the factors that have generally served to increase the number of people arriving in the EU from LAC.

Reasons for immigration: push and pull factors

Migration is recognised to be a complex phenomenon, the roots and consequences of which may be found in political, economic, demographic, social and/or cultural circumstances, but which is simultaneously the result of a private decision by an individual or family. Many variables therefore come together in migratory behaviour and they may encourage or inhibit the movement of persons. In an attempt to identify the reasons behind migratory flows, academic analyses tend to distinguish between push factors, linked to the reasons for which people are impelled to leave their country of origin, and pull factors, relating to those elements that attract them to destination countries.

With regard to push and pull factors, specialist publications point out that the social and political situation in LAC countries has created an incentive for people to emigrate in search of better income and job opportunities. With 33.2% of the population (182 million people) defined as living in poverty in 2008, the region continues to have the greatest level of inequality in the world: income per capita among the wealthiest fifth of the population is, on average, 20 times higher than that of the poorest fifth. The Gini coefficient in Latin America is around 0.52, compared with approximately 0.34 in the OECD countries, 0.32 in Eastern Europe and 0.41 in Asia. Unemployment affects 7.4% of the population and is estimated to reach a level of 9% for 2009, while the informal employment rate remains high throughout the region, as, in 2007, more than six out of every ten urban residents were employed in the informal sector (ECLAC, Labour Review 2008. Latin America and the Caribbean). With a total population of 579 million, an average life expectancy of 72.8 years, strategic natural resources and rich biodiversity, the region is still a long way from exploiting its potential. While five years of economic growth prior to the current financial and economic crisis marked the beginning of a slow but sustained process of poverty reduction for 27 million people, the region continues to register high levels of social exclusion.

The absence of institutionalised social security systems in the majority of countries in the region means that the costs of unemployment are borne by families. In these circumstances and without any hopes for the future, emigration becomes an attractive option, if not a
means of survival in some cases. Added to the socio-economic tensions are an increase in violence and organised crime in LAC, the recurring crises of governance that have occurred over the last few decades, poor institutional capacity and the failure to ensure political representation in some countries. Furthermore, the situation of social discontent resulting from the application of the neo-liberal model in the 1990s has led to the suspension of constitutional mandates in some countries of the region, even though democratic institutions have generally remained in place.

In terms of the pull factors as regards Europe, it should be stressed that the EU, as a developed region, represents an attractive destination in itself (Ruiz Sandoval, 2006). However, there is considerable agreement as to the impact the heightened restrictions and controls applied by the United States in the wake of the terrorist attacks of 11 September have had on recent migratory flows, as these measures have resulted in a partial diversion of migration towards the EU, in the perception that there is greater freedom of movement in respect of the European continent.

Another factor is related to the existence of a population growth rate in LAC as a region of origin that appears to adapt itself to the needs of the continent of destination, in this case an ageing Europe.\(^9\) As a result of its ageing population, Europe needs foreign workers in some production sectors in which nationals have shown no interest, such as jobs related to the care of the elderly, the sick and children, which in some cases are not taken care of institutionally, owing to weaknesses in the welfare state (Yepez del Castillo). As a result, the hard core of jobs to which European citizens attach little social value have gradually become the domain of foreign workers. In this context, it is important to bear in mind the attraction of these pockets of informality in some European economies, which, in the southern EU Member States in particular, have led to the illegal employment of foreign nationals. The subsequent normalisation of the situation through regularisation procedures has been singled out in some academic and political circles as the cause of the so-called pull effect (Ruiz Sandoval, 2006).

With regard to these pockets of informality, it is necessary to point to some indicators. While irregular employment and the hidden economy are phenomena that exist, to a greater or lesser extent, in all European countries, within Europe they are most prevalent within Spain, Greece and Italy. Although based on estimates, in 2000 Spain registered an irregular employment rate of approximately 32.2%, while the figure was 48% in Italy (Observatorio de Sostenibilidad en España, 2006)\(^10\). Irregular work and the informal economy in these countries are mainly accounted for by the following: 1) workers who do not declare all their activities or fail to pay social security contributions; 2) people who do not declare all their income in order to receive state benefits or sign on as unemployed when they have a job; 3) immigrants working illegally.

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\(^9\) The IOM points out that global population growth differs between developed and developing countries. In the former, the annual growth rate is lower than 0.3%, while in the rest of the world the population is growing almost six times as fast.

\(^10\) A 2004 study by the European Employment Observatory on approximate figures relating to irregular employment as a percentage of GDP in the countries of the EU revealed that the only reliable data for Spain concerned 1985, whereas for the almost 30 other countries covered by the study, the figures were usually more recent than 2000. In Observatorio de Sostenibilidad en España, 2006.
Another element that should be borne in mind is the existence in some EU countries of dual nationality and naturalisation arrangements that favour LAC nationals. Spain, Italy and Portugal are home to an unknown number of dual nationality citizens, who are entitled to live and work in any other EU Member State. In addition, there are social diaspora, family and national networks that help newly arrived immigrants to integrate. These groups encourage new departures either for the purposes of family reunification or by the simple fact of demonstrating the possibility of securing a better standard of living compared with the situation in the country of origin, and help to create an imagined view of the European welfare state (Ruiz Sandoval, 2006; Yepez del Castillo).

In Spain's case, for instance, the naturalisation of Latin Americans increased by 1000% in the 10 years from 1996 to 2006, rising from 5,412 in 1996 to 50,821 in 2006. This significant increase was the result of the relationship between internal demand for labour and the preferential nationality policies applied by the Spanish State (Zapata-Barrero, Gottsch, 2008). Others factors influencing not only migration to Europe but also the mobility of people at global level are the reduction in transport costs and greater ease of communication, making it easier to travel and for immigrants to maintain contact with their countries.

### 1.3 Spain's Leading Role and Other Cases of Interest

**Spain**

The last decade in Spain has been exceptional as regards migration. After a long stint as a country of origin for migrants, it has become one of the main destinations for immigrants to the EU, to the extent that, in the last few years, net migration to Spain has accounted for around 40% or more of the Union total (Aja, Arango and Oliver, 2008). The rapid increase in the arrival rate has been accompanied by a relatively liberal immigration policy, or at least one that that has been perceived as such by other EU Member States, which have been particularly critical of the immigrant regularisation schemes implemented by successive Spanish governments, which have benefited more than a million people since 1986. Nevertheless, these measures have attracted international recognition from the UNDP, which, in its most recent Human Development Report, praised Spain's policies of regularising and recognising the rights of illegal immigrants.

In quantitative terms, the latest statistics indicate the presence of more than 4.6 million officially registered immigrants on Spanish territory, which would put Spain in 10th place worldwide in terms of the proportion of immigrants among the overall population, which, in Spain's case, is 10.7% (UNDP, 2009). This is in addition to the total percentage of illegal immigration, which is, of course, difficult to quantify.

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11 In order to be eligible to apply for Spanish nationality, foreigners must have resided legally in the country for an uninterrupted period of 10 years. However, in the case of Latin American nationals, the requirement is two years of legal residence in order to begin the process, which may last a few years, and they are not obliged to give up their birth nationality, meaning that they are allowed to hold dual nationality.

12 The six regularisation schemes that have taken place in Spain (1986, 1991, 2000, 2001, 2004 and 2005) have resulted in the normalisation of the legal situation of approximately 1,080,000 immigrants.
Spain is currently the second most popular destination for migrants from the region (after the US). According to official sources, the number of immigrants from Ibero-America is 1,431,357, 10 times the number there were a decade ago. In 1998, there were as few as 103,203 officially registered migrants. At present, Latin American and Caribbean immigrants account for 30% of all foreigners in Spain (See Figure 2).

Figure 2

[Number of Ibero-American foreign nationals in Spain with a registration certificate or residence permit (1998-2009)]


Among the 15 largest national groups within the Spanish population, six correspond to an LAC country. According to the figures applicable in June 2009, Ecuadorians (442,114 people) were the third largest national group in Spain, after Moroccans and Romanians. This list of 15 nationalities also includes Colombia (4th place, with 287,417 people), Peru (7th place, with 142,975 people), Bolivia (11th place, with 105,931 people), Argentina (13th place, with 102,363 people) and the Dominican Republic (15th place, with 84,958 people). Latin American and Caribbean nationals have also benefited from regularisation schemes: in 2005, LAC immigrants submitted 267,416 applications for the legalisation of their residence in Spain, accounting for 38.7% of the total number.

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13 See the Anuario Estadístico 2008 and the Informe Trimestral sobre Extranjeros con Certificado de Registro en Vigor y con Autorización de Estancia por Estudios al 30 de junio de 2009, both published by the Ministerio de Trabajo e Inmigración.
### SPAIN

Number of foreign nationals with a valid registration certificate or residence permit

1998–2008 (June 2009)

<table>
<thead>
<tr>
<th></th>
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<td>760</td>
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</table>

Source: Anuario Estadístico 2008 and Informe trimestral Extranjeros con certificado de registro o tarjeta de residencia en vigor y Extranjeros con Autorización de Estancia por estudios en vigor a 30 de junio de 2009 (published in September 2009).
In turn, and contrary to popular belief, illegal immigration in Spain\textsuperscript{14} (and in EU countries in general) is not the result of illegal entry to the territory, but comes about indirectly, generally caused by a failure to renew tourist visas and the lengthening of stays. Although estimates of the number of illegal immigrants are always imprecise, participation in regularisation schemes can be a good indicator for estimating the volume of illegal residents among certain national groups. In this regard, Ecuadorians were one of the five most represented nationalities undergoing the 2001 regularisation process, and around 24 000 residents were also regularised in a special process introduced by the Government for Ecuadorian nationals. In addition, applications from Ecuadorians, Colombians and Bolivians came to 243 568 and accounted for approximately 35\% of the total number of participants in the 2005 regularisation scheme (Ferrero and Pinyol 2008).

Finally, it should be mentioned that, in the last two years, the possibility has been raised that the economic crisis could mean a turning point in LAC migration to Spain. The Spanish authorities have acknowledged publicly that they are expecting the rate of foreign arrivals in the country to slow down, as employment opportunities are one of the main pull factors (in April 2009 unemployment in Spain rose to 15\%, with a high of 28\% among immigrants). Partial figures for 2008 indicated a fall in the number of initial residence and work permits issued, and in the number of cases of family reunification (some 30 000 people fewer than in 2007, when around 128 000 people were reunited). A study by the Spanish National Institute of Statistics covering the 2008-2018 period predicted that immigration would become the most volatile variable in the long term. At the same time, government policies have focused on encouraging immigrants to return to their country of origin, providing an incentive in the form of the possibility of cashing in their unemployment insurance. Nevertheless, at present, official statistics confirm the continuing rise in the number of foreign nationals with a valid residence permit for Spain, representing a 3.3\% increase in the first half of 2009 compared with December 2008.

\textbf{Italy and Portugal}

Historic, linguistic and cultural ties are responsible, in the case of Spain, Italy and Portugal, for the increasing number of Latin American and Caribbean arrivals to their shores, reflecting old colonial connections. Italy has historically been a country of emigrants and remained so until the 1970s, when it became a country of destination, admitting a large contingent of Latin Americans. According to data from the Italian Institute of Statistics (ISTAT), the country’s foreign population grew by more than 16\% in 2007, representing the largest increase in Italian history. Overall, there are 3.4 million foreign nationals living in Italy, accounting for 5.8\% of the population. Most of them come from Eastern Europe. In 2007, there were 493 729 Romanian immigrants, with Albanians and Moroccans the next most numerous nationalities.

\textsuperscript{14} In Spain, attempts are usually made to produce an approximate estimate using data from municipal registers, on which the majority of immigrants living in the country – regardless of whether they have up-to-date documents or not – tend to be listed, as it allows them access to social services, such as health care. However, the cross-referencing of data from residence permits and the register presents difficulties, as they use different methods of calculation.
At present, the largest Latin American community in Italy is of Ecuadorians, with the number of immigrants rising from 68,900 in 2006 to 73,235 in 2007; these account for 73% of all Latin American immigrants to Italy. This is the third largest community of Ecuadorians living abroad, after those in the US and Spain. Behind Ecuadorians are nationals of Peru (70,755), Brazil (37,848), the Dominican Republic (18,591) and Colombia (17,890). The number of Ecuadorians has been growing over the last few years, as in 2001 Peruvians formed the largest Latin American community in Italy (28%), ahead of Brazilians (16%) and Ecuadorians (only 9%).

At the same time, many Brazilians, Argentinians, Ecuadorians and Venezuelans have arrived in Italy as descendants of Italians, meaning that they are not included in official records as foreigners but as nationals returning to their country. In that sense, it is important to look at the number of Argentinians falling into the ‘returned migrant’ category. Although it is difficult to put a number on them, they would have a considerable bearing on statistics. The sizeable number of Latin Americans residing in Italy illegally should also be stressed. During the last regularisation exercise in November 2002, 10% of applications were submitted by Latin Americans, with those from Ecuadorians and Peruvians most frequently accepted (IOM, 2004).

Figure 4: Latin American population in Spain, Italy and Portugal by country of origin (2005)

<table>
<thead>
<tr>
<th>Country</th>
<th>Spain</th>
<th>Italy</th>
<th>Portugal</th>
<th>Total 2005</th>
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<td>Brazil</td>
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<td>26,975</td>
<td>49,678</td>
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<td>15,430</td>
<td>574</td>
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<td>71</td>
<td>71 601</td>
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<tr>
<td>Other</td>
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<td>1 232</td>
<td>44</td>
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<tr>
<td>Total CARIBBEAN</td>
<td>98 339</td>
<td>26 030</td>
<td>690</td>
<td>124 369</td>
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</table>


In Portugal’s case, this country has also been a traditional source of emigration, with a significant level of transatlantic migration to Brazil, the United States and its former colonies in Africa, as well as to northern Europe, registered between the Second World War and the 1970s. In Latin America, the main destination was Brazil, although a large number of Portuguese migrants also travelled to Venezuela. Since 1990, Portugal has become an important immigration destination, its entry to the European Community in 1986 making it an attractive prospect. At present, the majority of Latin American migrants to Portugal come from Brazil, followed by Venezuela. It should be pointed out that there is a shortage of data owing to the fact that ‘returned migrants’ from these countries are not included in official statistics (IOM, 2004). That being the case, it is thought that the number of immigrants in Portugal, accounted for chiefly by Brazilians, is increasing considerably. According to the OECD, in 2006 there were 73 400 Brazilians in Portugal, a figure that has been growing since the 1990s, when the number hovered around 20 000 people. These figures do not include illegal immigrants or ‘returnees’ with Portuguese nationality.

Other cases of interest

In terms of the presence of Latin American and Caribbean nationals in other European countries, the figures are less significant as a proportion of the overall number of immigrants. In 2004, the number of Latin American immigrants in the United Kingdom came to 73 785, while the number from the Caribbean was 253 176, most of whom were from Jamaica. This figure is low compared with previous decades, when flows from the former British colonies in the Caribbean were higher. Since the 1940s, many people from the Caribbean have emigrated to Western Europe, mainly to the United Kingdom, France and the Netherlands. The number of immigrants in the United Kingdom who were born in the Caribbean Commonwealth countries was around 500 000 in 1971, 625 000 in 1980, and 500 000 in 1991, when the Caribbean community constituted approximately 0.8% of the United Kingdom’s overall population. Since then, the British Government has introduced rules on immigration that have considerably reduced the number of Caribbean nationals in the country, as a result of which they have begun to migrate to the United States. The decline in immigration to the United Kingdom has been accompanied by the departure of Caribbean migrants. Many of those leaving the United Kingdom have gone to Canada and the United States, but an increasing number have been returning to the Caribbean, marking the beginning of a significant return movement (Thomas-Hope 2005).

1.4 KEY TRAITS OF LAC IMMIGRATION TO THE EU:

Building up a comprehensive profile of the LAC immigrant to Europe is a complex task, but, with the aim of going some way to accomplishing it, it is possible to identify some key traits – behavioural patterns and trends that can help us to understand the nature of migration between LAC and the EU. We shall take a brief look at certain characteristics of Latin
American and Caribbean migration: its concentration in southern Europe, heterogeneity, feminisation and illegality.

Some of these key aspects of LAC migration to the EU are the subject of academic study in both regions and have had a particular bearing on the agenda for bi-regional political dialogue over the last few years.

Concentration: In the last few years, as the destinations for Latin American and Caribbean migrants have widened to include countries other than the United States, their concentration in the south of Europe in particular has intensified. There are a large number of Ecuadorians, Colombians, Argentinians and Bolivians in Spain, of Ecuadorians and Peruvians in Italy and of Brazilians in Portugal, as established above. The tendency for concentration is also clear in the case of Jamaicans in the United Kingdom, who account for 98% of Europe’s Jamaican community.

Heterogeneity: A strong trend in LAC migration is the growing social heterogeneity of the migrant population. In the 1990s, the constant economic crises in the region and their negative effects on job markets resulted not only in increased migratory flows but also in their social diversification. Until the mid-1970s, extra-regional migrants were, for the main part, professionals and the technically skilled with a high level of education. In the 1980s, people emigrated for essentially political reasons (CELADE, 2008), with migrants presenting a more varied profile in terms of social status and level of education. The diversity with regard to the latter aspect has resulted in greater heterogeneity depending on the country of origin. According to ECLAC data, in the case of LAC immigrants to Spain, among those aged between 16 and 55, Argentinians, Cubans, Chileans and Venezuelans are the only ones with a rate of tertiary education higher than that of Spaniards, unlike Ecuadorians, Colombians, Bolivians and Dominicans, for whom the rate is lower. On the whole, however, the proportion of illiterate and unqualified people among LAC immigrants is twice that among nationals.

Feminisation of migration: Another important trait of LAC migration is the growing number of women involved. ‘The gender composition of migratory flows is closely linked to the degree of complementarity between the labour markets of countries, the demand for labour in service activities, the role of social networks and possibilities for family reunification’ (ECLAC, 2008). This trend is evident in South American migration not only to Europe but also to the United States and Canada, and is fundamentally down to employment needs. Many women from LAC are engaged in domestic cleaning and childcare activities, care of the elderly and the sick and industrial cleaning services. In Spain, more than 40% of working Latin American women older than 16 are employed in domestic service, while the men work in construction, industry and agriculture. Proving an exception to the feminisation of migration to Spain are some communities, such as Argentinians, Chileans and Uruguayans, in which there is a gender balance. Women have a greater presence among immigrants from the Dominican Republic, Colombia and, to a lesser extent, Ecuador (Pellegrino, 2004). In the last few years, the increase in the number of men included among Latin American and Caribbean immigrants in Spain has been down to family reunification measures.
Illegality: It is very difficult to measure the scale of this phenomenon owing to its clandestine nature and the fact that, in the majority of cases, it involves people who enter the Union legally – as tourists or students, for instance – and then extend their stay beyond the authorised period. By way of reference, a study carried out in 2003 on the Colombian community in Spain concluded that around two-thirds of members of this national group were in the country illegally (Pellegrino, IOM 2004). LAC immigrants have also participated to a growing degree in the successive regularisation schemes implemented in Spain. As mentioned, illegality is closely linked to the hidden economy, which accounts for between 7% and 16% of Community GDP, mainly in sectors connected with construction, agriculture and work in the home.

2. MOBILITY OF HUMAN CAPITAL, REMITTANCES AND DEVELOPMENT

The impact of migrants’ remittances and the mobility of human capital on the development of countries of origin and destination has come to occupy a prominent position on the public policy agenda for Latin America and Europe. For this reason, we shall now examine these issues in order to assess their most pertinent aspects.

2.1 INTERNATIONAL MOBILITY OF HUMAN CAPITAL

Identifying the factors determining the mobility of human capital from Latin America and the Caribbean to Europe, i.e. ‘talent’ or skilled migrants, is of particular importance, because of its impact on the transfer of technology, specialised knowledge and production skills. The migration of human capital covers people with a high level of education: entrepreneurs, scientists, engineers, students, information technology specialists, professionals and artists who move beyond the borders of their country etc. The intense global demand for talent has led to an increase in the migration of specialised human resources, in particular since the 1990s, in response to new opportunities and incentives arising in more developed countries.
In the case of LAC, the growth of migratory flows described earlier has been accompanied by an increase in skilled migration, which has raised deep concerns about brain drain. The highest rate of brain drain in the region is found in Central America and the Caribbean.

Figure 6 shows the emigration rates for people with tertiary education (as a percentage of the corresponding workforce) from the Americas (North, Central and South America and the Caribbean) to the OECD countries. It indicates (second column of the figure) that the highest emigration rates for people with tertiary education are from the Caribbean (43%), followed by Central America (17%) and South America (5%). There are several economies, mainly small countries in the Caribbean, in which the emigration rate for people with tertiary education lies between 60 and 90% (Venezuela also has a high skilled migration rate, of 60%). The proportion of skilled workers (i.e. those with tertiary education) among residents and migrants is higher in South America and North America, suggesting that emigrants from countries in these regions are more educated in relation to nationals in the country of origin and immigrants in the country of destination.

Some of the push and pull factors for qualified migration are (i) the pay and income gaps between countries; (ii) complementarities between the mobility of human capital, technology and financial capital; (iii) a shortage in destination countries of qualified staff in technological roles and the health-care sector; and (iv) migration policies in developed countries that give preference to the entry of people with tertiary education and specialist qualifications (Solimano, 2008b).

In general, the concentration of capital, technology, research centres and universities in certain destination countries attracts human capital from all over the world. Skilled migration is also closely linked to the matter of ageing population in the industrial nations, which generates a demand for specialised labour. Migration schemes are therefore of key importance.
importance, with countries such as the United States, Canada and Australia, as well as the EU, having created special programmes and preferential visa arrangements over the last decade to attract foreign talent by encouraging the entry of professionals with specialist qualifications, such as information technology experts and doctors and medical workers.

Concerns about the brain drain have been balanced in recent years by a positive view of the mobility, in the sense that circular migration and the temporary return of migrants help to consolidate local job markets and their development (Peregrino, 2009). From this point of view, the thinking is to transform the brain drain into a ‘brain gain’, ‘brain exchange’ or ‘brain circulation’. In this sense, although there is no comparable information as regards LAC, the migration and subsequent return of human capital to the country of origin means the transfer of accumulated knowledge, skills, contacts and access to best practices etc., all of which has a positive impact on national development in the migrant’s country. Similarly, during the emigration period, some migrants’ knowledge and experience is transferred through sporadic visits and involvement in networks of contacts (Pollack, Solimano, 2004), which aids the transfer of expertise to the country of origin.

2.2 INTERNATIONAL REMITTANCES: DRIVERS AND IMPACT

Another characteristic feature of Latin American and Caribbean migration is its significant impact in terms of remittances, in other words the sending of money or goods back to countries of origin. These financial flows of international remittances act as a counterpart to the physical flows of persons; they constitute an additional source of income for recipients and, in macroeconomic terms, they complement external savings and bring extra foreign currency into the countries of origin of migrants. In view of the importance of these remittances, the Euro-Latin American Summits of Guadalajara (2004) and Vienna (2006) identified them as being one of the prime components of relations between the two regions. The European Commission has already played an active part by adopting, in December 2007, a proposal15 for establishing a new legal framework for payment services (Tedesco, 2008).

Although there are a number of reasons why migrants send money back to their countries of origin, these can nevertheless be grouped into categories: 1) altruism (helping the family); 2) self-interest; 3) repayment of previous investment in human capital on the part of the migrant’s family; and 4) diversification of sources of family income and stability.

15 See http://ec.europa.eu/internal_market/payments/framework
Migration in the context of relations between the EU and LAC

Figure 7: Remittances to LAC, 2001-2008 (selected countries, in dollars)

<table>
<thead>
<tr>
<th>Countries</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>Emigrantes</th>
<th>% de PIB</th>
<th>Prom. de remesas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>100</td>
<td>184</td>
<td>226</td>
<td>270</td>
<td>780</td>
<td>850</td>
<td>920</td>
<td>565</td>
<td>318,333</td>
<td>2.34</td>
<td>250</td>
</tr>
<tr>
<td>Belize</td>
<td>75</td>
<td>77</td>
<td>81</td>
<td>93</td>
<td>100</td>
<td>110</td>
<td>110</td>
<td>45,833</td>
<td>8.39</td>
<td>200</td>
<td></td>
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<tr>
<td>Bolivia</td>
<td>103</td>
<td>104.2</td>
<td>340</td>
<td>421.6</td>
<td>860</td>
<td>959</td>
<td>1050</td>
<td>1097</td>
<td>507,417</td>
<td>6.06</td>
<td>100</td>
</tr>
<tr>
<td>Brazil</td>
<td>2600</td>
<td>4600</td>
<td>5200</td>
<td>5624</td>
<td>5793</td>
<td>7373</td>
<td>7165</td>
<td>7200</td>
<td>750,000</td>
<td>2.77</td>
<td>800</td>
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<tr>
<td>Colombia</td>
<td>1756</td>
<td>2431</td>
<td>3067</td>
<td>3857.3</td>
<td>4126</td>
<td>4200</td>
<td>4521</td>
<td>4842</td>
<td>1,613,028</td>
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<tr>
<td>Costa Rica</td>
<td>80.2</td>
<td>134.83</td>
<td>306</td>
<td>320</td>
<td>400</td>
<td>520</td>
<td>582</td>
<td>624</td>
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<td>2.34</td>
<td>279</td>
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<tr>
<td>Cuba</td>
<td>730</td>
<td>1138.3</td>
<td>1194</td>
<td>1194</td>
<td>1100</td>
<td>1000</td>
<td>1000</td>
<td>1200</td>
<td>563,333</td>
<td>2.25</td>
<td>230</td>
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<tr>
<td>Chile</td>
<td>800</td>
<td>850</td>
<td>335,333</td>
<td>0.62</td>
<td>220</td>
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<td></td>
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<tr>
<td>Rep. Dom.</td>
<td>1807</td>
<td>2111.5</td>
<td>2216.58</td>
<td>2438.2</td>
<td>2560</td>
<td>2747</td>
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<td>3148</td>
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<td>1657</td>
<td>1740</td>
<td>1827</td>
<td>2873</td>
<td>3118</td>
<td>2922</td>
<td>692,030</td>
<td>5.87</td>
<td>345</td>
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<tr>
<td>El Salvador</td>
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<td>231.63</td>
<td>2546</td>
<td>2830</td>
<td>3316</td>
<td>3695</td>
<td>3766</td>
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<td>2993</td>
<td>3610</td>
<td>4128</td>
<td>4318</td>
<td>919,578</td>
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<tr>
<td>Guyana</td>
<td>40</td>
<td>119</td>
<td>137</td>
<td>143</td>
<td>260</td>
<td>270</td>
<td>423</td>
<td>415</td>
<td>206,934</td>
<td>36.7</td>
<td>167</td>
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<tr>
<td>Haiti</td>
<td>810</td>
<td>931.8</td>
<td>978</td>
<td>1026</td>
<td>1077</td>
<td>1100</td>
<td>1650</td>
<td>1870</td>
<td>1,277,624</td>
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<tr>
<td>Honduras</td>
<td>460</td>
<td>770</td>
<td>862</td>
<td>1134</td>
<td>1763</td>
<td>2353</td>
<td>2561</td>
<td>2707</td>
<td>930,974</td>
<td>21.6</td>
<td>242</td>
</tr>
<tr>
<td>Jamaica</td>
<td>947.8</td>
<td>1224</td>
<td>1426</td>
<td>1497</td>
<td>1651</td>
<td>1770</td>
<td>1860</td>
<td>2034</td>
<td>1,207,754</td>
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<tr>
<td>México</td>
<td>885.8</td>
<td>10502</td>
<td>13264</td>
<td>16613</td>
<td>20094</td>
<td>23053</td>
<td>26075</td>
<td>35148</td>
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<td>Nicaragua</td>
<td>660</td>
<td>759</td>
<td>757.8</td>
<td>809.55</td>
<td>901</td>
<td>950</td>
<td>960</td>
<td>1056</td>
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<tr>
<td>Panama</td>
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<td>231</td>
<td>254</td>
<td>292</td>
<td>340</td>
<td>325</td>
<td>108,833</td>
<td>1.65</td>
<td>250</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paraguay</td>
<td>566</td>
<td>560</td>
<td>565</td>
<td>750</td>
<td>700</td>
<td>191,838</td>
<td>5.68</td>
<td>305</td>
<td></td>
<td></td>
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<tr>
<td>Peru</td>
<td>930</td>
<td>1265</td>
<td>1295</td>
<td>1360</td>
<td>2495</td>
<td>2869</td>
<td>2900</td>
<td>2560</td>
<td>1,469,662</td>
<td>2.56</td>
<td>168</td>
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<tr>
<td>Suriname</td>
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<td>55</td>
<td>102.3</td>
<td>115</td>
<td>120</td>
<td>40,000</td>
<td>6.16</td>
<td>250</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>T. Tobago</td>
<td>40.7</td>
<td>58.5</td>
<td>80</td>
<td>93</td>
<td>97</td>
<td>110</td>
<td>125</td>
<td>130</td>
<td>43,333</td>
<td>0.64</td>
<td>250</td>
</tr>
<tr>
<td>Uruguay</td>
<td>42</td>
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<td>110</td>
<td>115</td>
<td>115</td>
<td>130</td>
<td>43,333</td>
<td>0.61</td>
<td>250</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Venezuela</td>
<td>134</td>
<td>335</td>
<td>247</td>
<td>269</td>
<td>272</td>
<td>300</td>
<td>331</td>
<td>532</td>
<td>424,117</td>
<td>0.35</td>
<td>163</td>
</tr>
<tr>
<td>ALC</td>
<td>24290</td>
<td>32049</td>
<td>38048</td>
<td>44997</td>
<td>52868</td>
<td>61531</td>
<td>68405</td>
<td>69005</td>
<td>59,223,049</td>
<td>0.34</td>
<td>280</td>
</tr>
<tr>
<td>Crecimiento</td>
<td>12%</td>
<td>19%</td>
<td>19%</td>
<td>17%</td>
<td>16%</td>
<td>11%</td>
<td>9%</td>
<td>3%</td>
<td>16%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Países</td>
<td>19</td>
<td>19</td>
<td>22</td>
<td>24</td>
<td>24</td>
<td>24</td>
<td>25</td>
<td>25</td>
<td>36</td>
<td>1.9</td>
<td>34</td>
</tr>
</tbody>
</table>


[Headings: Countries (…) Emigrants, % GDP, Average Remittance. Bottom two rows of left-hand column: Growth, Countries]

As Figure 7 shows, pecuniary remittances to LAC rose sharply between 2001 and 2008, although it has to be said that part of this increase is due to better statistical recording (Orozco, 2009). During this period, income from remittances to Latin America tended to outstrip direct foreign investment and official development aid.

The main source of remittances for Latin America is the United States: USD 47,665 billion in 2008, around 70% of the total, whereas remittances from Europe were around USD 10.533 billion, or 14% of the total. The remainder comes from other regions and countries of the world. Whereas over 12 million Latin American and Caribbean nationals remitted money from the US to LAC in 2008, only 2.7 million did so from Europe, with the majority of income from Europe being sent from Spain, which is second in importance only to the United States.

Measuring these remittances in per capita terms, we find that the highest per capita remittances are USD 440 in Panama, USD 361 in El Salvador and USD 257 in the Dominican Republic. By contrast, the countries with the lowest per capita remittances are Argentina with USD 6, Venezuela with USD 10 and Brazil with USD 30.
Figure 8: Remittances to LAC in 2008 and estimates for 2009

<table>
<thead>
<tr>
<th>Country/region</th>
<th>US</th>
<th>Europe</th>
<th>Rest of the world</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emigrants of working age</td>
<td>19 400 000</td>
<td>3 800 000</td>
<td>6 500 000</td>
<td>29 700 000</td>
</tr>
<tr>
<td>Remitters</td>
<td>12 610 000</td>
<td>2 660 000</td>
<td>4 550 000</td>
<td>19 820 000</td>
</tr>
<tr>
<td>Amount sent (USD)</td>
<td>3 780</td>
<td>3 960</td>
<td>2 400</td>
<td></td>
</tr>
<tr>
<td>Remittances in 2008 (USD)</td>
<td>47 665 800 000</td>
<td>10 533 600 000</td>
<td>10 920 000 000</td>
<td>69 119 400 000</td>
</tr>
<tr>
<td>Unemployed in 2009</td>
<td>10%</td>
<td>16%</td>
<td>8%</td>
<td></td>
</tr>
<tr>
<td>Remitters in 2009</td>
<td>12 042 550</td>
<td>2 457 840</td>
<td>4 459 000</td>
<td>18 993 319</td>
</tr>
<tr>
<td>Reduction in remitters</td>
<td>(567 450)</td>
<td>(202 160)</td>
<td>(91 000)</td>
<td>(828 690)</td>
</tr>
<tr>
<td>Estimated remittances in 2009 (USD)</td>
<td>44 382 818 025</td>
<td>9 489 720 240</td>
<td>10 434 060 000</td>
<td>64 429 841 385</td>
</tr>
<tr>
<td>Growth</td>
<td>(0.07)</td>
<td>(0.10)</td>
<td>(0.04)</td>
<td>(0.07)</td>
</tr>
</tbody>
</table>


In Europe, Spain is the principal sender of remittances to LAC, accounting for over half of all remittances to the region. According to a survey by Bendixen & Associates commissioned by the Spanish Ministry of the Economy, the great majority of LAC migrants living in Spain sent remittances to their families in 2007 (for example, 88% of Dominicans, 86% of Ecuadorians, 80% of Peruvians, 72% of Colombians) averaging EUR 270 per month, which represents around 15% of their annual income in the host country.

Figure 9: Remittances from Spain: total flow towards Andean countries

(million EUR)

<table>
<thead>
<tr>
<th></th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>% GDP 2006</th>
<th>% GDP 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ecuador</td>
<td>720</td>
<td>942</td>
<td>932</td>
<td>1 157</td>
<td>3.50%</td>
<td>1.301</td>
</tr>
<tr>
<td>Colombia</td>
<td>732</td>
<td>892</td>
<td>969</td>
<td>1 341</td>
<td>1.25%</td>
<td>1.431</td>
</tr>
<tr>
<td>Bolivia</td>
<td>80</td>
<td>229</td>
<td>429</td>
<td>735</td>
<td>8.50%</td>
<td>951</td>
</tr>
<tr>
<td>Peru</td>
<td>62</td>
<td>100</td>
<td>166</td>
<td>231</td>
<td>0.31%</td>
<td>244</td>
</tr>
<tr>
<td>TOTAL (Increase)</td>
<td>3 475 (+22.2%)</td>
<td>4 189 (+20.5%)</td>
<td>4 936 (17.8%)</td>
<td>6 807 (37.9%)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Banco de España. Further information can be found at www.remesas.org
In the case of the Andean countries, which is the region of origin of most Latin American migrants in Spain, there was sustained growth, averaging 14%, in total remittances in the period 2000-2006, which is consistent with the increased migratory dynamics experienced by the various countries in the region (see Ayuso, Pinyol, 2009). Colombia continues to be the principal recipient of remittances in absolute terms, but their impact is much greater in Ecuador, which occupies second place in terms of remittances received. However, the greatest effect of remittances from Spain is felt in Bolivia, where they accounted for 9.9% of GDP in 2007. Although Bolivia is not the country which receives the most remittances, it is the country where they have increased fastest in recent years, because Bolivians found it easier to visit Spain than other Andean countries until the introduction of the compulsory visa. In Bolivia and Ecuador, remittances have exceeded both direct foreign investment and official development aid since the year 2000. The Latin American country which has experienced the least growth in remittances from Spain in recent years has been Peru, and this reflects the healthier state of the Peruvian economy, which has grown at one of the fastest rates in the whole of Latin America over the last five years.

**Effects of remittances on development**

The extent of these remittance flows has aroused an increasing interest on the part of international experts and institutions in trying to assess their impact on poverty reduction and on the economies of recipient countries, and also their potential effect on the financing of development processes (Montoya Zavala 2006). It is generally accepted that remittances have an immediate beneficial effect for the direct recipients of these flows because the remittances partly offset the costs of migration and provide additional benefits: the families of migrants receive additional income to that generated in their own country and the countries receiving the remittances benefit from flows of currency and savings which can be mobilised for national development purposes. However, the medium-term consequences at macroeconomic level are not quite so obvious and have led to some debate.

The early indications are that the effects depend not just on the overall volume of funds, but also on the use to which the remittances are put and on their relative significance for the recipient economy as a whole (Olivié and Ponce 2008). An obvious example of this is provided by the figures in the second report of the Inter-American Dialogue *Task force on remittances*: the report shows for example that, of the Andean countries, Colombia received most remittances in 2005 (4.200 billion dollars). However, their impact on the balance of payments, their percentage of GDP or in relation to family spending was significantly less than in the case of Ecuador. In the former country remittances amounted to only USD 90 per capita whereas in the latter they amounted to USD 136.

Thus, a vital element for any assessment of the impact of remittances is the use to which they are put. In terms of *investments* financed by remittances, these are usually of small to medium size and include investment in housing and land, in small businesses and

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16 The following provides an important illustration of the significance of remittances at individual level: if the average amount sent home to the family from the United States or Europe by a Latin American migrant varies between USD 300 and USD 350 and if we bear in mind that the minimum monthly wage is around USD 200-300 in several Latin American countries, income from remittances is higher than the minimum threshold, which is highly significant given that remittance recipients are low and medium-income families (albeit generally not extremely poor).
agriculture. Remittances are also used to finance education and health costs and so they promote the creation of human and physical capital. Empirical evidence for LAC shows that remittances tend to raise the level of educational attainment and the health standards of children of poor families, although those results depend on variables such as gender, country, location of the family and educational level of the parents (Acosta, Fajnzylber and Lopez, 2007). A further source of investment financing is formed by ‘collective remittances’, in other words remittances sent by migrant associations in developed countries, which generally contribute towards the financing of urban and social infrastructure such as works to improve urban districts, and the construction and equipping of schools and hospitals. All in all, this shows that remittances have a positive effect on the human capital of recipient countries.

For their part, the studies commissioned by the Multilateral Development Fund (FOMIN) of the IDB for five Latin American countries (Guatemala, Honduras, El Salvador, Mexico and Ecuador) examine the use made of remittances sent to families in those countries in terms of consumption, savings and investment. Those studies show that around 72% of remittances are used to finance expenditure such as food, public services, rent or mortgage-related payments. The ‘savings’ component of these surveys/studies accounts on average for 7% of total spending of remittances, the ‘education’ component for 6% and expenditure on housing for 1.8%. Remittances clearly have a positive effect on individual wellbeing by helping to finance the consumption of goods which are essential in the lives of recipient families. Remittances are also a source of savings and a means of financing health and education costs. Studies show that poor families receiving income from remittances tend to avoid taking their children out of school, which helps to increase investment in human capital compared to the situation in the absence of remittances. Remittances are also an additional source of income for purchasing durables and housing.

In the light of these indicators, determining the net effect of remittances on the economic growth of recipient countries is a complex matter. There are various effects: as remittances increase, the pool of savings available for consumption or investment increases, which will hopefully have a positive effect on levels of activity and medium-term growth. However, in countries receiving large inflows of remittances from abroad, there is a tendency for the real exchange rate to appreciate, which reduces the profitability of non-traditional exports, which are a source of employment and currency. If remittances raise educational levels and improve the health of the population, this improves human capital, which necessarily impacts positively on growth in those countries.

Another potential beneficial effect usually associated with the sending of remittances is their contribution to the development of the financial sector by increasing flows of money into banks, thereby improving access to credit for recipients based on the security offered by the remittances. According to the survey mentioned above, 77% of migrants who say that they send remittances from Spain currently have a bank account in that country. The percentage increases to 91% in the case of workers earning in excess of EUR 10 000. The proportion is inverted if we consider the situation in the country of origin; 77% of workers who send home remittances do not have a bank account in Latin America. In addition to improving access to

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17 These figures represent average saving and spending behaviour in respect of income from remittances and are distinct from those for marginal behaviour, which according to the World Bank (2006) are even higher.
credit for individuals, it is assumed that greater access to the formal financial sector would contribute to modernising the recipient economy and improving the national savings ratio, which at the current time is very low. For this reason, attempts are being made to encourage remittance senders to make greater use of official banking channels.

Another point of view – as propounded in an IMF study (Chami, Fullenkamp and Jahjan, 2003) – is that remittances are individual compensatory transfers to cope with adverse economic conditions in the countries of origin of migrants and that they are therefore counter-cyclical, showing a negative correlation with movements of per capita GDP in remittance-receiving countries. On the other hand, some studies indicate that remittances can create a ‘dependence culture’ in recipient families, by reducing their incentive to work and invest in training the workforce. It is also necessary to assess the financial cost of sending remittances, which is generally an area handled by specialist companies charging high rates of commission, travel agencies and other mechanisms which avoid formal banking channels because immigrants frequently do not have a bank account. The result is that the cost of sending remittances is high.\(^{18}\)

**The effect of the current crisis on migratory flows and remittances**

When examining the current state and future prospects of migratory flows and remittances from the EU to LAC, it is necessary to take into account a variable whose impact is as yet uncertain: the global economic crisis. This crisis may lead to the first decline in world GDP for 60 years, if the forecasts of a 1% fall for 2009 and up to 4% in developed countries are correct. According to the UNDP *Human Development Report 2009. Overcoming barriers: Human mobility and development*, this crisis, which started as a financial crisis, has quickly turned into a jobs crisis, and because of this the OECD unemployment rate is expected to hit 8.4% in 2009. In Spain, the unemployment rate climbed as high as 15% by April 2009 and topped 28% among immigrants. This last figure prompts thoughts on the effects of this employment crisis on the immigrant population which, according to the forecasts, will be the hardest hit in OECD countries, if historical trends are maintained.

Traditionally, migrants are the first to lose their jobs in times of crisis which is because, on average, they have a profile typical of workers who are vulnerable: that is they are younger, have less formal education and less work experience and tend to work as labourers. According to the UNDP report, using quarterly GDP and unemployment data from 14 European countries between 1998 and 2008, it was found that in countries that experienced recessions, the unemployment rate of migrants tended to increase faster than that of other groups (UNDP, 2009).

In this context, forecasting the consequences of the economic crisis on human flows is one of the areas on which migratory studies at global level will be focusing, although there is currently no consensus about predictions as to its impact on the return of migrants or on stemming flows towards developed countries. The International Organization for Migration (IOM) admits that there has been a decline in the movement of the workforce, especially in the information technology, construction and manufacturing sectors; however, it says that

\(^{18}\) This facet has been examined by Orozco (2004) and Solimano (2004 and 2009).
the true impact of the recession in terms of the migrant workforce returning to its countries of origin has not yet been felt.

In this connection, the evidence suggests that migrants tend to remain in their country of destination even after economic conditions have worsened. This is because migration plans are usually complex and prompted by multiple causes, meaning that the impact of the economic crisis can prompt very different responses. A return to the country of origin, or in some cases to a third country, can be an option for migrants who have not spent much time in Europe, because they may perceive the crisis and unemployment as being an incentive to return home or to seek a country with better economic prospects where they can pursue their occupational plans. Migrants who have spent longer living in the EU, who have brought their families over, enrolled their children in schools and become assimilated into the daily life of the host country are able to put up with the crisis and the unemployment in the same way as the indigenous population. On a few occasions, decisions have been taken to return to the country of origin, decisions which are drastic in that the country of origin is also affected by the global nature of the crisis and there may even be fewer economic opportunities (Pinyol and Urrutia, 2009). As the Human Development report noted, there is reason to believe that there will not be any huge return flows, given the experience of the European guest-worker programmes in the 1970s, since return is influenced by prospects of re-entry to the host country, the generosity of the host country’s welfare system and the needs of family members – all of which tend to encourage migrants to ride out the crisis (UNDP, 2009)

When assessing the impact of the economic crisis it is also necessary to take on board the way in which this crisis, both now and in the future, will affect national and Community migration measures and policies, especially against a background of high unemployment when the local population is more prepared to apply for jobs hitherto mostly filled by migrants. These policies will have a decisive effect on promoting or restricting the entry of new migrants. As regards the impact of the crisis on flows of remittances, these have proved more stable in the past than other economic flows and have had a contra-cyclical effect, in that they have not diminished during periods of economic crisis in recipient countries (Lopez-Cordova and Olmedo 2006). At times when the economic crisis bites harder in remittance-sending countries than in recipient countries, it is doubtful whether flows can follow the same pattern (Bora Durdu and Sayan, 2008, Ayuso, Pinyol, 2009). In 2008, remittances to LAC fell for the first time in ten years and despite a nominal increase diminished in real terms by 1.5%. According to the IDB, one of the main reasons for this is that unemployment rates for people of Latin American origin have risen faster in the last year than for any other segment of the population in the host countries. Other factors are: inflation, driven by increased food and fuel prices; the weakness of the dollar, especially in countries where the local currency has strengthened against the dollar; and stricter application of measures to counter illegal immigration.

It is estimated that in 2009 (see Figure 8), total remittances to Latin America, which amounted to USD 69 billion in 2008, will fall to USD 61 billion, a drop of slightly more than 11%. The flow of remittances from Latin American migrants in Europe will drop from their level of USD 10.5 billion in 2008 to USD 9 billion in 2009, a fall of around 14% (Orozco, 2009).
The greater reduction in remittances from Europe is partly due to the fact that the unemployment rate for Latin American migrants is higher in Europe (18%) than in the United States (12%) and the rest of the world (8%). Furthermore, average remittances from Europe per migrant, which amount to around USD 4,000 per annum, are greater than remittances per migrant from the United States (USD 3,780) and the rest of the world (USD 2,400).
PART II

1. LEGAL AND POLITICAL BACKGROUND TO THE EU-LAC MIGRATION PHENOMENON

The increase in migratory flows in recent decades has spawned the concept of migration governance, which refers to the ability of States to design, implement, follow up and evaluate public migration management policies in collaboration with civil society actors. International migration involves relations between two or more States representing, respectively, the places of origin and destination or transit of migrants. This entails shared responsibility, because it is only through effective cooperation between the countries affected by migratory flows that it is possible to ensure protection of the civil and employment rights of emigrants and immigrants, by maintaining legality and security, whilst at the same time enabling migration as a driver of development both in the host economies and in the economies of countries of origin. Migrations have many facets, from individual and family to national and transnational, and these have different consequences (GROS, H. 2007). It is therefore essential for government migration policies and migration institutions to have a specific international cooperation strategy.

In its work, the Global Commission on International Migration (GCIM), recognised the importance of promoting cooperation at bilateral, regional and world level, pointing out that at bilateral level, ‘bilateral agreements are a valuable means of addressing migration issues that affect two States. They must always respect the normative framework affecting international migrants and thereby safeguard migrant rights’; it stressed that at regional level ‘additional efforts are required to ensure that regional consultative processes on migration have worldwide coverage, engage civil society and the private sector and are not focused solely on migration control. Greater interaction between the different processes is essential given the global nature of migration’. At world level, the GCIM indicated that ‘the new willingness of a range of States, institutions and non-governmental stakeholders to take global initiatives on international migration is welcome. The UN General Assembly High-Level Dialogue provides an opportunity for greater interaction and coherence between these initiatives, and to ensure that their momentum is maintained. The ongoing UN reform process provides a window of opportunity to realise this momentum through a revision of current institutional arrangements’ (GCIM, 2005: 73-75).

The global framework covers: regulation at world level and the interlaced network of bilateral and regional agreements for managing migration, the general aim of which is to make the movement of persons more orderly, manageable and productive while balancing and optimising the interests of countries of origin, destination and transit and those of migrants themselves (Ghosh 2002: 189). This concept of proactive management of international migration is based on the principle of regulated opening up which suggests a freely negotiated global agreement in the mutual interest to manage migration in the transnational area (Ghosh 2005). Agreeing with this principle, Cachón (2008b) supported the need to establish a ‘transnational normative network’ to support this global framework.
Given the close correlation between migratory flows and highly sensitive political issues associated with the exercise of territorial sovereignty (border controls, labour market, security, fundamental civil and political rights, etc.) States have not been much inclined to give undertakings which limit their room for manoeuvre. Therefore, despite the obvious plurinational dimension of migration, international cooperation in the field of migration has been achieved bilaterally rather than multilaterally. This has led to a network of disparate instruments which makes international governance of the phenomenon difficult and limits the effectiveness of policies but above all prejudices the weakest link, the migrants and their families. Nonetheless, in recent years international instruments to tackle the phenomenon have been adopted at various levels with the aim of establishing a few common bases. In this section we will refer firstly to initiatives at global level; we will then consider cooperation initiatives in Latin America and, finally, we will examine the gradual construction of a European migration policy with special emphasis on its effects for Latin America.

1. MIGRATION GOVERNANCE AT GLOBAL LEVEL

The regulation of migration is directly linked to the necessary protection of the human rights which must be afforded by States to all persons irrespective of provenance. The search for improved socioeconomic conditions continues to be the main reason for migrating and so international cooperation on migration has focused principally on employment matters. In this context, the right to work, understood in its broadest sense, is essential for human development, both from an individual and a collective point of view. Work in decent conditions is the main tool for combating human poverty and at the same time it represents a source of wealth and prosperity for society. In order for this right to be universally effective, it is essential for international cooperation to incorporate decent work into development strategies and policies from local right up to global level. Resolution 41/128 of the United Nations General Assembly (UNGA) of 1986 on the right to development provides that States are to take all necessary measures to ensure employment and the fair distribution of income (Article 8). It also states that ‘everyone is entitled to a social and international order in which […] rights and freedoms […] can be fully realised’ and reiterates that all human rights are indivisible and interdependent.

By means of Resolution 45/158 of 1990, the UNGA adopted the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families, which entered into force in July 2005. That convention recognises one series of fundamental rights to be afforded to all workers and members of their families without any formal requirement, because they form part of the minimum standard of fundamental human rights, and another series of more extensive rights which are only afforded to migrant workers in a regular situation. It is a very ambitious convention which, to date, has been ratified by very few of

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19 The exception being the international regulation of the right to asylum and refugee status, which was examined at an early date and codified originally by the United Nations in the Convention relating to the Status of Refugees of 1951.
the principal receiving countries. No country belonging to the EU has so far signed it, whereas several Latin American countries have done so. The convention established a Committee on the Protection of the Rights of All Migrant Workers composed of independent experts tasked with monitoring the application of the Convention by means of reports and receiving complaints from individuals where the signatory countries had accepted the Article 77 procedure.

In the international arena, the specialised entity in terms of migration is the IOM, set up in 1951 to promote international cooperation between States and to provide assistance to migrants through information and humanitarian aid. Despite being an important auxiliary body for protecting the rights of migrants, the IOM is not tasked with establishing specific normative frameworks but with ensuring compliance with existing ones at national and international level. The IOM served as the Secretariat for the Berne Initiative, a consultative process of national authorities which launched the ‘International Agenda for Migration Management’. That document, which was adopted in Berne in 2004, addresses issues relating to human rights, labour migration, integration, illegal migration, human trafficking and migrant smuggling, trade, health and return of migrants, in which areas it establishes various general principles and recognises good practices already tried out by various actors.

Within the framework of the United Nations, the International Labour Organization (ILO), a specialised agency for cooperation in the field of labour relations, pioneered the multilateral regulation of migration issues relating to labour relations by making recommendations and developing specific technical cooperation projects. The two principal ILO conventions relating to labour migration are the Migration for Employment Convention (revised) 1949 (No 97) and the Migrant Workers (Supplementary Provisions) Convention 1975 (No 143). The former includes recommendations for identifying policies, such as the circulation of information between countries, and a recommendation to take steps to avoid misleading propaganda relating to migration, in particular avoiding discrimination on any grounds. All parties to that convention are required to provide information on special provisions relating to migration for employment and the conditions of work and livelihood of migrants for employment.

As at the end of September 2009, the following Latin American countries had ratified the convention: Argentina, Belize, Bolivia, Chile, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Peru and Uruguay.

21 The IOM indicates that: ‘A State’s authority to regulate entry, stay and removal on its territory is not absolute. States are increasingly realising that migration must be managed, and that cooperation with other States is necessary. International obligations based on international norms that limit State authority over migration issues provide a means for protecting human rights and balancing the interests of migrants with the interests of States.’ At www.iom.int/jahia/Jahia/about-migration/migration-management-foundations/about-migration-international-migration-law.

As at September 2009, the following EU countries had ratified the convention: Belgium, France, Germany, Italy, the Netherlands, Portugal, Slovenia, Spain and the United Kingdom. The following LAC countries have also ratified it: Bahamas, Barbados, Belize, Brazil, Cuba, Dominica, Ecuador, Granada, Guatemala, Guyana, Saint Lucia, Trinidad and Tobago, Uruguay and Venezuela.

This convention has been ratified by very few EU countries (Cyprus, Slovenia, Italy, Portugal and Sweden) and as at September 2009, the only LAC country to have ratified is the Republic of Venezuela.
Convention 143, for its part, seeks to suppress clandestine migration for employment and illegal employment of migrants, and it also stresses the importance of equality of opportunity and treatment. Furthermore, States are required to declare and pursue a policy which guarantees equality of treatment in areas such as employment, social security, trade union and cultural rights, and which attempts to ensure a basic level of protection, even where a worker is in an irregular situation, and to protect workers who have suffered a loss of employment so that they can preserve their rights.

The implementation of both conventions is subject to international monitoring using the procedures laid down in the ILO Charter, initially through normal follow-up by means of periodic reports, and in addition, through various somewhat contentious mechanisms such as: claims from workers’ or employers’ associations; also complaints brought by a Member State, the Governing Body or a delegate to the General Conference.

Following the appointment of Juan Somavia, a Chilean, as Director General of the ILO in 1999, decent work\(^{24}\) became one of the ILO’s strategic aims. Starting from the premise that it is not possible to apply identical policies for the promotion of decent work across the board, Decent Work Country Programmes were set up and these attempted to apply a coherent approach. The guiding principles of this approach are: establishing clear priorities; national control; encouraging policy change; overall coherence of national policies and cooperation; maintaining a medium-term vision. The Guidebook for Developing and Implementing Decent Work Country Programmes (DWCPs) (ILO, 2008) advocates results-based management, seeks to increase social involvement and emphasises the gender aspect. The effectiveness of national programmes also depends on external factors, and therefore the ILO, in collaboration with the UN, is working to integrate its agenda into the global development agenda.

In 2005, the ILO launched the ‘Multilateral Framework on Labour Migration’, laying down non-binding principles and guidelines for a rights-based approach to labour migration.\(^{25}\) Principle 4 lays down that all States have the sovereign right to develop their own policies to manage labour migration, seeking to make those policies coherent, effective and fair. Principle 12 indicates that an orderly and equitable process of migration is to be promoted in both origin and destination countries, to guide men and women workers through all stages of migration, from planning to return and reintegration, including transit, arrival and reception in the destination country.

\(^{24}\) In the words of the ILO ‘Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.’

\(^{25}\) Agreement adopted by the Tripartite Meeting of Experts on the ILO Multilateral Framework on Labour Migration, held in Geneva from 31 October to 2 November 2005.
The ECOSOC Ministerial Declaration on generating full and productive employment and decent work for all adopted by the UNGA in July 2007\textsuperscript{26} called on governments to consider the impact of their policies on employment and pointed to the need to incorporate ILO objectives into United Nations programmes. In June 2008, the International Labour Conference of the ILO adopted the four core objectives of the Decent Work Agenda: providing employment opportunities by creating a sustainable institutional and economic environment; offering adequate social protection; promoting social dialogue by facilitating consensus between national and international policies, and promoting good labour relations. The ILO also recalls that the importance of respect for fundamental principles and rights at work, whose violation may not be invoked as a comparative legitimate advantage, and labour rules should not be used for protectionist trade purposes. The Declaration states that, due to the interdependent nature of these objectives, it is essential to make progress on all fronts because lack of progress in one area affects success in others. There is a follow-up mechanism to enable the ILO to help States to implement the Agenda. A Steering Group on the Follow-up to the Declaration (2008) was created and provision was made for a Preliminary Implementation Plan\textsuperscript{27} to adjust technical assistance to United Nations Development Assistance Frameworks (UNDAFs, coordinated by the United Nations Development Programme (UNDP)). The latter tries to give coherence to the joint action of the various agencies and to provide an integrated focus for policies. The Plan also aims to promote link-ups with non-governmental organisations and consultation with social interlocutors.

In addition to the main instruments mentioned, the ILO has a regulatory acquis which also affects the rights of migrant workers as they are applicable to all workers\textsuperscript{28}, such rights being protected by the same control mechanisms as those referred to above, or indeed by specific mechanisms in the case of freedom to join a trade union. The number of EU and LAC countries which have ratified this agreement is uneven (see Annex). Another regulatory framework which may impinge on the treatment of migrants is the one currently being debated by the General Agreement on Trade in Services (GATS) round of negotiations, which may affect temporary workers as well as in-house and external service providers, categories which for the most part lie outside the scope of ILO conventions on migrant workers.

\textsuperscript{26} Ministerial declaration of the high-level segment, adopted by the UNGA on 10 July 2007 (A/62/3//Rev.1)

\textsuperscript{27} International Labour Organization GB. 303/SG/DECL/2 303rd session, Geneva, November 2008

\textsuperscript{28} Mention should be made here of the Freedom of Association and Protection of the Right to Organise Convention, 1949 (No 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No 98), which equates all workers whether regular or irregular; the Equal Remuneration Convention, 1951 (No 100); the Discrimination (Employment and Occupation) Convention, 1958 (No 111); the Equality of Treatment (Accident Compensation) Convention,1925 (No 19); the Equality of Treatment (Social Security) Convention, 1962 (No 118); the Maintenance of Social Security Rights Convention,1982 (No 157); the Protection of Wages Convention,1949 (No 95); the Employment Service Convention, 1948 (No 88); the Private Employment Agencies Convention, 1997 (No 181); the Minimum Age Convention, 1973 (No 138); the Abolition of Forced Labour Convention, 1957 (No 105); the Labour Inspection Convention, 1947 (No 81); and others relating to specific sectors having a high proportion of migrant workers such as agriculture (Nos 129 and 184), health (Nos 149 and155), construction (No 167); hotels and restaurants (No 172) and mining (No 176).
2. COOPERATION AND MIGRATION POLICIES IN LAC

Overall, LAC is currently a net exporter of human resources to other countries, but there is also a significant flow of people from one country to another within LAC due to huge asymmetries between regions in terms of development and employment opportunities. A ‘migration agenda’ is currently in place which includes agreements, undertakings and instruments for migration management at regional, subregional and bi-national level. We will consider below the development of the agendas and instruments available within the region, examining regional initiatives first and then bilateral instruments in order to ascertain how cooperation contributes to the creation and strengthening of migration management instruments.

2.1 THE REGIONAL AGENDA

Migration has frequently figured on the Latin American multilateral agenda in recent years and has been discussed at Summits and regional sessions within the framework of the OAS and within integration bodies, and also at Ibero-American Summits. As a result of these encounters, a commitment has evolved to improve the level of protection of migrant workers through migration management. In order to achieve this, it is important to improve information on and measurement of this phenomenon in order to produce high-quality up-to-date statistical data; to strengthen and apply the international rules of the ILO; to promote the Multilateral Framework for Labour Migration; to promote social dialogue; to implement policies which link migration to development, and to incorporate the migration issue more effectively into subregional integration processes. The Hemispheric Agenda also refers to the challenge of formulating decent work and development policies in collaboration with host countries.

At subregional level, there are basically two important fora for consultation and cooperation in the region, one in the north and one in the south. In the north, there is the Regional Conference on Migration, established in 1996, and also known as the ‘Puebla Process’. In the south, there is the South American Conference on Migration, which dates from 1999. Although the concrete achievements of the two fora are not exactly major, the fact that there are fora for discussion between governments (which sometimes include civil society representatives) and for deciding on common elements of the regional agenda is a significant achievement on which to build.
The Puebla Process\(^{29}\) is based on recognition of the importance of cooperation, holds annual Vice-Ministerial meetings and has set up a Regional Consultation Group on Migration. These fora hold debates on essential migration-related issues, development and cooperation, establishing priorities for dialogue which are usually developed subsequently in a bilateral context or in smaller groups of countries. One of the principal achievements has been the development of a Statistical Information System on Migration for Central America and Mexico (SIEMCA), begun in 2005. The XIII Regional Conference on Migration (Puebla Process) was held in Honduras in 2008 and adopted a three-pronged Action Plan on migration management, human rights and linkage between development and migration. This called for action to: improve planning of migration policies; strengthen channels of communication; improve information and training on migration issues; incorporate a gender component; and coordinate the treatment of refugees with UNHCR.

Following the Lima Declaration of 1999, the ‘southern’ component of the process is the South American Conference on Migration, an offshoot of the Puebla Process\(^{30}\) which also holds annual conferences\(^{31}\). At the First Conference, government representatives agreed to set up a coordination and consultation forum on migration matters for South American countries. They also made an official request for the support of the IOM in implementing that process. At subsequent conferences they established an Action Plan and carried out a series of appropriate studies and investigations, based on the importance of adopting an integrated approach when tackling this issue, whilst at the same time protecting the human rights of migrants. The South American Conference stressed the importance of cooperation programmes for the formulation of government social development policies, which should aim to ensure that decisions to migrate were not based on necessity.

The Quito Declaration at the end of the IX Conference, held in September 2009, recognises that the construction of a South American citizenship means progressing ‘free mobility of persons in an informed and safe way and with rights’ and aims to guarantee the same rights for persons in the region as those demanded for their citizens in countries outside the region, and therefore members undertake to try to incorporate international standards and in particular to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The declaration also calls on destination countries to formulate and implement permanent regularisation programmes for irregular and/or undocumented persons and criticises the toughening of immigration policies which, in its

\(^{29}\) The countries taking part in the Puebla Process are Belize, Canada, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the United States of America. The following participate as observer States: Argentina, Colombia, Ecuador, Jamaica and Peru; the following as international organisations: the United Nations High Commissioner for Refugees (UNHCR), the Economic Commission for Latin America and the Caribbean (ECLAC-CELADE), the Inter-American Commission for Human Rights (ICHR), the United Nations Population Fund (UNPF), the International Organization for Migration (IOM), the Special Rapporteur of the United Nations on the Human Rights of Migrants and the Central American Integration System (SICA).

\(^{30}\) Participating countries are: Argentina, Brazil, Chile, Paraguay and Uruguay, Bolivia, Colombia, Ecuador, Peru and Venezuela; Guyana and Surinam.

\(^{31}\) Buenos Aires (2000); Santiago (2001); Quito (2002); Montevideo (2003); La Paz (2004); Asunción (2006); Caracas (2007); Montevideo (2008). The IX Conference was held in September 2009 in Quito.
view, encourages forms of irregular migration. This is one of the issues on which the Latin American position differs most markedly from that of Europe, where many people consider that it is the regularisation process itself which is prompting the increase in irregular migration, hence the need to toughen up expulsion procedures. The declaration also proposes setting up a South American Network of Cooperation on Migration, approves the Web Site and calls for greater presence and coordination in global migration fora, deciding on Bolivia as the location for the X Conference in 2010.

At regional level, albeit with a strong bi-regional input, a migration agenda has been formulated in conjunction with the Latin American Summits which, in addition to all the Latin American countries, include Andorra, Spain and Portugal. The 2006 Summit took ‘Migration and Development’ as its central theme and approved the Montevideo commitment. This theme was also reflected in the Action Programme of the Santiago Declaration at the Summit held in the Chilean capital in 2007 focusing on social cohesion. Approval was also given on that occasion to the Multilateral Ibero-American Convention on Social Security\(^{32}\) in conjunction with the Ibero-American Social Security Organization (OISS). This convention guarantees equal treatment and entitlement to and revaluation and cumulation of pensions arising in any of the signatory countries. Although the convention covers a very limited field and is limited to contributory pensions, industrial accidents and occupational diseases, it is a step towards facilitating mobility without loss of rights and it also establishes a mechanism for cooperation between Latin American social security institutions. It therefore represents a framework for identifying areas of cooperation which can be transferred to bi-regional EU-LAC cooperation.

Continuity has been provided by the institutionalisation of the Ibero-American Forum on Migration and Development (FIBEMYD), which met for the first time in Cuenca in April 2008, decided on an Action Plan to implement the Montevideo commitment, signed an agreement between SEGIB, the IOM and ECLAC and decided that the next Forum would be held in El Salvador in 2010. The Action Plan has three main components: migration management, human rights and migration and development. In all these areas, the emphasis is on learning about good practice. The first component incorporates specific topics such as young people, protection of minors, indigenous peoples and gender, in addition to management of the return of migrants. The second component calls for ratification of international instruments in general and the Ibero-American Convention on Social Security in particular. The third component calls for the incorporation of migration issues into development agendas and proposes a study on the impact of integration in three selected countries. The Plan also seeks to prioritise migration for temporary employment, to improve conditions for transferring remittances and to identify co-development projects which can link the diaspora with development projects in their countries of origin.

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\(^{32}\)Signed by Argentina, Bolivia, Brazil, Costa Rica, Chile, El Salvador, Paraguay, Peru, Portugal, Spain, Uruguay and Venezuela.
2.2 SPECIFIC INSTRUMENTS OF SUBREGIONAL INTEGRATION

The Latin American subregional integration processes, despite all their consolidation problems and difficulties, have also tackled the subject of migration. In none of the Latin American integration processes has free movement of persons been developed to the extent that it has in the EU. However, a certain amount of progress has been made in regulating migratory flows.

MERCOSUR: Article 1 of the Treaty of Asunción indicates that the main objective of the bloc is to establish a common market, this being taken to mean free ‘movement of goods, services and factors of production between countries’ within a period ending on 31 December 1994. Free movement of persons is not mentioned specifically but it is regarded as being included implicitly under the general scope of ‘production factors’, although no expression is given to the rights forming the legal content of that freedom. However, various instruments have been adopted which have liberalised movement of persons to some extent. Of these, the most significant are those which seek to ease the crossing of borders between Member States by MERCOSUR nationals and to make it more flexible. Since the 1980s, a subgroup has been examining labour and social security matters and there are agreements currently in place regarding exemption from translation of migration documents and there have been advances in important areas such as integrated border control and the fight against human trafficking. Approval has been given to Common Market Group Resolution (GMC) No 74/96 relating to entry and exit permits and Resolution (GMG) No 31/08 concerning the documents of each State party which facilitate the transit of persons through MERCOSUR. The most significant step forward is the Decision of the Common Market Council (CMC) No 28/02, which includes four agreements approved at the XII meeting of MERCOSUR Internal Affairs Ministers, Bolivia and Chile. The most notable of these are Agreement No 13/02 on Residence of MERCOSUR State Party Nationals and Agreement No 14/02 on Residence of MERCOSUR State Party Nationals and Nationals of Bolivia and Chile, both of which were signed on 6 December 2002 and establish a very broad legal status for nationals of States Parties.

These agreements provide for the grant of an initial two-year temporary residence permit to nationals of States Parties who can provide evidence of their nationality, have no police, criminal or judicial record, and where necessary can provide a certificate of mental and physical health. Persons benefiting under this agreement are those wishing to become established in the territory of another State Party (which will forward the application to the relevant consular office), and those already in the territory (who are to send their request for regularisation to the immigration services). Temporary residence can become permanent upon application 90 days prior to the expiry of the permit and satisfaction of certain minimum requirements, plus evidence of sufficient lawful means of support for the applicant.

33 This instrument, which repeals Resolution No 75/96, incorporates the Agreement on travel documents of States party to Mercosur and associated States which is set out in Decision (CMC) No 18/08.

34 Article 4 of Agreements 13/02 and 14/02.
and his or her family. Persons who have been granted temporary or permanent residence have a right of entry, exit, movement and stay within the territory of the host countries, without prejudice to any restrictions which may be imposed for reasons of public policy or public security. Similarly, they have a right to take up and pursue any economic activity on an employed or self-employed basis under the same conditions as nationals of the host State Party. Finally, immigrants and their family members are accorded the benefit of equal treatment with nationals in fields such as working conditions, pay, social security and education for their children. The agreements also provide for cooperation to prevent migratory flows of persons in an irregular situation through measures such as collaboration between monitoring bodies and the imposition of penalties on anyone illegally employing or smuggling nationals of States Parties.

The major stumbling block with these agreements has been the delay on the part of Paraguay in showing its willingness to be bound by the agreements, which has prevented their entry into force and required the bilateralisation of its effects. In this context, we would draw attention to the adoption of the Mercosur Multilateral Social Security Agreement and its Administrative Regulation, both of which are incorporated in Decision (CMC) No 19/97. This agreement provides for the coordination of social security systems in relation to existing contributory pecuniary and health benefits in the States Parties which are afforded to workers who provide or have provided services in any of the States Parties, and to their family members and assimilated persons (Articles 2 and 3). To that end, the agreement provides for the cumulation of all insurance or contribution periods completed in the territories of the States Parties for the purpose of awarding retirement, old age, invalidity or death benefits (Article 7).

**ANDEAN COMMUNITY (CAN):** Since the 1970s, CAN has had an Andean Labour Migration Instrument (Decision 116). During the initial years of its application, this instrument was a model for the management of migratory flows (especially of temporary workers). Pioneering efforts were also made by this region to regularise migrants in an irregular situation, as for example in Venezuela in 1981 where a quarter of a million people were allowed to regularise their situation. Following the ups and downs of the integration process itself, the agreement experienced a period of inactivity; however, it was reactivated in 2003 (Decision 545) with the adoption of a series of bi-national border agreements and decisions recognising identity papers, the amendment of the Andean Migration Card and the updating of rules on the treatment of migrants in line with international norms, especially those laid down by the ILO. CAN is tackling extracommunity migration by trying to develop migration cooperation policies with third countries for the benefit of nationals of its integration area. This effort has five key components: migratory governance and mobility of male and female workers in the region; assistance to and protection of the human rights of migrants; remittances and financial development tools; international negotiations and cooperation, especially in the context of the South American Conference on Migration.

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35 Article 5 of Agreements 13/02 and 14/02.
36 Articles 8 and 9 of Agreements 13/02 and 14/02.
37 Article 10 of Agreements 13/02 and 14/02.
CENTRAL AMERICAN INTEGRATION SYSTEM (SICA): Through its General Secretariat, SICA incorporates migration as a positive and fundamental element into development and integration in Central America. This subject is also part of the remit of SICA's Consultative Committee, the civil society consultative organ in this process. Tangible achievements include the CA4 (El Salvador, Guatemala, Honduras and Nicaragua), an area of free movement with a single visa which has been operative since 2004. In this connection, the CA4 has also made advances in terms of a harmonised manual of procedures to facilitate migration and a manual of procedures for information exchange. Joint training programmes are under way and countries are sharing information which is important for national security by encouraging the implementation of controls which help to combat child trafficking, smuggling of migrants, etc.

Central American countries have also made progress in the form of the Integrated System of Migration Operations (SIOM) within the framework of the Central American Commission of Directors of Migration (OCAM)38, which discusses mechanisms for regional coordination, implementation of the regional system of migration information and the common technology platform, in addition to coordinating the return of extra-regional migrants. Other than in those two fora, dialogue between the countries of Central America takes place mainly in the context of the Puebla Process, which is understandable given the importance of the United States for migratory flows in this subregion.

CARIBBEAN COMMUNITY (CARICOM): CARICOM, which was set up in 1973, moved towards a single market in the second half of the 1980s. Protocol 2 establishing that market covers right of establishment, provision of services and movement of capital. In 1996, CARICOM Heads of State agreed to limit free movement of persons to university graduates, artists, sportspersons, musicians and communication media workers. Businessmen and service providers enjoyed a special status. This was seen as being a step towards complete freedom of movement for workers. Following the revision in 2002 of the Treaty of Chaguaramas establishing the Caribbean Community, the goal of free movement of Community nationals within the Caribbean Community was reiterated (Article 45). It provided specifically for the elimination of restrictions on access to employment on the part of skilled workers, including measures to be adopted to facilitate the exercise of skills on an employed or non-wage-earning basis (this category specifically included university graduates, media workers, sportspersons, artists and musicians (Article 46). Articles 33 and 34 provided for the elimination of restrictions on the right of establishment of natural persons, including in particular a procedure for recognising the qualifications of nationals of Member States in order to facilitate access to non-wage-earning employment (Article 35). However, the recent CARICOM summit held in July 2009 was marred by numerous complaints about the treatment of interregional migrants which could delay attainment of this objective.

38 The Central American Commission of Directors of Migration – OCAM - (an acronym which dates back to early meetings when it was called the Central American Organization for Migration) was established in October 1990, in San José, Costa Rica, at the request of Central American presidents within the framework of the Central American Economic Plan of Action (PAECA). Since January 1999, the IOM has served as the Technical Secretariat of OCAM, pursuant to the agreement entered into with the General Secretariat of SICA, with a view to supporting the regional migration activities being pursued by the Commission. At www.oim.or.cr.
2.3 BILATERAL POLICIES AND PLANS

Bilateral migration policies have been pursued in various Latin American countries ever since the 1960s, when a series of specific agreements was formulated. This has led to the current free movement area in the Southern Cone (Argentina, Uruguay, Paraguay, Brazil, Bolivia and Chile). Furthermore, in the 1990s, bilateral agreements were signed between Argentina and Bolivia and between Argentina and Peru for the purpose of regularising the situation of illegal migrants. The control and regularisation of border migrants, including movement of persons, documentation, residence and work permits, are also components of the agreement between Brazil and Uruguay and of the Permanent Migration Status between Colombia and Ecuador (2000).

Certain countries in the region also have bilateral agreements with other regions, the main objective of which is the regulation of migration for employment flows, covering issues such as assisted return and readmission of irregular migrants39. A few specific agreements include components aimed at developing the skills of immigrants and fostering entrepreneurship in order to facilitate productive reintegration in the communities of origin. An example of this is the Temporary Circular Migration Programme applicable to nationals of Spain and Colombia. Finally, it is also worth noting the existence of national plans to regularise immigration in some of the main countries receiving intra-regional migration, such as Argentina’s Programa Patria Grande, or Mexico’s Migration Regularisation Programme. It should be noted that there are problems of access to full and up-to-date information about all the bilateral agreements currently in force, which makes it difficult to establish a comprehensive overview of the situation in the region.

2.4 CONSTRUCTION OF A EUROPEAN IMMIGRATION POLICY

Immigration policies have traditionally been the exclusive prerogative of States in that they affect two of the main constituents of the State: population and territory. In terms of European countries, however, the creation of an area of free movement for nationals took a huge step forward in the context of the European construction process. Thus, 1985 saw the signature of the Schengen Agreement, of which the objective was to create an area of free movement of persons, requiring the removal of common (internal) borders between the signatory countries and the need to harmonise controls at external borders. Due to the establishment of freedom of movement within European territory it became necessary to manage extra-Community immigration.

In this context, the Maastricht Treaty (1993) formalised cooperation between European governments in the areas of justice and home affairs – the third pillar – and included

39 As we shall see, the agreements of Ecuador, Colombia and the Dominican Republic with Spain are significant in this context.
migration and asylum as areas which, because of their common interest, needed to be tackled at EU level. However, in view of the problems and difficulties in achieving this intergovernmental coordination and the acknowledged need for effective democratic control over these policies, the Treaty of Amsterdam of 1999 assigned to the first pillar some of the policies relating to justice and home affairs, including border controls, immigration and asylum. Thus, migration management came within the remit of the Community and a deadline of five years was set for the formulation of a common immigration policy, with the unanimity rule being applicable in this matter.

In order to boost the establishment of an ‘area of freedom, security and justice’ at the highest political level, an Extraordinary European Council was held in October of that same year for the purpose of drawing up a five-year action plan. The Tampere Council recognised the need to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes. The Council identified four core components for a common European policy: (1) the need for a comprehensive approach to cooperation with countries of origin and transit; (2) development of a common European asylum system; (3) the importance of ensuring fair treatment for nationals of third countries residing in the EU and (4) efficient management of migration flows.

Following on from the Tampere European Council, the Commission submitted various proposals for directives in specific areas such as family reunification and the status of third-country nationals who are long-term residents. The reluctance of the Member States to yield up their control over immigration policy explains the difficulties in reaching unanimous agreement and the inclusion of an increasing number of national derogations in directives. The Commission, for its part, wanted to prevent further delays in approving directives and at least to ensure certain minimum common standards between the Member States. In 2004, the European Council adopted the Hague Programme, which sought to carry forward the Tampere agenda by strengthening the area of freedom, security and justice for the period 2005-2009. In much more specific terms than the previous agreement, the Hague Programme identified a series of concrete guidelines for a comprehensive approach to the migration phenomenon, which entailed taking into account, when formulating European immigration policy, all stages of migration, both its root causes and return and re-admission policies as well as integration measures. The work programme was to have a new institutional framework because, five years after the Treaty of Amsterdam, various aspects connected with immigration and asylum – mainly the management of illegal immigration – became part of the first pillar instead of the third

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40 Titles IV and VI of the EU Treaty.
3 COMPONENTS OF A EUROPEAN IMMIGRATION POLICY

Effective management of migration flows, inclusion of dialogue and cooperation in relations with countries of origin and transit and increased instruments to further the integration of third-country nationals were identified as key components of European immigration policy. In terms of asylum, priority was given to establishing a Common European Asylum System. The Commission for its part [COM (2008) 359] laid down the following priorities for European migration policy: establishing clear rules; similar and fair conditions; promoting legal immigration; providing information to third-country nationals on requirements and procedures for legal entry and stay in the EU; ensuring fair treatment of third-country nationals who reside legally in the territory of the Member States, with the aim of approximating their legal status to that of EU nationals; and encouraging association with third countries.

Effective management of migration flows

In 2005, by way of a response to the political guidelines contained in the Hague Programme, the Commission presented a Policy Plan on Legal Migration. The 2005 Plan laid down various formulae for tailoring migratory flows to labour market requirements and contained a proposal for a package of legislative measures for the period 2007-2009 – which included a general framework directive and four specific instruments – relating to the conditions and procedures for admitting specific categories of labour migrants. The objective was to achieve further harmonisation of the various means of legal entry and to complement earlier legislative improvements.

Together with the promotion of ordered, legal immigration, the other main focus has been the fight against illegal immigration. This fight has been waged on two main fronts: in the first place by combating illegal employment and the informal economy, which has resulted in the recent approval of the directive providing for sanctions against employers of illegally staying third-country nationals; and secondly, the fight against illegal immigration has been coupled with the gradual establishment of an integrated system of external border management and consolidation of controls and monitoring at EU frontiers. The greatest progress has been made within the co-decision framework. Noteworthy examples, among others, are the establishment of FRONTEX, the implementation of the Schengen Information System (SIS II), the development of a common visa policy and the approval of the directive on common standards and procedures for returning illegally staying third-country nationals.

41 Regarding the latter point, it should be noted that, with a view to guaranteeing the right of asylum in the EU, based on full compliance with the Geneva Convention, the Member States agreed to establish a Common European Asylum System (CEAS).

42 The purpose of the framework directive is to guarantee a common framework of rights to all third-country nationals in legal employment in the EU who are not yet entitled to long-term residence status, whereas the four directives aim to harmonise the conditions of entry and residence of highly-skilled workers (blue card scheme), seasonal workers, intra-corporate transferees and remunerated trainees.
The fight against illegal immigration has also acted as a spur to establishing improved dialogue and cooperation with the countries of origin and transit of migratory flows.

**Integration of third-country nationals**

For the EU, the integration of third-country nationals is regarded as crucial for ensuring the stability and cohesion of European societies. Seen as a two-way process, integration means formulating anti-discrimination policies, promoting respect for the fundamental freedoms and basic rights of the Union, encouraging intercultural dialogue and enhancing opportunities for and the ability to participate in society. In terms of the powers of Member States, the EU is promoting greater coordination between national and EU integration policies. In this sphere, the Commission has an annual Community action programme on integration, provides technical and economic backing for national programmes and promotes the exchange of good practices, all within the framework of the European Integration Fund.

**Relations with third countries**

Prior to the 1999 Tampere European Council, the European Commission issued a *Strategy Paper on immigration and asylum policy*, drafted in preparation for the Austrian Presidency, which pointed to the fundamental aspects of the Area of Freedom, Security and Justice of the EU which were incorporated in the Action Plan of the Austrian Presidency and in the text of the Conclusions of the Tampere Council. That paper states that ‘The reduction of migratory pressure calls for a coordinated policy which extends far beyond the narrow field of policy on aliens, asylum, immigration and border controls, and also covers international relations and development aid’. It also emphasises the importance of political cooperation between host countries, transit States and States of origin, extending development aid, promoting bilateral agreements and strengthening economic cooperation.

According to that document, the main areas of emphasis can be established by drawing four concentric circles with the EU at the middle. The first circle contains other European countries which, despite not being part of the EU or candidates for accession, are target countries for migration. The second circle includes countries bordering on the EC of 1998, which have ceased to be a significant source of immigrants (countries in the Budapest Group and the Mediterranean basin), whilst a third circle comprises emigration countries neighbouring the EU which require assistance in regulating migration (Turkey, North Africa and certain CIS countries). A fourth circle includes countries where efforts need to focus on eliminating the factors which make migration attractive, such as the Middle East, China and sub-Saharan Africa. Latin America and the Caribbean do not figure in this document, which points to the insignificance, at the end of the 1990s, of migratory flows from those countries.

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46 Ibid. paragraphs 116-119.
towards the EU, in that the document points out the need to formulate medium-term action plans for each of the circles\textsuperscript{47}.

Relations with third countries were a key element of the Tampere Programme (1999) and its successor, the Hague Programme (2004), even though it was not until 2005 that much progress was made in this field. The ‘Global Approach to Migration’, approved by the Council (2005), refers to the need for a balanced, global and coherent approach to combat illegal immigration and encourage legal immigration through collaboration with third countries. In this context, the EU pointed to the need to make migration issues a central element of EU relations with third countries, including neighbouring regions, and stressed the need to tackle the root causes of immigration, by widening the debate to include preventive measures to combat under-development, unemployment and poverty in countries of origin. It is interesting to note that the growing interest in the issue of migration and third country relations within the framework of DG Freedom, Justice and Home Affairs and also DG Relex has not been followed up to the same extent in the context of Europeaid, which has only generated cooperation projects, as we shall see in the next chapter of this report.

\textbf{3.1. THE EXTERNAL DIMENSION OF IMMIGRATION POLICY AS PART OF THE GLOBAL APPROACH TO MIGRATION}

In 2005, the increasing pressure created by illegal immigration across the southern borders of the EU – Lampedusa, Malta, eastern Greek islands, Canary Isles – led to a turning point in the attitudes of the various States and also at European level. Events throughout 2005 and in the early part of 2006 emphasised the need to formulate coherent and coordinated responses in terms of controlling maritime borders, but they also pointed up the need to embark on dialogue with countries of origin and transit on migration issues.

With this in mind, in 2005 the European Commission produced various communications relating to the importance of the external dimension of immigration policy, following the thrust initiated at the Tampere Council of 1999 and reinforced in the Hague Programme of 2004. In 2005, the Commission adopted Communication 390 entitled ‘Migration and Development: some concrete orientations’, which referred to the impact which economic and social development and the promotion of civil rights can have on the reduction of migration flows. In October of that year, the Commission issued Communication 491 entitled ‘A strategy on the external dimension of the area of freedom, security and justice’ and Communication 621 on ‘Priority actions for responding to the challenges of migration: first follow-up to Hampton Court’. In the latter, which recognised the positive contribution of migration in countries of origin and destination, the Commission referred to the need to link migration to development; to improve cooperation between Member States through FRONTEX; and to enhance cooperation and dialogue with countries of origin. All those

\textsuperscript{47} Ibid. paragraph 134, point 5.1.c)
elements would later be incorporated at the end of the year in the conclusions of the Brussels European Council of 15 and 16 December in the Annex on the ‘Global Approach to Migration’, which confirmed the growing importance of migration for the EU and its Member States and its key role in relations with third countries, especially those in neighbouring areas. The European Council noted the increasing importance of migration issues for the EU and its Member States and the fact that recent events had led to mounting public concern. It underlined the need for a balanced, global and coherent approach, covering policies to combat illegal migration and, in cooperation with third countries, harnessing the benefits of legal migration. It recalled that migration issues were a central element of the EU’s relations with a broad range of third countries including, in particular, the regions neighbouring the Union, namely the eastern, south-eastern and Mediterranean regions, and noted the importance of ensuring that the appropriate level of finance was allocated to those policies. The EU would strengthen its dialogue and cooperation with all those countries on migration issues, including return management, in a spirit of partnership and having regard to the circumstances of each country concerned.

In recent legislation adopted by the EU, there has been evidence of incorporating migration into relations with neighbouring countries, in particular with those in the Afro-Mediterranean area. Communication 735 (2006) entitled ‘The Global Approach to Migration one year on: Towards a comprehensive European migration policy’ confirmed that migration issues should be integrated into action plans under the European Neighbourhood Policy (ENP), in the context of EUROMED, and into regular political dialogue with ACP countries in line with Article 13 of the Cotonou Agreement. In the case of the ENP, the Commission produced Communication 247 of May 2007, ‘Applying the “Global Approach to Migration” to the Eastern and South-Eastern Regions Neighbouring the European Union’, whilst in terms of relations with ACP countries, an EU-Africa Ministerial Conference held in Tripoli at the end of 2006 focused on Migration and Development.

In the case of LAC countries, it was not until early 2009 that progress would be made towards establishing a structured dialogue on the subject of migration. This followed on from the Commission’s proposals in Communication COM (2008) 611 on ‘Strengthening the global approach to migration: increasing coordination, coherence and synergies’, and acknowledged the importance of implementing the Lima Declaration (May 2008) by means of a structured dialogue in order to identify and reinforce areas of mutual cooperation in connection with migration and mobility.

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49 The communication refers to countries in the Middle East which are ENP partners: Syria, Jordan and Lebanon.
PART III

1. COOPERATION INSTRUMENTS FOR MANAGING MIGRATORY FLOWS BETWEEN THE EU AND LAC

The need for cooperation between LAC countries and the EU on the subject of migration has arisen belatedly in the last few decades along with the increase in employment flows between the two continents. This has spawned a series of instruments and policies, many of them of a reactive nature and sometimes lacking consistency of design and application. This section examines the various legal instruments available for migration cooperation in relations between the EU and LAC as well as the complementary measures which underpin the management of this phenomenon.

1.1 BILATERAL AND REGIONAL AGREEMENTS AS A MEANS OF MANAGING EMPLOYMENT FLOWS BETWEEN THE EU AND LAC

1.1.1 The role of bilateral agreements

The ILO ‘Multilateral Framework on Labour Migration’ lays down two principles which should provide the guidelines for bilateral or regional migration management instruments: ‘An orderly and equitable process of labour migration should be promoted in both origin and destination countries to guide men and women migrant workers through all states of migration, in particular, planning and preparing for labour migration, transit, arrival and reception, return and reintegration’ (ILO 2005:14). The EU should act as a regional focus from which to promote migration agreements with worldwide impact. However, migration policy continues to rest largely in the hands of the Member States, and it is they who determine the conditions of entry, stay and exit of migrants in their territory by means of their internal regulations and bilateral agreements. Although the EU does not have unlimited jurisdiction to sign migration agreements, it can encourage their signature by the Member States or resort to mixed agreements which include Community and non-Community elements. Thus the European Commission pointed out [COM (2008) 359] that ‘the added value of the EU will be in providing European instruments where they are needed and providing the right framework for achieving coherence where Member States act on the basis of their competences’.

Establishing relations with countries of transit and origin of migration has been a recurring element of European discussions on migration policy, but there have been differing views on the role of third countries and on the instruments required for giving effect to this cooperation. The EU and the Member States have gone from adopting bilateral and sectoral repatriation agreements with third countries bordering its external frontiers to opting for a
policy based on integrating the various facets of immigration into general association or cooperation agreements, thereby securing greater collaboration with those States. Thus, the *European Pact on Immigration and Asylum*\(^50\) of October 2008 and the Commission Communication entitled *A Common Immigration Policy for Europe* [COM (2008) 259 final] of 2008 call for joint efforts with countries of origin to prevent illegal immigration and readmit nationals who have been returned. As progress has been made towards establishing a migration policy, migration issues have been included in the EU’s association agreements. In the case of LAC, bilateral agreements between EU countries and that region are rare except in the case of Spain, to which we will make special reference below. Nor has migration formed a specific topic in association agreements between the EU and LAC countries or regions. However, the subject has been given renewed attention in the current negotiations with CAN countries and Central America and so it is worthwhile heeding experiences in other regions.

1.2 Bilateral migration policy between EU and LAC countries with special reference to Spain.

In view of its status as the first and principal country of destination for Latin American immigration into the EU, we will start by examining the agreements concluded by Spain with Latin American countries. Due to its previous experience as a country of emigration, Spain has ample experience of bilateral agreements for regulating migration flows of Spaniards abroad but its experience as a host country is more recent. In March 2001, the Spanish Council of Ministers approved the ‘Programa Global de Regulación y Coordinación de Extranjería y la Inmigración’ (GRECO Programme) for the period 2001-2004, which constituted an initial attempt ‘to tackle all aspects of the management of aliens and immigration (...) without losing sight of the fact that we belong to a common area which is the European Union’.

The first set of GRECO measures focused on five areas of activity, the third of which was ‘Regulation of the arrival of immigrants from their countries of origin, including the following measures: 1) Approval of admission criteria for immigrants and determining of annual quotas; 2) Numerical determination of the permanent or seasonal labour requirement; 3) Identification of countries with which to negotiate agreements in view of the origin of migrants, previous relations and the characteristics of the country of origin; 4) Regulation by means of agreement of all aspects relating to migration management (recruitment of foreign workers, readmission of Spanish nationals and third-country nationals in transit, co-development aid, etc.) by identifying the obligations and responsibilities of the parties and promoting participation in the selection and channelling of foreign workers by trade unions and employers in the country of origin and destination; and 5) Establishment of mechanisms for selecting and training workers in the country of origin using both sides of industry and NGOs’. During the course of 2001, migration cooperation agreements were signed with Colombia, Ecuador and the Dominican Republic in a period notable for its increase in illegal

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immigration, especially from Ecuador\textsuperscript{51} and Colombia, the awakening of Spanish society to the migration phenomenon and a few exceptional regularisation processes. It was a time of upheaval in terms of migration and the agreements arose as a political response to the challenges of a migration system whose legal framework was being overwhelmed. The focus and content of the agreements is very similar\textsuperscript{52}, although the agreement with Ecuador goes into greater detail about seasonal workers and Spain’s commitment to ‘facilitate the gradual and voluntary departure and return of persons in an irregular situation in its territory’. The latter alluded to the ‘Voluntary and Gradual Return Programme’ set up in 2001 which regularised the situation of 20 352 Ecuadorians (only 3 000 of whom had to return in order to obtain a visa).

The agreements are comprehensive in scope and include clauses relating to the pre-selection of workers at source; a system for communicating employment offers in the target country; selection and recruitment of workers at the point of origin; special provisions for seasonal workers; organisation of movement; guarantees of employment rights and conditions at destination; opportunities for family reunification and return arrangements (compulsory for seasonal contracts). The agreements also include compulsory readmission for nationals who fail to comply with the conditions of entry or stay laid down in the country of destination, but they do not contain any provisions relating to remittances. The signature of the agreements prompted a series of administrative arrangements for the handling of employment offers, the pre-selection of workers at point of origin and the organisation of their movement (SENA in Colombia and UTSTM (a privately managed service) in Ecuador). This complex system, established in 2002, was improved in 2003 by new elements such as the possibility of making individual offers and of reallocating quotas between provinces or professions.

All this led to improvements in legal procedures but in practice the proportion of Ecuadorians and Colombians who used them was very small. The introduction of visas for both countries\textsuperscript{53} stemmed the flow of nationals who arrived as tourists but stayed on in Spain and worked illegally. Furthermore, although the treaties or the Aliens Law 14/2003 stated that countries with agreements had preference in terms of offers of employment, in practice it was employers who decided where to make their offers and no particular preferential treatment was granted. The agreements were also ineffectual due to the lack of employment offers (partly because employers already had a large pool of undocumented resident immigrants), bureaucratic obstacles and delays, the advance notice required for submitting offers or the preference for nearer countries in the case of seasonal workers so as not to have to pay removal expenses. Other weak points of the agreements, although explicitly recognised, were the lack of sufficient arrangements for specialist training; the lack

\textsuperscript{51} The death in 2001 of 12 Ecuadorian immigrants crowded together in a van which was crushed by a train brought to the fore the existence of a huge number of illegal immigrants who are victims of exploitation.

\textsuperscript{52} The introduction gives a definition of ‘migrant workers’; Chapter 1 focuses on means of communicating employment offers; Chapter 2 on ‘Assessment of professional qualifications, travel and reception of migrant workers’; Chapter 3 on ‘Employment and social rights and conditions of migrant workers’; Chapter 4 contains ‘Special provisions on seasonal workers’; Chapter 5 refers to the ‘Return of migrant workers’; Chapter 6 (the final chapter) refers to ‘Provisions for applying and coordinating’ the Agreement.

\textsuperscript{53} For Colombia since 1 January 2001 and for Ecuador since 3 August 2003.
of adequate information on stay, employment, accommodation, wages, employment rights, duties and guarantees; and the failure to implement assistance programmes for migrant workers returning voluntarily to assist their reintegration in the country of origin or to promote the creation of small or medium-sized bi-national businesses to capitalise on human resources and technology transfer.

The new Aliens Regulation, approved in 2004, aimed to achieve more orderly management of migration flows and included ‘second generation’ agreements. The regulation sought to respond to the demands of the labour market which could not be satisfied from within Spain, by publicising a list of occupations which were difficult to fill, the quota (which was only useful for managing temporary migration) and the quantity for large undertakings; it also contained family reunification provisions. Despite certain management problems, since 2005 the flow of legal immigrant workers recruited at source has increased for the first time. This was accompanied by measures such as the 2005 regularisation (harshly criticised by some European partners) and the acceptance of a bond as a permanent means of achieving individual regularisation.

August 2006 saw the ‘boat people’ crisis\(^\text{54}\), which had a profound effect on Spanish and European society and in the end affected policies. Against that background, approval was given to ‘Plan Africa 2006-2008’, which included a series of agreements with various sub-Saharan countries of origin or transit of illegal immigrants\(^\text{55}\), agreements were signed with eastern countries and European cooperation was strengthened in relation to external border controls. Furthermore, Spain implemented pilot projects to recruit workers at source in El Salvador, Honduras, Peru and Mexico and negotiated an agreement with the latter to recruit workers in 2008, an agreement which has met with little success due to the economic crisis. There is also a Migration Cooperation Agreement with Peru (2004) in addition to numerous social security agreements with various Latin American countries which enable workers to retain their rights, such as those with Argentina (2004), Brazil (1991), Chile (1998), Ecuador (1975), Mexico (1995), Paraguay (2006), Peru (2003), the Dominican Republic (2004), Uruguay (2000) and Venezuela (1988), and which recognise the principle of equal treatment.

Pending the agreement currently being negotiated with Bolivia, the first generation agreements with LAC countries in force in Spain have fewer instruments than the agreements signed with sub-Saharan countries whose national communities in Spain are smaller. In comparison with the agreements in force with LAC countries, the second generation agreements concluded with African countries make certain definitions and concepts more clear, are more dogmatic about combating illegal immigration and human trafficking networks and include the idea of ‘mutual assistance’. Unlike their predecessors, second-generation agreements provide for more mechanisms to facilitate return and state that aid will be given to ‘facilitate the reintegration of the person concerned in the country of

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\(^{54}\) This refers to the arrival of masses of small boats carrying migrants from the West African coast to the Canary Isles as a result of improved control in the Straits of Gibraltar following the cooperation agreement with Morocco.

\(^{55}\) Spain has signed Framework Migration Cooperation Agreements with seven countries: Gambia, Guinea-Conakry, Cape Verde, Guinea Bissau, Mali and Niger.
origin’. In addition, the new agreements include provisions on the integration of residents, with initiatives to be pursued in the country of origin (information and awareness programmes, courses on the language and culture of the host country, vocational training programmes, etc.) and in the country of destination (reception programmes to facilitate integration into society and employment, initiatives designed to guarantee equal opportunity, equal access to general public and private services and participation in all social spheres, etc.). Finally, pursuant to the Spanish Cooperation Master Plan, second-generation agreements include a chapter on ‘Migration and Development’ which contains measures aimed at combating poverty, improving the skills of immigrants as agents of development in their regions of origin and improving the impact of remittances on the development of communities. Despite all this, the existing agreements have been under-utilised in the majority of cases.

As for other EU countries, Italy has signed an agreement with Peru which entered into force in October 2004 with a minimal content comprising 6 articles. Italy is currently negotiating the conclusion of a migration agreement with Ecuador. The latter also has an agreement with Belgium which embodies the principles of free movement and voluntary return with dignity and encourages the regularisation of Ecuadorian immigrants whose situation is irregular. France has signed agreements on concerted management of migration with Brazil, Dominica, Saint Lucia and Surinam and is in the process of complex negotiations with Haiti. The United Kingdom has only a few social security agreements with Caribbean countries such as Barbados and Jamaica. In the absence of an entity which is capable of centralising information in this respect, it is not possible to provide an exhaustive picture of all the agreements in force which might impinge on this matter, because they are so widely dispersed.

1.3 Migration and the negotiation of association agreements between the EU and countries or regions of Latin America

The association agreements entered into with Mexico in 1997 and Chile in 2000 barely contain any specific provisions on migration. The latter includes scarcely any reference to cooperation to combat the organised crime associated with international migration and merely alludes to the possibility of bilateral agreements being negotiated by Chile and individual Member States. The section dealing with cooperation as an aspect of the association refers to the work of NGOs in that field. The Association Agreement with CARICOM also fails to lay down specific provisions on migration and merely refers to the possibility of making it easier for young professionals from the Caribbean to obtain professional experience and mitigating the brain drain. The Agreements with MERCOSUR, the countries of the ACN and Central America are in the process of negotiation. The ACN and Central America are areas which experience significant migratory flows, although the flows from Central America are predominantly towards the United States. By contrast, migration is an important aspect to include in the negotiations with the ACN countries. The Association
Agreements entered into by the EU and third States in other geographical areas\textsuperscript{56} contain a number of provisions which could be usefully incorporated into the association agreements between the EU and LAC countries, as follows:

\textbf{a) Non-discrimination clauses:} such clauses set out the principle of equal treatment in employment, which means the absence of any discrimination on grounds of nationality in terms of working conditions, remuneration and dismissal, relative to the nationals of the country concerned\textsuperscript{57}. There is also provision in the field of social security for treatment free from any discrimination based on nationality relative to nationals of the Member States in which they are employed, which in turn means equal treatment in relation to sickness and maternity benefits, invalidity, old age and survivors’ benefits, industrial accident and occupational disease benefits and death, unemployment and family benefits; there is also provision for the aggregation of all periods of insurance, employment or residence completed in the various Member States\textsuperscript{58}.

\textbf{b) Provisions to combat illegal migration:} The most recent agreements (Lebanon and Egypt) include a chapter on cooperation for the prevention and control of illegal immigration and require the members of the EU and the other party to the agreement to readmit any of their nationals illegally present on the territory of the other party. That does not preclude the negotiation and signature of bilateral agreements to provide for specific obligations on the readmission of their nationals; such negotiations may also cover arrangements for the readmission of third-country nationals\textsuperscript{59}.

\textbf{c) Provisions to reduce migratory pressure.} These provisions lay down the legal bases for projects and programmes intended to reduce flows towards the EU. They cover projects aimed at creating employment and conducting training in areas with high emigration levels, measures aimed at reducing poverty, improving living and working conditions, supporting economic development in areas from which migrants come, and measures promoting the resettlement of illegal immigrants repatriated from the EU\textsuperscript{60}.


\textsuperscript{57} Article 67 of the Agreement with Algeria, Article 64 of the Agreements with Morocco and Tunisia. The reference to provisions on employees in the other agreements is more flexible and obligations are dealt with in the context of the social dialogue between the parties.

\textsuperscript{58} The rules on social security in the Agreement with Israel are different: there is no express statement of the principle of equal treatment relative to nationals; instead the agreement refers to the need to coordinate the social security regimes of Israeli workers legally employed in a Member State and of their family members.

\textsuperscript{59} Articles 68 and 69 of the Agreements with Egypt and Lebanon.

\textsuperscript{60} Article 74 of the Agreement with Algeria, Article 71 of the Agreements with Morocco and Tunisia, Article 65 of the Agreements with Egypt and Lebanon, Article 82 of the Agreement with Jordan.
d) Provisions concerning dialogue on immigration policy: Provisions laying the legal foundations for a dialogue with third States on the migration policy of the EU have been incorporated into agreements entered into with countries on the Southern Mediterranean and with the ACP countries under the Cotonou Agreement. Clauses such as these on migratory movements provide that dialogue should focus particularly on issues related to the living and working conditions of immigrants; illegal immigration and the conditions governing the return of illegal immigrants; and measures fostering equal treatment for nationals of third signatory States and European citizens.\(^61\)

2. POLICY ON VISAS AND FREE MOVEMENT IN THE CONTEXT OF RELATIONS BETWEEN THE EU AND LAC COUNTRIES

As a result of the lack of progress in the regulation of migration between the EU and the LAC countries, the admission of nationals is determined principally by the general rules on visas and immigration which apply to the LAC countries and other third countries. Competence in migration is shared between the EU and the Member States with the result that generally speaking, admission for stays of less than three months are governed by Community rules, whereas decisions on admissions for more than three months are made according to each Member State’s own rules on aliens. In order to be able to cross the external borders of the EU without a valid residence permit for a Member State, citizens of LAC countries must satisfy the following requirements: they must be in possession of valid travel documents; they must be in possession of a valid visa; they must be in possession of documents providing both justification for the stay and evidence of sufficient means of subsistence; they must not be persons for whom an alert has been issued in the SIS for the purposes of refusing entry; they must not be considered to be a threat to public policy, internal security, public health or the international relations of any of the Member States.

There are various types of visas: uniform visas, long-stay visas, visas with limited territorial validity and visas issued at the border. Council Regulation (EC) No 539/2001 and the successive amendments thereto have resulted in harmonisation of visa requirements in the Community (with the exception of the United Kingdom and Ireland, which have opted out, and a small number of third States in respect of which each Member State makes its own decision). These common rules regulate the conditions of entry from all LAC countries and provide a common definition of ‘visa’. Under the current rules, the nationals of some LAC States need a visa for stays of less than three months whereas others do not, depending on the list in which their State appears. It should be pointed out that these differences are the result of lists which vary to accommodate changes in migratory flows towards Europe, meaning that a country may move from one list to another (for example nationals of Ecuador and Bolivia went from not needing a visa to needing one). Moreover, there are no objective, set criteria on which countries move from one list to another; the decision is made unilaterally by the EU without any consultation with the countries concerned.

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\(^{61}\) Article 72 of the Agreement with Algeria, Article 69 of the Agreements with Morocco, Tunisia and Egypt, Article 64 of the Agreement with Lebanon, Article 80 of the Agreement with Jordan.
(despite this being a highly sensitive matter where public opinion is concerned in the LAC countries) and there is no procedure to enable a listing to be reassessed or re-considered.

**Visas for stays of less than three months**

Regulation 1683/95 laid down a uniform format for visas along with technical specifications and security features which all EU States follow when issuing visas for stays of less than three months. Following the adoption of the Community Regulation, steps were taken to establish a mechanism to introduce reciprocity in visa matters; this was because not all the LAC States for which the visa requirement for stays of less than three months was waived applied that waiver to all EU States. Certain European citizens had to comply with visa-related or other requirements in order to enter the territory of some LAC States for less than three months. The Commission took a number of steps to re-establish the visa exemption, with a good deal of success. The arrival of new Community members has involved further negotiations and a visa exemption agreement has been reached with Brazil because some EU nationals needed a visa for short stays there.

The Visa Code 2009 governs the issue of other types of visas for intended stays in the territory of the Member State not exceeding three months in any six-month period. It applies to all non-EU countries, including the LAC; it contains no provisions relating specifically to LAC countries. It covers visas issued to seafarers in transit, transit visas, short-stay or transit visas, multiple entry visas, group visas, visas with limited territorial validity, and visas issued at the external border. Additionally, no LAC country is currently on the list of countries for which an airport transit visa is required.

**Visas for stays exceeding three months**

The admission of nationals of third States for stays exceeding three months is a matter for the national authorities of each Member State in accordance with its national legislation. The visas in question are national visas, which involve an internal administrative decision by each State regardless of whether the applicants are on the list of countries in Annex I or II of the Regulation for stays not exceeding three months. Nonetheless, a number of guidelines and recommendations to facilitate international mobility in education and research have been drawn up with the aim of decoupling mobility in those fields from the labour market of the host State.

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64 Costa Rica, Nicaragua, Panama, Venezuela, Brazil, Uruguay and Paraguay.

65 Cyprus, Estonia, Latvia and Malta.


68 Common Consular Instructions (2.2.)
One result of this is the Recommendation to facilitate the issue of short-stay visas to researchers\(^{69}\), which affects LAC countries subject to visa requirements for stays not exceeding three months; its aim is to facilitate the issue of visas and expedite the examination of visa applications from researchers. The Recommendation requests States to consider researchers as persons acting in good faith. Other examples are the Recommendation to facilitate the admission of third-country nationals to carry out scientific research in the European Community\(^{70}\), the Directive on the admission of third-country nationals for the purposes of scientific research\(^{71}\) and the Directive on the admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service\(^{72}\), which covers both students in higher education and pupils in secondary education; the directive provides for the possibility of students in training to engage in economic activities, and for a fast-track procedure for issuing residence permits or visas. Nonetheless provisions in that regard are the cause of some uncertainty as their effectiveness is dependent on transposition into national law and flexibility in procedures.

### 2.1 Status of persons allowed entry and other visa-related matters, work permits, family reunification and freedom to provide services

Once an LAC national is in the EU, his or her legal status varies depending on the aliens law of the country of residence. Although some measure of Community harmonisation has been achieved in certain aspects there is still a high degree of fragmentation in the applicable rules. The situation will become more streamlined under the planned rules for a single residence and work permit and a common set of rights for resident workers who are third-country nationals\(^{73}\). In the EU there is also, in addition to international rules, a Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin\(^{74}\). As a result, the EU and its Member States provide a standard of protection for fundamental rights to third-country nationals, including LAC nationals, which is higher than the minimum international level. Account must, in addition, be taken of the national legislation on aliens and above all of the bilateral agreements signed by each EU country.

Long-stay residents in an EU State are the subject of a harmonising directive\(^{75}\) under which long-term resident status is granted to third-country nationals who have resided legally and

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continuously within the territory of the Member States for five years; that directive also provides for equal treatment in access to employment, education, Social Security, tax benefits and the right of free movement and of residence in another EU Member State. The general harmonising Community legislation on family reunification is a Directive of 2003 laying down common procedures and rights relating to family reunification in all States. Other related aspects are the uniform format for residence permits for the EU and, where free movement is concerned, long-stay visas authorising movement in the Schengen territory for three months. The latter legislation is being updated under a new proposal for a regulation. Of note is the recent adoption of the 2009 Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (blue card), which lays down conditions governing labour market access, equal treatment and mobility within the territory of the EU for the purposes of highly qualified employment. Moreover, in the past, the Community position on the regulation of third-country nationals’ freedom of establishment and freedom to provide services has been restrictive. The provision of rules governing this type of immigration is recognised as a basic principle of the Common Immigration Policy for Europe.

3. COMBATING ILLEGAL IMMIGRATION: INSTRUMENTS GOVERNING RETURNS AND READMISSIONS IN THE CONTEXT OF EU – LAC RELATIONS

The establishment of Community rules on the return or deportation of aliens from the EU, a recent development, has suddenly emerged as an issue in EU-LAC relations. The term ‘return measures’ includes any provision in a Member State’s legislation on aliens and asylum requiring the removal of an alien to a place outside that State’s territory, usually back to his or her country of origin or residence, whether that measure is taken voluntarily or imposed forcibly by the public authorities in the performance of their duties. The gradual approximation to a common policy on measures for the removal or return of aliens must be viewed in the context of the framework established in the Maastricht Treaty and consolidated in the Treaty of Amsterdam, in which powers in the field fall within the Community framework (Articles 62 and 63, Title IV TEC), pursuant to Protocol (No 2) integrating the ‘Schengen acquis’ (comprising the Convention implementing the Schengen Agreement and all provisions adopted to enforce and implement it) into the framework of the European Union.

Community legislation in this field has been patchy and most progress has been made in areas where it has been politically easier to reach agreements. As a result, there has been progress in visas and entry (Schengen Borders Code, etc.), residence (family reunification, long-term residence, researchers, etc.), asylum (Common Asylum Area), and to a lesser extent, integration. Other Community fields such as cooperation in criminal and police matters, protection of fundamental rights and international relations, also influence the development of migration policies; one such example is in work to combat illegal immigration, especially measures for the removal of aliens, but care has not always been taken to ensure overall coherence and consistency.

### 3.1 Return of aliens in the EU: policies and instruments

The various rules in the Member States governing measures for removal have their roots in different administrative and judicial traditions and in different approaches to the recognition of aliens’ rights and the exercise thereof, making it difficult to make a simple statistical calculation and comparison of the measures adopted in each Member State\(^2\). As a result, regulatory approximation of State rules and practices on migration control became a prime objective and a schedule was laid down for the gradual harmonisation of measures for the removal of aliens, the key instrument among which was Directive 2008/115/EC, known as the Return Directive. There were three phases to the process of adopting measures: the first phase was in line with the Schengen rationale; the second was based on the Treaty of Amsterdam adopted in 2001, under which provisions used to be adopted before the Return Directive emerged; the third phase is the transposition of that directive (the time-limit for which has not yet expired) and its implementation\(^3\).

The concept of ‘return’ as construed under the Return Directive allows States to adjust their national rules on measures for removal\(^4\), thereby making it easier to achieve harmonisation which both complies with the current rules and involves minimal changes. This means that States can retain their own procedures, whether the basis for them is administrative or judicial or a combination of the two; whether they are declarative and executive or predominantly executive in nature; whether they are based on a procedure which merely returns the alien to a third State or on a punitive procedure combined with an entry ban; whether priority is given to voluntary departure or directly enforced removal; whether the tendency is for detention or alternative measures, etc. Nonetheless the directive lays down a minimum normative content which provides a common structure and operating framework for the Member State in respect of returns in order that decisions can be acted on in any State without the need for enforceability to be verified. In other words there is ‘free movement’ of return decisions between the Member States without the need for further procedures (principle of comparability). Once a certain level of consistency has been achieved in the regulation and enforcement of removal measures, the focus will shift to improving the workings of the other provisions of the Community system on aliens (border control, visas, family reunification, long-term residence, blue card, etc.).

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\(^2\) Regulation (EC) Nº 862/2007 was adopted as a result.

\(^3\) The Annexes contain a list and an analysis of each of the phases preceding the Return Directive and the changes to the wording of the directive from the time of its presentation by the Commission in 2005 to the time of its adoption in 2008.

\(^4\) For information on the Return Directive, see Baldaccini, 2009 and Acosta, 2009.
It follows that the directive does not construe the procedure to remove an alien to a third State (whether the State of origin, nationality, residence or any other) as a punitive procedure except in certain cases. The entry ban in Article 11 is only compulsory if the obligation to return has not been complied with or if no period for voluntary departure has been granted. In all other circumstances, a ban on entry is a matter for each Member State. Neither does the directive make an entry ban a compulsory part of return procedures taken at the border (Article 4(4)) since such procedures are not even necessarily subject to the common regime.

The returns procedure comprises two acts: the return decision and the removal. However, the directive allows both decisions to be taken at the same time in cases where voluntary compliance with the return decision is not offered (Articles 6(5), 7(3) and 8). A period of four weeks may be ordered for voluntary departure except where there is a risk of absconding, in which case additional requirements may be imposed (such as regular reporting to the authorities, retention of documents, deposit of a financial guarantee, or other measures which place restrictions on the alien’s movement in the territory). Removal may not be necessary if the alien voluntarily complies with the return decision but may be enforced where voluntary departure does not occur.

In principle, the directive raises the levels of protection and guarantees for aliens with regard to a number of Member States although some of the States with the most restrictive measures in this field are not party to the directive (United Kingdom, Ireland and Denmark). In other States the directive may be an argument for revising current standards ‘downwards’, for example in relation to Spain, by allowing extensions to periods of detention. Nonetheless, the directive recognises the fundamental rights of illegally resident aliens by incorporating the principle of non-refoulement; it regulates aliens’ rights in procedures and court proceedings (such as recourse to the courts for review of detention orders, the right to effective recourse, the right to legal assistance); and it recognises rights such as the right to family life, personal freedom and protection against inhuman or degrading treatment during the return procedure. Although the detail of those rights is not spelled out there is a considerable body of case-law from the Court of Justice of the European Communities (ECJ) interpreting the European Convention on Human Rights on safeguarding human dignity. The ECJ is able to scrutinise the most restrictive aspects of the directive such as the maximum period of detention. In addition, however, given that the system for the protection of rights in the EU is multi-tiered, the constitutional and ordinary courts of the Member States will play a key role in scrutinising national rules transposing the directive, thereby giving States great flexibility in fleshing out the rights concerned. The national provisions, together with bilateral and multilateral agreements, will ultimately shape the legal framework governing the removal of aliens.

Where readmission is concerned, unless general readmission agreements are adopted, a complex, non-uniform system will continue to govern the enforcement of measures to...
remove aliens. The absence of readmission clauses in EU-LAC agreements means that reference will have to be made to the meagre network of bilateral treaties signed by each of the member States with the LAC. The approach taken by the EU would appear to favour a multilateral negotiating framework once country-by-country agreements have been reached (the pattern followed for the Cotonou Agreements), involving agreements which include readmission and compensatory measures. Regional negotiation should include benefits of some kind for LAC nationals, whether in securing visas (facilitating measures such as the elimination of or reduction in fees, fast-track procedures, review of the list of States whose nationals are required to hold visas for short stays, etc.) or for nationals of theirs already resident in the territory of the EU. Additionally, funds which are already provided for in the various instruments 86 should be made available to finance immigration and asylum measures. Finally, the geographical instruments should incorporate migration into the development cooperation policies of the EU and the Member States. Fleshing out an appropriate European returns policy for the LAC means making it part of a broader framework of cooperation which can overcome the outright rejection of the Return Directive in most of the LAC countries.

3.2 Laws governing the return of aliens from LAC countries

Although the Return Directive is the benchmark instrument for the return of aliens, it does not apply in all cases, and it only applies obligatorily to cases involving illegal stays or unaccompanied minors 87. The directive allows various levels of harmonisation, and leaves it to States’ discretion to extend its application to other circumstances. The result is a slow, trickle-down harmonising effect: firstly, compulsory harmonisation of removal on grounds of illegal residence; secondly, substantive, de minimis harmonisation for removal of aliens at the border; thirdly, discretionary harmonisation with some common ground on removal for committing an offence; and finally, full discretion in the regulation of measures for the removal of aliens who pose a threat to public policy or State security.

The broad definition of the objective scope of the directive is accompanied by a broad definition of the concept of ‘illegal stay’ (Article 3(2)), as it has to apply to aliens whose stay in the territory of the Member States is unlawful, either because they do not fulfil or no longer fulfil the entry conditions laid down in Article 5 of the Schengen Borders Code 88 or for any other reason. This could include circumstances which currently warrant measures other than removal, such as administrative violations, the commission of which leads to loss of title to residence, especially violations related to the status of aliens. Excluded from the directive are Community citizens and persons who enjoy the right of free movement within the territory of the EU as defined in Article 2(5) of the Schengen Borders Code (essentially third-country nationals who are members of the family of a Union citizen) 89 and third-country nationals who have entered the EU under agreements between the Community, the Member States

86 To support return measures taken by the Member States, the European Return Fund, which was established by Decision No 575/2007/EC of the European Parliament and of the Council as part of the General Programme ‘Solidarity and Management of Migration Flows’, entered into operation in January 2008 with funding of EUR 4020.37 million for the period 2007-2013 (OJ L 144, 6.6.2007).
87 Although cases falling into these two categories account for over 90% of removals throughout the EU.
88 Definition in line with the restrictive interpretation of the concept of ‘unlawful residence’ given by the European Court of Human Rights. See judgment in Bolat v. Russia, no. 14139/03 ECHR 2006-XI of 5 October 2006.
89 Directive 2004/38/EC.
and the third States of which they are nationals, where those agreements confer rights of free movement on third-country nationals which are similar to the rights of Union citizens.

With the exception of minors, the listing of a third-country alien in the SIS as having been removed or the removal of an alien whose stay is no longer authorised and who is a person for whom an alert has been issued for the purposes of refusing entry entails an ban on entry to the other Schengen Signatory States (Articles 5 and 23 of the CISA). Once the period of the entry ban has expired it is likely to be more difficult for the person concerned to obtain an entry visa while the relevant data remain in the SIS.

Figure 10. Procedures for removal, guarantees and the detention regime

<table>
<thead>
<tr>
<th>Third-country aliens</th>
<th>Applicable legislation</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aliens who enjoy Community freedoms (under rules governing family members or other aspects)</td>
<td>Directive 2004/38/EC</td>
<td>Only applicable where there is a real and present threat to public security in the light of offences committed previously</td>
</tr>
<tr>
<td>Aliens expelled on grounds of unlawful residence</td>
<td>Return Directive and national transposing measures</td>
<td></td>
</tr>
<tr>
<td>Aliens refused entry at the border</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unaccompanied Alien Minors (UAM)</td>
<td>Return Directive, subject to any appropriate national variations (Paragraph 2.2.3)</td>
<td>Bilateral EU-LAC agreements on re-admission, Specific EU rules on long-stay residents, family reunification, researchers, Asylum and non-refoulement, Blue-card holders, etc</td>
</tr>
<tr>
<td>Aliens expelled for committing offences</td>
<td>National, unless the State applies, at its discretion, the Return</td>
<td></td>
</tr>
</tbody>
</table>
Migration in the context of relations between the EU and LAC

Aliens expelled as a threat to public security (and equivalent)

Directive

In any event, the mutual recognition of expulsion decisions will apply (alternative procedure).

Expulsion on other grounds (irregularity under Article 5 SBC)

Field within the Community framework

Field within the national framework, discretionally within the Community framework

a) Aliens who enjoy Community freedoms

Community citizens and third-country nationals who are members of a Community citizen’s family enjoy free movement within the territory of the EU, but Directive 2004/38/EC provides for grounds for refusing entry to the EU to family members of Community citizens if they do not have the necessary papers\(^90\). The ECJ has held that a permit is merely a document evidencing the right of residence\(^91\) and therefore a visa requirement must be interpreted as meaning that a visa can be easily obtained, if possible at the points of entry to the national territory\(^92\). Third-country family members must be subject to specific procedures for the review of previously imposed entry bans logged on the SIS\(^93\). With regard to expulsion, Article 27 et seq. of the directive cover a set of guarantees such as set grounds for expulsion\(^94\); the three-year maximum duration of the entry ban; the highest level of protection for long-stay residents; guarantees; and the weight to be afforded to special interests. There is barely a reference to the detention and internment system which is used to enforce the general provisions on aliens in each State\(^95\).

b) Aliens subject to the general expulsion system in the Return Directive

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90 As amended and made more flexible in the light of the case-law of the ECJ (Judgment in Case C-459/99 Mouvement contre le racisme, l’antisémitisme et la xénophobie ASBL (MRAX) v. Belgium ECR [2002] I-6591.)


94 Namely, protection of public order, public security or public health interpreted as personal conduct which represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

95 The ECJ has held that regardless of the Directive, detention for purposes of deportation infringes freedom of movement where there is no opportunity to submit alternative but valid evidence of the lawfulness of a person’s stay. ECJ Judgment in Case C-215/03 Salah Oulane v. Minister voor Vreemdelingenzaken en Integratie ECR [2005] I-1215.
The Return Directive provides for procedural guarantees alongside the minimum substantive guarantees set out in Articles 5 and 14(1) to prevent infringement of aliens’ rights during enforcement of a return measure. Accurate information must be provided to the alien on the return procedure and its consequences (Article 12), the system of legal remedies and assistance available to mount a defence against return (Article 13) and the alien’s rights throughout, from the beginning of the procedure to enforcement, particularly with regard to his or her particular circumstances (Article 14(2)). Article 12(1) enshrines the right to a written decision giving reasons in fact and in law on which the return decision is based, as well as information about available legal remedies. The three acts in the procedure are: return decision, removal and entry ban; reasons, however brief, must be given.

There is also a right to a written copy or oral translation of the decisions in a language the third-country national understands or may reasonably be presumed to understand. The right to access the courts or to an adequate, effective remedy against the decisions taken during the procedure is safeguarded, including remedies before higher administrative bodies where they provide safeguards of independence. Under the directive it must be possible for enforcement of the decisions to be temporarily suspended, unless a temporary suspension is already applicable under national legislation. There is a right to obtain legal advice, representation and linguistic assistance to exercise the right to a defence, free of charge to those who lack sufficient resources. The cost may be charged to the European Return Fund. Article 14(2) provides for the possibility of a procedure for a judicial review to determine the lawfulness of detention and, where appropriate, to order the alien’s release. The authorities are required to provide specific, understandable information about the existence of such proceedings.

The above safeguards represent the minimum protection level although they are too flexible and insufficient to a degree. However, a body of case-law on Articles 6 and 13 of the ECHR and on Protocol 7 ECHR serves as a basis for interpreting these and other safeguards for which there is no express provision in the Return Directive, despite the fact that they are equally binding on the States. One aspect of the directive where protection levels are lower is the matter of the duration and conditions of detention, which are regarded as an issue for

96 Article 5 of the Directive covers: the best interests of the child, family life, the state of health of the third-country national concerned, and the principle of non-refoulement. The above list is not exhaustive but it has been examined in the case-law of the ECHR in terms of the limits of the framework underpinning expulsion.

97 An expulsion procedure properly provided for in law with minimum safeguards is required by the ECHR under its judgment in Bolat. The nature of that procedure must be clearly laid down and two different procedures (judicial and administrative, with no possibility of an appeal), are not allowed in respect of a single act (Judgment of the ECHR in Liu and Liu v. Russia, no. 42086/05, 6 December 2007).

98 The reasons in fact may be restricted in order to safeguard national security, defence, public security and where justified in the light of certain criminal offences.

99 It is sufficient for persons who have entered the country illegally to be given a generalised information sheet explaining the main elements of the standard form in one of the five languages which are most frequently used or understood by illegal migrants; that exception may impair the right in question.

100 An interpretation of the ‘effectiveness’ of the remedy referred to in Article 13 of the ECHR can be found in the judgment of the ECHR in Čonka v. Belgium, no. 51564/99, 5 February 2000, ECHR 2002-I, where the Court ruled that the effectiveness of such a remedy depended on its having suspensive effect.
the States. That is because it directly involves personal freedom and although it was recognised in the European Charter of Fundamental Rights, the Charter cannot constitute a legal basis upon which the EU can assume competence for the matter. This weakness explains the laxity on time limits, which may be as long as six months and be subject to extension in exceptional circumstances; nonetheless, the directive requires detention to be for as short a period as possible and only maintained as long as removal arrangements are in progress and executed with due diligence.

The directive provides for two conditions for the detention of aliens: firstly, there must be no other sufficient but less coercive measures that can be applied effectively; secondly, detention is required when there is a risk of the third-country national concerned absconding or avoiding or hampering the preparation of the return or the removal process, but only to the extent that detention is necessary to ensure successful removal (Article 14(4)). The other restrictions are construed on the basis of national rules and international law, especially the ECHR. Particular account must be taken of the conditions of detention in detention centres in order to establish their lawfulness and prevent inhuman or degrading treatment prohibited under Article 3 ECHR. The ECHR has consistently held that it is necessary for detention centres to provide adequate living conditions up to a minimum standard.

c) Repatriation of UAM

The Return Directive lays down the system for the detention of minors and their families (Article 17), and deals with the special circumstances pertaining to unaccompanied minors, a relatively significant phenomenon in a number of EU countries. The fact that minors are included in the directive indicates that they can be expelled, and that in itself represents a reduction in the protection system in some States such as Spain, which makes provision for repatriation rather than expulsion. The fact that Article 11 of the directive does not list minors among the exceptions to an entry ban gives States discretion to take punitive action when applying the returns regime. In the event of an entry ban imposed by another Member State, the State responsible for the minor at that time must refrain from issuing, withdrawing or suspending an entry ban in individual cases for humanitarian reasons (Article 11(3)), although such action is allowed on other grounds. The ‘vulnerable persons’ category (Article 3) offers a work-around solution where the national rules so provide. The issuing of a residence permit to minors who cannot be repatriated is allowed (Article 11(4)) provided that

101 Under Article 14(5) a further limited period not exceeding a further twelve months may be imposed in cases where there is a lack of cooperation by the country of origin, or delays in obtaining the necessary documentation from the third-country national concerned.

102 Expulsion, detention for the purposes of return and the conditions thereof are the subject of study by various Council of Europe bodies in addition to the ECHR, such as the Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (CPT).


105 Council Resolution 97/C 221/03 of 26 June 1997 on unaccompanied minors who are nationals of third countries, which preceded the Directive, set out a number of relatively vague guidelines OJ C 221 of 19.7.1997, pp. 23-27.

106 Unless they are deemed to be victims of trafficking pursuant to Directive 2004/81/EC.
the Member State which issued the entry ban in question is consulted and account is taken of the interests of the State concerned. Minors may apply for postponement of the return measure (Article 9(2) and Article 14(1)) on grounds of age and 'vulnerable person' status, although this would lose effect when the age of majority is reached.

Minors may only be detained as a measure of last resort and for the shortest period of time. It has been argued that provisions allowing the detention of minors are contrary to Article 37 of the United Nations Convention on the Rights of the Child (CRC) which lays down the general rule of no detention, especially where such detention is based solely on the child’s status as an unaccompanied minor or his or her illegal immigrant status. Article 15(1) of the directive provides for that option only where there is a risk of absconding or hampering the return process and where no other, less coercive measures are available. The ECJ requires any detained minors to be held in special centres supervised by specialist staff, not in general centres for persons refused entry\textsuperscript{107}, and legal advice and access to the courts must be available to challenge the lawfulness of the detention or its appropriateness\textsuperscript{108}. The directive makes no reference to arrangements such as temporary accommodation or guards of the same nationality but such arrangements may be made subsequently by the child protection authorities. The transposing legislation should specify the most appropriate time and agency for taking such decisions, in line with the proportionality principle.

Under Article 11(2) a minor must only be returned to a member of his or her family, a nominated guardian or adequate reception facilities. Neither the closeness of the family member nor the formality of the guardianship is specified. Removal of minors to countries other than their countries of origin would be against the best interests of the child under Article 3 of the CRC. Neither can minors be removed to countries where his or her life or limb may be endangered\textsuperscript{109} (serious armed conflict, etc.), and furthermore, minors must have free time and access to education.

d) Aliens subject to a Member State’s domestic procedure for expulsion from the national territory and mutual recognition

The domestic procedure applies to aliens who are expelled on grounds of committing an offence, representing a threat to public security or on grounds that they have been refused entry or intercepted at the border and found to be entering unlawfully, except in those States which have chosen to extend the application of the Return Directive to those cases (Articles 2 and 4 of the Return Directive). Similarly, the national procedure would also apply to the expulsion of aliens whose unlawful stay is due to reasons other than those set out in Article 5 of the SBC. Where the Return Directive does not apply, the supranational effects of such removal decisions are based on mutual recognition of national removal decisions as provided for in Council Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third country nationals, in combination with the Schengen Agreement. That

\textsuperscript{107} Detention of minors in prisons is not allowed although it is not clear whether that would also include young offenders’ institutions in the event that the minor has committed an offence.


\textsuperscript{109} Judgment of the ECHR in Jakupovic v. Austria, no. 36757/97, 6 February 2003.
directive establishes a communications mechanism for exchanging information on expulsion orders and a mechanism to compensate for the costs accrued in their enforcement\textsuperscript{110}. The guarantees set out in the directive include recognition of the alien’s right to appeal against the enforcement of an expulsion ordered in another Member State. The expulsion decision will be logged on the Schengen Information System as an alert for the purpose of refusing entry both for persons expelled pursuant to the Return Directive and for aliens convicted of an offence punishable by a penalty involving deprivation of liberty of at least one year or in respect of whom there is evidence of an intention to commit serious offences in the territory of a signatory State. For each Member State, the regulation of the detention regime must be in line with its own constitutional and legal standards subject to the limits set out in Article 5 ECHR and Article 6 ECFR referred to above.

### 3.3 Entry ban

The addition of an entry ban represents an additional punishment under measures for the removal of aliens. The aim is to encourage voluntary departure by aliens by removing the entry ban for those who comply. The directive only provides for two instances of a compulsory entry ban (where removal is directly enforced and where a return order is not voluntarily complied with), although the wording of Article 11(1) is so loose that it is difficult to pinpoint the other instances. The maximum duration of the entry ban is five years, but specific duration will depend on the individual circumstances in each case (Article 5): the best interests of the child, family life and the health of the alien and other circumstances not specified in the directive (age\textsuperscript{111}, second-generation immigrants\textsuperscript{112}, etc.). The possibility of extending the five-year period on grounds of a threat to public policy, public security or national security is to be interpreted restrictively in accordance with the case-law of the ECHR. There are three general exceptions to the entry ban (Article 11): where a return order is voluntarily complied with; where the alien is deemed the victim of human trafficking and holds a temporary residence permit\textsuperscript{113}; and where the person concerned is entitled to international protection (Article 2, Directive 2004/83/EC). In the event that a previous return procedure has been processed in another State, the directive requires consultations to be held with that State and for account to be taken of its interests before a residence permit is issued. States may suspend an entry ban in individual cases or certain categories of cases although humanitarian grounds may not be used as justification, making it difficult to determine the scope of the ban\textsuperscript{114}.


\textsuperscript{111} Judgment of the ECHR in \textit{Maslov v. Austria}, no. 1638/03, 22 March 2007.


\textsuperscript{113} Council Directive 2004/81/EC or during the reflection period prior to issue of the permit referred to in the Directive.

\textsuperscript{114} The ECHR has defended the right to obtain a lifting of the entry ban within a reasonable period of time under certain conditions. Judgment of the ECHR in \textit{Maouia v. France}, no. 39652/98, 5 October 2000.
4. CONSISTENCY OF POLICIES: MIGRATION AND DEVELOPMENT WITHIN THE FRAMEWORK OF EU-LAC COOPERATION

The link between migration and development has been the subject of various EC communications\textsuperscript{115} which essentially link improvements in management of remittances to ties between diasporas and their countries of origin, the promotion of circular migration and mitigating the brain drain. A number of modest proposals have been drawn up on those issues although they focus principally on the Mediterranean countries and the Partnership with Africa. A European Commission Communication [COM (2008) 359] states that migration issues should be fully integrated into the Union’s development cooperation and other external policies and that the EU should work in close tandem with partner countries. That cooperation should focus on opportunities for legal mobility, capacities for migration management, identification of migratory push factors, protecting fundamental rights, fighting illegal flows and enhancing possibilities to let migration work in service of development. It also lists a number of approaches for policy action on the part of the EU and the Member States:

- The need to reinforce cooperation, support and capacity-building in partner countries with a view to developing policies for well-managed migration, identifying migratory push factors and supporting the development of effective adaptation measures; mitigating brain drain by actions in particular in the areas of training, recruitment, return, decent work, ethical recruitment standards and by assessing trends in their own national labour markets, complying with decent work standards, developing education and vocational training systems in line with labour markets’ needs, realising the development potential of remittances, in particular through the improvement of statistics, the reduction of transaction costs and supporting financial sector development.
- Continue using political and sectoral dialogues with the European Neighbourhood countries and with Latin America and the Caribbean as well as with Asia to deepen mutual understanding of the migration challenges faced and to strengthen the existing cooperation.
- Agree, together with interested Member States, mobility partnerships with partner countries, paving the way for management arrangements for labour immigration with long-term strategic partners as well as cooperation on return issues.
- Work with countries of origin, in full accordance with the principle of shared responsibility, in order to raise awareness of the need to discourage their citizens from illegally entering and residing on EU territory.
- Provide real possibilities for circular migration, by setting up or strengthening legal and operational measures granting legal immigrants the right to priority access to further legal residence in the EU.
- Include provisions on social security coordination in the association agreements concluded between the EU and its Member States and third countries. Apart from the principle of equal treatment, such provisions could cover portability of acquired social rights, in particular transfer of pension rights.

All the approaches set out above are consistent with a comprehensive approach to migration as addressed in the last paragraph, from which the LAC had been omitted. Specific instruments which incorporate migration into the various policies targeting the LAC are required in order to make the comprehensive management of migration a reality. First we shall address the extent to which migration has been reflected in the EU-LAC and then we shall move on to a discussion of migration policy in terms of policy consistency.

4.1. Migration and development cooperation with Latin America

In view of the fact that this was the subject of inter-regional dialogue between the EU and the LAC very recently, Community cooperation measures with the LAC in respect of migration have been very limited. The Aeneas programme for technical assistance in the specific areas of migration and asylum which ran during the period 2004-2008 with total funding of EUR 250 million only had a minor role in LAC. Under the current EU-LAC regulatory framework, funding for cooperation on migration is already linked to the action programme on immigration and asylum. Through the specific thematic programme in the field of asylum and immigration\[16] [COM (2006) 26 final], the Commission seeks to take a more effective, transregional approach to cooperation measures in that field. Its focus is on the link between migration and development, good management of labour migration, fighting illegal immigration and facilitating the readmission of illegal immigrants, protecting migrants and promoting international protection of refugees.

One new aspect of the programme is that it incorporates the opportunity to cooperate on the management of south/south migration. This will enable funding to be provided for measures aimed at improving the movement of persons within intra-regional LAC frameworks\[17]. The “Strategy Paper 2007-2010”\[18] allocates funding to the five main migratory routes and two additional funding initiatives. Of the monies available to the migratory routes, EUR 16 million (8%) are allocated to Latin America and the Caribbean\[19], and will be distributed in line with the priorities established under the EU-LAC Partnership although it is likely that they will focus on the Caribbean countries in view of the fact that they take priority as part of the ACP group.

The current regulations on cooperation, such as the DCI (instrument for development cooperation) constitute the principal legal basis upon which the European Commission

\[17]\ There used to be a programme of aid to uprooted people in Asia and Latin America (AUP), but the aid in question is now channelled through national programmes http://ec.europa.eu/external_relations/uprooted_people/index_en.htm.
adopts measures and cooperation programmes which indirectly help reduce migratory pressure towards the EU. In addition to the specific programme on migration and asylum referred to above, priority could be given to other measures aimed at generating employment and conducting training in areas where emigration is high, or measures which help to reintegrate illegal immigrants who have been repatriated from the EU. Such objectives are set out in regional programmes such as EURSOCIAL and URB-AL where migration would prove to be an interesting variable. It is significant that EURSOCIAL, the European Commission’s largest regional cooperation programme to promote social cohesion in LAC, has not expressly considered the issue of migration despite its work on exchanges of expertise aimed at fostering public policies in sectors which are highly relevant to this issue such as justice, employment or taxation. The recommendations for EURSOCIAL in the new Communication from the Commission on The European Union and Latin America: Global Players in Partnership of September 2009 make no reference to that possibility.

Other thematic programmes, such as ‘Investing in People’ (EUR 1 060 million) and ‘Non-state actors and local authorities in development’ (EUR 1 639 million), should enable local development and co-development programmes to be set up. Another matter which has been a focus of attention is the effort to reduce transaction costs in the transfer of remittances and the enhancement of the development impact of remittances. The European Commission has made regular contributions to that end under the Financing Facility for Remittances established in 2004 by the Multilateral Investment Fund (MIF) of the Inter-American Development Bank (IDB) and the International Fund for Agricultural Development (IFAD) to improve remittance transmission to rural areas. Accordingly it would be helpful to go more deeply into establishing cooperation mechanisms between financial bodies in both regions and improve access to banking services in countries of origin and countries of receipt. The establishment of an EU-LAC Foundation as a means to improving mutual knowledge and promoting intercultural dialogue and mutual understanding between the peoples of the two regions was proposed in the Lima Declaration (2008); such a foundation could act as a tool for an exchange which could involve the diasporas in the interregional dialogue.

None of these instruments, although valuable, can result in a comprehensive approach to migration unless they are part of a joint process. Accordingly the instruments must be tailored to the main topics of the interregional dialogue. The association agreements should establish a regulatory framework but there is also a need to increase the cooperation instruments which help implement policies formulated under the comprehensive approach. The Lima Declaration of the EU-LAC Summit of May 2008 called for greater mutual understanding of the challenges posed by migration and migration policies on the ground and for increased cooperation through the establishment of an agreed framework to enhance cooperation and partnership between the European Union, Latin America and the Caribbean in the field of migration and mobility policies. However, the general thrust of

the policies is inconsistent with the inadequate resources and instruments provided for implementation.

Generally, European development cooperation policy is changing to incorporate the principles of the Paris Declaration on aid effectiveness of 2006 and the Accra Agenda for Action of 2008, and to implement the Code of Conduct on Division of labour in Development Policy as between the EU and the Member States of 2007. In very general terms, the first two documents involve moving towards a results-based policy framework and establishing objectives following discussions with partners. This is also useful for cooperation in the field of migration. Where the Code of Conduct is concerned, the division of labour inherently involves increased coordination of policies not only with the Member States but also with partners and other donors, especially international bodies. This should mean closer cooperation on migration with the specialised agencies of the United Nations, especially the ILO and the IOM. Regional efforts to regulate intra-regional migration should also be supported and linked to bi-regional dialogue.

4.2. Migration and consistency with other EU policies towards LAC

The mainstreaming of migration into relations between the EU and LAC requires better knowledge of the effects that EU-LAC relations have in the countries of origin and destination. It is important to follow up developments in the different variables that shape human and economic flows between the two regions. The quality of available data must be improved so that they can provide information that can be used in sequential, comparative studies that can be evaluated, paving the way for studies into the effects in each of the countries by region and using the same methodology so that comparative studies can be made. Given the multi-faceted nature of migration at micro and macro level, it would be crucial to involve a good number of the relevant public and private stakeholders, coordinate activities and construct observation networks. The proposed migration observatory would be a valuable tool which should be coordinated with the bodies currently taking different approaches to trends in migration.

The economic crisis and its effects on the labour market in the EU and LAC offer the opportunity to study the dynamics of migration in the medium term and observe the ability of public policies to adapt to the needs of a changing, increasingly interdependent world. This information will enable institutionalised political dialogue to be based on sound foundations rather than on subjective perceptions. The Joint Press Communiqué on the launch of the EU-LAC Structured Dialogue on Migration on 30 June 2009 stresses the need to study the causes of migration (including poverty) as well as its consequences (the positives outweigh the negatives). One of the three major areas to emerge as a result is the link between migration and development, the other two being lawful migration and unlawful migration. The dialogue on development and migration will have to focus on specific policies aimed at realising the development potential of remittances; only then will it be capable of generating constructive proposals.
The Communication from the Commission *The European Union and Latin America: Global Players in Partnership* of September 2009 referred to above, which claims to be a contribution to preparations for the next EU-LAC Summit to be held in spring 2010 in Madrid, includes migration among the ‘new challenges’. At the same time it notes that the structured and comprehensive bi-regional dialogue launched in June 2009 has the potential to formulate management policies which can yield benefits to countries of both origin and destination. The striking new element in the Communication is that it also refers to stepping up dialogue on employment and social affairs, incorporating the decent work agenda and addressing employment policies. This is far more important an area in the management of migration than combating drugs, although migration and drugs are linked in the recommendations, evoking the security-oriented mentality that has been gaining ground in European migration policy.

Generally speaking, migration should be part of the negotiations for the Association Agreements under way with various countries and groups of countries in the LAC (ACN, Central America, MERCOSUR and the negotiations on amendments to the agreements with Mexico and Chile). This involves not only incorporating clauses regulating migratory flows both in relation to employees and the provision of services but also incorporating commitments to respect the fundamental rights of migrants and their families as set out in international instruments. Such a system would not only provide for binding reciprocal obligations\(^{122}\) but would contribute to an improvement in overall governance of migration. As a corollary, treaties should provide for policy coordination instruments and for incentives for better management of migration, thereby allowing governments of countries with fewer resources to mount the additional effort required under the migration policies and other measures as they relate to the labour market and improving people’s living conditions.

Furthermore, better coordination of European migration policies is a tool which would enhance the overall consistency between European migration policies and is thus a positive effect. Undesirable effects can be seen, however, when the process of convergence of Community policies being implemented results in a fall in the standards which some member countries had previously applied (as will apparently be the case with some aspects of the Return Directive). Migration policies in the EU should not be harmonised downwards; instead, the process should help raise standards in Member States albeit maybe at different speeds, while ensuring that no deterioration takes place.

The right to work is the foundation of development policies, it is a both a source of wealth in the general interest and a tool for individual advancement. The dialogue on migration policy should fully incorporate this aspect of social dialogue. Similarly, the migration aspect of labour and social policies should be fully incorporated both into the design of cooperation policies between the LAC and the EU and in the design and implementation of the social and competitiveness agenda which is due to be amended as part of the review of the Lisbon

\(^{122}\) Entering into an agreement entails a mutually binding reciprocal commitment rather than a unilateral imposition of an obligation as currently occurs under the Generalised System of Preferences Plus; under that system, enjoyment of tariff preferences is dependent upon signature of certain ILO agreements.
Strategy for Growth and Competitiveness and the European Social Agenda in 2010. There is therefore a link between the dialogue on social cohesion and the dialogue on migration; that link should not be overlooked: the relevant social actors must be involved in drafting a supplementary agenda.
PART IV

EU-LAC DIALOGUE ON MIGRATION

1. BUILDING EU-LAC POLITICAL DIALOGUE ON MIGRATION

As part of a global European immigration policy, the EU has only recently begun specific dialogues with counterparts in Africa, Asia and Latin America. While dialogue with African countries has developed quite considerably since 2005 (see Chapter 3), dialogue on immigration with Latin American countries has not been consolidated to the same extent. Initiatives promoting dialogue have nevertheless existed since the 1980s, though they have not focused exclusively on migration.

1.1. EU-LA political dialogue

EU-LA dialogue began as a result of the Central American crisis and the ‘San José Process’ in the 1980s. The migration agenda at the time focused on refugees from war and on interregional migration, and on the flight of political exiles from Latin American dictatorships. The context has now changed, and this has had a clear impact on instruments and mechanisms for managing the phenomenon. Fora for dialogue have diversified and adjusted to the changing circumstances of Latin American integration. Prompted by a stagnating Mercosur, the crisis in the Andean Community and the emergence of UNASUR, the EU has initiated new dialogue with individual partners such as Brazil, Colombia and Peru, in parallel with those existing with Mexico and Chile. The option for bilateral dialogue (EU-third state), to the detriment of the regional dialogue initially prioritised by the EU, means that there are now ten general political fora with the region as a whole and with subregional and individual LAC partners. Meetings of civil society organisations and sectoral dialogue also play a role.

<table>
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<td>Colombia and Peru¹²³</td>
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¹²³ Bolivia and Ecuador withdrew from the Andean Community-EU negotiations and Venezuela left the bloc.
Political dialogue since the mid-1990s has been heavily constrained by the negotiation of association agreements which include the setting up of a free trade area. Agreements have been signed with Chile, Mexico and the Caribbean, and negotiations with other partners in the region are ongoing (Mercosur, Colombia and Peru, Central America). With the exception of the above-mentioned EU-Brazil Summits, migration has only appeared on the agenda of political dialogue with subregional partners or in bilateral talks. Even when it continues to be virtually absent in political fora, it has been on the agenda of EU-LAC summits since 2004. Three meetings focusing on the issue have been held to date, their recommendations being set out in Final Declarations. The venues were Quito (2004), Cartagena (2006) and Brussels (2008):

- The first meeting, held in March 2004, was the first to examine remittances and (legal and illegal) migration flows, and their causes and social, political and economic consequences in countries of origin and destination. The result was reflected in the Guadalajara Declaration (Mexico, 2004), which included principles relevant to current dialogue on migration, such as a ‘comprehensive approach to migration’, ‘full respect for the human rights of all migrants, regardless of their status’ [...], and ‘the recognition of the contribution of migrants to economic development and to social and cultural life in the countries of destination’ (points 35 and 36).

- At the second meeting, prior to the Fifth Summit, the possibility of specific dialogue on migration was suggested for the first time. In points 49 and 50, the Vienna Declaration (2006) stated that ‘We therefore commit ourselves to take forward our comprehensive dialogue on migration by further enhancing our cooperation and mutual understanding of migration in all its dimensions in both regions. We underscore our commitment to effectively protect the human rights of all migrants’.

- The third meeting made progress in building consensus and reiterated ‘the need for a comprehensive migration policy’ and the need ‘to address the root causes of migration’, and ‘to continue [...] dialogue’124. Migration subsequently became a larger issue at the Sixth Lima Summit, which recognised ‘the positive impact of migration flows in both directions’, and ‘that poverty is one of the root causes of migration’. Reference was made for the first time to the ‘principle of shared responsibility’ and to ‘a comprehensive approach on international migration, including the orderly management of migratory flows, focusing on the mutual benefits for countries of origin and destination, and fostering the recognition and public awareness of the important economic, social and cultural contribution of migrants to the host societies’.

These declarations show that migration is now more commonly on the agenda of political dialogue. The rhetoric, however, has not yet been translated into policies or action. Policies are driven more by domestic rather than bi-regional interests, in fact, and common interests tend to be overlooked at domestic level. Outside the strictures of bi-regional dialogue, the issue of migration has become more important because the incorporation of part of its regulation into the Community system means that Member States and their counterparts have to adjust their national policies to the common rules, and this affects the previous bilateral status quo. Spain, which has gradually been incorporating the requirement for a visa for Latin American countries that were previously exempt under the Schengen common visa policy, is something of a paradigm. The repercussions of these changes in migration between LAC and Spain are significant, since it is the principal EU recipient of Latin American immigrants. This, coupled with the negative reception afforded to the Return Directive in LAC countries, has led to the need to redirect dialogue towards a more global agenda.

Migration will play an important role in the next EU-LAC Summit, scheduled for May 2010 under the Spanish Presidency, but if concrete agreements which do more than merely reaffirm previous declarations are to be reached, the recently initiated structured dialogue will have to establish basic principles, shape specific areas, set objectives and identify appropriate instruments with an agreed road map, albeit at different speeds.

1.2 BEGINNING OF A STRUCTURED DIALOGUE ON MIGRATION BETWEEN THE EU AND LATIN AMERICA AND THE CARIBBEAN

The idea of beginning an EU-LAC political dialogue on migration arose at the initiative of EUROLAT, the bi-regional Parliamentary Assembly. With a view to the V EU-LAC Lima Summit in 2008, EUROLAT highlighted the need to establish a systematic bi-regional dialogue on migration that would prioritise illegal immigration issues and legal migration opportunities, ensure the protection of migrant workers’ human rights and deepen cooperation with Latin American countries of origin and transit, based on balanced global criteria. EUROLAT also suggested that a Migration Observatory be set up with responsibility for ongoing and thorough monitoring of all issues related to Europe-Latin America migratory flows.

All these aspects were set out by EUROLAT’s Executive Bureau, which in February 2009 decided to set up a Working Group on EU-LAC migration, in response to a Latin American proposal. Its mandate was determined at its first meeting in April 2009 in Madrid: (1) to draw up the fundamental principles on which to build a Euro-Latin American consensus on migration, allowing ‘differentiated special treatment when European migration legislation is being applied to emigrants from Latin America and the Caribbean’, (2) to monitor the process under which the Return Directive will be transposed into the domestic legislation of EU Member States and ‘EU migration and asylum legislation as a whole’, and (3) to encourage the moves to set up the Euro-Latin American migration observatory.

The increasing importance the issue has assumed on the bi-regional agenda culminated in the recent launch of a Structured Dialogue on Migration. This is a response, on the one hand, to the opening of EU dialogue on migration with other regions in the framework of the Global Approach to Migration and the increase in flows of Latin American immigrants, and, on the other, to EUROLAT pressure and the consolidation of migration as an agenda item in bilateral relations. Structured bi-regional and global dialogue on migration thus consolidates the commitments made at the V EU-LAC Summit, which were based on the need to foster greater information and communication dynamics.

Setting out the three areas identified in the Lima Declaration, dialogue will be organised in three major areas: the link between migration and development, regular migration and irregular migration. These areas will encompass a variety of aspects, however. The following are identified as issues relevant to the link between development and migration: the causes of migration, the effect of remittances, prevention of the brain drain, mutual benefits and the strengthening of the competent authorities. With respect to managing legal migration, the rights and duties of migrants on entry, during their stay and on exit, recognition of qualifications, circular migration and family reunification will be addressed. Finally, with

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respect to irregular migration attention will focus on the rules applicable to irregular migrants, measures for vulnerable groups, dignified return and conditions for readmission. The latter point reflects the great concern caused in Latin America by the approval of the Return Directive and the consequences of its transposition. Since Latin America has various regional fora that cover these issues, it would be appropriate to seek some degree of convergence between dialogue on the relevant themes.

In general the objective of structured dialogue is to identify common challenges and areas of mutual cooperation, and to jointly define new responses and migration policies on the basis of shared responsibility and the commitment and willingness of the parties. Activities include exchanging ideas and information, identifying good practices in both regions and identifying areas of mutual interest that require a common response. Regular meetings will be held between high Government representatives of both regions, and a working group of European and Latin American experts will be set up in Brussels to facilitate and prepare the official high-level dialogue. Promoted initially by EUROLAT, this dialogue is driven by the EC, which organises and manages it as lead coordinator, though the EP will feature prominently since it provided the impetus for its launch. The Committee of the Regions, which represents the local dimension of migration, should also be drawn in, as should the Economic and Social Committee, which ensures the labour rights and integration of immigrants. The countries of Latin America will be represented by ministerial representatives of the countries most affected, EUROLAT (regional Parliaments), experts on migration and the various migrants’ associations in countries of destination and origin. It would also be desirable for representatives of integration organisations such as MERCOSUR, SICA, UNASUR or CARICOM and the international organisations specialising in migration that work in the region, such as the IOM and the ILO, to participate so as to incorporate the global dimension of migration governance.

The setting up of structured dialogue should establish confidence-building measures, resolve conflicts and build consensus on the basis of reciprocity and diversity. Migration is a particularly sensitive issue for both regions, though their approaches to it differ. The EU stresses the need to prevent and combat ‘irregular migration’, while the Latin American representatives emphasise immigrants’ rights and the benefits for countries of destination. Some differences of opinion between countries of origin nevertheless also exist in both regions, and the solutions arising within each of them may be examined jointly. The analysis of causes and consequences suggests that regulatory policies are not sufficient and necessarily lead to policies that focus on the human and political rights of migrants and their families, but also on those of the societies that expel them and the host societies, which means that a multi-level participatory approach must be taken in formulating responses. EU-LAC structured dialogue on migration is an opportunity for Latin America and Europe to build alliances which not only enhance the management of human flows and ensure the safety of people, but which also help to raise the standards of protection of human rights and improve global living conditions.

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ANNEXES

In preparing this report, 10 studies with specific contents were drawn up by migration specialists:

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1. BACKGROUND TO RETURN AND READMISSION INSTRUMENTS IN EU-LAC RELATIONS. FIRST INSTRUMENTS FOR ENSURING LEGISLATIVE ALIGNMENT

First phase: The Convention Implementing the 1985 Schengen Agreement (CISA) was adopted in 1990. This Convention paved the way for a qualitative leap in police and judicial cooperation in criminal matters between Member States and in the area of concern here: the bases for the current system for controlling the entry of aliens across external EU borders. As an instrument for coordinating the activity of Member States and of their police forces in particular, a computer system known as the SIS was set up under the Convention to provide access to a huge database organised by category of data, such as stolen cars, explosives, drugs, etc. Data on aliens deemed to be inadmissible by the Convention’s signatory States were to be included so that such persons could be detected at checkpoints on the Schengen external borders or in other identity checks in Member States (Article 92 CISA). By incorporating this function, the States promoting the Convention had to provide a minimal definition, based on a vast range of national expulsion measures, of what they deemed to be ‘inadmissible’ aliens in order to offer guidance to the States responsible for including such records in the new database (Article 96 CISA, currently Article 24 of the SIS-II Regulation). Over time and after running the system in, a corpus of decisions was established on the most appropriate interpretation of these principles, but the need to ensure greater legislative alignment between the instruments concerned was underscored in particular.

Second phase: The Amsterdam reform and the October 1999 Tampere European Council opened the second phase of a process of increasing Community integration of expulsion measures, allowing the EU to incorporate the Schengen acquis and providing the Community with new responsibilities in this area that were set out in Title IV of the TCE. This renewed framework of cooperation also included Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals129, the content of which was basically equivalent to Article 25 of the Schengen Convention, but whose objective was to complete the system established by the latter, which allowed measures to be implemented to expel aliens located in a Member State under an expulsion ordered by another Member State. Shortly afterwards the European Commission report of 15 November 2001, ‘A common policy on illegal immigration’130, and the subsequent plan to combat illegal immigration131 provided a reference framework for illegal immigration measures. The subsequent ‘Green paper on a Community return policy on illegal residents’132, drafted by the European Commission in October 2002, forms part of that framework, its measures including in particular a proposal for common rules on the return of aliens. A few years later this proposal was to be put into effect with the presentation of a draft Return Directive, which opened a new phase of development of Community policies in this area that was essentially to revolve around the deployment of this regulation and the

129 OJEC L-149, 02.06.2001 pp. 34-36. See ECJ rulings on (partial) failure to fulfil obligations in transposing the Directive against Italy and Belgium in Commission v Luxembourg of 8 September 2005 (C-448/04), and Commission v Italy of 8 September 2005 (C-462/04).
132 Green paper on a Community return policy on illegal residents [COM(2002) 175 final; not published in the OJEC].
adoption of other supplementary or related measures, such as the Return Fund or the limited Treaty of Prüm.\footnote{This Convention is consistent with the CISA, its predecessor, with which it shares major similarities. It has been subject to strong criticism for avoiding the Community working framework (even rejecting enhanced cooperation) and being very limited in scope in terms of illegal immigration, since it merely introduces specialist advisors for false documents, reaffirming some of the pre-existing mechanisms and duties to cooperate in adopting repatriation measures, already set out in the 2003 Directives on assistance in removal by air and the 2004 Decision on joint flights for removing aliens.}

**Third phase:** This began when the European Commission submitted a proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive) to the European Parliament and the Council on 1 September 2005, taking advantage of the introduction of the codecision procedure by qualified majority in the Council.\footnote{COM(2005) 391 final, and [SEC(2005) 1057 and SEC(2005) 1175]. The text and annexes were submitted to the Committee of the Regions, the European Parliament and the Council. Slow processing in 2005 and 2007 was followed by intense negotiations at several levels, which, spurred on by the spirit of the long and troubled processing of the Family Reunification Directive and by the incentive of benefiting from the Return Fund as reference points, laid the foundations for its approval in the European Parliament and made it possible to intensify and concentrate the discrepancies in the Council in a limited number of regulations in April and May 2008. This culminated on 5 June 2008 with an agreement in the Council of Justice and Interior Ministers on a common text that was eventually to be approved by Parliament, though with dissent in the Socialist Group and opposition from the Greens and the Left (369 votes in favour, 197 against and 106 abstentions, out of a total of 662 votes cast).} The Directive is part of a process of gradual but fragmented formulation of a Community Law on Aliens, which involves a series of basic concepts and procedures common to all Member States. The Directive thus operates according to a willingness to harmonise, but without succumbing to the complete standardisation of expulsion measures. It therefore ensures minimum legal security and the migration control system as a whole which the Union is building, and for which the previous coordination and mutual recognition measures proved insufficient.\footnote{Article 251, TEC, producing effects from January 2005. Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty (OJEC L.396/45 of 31.12.2004). The codecision procedure will become the ordinary legislative procedure in this area when the Treaty of Lisbon is approved (Articles 62.2, 63.2, 63.a.2 TFEU in relation to Article 251 TFEU, numbered according to the consolidated version set out in OJEC C-306/61 of 17.12.2007).}
1. BILATERAL SOCIAL SECURITY AGREEMENTS BETWEEN SPAIN AND LAC COUNTRIES

- Agreement between the Kingdom of Spain and the Republic of Peru for cooperation in the area of immigration, Madrid, 6 July 2004, BOE No 237 of 1 October 2004.


- Agreement of 8 May 1974, additional to the Social Security Agreement between Spain and Ecuador, in force since 1 July 1975, BOE No 180 of 29 July 1975.


- Social Security Agreement between the Republic of Paraguay and the Kingdom of Spain, BOE No 28 of 2 February 2006.


- Social Security Agreement between the Kingdom of Spain and the Dominican Republic, 1 July 2004, in force since 1 July 2006, BOE No 139 of 12 June 2006.


COMPARATIVE CONTENT OF THE AGREEMENTS SIGNED BETWEEN SPAIN AND COLOMBIA AND SPAIN AND ECUADOR ON THE REGULATION AND PLANNING OF MIGRATION FLOWS

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<thead>
<tr>
<th>COLOMBIA</th>
<th>ECUADOR</th>
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<tr>
<td><strong>Title:</strong></td>
<td>‘Agreement between Spain and Colombia on the regulation and planning of migration labour flows’</td>
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<tr>
<td><strong>Signed:</strong></td>
<td>21 May 2001</td>
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<tr>
<td><strong>Published:</strong></td>
<td>BOE of 4 July 2001</td>
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<tr>
<td><strong>In force:</strong></td>
<td>since 21 May 2001</td>
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1.1 CONTENT OF AGREEMENTS

**Preamble**

- Eagerness to reaffirm special historical and cultural ties
- Desire for the planned regulation of migration flows
- Protection of Colombian workers in Spain
- Migration as an enriching social phenomenon
- Respect for national legislation and international Conventions
- Respect for human rights and the prevention of unauthorised migration and labour exploitation

**Chapter One**

**Article 1.** The competent authorities are:

- For Spain: Ministries of Foreign Affairs, the Interior and Labour and Social Affairs
- For Colombia: Ministries of Foreign Affairs, Labour and Social Security and the Administrative Security Department

**Article 2.** Colombian nationals authorised to undertake paid work for a third party in Spain shall be

**Preamble**

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- For Ecuador: Ministry of Foreign Affairs

**Article 2.** Ecuadorian nationals authorised to undertake paid work for a third party in Spain shall be
Chapter 1. Communication of offers of employment

Article 3. Through its Embassy in Bogota, Spain shall communicate to Colombia ‘the number and characteristics of skilled and unskilled labour needs in light of the existence of offers of employment’.

Through the SENA, Colombia shall communicate the possibility of meeting such offers with Colombian workers.

The offer of employment shall indicate:

a) the sector and geographic area of activity
b) number of workers to be contracted
c) deadline for selection
d) contract duration
e) information on conditions of work, activity and position, wages, accommodation and payment
f) dates of arrival of workers in Spain
g) party responsible for travelling expenses (flight and administrative formalities)

Offers arriving by other channels shall be communicated to the Spanish authorities.

Chapter 2. Assessment of professional requirements, travel and reception of migrant workers

Article 4. The Spanish authorities shall preselect applicants, a process in which employers or their representatives are entitled to take part, based on the information provided by the SENA.

The purpose of such information is ‘to select the right person for the job’ and to provide training and information for workers.

Article 3. Through its Embassy in Quito, Spain shall communicate to Ecuador ‘the number and characteristics of skilled and unskilled labour needs in light of the existence of offers of employment’.

Ecuador shall communicate the possibility of meeting such offers with Ecuadorian workers.

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g) party responsible for travelling expenses (flight and administrative formalities)
The workers selected shall undergo a medical examination before signing the contract.

The contract may be replaced by an ‘equivalent document’.

A copy of the contract shall be provided to the Colombian authorities.

Visas shall be processed as a matter of urgency.

Article 5. The Colombian authorities shall do their utmost to facilitate the selection procedure.

Workers shall receive information as to how to reach their destination, and reports on their stay, work, accommodation, wages, rights, duties and employment guarantees.

The Spanish authorities shall provide residence and work permits.

Chapter 3. Rights and employment and social conditions of migrant workers

Article 6. After permits have been granted, each Party shall provide assistance to nationals of the other Party to enable them to work as employed persons.

Colombian workers shall be granted the right to family reunification according to Spanish rules.

Article 7. Pay and social security status shall be governed by Spanish legislation.

Article 8. Migrant workers shall have social security obligations and benefits as provided for by legislation, except where international agreements are more favourable.

Article 9. Disputes between management and workers shall be resolved according to Spanish rules.
and bilateral Conventions.

### Chapter 4. Special provisions on seasonal workers

<table>
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<tr>
<th><strong>Article 10.</strong> 'Seasonal workers' are Colombian nationals who 'pursue seasonal work under a contract of employment whose duration is consistent with the characteristics and duration of the aforesaid seasons'.</th>
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<td>Assurances shall be given that they will be housed in appropriate conditions of dignity and hygiene.</td>
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<th><strong>Article 10.</strong> 'Seasonal workers' are Ecuadorians who are 'authorised to enter and leave Spanish territory under this Agreement to pursue seasonal work under a contract of employment whose duration is consistent with the characteristics and duration of the aforesaid seasons'.</th>
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<td>Article 11. Seasonal workers shall be selected in accordance with the general rules of this Convention. Their working conditions shall be set out in the contract and shall comply with Spanish collective agreements and legislation.</td>
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The contract shall include an annex covering the obligation for the seasonal worker to return to Colombia. They shall report to a Spanish consular office on their return.

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<td>Article 12. Before they take up their contract, seasonal workers shall sign an undertaking to return to Ecuador. They shall report within one month to the same Spanish consular office which issued their visa, with the same passport used on leaving (mechanisms to cover loss of passport shall be provided for). Failure to comply with this undertaking to return ‘shall disqualify them from any future recruitment in Spain’.</td>
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**Chapter 5. The return of migrant workers**

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<th>Article 12. The Parties undertake to establish ‘programmes of support for the voluntary return of Colombian migrant workers to their country of origin’. They shall therefore:</th>
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<td>✓ favour the reinsertion of migrants;</td>
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promote SMEs;
create binational companies;
ensure human resources training and technology transfer.

Article 13. At the request of the other Party, each Party shall readmit into national territory their nationals who fail to comply with the current conditions of entry or residence. The respective costs shall be met by the requesting Party.

create binational companies;
ensure human resources training and technology transfer.

Article 14. At the request of the other Party, each Party shall readmit into national territory their nationals who fail to comply with the current conditions of entry or residence. The respective costs shall be met by the requesting Party.

The requesting Party undertakes ‘to provide assistance for the outward journey and the gradual and voluntary return of persons in an irregular situation in their territory, for which purpose the persons who request such assistance shall be ensured that (...) residence and work permits will be given preferential treatment as rapidly as possible, with a guaranteed job in [the country of] the requesting Contracting Party’. This point is valid for applications submitted prior to 1 March 2001.

Article 15. At the request of the other Party, each party shall readmit into national territory nationals of third countries who have entered from their territory into the territory of the latter or who have stayed there in an irregular situation.

Article 16. The Parties shall authorise the airport transit of nationals of third countries when their admission by the State of destination is guaranteed.

Article 17. Transport costs shall be met by the requesting Party.

Chapter 6. Rules of implementation and coordination of this Agreement

Article 14. The Parties shall jointly establish the procedures for implementing the Agreement and shall cooperate and consult directly when necessary. The Parties shall notify each other of the authorities responsible for managing the Agreement.

Article 18. The Parties shall jointly establish the procedures for implementing the Agreement and shall cooperate and consult directly when necessary. The Parties shall notify each other of the authorities responsible for managing the Agreement.
In the event of difficulties, consultations shall be carried out through diplomatic channels.

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<tr>
<th>Article 15. Both Parties undertake to deepen bilateral cooperation in controlling migration flows and to ensure that the fundamental rights of migrants are respected. Such cooperation shall involve greater coordination in combating irregular immigration, exploitation and the breaching of social rights, document fraud and illegal human trafficking.</th>
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| Article 17. A Joint Coordination Committee shall be established which shall be responsible for: |
| a) monitoring the implementation of the Agreement; |
| b) proposing its revision, where applicable; |
| c) disseminating the Agreement; |
| d) defining the rules of operation of the ad hoc committees; |
| e) resolving operational difficulties; |
| f) debating and preparing proposals on migration issues. |
| The Joint Committee shall meet alternately in Colombia and Spain at the request of either Party. |
| Its members shall be appointed by the authorities of each country. |

| Article 21. A Joint Coordination Committee shall be established which shall be responsible for: |
| a) monitoring the implementation of the Agreement; |
| b) proposing its revision, where applicable; |
| c) disseminating the Agreement; |
| d) resolving operational difficulties; |
| The Joint Committee shall meet alternately in Ecuador and Spain, at least once per year. |
| Its members shall be appointed by the authorities of each country. |

| Article 18. The Agreement shall apply from its signature. |
| This Agreement shall be valid indefinitely. |
| Each Party may suspend the Agreement for reasons of security or public health. |
| Each Party may denounce the Agreement through diplomatic |

<p>| Article 22. The Agreement shall apply on a provisional basis 30 days after its signature. |
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| Each Party may denounce the |</p>
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<th>channels. Signed in Madrid on 21 May 2001</th>
<th>Agreement through diplomatic channels. Signed in Madrid on 29 May 2001</th>
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# International Conventions Signed by EU and LAC Countries Relating to Migration and Employment Issues

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<th>COUNTRIES</th>
<th>UN</th>
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[Text from the image]


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