

# 1. Introduction

## 1.1. Subject of the study

The establishment of a common area without internal borders with the guaranteed free movement of persons represents one of the most important achievements and a unique symbol of the European integration. Nonetheless, the very existence of this area relies on the effectiveness of controls at the common external borders. In effect, since the creation of the Schengen area, Member States have tried to work together to manage their common border and guarantee their internal security. To this end, the EU Member States have prevented migrants from illegally crossing their external borders and entering the Union's territory. Thus, since the very beginning, immigration issues together with the questions related to asylum occupied a central place in the political agenda of the European Union and its Member States. The subjects of immigration and asylum were considered as matters of common interest that needed to be tackled through common policies. In this context, along with the need to secure Europe's external borders, EU cooperation with third countries in the areas of migration and asylum soon became a priority. In effect, the persistent migration flow towards Europe has increased the EU's awareness that relations with countries of transit and origin had to be significantly improved in order to induce or persuade them to cooperate more in the field of migration and border management.

In this context, while the external dimension of EU migration policy has been prevalently built around the objective of better managing migratory flows with a view to reduce migratory pressures on the Union, since 1999 the EU has developed an area of freedom, security and justice. To this end, the European Council held in Tampere set up the guidelines and the priorities for the next five years in order to guarantee safety and security at EU level. In fact, the Heads of State and Government gathered in Tampere explicitly called for the establishment of partnership with countries of origin and transit of migrants. Since then, EU Member States have tried to strengthen their external action and conclude agreements with non-EU States to better manage migration flows. In this regard, the return and readmission procedures of any illegal migrant became a predominant element in the framework of the political dialogue between Member States and their neighbouring countries. In the sphere of border control and migration management, the Hague Programme further stressed the need for closer cooperation in external border checks with third countries.

Within this framework, since the security of the Union's external border was an essential issue for European citizens, Member States were forced to undertake important measures to face the new challenges. Consequently, the EU began to focus on external aspects of migration and to include their immigration policies into the Union's relations with third countries. EU border management policy has established clear mechanisms to strengthen cooperation with those countries, helping them to enhance their ability to cope with illegal immigration and border control. Moreover, the Union has used all its diplomatic tools to achieve its objectives, offering the countries of origin and transit visa facilitation and development aid in exchange for their engagement in managing mixed migration flows. Mobility partnerships, regional processes and readmission agreements were aimed to obtain various forms of cooperation with third countries, especially in the Mediterranean area. The Global Approach on Migration and Mobility offered the wider framework in which this cooperation has been developed while the creation of Frontex, the European border agency, took a step further in the operational partnership with non-EU States through the so-called working arrangements.

The EU response to the current refugee crisis and the engagement of Turkey is a clear example of the enhanced partnership developed over the years between the EU and its neighbouring countries in the field of migration

and asylum. Soon after the onset of the civil war in Syria, many Syrians started to flee their country in response to the growing danger. Since the first months of the revolt against Bashar al-Assad, Turkey has hosted the vast majority of the Syrian refugees. At present, Turkey is the largest receiver with more than 2.5 million refugees on its soil, followed by Lebanon and Jordan. Even if the new Law on Foreigners and International Protection, which came into force in April 2014, provides temporary protection and assistance for asylum-seekers and refugees, regardless of their country of origin, Turkey still maintains a geographical limitation to the 1951 Refugee Convention. In this context, the recent EU-Turkey agreement could result in an increased risk of *refoulement* and human rights violations.

Many NGOs, like Human Rights Watch, Amnesty International and ECRE fear that the current deal will not only result in boats being turned back and increased detention, but also more refugees stranded at the Turkish-Syrian border. According to them, the EU has externalized its border control procedures, securing its external borders rather than pretending the respect of migrants and asylum seekers' fundamental rights and liberties. As part of the EU-Turkey migration Joint Action Plan signed in November 2015, the EU pledged to improve the humanitarian situation for refugees and asylum seeker in the country, while Turkey committed to undertake all possible measures to seal its border and thus restrict the flow of migrants and refugees towards the EU. In this context, the EU-Turkey deal and in particular the “one in, one out” mechanism to tackle the Syrian refugee crisis may undermine the basic rights of refugees and migrants and constitutes one of the most controversial measure of such a complex plan.

## 1.2. Statement of purpose and Methodology

In light of the serious crisis currently affecting the European Union, this work reviews the approach adopted by the Members States to cope with the management of the mixed migration flows, including in particular the EU's relations with third countries. I am interested in exploring the evolution of the EU's external policies in the field of migration and asylum. In particular, the main purpose of my thesis is to analyze whether Member States have shaped their relations with non-EU countries in order to manage the mixed migration flows on the road to Europe. Therefore, within the wider framework of the EU's external actions on migration and asylum, I will try to answer to the following research question: Have Member States prioritized security to the detriment of human rights?

Within this framework my work will be based on two main hypotheses. My first hypothesis is that, for the purpose of protecting EU's external borders and guarantee the safeguard of the Schengen area, Member States have adopted a security-based approach with poor regard to the needs of vulnerable migrants and asylum seekers. I suggest that within this approach the EU has supported third countries of origins and transit of migrants in managing the influx of illegal immigrants into Europe, leading to the 'externalization' of control measures beyond EU's borders. Secondly, I assume that by engaging the Republic of Turkey in the management of the mixed migration flows, the EU Member States may be in danger of being complicit in serious human rights violations against those fleeing war, widespread violence and persecution. In addition to this, I suggest that within the framework of the recent refugee crisis, the EU has given priority to a security-based approach at the expense of the human rights of migrants and refugees. My hypothesis is that the Joint Action Plan with Turkey is part of a wider approach in the field of migration and asylum that in the last decades has been mainly driven by security concerns.

In order to answer to the above mentioned question and develop the two main hypothesis, I will provide a critical analysis of the evolution of the EU's external policy on migration and asylum as well as of its

cooperation with third countries, mainly consulting the official documents redacted by the European Commission and the European Council. EU law, with particular attention to binding and non-binding legal instruments, will be taken into account together with the official statements and agreements that paved the way to the cooperation on migration issues between Member States and third countries of transit and origins of migrants. The opinion and the reports from international experts, such as the UN Special Rapporteur on the human rights of migrants or the Commissioner for Human Rights of the Council of Europe, will be an essential part of the work when analysing the balance between security and basic freedoms of migrants, including asylum seekers. In parallel with this, I have consulted the works published by several European Research Institutes, as the Migration Policy Institute, and relevant NGOs, as PRO ASYL and the European Council on Refugee and Exiles, which will represent an important source of information and data over the state of play and the respect of human rights within the territory of the EU and its neighbouring countries. Moreover, to carry out my research I have participated in International Conferences and academic debates on the refugee crisis in the EU, collecting relevant information that have increased my awareness of the current humanitarian emergency on the doorstep of the Union.

### 1.3. Outline of the study

The thesis is divided into 3 chapters. First, the work presents the facts: after a short description of the unprecedented Europe's refugee crisis, the work analyses the main characteristic of the massive waves of migrants towards Europe in the period comprised between January 2015 and February 2016. In this first part I will also provide, in accordance with the UNHCR's viewpoint, a clear distinction between a refugee and an economic migrant. Moreover, using the data published by the European Border Agency Frontex and the International Organization for Migration, I will present an overview of the most important migratory routes and the amounts of unauthorized border-crossing at EU's external borders.

The second chapter reviews the increasing cooperation with third countries in the field of border control management as part of a comprehensive agenda based on shared responsibility and mutual commitments. To this end, this chapter will focus on the main measures and policies carried out by the EU and its Member States to reinforce cooperation with third countries since the origin of the Schengen area in 1985 to the launch of the European Agenda on migration in May 2015. The thesis will also offer an analysis of the European external policy and will examine the partnerships and the agreements concluded with non-EU States in the area of migration and asylum. The analysis will take into consideration States' responsibilities and obligations under the International and European Human Rights Treaties relating to refugees and migrants, such as: The Universal Declaration of Human Rights, the European Convention on Human Rights, the Convention relating to the Status of Refugees and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

In the third chapter, I will provide a critical description of the main points of the recent Joint Action Plan on migration concluded between the European Union and the Republic of Turkey on 29 November 2015, together with a review of the main operational actions agreed on 18 March 2016. I will also shift the focus on the situation of human rights in Turkey in order to verify if such a country can be considered a "safe place" for migrants and refugees. In the last part I will sum up the thesis conclusions.