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EU cooperation with third countries in the field of migration

Study for the LIBE Committee

EU COOPERATION WITH THIRD COUNTRIES IN THE FIELD OF MIGRATION

STUDY

Abstract

EU external cooperation in migration and asylum has increased considerably in terms of instruments of cooperation with third partner countries and of funds committed. With the current refugee crisis, it is poised to increase even further. This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, reflects on the imbalances of EU external action as well as on the lack of evidence on the impact and efficiency of EU funding regarding the objectives of the migration policy, which are sometimes conflicting with the development goals. The study brings forward recommendations for rationalization and coordination of action, more balance between the different components of the GAMM, more transparency for a better evaluation and scrutiny, and a reinforced partnership approach with third countries.

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CONTENTS

LIST OF ABBREVIATIONS

AA	Association Agreement
ACP	African, Caribbean and Pacific Group of States
AMIF	Asylum, Migration and Integration Fund
ANAPEC	Agence nationale de promotion de l'emploi et des compétences, Morocco's public employment service
ANETI	Agence nationale pour l'emploi et le travail indépendant, Tunisia's public employment service
BMA	Bureau for Migration and Asylum (Moldova)
CAC	Common Application Centre
CAMM	Common Agenda on Migration and Mobility
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
DCFTA	Deep and Comprehensive Free Trade Agreement
DCI	Development Cooperation Instrument
DG DEVCO	Directorate-General for International Cooperation and Development, European Commission
DG HOME	Directorate-General Migration and Home Affairs, European Commission
DG NEAR	Directorate-General for Neighbourhood and Enlargement Negotiations, European Commission
EASO	European Asylum Support Office
ECHO	Humanitarian Aid Office of the European Commission
ECOWAS	Economic Commission of West African States
EDF	European Development Fund
EEAS	European External Action Service
ETF	European Training Foundation
ENI	European Neigbourhood Instrument
EU	European Union
EURA	EU readmission agreement
EUROPOL	European Police Office
FAC	Foreign Affairs Council
FRA	European Union Agency for Fundamental Rights
Frontex	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the

European Union

GAM	Global Approach to Migration (2005)
GAMM	Global Approach to Migration and Mobility (2011)
GATS	General Agreement on Trade in Services
GPGC	Global Public Goods and Challenges
HLWG	High-Level Working Group on Asylum and Migration
HR/VP	High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the European Commission
ICMPD	International Centre for Migration Policy Development
ILO	International Labour Organization
ILOs	Immigration Liaison Officers
IOM	International Organisation for Migration
IPA	Instrument for Pre-Accession Assistance
ISF	Internal Security Fund
ISP	Instrument contributing to Stability and Peace
JHA	Justice and Home Affairs
LIBE	Civil Liberties, Justice and Home Affairs Committee
MEV	Multiple-entry visa
MIEUX	Migration EU Expertise Programme
MoU	Memorandum of understanding
MP	Mobility Partnership
MPF	Mobility Partnership Facility
PCA	Partnership and Cooperation Agreement
PI	Partnership Instrument
RPP	Regional Protection Programme
RDPP	Regional Development and Protection Programme
SAA	Stabilisation and Association Agreement
SCIFA	Strategic Committee on Immigration, Frontiers and Asylum
SEMTE	State Secretariat for Migration and Tunisians Abroad, Tunisia
TAIEX	Technical Assistance and information Exchange Programme
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TPMA	Thematic Programme on Migration and Asylum
UNHCR	United Nations High Commissioner for Refugees
VC	Visa Code

VFA   Visa Facilitation agreement

VLAP   Visa Liberalisation Action Plan

VLD   Visa Liberalisation Dialogues

WA   Working arrangement

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EXECUTIVE SUMMARY

EU immigration and asylum policies have to face two major challenges: on the one hand the impending demographic crisis in Europe and on the other hand the migration pressures coming from outside its borders, as the current migration and refugee crises in the Southern Mediterranean and the Middle East exemplify. This makes it indispensable to develop a strong EU external action able to combat smuggling of migrants and trafficking of human beings, promote mobility and facilitate legal migration opportunities to third-country nationals, maximise synergies between migration and development of countries of origin, and enhance protection capacities towards persons in need of international protection, in line with the pillars of the Global Approach to Migration and Mobility (GAMM).

This study aimed at examining the overall strategy of EU cooperation with third countries in the field of immigration and asylum and evaluating its contours and outcomes, proceeds in three sections. Section 1 reviews the main forms of international cooperation adopted by the EU to tackle the multiple dimensions of the migration phenomenon, focusing on those covering enlargement and Eastern Partnership countries, Southern Mediterranean and Sub-Saharan countries, as well as the Greater Middle East. The analysis includes a mapping of the diverse funding sources for EU cooperation with third countries of origin and transit of migratory flows and a brief survey of the main modalities of Member States' own external cooperation in this field. Section 2 attempts to undertake an assessment of the outcomes and impact of the instruments of EU external cooperation on migration, from a triple perspective: the objectives pursued (substantive dimension), the consequences of the nature of the instruments used (functional dimension), and the challenges of coordination regarding their adoption and implementation (institutional dimension). Case studies on Moldova, Morocco and Tunisia seek to provide empirical insight into the topics examined. Finally, section 3 formulates conclusions contributing to the debate on the configuration and impact of EU cooperation with third countries in the field of migration, and proposes a set of concrete recommendations for further action.

1. The toolbox of EU external cooperation with third countries in the field of immigration and asylum

The EU has at its disposal a wide array of instruments devised to enable a comprehensive cooperation with third countries of origin and transit of migratory flows. Migration dialogues (both regional and bilateral), Mobility Partnerships (MPs), Common Agendas on Migration and Mobility (CAMMs), EU Readmission Agreements (EURAs), Visa Facilitation Agreements (VFAs), migration clauses in association and cooperation agreements, Regional Protection Programmes (RPPs) and Regional Development and Protection Programmes (RDPPs), as well as Frontex and EASO's external tools have been progressively conceived to achieve the objectives embodied in the GAMM, the overarching political framework inspiring EU external action in this field.

However, an analysis of the features, priorities, institutional framing and geographical scope of all these instruments reveals a scattered and sometimes incoherent picture. Although the GAMM instruments – at least the comprehensive ones such as migration dialogues, MPs and CAMMs – seem to be quite balanced in their initially stated priorities, their concretisation shows that the different pillars of this approach are not receiving equivalent degrees of attention. **The second pillar of the GAMM related to fighting irregular immigration, strengthening border controls**

and ensuring readmission is the most developed priority through global instruments, EURAs, and Frontex cooperation, while EU action is still limited and inconsistent with regard to maximising migration and development links, and promoting international protection (among non-comprehensive instruments, only RDPPs pursue these objectives, the EASO external action being still underdeveloped). **On legal migration, the added value of EU intervention is questionable** as no instrument of EU cooperation currently includes significant facilitations on the admission of migrants at EU level, while association and cooperation agreements are only being used to strengthen the integration of legal migrants originating from partner countries.

The intricate distribution of external competences applicable to the field of migration explains that most EU cooperation instruments with third countries ensure the participation of both the Union and its Member States. However, **a lack of sufficient involvement of the latter is perceived** in the follow-up and implementation phases of tools such as migration dialogues, MPs and RPPs, usually due to particular interests of certain Member States and the unavailability of funds to facilitate regular participation. Significant similarities in the content of each instrument concerning different countries also question the negotiated and "partnership" nature of these tools. In sum, although the GAMM has been conceptually taken on board in the discourse of EU institutions and Member States, there is still a significant margin for improvement in ensuring a balanced, coordinated and coherent implementation of each of its elements.

In terms of geographical priorities, the GAMM instruments have been clearly focused on the Western Balkans, Eastern Europe and South Caucasus countries, deeply involved on cooperating with the EU on migration issues. In recent years, however, cooperation with Southern Mediterranean countries is intensifying and attention is also beginning to turn to Sub-Saharan and Eastern African countries.

For the adequate enforcement of these forms of international cooperation, the EU has mobilised numerous financial instruments of diverse nature and origin. EU external cooperation on immigration and asylum is the result of a long process of accumulation in the framework of different EU policies (migration and asylum, development cooperation, external relations, neighborhood policy and humanitarian aid). **Overall, between 2004 and 2014 the EU spent more than EUR 1 billion on more than 400 projects worldwide**. There is a clear growth trend in EU development cooperation funds allocated to migration, which have stabilised at around EUR 100 million per year jointly considering the thematic funds and the geographical funds, all of which include immigration and asylum among their priorities. As a consequence of this unplanned pattern, the implementation and the funding sources are institutionally scattered among DG DEVCO, DG HOME, DG NEAR in the Commission as well as the EEAS, with very different objectives and intervention formats. **These funds do not always complement internal funds for migration and asylum related programmes, which for 2007-2013 amounted to EUR 4 billion**.

Through international treaties or informal arrangements, Member States, for their part, continue to develop a rather intense external action at the bilateral level in those fields in which they preserve exclusive or concurrent powers with regard to the EU. Migration cooperation agreements concluded by Spain and France with African countries illustrate how the migration phenomenon can be comprehensively approached at the national level, albeit they also evidence that the reluctance to offer legal migration opportunities is not restricted to EU frameworks of cooperation. **Concerning specific projects of external cooperation, those involving several Member States, with EU funding support, and in collaboration with EU agencies seems to be the most**

promising way to optimise resources, ensure added value, and pave the way for increasing Union action.

2. Impact of EU cooperation instruments in the field of immigration and asylum

The impact and even output assessment of EU external cooperation in the field of immigration and asylum is complicated by the lack of available relevant information. In relation to the strategic objectives of the GAMM, **legal migration and mobility, despite being one of the four key dimensions of external cooperation in the field of migration, have been subordinated in policy terms,** in particular in relation to the control of irregular migration. Evidence shows that whereas VFAs and, even more, visa exemptions boost mobility, MPs as such do not. Legal migration within EU external cooperation, in turn, seems blocked for the time being. Paradoxically, whereas the EU is investing heavily in institutional capacity building for better labor migration management in developing third countries, the credibility of those efforts is often undermined by the limited legal migration opportunities offered by EU Member States.

At first sight, the value of cooperation with third countries can seem more obvious in the field of irregular migration, having a direct impact on the number of irregular border crossings detected from partner countries, for instance. Return and reintegration support continues to be a major priority for EU development funding in the field of migration. However, projects in this field often overlap in the same country of origin, sustainability of initiatives seems to be in question, and return and reintegration programmes tend to promote the creation of parallel training, funding or business creation tracks instead of reinforcing public schemes already at work at national level. Their cost-efficiency also seems to be low.

In relation to migration and development, a recent evaluation concluded that **there is a gap between the support provided to institutions and the concrete outcomes for the migrants themselves**, i.e., the focus on capacity building and institutional strengthening may ultimately not translate into direct benefits for migrants. The sub-topic of remittances has been the most successful area for external cooperation in this field.

A major challenge in the near future for EU external cooperation in the field of migration, and more generally of EU development cooperation over the next years, is a **growing confusion of development assistance objectives and migration policy (home affairs)** objectives, including for instance return and readmission of irregular migrants, and the eventual subordination of the former to the latter through some form of conditionality. This might further undermine EU credibility in this field.

The diverse nature and the multiplicity of the instruments employed to develop the EU external action on migration has evident implications for their impact and effectiveness. On the one hand, while they entail cumbersome and lengthy procedures for their adoption, legal instruments constitute the appropriate tool to regulate migrants' rights related to social security entitlements, admission and integration, visa facilitations and exemptions, or safeguards applicable to return or interception, allowing for legal certainty, increased democratic legitimacy and judicial monitoring. On the other hand, political instruments, responding more easily to flexibility and sensitive public opinions in third countries opposing migration cooperation with the EU, fail to secure a complete and coordinated EU offer to partner countries, hinder monitoring of compliance with international human rights law and hamper the effective enforcement of commitments and safeguards, among other disadvantages derived from the non-binding nature of these instruments.

From an operational perspective, a lack of balance between the different components of the GAMM is also perceptible in favour of the control of irregular migration, including integrated border management programmes and return and reintegration**.** A second major issue concerns **the dispersion of funds and funding instruments, which translates into a lack of visibility for partner countries and implementers, a frequent lack of coordination and coherence between interventions in the same area as well as overlapping and duplication of efforts and resources**. In terms of implementation, EU Delegations often lack the specialised staff required to plan, implement and monitor those projects. Besides that, programming processes are often slow, and administrative procedures for the selection of service providers, project funding and implementation are often too burdensome to be effective, limiting to a large extent the flexibility of EU cooperation to respond to new developments or contextual changes. Finally, information on project implementation should be more systematically compiled and disseminated.

From an institutional perspective, strengthened coordination at different levels is one of the most pressing challenges that must be tackled for the development of an efficient EU external action on migration. Firstly, concerning EU-Member States coordination, a systematic exchange of bilateral practices and instruments of cooperation is lacking, despite the existence of institutional mechanisms and legal obligations in force to that effect. Increased coordination between the supranational and national levels could avoid, for instance, difficulties in EU negotiations with its partners, overlaps in the cooperation initiatives offered to them or the use of EU instruments as mere umbrellas for pursuing national agendas. Among EU institutions involved in the external dimension of immigration and asylum policies, the difference in perspectives and priorities of the Commission and the EEAS is evident. An increasing degree of the latter's involvement in this field should be matched with an increment of capacities, human resources and technical expertise, starting with the secondment of EU migration liaison officers to EU delegations abroad.

Also, **the increasingly meaningful place occupied by political instruments permits only very limited involvement of the European Parliament in the scrutiny of the design and implementation of the GAMM**, a shortcoming in need of prompt responses. The same holds true as regards the tasks undertaken by EU agencies such as Frontex or EASO. The external aspects of their mandates and responsibilities should be clarified too. As far as the intra-institutional dimension is concerned, coordination and rapprochement of priorities among the different European Commission DGs involved is indispensable. If their variety of perspectives can contribute to a more balanced EU external action on migration, the lack of coordination should not hinder its effectiveness. In this regard, the role of the HR/VP in ensuring internal coherence is of utmost importance, a responsibility that is starting to be put into practice. Similarly within the Council, coordination should be ensured not only between the JHA and FAC formations, but especially among the myriad working parties and structures charged with tasks related to the external dimension of EU immigration and asylum policies.

3.   Summary of policy recommendations

On the basis of the findings and conclusions emerging from the analysis in the study and the case studies included in the annexes, it is possible to formulate the following policy recommendations:

<u>**More balance between the different components of the GAMM:**</u>
- **A strengthened EU external action on legal migration**, that includes facilitations of legal admission of migrants, recognition of diplomas and

qualifications as well as portability of social rights, **is needed.** As a way of increasing the balance of priorities contained therein, **MPs should include additional possibilities for legal migration.** Advancing as much as possible in the internal harmonisation of EU rules in these fields will help to achieve those objectives. The possibility to present to partner countries a coordinated EU offer on labour migration opportunities should be explored.

- **The GAMM pillar on international protection is still insufficiently developed.** Capacity-building efforts and resettlement commitments, main components of RPPs/RDPPS, should be stepped up and carried out in real dialogue with countries hosting large refugee populations.

- The **external activities of the EASO that are underdeveloped** probably due to budget limitations and lack of political will, should be reinforced.

- **Further and more specific resources should be mobilised** to attain the GAMM objectives, a challenge that the upcoming MP Facility could face.

- **Focus should be put on facilitating the progress assessment of the GAMM.**

Reinforce the partnership approach:
- **A greater involvement of third partner countries in the design and negotiation of GAMM instruments should be secured** so as to respond to the partnership nature of these instruments, enhancing their local ownership and efficiency.

- **VFAs should include a higher degree of actual visa facilitations** and be concluded in view of an autonomous objective of promoting mobility from partner countries. Mobility-related incentives in the field of trade in services could be offered to EU partners once a visa-free regime has been granted in order to ensure sustainability of reforms undertaken within a VLD.

- **The EU should direct its readmission policy towards countries of origin** and include obligations on third-country nationals only in EURAs with important neighbour countries of transit as well as strive to look for additional incentives within other EU policies.

Rationalisation and increased coordination:
- **A high number of EU funding instruments apply to external cooperation on immigration and asylum, following at times conflicting approaches, and often leading to overlaps.** The funding framework should be simplified, clearly distinguishing objectives and EU policies and the corresponding funding possibilities.

- **The multiplication of regional dialogues** on migration in which many countries take part simultaneously **requires rationalisation efforts**, while more attention should be given to increasing their practical value and action-oriented approach.

- **Coherence and complementarities among different instruments of the GAMM directed to the same countries or regions or sharing similar priorities must be ensured.**

- **The existing legal and institutional framework should be reinforced to ensure a systematic exchange of information between the Commission and Member States** on agreements and projects carried out or planned by the latter in the field of migration.

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- **Increasing Member States' involvement in GAMM instruments should be explored** as their contribution is indispensable due to the current distribution of competences.

- **EEAS capacities and human resources should be stepped up** if an increased involvement of the Service in the external dimension of migration appears desirable**.** The secondment of migration liaison officers to EU delegations abroad should start immediately.

- **Modes of increasing coordination of priorities among DGs HOME, DEVCO and NEAR** within the Commission should be envisaged.

- **In the Council, creating a single unit in charge of coordinating the multiple existing working parties and structures** involved in this external dimension or empowering the HLWG on Asylum and Migration with a strong coordinating role should also be explored.

- **EU external action on migration should ensure added value with regard to Member States' bilateral external activities.** While the compatibility clauses included in EURAs, allowing for the application of bilateral readmission agreements, should be avoided, EU funding should only be granted, within MPs, to multilateral projects involving several Member States.

- **Instruments of a political nature may be useful for initiating migration cooperation with third countries, but suffer from shortcomings arising out of their soft law nature.** Migration cooperation should evolve towards greater recourse to hard law in order to ensure stability and legal certainty of engagements, specify further details of cooperation and safeguard migrants' rights.

More transparency for better evaluation and scrutiny:

- **Mandatory evaluations of implemented projects should not focus only on outputs and outcomes, but also on impact** in relation to the strategic objectives of each project. More resources should be invested in follow-up and evaluation of impact after the finalisation of projects.

- **Periodic and comprehensive evaluation efforts should be undertaken** for each instrument of the GAMM, both cooperation tools and financial instruments.

- The **production of a standard ex-post project fiche** with data about the allocation of a budget across different components of the project and elements for assessment should be envisaged at least in the framework of large programmes.

- **EU Member States should be compelled to provide accurate data** on the implementation of EU instruments of cooperation in order to allow for comprehensive and detailed evaluation exercises.

- **Assessment of the efficiency and of the human rights impact of Frontex' external action should be reinforced.**

- **The European Parliament should search for ways of increasing its capacities of scrutiny and monitoring** in the design and implementation of the GAMM, such as regular debates and consultations on the adoption and impact of MPs, CAMMs, RDPPs and EU agencies' external activities. Mechanisms of regularly monitoring the implementation of formal agreements like EURAs and VFAs with the involvement of the European Parliament should also be established.

INTRODUCTION

1. Scope and content of the study

The development and consolidation of an intense cooperation with third countries appears indispensable to adequately respond to the numerous challenges posed by the migration phenomenon, as acknowledged by the EU political discourse since the 'communautarisation' of immigration and asylum issues. Since 2005, the Global Approach to Migration (GAM)[1], renamed as the Global Approach to Migration and Mobility (GAMM) in 2011[2], constitutes the overarching political framework for dialogue and cooperation with third countries in these fields and is based on the following four pillars: prevention and fight against irregular immigration, strengthening border management and return; promotion of mobility and facilitation of legal migration opportunities and integration of legal residents; maximisation of synergies between migration and development of countries of origin; and the promotion of asylum and international protection. The importance of reinforcing cooperation with countries of origin and transit of migratory flows in line with these objectives has been constantly highlighted by EU institutions, especially in recent years and, more particularly, in the context of the unprecedented migratory and refugee crisis that the EU is facing nowadays. If the external dimension of EU migration policy has clearly become one of the highest priorities of the European integration process, work needs to be done on the design, implementation and assessment of the wide variety of cooperation instruments put in place by the EU to this effect.

In its Resolution of 17 December 2014, the European Parliament stressed once again the need for a holistic approach to migration, calling for a thorough analysis of the overall strategy on cooperation with third countries in this field[3], a demand to which the present study attempts to respond. For that purpose, this research examines and evaluates the contours and outcomes of EU cooperation with third countries on immigration and asylum. Section 1 reviews the main instruments of international cooperation adopted by the EU to tackle the multiple dimensions of the migration phenomenon, focusing on those covering enlargement and Eastern Partnership countries, Southern Mediterranean and Sub-Saharan countries, as well as the Greater Middle East. The analysis includes a mapping of the diverse and indispensable funding sources for EU cooperation with third countries of origin and transit of migratory flows and a brief survey of the main modalities of Member States' own external cooperation in this field. Section 2 undertakes an assessment of the outcomes and impact of the instruments of EU external cooperation on migration, from a triple perspective: the objectives pursued (substantive dimension), the consequences of the nature of the instruments used (functional dimension), and the challenges of coordination regarding their adoption and implementation (institutional dimension). Case studies on Moldova, Morocco and Tunisia seek to provide empirical insight into the topics examined. Finally, section 3 formulates conclusions contributing to the debate on the configuration and impact of EU cooperation with third countries in the field of migration, and proposes a set of concrete recommendations for further action.

Having briefly introduced the scope and content of this study, further clarifications on the challenges to which this external dimension is confronted, both in global terms as well as from a specific migration policy perspective, are needed to understand the context of the subject. In addition, any discussion on the development of an EU external action on

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[1] European Council, Presidency Conclusions, Brussels, 15–16 December 2005, point 4 and Annex I, "Global Approach to Migration: priority actions focusing on Africa and the Mediterranean".
[2] European Commission, "The Global Approach to Migration and Mobility", COM (2011) 743, 18.11.2011; Council Conclusions on the Global Approach to Migration and Mobility, 3 May 2012, doc. nº 9417/12.
[3] European Parliament, Resolution of 17 December 2014 on the situation in the Mediterranean and the need for a holistic EU approach to migration, P8_TA(2014)0105.

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migration requires to trace the institutional and legal setting in which it is to be elaborated. These aspects are developed in the following sub-sections 2 and 3.

2. Global and migration policy challenges

Any strategic analysis of cooperation with third countries in the field of immigration and asylum must start by considering two key contextual and political issues which determine the effectiveness and strategic scope of any action in this field, as well as the constraints that frame it.

In the first place, the root causes of mixed migration flows, i.e. conflict and instability in countries of origin, economic inequalities and poverty, overpopulation and demographic dynamics, unemployment, lack of security, weak levels of democracy and natural disasters as push factors of migration, are intensifying and will not probably cease to create increasing migration pressures over the coming decades, in particular from Sub-Saharan Africa and the Southern Mediterranean.

Secondly, the difficult political context in which migration policies operate in Europe, in particular, but not only, as a consequence of the global economic crisis must be taken into account. Whereas there is a wide consensus that the EU's labour market requires migrants in the medium, long and even short term due to demographic and labour market dynamics and to enhance its global competitiveness, migrant integration issues persist, and there is a growing anti-immigration sentiment in parts of the population. In some Member States, migration policy has become a major cleavage line in national politics, determining the outcome of elections[4]. Migration policy has thus become a very sensitive political issue.

EU cooperation in the field of migration and asylum cannot directly tackle all these challenges, but they have to be taken into account when formulating and assessing concrete cooperation programmes and instruments with partner countries, as well as when engaging with them through other relevant EU and Member State policies, to ensure policy coherence.

From a more specific migration policy perspective, the European Commission appointed in 2014 underlined EU migration policy as one of its ten political priorities for its five-year mandate[5]. In accordance to this, the European Agenda on Migration, proposed by the Commission in May 2015, aims to deal in a comprehensive way with all aspects of migration: the development of a Common European Asylum System, a new European policy on legal migration, the fight against irregular migration and human trafficking and the securing of the EU's external borders[6]. The European Agenda on Migration has so far been largely dominated by short-term considerations and a focus on the response to the ongoing migration crisis in the Mediterranean. Although it also refers to cooperation with third countries in the field of migration, especially in fields more closely related to security aspects, surprisingly the GAMM does not feature as one of the framework approaches for the implementation of the new Agenda.

In this context, cooperation with third countries faces a number of challenges demanding a clear response from the EU. All of them relate to the implementation of the GAMM but although it has been conceptually taken on board by the discourse and general policy approach of EU institutions and Member States, there is still room for improvement in

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[4] See I. Martín et al, *Exploring New Avenues for Legislation for Labour Migration to the European Union*, European Parliament, DG for Internal Policies, Policy Department C, PE 536.452, 2015, p.58.
[5] A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the next European Commission. Opening Statement in the European Parliament Plenary Session, Strasbourg, 15 July 2014.
[6] European Commission, "A European Agenda on Migration", COM (2015) 240, 13.5.2015.

ensuring a balanced, coordinated and coherent implementation of all its elements[7], as also with the internal dimension of EU immigration and asylum policies. The main challenges related to the objectives of the GAMM are:

- Regarding **legal migration and integration,** the importance of attracting talent and skills, while trying to meet the labour demand of specific sectors with relevant shortages in Member States is acknowledged. However, for achieving this purpose, facilitations on legal migration should be offered to EU partners, an objective for which increasing internal EU harmonisation is crucial, exploiting the decision-making advances in the Lisbon Treaty. The offer of real legal migration opportunities should be accompanied by promoting the recognition of diplomas and qualifications as well as by ensuring the transfer of social rights of immigrants as means to foster integration and facilitate circular migration opportunities. To this effect, real circular migration schemes should be devised by replicating certain examples of good practices at national level, avoiding disguised forms of temporary migration. Also, the promotion of cooperation between host Member States and migrant diasporas is indispensable to the fight against discrimination, racism and xenophobia.

- On the promotion of **mobility**, dissociating it from migration will allow the EU to facilitate the short stays (for maximum 3 months) of certain categories of persons from third countries who do not intend to settle in the EU. It is essential to advance on ongoing visa liberalisation dialogues with partner countries and to offer real visa facilitation opportunities to countries cooperating or willing to cooperate with the EU on the prevention of irregular immigration, border controls and readmission, striking the right geographical balance between Southern and Eastern partners.

- As regards the **fight against irregular immigration**, the main focus is strengthening cooperation with third countries in the prevention and fight against smuggling of migrants and human trafficking, by reinforcing training, capacity building actions and information sharing mechanisms, including an evaluation of the impact of ILOs networks and the cooperation they establish with third countries; by promoting cooperation on criminal matters; and by encouraging ratification of the Palermo Protocols in this field[8]. Also, the EU and its Member States should urgently respect and promote compliance with international obligations on search and rescue in order to stop the tragic deaths of migrants at sea, reinforce capacity building in this field, evaluate the impact on border cooperation of Frontex working arrangements with third countries.

- On **migration and development**, there is a pressing need to ensure the added value of programmes, projects and actions related to migration and asylum undertaken or financed at EU level; as well as to make sure that development assistance is not used for purely migration management purposes, but to mitigate push factors of migration, provided this is in line with the main objective of EU development policy, the eradication of poverty. This latter point is particularly important because there is a clear trend to subordinate the EU's international development cooperation to the objectives of EU migration policy. Greater attention should also be given to effective integration of migration and asylum

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[7] See European Commission, "Report on the implementation of the Global Approach to Migration and Mobility 2012-2013", COM(2014) 96, 21.2.14.

[8] Protocol against the smuggling of migrants by land, sea and air, and Protocol to prevent, suppress and punish trafficking in human beings, especially women and children, both supplementing the United Nations Convention against Transnational Organised Crime, 15 November 2000.

into national development plans in partner countries, to the effects of South-South migration, to the role of diasporas in promoting economic growth in countries of origin and, of course, to enhancing EU policy coherence in this field. Addressing the links between environmental degradation and migration is also a priority.

- In the field of **international protection**, main challenges include enhancing protection capacities of countries of origin and transit in order to improve refugee protection; showing real and practical solidarity with third countries through the improvement and implementation of resettlement commitments. However, the recent Commission's communication on the role of the EU external action to address the current refugee crisis, the largest faced by the EU since the end of WWII, fails to comprehensively acknowledge this set of responses[9], especially by omitting references to the need to devise legal avenues to secure access of asylum seekers to European soil[10] (these measures are nevertheless outside the scope of the present study).

- Finally, **human rights protection,** a cross-cutting objective of the GAMM, requires effectively monitoring the effects on the human rights of migrants and asylum seekers of the implementation of existing instruments of EU cooperation with third countries, mainly EU readmission agreements and joint border operations, as well as the impact of the outsourcing efforts of the EU particularly on border controls, return and international protection.

3. Institutional and legal setting

The essential legal question regarding the conception and development of EU external action on immigration and asylum relates to the distribution of competences between the EU and its Member States. The significance and complexity of the EU distribution of external competences not only determines the feasibility of the Union agreeing to establish cooperation with third countries in this field, but also conditions both the efficiency and efficacy of the external dimension of the EU migration policy. This external dimension relates, in general terms, to a field in which shared competences between the EU and its Member States are the rule[11], with only a few exceptions. That means that the adjective "global" that characterises the approach to migration and mobility inspiring cooperation with third countries refers to the need for balance among its material objectives, as well as to the need – at least for now – of combining and coordinating both decision levels of action at stake, EU and Member States. Respect for the distribution of competences is also relevant both for the conclusion, by the EU and its Member States, of legally binding agreements with third countries and for the adoption of political instruments regarding external cooperation on migration. It would make no sense for the Union or its Member States to commit, within political instruments, to further future actions and initiatives that they would not be able to implement for lack of competences.

Starting with the question of the existence of EU external competences, the only explicit external competence transferred to the EU in the migration field relates to the conclusion

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[9] See European Commission/ HRVP, Joint Communication on "Addressing the Refugee Crisis in Europe: The Role of EU External Action", JOIN (2015) 40, 9.9.2015, which focuses on actions directed towards addressing the root causes of the forced movement of people through humanitarian assistance and development cooperation. Other measures included therein mainly refer to readmission and fight against smuggling and human trafficking, with only passing references to capacity building through Regional Development and Protection Programmes.

[10] Such as humanitarian corridors, humanitarian visas, enhanced family reunification, private sponsorship schemes and more flexible visa arrangements. See European Parliament, Resolution of 10 September 2015 on migration and refugees in Europe, P8_TA-PROV (2015)0317, point 13.

[11] According to Article 4.2(j) TFEU, shared competence between the Union and Member States applies to the area of freedom, security and justice, of which immigration and asylum policies are part.

of readmission agreements with third countries of origin and transit[12]. As this provision was included in the Lisbon Treaty, after the GAMM had already been agreed, this shows the greater political importance of the readmission objective in EU external cooperation. For the rest of the migration fields, the absence of explicit external competences leads to resort to the CJEU doctrine of implied external powers, codified - not very accurately - in the Treaties since the Lisbon reform[13]. The application of this doctrine to fields such as short-term visas, borders or legal migration requires an assessment of whether the conclusion of an international agreement facilitates the achievement of the objectives of the internal competence transferred to the Union in that field. As cooperation with countries of origin and transit is essential to addressing migration challenges, the implied powers reasoning can be easily applied to the different components of the GAMM[14], with the exception of decisions on volumes of admission of migrants from third countries for labour purposes, preserved as an exclusive power by Member States[15]. Within the EU policy on asylum, article 78.2.g) TFEU refers to "partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection". However, this is not an external competence as such, but rather an objective taking the form of an internal competence, from which an implied external competence on asylum can be deduced. The contradiction between the relative ease with which implied external powers can be affirmed in the field of immigration and asylum and the almost complete absence of explicit external competences can be explained by this external dimension being not considered an objective in itself but a means to achieve the internal objectives of the EU policy on migration and to contribute, more generally, to the creation of an internal area of freedom, security and justice[16].

Concerning the nature of the EU competences, most of the objectives of the GAMM correspond to areas of concurrent competence, such as readmission, legal admission of migrants and socio-economic integration of legal residents. Facilitation and exemption of short-term visas as well as the normative aspects of external border controls are the only fields in which ERTA exclusivity currently applies[17], since there are common internal rules susceptible of being affected by Member States' bilateral agreements[18]. The objective of maximising the synergies between migration and development pertains to a field of parallel competences as far as it concerns development cooperation policy[19], while actions focused on migration within this pillar of the GAMM would rely on the nature of the respective competences within immigration policy. Some additional specifications are however to be highlighted with regard to readmission and borders. On the one hand, the qualification of readmission as a concurrent competence implies that this EU power may become exclusive once exercised with regard to a particular country. In addition, the

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[12] Article 79.3 TFEU.

[13] Article 216.1 TFEU. In this regard, see, for instance, M. Cremona, 'Defining competence in EU external relations: lessons from the Treaty reform process', in A. Dashwood and M. Maresceau (eds), *Law and Practice of EU External Relations. Salient Features of a Changing Landscape*, Cambridge University Press, Cambridge, 2008, pp. 34–69.

[14] In particular, implied external competences of the EU can be deduced from article 77.2.a) (short-term visas); 77.2.b) and d) (external borders controls); 79.2.a) (admission of legal migrants); 79.2.b) (socio-economic integration of legal residents); 79.2.c) (fight against irregular immigration); and 79.2.d) TFEU (combating trafficking of human beings from a non-criminal perspective).

[15] Article 79.5 TFEU.

[16] See Report by the Presidency on "European Union priorities and policy objectives for external relations in the field of justice and home affairs", Council doc. no. 7653/00, 6.6.2000, p. 5; European Council, Presidency Conclusions, Tampere, 15-16.10.1999, point 59; Hague Programme, point 4; and "A Strategy for the External Dimension of JHA: Global Freedom, Security and Justice", Council doc. no. 14366/3/05, 30.11.2005, points 1 and 8.

[17] Initiated with Case 22/70 *Commission v. Council* (AETR/ERTA) [1971] ECR 263, paras 17–18 and consolidated in subsequent CJEU case-law. See its codification in article 3.2 TFEU.

[18] Mainly contained in the Visa Code, the Visa lists Regulation and the Schengen Borders Code.

[19] Article 209.2 TFEU and Opinion of AG Kokott delivered on 26 March 2009, case C-13/07, *Commission v. Council*.

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"mandate theory" developed by the CJEU on the basis of the loyal cooperation principle[20] must be respected, requiring Member States to forego ongoing or future negotiations on readmission once the Commission receives a mandate to negotiate with the same country. On the other hand, the fact that the field of external border controls is considered to pertain to an ERTA-exclusive competence of the EU because of the existing exhaustive legislative *acquis* on borders is without prejudice to Member States preserving the power to implement border controls under secondary law[21]. This is important as subscribing arrangements on joint patrols deployed in third countries will correspond to a Member State power.

In view of the intricate distribution of competences to implement the GAMM that has been shortly described[22], both the EU and its Member States need each other to comprehensively achieve its objectives. Strengthened coordination efforts between the two levels will therefore be indispensable[23]. At the same time, while Member States should rest within the remit of their powers and respect EU competences, the Union should further exploit the scope of its external competences on migration and exercise them when the required conditions are met. Nevertheless, the development of a strengthened EU external action in this field very much depends on the simultaneous progress of internal harmonisation able to create more possibilities of ERTA exclusivity, as the internal and external dimensions of migration policy are clearly intertwined.

From an institutional perspective, the multifaceted character of migration involves multiple departments at both national Governments and EU institutions. Within the EU, several institutions and units inside them share responsibilities for the design and implementation of the external dimension of immigration and asylum policies. Consequently, inter-institutional and intra-institutional coordination is imperative[24].

Among the EU institutions, coordination is needed between the Council, the Commission and the European Parliament; as well as between the Commission and the EEAS, the participation of which in the external dimension of the EU migration policy should be clarified and probably increased[25]. This affects the central structure of the Service (its geographic directorates and specialised departments), but also EU delegations in third countries. The role of the latter in the implementation of the GAMM instruments should be deepened, in particular by providing EU migration liaison officers[26]. Coordination with diplomatic missions of Member States is also indispensable, as both conform to the institutional structures providing the political support for an effective implementation of the GAMM on the ground.

Efforts at intra-institutional coordination must also be pursued. This is especially true of the Directorates-General at the Commission involved in this field: DG HOME, responsible for designing and developing this external dimension, and DG DEVCO and DG NEAR, in

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[20] Case C-266/03 *Commission v. Luxembourg* [2005] ECR I-4805 and Case C-433/03 *Commission v. Germany* [2005] ECR I-6985.
[21] In addition to the uniform rules included in the Schengen Borders Code, note that Regulation (EC) No 1931/2006 establishes common rules on local border traffic to be implemented internationally through bilateral agreements concluded by Member States as a delegation of an exclusive competence of the EU.
[22] See H. Labayle, "La competence externe de l'Union européenne en matière migratoire", M. Maes, M.C. Foblets, P. De Bruycker (eds.), *Dimensions Externes du droit et de la politique d'immigration et d'asile de l'UE*, Bruylant, Bruxelles, 2011, pp. 175-201 and M. Cremona, "EU External Action in the JHA Domain: A Legal Perspective", in M. Cremona, J. Monar, S. Poli (eds.), *The External Dimension of the European Union's Area of Freedom, Security and Justice*, College of Europe Studies no. 13, P.I.E. Peter Lang, Brussels, 2011, pp. 77-118. For a more thorough analysis, see García Andrade, *La acción exterior de la Unión Europea en materia migratoria: un problema de reparto de competencias*, Tirant lo Blanch, Valencia, 2015.
[23] See section 2.1.3.1 of this study on EU-Member States coordination.
[24] See sections 2.1.3.2 and 2.1.3.3 of this study.
[25] See Council Conclusions on the implementation of the Global Approach to Migration and Mobility, 2.4.2014, doc. nº 8443/14, point 6.
[26] COM (2015) 240, 13.5.2015, p. 8.

charge of several instruments of cooperation and assistance to third countries. Coherence is necessary too among the different Council formations responsible for the external dimension of immigration and asylum policies, JHA and FAC, as well as between Council working structures with powers in this respect, such as the HLWG on Asylum and Migration, the central forum for strategic discussions and initiatives regarding the GAMM, and the SCIFA, in order to avoid overlapping efforts.

The participation of EU agencies in the external dimension of immigration and asylum policies is more or less steadily increasing. Nevertheless, although this EU enhanced role on policy implementation may be welcome and should be stepped up, the external aspects of the mandates and responsibilities of Frontex, EASO, FRA or even EUROPOL should be clarified. Monitoring the intra-EU activities these Agencies coordinate and strengthening inter-agency coordination are necessary tasks to undertake before asking third countries for cooperation. This study will address most of these institutional challenges.

1. THE TOOLBOX OF EU EXTERNAL COOPERATION IN THE FIELD OF MIGRATION AND ASYLUM

1.1. An overview of forms of EU cooperation with third countries on migration and asylum

KEY FINDINGS

- **Political instruments for EU external cooperation in the field of migration and asylum**, such as regional and bilateral migration policy dialogues, Mobility Partnerships and Common Agendas on Migration and Mobility have proliferated in the last few years. **As far as regional dialogues are concerned**, this multiplication of fora in which many countries take part simultaneously creates a clear risk of overlap that demands a rationalisation of the processes. As specific bilateral dialogues, **Visa Liberalisation Dialogues** are an influential tool for achieving the mobility objective of the GAMM and a strong incentive for partner countries to adopt reforms and closely cooperate on migration with the EU. **The 8 Mobility Partnerships signed so far** suffer from a lack of balance among their different components, with a focus on irregular migration, return and readmission and little progress in terms of legal migration and mobility. However, they are proving useful tools to align international cooperation in the fields of migration and asylum and contribute to an increased coordination and coherence in national migration policies.

- **The main legal instruments** in the field of cooperation on migration are migration clauses in global agreements such as association agreements or cooperation agreements and specific international agreements on migration, such as readmission agreements, visa facilitation or visa exemption agreements. **In the case of the 17 EURAs signed until now**, some problematic issues regarding the design and implementation relate to the systematic EU demand to include TCN clauses in these agreements. For these reasons, it would be wise, as the Commission proposed in 2011, to focus the EU readmission policy on countries of origin instead of transit and only include TCN clauses in readmission negotiations with countries neighbouring the EU and with a significant risk of transit migration to the EU, alongside appropriate incentives. **As for Visa Facilitation Agreements**, despite their stated aim to facilitate the issuance of Schengen visas, their real impact has proved limited. They do not solve the problem with the intricate paperwork associated with the issuance of a Schengen visa, the length of visa procedures and the issue of MEVs.

- **In term of operational instruments, Regional Protection Programmes,** launched on a pilot basis ten years ago, have consolidated as the key tool within the international protection pillar of the GAMM. They have strengthened their development dimension in the new Regional Development and Protection Programmes. Some weaknesses identified are: too broadly defined scope; lack of sufficient coordination of RPPs with other EU policies in the countries concerned; underdeveloped regional approach of the programmes; lack of local ownership; insufficient involvement of Member States on the ground; very weak resettlement component. Regarding the **external activities of EU agencies,** whose mandates need clarification, a thorough evaluation of the design and efficiency of Frontex cooperation with third countries is indispensable, while the external action of EASO is still underdeveloped.

Since the inception of the EU external action on migration in the 1990s and, mainly, after the adoption in 2005 of the Global Approach to Migration as its political framework, the modes and instruments used by the EU to cooperate with third countries of origin and transit have greatly diversified and gradually refined in scope and purposes. An assessment of the EU external cooperation in the field of migration needs to start with an overview as complete as possible of the tools the Union has mobilised to attain the goals of the GAMM, highlighting the main features of these instruments of cooperation, comparing their priorities, clarifying their geographical scope and assessing the perceptions of the main actors involved. Next, a benchmarking of each category of instrument against the objectives of the GAMM will allow the evaluation of whether current forms of cooperation respond to the ambitions and targets the EU and its Member States have committed to achieve. This overview – like the rest of the study - pays particular attention to instruments of cooperation adopted with enlargement countries, Eastern Partnership countries, Southern Mediterranean countries, Sub-Saharan countries, Greater Middle East countries and, to a lesser extent, other priority countries.

1.1.1. Instruments of the external dimension of EU policies of migration and asylum

This sub-section first introduces a general definition of each instrument and its aims, in order to subsequently present how each instrument has been concluded, subscribed or extended to different countries and its specific objectives, together with some references to some significant implementing measures. Firstly, political instruments such as regional and bilateral migration dialogues, Mobility Partnerships, and Common Agendas on Migration and Mobility are examined. Legal instruments are analysed next, including association and cooperation agreements containing migration clauses as well as international agreements devoted to specific migration issues, such as EU readmission agreements, visa facilitation agreements and visa waiver agreements. Finally, a presentation of instruments devoted to foster operational cooperation focuses in particular on Regional Protection Programmes and their renewed version, Regional Development and Protection Programmes, Frontex working arrangements and EASO external activities.

1.1.1.1. Political instruments

a. Regional dialogues
Regional dialogues on migration are conceived as multilateral frameworks for dialogue and cooperation on immigration and asylum between the EU and targeted regions of transit or origin. These dialogues serve to identify mutual interests and concerns in the field of migration; to exchange good practices and facilitate data collection; to deepen cooperation by transforming the GAMM objectives into specific priority actions; and to explore and develop practical cooperation with regard to the agreed priorities.

These soft modes of cooperation cover the main regions of origin and transit of migration flows towards the EU. Eastern countries are involved in the Prague Process (Western Balkans, Central Asia, South Caucasus countries and Eastern Europe, except Belarus), the Budapest Process and its Silk Routes Partnership for Migration (Western Balkans, Central Asia, South Caucasus and Eastern Europe) and the Eastern Partnership Panel on Migration and Asylum (South Caucasus and Eastern Europe, except Russia). Southern Mediterranean and Sub-Saharan countries participate in the Rabat Process (North, West and Central Africa), the Africa-EU Migration and Mobility Dialogue (African countries, except Morocco), and the ACP-EU Migration Dialogue (African, Caribbean and Pacific countries), while the Khartoum Process comprises Eastern African countries. This multiplication of fora in which many countries take part simultaneously creates a clear risk of overlap that demands a rationalisation of the processes[27]; their material scope is

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[27] Council Conclusions on the Global Approach to Migration and Mobility, 3 May 2012, doc. nº 9417/12, point 37.

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usually coincident too. Table 1 provides a comparative description of all of them, including more details on participants, main texts, priorities and follow-up structures.

The priorities of these regional dialogues are balanced, at least on paper, as most of them respond to the four pillars of the GAMM: prevention and fight against irregular immigration, including border management and return; facilitation of mobility and promotion of legal migration and integration of legal residents; maximisation of synergies between migration and development; and – more recently - promotion of international protection. In this regard, the Khartoum Process is an exception as it is initially focused on tackling human trafficking and smuggling of migrants and protecting their victims, although the participants intend to expand the process into a comprehensive regional dialogue on migration. Also the Eastern Partnership Panel on Migration and Asylum currently refers mainly to the first two pillars of the GAMM, and more concretely to mobility and the fight against irregular immigration, including readmission, border controls and fighting organised crime. Other priority regions are also covered by these frameworks of cooperation, such as the EU-CELAC Structured Dialogue on Migration (Latin American and Caribbean region)[28].

From an institutional perspective, regional dialogues on migration are normally launched through a political declaration adopted at ministerial level, generally with the participation of the European Commission[29], and sometimes based on a previous declaration made at the level of Heads of State and Government[30]. This ensures the participation of both EU Member States and the Commission at the launching of the dialogue and adoption of its terms of reference. In the exceptional case of the ACP-EU Dialogue on Migration and Development, the Commission negotiated the establishment of the regional dialogue directly, representing the EU and its Member States, as this dialogue is based on a declaration annexed to the revised Cotonou agreement, a mixed association agreement whose negotiations and implementation are ordinarily assigned, for the European part, to the Commission.

Most of these regional dialogue processes are developed through regular meetings at different levels such as expert meetings, focused on elaborating recommendations on implementation, and senior officials' meetings, in charge of monitoring implementation, suggesting future actions and preparing for the Ministerial or Ambassadors' conferences which validate recommendations, evaluate impact and progress and define future policy actions[31]. In some cases, the guidance of the dialogue is developed, additionally, by a steering committee or core group of participants[32]. On the EU side, participation of the Commission and Member States is ensured in all these structures, although the Member States' involvement varies depending on their circumstances and interests, as well as on

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[28] Launched in June 2009, after the engagement adopted in the EU-LAC Summit held in Lima in 2008. See "Basis for structuring the EU-LAC Dialogue on Migration", Council doc. no. 11617/09, 1.7.2009.
[29] This is the case of the Prague Process, the Silk Routes Partnership for Migration under the Budapest Process, the Rabat Process, the Africa-EU Partnership on Migration, Mobility and Employment (also with the participation of the AU Commission) and the Khartoum Process (also with the participation of the HR/VP).
[30] This is the case of the EaP Panel on Migration and Asylum, based on the Eastern Partnership, and the Africa-EU Partnership on Migration, Mobility and Employment, originated from the Joint Africa-EU Strategy, adopted at the "Second EU-Africa Summit" held in Lisbon in December 2007.
[31] See J. Köhler, "What government networks do in the field of migration. An analysis of selected Regional Consultative Processes", in R. Kunz, S. Lavenex, and M. Panizzon (eds.), *Multilayered Migration Governance. The Promise of Partnership*, Routledge, London, 2011, p.84, for the positive implications of having ministerial-level officials involved in regional migration processes.
[32] The Rabat Process is guided by a Steering Committee composed of Belgium, Burkina Faso, Equatorial Guinea, France, Italy, Morocco, Senegal, Spain, European and ECOWAS Commissions) that ensures implementation and strategic guidance. The Khartoum Process also has a Steering group of core EU and African countries, the European Commission, the AU Commission and the EEAS. The Africa-EU Dialogue will also be directed by a joint EU-Africa Core Group. The EaP Panel on Migration and Asylum is directly coordinated by the Commission, organized and supported by the Swedish Migration Board and IOM Mission in Ukraine.

the availability of funds to facilitate regular participation. Member States' participation in regional dialogues could be improved, according to the Commission, by organising fewer and more targeted meetings[33], and by increasing funding for their development.

According to the Council, regional dialogues have "significantly contributed to improving overall political relations with the countries concerned"[34]. However, in view of the Council and the Commission, participants should focus more vigorously on the operational and action-oriented approach that characterises the official documentation setting of these instruments[35]. As the Commission highlights, existing regional dialogues should be streamlined, while the launch of targeted and temporal initiatives of practical cooperation could substitute for establishing new onerous dialogues with old and new partners[36]. The option of discontinuing certain dialogues, a suggested possibility when they do not bring added value, may not be desirable from an external relations strategic perspective, as certain stakeholders have highlighted. Nevertheless, the added value of regional dialogues on migration varies according to their different levels of maturity, the degree of unity inside the partner region and the number of participants, among other factors.

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[33] COM (2014) 96, p. 14

[34] Council Conclusions on the Global Approach to Migration and Mobility, 3 May 2012, doc. nº 9417/12, point 17.

[35] *Ibid*. COM (2014) 96, p. 13-14.

[36] *Ibid*. COM (2014) 96, p. 14. See in this regard the organization of the *ad hoc* Summit in Valletta, convened for November 2015, whose aim is to gather Heads of State and Government of EU Member States and of the countries parties to the Khartoum Process and the Rabat Process, as well as the African Union Commission and the ECOWAS Commission. It will prioritize capacity building on migration management; return and readmission; legal migration and mobility; international protection; fight against smuggling and trafficking; as well as investments and development cooperation addressing instability and conflict. Also the Western Balkan route high-level conference, foreseen for October 2015, aims at addressing the root causes of migration; increasing financial support to first asylum countries; reinforcing capacity-building on asylum in transit countries, and enhancing cooperation against migrant smuggling. See Council, Presidency Note on "Migration: EU action, state of play and next steps", doc. No. 11782/1/15 REV 1, 11.9.2015, points 39 and 42.

Table 1. EU regional dialogues on migration

Regional frameworks	Participants	Main texts	Orientation and priorities	Implementation/follow-up structures
PRAGUE PROCESS (PP)	EU and its Member States; Non-EU Schengen States; 18 Eastern countries (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, FYROM, Montenegro, Moldova, Russia, Serbia, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan)	- Joint Declaration on "Building Migration Partnerships", Prague Ministerial Conference, April **2009** - Action plan 2012-2016, 2nd Ministerial Conference, Poznan, November **2011**	Explore and develop migration partnerships with a comprehensive, balanced, pragmatic and operational approach. Specific objectives: prevention and fight against illegal immigration; readmission, voluntary return and reintegration; legal migration, especially labour migration; promotion of integration of legal residents; migration, mobility and development; strengthening capacities on asylum and international protection (since 2011)	- Network of national contact points to facilitate daily cooperation at expert level - Ministerial Conferences (biennial) to evaluate results and decide future policy orientations - Senior officials' meetings (at least once a year) to prepare Ministerial Conferences, monitor implementation, evaluate impact and prepare future policy directions - Expert meetings - Core Group (15 partner States, European Commission)
BUDAPEST PROCESS (BP)	More than 50 countries and 10 IOs from Europe and its Eastern Neighbourhood	- Silk Routes Partnership for Migration, Istanbul Ministerial Declaration, 5th Ministerial Conference, 19 April **2013**	Dialogue and mutual cooperation in order to improve legal migration and mobility; support integration and counteract discrimination, racism and xenophobia; strengthen migration impact on development; facilitate return and readmission; smuggling and trafficking; promote international protection	- Ministerial Conferences to evaluate impact, progress and define future actions - Yearly Senior Officials meetings to oversee implementation - Platforms in sub-regions - Thematic expert meetings
EASTERN PARTNER-SHIP PANEL ON MIGRATION AND ASYLUM (EaP)	EU and its Member States; Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine	Launched in **2011** under platform 1 of the Eastern Partnership (Prague Eastern Partnership Summit, Prague, May 2009, followed by Summits in Warsaw, 2011, Vilnius, 2013, and Riga, 2015)	Cooperation and dialogue towards harmonization of policies and practices on migration and asylum. Objectives: supporting mobility through visa facilitation and visa liberalisation; cooperating on readmission, fight against illegal immigration; alignment of border management structures to EU acquis; fight against organised crime; capacity building	- Coordinated by the European Commission; organized and supported by Swedish Migration Board and IOM Mission in Ukraine - Panel meetings for policy discussion (biannual) - Expert workshops for practical implementation (biannual)
RABAT PROCESS (RP)	EU and its Member States; Norway, Iceland, Switzerland; African countries along migration routes from and via North, West and Central Africa	-Rabat Declaration and Action Plan, Euro-African Conference on Migration and Development, Rabat, July **2006** - Cooperation programme 2009-2011, 2nd Euro-African Ministerial Conference, Paris, November **2008** - Dakar Strategy 2012-2014, 3rd	Pragmatic and operational partnership on the migration phenomenon in all its perspectives. Objectives: organizing mobility and legal migration; prevention and fight against irregular migration, with particular attention to border management and return; strengthening synergies between migration and development; promoting international protection	- Steering Committee (Belgium, Burkina Faso, Equatorial Guinea, France, Italy, Morocco, Senegal, Spain, European and ECOWAS Commissions) to ensure implementation and strategic guidance - Thematic meetings and ad hoc working groups for examining specific aspects

		Euro-African Ministerial Conference, Dakar, November **2011** - Cooperation programme 2015-2017, 4th Euro-African Ministerial Conference, Rome, November **2014**		- Support Project: launched by European Commission in 2013 to encourage implementation of concrete measures. Implemented by ICMPD and FIIAP, guided by the Steering Committee.
AFRICA-EU MIGRATION AND MOBILITY DIALOGUE (MMD)	EU and its Member States; countries from the African Union	- Tripoli Declaration on Migration and Development, **2006**; Ouagadougou Action Plan to Combat Trafficking in Human Beings, 2006; Ouagadougou Declaration and Action Plan for Promotion of Employment and Poverty Alleviation, 2004. - First Action plan 2008-2010, 2nd Africa-EU Summit, Lisbon, December **2007** - Second Action plan 2011-2013, 3rd Africa-EU Summit, Tripoli, November **2010** -Third Action plan 2014-2017 + Africa Declaration on Migration and Mobility, 4th Africa-EU Summit, Brussels, April **2014**	Inter-regional, continental and inter-continental dialogue and cooperation in the area of migration, mobility, employment and higher education. Priorities: trafficking of human beings, irregular immigration, remittances, diaspora, mobility and labour migration, including free movement, and international protection	- EU-Africa Summits every three years - Ministerial-level meetings - Joint experts Group to monitor the implementation of the action plan. - Targeted policy seminars, research and communication activities - Direction under a joint EU-Africa Core Group
ACP-EU MIGRATION DIALOGUE	EU and its Member States; ACP countries	- Joint Declaration on Migration and Development (article 13), annexed to the revised Cotonou Association Agreement, **2010**.	Establishment of an intense dialogue on migration and development, legal migration and illegal immigration. Main themes: mobility of skilled persons, legal migration, readmission, visas, smuggling of migrants and trafficking in human beings, migrants' rights and remittances.	- ACP-EU Joint Council to adopt decisions and evaluate annual reports on the progress of the dialogue - Ambassadors' meetings to validate recommendations and evaluate progress on implementation (once per year) - Experts' meetings focused on elaborating recommendations and on their implementation (at least once per year)
KHARTOUM PROCESS	EU and its Member States, Norway, Switzerland, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Tunisia, AU Commission	- Declaration on the EU-Horn of Africa Migration Route Initiative, Ministerial Conference, Rome, November **2014**	Concrete actions of cooperation aimed at tackling trafficking of human beings and smuggling of migrants, supporting victims of trafficking, protecting human rights of migrants and promoting sustainable development in countries of origin and transit to address its root causes. Intention to expand it into a comprehensive regional dialogue on all the elements of migration and asylum.	- Steering group of core EU and African countries, European Commission, EEAS, and AU Commission. - Senior Officials' meetings to ensure follow-up.

b.   Bilateral dialogues

Several bilateral dialogues on Justice and Home Affairs issues, especially addressing migration matters, are in place between the EU and its Member States and specific third countries. These bilateral dialogues, qualified as "the drivers of the Global Approach"[37], are useful tools to identify specific fields of cooperation among the parties, having similar purposes as regional dialogues, but presenting a more technical approach. These bilateral dialogues are usually entertained through the joint association or cooperation councils established to implement the association and cooperation agreements concluded with these countries. This is true of the JHA dialogues based on the Stabilisation and Association agreements (SAAs) with Albania, Bosnia-Herzegovina, Montenegro, Serbia, FYROM and Kosovo; with Turkey on the basis of the Ankara Association Agreement; and the JLS Subcommittee of the Partnership and Cooperation agreements (PCAs) with Armenia, Azerbaijan, Georgia, Moldova and Ukraine[38]. The Dialogue on Migration launched in 2011 with Russia deserves special attention. After long discussions and legal and political controversies within the EU on the respective role of the Commission and the Member States with regard to the setting and development of this dialogue[39], it was finally established under the umbrella of the EU-Russia PCA[40]. In view of present political relations with Russia, this Dialogue is currently active only at a technical level.

Concerning the Southern Mediterranean countries, the Social affairs and Migration Working Group created under the umbrella of the Euro-Mediterranean Association agreements with Morocco, Tunisia and Jordan meets once a year. More recently, the EU started Dialogues on Migration, Mobility and Security with Morocco, Tunisia, Jordan and Lebanon[41]. These bilateral dialogues, proposed by the Commission in May 2011 and welcomed by the JHA Council and the European Council[42], appear to constitute a long-term response to the migration effects of the Arab Spring in contrast to the short term and emergency actions undertaken in the wake of the conflicts in the region. Although this initiative reflects the pillars of the GAMM, the terms used to define the Dialogue show that priority would be given to the partners' efforts on security aspects - migration management, border controls and return, and protection in the region for those in need – as a pre-condition to offer mobility and legal migration opportunities to these countries, on a clear and strong conditionality basis. In addition, Dialogues on Migration, Mobility and Security should be based, according to EU institutions, on the principles of differentiation and bilateralism, and on effective monitoring. These Dialogues, to which EU and Member States' experts are associated, constitute a preliminary stage towards the adoption of a Mobility Partnership (MP) with each partner. Once the MP is signed, discussions are pursued within its structure. In general terms, bilateral dialogues and

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[37] Council Conclusions on the Global Approach to Migration and Mobility, 3 May 2012, doc. nº 9417/12, point 41.

[38] Georgia, Moldova and Ukraine have signed respective association agreements with the EU and its Member States in 2014. Their entry into force is still pending.

[39] See P. García Andrade, "La dimension externe de la politique migratoire de l'Union européenne: un bilan au travers de ses instruments", in M. Dony (ed.), *La dimension externe de l'espace de liberté, de sécurité et de justice au lendemain de Lisbonne et de Stockholm: un bilan à mi-parcours*, Éd. de l'Université de Bruxelles, Bruxelles, 2012, pp. 133-135.

[40] The EU-Russia Dialogue on Migration excludes readmission and visas from its material scope as these issues are addressed through the EU-Russia Joint Committees established under the Readmission and Visa Facilitation agreements concluded between the EU and Russia.

[41] On the 13.10.2011, 6.10.2011, 12.12.2012 and 10.12.2014, respectively. Algeria has expressed interest in this Dialogue and Egypt has been approached by the Commission in May 2015.

[42] European Commission, Communication on "A dialogue for migration, mobility and security with the southern Mediterranean countries", COM (2011) 292, 24.5.2011; JHA Council, Conclusions 12 May 2011; European Council Conclusions of 23-24 June 2011, point 28. See also the Joint communication by the Commission and HR/VP, "A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean", 8.3.2011 and European Council Conclusions of 24 March 2011.

MPs are clearly interlinked, as the former serves to prepare for the adoption of the latter. This means that migration dialogues may end once the signature of a MP with that country intervenes, except for dialogues based on migration clauses contained in association and cooperation agreements and thus developed through the joint councils of those agreements.

Concerning other African countries, bilateral dialogues on migration and development are also entertained between the EU and ACP countries on the basis of article 13 of the Cotonou Association Agreement, while the South Africa-EU Structured Dialogue on migration, launched in 2008, is based on the Agreement on trade, development and cooperation[43]. Additionally, bilateral dialogues on migration cooperation exist with other priority countries such as the EU-China High Level Dialogue on Migration and Mobility[44]; the EU-India High Level Dialogue Meeting on Migration and Mobility, initiated in 2012, and the EU-United States Cooperation Platform on Migration and Refugee Issues[45].

Specific bilateral dialogues on technical cooperation on readmission and visas are also taking place through the Joint Committees created by EU readmission agreements and visa facilitation agreements in order to take charge of their implementation[46]. More recently, the Commission announced the future launching of high-level political dialogues on readmission, aimed at prioritising return and readmission in EU relations with specific countries. The focus is to be put on countries "where political engagement or leverage are needed, either for the implementation of existing commitments or for the conclusion or launch of negotiations on readmission agreements"[47]. These bilateral dialogues will be held by the HR/VP and relevant members of the Commission, depending on the concrete policies to be used as incentives. EU delegations will play a crucial role in the preparation and follow-up of these dialogues. According to the Commission, possible priority countries will be Morocco, Algeria, Egypt, Nigeria, Senegal, Guinea, Mali, the Democratic Republic of Congo, Ivory Coast, Ethiopia, Gambia, Afghanistan, Bangladesh, Pakistan and Sri Lanka. In this regard, the question arises of what role is to be left to the Joint Readmission Committees set up under existing EURAs or, in their absence, whether the issue of readmission could not be tackled under existing bilateral dialogues instead of creating new ones.

Other dialogue frameworks of utmost importance are Visa Liberalisation Dialogues (VLD) developed by the EU in view of extending a visa-free regime to the citizens of certain third countries. At present, VLDs are ongoing with Georgia (2012)[48], Kosovo (2012)[49], Russia (2007)[50], Turkey (2013)[51], and Ukraine (2008)[52]. VLDs are organised around the

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[43] See EU Council-ZA docs. 4908/08, 24.11.2008, and 4908/09, 23.7.2009.
[44] The first meeting took place on 14.10.2013, discussing on possible negotiations of a readmission agreement and visa waiver agreement for diplomatic passports between the EU and China.
[45] In 2010, its priorities were agreed and focused on return and reintegration, biometrics, resettlement, trafficking in human beings, capacity building on migration and labour migration.
[46] See section 1.1.1.2.b) of this study.
[47] European Commission, "EU Action Plan on return", COM (2015) 453, 9.9.2015, p. 12.
[48] Three progress reports have been issued in November 2013 (COM (2013) 808, 15.11.2013), in October 2014 (COM (2014) 681, 29.10.2014) and in May 2015 (COM (2015) 199, 8.5.2015).
[49] Two progress reports have been issued in February 2013 (COM (2013) 66, 8.2.2013) and in July 2014 (COM (2014) 488, 24.7.2014)
[50] See "Common steps towards Visa Free Short Term Travel of Russian and EU citizens". The first progress report was presented by the Commission in December 2013 (COM 2013 923). Bilateral talks on visas with Russia remain suspended following the Statement of the Heads of State and Government on Ukraine of 6 March 2014, COM (2015) 236.
[51] See Council Conclusions on developing cooperation with Turkey in Justice and Home Affairs, 21 June 2012, doc. 11579/12. The first progress report has been issued in October 2014 (COM (2014) 646, 20.10.2014).
[52] Five progress reports have been issued in September 2011 (SEC (2011) 1076, 16.9.2011); in February 2012 (SWD (2012) 10, 9.2.2012), in November 2013 (COM (2013) 809, 15.11.2013), in May 2014 (COM (2014) 336, 27.5.2014) and in May 2015 (COM (2015) 200, 8.5.2015).

implementation of a Visa Liberalisation Action Plan (VLAP), presented by the Commission to the country in question. VLAPs consist of four blocks of benchmarks on document security, including biometrics; border management, migration and asylum; public order and security; and external relations and fundamental rights. During a VLAP's first phase, the country must adopt or improve its legislation and policy framework in these fields. In a second phase, those measures must be effectively implemented in practice, a powerful stimulus to advance in reforms if the country wishes to accelerate the process of obtaining visa-free regime[53]. The progress of VLD is monitored at regular senior officials' meetings between DG HOME and the partner country, as well as through expert missions involving officials from the Commission and individual Member States. Once the country has met the benchmarks, the Schengen visa obligation for citizens of that country is abolished, through amending the list annexed to Regulation 539/2001.

Past VLDs were undertaken with Albania, Bosnia and Herzegovina, FYROM, Montenegro and Serbia in early 2008, until these Western Balkan countries were transferred to the list in Annex II of Regulation 539/2001[54]. A post-liberalisation monitoring mechanism has been adopted to assess the sustainability of reforms these countries have undertaken in the previous context of VLAPs[55]. A visa-free regime was also introduced for Moldova in April 2014, as a successful outcome of the VLD initiated with this country in 2010[56]. VLDs are therefore an influential tool for achieving the mobility objective of the GAMM in its highest degree and a significant tool for advancing reforms in all the fields covered by the area of JHA[57]. Their degree of leverage is high, working in practice as mini-accession processes. However, VLDs also present challenges such as ensuring the necessary budget support for capacity building measures in EU partners, and pursuing these dialogues with a focus on real and ascertainable technical progress on the relevant benchmarks, and on the basis of equal treatment towards different partners in similar situations[58].

c. Mobility Partnerships

Mobility Partnerships are conceived as the main comprehensive and long-term bilateral framework for facilitating policy dialogue and operational cooperation on migration management with third countries. The Commission proposed this instrument in 2007 as a

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[53] See S. Mananashvili, "The Diffusion of the EU Asylum Acquis in the Eastern Neighbourhood: A Test for the EU's Normative Power", *European Foreign Affairs Review* 20, nº 2, at 189 et seq., for the role of VLD in the diffusion of the EU asylum acquis towards the East.

[54] Council Regulation (EC) No 1244/2009 (OJ L 336, 18.12.2009, p. 1) as regards FYROM, Montenegro and Serbia, and Regulation (EU) No 1091/2010 of the European Parliament and Council for Albania and Bosnia-Herzegovina (OJ L 329, 14.12.2010, p. 1), both amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

[55] The Fifth Report on the Post-Visa Liberalisation Monitoring for the Western Balkan countries was issued in February 2015 (COM (2015) 58, 25.2.2015). A Steering Committee, chaired by the Commission and involving representatives of the Council Presidency and EU agencies, is in charge of this mechanism. Reference shall also be made to the visa temporary suspension mechanism introduced, by Regulation (EU) No 1289/2013 of the European Parliament and Council (OJ L 347, 20.12.2013, p. 74) amending Council Regulation 539/2001, to be activated in exceptional circumstances, and to the alert system operated by Frontex providing the Commission with information on asylum flows, as the number of unfounded asylum requests from these countries substantially increased in 2012.

[56] Regulation (EU) No 259/2014 of the European Parliament and of the Council of 3 April 2014 amending Council Regulation 539/2001 (OJ L 105, 8.4.2014, p. 9). In the period 2014-2016, Moldova would receive up to EUR 20M of budget support from the EU for reforms going beyond the benchmarks of the VLAP on border management, migration management and public order and security (Information Newsletter no. 10 on the EU-Moldova Mobility Partnership, December 2014, p. 21, available at http://www.mfa.gov.md/img/docs/MP-Newsletter-X-edition.pdf [last access 18.8.2015]).

[57] COM (2014) 96, p. 4.

[58] Criticisms in Albania and Bosnia raised significantly because of their non-inclusion on the visa waiver at the moment it was granted to Serbia, Montenegro and FYROM in December 2009: F. Trauner and E. Manigrassi, "When Visa Free Travel Becomes Difficult to Achieve and Easy to Lose: The EU Visa Free Dialogues after the EU's Experience with the Western Balkans", *European Journal of Migration and Law* 16/1, p. 137.

way to introduce legal migration into EU cooperation with partner countries, offering them mobility and legal migration opportunities, including circular migration projects, in return for their cooperation on preventing irregular immigration, increasing border management and accepting readmission commitments[59].

Since 2008, eight MPs have been subscribed between the EU and a variable number of interested Member States, on the one hand, and a third country, on the other. Joint declarations establishing a MP have been signed with Moldova, Cape Verde (2008), Georgia (2009), Armenia (2011), Morocco, Azerbaijan, Tunisia (2013) and Jordan (2014)[60]. Discussions on a MP with Belarus are complete, pending the signature of the corresponding joint declaration. MPs have also been offered to Senegal and Egypt. Both countries have thus far refused to enter into negotiations of this instrument, while conversations initiated with Ghana have been paralyzed[61]. Situations like these led EU institutions to consider the need to set time limits for exploratory discussions and the possibility of abandoning the discussions if they fail to achieve results[62]. Regarding the geographical scope, this instrument has mainly been extended to the East, in particular to five countries covered by the Prague Process and the Eastern Partnership. In addition to Cape Verde, MPs have been more recently offered to African countries, specifically to Southern Mediterranean countries as part of the new migration approach to this region. Evaluation exercises regarding MPs are scarce compared to their political importance[63].

Existing MPs follow the same structure. Their preamble refers to the existing relationship between the EU and the third country, the GAMM and the regional or bilateral dialogues that serve as frameworks of cooperation. Second, after a presentation of the general objectives, every MP details the specific objectives to be attained around the following - with slight variations- thematic priorities: mobility, legal migration and integration; border management, fight against irregular immigration and human trafficking, and readmission; migration and development; and, more recently, asylum and international protection[64]. Clauses related to implementation follow. Finally, MPs are accompanied by an annex of the initiatives and projects offered by the EU, participating Member States and the third country[65], with the exception of the MPs signed with Tunisia and Jordan. Apart from the respective annexes, the high similarities in structure and content of existing MPs suggest that this instrument is not subject to relevant discussions and negotiations with the partner country, but rather that the text is already prepared by the EU side asking for adherence[66]. The importance of the conditionality principle underlying this instrument also raises a question regarding its partnership nature[67].

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[59] European Commission, Communication on "circular migration and mobility partnerships between the European Union and third countries", COM (2007) 248, 16.5.2007; European Council Conclusions of 14.12.2007 and JHA Council Conclusions of June and December 2007.

[60] See Table 2 on Mobility Partnerships and the References section on "EU documents".

[61] See in this regard N. Reslow, "The Role of Third Countries in EU Migration Policy: The Mobility Partnerships", *European Journal of Migration and Law* 14, 2012, pp. 393–415.

[62] European Commission, "Mobility partnerships as a tool of the Global Approach to Migration", SEC (2009), 1240, 18.9.2009, p. 3. JHA Council Conclusions on Mobility Partnerships as a tool of the Global Approach to Migration, 30.11 - 1-12-2009, nº 15811/09.

[63] SEC (2009) 1240, 18.9.2009; *The European Union-Republic of Moldova Mobility Partnership 2008-2011: Evaluation Report*, 1.10.2012, available at http://www.mfa.gov.md/img/docs/eu-moldova-mobility-partnership-evaluation.pdf; Euro-Mediterranean Human Rights Network, *Analysis of the Mobility Partnership signed between the Kingdom of Morocco, the European Union and nine Member States on 7 June 2013*, February 2014.

[64] See table under section 1.1.2 of the present study.

[65] In contrast to other MPs, the one with Azerbaijan contains an annex of initiatives that does not specifically refer to the party responsible for each proposed initiative.

[66] See, particularly with regard to MPs with Morocco and Tunisia, P. De Bruycker, "L'approche globale des migrations de l'Union européenne: quel progrès suite au partenariat de mobilité avec le Maroc?", in R. Mehdi (dir.), *La Méditerranée, Espace Démocratique?*, Presses Universitaires d'Aix-Marseille, 2014, p. 103. S. Lavenex, R. Stucky, "Partnering for migration in EU external relations", in Kunz, R., Lavenex, S., Panizzon, M.

The specific objectives of cooperation included in all MPs reflect the four operational priorities of the GAMM, with the exception of promoting the protection of refugees and strengthening partners' capacities on asylum, a goal which has only been explicitly included in MPs with Armenia, Morocco, Azerbaijan, Tunisia and Jordan, signed since the renewal of the GAMM in 2012. The main criticism towards MPs refers to their limited added value with regard to facilitating legal migration opportunities for citizens from the partner countries[68], observing that initiatives on the portability of social rights and recognition of skills do not constitute concrete legal channels of labour migration[69].

MPs are set up through the signature of a joint declaration between the EU, interested Member States and the third country. Their political nature, as confirmed by the explicit will of the parties, makes them inapt to engender legally-binding international commitments. The inclusion of a clause in all MPs indicating that their provisions are not intended to create obligations and rights under international law is well advised, since, in the absence of the will of the parties, other signs such as formal elements, the structure or the drafting could have led to an interpretation in favour of an international agreement. Instead MPs can be qualified as non-conventional concerted acts or non-normative agreements, which means that *a priori* they avoid CJEU jurisdiction and the direct creation of rights on individuals. Nevertheless, the lack of legally-binding force does not mean they lack legal value, as arguably their signatories may be bound, by the good faith principle, at least not to act against their commitments and expectations they have created in their partners[70].

From an institutional perspective, MPs are negotiated, under political guidelines of the Council similar to mandates of international agreements, mainly by the Commission, together with the Presidency of the Council, representatives of Member States and the third country, with the participation of EU agencies such as Frontex, the European Training Foundation, EASO or EUROPOL. The text of MPs is also signed by the previous authorities. This procedure does not greatly differ from the negotiation and signature of a mixed agreement, with the exception of the lack of ratification by the EU and participating States and thus the absence of involvement of the European Parliament.

Migration cooperation platforms, where Member States' diplomatic missions, EU delegations and third country authorities meet, are in charge of the local implementation of MPs. These platforms serve as coordination tools between the EU side and the third country, and also extend to other stakeholders such as International Organisations and civil society representatives. National monitoring committees can also be created for boosting internal coordination among the Ministries of the partner country involved in the implementation of the MP. At the political level, the Commission is in charge of organising senior official meetings and updating the scoreboard, document tracking the progress of the projects of the MP. MPs are conceived as long-term frameworks

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(eds.), *Multilayered Migration Governance. The Promise of Partnership*, Routledge, London, 2011, p. 131 refer to a process of consultation rather than negotiation.

[67] Regarding MPs with Southern Mediterranean countries, see S. Carrera, L. den Hertog, J. Parkin, "EU Migration Policy in the wake of the Arab Spring. What prospects for EU-Southern Mediterranean Relations?", MEDPRO Technical Report nº 15, August 2012, available at www.medpro-foresight.eu, pp. 13-14.

[68] See S. Carrera, R. Hernández i Sagrera, "The Externalisation of the EU's Labour Immigration Policy Towards Mobility or Insecurity Partnerships?", *CEPS Working Document* nº. 321, October 2009, available at www.ceps.eu See also, in particular, "The European Union-Republic of Moldova Mobility Partnership 2008-2011: Evaluation Report", 1.10.2012.

[69] Carrera, den Hertog and Parkin, 2012, *op. cit.*; A. Weimar, "Mobility Partnerships. What impact do they have on legal migration and mobility?", *MPC policy brief*, July 2012.

[70] *Ibid*., p. 511. See also García Andrade, 2012, *op. cit*.

susceptible to evolve, eventually adding new initiatives and proposals in the course of time[71].

Because of the flexibility that characterises MPs, Members States' participation in them is voluntary and open to new participant Member States[72]. Although it was envisioned that the normative softness of the MP structure would decrease national reluctance to offer concrete initiatives, especially in the field of legal migration[73], Member States have yet to display a real engagement in their configuration and development, as well as in the financial contribution to their implementation[74]. In total, 16 Member States participate in the MP with Georgia, 15 in the MP with Moldova, 12 in the MP with Jordan, 10 in the MP with Armenia and Tunisia, 9 in the MP with Morocco, 8 in the MP with Azerbaijan, and just 5 in the MP with Cape Verde. Austria and Croatia do not participate in any MPs. France is the only Member State taking part in all of them. The degree of interest and ownership of the partner countries in MPs also varies greatly.

Criticism of the reduced involvement of Member States in MPs is accompanied by a negative assessment of the role of the EU in these instruments as mere coordinator of national initiatives, limiting its leading position to readmission, Schengen visas and funding of certain projects. Initiatives presented jointly by several Member States, possibility encouraged by the nature of the instrument, are also limited, a situation that could be remedied by increasing funding of multilateral projects. Finally, in some MPs, Member States have included projects or actions with little added value, as they had been already offered in other bilateral frameworks of cooperation[75].

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[71] Regarding the MP with Moldova, its government prepares regular newsletters containing detailed information on the progress of projects and initiatives developed under the MP. These information bulletins are available at http://www.mfa.gov.md/information-bulletins-en/- Information on projects related to the MP with Georgia can be found at the website of the Office of the State Ministry of Georgia on European and Euro-Atlantic Integration: http://www.eu-nato.gov.ge/en/eu/mobility-partnership
[72] To our knowledge, only the Netherlands decided to take part on the MP with Cape Verde after its signature.
[73] See Carrera and Hernández I Sagrera, 2009, *op. cit.*, p. 29.
[74] COM (2014) 96, p. 20
[75] As it is the case of certain Spanish and French initiatives included in the MP with Cape Verde and with Morocco. Cfr. section 1.3 of the present study.

Table 2: EU Mobility Partnerships

EU MOBILITY PARTNERSHIPS			
Country	Joint Declaration signed	Participating Member States	Other instruments of EU cooperation
Moldova	5.06.2008	BG, CY, CZ, FR, EL, DE, HU, IT, LT, PL, PT, RO, SI, SK, SE (15)	VLD (2010-2014); AA (2014); EURA (2007); VFA (2007+2012); RPP Eastern Europe (2007); Frontex WA
Cape Verde	5.06.2008	ES, FR, LU, PT, + NL (5)	AA (2000); EURA (2013); VFA (2012); Frontex WA
Georgia	30.11.2009	BE, BG, CZ, DK, DE, EE, EL, FR, IT, LT, LV, NL, PL, RO, SE, UK (16)	VLD (2012-); AA (2014); EURA (2010); VFA (2010); Frontex WA
Armenia	27.10.2011	BE, BG, CZ, DE, FR, IT, NL, PL, RO, SE (10)	PCA (1996); EURA (2013); VFA (2012)
Morocco	7.06.2013	BE, FR, DE, IT, NL, PT, ES, SE, UK (9)	AA (2000); EURA (neg.); VFA (neg.)
Azerbaijan	27.10.2013	BG, CZ, FR, LT, NL, PL, SI, SK (8)	PCA (1996); EURA (2014); VFA (2013); Frontex WA
Tunisia	3.03.2014	BE, DK, DE, FR, IT, PL, PT, ES, SE, UK (10)	AA (1998); EURA (neg.); RPP North Africa (2011); VFA (neg.)
Jordan	9.10.2014	CY, DE, DK, EL, ES, FR, IT, HU, PL, PT, RO, SE (12)	AA (1997); VFA (neg.); RDPP Middle East (2014)
Belarus	-----------		EURA (neg.); VFA (neg.)

d. Common Agendas for Migration and Mobility

Common Agendas for Migration and Mobility (CAMMs) are another soft law instrument of the GAMM, recently designed as an alternative framework of cooperation to MPs[76]. CAMMs will be offered when the EU and a third country wish to establish an advanced cooperation on migration but one of the parties is not willing to undertake the commitments associated with a MP[77], specifically the signature of a readmission agreement in exchange for a visa facilitation agreement. These non-binding programmes shall contain recommendations and objectives for dialogue and cooperation, including support measures offered by the EU and interested participating Member States. A CAMM may evolve into a MP once the parties agree.

The establishment of this kind of cooperation framework has been discussed with Nigeria, Ethiopia, South Africa[78], Brazil[79], Ghana[80] and India[81], although to date only a CAMM with Nigeria has been adopted, in March 2015[82]. The text of this CAMM demonstrates great similarities in format and substance to a MP. The CAMM with Nigeria is also composed of

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[76] Proposed by the European Commission in its Communication on "The Global Approach to Migration and Mobility", COM (2011) 743, 18.11.2011, p. 11 and welcomed by the Council Conclusions on the Global Approach to Migration and Mobility, 3 May 2012, doc. nº 9417/12, point 43.
[77] COM (2011) 743, p. 12. Council Conclusions, 3 May 2012, point 43.
[78] At the EU-South Africa Summit of 18.7.2013, agreement to explore the establishment of a CAMM.
[79] Draft Joint Declaration presented by the EU on January 2015.
[80] EU interest in establishing a CAMM with Ghana (COM (2014) 96, p. 7).
[81] After the expression of interest from India, a draft CAMM was proposed by the EU in April 2013.
[82] Joint Declaration on a Common Agenda on Migration and Mobility between the Federal Republic of Nigeria and the European Union and its Member States, done at Brussels on 12th March 2015.

a preamble with references to existing frameworks of cooperation between the EU and Nigeria and to the general objectives of this instrument "based on partnership and reciprocity". After setting out the priority areas for cooperation, which replicate the four pillars of the GAMM, the CAMM states that the signatories shall hold a dialogue, both at high and working level, to exchange information on legislation, policies and best practices, and to explore possibilities for concrete cooperation and policy recommendations. The following sections include concrete issues in which this kind of collaboration will be established.

In contrast to MPs, the cooperation set by this CAMM focuses on support measures regarding research, data collection, exchange of best practices and capacity building of the partner country in each of the priority issues. The CAMM makes few references to concrete cooperation actions or projects, whose specification is deferred to an annex to be drawn up and reviewed in the context of the EU-Nigeria Local Dialogue on Migration and Mobility. Those actions may be undertaken either between Nigeria and the EU, or between Nigeria and individual or groups of Member States, EU agencies or Member States' agencies. The Member States participating in the CAMM have not yet been explicitly identified at this stage.

1.1.1.2. Legal instruments

a. Migration clauses in "global agreements"
The so-called "global agreements" establishing a privileged relationship between the EU, its Member States and third countries, such as association agreements and cooperation agreements, contain diverse clauses related to migration cooperation[83]. These clauses, included in these international agreements since the 1990s, reflect the evolution of the objectives of the EU cooperation with third countries on migration issues. The first ones were focused on readmission of irregular migrants, following, to varying degrees, the model readmission clauses set by the Council in 1995[84]-1996[85] and 1999[86]. Since 2002, the model clause was replaced due to the need to integrate, in association and cooperation agreements, clauses related more broadly to migration management and readmission (the "post-Seville clauses")[87], including the following elements: an in-depth dialogue on migration; commitment to support economic and social development of regions of origin of migration flows; joint examination of efforts to combat illegal immigration and trafficking in human beings; the return and readmission of irregular migrants; and the promotion of fair treatment of legal residents on the territories of the parties[88].

Focusing first on readmission, migration clauses in "global agreements" include a confirmation of the obligation to readmit nationals and the engagement to conclude readmission agreements with the EU and, in the meantime, with the Member State which so requests, with a view to both facilitating the implementation of this international customary law rule and creating a readmission obligation with regard to third-country

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[83] See the annex on an inventory of EU agreements on migration for references to existing association and cooperation agreements and the corresponding clauses on migration.

[84] Council doc. nº 12509/95 and see, as an example, the Joint Declaration on readmission annexed to the Cooperation Agreement with the Republic of Yemen, of 25 November 1997 (OJ L 72, 11.3.1998, p. 18-29).

[85] Council doc. nº 4272/96 and see, as an example, article 72 of the PCA with the Republic of Armenia, of 22 April 1996 (OJ L 239, 9.9.1999, p. 1-50).

[86] Council doc. nº 13409/99 and see, as an example, article 76 of the SAA with the former Yugoslav Republic of Macedonia of 9 April 2001 (OJ L 84, 20.3.2004, p. 3–12).

[87] N. Coleman, *European Readmission Policy. Third Country Interests and Refugee Rights*, Martinus Nijhoff Publishers, Leiden, 2009, p. 214.

[88] GAER Council Conclusions on intensified cooperation on the management of migration flows with third countries, doc. nº 13894/02, 14.11.2002. See, as an example, article 70 of the PCA with the Republic of Tajikistan of 11 October 2004 (OJ L 350, 29.12.2009, p. 3-51).

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nationals and stateless persons. The Commission saw these clauses of material soft law as "enabling clauses" only, since they defer operational arrangements and procedural modalities to full readmission agreements[89]. These standardised clauses are therefore intended to encourage future negotiations of readmission agreements with the EU on the basis of the engagement contained in them, although their effects in this regard are questionable[90]. A more recent approach adopted by the EU towards certain Western Balkan countries and Georgia has been to negotiate an association agreement in parallel with the negotiation and conclusion of a EURA, using therefore the association agreement as a powerful leverage to achieve readmission objectives[91].

Other issues included in migration clauses in association and cooperation agreements since 2002 refer to vague engagements on cooperation in the field of visas, border management, asylum and migration, as this cooperation shall be based on mutual consultations and coordination between the Parties, including technical and administrative assistance for exchange of best practices, drafting of legislation, capacity building and training.

Finally, "global agreements" contain clauses on the treatment of workers, nationals from the parties, who legally reside on their respective territories. The fact that they have been inserted since the EC started to conclude association and cooperation agreements shows that these clauses were not conceived as an element of the external dimension of EU migration policy, although nowadays they do respond to one of the GAMM objectives, the integration of legal residents. These provisions govern rights to equal treatment in labour conditions, remuneration and dismissal, access to employment of workers and their families legally residing in the parties, as well as social security coordination[92]. Consequently, as these clauses do not create rights of entry and residence, association and cooperation agreements have not been used, up to now, to facilitate legal migration, although the EU external competence enshrined in article 217 TFEU could serve that purpose[93]. In contrast to the provisions on readmission and migration management cooperation, clauses on treatment of workers create enforceable individual rights, as the CJEU has recognised in several occasions[94]. In this context, provisions of most of the "global agreements" related to social security coordination need that association and joint cooperation councils, created by these agreements, adopt decisions in order to implement the principles these clauses set, such as equal treatment on social security, accumulation of insurance and employment periods, payment of family allowances and

[89] European Commission, Green Paper on a Community Return Policy on Illegal Residents, COM (2002) 175, 10.4.2002, p. 24. At the occasion of the revision of the Cotonou Association Agreement in 2010 the EU intended to negotiate the terms of article 13 of this agreement with a view to clarifying and specifying operational obligations on readmission, making this migration clause directly enforceable. The solution to the rejection of this request was the inclusion of the Declaration on a migration and development dialogue annexed to the Cotonou Agreement and serving as basis of the ACP-EU Dialogue, mentioned above.

[90] Coleman, 2009, *op. cit.*, p. 218 *et seq*. See, for instance, the case of Algeria, whose Euro-Mediterranean Association Agreement with the EU - signed in 2002 and in force since 2005 - contains a readmission clause, in article 84, that has not produced any effect on the negotiations of an EU readmission agreement. These negotiations have not even started since the negotiating mandate adopted by the Council in 2002.

[91] See, for instance, references included in article 83 of the SAA with the Republic of Serbia of 29 April 2008 (OJ L 278, 18.10.2013, p. 16–473).

[92] Surprisingly, association agreements signed in June 2014 with Georgia and Moldova do not include this kind of clause on equal treatment for workers.

[93] As the competence to conclude an association agreement allows the EU to deal with all the fields covered by the Treaties (Case 12/86 *Demirel* [1987] ECR 3719, para. 9), therefore enabling the EU to overcome legal limitations to develop an external action on legal migration, save for the exclusive power of Member States preserved by article 79.5 TFEU. See P. García Andrade, "The legal feasibility of the EU's external action on legal migration: the internal and the external intertwined", *European Journal of Migration and Law* 15/3, 2013, p. 274.

[94] See S. Peers, *EU Justice and Home Affairs Law*, 3rd ed., Oxford University Press, Oxford, 2011, pp. 417-427 for details on the content of clauses regarding legal migration in these agreements and the CJEU case-law related to them.

transfer of pensions to countries of origin[95]. The Council adopted, in 2010, the EU position to be defended at the Association Councils with Morocco, Tunisia, Algeria, Israel and FYROM, and, in 2012, with Turkey, Montenegro, San Marino and Albania, in order to adopt implementing decisions of the social security coordination principles[96]. In this regard, the EU should try to avoid the elapse of such large time periods since the adoption of international commitments and their actual implementation[97]. In some cooperation agreements, however, this issue is not to be developed by the joint council established by the agreement, but will be the object of future international agreements[98].

In sum, AAs and PCAs represent an interesting formula for improving the status of third-country nationals in the EU. However, the migrant workers' provisions inserted in these agreements have also contributed to the creation of different and preferential regimes of legal residents[99], as it is the case, for instance, of the Turkish and Moroccan workers in the EU, accepting thus a discrimination on the basis of nationality.

b. Specific international agreements on migration

Readmission agreements

EU readmission agreements (EURAs) constitute the primary instrument of the external dimension of EU immigration policy and are still the principal tool on which the GAMM is focused. Readmission agreements set out apparently reciprocal obligations between the EU and a third country, in particular detailed administrative and operational procedures to facilitate the return of irregularly staying migrants and thus implement return decisions adopted by Member States' authorities following the procedures and safeguards provided in Directive 2008/115.

Out of 22 negotiating mandates, the EU has concluded so far 17 readmission agreements with Hong Kong (2002), Macao (2003), Sri Lanka (2004), Albania (2005), Russia (2006), Ukraine, FYROM, Bosnia and Herzegovina, Montenegro, Serbia, Moldova (2007), Pakistan (2009), Georgia (2010), Cape Verde, Armenia, Turkey (2013) and Azerbaijan (2014)[100]. Mandates are yet unexploited with Algeria (2002) and China (2002), suggesting that the EU should evaluate the willingness of the third country before adopting the corresponding negotiating mandate. Negotiations are ongoing or blocked with Morocco (2000), Belarus (2011), and Tunisia (2014), probably due in part to the lack of appropriate incentives. Visa Facilitation agreements are systematically - and exclusively - offered in exchange for concluding a EURA, an incentive that countries such as Algeria and China have not received, and that was extended to Morocco 10 years after the EURA negotiations started

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[95] The exception would be the recognition, by the CJEU, of direct effect to the provision on equal treatment on social security in Cooperation Agreements concluded with Southern Mediterranean countries (e.g. Case 18/90 *Kziber*, [1991] ECR 199 on the former Cooperation Agreement with Morocco or Case C-103/94 *Krid* [1995] ECR 719, on the former Cooperation Agreement with Algeria). Those provisions in future agreements were differently drafted, except for the Euro-Mediterranean Association Agreements replacing the Cooperation Agreements just mentioned.

[96] See the annex on the inventory of agreements for references to these Council decisions (III).

[97] See in this regard, see K. Eisele and A. Wiesbrock, "Enhancing Mobility in the European Neighborhood Policy? The Cases of Moldova and Georgia", *Review of Central and East European Law* 36, 2, 2011, p. 139. For instance, some of the Council decisions on the EU position to be defended at the respective Association Councils were adopted in 2010, around 15 years after the signature of AAs with Morocco, Tunisia, Algeria or Israel, or 9 years after the signature of the SAA with FYROM. In 2015, the respective Association Council decisions have not been formally adopted yet.

[98] See, for an example, article 24 of the PCA with the Russian Federation of 24 June 1994 (OJ L 327, 28.11.1997, p. 1–69). See in this regard European Commission, Communication on "The External Dimension of EU Social Security Coordination", COM (2012) 153, 30.3.2012.

[99] See S. Iglesias, "¿Hay lugar para la acción exterior de la Unión Europea en materia de inmigración legal? Acuerdos internacionales, asociaciones de movilidad e intereses estatales", in J. Martín y Pérez de Nanclares (coord.), *La dimensión exterior del espacio de libertad, seguridad y justicia de la Unión Europea*, Madrid, Iustel, 2012, p. 184 and 192.

[100] See annex on the inventory of international agreements for complete references (II.2).

(2003), as also with Turkey which started a visa liberalisation dialogue with the EU 7 years after readmission negotiations began (2005)[101]. The Commission published an evaluation of existing EURAs in 2011[102].

In their content, existing EURAs follow a standardised approach with slight variations. All EURAs include readmission obligations with regard to nationals as well as third-country nationals who have transited through the requested party (TCN clause); exceptions to these obligations; rules to determine the Member State responsible for applying an EURA as the requested State; detailed rules on the readmission procedure, including means of evidence and presumption of nationality and transit; deadlines for requesting, responding to and implementing readmission obligations; accelerated readmission procedures; the modalities of transportation and their costs; data protection obligations; and transit operations. All EURAs foresee the establishment of a Joint Readmission Committee, composed of EU and third country representatives - the Union being represented by the Commission with the assistance of Member State experts – and which supervises implementation of the agreement, adopts decisions necessary for its uniform application, and proposes and decides on amendments. Finally, "compatibility clauses" indicating that the application of the agreement shall not affect rights, obligations and responsibilities of the parties arising from international law have been inserted in all EURAs[103]. These clauses refer, in particular, to the respect of international conventions on the protection of human rights and refugees, whose implementation should be ensured through appropriate post-return monitoring mechanisms, such as the pilot project suggested by the Commission to monitor the situation of persons readmitted under an EURA[104], initiated in 2014 regarding Ukraine and Pakistan and implemented by IOM in partnership with UNHCR. Concerning human rights protection, it is unfortunate that the EU Action Plan on return, adopted by the Commission in September, does not refer to the need to enhance the implementation of EURAs from the perspective of its compliance with human rights obligations, or to the indispensable efforts to be undertaken in the field of post-return monitoring[105].

Some problematic issues regarding the design and implementation of EURAs relate to the systematic EU demand to include TCN clauses in these agreements, which is received with aversion by most partner countries and creates onerous difficulties and delays in negotiating EURAs[106]. Paradoxically, although they always demand it at EU level, Member States do not usually include this clause in their bilateral readmission agreements, and those included in EURAs seem to be rarely applied in practice[107]. For these reasons, it would be wise, as the Commission proposed in 2011, to focus the EU readmission policy on countries of origin instead of transit and only include TCN clauses in readmission negotiations with countries neighbouring the EU and with a significant risk of transit migration to the EU, alongside appropriate incentives[108]. For the time being, this new

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[101] See S. Wolff, "The Politics of Negotiating EU Readmission Agreements: Insights from Morocco and Turkey", *European Journal of Migration and Law* 16, 2014, pp. 69-95.
[102] European Commission, Communication on "Evaluation of EU Readmission Agreements", COM (2011) 76, 23.02.2011.
[103] On the content of EURAs, see, among others, Coleman, 2009*, op. cit.* or S. Peers et al (eds.), *EU Immigration and Asylum Law (Text and Commentary): Second Revisited Edition*, Vol. 2: EU Immigration Law, Martinus Nijhoff Publishers, Leiden, 2012, pp. 553-589.
[104] Included in COM (2011) 76, rec. 15, and recalled in European Commission, Communication on EU Return Policy, COM (2014) 199, 28.3.2014, p. 10.
[105] See COM (2015) 453.
[106] COM (2011) 76, pp. 8-9.
[107] The same criticism can be made towards provisions on accelerated readmission procedures and transit operations, whose implementation in practice is also limited: COM (2011) 76, p. 5.
[108] COM (2011) 76, 8-9.

avenue does not seem to be exploited[109], although the Commission recently indicated that the opening of negotiations on readmission with main countries of origin will be proposed[110], and that increased leverage to help partner countries to fulfil readmission obligations and support negotiations should be sought[111], both within migration policy – through enhanced facilitation of visas and legal migration opportunities – and outside the home affairs area – including development assistance, neighbourhood policy, trade agreements, trade preferences, education and culture[112].

In view of these difficulties, EU institutions have proposed some new approaches. One would transform standard migration clauses inserted in association and cooperation agreements into more elaborated and directly enforceable clauses[113]. This would be especially true of the relations between the EU and ACP countries discussed above. More recently, the Commission has stated that it will focus on the swift implementation of the readmission commitment in art. 13 of the Cotonou Agreement. Regular bilateral meetings will be organised with key countries of origin in Sub-Saharan Africa to operationalise this provision[114]. Another option would be to negotiate EURAs in parallel with the negotiations of an association agreement, a strategy followed, as highlighted above, with some Western Balkan countries and Georgia[115].

A questionable issue emerges also from the relationship between EURAs and Member States' bilateral readmission agreements. EURAs take precedence over any previous bilateral readmission agreement or arrangement concluded between an individual Member State and the third country in question, insofar as the latter are incompatible with, or cover issues already addressed by, the EU agreement. The power to conclude future bilateral readmission agreements at national level is clearly discarded because of the pre-emptive effect of the EU's exercise of this concurrent external competence, with the exception of implementing protocols to be subscribed between the partner country and individual Member States to regulate certain concrete issues in view of the correct implementation of the EURA[116]. The problem arises when the above-mentioned compatibility clauses specify that "nothing in this Agreement shall prevent the return of a person under other formal or informal arrangements", reducing the described priority rules and, more important, limiting the added value of the EU external action, as this would be meaningful only for those Member States lacking agreements or arrangements with that specific country. The correct and uniform application of EURAs cannot be

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[109] See JHA Council conclusions defining the EU strategy on readmission, 9 and 10 June 2011, JHA Council conclusions on EU Return Policy, 5-6 June 2014, in which the Council recognizes the role of countries of transit and request efforts to facilitate returns of migrants readmitted by these countries to the countries of origin (point 3) as well as JHA Council conclusions on the future of the return policy, 8 October 2015.

[110] European Commission, "EU Action Plan against migrant smuggling (2015-2020)", COM (2015) 285, 27.05.2015, p. 8. See also COM (2015) 453, p. 11-12. The Commission expects that the conclusion of EURAs with countries of origin and the operationalization of readmission commitments contained in the Cotonou Agreement with Sub-Saharan countries (see below) will facilitate the conclusion of EURAs with transit countries in North Africa, as the main stumbling block of negotiations is associated to the TCN clause: COM (2015) 453, p. 11.

[111] See also European Council, Conclusions of 25-26 June 2015.

[112] COM (2015) 453, p. 14. Regarding trade in particular, the Commission suggests to explore the possibility to link the conclusion of free trade agreements or the granting of preferential treatment in parallel to the conclusion of a EURA.

[113] *Ibid.*, pp. 7-8.

[114] COM (2015) 453, p. 11. Priority countries for organising such meetings, in which the Commission, the EEAS, Member States and Frontex will participate, should include, according to the Commission, Nigeria, Senegal, Mali, Ethiopia, the Democratic Republic of Congo, Guinea, Ivory Coast, and Gambia.

[115] *Ibid.*, p. 8.

[116] García Andrade, 2015, *op. cit.*, pp. 343 *et seq.*

ensured[117], in addition to the evident lack of legal certainty and monitoring of safeguards applicable to returnees under informal arrangements.

Visa Facilitation Agreements

Visa Facilitation Agreements (VFAs) are among the most important tools within the first pillar of the GAMM. Their expected aim is to foster well-managed mobility. As their title suggests, they are supposed to facilitate the issuance of Schengen visas for the citizens of third countries. The first set of VFAs were concluded with Russia, Ukraine, Serbia, Montenegro, FYROM, Bosnia and Herzegovina, Albania and Moldova (2007), followed by Georgia (2010), Armenia, Cape Verde (2012) and Azerbaijan (2013)[118]. The EU-Ukraine and EU-Moldova VFAs were amended in 2012. Negotiations on the conclusion of further VFAs are either ongoing or in the phase of preparation with Belarus, Morocco, Tunisia and Jordan. The Commission issued an evaluation of VFAs in 2009[119].

The main characteristics of the VFAs are the simplification and the clear determination of the documentary evidence regarding the purpose of the journey for certain categories of travellers; the attempt to facilitate the issuance of multiple-entry visas (MEVs) for different categories of persons; the general reduction of the visa fee from EUR 60 to EUR 35 and the full visa fee waiver for different categories of persons; and finally, the reduction of the duration of the visa application procedure from 15 to 10 calendar days and the possibility of further reducing the processing time to 2 working days or less in urgent cases[120].

Despite their stated aim to facilitate the issuance of Schengen visas, the real impact of the VFAs is limited[121]. They do not entirely solve the problem with the intricate paperwork associated with the issuance of a Schengen visa, the length of visa procedures and the issue of MEVs. The only facilitation in terms of providing supporting documents is a clear definition of what documentary evidence (in the majority of cases, a written invitation or a request from a host) shall be presented to justify the purpose of certain types of visits[122]. Yet, the documentary evidence relating to conditions of stay and the intention to return to the country of origin, which is more difficult to procure, is entirely excluded from the subject matter of all VFAs. Similarly, the length of visa application procedures is only shortened by five calendar days, from the fifteen calendar days which the consulates have to decide on visa applications according to the Visa Code (VC)[123], to ten days according to the VFAs. Also, consulates of the Member States may extend this period for up to thirty calendar days "when further scrutiny of the application is

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[117] For requests on the need to foresee information and monitoring mechanisms on the practical implementation of EURAs, see J.P. Cassarino, *Study on Readmission Policy in the European Union*, European Parliament, DG for Internal Policies, Policy Department C, PE 425.632, 2010, p. 19-21.
[118] See annex on the inventory of international agreements for complete references (I.2). In practice, the first agreement on visa facilitations concluded by the EU is the MoU between the European Community and the National Tourism Administration of the People's Republic of China, on visa issues concerning tourist groups travelling to the EU (ADS) of 2004. This agreement also contains a readmission clause.
[119] Commission Staff Working Document, "Evaluation of the implementation of the European Community's visa facilitation agreements with third countries", SEC (2009) 1401, 15.10.2009.
[120] On the content of VFAs, see, for instance, F. Trauner and I. Kruse, "EC Visa Facilitation and Readmission Agreements: A New Standard EU Foreign Policy Tool?", *European Journal of Migration and Law*, 10, 2008, especially pp. 421-425.
[121] See in more detail S. Mananashvili, "The EU's (Un)Common Visa Policy: Lost in Aspirations", in Sousa (ed.), *O espaço de liberdade, segurança e justiça da UE: desenvolvimentos recentes = The EU area of freedom, security and justice: recent developments*, Lisboa, Ediual, 2014, pp. 61-96; and A. Weinar, O. Korneev, S. Makaryan and S. Mananashvili, "Consequences of Schengen Visa Liberalisation for the Citizens of Ukraine and the Republic of Moldova", *MPC Research Report* 2012/01.
[122] The documentary evidence for journeys undertaken for tourism or for "private reasons" (except for visits of close relatives is not covered by any VFAs.
[123] Art. 27 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, 15.9.2009, p. 1–58.

needed"[124]. Since modalities for lodging an application are not subject to the VFAs either, the relevant rules of the VC apply in every case, which means that consulates may add a further two weeks by requiring applicants to obtain an appointment to lodge their applications[125]. Finally, issues relating to the facilitation of the mobility of *bona fide* travellers such as business people, students and researchers have not been entirely resolved either by the first-generation VFAs, as the latter leave broad discretion to Member State consulates to issue MEVs for "*up to* 5 years"[126] or "*up to* 1 year"[127], which can be (and has often been) restrictively used.

The amended EU-UA and EU-MD VFAs, the second-generation VFAs, try to solve these problems with MEVs by limiting the discretion of Schengen Member States: the formulas "up to five years" and "up to one year" have been replaced by "five years" and "one year". Another positive result of renegotiating the existing agreements is the extension of their respective personal scopes. Otherwise, there is little innovative about the new agreements, which could for example have attempted to address the concerns relating to the documentary evidence as a main source of the intricate visa procedures. All this raises the question of whether more should be done "to explore the possibilities created by the conclusion of visa facilitation agreements" - as advocated in the Stockholm Programme, especially in the context where the VFAs are offered as a counterbalance of (and as a carrot for) Readmission Agreements[128]. At the EU Action plan on return, the Commission encourages further exploiting VFAs as leverage for readmission cooperation, by improving facilitations included in the agreements, taking into account that current VFAs might not be sufficiently attractive compared to the horizontal facilitations provided by the VC[129].

Visa exemption agreements

In the field of Schengen visas, the EU also concludes Visa Exemption or Visa Waiver Agreements with certain third countries, by which the parties allow visa-free travel for each other's citizens when travelling to their territory for a maximum period of three months during a six month period of stay. The conclusion of these agreements aimed at promoting mobility is exceptional, as the exemption of Schengen visas in the EU is normally granted through an amendment to Regulation 539/2001, subsequent, in some cases, to a VLD. In some situations, however, the EU has been obliged to proceed through the negotiation of international agreements on visa waiver. This is the case with agreements signed in 2009 with five Caribbean States, Antigua and Barbuda, Bahamas, Barbados, Mauritius, Saint Kitts and Nevis, as well as the Seychelles[130], as the liberalisation of visas to these countries was conditioned upon the conclusion of the agreements in order to avoid the repetition of non-reciprocity situations with these countries[131]. Although a legislative exemption seems to be preferred by EU institutions and third countries for reasons of celerity, the signature of an international treaty can provide with more legal guarantees to ensure reciprocity. While these six agreements

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[124] See for instance Art. 7(2) of the EU Georgia VFA.
[125] Art. 9(2) VC.
[126] See e.g. Art. 5(1) of the EU GE VFA.
[127] See e.g. Art. 5(2) of the EU GE VFA.
[128] A mandate for an 'upgraded' VFA with Russia was adopted in April 2011, although negotiations are suspended since the annexation of Crimea by the Russian Federation.
[129] COM (2015) 453, p. 14. The Commission also makes clear that the EU is unlikely to offer VFAs to third countries which generate high numbers of irregular migrants.
[130] OJ L 169, 30.6.2009. See annex on the inventory of international agreements for complete references (I.1).
[131] Council Regulation (EC) No 1932/2006 amending Council Regulation 539/2001 transferred these six Caribbean countries to the list of annex II, stating that the exemption from the visa requirement will only apply from the date of entry into force of the respective visa exemption agreements to be concluded with the EU. See also COM (2009) 48, 49, 50, 52, 53 and 55, 12.2.2009, p. 2.

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cover holders of diplomatic or service passports, persons travelling for the purpose of carrying out a remunerated activity as an employee or service provider are excluded from their scope[132].

Two visa waiver agreements, one concerning holders of ordinary passports and a second on holders of diplomatic, service or official passports, were also concluded in 2010 between the EU and Brazil with a view to ending the non-reciprocity situation with regard to EU citizens from certain Member States[133]. In this case, the signing of an international agreement was required by the Brazilian Constitution imposing the need of parliamentary ratification because of the loss of revenues. In contrast to other agreements and EU legislation, the scope of application of the visa waiver agreement for holders of ordinary passports with Brazil is quite restrictive, excluding citizens wishing to carry out remunerated activities, engage in research, traineeships, studies, social work, or undertake technical assistance, missionary, religious and artistic activities[134]. This has been accepted by the EU as a compromise of Brazil to maintain in force bilateral agreements previously concluded with certain Member States which include these categories of persons not covered by the EU agreement. This perpetuates a clear discrimination among EU citizens, especially towards those nationals of Member States not having a bilateral agreement with Brazil[135]. Assuming that the exclusive external competence of the EU in this field could have allowed the Commission to hold previous bilateral Member States agreements inapplicable[136], this situation reflects the greater negotiating power of Brazil and the lack of solidarity among Member States.

Mandates for new Visa Waiver agreements were adopted in October 2014 with regard to Dominica, Grenada, Kiribati, the Marshall Islands, Micronesia, Nauru, Palau, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Solomon Islands, Timor-Leste, Tonga, Trinidad and Tobago, Tuvalu, Vanuatu and the United Arab Emirates[137].

1.1.1.3. Operational instruments

a. *Regional Protection Programmes and Regional Development and Protection Programmes*
Contrary to the idea of externalising the processing of asylum applications on the territory of third countries that has not been pursued to date, the EU encourages third countries to develop their own asylum system in order to be able to protect themselves refugees. While this kind of support is obviously motivated by the hope to have less asylum seekers coming to the EU or even the possibility to send them back to third countries that could be considered as safe precisely because of their efforts in the field of asylum, these developments can also be considered positively from the point of view of refugees as they may represent more easier possibilities to find asylum. The action plan that has been agreed between the EU and Turkey on 15 October 2015[138] provides an example of this kind of deal between the EU and a third country that has obviously also to be analysed in terms of fair burden sharing between both parties.

The Regional Protection Programmes (RPPs) are also among that kind of tools developed within the fourth pillar on international protection of the GAMM. Their initial conceptual

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[132] In October 2014, mandates for negotiating amendments to these Visa Exemption agreements were adopted.
[133] Austria, Cyprus, Czech Republic, Estonia, Latvia, Lithuania and Malta.
[134] Article 3.2 of the Agreement.
[135] Estonia, Cyprus, Latvia and Malta.
[136] See B. Martenczuk, "Visa Policy and EU External Relations", in Martenczuk, B., Van Thiel, S. (eds.), *Justice, Liberty and Security. New challenges for EU External Relations*, VUBPress, Brussels, 2008, p. 47.
[137] Agreements with Trinidad and Tobago, Samoa, Vanuatu, Saint Vincent and the Grenadines, Grenada, Dominica, Saint Lucia, Timor Leste and United Arab Emirates have been already signed in May 2015.
[138] http://ec.europa.eu/priorities/migration/docs/20151016-eu-revised-draft-action-plan_en.pdf

framework was developed 10 years ago. By following up its own ideas from 2004 on the need for establishing Regional Protection Programmes and a subsequent invitation of the Council to present an action plan for one or more pilot RPPs, the Commission laid down the detailed conceptual framework of such programmes in September 2005[139]. As their title suggests, the RPPs purport to enhance the protection capacity of third countries. Conceptually, they consist of seven types of activities to be implemented mainly in the form of projects aiming at improving general protection situation as well as reception conditions of refugees; establishing effective refugee status determination procedures; providing training to relevant stakeholders; and bringing the benefits for the hosting communities by addressing wider environmental concerns and by disseminating information on the positive impact of refugees. Registration and resettlement components are two further constituent elements of RPPs[140].

The first two pilot RPPs were launched in the Eastern Europe (Belarus, Moldova and Ukraine), considered a region of transit, and in the African Great Lakes Region, particularly Tanzania, hosting a large refugee population (mostly from Burundi and the DRC). Despite their limited impact on achieving the ambitious goals pursued by the RPPs which in practice have taken the form of a multitude of the EU-funded (through AENEAS and Thematic Programme Migration and Asylum) projects, implemented by UNHCR and its partner NGOs on the ground[141], both programmes were renewed in 2010 and two new programmes were launched in 2011 in the Horn of Africa (Kenya, Yemen, Djibouti) and North Africa (Egypt, Libya and Tunisia)[142].

As one of the tools to respond to the Syrian refugee crisis, a new model of the RPPs has been developed since 2012, called Regional *Development* and Protection Programmes, with the aim to integrate in the existing concept a strong development component. In this regard two sets of new activities have been added: (i) research on the impact of the presence of a refugee population on the host community[143], and (ii) practical measures aimed at job-creation, education and improved infrastructure[144]. These additional objectives of RDPPs have the potential to more actively engage third countries' authorities[145]. The first such programme was launched in 2014 in the Middle East, namely in Lebanon, Jordan and Iraq, while RPPs in North Africa and the Horn of Africa will be transformed into the renewed RDPPs.

Finally, the European Agenda on Migration foresees the setting up of new or deepening of the existing RDPPs. To this end, it envisages making EUR 30 million available in 2015/2016, to be complemented by additional – and necessary - contributions from Member States[146].

While it is too early to judge the impact of the new model of RPPs, the insight gained from the implementation of the previous programmes points out the following

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[139] European Commission, Communication on regional protection programmes, COM (2005) 388, 1.9.2005.
[140] *Ibid*., p. 4.
[141] Cf. GHK, *Evaluation of pilot Regional Protection Programmes*, Final Report, DG JFS, European Commission, 2009.
[142] The GAMM Communication from 2011 declared the RPPs as one of the four priorities in the framework of the external dimension of the EU's asylum policy (p. 18)
[143] i.e. conducting analyses, assessments and studies in order to gain a sound understanding concerning the impact of the presence of refugees on host communities with a view to proposing opportunities for development for both refugees and their hosts alike. See: http://europa.eu/rapid/press-release_IP-13-1253_en.htm
[144] *Ibid*. referring to creating employment opportunities, providing micro-enterprise finance, skills development training, and vocational training, as well as appropriate social infrastructure development, including education, water and sanitation and improved energy supply.
[145] P. De Bruycker and L. Tsourdi, "Building the CEAS beyond legislative harmonization: practical cooperation, solidarity and external dimension", in *Reforming the Common European Asylum System: The New European Refugee Law*, Brill, Leiden, (forthcoming), p. 22.
[146] COM (2015) 240, p. 5.

weaknesses of the existing RPPs: (i) too broadly defined in scope, making impossible not only specific planning but also measuring the impact of the programmes; (ii) lack of sufficient coordination of the RPPs with other EU policies in the country concerned; (iii) underdeveloped regional approach of the programmes as well as lack of clarity on what a region is; (iv) lack of local ownership and insufficient involvement of the Member States on the ground (at least until recently), which together with the fact that RPP-labelled projects implemented by the UNHCR often fade in the overall UNHCR activities, leads to the lack of visibility of the RPPs; (v) very weak resettlement component (or its actual implementation), despite the fact that the EU's 2012 Joint Resettlement Scheme provided for the possibility of some financial aid for resettling the refugees from the RPP countries[147].

b.   Frontex working arrangements

The Frontex Agency also develops its own external action in the field of border management and has signed so far, on the basis of article 14 of its founding Regulation, working arrangements (WA) with the authorities of 17 third countries, a clear majority of them from the East: Russia, Ukraine, Moldova, Georgia, FYROM, Serbia, Albania, Bosnia and Herzegovina, the United States, Montenegro, Belarus, Canada, Cape Verde, Nigeria, Armenia, Turkey and Azerbaijan[148]. Negotiating mandates have been adopted with regard to Libya, Morocco, Senegal, Mauritania, Egypt, Brazil and Tunisia[149]. Existing WAs focus on the establishment of operational cooperation in several fields of action covered by the mandate of the Agency: information exchange; risk analysis; training; as well as participating in joint operations and return operations coordinated by the Agency[150]. Regulation 2007/2004, after its 2011 amendment, also enables Frontex to set up and finance technical assistance projects in third countries[151]; to invite observers from third countries to participate in the Agency's activities on joint operations, risk analysis and training[152]; and to deploy and receive liaison officers to maintain contacts with third countries' competent authorities dealing with irregular immigration and return[153]. The deployment of Frontex liaison officers shall only be authorised to third countries "in which border management practices comply with minimum human rights standards", a caution that, surprisingly, does not accompany those provisions related to the remaining actions of cooperation between the Agency and third countries[154]. Frontex also takes part in other GAMM instruments such as MPs, CAMMs and migration dialogues.

One important question to clarify at this point is that these instruments are operational or technical arrangements subscribed between an EU agency and the law enforcement

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[147] See A. Papadopoulou, *Regional Protection Programmes: an effective policy tool?,* ECRE, January 2015, pp. 15-17. See section 2.1.1.4 for a detailed analysis of the impact of RPPs.
[148] WA have also been subscribed with the CIS Border Troop Commanders Council and the MARRI Regional Centre in the Western Balkans. Frontex also cooperates with the following international organisations: DCAF, ICAO, ICMPD, IGC, ILO, Interpol, IOM, OSCE, UNHCR and UNODC. http://frontex.europa.eu/partners/international-organisations/
[149] http://frontex.europa.eu/partners/third-countries/
[150] For several years, Frontex WAs were not publicly available, but the Agency pursued a passive publicity policy, only releasing their text upon concrete requests, which contrasted with some Frontex partners publishing those WA. Their texts are currently available on the Agency website: http://frontex.europa.eu/partners/third-countries/. See the References section for complete references.
[151] Art. 14.5 of Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex Regulation). The insertion of this provision has ended with the situation in which the Agency could not benefit from Union funding corresponding to EU external relations financial instruments.
[152] Art. 14.6 of Frontex Regulation.
[153] Art. 14.3 and 4 of Frontex Regulation.
[154] On the place of fundamental rights in Frontex mandate, see V. Moreno Lax, "Frontex as a global actor: external relations with third countries and international organisations", in M. Dony (ed.), *La dimension externe de l'espace de liberté, de sécurité et de justice au lendemain de Lisbonne et de Stockholm: un bilan à mi-parcours*, Éd. de l'Université de Bruxelles, Bruxelles, 2012, p. 181-182.

authorities of third countries, not international agreements. Taking into account that both authorities lack international legal personality, that the Agency is independent only in relation to technical matters[155], and that the EU exclusively takes on international legally-binding commitments when the procedure of article 218 TFEU is followed, their nature as non-normative agreements seems well-established. Another characteristic of WAs is that they may promote operational cooperation on border management with third countries, but cannot serve as founding bases for the joint surveillance operations that certain Member States deploy in the territorial waters of third countries. For the moment the power to implement border controls remains in the hands of Member States[156]. Although *a priori* this would not be relevant since EU conventional powers normally derive from its normative powers, cooperation with third countries in this case, and joint patrols at sea in particular, relate to execution powers. Frontex therefore lacks the competence to obtain, in its WAs, the consent of the third country in question, making agreements signed by Member States indispensable, at least for now[157].

Official external evaluation of the Agency's activities is limited. A first evaluation report was issued in 2009 for the period from January 2006 to June 2008[158], which simply acknowledged the preference of Member States for the Agency to concentrate on practical cooperation with third countries, limiting its influence on political issues related to that cooperation, and highlighting the importance of Frontex cooperation with third countries for the success of joint operations[159]. The second evaluation, covering July 2008 to July 2014, has been finalised but is not yet publicly available[160]. Further independent assessment should seek to thoroughly analyse the design and efficiency of Frontex forms of cooperation with third countries, as well as their impact on the rights of immigrants and asylum seekers[161].

c. EASO cooperation with third countries

The mandate of the European Asylum Support Office (EASO) envisages cooperation with third countries although its external dimension has not yet been extensively developed in practice. EASO should support the external dimension of the CEAS[162], by coordinating the exchange of information and other actions within the EU, enabling technical cooperation with competent authorities of third countries, in particular in order to assist capacity-building measures, implement RPP/RDPPs or participate in resettlement actions[163]. As the

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[155] Art. 15 of Frontex Regulation.

[156] On the basis of secondary law only, once the exclusivity of this national power has been suppressed by the Treaty of Lisbon when the drafting of former article 62(2)(a) TEC was amended in order to eliminate the terms related to standards and procedures "*to be followed by Member States* in carrying out checks on persons".

[157] See P. García Andrade, "Initiatives of EU Member States in managing mixed flows in the Mediterranean and the EU distribution of competences", in C. Matera and A. Taylor, *Common European Asylum System and human rights: enhancing protection on times of emergencies*, CLEER Working Papers, 2014/7, pp. 54-55.

[158] COWI, External evaluation of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, Final Report, January 2009, available at http://www.statewatch.org/news/2009/may/frontex-eval-report-2009.pdf

[159] *Ibid.*, p. 63.

[160] The final report for this second evaluation awaits the endorsement of Frontex Management Board: Council, Presidency Note on "Migration: EU Action, state of play and next steps", doc. no. 11782/1/15 REV 1, 11.9.2015, point 26.

[161] See, among others, P. De Bruycker *et al., Setting up a Common European Asylum System*, European Parliament, DG for Internal Policies, Policy Department C, PE 425.622, 2010. Regarding the need to report on how human rights obligations are being respected in extraterritorial settings, see E. Guild and V. Moreno Lax, *Current Challenges for International Refugee Law, with a focus on EU Policies and EU Co-operation with UNHCR*, European Parliament, DG for External Policies, PE 433.711, 2013, especially p. 26.

[162] See L. Tsourdi, "What role for the EU as an international protection actor? Assessing the external dimension of the European asylum policy", in M. Dony (ed.), *La dimension externe de l'espace de liberté, de sécurité et de justice au lendemain de Lisbonne et de Stockholm: un bilan à mi-parcours*, Éd. de l'Université de Bruxelles, Bruxelles, 2012, pp. 147-160.

[163] Article 7 of Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, OJ L 132, 29.5.2010, p. 11–28 (EASO Regulation).

main aim of EASO is to support Member States in the implementation of the CEAS and strengthening practical cooperation, the Office is mandated to facilitate operational cooperation between Member States and third countries and may also cooperate with the latter's authorities by subscribing, like Frontex, working arrangements with them[164].

On 29 November 2013, the EASO Management Board adopted the EASO External Action Strategy that defines the approach and role of the Office with regard to the external dimension of the CEAS, its underlying principles, the implementation methodology to follow, geographical priorities, and as the forms that EASO external action will take[165]. Geographic priorities of EASO are enlargement countries and the Western Balkans, European Neighbourhood partners, Russia, countries included in RPPs, countries with which the EU is negotiating or has concluded a MP, as well as countries of the Prague Process, Rabat Process and Budapest Process[166]. EASO external activities can take the followings forms: supporting implementation of RPP/RDPPs; providing training to competent authorities in third countries; coordinating the development of practical cooperation actions on resettlement activities undertaken by Member States; and supporting capacity building measures in third countries with regard to their asylum and reception systems[167]. Partners that will facilitate EASO external action in third countries are the Commission (DG Home, DG DEVCO and ECHO), Member States, other JHA agencies, International Organisations, the EEAS and EU delegations in third countries.

In practice, the first specific project of cooperation undertaken by EASO relates to 'Promoting the participation of Jordan in the work of EASO as well as the participation of Tunisia and Morocco in the work of EASO and Frontex', which started in 2014[168]. EASO has not to date focused significantly on resettlement[169]. No working arrangement has been signed by EASO with third countries for the time being[170], showing the weakness of the external action of the Agency due to the limited budget it can devote to this area[171]. Nevertheless, the Office can also work under general agreements between the EU and a third country such as an association agreement, a MP or a CAMM[172].

1.1.2. Comparative analysis of EU instruments

The above overview allows making some considerations regarding the benchmarking of existing instruments of EU cooperation with third countries in the field of migration with the general objectives of the GAMM, the political framework of this external cooperation. First, all the four pillars of the GAMM are covered, to a certain extent, by the different instruments of EU cooperation with third countries analysed above (see Table 3 below). Among them, only regional and bilateral dialogues, MPs and CAMMs present a comprehensive nature, by which the distinct priorities of the GAMM are tackled simultaneously under a single instrument. Migration clauses inserted into association and cooperation agreements address the first pillar of the GAMM, only as far as the integration of legal residing migrants is concerned, and the second pillar of the GAMM, mainly regarding readmission of irregular migrants. Also RDPPs, in their renewed version,

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[164] EASO WA must have the agreement of the Commission and rest within the limits of its mandate. Art. 49 of EASO Regulation.
[165] EASO External Action Strategy, available at https://easo.europa.eu/wp-content/uploads/EASO-External-Action-Strategy.pdf
[166] *Ibid*., point 5.
[167] *Ibid*., point 6.
[168] EASO Annual Report, 2014, p. 81. The Office is also involved, since 2012, in the Prague Process Pilot Project 'Quality and training in the asylum processes'. See EASO Annual report, 2013.
[169] De Bruycker and Tsourdi, forthcoming, *op. cit.*, p. 14.
[170] EASO has only subscribed working arrangements with UNHCR and other agencies of the EU (Frontex, FRA, EU-Lisa), in accordance with article 50 and 52 of EASO Regulation.
[171] De Bruycker and Tsourdi, forthcoming, *op. cit.,* p. 14.
[172] EASO External Action Strategy, point 11.

are conceived to achieve the third pillar on development and the fourth on promoting international protection. Other instruments such as EURAs, VFAs, and Frontex working arrangements are focused on the fulfilment of one specific priority of the GAMM, combating irregular immigration, facilitating mobility and reinforcing border controls, respectively. Unfortunately, no instrument of EU cooperation currently includes significant facilitations of admission of migrants or labour migration opportunities for third partners, at least at EU level[173]. Also, the second pillar of the GAMM is the most integrated priority into these instruments of the external dimension of the EU migration policy, while the third and the fourth pillars on the maximisation of migration impact on development and the promotion of international protection are the objectives that receive less attention in terms of number of instruments. Among non-comprehensive instruments, only RDPPs are indeed pursuing the objectives of these two pillars. The external action led by EASO has not developed sufficiently in practice yet and has not materialised in specific operational instruments that could have been integrated in this comparative analysis.

By way of comparing the various instruments of EU cooperation to each other, MPs and CAMMs are conceived as similar frameworks of cooperation with partner countries. Apart from the fact that a CAMM does not include the commitment to negotiate a readmission agreement and a visa facilitation agreement with the EU, the CAMM is more focused, through recommendations and orientations, on supporting research and data collection, and on building the partner country's capacity for migration management. References to specific actions of cooperation on concrete fields between the EU and the third country which are, in most cases, drafted as exploratory contacts for future cooperation, are quite limited.

Interesting links can also be found between MPs and association and cooperation agreements that include migration clauses. The "global agreements" constitute international legally binding agreements, although post-Seville clauses on migration management cooperation can be qualified as material soft law, sharing this soft law character with MPs. However, regarding the objective related to legal migration, while association and cooperation agreements include enforceable rights for migrant workers on equal treatment in labour conditions and, in some cases, on social security coordination, joint declarations establishing MPs rather deal with forms of political cooperation among the parties, such as the organisation of information campaigns; capacity building; pre-departure training actions, and the promotion to cooperate in recognition of qualifications and portability of social rights (the latter objective can only be operationalised, according to the concrete initiatives contained in MPs, through the signing of bilateral agreements on social security).

As far as framework dialogues are concerned, regional dialogues and bilateral dialogues pursue similar purposes and are launched and developed on the basis of the same kind of institutional setting which involves both the Commission and Member States, although bilateral dialogues are usually linked to more formal structures such as joint councils of association or cooperation agreements. Both kinds of dialogues risk receiving the same criticism for lack of sufficient involvement of Member States and for their limited operational results in achieving GAMM objectives. However, these political frameworks should probably be judged for their contribution to the discussion of politically sensitive issues among countries of origin, transit and destination and their input to mutual knowledge and exchange of best practices, although some of these dialogues also pursue

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[173] Some initiatives of Member States included in MPs may refer to specific offers to this effect, but they are exceptional.

pragmatic and operational cooperation that should produce results, at least in the medium-term. Bilateral dialogues have not been included in the table below, since their number and variety made difficult to summarise their specific objectives.

Regarding their nature, GAMM comprehensive instruments, that is regional dialogues, bilateral dialogues, MPs and CAMMs, are all political instruments, while more specific instruments focused on one of the GAMM priorities such as VFAs, EURAs, RPPs and Frontex working arrangements are either legally binding or operational instruments. "Global agreements" constitute international legally binding instruments, although the nature of their migration clauses may vary from hard (clauses on equal treatment of workers) to soft law (clauses on migration cooperation and readmission). The material soft law nature of the latter matches the political character of the instrument of the MP as such, which makes it challenging to compel the parties to comply with their engagements and necessitates the adoption of further actions in order to attain the objectives of the instruments. All comprehensive instruments also ensure the participation of the Union and its Member States, either in the dialogues or joint declarations of MPs, or at the formal conclusion of association and cooperation agreements, reflecting the shared nature of EU external competences in the field of migration. However, more specific agreements such as EURAs, VFAs and visa waiver agreements are concluded by the EU alone, either because they constitute the exercise of a concurrent competence (readmission), or because they pertain to an ERTA-exclusive competence of the EU (Schengen visas).

From a geographical perspective, an imbalance to the detriment of the South is noticeable on the coverage of the GAMM instruments in general, and particularly of EURAs, VFAs and MPs. The reasons why deepening migration cooperation with Eastern neighbours is easier than with Southern countries seem to be linked to enlargement. Accession perspectives entail an enormous incentive lacking in Africa for the signature of EURAs, and the EU feels less concerned in extending visa facilitations to countries that, in a medium or long-term perspective, will have possibilities to join the EU[174], or at least to enjoy visa-free regimes as a consequence of ongoing VLD. Another factor lies in the concerns of Eastern EU Member States about limiting the negative impact of their Schengen accession on their neighbourhood relations. As a result, the selection of some Eastern countries for extending instruments such as MPs, like Georgia or Armenia, has been more symbolic than migration-driven[175].

In sum, the GAMM has been equipped, since its adoption until its consolidation, with instruments capable of addressing all the objectives set by this political framework. However, EU institutions and Member States should strive to work on every objective of each of the pillars of the GAMM with a similar degree of intensity, especially on the less pursued objectives related to migration and development, international protection and legal migration opportunities. The impact assessment corresponding to chapter 2 of this study will support this finding.

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[174] De Bruycker, 2014, *op. cit.*, p. 98.
[175] *Ibid*.

		Table 3: Benchmarking of EU cooperation instruments with GAMM objectives[176]		
	Organising legal migration and fostering mobility	**Preventing and combating irregular immigration and trafficking in human beings**	**Maximising development impact of migration and mobility**	**Promoting international protection**
Regional dialogues	- management of legal migration and improvement of conditions for legal migration and mobility (SR, MMD, RP) promotion of integration of legal residents (PP; SR) - counteracting discrimination, racism and xenophobia (SR) - facilitating mobility through visa liberalisation (EaP) and visa facilitation partnerships between technical and scientific institutions; cooperation on professional training; facilitation of circulation of workers and people (RP, MMD) - facilitating circular migration (RP)	- preventing and fighting illegal immigration; readmission, voluntary return and sustainable reintegration (PP; SR, EaP, RP) - prevent and combat smuggling of migrants and trafficking of human beings, supporting its victims (SR, EaP, MMD, KP, RP) - reinforcement of national border control capacities of transit and departure countries (RP)	- strengthening positive impact of migration on development (PP; SR; ACP) - promoting development (RP, KP) and co-development through financial instruments (RB) - remittances and diaspora (MMD) promoting sustainable development	- strengthening capacities in the area of asylum and promoting international protection (PP; SR; RP, MMD)
MPs[177]	- promote better framework for mobility (MD, CV, GE, AM, AZ) - simplifying procedures for legal stays (MA, TU, JO) - information on legal channels and employment (all) - circular migration (MD, CV, AM, AZ, GE, TU) - pre-departure training (MD, CV, GE, AM, AZ) - exchange programmes on education (GE, AM, AZ) - recognition of academic and professional qualifications (GE, AM, MA, TU, JO) - social protection of migrants (MD, CV, AR, MA, TU, AZ) - migration data collection - dialogue and cooperation on visas to facilitate mobility (ALL), including negotiations of VFA (CV, AZ, MA, TU, JO) - capacity building on legal migration (MD, CV, GE, AM, AZ, MA) - integration of legal residents (MA, TU) - reception and adaptation of asylum seekers (GE) - improve migration of students and researchers (TU, MA)	- border management cooperation (ALL) - operational cooperation with Frontex (MD, CV, GE, AM, AZ, MA) - negotiation and implementation of EU readmission agreements (GE, AM, MA, TU, AZ, JO, CV) - voluntary return and reintegration (MA, TU) - security of identity documents (GE, AM, MA, AZ, TU, JO) - campaigns against irregular immigration and trafficking (, GE, AM, MA, AZ, JO) - reinforced capacities on search and rescue (CV, TU) - cooperation on victims of human trafficking (MA) - unaccompanied minors (MA, TU) - assistance to detainees (TU) - capacity building in fight against irregular immigration and trafficking (MA, TU, JO) - reference to regularisations (GE) - integration of legal residents and fight	- voluntary return and reintegration (MD, CV, GE, AM, AZ, JO?) - socio-economic development (MA, TU, JO) - return of highly-skilled migrants (MD, CV, GE, AZ, MA) - bilateral agreements on migration and development (TU) - recognition of skills and qualifications (MD, CV, GE, AM, AZ) - exchange of students, researchers and specialists (MD, CV, GE, AM, AZ) - cooperation regarding diaspora and remittances (ALL) - prevent brain drain and brain waste (MD, GE, AM, MA, AZ, JO) - circular migration (MA, JO)	- capacity building on asylum (GE, AM, MA, AZ, TU, JO) - strengthening legislative and institutional framework of asylum (MD, CV, MA, TU, JO) - facilitating reception of asylum seekers and simplified procedures on asylum for those with special needs (GE, AM, AZ) - application of *non-refoulement* principle to TCN detained in the country (TU) - cooperation within the RPP (MD, TU, JO) - support to manage inflows of refugees under UNHCR mandate (JO)

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[176] Source: Elaborated by the authors using information from official documents setting the instruments in question.
[177] The information contained in this table on MPs is based on the specific objectives set with each partner and not on annexes, as the latter evolve with time. The fact that a specific objective is not explicit in the text of a MP is without prejudice of their respective annexes having included concrete initiatives to pursue those objectives.

		against xenophobia (JO)		
CAMM	- research - capacity building on collection and analysis of information and statistics on legal migration - efficiency and security of legal migration procedures - best practices between competent services - mutual recognition of qualifications - supporting integration of legal residents in the EU - exploring enhanced mobility opportunities of students and researchers - exploring improvement of visa procedures	- research - capacity building on collection and analysis of information and statistics on irregular migration - improving legislation and implementation - capacity building on border management, prevention and fight against smuggling of migrants - reducing visa overstay - support on combating trafficking in human beings - supporting protection to THB victims and reintegration - strengthening interagency cooperation within the partner country and with the EU - improving travel document security - exploring cooperation on return and increasing efficiency of procedures	- research - harnessing migrants' contribution to the economies of destination and origin countries - facilitating remittances and their development effect - supporting diaspora networks and integration of legal migrants - mitigating social consequences of migration (circular migration, brain drain) - optimising benefits from return migration	- supporting the partner's asylum system - supporting effective implementation of international conventions - capacity building on reception and identification of asylum seekers - capacity building on collection and analysis of information and statistics - promoting mutual knowledge of practices and implementation - strengthening cooperation with UNHCR - meeting needs of unaccompanied minors and other vulnerable groups internally displaced.
Migration clauses in "global agreements"	- right to equal treatment in labour conditions, salary and dismissal for workers of the parties - access to employment for workers and their families legally residing in the parties - coordination on social security	- confirm readmission obligations with regard to nationals - engagement to conclude readmission agreements		
EURAs		- facilitate the implementation of readmission obligations regarding nationals - create readmission obligations regarding third-country nationals - detailed administrative and operational procedures for ensuring return		
VFAs	- promoting mobility, by facilitating the issuance of short-stay visas for citizens of the parties - exempting visas to holders of diplomatic passports			
RPP / RDPP			- research on the impact of refugees on host communities (RDPP) - practical measures aimed at job creation, education and infrastructure (RDPP)	- enhancing protection capacity of third countries - improving reception conditions - establishing effective refugee status determination - provision of training - registration and resettlement
Frontex WA		- operational cooperation on border control in order to counter irregular migration and other related cross-border crime, as well as strengthening security at borders		

1.2. Mapping of funding sources for EU cooperation with third countries on migration and asylum

KEY FINDINGS

- **Funding instruments applicable to EU external cooperation in the field of migration and asylum** are the result of a long process of accumulation in the framework of different EU policies: migration and asylum policy, international development cooperation, external policy, neighbourhood policy, humanitarian aid. Migration has made its way into the main thematic priorities of most EU external cooperation funding instruments and regional programmes. Therefore, there is a high number of relevant instruments responding to sometimes different logics and often leading to overlaps. Visibility and coherence are difficult under these conditions and hinder evaluation of a cooperation portfolio that, between 2004 and 2014, exceeded EUR 1 billion on more than 400 projects.

- For 2014-2020, the former TPMA has been merged with four other former thematic programmes into the **Global Public Goods and Challenges (GPGC) Programme**. This new integrated thematic programme has an earmarked budget of EUR 344 million for migration and asylum.

- **In terms of geographical distribution** of these funds among partner countries, there is a clear focus on Neighbourhood countries (more than half of all funds) and the Sub-Saharan Africa. **The distribution of funds across the priorities of the GAMM** since 2004 shows a clear prevalence of the fight against irregular migration, whereas legal migration only attracts 14% of all funds. The launching of the **EU Emergency Trust Fund for Africa** bringing together EUR 1.8 billion in development cooperation funds to promote stability and address the root causes of irregular migration in Africa will facilitate and accelerate the disbursement of this budget.

- **The new Asylum, Migration and Integration Fund** has substantially increased the possibility of funding external cooperation actions in third countries in line with Home Affairs priorities. This is a positive step from the perspective of policy coherence, as long as purely migration-driven objectives will not anymore be pursued through development cooperation, as it was the case with the AENEAS and the TPMA.

EU external cooperation on migration and asylum is the result of a long process of accumulation in the framework of different EU policies: EU migration policy, EU international development cooperation, EU external policy, EU Neighbourhood Policy, and EU humanitarian aid. Overall, between 2004 and 2014 it spent more than EUR 1 billion on more than 400 projects. To a large extent, it has responded to emerging needs, both by EU policies and by partner countries as migration and asylum have gradually consolidated as key issues of the international agenda. As a consequence of this unplanned pattern, the implementation and the funding sources are institutionally scattered between DG DEVCO, DG HOME, DG NEAR and the EEAS, with very different objectives and intervention formats. This makes it very difficult to collect comprehensive data on EU cooperation in the fields of asylum and migration. Additionally, these funds do

not always complement internal funds for migration-related programmes[178], which for the 2007-2013 period amounted to EUR 4 billion.

1.2.1. Funding sources of EU external cooperation on migration and asylum

1.2.1.1. DG DEVCO funds

EU development cooperation in the field of asylum and migration is channeled through both horizontal/thematic and geographical funding instruments. For the 2014-2020 budgetary period, the resulting matrix of funding instruments is shown in Figure 1. Migration and asylum actions can be funded with all of them, since they feature as priorities in the respective regulations. Geographical instruments fund development cooperation in pre-accession countries (Instrument for Pre-accession Assistance, IPA[179]), neighbourhood countries (ENI[180]), and ACP countries (European Development Fund, EDF[181]). The Development Cooperation Instrument (DCI) covers all of them and the rest of developing countries[182]. Thematic instruments (such as the European Instrument for Democracy and Human Rights[183], the Instrument contributing to Stability and Peace[184] or the Partnership Instrument[185]) are subsidiary and complementary to geographical instruments and intended to fund innovative and pilot actions, multi-regional or cross-cutting interventions.

The result is a proliferation of funding instrument "envelopes" available to fund projects in this area in each partner country: depending on the regions, this can amount from six to 15 different funds and programmes. As a consequence, there is a multiplicity of projects in each country, with different legal and institutional frameworks, not always aligned and often overlapping with each other. In many countries there is not even a comprehensive list of such EU-funded programmes. In Morocco, for instance, there are currently at least 25 on-going projects in this domain, and the MP Scoreboards for Moldova and Tunisia include more than 100 projects[186]. The consequence of this dispersion of funding sources is a lack of visibility of total funds allocated to this area, in particular for the coming years: funds are committed for 2014-2020 to different funding instruments, but which thematic priorities they will be allocated to within each of the instruments is not predetermined. On the other hand, funds allocated for different areas and policy instruments are often confused, leading to very different visions of EU cooperation. For Moldova, for instance, estimates of amount of funds mobilised to

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[178] See P. Hausemer et al., *EU funds for Migration policies: Analysis of Efficiency and best practice for the future*, European Parliament, DG for Internal Policies, Policy Department D, PE 552.298, 2015.

[179] Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II), OJ L 77, 15.3.2014.

[180] Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument, OJ L 77, 15.3.2014.

[181] The international conventional legal base of the EDF is the Cotonou Association Agreement between the EU and its Member States, on the one hand, and ACP countries, on the other. For complete references, see https://ec.europa.eu/europeaid/funding/about-funding-and-procedures/where-does-money-come/european-development-fund_en.

[182] See Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020, OJ L 77, 15.3.2014. This Regulation is the legal basis as well for the Pan-African Instrument and the civil society and local authorities and the GPGC programmes.

[183] Regulation (EU) No 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for democracy and human rights worldwide, OJ L 77, 15.3.2014.

[184] Regulation (EU) No 230/2014 of the European Parliament and of the Council of 11 March 2014 establishing an instrument contributing to stability and peace, OJ L 77, 15.3.2014. This instrument will fund, for instance, the new Polivalent Centre announced by the Commission in Niger.

[185] Regulation (EU) No 234/2014 of the European Parliament and of the Council of 11 March 2014 establishing a Partnership Instrument for cooperation with third countries, OJ L 77, 15.3.2014.

[186] See case studies in Annex I.

support the implementation of the MP vary between EUR 25 and 50 million, depending on the perspective[187].

Figure 1. Main instruments for EU external cooperation 2014-2020
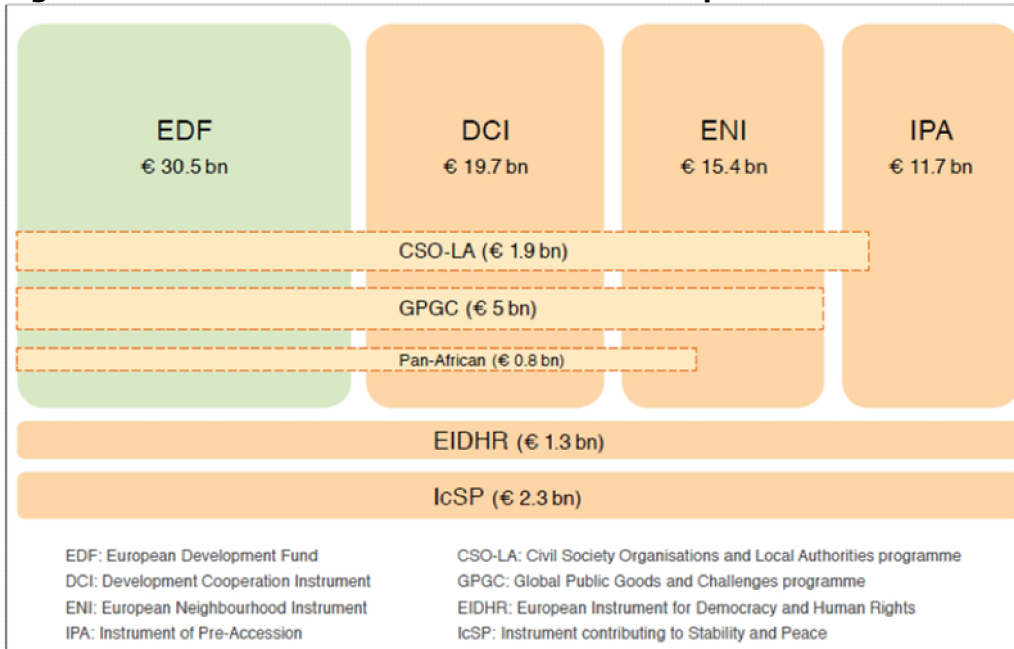
Source: Concord (2014)

In any case, a clear pattern is a constant increase of total expenditure on migration programmes over the last ten years. Figure 2 shows the total funds spent for each year. Overall, it shows a steep increase in funds between 2004 and 2008, a peak in 2010-2011 due to some large integrated border management operations in Eastern Europe and a stabilisation over 2013-2014 at a level of around EUR 100 million a year. Roughly half of that corresponds to thematic funds (AENEAS for 2004-2006 and the Thematic Programme on Migration and Asylum –TPMA- on 2007-2013) and the other half to geographical funds. Migration features are one of the thematic priorities in most Regional Indicative Programmes, but only rarely as focal points in National Indicative Programmes, in particular in Morocco, Ukraine and Pakistan.

The dedicated thematic programme was first created in 2004 as AENEAS to respond to the increasing need for action in this field[188]. Under this programme, EUR 250 million was allocated to promote more efficient management of migration flows in co-operation with third countries, in particular those engaged in preparing or implementing a readmission agreement, this link being already explicitly made at the time. For 2007-2013 it became the Thematic Programme on Migration and Asylum (TPMA[189]), with a total budget of EUR 384 million for the period. The TPMA was implemented through four calls for proposals that allowed for a large variety of projects, implementing actors and interventions throughout the world (65% of total funds for more than 180 projects) and through

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[187] See case study in 2.2.3 of Annex I.
[188] Regulation (EC) No 491/2004 of the European Parliament and of the Council of 10 March 2004 establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS), OJ L 80, 18.3.2004.
[189] Art. 16 of Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation, *OJ* L 378, 27.12.2006.

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targeted initiatives contracted through direct agreements for the rest, such as funding the Rabat Process or MPs (25 projects).

For 2014-2020, the TPMA has been merged with four other former thematic programmes into the Global Public Goods and Challenges (GPGC) Programme in the framework of the DCI[190]. This new integrated thematic programme, however, keeps a preset distribution of funds across thematic priorities, so that immigration and asylum have a total budget allocation of EUR 344 million[191]. In contrast to the former TPMA, the GPGC has to focus, according to its legal basis, on global and multi-regional initiatives so as to ensure complementarity with regional and bilateral funds, and only in exceptional cases on national projects (for instance to support the launching of Mobility Partnerships). Instead of the multiplicity of projects of the TPMA, the GPGC will be implemented through large global projects directly assigned by DG DEVCO. However, in order to keep some scope for the participation of small scale actors, a limited call for proposals is being prepared for 2015 in the amount of EUR 15 million.

Thematic programmes in the field of immigration and asylum are complemented by a demand-driven technical assistance facility (Migration EU Expertise, MIEUX) mobilised upon request of partner countries. MIEUX has a global scope and is based on peer-to-peer assistance (i.e. technical assistance is provided by experts from Member States administrations)[192]. It was launched in 2009 exclusively in the field of irregular migration (EUR 3 million until 2011), and subsequently extended to all areas of migration (EUR 4.5 million for 2011-2014 and EUR 8 million for 2015-2018). Other technical assistance facilities have been set up in the framework of regional programmes, such as the Demand Driven Facility in the framework of the Free Movement and Mobility in ECOWAS countries or the ACP-EU Action for Migrations, providing technical assistance on visas, readmission and transfer of remittances. The neighbourhood countries can also benefit from the TAIEX programme.

Figure 2. Funding for external cooperation programmes on migration and asylum (2004-2013)
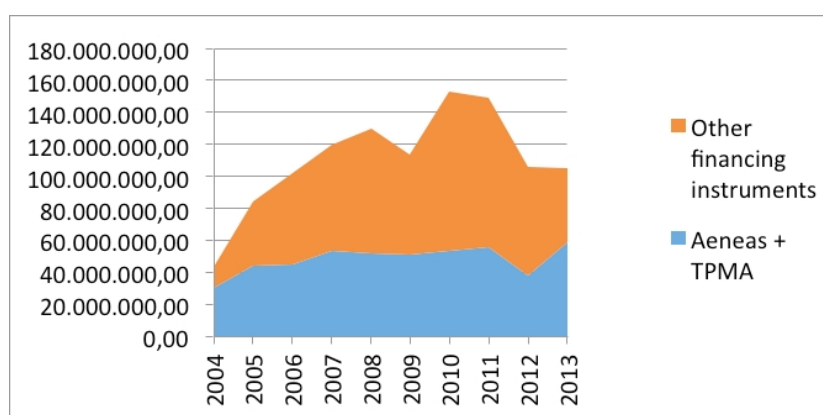
Source: DG DEVCO

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[190] See art. 7 and Part A of Annex II of Regulation (EU) No 233/2014.
[191] This is less than in the former budgetary period, but it refers only to thematic actions, not to the overall funds on immigration and asylum, which are poised to grow as these issues become increasingly relevant.
[192] For a review of actions and lessons learnt, see ICMPD, *Migration EU Expertise 2009-2015. Advancing migration cooperation through demand-driven peer-to-peer expertise. Lessons learnt and good practices*, 2015.

In terms of geographical distribution of these funds among partner countries, there is a clear focus on Neighbourhood countries (more than half of all funds) and the Sub-Saharan Africa. Figure 3 below shows the geographical distribution of the funds of the Thematic Programme on Migration and Asylum in 2004-2011 (between 40% and 50% of total expenditure on migration and asylum cooperation).

Figure 3. AENEAS and Thematic Programme on Migration and Asylum. Expenditures / Geographic priorities 2004-2011 (in euros)
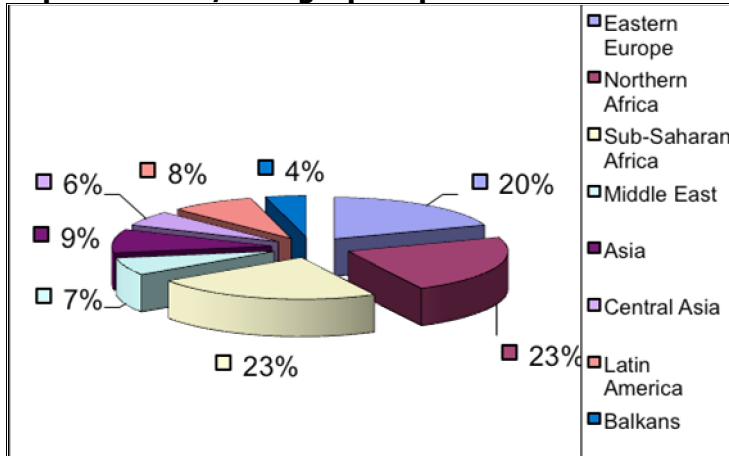
Source: DG DEVCO

Figure 4 shows the distribution of funds across the priorities of the GAMM of the more than 400 projects registered by DG DEVCO since 2004 in its database of projects. There is a clear prevalence of the fight against irregular migration, whereas legal migration only attracts 14% of all funds.

Figure 4. AENEAS and Thematic Programme on Migration and Asylum. Expenditures / Thematic priorities 2004-2011 (in euros)
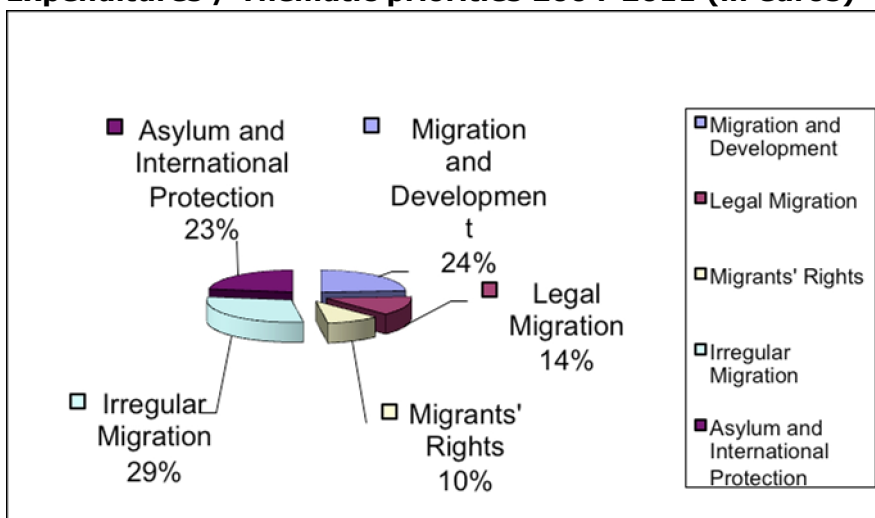
Source: DG DEVCO

The most important operational areas are integrated border management, asylum and regional protection programmes, migration and development (including, in particular, remittances projects and diaspora mobilisation), labour migration management, free movement of persons in regional integration processes, anti-trafficking, irregular migration prevention programmes, support for return and reintegration and for policy dialogues in the field of migration. Data collection and research is another expanding area, as a crucial basis for evidence-based policies. In contrast, skills development and recognition to date absorbs a very small proportion of resources, despite the recurrent reference to reduction or compensation of "brain drain" in the legal basis and programming instruments, in particular under the heading of Migration and Development (see Table 4 below). Increasingly, the European Commission tends to fund larger integrated migration management programmes comprising several of these elements, which complicates their evaluation.

In terms of modalities of intervention, capacity building, including technical assistance, policy development, training and sometimes even equipment, absorbs a large share of total funds. Another standard type of intervention is the implementation of migrant support, assistance or protection measures, including information campaigns. There are also numerous pilot projects and exchanges of good practices. Budget support has seen little use in the field of migration and asylum, with only two specific operations of migration sectoral budget support programmes (in Ukraine on border management and migration, including readmission related issues, for EUR 106.1 million for 2004-2010, and in Morocco for EUR 67.6 million for 2007-2010 for an integrated border management programme). Additionally, some migration top-up funds and indicators have been added recently to ongoing sectoral budget support programmes (in education and health, for instance) in Morocco. This "mainstreaming" of migration into sectoral budget support programmes is a priority for the future.

An innovation in this area is the launching of a European Union Emergency Trust Fund for Africa, recently announced by the European Commission. This will bring together EUR 1.8 billion in development cooperation funds to promote stability and address the root causes of irregular migration in the Sahel, the Horn of Africa and North Africa[193]. Funds come from approved budgets for the EDF, the ENI, the DCI, the ISP, the AMIF and other funds such as humanitarian assistance (ECHO). The aim is to complement them with contributions from Member States. Although it is conceived to cover a wide spectrum of development and emergency actions[194], the Trust Fund is increasingly seen as an instrument focused on migration-related issues. It is planned that the Fund will be signed at the Valletta EU-Africa Summit on 11-12 November 2015. Because of the emergency nature of this Trust Fund, it will allow for much faster, simpler and more flexible procedures for the disbursement of aid.

1.2.1.2. DG HOME funds

For the 2014-2020 budgetary period, the DG HOME funds in the field of migration and asylum (the European Refugee Fund, the European Return Fund and the European Fund for the Integration of Third-Country Nationals) have been merged into a single

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[193] See http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/2_factsheet_emergency_trust_fund_africa_en.pdf.

[194] Including economic programmes to create employment, basic services for local populations, migration management and promoting conflict prevention and enforcing the rule of law through capacity building in support of security and development as well as law enforcement, including border management and migration-related aspects.

instrument, the Asylum, Migration and Integration Fund (AMIF)[195], with total resources of EUR 3,137 million. Its main objectives include, among others: efficient management of migration flows; the implementation, strengthening and development of a common policy on asylum and a common immigration strategy; supporting legal migration in accordance with Member Sates' economic and social needs, such as labour market needs; promoting effective integration of migrants; enhancing fair and effective return strategies, to contribute to combating illegal immigration; and enhancing solidarity and responsibility-sharing among Member States, in particular towards those most affected by asylum and migration flows. This new fund has substantially increased the possibility of funding external cooperation actions "to ensure that the EU has the means to pursue its Home Affairs policy priorities and uphold its interests in relations with non-EU countries"[196], which has been very limited so far. However, measures on and in relation to third countries should not be directly oriented towards development, but should complement, when appropriate, the financial assistance provided through external aid instruments[197]. This is a positive step from the perspective of policy coherence and respect for EU primary law, since external cooperation actions aimed at achieving purely migration-driven objectives in the interest of the Union and its Member States will now be financed by the AMIF, an instrument founded on legal bases of Title V TFEU, and not in those corresponding to development cooperation as it was the case with AENEAS and the TPMA[198]. Reinforcing capacities of third countries in migration management might contribute to their development, but indirectly at best. Therefore the previous programmes could have implied a diversion of development funds from their main objective, in contradiction with EU Treaties[199]. The distribution of the funds within AMIF can be summarised as:

Global resources EUR 3,137 million, of which:
- EUR 2,392 million for national programmes of Member States (minimum 20% for asylum, minimum 20% for legal migration/integration). Under national programmes, Member States can fund external actions, and support measures to implement MPs, which need to cohere with measures supported through the EU external cooperation instruments and with the objectives and principles of EU external action. As a consequence, measures supporting the implementation of MPs, in particular those of a bilateral nature that align with national objectives and priorities, can be included in the respective national programmes of the EU Member States. Such measures could inter alia cover:

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[195] See Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, and Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management, OJ L 150, 20.5.2014.

[196] See presentation by European Commission, Directorate General for Home Affairs, *Funding Home Affairs beyond 2013* http://ec.europa.eu/dgs/home-affairs/financing/fundings/funding-home-affairs-beyond-2013/index_en.htm.

[197] See point 35 of the Preamble of Regulation No. 516/2014, as well as its art. 24.

[198] Both AENEAS Regulation No. 491/2004 and Regulation No. 1905/2006 on which the TPMA was based were founded on former art. 179 ECT on development cooperation.

[199] As indicated in art. 208 TFEU, Union development policy "shall have as its primary objective the reduction and, in the long term, the eradication of poverty". However, the CJEU follows a broad notion of development and does not appear to be against using development instruments to reinforce third countries' policies on migration, including in the field of readmission: see Case C-403/05 *Parliament v. Council* [2007] ECR I-9045, and especially Case C-377/12 *Commission v. Council* [2014] ECR (not yet published). An opposing view by which an indirect link to development is insufficient can be found in Case C-403/05, Opinion of Advocate General Kokott [2007] ECR I-9045.

- providing information to potential migrants about labour market opportunities and conditions of entry and stay in the Member State;
- providing language training to facilitate integration of migrants, as well as translations of relevant national documents in appropriate languages;
- organising information campaigns about national asylum policies or risks of irregular migration;
- organising university cooperation and exchange of students;
- providing support to the return and readmission of migrants from the Member State to relevant third countries.

▪ EUR 360 million for specific Member State actions (resettlement and relocation beneficiaries), some of which are relevant for the implementation of MPs, in particular:
- joint reintegration projects in countries of origin with a view to sustainable return, as well as joint actions to strengthen third countries' capacities to implement EU readmission agreements;
- joint return operations, including joint actions on implementation of Union readmission agreements;
- joint initiatives among Member States in the field of legal migration, including the setting up of joint migration centres in third countries, as well as joint projects to promote cooperation between Member States with a view to encouraging the use of exclusively legal migration channels and providing information about the risks of illegal immigration;
- new approaches, in cooperation with UNHCR, concerning access to asylum procedures targeting main countries of transit, such as protection programmes for particular groups or certain procedures for examining applications for asylum;

▪ EUR 385 million for Union actions, the European Migration Network (minimum 30% between the two), emergency assistance and technical assistance. Union actions are transnational actions or actions of particular interest for the Union. The Commission may also finance Union actions in or relating to third countries.

National programmes are still under elaboration, so that the actual allocation of AMIF funds cannot yet be analysed.

The other new DG HOME fund in this field is the Internal Security Fund (ISF), composed of two instruments: the ISF-Borders and Visa[200], which replaces the former External Borders Fund with global resources of EUR 2.76 billion (at least 30% for Union actions) and covers most aspects related to border management and visa policy, and the ISF-police[201], with global resources of EUR 1.004 billion, which mainly covers aspects related to law enforcement cooperation and the fight against organised crime activities such as human trafficking and migrant smuggling, including a part reserved for emergency assistance. These external cooperation actions can include capacity-building and training activities of Member States in third countries on issues such as migrant smuggling,

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[200] Regulation (EU) No 515/2014 of the European Parliament and of the Council, of 16 April 2014, establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC, OJ L 150, 20.5.2014.
[201] Regulation (EU) No 513/2014 of the European Parliament and of the Council, of 16 April 2014, establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA, OJ L 150, 20.5.2014.

human trafficking, or law enforcement cooperation. In the framework of Union actions, they can fund, for instance, the setting up of consular cooperation mechanisms between at least two Member States, resulting in economies of scale as regards the processing of applications and the issuing of visas at consulates in accordance with the principles on cooperation laid down in the VC, including common visa application centres.

In the AMIF work programme for 2014[202], a EUR 3 million Mobility Partnership Facility (MPF)[203] was created for an initial period of two years to fund actions which represent a high priority for the EU and its Member States and have a direct impact on the EU migration agenda. In particular the following actions are to receive funding: (i) support to partner countries' policy and legal frameworks for migration and mobility, including through circular and temporary migration schemes as well as better information and protection of migrants, including pre-departure training; (ii) information of potential migrants on opportunities for legal migration and requirements for legal stay, as well as on the risks of irregular migration; (iii) capacity-building of partner countries' authorities in legal migration management, including migration monitoring; (iv) support to partner countries' policy and legal frameworks as well as capacity-building on asylum policy and protection in line with international standards; (v) support to the migration dialogue with relevant partner countries.

1.2.1.3. DG NEAR funds

Since the end of 2014, DG NEAR has absorbed the geographical units in charge of managing the European Neighbourhood Instrument (ENI), with a total budget of EUR 15.4 billion for 2014-2020. Those units were formerly under DG DEVCO, so that development cooperation funds in the field of migration and asylum are now split. In this framework, a small "Centre of Expertise" on Migration and Border Management (B4) has been created within DG NEAR.

Amounts devoted to migration in this framework are not predetermined. They depend on the inclusion of migration and asylum among the priorities identified and of the actual programming of bilateral and regional cooperation in the framework of the different instruments, a process which is being finalised. The specific objectives of EU support under ENI make explicit reference to "creating conditions for the better organization of legal migration and the fostering of well managed mobility of people, for the implementation of existing or future agreements concluded in line with the Global Approach to Migration and Mobility", thus also enabling support for existing or future MPs.

1.2.1.4. EEAS funds

Finally, the EEAS also has an instrument, the Partnership Instrument (PI), which can fund migration related actions for strategic partner countries, including developed and developing countries. Amounts devoted to migration in this framework are not predetermined. They depend on the inclusion of migration and asylum among the priorities and of the actual programming of the different instruments. In the First Multi-annual Indicative Programme for 2014-2017, one of the main objectives is "to support EU and mutual strategic interests in the fields of data protection, international civil law, judicial cooperation, migration, equality, and the fight against drugs, organized crime and

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[202] http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/asylum-migration-integration-fund/union-actions/docs/awp_2014_amif_en.pdf.

[203] See Action Document for 'Support to new Mobility Partnerships with Azerbaijan, Tunisia and Jordan, 22 October 2014, https://ec.europa.eu/europeaid/sites/devco/files/aap_gpgc_migration_and_asylum_c_2014_7585_action_fiche1_20141022_en.pdf.

corruption", and it is a priority to "[support] the implementation of comprehensive EU dialogues and co-operation agendas with key partner countries and regional or global initiatives on mobility and migration matters", among other issues.

1.2.2. Comparative analysis of EU funding sources

Migration has made its way into the main thematic priorities of most EU external cooperation funding instruments and regional programmes. Table 4 provides an overview of the migration related objectives and priorities in each of the instruments, which builds the basis for funding actions in this field. Only the migration-related envelope within the GPGC is specifically earmarked for migration-related projects. The remaining funds are distributed over a seven-year period according to the specific priorities of each programme. In any case, there is not necessarily a correlation between the weight of each area of operation according to the funding instrument's legal basis and the actual implementation in terms of the number of projects and resources allocated. Brain drain mitigation and compensation, and more generally labour migration, tend to be underrepresented in the portfolio of actions, whereas integrated border management, return and reintegration and control of irregular migration play a bigger role in actual cooperation than in the programming instruments.

Table 4: Migration, asylum and mobility in the thematic priorities of EU external cooperation funding instruments

Instrument	Objectives	Total resources 2014-2020
DCI	Geographic programmes shall be drawn from the following areas of cooperation: migration and asylum (among many others) (i) supporting targeted efforts to fully exploit the interrelationship between migration, mobility, employment and poverty reduction, so as to make migration a positive force for development and reducing 'brain drain'; (ii) supporting developing countries in adopting long-term policies for managing migratory flows which respect the human rights of migrants and their families and enhance their social protection.	EUR 19.7 billion for 47 countries in LAC, Asia, Gulf and South Africa
EDF	The Parties agree to strengthen and deepen their dialogue and cooperation in the area of migration, building on the following three pillars of a comprehensive and balanced approach to migration: 1. Migration and Development, including issues relating to diasporas, brain drain and remittances; 2. Legal migration including admission, mobility and movement of skills and services; and 3. Illegal migration, including smuggling and trafficking of human beings and border management, as well as readmission	EUR 30.5 billion –ACP
ENI	Support to creating conditions for the better organisation of legal migration and the fostering of well-managed mobility of people, for the implementation of existing or future agreements concluded in line with the GAMM, and for the promotion of people-to-people contacts, in particular in relation to cultural, educational, professional and sporting activities; Bilateral support to mobility and migration management, including the protection of migrants; Support at multi-country level to mobility and migration management; Support through cross-border cooperation to the mobility of persons, goods and capital.	EUR 15.4 billion -Neighbourhood countries
GPGC	To support actions in areas to be drawn from: migration and asylum (out of five areas) (a) promoting migration governance at all levels, with a particular focus on the social and economic consequences of migration, and recognizing the key role of civil society organizations, including diaspora, and local authorities in addressing migration as an essential component of the development strategy; (b) ensuring better management of migratory flows in all their dimensions, including through enhancing capacities of governments and other relevant stakeholders in partner countries in areas such as: legal migration and mobility; preventing irregular migration, smuggling of migrants and trafficking in human beings; facilitating sustainable return of irregular migrants and supporting voluntary return and reintegration; integrated border management capacities; and international protection and asylum; (c) maximizing the development impact of the increased regional and global mobility of people, and in particular of well-managed labour migration, improving integration of migrants in countries of destination, promoting and protecting the rights of migrants and their families, through support to the formulation and implementation of sound regional and national migration and asylum policies, through integration of the migration dimension into other regional and national policies and through support for the participation of migrants' organizations and local authorities in policy formulation and in the monitoring of policy implementation processes; (d) improving a common understanding of the migration and development nexus, including social and economic consequences of government policies, be they in migration, asylum or in other sectors; (e) enhancing asylum and reception capacities in partner countries	EUR 5.1 billion (of which EUR 344 million earmarked for migration
Civil Society and Local Authorities	Civil society organizations include migrants' organizations in partner countries.	EUR 1.9 billion

Pan-African Partnership Instrument	Areas of cooperation: migration, mobility and employment (out of nine)	EUR 845 million
EIDHR	Cooperation and partnership with civil society on sensitive human rights and democracy issues, including migrants' enjoyment of human rights and the rights of asylum seekers and internally displaced persons	EUR 1.3 billion
ISP	With regard to assistance to authorities involved in the fight against terrorism, priority shall be given to supporting measures concerning the development and strengthening of counter-terrorism legislation, the implementation and practice of financial law, of customs law and of immigration law	EUR 2.3 billion
Partnership Instrument	Support objectives relating to global issues such as mobility Learning mobility (higher education)	EUR 954.8 million
IPA II	Specific objectives: capacity-building measures for improving law enforcement, border management and implementation of migration policy, including the management of migration flows. Thematic priorities for assistance: […] establishing and promoting from an early stage the proper functioning of the institutions necessary in order to secure the rule of law, aiming at ensuring the establishment of robust systems to protect the borders, manage migration flows and provide asylum to those in need;	EUR 11.7 billion
AMIF	General objective to contribute to the efficient management of migration flows and to the implementation, strengthening and development of the common policy on asylum, subsidiary protection and temporary protection and the common immigration policy. Specific objectives: a) to strengthen and develop all aspects of the Common European Asylum System, including its external dimension; b) to support legal migration to the Member States in accordance with their economic and social needs, such as labour market needs, while safeguarding the integrity of the immigration systems of Member States, and to promote the effective integration of third-country nationals; c) to enhance fair and effective return strategies in the Member States which contribute to combating illegal immigration, with an emphasis on sustainability of return and effective readmission in the countries of origin and transit; d) to enhance solidarity and responsibility-sharing between the Member States, in particular towards those most affected by migration and asylum flows, including through practical cooperation.	EUR 3.137 billion
ISF-Borders and visa	General objective to ensuring a high level of security in the Union while facilitating legitimate travel, through a uniform and high level of control of the external borders and the effective processing of Schengen visas. Specific objectives: a) supporting a common visa policy to facilitate legitimate travel, provide a high quality of service to visa applicants, ensure equal treatment of third-country nationals and tackle illegal immigration; b) supporting integrated border management, including promoting further harmonization of border management-related measures in accordance with common Union standards and through the sharing of information between Member States and between Member States and the Frontex Agency, to ensure, on one hand, a uniform and high level of control and protection of the external borders, including by the tackling of illegal immigration and, on the other hand, the smooth crossing of the external borders in conformity with the Schengen acquis, while guaranteeing access to international protection for those needing it, in accordance with the obligations contracted by the Member States in the field of human rights, including the principle of non-refoulement.	EUR 2.7 billion
ISF-Police	General objective to contribute to ensuring a high level of security in the Union. Specific objectives: a) crime prevention, combating cross-border, serious and organized crime including terrorism, and reinforcing coordination and cooperation between law enforcement authorities and other national authorities of Member States, […] and with relevant third countries and international organizations; b) enhancing the capacity of Member States and the Union for managing effectively security-related risks and crises […].	EUR 1.004 billion

Table 5 provides an overview of how migration is included in EU's Regional Indicative Programmes for 2014-2020[204]. In practice, many of these programmes work as umbrella funds to finance national activities and projects.

Table 5: Migration in Regional Programming 2014-2020

Regional Programme	Priorities
Pan-African Programme	Support for EU-Africa dialogue on migration, Rabat Process and Khartoum Process
ENI South	Capacity building on migration, mobility and international protection; strengthened cooperation and analysis of flows
ENI East	Strengthening migration systems; Integrated Border Management; Anti-trafficking; Promoting Mobility etc.
Central Asia	Integrated Border Management; Migration Management
Latin America	Migration and Border Management, in context of Security-Development Nexus
West Africa	Integrated Border Management; Implementation of ECOWAS Free Movement Protocols and Common Approach on Migration
Eastern, Southern Africa & Indian Ocean	Cross-regional action on migration includes improving migration governance, facilitating legal migration, and support for refugees and internally displaced persons

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[204] Regional Indicative Programmes are the multi-annual programming instruments of EU development cooperation in a particular region. They are based on Regional Strategy Papers setting out the main regional challenges and EU interests and complement the national indicative programmes approved for each aid beneficiary country.

1.3. Main lessons and inspiring practices from Member States' cooperation with third countries on migration and asylum

KEY FINDINGS

- **EU Member States continue to develop a rather intense external action on migration at the bilateral level**. Some of their cooperation practices could be reproduced or upscaled at EU level, and integrated into an EU-wide experience- and evidence-based 'global learning curve'.

- Some bilateral cooperation agreements in the field of migration evidence that the **reluctance to offer legal migration opportunities is not restricted to EU frameworks of cooperation**.

- Specific projects of external cooperation on migration involving several Member States, with EU funding support, and in collaboration with EU agencies, seem to be the most promising way to **optimise resources, ensure added value and pave the way for increasing Union action in this field**.

This section reviews some cases of Member States' cooperation with third countries to identify their main modalities of intervention in the field of asylum and immigration. The purpose is also to highlight cooperation practices which could be reproduced or extended to EU level.

Bilateral cooperation is established by individual Member States and third countries in those fields within which the Member States retain exclusive or concurrent powers in accordance with the EU distribution of competences[205]. This bilateral cooperation takes various forms according to the types of instruments used to undertake it. First, formal cooperation has traditionally been established through legally binding international agreements concluded with main countries of origin and transit. Bilateral treaties mainly concern readmission agreements; agreements on management of admission of labour migration; social security conventions; agreements on short-term visa exemption for holders of diplomatic passports, and on facilitations regarding long-term visas; police cooperation agreements against criminal activities, including trafficking and smuggling; and also local border traffic agreements as an exercise of the exclusive EU competence in this field delegated to Member States.

A remarkable specimen of bilateral agreements on migration can be found in migration cooperation agreements respectively concluded by Spain and France with countries of origin and transit, mainly from the African continent[206]. In contrast to other traditional treaties concluded by these Member States on different fields of migration, these so-called "new generation agreements" are characterised by addressing in one single legally binding instrument all the diverse dimensions of the migration phenomenon, thus highlighting the new global approach to migration[207]. The Spanish and French agreements address, with slight variations in scope and detail, the admission of migrant

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[205] See García Andrade, 2015, *op. cit*.

[206] For Spain, los "acuerdos marco de cooperación migratoria" find their origin in the Plan Africa 2006-2008 aimed at governing the relationship with Sub-Saharan African countries and renewed for the period 2009-2012. The importance of these agreements has been highlighted by the inclusion of a reference in Article 2 *bis* of Organic Law 2/2009 amending the Spanish Law on Aliens. For its part, France also initiated the signature of "accords de gestion concertée des flux migratoires et développement solidaire" in 2006 as part of its new strategy on migration towards third countries, particularly addressing African countries too.

[207] This kind of framework agreements on migration cooperation have been concluded by Spain with Guinea, Gambia (2006), Mali, Cape Verde (2007), Guinea Bissau and Niger (2008). France has concluded agreements on concerted migration management and solidary development with Senegal (2006), Gabon, Congo, Benin (2007), Tunisia, Cape Verde (2008), Burkina Faso and Cameroun (2009).

workers, voluntary return, integration of legal residents, migration and development synergies, the fight against irregular immigration and human trafficking, border management, and readmission. The overlap between these goals and those of EU MPs[208] calls into question the level of interest of these Member States in participating in the EU instrument, as they both do with regard to Cape Verde, and France does with regard to Tunisia. This dual approach could be justified in their willingness to remain an important interlocutor on migration issues with their partners; or cultural or historical links with third countries involved[209]; or in the fact that, as MPs replicate the bilateral approach of these Member States and even help them to achieve their national preferences, their participation does not seem problematic[210]. More specifically, these agreements include diverse commitments on mutual assistance for the integration of migrants, pre-departure measures and reception programmes; vague commitments on multiple entry visa facilitations for economic, scientific or cultural purposes; provisions on cooperation in the fight against irregular immigration and in border management through exchange of information, provision of technical assistance, training courses, support on document security and awareness campaigns; as well as engagements on cooperation and assistance for the development of regions of origin of migration and promotion of co-development actions. Readmission clauses are inserted in all these agreements, with direct executive force through the inclusion of annexes on procedural obligations and safeguards in the case of Spanish agreements. As regards labour migration, Spanish new generation agreements merely serve to facilitate channelling labour offers through the authorities of the third country[211], while French agreements contain a list of professions in which access to employment by nationals of the partners is allowed, including quotas for certain categories of residence permits. In both cases, provisions are drafted to avoid binding commitments in this field, showing their limited added value as far as labour migrants' admission is concerned[212]. This also evidences that the reluctance of Member States to offer labour migration opportunities to third countries is not restricted to EU frameworks of cooperation, but replicated, to some extent, at the bilateral level too.

The external action on migration developed by Italy is also notable. Apart from concluding agreements on labour migration with third countries[213], annual quotas of admission of economic migrants, defined by decree, are assigned to countries with which Italy has concluded agreements on cooperation against irregular immigration and readmission[214]. Those quotas can be restricted if the partner country does not effectively

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[208] See N. Reslow, "Deciding on EU External Migration Policy: The Member States and the Mobility Partnerships", *Journal of European Integration*, 34/3, 2012, p. 229, who states that Spanish and French agreements formed the inspiration for MPs.

[209] N. Ward, "Facilitating the temporary movement of natural persons. Economic partnership agreements versus bilateral migration agreements and Mobility Partnerships", in R. Kunz, S. Lavenex, M. Panizzon, *Multilayered Migration Governance. The promise of partnership*, Routledge, London, 2011, p. 151.

[210] Reslow, 2012a, *op. cit.*, pp. 223-239.

[211] In contrast with Spanish agreements specifically devoted to labour migration that govern in detail the selection and recruitment procedure of migrant workers and to which labour offers are preferentially directed according to Spanish legislation on aliens. These agreements have been concluded with countries such as Colombia, Ecuador, Morocco, Dominican Republic (2001), Mauritania (2007) or Ukraine (2009).

[212] See the analysis in Ward, 2011, *op. cit*. For the detailed content of Spanish and French agreements, see P. García Andrade, A. Di Pascale and A. Sarraj, "L'importance des relations bilatérales entre États membres et pays tiers en matière d'immigration: une analyse de l'action extérieure de l'Espagne, la France et l'Italie", in M. Maes, M.C. Foblets, P. De Bruycker (eds.), *Dimensions externes du droit et de la politique d'immigration et d'asile de l'UE*, Bruylant, Bruxelles, 2011, pp. 221-309. For an analysis on the compatibility of these agreements with the EU distribution of competences, see García Andrade, 2015, *op. cit.,* pp. 525 *et seq*.

[213] Such as Moldova (2003), Morocco, Egypt (2005), Albania (2008), or Sri Lanka (2011). Also an agreement on circular migration has been signed by Italy with Mauritius (2012). See European Commission, Commission Staff Working Document accompanying the 5th Annual Report on Immigration and Asylum (2013), SWD (2014) 165, p. 86 for recent developments on the external dimension of labour migration policies of other Member States.

[214] Such as Morocco (1998), Tunisia (1998 and 2003), Algeria (2000), Egypt (2007), Nigeria (2000 and 2009) or Libya. See P. Cuttita, "Readmission in the Relations between Italy and North African Mediterranean

cooperate with the Italian Government on return and on the prevention of irregular immigration[215].

Another significant modality of collaboration between Member States and third countries is set up through informal arrangements or political agreements, mainly used to establish operational cooperation on border management, as for example with Spanish and Italian arrangements with African border authorities aimed at providing equipment and training on border controls, and serving as the basis for the deployment of joint patrols in the territorial waters of partner countries[216]. Informal arrangements are also employed to address readmission[217], and, in some cases, labour migration. Despite their effectiveness, these forms of cooperation seem problematic in view of their lack of publicity and democratic legitimacy, which hinder monitoring of their design and impact[218].

Specific projects and initiatives of external cooperation undertaken by EU Member States are developed either under the umbrella of EU instruments of cooperation such as MPs or under national policies, nevertheless in most cases receiving EU funding. Some examples from these projects help to demonstrate good practices in the fields covered by this study.

In the field of legal migration, several projects developed by Member States have been presented to foster circular migration, probably the most repeated objective of the GAMM after readmission. One example is a German project on circular migration for health professionals from Moldova, inscribed under an EU funded project "Better managing the mobility of health professionals in the Republic of Moldova"[219], and implemented by the World Health Organisation from October 2011 to September 2014. The project aimed to promote circular migration of Moldovan health professionals, diminish the negative effects of brain drain, and facilitate the reintegration of migrants returning to the national health system. A key achievement of the project was the development of a model bilateral agreement and support throughout the negotiations and the signing, in August 2014, of a MoU between Moldova and Germany aimed at developing circular migration programmes in this field[220]. The Spanish seasonal migration schemes for the agricultural sector directed towards Moroccan nationals are often referred to as a model to follow[221]. In 2013 France signed an agreement with Georgia, within the framework of the MP, on

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Countries", in J.-P. Cassarino (ed.), *Unbalanced Reciprocities: Cooperation on Readmission in the Euro-Mediterranean Area*, Middle East Institute Special Edition Viewpoints, 2010, pp. 30-53.

[215] See Di Pascale's contribution in García Andrade, Di Pascale and Sarraj, 2011, *op. cit.*; P. Cuttita, "Yearly quotas and country-reserved shares in Italian immigration policy", *Migration Letters*, vol. 5 (1), April 2008, pp. 41-51.

[216] See A. Di Pascale, "Migration Control at Sea: The Italian Case" or P. García Andrade, "Extraterritorial Strategies to Tackle Irregular Immigration by Sea: A Spanish Perspective", in B. Ryan, V. Mitsilegas (eds.) *Extraterritorial Immigration Control. Legal Challenges*, Martinus Nijhoff, Leiden, 2010. SWD (2014) 165, p. 39 for more examples of arrangements establishing joint border patrols: Croatia-Serbia, Hungary-Serbia, Poland-Ukraine, Slovak Republic-Ukraine, Romania-Ukraine.

[217] According to Cassarino's study, France, Greece, Italy, Spain and the United Kingdom have been, over the last few decades, at the forefront of a new wave of agreements linked to readmission in the form of MoU, arrangements, pacts or police cooperation agreements. Cassarino, 2010, *op. cit.*, p. 26.

[218] See section 2.1.2.2 of this study.

[219] United Nations in Moldova, "Better managing the mobility of health professionals in the Republic of Moldova – context, challenges, and lessons learned", 30 March 2015, available at http://www.un.md/viewnews/203/

[220] A German employment ordinance has imposed a ban on the recruitment of health personnel from 57 countries suffering skills shortages according to the WHO Code of Practice on International Recruitment of Health Personnel, SWD (2014) 165, p. 87.

[221] See, e.g., A. Triandafyllidou, *Circular Migration between the EU and its Neighbours. A Comparative Analysis*, Metoikos Project, EUI, 2011 and C. González Enríquez and M. Reynés Ramón, *Circular Migration between Spain and Morocco: something more than agricultural work?*, Metoikos Project, EUI, 2011. This programme is based on the reactivation of the Agreement between Spain and Morocco on labour migration of 2001. See a brief assessment of this programme in M. Bensaid, and I. Martín, *Mesures de soutien aux migrants en matière d'emploi et de compétences (MISMES)*, Maroc, Fondation européenne pour la formation, 2015.

circular migration of professionals, aimed at facilitating access to a first professional experience for students, the exchange of young professionals to improve their career perspectives, and temporary access to the labour market for certain professions[222]. Despite its title, the content of the Agreement shows that it is focused on temporary, not circular, migration[223], an unfortunate example which is however replicated in EU legislation in which provisions facilitating circular migration and preventing brain drain are scarce[224].

On the synergies between migration and development, the Italian project "Addressing the negative effects of migration on minors and families left behind" is notable. This project, which ran from January 2011 to September 2013, aimed at addressing the negative effects of migration on children and other vulnerable family members left behind as a result of emigration from Moldova. Under EU and national funding, it was jointly implemented by Italian and Moldovan governments, NGOs, diaspora associations and the IOM. Its main impact relied on generating a deep understanding by Moldovan authorities of the situation of children in the country; adopting recommendations for developing strategies to address this phenomenon; providing assistance to vulnerable children in vocational training and professional formation; and grants. The project was combined with actions in Italy, developing awareness raising campaigns for Moldovan migrants in Italy on the negative effects of migration, as well as providing them with psychological, social and legal assistance[225].

On the fight against irregular immigration and fostering return, Belgium, Netherlands and Poland have developed, from December 2012 to March 2015, a project, implemented by IOM and funded by the EU, on "Supporting the establishment of effective readmission management in Armenia, Azerbaijan and Georgia". Its objectives were to contribute to the establishment and development of an effective mechanism for the management of readmission in the three countries by assisting in establishing case management systems of readmission, and facilitating and monitoring the implementation of EURAs with these countries; building capacity in Armenia and Azerbaijan for management of migration detention centres; and assisting in capacity building for reintegration of returned migrants. As far as Georgia is concerned, key achievements relate to the introduction of an electronic readmission management system for dealing with individual readmission cases in Georgia, with EU Member States' cooperation; and the implementation of the Assisted Voluntary Return from Georgia and Reintegration Programme for readmitted migrants who wish to return to their home countries[226].

On strengthening border controls and fight against irregular immigration, Spanish practice can be highlighted. One important project is the Seahorse Mediterranean

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[222] Accord entre le Gouvernement de la République française et le Gouvernement de la Géorgie relatif au séjour et à la migration circulaire de professionnels (ensemble deux annexes), signé à Paris le 12 novembre 2013 (pending ratification).

[223] Only a reference is found in the agreement to temporary permits "compétences et talents" granted to Georgian nationals on the condition that their experience in France is profitable to the development and entrepreneurship in Georgia at their return. For the distinction between circular and temporary migration, see for instance A Wiesbrock and H. Schneider, *Circular migration and Mobility Partnerships*, European Parliament, DG for Internal Policies, Policy Department C, PE 410.680, 2009.

[224] With regard to the EU Blue Card Directive, see P. Devisscher, "Legal Migration in the Relationship between the European Union and ACP Countries: The Absence of a True Global Approach Continues", *European Journal of Migration and Law*, 13, 2011, pp. 53-94.

[225] IOM Moldova, "EU helps hundreds of Moldovan families address the effects of migration at home and abroad", http://www.iom.md/index.php/media-center/press-releases/252-eu-helps-hundreds-of-moldovan-families-address-the-effects-of-migration-at-home-and-abroad Similar cooperation exists between Italy and Ukraine. See also L. Yanovich, Children Left Behind: The Impact of Labor Migration in Moldova and Ukraine, *Migration Information Source,* January 2015, available at www.migrationpolicy.org

[226] See IOM, "Readmission to Georgia", Newsletter issue 3, September 2014, available at http://iom.ge/1/iom-releases-its-latest-newsletter-readmission-management-project

Network, initiated in 2013 and focused in North Africa. This project aims at training African agents in maritime and land border surveillance and establishing a network of satellite communications to fight irregular immigration in the Mediterranean. Its conception and implementation is led by the Spanish *Guardia Civil*, with the participation of France, Italy, Malta, Portugal, Cyprus and Greece, together with the EU Commission and Frontex, and receives EU funding. Currently, the third country involved is Libya, while Algeria, Tunisia and Egypt have been invited to join the project. It is built on the past experience of Spanish cooperation projects with African countries bordering the Atlantic developed since 2006, including training, provision of equipment and joint patrols at sea. This cooperation has, according to Spanish authorities, significantly contributed to the reduction of migratory pressure by sea[227], although its effects on the protection of human rights of migrants are highly problematic. In addition, Spanish practice of police cooperation with African countries in the fight against organised criminality is an example of good practice emerging from regional migration dialogues. Replicating existing patterns of cooperation with Mauritania in this field, Spain presented at the meeting of the Steering Committee of the Rabat Process, held in April 2015, a project to set up a joint investigation team between the Spanish and the Nigerien police to fight human trafficking networks on the ground[228]. This project is included in the framework of a bilateral convention on the fight against criminality signed between Spain and Niger in May 2015[229], which follows similar conventions concluded by Spain with several other countries[230].

On capacity building on asylum and international protection, several – although fewer - projects in cooperation with third countries have been carried out to enhance the external dimension of international protection. These mainly support institutional development of third country asylum systems and organise training courses[231]. For instance, Denmark's experience on projects such as the "Regions of Origin Initiative" led it to become the leading partner of the RDPP in the Middle East[232]. Although resettlement and humanitarian admission do not seem to develop in strict cooperation with third countries, the German federal programme for the admission of Syrian refugees in 2013-14 provides a good practice example in this field[233]. An important project developed under the Prague Process, the Pilot Project 4 "Quality and Training in the Asylum Processes: The European Asylum Curriculum" (PP4), similarly provides an example relating to the field of asylum. This project was led by Sweden with the support of Germany, in close cooperation with EASO and UNHCR, and also involves other EU Member States. It ran from August 2012 to April 2014, aiming to explore the possibility of implementing the EASO Training Curriculum (formerly the European Asylum Curriculum) in interested Prague Process States. The project targeted case officers and

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[227] Guardia Civil, Spanish Ministry of Interior, press releases of 19 September 2013 and 1 April 2014. See also SWD (2014) 165, p. 33. MoUs are the instrument used for the setting up of these joint patrols both at sea and at land.

[228] Spanish Ministry of Interior, press releases of 23 April 2015 and 14 May 2015.

[229] Convenio de cooperación en materia de lucha contra la delincuencia entre el Reino de España y la República de Níger, hecho en Niamey el 14 de mayo de 2015, BOE no. 160, 6.07.2015.

[230] All these conventions include cooperation on irregular immigration and trafficking of human beings and have been concluded by Spain with countries such as Senegal, Cape Verde (2006), Mali (2008), Turkey (2009), Cameroun, Jordan, Serbia (2011) or Moldova (2013).

[231] SWD (2014) 165, pp. 25-26.

[232] Ministry of Foreign Affairs of Denmark (DANIDA), The Regions of Origin Initiative, September 2005, available at http://www.netpublikationer.dk/um/5918/pdf/Naeromraader_GB.pdf

[233] The programme was initially directed towards 5000 Syrians and have successively increased up to 20,000, prioritising those with humanitarian needs, people with family links in Germany and individuals who can contribute to the reconstruction in Syria. UNHCR, 'First group of Syrian refugees flies to Germany', News Stories (11 September 2013), available at <http://www.unhcr.org/523076919.html>; UNHCR, 'UNHCR welcomes Germany's decision to extend Humanitarian Admission Programme to an additional 10,000 Syrian refugees' (13 June 2014), available at <http://www.unhcr.org/539afe256.html>.

decision-makers working in the asylum process in Armenia, Belarus, Georgia, Kyrgyzstan, Moldova, Turkey and Ukraine. A meaningful outcome is the elaboration of guidelines aimed at standardising procedures and suggesting ways to build high quality training programmes on international protection[234]. It is therefore a good example of a multilateral project of several EU Member States, supported by EU funding, with the direct involvement of an EU agency, EASO, in collaboration with UNCHR, and emerging from a regional migration dialogue.

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[234] Prague Process Guidelines on Training in the Asylum Process - Approaches to Achieve Quality Training on core issues within the area of asylum and international protection, 2014, available at www.pragueprocess.eu. (20.08.2015). This project has been continued by a new project on "Quality in Decision-making in the Asylum Process –Focus on Evidentiary Assessment, Due Process and Jurisprudence" (PP7), running from November 2014 to January 2016.

2. IMPACT OF EU COOPERATION INSTRUMENTS IN THE FIELD OF MIGRATION AND ASYLUM

Literature and policy analysis on the implementation of EU external cooperation in the field of migration, both regarding cooperation instruments and funded projects, is extremely scarce. In part, this is due to the unavailability of relevant information on the impact and even output assessment of EU cooperation in this field (it is often not published, even if formally public, and in any case it is scattered across EU Delegations and Commission units). Simple inputs for such an analysis, such as a comprehensive list of migration and asylum related projects in a specific country, are often lacking, including data on budgets or numbers of beneficiaries. As a recent review of migrant support measures worldwide concluded, "there are not enough data and information available to evaluate, in a consistent and scientific way, the efficiency and impact of migrant support measures. The lack of systematic monitoring and follow-up mechanisms and impact assessments […] is obviously a major obstacle to a systematic improvement of [migrant support measures in countries of origin]"[235]. The same study concluded that "despite the wide transfer of practices, there is only a limited experience-based 'global learning curve'. Practices and models are transferred and replicated from country to country in a mechanical way, often by global actors in the framework of responses to calls for project proposals" or by contracted experts, rather than as a result of a systematic learning process.

Mandatory project and programme evaluations do not provide the basic information required to assess the cost-effectiveness and impact of migration cooperation interventions. They are conducted as part of the technical and administrative evaluation of the projects, and not with the objective of determining their impact. So a project management rationale prevails, focused on project outputs and activities (deliverables) rather than on their outcomes. The most useful sources of this type are the thematic evaluations carried out on behalf of the Commission, for instance on Regional Protection Programmes (2009), labour migration AENEAS and TPMA projects (2011), the TPMA itself (2013) and migration and development (2014). There are evaluations in progress on anti-trafficking projects and the global calls for proposals in this field.

Implementing institutions and units need greater support in the form of efforts to generate standardised information on migration-related development cooperation projects and policy interventions, to allow for a systematic assessment of their impact and efficiency. Some general rules on the information to be made public by project implementers might dramatically improve the knowledge base for policy interventions. In the same way that ex-ante project fiches are increasingly standardised, the production of a standard ex-post project fiche with data about the allocation of a budget across different components of the project and elements for assessment could be envisaged at least in the framework of large programmes like the former TPMA. The EU has undertaken such a commitment in the framework of the Global Partnership for Effective Development Cooperation, which should be fully implemented by December 2015[236]. A clear legislative framework in this regard could greatly contribute to a "learning curve" of practices in the field of external cooperation in migration and asylum.

Similarly, Member States have asked the Commission to include indicators of performance on the next implementation report of the GAMM due in early 2016. Although

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[235] I. Martín and S. Makaryan, *Migrant Support Measures from an Employment and Skills Perspective (MISMES): Global Inventory with a Focus in Countries of Origin*, European Training Foundation, 2015.
[236] Fourth High Level Forum on Aid Effectiveness, Busan Partnership for Effective Development Cooperation, http://effectivecooperation.org/files/OUTCOME_DOCUMENT_-_FINAL_EN.pdf, point 23.

the Commission is planning to include some indicators, those currently being envisaged are quite limited due to scarcity of resources and to the fact that progress assessment should not be based only on facts and figures. Of course, beyond the availability of accurate information, the concurrence of difference factors on measured outcomes (the issues of contribution and attribution) is an additional difficulty.

Finally, data provided to Eurostat by Member States on their implementation of EU immigration and asylum policies are often fragmentary or outdated, making it difficult to compile all relevant information and use it for comparative evaluation purposes.

2.1. Evidence on the output and impact of different instruments of EU cooperation with third countries in the field of migration and asylum

KEY FINDINGS

- **Available public information on EU external cooperation** in the field of migration and asylum does not allow for a systematic evaluation of its impact and efficiency. Even basic information on distribution of funds, projects implemented or state of progress of projects is scattered and often not available.

- **Mandatory evaluations of projects implemented should not focus only on outputs and outcomes,** but also on impact in relation to the strategic objectives of each project.

- **Evaluations of the global calls for proposals implemented since 2004 in the framework of the AENEAS Programme and the Thematic Programme for Migration and Asylum** have shown, partly due to fragmentation, a very limited impact and the need for a more strategic approach.

- **In the framework of the new European Agenda on Migration, there is a trend to evaluate all external cooperation initiatives in this field in relation to their contribution to the European migration policy**. However, a large share of those actions has a main objective to contribute to the development of beneficiary countries, which should be taken into account in evaluations.

- **From a substantive dimension**, legal migration, mobility and international protection have been subordinated in relation to the control of irregular immigration, fields in which the value of cooperation seems more obvious. On migration and development, the support provided may not translate into direct benefits for migrants, while a growing confusion of development assistance and migration objectives might undermine EU credibility in this field.

- **Regarding implementation,** EU Delegations often lack the **specialised staff required** to plan, implement and monitor projects. Besides that, the **programming process is very slow**, limiting the capacity to respond to new developments. A**dministrative procedures** are too burdensome to be effective.

- **Political instruments** that are increasingly common in the external dimension of EU immigration and asylum policies may be useful for initiating cooperation on migration issues with third countries, but in view of the shortcomings and weaknesses derived from their soft law nature, migration cooperation should evolve towards an increasing recourse to hard law.

- **Concerning the institutional dimension**, a **systematic exchange of information on bilateral activities and projects between Member States and the Commission** is needed, while **coordination and rapprochement of priorities among the different European Commission DGs**, as well as with the EEAS, appears indispensable. The limited **involvement of the European Parliament** in the design and implementation of GAMM instruments requires to search for ways of increasing its monitoring capacities.

The assessment of the outcomes of EU cooperation with third countries in the fields of migration and asylum, carried out based on evidence in secondary sources, will focus on three dimensions: the strategic interests and objectives pursued by the external

dimension of EU immigration and asylum policies (substantive dimension); the pros, cons and consequences of different instruments used to achieve those objectives (functional dimension) and the areas for improving coordination across different levels and departments of government (institutional dimension). Although available information on the different instruments of EU cooperation, in particular funds and projects, does not allow for a quantitative analysis of the impact of that cooperation, a series of qualitative insights emerge from the analysis of existing practices.

2.1.1. Substantive dimension

From a substantive point of view, it is important to analyse EU external cooperation instruments in the light of their impact on the objectives of the GAMM, i.e., on mobility, legal migration and integration; irregular migration, border control and readmission; international protection and human rights standards; and the migration-development nexus in partner countries. Although a full quantitative analysis is not possible, the use of some basic indicators allow some insight into the dynamics of the GAMM implementation.

2.1.1.1. Mobility, legal migration and integration

Despite being one of the four key dimensions of external cooperation in the field of migration, legal migration and mobility have been subordinated in policy terms compared to the control of irregular migration. The European Commission recognised this, stating in its evaluation of GAMM that "more work needs to be done to make sure that the MPs are being implemented in a balanced manner, i.e. better reflecting all four thematic priorities of the GAMM, including more actions with regard to legal migration, human rights and refugee protection"[237].

In this sense, the external dimension of the EU visa policy is driven for the time being by irregular immigration considerations, as shown by the fact that no VFA is concluded or even negotiated until the conclusion of a readmission agreement is ensured. However, enhancing mobility of bona fide travelers - and even promoting the safe arrival of asylum seekers[238] - are important objectives that should also be taken into account when designing this external dimension[239]. Existing EU visa exemption agreements do not cover persons travelling for remunerated activities[240], which limits their potential for facilitating economic mobility.

Regarding the impact of VLDs, one of the main outcomes observed in the Western Balkan countries (Albania, FYROM, Bosnia and Herzegovina, Montenegro, Serbia) relates to the steady increase of asylum applications, largely unfounded, from citizens of these countries[241]. Research shows that the emphasis put by target EU partners on ending abuses of the European asylum systems by their citizens have had the consequence of curtailing the mobility rights of marginalised groups of citizens, in opposition to the Commission's objective of improving anti-discrimination and integration policies within VLD. For instance, Macedonia has passed a new law providing for the suspension of the right to travel for persons suspected of being potential failed asylum seekers, and

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[237] COM (2014) 96, p. 9.
[238] See E. Guild et al, *Enhancing the Common European Asylum System and Alternatives to Dublin*, EP Study, PE 519.234, 2015, p. 21, where it is suggested that lifting visa requirements from countries producing high numbers of asylum seekers could reduce the compulsion for their nationals to undertake dangerous journeys in search of safety.
[239] At national level, Member States are using their long-term visa policy as a channel to encourage legal migration by implementing certain facilitating measures in third countries and/or with their cooperation. See European Migration Network, Visa Policy as a Migration Channel, EMN Study, October 2012, p. 45 et seq.
[240] Joint declarations annexed to these agreements however clarify that this category of persons refers to employees and service providers but should not cover business persons travelling for business deliberation, sports persons, artists, journalists or intra-corporate trainees
[241] See section 2.1.1.4 on asylum and human rights protection.

authorising border checks based on ethnic profiling[242]. On a more positive note, it seems that visa-free travel is still mostly used by bona fide travelers from the Western Balkan countries[243], reducing their financial and time costs, and that visa liberalisation has allowed EU partners to refocus their efforts on surveillance – up to then concentrated on irregular border crossings - of other cross-border criminal activities, reducing local demand for smugglers and facilitators' services[244]. The Commission stated that visa-free travel for Moldovan citizens, effective since April 2014, has been implemented satisfactorily[245].

Indicators concerning the impact of MPs on legal migration and mobility could possibly be based on the number of visas granted to citizens from specific partner countries over time, rates of visas granted in relation to applications, and number of first residence or work permits granted. Figure 5 provides an overview of the evolution of the number of first residence permits granted to citizens of MP partner countries before and after the signature of the MP. Although these data might indicate a lack of impact or even a negative impact of MPs on the number of first residence permits, with the exception of Georgia for the first year after its adoption, the impact of the economic crisis after 2008 might explain much of the fall, for instance for Moldova. In any case, it appears that MPs did not create new dynamics of legal migration from partner countries to the EU[246].

Figure 5. Number of first residence permits issued by Member States to citizens of MP partner countries
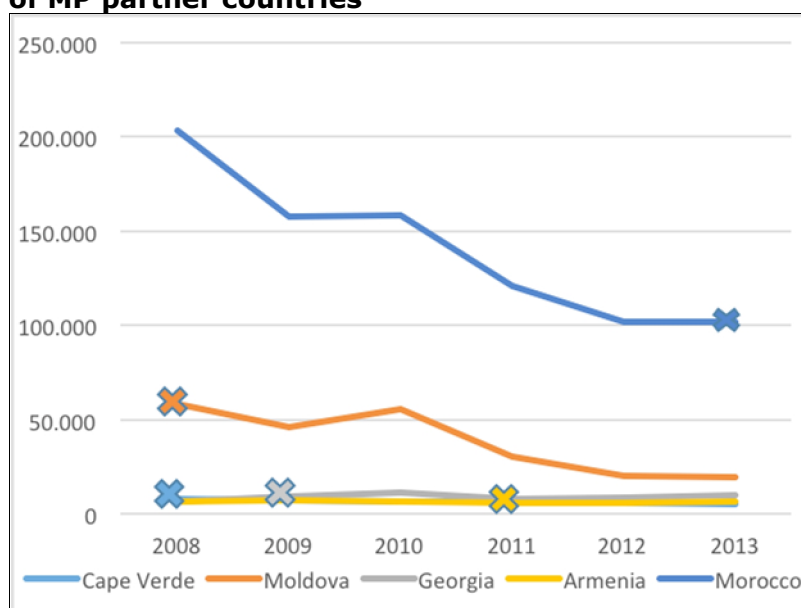
Source: Eurostat. Residence permits for more than 3 months, for all purposes.

Regarding the number of short-term visas granted the view is more nuanced. Some VFAs have entered into force too recently to allow for a comprehensive assessment of impact. Figure 6 shows an increase in the number of Schengen visas issued to Georgian citizens after the signature of the VFA in 2011, and in particular in 2013. This trend continued in 2014, when it reached 80,986 visas issued according to Eurostat, almost 70% more than in 2010. For Moldova, after the visa exemption in force since 2014, there was a clear

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[242] Trauner and Manigrassi, 2014, *op. cit.*, p. 137.
[243] Frontex Western Balkans Annual Risk Analysis 2015, p. 6.
[244] Frontex Western Balkans Annual Risk Analysis 2012, p. 16-17.
[245] COM (2015) 236, p. 13.
[246] Data for 2014 are still not available in September 2015.

drop in the number of visas issued[247]. However, Reslow concludes that there is insufficient information available to draw conclusions on the impact of MPs and VFAs on mobility[248].

Figure 6: Number of Schengen visas issued by Member States in MP countries
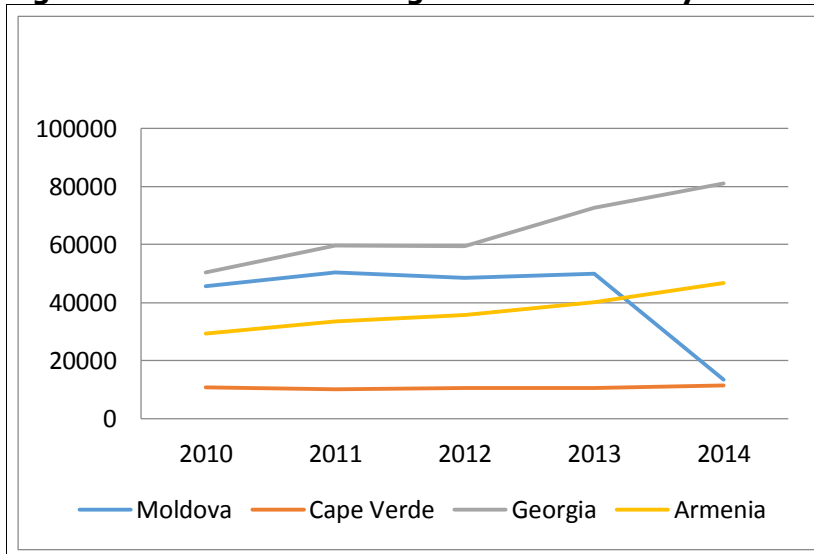
Source: Visa Statistics 2010-2014

The legal channels available to materialise EU cooperation regarding labour migration are underdeveloped. This is particularly clear in the cases of recent MPs with Morocco, Tunisia and Jordan. Of the four pillars of the GAMM, there has been less cooperation under the first pillar on better organising legal migration and fostering well-managed migration than in other areas[249]. A major obstacle comes from the fact that whereas the EU is investing heavily in institutional capacity building for better labour migration management in developing third countries, the credibility of those efforts is often undermined by the limited legal migration opportunities offered by EU Member States within MPs. The cases of international placement services of public employment services in Morocco and Tunisia (ANAPEC and ANETI) largely developed with the support of EU cooperation funds, illustrate this problem[250]. Furthermore, existing legal migration avenues are often not operational due to lack of capacities in labour market analysis and limited labour market information systems, lack of functional frameworks for fair and ethical international recruitment, and challenges in recognition of qualifications. The European Agenda on Migration, which has legal migration as one of its four main axes, is a unique opportunity to set the framework to advance this first pillar of the GAMM, but the envisaged measures do not seem to go in this direction so far. For countries with which the EU has concluded or is negotiating free trade agreements, and in particular Deep and Comprehensive Free Trade Areas, such cooperation should also include some degree or prospect of liberalisation of services provided through the temporary presence of natural persons of a State party in the territory of other State party ("GATS Mode

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[247] Of close to 50.000 to slightly over 13.398. Visa Statistics Compilations, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm.
[248] N. Reslow, "EU 'Mobility' Partnerships': An Initial Assessment of Implementation Dynamics", Politics and Governance Vol. 3.2, 2015.
[249] See COM (2014) 96.
[250] See Bensaid and Martín, 2015, *op. cit.*, for Morocco, with references to three other evaluations of this service, and I. Martín, Kriaa, M. and Demnati, M.A. (2015), *Mesures de soutien aux migrants en matière d'emploi et de compétences (MISMES): Tunisie*, Fondation européenne pour la formation, 2015.

4")[251]. Although Member States have so far refused any concession in this field, the liberalisation of services could also be an important incentive to offer to EU partners once a visa-free regime has been granted, as a way of ensuring the continuity of the reforms undertaken in that country within a VLD.

EU institutions have also repeatedly advocated that circular migration be included as an objective in cooperation with third countries. MPs were meant to be the frameworks used to achieve this objective, but up to now they have only encouraged national projects on circular migration – sometimes rather on temporary migration[252] - through EU funding, leading to questioning whether no other EU intervention is possible in this field. The main legislative measure related to this objective, the EU Blue Card Directive, does not significantly promote circular migration[253].

2.1.1.2. Irregular migration, border control and readmission
In this field the value of cooperation with third countries seems more obvious. Figure 7 shows a direct correlation between cooperation developments and the number of illegal border crossings detected by Member States' authorities. After the peak of irregular crossings in the Western Mediterranean route in 2005-2006[254], increased cooperation with Morocco and enhanced border surveillance systems served to stabilise the numbers of irregular border crossings detected under 8,000 per year. Nonetheless, migration pressure slightly increased again in summer 2014 due to violent conflicts in countries mainly from Western and Central Africa that have added to the economic causes of migration in this region. Of course, strengthened control of borders may have diverted irregular migration flows to other, more dangerous routes. As for the Central Mediterranean route through Italy and Malta, the agreement between Italian and Libyan authorities in 2009 was reflected in a significant drop of irregular border crossings detected. There was another peak in the aftermath of the Tunisian Revolution in 2011, when controls by Tunisian authorities collapsed for some months, and then again a much more important increase in total numbers after the fall of the Libyan regime in late 2012. In 2014, detections attained staggering levels, mainly affecting Italy.

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[251] Mode 4 of the General Agreement on Trade in Services refers to the presence of persons of one member of the World Trade Organization in the territory of another member for the purpose of providing a service. It does not concern persons seeking access to the employment market in the host member, nor does it affect measures regarding citizenship, residence or employment on a permanent basis (see www.wto.org/english/tratop_e/serv_e/mouvement_persons_e/mouvement_persons_e.htm).
[252] See section 1.3 of the present study.
[253] See G. Papagianni, "Forging an External EU Migration Policy: From Externalisation of Border Management to a Comprehensive Policy?", *European Journal of Migration and Law*, 15, 2013, p. 294 for criticism on the lack of substantial follow-up measures on the circular migration concept.
[254] Not featured in the graph, as Frontex data only reach back to 2007, and Member States' data for former years are fragmentary and not comparable.

Figure 7. Illegal border crossings detected in Western and Central Mediterranean routes
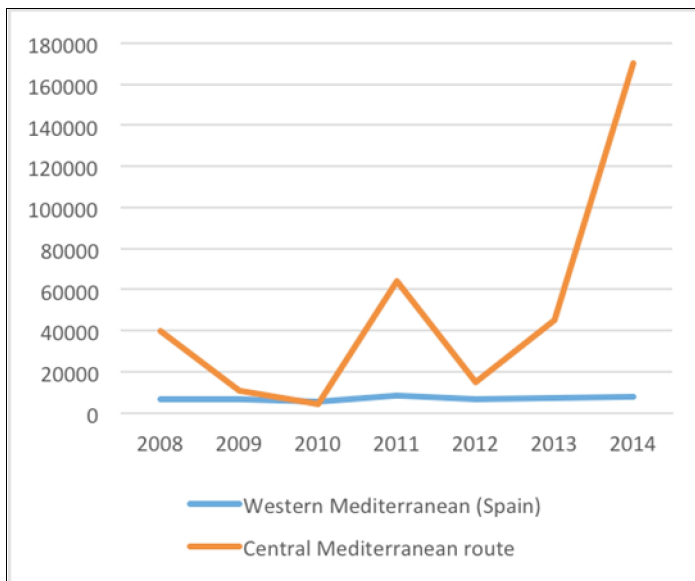
Source: Frontex Risk Analysis reports

The Eastern Mediterranean route had the second largest number of detections of illegal border crossings in 2014 in EU Member States (50,830), almost twice as many as in 2013. Because of the Syrian conflict, these migration flows are mixed, as in the Central Mediterranean route. In the Eastern European land borders with Belarus, Moldova, Ukraine and the Russian Federation, where significant resources were invested in integrated border management operations between 2004 and 2011, in particular in Ukraine and Moldova[255], the numbers of illegal border crossings detected has remained between 1,000 and 1,600 a year. Finally, the Western Balkans route witnessed unprecedented numbers of illegal crossings in 2014, more than twice as many as in 2013.

In general terms, numbers of third-country nationals found illegally present in the EU rose in 2014 or remained high during previous years with regard to certain countries which are EU partners on migration cooperation, such as Morocco, Albania, Pakistan, Ukraine, Nigeria, Serbia and Russia[256]. Figures from Moldova have declined.

Among the top ten nationalities of individuals subject to return decisions issued in 2014 are countries with which the EU has concluded EURAs such as Albania, Morocco, Pakistan and Ukraine. These, Russia and Serbia are among the top ten of nationalities of people effectively returned to third countries[257]. Problems lie in the fact that the nationality of returned migrants does not necessarily correspond to the requested State of return in the available data, and that it is not specified on the basis of which instrument these returns took place (EURAs, bilateral readmission agreements, informal arrangements). Data on the use of EURAs by Member States is incomplete[258]. It may be advisable to amend Regulation 862/2007 on statistics on migration and international protection in order to request Member States that statistics supplied to Eurostat on numbers of third-country nationals returned to a third country include disaggregation by type of act allowing the

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[255] Between 2005 and 2014, the EU contribution to the EU Border Assistance Mission (EUBAM) amounted to more than EUR 100 million.
[256] Eurostat, "Third country nationals found to be illegally present - annual data, 2008-2014".
[257] Frontex Annual Risk Analysis 2015.
[258] Eurostat, Third-country nationals who have left the territory to a third country by type of agreement procedure and citizenship, 2014.

effective return[259]. Data should also be disaggregated not only with regard to the citizenship of returnees, but also to the third country where the individual was returned. Quantitative data on returns under EURAs can be indicators of the effectiveness of these instruments, but a comprehensive evaluation of EURAs must include how they affect the fundamental rights of migrants[260]. This has not been the case. Cassarino proposes, as measurable indicators, that the Commission should include in a thorough evaluation process ways in which rights to an effective remedy and fair treatment of asylum claims have been addressed, the number and conditions of asylum seekers in detention centers, numbers and types of complaints made against immigration officers, medical records, or conditions after readmission in the third country[261].

Return and reintegration support continues to be a major priority for EU development funding in the field of migration. However, projects in this field often overlap in the same country of origin - with several programmes by different donors operating at the same time, occasionally even for the same countries of destination -, with different conditions and assistance packages for different return and reintegration projects by the EU, Member States or other international actors[262]. This creates substantial distortions. Beyond this, sustainability of initiatives is questionable, and return and reintegration programmes tend to promote the creation of parallel training, funding or business creation tracks instead of reinforcing public schemes already at work at the national level. Due to high operating costs and labour-intensity, the share of total funds which actually reaches beneficiaries is typically relatively small[263].

2.1.1.3. Migration and development

The Commission's recent evaluation of EU-funded migration and development projects found a gap between support provided to institutions and concrete positive outcomes for the migrants themselves, i.e., the focus on capacity building and institutional strengthening may ultimately not translate into direct benefits for migrants[264]. This is confirmed by the low average numbers of beneficiaries and hence the low cost-efficiency of migrant support measures analysed in a global inventory of such measures[265]. Cooperation in this field is labour intensive, it often involves international staff, and unit cost per beneficiary seems very high whenever data are available to calculate it. Burdensome administrative procedures often increase the cost disproportionally.

As stated in the Commission's evaluation, initiatives funded under the AENEAS and TPMA programmes mainly explored three channels for maximising the role of migrants for the development of countries of origin: the mobilisation of diaspora members with high qualifications to serve for short term periods in the countries of origin; the creation of small enterprises by diaspora members in these countries; and the use of remittances for

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[259] Through an amendment to article 7 or article 8.1.f) in relation to article 7 of Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection (OJ L 199, 31.7.2007, p. 23). Disaggregation by type of return - voluntary or forced – should also be included.

[260] See Cassarino, 2010, *op. cit.*, p. 46

[261] *Ibid*.

[262] In Armenia, for instance, in 2013 there were seven different return and reintegration projects ongoing: Return Assistance in Armenia (Cooperation OFII-BAMF) – RACOB; Post-arrival assistance to Armenian returnees from the Netherlands, Return to Sources, Returnees from Europe; Sustainable Reintegration after Voluntary Return, Migration and Development 2 and Strengthening Armenia's migration management capacities,, with special focus on reintegration activities in the framework of the EU-Armenia, see S. Kalantaryan, *Migrant Support Measures from an Employment and Skills Perspective (MISMES). Armenia,* ETF, 2015.

[263] Often under 50%. See Martin, Kriaa and Demnati, 2015, *op. cit*.

[264] E. Picard and R. Greco Tonegutti, *Technical Assistance for study on concrete results obtained through projects on Migration and Development financed under AENEAS and the Thematic Programme for Migration and Asylum*. Final Report, 2014.

[265] See Martín and Makaryan, 2015, *op. cit*.

local development. The first proved to be effective only when countries of origin showed the capacity to link up with their diasporas in a positive and attractive manner, through considerable efforts of communication and a high level of coordination among national institutions. The involvement of national and local authorities and institutions should therefore be sought as a priority in diaspora interventions. The second channel, the creation of small enterprises by migrants or their families in countries of origin, seems to have led to only a limited number of such businesses with sound prospects for sustainability (the same happens with businesses created in the framework of return and reintegration programmes, the worst performer among different categories of interventions). The evaluation concluded that the sub-topic of remittances has been the most successful area for external cooperation in this field, and return and reintegration the least successful.

Simultaneously, from the analysis of the profile of EU-funded projects in this field, it emerges that there are very few projects to mitigate the impact of brain drain. In this context, while the Blue Card Directive only contains optional provisions to ensure ethical recruitment and although it has foreseen the possibility to use EU and Member States' external action for that purpose[266], these clauses should be combined with compulsory conditions or an EU code of conduct on ethical recruitment binding on all Member States[267]. Also very limited projects are in place for the development of skills and qualifications in relation to employment. This is increasingly relevant given the growing emphasis by some Member States on attracting highly-skilled migrants, replicated at EU level through the different instruments to facilitate legal labour migration, including the Blue Card Directive[268].

The relatively small size of actions and the large number of actors involved in the migration and development field - civil society organisations and migrant's associations play an important role in implementing many projects - has led to a multiplicity of initiatives. This allows for a great variety of actions and a high social visibility of EU cooperation, but entails an excessive dispersion of impact, often without mutual learning mechanisms. The recent mapping of migration and development initiatives undertaken in Morocco in the framework of the Sharaka project demonstrates this problem[269]. The recommendation to set up a repository for main outputs of migration and development projects is particularly relevant in this context, as in relation to training materials. On the other hand, evaluators noted that project management was sometimes handled by expatriate managers, at a much higher cost, even where local experts would have been able to undertake the required tasks. This is clearly a general problem in EU development cooperation practice.

An interesting aspect specifically of MPs is the extent to which their signature leads to an increase in the number and size of projects, i.e., in the resources mobilised for cooperation regarding migration, and in particular migration and development projects. These projects are listed in the Annexes to the Joint Declarations indicating their budget, funding entity, objectives and implementation period in the corresponding Scoreboards. However MP Annexes and Scoreboards contain different types of initiatives, many of which pre-date the MPs or were in progress and subsequently "aligned" to the MP's objectives. So whereas the process of developing and updating the Annexes or Scoreboards is useful in terms of policy and cooperation coherence, it does not convey an accurate view of the added value of MPs in terms of cooperation. In any case, there

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[266] See art. 8.4 and 3.3 of Directive 2009/50.
[267] Devisscher, 2011, *op. cit.*, p. 70.
[268] Martín et al, *Exploring New Avenues for Legislation for Labour Migration to the European Union*, *op. cit*.
[269] See Morocco's case study in Annex I of this study.

seems to be an evolving pattern: whereas in the case of Moldova the signature of the MP brought about a proliferation of projects in this field and a substantial increase of funds allocated, and in Georgia a similar process was observed, in subsequent MPs the additional funding has been more limited, and consisting largely of the new flagship initiatives funded by the EU to support the implementation of MPs, and in some cases other new EU-funded projects[270]. Member States, in contrast, have been less active in funding projects to achieve the objectives of the MPs.

Finally, a continuous trend in EU external cooperation in the field of migration related to the links between migration and development brings into question the ultimate objective of a substantial part of this cooperation. Some Member States have been demanding EU development cooperation in the field of migration and asylum, which has according to its legal basis the main objective of promoting the development of third countries, to be reoriented to contribute to the achievement of the EU migration policy. The *Policy Coherence for Development 2015 EU Report*[271] recently expressed that:

> *Integration of foreign policy aspects into the EU migration policy and ensuring linkages between internal and external dimensions is vital. Home Affairs issues need to be embedded in the EU's overall external relations, including development cooperation, in view of facilitating reinforced dialogues and cooperation with third countries. In this vein, cooperation and coordination among the various stakeholders should be stepped up. This aims to mobilise a variety of tools to promote readmission and return process of irregular migrants in line with EU standards on fundamental rights. At the request of the European Council, the Commission is considering how to strengthen an incentive based approach in external cooperation on migration with strategic partners in the EU neighbourhood and beyond. EU development assistance to partner countries is, in essence, not conditional on cooperation on migration matters. Still, recent developments, notably in the Mediterranean, have highlighted the crucial importance of encouraging cooperation with partner countries on irregular migration. Efforts are being made to strengthen measures at Member State level to ensure that the use of conditionality in the migration dialogue does not negatively impact development cooperation.*

This confusion of development assistance objectives and migration policy or home affairs objectives, including for instance readmission and return of irregular migrants, and the eventual subordination of the former to the latter through some form of conditionality is a major challenge for EU external cooperation on migration, and more generally for future EU development cooperation.

2.1.1.4. Asylum and human rights protection
This is another area that, according to the Commission evaluation of the GAMM, has been relatively neglected in recent years, although this might be changing, in relation to asylum, in the wake of the ongoing crisis in the Mediterranean. EU efforts aimed at ensuring asylum and human rights protection in third countries have had only very limited measurable impact. Despite a principled approach to human rights as guiding criteria for development cooperation (see article 208 TFEU), the reality on the ground does not always promote the respect of human rights of migrants.

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[270] See Morocco's case study in Annex I of this study.
[271] European Commission, Staff Working Document, "Policy Coherence for Development 2015 EU Report", SWD(2015)159, 3.8.2015.

In 2009, an external evaluation requested by the European Commission assessed pilot RPPs in Eastern Europe and African Great Lakes Region, comprising 12 projects funded for an aggregate value of EUR 17.1 million[272]. Despite delays in implementation and lack of coordination, those first RPPs evidence good progress in assuring local protection of refugees, but success was elusive in terms of their local integration. Training and capacity building of national authorities had positive effects, but projects were not able to kick-start coordination of EU refugee, humanitarian and development policies within the framework of RPPs (the problem of compartmentalisation of cooperation). Limited flexibility regarding changing situations on the ground was another major issue identified by the evaluators. Difficulties in trying to measure outcomes and impacts of RPPs were highlighted, as well as weaknesses in the monitoring and evaluation process. In any case, since the EU has continued to launch RPPs in the Horn of Africa and North Africa and more recently RDPPs[273], it is clear that those first pilot programmes served their main purpose of testing new intervention frameworks and improving EU cooperation.

In particular, UNHCR reported that the RPP in Tanzania made noticeable progress in increasing the capacity of the national asylum system[274]. Activities undertaken included training police officers in areas hosting refugees; radio campaigns to spread information about the possibility for Burundian refugees to repatriate; establishing information technology services to register those who preferred to apply for Tanzanian citizenship; identifying and processing resettlement candidates; and early-stage activities to help develop a civil society network[275]. In the Eastern Neighbourhood, specifically Belarus, Moldova and Ukraine, the RPP focused mainly on adding support to activities already being undertaken by UNHCR. Efforts aimed at capacity building and at raising public awareness and acceptance of the presence of refugees were beneficial, according to UNHCR, but hampered somewhat by turnover among the staff assigned by the partner governments[276]. UNHCR reported some improvements in access to asylum procedures through better awareness on the part of officials, and through a higher quality asylum procedure[277].

Reflecting the large and protracted nature of the refugee situation in the region, the RPP established in 2011 in the Horn of Africa placed a significant focus on improving security and living conditions for refugees in camps, and on enabling registration to refugees in urban and border areas. Building on previous EU-funded projects, the RPP has shown "qualitative results in the overall protection environment and relationships with stakeholders", and demonstrates "that RPPs should be complementary instead of stand alone programmes that can promote durable solutions"[278]. In North Africa, the RPP began also in 2011 and, during periods when conditions were stable enough, engaged in training, awareness raising, facilitating fair RSD and voluntary return, and basic support in particular for trafficking victims. One important development of this RPP is its dialogue with a regional organisation, the League of Arab States, in addition to the interactions with national partners. The RDPP for the Middle East that began in July 2014 shows promise in its aims to add to the protection-specific activities of the other RPPs components of advocacy and dissemination of results to aid policy development, and of

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[272] GHK, 2009, *op. cit*.
[273] See Section 1.1.1.3, including a global review of main weaknesses of existing RPPs.
[274] M. Garlick, "EU Regional Protection Programmes: Development and Prospects", in M. Maes, M.C. Foblets, P. De Bruycker (eds.), *External Dimensions of EU Migration and Asylum Law and Policy*, Bruylant, Bruxelles, 2011, p. 380.
[275] Papadopoulou, 2015, *op. cit.,* p. 11.
[276] Garlick, 2011, *op. cit.*, pp. 382-383.
[277] Papadopoulou, 2015*, op. cit.,* p. 10.
[278] *Ibid.*, p. 13.

significant socioeconomic development aid to enhance the prospects for self-support through education, business development and employment[279].

In all RPPs and RDPPs to date, the resettlement component has been well executed, but remains remarkably small compared to the size of the need. On 8 June 2015 the European Commission adopted a Recommendation calling for a European pledge of 20,000 resettlement places, mostly for refugees coming from RPP partner countries[280]. UNHCR projected a total global resettlement need for 2016 of over 1,150,000 places[281]. The EU pledge, if fully taken up by the Member States, would alleviate slightly less than 1.75% of this need. In this regard, at the JHA Council of 20 July 2015, the representatives of Member States' Governments agreed on resettling 22,504 people in clear need of international protection and the distribution among them, to be implemented through multilateral and national schemes, giving priority to regions such as North Africa, the Middle East and the Horn of Africa, where RDPPs are being implemented[282]. Arguably, one result of this lack of a significant resettlement component may be to lead partner states to see RPPs as "mere containment tools"[283]. Finally, recommendations to effectively cooperate with third countries in resettlement activities do not have been acted upon yet[284] but should lead to a Commission proposal in March 2016 under the European Agenda on Migration[285]. RDPPs and especially their resettlement component should be designed and implemented taking into consideration the necessities and capacities of the targeted third countries[286].

As regards the impact of other GAMM instruments on human rights protection, it seems problematic that asylum applications and positive asylum decisions in EU Member States rise with regard to nationals of countries that have concluded EURAs[287]. Although national return decisions must respect the *non-refoulement* principle and that therefore EURAs per se do not violate human rights obligations in this regard and may be effective with regard to unfounded asylum applications, one could question the reliability of these partners for the treatment of returnees if they simultaneously constitute countries of origin of refugees[288]. As already highlighted, mechanisms of monitoring persons concerned in effective readmission to those countries and their subsequent fate should be put in place.

Border control arrangements with third countries must also take due account of their impact on people in need of international protection, as usually Frontex and Member States' arrangements on border control entail the surveillance of the partner's territory,

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[279] *Ibid*., pp. 13-15. Some limited information on actions and projects developed under the RPPs in North Africa and the Horn of Africa, as well as on assistance to the Syrian refugee crisis can be found in SWD (2014) 173, 22.05.2014.
[280] C (2015) 3560.
[281] UNHCR, UNHCR Projected Global Resettlement Needs 2015, 1.7.2015, p. 12.
[282] Conclusions of the Representatives of the Governments of the Member States meeting within the Council on resettling through multilateral and national schemes 20 000 persons in clear need of international protection, JHA Council, 20.7.2015. Council conclusions on safe countries of origin were adopted to at this meeting, by which priority to assess the safety of the Western Balkan countries was agreed.
[283] De Bruycker and Tsourdi, forthcoming, *op. cit.*, p. 31.
[284] As suggested in De Bruycker *et al.,* 2010*, op. cit.,* p. 410, multilateral dialogues should be initiated with third countries hosting large numbers of refugees in order to facilitate cooperation and fostering commonality of objectives and practices. Some form of tripartite agreements between EU Member States, UNHCR and third countries of first asylum could be envisaged. See in this sense European Parliament, Resolution of 10 September 2015 on migration and refugees in Europe, P8_TA-PROV(2015)0317, point 18.
[285] COM (2015) 240, p. 18.
[286] Guild and Moreno Lax, 2013, *op. cit.*, p. 25.
[287] Eurostat, "Asylum and first time asylum applicants by citizenship" and "Final decisions of applications by citizenship", 2008-2014.
[288] On the links between readmission agreements and human rights, see, among others, Coleman, 2009, *op. cit.*; M. Giuffré, "Readmission agreements and refugee rights: from a critique to a proposal", *Refugee Survey Quarterly*, 2013, 32, pp. 79-111.

hindering the exit of asylum seekers, in addition to other controversial effects on the human rights of migrants as a consequence of interdictions at sea[289]. Moreover, it should be borne in mind that Frontex has subscribed WAs with countries which represent priority countries of nationality of asylum applications in the EU, such as Serbia, Russia, Nigeria and Albania[290].

Regarding the impact of past VLDs with the Western Balkan countries (Albania, FYROM, Bosnia-Herzegovina, Montenegro, Serbia), the significant increase of asylum applications, mostly unfounded, from these countries is noteworthy. Although diverse factors might of course be at its source, this trend is noticeable since the entry into force of the visa-free regime in 2010. In 2014 asylum applications from the Western Balkan countries continued to rise - 47% more than in 2013, representing 97% of asylum applications in the EU from visa-exempted nationalities. Belgium has volunteered within SCIFA to monitor the effects of visa free regimes, particularly indicating that the information campaigns targeting the Western Balkans have been successful in reducing the inflow of asylum seekers with unfounded applications in Belgium[291]. As indicated in the Moldovan case study, no serious abuses have been recorded since the entry into force of the visa-free regime with this country, and the numbers of asylum applications filed by Moldovan citizens in the EU remain low[292].

2.1.2. Functional dimension

The EU external action on migration is being developed, as has been shown, through an assorted set of instruments of different nature. EURAs, VFAs and VWAs, as well as AA and PCA containing migration clauses, are international treaties, agreements with legally-binding force for the respective Parties. In contrast, MPs and CAMMs have been formalised through the signature of joint political declarations with third countries, while regional and bilateral migration dialogues share with the former also their political nature, having being adopted through terms of references among the participants or simple political declarations, statements or conclusions. Financial development cooperation in the field of migration and asylum is also channelled through a multiplicity of funds and assistance instruments.

The nature and the mix of all these instruments has certain implications in relation to their impact and effectiveness. The following analysis of the respective features of each category of instruments aims to assess their advantages, disadvantages and consequences for the attainment of the GAMM's objectives.

2.1.2.1. Legal instruments

The recourse to the negotiation, signature and ratification of international agreements for the establishment of cooperation on migration issues certainly provides predictability and legal certainty regarding the content and scope of the commitments undertaken by their Parties. As sources of international law, conventions enable the EU and third countries to invoke international responsibility in case of infractions to these agreements. Particularly within the EU, this entitles the CJEU to assess the compatibility with EU primary law of Council decisions authorising their conclusion and to declare infringements by Member

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[289] See, among others, M. Den Heijer, *Europe and Extraterritorial Asylum*, Hart Publishing, Oxford, 2012.
[290] Eurostat, "Asylum and first time asylum applicants by citizenship 2008-2014".
[291] SWD (2014) 165, p. 42.
[292] See Annex I on the present study on the case study on Moldova.

States if appropriate, although the Commission has not to date formally started any infringement procedure related to the external dimension of migration[293].

The possibility for the EU to enter into international agreements in these fields is clearly established, as the extent and scope of EU external competences in the field of migration is wide[294]. Nonetheless, the recourse to legally binding instruments by the EU evidently entails more cumbersome procedures for their adoption, complexity which is aggravated in fields where the current distribution of competences would require the conclusion of mixed agreements. The lengthy procedures required for formal agreements may not provide sufficient flexibility to be effective in this domain of external relations.

However, the limitations caused by formal instruments are offset by their advantages, as international agreements seem to be the appropriate instrument to regulate certain matters related to enforceable rights of migrants such as social security entitlements, recruitment of foreign workers and their rights, facilitation or exemptions on the issuance of visas, or guarantees and safeguards applicable to returned or intercepted migrants. Hard law is needed to enforce individual rights and ensure legal certainty on the accepted engagements. Additionally, the conclusion of international agreements enhances democratic legitimacy of the development of this external dimension, since the approval of European Parliament is required according to art. 218.6.a) v) TFEU.

2.1.2.2. Political instruments

Recent years have seen a clear trend towards an increasing recourse to political instruments, deprived of legally binding force, for the development of EU external action on migration, mirroring a previous similar evolution at national level. The main advantages of this trend relate to the adaptation of informal or political instruments to flexibly respond to changing circumstances, allowing for readjusting and renegotiating the terms of an agreement[295]. This flexibility also permits the updating of engagements of the partners without repeating lengthy negotiation and ratification procedures, as in the case of MPs and contrary to the amendments of the VFAs with Moldova, Ukraine and Russia.

According to several stakeholders, another positive aspect of political instruments, such as regional and bilateral migration dialogues, is that they increase exchange of best practices and mutual knowledge of participants, serving as a forum to initiate discussions on sensitive issues that the partners will not probably undertake in formal negotiations, also engendering new projects and further agreements and helping to mobilise additional funding for the development of practical actions. The risk is however that these dialogues focus on sterile discussions, or on simply selecting topics for next meetings, which can be especially problematic when officials sent as representatives of the participating countries are not always empowered to assume commitments.

An additional advantage of this kind of instruments is that migration management and cooperation with countries of destination is still controversial for countries of origin and transit, especially for their public opinions, thus explaining why political instruments are sometimes also preferred by third countries' authorities, instead of legally binding instruments that must receive publicity and parliamentary ratification. In particular, a low level of public visibility is positive for countries where readmission is unpopular, giving a

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[293] With the only exception of the opening of an infringement procedure against Germany because of the signature of an ADS bilateral agreement with China in 2002, contrary to the EU exclusive competence on short-term visas.
[294] See introductory section *supra*.
[295] J.-P. Cassarino, "Informalising Readmission Agreements in the EU Neighbourhood", *International Spectator*, vol, 42 (2), June 2007, p. 187 and 189.

negative image of them as dominated by European powers[296]. For the EU and its Member States, the operability of forms of migration cooperation is consequently prioritised over their formalisation.

The EU considers the fact that MPs are adopted through political declarations to be a positive aspect, entailing flexibility with regard to the voluntary participation of Member States in these partnerships. This might increase, according to the EU, the involvement in implementation of willing Member States in countries where they have particular interests and expertise[297], while allowing others which do not agree with MPs objectives not to take part.

Also soft law is considered to be the price to be paid in order to have "some Europe" in the external dimension of legal migration. Only by proposing political instruments such as MPs has it been possible to diminish Member States' reluctance to address legal migration issues within EU cooperation with third countries[298]. This approach has however not yet yielded significant progress, while at the same time diminishing any motivation to pursue a common approach to legal migration in relations with third countries[299].

In the Commission's view, this is also the Achilles heel of this approach, as it makes more difficult to secure a balanced and complete EU offer to third countries[300]. Indeed, the degree of discretion and margin of appreciation left to Member States' governments is considered too large to ensure a coordinated effort at EU level[301]. Moreover, the reduced engagement of Member States in the development and financing of certain political instruments such as MPs is a consequence of their flexibility and non-binding nature[302].

In addition to this, the shortcomings of political declarations and informal agreements increasingly used by the EU and its Member States are manifold. First, informal agreements and political declarations lack democratic legitimacy and judicial control[303], preventing the mandatory participation of the European or national parliaments and a possible intervention of the CJEU and national courts on the interpretation, control of compliance and conformity of their content with other legal obligations, as well as avoiding the enforcement of the right to an effective remedy in case of undesirable or damaging effects of a specific instrument. Specifically in relation to the limited parliamentary involvement in political instruments, one could consider that the material scope of non-normative agreements has no limitations, their basis being the attribution of the direction of external policy to the executive power. At EU level, the TEU arguably confers this task upon the Council, in particular to the FAC[304]. Consequently, if political instruments should match with political controls, instruments such as MPs, which are not subject to the right to information and intervention of the European Parliament enshrined in article 218 TFEU for international agreements, should not however escape from the prerogatives of political monitoring of this institution.

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[296] *Ibid.*, p. 189.
[297] COM (2014) 96, p. 20.
[298] "The Global Approach should contribute to this effort through considering *non-binding measures* aimed at better organising legal migration in cooperation with third countries taking into account the priorities, needs and capacities of each Member State.", Council Conclusions on the GAMM, May 2012, point 10 (emphasis added).
[299] R. Parkes, "EU Mobility Partnerships: A Model of Policy Coordination?", *European Journal of Migration and Law*, 2009/11, p. 329.
[300] COM (2014) 96, p. 20.
[301] Carrera and Hernández I Sagrera, 2009, *op. cit.*, p. 30.
[302] COM (2014) 96, p. 20.
[303] Carrera and Hernández I Sagrera, 2009, *op. cit.*
[304] Article 16.6, last indent, TEU.

Secondly, being informal, political instruments usually lack publicity, as with the informal arrangements on readmission and border cooperation subscribed by EU Member States with third countries. Most informal agreements linked to readmission in the form of MoUs or exchanges of letters subscribed by Member States are with countries in the South and East Mediterranean and Africa, while most formal readmission agreements have been concluded with Eastern European countries and the Western Balkans[305]. If these arrangements are not recorded in official bulletins or other formal documents, difficulties arise in detecting them, aggravated if a fluent exchange of information is not taking place between Member States and the EU. The lack of publicity does not affect however every political instrument, since joint declarations establishing a MP or a CAMM are published. Even in these cases, however, there is still some degree of obscurity regarding implementing tools such as the MP scoreboards.

Finally and most importantly, the lack of publicity usually characteristic of political instruments and informal arrangements casts doubts on the ways to ensure compliance of their implementation with international and European human rights law[306]. Illustrating examples are the readmission cooperation between Italy and Libya or the criticism directed towards EURAs and Frontex cooperation with third countries.

For all these reasons, political instruments should be primarily used as means to favour and to enter into legally-binding instruments, restricting their use to govern only specific migration issues and not the kinds of matters that need to be regulated in hard law instruments. It must be noted however that the fact that a formal agreement is concluded does not imply that hard law is always present with regard to all the commitments included therein, entailing the appearance of material soft law. This is the case of readmission and migration management cooperation clauses inserted in several AAs and PCAs signed by the EU, as well as Spanish and French bilateral migration cooperation agreements, containing clauses related to the rights of migrants which are usually drafted in rather vague terms[307].

2.1.2.3. Operational perspective

The operational perspective refers to the effects and consequences of funds, areas of intervention and types of projects and working arrangements to implement them. A first issue concerns the lack of balance between the components of the GAMM: despite political commitment to a balanced approach, the implementation of EU cooperation in the field of migration and asylum is biased in favour of the control of irregular migration, including integrated border management programmes, and return and reintegration, even if there is a positive evolution in this regard in favour of labour migration, migration and development and asylum and international protection interventions.

A second major issue is the dispersion of funds and funding instruments, which translates into a lack of visibility for partner countries and implementers; a frequent lack of coordination and coherence between interventions in the same area; and overlapping and duplications of efforts and resources. The multiplicity of geographical and thematic funds and programmes (see section 1.2) also introduces arbitrariness in the choice of projects to be funded, and undermines a coherent approach to funds distribution in this field among different goals and areas, as well as the overall amount of resources devoted to migration in the framework of EU external cooperation.

The large share of resources in this area devoted to capacity building and training of authorities in partner countries addresses what all actors identify as the crucial issue in

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[305] Cassarino, 2007, *op. cit.*, p. 187.
[306] *Ibid.*, p. 193.
[307] See García Andrade, 2012, *op. cit.*

improving migration management and optimising the development impact of migration. But it poses major problems of relevance and added value (to the extent that international cooperation substitutes for the action of partner States), sustainability (after international funds are exhausted) and effectiveness. Significant resources are spent on training actions, often without prior analysis of real training needs (of institutions, but also of individuals who will benefit from the training activities, since the same officers often receive similar trainings in different contexts over the years). New training packages and tools are often developed in the framework of each project without building on formerly developed ones in the same areas. A more thorough evaluation of capacity building and training actions should be undertaken, since so far there is no established set of good practices to build on in this field.

In terms of implementation, EU Delegations often lack the specialised staff required to program, implement and monitor those projects. The recent changes in status as a consequence of the creation of the EEAS has added to the confusion in this respect. Additionally, the programming process is often very slow, greatly limiting the capacity to respond to new developments or contextual changes, and administrative procedures for the selection of service providers, project funding and implementation are often too burdensome to be effective. Combined, these issues lead to a very limited flexibility of EU action. This aspect might improve in relation to future projects in Africa with the implementation of the Emergency Trust Fund for Africa, but operational procedures are yet to be defined. Regional programmes in particular are implemented by specific EU delegations, so they tend to be "split" between involved delegations and separate national actions, to a certain extent losing their regional dimension.

Linked to this institutional capacities issue and to the fragmentation and multiplicity of funds and programmes, EU external cooperation in the field of migration and asylum features a high degree of compartmentalisation, with recurrent problems of coordination, alignment and integration across projects or actions pursuing complementary or even similar objectives.

In this context, the growing involvement of Member States' institutions in the implementation of projects as service providers, for instance, in the implementation of RDPPs and targeted initiatives or projects to support the implementation of MPs[308], is challenging. Whereas peer-to-peer support no doubt constitutes an effective way to build institutional capacity in partner countries, and Member States are best placed to provide it, the direct engagement of public institutions from Member States in project implementation in the area of migration risks politicising the selection of service providers, making accountability more difficult and letting Member States political priorities and objectives interfere with the implementation of EU-funded projects in migration and asylum, probably to the detriment of development-related objectives. This risk also applies to the implementation of the external actions in the framework of AMIF, which should be included in Member States' National Action Plans, and hence may even fund human resources in Member States. However, this is less serious than in the case of the development cooperation fund, given that AMIF's main objective is precisely to contribute to a common asylum and immigration policy.

Finally, information on project implementation should be more systematically compiled and disseminated, as often it is public but not actually published beyond the action fiche. Mandatory evaluations should not focus only on outputs and outcomes, but also on

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[308] For example, the Targeted initiative in Georgia was implemented by the Ministry of Internal Affairs of the Czech Republic, in Moldova by the Swedish Public Employment Service, in Armenia by the OFII and GIZ and in Morocco by France Expertise International.

impact in relation with the strategic objectives of each project, and more resources should be invested in follow-up and evaluation of impact after the finalisation of projects. Standard performance indicators of projects and instruments would greatly facilitate making comparisons across regions and types of projects.

2.1.3. Institutional dimension

2.1.3.1. EU - Member States coordination
As highlighted above, the current distribution of competences in the EU immigration and asylum policies requires strengthened coordination efforts between the Union and its Member States for developing and implementing the GAMM. The point of departure for ensuring that the EU and its Member States coordinate their external actions on migration is the need to count on adequate means to exchange information on agreements concluded, projects and actions carried out at Member States' level. At present, however, the Commission lacks information regarding what Member States' governments are doing on a bilateral level, as no systematic exchange of national practices of cooperation with third countries seems to be occurring within EU structures. Institutional mechanisms are nevertheless in place, as well as legal obligations in force for this purpose. Indeed, one of the functions to be fulfilled by the HLWG on Asylum and Migration was to serve as a working structure where Member States should inform about their own external action on migration and exchange experiences and practices with each other and with the Commission[309]. However, there does not seem to be an orderly exchange of bilateral practices within the HLWG, but rather an ad hoc process of presenting and discussing some national projects.

As a development of the loyal cooperation principle, the obligation to exchange information on migration issues is specifically enshrined in Council Decision 2006/688 establishing a mechanism of mutual information on national measures that Member States intend to take or have recently taken in the areas of immigration and asylum, provided that these measures are publicly available and likely to have a significant impact on several Member States or on the EU as a whole[310]. In the evaluation of this mechanism undertaken in 2009, the Commission acknowledged that its functioning in practice had not met expectations[311]. It was therefore decided that the information communicated by Member States would be provided in the following years in the Commission's report on the tracking method for monitoring the implementation of the European Pact on Immigration and Asylum[312]. Since then, general information on national measures, including bilateral agreements with third countries, has been included in working documents accompanying the annual reports on immigration and asylum[313]. This does not necessarily mean that an exchange of views and debates on their external

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[309] See "Modification of the terms of reference of the High Level Working Group on Asylum and Migration (HLWG)", Council doc. 9433/02, 30.5.2002, point 9.
[310] Article 1 of Council Decision (EC) 2006/688 of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration, OJ L 283, 14.10.2006.
[311] Since April 2007 until September 2009, only 45 national measures were communicated through this mechanism, while 11 Member States have not provided any information at all. At the evaluation, no international agreement or external cooperation measure was identified. See European Commission, Report pursuant to Article 4 and Article 5 of the Council Decision of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration, COM (2009) 687, 17.12.2009.
[312] *Ibid*. See European Commission, Communication on the "Tracking method for monitoring the implementation of the European Pact on Immigration and Asylum", COM (2009) 266, 10.6.2009.
[313] 1st report COM (2010) 214; 2nd report COM (2011) 291; 3rd report COM (2012) 250; 4th report COM (2013) 422; 5th report COM (2014) 288. See the Commission Staff Working Documents accompanying the annual reports for specific references to national actions, e.g. SWD (2014) 165, 22.5.2014. Surprisingly, the report on the implementation of the GAMM does not include references to Member States' external action on migration.

action take place among Member States and with the Commission. For this reason, an amendment to Council Decision 2006/688 should be undertaken in order to include an explicit obligation to exchange information on projected bilateral agreements, arrangements and projects that Member States plan to set with third countries, to hold a debate on these measures and to internally coordinate before their adoption. If the current mechanism is not considered appropriate, a new legally binding norm should be adopted in order to clearly set specific obligations on Member States with regard to concluded and projected bilateral agreements or arrangements with third countries in this field[314].

A similar lack of information and coordination is present in the relationship between Member States and EU agencies, mainly Frontex. As the Agency's regulation permits cooperation with third countries outside the Frontex umbrella provided that it complements the action of the Agency[315], Regulation 2007/2004 requires Member States to report to the Agency on the operational cooperation they develop at the external borders outside the framework of Frontex[316]. However, a fluent exchange of information does not seem to be the rule particularly as regards border management operational cooperation with third countries at national level.

Readmission negotiations, cooperation within mobility partnerships or national projects receiving EU funding are examples of specific matters in which a certain lack of coordination is felt.

First, regarding readmission, the Return Migration and Development Platform (RDP) of the European University Institute reveals how Member States do not always respect the loyal cooperation principle which is at the basis of the "mandate theory"[317]. For instance, while the Commission received the mandate to negotiate an EURA with Russia in September 2000, Greece signed a police cooperation agreement linked to readmission with the same country in May 2004, as did Italy in January 2006, four months before the signature of the EURA with Russia. Similarly, France, the United Kingdom and Italy signed bilateral readmission agreements or memoranda linked to readmission with Algeria in 2003, 2006 and 2009, respectively, after the mandate to negotiate a EURA had been adopted in November 2002 with the same country[318]. Apart from the fact that the sincere cooperation principle enshrined in article 4.3 TEU has been infringed by these Member States without legal consequences, these examples serve to highlight the need to prevent EU negotiations on readmission from being impaired by Member States' parallel negotiations.

Another case of limited coordination between the Union and its Member States concerns the design and implementation of MPs with third countries. Overlap is visible between projects or initiatives offered by individual Member States and the EU or an EU agency. For instance, within the MP with Cape Verde, Portugal, Spain, France and Frontex each offer projects on border managements with similar purposes. The MP with Morocco offers a clear illustration of overlapping efforts with regard to information campaigns and training courses on legal migration (IT, BE, ES); capacity building for employment

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[314] With regard more specifically to readmission, Cassarino recommended to the European Parliament to request the Commission to carry out a thorough and regularly updated inventory of all bilateral agreements linked to readmission concluded by each Member State. Cassarino, 2010, *op. cit.*, p. 18.

[315] Article 2.2, first para. of Frontex Regulation.

[316] Article 2.2, last para. of Frontex Regulation.

[317] This information is available at the Inventory of the agreements linked to readmission, prepared by the RDP of the EUI at http://rsc.eui.eu/RDP/research/analyses/ra/ (last access on 17.8.2015).

[318] Note that, although United Kingdom enjoys an opt-out situation within the EU immigration and asylum policies, the British government had opted-in to the mandate to negotiate a EURA with Algeria. See Council doc. no. 14835/1/02, 26.5.2008.

agencies (EU, SE); training measures on border management, prevention and fight against smuggling of migrants and trafficking of human beings, and document security (FR, PT, NL, Frontex) or capacity building on international protection (NL, DE, PT, EU, EASO). Although each project may bring added value to migration cooperation between the partner and individual Member States, it is important not to lose sight of the fact that MPs are EU instruments, receiving EU funding for their implementation, so that projects and activities contained therein should have an EU or at least a multilateral scope.

In some MPs, certain Member States offer projects which were already being implemented at the bilateral level. This is well exemplified again in the MP with Cape Verde within which France and Spain included proposals of cooperation that were being negotiated or already in place with the Cape Verdean authorities[319]. The French case is even more questionable, as its bilateral migration cooperation agreement with Cape Verde was negotiated in parallel with the discussions on the EU MP, in which France participated, which could be against the loyal cooperation principle in the EU external relations. The MP with Morocco also evidences the limited added value of MPs as currently devised, since an important part of the initiatives included in this instrument were already in progress as of March 2013[320].

These shortcomings related to MPs could be solved by requiring Member States to exclusively include new proposals and initiatives, and, more importantly, by making EU funding available only to multilateral projects involving several Member States under a MP, therefore adding a real value to this EU instrument.

A need for increased coordination is also noticeable concerning funding of the EU and Member States' external dimension of immigration and asylum policies. In particular, criticism may be addressed towards the increasing recourse to a shared management system in the external dimension of AMIF and ISF. According to the Commission, the distribution of competences on immigration and asylum necessitated giving more responsibility to Member States to decide on the implementation of EU funds. However, it is surprising to have this system by which Member States get more funding for bilateral external action at a moment when the Union has more and more competences in this area. Another challenge is of course to ensure complementarities on financing, as the EU provides funds for the implementation of the GAMM by Member States, but it might not be aware of which funds national authorities are themselves devoting to the implementation of the GAMM.

From the interviews carried out during this study, it emerges, as has been pointed out before, that Member States are willing to be involved in every activity of EU external action on migration. However, they do not always participate later on or do not ensure a continuous involvement in those EU activities, nor in regional and bilateral migration dialogues or in the implementation meetings of MPs. A possible way to address the weak participation of Member States, usually due to lack of financial and human resources to cover all fora especially regarding regional and bilateral migration dialogues, could be to simplify the external representation of the EU and its Member States. This could be done by having the Commission as one single representative of both the EU and its Member States. According to article 17 TEU, the Commission ensures, with the exception of CFSP,

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[319] In particular, the Agreement between France and Cape Verde on concerted management of migration flows and solidary development which was to be signed in Paris on 24.11.2008 (JORF no. 90, 16.4.2011, p. 6680) as regards the French proposals on economic admission of migrants and a co-development programme, and the Agreement between Spain and Cape Verde on joint surveillance of maritime zones under sovereignty and jurisdiction of Cape Verde, done in Praia on 21.02.2008 (BOE no. 136, 5.6.2009, p. 47545), as regards the Spanish proposal on sea patrols and surveillance operations.
[320] MP with Morocco, Council doc. 6139/13, 3.6.2013, pp. 33-45

the Union's external representation. Since this only grants the Commission the external representation of the Union itself in its fields of competence, not of its Member States, the latter should confer on the Commission a clear mandate with specific guidelines to be followed with regard to those issues in which Member States still preserve national powers, on the basis of the needs and interests of national governments. Nevertheless, for now, Member States governments would not accept such a proposal in fields in which they still preserve important competences, margin of discretion and financial capacities, taking also into account that regional dialogues in which intergovernmental presence is key, such as the Rabat Process, are producing very positive results.

2.1.3.2. Inter-institutional coordination

A great variety of EU institutions and working structures are involved in the design and implementation of the GAMM. One of the major institutional challenges affecting the external dimension of immigration and asylum policies is the relationship between the Commission and the EEAS. Their difference in perspectives is evident, since the Commission, and specially DG HOME, is more centred on concrete migration priorities from a technical perspective, while the EEAS wishes to introduce a more strategic and geopolitical vision from an external relations point of view[321]. Many voices argue in favour of increasing the involvement of the EEAS in this field, a path welcomed by the Council, the European Parliament and Member States[322]. The problem lies, most stakeholders agree, in whether the EEAS has sufficient capacity and human resources to undertake a greater responsibility in the conception and implementation of the GAMM.

In particular, EU Delegations, as part of the EEAS, are supposed to assume a strengthened role in the implementation of EU forms of cooperation with third countries in this field, as they represent the EU in the countries where they are accredited[323], and should thus constitute the main political support for the operability of this external dimension[324]. For this purpose, migration liaison officers are to be sent to EU delegations abroad before the end of 2015[325]. Their role would be important in every field of migration, even in labour migration[326]. It is not however clear that these officers would

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[321] Apparently, the EEAS is more influential in the development of dialogues and other forms of migration cooperation with Africa than with the Eastern partners, with which discussions have acquired a more technical character.

[322] See Council Conclusions on the GAMM, 2012, point 5, and especially Council Conclusions on the implementation of the GAMM, 2014, point 6; European Parliament, Resolution of 5 April 2011 on migration flows arising from instability: scope and role of EU foreign policy, P7_TA (2011)0121, 5.4.2011, Resolution of 3 April 2014 on the EU comprehensive approach and its implications for the coherence of EU external action, P7_TA-PROV (2014)0286, point 8. See S. Carrera, J. Parkin, L. den Hertog, "EU Migration Policy after the Arab Spring: the Pitfalls of Home Affairs Diplomacy", Policy Paper 74, Notre Europe/CEPS, February 2013; Carrera, den Hertog and Parkin, 2012, *op. cit.*; or Guild and Moreno Lax, 2013, *op. cit.*, p. 24.

[323] See Council Conclusions on the implementation of the GAMM, 2014, point 7. The EP has noted that "while the EU delegations in third countries will complement existing diplomatic representations of the Member States, there will be possibilities for long-term gains in efficiency, as the future EU delegation could in many cases take over consular services and deal with Schengen visa issues", European Parliament Resolution of 22 October 2009, on the institutional aspects of setting up the European External Action Service, P7_TA(2009)0057, DO C 265 E, 30.9.2010, point 10. The European Agenda on Migration highlights that EU delegations in key countries will "in particular report on major migratory related developments in the host countries, contribute to mainstream migration issues into development cooperation and reach out to host countries to ensure coordinated action" (p. 8).

[324] In this regard, Spanish practice could be examined as a model, since the external strategy on migration developed by this Member State towards Sub-Saharan Africa was accompanied by intense efforts on extending Spanish institutional presence in those countries, through the opening of new diplomatic missions and by strengthening its diplomatic and sectorial agents in existing ones (see Plan África 2006-2008, Executive Summary, p. 9).

[325] Stockholm Programme, point 7.1; European Council meeting of April 2015; the European Agenda on Migration, p. 8; and especially Council doc. no. 11782/1/15 REV 1, 11.9.2015, point 45.

[326] It is suggested to explore the idea of "EU Labour Information points" as part of EU delegations, offering the possibility to European employers of posting job vacancies and providing information on labour opportunities in

belong to DG HOME in the Commission, but they could even be national agents seconded for this purpose. Coordination between EU delegations and Member States' diplomatic missions abroad should also be ensured and increased[327], as well as the connection between EU migration liaison officers and liaison officers from EU agencies such as Frontex[328].

inally, a significant drawback of the EU external action on migration resides in the limited democratic scrutiny of its design and implementation. The fact that political and operational instruments take a more and more meaningful place in the development of the GAMM substantially diminishes the role of the European Parliament, only legally bound to intervene by approving the conclusion of international agreements in this field. The role and involvement of the European Parliament should be increased[329], making it advisable to search for ways of boosting deeper consultations and cooperation between the Commission and the Council, on the one side, and the European Parliament, on the other. If rigid means of involvement should be avoided in view of the flexibility and celerity that currently characterise this external dimension, forms of involvement such as, for instance, regular debates and consultations on the design and impact of MPs, CAMMS and RDPPs should be envisaged. Also, the role of the European Parliament with regard to formal agreements like EURAs and VFAs should not be limited to the formal procedure of consent foreseen in article 218 TFEU, but this institution could arrange for mechanisms of monitoring their implementation, in which MEPs should be deeply involved[330]. A more visible and intense involvement of the European Parliament is also desirable with regard to the supervision of the external action developed by EU agencies in this field. Currently, the revised mandate of Frontex only refers to a duty to inform the European Parliament on working arrangements subscribed by the Agency with other Union agencies, international organisations and third countries, as well as about the deployment of Frontex liaison officers in third countries[331]. The EASO regulation does not include a similar reference with regard to its external activities.

2.1.3.3. Intra-institutional coordination

Inside specific EU institutions, enhancing coordination and coherence is an evident challenge of the EU external action on migration. This is particularly true of the Commission. The diverse Directorates General involved in the design and implementation of the GAMM have different mandates and different perceptions of the objectives and needs of the EU regarding the external dimension of these policies. According to several stakeholders, DG HOME - particularly its International Coordination Unit - seems to follow a more security-centred approach and considers the external dimension as a means to achieve internal migration objectives[332], not always having in mind the general external relations policy goals and the specific needs and objectives of development

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the EU: MPC and P. Bosch, "Towards a pro-active European migration policy. Concrete measures for a comprehensive package", *MPC Policy Brief* 2015/03, EUI, pp. 10-11.

[327] The use of a cooperation model based on the concept of the Schengen Local Cooperation might prove helpful, according to Papagianni, 2013, *op. cit.*, p. 297.

[328] COM (2015) 285, p. 5. In this regard, mention is also to be made to the African Frontex Intelligence Community (AFIC), an informal cooperation platform for regular knowledge and intelligence sharing on border security between Frontex, African countries and EU Member States ILOs in those countries. The Commission suggests to enhance the development of this platform and to extend the model to other regions: COM (2015) 285, p. 5.

[329] Papagianni, 2013, *op. cit.*, p. 297 and Reslow, 2012b, *op. cit.*, p. 226 and 231.

[330] With regard to EURAs, see, for instance, Cassarino, 2010, *op. cit.*, and M. Manrique Gil et al, "Mediterranean flows into Europe: Migration and the EU's foreign policy", *EP in depth analysis*, March 2014, PE 522.330, pp. 17-18.

[331] Articles 13 and 14.8 of Frontex Regulation after the reform made by Regulation (EU) No 1168/2011.

[332] As acknowledged by the Council since the inception of the external dimension of migration (see supra note 16).

cooperation[333]. DG DEVCO, which is devoting an increasing amount of development funds for migration-related purposes[334], has a different set of technical expertise on immigration and asylum, more focused on development, as compared to DG HOME agents, while DG NEAR seems to be more focused on objectives of purely political character. RPP/RDPPs illustrate these different views, since in designing and developing these programmes DG DEVCO was apparently focused on refugee protection and fighting for the inclusion of development links within RPPs, while, under DG HOME funding, these programmes might assume many other objectives, including fighting smuggling of migrants and human trafficking, with the risk of marginalising refugee concerns.

Coordination among the DGs involved is therefore crucial. The alternative to concentrate everything under one existing Directorate within the Commission, i.e. DG HOME, would not be adequate in our view, as each Directorate involved in the external dimension contributes to a more comprehensive and balanced EU external action in the field. However, the advantage of the variety of actors implicated should not become a hindrance for the effectiveness of the policy. It should even be considered whether keeping all the dimensions of migration under DG HOME is the best approach. Although this allows greater coherence, having interior officials in charge of legal and labour migration, integration of residents, migration-development synergies and international protection should be carefully assessed[335]. To this effect, the internal institutional organisation of certain Member States with regard to migration and asylum could provide a model of governance[336].

In any case, the institutional coordination of the policy planning and action of DG DEVCO, DG HOME, DG NEAR and the EEAS will be a key issue to ensure "acting as one" in relations and cooperation with partner countries. Migration policy dialogues should be fully integrated, also institutionally, with cooperation in the field of development, in particular in countries with enhanced cooperation frameworks such as the Action Plans and Single Support Frameworks agreed in the framework of the European Neighbourhood Policy. This will be even more important in the framework of the implementation of the European Agenda on Migration. With its adoption, an inter-service group composed of DG HOME and other Directorates involved in migration will be in charge of monitoring the follow-up of the new agenda.

Being responsible for ensuring coherence and coordination of the external action inside the Commission, the HR/VP has been charged, since the start of the mandate of the new Commission, with chairing a Commissioners' Group on External Action, in order to develop a joint approach in conducting EU action in several portfolios having a strong external dimension, including migration together with neighbourhood and enlargement; trade; development; humanitarian aid; climate action and energy; and transport[337]. A similar initiative was on the table during the mandate of the former Commission, but it only met once a year without the presence of the former HR/VP. It is however still too early to assess the added value of this promising initiative, although it is already clear that current HR/VP has assumed a more active role on the external dimension of migration.

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[333] See Carrera, den Hertog and Parkin, 2012, *op. cit.*
[334] Papagianni, 2013, *op. cit.*, p. 288.
[335] Carrera, den Hertog and Parkin, 2012, *op. cit.*
[336] For instance, in Spain, asylum, irregular immigration, border management and readmission are under the mandate of the Interior Ministry, including negotiation and implementation of bilateral agreements on these issues. Labour migration and integration is governed by the Ministry on Employment and Social Security, while visas, migration and development synergies and broad migration cooperation agreements correspond to the mandate of the Ministry of Foreign Affairs and Cooperation.
[337] Mission Letter from President Juncker to HR/VP Mogherini, 1 November 2014, p. 3.

The Council is another institution which needs to ensure coordination of the design and implementation of the GAMM, not only between the JHA and FAC formations, but also among various working parties and structures charged with tasks related to the external dimension of EU immigration and asylum policies, such as the Working Party on Integration, Migration and Expulsion, the Visa Working Party, the Asylum Working Party, the HLWG and SCIFA, as well as geographic Working Parties on foreign affairs. In particular, in addition to the coordinating role of the COREPER, the HLWG, the most important structure in this external dimension, remains, in words of the Council, "the central steering forum for strategic discussions and initiatives in relation to the Global Approach and to prepare the ground for concrete actions of implementation, where appropriate, in consultation with other Council Working Parties"[338]. SCIFA plays a leading role in coordinating the external and the internal dimensions of migration policies[339]. Currently, work is apparently being done, and should be encouraged, to ensure better coordination between these structures in order to avoid overlaps[340]. An alternative to explore could be to merge these working groups into one single unit in charge of the external dimension of immigration and asylum policies within the Council.

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[338] Council Conclusions on the GAMM, doc. 9417/12, 3.5.2012, point 6. The mandate of the HLWG indicates that Counsellors responsible for the geographic areas referring to countries addressed in its agenda also participate in the meetings (Council doc. 9433/02, 30.5.2002, point 12).
[339] Council docs. 6166/2/99, 16.03.1999, 6370/00, 22.2.2000, and especially 17476/10, 6.12.2010 and 17182/11, 18.11.2011.
[340] JAIEX, the JAI-RELEX Working Party, created in 2008 to coordinate external relations in the area of justice and home affairs, prepare dialogues with third countries in this field, provide with strategic reflections, and debate on the external activities of EU agencies, is however more focused, at present, on the external dimension of police and judicial cooperation issues. See its mandate in Council doc. 14236/08, 27.10.2008 and 14431/1/08, 28.10.2008.

2.2.   Short case studies

KEY FINDINGS

- **Moldova signed Readmission and Visa Facilitation Agreements with the EU in 2007, and was the first neighbourhood partner country to sign a Mobility Partnership in 2008.** It obtained a visa free regime with the EU in 2014. The EU-Moldova MP has proved a comprehensive and flexible umbrella instrument that facilitated the country's reform agenda in the field of migration. Over 100 initiatives were set supported by over EUR 50 million commitments from the EU and the 15 partner Member States. The MP has shown good coordination and close observance of the initial objectives. The challenges identified point to the need for increased clarity on the scope of the tool and its relation to other EU instruments in the area, a more balanced approach in line with GAMM pillars, better-informed planning of financial assistance projects and a thorough commitment to human rights aspects of migration.

- **Morocco was the first Arab Mediterranean partner country with which the EU signed a Mobility Partnership, in June 2013**, jointly with nine of its Member State. Morocco was already at least since 2006 a reliable partner in the field of border control to contain irregular migration to Europe, and between 2007 and 2010 benefitted of a budget support programme for integrated border control amounting to EUR 67.6 million. Negotiations for a VFA and a EURA started in January 2014, but the prospects of agreeing are remote. In contrast, the MP has proved instrumental to a thorough review of Morocco's immigration policy based on the protection of human rights and the integration of immigrants. This new policy is being strongly supported by the EU, which has doubled its financial commitments in the field of cooperation on migration and asylum to EUR 20 million.

- After successive migration crisis following the Revolution in January 2011, **Tunisia signed a Mobility Partnership with the EU and 10 Member States in March 2014** in the framework of the "Privileged Partnership" established to support political and economic transition. However, social opposition to the MP was strong, as social movements and migrant associations denounced an attempt by the EU to "outsource" migration control. As a consequence, MP implementation is proving slow, and negotiations for a EURA and a VFA have not yet started, whereas the flagship project to support the implementation of the MP has yet to start one and a half years after the signature. The consultation process to agree on a negotiation platform with the EU (for instance on the content of the Annex of implementing projects for the MP) has already helped the inter-governmental coordination of national authorities in this field, and might be instrumental in advancing a clearer formulation of national migration policies.

A short abstract of the three country case studies carried out as part of this research paper is provided in this section. Annex I contains the full country case studies, including references.

2.2.1. Moldova

Moldova has been an active EU partner in migration cooperation for seven years. Moldova signed Readmission and Visa Facilitation Agreements with the EU in 2007 and joined the EU Mobility Partnership in 2008. A Regional Protection Programme was set up

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in the region during 2009-2013. In 2010, a Visa Liberalisation Dialogue was launched and a visa free regime was granted to Moldova in April 2014.

The EU-Moldova Mobility Partnership (MP)[341] has proved a comprehensive and flexible umbrella instrument which facilitated the country's reform agenda in the field of migration, in line with the EU *acquis.* Over 100 initiatives were set[342] supported by over EUR 50 million commitments from the EU and the 15 partner Member States[343]. The MP has shown good coordination and close observance of the initial objectives[344]. The challenges identified point to the need for increased clarity on the scope of the tool and its relation to other EU instruments in the area, a more balanced approach in line with GAMM pillars, better-informed planning of financial assistance projects and a thorough commitment to human rights aspects of migration.

The EURA and VFA have known a smooth implementation in Moldova. The country has made very good progress in readmission matters, having established an effective legal and institutional framework in the area. The number of Moldovan citizens readmitted from the EU decreased and remains stable. With the support of the EU, Moldova is to continue the efforts on readmission agreements negotiations with the main third countries in the coming years, currently the main threat to the stability of the country's migration management system.

The RPP, in place from 2009-2013 for Moldova-Belarus-Ukraine, ensured crucial infrastructure and technical assistance at Moldova's borders[345], regular border protection monitoring missions[346], training of border guards, legal practitioners and civil society representatives on asylum matters. Yet the programme largely lacked a genuine regional dimension hampered mainly by diverging capacities and varying commitment of the three targeted states.

The VLD, together with the VLAP, have proved strong reform tools in the case of Moldova. In less than 4 years, the country has adopted and put in place an impressive legislative, policy and institutional framework in the field of migration and beyond, including the reform of border police, a national data protection authority, a national anti-corruption centre, an integrity council and an Ombudsman's office. The implementation phase also showed good progress, but the far-reaching reform agenda has generally stagnated after the visa free regime entered into force.

As for the strict case of visa liberalisation, during the first year of enforcement, the visa waiver for Moldova has been implemented smoothly, with no serious abuses recorded[347]. The number of Moldovan citizens readmitted from EU Member States is stable and the number of asylum applications from Moldovan citizens in the EU Member States remains low. Future implementing steps include adherence to the Schengen *acquis* and standards, with more than EUR 21 million EU budgetary commitments for 2014-2016.

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[341] Council of the European Union, Joint Declaration on a Mobility Partnerships between the European Union and the Republic of Moldova, 21 May 2008, doc. nº 9460/08.
[342] http://scoreboard.mfa.gov.md.
[343] COM (2014) 96 final, 21.2.2014, p.5.
[344] Monitoring of migration flows; Consolidation of the National Migration Management System; Information on legal migration and assistance for returning migrants; Labour migration schemes; Voluntary return and reintegration schemes; Diaspora consolidation and co-development; Social protection of migrants and their families; Development of the Moldovan labour market; Visa and readmission; Cooperation in border management; identity and travel documents, fight against illegal/irregular migration and trafficking in human beings. See, note 1, Annex, p.8.
[345] Nine reception centres for interview and/or short receival of asylum seekers for up to 24 hours have been established at the International airport Chișinău, land border points Leușeni and Palanca, border police pickets of Criva, Sculeni and Giurgiulești, Ocnita, Saiti; one interview room was renovated within the premises of BMA.
[346] 63 missions during 2011-2013.
[347] COM (2014)711 final of 27.11.2014, p.11.

2.2.2. Morocco

There are between 3.5 and 5 million Moroccan residents abroad, according to official estimates, i.e. between 10% and 15% of the population. Annual migration flows remain between 80,000 and 100,000. Even if migration rates have declined over the last few years, between 29% and 40% of young people express the wish to migrate (i.e., 4 to 5.3 million young people). Morocco has also become a transit country from Sub-Saharan Africa to Europe, although figures remain modest (between 25,000 and 40,000 Sub-Saharan irregular immigrants in the country, according to Ministry of Interior estimates, out of a total of fewer than 100,000 legal foreign residents).

Morocco was the first Arab Mediterranean partner country with which the European Union signed a Mobility Partnership, in June 2013. The Joint Declaration between the EU, nine of its Member States and Morocco was complemented by an Annex of cooperation projects by EU agencies and Member States supposed to contribute to the achievement of each of the objectives stated[348].

In the Joint Declaration, the parties engage themselves to negotiate a Visa Facilitation Agreement and a Readmission Agreement, but after a first round of talks negotiations seem blocked since January 2015. Sources linked to the negotiations consider chances for reaching an agreement in the foreseeable future to be very small.

The MP was followed, three months after its signature, by a deep change in the immigration policy in the Kingdom. This has become a unique case in the EU's Southern Neighbourhood of a partner country establishing an immigration and asylum policy based on human rights principles, in line with the EU's GAMM. An exceptional regularisation campaign during 2014 resulted in 17,918 one-year residence permits from 27,330 applications registered (almost half of them to Senegalese and Syrians, followed by Nigerians and Ivoirians). In March 2014, the Government presented to Parliament three new laws on Immigration, Trafficking of Human Beings and Asylum, although they have not yet been adopted. In December 2014, a National Migration and Asylum Strategy was launched, including eleven immigrant integration programmes in all relevant fields; the first progress report on the implementation of this strategy was presented in September 2015.

The new policy prompted a quick reaction from the European Union and a redefinition of its priorities of cooperation in this field. Now EU cooperation in migration focuses strongly on the integration of immigrants, and the mobilisation of Moroccan skills abroad, in full agreement with the policy priorities of the Moroccan government, as well as on return and reintegration to and from Morocco to the countries of origin.

In August 2015, there were in Morocco 25 different ongoing projects in the field of migration funded by the EU[349], for a total amount of more than EUR 20 million over their implementation period. Of this amount, EUR 10 million corresponds to the new budget support programme to promote the integration of immigrants in Morocco, launched in 2015 after the adoption of the new immigration policy. Another EUR 5 million corresponds to the Sharaka Project to support the implementation of the MP, which also has a strong technical assistance and institutional capacity building component. EUR 1 million funds a return programme to countries of origin from Morocco, plus EUR 1.6

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[348] These objectives are i) a better management of the movement of persons for short stays, legal migration and labour migration, ii) strengthening cooperation in the field of migration and development, iii) fighting irregular migration, networks of trafficking of human beings and the promotion of an effective return and readmission policy, and iv) respecting international instruments on the protection of refugees.

[349] *Projets financés par l'Union européenne au Maroc dans le domaine de la migration,* document de la Délégation de l'UE au Maroc.

additional million in the framework of a multi-country project to improve cooperation between countries of origin, transit and destination on voluntary return to meet the needs of vulnerable migrants. Overall the implementation of the MP has translated so far into a more than doubling of EU resources for cooperation allocated to the field of migration in Morocco. However, these figures pale compared to the EUR 67.6 million invested between 2007 and 2010 in an integrated border management programme managed by the Ministry of Interior, for which no evaluation is available.

2.2.3. Tunisia

Tunisia has a long tradition of labour migration, and roughly 10% of its total population lives abroad: 1.2 million emigrants, 83% of them in Europe. After the 2011 revolution, two migration crisis affected the country[350]: between February and August 2011, 28,000 Tunisians benefitted from the confusion in the border control system to get to the Italian island of Lampedusa, and then the European continent, creating a political crisis in the system of the free movement of persons within the European Union. Then the civil war in Libya in 2011-2012 provoked a flow of some 200,000 refugees into Tunisia (according to UNHCR), as well as a temporary return of up to 137,000 Tunisian emigrants (IOM figures). Since 2012, the situation has stabilized[351].

On 3 March 2014, the EU, Tunisia and ten Member States signed the Joint Political Declaration of a Mobility Partnership, the second MP (after Morocco in 2013) signed with a Mediterranean partner. It was signed by Tunisia's interim technical Government which had entered office only two months before to prepare the second democratic elections after the Revolution. Negotiations for a Visa Facilitation Agreement and for a Readmission Agreement between the EU and Tunisia, provided for in the MP Joint Declaration, have not yet started. The Annex listing the actions to be implemented to achieve each of the objectives of the MP (or "Scoreboard", as it is denominated) is not yet fully agreed either and has not been published. In any case, the consultation process to agree on the Annex of implementing projects has already helped the inter-governmental coordination of national authorities in this field, and might be instrumental in advancing a clearer formulation of national migration policies.

In preparation of the MP, and in the wake of the Tunisian Revolution, the EU-Tunisia Migration Agenda (ETMA) was adopted. The project was funded under the ENPI and aimed to promote comprehensive migration cooperation between Tunisia and the EU, by fostering the exchange of expertise on border management and migration related subjects, as well as technical assistance in drafting a national migration policy and improving institutional coordination mechanisms. It was implemented by ICMPD, initially between January 2012 and June 2013, with an extension until the end of 2014, and involved the work of an international expert for three years in Tunisia. Its initial budget amounted to EUR 800.000. A gaps and needs assessment was carried out assessing the institutional capacities of Tunisian authorities with a view to identifying challenges and ways to overcome them. This assessment also led to the elaboration of a tailor-made programme of capacity building activities and the organisation of a series of workshops. However, the political transition made it very difficult to secure the active participation of Tunisian authorities, and many objectives of the project did not materialise. In the framework of the project, an attempt to coordinate international donors in the field of migration around the EU Delegation was undertaken, with a first coordination meeting in

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[350] See SEMTE, *Vers une stratégie nationale en matière de migration et des Tunisiens à l'étrange*r, 2013, Secretariat d'Etat pour les migrations et les Tunisiens à l'étranger.
[351] See H. Boubakri, *Revolution and International Migration in Tunisia,* Migration Policy Centre Research Report 2013/04.

2012 that had no continuity. An on-line EU-Tunisia Platform on Migration was developed (https://www.eurotun-migr.net/en/), but without much activity.

In this same context, Tunisia is at the crossroads of the public debate about outsourcing of irregular migration control and asylum. From a positive perspective, the idea is to provide Southern Mediterranean partner countries, in the framework of the MPs, with the incentives and cooperation resources they need to uphold their responsibility in the field of international protection and deal as transit countries with irregular migration and refugee flows before they reach Europe, ensuring human rights protection of migrants. For critics, in particular for civil society and human rights organisations, this is an attempt by Europe to push away the migration crisis and evade its responsibilities, and will lead to reduced human rights protection for migrants and refugees. Efforts of the EU to improve integrated border management systems or develop national asylum systems through RPPs, for instance, would basically aim to "contract out" migration control to those countries.

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3. CONCLUSIONS AND RECOMMENDATIONS FOR FUTURE ACTION

Key findings of this study include the following conclusions and recommendations for future action in the external dimension of EU immigration and asylum policies, which have been structured in accordance with the two main parts in which this report is divided.

3.1. Regarding the toolbox of EU external cooperation in the field of immigration and asylum

- The multiplication of **regional dialogues on migration** in which many countries take part simultaneously requires rationalisation, while more attention should be given to increasing their practical value and action-oriented approach. The launch of more temporary and concrete initiatives could be explored, as well as organising more targeted meetings and ensuring funding for their development as a way to reverse the limited participation of Member States.

- Regarding **Mobility Partnerships**, their implementation is not balanced among their different components. MPs should include additional possibilities for legal migration, and, since the latter mostly depend on Member States' competences, participation in these instruments should be conditioned to their offering concrete concessions in this field. MPs scoreboards should be upgraded to a true tool for progress assessment in achieving the stated objectives of the MPs, as they currently are mainly a register of initiatives undertaken unilaterally by Member States and the EU. So far, the added value of MPs in terms of cooperation resources is very limited. To mark the special partnership with partner countries in this field, specific resources should be mobilised to achieve the objectives of the MP and develop measures and interventions geared to each of them. The upcoming Mobility Partnership Facility could be an instrument to face this challenge.

- The **EU readmission policy** should focus on countries of origin of migratory flows in order to avoid difficult negotiations on readmission obligations regarding third country nationals in transit. The TCN clause should only be included in EURAs concluded with neighbouring countries representing a significant risk of transit migration to the EU, provided that increased leverage and assistance is ensured to these countries. Concerning leverage for readmission negotiations and for border control objectives, the EU should strive to look for additional incentives within other EU policies such as trade, neighbourhood policy and education, avoiding nonetheless the diversion of these policies from their main objectives according to the EU Treaties.

- T**he level of facilitations of mobility included in Visa Facilitation Agreements** should be increased and envisaged as an autonomous objective for promoting mobility from certain third countries that do not pose serious irregular migratory risks. The EU should start a reflection on what could be offered to third countries once they receive a visa-free regime after the successful ending of a VLD, so as to maintain the impetus for reforms undertaken by partner countries. Mobility-related incentives in the field of trade in services could be explored for this purpose.

- **EU external action on legal migration** has not been adequately developed. Only certain clauses included in association and cooperation agreements contain enforceable rights for migrant workers that reinforce their integration in EU Member States. Advancing as much as possible in the internal harmonisation of rules on admission, as well as exploiting the potential of the EU external competence on association enshrined in art. 217 TFEU, as a way to address every field of potential cooperation covered by the EU Treaties, can strengthen the development of a truly common external action on legal admission of migrants that includes, among other objectives, facilitation of legal admission, recognition of diplomas and qualifications and portability of social rights. Moreover, the possibility to present to partner countries a coordinated EU offer on labour migration opportunities should be explored, as the Union could act as a coordinating tool of Member States' competences on this issue on the basis of art. 74 TFEU. However, Member States' bilateral external action evidences that their reluctance to offer labour migration opportunities to third countries is not restricted to EU frameworks of cooperation and is therefore not dependent only on the legal distribution of competences.

- The GAMM pillar on **asylum and international protection** is still insufficiently developed. Current actions in this field, under RPPs/RDPPs, focus on capacity-building of third countries in regions of origin and transit, while the resettlement component of these programmes continues to be extremely weak. Other shortcomings of RPPs/RDPPs, such as the lack of local ownership, Member States' involvement and coordination with other EU related-policies, need to be tackled. The mere existence of an external dimension of asylum, understood as implying the development of forms of cooperation with partner countries, is questionable. Capacity-building efforts and resettlement activities should be stepped up and carried out in real dialogue with countries hosting large refugee populations. As the preamble of the 1951 Geneva Convention acknowledges, international cooperation is needed to address the disproportionate burdens that asylum places on certain third countries.

- The **mandates of EU agencies such as Frontex and EASO** should be clarified with regard to their involvement in cooperation with third countries in the field of immigration and asylum. While assessment exercises on the efficiency of Frontex WAs with third countries' authorities and on the impact of this cooperation on the rights of immigrants and asylum seekers are scarce, the EASO external action is still underdeveloped probably due to budget limitations and a lack of political will.

- **Coherence and complementarities among different instruments of the GAMM directed to the same countries or regions or sharing similar priorities** must be ensured. For instance, MPs, VLDs and RDPPs should be coordinated regarding their objectives and joint complementary efforts aimed at capacity building of partner countries on asylum.

- Most importantly, **greater involvement of third countries** in the design and negotiation of GAMM instruments would enhance the "partnership" nature of these instruments, improving their local ownership, their efficiency and their contribution to their own migration challenges and needs.

- EU external action on migration should ensure **added value with regard to Member States' bilateral external activities**. To this effect, the compatibility clauses included in EURAs, by which these EU agreements do not prejudice the

implementation of returns through any existing formal or informal agreements different to EURAs, undermine the added value of EU action, damage their uniform application and prevent effective monitoring of how returns are implemented by EU Member States. As certain overlaps among individual Member States' initiatives as well as the offering of already on-going activities at the bilateral level may be identified within MPs, EU funding should only be granted to multilateral projects involving several Member States while the latter should be required to exclusively include proposals for new projects in future MPs.

- **Funding instruments** applicable to EU external cooperation in the field of immigration and asylum are the result of a long process of accumulation in the framework of different EU policies: migration and asylum policy, international development cooperation, external policy, neighbourhood policy, humanitarian aid. Therefore, there is a **high number of relevant instruments responding to sometimes different logics and often leading to overlaps**. **Visibility and coherence are difficult** under these conditions and hinder scrutiny and democratic control. A simplification of the funding framework should be envisaged, clearly distinguishing between objectives and EU policies and the corresponding funding possibilities.

3.2. Regarding the impact of EU cooperation instruments in the field of immigration and asylum

- **Available public information on EU external cooperation** in the field of migration and asylum does not allow for a systematic evaluation of its impact and efficiency. Evaluation reports and impact assessments officially requested by EU institutions or conducted by independent entities in this field are extremely scarce. Even basic information on distribution of funds, projects implemented or state of progress of projects is at best scattered and often not available. Periodic and comprehensive evaluation efforts should be undertaken for each instrument of the GAMM, including both cooperation tools and financial instruments.

- The implementation of the GAMM through the existing forms of external cooperation and the financial instruments mobilised for its support have been **geographically** focusing on the Western Balkans, Eastern Europe and South Caucasus countries, deeply involved on cooperating with the EU on migration issues. More recently, however, migration cooperation has intensified with Southern Mediterranean countries and has started to address relations with Sub-Saharan and Eastern African countries. These latest efforts must be pursued so as to **secure a balanced implementation of the GAMM**.

- **Evaluations** of the global calls for proposals implemented since 2004 in the framework of the **AENEAS Programme and the Thematic Programme for Migration and Asylum** have shown, partly due to fragmentation, a **very limited impact and the need for a more strategic approach**. This has led to the new merged Global Public Goods and Challenges programme, which absorbs five former thematic lines. However, the distribution and management of funds continues to largely respect former thematic distributions, so no significant real change has occurred. This reorientation of the thematic programme on migration towards more global, strategic actions has the disadvantage of leaving many civil

society organisations and small actors in the field of migration without funding for their activities, and EU Delegations without a tool to act in this field.

- In the framework of the new European Agenda on Migration, there is a **trend to evaluate all external cooperation initiatives in this field in relation to their contribution to the European migration policy - and hence the control of irregular migration**. However, a large share of those actions has a main objective to contribute to the development of beneficiary countries, which should be more taken into account.

- **Mandatory evaluations of projects implemented should not focus only on outputs and outcomes, but also on impact in relation to the strategic objectives of each project**, and more resources should be invested in follow-up and evaluation of impact after the finalisation of projects. Standard performance indicators of projects and instruments would greatly contribute to make comparisons easier across types of projects and regions.

- The **production of a standard ex-post project fiche** with data about the allocation of the budget across different components of the project and elements for assessment should be envisaged at least in the framework of large programmes. Clear rules in this regard could greatly contribute to a "learning curve" of practices in the field of external cooperation on migration and asylum.

- **Data provided by EU Member States on the implementation of EU instruments of cooperation is incomplete and do not allow for comprehensive and detailed evaluation exercises.** For instance in the field of return, Regulation 862/2007 on statistics on migration and international protection should be amended in order to request Member States that statistics supplied to Eurostat on numbers of returned third-country nationals include disaggregation by type of act on which the return was based and the specific third country where the individual has been actually returned.

- Regarding **implementation**, **EU Delegations often lack the specialised staff required to plan, implement and monitor projects**. Besides that, the programming process is often very slow, greatly limiting the capacity to respond to new developments or contextual changes, and administrative procedures for the selection of service providers, project funding and implementation are often too burdensome to be effective. Combined, these issues lead to a very limited flexibility of EU action. Linked to this institutional capacity issue and to the fragmentation and multiplicity of funds and programmes, EU external cooperation in migration and asylum features a high degree of compartmentalisation, with recurrent problems of coordination, alignment and integration across projects or actions pursuing complementary or even similar objectives.

- Another growing trend in the implementation of EU actions in this field concerns the **increasing involvement of Member State institutions in the implementation of projects**. Whereas peer-to-peer support no doubt constitutes an effective way to build institutional capacity in partner countries, and Member States are best placed to provide it, the direct engagement of public institutions from Member States in project implementation in the area of migration risks politicising the selection of service providers, making accountability more difficult and letting Member States' political priorities interfere with the

implementation of EU-funded projects in the field of migration and asylum, probably to the detriment of development-related objectives.

- Political instruments that are increasingly common in the external dimension of EU immigration and asylum policies may be useful for initiating cooperation on migration issues with third countries, but in view of the shortcomings and weaknesses derived from their soft law nature, **migration cooperation should evolve towards an increasing recourse to hard law** to ensure stability and legal certainty of engagements, specify further details of cooperation and safeguard migrants' rights in fields such as social security entitlements, admission and integration.

- **A systematic exchange of information on agreements and activities projected or carried out by Member States in the field of migration is currently lacking between the latter and the Commission**. Despite the mandatory nature of the loyal cooperation principle, it seems advisable to adopt a legally binding norm of secondary law or to amend Council Decision 2006/688 to include explicit obligations for exchanging information about bilateral agreements and projects planned by Member States with third countries, debating on these measures and ensuring internal coordination before their adoption.

- Although Member States insist on being involved in every activity of the EU external action on migration, they do not always ensure their continuous participation in cooperation frameworks such as regional and bilateral migration dialogues or MPs and their follow-up. Ways to **increase Member States' involvement in GAMM instruments** should be explored, as for now both levels of action, national and supranational, must be coordinated because of the current distribution of competences. The external representation of the EU and its Member States could be simplified in certain fora, by conferring clear guidelines to the Commission with regard to issues still in the hands of the Member States.

- In order to effectively implement the GAMM and address migration challenges, efforts must be undertaken to **bring closer the divergent perspectives and priorities of the Commission and the EEAS**. If the latter is to be more involved in this external dimension, its capacities and human resources should be increased. The secondment of migration liaison officers to EU Delegations abroad should start immediately, as Delegations should act as the main political support on the ground for the implementation of the GAMM. Coordination with Member States' diplomatic missions and Frontex liaison officers also seems indispensable.

- The limited involvement of the **European Parliament** in the design and implementation of the GAMM makes it advisable to **search for ways of increasing its monitoring capacities**, especially as regards political and operational instruments that should not escape from scrutiny. Regular debates and consultations on the adoption and impact of MPs, CAMMs, RDPPs and EU agencies' external activities should be systematically held within the European Parliament. Its role in international agreements like EURAs and VFAs should not be confined to the formal procedure of consent foreseen in art. 218 TFEU, and the European Parliament should push for the adoption of mechanisms of monitoring implementation, particularly in view of the impact of these agreements on migrants.

▪ Concerning the **intra-institutional dimension, coordination and rapprochement of priorities among the different European Commission DGs involved in this external dimension** – mainly HOME, DEVCO and NEAR - **appears indispensable**, an important task for the HR/VP in charge of ensuring coherence of the external action within the Commission. Within the Council, coordination should be ensured not only between the JHA and FAC formations, but especially regarding the myriad working parties and structures having tasks related to the external dimension of EU immigration and asylum policies. Possible alternatives include creating a single body in charge of this external dimension, composed of members from diverse existing working groups, or empowering the HLWG on Asylum and Migration with a strong coordinating role.

▪ The European Agenda on Migration presented by the European Commission in May 2015 was conceived to formulate a comprehensive, coherent, EU-wide response to migration and asylum related challenges. However, **the immediate political agenda has prevailed and short-term considerations related to the migration crisis in the Mediterranean have absorbed most of the attention**. This has been **detrimental to a full integration of legal economic immigration considerations as part of the external cooperation dimension of the Agenda**. The significance of strengthening partnership with third countries has been integrated in the diverse pillars of the new Agenda, albeit especially in those related to control aspects. It is revealing that the GAMM does not feature as one of the framework approaches for the implementation of the new Agenda. On the other hand, the European Agenda on Migration is based on the assumption that increased development cooperation will lead to the development of countries of origin, which in turn will reduce migration flows. However, all available evidence and research show that this is a wrong assumption, and that in the first stages of development migration flows even increase with the development of a country (de Haas 2010). This calls for targeted external cooperation aimed to better manage migration flows rather than to prevent them. However, the Agenda does not include a specific pillar on Migration and Development, and this issue is addressed in passing only in the pillar on "A new Policy on Legal Migration". **References to the external dimension of asylum only regard RDPPs and resettlement under "immediate action", are clearly insufficient in view of the current refugee crisis.** To this extent, the European Agenda on Migration risks to be a missed opportunity to mainstream cooperation with third countries into EU migration policy.

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ANNEX I. COUNTRY CASE STUDIES

Moldova

EU cooperation with Moldova in the field of migration has steadily increased during the last seven years. In 2007, Moldova signed the EURA and VFA, in force as of January 2008. The VFA was amended in 2013. In 2008, Moldova was one of the first third countries (along with Cape Verde) to sign a Mobility Partnership with the EU. Then, in 2009, a RPP was set up for Moldova, Ukraine and Belarus, renewed for a second phase in 2011-2013. In 2010 the EU-Moldova VLD was launched and in less than four years a visa-free regime was extended to Moldova.

EU-Moldova Mobility Partnership

Moldova was the first Eastern neighbour to sign a Joint Declaration on a MP with the EU, in May 2008[1]. Its general objectives largely mirror the GAMM pillars[2], and are subsequently detailed in ten specific objectives.[3] The general and specific objectives are further transposed in the National Strategy on Migration and Asylum 2011-2020 and the corresponding action plan[4].

The coordination and monitoring of the MP is ensured through a National inter-ministerial Monitoring Committee, yearly EU-Moldova High Level meetings and a Local Level Platform meeting twice a year. Since 2012, the implementation of the MP is also monitored through a dedicated policy "scoreboard".

European Union – Republic of Moldova Mobility Partnership Scoreboard
The Scoreboard is an online, open access monitoring tool, drawing together in a centralised database over 100 completed, ongoing and considered initiatives implemented in the framework of the EU-Moldova Mobility Partnership. The tool provides a transparent, easy to use tool to monitor the process and progress of the cooperation between the EU and Moldova. The Scoreboard has been financed from the EU and implemented by the local office of the IOM in partnership with the Government of the Republic of Moldova. Since completion of the project, the tool has been managed and kept up to date by the Ministry of Foreign Affairs and European Integration.
Available at: http://scoreboard.mfa.gov.md

The implementation of EU-supported MP initiatives seems to follow a subsidiarity principle approach. The Commission directly manages the initiatives which involve multiple partners or suppose a broader regional scope of intervention, and otherwise delegates implementation to better placed actors, such as local offices of International Organisations, Member States and NGOs. Additionally, FRONTEX and ETF commit autonomous budgetary resources to specific initiatives.

Member States' bilateral and multilateral participation is more diverse. Fifteen of them joined the MP as partner States[5]. Member States' involvement varies greatly in the implementing process, based on the action pursued, objectives and national strategic

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[1] Council of the European Union, Joint Declaration on a Mobility Partnership between the European Union and the Republic of Moldova, 21 May 2008, doc. nº 9460/08.
[2] International protection and asylum is absent from the initial MP. However, this pillar has been largely addressed during MP implementation process.
[3] Monitoring of migration flows; consolidation of the national migration management system; information on legal migration and assistance for returning migrants; labour migration schemes; voluntary return and reintegration schemes; diaspora consolidation and co-development; social protection of migrants and their families; development of the Moldovan labour market; visa and readmission; cooperation in border management; identity and travel documents, fight against irregular migration and trafficking in human beings. See Annex to the MP, note 1, p. 8.
[4] Government Order 655 of 08.09.2011 and Government Order 1009 of 26.12.2011, respectively.
[5] Bulgaria, Cyprus, Czech Republic, France, Greece, Germany, Hungary, Italy, Lithuania, Poland, Portugal, Romania, Slovenia, Slovakia, Sweden.

considerations. Member States' forms of involvement cover a wide range of actions, from technical assistance to bilateral agreements and financial assistance. The Member States most actively involved in MP initiatives are Romania, the Czech Republic, Poland and Hungary[6]. The qualitative contribution of Sweden and Germany was repeatedly praised by local stakeholders[7]. Interestingly enough, the rate of migration is not a core consideration when it comes to Member States' active participation within the EU-Moldova MP framework.

The main financial sources of the MP are the European Neighbourhood Instrument (ENI-DG NEAR), the Thematic Programme for Cooperation with third countries in the areas of migration and asylum, set under the Development and Cooperation Instrument (DCI-EuropeAid/DEVCO Funds), Member States' bilateral contributions and the Moldovan national budget[8]. Over EUR 25 million of EU and Member States' budgetary contributions have been disbursed in support of the MP actions.[9]

Within the framework of the GAMM pillars, there is a strong focus on irregular migration, including border management, readmission, return and reintegration. The actions include trainings, operational agreements and dedicated capacity building projects. The legal migration and mobility pillar is currently being reinforced, beyond migration system management and a visa-free regime. Further planned action notably includes facilitating bilateral circular migration arrangements with Member States[10]. Additionally, Moldova committed to pilot the Global Agenda for Economic Mobility within the Framework of 2014 Global Framework on Migration and Development[11]. The Government continues its efforts on recognition of documents supporting the professional capacities of Moldovan citizens and on negotiating social security agreements[12].

Recently, there is a growing emphasis on development oriented initiatives. These include building the capacity of the national labour market and fostering diaspora co-development projects. The shift towards development is also supported by the ENI 2014-2020 allocated funds for the country, as over one third of the committed resources target rural development and reform of the agricultural sector, the main origin sector of migrants[13].

The international protection and asylum pillar is the least supported in terms of MP dedicated initiatives. Even if the pillar has been tremendously reinforced as part of the Visa Liberalisation *ex ante* conditionality package[14], currently, with some exceptions[15], the area depends largely on national budgetary resources[16], under the pressure of

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[6] Scoreboard data.

[7] Interviews, field mission Moldova 10-12 August 2015.

[8] Scoreboard data.

[9] Scoreboard data. Other sources point to a EUR 50 million commitments, see COM (2014) 96, p. 5. The diverging amounts are due to a general lack of clear distinction between the support to MP as opposed to other actions such as VLAP.

[10] Currently in place with Sweden and Germany.

[11] Council High Level Working Party on Asylum and Migration, Summary of Discussions, Meeting 23-24 September 2014, doc. 13605/14, 8 October 2014, p. 15.

[12] 11 agreements on social security have been signed up to 2014. Ministry of Foreign Affairs and European Integration, Information Bulletin on Mobility Partnership No 10, p.12, available in Romanian at: http://www.mfa.gov.md/img/docs/buletin-informational-mobilitate-10.pdf.

[13] European Commission, Single Support Framework for EU support to the Republic of Moldova (2014-2017), p. 6, available at: http://eeas.europa.eu/enp/documents/financing-the-enp/index_en.htm.

[14] See in particular, European Commission, Third Report on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation, COM (2012)348, 22.6.2012, p. 6.

[15] Legal and Social Protection of Asylum Seeking and Refugee Children in Ukraine, Belarus, and Moldova, overall EuropeAid budget 988830 EUR, available at: http://scoreboard.mfa.gov.md/project/view/154. Several other EU-supported initiatives are implemented by UNHCR Moldova, under the Thematic Programme for Cooperation with third countries in the areas of migration and asylum - DG DEVCO Funds.

[16] Moldova's 2014 budget committed over 1 million euro to migration and asylum expenditure (29 071 300 lei MDL), Law on State Budget no 72 of 12.04.2015.

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constantly rising asylum applications[17]. The number of applications is expected to rise further, especially once the travel documents for refugees are in place, an action pending since 2011 and expected by the end of 2015[18].

Overall, the MP constitutes an overarching and flexible umbrella framework supporting the EU-Moldova cooperation on migration. The implemented initiatives have closely matched the partners' objectives of a coordinated, multilateral implementation[19]. The MP also greatly facilitated the country's reform agenda in the field of migration, in line with the EU *acquis*.

Nevertheless, there is a general need for increased clarity in the MP relationship and added-value to other EU bilateral and multilateral tools on migration cooperation, in particular border cooperation and assistance missions, visa liberalisation and RPP.

Because of the wide range of actions addressed in the MP, monitoring and coordination should remain a top priority. The changing national monitoring arrangements suggest that coordination proved challenging, especially during the early implementing years[20].

Member States' participation has been increasingly pooled under the common MP umbrella since 2011[21]. However, the Member States' bilateral and multilateral action is still largely engaged on an *ad-hoc* basis, lacking a comprehensive, streamlined approach. In this sense, a prioritisation of areas with increased opportunity for Member States participation should be constantly observed.

As to whether the 'partnership' in name is also a 'partnership' in nature, the answer must be nuanced by macro and micro levels. At country level, the EU clearly sets the MP agenda in terms of core objectives and results to achieve. Locally, especially regarding concrete implementing actions, national authorities largely perceive the cooperation in 'partner' terms.

Strong indicators point to the need for increased quality of planned assistance. The design of assistance, while thoroughly observing international principles, should be more closely tailored to Moldova's specificities and needs. Where feasible, small and better targeted projects should be considered over "one size fits all" projects. The sustainability of EU initiatives is generally low, with their life-span generally tracking the life-span of EU expert or financial assistance, with the project ending with the cessation of the EU involvement. Budgeted initiatives should better address the national institutions' capacity to replicate and sustain the achieved results. Inclusive Partnership Agreements (based on the example of 2014 EU Code of Conduct in Partnership[22]) may be considered from the very start of the project implementation to ensure that all the relevant actors are on board.

Regarding the balance between GAMM pillars, there has been a sustained strong focus on irregular migration*,* including border management, migration systems, visa and readmission issues. Recently substantial development-oriented initiatives were programmed and implemented, however their tangible impact is not yet clear. The development-related initiatives have largely failed to address the pull factors of migration and fundamental barriers to return and reintegration. A more careful and better informed planning of development initiatives, based on country migration profile data[23] and *ex*

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[17] The number of asylum applications increased by 50% in 2014, reaching a still manageable number of 245. The number is constantly increasing with already 195 applications registered in the first quarter of 2015, according to the data provided by the National Bureau for Migration and Asylum (BMA).

[18] The measure is expected to further increase the asylum applications in Moldova, according to UNHCR Moldova experts, Field mission interview Chisinau 12.08.2015.

[19] COM (214) 96, note 11, pp. 4-5.

[20] Evaluation Report 2008-2011, 01.10.2012, p. 57, available at: http://www.mfa.gov.md/img/docs/eu-moldova-mobility-partnership-evaluation.pdf

[21] *Ibid.*

[22] Commission Delegated Regulation (EU) No 240/2014 of 7 January 2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Fund, OJ L 74 of 04.3.2014.

[23] IOM, Extended Migration Profile of Republic of Moldova, 2012, available at: http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=42&products_id=929.

ante impact assessment, should be pursued. The legal migration and mobility pillar needs further attention as it can enhance development as well as facilitate a transition phase towards reintegration. In this sense continued attention must be paid to circular and seasonal migration arrangements, social rights and social security portability agreements. The international protection and asylum pillar has seen important progress and substantial reform. Nevertheless, the pillar's visibility is reduced within the MP framework.

Regarding the human rights horizontal priority of GAMM, increased efforts have been made towards the respect and protection of human rights, particularly in the field of asylum. However, a positive/preventive component of human rights promotion is underdeveloped. Initiatives in place make only limited use of the potential for mainstreaming human rights. Future initiatives should observe a thorough approach to fundamental rights mainstreaming, including better mainstreaming of the National Human Rights Action Plan throughout the MP implementing actions.

EU Readmission and Visa Facilitation Agreements

The EU-RA and VFA were signed in 2007, and entered into force in 2008[24]. The implementation of the agreements is monitored by the EU-Moldova Readmission and the Visa Facilitation Joint Committees.

The Bureau for Migration and Asylum (BMA), a unit of Ministry of Interior, is responsible for the implementation of the EURA. According to BMA data, the number of readmission requests from EU Member States decreased from 242 in 2011 to 157 in 2012 and remains stable with 157 readmission requests 2013 and 151 in 2014. For 2012-2013 the highest number of requests originated from France (41%), Germany (12%) and Austria (11%). One EU citizen was readmitted from Moldova in 2010[25], two in the first half of 2013[26] and five in 2015[27]. In the first half of 2013, at least 8 persons readmitted were not citizens of Moldova[28].

Moldova continues to negotiate EURA Implementing Protocols with Member States, with 19 protocols signed[29]. Negotiation and signature of readmission agreements with the main countries of origin remains a priority, in particular with Commonwealth of Independent States (CIS) members[30].

Under EURA technical and financial support provisions, several EU-funded projects were implemented from 2011-2015, with an estimated financial commitment for Moldova of over EUR 3 million[31]. The projects supported measures directed at BMA capacity building

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[24] Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorization, Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas, OJ L 334 of 19.12.2007.
[25] BMA data.
[26] European Commission, Fifth Report on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation, COM (2013)807, 15.11.2013, p.11.
[27] BMA data.
[28] COM (2013)807, note 28, p.11.
[29] Austria, Bulgaria, Estonia, the Czech Republic, Germany, Greece, Hungary, Italy, Lithuania, Latvia, Malta, Romania, Slovenia, Slovakia, Spain, Belgium, Luxembourg, Netherlands (Benelux common Implementing Protocol), Denmark (bilateral agreement). Draft agreements have been sent to all remaining Member States (Croatia, Cyprus, Ireland, Portugal, Poland, Finland, United Kingdom and Sweden) with negotiations planned or under way.
[30] Readmission agreements have been signed with Norway, Switzerland, Georgia, Turkey, Albania, Serbia, FYR Macedonia, Ukraine. Negotiations are under way with Bosnia and Herzegovina, Kazakhstan and Montenegro. Difficult negotiations have been under way with Russian Federation, currently blocked due to sensitive political reasons regarding Transnistria. Draft intergovernmental agreements have been sent to Azerbaijan, Armenia, Belarus, Kirghizstan, Syria, Bangladesh, India, Lebanon, Pakistan, Jordan, Afghanistan, Iran, Iraq, China, Uzbekistan, Tajikistan, and Turkmenistan. According to BMA data, 317 return and 41 removal decisions were issued in the first quarter of 2015.
[31] Support to implementation of EC Readmission Agreements with the Republic of Moldova, The Russian Federation and Ukraine: Facilitation of Assisted voluntary return and reintegration (SIREDA) 2011-2013, overall budget: 2,377,205 EUR, EC(DCI-MIGR/2010/229-644); Fighting Irregular Migration in Moldova (FRIMM), budget for Moldova 1200000 EUR; Support to the implementation of the visa facilitation and readmission agreements - Moldova and Georgia (ReVis) 2011-2013, overall budget: 1,031,900 Euros EC(DCI-

on readmission, consolidating data analysis systems, facilitating negotiations on readmission agreements with selected countries of origin and training public officials.

The 2007 VFA established facilitated visa application procedures for certain categories of Moldovan citizens. In 2013, the VFA was amended in line with the new VC granting additional visa facilities[32]. The VFA continues to apply also after the entry into force of the visa-free regime (28 April 2014) for Moldovan citizens not holding a valid biometric passport. To support the implementation of the VFA, a first ever Common Application Centre (CAC) was set up in 2007 at the Hungarian Embassy in Chisinau, managing short-stay visa applications for 15 Schengen Member States and Croatia[33]. Romania, Lithuania and Italy, the Member States issuing the highest number of multiple-entry visa to Moldovan citizens[34], did not join the CAC. Originally conceived to manage up to 10,000 visa applications per year, the CAC capacity was readapted due to increased numbers of visa applications (from 7,487 in 2008[35] to over 17,500 in 2012[36]). A dedicated programme was put in place as of 2009 to support the enlargement of the Centre, financed from Moldova's budgetary resources[37]. To prevent fraud, national contact points have been designated within the responsible national authorities to confirm the authenticity of visa supporting documentation[38]. Overall, the impact of the CAC is reflected in a substantially increased number of visas issued, better representation of Member States, higher transparency and coherence of visa application procedures. The rate of visa rejections decreased from 7.75% in 2010 to 5.9% in 2012[39]. However, the decreasing rejection rate is not attributable to the CAC alone. It has been rather a general trend for all EU consulates in Chisinau during the reference period, with a weighted average of 4.89% for 2012, which is less than the CAC visa rejection rate for the same year[40].

Overall, the EURA with Moldova is being effectively implemented. There is good cooperation between the Moldovan responsible authorities and EU Member States on readmission procedures. The number of Moldovan citizens readmitted from the EU decreased and remains stable. The negotiation of readmission agreements with third countries of origin is more challenging. In this aspect, sustained support from the EU, especially in the politically sensitive negotiations, is crucial to secure the effective functioning of Moldova's still fragile readmission system as a whole.

The VFA has had a smooth implementation in Moldova. Lessons learned include a CAC which ensured better representation of EU Member States in the country, increased transparency and coherence of the visa application process. A good cooperation example is the establishment of CAC dedicated contact points in the relevant national authorities to check the authenticity of visa supporting documents and thwart fraud attempts.

MIGR/2010/229-600); Strengthening migration management and cooperation on readmission in Eastern Europe – Moldova-Ukraine-Belarus (MIGRECO) 2013-2015 budget for Moldova 673 000 EUR.
[32] Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas, O.J. L 168 of 20.06.2013.
[33] Austria, Belgium, Denmark, Estonia, Finland, Greece, Hungary, Latvia, Luxembourg, the Netherlands, Slovakia, Slovenia, Sweden, Switzerland, Croatia. See further the official page of the Centre http://www.cac.md/index_en.html.
[34] COM (2013)807 final, note 28, pp.11-12 „ [...] the most multiple-entry visas were issued by Romania (61.94% or 32533 multiple- entry visas out of a total of 52520); Lithuania (45.15% or 647 multiple-entry visas out of a total of 1 433); and Italy (36.07 % or 3 795 out of a total of 10 521)."
[35] European Commission, Working Document on the overall progress made on the implementation of the EU-Moldova ENP Action Plan for 2009, SEC (2010) of 12.05.2010, accompanying the Communication 'Taking stock of the European Neighbourhood Policy', COM (2010) 207.
[36] S. Mananashvili, "Access to Europe in a Globalised World: Assessing the EU's Common Visa Policy in the Light of the Stockholm Guidelines", EUI Working Paper RSCAS 2013/74, p. 10.
[37] See http://scoreboard.mfa.gov.md/project/view/162
[38] European Commission, Joint Staff Working Paper, First Progress Report on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation, SEC (2011) 1075, 16.9.2011, p. 2.
[39] European Commission, Fourth Report on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation, COM (2013) 459, 21.6.2013, p. 10.
[40] COM (2013) 459, pp. 9-10.

Regional Protection Programme for Eastern Europe

The RPP for Moldova-Ukraine-Belarus was implemented between 2009-2010 (Phase I)[41] and further renewed for 2011-2013 (Phase II)[42]. The RPP was designed to ensure the efficient management of refugee flows and enhance the protection capacities of the Eastern European region transit zone. The implementing actions for Moldova concerned mainly enhancement of protection capacities through monitoring of border regions and placement facilities; technical assistance and infrastructure support; training of responsible authorities and, as of 2011, supporting refugee self-reliance.

Implementation, monitoring and evaluation was ensured by the Steering Committee formed by representatives of the three partner countries, meeting annually. The local office of UNHCR led the RPP implementation in Moldova[43]. Further national coordination agreements and MoUs were signed with national authorities and civil society organisations[44].

The RPP evaluation indicators show that, during five years of implementation, the programme ensured crucial infrastructure and technical assistance at borders[45], regular border monitoring missions[46], and training of border guards, legal practitioners and civil society representatives on asylum matters. Under the self-reliance component, as of 2011, 110 asylum seekers and refugees had been counselled, 36 had been integrated in the job market and 12 asylum seekers benefited from self-reliance grants[47]. Since 2010 the number of asylum seekers registered at borders has constantly risen, from 2 cases in 2010 to 32 in 2013 and 20 cases in the first half of 2015[48]. The number of resettlements remains low in the region and particularly low in Moldova[49].

The RPP action was complemented by other ECHR led projects funded under the EU Thematic Programme for Cooperation with third countries in the areas of migration and asylum[50].

Overall, the perception of national authorities towards the RPP is positive. The most visible and appreciated actions are the technical assistance and equipment of nine interview and first reception centres at border points, awareness raising campaigns, and training of border police officials, judges and legal practitioners, which led to an increased openness and change of attitude towards asylum seekers and refugees. One major challenge reported is the increased shift of border personnel, hindering the sustainability of achieved results.

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[41] Budget allocation for Moldova 400 000 EUR.

[42] Budget allocation for Moldova 191 722 EUR.

[43] Other local implementing partners included: Migration and Asylum Bureau (BMA), Business Advisory Centre, Law Centre of Advocates, "Salvati Copiii" Moldova, Society for Refugees, Charity Centre for Refugees, ULIM Moldova, UNDP Moldova, ILO-IPEC Moldova - 1st Phase and BMA, Ministry of Education, Ministry of Employment, Family and Social Protection, Border Police Department, Law Centre of Advocates NGO -2nd phase.

[44] Including the Border Police department, BMA, National Justice Institute, Agency for Employment, National Legal Aid Council.

[45] Nine reception centres for interview and/or short receival of asylum seekers for up to 24 hours have been established at the International airport Chișinau, land border points Leușeni and Palanca, border police pickets of Criva, Sculeni and Giurgiulești, Ocnita, Saiti; one interview room was renovated within the premises of BMA.

[46] 63 missions during 2011-2013.

[47] UNHCR data.

[48] UNHCR data: 2010 – 2; 2011 – 3; 2012 – 11; 2013 – 32; 2014 – 27. 2015 – 20. The majority asylum seekers entered Moldova through border points of Chisinau International Airport, Tudora, Palanca and Basarabeasca.

[49] UNHCR, Note on RPP, 8 June 2010: "In 2010, some 74 refugee cases (157 persons) from Ukraine, 3 cases (3 persons) from Belarus and 2 cases (6 persons) from Moldova were referred by UNHCR for resettlement. 44 cases or 92 refugees were accepted and departed for resettlement countries in 2010".

[50] Local Integration of Refugees (LIR) 2009-2011 in Belarus, Moldova and Ukraine, budget allocation for Moldova 554 963 EUR; Quality Initiative in Eastern Europe and the Southern Caucasus (QIEE) 2013-2015 in Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine, overall commitment 2.5 million EUR.

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The RPP in Moldova reveals that a genuine regional cooperation was underdeveloped, hampered mainly by diverging capacities and varying levels of commitment of the three targeted states.

Regarding the budgetary planning, the RPP for Moldova (and the RPP as a whole) did not follow the EU budgetary principle of concentration. As such, the impact of a relatively limited EU financial budgetary allocation for Moldova (around EUR 600,000 for 5 years), was considerably decreased by dispersed allocations throughout a wide range of implementing measures addressing multiple national actors and target groups[51].

The situation in the Transnistrian region hindered effective monitoring of the Moldovan and Ukrainian non-controlled border sector (453 km).

Even if considered, no substantial synergies with other EU-funded cooperation programmes were developed, such as the EU Border Assistance Mission for Moldova and Ukraine (EUBAM) or Facilitation of Assisted voluntary return and reintegration project (SIREDA).

Visa Liberalisation Dialogues and visa free regime

The EU-Moldova VLD was launched in 2010, and in 2011 Moldova was presented with a first VLAP. In November 2013, the Commission proposed a visa-free regime for Moldova, in force as of 28 April 2014[52].

The coordination and monitoring of the VLAP was ensured by a national Task Force that met weekly[53]. Regular Senior Officials meetings and on-site evaluation missions, including Member State experts, officials of the Commission and the EEAS have been organised.

The first VLD phase related to the legislative, policy and institutional framework was completed in 2012. The main output of the first VLD phase was the establishment of consolidated legislative and multiannual policy frameworks in the field of document security, border management, integration of foreigners and migration management, asylum, statelessness, the fight against cross-border organised crime and human trafficking, terrorism, corruption, money laundering, drug trafficking, judicial cooperation in criminal matters, national law-enforcement cooperation, data protection and citizens' fundamental rights, including non-discrimination and protection of minorities[54]. Important institutional reform was achieved, including strong consolidation of BMA capacities such as a 'One-stop-shop' registration point for migrants, asylum seekers and stateless persons, reform of the Border Police, establishment of a Data Protection Centre, an Anti-Corruption Centre, a National Integrity Council and an Ombudsman. Numerous international and Council of Europe conventions have been signed and ratified in the area of judicial cooperation, organised crime, corruption, data protection, non-discrimination and protection of persons with disabilities.

The second phase of VLD was initiated in 2013 targeting the effective implementation and operation of the previously established frameworks. These included consolidation of document security systems, border management operationalisation in line with the

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[51] The financed actions included: border monitoring missions, technical assistance of Border Police Department, BMA, border points, language centres, equipment of six temporary reception centres, information campaigns, multiple training activities of border personnel and national judges, study visits, book donation, language courses for refugees and self-reliance measures aiming at social market integration of asylum seekers and refugees.
[52] Regulation (EU) No 259/2014 of the European Parliament and of the Council of 3 April 2014 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, O.J. L 105 of 08.4.2014.
[53] SEC (2011) 1075.
[54] SEC (2011) 1075; European Commission, Joint Staff Working Document, Second progress report on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation, SWD (2012)12, 9.2.2012.

Schengen Border Code,[55] training of border guards on applying EU Schengen Catalogue best practices, increased cooperation with FRONTEX and effective use of data management and surveillance systems. The BMA migration management capacity was further reinforced by the establishment of six additional territorial units near the Transnistrian region[56]. The public order and security reforms have been reinforced with improved inter-institutional coordination and databases in place. The new anti-corruption bodies have started to show positive results with a modest track record of high level corruption sentences. An operational cooperation agreement with Europol was signed in early 2014.[57] An exemplary functioning system on statelessness was put in place[58]. The Commission reported good progress on the implementation of the national human rights action plan and consolidation of the Ombudsman Office capacities[59].

Over EUR 21 million of EU assistance has been allocated to support VLAP implementation for 2014-2016[60]. Important complementary support was provided under the EUBAM to Moldova and Ukraine[61]. Additionally, the EU has committed over EUR 60 million in support of justice sector reform[62]. The VLAP implementation process, which benefited greatly from the expert assistance of an EU High Level Policy Advice Mission to Moldova in 2010-2015, is mandated to support the main institutions in strategic planning, policy making and management efforts[63].

As of 28 April 2014, the visa-free regime for Moldova entered into force, granting Moldovan citizens holding biometric passports visa-free entry and stay rights on the territory of EU Member States (excepting the United Kingdom and Ireland) and in non-EU Schengen states for short stays of up to 90 days in any 180-days period.

By 2014, over 1 million out of 3.5 million Moldovan citizens had received biometric passports[64]. From 28 April 2014 to 31 May 2015, the Border Police registered 530,487 exits of Moldovan citizens with biometric passports towards the EU (out of 2,313,401 total).[65] For the same period, 1,355 cases of refusal of entry and illegal stay by Moldovan citizens were reported[66]. In 2014, the Border Police of Moldova registered a decrease in numbers of illegal migrants at the Moldovan-Romanian border by 35%, while the number of migrants aiming to reach the EU at the Moldova-Ukraine border increased by 60%[67].

During the first year of enforcement, the visa waiver for Moldova has been implemented smoothly, with no serious abuses recorded[68]. The number of Moldovan citizens readmitted from EU Member States is stable amounting to over 150 requests per year[69]. The number of asylum applications from Moldovan citizens in the EU Member States remains low.

Further implementing steps concern continued adoption and implementation of the Schengen *acquis* and standards, including the effective application of the Visa Information System (VIS)[70]. Moldova is to deepen its cooperation with EUROPOL, EASO

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[55] Regulation (EC) 562/2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), O.J. L 105 of 13.4.2006.
[56] BMA data.
[57] https://www.europol.europa.eu/latest_news/signing-operational-cooperation-agreement-moldova.
[58] SWD(2012) 12, note 57, p. 23; Interviews with national stakeholders.
[59] COM (2013) 807, p. 35.
[60] Border Police of Moldova data.
[61] http://www.eubam.org.
[62] COM (2013) 807, p. 36.
[63] EU Budget contribution 2 414 648 EUR, implemented by UNDP Moldova. See, http://www.euhlpam.org.
[64] Ministry of Foreign Affairs and European Integration data.
[65] Border Police of Moldova reported data.
[66] Border Police of Moldova reported data.
[67] Border Police of Moldova, Annual Report 2014, available at:
http://www.border.gov.md/images/docs/fin_Raport_activitate_DPF_2014_final-eng.pdf.
[68] European Commission, Sixth bi-annual report on the functioning of the Schengen area 1 May - 31 October 2014, COM (2014)711 final of 27.11.2014, p. 11.
[69] See Readmission Agreement and Visa Facilitation section.
[70] Council High Level Working Party on Asylum and Migration, Summary of Discussions, Meeting 23-24 September 2014, 13605/14, p.15.

and FRONTEX especially in the area of training and capacity building[71]. Continued EU support is secured for 2014-2017, under the ENI 2014-2020, whereas EUR 67-82 million has been committed to police reform and border management objectives (EUR 122-149.2 million for the 2014-2020 financial period, 30% of the ENI portfolio for Moldova)[72].

In the case of Moldova, the VLD and VLAP have proved to be strong dismantling tools which rapidly fostered important reforms in the area of border management, migration and asylum. Moreover, the credible visa liberalisation prospect (and the AA, including a Deep and Comprehensive Free Trade Agreement (DCFTA) signed in July 2014) favoured reforms reaching far beyond the specific area of home affairs. The constant EU expert and financial assistance added to Moldova's incentives to sustain progress on the reform agenda.

The EU-Moldova VLD is an outstanding example of a genuine bilateral engagement. The EU, the Member States and the Moldovan authorities alike proved strongly committed to the process[73]. From 2011 to 2013, the Commission issued five VLAP Progress Reports on Moldova (as opposed to one per year for Georgia and Ukraine) and commissioned one visa liberalisation impact assessment. Multiple high level and on-site in-depth evaluation missions have been organised to monitor the country's progress.

From a political point of view, the visa free regime did not have its expected impact. This is so mostly because a large share of Moldovan citizens had already secured the right to travel and reside in EU Member States through other means, before the visa waiver entered into force[74]. A large share of the remaining citizens are less likely to exercise the right primarily due to scarce financial resources, professional capacities and skills, geo-political views or other ideological factors. Hence, out of the overall potential beneficiaries of the measure, only a limited share is actually actively exercising the right. The Border Police data shows that only ¼ of Moldovan citizens' exits towards EU used biometric passports, thus benefiting from a visa waiver[75]. Moreover, there is a general low awareness and poor understanding of the benefits of the EU-Moldova cooperation, including the visa liberalisation regime.

After the visa-free regime entered into force (and the AA, including a DCFTA signature in July 2014), the pace of reforms and the VLAP benchmark indicators have generally stagnated and in some cases even regressed. The main reported challenges relate to frozen progress on justice reform, regression in the effective functioning of the non-discrimination system and the established Ombudsman Office, and very modest progress on the integrity and fight against corruption action plan.

The deteriorating indicators confirm that the EU conditionality tool remains a political one in nature, and its use in the case of the Moldova VLD is no exception. While the areas of border security and prevention of irregular migration benefited from tight conditionality benchmarks, the progress towards other VLAP benchmarks, such as judicial reform, non-discrimination or the fight against corruption lacked a similar systematic assessment and clear fulfilment criteria. In other cases, the EU showed increased tolerance, as the example of travel documents for refugees shows. The latter have been demanded by the EU and promised by national authorities in all VLAP progress reports, but were still not in place in mid-2015.

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[71] *Ibid*.

[72] Single Support Framework for EU Support to the Republic of Moldova 2014-2017, adopted on 11 June 2014, available at http://ec.europa.eu/enlargement/neighbourhood/pdf/key-documents/moldova_2014_2017_programming_document_en.pdf.

[73] COM (2013) 807, p. 3: "The missions were unmatched in terms of the depth of the assessment — four weeks involving 12 EU Member States' experts accompanied by officials of the Commission and of the EEAS".

[74] Right of residence and work in EU Member States, migration regularisation laws in certain Member States (especially Italy), naturalisation (especially in the case of Moldovan citizens granted the Romanian, Bulgarian, Irish, Italian, Greek citizenship), increased family reunification rights, facilitated long stay and multiple entry Schengen visas.

[75] 530,487 out of 2,313,401 total Moldovan citizens exists towards EU during the first month of visa liberalisation.

Morocco

Moroccan residents abroad amount to 3.5 million according to the Ministry of Foreign Affairs (on the basis of consular registers) and up to 5 million according to the Ministry of Migration Affairs, i.e. between 10% and 15% of the population. 84% of them are in European countries (34% only in France, followed by Spain, Italy, the Netherlands and Belgium). Morocco considers Moroccans abroad to be all its citizens, whether or not they have taken a foreign nationality, and hence these numbers include second and third generation migrants. Annual migration flows remain at a level of between 80,000 and 100,000. Even if migration rates have shown a declining trend over the last few years, emigration flows seem poised to remain high; indeed, depending on the survey, between 29% and 40% of young people express the wish to emigrate (i.e., 4 to 5.3 million young people). But Morocco has become a key host country as well as a transit country from Sub-Saharan Africa to Europe; even if figures remain very modest (between 25,000 and 40,000 Sub-Saharan irregular immigrants in the country, according to Ministry of Interior estimates, and a total of fewer than 100,000 legal foreign residents). For the last ten years Morocco has cooperated closely with Spanish authorities to control irregular migration to the European Union through the Gibraltar Strait and the Ceuta and Melilla enclaves, implementing the Morocco-Spain Readmission Agreement of 17 March 1992 (other readmission agreements have been signed with Germany, Italy, France, Belgium and the Netherlands).

Accordingly, ever since EU external cooperation in the field of migration took shape in 2004 Morocco has been one of the main destinations of that assistance. Under the AENEAS programme between 2004 and 2006 Morocco was the beneficiary (sometimes not exclusive) of EUR 18 million distributed in 22 out of 105 projects implemented globally, in 11 of them with the objective to strengthen its migration management capacities, and as many to fight irregular migration[76].

Mobility Partnership

Morocco was the first Arab Mediterranean partner country with which the European Union signed, in the aftermath of the Arab Spring, a Mobility Partnership. A Joint Declaration[77] was signed and published in June 2013 between the EU, nine of its Member States[78] and Morocco, jointly with an Annex of cooperation projects by EU agencies and Member States supposed to contribute to the achievement of each of the objectives stated in the Joint Declaration. The objectives of the Mobility Partnership are: i) better management of the movement of persons for short stays, legal migration and labour migration, ii) strengthening cooperation in the field of migration and development, iii) fighting irregular migration and human trafficking networks and the promotion of an effective return and readmission policy respecting human rights, applicable legislation and the dignity of concerned persons, and iv) respecting international instruments on the protection of refugees.

In the Joint Declaration, the parties committed to negotiate a Visa Facilitation Agreement and a Readmission Agreement, but after a first round of talks negotiations seem blocked since January 2015. Sources linked to the negotiations consider chances for reaching an agreement in the foreseeable future to be very low. However, until the signature of these two legal instruments, the Mobility Partnership does not provide for any increased

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[76] See A. Kirchner, *The "External Dimension" of the EU's Immigration Policy and Morocco's Capacity to Manage Migration,* Bachelor Thesis, European School of Management and Governance, University of Twente, Enschede, Netherlands, 2010.
[77] http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2013/docs/20130607_declaration_conjointe-maroc_eu_version_3_6_13_en.pdf.
[78] Belgium, France, Germany, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

mobility between the EU and Morocco or new labour migration possibilities, and involved Member States have not made any concrete offer in this respect (participation in the Mobility Partnerships does not entail for Member States the obligation to take any engagement in relation to any of the objectives of the MP). This severely limits the potential for action to realise objective i) above on promoting mobility and legal migration.

The Annex of cooperation projects has an "evolving nature". Indeed, in the autumn of 2013 Moroccan authorities presented a series of counter-proposals, but apart from those integrated in the Sharaka project they were not taken on board by the European partners. This created some dissatisfaction among Moroccan officials. The Annex basically consists of an inventory of projects undertaken by the EU and partner Member States in this field in the framework of their development cooperation, either new or ongoing even before the signature of the Mobility Partnership (92 initiatives under consideration, in preparation or ongoing are inventoried in the last version). The last available version of the Annex dates to June 2015, and is presented as a Scoreboard (or Tableau de Bord), but without a real progress assessment of the implementation of the projects or their contribution to the achievement of the MP objectives (the information provided refers only to the MP objective pursued, the MS or institution initiating or funding the action, the proposed initiative or project, indicative implementation period, indicative budget, funding source and status). To carry out such an assessment on a regular basis, either independently or as a joint exercise, would be a major breakthrough to advance the implementation of the MP. On the other hand, the mere existence of the Scoreboard acts as a tool to align projects, increase coherence and facilitate complementarity and coordination among donors.

The flagship initiative funded by the EU in relation to the Mobility Partnership is the Sharaka Project to support the implementation of the EU-Morocco Mobility Partnership, launched in 2014 with a budget of EUR 5 million over 3 years. The project is implemented by a French public entity, France Expertise International, in partnership with six other Member States. Its main objective is to support national migration and development and mobility policies in Morocco in a framework of reinforced cooperation between Moroccan and European administrations. The specific objectives are to optimise the positive effects of migration, both for Morocco and for the European Union, mobilising the expertise of the seven partner Member States to respond to the needs of Moroccan institutions (short and long term expertise, peer-to-peer exchanges, studies and benchmarking, pilot actions, networking and targeted communication). It has four main components:

- to capitalize on migration and development projects in Morocco and scale up the most effective (a thorough mapping of these projects is in progress, to look for complementarity and good practices to scale up);

- to build government capacities in the mobilisation of Moroccans residing in Europe (in line with the Moroccan government policy, this will be focused on qualified migrants, who are only a small share of all Moroccan migrants; around 400,000 Moroccan residents abroad have a higher education degree);

- to build institutional capacities in labour migration management, and specifically:

  • support regularised immigrants for their integration into the Moroccan labour market (this targets the less than 18,000 regularised migrants, for whom a full services portfolio is being developed at ANAPEC);

  • support the Public Employment Service (ANAPEC) in international placement of Moroccan workers in Europe (a thorough diagnostic of the capacities of the

international division of ANAPEC has been carried out and a series of support actions planned, which will build on the at least three other cooperation projects which have supported this division since 2004[79];

- to support Moroccan institutions and civil society organisations working in the reintegration of returning Moroccan migrants.

New immigration policy

The Mobility Partnership was followed, only three months after its signature, by a deep change in the immigration policy in the Kingdom. This has become a unique case in the EU's Southern Neighbourhood of a partner country establishing an immigration and asylum policy based on human rights principles, in line with the EU's GAMM. As a consequence, it redefined the framework and priorities of EU cooperation in this field in Morocco.

The sequence of the adoption of the new policy is revealing. On September 2013, the National Council for Human Rights announced a report on "Foreigners and Human Rights in Morocco: For a Radically New Asylum and Immigration Policy"[80]. A few days later, the King issued a set of "High Orientations" launching a new global immigration policy and an operational action plan. In October, a new Department on Migration Affairs was created in the Ministry of Moroccan Residents Abroad, which took over planning, coordination and implementation of the new policy. In November 2013 an exceptional regularisation scheme was launched for the year 2014. This campaign resulted in 17,918 one-year residence permits from 27,330 applications registered (almost half of them to Senegalese and Syrians, followed by Nigerians and Ivoirians). Among these, all women and children who submitted applications (more than 10,000) were granted residence permits given their special vulnerability. The residence permits have been automatically renewed for 2015. In March 2014, the Government presented to Parliament three new laws on Immigration, Trafficking of Human Beings and Asylum, but they have not yet been adopted. In December 2014, a National Immigration and Asylum Strategy was launched, including eleven immigrant integration programmes in all relevant fields. The Moroccan Government presented the first progress report on the implementation of this strategy in September 2015.

This new policy was a major departure from the official migration policy enforced in Morocco since the adoption of the Immigration Law 02-2003, which criminalised irregular migrants and established heavy fines and prison penalties for irregular immigrants and those who provide support to them. The Minister of Migration stated, in the public presentation of the new bill, that, in the 2003 law, "the repressive and procedural aspects prevailed" in dealing with immigration. The 2003 Law provoked an intense political debate, with heavy criticism from civil society over the lack of respect for fundamental human rights and with denunciations of the "externalization" of the European Union border control to Maghreb countries.

These public criticisms of Moroccan policy towards irregular immigrants were subsequently aimed at the administrative practice of abandoning to their own fate on the border with Algeria in the desert irregular immigrants detained trying to cross over to the Spanish enclaves of Ceuta and Melilla (the only land border between Africa and Europe). There were documented cases of deaths and these migrants often reappeared in the

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[79] Bensaid and Martín, 2015, *op. cit*.
[80] *Étrangers et droits de l'homme au Maroc: pour une politique d'asile et d'immigration radicalement nouvelle",* www.cndh.ma.

border city of Oujda after a few days and many ordeals. In the framework of the new approach, Morocco has discontinued this illegal practice and now brings detained migrants, instead, to major urban centers far from the European borders, mainly Rabat.

Beyond some challenges posed by the new immigration policy, in particular in terms of human rights protection, institutional capacities, social tensions, integration potential of immigrants and long-term prospects[81], the new policy prompted a quick reaction from the European Union and its cooperation in this field. Indeed, the EU was quick to support this new immigration policy, which has become the top priority of cooperation with Morocco in this field. In the framework of the Sharaka Project much of the EUR 1.4 million labour migration component has been ear-marked for capacity building of the Public Employment Service (ANAPEC) for immigrant workers' integration into the labour market. Additionally, a new EUR 10 million budget support programme to promote the integration of immigrants has been deployed, including EUR 2 million each for the Ministries of Public Health and Education to support the extension of health care and school enrolment to all immigrants.

EU cooperation on migration

In August 2015, there were in Morocco 25 different ongoing projects in the field of migration funded by the European Union, for a total of more than EUR 20 million over their implementation period (for multi-country projects, it is not easy to determine the share corresponding to Morocco). Of this amount, EUR 10 million corresponds to the new budget support programme to promote the integration of immigrants in Morocco, launched in 2015 after the adoption of the new national immigration policy. EUR 4 million of it was added to existing budget support programmes in the health and education sectors (EUR 2 million each), EUR 1.6 million for technical assistance to the competent Ministry and EUR 4.4 million for assistance to migrants (EUR 1.4 million for integration assistance to immigrant women and EUR 3 million for immigrant integration actions). Another pre-existing project (EUR 1.6 million) aims to improve the protection of human rights of Sub-Saharan immigrants in Morocco. Another EUR 5 million corresponds to the Sharaka Project to support the implementation of the Mobility Partnership (see below), which also has a strong technical assistance and institutional capacity building component. EUR 1 million funds a return programme to countries of origin from Morocco, plus EUR 1.6 million in the framework of a multi-country project to improve cooperation between countries of origin, of transit and of destination on voluntary return to meet the needs of vulnerable migrants. The rest goes to small migration and development technical assistance programmes.

Current EU cooperation in the field of migration focuses strongly on the integration of immigrants, and the mobilisation of Moroccan skills abroad, in full agreement with the policy priorities of the Moroccan government, as well as on return and reintegration to and from Morocco to the countries of origin. Overall the implementation of the Mobility Partnership signed in June 2013 has translated into a more than doubling of EU resources for cooperation allocated in the field of migration in Morocco. However, these figures pale compared to the EUR 67.6 million invested between 2007 and 2010 in an integrated border management programme managed by the Ministry of Interior, for which there is no   evaluation   available.

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[81] See *Ten years afterwards, is Morocco an immigration trailblazer again?,* Migration Policy Centre blog entry posted by Iván Martín on the February 25, 2015, https://blogs.eui.eu/migrationpolicycentre/ten-years-afterwards-is-morocco-an-immigration-trailblazer-again/.

Tunisia

Tunisia has a long tradition of labour migration, and roughly 10% of its total population lives abroad: 1.2 million emigrants, 83% of them in Europe, and in particular more than 54% in France, followed by Italy and Germany[82]. 28% of the adult population (and 44% of those 15-24 years old) express their desire to emigrate if the opportunity arises, and 22% plan to do so in the next 12 months (OCDE 2012). For the last forty years, the country has consistently pursued a policy aimed at facilitating labour migration, including the migration of skilled workers. However, there has not been, to date, a comprehensive national migration strategy clearly specifying the main policy objectives, the ways and means to achieve them and the institutional division of work and coordination mechanisms, though some attempts to define one have been undertaken since the 2011 revolution (including the circulation of a draft National Migration Strategy, which was never formally adopted).

The rich variety of public institutions which deal with different aspects of migration management include: the Ministry of Social Affairs with its State Secretariat for Migration and Tunisians Abroad (SEMTE), integrating a General Directorate for International Cooperation on Migration, and its Office for Tunisians Abroad (OTE, with a network of 44 labour attachés); the Ministry of Vocational Training and Employment with its Bureau of Foreign Labour and its public employment service (ANETI, with more than 90 regional offices), including an International Employment Department; and the Tunisian Agency for Technical Cooperation (ACTC) under the Ministry of Development and International Cooperation. In addition, the country has a series of bilateral labour agreements with main destination countries (e.g. France, Italy, Switzerland), mainly with the aim of facilitating labour emigration. However, there has not yet been a clear institutional coordination platform on migration.

After the 2011 revolution, two consecutive migration crisis affected the country: between February and August 2011, 28,000 Tunisians benefitted from the confusion in the border control system to get to the Italian island of Lampedusa and then the European continent, creating a political crisis in the system of the free movement of persons within the European Union. Then the civil war in Libya in 2011-2012 provoked a flow of some 200,000 refugees into Tunisia (according to UNHCR), as well as a temporary return of up to 137,000 Tunisian emigrants (IOM figures). Since 2012, the annual migration balance has stabilised and shows a slight increase[83], estimated by the National Statistical Institute at around -16,000 per year over the last five years. Cooperation in the field of migration has increased dramatically since the revolution, in terms of projects, resources invested and actors.

Mobility Partnership
On 3 March 2014, the EU, Tunisia and ten Member States[84] signed the Joint Declaration establishing a MP[85], the second with a Mediterranean partner country (after Morocco in 2013). This was one of the steps planned in the framework of the "Privileged Partnership" with the EU announced in November 2012 in the wake of the Tunisian revolution, with an Action Plan agreed for 2013-2017. On the Tunisian side, it was signed by the interim technical Government, which had entered office only two months before to prepare the second democratic elections after the revolution and face the dire economic situation,

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[82] See SEMTE, *Vers une stratégie nationale en matière de migration et des Tunisiens à l'étrange*r, *op. cit*.
[83] See H. Boubakri, Boubakri, *Revolution and International Migration in Tunisia, op. cit*.
[84] Belgium, Denmark, Germany, Spain, France, Italy, Poland, Portugal, Sweden and the United Kingdom.
[85] See http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/international-affairs/general/docs/declaration_conjointe_tunisia_eu_mobility_fr.pdf.

and only two months before the announcement of a Macro Financial Assistance package to Tunisia amounting to EUR 300 million. In contrast with the case of Morocco, the Annex of the EU-Tunisia MP was not published at the request of the Tunisian authorities, and has been negotiated ever since.

The MP was signed with the explicit opposition of main Tunisian migrants associations and civil society organisations, including the former single trade union, the Union Générale des Travailleurs Tunisians (UGTT). They published a statement calling the Government to "refuse the signature of the Mobility Partnership proposed by the EU, which has a more than obvious securitary approach and amounts to imposing the outsourcing of migratory controls"[86]. They denounced "the lack of transparency in the negotiation process which did not involve civil society actors, many of whom have been active on issues directly relevant to the agreement". The EU Delegation invited civil society organisations to some preparatory meetings with the Tunisian government, but at the last minute and without sharing the working documents, which prompted the organisations to decline to participate. After the signature of the MP, they called on the Government not to sign a readmission agreement, invoking human rights concerns[87].

The content of the EU-Tunisia MP resembles that of other MPs, with some specificities reflecting the priorities of the Tunisian authorities: for instance, it is more articulate than the EU-Morocco MP in relation to legal migration. As with other MPs, it has four areas of action: mobility, legal migration and integration; the fight against irregular migration and human trafficking, migrant readmission, security of travel and identity documents and border management; migration and development and asylum and international protection. To support the implementation of the MP, a EUR 5 million project was formulated in the framework of the AMIF programme. In the Project Action Fiche prepared by the Commission, the project would have the following main results:

- Strengthened capacity of relevant Tunisian authorities to manage labour migration and trade-related mobility through enhanced cooperation with EU partners.

- Improved knowledge of the features and trends of the main Tunisian communities in Europe and the establishment of a targeted diaspora mobilisation programme.

- Strengthened capacity of relevant Tunisian authorities and of civil society organisations to provide support for the reintegration of returnees.

One year and a half after the signature of the MP, it has not yet been launched (in the case of Morocco, the MP was launched within 9 months of its signature).

An ENI-funded EUR 3 million programme was launched in early 2015 to support the Tunisian authorities in putting in place an integrated border management system. A major security sector reform support programme under preparation would also have a strong border management component. Additionally, a two-year EUR 1 million project to improve sustainability of reintegration of voluntarily returning migrants to Morocco, Tunisia and Senegal started at the beginning of 2015.

Negotiations for a Visa Facilitation Agreement and for a Readmission Agreement between the EU and Tunisia, provided for in the MP Joint Declaration, have not yet started. The Annex listing the actions to be implemented to achieve each of the objectives of the MP (or "Scoreboard", as it is denominated) is not yet fully agreed either and has not been published (the last version dates to May 2015, and inventories a total of 101 initiatives

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[86] www.maison-migrations.tn/index.php/39-actualites/actualites-migrations-en-tunisie/86-tunisie-immigration-adresse-au-prochain-premier-ministre.
[87] « Partenariat de Mobilité entre la Tunisie et l'UE : l'externalisation des frontières européennes à marche forcée », http://www.migreurop.org/article2491.html?lang=fr.

under consideration, in preparation or ongoing in all fields of cooperation), and the new actions envisaged in it have in most cases not yet started. Tunisian authorities complain that the MP does not provide for any additional legal labour migration opportunity or even the activation of bilateral labour agreements with some Member States which are not fully exploited so far (in particular France, where only a third of the total potential number of 9,000 migrant workers benefit every year), and that support measures included in the Annex by the European Union and Member States concern mainly technical assistance. In any case, the consultation process to agree on the Annex of implementing projects has already helped the inter-governmental coordination of national authorities in this field, and might be instrumental in advancing a clearer formulation of national migration policies.

EU-Tunisia Migration Cooperation Agenda (ETMA)

This project, funded under the ENPI, was the first supported by the EU in Tunisia in this field, and aimed to promote comprehensive migration cooperation between Tunisia and Europe, in line with the EU GAMM and in the context of negotiations for a MP, by fostering the exchange of expertise on border management and migration related subjects, as well as technical assistance in drafting a national migration policy and in improving institutional coordination mechanisms. It was implemented by the ICMPD, initially between January 2012 and June 2013, with an extension until the end of 2014, and involved the work of an international expert for three years in Tunisia. Its initial budget was EUR 800,000.

The project addressed six thematic components: (1) mobility/legal migration, (2) diaspora outreach and development, (3) return, readmission and reintegration, (4) border management and document security, (5) pilot projects (addressing integration/re-integration) and (6) migration management strategy development. A gaps and needs assessment was carried out[88] assessing the institutional capacities of Tunisian authorities both at central and local levels with a view to identifying challenges and ways to overcome these. This assessment also led to the elaboration of a tailor-made programme of capacity building activities and the organisation of a series of workshops. However, the political transition made it very difficult to have an active participation of Tunisian authorities, and many objectives of the project did not materialize. The pilot projects aimed at supporting returnees were implemented through a call for applications for the local associations (13 returning migrants and seven local NGOs benefitted from it). There are two other ongoing assisted voluntary return and reintegration projects in Tunisia, one managed by IOM and the other one by the French OFII[89].

In the framework of the project, an attempt to coordinate international donors in the field of migration around the EU Delegation was undertaken, with a first coordination meeting in 2012 which had no continuity. An on-line EU-Tunisia Platform on Migration was developed[90], but without much activity. Whereas the project achieved some progress in integrated border management, at least in terms of elaboration of a diagnostics and of an action plan, in the field of national migration policy it was side-stepped by national authorities, who elaborated a draft national migration strategy without involving the project.

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[88] Etat des Lieux de la Gestion des Migrations en Tunisie : Partie mobilité, migration légale, diasporas et retour, réinsertion and Partie gestion des frontières, migration irrégulière et fraude documentaire.
[89] See Martín, Kriaa and Demnati, 2015.
[90] https://www.eurotun-migr.net/en/

"Outsourcing" of migration controls, asylum and rescue operations

A recurrent issue in the framework of discussions for an EU-Tunisia MP, but well ahead since the early 2000s and until very recently in the framework of the ongoing migration crisis in the Mediterranean, is the idea of "outsourcing" or externalisation of controls of irregular migration, processing and reception of asylum-seekers, in particular to Tunisia and Morocco. In March 2015 informal proposals of the Italian Government were discussed within the Council of Ministers of Interior to support Southern Mediterranean countries, in particular Egypt and Tunisia, with training and funds to take over maritime search and rescue operations, dealing with the reception or the return of those migrants. From a positive perspective, the idea is to provide those partner countries, as transit countries, with the incentives and resources they need to assume their responsibility in the field of international protection and deal with irregular migration and refugee flows before they reach Europe, ensuring human rights protection of migrants. For critics, in particular civil society and human rights organisations, this is an attempt of Europe to push away the migration crisis, evade its responsibilities and will reduce human rights protection for migrants and asylum-seekers[91]. EU efforts to improve integrated border management systems or develop national asylum systems through Regional Protection Programmes, for instance, would aim to "contract out" migration control to those countries. In the meantime, irregular migrants lack access to legal representation and to fundamental legal guarantees, and can be held up to one year in detention before being deported.

Tunisia, with Egypt and Libya, was one of the three beneficiary countries of the Regional Protection Programme for North Africa launched in 2010 under the TPMA (EUR 3.6 million)[92]. It started to operate in December 2011 and was managed as three different programmes. Most of the activities supported through the RPP were standard UNHCR services, including refugee status determination and up to 3,500 resettlements from the camp of Shousha[93]. The latter opened in February 2011 after the crisis in Libya, and more than 250,000 refugees transited through it. It was closed in mid-2013 without guaranteeing full protection to all asylum-seekers (in terms of residence permit and access to social benefits). The RPP also funded a series of capacity building and advocacy activities for the adoption of national asylum legislation. However, Tunisia still has no legislation on asylum or asylum demands processing system, although it acceded to the 1951 Convention Relating to the Status of Refugees in 1957 (and the 2014 Constitution provides that "the right to political asylum shall be guaranteed as prescribed by law"). Therefore, UNHCR continues to carry out refugee status determination and to search for solutions for refugees, but has no access to detention centres or border areas. In April 2015, a new Regional Development and Protection Programme for North Africa was launched under the leadership of Italy and with the participation of 12 Member States. It covers all North African countries, from Morocco to Egypt, plus Niger and Mauritania, and brings together funds from the AMIF (EUR 10 million, DG HOME) and ENI (EUR 3 million, DG NEAR).

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[91] See, for instance, and Red Cross EU office (2013), *Shifting borders, Externalizing Migrant Vulnerabilities and Rights?,* or Amnesty International (2014), *The Human Cost of Fortress Europe. Human Rights Violations Against Migrants and Refugees at Europe's Borders,* www.amnesty.eu/content/assets/Reports/EUR_050012014_ Fortress_Europe_complete_web_EN.pdf.
[92] Support to UNHCR activities in North Africa in the context of Regional Protection Programmes in Egypt, Libya and Tunisia, DCI-MIGR/2011/270-894, TPMA.
[93] Papadopoulou, 2015, *op. cit.*

ANNEX II. INVENTORY OF EXISTING AGREEMENTS ON MIGRATION BETWEEN THE EU AND THIRD COUNTRIES

This inventory comprises all international agreements, both bilateral and multilateral, concluded by the EU with third countries in the field of migration. Political and operational instruments are excluded.

I.- Short-term Visas

I.1.- Visa Waiver Agreements

(i) Agreement between the European Community and Antigua and Barbuda on the short-stay visa waiver, done at Brussels on 28 May 2009, OJ L 169, 30.6.2009, p. 3-8 (p.a. 28.5.2009; e.f. pending).

(ii) Agreement between the European Community and Barbados on the short-stay visa waiver, done at Brussels on 28 May 2009, OJ L 169, 30.6.2009, p. 10-15 (p.a. 28.5.2009; e.f. 1.3.2010).

(iii) Agreement between the European community and the Republic of Mauritius on the short-stay visa waiver, done at Brussels on 28 May 2009, OJ L 169, 30.6.2009, p. 17-22 (p.a. 28.5.2009; e.f. 1.3.2010).

(iv) Agreement between the European Community and the Commonwealth of the Bahamas on the short-stay visa waiver, done at Brussels on 28 May 2009, OJ L 169, 30.6.2009, p. 24-29 (p.a. 28.5.2009; e.f. 1.4.2010).

(v) Agreement between the European Community and the Republic of Seychelles on the short-stay visa waiver, done at Brussels on 28 May 2009, OJ L 169, 30.6.2009, p. 31-36 (p.a. 28.5.2009; e.f. 1.1.2010).

(vi) Agreement between the European Community and the Federation of Saint Kitts and Nevis on the short-stay visa waiver, done at Brussels on 28 May 2009, OJ L 169, 30.6.2009, p. 38-43 (p.a. 28.5.2009; e.f. 1.8.2015).

(vii) Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of diplomatic, service or official passports, done at Brussels on 8 November 2010, OJ L 66, 12.3.2011, p. 2-6 (e.f. 1.4.2011).

(viii) Agreement between the European Union and the Federative Republic of Brazil on short-stay visa waiver for holders of ordinary passports, done at Brussels on 8 November 2010, OJ L 255, 21.9.2012, p. 4-9 (e.f. 1.10.2012).

(ix) Agreement between the European Union and the United Arab Emirates on the short-stay visa waiver, done at Brussels on 6 May 2015, OJ L 125, 21.5.2015, p. 3–9 (p.a. 6.5.2015; e.f. pending).

(x) Agreement between the European Union and the Democratic Republic of Timor-Leste on the short-stay visa waiver, done at Brussels on 28 May 2015, OJ L 173, 3.7.2015, p. 3–9 (p.a. 28.5.2015; e.f. pending).

(xi) Agreement between the European Union and Saint Lucia on the short-stay visa waiver, done at Brussels on 28 May 2015, OJ L 173, 3.7.2015, p. 12-18 (p.a. 28.5.2015; e.f. pending).

(xii) Agreement between the European Union and the Commonwealth of Dominica on the short-stay visa waiver, done at Brussels on 28 May 2015, OJ L 173, 3.7.2015, p. 21-27 (p.a. 28.5.2015; e.f. pending).

(xiii) Agreement between the European Union and Grenada on the short-stay visa waiver, done at Brussels on 28 May 2015, OJ L 173, 3.7.2015, p. 30-36 (p.a. 28.5.2015; e.f. pending).

(xiv) Agreement between the European Union and Saint Vincent and the Grenadines on the short-stay visa waiver, done at Brussels on 28 May 2015, OJ L 173, 3.7.2015, p. 39-45 (p.a. 28.5.2015; e.f. pending).

(xv) Agreement between the European Union and the Republic of Vanuatu on the short-stay visa waiver, done at Brussels on 28 May 2015, OJ L 173, 3.7.2015, p. 48–54 (p.a. 28.5.2015; e.f. pending).

(xvi) Agreement between the European Union and the Independent State of Samoa on the short-stay visa waiver, done at Brussels on 28 May 2015, OJ L 173, 3.7.2015, p. 57–63 (p.a. 28.5.2015; e.f. pending).

(xvii) Agreement between the European Union and the Republic of Trinidad and Tobago on the short-stay visa waiver, done at Brussels on 28 May 2015, OJ L 173, 3.7.2015, p. 66–72 (p.a. 28.5.2015; e.f. pending).

I.2.- Visa Facilitation Agreements

(i) Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China, on visa and related issues concerning tourist groups from the People's Republic of China (ADS), done at Beijing on 12 February 2004, OJ L 83, 20.3.2004, p. 14-21 (e.f. 1.5.2004).

(ii) Agreement between the European Community and the Russian Federation on the facilitation of the issuance of visas to the citizens of the European Union and the Russian Federation, done at Sochi on 25 May 2006, OJ L 129, 17.5.2007, p. 27-34 (e.f. 1.6.2007)

(iii) Agreement between the European Community and Ukraine on the facilitation of the issuance of visas, done at Luxembourg on 18 June 2007, OJ L 332, 18.12.2007, p. 68-76 (e.f. 1.1.2008).

(iv) Agreement between the European Community and the Republic of Albania on the facilitation of the issuance of visas, done at Brussels on 18 September 2007, OJ L 334, 19.12.2007, p. 85-95 (e.f. 1.1.2008).

(v) Agreement between the European Community and Bosnia and Herzegovina on the facilitation of the issuance of visas, done at Brussels on 18 September 2007, OJ L 334, 19.12.2007, p. 97-107 (e.f. 1.1.2008).

(vi) Agreement between the European Community and the Republic of Montenegro on the facilitation of the issuance of visas, done at Brussels on 18 September 2007, OJ L 334, 19.12.2007, p. 109-119 (e.f. 1.1.2008).

(vii) Agreement between the European Community and the Former Yugoslav Republic of Macedonia on the facilitation of the issuance of visas, done at Brussels on 18 September 2007, OJ L 334, 19.12.2007, p. 125-135 (e.f. 1.1.2008).

(viii) Agreement between the European Community and the Republic of Serbia on the facilitation of the issuance of visas, done at Brussels on 18 September 2007,OJ L 334, 19.12.2007, p. 137-147 (e.f. 1.1.2008).

(ix) Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas, done at Brussels on 10 October 2007, OJ L 334, 19.12.2007, p. 169-179 (e.f. 1.1.2008).

(x) Agreement between the European Union and Georgia on the facilitation of the issuance of visas, done at Brussels on 17 June 2010, OJ L 52, 25.2.2011, p. 34-44 (e.f. 1.3.2011).

(xi) Agreement between the European Union and the Republic of Moldova amending the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas, done at Brussels on 27 June 2012, OJ L 168, 20.6.2013, p. 3-9 (e.f. 1. 7.2013).

(xii) Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas, done at Brussels on 23 July 2012, OJ L 168, 20.6.2013, p. 11-17 (e.f. 1. 7.2013).

(xiii) Agreement between the European Union and the Republic of Cape Verde on facilitating the issue of short-stay visas to citizens of the Republic of Cape Verde and of the European Union, done at Praia on 26 October 2012, OJ L 282, 24.10.2013, p. 3-12 (e.f. 1.12.2014).

(xiv) Agreement between the European Union and the Republic of Armenia on the facilitation of the issuance of visas, done at Brussels on 17 December 2012, OJ L 289, 31.10.2013, p. 2-11 (e.f. 1.1.2014).

(xv) Agreement between the European Union and the Republic of Azerbaijan on the facilitation of the issuance of visas, done at Vilnius on 29 November 2013, OJ L 128, 30.4.2014, p. 49-60 (e.f. 1.9.2014).

I.3.- Others

(i) Seafarers' Identity Documents Convention of the International Labour Organisation (Convention 185) (Council Decision 2005/367/EC of 14 April 2005 authorising Member States to ratify it, in the interests of the EC, OJ L 136, 30.5.2005, p. 1-2).

II. Irregular immigration and Return

II.1.- Fight Against Irregular Immigration

(i) Protocol to prevent, suppress and punish trafficking in human beings, especially women and children, supplementing the United Nations Convention against Transnational Organised Crime, 15 November 2000 (Council Decision 2006/619/EC of 24 July 2006 on its conclusion on behalf of the EC, OJ L 262 of 22.9.2006, p. 51).

(ii) Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against Transnational Organised Crime, 15 November 2000 (Council Decision 2006/617/EC of 24 July 2006 on its conclusion on behalf of the EC, OJ L 262 of 22 .9.2006, p. 34).

II.2.- Readmission Agreements

(i) Agreement between the European Community and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation, done at Brussels on 27 November 2002, OJ L 17, 24.1.2004, p. 25-39 (e.f. 1.03.2004).

(ii) Agreement between the European Community and the Macao Special Administrative Region of the People's Republic of China on the readmission of persons residing without authorisation, done at Luxembourg on 13 October 2003, OJ L 143, 30.4.2004, p. 99-115 (e.f. 1.6.2004).

(iii) Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China, on visa and related issues concerning tourist groups from the People's Republic of China (ADS), done at Beijing on 12 February 2004, OJ L 83, 20.3.2004, p. 14-21: article 5 (e.f. 12.2.2004).

(iv) Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the readmission of persons residing without authorisation, done at Colombo on 4 June 2004, OJ L 124, 17.5.2005, p. 43-60 (e.f. 1.5.2005).

(v) Agreement between the European Community and the Republic of Albania on the readmission of persons residing without authorisation, done at Luxembourg on 14 April 2005, OJ L 124, 17.5.2005, p. 22-40 (e.f. 1.5.2006).

(vi) Agreement between the European Community and the Russian Federation on readmission, done at Sochi on 25 May 2006, OJ L 129, 17.5.2007, p. 40-60 (e.f. 1.6.2007).

(vii) Agreement between the European Community and Ukraine on the readmission of persons, done at Luxembourg on 18 June 2007, OJ L 332, 18.12.2007, p. 48-65 (e.f. 1.1.2008).

(viii) Agreement between the European Community and the former Yugoslav Republic of Macedonia on the readmission of persons residing without authorisation, done by exchange of letters on 18 September 2007, OJ L 334, 19.12.2007, p. 7-24 (e.f. 1.1.2008).

(ix) Agreement between the European Community and the Republic of Montenegro on the readmission of persons residing without authorisation, done at Brussels on 18 September 2007, OJ L 334, 19.12.2007, p. 26-44 (e.f. 1.1.2008).

(x) Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation, done at Brussels on 18 September 2007, OJ L 334, 19.12.2007, p. 46-64 (e.f. 1.1.2008).

(xi) Agreement between the European Community and Bosnia and Herzegovina on the readmission of persons residing without authorisation, done at Brussels on the 18 September 2007, OJ L 334, 19.12.2007, p. 66-83 (e.f. 1.1.2008).

(xii) Agreement between the European Community and the Republic of Moldova on the readmission of persons residing without authorization, done at Brussels on 10 October 2007, OJ L 334, 19.12.2007, p. 149-167 (e.f. 1.1.2008).

(xiii) Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation, done at Brussels on 26 October 2009, OJ L 287, 4.11.2010, p. 52-67 (e.f. 1.12.2010).

(xiv) Agreement between the European Union and Georgia on the readmission of persons residing without authorisation, done at Brussels on 22 November 2010, OJ L 52, 25.2.2011, p. 47-65 (e.f. 1.3.2011).

(xv) Agreement between the European Union and the Republic of Cape Verde on the readmission of persons residing without authorization, done at Brussels on 18 April 2013, OJ L 282, 24.10.2013, p. 15-34 (e.f. 1.12.2014).

(xvi) Agreement between the European Union and the Republic of Armenia on the readmission of persons residing without authorization, done at Brussels on 19 April 2013, OJ L 289, 31.10.2013, p. 13-29 (e.f. 1.1.2014).

(xvii) Agreement between the European Union and the Republic of Azerbaijan on the readmission of persons residing without authorization, done at Brussels on 28 February 2014, OJ L 128, 30.4.2014, p. 17–42 (e.f. 1.9.2014).

(xviii) Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorization, done at Ankara on 16 December 2013, OJ L 134, 7.5.2014, p. 3–27 (e.f. 1.10.2014).

III.- Association and Cooperation Agreements containing migration clauses

(i) Agreement establishing an Association between the European Economic Community and Turkey, done at Ankara on 12.9.1963, JO 217 du 29.12.1964, p. 3687-3697 (e.f. 1.12.1964). Additional Protocol and Financial Protocol signed on 23 November 1970, annexed to the Agreement establishing the Association between the European Economic Community and Turkey and on measures to be taken for their entry into force, OJ L 293, 29.12.1972, p. 3-56. Decision 1/80 of the EEC- Turkey Association Council, 19.9.1980; Decision nº 3/80 of the EEC- Turkey Association Council, 19.9.1980 (OJ 1983, C 110).

Council Decision of 6 December 2012 on the position to be taken on behalf of the European Union within the Association Council set up by the Agreement establishing an association between the European Economic Community and Turkey, with regard to the adoption of provisions on the coordination of social security systems, OJ L 340, 13.12.2012, p. 19–25.

(ii) Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine, done at Luxembourg on 14 June 1994, OJ L 49, 19.2.1998, p. 3-46: articles 24-29 (e.f. 1.3.1998).

Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, done at Brussels on 21 March 2014, OJ L 161, 29.5.2014, p. 3–2137: articles 16-19 (p.a. 1.11.2014, e.f. pending).

(iii) Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part, done at Corfu on 24 June 1994, OJ L 327, 28.11.1997, p. 1–69: articles 23-27, 84 (e.f. 1.12.1997).

(iv) Partnership and Cooperation Agreement between the European Communities and their Member States and the Republic of Kazakhstan, done at Brussels on 23 January 1995, OJ L 196, 28.7.1999, p. 3-45: article 20 (e.f. 1.7.1999).

(v) Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Kyrgyz Republic, of the other part, done at Brussels on 9 February 1995, OJ L 196, 28.7.1999, p. 48-89: article 20 (e.f. 1.7.1999).

(vi) Partnership and Cooperation Agreement between the European Communities and their Member States and the Republic of Moldova, done at Brussels on 28 November 1994, OJ L 181, 24.6.1998, p. 3–48: articles 23-28 (e.f. 1.7.1998).

Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, done at Brussels on 27 June 2014, OJ L 260, 30.8.2014, p. 4–738: articles 14-15 (p.a. 1.9.2014, e.f. pending).

(vii) Cooperation Agreement between the European Community and the Socialist Republic of Vietnam, done at Brussels on 17 July 1995, OJ L 136, 7.6.1996, p. 29-36: Declaration by the European Community on readmission (e.f. 1.6.1996).

(viii) Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, signed at Brussels on 17 July 1995, OJ L 97, 30.3.1998, p. 2–183: articles 64-69; Declaration concerning Article 69 of the Agreement (e.f. 1.3.1998).

Council Decision of 21 October 2010 on the position to be taken by the European Union within the Association Council set up by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 306, 23.11.2010, p. 8

(ix) Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, signed at Brussels on 20 November 1995, OJ L 147, 21.6.2000, p. 3–172: articles 57, 64-66. (e.f. 1.6.2000).

Council Decision of 21 October 2010 on the position to be taken by the European Union within the Association Council set up by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 306, 23.11.2010, p. 21

(x) Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, signed at Brussels on 20 February 1996, OJ L 70, 18.3.2000, p. 2–204: articles 64-69; Joint Declaration relating to readmission (e.f. 1.3.2000).

Council Decision of 21 October 2010 on the position to be taken by the European Union within the Association Council set up by the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 306, 23.11.2010, p. 1

(xi) Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Georgia, of the other part, done at Luxembourg on 22 April 1996, OJ L 205, 4.8.1999, p. 1-52: article 75 (e.f. 1.7.1999).

Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, done at Brussels on 27 June 2014, OJ L 261, 30.8.2014, p. 4–743: articles 15-16 (p.a. 1.9.2014, e.f. pending).

(xii) Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part, done at Luxembourg on 22 April 1996, OJ L 239, 9.9.1999, p. 1-50: article 72 (e.f. 1.7.1999).

(xiii) Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Azerbaijan, of the other part, done at Luxembourg on 22 April 1996, OJ L 246, 17.9.1999, p. 1–51: article 75 (e.f. 1.7.1999).

(xiv) Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of

Uzbekistan, of the other part, done at Florence on 21 July 1996, OJ L 229, 31.8.1999, p. 3-52: article 72 (e.f. 1.7.1999).

(xv) Cooperation Agreement between the European Community and the Lao People's Democratic Republic, done at Luxembourg on 29 April 1997, OJ L 334, 05.12.1997, p. 15-23: Joint Declaration on the readmission of citizens (e.f. 1.12.1997).

(xvi) Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part, done at Luxembourg 24 November 1997, OJ L 283, 26.10.2005, p. 10-176: article 80 (e.f. 1.5.2002).

(xvii) Cooperation Agreement between the European Community and the Kingdom of Cambodia, done at Luxembourg on 29 April 1997, OJ L 269, 19.10.1999, p. 18-28: Joint Declaration on the readmission of citizens (e.f. 1.1.1999).

(xviii) Cooperation Agreement between the European Community and the Republic of Yemen, done at Brussels on 25 November 1997, OJ L 72, 11.3.1998, p. 18-29: Joint Declaration on the re-admission of citizens (e.f. 1.7.1998).

(xix) Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, OJ L 317, 15.12.2000, p. 3-353: article 13 (p.a. 28.5.2009; e.f. 1.1.2010).

Agreement amending for the second time the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States, of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, as first amended in Luxembourg on 25 June 2005, signed in Ouagadougou on 22 June 2010, OJ L 287, 4.11.2010, p. 3-49: Joint Declaration on Migration and Development (Article 13) (p.a. 22.6.2010; e.f. 31.10.2010).

(xx) Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, done at Luxembourg on 9 April 2001, OJ L 84, 20.3.2004, p. 3–12: articles 44-46; 75-76 (e.f. 1.4.2004).

Council Decision of 21 October 2010 on the position to be taken by the European Union within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 306, 23.11.2010, p. 28

(xxi) Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Arab Republic of Egypt, of the other part, done at Luxembourg on 25 June 2001, OJ L 304, 30.9.2004, p. 39–208: articles 62-63; 68-70 (p.a. 1.1.2004, e.f. 1.6.2004).

(xxii) Cooperation Agreement between the European Community and the Islamic Republic of Pakistan on partnership and development fields, done at Islamabad on 24 November 2001, OJ L 378, 23.12.2004, p. 23-36: Declaration by the European Community and the Islamic Republic of Pakistan; Statement by the Islamic Republic of Pakistan on the declaration on readmission agreements; unilateral statement by the Community on the occasion of the signing of the Cooperation Agreement between the European Community and Pakistan (e.f. 1.9.2004).

(xxiii) Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the People's

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Democratic Republic of Algeria, of the other part, done at Valencia on 22 April 2002, OJ L 265, 10.10.2005, p. 2–228: articles 67-71, 83-84 (e.f. 1.9.2005).

Council Decision of 21 October 2010 on the position to be taken by the European Union within the Association Council set up by the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the People's Democratic Republic of Algeria, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 306, 23.11.2010, p. 14

(xxiv)   Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part, done at Luxembourg on 17 June 2002, OJ L 143, 30.5.2006, p. 2–188: articles 68-70; Joint Declaration relating to Workers (e.f. 1.4.2006).

(xxv) Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part, done at Brussels on 18 November 2002, OJ L 352, 30.12.2002, p. 1–1450: article 46 (e.f. 1.3.2005).

(xxvi)   Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Tajikistan, of the other part, done at Luxembourg on 11 October 2004, OJ L 350, 29.12.2009, p. 3-51: article 70 (e.f.1.1.2010).

(xxvii)   Cooperation Agreement between the European Community and the Principality of Andorra, done at Brussels on 15 November 2004, OJ L 135, 28.5.2005, p. 14–18: article 5 (e.f. 1.7.2005).

(xxviii)   Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, done at Luxembourg on 12 June 2006, OJ L 107, 28.4.2009, p. 166–502: articles 46-48; 80-81 (e.f.1.4.2009).

Council Decision of 6 December 2012 on the position to be taken on behalf of the European Union within the Stabilisation and Association Council established by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 340, 13.12.2012, p. 1–6.

(xxix)   Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, done at Luxembourg on 15 October 2007, OJ L 108, 29.4.2010, p. 3–354: articles 49-51, 82-83 (e.f. 1.5.2010).

Council Decision of 6 December 2012 on the position to be taken on behalf of the European Union within the Stabilisation and Association Council set up by the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, with regard to the adoption of provisions on the coordination of social security systems, OJ L 340, 13.12.2012, p. 7–12.

(xxx)   Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part, done at Luxembourg on 29 April 2008, OJ L 278, 18.10.2013, p. 16–473: articles 49-51, 82-83 (e.f. 1.9.2013)

(xxxi)   Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and Bosnia and Herzegovina, of the other part, done at Luxembourg 16 June 2008, OJ L 164, 30.6.2015, p. 2-547: articles 47-49, 80-81 (e.f. 1.6.2015).

(xxxii)   Framework Agreement on comprehensive partnership and cooperation between the European Community and its Member States, of the one part, and the Republic of Indonesia, of the other part, done at Jakarta on 9 November 2009, OJ L 125, 26.4.2014, p. 17-43: article 34 (e.f. pending).

(xxxiii)   Framework Agreement between the European Union and its Member States, on the one part, and the Republic of Korea, on the other part, done at Brussels on 10 May 2010 OJ L 20, 23.1.2013, p. 2–24: article 33 (e.f. pending).

(xxxiv) Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part, done at Brussels on 11 May 2012, OJ L 204, 31.7.2012, p. 20-130: article 105 (e.f. pending).

(xxxv)   Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other, done at Tegulcigalpa on 29 June 2012, OJ L 346, 15.12.2012, p. 3–2621: articles 19 and 49 (p.a. 1.8.2013, e.f. pending).

(xxxvi) Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and Mongolia, of the other part, done at Ulaanbaatar on 30 April 2013: article 31 (e.f. pending).

(xxxvii) Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part, done at Phnom Penh on 11 July 2012: article 26 (e.f. pending).

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ANNEX III. LIST OF INTERVIEWS

Brussels:

- International Coordination Unit, DG HOME, European Commission
- External Relations, Asylum and Migration Unit, Council of the EU
- European External Action Service
- DG DEVCO – B3
- Brussels Mission, ICMPD
- Regional Office for the EEA, the EU and NATO, International Organization for Migration, Brussels

Member States:

- Subdirection General of International Relations and Immigration, Ministry of Interior, Spain

Moldova:

- Bureau for Migration and Asylum, Ministry of Internal Affairs of the Republic of Moldova
- International Cooperation Directorate, Border Police Department, Ministry of Internal Affairs of the Republic of Moldova
- National Office UNHCR Republic of Moldova
- The Delegation of the European Union to the Republic of Moldova (Justice and Home Affairs)
- The Delegation of the European Union to the Republic of Moldova (Political Affairs)

Morocco:
- Ministère chargé des marocains résidant à l'étranger et des affaires de la migration (MCMREAM). Direction de la coopération, des études et de la prospective.
- The Delegation of the European Union to the Kingdom of Morocco (Human Rights and Migration)
- Conseil National des Droits de l'Homme, Président.

Tunisia:

- Ministry of Social Affairs – Secretariat of State for Migration
- International Organization for Migration (Office in Tunisia)
- The Delegation of the European Union to the Republic of Tunisia (Migration)
- Academic expert

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