

# MOBILITY AND LEGAL MIGRATION IN THE CONTEXT OF THE EUROPEAN NEIGHBOURHOOD POLICY: WHAT ROLE FOR THE EUROPEAN UNION?<sup>1</sup>

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## **Abstract**

The paper examines the evolution of the external dimension of EU immigration policy mainly in the context of European Neighbourhood policy (ENP). The EU is interested in countering irregular migration from Southern neighbours rather than in facilitating legal migration for third country nationals. The latter field falls within the competence of the EU Member States and they are reluctant to open legal migration channels. Only recently Mobility Partnerships (MPs) have been concluded with Morocco, Tunisia and Jordan. Most recently, the EU has decided to financially support countries of origin/transit in order to strengthen

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their capacity to tackle migration pressure; migration compacts will be negotiated not only with Southern neighbours but also with other African countries. In contrast to Southern neighbours, MPs were agreed with all Eastern neighbours, except Belarus; readmission agreements and visa-free agreements were concluded with three Eastern neighbour countries: Ukraine, Georgia and Moldova. The EU has fostered mobility and people-to-people movements in its relations with Eastern neighbours but the added value of EU legislation designed to favour legal migration and integration of third country nationals remain limited. The conclusion is that the EU continues to be a «fortress», especially for low-skilled migrants seeking an employment.

### **Keywords**

EU immigration policy; European Neighbourhood policy; economic migrants; mobility partnerships; visa facilitating agreements; readmission agreements.

## **MOVILIDAD Y MIGRACIÓN LEGAL EN EL CONTEXTO DE LA POLÍTICA EUROPEA DE VECINDAD: ¿QUÉ ROL PARA LA UNIÓN EUROPEA?**

### **Resumen**

El presente trabajo abarca la evolución de la dimensión exterior de la política de inmigración de la UE en el marco de la Política Europea de Vecindad (PEV). La UE está más interesada en luchar contra la migración irregular de los países vecinos del sur que en facilitar la migración legal de los nacionales de terceros países. Este último ámbito es competencia de los Estados miembros de la UE, que se muestran reacios a abrir canales de migración legal. Solo recientemente se han concluido acuerdos de movilidad con Marruecos, Túnez y Jordania, pero en la actualidad no hay acuerdos para facilitar visados entre la UE y los países del norte de África. Más recientemente, la UE ha decidido apoyar financieramente a los países de origen/tránsito con el fin de reforzar su capacidad para hacer frente a la presión migratoria. En este sentido, los pactos de migración se negociaron no solo con los Vecinos del Sur, sino también con otros países africanos. A diferencia de los vecinos del sur, se concluyeron acuerdos de movilidad con todos los vecinos orientales, a excepción de Bielorrusia; acuerdos de readmisión y acuerdos de acceso sin visados (*visa-free*) con tres países vecinos orientales: Ucrania, Georgia y Moldavia. La UE ha fomentado la movilidad en sus relaciones con los vecinos orientales, pero el valor añadido de la legislación de la UE en el marco de la migración legal y la integración de nacionales de terceros países sigue siendo limitado. La conclusión es que la UE sigue siendo una «fortaleza», especialmente para los inmigrantes poco cualificados que buscan un empleo.

### **Palabras clave**

Política de inmigración de la UE; Política Europea de Vecindad; migrantes económicos; acuerdos de movilidad; acuerdos para facilitar visados; acuerdos de readmisión.

### **MOBILITE ET MIGRATION LEGALE DANS LE CONTEXTE DE LA POLITIQUE EUROPEENNE DE VOISINAGE: QUEL ROLE POUR L'UNION EUROPEENNE?**

#### **Résumé**

Le présent article examine l'évolution de la dimension externe de la politique migratoire de l'UE dans le contexte de la Politique Européenne de Voisinage (PEV). L'UE s'intéresse plus au contraste de l'immigration irrégulière en provenance des Pays Voisins du Sud, qu'à faciliter la migration légale en provenance des Pays Tiers. Cette dernière retombe dans les compétences des États membres, lesquels sont aussi peu enclins à ouvrir les couloirs de la migration légale. Ce n'est que récemment que l'UE a conclu des partenariats sur la mobilité avec le Maroc, la Tunisie et la Jordanie. Plus récemment encore, l'UE a décidé de financer les pays d'origine ou de transit à fin de renforcer leur capacité à faire face aux pressions migratoires. Ces conventions vont être négociées aussi bien avec les voisins du Sud qu'avec d'autres pays africains. Des partenariats sur la mobilité ont par contre été conclus avec tous les Pays Voisins de l'Est, mis-à-part la Biélorussie; des accords de réadmission et des accords de 'visa-free' ont été conclus avec trois Pays Voisins de l'Est: l'Ukraine, la Géorgie et la Moldavie. L'UE a encouragé la mobilité dans ses relations avec les Pays Voisins de l'Est, mais la valeur ajoutée de la législation de l'UE visant à favoriser la migration légale et l'intégration des ressortissants de pays tiers reste limitée. La conclusion est que l'UE continue d'être une «forteresse», en particulier pour les migrants peu qualifiés qui cherchent un emploi.

#### **Mots clés**

Politique migratoire de l'UE; Politique Européenne de Voisinage; migrants économiques; partenariats sur la mobilité; accord facilitant l'obtention de visa; accords de réadmission.

## SUMMARY

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I. INTRODUCTION. II. THE SCOPE OF THE COOPERATION IN THE AREA OF MIGRATION IN THE EARLY YEARS OF THE ENP AND THE MOBILITY PARTNERSHIPS. III. THE NEW EMPHASIS ON MOBILITY AND PEOPLE-TO-PEOPLE CONTACTS AFTER THE ARAB SPRING (2011) AND ITS SELECTIVE IMPLEMENTATION. IV. GREATER PEOPLE-TO-PEOPLE MOVEMENTS BETWEEN THE EU AND EASTERN NEIGHBOURS AND ENHANCED PROTECTION FOR LEGAL MIGRANTS IN UKRAINE BUT INSUFFICIENT OPENINGS TO LEGAL MIGRATION. V. THE EUROPEAN AGENDA ON MIGRATION (2015), THE INCREASE OF INSTABILITY IN THE NEIGHBOURHOOD AND THE LIMITED IMPACT OF CHANGES IN THE EU LEGISLATION DESIGNED TO ENCOURAGE PEOPLE-TO-PEOPLE MOVEMENTS. VI. STRENGTHENING THE CAPACITY OF AFRICAN COUNTRIES TO MANAGE MIGRATORY PRESSURE THROUGH FINANCIAL INSTRUMENTS. VII. CONCLUSIONS.

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## I. INTRODUCTION

Migration flows encompass both economic migrants and those qualifying for asylum protection or some other forms of international protection. The former escape from poverty and most often move to another country to remain. The latter want to stay in the destination country for a limited period of time, given that they are forced to leave their home country by a situation of internal or international conflict which is presumably temporary<sup>4</sup>. Third countries included in the European Neighbourhood Policy (ENP), and in particular South-

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<sup>4</sup> A further cause of forced migration is climate change. This is recognised in European Commission Staff Working Paper, «Migration and development», SEC (2001) 1353 final, 18.11.2011. On this topic, see Dimitra MANOU, Andrew BALDWIN, Dug CUBIE, Anija MIHIR, Teresa TORP, *Climate change, migration and human rights-Law and Policy perspectives*, Routledge, Abingdon and New York, 2017.

ern neighbours<sup>5</sup>, are the main source of legal<sup>6</sup> and illegal migration<sup>7</sup> towards the EU. On the one hand, the migratory flows coming from Northern African countries include people in need of some forms of international protection as well as economic migrants; both seek to enter illegally in the EU through the EU Mediterranean countries or through Turkey. On the other hand, persons coming from ENP countries, such as Ukraine and Morocco, are an important source of legal migration. This piece intends to focus on the EU's approach to the cooperation in the area of migration with ENP countries in order to examine whether the EU's strategy has been balanced in pursuing the objective of curbing irregular migration flows and fostering mobility opportunities of third country nationals coming from its neighbours<sup>8</sup>. Has the EU also favoured the opening of channels of legal migration from ENP countries? We find this topic interesting since although the EU has competence to conclude re-admission agreements<sup>9</sup> and can establish rules on legal migration, it does not have the competence to determine the volumes of admission of third-country nationals coming from third countries (...) in order to seek work<sup>10</sup>. Member States retain the power to set the volume of admission through quotas<sup>11</sup>, although the EU

<sup>5</sup> Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia. The ENP also cover Eastern neighbours (i.e. Eastern Partnership, EaP), namely: Armenia, Azerbaijan, Belarus, Georgia, Moldova, Ukraine. The relations between the EU and the Russian Federation do not fall within the ENP; therefore, all agreements concluded with these country will not be accounted for.

<sup>6</sup> According to Eurostat statistics: «In 2015, citizens of Ukraine received the highest number of permits, ahead of citizens of the United States (262 thousand), Chinese (167 thousand), Indians (136 thousand), and Syrians (104 thousand). (...) Around three quarters (376 thousand) of all Ukrainians who received first permit in the EU in 2015 received an employment related permit», available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Residence\\_permits\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Residence_permits_statistics) (last accessed on 18.7.2017).

<sup>7</sup> The top five third country nationals refused entry at EU-28 external borders in 2015 came from Morocco (164 885), Ukraine (24 485), Albania (16 910), Russia (10 715) and Serbia (7 775). Moroccans were refused entry mainly at the land border of Spain; Russians and Ukrainians at the land border of Poland; available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics\\_on\\_enforcement\\_of\\_immigration\\_legislation](http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_enforcement_of_immigration_legislation) (last accessed on 18.7.2017).

<sup>8</sup> In this piece, initiatives concerning cooperation in the area of migration different from those adopted in the context of the ENP (such as the Budapest process established in 1993) will not be accounted for.

<sup>9</sup> This is explicitly provided for in art. 79(3) TFEU.

<sup>10</sup> Art. 79(5) TFEU.

<sup>11</sup> Kay HAILBRONNER, Daniel THYM, *EU Immigration and Asylum Law: A Commentary*, C. H. Beck, München, 2016, p. 284.

has some limited powers in the area of legal migration, as well shall see<sup>12</sup>. It is therefore important to see what kind of initiatives the EU has been able to undertake in its relations with its neighbours, considering the legal limits that hamper its efforts<sup>13</sup>.

## II. THE SCOPE OF THE COOPERATION IN THE AREA OF MIGRATION IN THE EARLY YEARS OF THE ENP AND THE MOBILITY PARTNERSHIPS

When the ENP was launched in 2003 with the Communication «Wider Europe»<sup>14</sup>, the EU set to promote greater stability, security and prosperity in the neighbourhood, comprising two blocs of third countries, the Eastern neighbours, most of which formed the so-called Eastern Partnership (EaP) in 2009 and the Northern African countries, which are part of the Union for the Mediterranean (2008)<sup>15</sup>. Some of the partners of the first group qualify as

<sup>12</sup> See section IV.

<sup>13</sup> This piece will not examine the emergency response given by the EU and its Member States to movements of people fleeing from wars and qualifying for asylum or for some forms of temporary international protection given that these areas of research have already received considerable academic attention. The EU's attempt to better control and manage the movements of this special category of migrants is based on three pillars: the CFSP naval operation carried out in the context of EU Navfor Med Operation Sophia to counter the smuggling of migrants and also to save the lives of persons seeking to reach the EU Member States through the Mediterranean Sea; the EU-Turkey statement of 18th March 2016 (Press Release No 144/16), providing that for every Syrian being returned from Turkey from the Greek islands, another Syrian will be resettled from Turkey to the EU; and the temporary re-location scheme adopted in 2015 to alleviate Greece and Italy from the pressure coming from persons in need of international protection.

<sup>14</sup> The ENP has evolved over time. It has been launched in 2003 with the Communication from the Commission to the Council and the European Parliament, «Wider Europe — Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours», COM (2003) 104 final, 11.3.2003. Revisions took place and renewed in 2011 and 2015. See, respectively «A new response to a changing Neighbourhood», COM (2011) 303 final, 25.5.2011; and «Review of the European Neighbourhood Policy», JOIN (2015) 50 final, 18.11.2015.

<sup>15</sup> It is noteworthy that the EU has concluded Association Agreements (i.e. the Euro-Mediterranean agreements) with all Southern countries (except Libya and Syria). For an analysis on the dynamics in 1990s of Euro-Med relations, among others, Guy HARPAZ, «When East meets West: Approximation of Laws in the EU-Medi-

European countries within the meaning of art. 49 of the Treaty of EU (TEU). In contrast, none of the Southern neighbours had a European perspective.

Since the inception of the ENP, the Commission has placed emphasis on the common interest of the EU and its partner countries to integrate third country nationals, lawfully residing in the Union and to fight illegal migration<sup>16</sup>. As to the latter, emphasis is placed on reinforcing the neighbouring countries' efforts to combat illegal migration through the conclusion of readmission agreements with, e.g. Morocco, Russia, Algeria, Ukraine, Belarus and Moldova<sup>17</sup>.

In contrast, there is cautiousness on the degree of liberalization of movements for economic migrants. Indeed, the free movement of people and labour is considered a long-term objective and the freedom for workers to move from one Member State to another is envisaged «where skills are needed most»<sup>18</sup>. The ambition of the initiatives that the Commission is ready to undertake seems quite limited: emphasis is placed on enhancing movements of people in border areas. The purpose is to avoid that the EU enlargement towards the East creates new dividing lines between the new EU members and their new neighbours. It is also envisaged to facilitate the movement of citizens of neighbouring countries participating in EU programmes and activities. Most importantly, it is stated that, «provided the necessary conditions are in place, the EU should be open to examine wider application of visa free regimes»<sup>19</sup>.

When the ENP was launched, readmission agreements were considered the key instrument for the EU to counter illegal migration, which has the aim of ensuring the return of third country nationals to their country of origin or transit. However, there was little appetite for such a cooperation amongst the EU partner countries, especially from Southern neighbours. The provisions of the 1970s cooperation agreements concluded by the then European Economic Community (EEC) with this group of countries did not contain clauses on cooperation in this area. In addition, it is well-known that Morocco has resisted the conclusion of an EU-wide readmission agreement for a long time<sup>20</sup>. This country was ready only to discuss about irregular immigration but not

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terreanean Context», *Common Market Law Review*, num. 43, 2006, pp. 993-1022: p. 996 ss.

<sup>16</sup> COM (2003) 104 final, *op. cit.*, note 14, p. 6.

<sup>17</sup> *Ibid.*

<sup>18</sup> COM (2003) 104 final, *op. cit.*, note 14, p. 11.

<sup>19</sup> *Ibid.*

<sup>20</sup> Sarah WOLFF, «The Politics of Negotiating EU Readmission Agreements: Insights from Morocco and Turkey», *European Journal of Migration and Law*, num. 6, 2014, pp. 69-95.

to commit to readmit irregular migrants in the context of Euro-Mediterranean agreement entered into force in 2000<sup>21</sup>. It seems that the same bilateral readmission agreement with Spain of 1992 has never been fully implemented<sup>22</sup>. This is one of the reasons why the EU external migration policy became more diversified in 2005 when a new Strategy, called «Global Approach to Migration and Mobility (GAMM)» was adopted by the Council<sup>23</sup>. The new approach, which is defined as «migrant-centred» is based on four axes: legal migration and mobility, irregular migration and trafficking in human beings, the support to international protection and asylum policy and the maximization of the development impact of migration<sup>24</sup>. The opening towards legal migration is justified not only by the demographic patterns of EU population, but also by the conviction that economic migrants could contribute to the growth of the country where they work<sup>25</sup>. It goes without saying that fighting illegal immigration through the conclusion of bilateral readmission agreements is still important in the context of the new approach to migration challenges. It is not clear from the policy document setting out the new GAMM whether the EU will tie the cooperation on fighting irregular migration to the

<sup>21</sup> See art. 60 dedicated to «Dialogue in social matters» of 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 (OJ L 70, 18.3.2000, p. 2). This dialogue extends to: «illegal immigration and the conditions governing the return of individuals who are in breach of the legislation dealing with the right to stay and the right of establishment in their host countries.» There is no legal commitment to readmit irregular migrants undertaken by Morocco, in contrast to the provisions of other agreements with Southern countries, i.e. art. 68 of the Euro-Mediterranean agreement establishing an association between the European Communities and their Member States, of the one part, and Egypt (OJ L 304, 30.9.2004, p. 39). This provision contains a commitment by each Member State and Egypt to readmit their nationals. However, no mention is made of citizens of other nationalities who reached the EU from Egypt.

<sup>22</sup> Jean-Pierre CASSARINO, «Resilient bilateralism in the cooperation on readmission», in Marise CREMONA, Joerg MONAR, Sara POLI, *The External Dimension of the European Union's Area of Freedom, Security and Justice*, p. I.E. Peter Lang (Cahiers du Collège d'Europe/College of Europe Studies 13), Bruxelles/Bern/Berlin/Frankfurt and Main/New York/Oxford/Wien, 2011, pp. 191-208: p. 196.

<sup>23</sup> Council Conclusions, «Global Approach to Migration: Priority Actions focusing on Africa and the Mediterranean», 15914/05, 17.11.2005.

<sup>24</sup> European Commission, «The Global Approach to Migration and Mobility», COM (2011) 743 final, 18.11.2011, p. 6.

<sup>25</sup> *Ibid.*, p. 2.

development of greater opportunities of legal migration. This is not explicitly said in this context. However, in practice this is what happened.

The EU's instrument formalising the four pillars of the GAMM is the Mobility Partnership (MP), a non-legally-binding agreement<sup>26</sup>, launched in 2007 by the Commission<sup>27</sup>, taking the form of a joint political declaration signed on the one hand, by the EU and the participating Member States<sup>28</sup> and, on the other, the concerned third country. The MPs pursue various objectives at the same time: they facilitate legal migration, foster well-managed mobility, while preventing and combating illegal immigration and trafficking in and smuggling of human beings, in accordance with international obligations relating to refugee protection and more broadly human rights.

These new instruments are based on mutual offers of commitments aimed on the one hand, at ensuring the returns of irregular migrants to the concerned ENP partner and on the other, at facilitating legal migration from third countries. The MPs are very flexible in content: there is a list of possible measures that the third country concerned could take to counter irregular migration<sup>29</sup>. These cover the readmission of its nationals but also «under clearly defined circumstances, [of] third country nationals and stateless persons who arrived in the EU through the territory of the country concerned, where appropriate in the framework of an EC readmission agreement»<sup>30</sup>. Efforts to improve the security of travel documents against fraud or forgery and the adoption of measures designed to tackle migrant smuggling and human trafficking are also mentioned. It is made clear that all these measures «must be implemented in full compliance with the fundamental rights of the persons in question, including the specific rights of persons who might be in need of international protection»<sup>31</sup>. There are examples of commitments that both the EU and the Member States participating in the MPs may take: Member

<sup>26</sup> They are not published on the OJ.

<sup>27</sup> European Commission, «Communication on circular migration and mobility partnerships between the European Union and third countries», COM (2007) 248, 16.5.2007. See also, *inter alia*, Jan WOUTERS and Sanderijn DUQUET, «The Arab uprisings and the European Union: in search of a comprehensive strategy», *Yearbook of European Law*, num. 32, 2013, pp. 230-265: p. 250.

<sup>28</sup> Member States are not obliged to take part in MPs.

<sup>29</sup> See, Roderick PARKES, «EU Mobility Partnerships: A Model of Policy Coordination?», *European Journal of Migration and Law*, num. 11, 2009, pp. 327-345; Natasja RESLOW, «The Role of Third Countries in EU Migration Policy: The Mobility Partnerships», *European Journal of Migration and Law*, num. 14, 2012, pp. 393-415.

<sup>30</sup> COM (2007) 248, *op. cit.*, note 27, p. 4.

<sup>31</sup> *Ibid.*, p. 5.

States could on a voluntary basis facilitate access to their labour markets to the nationals of the third country in question. In political terms, these individual offers would be pooled in order to put together a consolidated EU offer to the third country in question. These national offers could take the form of labour quotas reserved for the nationals of the third country in question, or practical instruments to help match job offers in the Member State in question with job seekers in the third country concerned without bypassing existing admission procedures. However, it is recognised that mechanisms to facilitate economic migration is primarily based on «the labour needs of interested Member States, while fully respecting the principle of Community preference for EU citizens»<sup>32</sup>.

A further possible way to foster and facilitate legal migration is to open up for selected persons, belonging both to skilled and unskilled workers, and also young people (students), the possibility to move to the EU for a limited period of time and then to return to their home country<sup>33</sup>.

MPs could also envisage measures designed to improve and/or ease the procedures for issuing short stay visas to nationals of the third country. For example, multiple entry visa valid for a long period (up to five years) can be issued to bona fide persons who need to travel frequently; the reduction of the visa fee is a further possibility. However, all these initiatives eventually depend on the interest of Member States in participating in the MPs and their willingness to open their job market to third country nationals. Although the ENP countries are considered a geographical priority of the GAMM<sup>34</sup>, yet, in the years following the adoption of the new Strategy, no MPs were concluded with Southern neighbours. Initially, the EU's action was more successful in the Eastern neighbourhood<sup>35</sup>. In 2007 a visa facilitation agreement and a readmission agreement, which entered into force on the same day, were concluded with Ukraine<sup>36</sup>, whose cooperation in the area of freedom, security and justice was more advanced than that with any other ENP partner. In this specific case, there was no need to conclude a MP. In 2008 two pilot-MPs,

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<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*, p. 13.

<sup>34</sup> *Ibid.*, p. 8.

<sup>35</sup> For an appraisal of the cooperation with ENP partners in this area, see, Agnieszka WEINAR, «Cooperation on Migration and the Revised European Neighbourhood Policy», in Dimitris BOURIS and Tobias SCHUMACHER (eds.), *The Revised European Neighbourhood Policy. Continuity and Change in EU Foreign Policy*, Palgrave Macmillan, London, 2017, pp. 263-283; p. 272.

<sup>36</sup> For the text of the readmission agreement see OJ L 332, 18.12.2007, p. 48.

drafted in similar terms, started with Cape Verde and Republic of Moldova<sup>37</sup>. Other EaP countries, Georgia (2009) and Armenia (2011) followed suit<sup>38</sup>; this development paved the way for the negotiation of a visa facilitation and the readmission agreements. It should be noted that often the two agreements are negotiated and concluded at the same time and it is not by chance.

As to the content of the MPs, this is largely the same and it is drafted in fairly vague terms; this has been a *conditio sine qua non* for ensuring the participation of Member States<sup>39</sup>. MPs are generally composed by a Preamble and four main parts (mobility, legal migration, integration and asylum; migration and development; border management, identity and travel documents, fight against illegal migration and trafficking in human beings). The implementing measures are listed in annex of the MPs.

### III. THE NEW EMPHASIS ON MOBILITY AND PEOPLE-TO-PEOPLE CONTACTS AFTER THE ARAB SPRING (2011) AND ITS SELECTIVE IMPLEMENTATION

Building upon the EaP experience, since the end of 2010, the EU opened a dialogue for migration, mobility and security with the Southern

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<sup>37</sup> See, Joint Declaration on Mobility Partnership between the European Union and the Cape Verde of 5 June 2008. The negotiation was conducted by the Commission. Participating Member States n. 4; Joint Declaration on Mobility Partnership between the European Union and the Republic of Moldova of 5 June 2008. Participating Member States n. 15.

<sup>38</sup> See, Joint Declaration on a Mobility Partnership between the European Union and Georgia of 30 November 2009; Joint Declaration on a Mobility Partnership between the European Union and Armenia of 6 October 2011. Participating Member States n. 15 and n. 10, respectively.

<sup>39</sup> See, Steffen ANGENENDT, «EU Mobility Partnerships: The ‘Most Innovative and Sophisticated Tool’ of European Migration Policy?», Policy Brief, Migration Strategy Group on Global Competitiveness, 2014, available at: <https://pt.scribd.com/document/241101326/EU-Mobility-Partnerships-The-Most-Innovative-And-Sophisticated-Tool-of-European-Migration-Policy> (last accessed on 19.7.2017); S. Stefan BROCZA and Katharina PAULHART, «EU mobility partnerships: a smart instrument for the externalization of migration control», *European Journal of Futures Research*, num. 3/15, 2015, available at: <https://link.springer.com/article/10.1007/s40309-015-0073-x> (last accessed on 19.7.2017).

countries<sup>40</sup>, in line with the aims of the EU's GAMM<sup>41</sup> and in parallel with the Communication «A new response to a changing neighbourhood»<sup>42</sup>, after the start of the Arab Spring. In the latter document the EU emphasises its intention to differentiate its relations *vis-a-vis* the ENP countries depending on their progress in carrying out domestic reforms: this principle is known as the «more for more» principle and it is an expression of the principle of conditionality, which characterise the EU external action. Greater mobility opportunities are included amongst the commitments made by the EU to reward all ENP countries (and not only the Southern neighbours) —in addition to greater financial support and access to the internal market— in exchange of their engagement to consolidate a «deep and genuine democracy» and the rule of law<sup>43</sup>. However, it is clear that the EU is more interested to open-up the opportunities of legal migration for «well-educated, young and talented workers»<sup>44</sup> than for unskilled workers. In addition, the conclusion of MPs is conditional upon the availability to cooperate in fighting irregular migration. The Communication selects the category of citizens whose mobility is encouraged, namely students, researchers and business people; second, reference is made to the pursue of the process of visa facilitation for selected ENP partners and visa liberalisation for those with the most advanced forms of cooperation with the EU. A third interesting aspect of the Commission communication is that it identifies various countries in the EU neighbourhood that would be good candidates for MPs: these are Armenia, Morocco, Tunisia and Egypt<sup>45</sup>. Yet, in the practice, a MP was concluded with Armenia only.

As an implementation of the principle of conditionality, the Commission presented the Visa Liberalization Action Plan (VLAP) to the Ukrainian, Moldovan and Georgian authorities in 2010, 2011 and 2013<sup>46</sup>. These coun-

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<sup>40</sup> European Commission, «A dialogue for migration, mobility and security with the Southern Mediterranean Countries», COM (2011) 292 final, 24.5.2011.

<sup>41</sup> *Ibid.*, p. 2.

<sup>42</sup> European Commission, «A new response to a changing Neighbourhood», COM (2011) 303 final, 25.5.2011.

<sup>43</sup> The EU's «enhanced support will come in various forms, including increased funding for social and economic development, larger programmes for comprehensive institution-building (CIB), greater market access, increased EIB financing in support of investments; and greater facilitation of mobility», *ibid.*, p. 3.

<sup>44</sup> *Ibid.*, p. 12.

<sup>45</sup> *Ibid.*

<sup>46</sup> For an overview of these instruments see Raül HERNÁNDEZ I SAGRERA, *The Impacts of Visa Liberalisation in Eastern Partnership Countries, Russia and Turkey on Trans-border Mobility* (Study for the LIBE Committee, European Parliament 2014);

tries had either concluded a MP or readmission and visa facilitation agreements with the EU. In the VLAPs the EU defined action plans to achieve the abolishment of visa requirements in exchange of the cooperation of these countries in concluding readmission agreements. The EU provided the benchmarks that these countries had to respect in order to be ready for the lifting up of the visa requirements; a monitoring mechanism of the progresses towards the achievements of these benchmarks was set up. The Action Plan is composed of two stages: the first one envisages legislative and policy reforms and the second one focuses on their implementation. Four blocks of benchmarks are envisaged: 1) document security, including biometrics; 2) border management, migration and asylum; 3) public order and security; and, 4) external relations and fundamental rights.

The status of visa free country was granted to Moldova (2011), Georgia (2017) and Ukraine (2017) since these countries have satisfied all the conditions required by the EU. This entails that citizens of these countries with biometric passports travelling to the EU for up to 90 days in any 180-day period, for tourism, to visit relatives or friends, or for business purposes (but not to work) are exempt from the obligation to have a visa. This visa liberalization regime does not apply in the UK, Ireland and Denmark due to the operation of the opt-outs of these countries in the area of freedom, security and justice; however, it extends to the Schengen-Associated countries (Norway, Iceland, Liechtenstein).

Other Eastern neighbours could upgrade their relations with the EU and achieve the status of visa-free countries in the future. Indeed, the EU concluded MPs also with Armenia (2012), Azerbaijan (2013)<sup>47</sup> and Belarus (2016)<sup>48</sup>. The content of these MPs does not differ substantially from the previous MPs with Moldova, Georgia and Armenia. Visa liberalization and readmission agreements were also concluded with Armenia and Azerbaijan in 2012 and 2013<sup>49</sup>.

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Peter VAN ELSUWEGE and Olga BURLYUK, «Exporting the Rule of Law to the EU's eastern neighbours: reconciling coherence and differentiation», in Sara POLI (ed.), *The European Neighbourhood Policy — Values and Principles*, Routledge, London and New York, 2016, pp. 167-182.

<sup>47</sup> See, Joint Declaration on Mobility Partnership between the Republic of Azerbaijan and the European Union and its participating Members States of 5 December 2013. Participating Member States n. 8.

<sup>48</sup> See Mobility Partnership between the Republic of Belarus and the European Union and its participating Members States of 13 October 2016. Participating Member States n. 7. The final text of the MP is not available at the time of writing.

<sup>49</sup> On the possibility of concluding MPs with Southern neighbours see *infra* sections III, IV and VI.

Hence, to date, all Eastern neighbours, except for Belarus<sup>50</sup> signed a readmission agreement and have visa liberalization plans or qualify as short term-visa-free countries. All five visa facilitation agreements are similar in content. In particular, they aim at facilitating short-stay visas (i.e. no more than 90 days within a period of 180 days) and multiple-entry visas; ensuring cheaper less bureaucratic procedures for certain categories of persons (e.g. family members, students, business people, journalists, scientists, etc.). Criticism are related to the excessive degree of discretion left to the consulates of the Member States<sup>51</sup>.

It may be quite surprising that the second group of Eastern countries, which did not carry out domestic reforms along the lines agreed in the action plans, could conclude the mentioned agreements. How can such an upgrade of the contractual relations be explained? Why does the EU favours people-to-people contacts in the absence of a genuine commitments towards domestic reforms? In principle, the MP is designed to ensure that migration and mobility, including greater labour mobility, are mutually beneficial for the EU and its partners<sup>52</sup>. A further explanation of the EU's willingness to conclude these partnerships despite the lack of progress of the contracting party in political reforms is that these partnerships focus more on «migration management» than on opportunities for legal migration from third countries. The EU and its Member States are more interested in making the return of illegal immigrants more effective than in facilitating the legal migration of third country nationals. Indeed, the parties, by signing the partnership, commit to signing a readmission agreement, by which the ENP partner concerned agrees to readmit not only its own citizens but also those of third States who have transited through its territory and who are caught illegally entering or residing in the EU. Thus, in conclusion, when the decision to set up a MP is made on a bilateral basis this does not mean that the EU is rewarding the partner country for its progress towards building democracy and respecting human rights<sup>53</sup>.

<sup>50</sup> Belarus and the EU held a meeting for discussing on the readmission and visa facilitation agreements in Minsk on 20 June 2017 available at: <http://eng.belta.by/politics/view/belarus-in-readmission-and-visa-facilitation-talks-with-eu-102536-2017/> (last accessed on 19.7.2017).

<sup>51</sup> Sergo MANASHVILI, «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, p. 19, available at: <http://cadmus.eui.eu/handle/1814/28257> (last accessed on 19.7.2017).

<sup>52</sup> COM (2011) 743, *op. cit.*, note 24, p. 10.

<sup>53</sup> Sara POLI, «The European Neighbourhood Policy: Differentiation without Political Conditionality?», in *Yearbook of Polish European Studies*, num. 18, 2011, pp. 133-164 p. 147.

Let us now turn to the implementation of the 2011 Communication *vis-a-vis* Southern neighbours. The instability across the Southern Mediterranean countries caused by the 2011 Arab Spring has provided impetus to the cooperation in the field of migration between Tunisia and Morocco on the one hand, and EU and its Member States on the other. The EU decided to open the perspective of MP for Southern countries, which were concluded with Morocco, Tunisia and Jordan in 2013-2014<sup>54</sup>.

On the subject of irregular migration, the content of MPs with Southern countries deals with readmission in general terms. For example, the MP with Morocco refers to the negotiation of readmission agreements «with provisions relating to third-country nationals as well as accompanying measures and reconciling the need for operational efficiency with the requirement to observe the fundamental rights of migrants»<sup>55</sup>. As for Jordan, the MP underlines that one of the objective is «[t]o negotiate a readmission agreement between the EU and Jordan with provisions relating to third country nationals based on clear and transparent criteria to be laid down in the agreement and taking into account the specific situation of Jordan»<sup>56</sup>. Finally, the MP with Tunisia does not make any reference to readmission of third-country nationals<sup>57</sup>.

<sup>54</sup> See, Joint Declaration on Mobility Partnership between the Kingdom of Morocco, and the European Union and its Member States of 7 June 2013, Participating Member States n. 9; Joint Declaration on Mobility Partnership between Tunisia, and the European Union and its Member States of 3 March 2014, Participating Member States n. 10; Joint Declaration on Mobility Partnership between the Hashemite Kingdom of Jordan, and the European Union and its Member States of 9 October 2014, Participating Member States n. 12. See, among others, Martin BALDWIN-EDWARDS, «The Emerging European Immigration Regime: Some Reflections on Implications for Southern Europe», *Journal of Common Market Studies*, num. 35, 1997, pp. 497-519. Mohamed LIMAM, Raffaella DEL SARTO, «Periphery under Pressure: Morocco, Tunisia and the European Union's Mobility Partnership on Migration», *EUI Working Paper, RSCAS 2015/75*, pp. 1-14, available at: <http://cadmus.eui.eu/handle/1814/37521> (last accessed on 19.7.2017).

<sup>55</sup> Joint Declaration between the Kingdom of Morocco, and the European Union and its Member States, *op. cit.*, note 54, point 13.

<sup>56</sup> Joint Declaration between the Hashemite Kingdom of Jordan, and the European Union and its Member States, *op. cit.*, note 54, point 9.

<sup>57</sup> Joint Declaration on Mobility Partnership between Tunisia, and the European Union and its Member States, *op. cit.*, note 54, points 9-10.

#### IV. GREATER PEOPLE-TO-PEOPLE MOVEMENTS BETWEEN THE EU AND EASTERN NEIGHBOURS AND ENHANCED PROTECTION FOR LEGAL MIGRANTS IN UKRAINE BUT INSUFFICIENT OPENINGS TO LEGAL MIGRATION

The previous sections show that Eastern neighbours have achieved far more than the Southern ones in terms of mobility opportunities: all of them have MPs which have led to the setting up of a visa-free regimes for the citizens of Moldova, Georgia and Ukraine or to visa facilitation agreements for the others members of the group. Therefore people-to-people movements towards the EU are likely to increase from the three countries mentioned above. A further interesting aspect of the EU relations with its Eastern partners concerns the rules on legal migration included in the 2014 bilateral association agreements between the EU, its Member States, the Euratom and Georgia, Moldova and Ukraine. These Treaties envisage the deepest form of political and economic cooperation with EU. The fields covered by the agreement extend to the area of freedom, security and justice. There is one provision of the EU-Ukraine agreement which is noteworthy since it aims at integrating the Ukrainian workers in the labour market. This is art. 17 which imposes a prohibition not to discriminate workers of Ukrainian nationality, legally working in a Member State, on the basis of nationality, as regards working conditions, remuneration and dismissal compared to nationals of a Member State. The mentioned provision, which is not replicated in the agreements with Georgia and Moldova, goes beyond art. 24 of the Partnership and cooperation agreement between the EU, its Member States and Ukraine concluded in 1994<sup>58</sup>. Yet, the EU-Ukraine Treaty does not provide for a prohibition to discriminate in the field of social security with respect to nationals of Member State in which Ukrainian nationals are employed<sup>59</sup>. Therefore, even the agreement based on the most advanced form of cooperation between the EU and a neighbour country does not seem to treat Ukrainian workers fairly.

Turning to Southern neighbours, only three (out of ten) signed MPs; in particular, the conclusion of the MP with Morocco is a good sign; this partner is an important country of origin and transit. It is also important to stress that in January 2015 the EU has opened negotiations on visa facilitation and readmission agreements with Morocco, following the strategy of linking the two agreements one to the other, as it did with Eastern neighbours. The rationale

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<sup>58</sup> Guillaume VAN DER LOO, *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area*, Brill Nijhoff, Leiden and Boston, 2016, p. 198.

<sup>59</sup> *Ibid.*

for proposing a cooperation in this area is the same as for Eastern partners. In contrast to Morocco, the EU has not been able to engage with Egypt, contrary to the wishes expressed in the Communication of 2011<sup>60</sup>.

Leaving aside the cooperation on irregular migration and the conclusion of visa-free agreements, if we examine whether MPs resulted in greater opportunities for legal migration, the picture looks gloomy. The reason is that these instruments are characterised by a number of structural weaknesses. First of all, given the current division of competence between the EU and its Member States and the informal nature of the cooperation, they are voluntary for the latter; in fact only countries with a proximity link with the concerned partner country seem to be interested in signing these instruments<sup>61</sup>. In addition, the UK has exercised its opt-outs in this area, despite being one of the countries that took the initiative to propose the GAMM<sup>62</sup>. Existing MPs have focused primarily on a security approach to management migration rather than on the migrants' opportunities for mobility and migration. As a result, MPs have

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<sup>60</sup> Particularly the Commission proposed to start dialogues taking into account three main criteria: firstly, the overall relationship that the EU maintains with each partner country; secondly, the current level of capacity in the partner country to manage migration flows, and; thirdly, the willingness of the latter to engage in a constructive and effective dialogue aimed at establishing the Partnership. On this basis, progressively the Commission launched dialogues with Tunisia, Morocco and Egypt. COM (2011) 292 final, *op. cit.*, note 40, p. 12. See, *inter alia*, Peter SEEBERG, «Mobility Partnerships and the EU, Part I: Where are we regarding implementation and what will be the consequences?, Part I and II», published in *Center for Contemporary Middle East Studies, University of Southern Denmark (2014)*, available at: [https://static.sdu.dk/mediafiles/4/B/4/%7B-4B436E70-4E30-4E2B-8D82-2CDBDD9926E1%7D060714\\_Mobility\\_Seeberg1.pdf](https://static.sdu.dk/mediafiles/4/B/4/%7B-4B436E70-4E30-4E2B-8D82-2CDBDD9926E1%7D060714_Mobility_Seeberg1.pdf) (last accessed on 19.7.2017).

<sup>61</sup> Member States signatories of Moldova and Georgia's declarations were 15, 10 for Armenia, 12 for Jordan, 8 for Azerbaijan, 7 for Belarus, 9 for Morocco, 10 for Tunisia.

<sup>62</sup> «The GAMM was originally a United Kingdom initiative and the Government remains broadly supportive of it in principle. However, they appear to have grown increasingly skeptical. While they see the value in a shared approach to managing migration issues between the EU and its partner countries, they do not believe it is appropriate to center the whole of the GAMM on the rights and empowerment of migrants, and are critical of the 'migrant-centred' approach favoured by the Commission» [House of Lords, European Union Committee, 8<sup>th</sup> Report of Session 2012-3, para. 160]. In addition to the UK, under Protocols 21 and 22 to the Treaties, Ireland and Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Title V TFEU.

been sarcastically renamed «immobility partnerships»<sup>63</sup>. The participating Member States are not ready to provide formal opportunities for economic migrants to seek employment. An important factor making MPs weak instruments is related to the division of competence between the EU and its Member States<sup>64</sup> in the field of migration. The EU has a shared competence to conclude readmission agreements<sup>65</sup>. In contrast, there are a significant number of aspects concerning admission of third country nationals and access to the job market which squarely fall within national competence. Even if it is true that the external dimension of the common immigration policy is developing and the EU has harmonised the conditions governing entry into and legal residence in a Member State<sup>66</sup>, including for the purposes of family reunification, for third-country nationals<sup>67</sup>, Member States retain important areas

<sup>63</sup> Agnieszka WEINER, *Mobility Partnerships — what impact do they have on legal migration and mobility?*, EUI Blogs—MPC Blog, Debate on Migration, 2012, available at: <https://blogs.eui.eu/migrationpolicycentre/mobility-partnerships-what-impact-do-they-have-on-legal-migration-and-mobility/> (last accessed on 19.7.2017).

<sup>64</sup> European Parliament Study, *Division of competence between the European Union and its Member States concerning migration*, 2011, available at: <http://www.europarl.europa.eu/studies> (last accessed on 19.7.2017).

<sup>65</sup> Art. 79 (3) of the TFEU. On the nature of the competence see European Parliament Study, *Division of competence between the European Union and its Member States concerning migration*, *op. cit.*, note 64, p. 14.

<sup>66</sup> See, among others, Directive 2009/50/EC on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment [OJ L 155, 18.6.2009, pp. 17-29] which created the so called 'EU Blue Card'; Directive 2011/98/EU, i.e. the EU Single Permit Directive, sets out a common and simplified procedure for third country nationals applying for a residence and work permit in a Member State, as well as a common set of rights to be granted to regular immigrants [OJ L 343, 23.12.2011, pp. 1-9]; Directive 2014/36/EU regulates the conditions of entry and residence of third country nationals for the purpose of employment as seasonal workers [OJ L 94, 28.3.2014, pp. 375-390]; Directive 2016/801/EU on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing [OJ L 132, 21.5.2016, pp. 21-57]. See, among others, Franziska WEBER, «Labour market access for asylum seekers and refugee under the Common European Asylum system», *European Journal of Migration and Law*, num. 18, 2016, pp. 34-64.

<sup>67</sup> Directive 2003/86/EC sets out provisions on the right to family reunification [OJ L 251, 3.10.2003, pp. 12-18]. Since the 2008 implementation report concluded that it was not being fully applied in the Member States, the Commission published a

of competence in the management of legal migration<sup>68</sup>: the determination of volumes of third country nationals admitted in order to seek work (whether employed or self-employed)<sup>69</sup>. Therefore, the implementation of MPs in these areas falls within the Member States. The integration of third country nationals, residing legally in their territories<sup>70</sup>, also primarily falls within the Member States. The EU may provide at most incentives and support to promote such an integration. Indeed, the possibility for the EU to define harmonised rules in this area is excluded<sup>71</sup>; this entails that the pre-emption effect cannot take place.

Looking at the way Member States implemented the MPs, the conclusion is that there is reluctance to open labour market to the temporary migrant workers and/or offer better conditions for circular migration through flexible social rights<sup>72</sup>.

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communication providing guidance to the Member States on how to apply it, COM (2014) 210 final, 3.4.2014.

<sup>68</sup> For a general comment on the limits of labour market access and the effectiveness of social rights of third-country labour migrants under EU law, see, among others, Herwing VERSCHUEREN, «Employment and Social Security Rights of Third-Country Labour Migrants under EU Law: An Incomplete Patchwork of Legal Protection», *European Journal of Migration and Law*, num. 18, 2016, pp. 373-408.

<sup>69</sup> Art. 79 (5) TFEU.

<sup>70</sup> At European level, existing integration instruments include the European Migration Forum, available at: <http://www.eesc.europa.eu/?i=portal.en.immigration-and-asylum-european-migration-forum> (last accessed on 19.7.2017), the European Website on Integration available at: <https://ec.europa.eu/migrant-integration/> (last accessed on 19.7.2017), and the Network of National Contact Points on Integration available at: <http://www.olai.public.lu/en/relations-internationales/ue/ncpi/> (last accessed on 19.7.2017). The latter is a forum in which Member States can exchange information and best practices in order to find valid solutions for the integration of immigrants in all the Member States, as well as to guarantee the coherence of national policies with European initiatives. On 7 June 2016 the Commission put forward an action plan, setting out a policy framework and practical steps to help Member States integrate the 20 million non-EU nationals legally resident in the EU COM (2016) 377 final, 7.6.2016.

<sup>71</sup> Under art. 79(4) TFEU, any harmonisation of the laws and regulations of the Member States on the integration of third-country nationals residing legally in their territories is excluded.

<sup>72</sup> According to Weinar, there are two examples of changes in domestic legal order introduced to favour the mobility of citizens from partner countries: «(1) a Polish initiative opening its labour market to the temporary labour migration from the countries which signed the MP; (2) the German initiative to offer to its long-term residents

## V. THE EUROPEAN AGENDA ON MIGRATION (2015), THE INCREASE OF INSTABILITY IN THE NEIGHBOURHOOD AND THE LIMITED IMPACT OF CHANGES IN THE EU LEGISLATION DESIGNED TO ENCOURAGE PEOPLE-TO-PEOPLE MOVEMENTS

The Communication of 2015 on the review of the ENP dedicates limited space to legal migration and this is understandable considering that the stability of ENP countries deteriorated<sup>73</sup>, as a result of 2014 conflict in Ukraine, which added up to that in Syria and to the difficulties encountered by Libya to preserve its statehood. The presence of refugees in countries such as Jordan and Lebanon was a further de-stabilising factor for Southern neighbours. In this context, it is not surprising if the tone of the document revising the ENP is centred-around the idea of stabilising the neighbourhood more than on anything else. The EU places emphasis on the need for greater cooperation on return and readmission of irregular migrants in all dialogues with countries of origin and transit of migrants.

Whilst the EU's interest is to reinforce cooperation with neighbours and other countries (e.g. Western Balkans, Turkey, Middle East, the Sahel region and the Horn of Africa), it seeks to promote better tools in order to identify skill gaps in the European labour market and encourage the recognition of qualifications of third country nationals working in the EU. A number of new tools are mentioned, e.g. a platform of dialogue with businesses, trade unions and social partners; regional mobility schemes in relevant sectors (e.g. agriculture, or tourism) in line with the 2014 Seasonal Workers Directive<sup>74</sup> and

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the possibility of return to home country for extended periods of time (up to 2 years) without losing the residence rights. These are pretty direct and straightforward initiatives that bring more value into the MPs». *Agnieszka WEINER, Mobility Partnerships — what impact do they have on legal migration and mobility?*, *op. cit.* 63.

<sup>73</sup> JOIN (2015) 50 final, *op. cit.*, note 14, p. 16. See also, European Parliament research service, «European Neighbourhood Policy Southern Neighbourhood — migration issues», *Briefing paper*, December 2015, available at: [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS\\_BRI\(2015\)573888](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2015)573888) (last accessed on 19.7.2017). For critical comments, see Tobias SCHUMACHER, «Back to the Future: The 'New' ENP towards the Southern Neighbourhood and the End of Ambition», *College of Europe Policy Brief*, num. 1, 2016, available at: <https://www.coleurope.eu/research-paper/back-future-new-enp-towards-southern-neighbourhood-and-end-ambition> (last accessed on 19.7.2017).

<sup>74</sup> Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, *op. cit.*, note 66.

skilled labour migration scheme, including preferential schemes for nationals of the ENP countries<sup>75</sup>; issues related to efficient transfer of remittances and a new start-up (Startback) fund providing capital to promote «brain circulation». However, all in all these initiatives signal a very limited ambition to foster legal migration from ENP countries. The tone and spirit of the revision of the ENP is coherent with the European Agenda on Migration<sup>76</sup>, adopted by the Commission in May 2015. Most of this document describes emergency actions to be taken by the EU to avoid future migration pressure on the EU external borders and on containment of migration flows through cooperation with countries at the origin of these uncontrolled movements. The EU's interest in facilitating the return of irregular migrants is still high. However, a revision of the EU's approach in this area is advocated since it is stated that priority should be given to readmission agreements with the main countries of origin of irregular migrants<sup>77</sup>. Considering that the most important reason leading to dissatisfaction on the way readmission agreements work is that often it is not possible to identify<sup>78</sup> third countries nationals (thus making useless the existence of a readmission agreement with the concerned third country), it may be concluded that the importance attached by the EU to the conclusion of readmission agreements is probably unjustified.

The agenda on migration also displays an interest in strengthening the available channels of legal migration. For example, there is support towards the simplification of procedures enabling selected categories of persons (not workers) to move to the EU. These are students, researchers and trainees. In particular, mention is made of a Directive, that was in the pipeline in 2015, which is described as being aimed at giving these groups new mobility and job seeking opportunities<sup>79</sup>. Yet, in reality, the final text of this piece of legislation<sup>80</sup> is aimed at fostering people-to-people contacts and mobility, and facilitating and speeding up the entry of third-country nationals applying for the purpose of carrying out a research activity in the Union, while preserving Member States'

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<sup>75</sup> JOIN (2015) 50 final, *op. cit.*, note 14, p. 16.

<sup>76</sup> European Commission, «European agenda for migration», COM (2015) 240 final, 13.5.2015.

<sup>77</sup> *Ibid.*, p. 10.

<sup>78</sup> Sergio CARRERA, *Implementation of EU Readmission Agreements. Identity Determination Dilemmas and the blurring of Rights*, SpringerOpen, 2016, p. 2.

<sup>79</sup> *Ibid.*, p. 14.

<sup>80</sup> Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing, *op. cit.*, note 66.

prerogatives with respect to immigration policy<sup>81</sup>. The Directive does not aim at providing employment opportunities for third country nationals.

The revision of the «blue card directive», which is aimed at facilitating the mobility for highly skilled workers, is also announced in the Agenda, while the failure of the previous scheme is implicitly admitted<sup>82</sup>. Once again, looking at the text of the proposed Directive, it is possible to observe that the new piece of legislation does not envisage to extend the scope *ratione personae* of the scheme but to strengthen the rights of beneficiaries by easing family reunification and intra-EU mobility<sup>83</sup>. The Commission also takes the view that a further category of third country nationals, whose mobility opportunities could be enhanced, is that of highly skilled professionals, providing services to businesses and governments.

A second initiative taken shortly after the adoption of the Agenda on migration is explained in a Communication<sup>84</sup> of 2016, which is, at least in part, aimed at enhancing legal avenues to Europe. Here, the Commission proposes that an expression of interest system, accessible to both employers and Member States' authorities, to be created in order to enable qualified migrants seeking a job to form of a pool of possible candidates from which Member States can draw on the basis of their actual labour market needs<sup>85</sup>.

## VI. STRENGTHENING THE CAPACITY OF AFRICAN COUNTRIES TO MANAGE MIGRATORY PRESSURE THROUGH FINANCIAL INSTRUMENTS

In 2016 the Commission announces a new instrument to shape the cooperation with third countries in the area of migration. This is the Compact which is embedded in a Partnership Framework is primarily designed to produce concrete results in stemming the flow of irregular migrants by enhancing support for those in need in their countries of origin and transit. These new instruments are geared towards strengthening the capacity of the EU partner

<sup>81</sup> See recitals n. 6 and 9.

<sup>82</sup> «(...) In its first two years, only 16,000 Blue Cards were issued and 13,000 were issued by a single Member State», *ibid.*, p. 15.

<sup>83</sup> European Commission, «Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of highly skilled employment», COM (2016) 378 final, 7.6.2016.

<sup>84</sup> European Commission, «Towards a reform of the common European asylum system and enhancing legal avenues to Europe», COM (2016) 197 final, 6.4.2016, p. 18.

<sup>85</sup> COM (2016) 378 final, *op. cit.*, note 83, p. 18.

country to better manage migratory pressure, in full respect of our humanitarian and human rights obligations. The objectives of the compacts are to save lives in the Mediterranean sea, to increase the rate of returns to countries of origin and transit, to enable migrants and refugees to avoid taking dangerous journeys.

In order to financially support this new approach, the EU and its Member States will mobilize 8 billions Euros between 2014 and 2020 to deliver the compacts<sup>86</sup>. More recently, the Mobility Partnership Facility (MPF), which is an EU-funded initiative with a limited duration of 35 months as of 1 January 2016, was launched to contribute to the operationalisation of the GAMM, while also strengthening the cooperation between the EU and partner countries that signed a MP in the area of migration and mobility<sup>87</sup>.

A limited number of priority third countries of origin and transit will be targeted to elaborate compacts; these are all ENP countries: Jordan, Lebanon Tunisia and Libya. The compacts with the first two countries concern mutual commitments with respect to aiding the plight of both Syrian refugees and host communities and helping these host countries deal with the crisis<sup>88</sup>. As to Tunisia, it is underlined that this country has made remarkable progress to complete its peaceful and democratic post-revolution transition and is a positive example of the Arab Spring. Building on the broader engagement based on the existing MP, the EU aims at enhancing more effective cooperation on return and readmission to be developed, notably through the negotiation of

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<sup>86</sup> *Ibid.*, p. 11.

<sup>87</sup> In 2016 the EU has also set up the MPF in order to «support the preparation and implementation of Mobility Partnership and Common Agendas on Migration and Mobility by providing targeted, flexible and tailor-made assistance», European Commission, «Report on the Implementation of the European Neighbourhood Policy Review, JOIN (2017) 18 final, 18.5.2017, p. 24. The MPF is funded by the European Commission and implemented by the International Centre for Migration Policy Development (ICMPD). The priorities of actions to be implemented under the MPF are identified by Member States in close cooperation with partner countries, available at: [https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration/mobility-partnership-facility\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration/mobility-partnership-facility_en) (last accessed on 19.7.2017). MPF is devoted to funding initiatives with countries having a mobility partnership and those included in the Common Agenda on Migration and Mobility (CAMM). To the date, CAMMs has been signed with Ethiopia, India and Nigeria. The main difference between MPs and CAMMs is that CAMMs could be upgraded to a MP at later stage, while MPs paves the way for a step forward, i.e. the negotiation of a visa facilitation agreement and the readmission agreement.

<sup>88</sup> COM (2016) 378 final, *op. cit.*, note 83, p. 7.

the readmission agreement<sup>89</sup>. Coming to Libya, the EU offers a package of measures which includes financial support (around 100 millions Euros has been committed and a part of it already disbursed), fostering protection, resilience and stabilisation of displaced populations, together with their host communities; support to security sector reform, with focus on police and criminal justice as well as border management; governance and technical assistance<sup>90</sup>.

Finally, a common agenda on migration and mobility is launched to establish a dialogue with countries that are the origin of migration flows (or are transit countries) in Western, Sub-Saharan and Central Africa: (Niger, Mali, Senegal and Nigeria) and in Eastern Africa (Ethiopia)<sup>91</sup>. This initiative is designed to re-launch the cooperation with these countries, given that the Cotonu agreement (of which these countries are parties) had not led to significant results<sup>92</sup>.

Further financial advantages could be gained by third countries targeted by the EU and wishing to cooperate with the EU. With the 2015 Valletta Summit<sup>93</sup> the so-called «European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa» (Trust Fund)<sup>94</sup> is set up. This is designed, amongst other things, «to improve migration management in all its aspects, including contributing to national and regional strategies on migration management, containing and preventing irregular migration and fight human trafficking, effective return and readmission, international protection and asylum, and enhancing synergies between migration and development»<sup>95</sup>. This fund addresses the migra-

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<sup>89</sup> *Ibid.*, p. 14.

<sup>90</sup> *Ibid.*, p. 15.

<sup>91</sup> It is also announced that the «Union will engage more strongly with Egypt, including through more financial assistance for capacity-building», *Ibid.*, p. 16.

<sup>92</sup> European Commission, «A renewed partnership with the countries of Africa, the Caribbean and the Pacific», JOIN (2016) 52 final, 22.11.2016, p. 6. The Cotonou agreement provides for cooperation combating smuggling and trafficking in human beings and illegal immigration, including implementing readmission obligations (art. 13).

<sup>93</sup> The Valletta Summit took place on 11 and 12 November 2015. The Political Declaration and the Action Plan are available at: <http://www.consilium.europa.eu/en/press/press-releases/2015/11/12-valletta-final-docs/> (last accessed on 15.6.2017).

<sup>94</sup> See Commission press release, President Juncker launches the EU Emergency Trust Fund to tackle root causes of irregular migration in Africa, 12.11.2015, available at: [europa.eu/rapid/press-release\\_IP-15-6055\\_en.pdf](http://europa.eu/rapid/press-release_IP-15-6055_en.pdf) (last accessed on 19.7.2017).

<sup>95</sup> Available at: [https://ec.europa.eu/europeaid/regions/africa/eu-emergency-trust-fund-africa\\_en](https://ec.europa.eu/europeaid/regions/africa/eu-emergency-trust-fund-africa_en) (last accessed on 19.7.2017).

tion crises in three African regions —i.e. Sahel/Lake Chad, Horn of Africa and North Africa— which encompass the major African migration routes to Europe<sup>96</sup>. The Trust Fund is to be understood as complementary and innovative tool to the EU's already existing development cooperation instruments, including those supporting MPs<sup>97</sup>. This fund takes inspiration from the one made available by the EU and its Member States to Turkey in order to financially support the commitments made by the parties of the EU-Turkey statement of March 2016<sup>98</sup>.

In addition to these initiatives, which are inspired more by a logic of addressing emergencies than the root causes of migration, the Commission has launched the so-called European External Investment Plan (EEIP) designed to foster investment in Africa and the ENP countries with an input from the EU budget of 3.35 billions Euros<sup>99</sup>. It remains to be seen if the EU financial efforts to encourage private investments<sup>100</sup> will finally be successful.

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<sup>96</sup> European Commission, «Joint Communication for a renewed impetus of the Africa-EU Partnership», JOIN (2017) 17, 4.5.2017, p. 13. More precisely, the Trust Fund encompasses 23 countries in total. Eligible countries are: Sahel/Lake Chad (i.e. Burkina Faso, Cameroon, Chad, the Gambia, Mali, Mauritania, Niger, Nigeria and Senegal; Horn of Africa (i.e. Djibouti, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, Tanzania and Uganda) and North Africa (Morocco, Algeria, Tunisia, Libya and Egypt). In addition, neighbouring countries of the eligible countries may benefit, on a case-by-case basis, from Trust Fund projects with a regional dimension in order to address regional migration flows and related cross-border challenges.

<sup>97</sup> As of 19 July 2017, 116 programmes have been approved by the Operational Committee of the EU Trust Fund (EUTF) for Africa for a total amount of around 1889.3 million Euros, of which more than 1144.2 million Euros has been contracted to implementing partners. EU sources of funding for the EUTF for Africa and Member States and other donors pledges contributions are available at: [https://ec.europa.eu/europeaid/eutf-pledged-contribution-eu-member-states-and-other-donors-march-2017\\_en](https://ec.europa.eu/europeaid/eutf-pledged-contribution-eu-member-states-and-other-donors-march-2017_en) (last accessed on 20.7.2017).

<sup>98</sup> EU-Turkey statement, 18 March 2016, , *op. cit.*, note 13.

<sup>99</sup> In case Member States match the EU's contribution, the total amount of resources could reach 88 billion Euros. See IP/16/3002, 14.11.2016.

<sup>100</sup> See, in particular, the G20 initiative to promote private investment and investment in infrastructure under Germany Presidency (2016-2017), i.e. the G20 Compact with Africa, which is, according to Dr Wolfgang Schäuble, Federal Minister of Finance, «a long-term, demand driven process. The African countries will determine what they want to do to improve conditions for private investment, with whom they want to cooperate, and in what form», available at: <http://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Topics/Featured/G20/2017-03-30-g20-compact-with-africa.html> (last accessed on 19.7.2017).

The initiatives adopted after 2015 show two trends: on the one hand, the EU favours an informal cooperation with third countries, reinforced by financial support, instead of insisting on the conclusion of readmission agreements; and, on the other, the idea emerges that the cooperation with the EU will be rewarded<sup>101</sup>; the implication is that the lack of cooperation will be penalised. If this is the case, there is a risk that the development cooperation, whose objective is the eradication of poverty, is used for purely migration management purposes and not to mitigate push forces<sup>102</sup>.

## VII. CONCLUSIONS

The main findings of the research is that the EU's cooperation with ENP countries in the area of migration is dominated by the objective of curbing irregular migration flows. Overall, the initiatives adopted by the EU to favour legal migration from these countries are recessive if compared with the numerous efforts to contain movements of people from the neighbours. As a result, the EU is still a 'Fortress' for third country nationals seeking job opportunities; this is due to the reluctance of Member States to open-up their job market to economic migrants as well as to the limited added value of the EU's efforts to facilitate legal migration, given the EU's competence gaps. Most recently, the EU has acted to strengthen the resilience of African countries of origin of migration flows to tackle migration challenges through the setting up of the EU emergency trust fund for Africa and partnership frameworks. Having tamed the Eastern migration route to the EU, as a result of the implementation of EU-Turkey statement of 2016 and its facility, the Union has, on the one hand, extended its efforts to establish a dialogue on migration with Western, Sub-Saharan and Central Africa (Niger, Mali, Senegal and Nigeria) and in Eastern Africa (Ethiopia) and on the other, focused on the root causes of migration in Africa, by investing in this continent. Leaving aside the difficulties of cooperating with unstable Southern neighbours in managing migration challenges, the EU is likely to concretely favour mobility from

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<sup>101</sup> A further illustration of this compensation logic may be found in the following statement: «One way in which the EU can help to ensure that countries of origin benefit from migration is through facilitating cheaper, faster and safer remittance transfers», JOIN (2015) 50 final, *op. cit.*, note 14, p. 17.

<sup>102</sup> Paula G. ANDRADE, Iván MARTÍN and Sergo MANANASHVILI, *EU Cooperation with Third Countries in the Field of Migration* (Study for the LIBE Committee, European Parliament, 2015), p. 17.

Moldova, Ukraine and Georgia thanks to the abolition of short-term visas for selected categories of third country nationals. In this area, European-led initiatives have made their added value most visible for the ENP countries. In the specific case of Ukraine, the EU has also favoured a substantial integration of legal Ukrainian workers in the job market by imposing equal treatment with respect to nationals of the EU, although there is scope for improvements when it comes at their social security rights.