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Protecting is Not Enough: Promoting the
Right of Migrants Not to Flee Their Home.
The EU Challenge of Development and Migration

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Protecting is Not Enough: Promoting the Right of Migrants Not to Flee Their Home. The EU Challenge of Development and Migration

by

Serena Marini*

Abstract

In light of the unprecedented European migration crisis, current EU policy strategies aim at gradually and increasingly integrating the existing development policy instruments into migration policy, namely as regards long-term measures to address the root causes of illegal migration and forced displacement: ending the migration crisis requires addressing the “push” factors. The EU Global Strategy and the new European Consensus on Development, as well as the principal instruments structuring EU external migration policy, explicitly highlight the nexus between development and migration. This link is of utmost importance as regards the EU Emergency Trust Fund for Africa and the new European External Investment Plan, and is particularly underlined in the new Migration Partnership Framework, whose principal aim is to strengthen cooperation with individual third countries, particularly in Africa, a continent where major crises continue to emerge. Consequently, development cooperation has been increasingly conceived as a major tool to serve migration policy interests, namely promoting European security interests. Its function appears twofold: on the one hand, it works as a preventive instrument in order to stem illegal migration in countries of origin and transit; on the other hand, it facilitates “non-authorised migrants” return, being used as a lever to reward countries’ determination to cooperate with the EU in the field: what is often referred to as a “carrot-and-stick” strategy. This growing influence of security concerns on EU development policy entails a series of challenges as well as risks. The latter concern primarily the potential diverting of EU development cooperation from its own primary objective as embedded in the Treaty of Lisbon – the eradication of poverty – to the possible detriment of the respect for the principle of Policy Coherence for Development.

Keywords: Migration crisis; External migration policy; Migration-development nexus; Development cooperation; Partnership; Policy coherence; Human-rights conditionality

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Overview

In light of the unprecedented European migration crisis, there have been increasing attempts at the EU level to link development with migration policies. No longer considered as simply part of development cooperation, migration has actually become its core, with a series of potential consequences in terms of the future orientation of development aid. In that framework, the regional focus of European external migration policy in recent years has shifted towards Africa, a continent where major crises continue to emerge¹.

The first part of the analysis focuses on the migration-development nexus in current EU external migration policy. External migratory pressures have become a structural phenomenon – the “new normal” – with a series of consequences for both the EU external migration and development cooperation policy.

Migration is considered as a priority issue both by the EU Global Strategy and the new European Consensus on Development. The EU member States have become increasingly aware that an effective answer to this external challenge can only be given by strengthening the Area of Freedom, Security and Justice (AFSJ) external dimension. More than just being an added value, the external dimension of the AFSJ has become a real necessity in the fight against illegal immigration: only through their common collective weight, EU member States can put sufficient pressure on third countries to cooperate.

In that context, recent legal instruments and policy tools, adopted at the EU level within the framework of the AFSJ external dimension, highlight the increasing use and integration of development cooperation instruments. Notwithstanding its growing support to African

¹ In 2016, the Central Mediterranean was the main route of arrival for irregular migrants to Europe and the composition of nationalities show a consistent flow of migrants from Sub-Saharan Africa. See the Joint Communication of the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to the European Parliament, the European Council and the Council, *Migration on the Central Mediterranean Route. Managing flows, saving lives*, JOIN (2015) 4 final of 25 January 2017.

countries in border control and the fight against smugglers – i.e. short-term measures in order to tackle the emergency – the EU has increasingly intensified, within the framework of regional initiatives such as the Rabat² and Khartoum³ Processes, political cooperation and dialogue with African countries, as well as the African Union, on all relevant issues related to forced migration. In this regard, a special attention has been given to long-term strategies, which improve opportunities in countries of origin fostering sustainable development and so allowing people build a future in their home country.

As far as the external AFSJ dimension is concerned, the use of development cooperation is twofold. On the one hand, EU development policy is used as a *preventive* tool of illegal migration and forced displacement in countries of origin and transit. In that framework, a number of “positive” instruments have been set up for nearly a decade with the aim of addressing the root causes of the phenomenon: forms of (economic) assistance and development cooperation aimed at creating in third countries of origin better economic and social conditions so as to prevent and disincentive forced displacement of people.

On the other hand, the EU development aid is also increasingly considered as an important tool to facilitate the return of “non-authorised migrants” and is a fundamental part of re-admission agreements. Recent legal and policy instruments of the EU external migration policy, such as the Migration Partnership Framework or the African Emergency Trust Fund, witness a certain securitization of EU development policy. The method consists in “incentivising” third countries to collaborate with the EU in stemming illegal migration, rewarding their ‘commitment’ with aid allocations: what is usually called the “carrot-and-stick strategy”.

The second part of the paper focuses on the current securitization of EU development policy within the framework of the AFSJ external dimension. The majority of NGOs committed in the field, as well as the European Parliament (EP), highlighted that there is increasing evidence that some of the aid spent by the EU Commission has “security” rather than “development” objectives: “securitization” of development means that development goals might be undermined by security interests, either in terms of conflicting objectives or because aid money might be diverted away from poverty reduction.

The current securitization of development might entail some legal as well as political problems. From a legal perspective, the EU development cooperation policy risks divert itself from its main purpose, as explicitly established in Article 208(1) of the Treaty on the Func-

² The Rabat Process is a platform for political cooperation among the countries along the migration route between Central, Western, Northern Africa and Europe. Established in 2006, it is also known as the “Euro-African Dialogue on Migration and Development”; it promotes policy-making on migration issues, through an approach that includes the link between migration and development.

³ The Khartoum Process promotes dialogue between Europe and countries of the Horn of Africa. The “Rome Declaration”, adopted on 28 November 2014, established the groundwork for the Khartoum Process.

tioning of the European Union (TFEU): the reduction, and, in the long-term, the eradication of poverty and the development of third countries. At the same time, however, rather than the purposeful securitization of development aid, one might argue that these trends are part of a general effort to progress towards more “coherence” across the EU’s external policies, through an approach that would straddle development, security and migration.

In addition to this, another legal problem concerns the role of human rights in current aid allocations to countries of origin and transit. Indeed, since the entry into force of the Lisbon Treaty, several efforts have been done in order to further integrate and give human rights a central position in EU external and development cooperation policy. Nonetheless, the development of a comprehensive “human-rights based approach” for EU development policy might be currently at risk in light of the European migration crisis, with development assistance becoming increasingly conditional on third countries’ commitment to readmit their own nationals, rather than on their efforts to respect and promote human rights at home.

From a political point of view, the potential consequences of a more securitized development policy within the framework of the AFSJ external dimension are still controversial and require to reflect on what kind and whose security the policy area is supposed to serve.

I. Interactions between migration and development cooperation in the EU Global Strategy and the European Consensus on Development: fostering the “resilience approach”

The adoption of the European Union Global Strategy (EUGS)⁴ in June 2016, coincided with an unequivocally difficult moment for the EU; on the one hand, its very essence of an exemplary regional integration process was being called into question due to the results of the “leave or remain” Great Britain referendum; on the other hand, the EU and its member States were still confronted with huge inflows of irregular migrants, the majority of which originating from Sub-Saharan Africa.

Differently from the European Security Strategy (ESS) of 2003⁵, which does not contain any reference to migration - neither in terms of a threat nor a risk - nowadays, almost fifteen

⁴ European Union - European Union Global Strategy (EUGS), “*Shared Vision, Common Action: a Stronger Europe. A Global Strategy for the European Union’s Foreign and Security Policy*”, June 2016, available at https://eeas.europa.eu/top_stories/pdf/eugs_review_web.pdf.

⁵ European Union - European Security Strategy (ESS), “*A Secure Europe in a Better World*”, Brussels, 12 December 2003, available at <https://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>. The document was drafted under the aegis of CFSP High Representative Javier Solana.

years ahead since the release of the ESS, the panorama has remarkably changed and migration is widely cited in the EUGS, and is at the forefront of the most frequently mentioned issue areas⁶.

Even if the migratory phenomenon is not described as a “security threat”, the document recognizes the key role of migration by mentioning it not only as one of the Union’s foreign policy objectives, but also with reference to geographical areas as well as EU values. As regards the latter, within the framework of migration, the focus of the EUGS on values implies respecting migrants’ human rights throughout all phases of the migration process.

Highlighting the urgency to implement a “more effective migration policy”, the EUGS insists on two main aspects which are directly interrelated: first, the importance to do a “special” work directly in origin and transit countries of migrants and refugees in order to tackle the challenge of illegal migration; second, the need to strengthen the implementation of the AFSJ external dimension: it is only through their common collective weight that the EU member States can better cooperate with third countries through “common and tailor-made approaches”. In that context, the strengthening of the AFSJ external dimension entails a more pronounced cooperation with third countries, who themselves are required to play a more proactive role; as it is highlighted in the Global Strategy, the EU is committed to being a responsible global stakeholder, but “responsibility must be shared”, and it goes “hand in hand” with revamping EU external partnerships.

Furthermore, this work with third countries of origin and transit entails a high level of coordination between migration and other EU external action policies, such as development cooperation: as a consequence of this, migration and development have become increasingly inter-linked. The Global Strategy explicitly states that “through development, trust funds, preventive diplomacy, as well as mediation, the EU has committed to actively working with countries of origin in order to address and prevent the *root causes* of displacement, manage migration, and fight trans-border crime”.

The same focus on the nexus between development and migration represents one of the key issues of the revision of the European Consensus on Development in 2017⁷. Largely cited in the document, migration is said to have become an “ever more pressing issue for

⁶ In its sixty pages, the foreign policy document refers to the migratory phenomenon by making reference to a wide variety of terms, such as “mobility”, “border management”, “countries of origin and transit”, “migrants”, “asylum”, “refugees”, “legal migration”, “readmission”, “return”, “displacement”, “irregular flow”, “reception”, “legal migration”, “legal circular channels”. For a more in-depth analysis see CECCORULLI, Michela, LUCARELLI, Sonia, *Migration and the EU Global Strategy: Narratives and Dilemmas*, The International Spectator (2017), pp. 83-102.

⁷ On 19 May 2017, the Council adopted the new European Consensus on Development, entitled “*Our world, our dignity, our future*”, available at https://ec.europa.eu/europeaid/sites/devco/files/european-consensus-on-evelopment-20170602_en.pdf. The joint statement by the three institutions (Parliament, Council and Commission) sets out a new framework for development cooperation for the EU and its member States. The European Consensus on Development is the EU’s response to the UN 2030 Agenda for Sustainable Development and it establishes the main principles guiding the approach of the EU and its member States to cooperation with developing countries over the next 15 years, as well as a strategy for reaching the sustainable development goals (SDGs). The Commission issued the first European Consensus on Development in 2005, with the aim to offer for the first time a common vision for guiding the action of the European Union in development cooperation, both at member States and Community levels.

both developing and developed countries”: a “complex, global, and long-lasting phenomenon” which requires a “strengthened engagement” so as to facilitate the safe, orderly, regular and responsible migration and mobility of people.

Sharing the EUGS approach, the new Consensus requires the same high level of coordination between migration and other EU external action policies, namely development cooperation. As it is stated in the document, “addressing migration cuts across many policy areas, including development”; consequently, the new Consensus demands the improvement of cooperation between development and external migration as well as neighbourhood policy⁸, so as to make the link between the two policy areas really effective.

This approach to the external dimension of migration can be described using the term “resilience”. The objective of resilience is to enable migrants and refugees to stay close to home preventing them from taking dangerous journeys, so reducing the number of economic migrants and asylum seekers *en route* to the EU. Even if it is not a new idea, this approach has gained a renewed priority in light of the current “refugee crisis”: this type of strategy is aimed at strengthening the EU’s engagement with countries of origin alleviating the conditions leading to migration, improving those countries’ capacity to manage migration, and encouraging them also to readmit their nationals. At the same time, the EU is committed to improving and increasing education and livelihood opportunities in countries of transit.

As already mentioned, the “resilience approach” encompasses a wide variety of tools across different policy areas, including development. In that context, development cooperation works as a positive instrument in order to address root causes of irregular migration and prevent massive inflows of migrants into Europe. As it is stated in the new Consensus on Development, with regard to its *preventive* aspect, development policy will include the promotion of “investment, trade and innovation in partner countries to boost growth and employment opportunities”, while supporting social and education systems.

The “resilience strategy”, which is provided for in the EUGS as well as in the new Consensus on Development, reflects an increasing securitization of migration at the EU level. In that context, however, it is worth wondering which kind of security it refers to. Through an in-depth analysis of these documents, it seems that security does not concern only the European level, i.e. the security of the aid donor. Indeed, on the one hand, resilience – as the ability of states and societies to reform – benefits the EU in terms of preventing irregular inflows of migrants; however, on the other hand, if effective, resilience could also have a positive impact on third countries in the long run, since it aims at an overall improvement

⁸ See HENÖKL, Thomas, KEIJZER, Niels, *The Future of the “European Consensus on Development”*, Briefing Paper of the German Development Institute, No. 5/2016, available at https://www.die-gdi.de/uploads/media/BP_5.2016.pdf.

of their living conditions through the growing integration of development cooperation instruments into migration policy.

A. The migration-development nexus in EU external migration policy: the preventive and security-based approach of “root causes of migration”

The EU has tried for a period of almost twenty years to address the link between development and migration in its AFSJ external dimension⁹, with the result that, over recent years, the two policy areas have become increasingly inter-connected. With the launch of the AFSJ external dimension¹⁰ this linkage between migration and development was first emphasized through a security-based type of approach: the so-called “root causes approach of migration”¹¹, also named “stay-at-home policy”¹². The approach aims to stimulate alternatives to migration through political innovation and economic assistance in countries of origin: alleviation of migration pressure is possible by directly intervening in countries of emigration through development aid¹³, so as to eliminate those “push factors” causing people to leave their home countries¹⁴. Hence, the original matrix of the migration-development linkage is essentially based on a “preventive” and security-based approach to migration, which makes

⁹ The Area of Freedom, Security, and Justice (AFSJ) is governed by the Title V TFEU. It has been established in order to ensure the absence of internal border controls for persons, the development of a common policy as regards asylum, immigration, and external border control; to ensure a high level of security; to facilitate access to justice, namely through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. These objectives are established in Article 67 (2)-(4). For an analysis of the evolution of the EU’s external migration policy, see BOSWELL, Christina, *The ‘External Dimension’ of EU immigration and Asylum Policy*, International Affairs (2003), pp. 619-638; LAVENEX, Sandra, *EU external governance in ‘wider Europe’*, Journal of European Public Policy (2004), pp. 680-700; LAVENEX, Sandra, SHIMMELFENNIG, *EU Rules Beyond EU Borders: Theorizing External Governance in European Politics*, Journal of European Public Policy (2009), pp. 791-812. For a more in depth analysis of the AFSJ external dimension see also PEERS, Steve, *EU Justice and Home Affairs Law*, Oxford, Oxford University Press (2016), 4th ed., 640 p.

¹⁰ The external dimension of the AFSJ entails the growing development of relationships between the EU and third countries, as well as organizations, aimed at achieving the scopes relating to the Union’s internal security. It was acknowledged by the European Council, held in Tampere on 15-16 October 1999. In that context, it is worth pointing out that the entry into force of the Treaty of Lisbon represented a crucial cornerstone in order to strengthen and develop the external dimension of the AFSJ. This has been possible through the abolition of the ‘pillar structure’; the creation of a single legal personality (Article 47 TEU); a unified procedure for the negotiation and the conclusion of agreements, as well as the extension of qualified majority voting. See, for instance, MONAR, Jörg, *The External Dimension of the EU’s Area of Freedom, Security and Justice: Progress, potential and limitations after the Treaty of Lisbon*, Swedish Institute for European Policy Studies Report 1, available at <https://core.ac.uk/download/pdf/9552294.pdf>. See also BALZACQ, Thierry (ed.), *The External Dimension of EU Justice and Home Affairs – Governance, Neighbours, Security*, Palgrave Macmillan UK (2009), 283 p.

¹¹ The European Council has incorporated the “root causes approach” as a core component of the EU policy on migration since the European Council of Tampere held in 1999. The Conclusions of the Tampere Summit affirmed that: “The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts [...] Partnership with third countries concerned will also be a key element for the success of such a policy, with a view to promoting co-development”. See the Presidency Conclusions, para. 11, of the European Council held on 15/19 October 1999. The same approach was then confirmed in the Hague Process (2005-2009) and in the Stockholm Process (2010-2014).

¹² CHETAIL, Vincent, “Paradigm and Paradox of the Migration-Development Nexus: the New Border for North-South Dialogue”, *German Yearbook of International Law* (2008), pp. 183-215. See also LAVENEX, Sandra, KUNZ, Rahel, *The Migration-Development Nexus in EU External Relations*, Journal of European Integration (2008), pp. 439-457.

¹³ It is worth pointing out that, at the intergovernmental level, the root causes approach was first endorsed in Europe in 1991, as a result of the fall of the Iron Curtain and the conflict in the Balkans. Indeed, at that time European States were particularly concerned about East-West migration, instead of South-North one. This approach was initially formulated in the framework of the Council of Europe at the fourth Conference of European Ministers responsible for migration affairs convened in September 1991 in Luxembourg.

¹⁴ Along with the “root causes approach”, the academic literature identified also the “remote control” approach, which is a security-based type of approach whose principal aim is to restrain the movement of people. According to this approach, a strong and effective control of external frontiers became a crucial objective of EU cooperation in Justice and Home Affairs (JHA).

use of development cooperation tools in order to improve socio-economic conditions in countries of origin and, consequently, reduce illegal migrants' flows.

This security-oriented approach was then partially overcome with the launch of the Global Approach to Migration (GAM): adopted by the European Council in 2005¹⁵, the document upgraded to its current form – the Global Approach to Migration and Mobility (GAMM) – in 2011¹⁶, and it still represents the overarching framework of the EU external migration and asylum policy¹⁷, defined as “complementary to other, broader objectives that are served by EU foreign policy and development cooperation”¹⁸. Even if the GAMM foresees measures aimed at reinforcing the EU and member States contribution to the development of countries of origin by eradicating long-term migration drivers – political, economic, social and environmental factors –, the Global Approach does not tackle migration in a “preventive” manner, considering it as a security threat or a risk. On the contrary, the document reflects a new focus on migration, which itself appears as a “positive force for development” of the countries of origin. These measures include: facilitating remittances; promoting economic, social and cultural investments of the diasporas in countries of origin; and limiting the “brain drain” of qualified people¹⁹.

Currently, in light of huge migrants' inflows into Europe, the link between development and migration has been newly stressed in the 2015 European Agenda on Migration²⁰ in a much more security-oriented manner, by directly recalling the “root causes” policy paradigm. As regards the area “Reducing incentives for irregular migration”²¹, the European Commission underlines, along with the fight against smugglers and human traffickers, the key *preventive* role of development cooperation, with a central priority given to the African

¹⁵ The GAM was adopted under the Hague Programme, which, after the Tampere Programme (1999-2004), covered a second five-year period. With regard to the African continent, see *Council of European Union - Global Approach to Migration: Priority actions focusing on Africa and the Mediterranean*, Brussels, 13 December 2005, available at <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015744%202005%20INIT>.

¹⁶ *European Commission – Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on The Global Approach to Migration and Mobility*, COM(2011) 0743 final of 18 November 2011, available at https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/communication_from_the_commission_1.pdf. In 2011, the European Commission put forward a renewed Global Approach to Migration and Mobility (GAMM).

¹⁷ The GAMM is centred on four policy pillars: 1) Enhancing regular migration and facilitating mobility; 2) Preventing and combating irregular migration and human trafficking; 3) Maximising the development impact of migration and mobility; and 4) Promoting international protection.

¹⁸ Migration and development – “Maximising the development impact of migration and mobility” – represents one of the pillars on which GAMM is based. Within this approach, a new and more positive conception of the migration-development nexus appears. Migration is considered as an opportunity for strengthening development rather than a problem that has to be eradicated. As it is underlined in the GAMM in the “Thematic priorities” section: “Good governance of migration will bring vast development benefits [...] While the potential of migrants to contribute to the development of their country of origin should be fully recognised and assisted by a wide range of measures, efforts should also be made to counteract brain drain and brain waste and promote brain circulation”.

¹⁹ *Joint Statement by the Council and the representatives of the Governments of the member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: “The European Consensus”*, 22 November 2005, Doc. 14820/05, para. 110, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A42006X0224%2801%29>.

²⁰ *European Commission - Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of Regions, A European Agenda on Migration*, COM(2015) 240 final of 13 May 2015, available at <http://eurlex.europa.eu/legalcontent/EN>.

²¹ The new Agenda includes policy measures to be adopted in the medium and long term, both inside and outside the EU, in four areas. The different four areas are respectively: “Reducing the incentives for irregular migration”; “Border management”; “Common asylum policy”; “New policy in legal migration”.

continent, in tackling issues such as “poverty, social insecurity, inequality and unemployment, which are the main *root causes* of irregular and forced migration”²².

Hence, the more the Union envisages its external migration policy as a long-term instrument, aimed at addressing long-drivers of migration, the more noticeable and enhanced the interrelation between the AFSJ external dimension and development cooperation becomes.

B. Legal instruments; political dialogues; policy tools. Linking development and migration in current EU external migration policy

The linkage between development and migration – the Migration-Development nexus – and the need to address the root causes of forced migration and displacement – i.e. the long-term drivers of migration – have been increasingly tackled through both legal instruments, and political tools such as Mobility Partnerships, Common Agendas on Migration and Mobility, regional and bilateral migration policy dialogues²³.

With regard to legally binding instruments contributing to the prevention and effective management of migratory flows, primary relevance is given to international treaties, namely association and, as concerns the EU development aid policy, development cooperation agreements.

In regard with association agreements, regulated by Article 217 TFEU, in most cases they include migration as one of the topics to be covered in a dialogue on social matters, and contain one article on prevention of irregular migration. Association agreements within the framework of the Euro-Mediterranean Partnership²⁴ include explicit clauses in relation with the priority objective to prevent and control migratory flows. These are usually found in the chapter titled: “Dialogue and cooperation on social matters”²⁵. Migration-related clauses appear also in partnership and cooperation agreements, which in some cases address several dimensions concerning the migratory phenomenon, namely the root causes of migration

²² According to the Commission: “Many of the root causes lie deep in global issues which the EU has been trying to address for many years. Migration should be recognized as one of the primary areas where an active and engaged external policy is of direct importance of EU citizens”.

²³ For an in-depth analysis of the EU external migration policies, see CARRERA, Sergio, RADESCU, Raluca, RESLOW, Natasja, “EU External Migration Policies: A Preliminary Mapping of the Instruments, Actors and their Priorities”, Report prepared for the project “Transnational Migration in Transition: Transformative Characteristics of Temporary Mobility of People” (EURANET), available at http://www.uta.fi/edu/en/research/projects/cura-net/publications/TASK%203.1%20REPORT_UM_CEPS_final_v4.pdf.

²⁴ The Euro-Mediterranean Partnership’s stated goal is to create a “deep Euro-Mediterranean Free Trade area in order to remove trade barriers between both the EU and Southern Mediterranean countries and between Southern Mediterranean countries themselves. In that context, the EU has concluded with most of its partners (except for Syria and Libya) Association Agreements, whose scope is essentially limited to trade in goods. Association Agreements have been signed with Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria, Tunisia and Turkey.

²⁵ See Art. 65 of the *Euro-Mediterranean Agreement establishing an Association between the European Communities and its Member States, of the one part, and the Arab Republic of Egypt, on the other part* (concluded with Decision 2004/635/EC of the Council of 21 April 2004). According to this provision, with a view to consolidating cooperation between the Parties in the social field, priority will be given to “a) reducing migratory pressures, notably by improving living conditions, creating jobs, and income generating activities and developing training in areas from which emigrants come”. See also Art. 65 of the *Euro-Mediterranean Association Agreement between the EU and Lebanon* (concluded with Decision 2006/356/EC of the Council of 14 February 2006).

and the development-migration nexus. An example is Article 13, paragraph 4, of the Cotonou Agreement between the African, Caribbean, Pacific countries (ACP) and the EU²⁶. According to this provision: “strategies aiming at reducing poverty, improving living and working conditions, creating employment and developing training, contribute in the long term to normalising migratory flows”.

As far as policy tools are concerned, the primary characteristic of all these instruments is the concept of “partnership” which entails shared responsibility and an enhanced and proactive cooperation between the EU and the countries of origin and transit, and whose relevance is particularly highlighted in the GAMM. Introduced in 2007, Mobility Partnerships are signed with third countries in the form of political declarations, setting out the intention of the EU and the third country concerned to cooperate²⁷. Along with these political instruments, political regional dialogues, such as the Rabat and Khartoum Processes, constitute a relevant framework to tackle the migration and development policy area²⁸.

1. The Migration Partnership Framework (MPF): a focus on long-term measures

The challenging EU strategy of a broader and enhanced involvement of third countries of origin and transit in tackling the migration-development nexus is highlighted in the new Migration Partnership Framework (MPF)²⁹, proposed by the European Commission and endorsed by the European Council in June 2016. The policy document clearly reflects the EU migration policy emphasis towards Africa, as it takes into account five African “priority” countries of origin: Mali, Nigeria, Niger, Senegal and Ethiopia. As it is clearly affirmed in the section focusing on long-term objectives, “Africa remains the priority region”.

Its self-declared scope is to foster “win-win” relationships with third country partners – a results-oriented approach – in order to better manage migration through short as well as long-term measures. In addition to short term measures – i.e. saving lives and breaking the business model of smugglers; preventing illegal migration and enhancing cooperation on returns and readmission of irregular migrants – the priority of the Partnership Framework

²⁶ *Partnership Agreement 2000/483/EC between the African, Caribbean and Pacific Group of States of the one part, and the EU, of the other part*, available at [http://eur-lex.europa.eu/legal-content/EN/TEXT/?uri=CELEX:22000A1215\(01\)](http://eur-lex.europa.eu/legal-content/EN/TEXT/?uri=CELEX:22000A1215(01)). The agreement was modified for the second time in 2010. See Decision 2010/648/EU of 14 May 2010 with which the Council authorised the signing of the agreement amending the Cotonou Partnership Agreement for the second time.

²⁷ The declarations are structured around four pillars: legal migration; irregular migration; asylum and international protection; and migration and development. Attached to the declarations, in an annex, there is a list of proposed projects to be carried out within the partnership.

²⁸ For a more in-depth analysis of the principal political dialogues, especially with regard to the EU-Africa/ACP Relations, see EISELE, Katharina, *The External Dimension of the EU's Migration Policy. Different Legal Positions of Third-Country Nationals in the EU: A Comparative Perspective*, Leiden, Brill Nijhoff (2014), 540 p.

²⁹ *European Commission - Communication to the European Parliament, the European Council, the Council and the European Investment Bank on establishing a new Partnership Framework with third countries under the European Agenda on Migration*, COM(2016) 385 final of 7 June 2016, available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf.

is to foster longer term measures. These are focused on addressing the root causes of forced migration and on improving economic and social development in countries of origin. In that context, a substantial increase in investments in African partner countries is made possible through the recent European External Investment Plan (EIP)³⁰, a part of which is the new European Fund for Sustainable Development (EFSD): a financing mechanism to support investments by public financial institutions and private sector.

A key component of this new approach provided by the Partnership Framework is the concept of “compacts”: political packages which encompass clear targets and joint commitments, including – even if not only – through legal instruments, i.e. the conclusion of more formal agreements, such as agreements on readmission. Allegedly built for the mutual benefit and interest of the EU and its partner countries, they combine different policy elements beyond migration, such as mobility, trade, energy, security, and *development*. In that context, the EU and its member States act in a coordinated manner, so reflecting the shared character of their competence in both development and migration policy³¹.

2. Budgetary tools: the EU Emergency Trust Fund for Africa

Along with policy tools, funding instruments such as the European Union Trust Funds (EUTFs)³² play also a key role in the EU’s external policies on migration, particularly as concerns addressing the root causes of conflicts and forced migration and supporting the transition of conflict prone countries towards resilience and development. The EU Emergency Trust Fund for Africa (“the Africa Trust Fund”)³³, formally constituted at the Valletta Summit on Migration held on 11-12 November 2015³⁴, currently encompasses a total of 23 African countries, covering three vast regions - the Sahel/Lake Chad, the Horn of Africa

³⁰ The EIP was proposed by the Commission on 14 September 2016 to encourage investment in EU partner countries in Africa and the EU Neighbourhood region. It is worth pointing out that the instrument itself, among the long-term challenges which need to be addressed in the development field, mentions the “root causes of migration”.

³¹ As far as the Area of Freedom, Security and Justice (AFSJ) is concerned, the EU competences are shared with member States. The AFSJ is included in the list provided for by Art. 4(2) TFEU, which refers to the shared competences. This list is not exhaustive and embraces all the competences not referred to by Art. 3 (exclusive competence) or Art. 6 (supporting actions). As for the areas of development cooperation and humanitarian aid, according to Art. 4(4), the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in member States being prevented from exercising theirs.

³² Currently, the EU counts three EUTFs: the EU’s Bekou Trust Fund for the Central African Republic, established in July 2014; the EU Regional Trust Fund for Syria (Madad Fund), created in December 2014; and the EU Emergency Trust Fund for Africa which is analysed in this paper. In this regard, see HAUCK, Volker, KNOLL, Anna, CANGAS HERRERO, Alisa, *EU Trust Funds: Shaping a more comprehensive external action?*, Briefing Note of the ECDPM (European Centre for Development Policy Management), No. 81/November 2015, available at http://ecdpm.org/wpcontent/uploads/Briefing_Note_81_EU_Trust_Funds_Africa_Migration_Knoll_Hauck_Cangas_ECDPM_2015.pdf.

³³ *European Commission - Decision on the establishment of a European Union Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa*, C(2015) final of 7293 20 October 2015, available at https://ec.europa.eu/europeaid/sites/devco/files/commission-decision-2015-7293-20151020_en.pdf.

³⁴ At the Valletta Summit, EU and African leaders signed a political declaration and adopted an Action Plan to jointly address the challenges of migration. It is worth pointing out that the creation of the Trust Fund for Africa was first announced by the EC President, Jean-Claude Juncker, in his State of the Union speech, held on 9 September 2015.

and North Africa³⁵ -, and it is set up for the period until 2020³⁶. Funding instruments pledged by the Commission have hence the potential to compensate EU limited legal competences as far as the external migration policy is concerned, a phenomenon which has been called “policy-making through funding”³⁷. The legal basis for the Africa Trust Fund is laid out in Article 187 of the Financial Regulation (FR) of the EU Budget³⁸ and it stems from a joint initiative of the European Commission, in cooperation with the European External Action Service (EEAS) and at least one Member State acting as founding partner: these actors proceeded to the drafting of a Constitutive Agreement defining the specific objectives of the Trust Fund and the rules applying to its management and governance³⁹. Among its stated objectives, there is addressing ‘the root causes of destabilisation, forced displacement and irregular migration in particular by promoting resilience, economic and equal opportunities, and security and development’⁴⁰. The theory underpinning the creation of the Fund is thereby that migration can be stemmed through development; to find its stated objectives, it envisages four types of broad activities aiming at tackling “push factors” and at reintegrating returnees: programmes for creating employment opportunities, especially for young people and women in local communities; activities supporting resilience in terms of food security and the wider economy; improvement of migration management; and programmes which aim at improving overall governance, rule of law, security and development, and conflict-prevention systems.

II. The impact of the migration crisis on EU development cooperation. Towards an increased securitization of development: risks and challenges

In light of the above-mentioned securitization of migration, which gained a renewed priority since the beginning of the European “refugee crisis”, there is also growing evidence for

³⁵ The Fund currently stands at around EUR 2.5 billion (bn), EUR 500 million of which are for the implementation of the recently agreed “migration compacts” mentioned above. The EC drew massively from the reserves of the 11th European Development Fund (EDF).

³⁶ The Trust Fund must have a limited time-span, although there is the possibility to extend it.

³⁷ For an analysis of the EU budgetary responses to the refugee crisis in Europe see DEN HERTOOG, Leonhard, *EU Budgetary Responses to the “Refugee Crisis”: Reconfiguring the Funding Landscape*, CEPS Paper in Liberty and Security in Europe, No. 93/May 2016, available at <https://www.ceps.eu/system/files/LSE%20No%2093%20LDH%20on%20EU%20Budgetary%20Responses%20to%20the%20Refugee%20Crisis.pdf>. See also DEN HERTOOG, Leonhard, *Money Talks: Mapping the Funding for EU External Migration Policy*, CEPS Paper in Liberty and Security in Europe, No. 95/November 2016, available at <https://www.ceps.eu/publications/money-talks-mapping-funding-eu-external-migration-policy>.

³⁸ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0966>.

³⁹ Agreement establishing the European Union Emergency Trust Fund for stability and addressing the root causes of irregular migration and displaced persons in Africa, and its internal rules, between the European Commission and the Kingdom of Spain (Annex 1 of the Decision establishing the Trust Fund), available at <https://ec.europa.eu/europeaid/sites/devco/files/constitutive-agreement-annexe-2015-7293-20151020-en.pdf>.

⁴⁰ See note 26 (Art. 1, para. 2).

the securitization of EU development policy⁴¹, with some of the aid spent by the Commission that seems to have “security” rather than “development” objectives. This trend is documented in all the above-cited instruments adopted in the framework of the EU external migration policy: recent legal as well as policy instruments witness this potential “instrumentalisation” of development aid for migration management and security purposes⁴², and the subsequent risk of incoherence in the EU external action. In that context, several countries where EU member States have perceived security threats – i.e. potential new arrivals of illegal migrants – have also become top recipients of the European Union institutions’ Gross Official Development Assistance (ODA)⁴³. The case of Turkey is paradigmatic: during the period 2013-2014, the EU institutions provided Turkey with the biggest development aid quota⁴⁴; in that context, Turkey had been the country through which the majority of illegal migrants had entered Europe during the previous two years (2011-2012): 45 per cent on average⁴⁵. The same picture is visible when looking at the list of the top ten recipients of the European institutions’ Gross ODA in 2014-2015⁴⁶: Turkey lies at the top of the list, followed by Morocco, Serbia, Tunisia, West Bank and Gaza Strip, Ukraine, Bosnia and Herzegovina, Afghanistan, Egypt, and Niger. The EU has also concluded readmission agreements with some of these countries, such as Serbia and Bosnia Herzegovina⁴⁷, as well as Turkey⁴⁸, making it evident the link between development assistance and third countries’ willingness to cooperate on readmissions. In that framework, development cooperation, instead of being used for a *preventive* scope, seems to work in a *repressive* phase, as a lever in order to facilitate third countries’ engagement in readmission processes.

⁴¹ The EU formal powers in the field of development cooperation - signing development policy treaties and adopting development policy legislation for a long time - date back to the original Treaty on the European Union (Maastricht Treaty), in force in 1993. The Lisbon Treaty, in force in 2009, has strongly innovated treaty provisions related to development cooperation, particularly as regards the objectives of development policy itself.

⁴² The element of “conditionality”, consisting in subordinating development aid to the externalization of migration control in and by countries of origin and transit themselves, was already visible in the Tampere Conclusions of the European Council. Instead of enumerating specific measures for promoting development in countries of origin and transit, they rather called for assistance to third countries for the purpose of combating illegal immigration and coping with their obligation of readmission. A third country’s willingness to actively fight irregular migration has become a condition for receiving EU development aid.

⁴³ As far as the geography of EU development cooperation is concerned, it focuses namely on those countries from which originate or transit the majority of migrants. They only partially coincide with those States more in need of development assistance.

⁴⁴ See the OECD *Development Co-operation Report 2016 – the Sustainable Development Goals as Business Opportunities*, issued by the OECD and available at <http://www.oecdilibrary.org/docserver/download/4316031e.pdf?expires=1506690558&id=id&accname=guest&checksum=D12E8E6C5E78CA322D1C562DD4353B7C>.

⁴⁵ See Frontex, *Annual Risk Analysis 2014*, p. 31.

⁴⁶ See the OECD *Development Co-operation Report 2017 – the Sustainable Development Goals as Business Opportunities*, issued by the OECD and available at <http://www.oecdilibrary.org/docserver/download/4317041ec019.pdf?expires=1506689309&id=id&accname=guest&checksum=EA500295456663D1EA6FEFD791E445DE>.

⁴⁷ The EU concluded visa facilitation and agreements on the readmission of persons residing without authorization with both Serbia and Bosnia-Herzegovina. Both the readmission agreements entered into force on 1 January 2008.

⁴⁸ *Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation*, available at [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22014A0507\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22014A0507(01)). The agreement was signed on 16 December 2013 and entered into force on 7 May 2014. As is well known, Turkey represents the key non-EU country in the EU’s refugee crisis, hosting over 2 million Syrian refugees and becoming a transit country for many asylum-seekers, an increasing number of which have been making the journey from Turkey to Greece. In that context, on 18 March 2016, following on from the EU-Turkey Joint Action Plan activated on 29 November 2015 and the 7 March EU-Turkey statement, the European Union and Turkey agreed on a Statement to tackle irregular migration, which took effect from 20 March 2016. For a more in-depth analysis, see PEERS, Steve, ROMAN, Emanuela, *The EU, Turkey and the Refugee Crisis: What could possibly go wrong?*, available at <http://eulawanalysis.blogspot.it/2016/02/the-eu-turkey-and-refugee-crisis-what.html>.

According to the opinion of many NGOs as well as scholars active in the field, the new Migration Partnership Framework (MPF) reflects a “carrot-and-stick” approach⁴⁹. As mentioned in the EU document, the Partnership Framework is based on a “mix of positive and negative incentives”. On the one hand, through positive incentives - i.e. “carrots” - the primary objective is to guarantee the full cooperation of third partner countries: these measures go also beyond the field of migration policy⁵⁰ and encompass, *inter alia*, the EU neighbourhood and development aid policy. Development aid is itself mentioned as a long-term objective of the MPF, but also considered by the European Commission as a reward for “those countries that fulfil their international obligation to readmit their own nationals, and those that cooperate in managing the flows of irregular migrants from third countries, as well as those taking action to adequately host persons fleeing conflict and persecution”.

On the other hand, negative incentive focus on the “sticks”, i.e. the potential consequences that may arise if partner countries do not fully cooperate on readmissions and returns⁵¹. In this regard, the European Council itself underlined that the MPF is to be founded on “effective incentives and adequate conditionality”: in that context – it highlighted – “cooperation on readmission and return will be a key test of the partnership between the EU and its partners”.

As for the financial tools, the European Union Trust Fund for Africa appears also at the centre of a shift towards a security-focused response to migration⁵², another example of the “carrot-and-stick approach”, i.e. development funding which is made conditional on the cooperation of third countries with regard to readmission⁵³. Hence, the most controversial aspect is how the Fund relates to the EU’s development policies. As pointed out by many

⁴⁹ Among the NGOs active in this field, CONCORD (European NGO Confederation for Relief and Development), strongly oppose this approach based on aid conditionality, which depends on the willingness of partner countries to cooperate on readmission and return. See *Migration and Development. Coherence for Migration and Security. And what about Development?*, Spotlight Report of CONCORD (2015), available at https://concordeurope.org/wp-content/uploads/2015/04/SpotlightReport_Migration_2015.pdf. In addition, the European Parliament has expressed similar concerns through a number of recent resolutions, taking a clear stand on this issue and calling for the retention of poverty alleviation as the main goal of EU development policy. See ADEPOJU, Aderanti, VAN NOORLOS, Femke, ZOOMERS, Annelies, *Europe’s Migration Agreements with Migrant-Sending Countries in the Global South: a critical review*, International Migration (2009), p. 68. See also BETTS, Alexander, MILNER, James, *The Externalisation of EU Asylum Policy: the Position of African States*, Centre on Migration, Policy and Society Working Paper No. 36/2006, available at https://www.compas.ox.ac.uk/media/WP-2006-036-Betts-Milner_EU_Asylum_Policy_Africa.pdf.

⁵⁰ Positive incentives are tailored to each partner country and can take the form, in the field of migration policy, of resettlement opportunities for individuals in need of international protection, visa facilitation or the opening up of other pathways for legal migration to the EU.

⁵¹ As highlighted by the Commission in its Communication on the establishment of the Migration Partnership Framework, “These relationships will be guided by the ability and willingness of the countries to cooperate on migration management, notably in effectively preventing irregular migration and readmitting irregular migrants”.

⁵² For a critical approach see KOCH, Florian, note 40; and CASSILLEJO, Clare, “The European Union Trust Fund for Africa: What Implications for Future EU Development Policy?”, Briefing Paper of the German Development Institute available at <https://www.die-gdi.de/en/briefing-paper/article/the-european-union-trust-fund-for-africa-what-implications-for-future-eu-development-policy/>. In addition, see also the Report issued by the European Parliament’s Committee on Development on the EU Trust Fund for Africa of 29 June 2016, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2016-0221+0+DOC+XML+V0//EN>.

⁵³ The element of conditionality appears for example when member States made clear that they would prefer their allocations to the Africa Trust Fund to be conditional on the compliance of African countries with Art. 13 of the Cotonou Agreement, which explicitly mentions readmission.

NGOs⁵⁴, the EUTF seems diverting development aid in service of EU's migration agenda in a broader trend towards the securitisation of EU development assistance⁵⁵. This would be evident looking at the logic on which the Fund is based: rapid and "flexible" funding allocations. Hence, the most discussed issue is whether such allocations will impact on long-term interests of third countries of emigration or rather exclusively on the short-term security interests of the EU. The North Africa window of the Trust Fund, for example, mostly focuses on migration management objectives instead of on development ones⁵⁶. While the Trust Fund nominally addresses the root causes of migration in the African continent, African partners, NGOs, and the European Parliament itself, share the concern that this priority is not respected as regards all the EUTF regional windows. Accordingly, the use of EDF funds to tackle problems in countries of emigration might not be in alignment with the EU's commitment to target EU aid to States where needs are most serious.

A. Legal questions

1. A twofold concept of "coherence" for EU development cooperation

Coherence between migration and development policies has been identified by the European Commission as one of the five EU priorities to implement the obligation of "Policy Coherence for Development" (PCD)⁵⁷. In that framework, a development policy targeted to reduce migration pressure and subject to the security interests of the Union⁵⁸, may divert international aid from non-sending countries, among which there are the poorest regions of the world – the so-called Least Developed Countries (LDCs)⁵⁹ – and, in doing so, it risks not abiding by obligations established by the EU law.

From a legal perspective, according to Article 208(1) TFEU, there are three distinct aspects to coherence in the development policy area: first, coherence of EU development cooperation with the more general principles and objectives of EU external relations (e.g. linking

⁵⁴ See note 50.

⁵⁵ According to African actors' critics, the Valletta process outcomes reflected European interests, consisting in containing irregular migration flows, reducing arrivals, and namely ensuring African compliance on returns and readmissions. Moreover, EU officials and African partners expressed serious disagreement whether the Fund has sufficient African ownership.

⁵⁶ According to the European Commission, the region consists of "transit countries". For a more accurate view see European Commission, "The European Union Emergency Trust Fund for stability and addressing root causes of irregular immigration and displaced persons in Africa – Strategic Orientation Document", North-Africa Window, Brussels, 2015.

⁵⁷ *European Commission - Communication on Policy Coherence for Development – Accelerating Progress towards attaining the Millennium Development Goals*, COM(2005) 134 final of 12 April 2005, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52005DC0134>. Policy Coherence for Development was formalized in the 2005 European Consensus on Development as a way of strengthening work towards achieving the MDGs.

⁵⁸ KOCH, Florian, *Carrot and Stick? EU Migration Policy on Africa now marching to a different drum*, available at <http://www.fesau.org/>.

⁵⁹ NGOs active in this field, such as CONCORD (European NGO Confederation for Relief and Development), strongly oppose this approach based on aid conditionality, which depends on the willingness of partner countries to cooperate on readmission and return. See *Migration and Development. Coherence for Migration and Security. And what about Development?*, Spotlight Report of CONCORD (2015), available at https://concordeurope.org/wp-content/uploads/2015/04/SpotlightReport_Migration_2015.pdf. In addition, the European Parliament has expressed similar concerns through a number of recent resolutions, taking a clear stand on this issue and calling for the retention of poverty alleviation as the main goal of EU development policy.

to Article 21 TEU); second, the primary objective consisting in “the reduction and, in the longer term, the eradication of poverty”⁶⁰; third, the obligation to “take account of the objectives of development cooperation in the policies that the EU implements which are likely to affect developing countries”, including policies focusing on the outside world, such as the common commercial policy and external relations.

These three different aspects mentioned in Article 208(1) TFEU entail at the same time a twofold concept of coherence: one “external”, which emerges when development cooperation is applied in relation with all the other EU’s external policies; and the latter “internal”, within the exclusive context of the Union’s development cooperation policy.

With regard to the first aspect, one of the most important innovations of the Treaty of Lisbon in the area of external relations has been the adoption of a range of common principles and objectives whose function is to govern the conduct of all strands of the EU’s external action, including the AFSJ external dimension (external migration), security and development cooperation policy. Set out in Article 21(1) TEU, these principles include democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity and respect for the principles of the UN Charter and international law. With regard to the objectives, they are set out in Article 21(2) TEU. This latter entails a wide range of objectives, which, in turn, may be divided as political, security, economic, as well as social⁶¹. In that context, the respect for the principle of Coherence for Development essentially requires development cooperation to be conducted coherently within the framework of the EU’s overall external action, in the context of its main other principles and objectives⁶².

Furthermore, as far as the second aspect of the principle of coherence for development is concerned, Article 208(1) subparagraph 2 TFEU states that: “Union development cooperation policy shall have as its *primary* objective the reduction, and in the longer term the eradication of poverty”. The “economic” aim of fostering the sustainable economic, social

⁶⁰ In a concise manner, the provision states that the primary objective is to reduce and in the long term eradicate poverty. Prior to Lisbon Treaty the objectives of EU development policy were formulated more elaborately. Art. 177 of the EC Treaty pre-Lisbon included other objectives, such as the enhancement of the social and sustainable development of developing countries, particularly the least favoured among them (2); as well as the furthering of the integration of developing countries into the world economy (3). These objectives of Art. 177 of the EC Treaty have now been moved to Art. 21 of the TEU, namely 21(2) paragraphs (b), (d), (e) and to a certain extent paragraph (f). For a complete and accurate analysis see VAN VOOREN, Bart, WESSEL, A. Ramses, *EU External Relations Law: Text, Cases, Materials*, Cambridge, Cambridge University Press (2014), 570 p.

⁶¹ Among the economic objectives, there is the aim of fostering the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty, and to encourage the integration of all countries into the world economy. As for security objectives: promote peace, security, prevent conflicts, and strengthen international security, in accordance with international law, including those relating to external borders. Finally, as far as political objectives are concerned: safeguard EU’s values, fundamental interests; consolidate and support democracy, the rule of law etc. See KOUTRAKOS, Panos, *The EU Common Security and Defence Policy*, Oxford, Oxford University Press (2013), 318 p.

⁶² This focus on the coherence of the EU’s external action as a normative and political imperative has been central within the process leading to the Lisbon Treaty. In that context, it suffices to look at the mandate of the 2007 Intergovernmental Conference, which mentions coherence in its very first paragraph. This focus has been particularly remarkable when referring to specific areas, such as development cooperation or humanitarian aid, as well as in the context of the European Security Strategy, which considered it as one of the main priorities of the Union’s international role. See KOUTRAKOS, Panos (ed.), *The European Union’s External Relations a year after Lisbon*, Centre for the Law of EU External Relations, CLEER Working Papers, 2011/3.

and environmental development of developing countries, with the primary aim of eradicating poverty, is already envisaged as one of the objectives at the basis of the Union's external action. Hence, the importance of the above-mentioned subparagraph lies in the fact that it identifies an objective already set out in Article 21(2) TEU, with regard to the entire range of the Union's external action, while at the same time selecting and adopting it as the "primary" objective of development cooperation. In doing so, it suggests that the other objectives provided for in Article 21(2) TEU may certainly be pursued by development cooperation measures, but only in so far as these are secondary. In that context, the European Court of Justice (ECJ) has often used the term "incidental" with the aim to clarify that "if examination of a measure reveals that it pursues a twofold aim or that it has a twofold component and if one of those is identifiable as the main one, whereas the other is merely *incidental*, the measure must be based on a single legal basis, namely that required by the main aim or component"⁶³.

Consequently, when analysing the risk for the EU's development cooperation to divert itself from its main objective – the eradication of poverty in the long term – one should bear in mind the kind of "coherence" emerging from Article 208 TFEU, which, as pointed out, appears as much inclusive as excluding: on the one hand, it is aimed at establishing a bridge between development aid and the objectives governing all the other external policies of the Union; on the other hand, its scope is also to avoid to rely on Articles 208-211 TFEU for measures which are mainly concerned with objectives other than the eradication of poverty in the long term⁶⁴: in this case the prevention of illegal migration flows. By setting out a "primary" objective, Article 208(1) TFEU suggests that the scope of development cooperation has been explicitly defined and should not be boundless or without limits: it means that, even if all external policies are to be conducted in the context of the principles and objectives of the Union's external action, each one has its own specific objectives. In other terms, despite the fact that all the Union's external policies must be conducted in the context of the principles and objectives of the EU's external action, for each policy specific objectives are specified in the Treaties.

As far as the securitization of development within the AFSJ external dimension is concerned, development cooperation may serve other objectives other than the eradication of poverty. This latter objective should remain its first pillar, even though this does not necessarily prevent from the possibility to straddle migration, development and security, in light of a coherent framework with regard to the main objectives and principles of the Union's external action.

⁶³ See ECJ, Case C-91/05 *Commission v Council*, EU:C:2008:288, para. 73. To that effect, see also ECJ, Case C-211/01 *Commission v Council*, EU:C:2003:452, para. 39; ECJ, Case C-338/01 *Commission v Council*, EU:C:2004:253, para. 55, and ECJ, Case C-94/03 *Commission v Council*, EU:C:2006:2, para. 35.

⁶⁴ See KOUTRAKOS, Panos, *The EU Common Security and Defence Policy*, pp. 212-213, *op. cit.*

2. Towards a new form of development aid conditionality? The risks for the “human-rights based” approach of EU development cooperation

From a legal perspective, another question stemming from this growing integration of development policy instruments into external migration policy – namely long-term measures addressing the root causes of illegal migration – concerns the risk not to abide by the comprehensive “human rights-based approach” of EU development policy, which represents one of the most important results of the Lisbon Treaty.

With the entry into force of the latter, the active promotion of “European values” has been considered as an explicit obligation weighing on the Union in its external actions⁶⁵. Hence, Article 3(5) TEU provides that “in its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the *protection of human rights*”.

What is often referred to as the “missionary principle”⁶⁶ is also reflected in Article 21(1)-(2) TEU. In that framework, furthering “European values” in the wider world appears as a duty applying with respect to all third countries, not merely with regard to the developing ones. With regard to the latter, Article 208(1) TFEU provides that “Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union’s external action...” This means that the standards required from third countries, in terms of respect for the “rule of law” and “good governance”, are expected to be relatively high.

As is well known, from the early 1990s, the EU has included what is usually referred to as “human rights clauses” in virtually all trade and cooperation agreements between the EU and a third country⁶⁷. Human-rights “conditionality” means that effective observance of human rights and principles of democracy are expected to be preconditions for commitments in EU trade or association agreements with a third country⁶⁸: these clauses require the EU, on the one hand, and the other contracting party or parties, on the other hand, to respect human rights and democracy based on the rule of law. Today these human rights

⁶⁵ CHERUBINI, Francesco, *I valori dell’Unione europea nella politica di cooperazione allo sviluppo*, in SCISO, Elena, MORVIDUCCI, Claudia, BARATTA, Roberto (eds.), *I valori dell’Unione europea e l’azione esterna*, Torino, Giappichelli (2016), pp. 120-142.

⁶⁶ BROBERG, Morten, *Don’t Mess with the Missionary Man! On the Principle of Coherence, the Missionary Principle and the European Union’s Development Policy*, in CARDWELL, Paul James (ed.), *“EU External Relations Law and Policy in the Post-Lisbon Era”*, The Hague, TMC Asser Press, 2012, pp. 181-196.

⁶⁷ See in this regard *European Commission - Communication on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries*, COM(1995) 216 final of 23 May 1995, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51995DC0216&from=IT>.

⁶⁸ Respect for human rights by the Parties became an essential element of these agreements. For a more in-depth analysis see CREMONA, Marise, *Human Rights and Democracy Clauses in the EC’s Trade Agreements* in O’KEEFFE, David, EMILIOU, Nicholas, *The European Union and World Trade Law: after the GATT Uruguay Round*, New York, Chichester (1996), pp. 62-77.

clauses represent an “essential element” of the agreements: this means that where one party fails to respect the clause, the other may terminate or suspend the operation of the agreement in whole or in part⁶⁹.

With regard to the development-migration nexus into EU recent external migration policy, according to a joint statement issued by 124 NGOs⁷⁰, the new Migration Framework risks not ensuring sufficient protection of human rights of migrants, making it not clear to understand to what extent their active promotion and protection have been incorporated into migration partnerships with MPF priority countries. According to this vision, the main risk is that the new migration policy approach envisaged in the MPF could be characterised, in a path similar to the adoption of the above mentioned EU-Turkey Statement of March 2016⁷¹, by the emergence of a new development aid conditionality, one that makes development cooperation with certain countries dependent on their willingness to collaborate on migration issues⁷² rather than on their effective promotion of human rights.

B. Political questions: whose security development policy is supposed to serve?

According to some EU foreign policy scholars⁷³, EU policymakers consider development aid as an instrument of “soft power”, in other terms as a lever that the EU could use in order to pursue its own objectives.

From a political point of view, the potential consequences of a more securitized development policy within the framework of the AFSJ external dimension are controversial: in other terms, securitization of development aid might be read in a critical sense, as a purposeful strategy to allocate more funds on security aspects rather than on the eradication of poverty, or, alternatively, as a positive trend towards the objective to reach a more pronounced coherence within the Union’s external action, allowing it to enhance its international weight and visibility. The point is, first, to reflect upon the prevailing understanding of “security” within the Union. This, in turn, begs the question on whose security the EU development policy area is supposed to serve. The answer to this question might entail

⁶⁹ This principle follows from Article 60 of the Vienna Convention on the Law of Treaties, done at Vienna on 23 May 1969 and entered into force on 27 January 1980.

⁷⁰ The joint NGO statement ahead of the European Council of 28-29 June 2016 is available at <http://www.aedh.eu/Joint-NGO-statement-ahead-of-the.html>. In that statement, the signatories expressed their concern about, as stated, ‘the direction the EU is taking by making deterrence and return the main objective of the Union’s relationships with third countries’.

⁷¹ For a critical approach of the Statement with regard to the human-rights respect, see for example LABAYLE, Henri, DE BRUYCKER, Philippe, *The EU-Turkey Agreement on migration and asylum: False pretences or a fool’s bargain?*, available at <http://eumigrationlawblog.eu/the-eu-turkey-agreement-on-migration-and-asylum-false-pretences-or-a-fools-bargain/>.

⁷² It is worth underlining that, according to many scholars, this EU approach to development aid conditionality characterised its migration policy agenda at the beginning of the 2000s. See BOSWELL, Christina, note 4.

⁷³ For a more in-depth analysis, see FURNESS, Mark, GÄNZLE, Stefan, *The European Union’s Development Policy: A Balancing Act between ‘A More Comprehensive Approach’ and creeping Securitization*, in BROWN, Stephan, GRÄVINGHOLT, Jörn (eds.), “The Securitization of Foreign Aid”, London, Palgrave Macmillan (2016), pp. 138-162

some conclusions on how the European Union emerges as an effective global actor, able to manage tensions between security and development objectives.

As for the first aspect, in light of an increasingly interdependent international scenario, within the Union a broad construction of security seems to prevail, one that does not entail the mere protection of European territorial integrity, but, on the contrary, which appears in close links with other policies, especially development. Development occupied already a prominent place in the ESS, in which it is pointed out that security “is a precondition of development”⁷⁴. The same conclusion appears in the EUGS, which insists on the need to strengthen the State and societal resilience to the Union’s East and South, by targeting the most acute cases governmental, economic, societal fragility, while developing “more effective migration policies for Europe and its partners”.

With regard to the second aspect – i.e. whose security the EU development policy area is supposed to serve – it is worth considering the ultimate objective of policymaking and implementation of policies. If the security of the EU – i.e. the donor – prevails to the detriment of the socio-economic development in partner countries, then the critical perspective of securitization of development appears legitimate. Indeed, in a similar context, European security interests would dominate policy discourse, decision making and aid allocations, thus not abiding by the EU commitments of development cooperation policy. However, if development policy were primarily directed towards enhancing human security of potential migrants at home, protecting poor people in fragile countries caught in a cycle of conflict, insecurity and poverty, and at the same time fostering resilience – a stable environment in which institutions can be built and development projects can be successfully implemented – then a more positive understanding of securitization of development could be possible.

III. Conclusions

The re-emergence of the “root causes approach of migration” or “stay-at-home” policy, characterised by the gradual integration of development legal and policy instruments into external migration policy, reflects the urgency perceived by the EU to tackle forced migration and displacement in a preventive manner. Development aid in countries of emigration has an impact on migration in two ways: on the one hand, it addresses the root causes of migratory flows; on the other, it allows public authorities to better manage the phenomenon. As a consequence, the principal aim of the EU external action in that field should be to create a “virtuous” relationship and synergy between development and migration: a legal and well-managed migration causes more development, which, in the long term, would be

⁷⁴ For an analysis of policy interactions between development cooperation and CSDP, see KOUTRAKOS, Panos, *The EU Common Security and Defence Policy*, Oxford, Oxford University Press (2013), p. 212, *op. cit.*

itself at the origin of a reduction and a better management of illegal migration and forced displacement. Debating on the fight against illegal immigration and readmissions of irregular migrants is not enough. Recent external migration policy instruments showed that, in the framework of international cooperation with third countries of origin, it is of utmost importance to include active intervention on the root causes of migration. Civil wars, persecution, lack of political stability, extreme poverty and human rights violations are all considered as “push” factors, because they are strictly linked with an increase in migratory flows of refugees and displaced persons, who have right to international protection (also towards Europe). It is currently of extreme urgency and of primary importance to address these “root causes”, going beyond and overcoming extemporary emergency measures. Notwithstanding, these policies should not rely on a certain type of approach based on the “conditionality” of development aid. In that context, the risk is that development cooperation with third countries of origin and transit might be linked to, or conditioned by, agreements on readmission or stronger border management.

The Global Approach to Migration and Mobility is a process still in evolution, even if important results have already been reached. The new challenge for the EU to act as a real global actor in strengthening the migration-development nexus is now to adopt a “sustainable” approach, one which takes also into account people involved in this process as well as their fundamental rights. This approach should be agreed upon from all EU member States, and it should reflect the right synergy and coherence between EU external action policies, namely development cooperation and migration. Tackling immigration-related issues in a real “integrated” manner means responding not only to emergency cases, but also working on the long-term economic development of third countries of origin, as well as solving local crises.

On the occasion of the beginning of the Khartoum Process in 2014, the EU, its member States and Horn of Africa countries committed to building a regional dialogue on migration and mobility, in order to tackle root causes of migration (even irregular migration) in a global, shared, deepened and “balanced” manner. Currently, this objective requires strengthened efforts aimed at eradicating poverty and, namely, at reaching the new Sustainable Development Goals agreed upon by world leaders through the adoption of the “2030 Development Agenda” on the occasion of the 70th United Nations’ General Assembly meeting, held in September 2015.

In that framework, the external dimension of EU migration policy should not be translated into a mere “externalisation” of the EU and its member States’ responsibilities on migration management. On the one hand, in order to reach positive results in terms of development of third countries of origin, the EU and its member States should turn political objectives into legally binding instruments. The migration-development link is represented, from a

legal point of view, by the provision of certain migration clauses in association, cooperation and partnership agreements, as well as by the adoption of some international instruments, such as mobility partnerships. On the other hand, the EU, its member States and African countries of emigration should continue to share their responsibilities in a spirit of real partnership, with the aim of establishing a long-standing dialogue on the effective management of people migration and mobility. Promoting economic, political and social development in countries of origin and transit through cooperation and concrete actions is the only way to diminish and reduce “at its root” international migratory flows. Commitments in this regard are in the interest of all involved actors. This character of reciprocity is evident looking at the nature of the obligations in recent agreements adopted in the cooperation development sector. In these agreements it is possible to find not only commitments made by the EU and its member States for the benefit of third countries; on the contrary, third countries are required a respective commitment to the benefit of the EU and its member States in the management of migration.

Accordingly, the new external migration policy instruments can reflect the principal objectives of international development cooperation and be coherent with the EU development aid policy only if positive effects of the development-migration nexus are taken into account. Among these effects, there are human resources development, social protection, optimization of the benefits deriving from migration, gender equality, migrants’ integration as well as the protection of their human rights. A precondition for the EU to act a real global actor in external migration policy is the existence of a strategy that sets out priorities upon which EU action should be based. The objective should be to reconcile the immigration concerns of the EU member States with the need for development of the Southern Hemisphere.

* * *

List of abbreviations

AFSJ	Area of Freedom, Security and Justice
AU	African Union
CFSP	Common Foreign and Security Policy
DC	Development Cooperation
DG	Directorate-General
EDF	European Development Fund
EEAS	European External Action Service
EIP	External Investment Plan
EC	European Commission
ECJ	European Court of Justice
EDF	European Development Fund
ESS	European Security Strategy
EU	European Union
EUGS	European Union Global Strategy
EUTFs	European Union Trust Fund
GAM	Global Approach to Migration
GAMM	Global Approach to Migration and Mobility
JHA	Justice and Home Affairs
HR	High Representative
MPF	Migration Partnership Framework
ODA	Official Development Assistance
PCD	Policy Coherence for Development
SDGs	Sustainable Development Goals

TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UN	United Nations

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