

N° 2019/03

**EUROPEAN MIGRATION POLICIES WITH AFRICAN COUNTRIES:
INSIGHTS INTO THE CURRENT YEAR**

Eleonora Frasca*

* PhD Candidate in EU Immigration Law at UCLouvain, eleonora.frasca@uclouvain.be.

Le présent texte peut être uniquement utilisé à des fins de recherche individuelle. Toute reproduction ou diffusion, que ce soit en version papier ou électronique, est soumise au consentement du ou des auteurs. L'auteur est libre d'en publier le contenu ailleurs mais assume alors l'entière responsabilité du respect de ses obligations vis-à-vis de tout éditeur tiers.

This text may be used for personal research purposes only. Any reproduction or diffusion for other purposes, whether in hard copy or electronic format, requires the consent of the author(s). The author is free to publish the text elsewhere but then assumes full responsibility for complying with the obligations imposed by any third party.

Les Cahiers du CeDIE doivent être cités comme suit : Auteur, Titre, *Cahiers du CeDIE* année/numéro, uclouvain.be/fr/instituts-recherche/juri/cedie.

The CeDIE Working Papers should be cited as follows: Author, Title, *CeDIE Working Papers* year/number, uclouvain.be/fr/instituts-recherche/juri/cedie.

ISSN 2034-6301

© Eleonora Frasca

Published in Belgium by:
Université catholique de Louvain
CeDIE – Centre Charles De Visscher pour le droit international et européen
Collège Thomas More
Place Montesquieu, 2 (boîte L2.07.01)
1348 Louvain-la-Neuve
Belgique / Belgium

uclouvain.be/fr/instituts-recherche/juri/cedie

Contact : cedie@uclouvain.be

ABSTRACT

EU-Africa cooperation on migration has ranked high in the European Union's policy priorities of the past years. This paper reviews and presents the most recent developments in the area of EU-Africa relations on migration while offering some critical insights into the current year (2019). In the context of the EU external action, migration is increasingly mainstreamed into other policies areas raising issues of horizontal policy incoherence; EU institutions and Member States also bear conflicting interests leading to vertical policy incoherence. Those two trends, which exemplify the current state of EU-Africa migration cooperation, are often the reason why policy actions set unrealistic goals. Some conclusive remarks illustrate how migration cooperation should be given the appropriate weight within the broader context of EU engagement with African countries.

KEYWORDS

EU-Africa Cooperation — Migration Partnership — European Agenda on Migration — External Dimension — EU-Africa Relations — Third Country Cooperation.

TABLE OF CONTENTS

INTRODUCTION	5
1. THE MOST RECENT POLICY DEVELOPMENTS IN EU-AFRICA RELATIONSHIP EMANATING FROM THE EUROPEAN AGENDA ON MIGRATION.....	5
2. INCREASING BLURRING OF POLICIES AREAS IN THE EXTERNAL ACTION FOR THE SAKE OF MIGRATION MAINSTREAMING.....	7
3. INSTITUTIONAL CHALLENGES: TOO MANY PLAYERS WITH DIFFERENT GOALS?.....	8
4. EU-ENGAGEMENT WITH AFRICA BEYOND MIGRATION: SOME PERSPECTIVE AHEAD OF THE NEW YEAR	8
5. SOME ANNIVERSARIES IN 2019: AN OCCASION TO TAKE STOCK?	9
CONCLUSION	9

This contribution is based on a seminar presentation held at the University of Strasbourg on the 8th of February 2019 titled “*Quelle politique migratoire extérieure pour l’Union européenne? Le droit d’asile et la politique d’immigration de l’Union européenne en questions*”. It reviews and presents the most recent developments in the area of EU-Africa relations on migration while offering some critical insights into the current year.

INTRODUCTION

EU-Africa cooperation has been at the centre of European Migration Policies during the past five years and a core element of the European Agenda on Migration,¹ the comprehensive political document that serves as a strategy for the European response to migration.

1. THE MOST RECENT POLICY DEVELOPMENTS IN EU-AFRICA RELATIONSHIP EMANATING FROM THE EUROPEAN AGENDA ON MIGRATION

During the Commission under Jean-Claude Juncker’s presidency (2014-2019), cooperation with Africa became a high priority in the migration policy, politics and discourse of the European Union. The crisis of the internal dimension of migration and asylum law and policies and the consequent “deadlock” stalling the asylum reforms proposed by the European Commission in 2016, led to an over-focus on the external dimension.

At the same time, a strong informalisation of third-country cooperation characterised the external dimension, through political statements, high-level visits, deployments of EU liaison officers, and “Migration Compacts”. These political commitments and actions entail a highly variable Member States’ participation, both in economics and political terms as well as in practice, and a very little participation to the decision-making process by African countries.

Such strategy responds to the alignment of migration, security and development objectives, nothing new for the European Union’s action in this area. Indeed, these are the same “old” objectives identified in the Tampere Conclusion (1999)² as well as in the GAM (2004)³ and the GAMM (2011):⁴ first, “the fight against irregular migration” and the goal of curbing arrivals to Europe, increasing return while preventing migration from Africa; secondly, the long-term objective of “tackling the root causes of migration” in view of development, a goal that neglects the conspicuous body of literature showing that more development leads to more migration. What

¹ European Commission, COM(2015) 240, Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions on a European Agenda on Migration, Brussels, 13 May 2015.

² Council of the European Union, Presidency Conclusion from the Tampere European Council held on 15 and 16 October 1999.

³ Council of the European Union, Presidency Conclusion on a Global approach to migration: Priority actions focusing on Africa and the Mediterranean, Brussels, 13 December 2005.

⁴ European Commission, COM(2015) 240, Communication from the European Commission 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, Brussels, 18 November 2011.

remains on paper is offering reasonable opportunities for legal migration, preventing deaths at sea and in the desert, and increasing protection for refugees and other migrants.

In the field of European migration policies in relation with the African continent, a number of *ad hoc* measures have been taken as a reaction to the increase in migrant irregular arrivals by sea. The Valletta Action Plan,⁵ adopted in 2015, witnessed a high participation of African countries and paved the way for further measures. The priorities and objectives of the Valletta Action Plan are highly set by the EU and reflect a euro-centric vision of third-country cooperation in the field of migration. The Valletta Action Plan was followed by the EU new Migration Partnership Framework 2016.⁶ Five Migration Compact were stipulated with Niger, Nigeria, Mali, Senegal and Ethiopia. Those instruments can be considered the second generation “tool” of Mobility Partnership (previously signed with Morocco, Tunisia and Cape Verde in Africa). The list of potential candidates for Migration Compacts is longer and the geographical scope goes beyond Africa, including countries such as Jordan, Lebanon, and Afghanistan. The type of cooperation envisaged by the MPF has been largely inspired by the EU-Turkey statement,⁷ which served as a blueprint for cooperation with third countries.

Multiple issues arise around the implementation of these Migration Compacts. The European External Action Service has been in charge of monitoring their implementation, producing five “Progress Reports on the Partnership Framework with third countries under the European Agenda on Migration”, the latest⁸ published on 6 September 2017. The European Union Trust Fund for Africa (EUTFA)⁹ has worked as the main financial instrument to implement this strategy. The EUTFA, which is an emergency funding, consists of projects targeting migration which have multiple objectives within the broader theme “Improved migration management”, ranging from enhancing border guards capacity, strengthening reintegration of returning migrants, migration prevention programmes, etc. There is criticism towards the way those projects were conceived: in a rather quick, ineffective, and non-transparent manner. Moreover, some projects are development projects “relabelled” as migration projects by players who have no expertise in migration. The control over the implementation of these projects remains with Member States agencies providing for funding. It is no secret that there is little African ownership over projects funded under the EUTFA and no genuine involvement; the projects’ objectives *are not aligned* with priorities and needs of African countries (for instance, one for all: increasing legal migration opportunities to Europe). Sometimes, the objectives seem to be even *in contrast* with the needs of African countries. Taking the example of the ECOWAS region, building capacity for border control is in contrast with the objective of fostering infra-African mobility and freedom of movement in that region. One has to ask: in whose interest is border capacity built?

⁵ Valletta Action Plan from the Valletta Summit on Migration, Malta, 11 and 12 November 2015.

⁶ European Commission COM(2016) 385, Communication from the European Commission to the European Parliament, the Council, the European Investment Bank on establishing a new Partnership Framework with third countries under the European Agenda on Migration, Strasbourg, 7 June 2016.

⁷ European Council, EU - Turkey statement, Press release, 18 March 2016.

⁸ European Commission, COM (2017) 471, Report from the Commission to the European Parliament, the European Council and the Council, Fifth Progress Report on the Partnership Framework with third countries under the European Agenda on Migration Brussels, 6 September 2017.

⁹ Commission Decision of 20 October 2015 on the establishment of a European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa Brussels, 20 October 2015.

2. INCREASING BLURRING OF POLICIES AREAS IN THE EXTERNAL ACTION FOR THE SAKE OF MIGRATION MAINSTREAMING

The European Union is the first investor in Africa, the first region source of remittances from African diaspora (remittances for many African countries constitute a considerable share of their GDP) and it is also the first humanitarian and development aid provider.

Against this backdrop, migration has recently been increasingly integrated into other policy fields and mainstreamed in agreements or used as a leverage, sometimes to the detriment of the main policy objectives. For instance, in the field of foreign policy, there have been interferences and divergences between Member States' Foreign Affairs Ministries', as well as diplomats, and Home Affairs' priorities. This divide is also experienced within and among the European Institutions: multiple policy objectives divergences can be observed between DG HOME and the Council on the one hand, and the EEAS and DG DEVCO on the other hand. The last European legislature has been characterised by a stronger and strengthened involvement of the EEAS in migration matters and of the High Representative of the Union for Foreign Affairs and Security Policy, who has acted as the liaison between European Institutions and has been very vocal on migration.

Horizontal policy incoherence can be observed when migration is mainstreamed across various policy areas in the external dimension, generating inconsistencies among those different branches. An aspect of the issue of policy incoherence is "conditionality" or the "more-for-more approach". An example is funding for development and the promise of legal mobility opportunities to third countries in exchange of increasing border controls (the case of Senegal). Another example is refugee resettlement programmes conditional on third country cooperation on return (the case of Niger).

In the field of the Common Security and Defence policy (particularly in the Sahel), migration control objectives are mainstreamed into military operations. The same goes for development policy, neighborhood policy or commercial engagement through investment and trade, where it is common practice to add clauses or incentives for migration cooperation.

A number of European Union's broad commitments, such as the EU External Investment Plan¹⁰ by 2020, aim at attracting private investment in Africa. The new Joint Africa-EU Strategy, called Africa-Europe Alliance for Sustainable Investment and Jobs¹¹, claims to be "a new partnership of equals" and declare as its main objective the need for "intertwining the continents" while neglecting any aspects of mutual decision and openly not willing to include African countries' views.

¹⁰ European Commission COM(2016) 581, Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, Strengthening European Investments for jobs and growth: Towards a second phase of the European Fund for Strategic Investments and a new European External Investment Plan, Brussels, 14 September 2016.

¹¹ European Commission (2018) 643, Communication from the Commission to the European Parliament, the European Council and the Council, Communication on a new Africa – Europe Alliance for Sustainable Investment and Jobs: Taking our partnership for investment and jobs to the next level, Brussels, 12 September 2018.

3. INSTITUTIONAL CHALLENGES: TOO MANY PLAYERS WITH DIFFERENT GOALS?

Migration and asylum is a field of shared competence and the lack of alignment of the EU with its Member States policy objectives can result in the so-called vertical policy incoherence. In the external dimension, vertical policy incoherence is quite common: Member States, depending on previous bilateral relationship or interests, have a preference for bilateral cooperation and often question the added value of collective action (this is the case of readmission agreements). This is a well-known weak point of the GAMM: for instance, while the European Commission is in favour of bargaining with third country (e.g. by proposing more effective in border control in exchange of visas facilitation), the competence to deliver visas remain with Member States.

In the field of migration cooperation with African countries, a number of Member States is very active: Portugal, Spain, France, Italy and, more recently, Germany. Those Member States have specific interests in African countries due to historical ties and power structures. On the other hand, some Member States are very little interested in the external dimension to which they contribute to a limited extent. For instance, there is a highly disproportionate Member States' funding contribution to third countries cooperation activities or emergency funds.

On the side of development, Brexit will also have an impact on EU-Africa cooperation. The United Kingdom is one of the “big four” shaping EU development policy (together with France, Germany and the European Commission). One has to ask: what would be the role of the United Kingdom in international cooperation and development? Will the United Kingdom participate into EU decision-making and spending? How?

Another worrisome aspect of the “institutional challenges” experienced in the EU external action is the fact that the European Parliament is often “cornered”. The conclusion of international agreements in the form of “soft law” or “political declaration” has the consequence of hindering the democratic scrutiny of the actions agreed under such processes.

4. EU-ENGAGEMENT WITH AFRICA BEYOND MIGRATION: SOME PERSPECTIVE AHEAD OF THE NEW YEAR

International relations between Africa and the EU go well beyond migration cooperation. Key events in the year ahead will be particularly interesting to follow. In order to understand which direction EU-Africa relations and migration policies are taking, the negotiations of post-Cotonou agreement¹², within the ageing but familiar ACP-EU framework will be a first milestone to achieve; the ACP-EU partnership is the cornerstone of the relationship between EU and developing countries. It remains to be seen if the African Union is a legitimate partner for the negotiations. The African Union is not a partner of the Cotonou agreement because some African Union Member States are reluctant to give to the African Union a clear mandate to negotiate on their behalf. A division among African Member States can be observed between those who privilege an inter-governmental approach and those who will prefer a “one voice” approach.

¹² European Commission and High Representative of the Union for Foreign Affairs and Security Policy, JOIN(2016) 52, Joint Communication to the European Parliament and the Council, A renewed partnership with the countries of Africa, the Caribbean and the Pacific, Strasbourg, 22 November 2016.

A second milestone will be the upcoming EU Parliamentary elections in May 2019 while the new Presidency of the EU Commission will take office in November. What will be the political direction of the EU for the next five years? Who will win the battle between pro-European vs Eurosceptics? Are the upcoming elections dangerous for EU integration and unity? Surely we can predict that these political changes will have an impact on development and foreign policy priorities as well as migration.

The third milestone is the adoption of the next Multi-Annual Financial Framework (2021-2027). Negotiations have been launched in May 2018¹³ and are supposed to end in October 2019. The Framework is a proxy for Member States' ambitions on spending and funding for the EU external action will depend on the next MFF.

On the other side of the Mediterranean, the African Union is one of the world's fastest-growing economies, committed to the Sustainable Development Goals with a proper African Union Agenda until 2063. The African Union is undergoing strong institutional and financial reforms (among which the most significant is the 0.2% levy on eligible imports to improve financial autonomy). One example is the Regional Economic Communities (RECs), which are legally, politically and financially independent organisations accountable towards their membership (African States, not the African Union). The structures, hierarchies and direction of relationships among RECs need clarification in the upcoming years. Another example which describes the size and significance of African reforms and potential for growth is the African Continental Free Trade Area (AfCFTA): a single continental market for goods and services, with free movement of persons, in order to expand intra-African trade and enhance industrial competitiveness.

The ratification process has been launched in March 2018 and for now 49 African Union Member States have signed, excluding Nigeria (which is Africa's largest economy).

5. SOME ANNIVERSARIES IN 2019: AN OCCASION TO TAKE STOCK?

The year 2019 is a golden year for anniversary. First, there will be the 20-year anniversary of the Tampere Conclusions, which set the main Freedom Security and Justice Area's priorities and orientations, that are somehow still the same. Two thousand and nineteen will also be the 10-year anniversary from the Lisbon Treaty, which represents an important change in European migration policies and legislation. Looking from the African Union's perspective, the African Union Assembly has declared 2019 the year of "Refugees, Returnees and Internally Displaced Persons".

Finally, 2019 is the starting year for the implementation and follow-up of the Global Compacts: what will be the direction of global migration governance? Will the Global Compacts lead to more balanced partnerships between countries?

CONCLUSION

The European Union should not make the mistake to disguise a short-term and short-sighted approach into a proclaimed long-term approach. European migration policies are too often victim of euro-centrism, posing unrealistic goals and expectations towards cooperation with African countries. Only 8% of African migrants migrate to Europe; Africa's most important migration is

¹³ European Commission COM(2018) 322, Proposal for a Council Regulation laying down the multiannual financial framework for the years 2021 to 2027 Brussels, 2 May 2018.

within Africa. Moreover, the EU is not the only interlocutor of Africa in the continent: China as well as Russia also have their interests in the continent.

Migration is one of the challenges faced by Africa and Europe: demographic unbalances, climate change and the geopolitical instability in some of the African region should not be disregarded.

For this reason, the next European Commission should be very careful in reassigning the due weight to migration: cooperation with African Countries is much larger than migration cooperation and the attempt to “stop” migration has already proven to be ineffective. The weight reserved to migration by African countries and their interests in cooperating might change over time. Building a true dialogue and a true partnership, inspired by multilateralism and the so-called “value-driven” foreign relations will be a good answer to the question “*Quelle politique migratoire extérieure pour l’Union européenne?*”

Comité scientifique/Scientific Board

Prof. Jean-Yves Carlier
Prof. Pierre d'Argent
Prof. Marc Fallon
Prof. Stéphanie Francq
Prof. Sylvie Sarolea

Comité de rédaction/Editorial Board

Prof. Stéphanie Francq
Annie Fourny
Caroline Manesse

Les Cahiers du CeDIE sont stockés sur DIAL, la plateforme de dépôt institutionnel de l'Académie Louvain.
The CeDIE Working Papers are uploaded on DIAL, the Louvain Academy repository and publications database.

CeDIE – Centre Charles De Visscher pour le droit international et européen. Créé en 1963, le CeDIE honore depuis 1973 la mémoire du Professeur Charles De Visscher (1884-1973), une personnalité qui a marqué le droit international public dans la période d'après-guerre. Il fut, en particulier, président de l'Institut de droit international, juge à la Cour internationale de Justice et ministre du gouvernement belge. Le CeDIE poursuit des activités de recherche dans les disciplines juridiques affectant les problématiques internationales au sens large, en particulier le droit international public, le droit international privé, le droit européen (UE) et les droits de l'homme. Depuis ses débuts, le CeDIE défend une conception large du droit international et une approche comparative, de type interdisciplinaire.

CeDIE – Charles De Visscher Centre for International and European Law. Established in 1963, the CeDIE honours since 1973 the memory of Professor Charles De Visscher (1884-1973), a prominent figure in the field of public international law in the post-WWII period. Among others, he held positions as President of the Institut de droit international, Judge of the International Court of Justice and Minister in the Belgian government. The CeDIE carries research activities in the field of international law including public international law, private international law, European (EU) law and human rights law. Since its inception, the CeDIE aims to promote a broad understanding of and an interdisciplinary approach to international law.
