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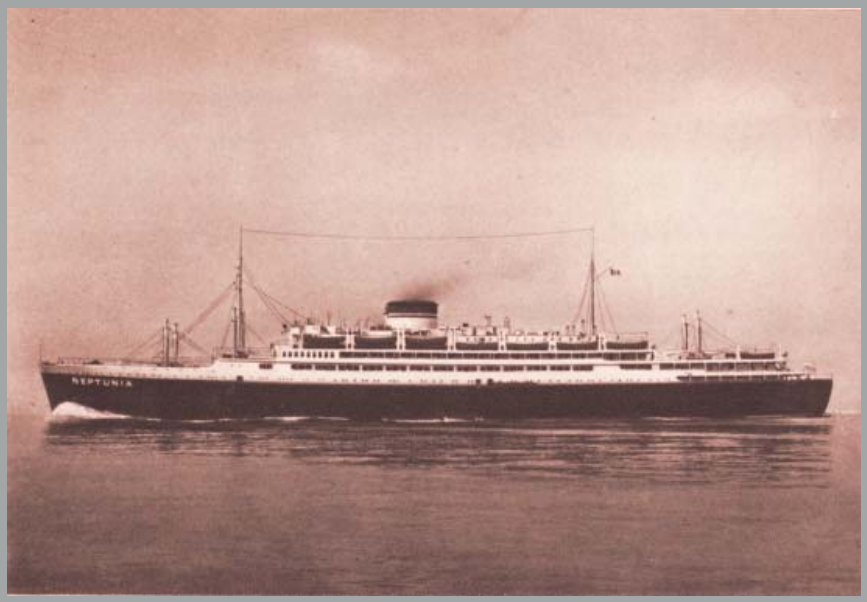

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SOME BRIEF REFLECTIONS CONCERNING THE MOBILITY PARTNERSHIP IN THE EU EXTERNAL MIGRATION POLICY

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ABSTRACT: The present work intends to highlight the most relevant aspects of the choices of the EU's external migration policy through the instrument of Mobility Partnership which was proposed as general framework for the management of migration flows from third countries. Its main aim was to take due account of the interests and objectives of EU, partner countries and migrants themselves. So, the partnership was included among the external migration policy's instruments with additional and different features than its earlier namesakes of the Union's external relations. Nevertheless, the need to contain the migratory pressure coming from Africa and the Mediterranean, an area in which the Union has recognized priority actions, affects the form and the content of the few partnerships concluded until now and has a negative impact on its results, as well as on the respect of fundamental rights of migrants.

KEY WORDS: EU external migration policy, Partnership, Mediterranean, Readmission Agreement.

ALGUNAS BREVES REFLEXIONES SOBRE LA ASOCIACIÓN DE MOVILIDAD EN LA POLITICA DE LA UE EN MATERIA DE MIGRACIÓN EXTERIOR

RESUMEN: Este trabajo se centra en los aspectos más relevantes de las decisiones de política exterior de migración de la UE, mediante la Asociación de Movilidad que se propone como marco general para la gestión de los flujos migratorios procedentes de terceros países. Su objetivo principal era tener debidamente en cuenta los intereses y objetivos de la UE, los países socios y los propios migrantes. Es así que la cooperación se incluyó entre los instrumentos de política de migración externa con características nuevas y diferentes de sus antecedentes dentro de las relaciones externas de la Unión Europea. Sin embargo, la necesidad de contener la presión migratoria procedente de África y del Mediterráneo, área en la cual la Unión ha reconocido acciones prioritarias, influye en la forma y el contenido de pocas asociaciones hasta ahora llevadas a cabo, y posee una repercusión negativa en sus resultados, tal como en el respeto de los derechos básicos de los migrantes.

PALABRAS CLAVE: Política exterior de migración de la UE, Asociaciones de Movilidad, Mediterráneo, Acuerdo de readmisión

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QUELQUES BREFS REFLEXIONS SUR LE PARTENARIAT POUR LA MOBILITÉ DANS LA POLITIQUE MIGRATOIRE EXTÉRIEURE DE L'UE

RÉSUMÉ : Ce travail se concentre sur les aspects les plus pertinents des choix de la politique migratoire extérieure de l'UE à travers l'instrument de partenariat de mobilité qui a été proposé comme cadre général pour la gestion des flux migratoires en provenance des pays tiers. Son principal objectif était de tenir dûment compte des intérêts et des objectifs de l'UE, les pays partenaires et les migrants eux-mêmes. Ainsi, le partenariat a été inclus parmi les instruments de la politique de migration externe avec des fonctionnalités supplémentaires et différentes que ses homonymes antérieures de relations extérieures de l'Union. Néanmoins, la nécessité de contenir la pression migratoire en provenance d'Afrique et de la Méditerranée, un domaine dans lequel l'Union a reconnu les actions prioritaires, affecte la forme et le contenu des rares partenariats conclus jusqu'à présent et a un impact négatif sur ses résultats, ainsi que sur le respect des droits fondamentaux des migrants.

MOTS-CLÉS: Politique migratoire extérieure de l'UE, Partenariat, Méditerranée, Accord de réadmission.

I. INTRODUCTORY REMARKS CONCERNING THE PARTNERSHIP INSTRUMENT

For a long time now some scholars no longer believe that the production of international law is limited to classical sources. This is because of their pluralization process. In fact these sources are multiple and different from those perceived in the classical conception of international law because of the growing involvement in regulatory activity of more actors besides States[2]. This means, on the one hand, a recourse to informality in the production of international law and on the other hand, it causes a diversification of the means of production of its rules and, as a result, of their content.[3]

In such a context we can include partnerships which, although in many cases coincide with the classical international treaty, in other cases show different connotations not perfectly coincident with the first. Partnerships have therefore become a tool to foster cooperation and integration of third countries and their citizens in the European Union, namely a framework within

[2] See D'Aspremont, J., (ed.), *Participants in the International Legal System-Multiple Perspectives on Non-State Actors in International Law*, Routledge, London, 2011. See also von Bogdandy, A., Wofrum, R., von Bernstorff, J., Dann, P., Goldmann, M. (eds.), *The Exercise of Public Authority by International Institutions. Advancing International Institutional Law,* Springer, Heidelberg, Dordrecht, London, New York, 2010, in particular pp. 3-32.

[3] In this perspective, see D'Aspremont, J., *Formalism and the sources of International Law – A theory of the Ascertainment of Legal Rules*, Oxford University Press, Oxford, 2011, who considers also that: 'the idea that formal law-ascertainment has grown inappropriate to capture contemporary international norms has become even more prevalent', p. 3.

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which to include a further set of binding and non-binding acts. They have also assumed a programmatic nature as part of some specific external actions of the Union[4]. Thus as part of the EU external migration policy, partnerships were introduced as an instrument of the so-called Global Approach for the regulation of international relationships between the EU institutions, Member States and third countries, specifically identified with reference to the migratory routes[5]. This instrument was also considered appropriate to embody a different approach aimed at involving all stakeholders, including migrants[6].

Accordingly, the present work precisely intends to highlight the most relevant aspects of the choices of the EU's external migration policy through the main instrument, the Mobility Partnership, which gives substance to the so-called "partnership approach"[7]. In any case, additional existing instruments in the Union's relations with third countries continue to "mingle" in order to contain the migratory pressure coming from Africa and the Mediterranean, an area in which the Union has recognized priority actions. As it will be seen, the Mobility Partnership is a non-binding instrument that reflects the choices of national policy of the Member States which decide to participate. It is also closely linked to the readmission agreements which are the main legal instruments to contain the migratory masses, at the expense of migrants' rights[8].

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[4] For more in-depth considerations, let us to refer to Russo, T., "Partnership as an Instrument of Democratization in EU External Action: A Look at the Balkans", in *Law between Modernization and Tradition. Implications for the Legal, Political, Administrative and Public Order Organization,* Hamangin, Bucharest, 2015, pp. 677-688.

[5] See Urbano de Sousa, C., "Le partenariat pour le mobilité: un instrument de l'approche globale en matière d'immigration, in De Bruycker, P., Foblets, M.-C., Maes, M. (sous la direction), *Dimension Externes du Droit et de la Politique d'immigration et d'Asile de l'UE*, Bruylant, Brussels, 2011, pp. 343-358.

[6] See the critical considerations on the protection of migrants of Collyer, M., "Migrants as strategic actors in the European Union's Global Approach to Migration and Mobility", *Global Networks,* Vol. 12, No. 4, 2012, p. 505-524.

[7] So Kunz, R., "Governing International Migration through Partnership", *Third World Quarterly,* Vol. 34, No. 7, 2013, pp. 1227-1246.

[8] In a critical view, see Ippolito, F. and Trevisanut, S. (eds.), *Migration in the Mediterranean. Mechanism of International Cooperation,* Cambridge University Press, Cambridge, 2015.

II. THE EXTERNAL DIMENSION OF EU MIGRATION POLICY AND THE "PARTNERSHIP APPROACH"

As it is known, the external dimension of EU migration policy[9] was developed only at a later time, that is when the abolition of internal borders between EU Member States leads as a corollary the strengthening of external borders, and therefore the need to create a common border management policy[10]. Similarly, the approach that is used by the Union is primarily directed to the externalization of the European area of freedom, security and justice with the adoption of measures to combat illegal immigration[11]. Although in fact already with the Tampere programme, the European Council was aware of the need to establish 'a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit' and considered the partnership with third countries 'a key element for the success of such a policy, with a view to promoting co-development'[12], it is only since 2005 that the so-called "partnership approach" begins to materialize. It is so defined because based on 'the belief

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[9] According to Reslow, N., *Partnering for mobility? Three-level games in EU external migration policy,* Datawyse bv, Maastricht, 2013, 'External migration policy can be defined as a policy whereby third countries are drawn in to agreements, information exchanges, cooperation mechanisms or negotiations with the EU on migration issues', p. 21.

[10] This cooperation began in the Community area as early as 1985 when five of the ten countries that were at the time the Member States of the EEC signed the Schengen Agreement, integrated, five years later, by the implementing Convention. It is well known, then, how the Amsterdam Treaty and the subsequent implementing programmes since 1999 have materialized and developed this objective. On the evolution of the Union's policy on immigration, see for all, Condinanzi, M., Lang, A., Nascimbene, B., *Citizenship of the Union and free movement of persons,* Martinus Njihoff Publishers, Leiden-Boston, 2008, in part. p. 201 ff.

[11] From this moment, actions of the Union direct to the creation of an area of freedom, security and justice tend gradually to strengthen its external dimension. However, compulsory measures regard illegal or irregular migration. See Cardwell, P.J., "New Modes of Governance in the External Dimension of EU Migration Policy", *International Migration,* Vol. 51, No. 6, 2013, pp. 55-66, who considers that curiously the strengthening of the external dimension to FSJ in the Stockholm Programme was the provision of 'greater opportunities for EU citizens to work and do business with countries across the world', p. 56.

[12] See Tampere European Council, *A Common EU Asylum and Migration Policy*, 15-16 October 1999.

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that migration can be effectively managed in a spirit of cooperation between all affected countries to yield win-win (including countries of origin and destination) or win-win-win (also including migrants) solutions'[13].

It is true that, in general, the EU's migration policy has established itself with difficulty. The phenomenon in question was always considered a highly sensitive matter for national sovereignty[14] and, in any case, the subject of intergovernmental cooperation between States[15]. This explains how the same internal dimension has developed in small steps, starting as a sub-area of cooperation on justice and home affairs. It also explains how the external dimension[16] has taken shape thanks to the need for integrating migration issues in the relationships with third countries for the EU enlargement policy, the European neighborhood policy[17], or as a reflexion of the Union's internal competences[18].

[13] So, Kunz, R., "Governing International Migration", *cit*. p. 1233 who considers that partnership is not a mere political tool, but an essential element of the governance of international migration.

[14] See Reslow, A., "Deciding on EU External Migration Policy: The Member States and the Mobility Partnership", *Journal of European Integration,* Vol. 34, No. 3, 2012, pp. 223-239.

[15] An example is given by the Budapest Process that is a consultative forum of more than fifty governments (including Western Balkans, China, Bangladesh, Pakistan, Afghanistan, Iran, Iraq, Syria, Turkey and the countries of Central Asia) and various international organisations based on exchanging information and best practices on a wide range of migration issues. It started in 1991 as one of the longest standing cooperation framework on migration for Europe and its Eastern neighbours. Thanks to the Budapest Process, the Silk Route Partnership for Migration was established at the Ministerial Conference held in Istanbul on 19 April 2013 to improve cooperation in the area of migration between the countries of the Budapest Process and the Silk Route countries (Afghanistan, Bangladesh, Iran, Iraq and Pakistan).

[16] See Weinar, A., *EU Cooperation Challenges in External Migration Policy, EU-US Immigration Systems*, 2011/02, Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, 2011, who considers the external dimension of migration policy 'a matrix of tension between priorities and competences at the supranational and national levels'.

[17] So, for example, thanks to migration and readmission clauses included in international agreements of association and cooperation. See Eisele, K., *The External Dimension of the EU's Migration Policy. Different Legal Positions of Third-Country Nationals in the EU: A Comparative Perspective*, Brill-Nijhoff, Leiden, 2014.

[18] According to Reslow, N., "An Incompetent Actor? Assessing EU External Migration Policy", *European Foreign Affairs Review,* Vol. 20, No. 4, 2015, pp. 471-494, 'Legal competence

Even after the Lisbon Treaty, the Union's external competence in this field is conventionally limited to readmission agreements provided for in Article 79.3 TFEU, the visa agreements based on Article 77 TFEU, as well as to the 'partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection' (Article 78.2, letter. g). Furthermore Member States retain the right to determine volumes of admission of third countries' citizens on their territory in order to find work (Article 79.5 TFEU)[19]. However, there has been a radical change from the point of view of policy choices underlying

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on external migration policy is, however, also derived from internal competences in the field of justice and home affairs', as well as she considers that the adoption of measures within the EU 'based on internal competence on migration can have significant external effects', in part. p. 478.

19 As well known, the EU migration policy should be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States (Article 80 TFEU). In the view of the achievement of the EU objectives provided in Article 79 TFEU (legal immigration, integration of migrants, fight against illegal immigration, fight against trafficking in human beings, etc.) a number of important directives relating to immigration and asylum have been adopted. According to Martenczuk, B., "Migration Policy and EU External Relations", in Azoulai, L. and De Vries, K. (eds.), *EU Migration Law. Legal Complexities and Political Rationales,* Oxford University Press, Oxford, 2014, the EU external migration policy consists of 'all policies affecting the movement of TCNs across the EU's external border', p. 69 ff. These are, for example, the *Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment* (OJ L 155, 18.6.2009, pp. 17–29); the *Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State* (OJ L 343, 23.12.2011, pp. 1–9)**;** *Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers* **(**OJ L 94, 28.3.2014, pp. 375–390); *Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer* (OJ L 157, 27.5.2014, pp. 1–22, it is to be transposed by 29 November 2016), as well as the *Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification* (OJ L. 251/12-251/18); *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals* (OJ L. 348/98-348/107; 16.12.2008); *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals*. For a comprehensive overview of the relevant EU legislation, see for all Hailbronner, K.

the external dimension of migration[20]. As a result of the changing scenario of international migration, the European Union also expressed the need to change its approach to migration through the strategy on the *Global Approach to Migration* promoted by the European Council in December 2005, focusing on partnership and dialogue with non-EU countries[21]. This approach, which aimed at incorporating the opportunities of legal migration in the external policies of the Union, was then translated into a series of policy proposals of the Commission that since 2007 seeks to promote, at the occurrence of certain conditions, the opportunities of legal migration for the citizens of third countries in order to discourage illegal migrations[22]. Therefore in 2011 the Commission adopted a renewed Global Approach in the Communication on *Global Approach to Migration and Mobility* (GAMM)[23], which includes mobility as a much broader concept than migration[24].

This renewed approach establishes a general framework for the EU's relations with third countries in the field of migration, namely an overarching framework of EU external migration policy, complementary to EU foreign policy and development cooperation. Based on four pillars, (legal immigration and mobility, illegal immigration and trafficking in human beings, international protection and asylum policy, and maximising the impact of migration and mobility on development) it was implemented not only through the classic legal instruments previously mentioned, but also through a number of policy instruments, including the Mobility Partnership, already considered 'as the main strategic, comprehensive and long-term cooperation framework for

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and Thym, D. (eds.), *EU immigration and asylum law.* Commentary*,* 2nd edition, C.H. Beck/ Hart/Nomos, München, Oxford, Baden-Baden, 2016.

[20] See Nascimbene, B., "The Global Approach to Migration: European Union Policy in the Light of the Implementation of the Hague Programme"*, ERA* Forum, Vol. 9, No. 2, 2008, pp. 291-300.

[21] See European Council *Global Approach to Migration: Priority actions focusing on Africa and the Mediterranean*, 13 December 2005, 15744/05. This was completed in its conclusions on the development of a *Comprehensive European Migration Policy* of December 2006, 16879/1/06 REV 1.

[22] See European Commission *On circular migration and mobility partnerships between the European Union and third countries,* 16 May 2007, COM(2007) 248 final.

[23] See 18 November 2011, COM(2011) 743 final.

[24] In a critical view, see Reslow, N., "An Incompetent Actor", *cit*., p. 482 ff.

migration management with third countries, adding value to existing bilateral frameworks'[25].

III. THE MOBILITY PARTNERSHIP: LEGAL FORM AND CONTENTS

The Mobility Partnership is the name that the Commission proposed to give to the mobility packages as a general framework for the management of migration flows from third countries while bringing together the 'possibilities offered by the Member States and the European Community, while fully respecting the division of competences as provided by the Treaty'[26]. This Partnership was born with many purposes: organizing a package of mutual commitments and offers of project initiatives covering mobility, migration and asylum issues, adapted to the specific requirements of EU Member States in terms of the labor market; seeking to secure easier access to EU territory for the citizens of third countries; facilitating circular and temporary migration in order to help the EU Member States to respond to the needs of their labor market and use the potential positive impact of migration for their development; responding to the needs of countries of origin with regard to skills transfer and mitigating the effects of brain drain. Therefore, its main aim was to take due account of the interests and objectives of EU, partner countries and migrants themselves[27]. In this sense, this instrument was deemed to be able to turn into responsible partners, not only the third States willing to cooperate with the Union to share common interests, mutual benefits and shared responsibility, but also the migrants themselves in as much as informed, assisted and encouraged to collaborate also for their repatriation[28].

As a result, the partnership was included among the external migration policy's instruments with additional and different features than its earlier

[25] European Council *The Stockholm Programme – An open and secure Europe serving and protecting the citizens*, 2 December 2009, 17024/09, paragraph 6.1.1, p. 61.

[26] See European Commission *The Global Approach to Migration one year on: Towards a comprehensive European migration policy,* 30 November 2011, COM(2006) 735 final.

[27] The human rights of migrants are in fact a cross-cutting issue in this approach.

[28] So Kunz, R., "Governing International Migration", *cit.* p. 1240 who, in general, considers that thanks to the partnership approach also migrants are turned in partners, not only in development, but also in return policy making.

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namesakes of the Union's external relations. So much so that the Commission took care to define the legal nature, form and content, concluding that it is impossible to list all the components of a Mobility Partnership. It presents itself as a kind of policy coordination[29] that is characterized by its wide differentiation both as regards with the participating Member States and its contents. In fact, such contents are affected by other Union's external relations with third countries involved, as well as 'they are tailored to the specifics of each relevant third country, to the ambitions of the country concerned and of the EU, and to the level of commitments which the third country is ready to take on in terms of action against illegal migration and facilitating reintegration of returnees, including efforts to provide returnees with employment opportunities'[30]. Even more, these partnerships depend on Member States' national laws concerning the admission of third-country citizens, as well as their political constraints and priorities. However, they are constructed on the basis of a common element, the "joint responsibility" between partners.

For all these reasons, the mobility partnership is one of the flexible instruments[31] that lack a legal definition and it is alternative to those binding to achieve the objectives of the external governance of the Union's migration policy[32]. By express provision of the Commission[33], it has a complex legal nature. In fact it involves many elements, some of the Union's competence, others of the Member States' competence. It is namely a framework established by a 'joint political declaration between the EU and interested Member States, on the one hand, and the partner country on the other, based

[29] See Parker, R., "EU Mobility Partnership: A model of Policy Coordination?", *European Journal of Migration and Law,* Vol. 11, No. 4, pp. 327-345.

[30] See European Commission *On circular migration and mobility partnerships*, *cit*., p. 4.

[31] There are several political instruments, such as bilateral and regional policy dialogues and action plans between countries of origin, transit and destination, according to specifically geographical priorities in line with the reality of migration trends, as well as migration profile, migration missions, etc.

[32] See Cardwell, P.J., "New Modes of Governance", *cit*., p. 57.

[33] See *Mobility partnership as a tool of the Global Approach to Migration*, 18 September 2009, SEC(2009)1240 final, who considers the mobility partnership as 'the most innovative tool to date of the Global Approach to Migration and contribute significantly to its operationalization', paragraph 4.

on mutual commitments, but formally non-binding'[34]. More specifically, it takes 'the form of political statements (declarations of intention) signed by the Community, the Presidency of the EU, interested Member States and respective partner third country'. It is formulated in non-binding terms, to be adapted according to the current needs[35]. It is an umbrella under which partners can implement not only cooperation initiatives, but also can negotiate and conclude bilateral agreements, albeit mainly on readmission in the event of illegal immigration[36].

Certainly, in the face of numerous attempts to give a definition[37], it seems that the most significant features of the Mobility Partnership could be its non-binding nature, the will of the Member States to take part of it, as well as its purpose to compose or combine the interests of the institutions of the Union, of third countries and above all of the Member States. In other words, it seems to be a regulatory framework which has the purpose to ensure that movements of persons between the EU and a partner country are well-governed. Indeed, a Mobility Partnership should be presented once a certain level of progress has been achieved in the migration and mobility dialogues, also taking into consideration the broader economic, political and security context. Moreover, the mobility partnership offers visa facilitation based on a simultaneously negotiated readmission agreement. The composition of these interests, thought of as one of the main objectives of partnership, would have to minimize tensions in the EU's external migration policy. On the contrary, the existing diversities, in addition to affecting the form and the

[34] See Carrera, S., Hernández i Sagrera, R., "Mobility Partnerships 'Insecurity Partnership' for policy coherence and migrant workers' human rights in the EU"*,* in Kunz, R., Lavenex, S., Panizzon, M. (eds.), *Multilayered Migration Governance. The promise of partnership,* Routledge, London and New York, 2011, p. 97 ff.

[35] It is a "living document" in the thought of Brocza, S. and Paulhart, K, "EU mobility partnerships: a smart instrument for the externalization of migration control", *Eur J Futures Res,* No. 3, 2015.

[36] See Wiesbrock, A., "Euro-Mediterranean Labour Migration: a mutually beneficial partnership?"*,* in Ippolito, F., and Trevisanut, S. (eds.), *Migration in the Mediterranean*, cit., who considers that the Mobility Partnership with Morocco and Tunisia shows a clear emphasis on migration control, readmission and return and only minimally improved opportunities for legal migration and employment, p. 175.

[37] For a reconstruction on the topic of Mobility Partnership, see Reslow, N., "*Partnering for mobility?*", *cit*., p. 21 ff.

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content of the few partnerships concluded until now, have a negative impact on cooperation hindering, at least for the moment, the envisioned results.

IV. THE PRIORITY GIVEN TO AFRICA AND THE MEDITERRANEAN

The priorities to respond to migration-related challenges are, as it is known, identified by the Council[38] and, therefore, by the Commission[39] in its proposals to promote the management of migration flows of people from Africa and the Mediterranean. Notoriously, these areas are the scene of death for thousands of migrants/refugees in transit to reach the Union. Following the approach outlined above, the tools used were those of political dialogue, both at regional and multilateral levels since immediate Southern neighbours, and bilaterally with key countries of origin and transit of migration flows or, anyway, coming within the migratory routes. These are precisely the third States with which to conclude Mobility Partnerships. The two areas in question are interconnected and overlapping not only from a geographical point of view, but also in the context of the Union's policies. In fact, they are also the subject of the European neighbourhood policy and fall within the Euro-Mediterranean Partnership and the Union for the Mediterranean, that is to say other frameworks within which to manage both bilateral and regional relations[40].

[38] See European Council *Global approach to migration, cit.*, p. 3, where it states that 'Action must be taken to reduce illegal migration flows and the loss of lives, ensure safe return of illegal migrants, strengthen durable solutions for refugees, and build capacity to better manage migration, including through maximising the benefits to all partners of legal migration, while fully respecting human rights and the individual's right to seek asylum. The immediate actions set out below form part of a broader agenda for developing the EU's relationship with Africa and the Mediterranean countries through genuine partnership. The European Council also welcomes the complementary dialogue and cooperation being pursued by Member States in this area'.

[39] See European Commission *Priority actions for responding to the challenges of migration: first follow-up to Hampton Court,* 30 November 2005, COM(2005) 621 final.

[40] See European Commission *Strengthening the European Neighbourhood Policy,* 4 December 2016, COM(2006)726 final that considers that: 'these mobility partnerships would form part of the actions envisaged to strengthen the European Neighbourhood Policy'.

As a new initiative that is part of the highlighted "partnership approach", the EU-Africa Partnership on Migration, Mobility and Employment[41] is a continental Partnership between the EU and all African States which aims to provide comprehensive responses to migration, in the interest of all partners. The particular focus of this partnership is that of facilitating mobility and free movement of people in Africa and within the EU; better managing legal migration between the two continents, addressing the root causes of migration and refugee flows; ensuring fair treatment of all migrants under applicable international law; finding concrete solutions to problems posed by irregular migration flows and trafficking of human beings; ensuring that migration and mobility work for development[42]. At a sub-regional level, some examples are the Rabat process which consists of policy dialogues with countries along the Western migratory route[43], as well as the Khartoum Process that was launched at a Ministerial Conference in November 2014 in Rome to establish a long-standing dialogue on migration and mobility[44].

At a bilateral level, although the mobility partnership had started with several countries of the region, it has taken shape with only a few countries (Cape Verde, Morocco, Tunisia, Jordan). Instead with other countries (Ethiopia

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[41] See Lavenex, S., "Interregionalism in the EU External Migration Policies", in Telò, M., Fawcett, L., Ponjaert, F. (eds.), *Interregionalism and the European Union. A Post-Revisionist Approach to Europe's Place in a Changing World,* Routledge, London and New York, 2015, pp. 159-174, in part. p. 169.

[42] It is informed by the Joint Africa-EU Strategy agreed in Lisbon in December 2007, as well as the Declaration of the 2006 Tripoli Ministerial Conference on Migration and Development, and the Ouagadougou EU-Africa Plan of Action on Trafficking in Human Beings, especially Women and Children.

[43] It was launched at the first Euro-African Ministerial Conference on Migration and Development in July 2006 in Rabat. It brings together governments of European and African countries from North, West and Central Africa, together with the European Commission and the Economic Community of West African States (ECOWAS). Its aims are: to enhance dialogue and cooperation on legal migration and mobility; prevention of irregular migration and measures to counteract it; migration and development; international protection.

[44] The Khartoum Process is led by a Steering Committee of five EU Member States (Italy, France, Germany, UK, Malta), five partner countries (Egypt, Eritrea, Ethiopia, South Sudan, Sudan) as well as the European Commission, the European External Action Service and the AU Commission.

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and Nigeria) the Common Agenda on Migration and Mobility tool (CAMM)[45] has been used. According to some scholars, the conditional link between mobility partnerships and cooperation on readmission[46] does not correspond to the main interest of the African countries. These, indeed, would be more interested in promoting their development and then the connection between migration and development[47]. Conversely, the debate concerning migration and development would be characterized by the 'overwhelming presence of the security rationale'[48]. As pointed out, cooperation on readmission has

[45] According to the Commission (see note 22), the Common Agenda is a political instrument 'for partner countries and for the EU and its Member States in cases where both sides want to establish an advanced level of cooperation, but where one side or the other is not ready to enter into the full set of obligations and commitments. Like the MP, the CAMM should set a number of common recommendations, targets and commitments for dialogue and cooperation and should include a package of specific support measures offered by the EU and interested Member States. If both parties agree, the Common Agenda could be upgraded to a Mobility Partnership at a later stage. It does not include the negotiation of visa facilitation and readmission agreements, and it should mainly be used for other third countries'.

[46] See Cassarino, J.P., *Readmission Policy in the European Union,* Bruxelles: European Parliament, 2010, who considers that: 'the EU's attempt to link mobility partnerships with cooperation on readmission reflects how this issue has become a central component of its immigration policy', p. 36.

[47] See Chou, M.-H., *EU and the Migration-Development Nexus: What Prospects for EU-Wide Policies?,* Working Paper, No. 37, University of Oxford, 2006.

[48] So Chou, M.-H., *European Migration Strategy towards West Africa: the Origin and Outlook of 'Mobility Partnership' with Cape Verde and Senegal,* 2009, available on <http://aei.pitt.edu/33039/1/chou._meng-hsuan.pdf>. The readmission agreements ask in fact their partners to readmit, not only their own citizens, even other States' citizens who passed through their territory to reach Europe. Furthermore, the connection between readmission and visa facilitation agreements is not an automatic connection. See Council of the EU, *Common approach on visa facilitation,* 16030/05, Brussel, 21 December 2005, who considers that: 'However, the existence of a readmission agreement, or the willingness of a third-country to negotiate one, does not automatically nor routinely lead to the opening of negotiations on a visa facilitation agreement. The EU shall consider making use of other instruments to achieve the conclusion and implementation of a readmission agreement, e.g. political, economic, commercial or development policy related'.

been perceived as succumbing to foreign influence, and not as a developing country's own policy [49].

It is true that in the Commission's view the establishment of a mobility partnership can take place 'once certain conditions have been met, such as cooperation on illegal migration and effective mechanisms for readmission'[50]. Both partnerships with Jordan and with Morocco provide, for example, in the section on implementation, that**: '**The signatory parties take the view that the elements contained in the various components of this partnership will be implemented using a balanced overall approach and constitute a package, particularly the visa and readmission facilitation agreements, which shall be concluded simultaneously'[51]. Such a connection has been criticized, on the one hand, because it would continue to confirm the traditional conception of migration as insecurity [52]. On the other hand, because it entails the risk of violation of international obligations relating to fundamental rights[53], such as the right to non-refoulement or the right of every person to seek asylum and to leave their own country, as well as the risk of collective refoulements[54].

[49] So Weinar, A., "EU cooperation challenges", cit., p. 7. Sub-Saharan African countries are interested in the access to EU labour markets and North African countries consider transit migration an European issue the effects of which they have to put up with.

[50] See European Commission *The Global Approach to migration one year on,* mentioned above note 25.

[51] See the Joint declaration establishing a Mobility Partnership between the Hashemite Kingdom of Jordan and the European Union and its participating Member States, paragraph 33 e the Joint declaration establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and its Member States, paragraph 39.

[52] See Carrera, S., *The EU's Dialogue on Migration, Mobility and Security with the Southern Mediterranean. Filling the Gaps in the Global Approach to Migration,* June 2011, available on <http://aei.pitt.edu/32071/1/No_41_Carrera_on_EU_Dialogue_with_SoMed_edited_final-1.pdf>, p. 5.

[53] See the Analysis of the Mobility Partnership signed between the Kindgom of Morocco, the European Union and nine Member States on 7 June 2013 edited by the Euro-Mediterranean Human Rights Network, February 2014, available on <http://euromedrights.org/wp-content/uploads/2015/03/PM-Morocco_Final-Version-EN.pdf>. See also the Focus of Asylum and migration into the EU in 2015 edited by the European Union Agency for Fundamental Rights, 2016.

[54] It is well known that the automatism in the refoulement of asylum-seekers without any assessment of the respect of fundamental rights was condemned by the European Court of Human Rights also with reference to the so-called Dublin system (on the reform proposal,

This fact undermines an approach centered on the respect of migrants' rights that is the basis of the very structure of the Mobility Partnership[55].

V. CONCLUSIONS: WHAT RESULTS?

In conclusion, it is clear that the success of the Union's migration policy depends on its external dimension, namely on the regulation of its relations with third countries of origin and transit of such migratory flows that in recent years have tried to reach Europe. However, it is equally clear that, in the context of a still "experimental" phase, the proposed new approach encounters several obstacles caused by the shared competence of Member States (Article 4.2, lett. j TFEU). These limit the power of initiative of the Commission and continue to propose individual projects demonstrating a preference for bilateral cooperation. Moreover, Member States are free to participate in the mobility partnership and take part only if it is in line with their national policy. Apart from France which is present in all the partnerships, in other cases the number of participating States is highly variable.

Furthermore, we cannot fail to mention the different approach followed by the two main institutions involved: the Council and the Commission. The former has shown a greater propensity to frame migration in the foreign policy, the latter more inclined to offer incentives to third countries with the aim of improving cooperation[56]. Even the choice of a typically non-binding

see Caggiano, G., "Prime riflessioni sulle proposte di riforma del sistema europeo comune d'asilo in materia di qualifiche, procedure e accoglienza", *SIDIBlog* of 3rd October 2016, available on http://www.sidiblog.org). See *ex multis* ECtHR, *Sharifi and Others v. Italy and Greece* (no. 16643/09), 21 October 2014. Similarly, any automatic provision on readmission included in agreements gives rise to doubts about their legitimacy, such as in the case of Agreement between the European Union and the Republic of Turkey on the readmission of persons residing without authorisation (OJ L 134, 7.5.2014, pp. 3–27) that was concluded by the Council Decision 2014/252/EU (OJ L134/17.05.2014) and entered into force on 1st October 2014. On 18 March 2016, the European Union and Turkey decided to end the irregular migration from Turkey to the EU, because of some debatable principles contained in the EU-Turkey statement of 7 March 2016. See Favilli, C., "La cooperazione UE-Turchia per contenere il flusso dei migranti e richiedenti asilo: obiettivo riuscito?", *Diritti umani e diritto internazionale,* Vol. 10, No. 2, 2016, pp. 405-426.

[55] See Carrera, S., *The EU's Dialogue on Migration, Mobility and Security with the Southern Mediterranean*, *cit.*

[56] See Reslow, A., "Deciding on EU External Migration Policy", *cit.* p. 225.

instrument is relevant in this sense. It also makes marginal, if not non-existent, the role of the European Parliament and excludes the jurisdiction of the Court of Justice. For this reason some have affirmed the need to translate the mobility partnerships in international agreements, similar to those used in the context of readmission and asylum cooperation[57]. Apart from the fact that such a solution would lead to the change of the approach that was intended to usher in with this tool[58], it would have the effect of bargaining for the signature of the agreement with the addition of delays in the ratification process. Although outside of this context, one example is the readmission agreement with Turkey. The negotiations were very long because of the fact that Turkey requested as a precondition a road map for visa liberalization for its nationals.

Therefore, the results obtained can be evaluated both quantitatively and qualitatively. In the first sense, there has been a proliferation of policy documents which, perhaps for the need to explain this new approach of the EU external migration policy, have made its objectives too much overlapped and unclear. In the same perspective, the bilateral relations between the EU Member States and third countries continue to prevail quantitatively, thus belittling the "competence" of the Union in the field. Furthermore, the predominant role of the Council and the Member States "decreases" or diminishes the power of the Commission. Finally, in the implementation process of the Mobility Partnership 'the approach of restricting immigration and maximizing the efficiency of readmission' has prevailed[59]. From the second point of view, conversely, although the intention was to qualitatively improve the Union's external relations on migration issues, precisely in a spirit

[57] See Carrera, S., *The EU's Dialogue, cit.*, who recommends that: 'Despite comprising a central plank of the EU's response to events in the Southern Mediterranean, Mobility Partnerships reveal deficits when tested against principles of legal certainty, democratic accountability and international labour and human rights standards', p. 24. See also Carrera, S. and Hernández i Sagrera, R., "The externalisation of the EU's Labour Immigration Policy. Towards Mobility or Insecurity Partnership?", *CEPS Working Document,* No. 321, 2009.

[58] See Kunz, R., "Governing International Migration", *cit.* p. 1241 who considers that "partnership approach" creates new states and migrant subjectivities in a '(quasi-)contractual joint agreements of mutual commitments'.

[59] According to Maisenbacher, J., "The Political Economy of Mobility Partnership – Structural Power in the EU's External Migration Policy", *New Political Economy*, Vol. 20, No. 6, 2015, pp. 871-893, market forces influence EU external migration policy.

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of partnership with shared responsibilities, the balance seems to be skewed in favor of the needs of Member States with obvious risks for the respect of fundamental rights of migrants. In conclusion, the "ostensible" reduction of the registered migratory pressure[60] is more a result of the change of the selected migratory routes[61] or of all migrants left outside Europe that an outcome to be attributed to this new approach.

[60] See UNHCR data available on <http://data.unhcr.org/mediterranean/regional.php>.

[61] See *Europe/Mediterranean - Migration Crisis Response Situation Report* of the International Organization for Migration (IOM), 7 September 2016, available on <https://www.iom.int/sites/default/files/situation_reports/file/IOM-Med-Migration-Crisis-Response-Sitrep-07-September-2016.pdf>.

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