Janine Silga:

The origins of the migration and development nexus in the EU policy and legal framework

In the nineties, the European Union has been increasingly involved in addressing what was then perceived as the so-called “migration pressure”. In reality, as the Commission also noticed, migration pressure often amounted to illegal migration and the will to restrain migration pressure was also intensified by the fear of a future migration crisis.

As to the currently expanding external dimension of the EU migration policy, it is the result of an increasing awareness of the “shortcomings of traditional migration control policies.” Indeed, given the transnational impact of migration, adequate cooperation with sending as well as transit countries of migrants seems unavoidable. This is especially true in the context of the fight against illegal immigration in the EU.

However, as Christina Boswell points out: “Under this rubric of cooperation with sending and transit countries (...) one can discern two rather distinct approaches. The first involves

---

1 Hereafter “the EU”.
2 In its 1994 Communication, the Commission explains that: “Migration pressure relates to all actual and potential migratory movements directed towards Europe.” It then goes on to argue that: “Migration pressures whose root causes need to be addressed take a variety of forms. Economic disparities will generally represent the most significant pressure. Other pressures derive from demographic and environmental factors. In other cases the pressures relates to the human rights of political situation in the country of origin...” Communication from the Commission to the Council and the European Parliament on Immigration and Asylum Policies, COM(94)23 Final, adopted on 23.02.1994 p. 13, pt. 47.
4 As quoted by the Commission, the United Nations Population Fund stated that: “Though rates of population growth may have fallen in most developing countries, numbers are rapidly increasing. The rapid increase in the number of young people entering their peak years of fertility has the potential for even greater increases in the future. Every demographic impetus towards migration will be multiplied over the next two or three decades as populations-and therefore the number of potential migrants- rise. The combination of population pressures and economic imbalances could produce mass migration from poorer to richer countries.” Communication from the Commission to the Council and the European Parliament on Immigration and Asylum Policies, COM(94)23 Final, p. 17, pt. 64.
6 In one of its 2006 communication, the Commission has defined illegal immigration as corresponding to a “variety of phenomena.” Indeed, as it goes on to say: “This includes third country nationals who enter the territory of a Member State illegally by land, sea and air, including airport transit zones. This is often done by using false or forged documents, or with the help of organised criminal networks of smugglers and traffickers. In addition, there is a considerable number of persons who enter legally with a visa or under a visa-free regime, but ‘overstay’ or change the purpose of stay without the approval of the authorities; lastly there are unsuccessful asylum seekers who do not leave after a final negative decision.”, Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals, COM(2006) 402 final, 19.07.2006.
forms of cooperation that essentially externalize traditional tools of domestic or EU migration control\(^7\) (...). The second type of policy can be loosely defined as ‘preventive’: measures designed to change the factors which influence people’s decisions to move, or their chosen destination [in other words, the so-called root causes of migration]\(^8\).” The migration and development nexus perfectly fits in the second type of policy aiming at addressing the issue of illegal immigration in a preventive manner.

Even if the underlying logics\(^9\) behind each approach seem rather different, there is no opposition between these two concepts of the external dimension of the EU migration policy, namely the control-based approach and the preventive one. Conversely, they are both perceived, at the EU level, as efficient means to fight against illegal immigration\(^10\). However, these two sides of the same coin were not always given equivalent importance in the EU migration policy\(^11\). And this has been the case for several reasons, as the evolution of the external dimension of the EU migration policy shows.

\(^{7}\) As the author explains: “The logic here is to engage sending and transit countries in strengthening border controls, combating illegal entry, migrant smuggling and trafficking, or readmitting migrants who have crossed into the EU illegally.” Op. Cit., p. 619.

\(^{8}\) Ibid., pp. 619-620.

\(^{9}\) Christina Boswell argues that the preventive approach logically implied a “logic of prevention” as “[i]t generated proposals for addressing the ‘root causes’ of migration and refugee flows in countries of origin, through more targeted use of development assistance, trade, foreign direct investment or foreign policy instruments.” Ibid., p. 624.

\(^{10}\) The above mentioned 2006 Communication from the Commission underlines that cooperation with third countries (in order to address the push factors for illegal immigration and the securing of borders are both priority policies (together with other concerns such as the fight against human trafficking, illegal employment and return policy.) Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals, COM(2006) 402 final, op. Cit.

\(^{11}\) As Christina Boswell argues: “The combination of a control-oriented Council of Ministers, an institutionally weak Commission JHA Task Force and a lack of political will from the European Council meant that preventive approaches were effectively marginalized until the late 1990s. Cooperation with third countries on JHA issues largely took the form of providing support to future EU members to reinforce border control, develop asylum systems and combat illegal migration.”, BOSWELL C., op. cit., p. 627.
I- The emergence of the migration-development nexus in the context of the developing external dimension of the EU migration policy

A- The Tampere declaration

The European Council meeting in Tampere was the turning point regarding the emergence of an external dimension of the EU migration policy. As Christina Boswell highlights: “The groundbreaking conclusions of this Special European Council on Justice and Home Affairs stated that justice and home affairs concerns (which include immigration and asylum issues) should be ‘integrated in the definition and implementation of other Union policies and activities’, including external relations.” More importantly, with regard to the development of a preventive approach, translated in pragmatic terms by the migration and development nexus, the Tampere declaration showed an increasing willingness to foster cooperation with sending as well as transit countries, in order to address the root causes of illegal immigration. In its Paragraph 11, the European Council declared 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 and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children. To that end, the Union as well as Member States are invited to contribute, within their respective competence under the Treaties, to a greater coherence of internal and external policies of the Union. 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.”

Although the Tampere European Council is indisputably regarded as the political momentum for the implicit recognition of the need to promote positive links between migration and

---

12 For an overview on the initial emergence of the external dimension of the EU migration policy, also read, NIESSEN J. And MOCHEL F., EU External Relations and International Migration, Migration Policy Group, January 1999.
13 BOSWELL C., Ibid., p. 620.
development, it was the result of prior political statements as well as institutional attempts at the EU as well as the Member States’ level.

In the early nineties, the question of the integration of migration issues into the scope of the external policy was already taken into account. As Christina Boswell underscores, while “as early as 1991, the European Commission was calling for the integration of migration issues into the EU’s external policy” [...] In December 1992, the Edinburgh European Council had agreed that ‘coordination in the fields of foreign policy’ should ‘contribute substantially to addressing the question of migratory movements.’” Two communications from the Commission (under the influence of the European Task Force on Justice and Home Affairs) insisted on the potential positive impact of developing a preventive approach, as an integral part of the external dimension of the EU migration policy.

The 1991 Communication was adopted as a response to “the request made by the European Council in Luxembourg to the ministers with responsibility for immigration to draw up a report on the matter.” In this Communication, the Commission stresses that: “Adopting a global approach to the problem, [...] proposes three lines of action on the various aspects of immigration: (i) action to counter migration pressure by incorporating migration into the Community’s external policy, particularly through an appropriate and targeted cooperation policy; (ii) action to control migration flows, particularly through (...) the approximation on

---

14 As Christina Boswell argues: “The perceived need for such external approaches was above all a consequence of the inadequacy of domestic border controls in managing migration. One reason for this was the rise in levels of migration and refugee flows over this period. The lifting of restrictions on movement from the former communist bloc generated (...) fears about a mass influx of immigrants from central and eastern Europe.” BOSWELL C., Op. cit., p. 621.


16 In the conclusions following the meeting at Edinburgh on the 12 December 1992, the Presidency acknowledged that: “It was convincing that a number of different factors were important for the reduction of migratory movements in the Member States: the preservation of peace and the termination of armed conflicts; full respect for human rights; the creation of democratic societies and adequate social conditions; a liberal trade policy, which should improve economic conditions in the countries of emigration. Co-ordination of actions in the fields of foreign policy, economic cooperation and immigration and asylum policy by the Community and its Member States could also contribute substantially to addressing the question of migratory movements...” Conclusions of the Presidency-Edinburgh, December 12, 1992. Bull. EC 12-1992, pt. I-31.

17 BOSWELL C., Ibid.


19 Six-monthly meeting of ministers with responsibility for immigration: Bull. EC 6-1991, point 1.4.9.
measures to combat illegal immigration (...); (iii) action to strengthen policies for integrating legal immigrants into society in host countries... 20

As to the Communication that was adopted in 1994 21, it was particularly focused on the “root causes” approach 22.

In this latter Communication, the Commission confirms its intention to deal with immigration by using what it previously defined as a threefold approach, aiming at: “action on migration pressure, particularly through co-operation with the main countries of would-be emigration to Europe; action on controlling immigration in order to keep it within manageable structures; action to strengthen policies for legal immigrants 23.”

Concerning the action on the causes of migration pressure, the Commission argues that, “this requires ensuring that immigration and asylum policies are fully integrated into the Union’s external policies, and that the various external policy instruments available to the Union are used to address the root causes of those pressures. That could involve action at a number of different levels such as in the areas of trade, development and co-operation policies, humanitarian assistance and human rights policies 24.” To support its view, the Commission emphasises that: “A comprehensive approach to migration pressure requires coordination of action in the field of foreign policy, trade policy, development cooperation and immigration and asylum policy by the Union and its Member States (...). The external policies pursued by the Union in the fields of common foreign and security policy, trade, co-operation and development policies can in themselves contribute to achieving these objectives and in practice often do so 25.” Then, the Commission identified three main fields of action in order to address the “root causes” of migration pressure: economic disparities, demographic pressures and environmental considerations 26.

22 BOSWELL C., op. cit., p. 626.
24 Communication from the Commission to the Council and the European Parliament on Immigration and Asylum Policies, COM(94)23 Final, Ibid. And, in this respect, the Commission goes on to insist that: “Effective action in this area also requires ensuring the availability of accurate information on current migration patterns and likely future trends.” See also BOSWELL C., op. cit.
In this respect, the international context should not be forgotten either, as the migration and development nexus had drawn growing attention in other fora\textsuperscript{27}, such as international institutions or national governments\textsuperscript{28}. Indeed, as Christina Boswell explains : “Since the early 1990s there had been a huge expansion of multilateral activities in the area of prevention and peace-building, ranging from early warning human rights monitoring, institutional capacity-building and post-conflict reconstruction, through various forms of political mediation, to more robust peacekeeping and military interventions\textsuperscript{29}.”

However, despite this “readiness at the Council\textsuperscript{30} and Commission\textsuperscript{31} level to recognize the need for preventive approaches (…), the institutional context of policy-making provided a far from favourable environment\textsuperscript{32}.” Indeed, on the one hand Justice and Home Affairs officials meeting in the Council of Ministers “were still largely absorbed with the ‘externalization of control’ agenda (…)\textsuperscript{33}.” On the other hand the development and foreign affairs officials “were keen to avoid what many saw as an attempt to subvert development goals through targeting development to prevent migration flows\textsuperscript{34}.” This resulted in a reluctance from development and external relations members of the Commission to promote the integration of migration

\textsuperscript{27} It is worth noting that the European Community was aware of the development taking place in international fora with respect to the management of immigration. Read, for instance, Communication from the Commission to the Council and the European Parliament on Immigration and Asylum Policies, COM(94)23 Final, op. cit., Annex IV on “Recent Developments in international fora”.The Commission notably refers to the European Population Conference (taking place form 23 to 26 March 1993) in Geneva and , which explicitly mentioned the links between migration and development. Indeed, at point 23 of the above mentioned document, the Commission reports that : “On migration and development it was recommended that Governements of countries of origin and destination should seek to address the causes of emigration in order to alleviate the massive and uncontrolled international migration flows.” This quotation perfectly reflects the “root causes” approach.

\textsuperscript{28} OLESEN H., Migration, Return and Development : An Institutional Perspective, International Migration Vol. 40 (5), 2002, IOM, pp. 125-150. In the first part of his article, the author especially focuses on international institutions concerned with development issues, such as the International Organization for Migration, the World Bank, the Organisation for Economic Co-operation and Development or the United Nations. On this precise matter, read pages 128-134.

\textsuperscript{29} BOSWELL C., op. cit., p. 625.

\textsuperscript{30} See, for example, the Council conclusions concerning the Commission communication on immigration and asylum policies, in which the Council “expressed its appreciation” of the previously mentioned communication.”Bull. EU 6-1994, pt. 1.4.3. Nonetheless, the priority remains on the fight against illegal migration.

\textsuperscript{31} All the more so, as, in its 1994 Communication, the Commission noted that : “In its Communication of May 1992 on development co-operation policy in the run-up to 2000 (…) the existing relationship between certain migratory movements and the development co-operation policy [were highlighted].” And “[T]he best remedy yo those migratory pressures would be the promotion of economic growth in the developing countries. The integration of an active migration policy into general development co-operation policies and external economic relations should be strengthened (…). The effects of such a global approach would, however, be felt only in the long run.” Communication from the Commission to the Council and the European Parliament on Immigration and Asylum Policies, COM(94)23 Final, op. cit., p. 16, pt. 58. The Communication the Commission refers to is the following : Development Cooperation in the run-up to 2000 (The Community’s relations with the developing countries viewed in the context of political Union)- The consequences of the Maastricht Treaty SEC(92)915 Final.

\textsuperscript{32} Ibid., p. 626.

\textsuperscript{33} Ibid.

\textsuperscript{34} Ibid.
prevention goals into the EU external policy. All the more so, as until 1999, there was an obvious “absence of more robust political support from the European Council.” This approach was closely followed as well as supported by other institutions, notably the European Parliament and the European Economic and Social Committee.

B. Internal contextual factors

Several factors have contributed to the gradual emergence of a preventive approach in the context of the developing external dimension of the EU migration policy:

- The adoption of the Amsterdam Treaty in 1997

Although the Treaty did not “explicitly cover the question of cooperation with third countries on [justice and home affairs], the Commission and Council’s subsequent action plan for implementing Amsterdam nonetheless derived a number of implications from the treaty on the ‘external aspects’ of JHA.” Indeed, by transferring migration and asylum issues from the third to the first pillar, the Amsterdam Treaty reinforced the role of the Commission.

- The influence of the Member States and the creation of the High-Level Working Group

---

35 Ibid.
36 Ibid. Read, for instance, the declaration of the Maastricht European Council of December 1991, mentioned in the Bulletin of the European Community: Bull. EC 12-1991, pt. I-6. The focus was clearly on the fight against illegal immigration. See the Six-monthly meeting of ministers with responsibility for immigration, reported in the Bulletin of the European Community: Bull. EC 12-1991, pt. 1.4.15. In the conclusions of the meeting, the ministers made no explicit allusion to the external aspect of the immigration policy as suggested by the Commission. Instead, it “...also decided to look further into the question of deportation of illegal immigrants and to endeavour to establish procedures for dealing with critical situations in the event of large-scale migratory surges.”
37 In one of its resolutions adopted on 18 November 1992 (with reference to the 1991 Commission’s Communication), the European Parliament “...argues that migratory pressures could be stemmed by helping countries of origin to develop their economies.” Bull. EC 11-1992, pt. 1.3.25. Similarly, in another resolution adopted in 1993, the European Parliament indicated that: “...[It] also regrets that the approach adopted by the ministers responsible for immigration takes no account of its previous resolutions and point out that immigration policy should not be considered solely from the viewpoints of internal security and public order but also from that of solidarity with immigrants’ countries of origin and the need to comply with the Community’s international obligations regarding human rights and fundamental freedoms.” Bull. EC 7/8-1993, pt. 1.2.17.
38 In an own-initiative opinion on immigration policy (adopted on 28 November 1991), the Economic and Social Committee “...stresses the need to turn migration flows to the account of both countries of origin and host countries and to deal with the causes of immigration. It also calls for the revised version of the Treaty of Rome to establish Community legal competence in the field of immigration.” Bull. EC 11-1991, pt. 1.2.10.
Under the Austrian Presidency a strategy paper on immigration and asylum policy was issued in July 1998 emphasising that the EU “had a crucial role in the ‘reduction of migratory pressure in the main countries of origin of immigrants’, through means including intervention in conflict regions, extended development aid and economic cooperation, and the promotion of human rights”.

Following this paper, and with the support of the Dutch government, a High-Level working group was set up in the framework of the Council of Ministers to “prepare cross-pillar Actions Plans for selected countries of origin and transit of asylum seekers and migrants.”

After its creation, the High Level Working Group’s action was gradually supplemented by the Commission’s increasing involvement in respect of the emergence of the preventive approach.

II- The growing involvement of the European Commission in the shaping of the migration and development nexus in the external dimension of the EU migration policy

A- The 2002 Communication from the Commission to the Council and the European Parliament on integrating migration issues in the European Union’s relations with third countries

One could rightly note that the Commission is now the main promoter of the “root causes” approach to migration at the EU level and thus, the main institution that is able (and willing) to foster positive links between migration and development. As Christina Boswell points out: “Despite initial concerns about migration issues subverting the development agenda, Commission officials now appear to be ready to embrace a root causes approach.”

Therefore, the Commission started handling the issue of inclusion of migration issues in the development agenda and reciprocally, the development issues in the migration agenda.

---

41 Ibid., p. 628.
42 Ibid. Six countries were focused on: Afghanistan, Albania, Morocco, Somalia, Sri Lanka and Iraq.
44 Ibid., p. 635.
In a Communication of 2002, the Commission “clearly prioritized preventive over control-oriented approaches.” In this Communication, the Commission suggested solution to reconcile “differing but complementary priorities”, namely the migration management (and notably the need to fight against illegal immigration) and external relations’objectives, and especially development objectives, as stated in article 177 of the EC Treaty.

B- Subsequent developments

Subsequently, the Commission adopted several communications dealing with the migration and development nexus, the most significant being:

- The Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Migration and Development: Some concrete orientations: This communication, building on the 2002 Communication draws more attention on specific and practical issues regarding the migration and development nexus, namely: remittances, the role of diasporas in the development of their home countries, circular migration and brain drain.

- The Communication from the Commission to the Council and the European Parliament, The global approach to Migration one year on: Towards a comprehensive European migration policy: This communication follows the Global approach to Migration adopted by the European Council in 2005 and focusing on Africa and the

---

45 Ibid., 634.
46 Communication, p. 4.
47 According to article 177 EC: “Community policy in the sphere of development cooperation (…), shall foster:
— the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,
— the smooth and gradual integration of the developing countries into the world economy,
— the campaign against poverty in the developing countries.
2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.”
Mediterranean\textsuperscript{50}. This communication was, indeed, part of a EU strategy aiming at building a global and comprehensive approach to migration, by first concentrating on Africa and subsequently enlarging to other regions, notably central and eastern Europe. One of the main interest of this communication is that it truly highlights the need to find common priorities agenda with sending and transit developing countries\textsuperscript{51}. Therefore, it identifies key issues to be addressed in the context of a global (and consistent) approach to migration: the need to strengthen dialogue and cooperation with African countries of origin and transit, legal migration, integration and intercultural dialogue, the fight against illegal migration and trafficking in human beings.

- Communication from the Commission to the European Parliament and the Council, Thematic Programme for the cooperation with third countries in the area of migration and asylum\textsuperscript{52}: This programme, replacing AENEAS, fulfils the same objectives, among others one may find the promotion of links between migration and development and the fight against illegal immigration.

- The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on circular migration and mobility partnerships between the European Union and third countries\textsuperscript{53}: Interestingly, and for the first time, this communication tackled a very practical issue directly linked to the migration and development nexus namely the

\textsuperscript{50} In this Communication, the Commission clearly underlines that: « 2006 has been a year of agenda setting with Africa. A ministerial conference on migration and development was held last July in Rabat bringing together some 60 countries along West and Central African migration routes. African and EU states participated in the UN High Level Dialogue on Migration and Development in September. An EU-Africa Ministerial Conference was also held in Libya in November to formulate a joint approach to migration between the EU and the whole of Africa for the first time. ’Migration’ has been a recurrent agenda item in dialogue and cooperation programmes with Mediterranean countries, building on the considerable work already carried out in the [European Neighbourhood Policy] framework, and the EuroMed forum has been used to further exchange best practice and work towards a joint programme of activities. It has also been on the agenda of high level meetings with the African Union and the regional organisations. Dialogue on migration issues on the basis of Article 13 of the Cotonou Agreement was opened with key Sub-Saharan African states. The Rapid Reaction Mechanism has been employed to support Mauritania and Senegal in their efforts to cope with illegal migration.” Op. cit., p. 3.

\textsuperscript{51} On the topic of regional consultative processes, aiming at increasing convergence in migration management at the regional and international levels, read, THOUEZ C. And CHANNAC F., “Shaping International Migration Policy: The Role of Regional Consultative Processes”, West European Politics, 2006, Vol. 29, No.2, pp. 370-387.

\textsuperscript{52} COM(2006) 26 final, 25.01.2006. The legal basis for this thematic programme is in the 1905/2006 Regulation establishing an instrument for the financing of development cooperation, in its article 16 more precisely.

concrete way in which, an orderly movement of people could be organised between the EU and sending countries through mobility partnerships and circular migration.

The above mentioned documents show the will of the Commission to adopt an ever more precise and practical strategy when addressing the challenges raised by the migration and development nexus at the EU level.

III- Concrete experiences at the EU level

A- The example of a Member State: The French case and co-development

The concept of co-development, which starts evolving in as the new concept of “solidarity development” was initiated by France, and aims at making diasporas “veritable partners in development co-operation.”

In the framework of the French immigration policy, co-development is narrowly defined as the actions of migrants (or more broadly “diasporas”) to contribute to their countries of origin.

---

54 WEIL P., “Towards a Coherent Policy of Co-Development”, International Migration, Vol. 40(3), 2002, pp. 41-55. As this author argues: “When nation states engage in so-called ‘co-development’ efforts, which in theory link immigration policy and development, this frequently camouflages what are essentially attempts by receiving countries to forcibly return illegal immigrants after providing them some modest financial assistance or perhaps a rapid and largely ineffective professional formation (as has been the case in France).”, p. 42. On this notion and a more general overview of the French migration policy, read Nair S., L’immigration est une chance- Entre la peur et la raison, Seuil, 2007, read especially on co-development, pp. 197-221.

55 See especially, the European Pact on Immigration and Asylum (4th July, 2008 Version) where both expressions are used apparently indifferently. Indeed, despite this terminologic evolution, it is still unclear whether “solidary development” entails a significant conceptual difference from the notion of “co-development”. In its report to the Parliament, the General Secretary of interministerial committee on immigration control, comments on solidarity development in the following way: “Le décret du 18 mars 2008 portant composition du nouveau gouvernement a remplacé l’appellation ‘codéveloppement’ dans l’intitulé du ministère par celle de ‘développement solidaire’. Le développement solidaire comprend : le codéveloppement et les actions sectorielles d’aide au développement dans celles des régions des pays d’origine qui sont des régions de forte émigration vers la France, permettant de contribuer à la maîtrise des flux migratoires.” Secrétariat Général du Comité interministériel de contrôle de l’immigration, Rapport au Parlement sur les orientations de la politique de l’immigration, Décembre 2008, see especially Chapter IV, p. 172.

56 Diaspora networks can be defined as “groups of individuals, engaged in the economies and societies of both their destination and their source countries.” “Policy for Coherence for Development- Migration and Developing Countries”, OECD, Development Centre, 2007, Op. cit., p. 93.

57 “Policy for Coherence for Development- Migration and Developing Countries”, OECD, Development Centre, 2007, Ibid., p. 100.

58 “…”Toute action d’aide au développement à laquelle participent des migrants vivant en France (ou leurs enfants dans le cadre des projets de jeunes issus l’immigration), quelles que soient la nature et les modalités de cette contribution.” Secrétariat Général du Comité interministériel de contrôle de l’immigration, Rapport au Parlement sur les orientations de la politique de l’immigration, op. cit.
Originally, co-development’s main objective was to encourage migrants to return to their countries of origin, but this view was subsequently broadened to encompass “all aspects of development co-operation in which migrants living in OECD countries (business people, academics, health personnel, engineers) can be involved. Migrants are encouraged to promote commercial activities or implement social development projects in their home country”\(^{59}\), such as building schools or hospitals. Furthermore, “the concept of co-development also includes helping migrants to direct their savings better towards productive investment in their countries of origin. This concerns especially the transfer of monies as well as strengthening the capacities of micro-credit institutions”\(^{60}\).”

The OECD gives the example of the French Government’s *Programme Développement Local et Migration* (PDLM). This programme was launched in 1994/1995 as a pilot project in three West African countries, namely Mali, Senegal and Mauritania. This programme financed “*micro-project start-ups developed by reintegrated migrants and ensures its follow-ups on the ground*”\(^{61}\). Although this programme and similar initiatives are “too small to have a discernable impact on aggregate economic development”, they can still “*have meaningful effects in particular migration corridors*”, all the more so, as they “*integrate rather well with existing instruments of regional development such as sectoral programmes (health, education, rural development)*”\(^{62}\).

Co-development has also been integrated into bilateral agreements. One noticeable example is the case of the 2000 bilateral Convention between France and Mali on co-development\(^{63}\), which complements the 1998 Agreement on migration between the two States\(^{64}\). In both cases, the emphasis is on the management on migratory flows based on

---

\(^{59}\) “Policy for Coherence for Development- Migration and Developing Countries”, OECD, Development Centre, 2007, Ibid.

\(^{60}\) “Policy for Coherence for Development- Migration and Developing Countries”, OECD, Development Centre, 2007, Ibid.


\(^{62}\) “Policy for Coherence for Development- Migration and Developing Countries”, OECD, Development Centre, 2007, Ibid.

\(^{63}\) Décret n°2007-54 du 11 janvier 2007 portant publication de la convention de codéveloppement entre le gouvernement de la République française et le gouvernement de la République du Mali, signed in Paris on 21th December, 2000, Journal Officiel de la République Française n°11, 13/01/2007, p. 850. It is worth noting the almost seven year time lag between the signature and entry into force of this convention, while the agreement on migration entered into for in the same year of its signature.

partnership and development. The 1998 Agreement on migration even provides for the creation of a joint committee on migration. More recently, France has signed bilateral agreements on concerted management of migratory flows with eight countries, including Gabon. Lastly, co-development has been given a new legal significance (although it remains to be seen whether it will lead to further concrete implications), as it was introduced as such as one part of the current Code de l’Entrée et du Séjour des Etrangers et du droit d’asile (CESEDA), which lays down the rules on the entry and stay of foreigners in France.

B- The EU “experiment” : The mobility partnerships and circular migration

At the EU level, there is a raising awareness of the fact that globalisation is an inevitable process, which will necessarily imply international movement of population. At the same time, there is an increasing awareness of the fact that immigration could be used in order to address the EU’s own economic and demographic challenges in the short and mid-term. Therefore, the integration of migration related issues in the framework of the EU external relations, is increasingly considered as a general way to benefit from globalisation thanks to a better management of migration flows. This being said, most normative and financial resources are still concentrated on the fight against illegal immigration. Nonetheless, at the EU level, this fight can take several shapes including those that would be most profitable to all stakeholders, namely developing countries as sending countries, the EU representing receiving countries, and migrants themselves.

65 Article 1 et seq. of the 1998 Agreement on Migration between France and Mali.
67 http://www.premierministre.gouv.fr/acteurs/gouvernement/conseils_ministres_35/conseil_ministres_11_juillet_1357/les_accords_gestion_concertee_60611.html (12/10/2008). These agreements are based on three main dimensions : management of legal migration, fight against illegal immigration and development.
68 Of all these agreements, only the one with Gabon has entered into force : see Décret n°2008-900 du 3 septembre portant publication de l’accord entre le Gouvernement de la République gabonaise relatif à la gestion concertée des flux migratoires et au codéveloppement, signé à Libreville 5 juillet 2007, Journal Officiel de la République Française n°0208 of 6th September 2008, p. 13959.
69 Livre IX of the CESEDA.
70 Economic and financial Affairs Council of 4th December 2007. Among other things, the Council underlined that : “Migration has an important role to play to increase growth potential and facilitate adjustment (...). Moreover, immigration can enhance overall labour mobility, thus contributing to absorbing asymmetric shocks (...). Migration has become an important factor in population growth in the EU and is the most dynamic source of population change.”
In this regard, one great challenge is how to ensure a regulatory framework, that would both ensure flexible movement of people and their return to their countries of origin. Indeed, for movement of people to benefit the sending countries, the latter must make sure that emigration will not amount to losing their human resources, and especially the most qualified one ("brain drain") as mentioned previously. On the other hand, receiving countries, may often be reluctant to open access to their territory, if they are not sure that migrants will not be tempted to stay permanently, which would eventually result in illegal immigration. As for migrants themselves, the need to leave their countries whatever the purpose should be balanced with the development need of their countries of origin, knowing that they may be willing to take part in the development of their countries of origin themselves by using co-development tools. In this latter case, there is certainly a need to increase the incentives for migrants to return to their country of origin after spending time abroad.

One useful legal device could be the mobility partnership, which intends to satisfy all the interests mentioned above.

So far, two pilot mobility partnerships have been agreed upon between the European Union, interested Member States and two targeted third countries : Cape Verde and Moldova. Possibilities to launch other pilot mobility partnerships are also being explored with Georgia and Senegal.

The nature as well as the content of the mobility partnerships are examined in a Communication from the Commission of 23 May 2007. None has yet been implemented, and yet, they appear to provide for an interesting potential (legal) framework to manage migration flows at the EU level.

---

71 Lately, in its Conclusions, the Justice and Home Affair Council has, “...[welcomed] the launching of pilot Mobility Partnerships with Cape Verde and the Republic of Moldova, which constitute a new political framework for comprehensive dialogue and balanced cooperation on migration, gathering in a coordinated and reciprocal effort national, Community and third countries initiatives. The Council acknowledges the potential of the Mobility Partnership as a tool for increased coordination and synergy between national and Community action on migration, and for better achieving cross-sectoral coherence.” Council of the European Union, Council Conclusions on enhancing the Global Approach to Migration, 2873 Justice and Home Affairs Council meeting, Luxembourg 5 and 6 June 2006, p. 4.

72 Indeed, “...[t]he Council invites the Commission, in close liaison with Member States and the Presidency, to take forward exploratory talks with Georgia and Senegal and to open dialogue with these countries, with a view to launching additional Mobility Partnerships.” Ibid.

73 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on circular migration and mobility partnerships between the European Union and third countries, op. cit.

Mobility partnerships are unique in that they are instruments trying to bring together both migration and development concerns, while establishing the framework for “individualised” relations between the EU and specific third countries.

1. The rationale for mobility partnerships:

The Commission adopted the Communication on circular migration and mobility partnerships, following the Conclusions of European Council, according to which: “While respecting the competence of Member States in this area, consideration will be given to how legal migration opportunities can be incorporated into the Union’s external policies in order to develop a balanced partnership with third countries adapted to specific EU Member States’ labour market needs”…

Indeed, in this Communication, the Commission aims at identifying new “approaches to improve the management of legal movements of people between the EU and third countries ready to make significant efforts to fight illegal migration.”

In this respect the Commission’s objective is twofold:

- To explore the extent to which circular migration may help EU Member States address their labour needs;
- To exploit potential positive impacts of migration on development while taking into account the need of sending countries in terms of skill transfers as well as the need to limit the negative consequences of “brain drain”.

Mobility partnerships were referred to in a Commission’s earlier Communication as mobility packages. This Communication then planned that: “once certain conditions have been met, such as cooperation on illegal migration and effective mechanisms for readmission, the objective could be to agree mobility packages with a number of interested third countries which would enable their citizens to have better access to the EU”… Then, the Commission went on to affirm the need “to better organise the various forms of legal movement between the EU and third countries” and concluded that: “Mobility packages would provide the overall framework for managing such movements and would bring together the possibilities

---

75 Communication from the Commission, 23 May 2007, p. 2.
76 Ibid., p. 2.
77 Ibid., p. 3. A question may arise from the Commission’s statement: do these mobility partnerships amount to a certain form of (positive) conditionality?
Therefore, mobility packages, the current mobility partnerships are instruments designed to manage legal migration in a more flexible way. Nevertheless, these instruments are still in line with the fight of illegal immigration as they will only be possible between the EU and third countries willing to help the EU to achieve this objective.

2. The complex legal nature of the mobility partnerships:

The Commission is not really explicit regarding the legal nature of the mobility partnerships. Indeed, the Communication merely refers to the "complex legal nature" of these instruments, given that: "they will involve a series of components, some of which will fall in the Community’s remit and others in the Member States’.”

If mobility partnerships were eventually given a conventional nature (or if they are integrated as part of a future agreement on circular migration between the EU and a third country), it would be very likely that they would take the form of mixed agreements, as legal migration falls essentially within the scope of competence of the Member States. In this respect, it remains to be seen what their material legal basis could be. Indeed, the content of these mobility partnerships will embrace many aspects of the migration policy and of the External relations policies, especially regarding the development policy.

For the time being, it seems that, certainly for practical reasons, mobility partnerships do not take the form of “hard law” instruments, but rather of informal agreements between interested Member States, the European Community and selected third countries. In this sense, they can be considered “atypical” legal instruments. Mobility partnerships are legal in the sense that they encompass (at least political) obligations, of which breaches, could be (at least politically) sanctioned. “Atypical” in that their legal nature is unclear as well as their legal function/status in the already existing legal framework of the EU migration and development policies.

3. The content of the mobility partnerships:

---

78 Ibid.
79 Ibid.
80 Indeed, a conventional nature is foreseen by the Commission to « promote secure circular migration ». Ibid., p. 13.
By concluding mobility partnerships, parties have to commit themselves to respect a certain number of obligations. Obviously, these obligations will vary on a case by case basis depending on the situation of the third country concerned by the mobility partnership.

As regards third countries, their main commitment will concern the fight against illegal immigration. In this respect, the third country concerned with the mobility partnership will have to commit itself to:

- Readmission obligations as both a country of origin and a country of transit.
- Cooperate and give appropriate support to the EU and Member States with respect to the fight against illegal migration.
- Take necessary actions to prevent illegal migration, including the fight against migrant smuggling and human trafficking. Such actions could consist in, for instance, improving border control and management or in improving the security of travel documents against fraud and forgery.
- Encourage return of migrants and reduce incentives for irregular migration, by promoting productive employment and decent work.
- Act in compliance with the fundamental rights of migrants, including those in need for international protection, such as refugees.

As to the EU and the Member States, their obligations seems to be far broader as they entail:

- To improve opportunities for legal migration for nationals of the third country in question, while respecting the principle of Community preference for EU citizens.
- To assist the third country in the development of their capacity to manage legal migration flows (that is to say, by supplying it with financial and/or technical assistance).
- To take necessary measures to address the risk of “brain drain” by promoting circular migration or return migration.
- To improve and relax the procedures for issuing short stay visas to third country nationals by both organising the consular services of the Member States in the country concerned more efficiently and concluding visa facilitating agreements.

4. The complementarity/added value of the mobility partnerships with regard to other instruments:
The most interesting added value of the mobility partnerships is that they take into account the specific relations of the EU with the third country concerned. Therefore, such instruments are “tailored to the [specific needs and capacities] of each relevant third country”\textsuperscript{81}.

Moreover, mobility partnerships are negotiated, which gives even more room for adapting the instruments to particular situation. Even the more so, as their “precise structure (...) should be informed by migration profiles [of the third country concerned] where available”\textsuperscript{82}.

Mobility partnerships are not intended to replace the already existing set of legal instruments that shape the relations between the EU and third countries with respect to migration. Indeed, the Communication clearly states that: “...[E]ach mobility partnership should provide for a follow-up mechanism, making the greatest possible use of existing frameworks for dialogue between the authorities of the country in question, the Commission and interested Member States (e.g. the thematic subcommittee or working groups established under the relevant agreements)”\textsuperscript{83}.

The same consideration also applies to current instruments provided for by secondary legislation, such as the thematic programme on migration, which aims at giving technical as well as financial aid in order to support projects on the field of migration and asylum.

Last but not least, mobility partnerships necessarily include aspects of circular migration\textsuperscript{84}, although this latter element will be dealt with in several other legal instruments, such as some already existing directives (for instance, directive 2003/109/EC on the status of long term residents, the proposals for directives concerning precise areas of legal migration, such as highly skilled migrants or seasonal migrants or potentially future instruments like the circular migration schemes).

**Conclusion : Current issues and challenges**

The fact that the migration and development nexus as an emerging policy field is increasingly taken into account should not lead to forget that the focus remains on the fight against illegal

\textsuperscript{81} Ibid.
\textsuperscript{82} Ibid., pp. 3-4.
\textsuperscript{83} Ibid., p. 3.
\textsuperscript{84} The Commission defines circular migration as « a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries. »
migration, which in the short term means making border management more efficient, and in
the longer term solving the “root causes” of migration pressure. Therefore, the
instrumentalisation of the migration and development nexus in political and institutional
discourse is an existing risk.
All the more so, as the migration and development nexus requires a great degree of coherence
between several area of external as well as internal policies, which is far from being complete
nowadays. Therefore, the way in which the migration and development nexus is dealt with at the policy
level, stresses even more on the forgotten link between illegal migration (“root causes”) and
legal migration (by aiming at setting up a more flexible framework for smoother movement of
people).
Furthermore, the competence issue remains extremely important because the EU scope of
compentence is not at all even, whether one deals with illegal or legal migration. And this issue
is all the more relevant as, the development policy, contrary to the still developing migration
one constitutes an complete policy area with its own objectives, instruments, financial
mechanisms and officials. Accordingly, one great policy challenge would be to identify the
borderline between the two policies (by preserving the integrity of their functioning), while
still being able to take advantage of their interconnections. Indeed, the migration and
development policies are clearly not at the same stage of evolution and were not originally
designed to fulfll the same objectives. It seems that here, the crucial issue will be the need to

---

85 On the need for coherence for the external migration policy, read, Steve Peers, Irregular Immigration and EU
External Relations, in Irregular Migration and Human Rights: Theoretical, European and International
86 According to the European Commission, “[I]nlegal immigration takes a number of forms. Persons may, on the
one hand, seek to enter the territory of the Community illegally by evading immigration controls or by the use of
false documents. In other cases persons who have entered the Community lawfully may place themselves in an
irregular situation by overstaying or otherwise acting in breach of the terms of their admission (e.g. taking up
employment).” Communication from the Commission to the Council and the European Parliament on
Immigration and Asylum Policies, COM(94)23 Final, op. cit., p. 27, pt. 103.
87 As the Commission admits : “With migration pressures increasing and opportunties for legal migration being
increasingly restricted, people wanting to enter the Union are likely to continue to turn to illegal immigration.”
This acknowledgement, however, is followed by an very hard view on the need to firmly combat illegal
immigration. Therefore, the Commission seems to somewhat (willingly?) “miss the point” when it comes to
clarify the links between legal and illegal migration. Communication from the Commission to the Council and
follow an extremely precise and coherent position if the link between migration and development is to be sustainable.

Finally, deriving from the previous observation, a growing issue could be the threat to the vertical coherence (between the Member States and the EU itself) of the links between migration and development as exemplified by mobility partnerships and other types of à la carte arrangements. Indeed, given that immigration law and policy still resides within the scope of competence of Member States (and it is not foreseeable that it will change in the future), the whole possibility to create common policy logics in the developing field of migration and development may be endangered.

As a result, although EU institutional actors (and especially the Commission) appear increasingly involved in the framing of a policy on migration and development, as part of the broader external dimension of the EU migration policy itself, it remains to be seen whether this will lead to further concrete and feasible measures.

---

88 For an interesting overview on the issue of policy coordination to deal with the links between migration and development nexus at the EU level, see LAVENEX S. And KUNZ R., “The Migration-Development Nexus in EU External Relations”, Journal of European Integration, 2008, 30:3, pp. 439-457.

89 For greater insight on the issue of policy coherence in the field of the external dimension of migration in the Commission, read, BOSWELL C., “Evasion, Reinterpretation and Decoupling : European Commission Responses to the ‘External Dimension’of Immigration and Asylum”, op. cit.