

Can the EU Not Promote Free Movement of Persons in the External Action on Migration? Neglecting Regional Mobility in EU-Africa Cooperation

*Eleonora Frasca*¹

Abstract

This chapter investigates to what extent free movement of persons, as a regional integration objective, is promoted in the EU external action when the EU cooperates with non-EU States belonging to other regional international organisations (RIOS) on migration in Africa. The tenets of the EU free movement regime and the importance of free movement of persons for Africa's integration are scrutinised. Focusing on the EU's external migration policies and the external funding financing these policies, EU-Africa migration cooperation illustrates that free movement initiatives in the African region are not taken into account in the EU external migration policies. These external policies are not based on a common understanding of migration, but on the EU's interest in preventing irregular migration from Africa to the EU. This chapter problematises how the objective of preventing irregular migration in EU-Africa cooperation can undermine free movement initiatives in Africa and, in particular, in RIOS.

Keywords

Free movement of persons – Regional migration – Regional integration – EU-Africa cooperation on migration – EU external action – EU external funding – Irregular migration

¹ Dr. Eleonora Frasca, Faculty of Law, Université catholique de Louvain (UCLouvain), Place Montesquieu 2, 1348, Louvain-la-Neuve, Belgium.
E-mail: eleonora.frasca@uclouvain.be.

1 Introduction

The term ‘region’ has several meanings in both European and African contexts.² Similarly, the term ‘migration’ is a multifaceted concept.³ A working definition of regional international organizations (RIOs) has been developed by the International Law Association.⁴ However, the legal relevance of the concept remained debated.⁵ Besides conceptual disputes, it is undoubted that different RIOs provide for different forms of inter-State cooperation on migration.⁶ They can do that *internally*, developing more or less advanced forms of integration (including through international law-making), and they can also engage in *external* forms of cooperation on migration.

The European Union (EU), one of the many RIOs in Europe, developed supra-national legislation on migration, including on free movement of persons. In this field of law, the EU has achieved a high degree of integration, building a border-free area of circulation and gradually developing a set of rights related to free movement, as well as regional citizenship which ‘is destined to be the fundamental status of nationals of the Member States’.⁷ Thanks to specific bilateral agreements, some countries that are not members of the

2 As argued in the International Law Association (ILA) report ‘The International Law of Regional Organizations’, 2024, ‘RIOs can be ‘regional’ in a strict geographical sense, but also that the term ‘regional’ is applied in a wider context beyond the location of its members’, p. 8.

3 On this topic, Samson Maekele Tsegay, ‘International Migration: Definition, Causes and Effects’ (2023) 3 *Genealogy* 7, 61.

4 International Law Association (2024) ‘The International Law of Regional Organizations’ Final Report, 2024. The adopted definition is the following: A Regional International Organization (RIO) is an international organization whose membership consists of States (and international organizations) that share similar geographical, linguistic, cultural, economic, political, legal or other characteristics’, p. 13.

5 See the contribution to this edited volume by Jan Klabbers, ‘The Soft Phenomenology of the Regional International Organisation’.

6 The approach undertaken in this paper is one that focuses on migration as primarily regional phenomenon and on experiences of inter-States of cooperation on migration at the regional level.

7 Article 21 of the Treaty on the Functioning of the European Union (TFEU) establishes that every citizen of the Union has the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and to the measures adopted to give effect to that right, O.J., C 202, 7 June 2016. Article 45 of the Charter of Fundamental Rights of the European Union (CFR) also guarantees the right of every EU citizen to move and reside freely within the territory of the Member States, O.J., C 326, 26 October 2012, 391. See also Case C-184/99 *Grzelczyk* [2001] ECR I-06193 para 31.

EU/RIO can also participate in the EU free movement regime, thus enlarging the personal and geographical scope of free movement rights beyond the EU citizens and territory. The sophisticated free movement regime not only involves EU citizens' movement across the territories of the Member States, but also includes certain categories of non-EU citizens while contextually excluding others.⁸ Moreover, through differentiated integration, EU Member States and non-EU States participate in the border-free Schengen area to different extents. This means that integration in the free movement regime goes beyond the EU Member States, enabling regular migration within the broader European region and different forms of participation in the EU legal order by non-EU States.

In Africa, there are many different RIOS. It is estimated that an average African State is a member of no less than eight different regional bodies.⁹ The African Union (AU), which succeeded the Organization of African Unity (OAU), is an inter-governmental regional organization comprising 55 African Member States.¹⁰ Regional Economic Communities (RECs) are also RIOS, as they consist of groups of neighbouring or nearby African States of a sub-region, and they are considered the building blocks of the African Economic Community.¹¹ The African Union coordinates and harmonises the RECs policies 'for the gradual attainment of the objectives of the Union'.¹² Free movement of persons is one of the objectives of African integration, and several RECs have provisions on free movement within the sub-regional spaces.¹³

8 Third-country nationals who are applicants and beneficiaries of international protection do not enjoy free movement rights across Member States. On this topic, see: Iris Goldner Lang, 'Freedom of movement of EU citizens and mobility rights of third-country nationals: where EU free movement and migration policies intersect or disconnect?' in E. Tsourdi and P. De Bruycker (eds.), *Research Handbook on EU Migration and Asylum Law* (Edward Elgar, 2023) 98.

9 Bruce Byiers, 'Regional organisations in Africa – Mapping multiple memberships' (ECDPM, 15 September 2017), check also the interactive map.

10 Constitutive act of the African Union, done in Lome, Togo, 11 July 2000, and Protocol on amendments to the constitutive act of the African Union, done in Addis Ababa, 3 February 2003.

11 There are eight Regional Economic Communities (RECs) in Africa: the Arab Maghreb Union (AMU), the Community of Sahel-Saharan States (CEN-SAD), the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), the Intergovernmental Authority on Development (IGAD), and the Southern African Development Community (SADC).

12 Article 3 (1) of the Constitutive act of the African Union.

13 Articles 2, 27(1), 27(2) of the Treaty establishing the ECOWAS. Article 2 of the Protocol on the Free Movement of Persons, the Right of Residence and Establishment of the ECO-

One might wonder if (regional) free movement law and integration techniques – and the undoubted expertise that the EU has developed in abolishing obstacles to the free movement of persons in and beyond the regional organization – could be promoted among other regional organizations worldwide, and how. Such promotion, on the one hand, could derive from Article 21(1) TEU and, on the other hand, from recent global developments in collaborative solutions to migration governance.¹⁴

Article 21(1) TEU not only provides that the EU values must be safeguarded in the EU's international relations, but also links these values to a more extensive set of principles that should guide the Union's action on the international scene.¹⁵ These are 'democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law'.¹⁶ While the reference to the notion of 'fundamental freedoms' in this specific part of the Treaty does not concern 'freedom of movement of persons', one could argue that the fundamental freedom of movement of persons is, more broadly, one of the principles that have inspired the Union's 'own creation, development and enlargement'. The second subparagraph of Article 21(1) TEU requires the Union to 'develop relations and build partnership with third countries, and international, *regional* or global organizations which share the principles referred to in the first subparagraph'.¹⁷ Free movement at the regional level could be considered a 'principle' that the EU shares with many other regional organizations.

WAS. Article 40 of the Treaty Establishing the ECCAS. Article 3 and 10 of the SADC Protocol on Facilitation of Movement of Persons under. Articles 2 (4(b), (c), (d), and (e)) of the Protocol on the Establishment of EAC. Articles 3, 9, 11, and 12 of the COMESA Protocol on the Free Movement of Persons, Labour, Services, the Right of Establishment and Residence. Article 3 of the Protocol on Free Movement of Persons in the IGAD. Article 2 of the Treaty Establishing the AMU. Article 3(f) of the Treaty Establishing the CEN-SAD. On this topic, Sonja Nita, 'Regional free movement of people: The case of African Regional Economic Communities' (2013) 3 Regions and Cohesion 8.

14 On this topic, see Vincent Chetail, 'The politics of soft law: Progress and pitfall of the Global compact for safe, orderly, and regular migration' [2023] *Frontiers in Human Dynamics*.

15 Treaty on European Union (consolidated version 2016), O.J., C 202, 7 June 2016. For a commentary on Article 21 TEU, see Thomas Ramopoulos, 'Article 21 TEU', in M. Kellerbauer, M. Klamert, and J. Tomkin (eds.), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford Academic 2019).

16 Article 21(1) TEU.

17 *Ibid.*, emphasis added.

On the other hand, promoting free movement of persons in other regional contexts might result from recent global developments in international migration law. One of the principles established in the Global Compact for Safe, Orderly and Regular Migration (GCM) is that of ‘advancing a common understanding of migration’ in which the production of knowledge and the understanding of migration should be a joint effort.¹⁸ How States come together to build regional free movement regimes is an important factor contributing to a shared understanding of migration.

This chapter explores if and to what extent free movement, as a regional integration objective, is taken into account and potentially promoted in EU-Africa cooperation on migration. The interest of this research question lies in the fact that migration, as a global phenomenon, requires policies that respect the rights of migrants and provide opportunities to migrate legally and safely. For now, regional free movement initiatives are where these policies take effect and develop in a way that contributes to regional development. The regional dimension is quintessential to migration and migration policies.

To the contrary, by over-focusing on preventing Africa-to-Europe migration, EU external migration policies pose a disruptive challenge to regional migration and existing free movement initiatives in the African continent. These policies are based on the EU’s interest of controlling irregular migration rather than on a ‘common understanding of migration, shared responsibilities and unity of purpose regarding migration’, as the Global Compact on Migration requires.¹⁹ To demonstrate how the objective of preventing irregular migration in EU-Africa cooperation can undermine free movement initiatives in Africa and, in particular, in RIOS with provisions on free movement of persons, the chapter is structured as follows.

In the next section on the regionalization of migration, the tenets of the EU free movement regime and the importance of free movement of persons for Africa’s integration are briefly presented. The terminology ‘mobility’ vs ‘migration’ is discussed (Section 2). The following section shows that the EU’s understanding of how free movement regimes contribute to regional development is currently absent from region-to-region cooperation, both in discourse and practice (Section 3). Building a ‘common understanding of migration’ is one of the guiding principles of the GCM. It calls for ‘international efforts’ in strengthening the ‘knowledge and analysis of migration’ as ‘shared understandings will

18 United Nations General Assembly, Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195), 19 December 2018.

19 *Ibid.*, point 9.

improve policies that unlock the potential of sustainable development for all'.²⁰

This chapter will argue that the expertise that the Union has built up in developing its free movement regime is not or seldomly included in the understanding of migration promoted in the EU external action, even where conditions are there to reinforce shared knowledge on the issue. The EU external migration policies implemented in the African continent mainly aim to prevent irregular migration from Africa to Europe. This objective is pursued through policies of so-called externalization, securitization and informalization of migration law, which impact *all* migration from Africa, including intra-African regional migration.²¹

2 The Regionalization of Migration: Free Movement Regimes

In migration studies, the regional dimension is key to understanding the migratory phenomena, as international migration occurs primarily within regions.²² As explained in the World Migration Report, '[n]otwithstanding increasing globalization, geography is one of the most significant factors shaping patterns of migration and displacement. Many people who migrate across borders do so within their immediate regions, to countries that are close by'.²³ However, regional integration comes with the cost of 'an intensification of border control at the region's external frontiers and a tightening of its asylum and immigration policy'.²⁴

High degrees of inequalities characterise migrants' access to the so-called Global Mobility Infrastructure.²⁵ As a matter of fact, migration is far from

²⁰ *Ibid.*, point 10.

²¹ Africa-to-Europe migration only represents a small part of African migration worldwide, the majority being intra-Africa migration. See UN DESA, 'Global Migration Database'. Similarly, irregular migration to the EU only represents a small part of all migration to the EU. See Eurostat, 'Migration and migrant population statistics'. See also IOM and the African Union, 'Connecting the Threads: Linking policy, practice and the welfare of the African migrant', 2nd Africa migration report, 2024: 'Migrants from West, Central, Southern, and East Africa predominantly reside in neighbouring African nations'.

²² On this topic, see Andrew Geddes, Marcia Vera Espinoza, Leila Hadj Abdou and Leiza Brumat, *The dynamics of regional migration governance* (Edward Elgar, 2019).

²³ McAuliffe, M. and L.A. Oucho (eds.), 2024. *World Migration Report* (IOM, 2024) 55.

²⁴ Jean-Yves Carlier, 'General Report: Regional Integration', in M.-C. Foblets, J.-Y. Carlier (eds.), *Law and Migration in a changing world* (Springer, 2022), 8.

²⁵ Thomas Spijkerboer, 'The Global Mobility Infrastructure: Reconceptualising the Externalisation of Migration Control' (2018) 20 *European Journal of Migration and Law* 452.

being liberalised at the global level. If the idea of a borderless *world* is utopian, that of borderless *regions* already shows its feasibility.²⁶ Through regionalization, partial liberalization of migration has happened in many parts of the world.²⁷ In this context, regionalization can be broadly understood as a set of legal measures taken at the regional level – through international agreements or more legally complex transfer of competence to a RIO – to address regional migration, with a view to facilitating free movement of nationals of the States members of the RIO.

Regional answers to migration can profoundly impact regional development, bringing economic prosperity and fostering regional identities.²⁸ Through time, groups of States have come together in regional fora to discuss and potentially adopt *rules* – often gradually – that aim to facilitate cross-border movement at the regional level. Such rules range from lighter measures in terms of international cooperation, such as the facilitation of inter-regional short-term travel to visa liberalization, to progressively deeper measures, such as the establishment of fully-fledged free movement rights and regional citizenship.²⁹

Due to the importance of the regional dimension in the regulation of migration, it is not surprising that Regional Consultative Processes (RCPs) have emerged as important fora in developing inter-States dialogues on migration, which can eventually stimulate and lead to the adoption of formal binding rules. RCPs are informal cooperation structures where States come together at the inter-governmental level. They are informal and non-binding, but nonetheless crucial to building a shared understanding of migration.³⁰ In the New York Declaration for Refugees and Migrants of 2016, RCPs were identified

26 On this topic, Sonja Nita *et al.* (eds.), *Migration, free movement and regional integration* (UNESCO Publishing and UNU Institute on Comparative Regional Integration Studies 2017).

27 Sonja Nita, 'Free movement of people within regional integration processes: A comparative view', in S. Nita *et al.*, *Migration, free movement and regional integration* (UNESCO Publishing and UNU Institute on Comparative Regional Integration Studies, 2017) 3.

28 Organisation for Economic Cooperation and Development (OECD), *The Contribution of Migration to Regional Development*, *OECD Regional Development Studies* (OECD Publishing 2022).

29 Sandra Lavenex, Flavia Jurje, Terri E Givens and Ross Buchanan, 'Regional Migration Governance' in T. A. Börzel and T. Risse (eds.), *The Oxford Handbook of Comparative Regionalism* (Oxford University Press, 2016) 457.

30 It should be noted that this dynamic was followed by the EU Member States for the creation of the Schengen area. The Schengen Convention was initially conceived in informal structures of cooperation, governed by unanimity rules and decided upon in inter-governmental settings, and later brought into EU law. On this topic, Elspeth Guild

as having a significant role in the preparation and negotiations of the Global Compact for Safe, Orderly and Regular Migration (GCM).³¹ Moreover, the GCM is subject to rounds of *regional* reviews where States commit to reviewing the progress made in the GCM's implementation within their respective regions. Both the EU and the AU have developed or are developing free movement regimes, as mobility is seen as a factor contributing to regional integration.

2.1 *The EU Free Movement Regime and the Broader European Region*

The EU is the most prominent example of an intra-regional free movement regime. This complex field of EU law results from two entangled developments: freedom of movement in the EU internal market and the abolition of internal border controls in the Area of Freedom, Security and Justice.³² On the one hand, the freedom of movement of persons, recognised as one of the four fundamental freedoms of the EU internal market, has evolved progressively and is now one of the most cherished rights of EU citizens.³³ On the other hand, establishing an Area of Freedom, Security and Justice where internal border controls have been abolished, required the creation of an EU (common) migration policy to enforce border controls at the EU's external borders. These parallel developments created crucial differences in relation to migration, exemplified by the dichotomous legal categories in which EU law qualifies international migration (i.e., EU citizens/third-country nationals, free movement/migration, irregular migration/legal mobility, etc.).³⁴

and Paul Minderhoud (eds.) *The First Decade of EU Migration and Asylum Law* (Martinus Nijhoff, 2012).

31 See para 54 of the New York Declaration for Refugees and Migrants, 19 September 2016: 'We will build on existing bilateral, *regional* and global cooperation and partnership mechanisms [...]. We will strengthen cooperation to this end [...], including through *regional consultative processes*' (emphasis added). See also para 14 of the Annex II to the New York Declaration: 'Regional consultations in support of the negotiations would be desirable, including through existing consultative processes and mechanisms, where appropriate'.

32 Philippe De Bruycker, 'The European Union: from freedom of movement in the internal market to the abolition of internal borders in the area of freedom, security and justice' in S. Nita et al. (eds.), *Migration, free movement and regional integration* (UNESCO Publishing and UNU Institute on Comparative Regional Integration Studies, 2017) 287.

33 According to the Eurobarometer, 'a large majority of respondents cherish the free movement of people within the EU, with 89% agreeing that it benefits them personally and 83% that it benefits the economy'. See Commission, Eurobarometer on citizenship and democracy, December 2023 (2971/FL528).

34 On this topic, Elspeth Guild, *The Legal Elements of European Identity: EU Citizenship and Migration Law* (Wolters Kluwer, 2004).

Freedom of movement within the EU/RIO is defined differently depending on whether the person circulating is an EU citizen or a third-country national. In addition, depending on the third country of origin, different rules apply with regard to freedom of movement – so that some countries bordering the EU are linked to the EU free movement regime by rules that extend, in whole or in part, mobility rights to these non-EU countries' citizens. In other words, the current EU free movement regime results, on the one hand, from the progressive and broad interpretation of the notion of 'freedom of movement', as an EU law principle and as a right which belongs primarily to the EU citizens (nationals of an EU Member States) – and, on the other hand, from a patchwork of international agreements, including trade agreements, with non-EU States and internal legislation which allows several but not all categories of non-EU citizens (third-country nationals) to enjoy a set of mobility rights to and within the EU.³⁵

As for EU citizens, while, initially, free movement was conceived to protect, essentially, *workers* – economically active EU citizens circulating within the regional organization, the then European Economic Community, for economic reasons –, it progressively expanded its personal scope to become a regime related to free movement of *persons*. As early as 1986, the Court of Justice of the European Union identified the freedom of movement not merely as an 'instrument of economic integration' but as 'one of the fundamental principles of the Community'.³⁶

In parallel, being a major regional integration achievement, the EU promotes free movement of persons in its external relations to third countries geographically located in Europe, which have been integrated or could potentially integrate into the EU free movement regime. Mobility is a core aspect of the EU cooperation with third countries that are not (or not yet) part of the EU/RIO. This promotion has both a symbolic and economic value for countries cooperating with the EU, especially in the context of the EU Neighbourhood Policy and enlargement negotiations. Among these groups of countries, a distinction is drawn between countries of the European Economic Area and Switzerland (a), countries which achieved visa liberalization for their citizens who enjoy visa-free travel to the Schengen area, such as neighbouring States of the Western Balkans and the Eastern Partnership (b) and countries to which visa liberalization has been promised but not fulfilled because of protracted

35 On this topic, Jean-Yves Carlier and Marie-Claire Foblets, 'General Report: Regional Integration', in M.-C. Foblets, J.-Y. Carlier (eds.), *Law and Migration in a changing world* (Springer, 2022), 7–9.

36 Case C 66/85 *Lawrie Blum* [1986] ECR 02121 paras 11 and 16.

negotiations on other aspects of migration cooperation, such as neighbouring States of the Euro-Mediterranean Partnership (c).³⁷ It is no coincidence that the latter group of countries, although physically close to the European Union, does not belong to the geographical region 'Europe'.

2.1.1 Free Movement and Schengen-Associated Countries

The EU has integrated certain non-EU countries into the area without internal border controls. Several countries participate in the EU single market thanks to international agreements on free movement and Schengen membership, their participation resulting in a form of *de jure* integration into the EU free movement regime.³⁸ Iceland, Liechtenstein and Norway concluded the European Economic Area agreement, which includes provisions on free movement of persons.³⁹ Similarly, Switzerland concluded a set of bilateral treaties with the EU, which also cover free movement of persons.⁴⁰ The four countries – Iceland, Liechtenstein, Norway and Switzerland – have signed association agreements with the EU to be members of the Schengen area. They apply EU rules relating to the crossing of borders and have harmonised the conditions of entry and short stay visas and visa types.

2.1.2 Visa Liberalization and States Candidate to the EU Membership

With countries of the Western Balkans and with countries of the Eastern Partnership, the EU has resorted to methods of legal 'co-option'.⁴¹ The fulfilment of the promise of visa liberalization of nationals of these countries depends on their progress in implementing domestic reforms in fields related to respect for the rule of law, the fight against organised crime, and migration governance.⁴² In this context, their EU membership is at stake. This normative

37 Daniel Thym, *European Migration Law* (Oxford University Press, 2023), 555.

38 On this topic, see Bruno de Witte, Andrea Ott and Ellen Vos (eds.) *Between flexibility and disintegration: the trajectory of differentiation in EU law* (Edward Elgar, 2017).

39 Agreement on the European Economic Area, O.J. L 1, 3 January 1994, 3–522.

40 Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons in the sectors free movement of persons, air and land transport, public procurement, scientific and technological cooperation, mutual recognition in relation to conformity assessment, and trade in agricultural products, O.J. L 353, 31 December 2009, 71–90.

41 On the basis of visa liberalization dialogues, the EU granted visa-free travel to nationals of Montenegro, Serbia and North Macedonia in December 2009, Albania and Bosnia and Herzegovina in 2010, Moldova in 2014, Georgia in 2017 and Ukraine in 2017, Kosovo in 2024.

42 For the kind of normative alignment required, see European Commission, 'EU Action Plan on the Western Balkans', press release of 8 December 2022.

alignment foresees their full adoption of EU law if and when these countries will be granted accession. The European Commission claims that visa-free travel for their nationals

provides a strong incentive for Western Balkan partners to intensify their fundamental reform efforts. As such, it greatly helps to advance the accession process. It is a powerful tool in facilitating people-to-people contacts and in strengthening ties between the EU and citizens of visa-free countries.⁴³

The ‘strategic use’ of visa-free travel allows the EU to ‘persuade third States to support migration management by means of domestic reforms’.⁴⁴ Non-EU countries’ compliance with the Schengen rules is attained in exchange for access to short-stay Schengen visas for their nationals, *de facto* integrating those third-country nationals in the EU free movement regime. The EU has formally cooperated with these countries by combining readmission agreements (EURAS) with visa facilitation agreements.⁴⁵ The negotiations of an EU visa facilitation agreement followed the entry into force of an EURA. However, to obtain visa facilitation agreements granting their citizens (limited) mobility rights to the European Union, non-EU countries must align their visa rules to the Schengen *acquis*.⁴⁶ Marise Cremona and Jorrit Rijpma refer to this phenomenon as ‘the promotion, by the EU, of its own *acquis* towards third countries, and their adoption of that *acquis* into their own domestic legal orders’.⁴⁷ As such, several non-EU countries of the broader European region are partially incorporated into the EU free movement regime. They have indirectly adopted EU rules into their domestic legal orders as a result of this external promotion by the Union.

43 European Commission, ‘Visa liberalisation: Commission reports on the continued fulfilment of requirements by the Western Balkans and Eastern Partnership countries’, press release of 10 July 2020.

44 Daniel Thym, *European Migration Law* (Oxford University Press, 2023), 283.

45 On the topic of readmission agreements, see Eleonora Frasca and Emanuela Roman, ‘The Informalisation of EU Readmission Policy: Eclipsing Human Rights Protection under the Shadow of Informality and Conditionality’ (2023) 8 *European Papers* 2, 931–957.

46 Lena Laube, ‘The Relational Dimension of Externalizing Border Control: Selective Visa Policies in Migration and Border Diplomacy’ (2019) 7 *Comparative Migration Studies* 1.

47 Marise Cremona and Jorrit Rijpma, ‘The Extra-Territorialisation of EU Migration Policies and the Rule of Law’ (EUI Working Papers, 2007), 1, 15.

2.1.3 Standoff with Associated Countries of the Euro-Mediterranean Partnership

Differently, with associated countries of the Southern European Neighbourhood, such as Morocco, Tunisia and Algeria, integration on mobility is not achieved, resulting in unresolved tension.⁴⁸ The European Commission obtained its first negotiating mandate for securing an EURA with Morocco in 2000, and a mandate for the signature of a visa facilitation agreement in 2013, after the adoption of the EU-Morocco Mobility Partnership.⁴⁹ Despite several rounds of negotiations held in more than two decades, no agreement has been adopted so far.⁵⁰ In 2016, parallel negotiations for a visa facilitation and a readmission agreement started with Tunisia, but soon stagnated.⁵¹

The case of Morocco and Tunisia is interesting. Until the creation of the Schengen area and the Europeanization of visa policy, citizens of both countries could travel freely to neighbouring Mediterranean EU countries. Visa obligations were introduced for citizens of these countries at the time when the EU visa policy was established. Therefore, free movement in the Mediterranean, which was once possible, came to a standstill.⁵² There is no prospect of integrating the citizens of these countries into the EU free movement regime. This circumstance makes these countries reluctant to cooperate with the Union in other aspects of migration policies – at least through formal means – as it is the case for readmission cooperation.

2.2 *Free Movement Initiatives in Africa*

On a continental level, initiatives related to the free movement of persons accompany the history of Africa's regional integration, even if the full implementation of a continental free movement regime is far from being accomplished.⁵³ As a regional integration objective, free movement has historically

48 See Tasnim Abderrahim, 'A Tale of Two Agreements: EU Migration Cooperation with Morocco and Tunisia' (2019) *PapersIEMed* 7.

49 Migration and mobility partnership signed between the EU and Morocco, 7 June 2013.

50 For the example of Morocco see: Sergio Carrera and others, 'EU-Morocco Cooperation on Readmission, Borders and Protection: A Model to Follow?' (2016) *CEPS* 87; Nora el Qadim, *Le gouvernement asymétrique des migrations Maroc/Union européenne* (Dalloz, 2015).

51 European Commission, 'Brussels the EU and Tunisia start negotiations on visa facilitation and readmission', press release of 12 October 2016.

52 On this topic, see Simone Paoli, 'The Schengen Agreements and their Impact on Euro-Mediterranean Relations. The Case of Italy and the Maghreb' (2015) *Journal of European Integration History*, 125.

53 See Ikechukwu P Chime et al., 'The AU Free Movement Protocol: Challenges in Its Implementation' (2023) *Journal of African Law*, 1; Alan Hirsch, 'The African Union's

been linked to the intellectual and political movement of Pan-Africanism and nationalist movements across the continent, as a contestation of the African States' borders, a legacy of colonialism.⁵⁴ Through time, both hard and soft legal initiatives have supported this endeavour.⁵⁵ In the context of the realization of African Union 'Agenda 2063', the leading continental political framework, it is acknowledged that

free movement of people is a pillar of African integration and accelerated growth of intra-African trade. This programme aims at transforming Africa's laws, which remain generally restrictive on movement of people despite political commitments to bring down borders with the view to promoting the issuance of visas by Member States and enhance free movement of all African citizens in all African countries by 2018.⁵⁶

On the hard law spectrum, the Africa Union adopted a Protocol relating to the free movement of persons in 2018, advancing regional integration on mobility, notwithstanding current practical challenges.⁵⁷ Other initiatives concern the African States' facilitation of inter-regional travel through liberalization or relaxation of visa requirements.⁵⁸ On the soft law spectrum, the African Union

Free Movement of Persons Protocol: Why has it faltered and how can its objectives be achieved?' (2021) 28 *South African Journal of International Affairs* 497; Samuel Kehinde Okunade and Olusola Ogunnubi, 'The African Union Protocol on Free Movement' (2019) 8 *Journal of African Union Studies*, 73.

- 54 Alan Hirsch, 'A strategic consideration of the African Union Free Movement of Persons Protocol and other initiatives towards the freer movement of people in Africa' (South African Institute of International Affairs, 2021).
- 55 African Union, 50th Anniversary – Solemn Declaration, 26 May 2013.
- 56 African Union, 'A shared strategic framework for inclusive growth and sustainable development and a global strategy to optimize the use of Africa's resources for the benefit of all Africans', also known as 'Agenda 2063. The African we want by 2063', September 2015, 1, 107.
- 57 Treaty Establishing the African Economic Community Relating to the Free Movement of Persons, Right of Residence and Right of Establishment (AU Free Movement Protocol), signed in Addis Ababa, 29 January 2018. The Protocol codified the binding commitment expressed in 1991 in the Treaty establishing the African Economic Community. Major challenges concern signature and ratification. Fifteen ratifications are required for the Protocol to come into force, but this threshold has not yet been reached.
- 58 On this topic, see the Africa Visa Openness Index (AVOI), which measures the extent to which each country in Africa is open to visitors from other African countries, available at www.visaopenness.org. African Development Bank and African Union Commission, Africa Visa Openness Report, 12 December 2023. The report of 2023 established that

Passport was launched 2016 to facilitate mobility within the continent.⁵⁹ A specific African Union's Migration Policy Framework shows that regional mobility sits high in the priorities of the African Union, and the Pan African Forum on Migration (PAFOM) – the continental inter-state dialogue – testifies to the importance of regional cooperation structures in fostering a common understanding of migration.⁶⁰ These 'pre-law' efforts have great potential, as they can lay the foundation for further strengthening regional free movement initiatives in Africa.

The African Regional Economic Communities (RECs) developed more advanced forms of free movement regimes at the sub-regional level. The African Union recognises RECs as essential vehicles for African integration, although their level of integration, institutional structures and centre of interest might differ.⁶¹ Free movement is one aspect of integration in the RECs, through the recognition of fully-fledged free movement rights as well as community citizenship.⁶² For instance, already in 1979, the Economic Community of West African States (ECOWAS) made free movement of persons a reality for the citizens of its Member States, and regional cross-border movements within the sub-region are part of the identity of West Africans.⁶³ The ECOWAS Protocol on free movement of persons and the right of residence and establishment allows for a right to entry and a 90 days visa-free stay.⁶⁴ One might wonder if

the majority of the African countries 'currently offer visa-free entry privileges to the citizens of at least one other country'. Four countries 'offer a visa on arrival to the citizens of *all* other African countries'. Roughly 60% of the African countries 'offer visa-free travel to at least 10 other countries' and other four countries 'now offer visa-free entry to the citizens of the rest of the continent'.

59 African Union Assembly, Decision on free movement of persons and the African passport, AU/Dec.607 (XXVII), 1.

60 Migration Policy Framework for Africa and Plan of Action (2018–2030), which recommends 'the harmonization and strengthened implementation of AU and REC free movement provisions related to residence and establishment, as well as enhanced cooperation among Member States in regard to the facilitation of free movement', 5.

61 On this topic, see Inocent Moyo, Jussi P Laine, Christopher Changwe Nshimbi (eds.) *Intra-Africa Migrations Reimagining Borders and Migration Management* (Routledge 2021)

62 The majority of the Treaties establishing the RECs have provisions on free movement of persons and labour, the rights of establishment, and residence, and they provide for the gradual realization of these rights. See footnote 7.

63 Achille Mbembe, 'The idea of a borderless world', Chimurenga's Chronic, on circulations and the African imagination of a borderless world, October 2018.

64 ECOWAS, Protocol Relating to Free Movement of Persons, Residence and Establishment, 29 May 1979, A/P 1/5/79. On this topic, see Aderanti Adepoju, Alistair Boulton and Mariah Levin, 'Promoting integration through mobility: free movement under ECOWAS' (2010) 29 Refugee Survey Quarterly 120.

the importance of free movement regimes in both the EU and the AU is currently reflected in region-to-region cooperation.

2.3 *A Common Understanding of Regional Migration?*

One of the principles of the Global Compact for Migration is that of ‘advancing a common understanding of migration’ in which the production of knowledge about migration should be a joint effort.⁶⁵ Andrew Geddes and others observed that

there are important instances of regional cooperation to promote mobility or free movement between participating states, which introduces a legal and political distinction between those who move between states within the regional grouping (labelled *mobility*) and those who move from outside this regional setting (labelled *international migration*).⁶⁶

This means that the regional ‘element’ in migration law is so vital that it gives the same phenomenon a particular semantic. This distinction in terminology is particularly significant in the EU context, and it is mirrored in EU law. The free movement of EU citizens *and* migration are carefully distinct from a legal perspective. This dichotomous view of migration can be found in legal categories such as EU citizens as opposed to third-country nationals or the risk of irregular migration as opposed to the promotion of legal mobility opportunities and visa-free travel. While in law, the categories are more complex than

65 Global Compact for Migration, point 10: ‘We shared our realities and heard diverse voices, enriching and shaping our common understanding of this complex phenomenon. We learned that migration is a defining feature of our globalized world, connecting societies within and across all regions, making us all countries of origin, transit and destination. We recognize that there is a continuous need for international efforts to strengthen our knowledge and analysis of migration, as shared understandings will improve policies that unlock the potential of sustainable development for all. We must collect and disseminate quality data. We must ensure that current and potential migrants are fully informed about their rights, obligations and options for safe, orderly and regular migration, and are aware of the risks of irregular migration. We also must provide all our citizens with access to objective, evidence-based, clear information about the benefits and challenges of migration, with a view to dispelling misleading narratives that generate negative perceptions of migrants’. See, for instance, International Organization for Migration (IOM), ‘Advancing a common understanding of migration governance across regions’, Assessment Report (IOM, 2019).

66 Andrew Geddes, Marcia Vera Espinoza, Leila Hadj Abdou and Leiza Brumat, *The dynamics of regional migration governance* (Edgar Elgar Publishing, 2019) 2, emphasis added.

dichotomies, they broadly reflect the regional or non-regional nature of migration.⁶⁷ Citizens of the countries who are geographically located in Europe might aspire to gradual access to mobility rights – from partial integration of citizens of States candidates for the EU membership to full integration of citizens of non-EU countries who are simultaneously Schengen members. A value judgment is attached to the concepts of ‘migration’ and ‘mobility’, where mobility is often presented as good and positive and migration as bad and risky.⁶⁸ Iris Goldner Lang observes that

[w]hereas one refers to ‘free movement rights’ in relation to EU citizens, third-country nationals are associated with the term ‘migration’. The words ‘rights’ and ‘free’ are consciously omitted in reference to ‘migration’. The term ‘mobility’, on the other hand, can be used in relation to both EU citizens and third-country nationals, but it seems to refer exclusively to ‘desirable’ migrants (e.g., tourists, students, researchers, business people, and short-term visitors) and is of a circular and temporary character.⁶⁹

This is not *per se* a problem, but the distinction can be criticised when EU external migration policies undermine mobility within non-EU regional spaces, as is the case in EU-Africa cooperation, where regional mobility dynamics are often neglected. Moreover, at the global level, the GCM calls for ‘facilitating mobility’, making migration policies more coherent.⁷⁰

3 EU-Africa Cooperation on Migration

In the context of EU-Africa cooperation, for a long time, migration featured as one of the main cooperation objectives, as evidenced in the Cotonou

67 On this topic, see Godfried Engbersen, Arjen Leerkes, Peter Scholten, Erik Snel, ‘The intra-EU mobility regime: Differentiation, stratification and contradictions’ (2017) 5 *Migration Studies* 3, 337–355.

68 Sergio Carrera, Raluca Radescu and Natasja Reslow, ‘EU external migration policies. A preliminary mapping of the instruments, the actors and their priorities’ (2015) Report for the EURA-net project, 12.

69 Iris Goldner Lang, ‘The European Union and migration: An interplay of national, regional, and international law’ (2017) 111 *AJIL Unbound* 509, 512.

70 François Crépeau, ‘Towards a mobile and diverse world: “facilitating mobility” as a central objective of the global compact on migration’ (2018) 30 *International Journal of Refugee Law*, 650.

international agreement,⁷¹ now substituted by the Samoa agreement,⁷² as well as in policy frameworks such as the EU-Africa Strategy (2007)⁷³ and the new EU-Africa Strategy (2020).⁷⁴ The African States were the primary targets of the external dimension of EU migration law, as testified in the subsequent policy frameworks: the 2005 Global Approach on Migration (GAM),⁷⁵ substituted in 2012 by the Global Approach on Migration and Mobility (GAMM) in 2012.⁷⁶ The renaming of the GAM in GAMM had also a symbolic significance. It officially dissociated the concept of ‘migration’ from the concept of ‘mobility’ in the EU external policy discourse towards African migration:

[m]igration is hence related to border controls, expulsions and readmission, while mobility is [...] a much broader concept aimed at facilitating visas for certain categories of third-country nationals, which may be of strategic importance for the Union such as tourists, business communities or scientists.⁷⁷

71 Article 13 (1) of the Cotonou agreement established that ‘1. The issue of migration shall be the subject of in-depth dialogue in the framework of the ACP-EU Partnership’. Partnership agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000, O.J., L 317, 15 December 2000, 3–353.

72 The Samoa agreement was signed on 15 November 2023, but it has not yet been ratified. It contains several provisions on migration. See Council Decision (EU) 2023/2861 of 20 July 2023 on the signing, on behalf of the European Union, and provisional application of the Partnership Agreement between the European Union and its Member States, of the one part, and the Members of the Organization of African, Caribbean and Pacific States, of the other part ST/8371/2023/DCL/1, O.J. L, 2023/2861, 28 December 2023.

73 Commission, Communication ‘EU Strategy for Africa: Towards a Euro-African pact to accelerate Africa’s development’, SEC(2005)1255 and Communication ‘From Cairo to Lisbon – The EU-Africa Strategic Partnership’, SEC(2007) 855.

74 Commission and the High Representative of the Union for Foreign Affairs and Security Policy, Joint communication ‘Towards a comprehensive Strategy with Africa’, JOIN/2020/4 final, 9 March 2020.

75 European Council, Presidency Conclusions, Brussels, 15–16 December 2005, point 4 and Annex I, ‘Global Approach to Migration: Priority actions focusing on Africa and the Mediterranean’.

76 Commission, ‘The Global Approach to Migration and Mobility’, COM (2011) 743, 18 November 2011.

77 Sergio Carrera, Raluca Radescu and Natasja Reslow, ‘EU external migration policies. A preliminary mapping of the instruments, the actors and their priorities’ (2015) Report for the EURA-net project, 1, 12.

These policy frameworks were complemented by the New Migration Partnership Framework in 2016⁷⁸ and the EU Pact on Migration and Asylum of 2020, making migration cooperation with third countries even more central to the EU migration policies.⁷⁹ Numerous studies on EU-Africa relations discuss the broader legal and policy implications of such frameworks, critically engaging with the unequal structures of cooperation and power imbalance.⁸⁰ The EU approaches Africa-to-Europe migration mainly as a single issue, that of irregular migration, which must be prevented. Free movement within and from the African continent, rather than an exercise of (regional) freedom, is treated with suspicion and perceived as a potential threat to the Union's security.⁸¹ According to EU law, virtually all African citizens embed a potential migratory risk.⁸² This particular understanding of African migration, grounded in the idea of containment, is reflected in the Union's external action.⁸³ For instance, the EU agency Frontex runs different projects to support the African States in

78 Commission, 'Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration', COM (2016) 385.

79 Commission, 'Communication on a New Pact on Migration and Asylum', COM (2020) 609.

80 Toni Haastrup, Luis Mah and Niall Duggan (eds.), *The Routledge Handbook of EU-Africa Relations* (Routledge, 2021); Valeria Fargion and Mamoudou Gazibo (eds.), *Revisiting EU-Africa Relations in a Changing World* (Edward Elgar Publishing, 2021); Adekeye Adebajo and Kaye Whiteman, *The EU and Africa. From Eurafrique to Afro-Europa* (Hurst, 2012); Maurizio Carbone, *The European Union in Africa. Incoherent policies, asymmetrical partnership, declining relevance?* (Manchester University Press, 2016).

81 Ferruccio Pastore and Emanuela Roman, 'Migration Policies and Threat-based Extraversion. Analysing the Impact of European Externalisation Policies on African Polities' (2020) 36 *Revue européenne des migrations internationales* 133.

82 While all EU citizens can visit the majority of the African States without arranging a visa prior to travel, all African States figure on the EU common list of countries whose citizens must secure a visa to travel to an EU Member State for a short stay, the so-called Schengen visa. See Council Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (codification) PE/50/2018/REV/1, O.J., L 303, 28 November 2018, 39–58. According to Schengen visa statistics, the refusal rate of visa applications is the highest for African countries than in any other region of the world. See www.statistics.schengenvisainfo.com. On the broader topic, see Esra Demir-Gürsel and Jens Theilen, 'Framing Europe in Human Rights, Framing Human Rights in Europe: Authoritarianism, Migration, and Climate Change in the Council of Europe' (2023) 12 *ESIL reflections* 1.

83 Iriann Freemantle and Loren B Landau, 'Migration and the African Timespace Trap: More Europe for the World, Less World for Europe' (2022) 27 *Geopolitics* 791.

collecting data and sharing information about border security threats affecting the African countries and the EU.⁸⁴

3.1 *Normative Misalignment in EU-Africa Cooperation on Migration*

Most EU migration cooperation is directed towards preventing irregular migration, epitomised by the EU's request that the African States reaffirm their sovereign control over borders.⁸⁵ This objective is pursued through policies of so-called 'externalization', 'securitization' and 'informalization' of migration law. While none of these terms has a single definition, externalization is the process whereby the EU and its Member States perform their border control functions extra-territorially or through delegation to a third party,⁸⁶ securitization is the process whereby migration emerged as a security issue,⁸⁷ and informalization of law-making is the process whereby the EU concludes international agreements on migration with third countries bypassing substantive and/or procedural rules.⁸⁸ Many studies have the merit of demystifying Europe-to-Africa migration as well as irregular migration.⁸⁹ The richness and importance of mobility within the African continent are accurately docu-

84 Africa-Frontex Intelligence Community (AFIC). – Can you refer to the official document establishing this?

85 For a critical analysis: Elaine Fahey, 'Unravelling the subjects and objects of EU external migration law' in D. Bigo et al. (eds.) *The Routledge Handbook of Critical European Studies* (Routledge 2020) 441.

86 Among many, Violeta Moreno-Lax and Martin Lemberg-Pedersen, 'Border-induced displacement: The ethical and legal implications of distance-creation through externalisation' (2019) 56 *Questions of International Law* 5.

87 Among many, Didier Bigo, 'The (in)securitization practices of the three universes of EU border control: Military/Navy – border guards/police – database analysts' (2014) 45 *Security Dialogue* 209; Vicki Squire, 'The Securitisation of Migration: An Absent Presence?' in G. Lazaridis and K. Wadia (ed.) *The Securitisation of Migration in the EU. The European Union in International Affairs* (Palgrave Macmillan, 2015) 19.

88 Among many: Eva Kassoti and Narin Idriz (eds.), *The Informalization of the EU's External Action in the Field of Migration and Asylum* (T.M.C. Asser Press 2022); Paul James Cardwell, 'Rethinking Law and New Governance in the European Union: the Case of Migration Management' (2016) 41 *European Law Review*, 362; Paula García Andrade, 'The external dimension of the EU migration policy: the legal framing of building partnerships with third countries' in E. Tsourdi and P. De Bruycker (eds.) *Research Handbook on EU Migration and Asylum Law* (Edward Elgar 2023), 365; Andrea Ott 'Informalization of EU bilateral instruments: Categorization, contestation, and challenges' (2020) 39 *Yearbook of European Law*, 569; Ramses A Wessel, 'Normative transformations in EU external relations: the phenomenon of soft international agreement' (2021) 44 *West European Politics* 72.

89 Marie-Laurence Flahaux, 'Demystifying African Migration: Trends, Destinations and Returns' in G. Carbone (ed.) *Out of Africa. Why People Migrate* (Ledizioni, 2017) 31;

mented and put the spotlight on the general lack of common understanding of migration between the two continents from a normative perspective.⁹⁰ While regional free movement is key to the EU development in the wider region, making the EU a leading example of integration in this field, capable of integrating into its free movement regions neighbouring States through a complex system of incentives, the EU does not support nor promote free movement in regional contexts in its external action.⁹¹

Despite the EU policies targeting mainly Africa-to-Europe migration, they impact all migration from Africa, including intra-African regional and sub-regional migration. For this reason, factually wrong visions of African migration, reflected in the substantive aspects of EU migration cooperation, clash with legal efforts on free movement in the African sub-regions.⁹² In other words, the current EU migration cooperation with States members of RIOS, such as the ECOWAS, might threaten the coherence of their regional free movement regimes.⁹³ The predominance of security-dominated cooperation without, at the same time, fostering efforts to integrate and facilitate cross-border movements in regional space is detrimental to African integration efforts.

3.2 *Scaling-Up EU-Africa Cooperation on Migration*

Since the Valletta Joint Political Declaration and Action Plan of 2015, the scale of EU-Africa cooperation on migration changed significantly. Political, financial and legal actions on migration are increasingly taking precedence over other objectives of EU-Africa cooperation. As a matter of fact, the African countries are increasingly targeted by the Union's external migration

Anna Triandafyllidou (ed.), *Irregular Migration in Europe. Myths and Realities* (Routledge, 2016).

90 Olivier Bakewell and Loren B Landau (eds.), *Forging African Communities. Mobility, Integration and Belonging* (Palgrave MacMillan, 2022); Asfa-Wossen Asserate, *African Exodus: Migration and the Future of Europe* (Haus Publishing, 2018); Cris Beauchemin (ed.), *Migration between Africa and Europe* (Springer, 2018); Mehari Taddele Maru, 'Migration Policy-making in Africa: Determinants and Implications for Cooperation with Europe' (2021) Robert Schuman Centre for Advanced Studies Research Paper no 54.

91 Amanda Bisong, 'Trans-regional institutional cooperation as multilevel governance: ECOWAS migration policy and the EU' (2019) 45 *Journal of Ethnic and Migration Studies*, 1294.

92 On this topic, see Kwaku Arhin-Sam, Amanda Bisong, Leonie Jegen, H. Mounkaila, Franzisca Zanker, 'The (in) formality of mobility in the ECOWAS region: The paradoxes of free movement' (2022) 29 *South African Journal of International Affairs*, 187.

93 On this topic, Christina Oelgemöller, 'How freedom of movement infringes on the right to leave' (2023) 5 *Front. Hum. Dyn.* 1.

policies, in particular through informal agreements accompanied by external funding.⁹⁴

Informal agreements are widespread in the EU contemporary practice of international law-making on migration.⁹⁵ Mobility Partnerships,⁹⁶ Migration Compacts,⁹⁷ Common Agendas on Migration and Mobility,⁹⁸ informal readmission agreements,⁹⁹ Memorandum of Understanding¹⁰⁰ as well as Joint Declarations¹⁰¹ are prevalent in the EU external action. These informal agreements often constitute the basis for technical cooperation on migration. They are accompanied by funding for cooperation on migration control to fulfil the commitments they spell out.¹⁰² External funds are used to persuade third

-
- 94 Eva Dick and Benjamin Schraven, 'Regional cooperation on migration and mobility: experiences from two African regions' in A Geddes *et al.* (eds.) *The dynamics of regional migration governance* (Edward Elgar Publishing, 2019) 109; Micheal Imran Kanu, 'Towards purposeful economic integration in Africa: Free movement of persons instead of illegal migration' (2020) *Journal of the African Union Commission of International Law* 165.
- 95 On this topic, Eleonora Frasca, 'Informal agreements and quasi-legal mechanisms in EU-Africa cooperation on migration: how the EU takes advantage of the GCM commitments' (2023) 5 *Frontiers in Human Dynamics*, 1. Informal agreements on migration are not concluded exclusively with the African States, but in prevalence.
- 96 Mobility Partnerships were signed with Cape Verde (5 June 2008); Morocco (7 June 2013) and Tunisia (3 March 2014).
- 97 Commission, 'Communication on Establishing a New Partnership Framework with third countries under the European Agenda on Migration', COM (2016) 385, 3, footnote 7.
- 98 Joint Declaration on a Common Agenda on Migration and Mobility between the Federal Democratic Republic of Ethiopia and the European Union and its Member States (11 November 2015) and Joint Declaration on a Common Agenda on Migration and Mobility between the Federal Republic of Nigeria and the European Union and its Member States (12 March 2015).
- 99 EU-Guinea good practices for the efficient operation of the return procedure (16 July 2017); EU-Ethiopia admission procedures for the return of Ethiopians from European Union Member States (1 November 2017); EU-Ivory Coast Joint document on the procedures for identification and readmission of migrants presumed to be Ivorian nationals staying irregularly in the European Union (2018) and EU-The Gambia good practices for the efficient operation of the identification and return procedures of persons without authorization to stay (2018).
- 100 Memorandum of Understanding on a strategic and global partnership between the European Union and Tunisia (16 July 2023).
- 101 Joint Declaration establishing a migration partnership between the Islamic Republic of Mauritania and the European Union (8 March 2024) and EU-Egypt Joint Declaration (17 March 2024).
- 102 Migration control funding comes from the EU Trust Fund for Africa, see Constitutive agreement establishing the European Union Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa, and its

countries to change their domestic legislation or enforce it in a manner instrumental to the EU's interest in migration control, losing sight of the objectives of international cooperation and development.¹⁰³ Negative conditionality also plays a role in EU-Africa cooperation on migration. The main financial instrument for external funding on migration in Africa was created *ad hoc* and constituted at the Valletta Summit. It is called the EU Emergency Trust Fund for 'stability and addressing root causes of irregular migration and displaced persons in Africa' and it was created 'to address the root causes of instability, forced displacement and irregular migration and to contribute to better migration management'. Its creation shows how the EU approaches African migration, namely negatively, more as a problem 'to be solved' or 'managed' than positively, as part of continental integration, a challenge primarily for Africa rather than the EU.

In the implementation of the Trust Fund, which has been the main driver of migration cooperation in Africa, the Union approaches migration individually with each third country, focusing on border control, preferring bilateral cooperation on migration (EU-to-third-country) instead of region-to-region cooperation. Although, at the implementation level, it would be more difficult to interact with the RECs, due to lack of capacity of the REC itself, such a task is not impossible. Under the EUFTA, only one project out of 251 projects aims to support free movement within the African RECs.¹⁰⁴ Moreover, the 'regional' distribution of projects financed by the Trust Fund is artificial. In fact, three regions are identified: the Sahel, North Africa and the Horn of Africa. These three regions do not correspond to African RIOS /RECs. Some projects are implemented at a regional level, but do not take into account the specificities that characterise the countries' membership to a RIO nor their citizens' free movement rights within that region. The implementation of the EU Trust fund for Africa shows that a securitarian approach prevails in the projects

internal rules, done at La Valletta, on 12 November 2015, and from the Global Europe Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, PE/41/2021/INIT OJ L 209, 14 June 2021, 1.

103 Eleonora Frasca, 'The EU's legal influence on migration in the African States: The normative content of development cooperation projects' in M. Neuman, R. A. Wessel, and T. de Zee, *A Geopolitical EU in the Making? The EU's Actorness in a (De-)Globalizing World* (T.M.C. Asser Press, 2025).

104 One is the project 'Towards Free Movement of Persons and Transhumance in the IGAD region' (project identification number EUTF05-HoA-REG-19. Another project, called 'FMM West Africa: Support to Free Movement of Persons and Migration in West Africa' is also funded by the European Union, but not under the EU Trust for Africa.

funded under this instrument, with migration control objectives being at the forefront of cooperation.

3.3 *Undermining Free Movement in Africa*

By advising, equipping and persuading the African States to comply with or better enforce migration law in line with the EU's interests, the EU exercises a legal influence in their domestic legal orders. Much of the EU funding reinforces non-EU countries' border control capacities, and is aimed at preventing irregular migration to the EU. In doing so, EU-Africa cooperation on migration neglects the importance of migration for the regional identity of the RECs, in particular in the ECOWAS, and for African integration. When cooperating with States belonging to RIOS that developed or are developing free movement regimes, the EU defends its own migration regional interests – containment and securitization – thus undermining the facilitation of migration as a driver and objective of regional integration in those regions. Claire Castillejo notes that

the EU should adopt a broader and longer-term perspective on migration that could rebalance the current narrow, short-term focus on irregular migration. This would begin with a recognition that the vast majority of people migrate within Africa, that harnessing the potential of such intraregional and intracontinental movement is the priority for African actors, and that this requires long-term sustained support.¹⁰⁵

In addition, the EU external migration policies are based on factually wrong assumptions about African migration, such as an over-emphasis on irregular migration to the European Union, which remains a marginal phenomenon in comparison with the overall scale and types of regular migration to the Union, and the unidirectional migration from Africa to the European Union without sufficiently taking into account that the majority of international migration of African citizens is regional and continental.¹⁰⁶ This one-sided and counter-productive narrative heavily influences the EU decision-making and policy choices regarding EU-Africa cooperation. The EU should refrain from adopting external migration policies that are counter-productive and short-sighted

¹⁰⁵ Clare Castillejo, 'The influence of EU migration policy on regional free movement in the IGAD and ECOWAS regions' (2019) DIE Discussion Paper no. 11, 1, 44.

¹⁰⁶ On this topic, the work of geographers is of great interest: Henk van Houtum and Rodrigo Bueno Lacy, 'The migration map trap. On the invasion arrows in the cartography of migration' (2020) 15 *Mobilities* 196.

and live up to the commitments of the GCM to facilitate mobility, even if only limited to regional spaces. The EU external migration policies are in stark contrast not only with regional free movement of persons, but they also run counter the efforts of 'facilitating mobility' globally.

4 Conclusion

This chapter focused on the failure of the European Union to foster a common understanding of migration in its external action. Regional free movement of persons, an area where the EU has developed invaluable expertise, is rarely prioritised when cooperating with the African States. The underlying concern in external cooperation with third countries is the control of irregular migration. However, the EU's own external action framework pleads in favour of promoting free movement in regional spaces. Article 21(1) TEU provides that the Union's action on the international scene shall be guided by the principles that have inspired its own creation. There is room for arguing that these include freedom of movement of persons. Global developments in migration law also plead in favour of paying special attention to regional mobility. The GCM calls for 'advancing a common understanding of migration' which should be based on a careful and detailed study of international migration dynamics, also focusing on regional migration and the benefits it can bring to regional integration. The Union should refrain from promoting external migration policies that hinder migration regionalization dynamics already underway in Africa. The prevailing approach of the EU is one that promotes EU's own regional interests (the prevention of irregular migration from Africa) to the detriment of regional free movement initiatives in Africa. The role of the European Union as an international legal actor in migration can be questioned. Indeed, free movement of persons is an essential objective of African integration and a reality in sub-regional organizations such as the ECOWAS, which the EU should respect and support.