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Robert Schuman Centre for Advanced Studies
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EU Mobility Regimes and Visa Policy towards ENP
Countries

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Abstract

The paper compares the instruments which enhance the mobility of ENP Mediterranean and Eastern citizens, by distinguishing between visa cooperation and legal migration matters. Our analysis would suggest that cooperation in the field of legal migration, and especially social security rights, is more developed with Mediterranean Partners than with Eastern ones. This can be explained by the fact that the Association Agreements concluded with Mediterranean states are a more fruitful framework for cooperation than the Partnership and Cooperation Agreements concluded with Eastern partners. As far as visa cooperation is concerned, it is, conversely, more developed with Eastern Partners. It appears that the instruments tailored in the context of the Area of Freedom, Security and Justice are more appropriate to favouring the short stay of ENP nationals in the EU, to the Association Agreements. In any case, at this point, the opportunities provided by these instruments have not been fully exploited and cooperation levels remain weak.

Keywords

European neighbourhood policy, EU visa policy, partnership and cooperation agreements, association agreements, visa facilitation agreements, visa liberalisation action plans.

1. Introduction

From the earliest days of the European project, the historic, economic, cultural and geographical links of non-member neighbours with members were carefully taken into account. Bilateral cooperation agreements were concluded, in 1975-1978, with Mediterranean countries. The East European neighbours were left out of this process because of their remoteness. They also remained outside the Barcelona process which was launched in 1995 with the aim of strengthening relations among Mediterranean countries. Nevertheless, Partnership and Cooperation agreements (PCAs) have been concluded with Eastern neighbours since 1994¹, at the same time as the cooperation agreements with Mediterranean countries had been replaced by Association Agreements (AA), which were more ambitious in cooperation terms².

The unprecedented EU enlargement of 2004 necessitated a re-think of relation policies with neighbouring states in order to prevent 'new dividing lines' between an enlarged EU and its new neighbours (European Commission 2004). This led to the development of the European Neighbourhood Policy (ENP), which was first addressed to Eastern countries and next extended to Southern countries³. Its originality was to enable the development of bilateral relations between the EU and neighbouring countries, while remaining interconnected with regional and sub-regional processes and, in particular with the Barcelona Process and the Eastern Partnership, which was launched in 2009.

Today, the ENP countries are, taken as a whole, the main source and transit of legal and illegal migration towards the EU. They have historic, economic, cultural and geographical links with EU Member States and they represent an important labour source for an aging Europe. These factors explain the central position of mobility in the ENP. As the Commission pointed out, 'the ability of people to move and interact with each other was of the utmost importance for many aspects of the ENP, from trade and investments to cultural exchanges. Mobility is in itself a key foreign policy priority as this is the prism through which the citizens of partner countries perceive the EU' (European Commission 2004). Despite the recognition that the mobility of individuals is an important factor in the achievement of good relations between the EU and its neighbours (European Commission 2007b), the EU imposes visa obligations on citizens of all ENP countries, with the exception of Israel and (as of 2014) Moldova.

Mobility is part of the ENP objectives, but also part of the Commission strategy on the Global Approach to Migration (GAM)⁴, created in 2005: this was first addressed to Southern countries and then extended to Eastern countries. This aspect of the GAM has been reinforced with the latest revision of the political framework of the external dimension of the EU's migration policy. This

¹ Five Eastern countries have PCAs in force: Ukraine, Moldova, Armenia, Azerbaijan and Georgia. The PCA with Belarus was signed in 1995, but has not been ratified by the EU given the political situation in the country.

² Concerning Mediterranean partners, all have concluded AA with the exception of Libya and Syria.

³ So that, the ENP extends to sixteen third countries, including ten Mediterranean states (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestine, Syria and Tunisia) and six Eastern states (Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine).

⁴ The 'Global Approach to migration', endorsed at the European Council of December 2005, sought to balance a control-oriented approach adopted to date with the promotion of legal migration opportunities, European Council, Presidency conclusions, Brussels, 15-16 December 2005, pt. 4 and Annex I, '*Global Approach to Migration: priority actions focusing on Africa and the Mediterranean*'. See also, European Commission, '*The global approach to migration one year on: towards a comprehensive European migration policy*', COM (2006) 735, 30 November 2006; European Council, Presidency conclusions, Brussels, 14-15 December 2006; European Commission, '*Applying the Global Approach to Migration to Eastern and South-Eastern Regions Neighbouring the European Union*', COM (2007) 247, 8 June 2007; European Commission, '*Strengthening the global approach to migration: increasing coordination, coherence and synergies*', COM (2008) 611, 8 October 2008.

revision came in late 2011, after the events of the Arab Spring (European Commission 2011a), when GAM became the ‘Global Approach to Migration and Mobility’ (GAMM) (European Commission 2011b, 2014a).

Mobility is a cornerstone of these two frameworks, even if it remains a rather fuzzy concept. Unlike migration, which has a long-term and definite character, mobility is associated with ephemeral and circular characteristics. Furthermore, there has been an expansion in the categories of mobile persons. Indeed, the Commission has noted that the mobility of third-country nationals across external EU borders applies to several categories of people, all *bona fide* travellers: e.g. short-term visitors, tourists, students, researchers, business people and visiting family members. The Commission has stressed that mobility is, thus, a much broader concept than migration (European Commission 2011b, 1). Mobility is, therefore, linked to visa policy. Moreover mobility can be enhanced by policies that remove obstacles to movement e.g. institutional obstacles: portability of rights, avoidance of double taxation etc. In this sense, mobility is linked to legal migration and seems to implicate circular migration, so that the Commission speaks about ‘circular mobility’ (European Commission 2011b, Annex). It should be mentioned here that the concept of mobility, as defined by the Commission, did not take into account forced migrations. So that, the problems experienced in the Syrian and the Ukrainian crises will not be dealt with in this article.

In this paper, the authors will cast a critical look at various EU instruments, which facilitate migrant mobility from Eastern and Southern neighbouring countries. The dual meaning of the concept of mobility led to the distinction between: visa cooperation with ENP partners (Part 2); and legal migration matters (Part 3). This distinction is also needed because differing competences apply in these two areas. As far as the external dimension of visa and border management policies are concerned, the European Union’s external competence led to the development of a series of new instruments including: Visa Facilitation Agreements (VFA); Visa Liberalisation Action Plans (VLAP); and Local Border Traffic Agreements (LBTA). As regards the EU’s external actions on legal migration, the distribution of competences between the EU and member states constitutes an important hindrance to its development. However, it does not mean that the EU is unable to develop cooperation with ENP Partners in these matters: AA are coordinating tools which offer alternatives (Garcia Andrade 2013).

Instead, Mobility partnerships (MP) have not been considered as instruments which foster mobility, mainly because of their non-legally binding nature, which prevent them from offering legal solutions for visas and legal migration and because they were forged as a response to a range of policy goals with little or no connection to ENP (Parkes 2009, 1). They are the framework into which Common Visa Application Centres have been inserted. It cannot be said that these instruments really enhance the mobility of ENP partners. Only one Centre has been established in EaP countries, while three more were established in other third countries⁵. Then, even if the mechanism were to facilitate visa application, it would not have any impact on the procedure for issuing uniform visas. For this reason the centres were excluded from the study. Furthermore, the comparative dimension of this article meant that we left aside the analysis of EU secondary legislation promoting the mobility of ENP nationals: the added-value for comparison between East and South ENP states was limited.

This juridical and comparative analysis of mobility regimes offered to the EU Eastern and Southern neighbours represents an innovative contribution to the literature on EU migration and ENP policies: we hope the following can stand as an in-depth comparative study of the policies developed for these two groups of countries.

⁵ Common Visa Application Centres have so far been established in Cape Verde, Kinshasa and Podgorica.

2. Visa Cooperation with ENP Partners

The demand for mobility was higher in ENP Mediterranean states than in ENP Eastern countries when the ENP was set⁶. But this policy was addressed primarily to ENP Eastern countries owing to the popular discontent over the introduction of a visa requirement after the 2004 enlargement of the EU. Indeed, the EU's 2004 enlargement resulted in the imposition of a visa obligation on third country nationals, who were used to travelling freely between their country and new members of the EU.⁷ This obligation has generated considerable resentment inside these countries. The EU's visa regime undermined the ENP's objectives, especially in terms of the perception of the EU among citizens of ENP Eastern countries (Boniface and Wesseling 2008). The EU, therefore, adopted a series of new instruments which enhance mobility: Visa Facilitation Agreements (2.2.); Visa Liberalisation Action Plans (2.3); and Local Border Traffic Agreements (2.4.). These instruments, which constitute a development of the Schengen *acquis*, were primarily addressed to Eastern ENP states which, unlike Mediterranean partners, were directly affected by the enlargement of the Schengen area. After a long period of stasis, cooperation with Mediterranean countries in visa matters started developing, from 2008 onwards, above all through Association Agreements (2.1.).

2.1. Association Agreements

The AAs with Mediterranean neighbours which were not covered until the approval of the Valencia JHA regional programme, in 2002, lack provisions on visa, mobility and migration issues.⁸ As far as the AAs concluded after this date are concerned, they do not contain any clause on mobility issues, except the AA with Algeria which contains a clause on the movement of persons. Due to the fact that the EU did not plan to facilitate visa issuance to Algerian citizens, this country was reluctant to conclude a readmission agreement. The negotiations, in fact, were deadlocked until 2013, when it was planned to launch a Dialogue on migration, mobility and security, which might lead to the negotiation of an MP⁹.

Such a dialogue has been previously established with Jordan, Morocco and Tunisia¹⁰ following an evolution of the Association Agreements with these three states which, it should be remembered, did not initially contain migration provisions. Indeed, these three partners were recognized as having an 'advanced status' or a 'privileged partnership', which aimed to enhance the mobility of citizens.¹¹ But the true catalyst for a stronger cooperation in mobility matters was the 2011 'Arab spring'. As stated by the Commission in 2013, 'partners have strong expectations that their democratic revolutions will lead to easier mobility to the EU (European Commission 2013a, 15).' In response to these changes and in order to provide enough incentives for the emergence of a 'Mediterranean society', the Dialogue on migration, mobility and security became the framework in which the EU increased cooperation in

⁶ The number of short stay visa applications is currently lower in Mediterranean ENP countries than in Eastern ENP countries: though this was not the case ten years ago. For 2003, see the statistics in Boniface *et al.* 2008, 29. For 2012, see European Commission, Overview of Schengen visa statistics 2009-2012, p. 10, (http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/docs/overview_of_schengen_visa_statistics_en.pdf - last accessed on 10 July 2014).

⁷ This explains the steep increase in the number of visa applications from ENP Eastern citizens' over the last decade.

⁸ Nevertheless, the AA with Tunisia and Syria include a social dialogue clause. Migration is part of this dialogue with a focus on the fight of illegal migration (article 69 of the AA with Tunisia; article 110 of the AA with Syria).

⁹ Speech of José Manuel Barroso, 7 July 2013, <http://euro-mediterranee.blogspot.fr/2013/07/algerie-loccasion-de-la-signature-dun.html> It is also planned to start a Dialogue on migration, mobility and security with Algeria, Egypt, Libya, Lebanon and Syria as soon as conditions allow, European Commission (2014, Annex 1).

¹⁰ It started with Tunisia and Morocco in October 2011 and with Jordan in December 2012.

¹¹ Morocco was the first partner to be recognized an "Advanced status" in October 2008, status which was "original and without precedent in history" (Beurdeley 2012). The "Advanced status" partnership with Jordan was agreed in October 2010 by the EU-Jordan Association Council. Tunisia accessed to the "Advanced Status" in November 2012.

mobility matters¹² and to conclude the MPs.¹³ The signature of the MP is an important step as it was to help this country to initiate and implement many reforms before the Visa Dialogue began: as was the case for some Eastern Partners (Litra, 2012; Buracec, 2012, 15). Indeed, since the end of 2013, the European Commission has been planning such an agreement with Morocco: this was in return for the conclusion of a readmission agreement, which makes negotiations particularly complex.

The PCAs concluded with Eastern Partners did not focus on cooperation in the field of migration. It was decided to put in place a new legal framework to deal with such issues rather than seek the evolution of these agreements. This was, in large part, because the enlargement of the Schengen area had made these matters urgent. This includes VFA which serve as a transitional tool facilitating the issuance of short-term visas without full visa liberalization. The AAs which were negotiated as a second step reflect the state of EU law, providing visa facilitation and visa free travel, provided that conditions for secure and well-managed mobility are in place¹⁴.

2.2. Visa Facilitation Agreements

VFA can be viewed as a compromise between: the desire of certain Member States for visa-free travel with neighbouring third countries; and the desire of other Member States to maintain a more restrictive visa regime with the aim of reducing irregular immigration (Peers, Guild and Tomkin 2012, 323). VFA simplified visa issuance procedures without establishing a visa-free regime. Even though VFA are linked to readmission agreements and are mostly negotiated and signed together with them,¹⁵ the Council stated that ‘the existence of a readmission agreement or the willingness of a third-country to negotiate one, does not automatically, nor routinely lead to the opening of negotiations on a VFA’ (European Council, 2005b, 3).

So far the EU has concluded VFA with five Eastern partnership countries: Armenia, Azerbaijan, Georgia, Moldova and Ukraine; see Table 1. All are in force except the agreement with Azerbaijan. The VFA with the Republic of Moldova and with Ukraine: visa reports in Ukraine and Moldova (see Weinar *et al.* 2012 and Sushko *et al.* 2012) had to be amended due to the coming into force of the Visa Code in April 2010.¹⁶ The only EaP country which has not yet signed a VFA with the EU is Belarus. The EU launched negotiations on visa facilitation and readmission agreements with this state on 30 January 2014.

The content of all five agreements is similar. They facilitate the issuance of short-stay visas for a stay of no more than 90 days within a period of 180 days. The agreements enable shorter periods of issuance, as the decision has to be taken within ten days and in urgent cases in two days or less. Furthermore, they ensure that the procedures are cheaper (they offer a reduced fixed fee of 35 euros

¹² The dialogue on migration, mobility and security allowed the EU and Jordan, Morocco and Tunisia to discuss in a comprehensive manner all aspects of their possible cooperation in managing migration flows and circulation of persons. With other partners, the cooperation remains weak.

¹³ The negotiations on the Political Declaration for the EU-Morocco Mobility Partnership were finalised on 1 March 2013 and the Mobility Partnership was signed 7 June 2013. This agreement represents a benchmark for other countries in the region and the mobility partnership with Tunisia, which was signed 3 March 2014, is in many ways similar to it. As far as negotiations with Jordan are concerned, they are still ongoing.

¹⁴ The EU and its Member States have so far signed three AA with Eastern ENP states: Georgia, Moldova and Ukraine. These agreements are currently in the process of ratification except the agreement with Ukraine which was ratified 15 September 2014 simultaneously by both parties and will enter into force in 2015. AA with Armenia and Azerbaijan are currently in the process of negotiations.

¹⁵ Out of six EaP countries, Ukraine was the only one where negotiations for a readmission agreement started first and the negotiations on visa facilitation agreement followed later.

¹⁶ According to Manashvili (2013, 17), “one of the main reasons behind the initiation of the process of amending the existing Visa Facilitation Agreements in only two and a half years after their entry into force was linked to their poor implementation on the ground, triggering particularly the problems in obtaining long-term multiple-entry C visas.”

for processing the visa application) and that they are less bureaucratic, as the documents to be presented regarding the purpose of the journey are simplified for certain categories of persons, in particular close relatives, students, business people, journalists, scientists, members of official delegations, etc. Finally, there are simplified criteria for the issuance and the possibility of applying for multiple-entry visas. However, despite the fact that VFA provide solutions for a number of problems related to visa issuance, there is ongoing criticism as to their limited practical value due to a number of clauses contained within the agreements. This leaves wide discretion to Member States' consulates (Manashvili 2013, 19). Moreover, it is not only the legal framework but its implementation that influences the mobility of individuals. The existent data show that, before VFA, there were more visas issued and more mobility from the Eastern neighbourhood than is now the case. But, the number of visas issued in Eastern ENP countries is considerably higher than in the ENP Mediterranean countries (European Commission 2013c, 9) and the visa refusal rate has remained higher in the Mediterranean ENP countries than in the Eastern ones.¹⁷

2.3. Visa Liberalization Action Plans

'VLAP' are the label provided by the EU for the visa liberalization process with EaP countries: it being understood that that visa liberalisation is not officially on the agenda with the Mediterranean Partners.

Action Plans (AP) include four blocks of reforms which need to be satisfied by the EaP countries for the establishment of a visa-free regime with the EU: document security, including biometrics; border management, migration and asylum; public order and security; external relations and fundamental rights. Each block consists of two phases. The first phase consists of legislative and policy reforms, while the second phase encompasses specific benchmarks for the implementation of these reforms. The implementation of AP is monitored through regular progress reports by the Commission and through regular meetings of Commission and EaP country representatives.

Generally speaking, benchmarks set by the AP with EaP countries are much more specific and demanding than the 'roadmaps' with the Western Balkans states. As regards the first block on document security, AP requires the fulfilment of international standards of the International Civil Aviation Organization (ICAO), unlike the roadmaps, which also mention EU provisions (Hernández i Sagrera 2014, 16). However, AP require that the consulates of the EaP countries have to be equipped to issue biometric passports, while not even all EU Member States are equipped for this purpose (Hernandez i Sagrera 2014, 16). As regards the second block of reforms on irregular migration, apart from the fulfilment of international and EU standards, AP require the adoption and implementation of subsidiary protection measures. Furthermore (unlike in the roadmaps), the abolition of visas is made conditional upon the implementation of readmission agreements (Hernández i Sagrera 2014, 16). The third block on public order and security contains a list of international organizations whose standards should be respected by EaP countries¹⁸. Finally, the fourth block is also more demanding than the roadmaps as regards the protection of minorities and combating hate crimes and ensuring freedom of religion (Noutcheva, Pomorska and Bosse 2013).

So far, only three out of six EaP countries have been granted AP (Table 1). All the three APs set similar criteria for visa liberalization. Moldova is the only EaP country which has met all the benchmarks and, therefore, finalized the process: Moldovan nationals can now travel visa-free to all the EU Member States for up to 90 days (apart from the United Kingdom and Ireland) and to the EFTA countries.

¹⁷ To illustrate this point, the refusal rate was 3.2% for the Eastern and 16% for the Mediterranean countries. In 2012 the rate improved slightly: it was 2.1% for the Eastern and 15.9% for the Mediterranean countries (European Commission 2013, 9).

¹⁸ On the balance between justice/freedom and security in the ENP, see Noutcheva et al. 2013.

The ‘success story’ of Moldova¹⁹ has more political than practical significance for both sides. On the side of the EU, the waiving of visas for Moldovans gives credibility and legitimacy to the EU’s policy towards the EaP countries. It proves that the ENP does not only promote the EU’s interests in border control and prevention of irregular migration. The EU, the agreement suggests, also takes into account EaP interests in enabling travel and regular admission of its nationals, provided that EU conditionality is satisfied.²⁰ On the side of Moldova, it was an important pre-election victory for its political leaders. Finally, on both sides, the lifting of visas for Moldova, as on the fulfilment of the EU-set benchmarks, created a precedent for other EaP countries by showing that the visa liberalization process is worth pursuing.

The other two EaP countries, which have so far been granted AP, are Ukraine and Georgia. In May 2014, the Commission concluded that Ukraine had fulfilled the necessary first phase benchmarks and that the second phase of the VLAP can begin (European Commission 2014b). Georgia, however, is still implementing the first phase of her VLAP (European Commission 2013b). The functioning of the existing VLAP reveals how demanding and far-reaching the benchmarks are. One also gets the impression that the assessment of whether the benchmarks have been fulfilled is, to a certain degree, politicised: this calls into question the credibility of the whole process.

2.4. Local Border Traffic Agreements

Regulation 1931/2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention (European Union 2006) establishes the regime of border traffic at external EU borders. It does so by authorising EU Member States to conclude bilateral agreements with the neighbouring third countries so long as they provide advantages to border residents crossing the external EU borders of the signatory Member States.

Regulation 1931/2006 introduces a special permit issued to the border residents (30-50 km zone on both sides of the border) of the signatory states including those subject to a visa obligation. Based on the interpretation of the Court of Justice in *Shomodi*, Regulation 1931/2006 must be interpreted as meaning that the holder of a local border traffic permit can move freely within the border area for a period of three months if his/her stay is uninterrupted. They, then, have a new right to a three-month stay each time his/her stay is interrupted.²¹ Thus, the Court confirmed that Regulation 1931/2006 derogates from the Schengen *acquis* and that the limitation of stays to periods not exceeding three months per six-month period does not apply here. As the Court stated, ‘the purpose of those rules is to enable the residents of the border areas concerned – while, at the same time, taking account of local, current and historical realities – to cross the external land borders of the European Union for legitimate economic, social, cultural or family reasons, and to do so easily – that is to say, without excessive administrative constraints – and frequently, even regularly’.²²

So far, five LBTA with EaP countries have entered into force: three Schengen states – Hungary, Poland and Slovakia – signed special LBTA with Ukraine; the fourth LBTA was signed between Romania and Moldova; and the latest agreement between Latvia and Belarus. The Lithuania-Belarus and the Poland-Belarus agreements were supposed to enter into force in 2011. However, after the approval of the Belarus legislative organs and the signature of the president, Belarus refrained from sending a diplomatic note, the last step that needed to be taken to bring the agreements into force.

¹⁹ For the discussion of whether Moldova is an EU “success story” see Sobjak 2013; Boonstra 2011 and “Moldova Reality Check” 2013. On the functioning of the ENP in Moldova see e.g. Hagemann 2013.

²⁰ For a critique of the ENP with Moldova and Georgia in terms of its lack of facilitating the interests of the EaP countries, see Eisele and Wiesbrock 2011.

²¹ Para. 26 in Case C-254/11 Szabolcs-Szatmár-Bereg Megyei Rendőrkapitányság Záhony Határrendészeti Kirendeltsége v. Oskar Shomodi [2013] ECLI:EU:C:2013:182.

²² Para. 24 in *Shomodi*.

After a while it became clear that the decision not to launch the agreements was based on political and economic considerations (Yeliseyeu 2014, 75). It is worth noting that there are not plans to apply the Regulation to the Spanish enclaves of Melilla and Ceuta in North Africa²³ because, while being a part of the Spanish territory, they are not part of the Schengen area.²⁴

In practice, as the Commission noted, the local border traffic regime functions efficiently. However, there are several difficulties with the definition of border areas and the requirement for medical travel insurance; as well as the existence of stricter conditions in the agreements than those provided by the Regulation (European Commission 2011c).

3. Portability of Rights

Due to the lack of an EU-harmonized social security policy, social security rights of ENP nationals depend, on the one hand, on Member States' national legislation and, also, on bilateral social security agreement between a particular EU Member State and the respective third country²⁵. The 2012 Commission Communication on the External Dimension of EU Social Security Coordination has underlined the lack of cooperation between Member States, which results in a fragmented approach to social security coordination with third countries and a lack of transparency as to migrants' rights (European Commission 2012, 3).

On the other hand, Regulation 1231/2010 (European Union 2010) extends access to the social benefits of the Member State of residence to third-country nationals who are lawfully travelling from another member state. It does not apply to purely internal situations. In the case of third-country nationals who reside in a Member State, several EU migration rules have imposed standards that national social security legislation must meet. Indeed, 'national treatment' clauses on social security rights have been inserted into a number of EU migration directives.²⁶ Equality of treatment can be also guaranteed as regards the transfer of their state pensions to a third country.²⁷ But, these clauses can be applied only to the categories of migrants referred to in the directives. This patchy approach of social security systems creates obstacles for migrants and businesses from third countries in terms of entering, moving within and leaving the EU. As a consequence it was planned to develop a common EU approach to social security coordination with third countries. Unlike PCAs (3.1), Association Agreements appear as a tool to take this forward (3.2.).

²³ On the status of these two Spanish enclaves in Morocco, see Berramdane 2008.

²⁴ Specific rules defined in the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement, which exempt from the visa requirement the Moroccan nationals who are resident in the provinces of Tetuan or Nador, Declaration by the Kingdom of Spain on the towns of Ceuta and Melilla in the Final Act to the Agreement on the Accession of the Kingdom of Spain to the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders signed at Schengen on 19 June 1990, OJ L 239, 22.9.2000, p. 69.

²⁵ On social security bilateral agreements, see Spiegel 2010.

²⁶ For an overview of the equal treatment provisions regarding access to social security in the EU migration directives, see European Migration Network 2014, Table A1.1.

²⁷ This right is granted explicitly by Article 14(1) (f) of the directive 2009/50/EC, but must also be inferred from the terms of Article 12 (c) of the directive 2005/71/EC.

3.1. Partnership and Cooperation Agreements

The PCAs with Ukraine and Moldova contain a clause on the coordination of social security²⁸ which obliges the signatories to conclude agreements. These agreements must ensure that all periods of insurance, employment or residence completed by Ukrainian workers in EU Member States are added together for the purpose of pensions and that any pensions are freely transferable. Due to the fact that this clause only obliges the signatories to conclude agreements which will regulate social security coordination, it seems that it is not capable of direct effect.

The other three PCSs do not contain such a clause, but, like the PCAs with Ukraine and Moldova, they provide that EU Member States ‘shall endeavour to ensure’ equal treatment of ENP nationals who are legally employed in the territory of a Member State as regards working conditions, remuneration and dismissal. The word ‘endeavour’ suggests that this clause cannot have direct effect as it does not constitute an obligation. It is, therefore, different from the PCAs with Russia and Morocco which have a stricter wording: these demand direct effect.²⁹

Unlike PCAs, AA have been developed in an interesting way as far as coordination of social security is concerned.

3.2. Association Agreements

The conferral of social security rights on third-country nationals who are resident in a member state is being carried out *via* the implementation of the principles contained in these agreements which are to govern the coordination of social security rules for workers and their families, who move between an EU country and the associated country. Indeed, in October 2010, the Council took a first step in this process. It decided on the position to be taken by the EU within the Association Councils set up by the Agreements with four ENP Mediterranean partners (Morocco, Tunisia, Algeria, and Israel)³⁰ on the adoption by those Councils of decisions regarding the coordination of social security systems.

These decisions should complete regulation n°1231/2010 (European Union 2010) by extending the equality of treatment of EU citizens and nationals of the associated country who are resident in a Member States: nationals would enjoy full equality as soon as they are employed within the area of free travel formed by the EU and its country of origin and providing, too, that the family has established residence there. Once they are adopted, the common EU approach to social security coordination will be effectively implemented, with direct effects in national law, and legally employed workers should benefit from equal treatment with workers in the host state; export of the full amount of old-age, survivors’ and invalidity pensions and pensions in respect to accidents at work and occupational diseases outside the territory of the paying state; and equal treatment for legally resident family members.

Thus, the AA are tools for protecting citizens who are working in other states. But, they can also be viewed as a way of attracting businesses and labour from associated countries. The common EU approach to social security coordination is important in this regard. The suggestion of the Commission to include a standard social security coordination clause – based on the principles of equal treatment, export of pensions and administrative cooperation – in future association agreements is interesting (European Commission 2012, 5).³¹

²⁸ Art. 25 of the Ukrainian PCA and Art. 24 of the Moldovan PCA.

²⁹ See C-265/03 *Igor Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol* [2005] ECR I-2579; C-18/90 *Office national de l'emploi (Onem) and Bahia Kziber* [1991] ECR I-199.

³⁰ See Council Decisions n°2010/697, 2010/698, 2010/699, 2010/700, respectively of 21 October 2010, OJ L 306 23 December 2010.

³¹ It further put forward a proposal to establish a new instrument which would enable a coherent EU approach towards third countries in the area of social security – an EU social security agreement, which would allow a more flexible approach to

In the future, AA could be exploited in other ways in order to enhance the mobility of citizens of ENP partners. They could partially compensate the lack of an exclusive competence of the EU as regards the conditions of admission of third-country nationals to member states' territories, which enable the EU to conclude specifically international agreements with third countries.³²

4. Conclusion

The paper has compared the instruments which enhance mobility of ENP Mediterranean and Eastern citizens, by distinguishing between visa cooperation and legal migration matters. On the basis of the analysis, it appears that cooperation in the field of legal migration, and especially of social security rights, is more developed with Mediterranean Partners than with Eastern ones. This can be explained by the fact the AAs concluded with Mediterranean states are a more fruitful framework for cooperation than the PCAs concluded with Eastern partners.

As far as visa cooperation is concerned, visa cooperation is conversely more developed with Eastern Partners. Specific mechanisms were created in order to overcome the shortcomings linked to the enlargement of the Schengen area expected following the 2004 enlargement. Even if these instruments constitute developments of the Schengen *acquis* and, thus, are situated in the context of the AFSJ, they also serve ENP goals in terms of mobility, in theory at least, because in practice it seems that the mobility of Eastern citizens has not really increased which the VFAs in question have been in force. Moreover these agreements, like visa liberalisation agreements, are only proposed to ENP Partners or to states which are included in the pre-accession process. They could, therefore, be considered as instruments which reinforce the ENP's originality. Nevertheless, these agreements were proposed only to certain Eastern Partners and do not constitute a comprehensive instrument of the ENP. An evolution occurred recently as the Commission planned to negotiate a VFA with Morocco. The cooperation with Mediterranean states in mobility matters has, to date, taken place in the context of AA. It did not prove to be a success by comparison with the agreements with Eastern partners.

To conclude, it appears that the instruments tailored in the context of AFSJ are more appropriate in favouring short stay of citizens of ENP partners in the EU, in comparison to the AAs. Both the VFAs and the VLAPs emphasize the Member States' desire to maintain a restrictive visa regime or to enable visa-free travel only upon the fulfilment of highly demanding benchmarks, thus once again revealing the tension between the openness and safeguards of EU migration policy. By contrast, for reasons linked to the division of competences between the EU and its Member States, the AAs are a more suitable tool for dealing with legal migration matters. Nevertheless, at this point, the opportunities provided by these instruments have not been fully exploited and cooperation remains weak in this field.³³

(Contd.) _____

social security coordination than is possible under association agreements and could also be concluded with third countries with which there is no association agreement.

³² Indeed, article 217 TFEU avoids having to justify both the existence of explicit or implied external competences based on the specific legal bases of the Treaties, and the conditions for their exercise in each of the particular fields covered by the agreement.

Table 1: Visa Cooperation Instruments in ENP Countries – State of Play

Country	Association Agreement / Partnership and Cooperation Agreement	Visa Facilitation Agreement (entry into force)	Visa Liberalisation Action Plan	Local Border Traffic Agreements
Algeria	01/09/2005 (AA in force)	--		
Armenia	01/07/1999 (PCA-in force)	01/01/2014	--	
Azerbaijan	01/07/1999 (PCA-in force)	Signed 029/11/2013 (not yet in force)	--	
Belarus	Not in force (signed in 1995, but not ratified)	Negotiations launched 30 January 2014	--	LBTA with Latvia (enter into force on 01/12/2011) LBTA with Lithuania and Poland (not yet in force)
Egypt	01/06/2004 (AA in force)	--		
Georgia	01/07/1999 (PCA-in force) 27/06/2014 – signing of AA (not yet in force)	01/03/2011	04/06/2012 Visa Liberalization Dialogue 25/02/2013 VLAP	
Israel	01/06/2000 (AA in force)	Visa exemption		
Jordan	01/05/2002	--		

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	(AA in force) 26/10/2010 (‘Advanced status’ partnership)			
Lebanon	01/04/2006 (AA in force)	--		
Libya	2007: Council decision to start the process of negotiating a Framework Agreement. 2008: launch of negotiations.	--		
Moldova	01/07/1988 (PCA-in force) 27/06/2014 – signing of AA (not yet in force)	01/01/2008 01/07/2013(amendment)	15/06/2010 Visa Liberalization Dialogue 24/01/2011 VLAP 03/04/2014 Lift of visa requirements stipulated by Regulation 259/2014 of 3 April 2014, OJ L 105, 08/04/2014, p. 9-11.	LBTA with Romania (enter into force 22/01/2010)
Morocco	01/06/2000 (AA in force) 13/10/2008	-- (negotiation mandate expected for 2014)		

	(‘Advanced status’ partnership)			
Palestine	1997: Interim Association Agreement on trade and cooperation	--		
Syria	Signed 19/10/2004 (Not in force)	--		
Tunisia	01/03/1998 (AA in force) 19/11/2012 (‘Privileged Partnership’)	--		
Ukraine	01/03/1998 (PCA- in force) 21/03/2014 (political provisions) & 27/06/2014 (other provisions) – signing of AA – 15/09/2014 (Not in force)	01/01/2008 01/07/2013(amendment)	29/10/2008 Visa Liberalization Dialogue 22/11/2010 VLAP 27/05/2014 Launch of the 2 nd phase of the VLAP	LBTA with Hungary (enter into force on 11/01/2008) LBTA with Slovakia (enter into force 27/09/2008) LBTA with Poland (enter into force on 01/07/2009)

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